

Restorative Justice In The Criminal Justice System: An Analysis of Sentencing Proportionality in the Crime of Embezzlement in Office Involving Minor Losses (An Analysis of the Stabat District Court Decision Number 214/Pid.Sus/2025/PN Stb)

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ABSTRACT

This study examines the application of restorative justice to the crime of embezzlement in office involving minor losses, through a case study of the Stabat District Court Decision Number 214/Pid.Sus/2025/PN Stb. The issues discussed encompass the qualification of criminal acts that meet the requirements for restorative resolution, the orientation of criminal law enforcement, and judicial considerations in sentencing. Employing a normative juridical method with statutory, case, and conceptual approaches, this study finds that embezzlement in office with a loss value below the threshold prescribed by Supreme Court Regulation Number 2 of 2012 qualifies as a minor offense and objectively meets the criteria for restorative justice. In the a quo decision, the judge imposed a 1 (one) year imprisonment sentence for a loss amounting to IDR 187,500.00. Resolution through restorative justice could not be implemented due to the absence of a settlement agreement from the victim. Nevertheless, the imposition of the custodial sentence is deemed to insufficiently reflect the principles of proportionality and legal utility. In this regard, the judge inherently possesses the authority to consider alternative sentencing options other than imprisonment, in alignment with the legal principle that positions imprisonment as an ultimum remedium.

Keywords : Restorative Justice; Embezzlement in Office; Criminal Proportionality; Judicial Decision.

INTRODUCTION

Law functions as a guideline to realize order in societal life, the application of which is based on three primary elements: certainty (Rechtssicherheit), utility (Zweckmäßigkeit), and justice (Gerechtigkeit) (Mertokusumo, 2019: 223). Within the scope of criminal law, the enforcement of these three elements frequently requires a careful alignment between the application of written rules and the effort to achieve substantive justice. The criminal justice system in Indonesia is currently undergoing a paradigm shift, moving from punishment-oriented retributive justice toward recovery-centered restorative justice. This development is part of criminal policy (*kebijakan hukum pidana*) aimed at rationally countering crime for the benefit of society (Arief, 2002: 88). The regulation concerning restorative justice has been accommodated through Supreme Court Regulation Number 1 of 2024, Prosecutor's Office Regulation Number 15 of 2020, and Police Regulation Number 8 of 2021.

Legal issues frequently arise in the application of sanctions against the crime of embezzlement in office (Article 374 of the Criminal Code/KUHP) involving relatively minor losses. Although the act contains elements of abuse of authority or position within an employment relationship, losses incurred below the value of IDR 2,500,000.00 should properly qualify as a minor offense, as regulated under Supreme Court Regulation Number 2 of 2012.

The problem regarding the appropriateness of imposing this criminal sanction can be

observed in the Stabat District Court Decision Number 214/Pid.Sus/2025/PN Stb. In the a quo case, the panel of judges imposed a one-year imprisonment sentence on the defendant for embezzling three oil palm fresh fruit bunches with a loss value of IDR 187,500.00. Consequently, this study is structured to juridically examine the normative criteria for criminal acts that can be resolved through restorative justice mechanisms, while simultaneously analyzing the judicial considerations in deciding the case based on the principles of proportionality and legal utility.

METHODS

This study constitutes normative juridical research that is descriptive-analytical in nature (Marzuki, 2011: 32). The approaches employed comprise the statutory approach, the case approach, and the conceptual approach. The legal materials utilized in this study are sourced from court decisions, statutory regulations (including the Criminal Code, the Criminal Procedure Code, Supreme Court Regulations, Prosecutor's Office Regulations, and Police Regulations), as well as criminal law literature. Legal materials were collected through document and library studies, which were subsequently analyzed using a qualitative method to systematically address the legal issues under investigation.

RESULTS AND DISCUSSION

Restorative Justice within the Criminal Justice System

Although a criminal offense meets the objective criteria to be resolved through restorative justice, its implementation within the criminal justice system remains bound by procedural limitations and subjective requirements. Restorative justice fundamentally emphasizes a recovery-oriented approach rather than mere retribution. The resolution of cases through this approach relies not solely on the fulfillment of administrative requirements, but demands deliberation that culminates in a voluntary settlement agreement between the offender and the victim (Flora, 2018: 145). Without an agreement representing the interests of both parties, the primary objective of such recovery cannot be achieved.

These procedural and subjective limitations are explicitly regulated under Supreme Court Regulation Number 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice. The provision of Article 6 paragraph (2) letter a of the regulation prohibits judges from applying the restorative justice guidelines if either the victim or the defendant refuses to reconcile. This requirement of consent constitutes a form of legal protection for the victim, reinforcing that restorative justice is not an absolute right of the defendant. Restorative justice is a dispute resolution instrument whose implementation heavily depends on the consent of the aggrieved party (Marlina, 2009: 180). A refusal by the victim serves as the legal basis that nullifies the court's authority to apply a resolution outside formal sentencing mechanisms.

A legal issue arises when the victim rejects the settlement mechanism, thereby formally halting the continuation of restorative justice. However, the breakdown of this mechanism does not imply that the principles of proportionality and subsidiarity in criminal law can be disregarded. Sentencing policy should not be left entirely to the subjective will of the victim, but must be returned to the core concept of rational and balanced criminal liability (Arief, 2002: 88).

As the executor of judicial power, the judge retains judicial discretion in determining the type and severity of the sentence. Therefore, in adjudicating cases involving minor losses where

a settlement agreement is not reached, the judge is required to formulate a decision attentive to the three core elements of law enforcement: certainty, utility, and justice (*Rechtssicherheit, Zweckmäßigkeit, and Gerechtigkeit*) (Mertokusumo, 2019: 223). In line with the foundation of the progressive law theory, law is fundamentally aimed at human interests; thus, law enforcement should not become entangled in rigid formalism that disregards substantive justice (Rahardjo, 2006: ix). Through this framework, the judge possesses the authority to impose commensurate alternative sanctions to ensure that the resulting decision remains proportional and utility-oriented, even when the restorative mechanism fails to be executed.

The Qualification of the Crime of Embezzlement in Office as an Object of Restorative Justice

The development of criminal policy (*kebijakan hukum pidana*) in Indonesia demonstrates a continuous paradigm shift from retributive sentencing, which is punishment-oriented, toward a rehabilitative approach through the instrument of restorative justice. Criminal policy essentially constitutes a rational effort by society to counter crime in order to achieve the objectives of social protection and welfare (Arief, 2002: 88). Within this framework of values, restorative justice views a criminal offense not merely as a violation of state authority or statutory regulations, but as an act that triggers the breakdown of relationships and causes actual harm to individuals and the societal order (Amdani, 2016: 72). Consequently, the orientation of criminal case resolution is directed toward restoring balance and rehabilitating the situation through dialogue spaces involving the accountability of the offender, the restoration of the victim's rights, and the reintegration of the affected community.

The application of restorative justice within the criminal justice system is not implemented without precedent, but possesses measurable normative boundaries to guarantee legal certainty. The Supreme Court has institutionalized these parameters through Supreme Court Regulation Number 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice. The objective qualifications for judges to apply this resolution instrument require that the adjudicated offense constitutes a minor offense (*tindak pidana ringan*), the victim's loss amounts to a maximum of IDR 2,500,000.00 (two million five hundred thousand rupiahs) or does not exceed the local provincial minimum wage, and the underlying offense carries a maximum imprisonment sentence of 5 (five) years. This loss threshold classification systematically links with the preceding regulation, namely Supreme Court Regulation Number 2 of 2012, which affirms the placement of property crimes of minor value into the resolution regime of minor offenses (Mulyani, 2016: 338).

Dogmatically, the crime of embezzlement in office regulated under Article 374 of the Criminal Code (KUHP) is qualified as an aggravated offense (*gequalificeerde delict*). This offense contains an aggravating element of criminal penalty based on the abuse of possession over property, where such possession lawfully arises from an employment relationship, livelihood, or the provision of wages (Hasan, 2021: 3). Although this act normatively contains an element of breach of trust inherent in employment relations, the evaluation of the appropriateness of its sanction cannot be separated from the magnitude of the material loss incurred. If the loss is deemed minimal, the resolution of this embezzlement in office offense substantially remains qualified to be managed through restorative justice mechanisms without reducing the essence of

legal liability on the part of the offender.

Embezzlement in office involving a minor scale of loss essentially constitutes a property crime whose damaging impact can still be factually restored (reparable) through property return compensation or restitution for damages. Given that such acts are generally case-specific and do not yield widespread destructive impacts on public order, the case rationally falls under the category of offenses proportional for resolution outside formal criminal proceedings. This alternative approach fully aligns with the ultimate objective of implementing criminal policy, namely providing comprehensive protection to society and realizing social welfare—a condition that proves frequently difficult to materialize if the law enforcement system relies exclusively on the imposition of custodial sentences (Kenedi, 2017: 17).

In the realm of law enforcement, judges consistently bear a juridical obligation to harmonize three fundamental elements: certainty, utility, and justice (Mertokusumo, 2019: 223). Enforcing case resolution through conventional imprisonment channels for an offense with minimal losses ultimately has the potential to undermine the principle of legal utility itself. As mandated by the foundational postulate of progressive law, law is inherently functioned to serve and advance human life, rather than restricting substantive justice within the rigid bars of statutory text (Rahardjo, 2006: ix). Consequently, positioning minor-scale embezzlement in office as an object of restorative justice constitutes a logical, equitable judicial step that completely aligns with the spirit of modern sentencing proportionality.

Analysis of Sentencing Proportionality and Restorative Justice Values in the Stabat District Court Decision Number 214/Pid.Sus/2025/PN Stb

The dynamics of law enforcement that pit formal legal certainty against substantive justice are vividly reflected in the Stabat District Court Decision Number 214/Pid.Sus/2025/PN Stb. In the *a quo* case, the defendant, an oil palm harvester, was prosecuted for embezzlement in office for separating and storing three oil palm fresh fruit bunches weighing 75 kilograms. The act caused a material loss to the corporation (PT PP London Sumatra Turangie Estate) amounting to IDR 187,500.00. The Panel of Judges ultimately declared the Defendant guilty of violating Article 374 of the Criminal Code (*Kitab Undang-Undang Hukum Pidana* - KUHP) and imposed a custodial sanction in the form of one year of imprisonment. This crime of embezzlement in office (*gequalificeerde verduistering*) is indeed constructed as an aggravated offense due to the element of abuse of possession over property arising from an employment relationship (Zainudin Hasan, 2021: 3).

Viewed from the evidentiary aspect of procedural law, the consideration of the Panel of Judges stating that the elements of the offense under Article 374 of the Criminal Code have been legally and convincingly proven is precise. The Defendant was materially proven to have possession of the property due to an employment relationship, committed intentionally and unlawfully. The trial facts also confirm that the Panel of Judges attempted a resolution through the restorative justice mechanism. However, this effort was hindered by the corporation's refusal to reconcile. Pursuant to the mandate of Article 6 paragraph (2) letter a of Supreme Court Regulation Number 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice, the victim's refusal imperatively nullifies the judge's authority to formally apply the restorative justice instrument. This reinforces that law enforcement within a restorative

framework still requires the harmonization of values between the related parties to create peace in social life (Soerjono Soekanto, 1983: 35).

Nevertheless, the failure to procedurally reach a settlement agreement does not automatically diminish the urgency of applying the principle of proportionality in sentencing (*strafmaat*). Imposing a one-year imprisonment sentence for a loss valued at IDR 187,500.00 tends to represent a formalistic-legalistic approach that disregards the essence of rehabilitation. As outlined by Andi Hamzah, the issue of sentencing is highly crucial because judges possess broad authority to determine the form and duration of the penalty imposed on the defendant based on concrete cases (Yusi Amdani, 2016: 66). Judges retain judicial discretion to internalize restorative values and criminal policy into their decisions. The Panel of Judges should have been guided by Supreme Court Regulation Number 2 of 2012 concerning the Adjustment of Minor Offense Limits and the Fines Amount in the Criminal Code. Given that the material loss falls far below the threshold of IDR 2,500,000.00, the Defendant's act essentially qualifies as a minor offense that requires resolution through summary procedures and minimal sentencing (Sri Mulyani, 2016: 338-339).

This argument has a strong philosophical footing in the doctrine of progressive law. Law should inherently be operated to serve human interests and welfare, rather than binding justice within the rigidity of statutory texts (Satjipto Rahardjo, 2006: ix). The quality of law is determined by its capacity to serve human welfare, where the administration of law is required to prioritize empathy and care (Siregar, 2024: 2). This paradigm is aligned with the principle of restorative justice, which rejects sentencing merely as a means of retribution. Judges do not function merely as the mouthpiece of the law (*la bouche de la loi*). This is constitutionally affirmed through Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power, which obligates judges to continuously explore, follow, and understand legal values and the sense of justice living within society to synergize certainty, utility, and justice (Sudikno Mertokusumo, 2019: 223).

Imposing an imprisonment sanction on a laborer with an economic motive for an extremely minor loss especially when the evidence has been secured and returned intact (reparable) to the company constitutes the antithesis of the principle of utility. Criminal policy (*kebijakan hukum pidana*) is a rational and organized effort by a society to counter crime (Muladi, 2002: 182). Such policy should be aimed at achieving public protection and social welfare, rather than mere retribution (Barda Nawawi Arief, 1996: 2; John Kenedi, 2017: 17). A punitive decision in this case risks damaging the socio-economic condition of the Defendant and their family, hindering the process of social reintegration, and adding to the residual issue of overcrowding in correctional institutions.

The principle of proportionality requires equivalence between the severity of the criminal sanction and the degree of fault and damaging impact. In accordance with the *ultimum remedium* principle, judges are legally authorized not to impose a custodial sentence. This is where the relevance of Article 53 of Law Number 1 of 2023 (the National Criminal Code) takes shape, which mandates that if a conflict arises between legal certainty and justice, judges must prioritize justice. In deciding cases with minimal loss values where the victim refuses to reconcile, restorative justice values can still be executed by the judge through the imposition of alternative sentences. This proportionality-centered resolution represents a shift from retributive justice, which has long been prone to neglecting the restoration of conditions (Syah Awaluddin, 2024:

24-25). Imposing a fine adjusted to the Defendant's capacity (with reference to their monthly wage of IDR 2.9 million) or a conditional sentence (probation) constitutes a precise formulation. This approach ensures that the criminal act still receives a lawful sentencing precedent, while maintaining a balance between legal certainty, social utility, and substantive justice.

CONCLUSION

The crime of embezzlement in office (Article 374 of the Criminal Code) involving a minor loss normatively and objectively qualifies for resolution through restorative justice. The reparable characteristic of the loss places this case within alternative dispute resolution, in line with criminal policy that prioritizes recovery over a retributive approach. Although the implementation of restorative justice has procedural limitations—such as the victim's refusal to reconcile, which nullifies the execution of the mechanism based on Supreme Court Regulation Number 1 of 2024 this condition does not eradicate the judge's judicial authority. In deciding cases, judges remain guided by the principle of utility and do not necessarily have to impose an imprisonment sentence.

Regarding the Stabat District Court Decision Number 214/Pid.Sus/2025/PN Stb, the imposition of a one-year imprisonment sentence for a loss of IDR 187,500.00 tends to prioritize a formalistic approach and does not fully reflect the principle of proportionality. Although the victim refused to reconcile, the panel of judges could have considered Supreme Court Regulation Number 2 of 2012 to classify the case as a minor offense. In line with the principle of criminal law as a last resort (*ultimum remedium*), judges possess the authority to impose criminal sanctions other than imprisonment to realize substantive justice and legal utility, while maintaining legal certainty.

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