

## THE CONCEPT OF RESTORATIVE JUSTICE IN THE RESOLUTION OF CRIMINAL ACTS OF EMBEZZLEMENT OF CUSTOMERS' FUNDS BY BANK EMPLOYEES

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**Abstract.** *Criminal acts of embezzlement of customer funds continue to occur frequently in various banks. Such acts are detrimental to the bank's finances and hinder the economy, especially for those who need quick funds. Embezzlement of customer funds is often committed by bank employees due to their easy access and position as financial officers. The problem is how to resolve criminal acts of embezzlement of customer funds by bank employees so that they are held accountable for their actions. The purpose of this study is to determine the model for resolving criminal acts of embezzlement of customer funds by bank employees due to their position. This study uses an empirical juridical method, with the object being the embezzlement of customer funds at BPR. Data was collected through direct interviews with relevant stakeholders, BPR leaders, police, and perpetrators. This study produced a restorative justice model in resolving criminal acts of embezzlement by bringing together the parties involved, both from BPR X and the bank employee and his family. Both parties agreed not to pursue legal action. The agreement between the two parties was set out in a memorandum of understanding and witnessed by witnesses, the essence of which was that the perpetrator was willing to pay back the money that had been taken, although not in full due to considerations of his long service at the BPR, and was willing to be dismissed. Both parties accepted this, so there was no criminal prosecution. On the one hand, BPR benefited from getting the money back, even if not in full, and on the other hand, the victim was not prosecuted. The good name of BPR and the bank employee was preserved.*

Keywords: Funds, Customers, Embezzlement, Bank employees, Restorative Justice.

### I. INTRODUCTION

#### a. Research Background

Discussions regarding crimes in the banking sector have recently become a concern for many parties, ranging from banks as perpetrators of crime to bank employees. Criminal acts committed by banks, which are prohibited from conducting banking activities, refer to the provisions of Article 49 paragraph (1) of Law Number 4 of 2023 concerning the

Development and Strengthening of the Financial Sector (PPSK). There are three types of criminal acts related to 'banking activities', namely:

1. "Making false entries in a bank's books/reports/accounts (window dressing)."
2. "Removing or not including entries in a bank's books/reports/accounts."
3. "Altering, obscuring, concealing, deleting, or removing entries in a bank's books/reports/accounts."

Window dressing is a criminal offence that carries the most severe penalties for banks. In addition, the risks faced by banks are very serious, namely that the bank's health rating will become unhealthy and the bank officials involved will be subject to criminal prosecution. One example of a criminal offence committed by a bank is the case of Bank Dwipa Semesta. The bank did not record deposits in the bank's books (unrecorded transactions). (Novrilia, 2023)

Meanwhile, in the banking sector, embezzlement of customer funds is usually committed by bank employees. An example of customer money embezzlement at a state-owned bank in Garut. NF, as the head of the bank unit office, embezzled money from 2021 onwards, using the modus operandi of making five cash withdrawals totalling 1 billion rupiah belonging to a customer of the bank, by instructing his subordinates/tellers who were aware of the situation. The suspect spent the money for personal use and partially to reimburse other customers who had previously been defrauded..(Amelia, 2022)

This banking crime occurred because banks play a central role in collecting funds and managing money from the public. Banks receive and deposit money from individuals and other entities, then lend that money in the form of credit for economic activities. The amount of funds collected in banks is large, so many people are tempted by that money.

Tempted by the large amount of money, a crime in the banking sector involving embezzlement was committed by an employee of BPR X in Cirebon Regency, who took money stored in a safe under his control without the knowledge of his superiors. This incident occurred at one of BPR X's branches in Cirebon Regency, where a customer was going to withdraw Rp. 87,000,000 in cash at the teller, and the teller asked the head of operations, let's call her Mawar, if anyone was going to withdraw money. However, after the teller and accountant checked the safe, they found that the amount of money in the safe was not as much as that. However, the physical cash balance and the ledger balance matched. This was then reported to the BPR management. A check was then conducted on the existing financial data. It turned out that there was a discrepancy of up to IDR 350,000,000. The head of operations was questioned about this large discrepancy. The head of operations accused the teller of embezzling the money. However, when questioned, the teller denied using the money.

Finally, the bank's management asked the head of operations directly and it turned out that the money had been used or taken by the head of operations from February 2024 to June 2024. The money was taken once a week, in the amount of Rp. 10,000,000, and had been reported to the authorities. (Senosa, 2024) The above actions are common and are referred to as embezzlement. In the banking industry, embezzlement of customer funds can be carried out by bank employees in various ways (modus operandi).

Banks operate in accordance with the Banking Law, namely Law No. 10 of 1998. This law provides for criminal sanctions against those who have committed violations in accordance with the articles in the banking law, one of which concerns the embezzlement

of customer funds. The issue is how to resolve the criminal act of embezzling customer funds. Considering that if the case goes to court, the perpetrator will be subject to criminal sanctions, it is likely that the money taken will not be returned, and it could damage the reputation of the rural bank (BPR). Meanwhile, from the customer's perspective, the money can still be retrieved or replaced in accordance with the amount deposited at BPR X through the LPS (Deposit Insurance Corporation), but this could damage trust in BPR X. Therefore, a model for resolving criminal acts of embezzlement by bank employees is needed, one that allows for a win-win solution. The perpetrator is not prosecuted, the embezzled money can be returned, the bank's reputation is maintained, and it does not require high costs or take up working time.

Previous research by Rivaldo Datau in (Lex Privatum Vol. V/No. 1/Jan-Feb/2017), entitled 'Embezzlement of Customer Deposits as a Banking Crime' discusses the application of the law where such acts are regulated in the Criminal Code and outside the Criminal Code. Agus Wijaya and colleagues then conducted research entitled 'Embezzlement of Official Duties in the Banking Sector to Duplicate Bank Accounts' in 'Jurnal Preferensi.Hukum Vol.3 No.2/2022,' which examined the application of articles in the Criminal Code. The perpetrators were subject to sanctions and the case was resolved through the courts. Meanwhile, the researchers will examine the model of out-of-court settlement through restorative justice, so that no criminal punishment is imposed.

## II. RESEARCH METHOD

The type of research is qualitative, descriptive analysis, which describes phenomena such as activities, relationships, changes, characteristics, and others. This research examines the actions of bank employees who take customers' money under their control without the knowledge of their superiors, or embezzle customers' money, and the restorative justice model as a solution.

The empirical juridical approach method, namely the conformity between *das sein* and *das sollen*. In other words, analysing and examining the workings of law in society. To find the data and facts collected, then identify the problems, compare them with the relevant regulations and find solutions or resolutions.

The data consists of primary and secondary data. Primary data is obtained through interviews conducted directly with parties related to the research. The focus of the research is on allegations of embezzlement at a rural bank (BPR) X in Cirebon Regency. In addition, secondary data on laws and regulations, books, and documents related to the research topic is also used. The collected data is sorted and selected for analysis, comparing the criminal acts committed with the applicable provisions or articles, and applying restorative justice as a solution and drawing conclusions from the content of the article.

## III. RESEARCH RESULTS AND DISCUSSION

### a. Elements of Embezzlement

Taking money from a safe at a rural bank (BPR) due to one's position as a depository of customer funds at a certain BPR X in Cirebon Regency, without the knowledge of management or any records or information regarding the money, and using it for personal gain constitutes embezzlement. Embezzlement of bank customer deposits is a form of banking crime committed by bank employees in various ways (*modus operandi*).

However, the crime of abuse of authority is a criminal act of embezzlement in office, a practice that occurs in the banking sector. At BPR X in Cirebon Regency, the suspect was a person who had the position or authority to store or safeguard customer money at the bank, but took it for his own benefit or to enrich himself without the knowledge of his superiors, which is equivalent to stealing money stored in bank customer accounts. (Aspan, 2022)

Embezzlement committed due to one's position is classified as aggravated embezzlement. The aggravating factors are:

1. The defendant was entrusted with the embezzled goods due to their working relationship, for example, an employer and an employee/worker.
2. The defendant kept the goods due to their position, such as a laundry worker taking clothes that they washed.
3. The defendant received monetary compensation, such as a porter who transported passengers' luggage and embezzled it. (Soesilo, 1991)

Based on the above, the actions of the BPR X employee in Cirebon Regency in taking customer money entrusted to BPR X constitute embezzlement. In essence, embezzlement is the misappropriation of money entrusted or deemed to be entrusted by the owner to a bank employee. By committing embezzlement, the bank employee has betrayed the trust placed in them by the rightful owner of the customer's deposit.

This act fulfils the elements of embezzlement, namely:

1. Subjective element, namely the existence of intent
2. Objective element, namely:
  - a. possessing something unlawfully
  - b. an object/item;
  - c. partly or wholly belonging to another person, and
  - d. being in their possession not as a result of a malicious act.

This act constitutes embezzlement because the customer's goods or money were actually in the possession of the perpetrator, namely employee X of the bank. This differs from theft, where the goods or money are not yet in the possession of the perpetrator. Furthermore, the intention to illegally possess the goods also distinguishes embezzlement from theft. If the intention to take control existed at the time the goods/objects were taken, then it constitutes the crime of theft. In embezzlement, the intention to take control only arises after the goods in question have been in the perpetrator's possession for some time.

## **b. Penalties under the Banking Act**

Embezzlement of customer funds at banks or crimes in the banking sector are regulated in the Banking Law, namely Law No. 10 of 1998. These criminal acts are categorised as economic crimes, or crimes that fall outside the scope of the Criminal Code or special criminal laws. The Banking Law is included in economic criminal law in a broad sense, which covers provisions of regulations or actions in the economic field. Violations are punishable by penalties not stipulated in Emergency Law No. 7 of 1955 or, in a broader sense, economic crimes are defined as any act that violates the law outside of Emergency Law No. 7 of 1955 that has an economic nature or motive or that can have a negative impact on healthy economic and financial activities of the state. (Sanusi, 2024)

Based on Law No. 10 of 2008 concerning Banking, Article 49 paragraph 1 letter b, which states that:

‘(1) Members of the Board of Commissioners, Directors, or employees of a bank who intentionally’:

- a. ‘Omit or fail to include or cause the omission of entries in the books of account or in reports, as well as in documents or reports on business activities, transaction reports or accounts of a bank.’

The criminal penalty for such acts is imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years, as well as a fine of a minimum of IDR 10,000,000,000 and a maximum of IDR 200,000,000,000.

Banking crimes are crimes that utilise banks as a means and/or banking institutions as their object. In fact, the term ‘banking crime’ has not yet gained consensus. From a legal perspective, there is no legislation that provides a definition of banking crimes and crimes in the banking sector. (BPHN, 1992) In addition, crimes in the banking sector are crimes that not only include violations of laws and regulations, but also include fraud, embezzlement, forgery and other criminal acts related to banking institutions.

What was done by the head of operations, let's call him (M), who is an employee of Bank X in Cirebon Regency, by taking money from the safe deposit box due to his position without any records in the bank's books/business activity reports/transaction reports/bank accounts, it can be said that his actions violated the law, including the criminal act of embezzling customer money. This led the head of Bank X's branch to report the incident to the Weru Police Station in Cirebon Regency. After an investigation and inquiry, the police chief stated that there was suspicion of embezzlement of customer funds. After conducting an investigation by questioning the bank employee directly, it was concluded that he had indeed taken the money between February 2024 and June 2024. The withdrawals were made weekly, amounting to Rp. 10,000,000 each time, with the total amount taken estimated at around Rp. 320 million.

With this admission and evidence of missing funds, it can be confirmed that the perpetrator (M), a bank employee who held the position of head of operations, is liable to criminal sanctions of 5 (five) to 15 (fifteen) years imprisonment and a fine of between Rp. 10 billion to 200 billion in accordance with Law No. 10 of 1998 concerning amendments to Law No. 7 of 1992 concerning Banking, Article 49 Paragraph 1 letter C.

The Banking Law is applied because the act is regulated in a specific law, namely the Banking Law. This application is in accordance with the principle of ‘Lex Specialist Derogat Legi Generalis’, which states that when an act is regulated in specific law and general law, the specific law will override the general law.

### **c. Resolution through Restorative Justice**

The large number of banking crimes with various modes, especially those involving bank employees, such as embezzling customer money, are subject to criminal sanctions in accordance with applicable regulations. However, criminal sanctions have now shifted towards reconciliation with out-of-court settlements through restorative justice. The concept of restorative justice offers resolution through mediation or meetings between the perpetrator and the victim of the crime.

The concept of restorative justice is an approach that emphasises the creation of justice and balance for both the perpetrator and the victim. The criminal justice process, which focuses on punishment, is transformed into dialogue and mediation to reach an agreement in resolving criminal cases that is more just and balanced for both the victim

and the perpetrator. (Ramadika, 2021). Even in countries that have practised restorative justice, criminal acts such as murder can be dealt with through restorative justice, such as in the United States, Belgium, Australia, Japan and others. Restorative justice provides an opportunity for victims to take part in the process of determining what should be done, unlike retributive justice, where the rights of victims are represented by the state and can sometimes be detrimental to the victims. For example, if someone loses a lot of property due to theft, the perpetrator is caught and tried and then punished, but the victim's lost property is not returned.

Restorative justice as a form of law enforcement outside the courtroom is certainly different from the retributive justice system, where perpetrators of criminal acts are subject to criminal sanctions. Law enforcement that holds perpetrators accountable is repressive law enforcement. Of course, this differs from enforcement outside the court system, where there may be no criminal punishment, which is an advantage for offenders as they can live freely.

An out-of-court settlement or restorative justice was pursued in this case, considering that the perpetrator had previously been reported to the Weru Police Station for embezzling customer funds, which was followed up with an investigation and inquiry by summoning Mawar for questioning at the Weru Police Station. The perpetrator admitted to having committed the crime. With this admission, the Weru Police Station also summoned the head of BPR X to meet with Mawar, the perpetrator. The police handed the case over to the head of BPR X, who had to decide whether to pursue legal action or seek an out-of-court settlement. The police station itself recommended mediation. Given the seriousness of the threat, the police handed the case back to the head of BPR X, who had to decide whether to pursue legal action or not. The Weru police chief advised that it would be better to pursue mediation or an out-of-court settlement, or to use restorative justice.

Restorative justice models have not yet shown consistency, even though the concept of restorative justice has existed. The concept of restorative justice is an approach that emphasises the creation of justice and balance for both the perpetrator and the victim of a crime. The procedural mechanisms and criminal justice system oriented towards punishment are transformed into a process of dialogue and mediation to create an agreement on a more just and balanced resolution of criminal cases for both the victim and the perpetrator. (Ibid, Ramadika, 2021).

The stages in the restorative justice process are as follows:

1. The head of BPR X took the initiative to summon (M), who was still an employee of the bank, and asked whether it was true that (M) had taken the money from the safe. He admitted it.
2. The two discussed the resolution of what he had done as a criminal act of embezzlement. That is, by taking the path outside of court through restorative justice.
3. Inviting the perpetrator and his family to come to the Head Office to engage in dialogue to reach a resolution through restorative justice.
4. There was an agreement between the perpetrator and the BPR, with the agreement that the BPR would accept the return of the embezzled money amounting to Rp. 320,000,000, provided that (M) was willing to return it. M and his family are willing to return the money, but the perpetrator will only pay Rp. 294,000,000 and Rp. 10,000,000 for the withdrawal of the police investigation report. The BPR finally agreed, considering that the bank employee had served at BPR X for 15 years. As a

reward for his services, the agreement between the two parties was finally approved with the signing of the BA witnessed by the police.

5. The agreement or settlement between both parties is set forth in a stamped and signed statement.
6. The management of BPR X has decided to terminate (M)'s employment as the head of operations at BPR X.

With the agreement of both parties, this resolution serves as a model of restorative justice, as both parties hope to achieve justice and balance for both the perpetrator and the victim. The procedural and criminal justice mechanisms oriented towards punishment are transformed into a process of dialogue and mediation in order to reach an agreement on a more just and balanced resolution of criminal cases for both the victim and the perpetrator. (Ibid, Ramadika, 2021)..

#### IV. Conclusion

Embezzlement committed by an employee of BPR X fulfils the elements of a criminal offence. As this criminal offence was committed by a bank employee working in the private banking sector, it is subject to sanctions under Law No. 10 of 1998, Article 49(1)(c), but the resolution is handled outside of court through restorative justice, with no criminal prosecution. The process involved a summons from the Head Office, resolution through restorative justice, inviting the perpetrator and his family to come and engage in dialogue, seeking an agreement, drawing up an agreement/settlement and minutes of proceedings. In addition, BPR dismissed the perpetrator. With the resolution through restorative justice, both parties benefit. The BPR gets its money back, albeit not in full, the perpetrator is not penalised, and both parties' reputations are preserved.

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