

Criminal Liability of Bank Employees in the Crime of Customer Fund Embezzlement: A Legal Analysis Under Indonesian Positive Law and the Application of the Lex Specialis Derogat Legi Generali Principle

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ABSTRACT

This research investigates the crime of embezzlement of customer funds by bank employees within the framework of Indonesian positive law. Embezzlement in the banking sector is a serious legal issue because it not only violates the fiduciary duty between employees and customers but also erodes public confidence in the financial system. The objective of this study is to analyze the legal provisions governing embezzlement, evaluate the consistency of statutory regulations, and highlight the implications of discrepancies in Indonesian law. The study applies a normative juridical method, focusing on the examination of legal norms, statutory interpretation, and doctrinal analysis. Primary legal materials consist of the Indonesian Penal Code (KUHP) and the Corruption Eradication Law (Law No. 20 of 2001), while secondary sources include academic literature, legal journals, and expert opinions. The findings demonstrate that embezzlement is regulated under Articles 372–377 of the KUHP, which stipulate penalties ranging from fines to imprisonment based on the circumstances of the act. However, there exists a fundamental inconsistency between these provisions and those of the Corruption Eradication Law. While the KUHP provides relatively lenient sanctions with a maximum imprisonment of four years, the Corruption Law prescribes far more severe punishments, including life imprisonment and substantial fines. This disparity creates ambiguity, weakens the coherence of the legal system, and results in uneven law enforcement in banking embezzlement cases. The study concludes that harmonization of Indonesian criminal law is urgently needed to provide legal certainty and ensure justice. Strengthening banking oversight, improving ethical standards through employee training, and ensuring transparent judicial processes are also necessary to restore and maintain public trust in the financial sector.

Keywords: Embezzlement, Banking Crimes, Indonesian Penal Code,

INTRODUCTION

Indonesia upholds the principle of the rule of law, grounded in the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) and Pancasila as the philosophical foundation of the state. Accordingly, every citizen is bound by the legal provisions in force [(Aditya Mantara Putra et al., 2024, p. 1)]. All citizens expect equal access to justice within the legal system, where equality before the law represents a concrete manifestation of fairness. The state is therefore responsible for establishing non-discriminatory laws applicable to all its people [(Haykal & Kosasih, 2021, p. 1)].

The fifth principle of Pancasila, namely “social justice for all Indonesian people”, embodies values that serve as the primary goal of public life. This concept of justice includes both prosperity and welfare, which represent the nation’s aspirations in fulfilling the physical and spiritual needs of society [(Santoso, 2014, p. 86)].

The banking sector plays a vital role in a nation’s economy as a financial intermediary. In practice, almost all human activities are interconnected with financial transactions. Alongside technological advancement, financial services have become increasingly digitized, facilitating activities such as deposits, loans, payments,

trade transactions, and other financial interactions [(Hasan, 2014, p. 4)].

Nevertheless, embezzlement can occur through the misuse of computer technology or the exploitation of digital banking facilities. While banking technology is designed to improve the speed and accuracy of customer data management, it may also be misused by irresponsible individuals. Various forms of financial crime, such as credit card data theft, highlight the vulnerability of customers to fraudulent acts [(Maskun, 2013, p. 56)]

In the series of works on Economics, Finance, and Trade, banks provide a variety of services, including the circulation of money, lending, supervising the distribution of currency, and offering safe deposit facilities for valuables [(Abdullah & Wahjusaputri, 2018, p. 2)].

Safeguarding customer funds deposited in banks constitutes a crucial legal concern. In practice, however, such funds may be lost either due to embezzlement committed by bank employees or through external breaches by unauthorized parties. Given the legal relationship between the customer and the bank, embezzlement perpetrated by employees represents a serious issue within the domain of banking crimes [(Djumhana, 2006, p. 590)].

Bank employees, entrusted with collecting customer deposits and managing administrative or bookkeeping processes, may unlawfully exploit this position by misappropriating customer credit card information for personal gain. Such misconduct is classified as a criminal act within the banking sector and is subject to sanctions under applicable banking laws. Law, therefore, plays a critical role in regulating the financial industry to both address and prevent violations committed by individuals [(Kristian & Gunawan, 2018, p. 4)].

Banking crimes encompass any deliberate or negligent actions committed by bank officials or institutions in conducting their operations, which result in unlawful consequences or intangible losses that are often difficult to prove but nonetheless detrimental to society or the state [(Kristian & Gunawan, 2018, p. 15)].

An illustrative case relevant to this study is “A Bank Employee in Jayapura Embezzled IDR 1.4 Billion of Customer Funds for Online Gambling.” The suspect diverted funds from ten customer accounts using the same method and was charged under Articles 2 and 3 of the Corruption Eradication Law (Law No. 20 of 2001) in conjunction with Article 372 of the Indonesian Penal Code (KUHP).

From the foregoing discussion, the researcher identifies a normative gap between Article 2(1) and Article 3 of the Corruption Eradication Law (UU Tipikor) and Article 372 of the KUHP. Article 2(1) stipulates imprisonment for a minimum of four years and a maximum of twenty years, along with fines ranging from IDR 200 million to IDR 1 billion. Article 3 prescribes punishment of life imprisonment, or imprisonment for a minimum of one year and a maximum of twenty years, with fines between IDR 50 million and IDR 1 billion. In contrast, Article 372 of the KUHP provides a maximum penalty of four years’ imprisonment or a fine of up to IDR 200 million. These inconsistencies highlight the lack of coherence between the relevant provisions.

Accordingly, this study seeks to address the following research problem: How is the crime of embezzlement of customer funds by bank employees reg **Research Method**

This study employs a normative juridical method. A normative study focuses on analyzing legal concepts, principles, norms, and their application through interpretation. The normative juridical approach is carried out by referring to legal norms contained within existing regulations and social norms, particularly those embedded in societal culture. In this research, the approach is applied to examine several provisions related to banking law, with the aim of reviewing the legal foundations of relevant statutes and evaluating the consistency and coherence of the existing regulations [(Diantha, 2016, p. 7)].

The legal sources in this study are divided into two categories: primary and secondary sources. Primary legal sources include statutory regulations that serve as the legal basis for criminal acts in the banking sector. Secondary legal sources consist of legal theories, law journals, scholarly writings, and expert opinions related to the subject matter.

The technique of collecting primary legal materials was conducted through documentation and note-taking of legal sources to be analyzed in the discussion of this study. For secondary legal materials, the collection process

involved compiling various references relevant to the research topic, followed by selection, classification, and comparison with existing facts. Expert opinions were also incorporated, both through direct and indirect quotations.

The analysis of legal sources in this study was conducted through a literature review, processed, and presented in a descriptive manner. The arguments were developed using both inductive and deductive legal reasoning in order to arrive at comprehensive conclusions.ulated under Indonesian positive law?

RESEARCH FINDINGS AND DISCUSSION

The Crime of Embezzlement under Positive Law

Positive law is defined as a body of legal rules or norms that are formally in force within a state at a given time and are binding upon all its citizens [(Mertokusumo, 2005, p. 56)]. According to Soerjono Soekanto, positive law refers to the law established by a legitimate authority and officially enforced through legislation [(Soekanto, 1986, p. 21)].

Christine S. T. Kansil and C. S. T. Kansil argue that embezzlement occurs when an individual unlawfully appropriates part or all of another person's property without consent. Although such property may initially come into the perpetrator's possession lawfully and without criminal conduct, the act of unlawful appropriation constitutes a legal violation [(Kansil & Kansil, 2000, p. 252)].

The term *delik* originates from the Dutch word *strafbaarfeit*, which was later adapted into several Indonesian terms such as *delict*, *delik*, and *tindak pidana* (criminal act) by Indonesian legal scholars. The term *delik* was used in Emergency Law No. 7 of 1953, which regulated the Prosecution, Investigation, and Adjudication of Economic Crimes [(Chazawi, 2002, pp. 67–68)].

Peter Mahmud Marzuki defines embezzlement as the misuse of entrusted authority to manage or safeguard money or goods for unlawful purposes [(Marzuki, 2005, p. 312)]. For an act to qualify as embezzlement, several conditions must be fulfilled: (1) the act is intentional, (2) it involves control over a property, (3) it is unlawful, (4) the property belongs to another person, and (5) the perpetrator's possession of the property was not the result of a prior criminal act.

In Indonesian positive law, the provisions on embezzlement are regulated under the Indonesian Penal Code (KUHP), Chapter XXIV, specifically Articles 372–377.

Article 372 KUHP: “Anyone who consciously and unlawfully possesses property belonging to another person, in whole or in part, which is already in their possession without prior criminal conduct, shall be convicted of embezzlement, with a maximum imprisonment of four years or a fine of up to IDR 900.”

Article 373 KUHP: This article regulates petty embezzlement. It provides that “embezzlement of property valued at no more than IDR 250, if committed by a person not specified in Article 372, shall be punishable by a maximum imprisonment of three months or a fine not exceeding IDR 600.”

Article 374 KUHP: This provision concerns embezzlement committed by a person with a specific employment or trust relationship with the victim. It states: “anyone who, by reason of employment or payment, possesses and subsequently embezzles property, shall be punishable by a maximum imprisonment of five years.”

Article 375 KUHP: This article applies to embezzlement committed by individuals in positions of authority over property due to their employment or office. It stipulates: “anyone who embezzles property under their lawful control not through crime, but by virtue of position, employment, or trust, shall be convicted of embezzlement with a maximum imprisonment of five years.”

Article 376 KUHP: This article addresses aggravated circumstances. It states: “if the perpetrator commits such embezzlement in the course of their position, employment, occupation, or habitual practice, additional penalties

may be imposed, including the revocation of rights as stipulated in Article 35, Nos. 1, 2, 3, and 4.”

Article 377 KUHP: This provision further regulates aggravated penalties. It provides: “if the offender of Articles 372, 373, 374, 375, and 376 is a person who earns a livelihood by managing others’ property, their right to hold such a position may be revoked.”

CONCLUSION

Based on the analysis, it can be concluded that the crime of embezzlement of customer funds by bank employees constitutes a serious violation under Indonesian positive law. Embezzlement, as regulated in Articles 372–377 of the Indonesian Penal Code (KUHP), encompasses intentional acts of unlawfully appropriating another person’s property that has come into the perpetrator’s possession without prior criminal conduct. When such acts are committed by bank employees, they not only breach the trust inherent in the employee–customer relationship but also undermine public confidence in the banking sector as a whole. Furthermore, discrepancies between the provisions of the Corruption Eradication Law (Law No. 20 of 2001) and Article 372 of the KUHP reveal inconsistencies in the sentencing framework. While the Corruption Law imposes severe penalties, including life imprisonment and substantial fines, Article 372 prescribes significantly lighter sanctions. This inconsistency creates legal uncertainty and poses challenges to the uniform enforcement of justice in cases of banking embezzlement.

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