

## **Analysis of the Effectiveness of Criminalization and the Application of Restitution to Victims in Criminal Acts of Embezzlement by Workers (Study of Decision Number 327/Pid.B/2025/PN. Ktp)**

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**Abstract.** *Distinction between intent and negligence to prevent overbroad interpretations that violate the principle of legality. This study examines the effectiveness of criminal penalties and the application of restitution in the crime of embezzlement by workers based on Decision Number 327/Pid.B/2025/PN.Ktp. The background of the study indicates that cases of embezzlement by workers are increasing and causing material losses and damaging trust in employment relationships. However, law enforcement is still focused on criminalizing perpetrators without considering the restoration of victims' rights, thus not in line with the principles of social justice Pancasila. Using normative legal research methods, this study examines primary, secondary, and tertiary legal materials to explore relevant legal principles and doctrines. The study found that the sentencing decisions imposed by judges took into account juridical, sociological, and philosophical aspects to achieve substantive justice. However, the system's weaknesses are evident in the unclear provisions regarding restitution for victims, resulting in a retributive orientation of sentencing. From the perspective of Pancasila Justice, sentencing must prioritize a balance between legal certainty, expediency, and justice by providing space for victim recovery, perpetrator development, and the creation of social harmony.*

**Keywords:** Criminal; Embezzlement; Law; Restitution.

### **1. Introduction**

The development of criminal law in Indonesia cannot be separated from the history of its implementation. *Wetboek van Strafrecht* colonial legacy which was then adapted to the values of Pancasila and the 1945 Constitution. Sri Endah Wahyuningsih emphasized that this change was not only normative, but was a substantial transformation in realizing justice that sided with the people.

public. In line with this, Bambang Tri Bawono emphasized that criminal law must guarantee a balance between the interests of the perpetrator, the victim, and society.

Social changes and the complexity of modern employment relationships have increased cases of employee embezzlement, which harms companies economically and undermines trust in the workplace. Wahyuningsih stated that criminal law must provide protection and a deterrent effect not only for perpetrators but also for victims. As the paradigm of criminal justice evolves, demands have emerged for the implementation of restorative justice, which places greater emphasis on reparation for victims' losses. Tria Sasangka Putra stated that restorative justice is an important strategy for balancing the interests of perpetrators, victims, and the community.

Embezzlement by workers violates legal and social norms because it occurs within an employment relationship based on trust. The Criminal Code, through Articles 372–374, stipulates sanctions for such acts. Research from the Law Faculty of Slamet Riyadi University and Pattimura University indicates that these provisions serve a preventive purpose.

Yanto, a Professor at Unissula and Supreme Court Justice of the Republic of Indonesia, emphasized the importance of restitution to ensure justice for the victims.

The effectiveness of criminal punishment is determined not only by the severity of the sentence, but also by the extent to which it provides legal certainty and improves social order. Wahyuningsih explained that proportionality of punishment is key to ensuring relevant and non-discriminatory punishment.<sup>7</sup> Ongoing updates to the Criminal Code are also aimed at strengthening legal protection against increasingly complex modern crimes.

Embezzlement methods are now increasingly sophisticated, utilizing technology, as reported by the mass media.<sup>9</sup> This demands a more responsive criminal justice system. In addition to material losses, embezzlement also reduces productivity and trust in the workplace. Wahyuningsih stated that criminal penalties must maintain social order and prevent recurrence of crimes.<sup>10</sup> Nurul Qamar added that criminal punishment needs to be accompanied by guidance and education for the perpetrators.

In practice, Article 374 of the Criminal Code has been applied by judges, such as in Decision Number 186/Pid.B/2023/PN Smg, where the perpetrator was sentenced to prison for abusing the company's trust.<sup>12</sup> Studies from ResearchGate, the Faculty of Law eJournal, and the Unissula Repository also emphasize the importance of effective criminalization to protect victims and prevent recurrence of crimes.

In the latest case, Decision Number 327/Pid.B/2025/PN Ktp, defendant ABS was found guilty of embezzling urea fertilizer belonging to PT. USP by concealing eight sacks of fertilizer to sell. The judge sentenced him to one year and six months in prison because the elements of Article 374 of the Criminal Code had been fulfilled, considering that the perpetrator abused the company's trust. The decision emphasizes the importance of Article 374 of the Criminal Code in maintaining the integrity of employment relationships and providing a preventive effect.

Unissula academics emphasized the urgency of implementing comprehensive criminal justice. Bambang Tri Bawono emphasized criminal justice-oriented criminal justice. Tria Sasangka Putra emphasized the rehabilitation of perpetrators and reparation for victims' losses. Meanwhile, Yanto emphasized the importance of restitution as an integral part of substantive justice.

However, the current situation demonstrates an imbalance: prison sentences are imposed, but restitution is rarely provided to victims. According to Satjipto Rahardjo, the law should provide substantive justice, not just formal justice.<sup>16</sup>The restitution mechanism is actually regulated in Article 98 of the Criminal Procedure Code and Law 31/2014 concerning Protection of Witnesses and Victims, but is very rarely used in cases of embezzlement of office.

Therefore, it is important to conduct an in-depth study of the effectiveness of criminal penalties and the application of restitution, particularly in Decision Number 327/Pid.B/2025/PN KTP. This study is entitled "The Effectiveness of Criminal Penalties and the Application of Restitution for Victims of Employee Embezzlement."

## **2. Research Methods**

This research uses a normative legal approach, namely an approach that focuses on the study of positive legal norms or *law in the books*. In this method, law is understood as a system of norms that provides certainty, justice, and benefit. Because it is normative in nature, the research does not collect field data, but rather analyzes legal materials. This type of research is non-empirical or doctrinal, focusing on legal reasoning by analyzing a final and binding court decision. This research examines how judges apply criminal punishment theory, assess abuse of trust in employment relationships, and examines whether restitution is considered in the decision. The research specifications are descriptive-analytical. Descriptively, the research describes the content and structure of the judge's legal reasoning in the decision. Analytically, the research outlines the relationship between legal norms, principles of justice, theories of punishment, and the relevance of restorative justice. The data in this study comes from three types of legal sources. The primary source is Decision Number 327/Pid.B/2025/PN KTP, which serves as

the main object of analysis. Secondary sources include the Criminal Code, the Witness and Victim Protection Law, law books, and relevant scientific journals. Tertiary sources include legal dictionaries, encyclopedias, and glossaries to clarify the terminology used. Data collection was conducted through a literature review, which involved reviewing laws and regulations, inventorying relevant court decisions, and gathering academic literature to support the analysis. All legal materials were then classified according to the problem formulation and analyzed using legal interpretation methods, including grammatical, systematic, and teleological. The data analysis technique used descriptive qualitative analysis. The study assessed the evidentiary elements of the crime, the proportionality of the punishment, the element of abuse of trust, and considerations of restitution for the victim. The analysis also compared the verdict with similar verdicts to examine the consistency of legal application and the possibility of disparities in sentencing. Through this approach, the study is expected to reveal the effectiveness of criminal punishment as a preventive and corrective measure, as well as strengthen the urgency of implementing restorative justice in the case of embezzlement by workers.

### **3. Result and Discussion**

#### **3.1. Legal Considerations in Imposing Criminal Sentences on Perpetrators of the Crime of Embezzlement in Office as in Decision Number 327/Pid.B/2025/PN. Ktp**

In everyday life, there are many cases of domestic violence in Indonesia, especially in this day and age where many people are experiencing economic difficulties, this makes.

Some people have excessive emotions and find it difficult to control themselves. In addition to the many crimes outside, crimes often occur in the home due to the lack of economic resources.

Emotions flare up when talking. This makes us have to be more alert and more sensitive to the environment in our homes.

The judge's legal considerations in sentencing the perpetrator of embezzlement in office in Decision Number 327/Pid.B/2025/PN.Ktp show that the judge not only applies the normative provisions in Article 374 of the Criminal Code, but also considers relevant sociological and philosophical aspects. In this case, the defendant ABS, a dump truck driver at PT. Umekah Sari Pratama, was proven to have embezzled eight sacks of urea fertilizer that were legally under his control due to an employment relationship. This act was carried out by moving and hiding some of the fertilizer that should have been stored in the company barracks, to then be sold for personal gain. This action was revealed through the findings of witnesses and reported to the company's security until finally it was processed legally.

From the facts revealed at the trial, the panel of judges concluded that all elements in Article 374 of the Criminal Code had been fulfilled, including the element of having goods that were legally controlled, then misused unlawfully. The judge considered that the defendant intentionally (opzet) carried out systematic actions to control the goods for himself, as the concept of intention put forward by Hazewinkel-Suringa regarding the will accompanied by awareness of the intended consequences.<sup>^1</sup> The defendant's actions also reflect a breach of trust (vertrouwensbreuk) which is the core of embezzlement of office, as explained by Simons that embezzlement is not just the taking of goods, but the denial of trust given by the owner of the goods.<sup>^2</sup>

The judge's legal considerations emphasized that legal control of goods due to an employment relationship is a differentiating factor between ordinary embezzlement and embezzlement in office. In this context, the employment relationship between the defendant and the company becomes the basis for aggravating the defendant's actions because he abused the trust given to him. This is in line with Andi Hamzah's view that the element of employment relationship provides a greater weight of guilt in the crime of embezzlement of office. Thus, the judge declared the defendant legally and convincingly guilty and sentenced him to one year and six months in prison.

In addition to legal considerations, the judge also considered the sociological aspects of this case, namely the impact of the defendant's actions on the moral order within the workplace.

Although the defendant's actions damaged trust within the company, the judge considered the defendant's economic background as a mitigating factor, in accordance with the principle of individualized sentencing. This consideration reflects a humanistic approach that aligns with modern criminal theory, which focuses not only on retribution but also on preventive and rehabilitative functions.

Philosophically, this decision demonstrates the judge's view that criminal punishment must be placed within the framework of Pancasila values, especially social justice and humanity. This is in line with Satjipto Rahardjo's progressive legal ideas that position the law as a means to serve humanity and not the other way around. The judge emphasized the importance of punishment that is not only repressive, but also provides space for the restoration of social relations disturbed by the defendant's actions. In the context of restorative justice, the judge also highlighted the importance of restitution to the company as a form of restitution, although this mechanism was not implemented in the decision.

The author's analysis shows that this decision is in line with Lawrence M.

Friedman's legal system theoretical framework which emphasizes the relationship between structure, substance, and legal culture in the operationalization of the criminal justice system.<sup>5</sup> The working judicial structure, the relevant legal substance in Article 374 of the Criminal Code, and the value of trust as a legal culture of society are elements that support the achievement of legal objectives. In addition, the judge's approach that considers the defendant's personal condition, socio-economic motives, and the impact of the act on the company's environment reflects the application of an integrative theory of punishment that combines legal certainty, benefit, and justice.

Overall, the judge's ruling in this case demonstrates an integrated approach that combines normative, social, and philosophical aspects. Criminal penalties are not only aimed at providing a deterrent effect but are also positioned as an instrument to restore social balance, strengthen the morality of workplace relations, and educate the public about the importance of maintaining trust in the workplace. Therefore, this ruling holds not only legal but also significant moral and social significance in the context of criminal law enforcement in Indonesia.

### **3.2. Weaknesses in the Criminal System in the Crime of Embezzlement in Office, Especially Regarding the Absence of Restitution Obligation for the Perpetrator to Reimburse the Victim's (Company) Losses**

The weakness of the criminal justice system in the crime of embezzlement in office is clearly evident from the still dominant orientation of retributive punishment, which only emphasizes the imposition of imprisonment without any obligation of restitution for the perpetrator to compensate the losses suffered by the victim, especially corporations. This condition is evident in Decision Number 327/Pid.B/2025/PN Ketapang, where even though the defendant was found guilty and sentenced to one year and six months in prison, the judge did not order the payment of cash compensation to the company that suffered losses of Rp3,024,000.00. Even though the amount of the loss was revealed in court. The verdict only ordered the return of evidence in the form of eight sacks of fertilizer and one truck, without any aspect of financial recovery that should be part of justice for the victim.

This lack of restitution is rooted in the normative weakness of Article 374 of the Criminal Code, which only addresses the elements of the crime of embezzlement in office, without including restitution for the victim as part of the punishment. The Criminal Code's retributive justice paradigm often marginalizes victims in the judicial process. However, in economic crimes like embezzlement, material losses are a direct impact and should be the primary focus of restitution. This demonstrates that the criminal justice system in Indonesia does not adequately support the interests of victims.

Procedural weaknesses also exacerbate the absence of restitution in criminal decisions. The Criminal Procedure Code (KUHAP) does provide a mechanism for consolidating civil lawsuits in criminal cases, but this mechanism relies on the victim's initiative and readiness to provide evidence of losses from the investigation stage. In this case, no claim for compensation was filed, leaving the judge without a procedural basis for issuing an order for restitution. Furthermore, proving losses also faces technical challenges because the value of the losses is not supported by a forensic audit or expert testimony that could substantiate the basis for calculating restitution.

Structurally, judges also lack comprehensive legal guidelines for determining the form and amount of restitution in embezzlement cases. This regulatory vacuum tends to lead judges to opt for the simpler route of returning any remaining evidence, rather than ordering cash payments, which require calculating losses, securing a bond, and administering the process. Furthermore, the issue of executing judgments presents an additional challenge due to the limited mechanisms for confiscating and tracking the defendant's assets when a restitution order is issued.

These weaknesses conflict with the values of justice in Pancasila, especially the second and fifth principles, which emphasize balanced justice for all parties.

Prioritizing solely the aspect of retribution without ensuring victim recovery does not reflect the principle of substantive justice. A victim-oriented justice concept should allow for restitution as a form of moral and legal responsibility of the perpetrator to the victim. From a restorative justice perspective, punishment should not only deter the perpetrator but also restore the social and economic conditions disrupted by the crime.

Cases of embezzlement committed by workers against companies also demonstrate the risk of weak industrial relations when company losses are not financially reimbursed. While prison sentences provide a retaliatory effect, they do not resolve the economic problems caused. Consequently, both perpetrators and victims are left in a vulnerable position: perpetrators lose their jobs, while victims are denied adequate compensation.

From the analysis of these cases, the weaknesses of the criminal justice system can be grouped into four main aspects: normative weaknesses due to the lack of explicit provisions on restitution; procedural weaknesses related to the mechanism for consolidating lawsuits; structural weaknesses in the form of minimal guidelines for judges and weak execution mechanisms; and philosophical weaknesses because the orientation of punishment is still more retributive than restorative. These four aspects emphasize that the Indonesian criminal justice system does not fully reflect the goals of development, community protection, and rehabilitation for victims as

recommended in the reform of the national criminal law.

To address these weaknesses, legal reform is needed that places restitution as an integral part of criminal decisions, particularly in cases of economic crimes. Furthermore, technical guidelines for judges regarding the calculation of losses are needed, the role of the LPSK (Lembaga Penitentiary Agency), and coordination between law enforcement agencies are needed to ensure restitution is addressed from the investigation stage. With these steps, criminal justice is expected to achieve more comprehensive justice: punishing perpetrators, rehabilitating victims, and maintaining social balance, in line with the principles of Pancasila justice.

### **3.3. The Effectiveness of Criminalization in the Crime of Embezzlement in Office When Reviewed Based on the Values of Pancasila Justice as the Philosophical Basis of the National Legal System**

The effectiveness of criminal penalties for embezzlement cannot be measured solely by the length of imprisonment, but also by the punishment's ability to fulfill the objectives of criminal law, which encompass retributive, preventive, restorative, and rehabilitative aspects. In the context of the Indonesian legal system, all of these objectives must align with the values of Pancasila, the philosophical foundation that emphasizes human and social justice.

Therefore, effective criminalization requires a balance between legal certainty, victim recovery, perpetrator development, and community protection.

When analyzed through the values of Pancasila—particularly the second principle on just and civilized humanity and the fifth principle on social justice—victim recovery is an important component in determining the effectiveness of criminal punishment. In the Ketapang District Court case Number 327/Pid.B/2025/PN Ktp, the prison sentence of one year and six months does fulfill the aspect of legal certainty, but does not fully reflect the recovery that PT. USP should receive as the victim, considering that the verdict only orders the return of evidence without including cash restitution for losses of Rp3,024,000.00. Thus, the punishment has not reached the dimension of substantive justice mandated by Pancasila.

From a preventative perspective, imprisonment provides a general deterrent effect, but its effectiveness is limited without measures that address the root of the problem, such as improving employment relationships, restitution, and guarantees that perpetrators will not repeat their actions. Pancasila values require that punishment be not only punitive but also restorative, so mechanisms such as restitution, mediation, or development programs should be integrated into criminal decisions. This way, both deterrent and developmental effects can go hand in hand.

The effectiveness of criminal penalties is also related to the fulfillment of victims' rights. The burden of filing a restitution lawsuit through the consolidated case mechanism under the Criminal Procedure Code (KUHAP) is often an obstacle, as the procedure requires victim initiative and complex technical evidence. This makes it difficult for victims, especially companies lacking the specialized capacity to handle additional legal proceedings. As a result, the value of social justice emphasized by Pancasila has not been optimally realized in judicial practice.

Using operational indicators based on Pancasila values—such as victim reparation, perpetrator development programs, legal certainty, social restoration, and a sense of public justice—the verdict in this case cannot be considered fully effective. Normative, procedural, and institutional barriers are the main factors limiting the application of criminal penalties that are more oriented towards substantive justice and humanitarian values.

To increase the effectiveness of criminal punishment in line with Pancasila values, several corrective measures can be proposed, such as including the obligation of restitution in the Criminal Procedure Code or the new Criminal Code, providing guidelines for calculating losses for judges, strengthening the mechanism

mediation or restorative conferences before sentencing, and ensuring a combination of criminal sanctions and reparation obligations that can be supervised by the court. Thus, punishment for embezzlement is not only repressive but also transformational, healing the victim's losses, empowering the perpetrator to change, and realizing social justice as envisioned by Pancasila.

#### 4. Conclusion

Based on analysis to Decision Court Country Ketapang Number 327/Pid.B/2025/PN.Ktp concerning the crime of embezzlement in office, it can be concluded that the application of the law in this case is based on legal, sociological, and philosophical considerations. The judge considered that all elements of Article 374 of the Criminal Code had been proven, considered the social impact and the defendant's personal circumstances, and attempted to uphold substantive justice through punishment that is not only retaliatory but also educational and preventive. Furthermore, the criminal justice system for embezzlement cases still shows weaknesses, particularly regarding the lack of restitution obligations for victims. The absence of a mechanism for restitution in the Criminal Code and Criminal Procedure Code (KUHAP) results in the focus of punishment being more on imprisonment, thus not fully reflecting substantive justice or the needs of victims. This indicates that the Indonesian criminal justice system remains retributively

oriented and has not yet fully adopted a restorative justice approach. When linked to the values of Pancasila Justice, the criminalization in this case is not fully effective because it fails to achieve a balance between legal certainty, expediency, and justice. Ideal criminalization, according to Pancasila, should not only punish the perpetrator but also restore the victim's losses and improve their moral and social well-being. Therefore, implementing a restorative justice approach, including mandatory restitution and perpetrator development, is crucial to ensure that criminalization truly reflects the ideals of Pancasila justice.

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