



Penalty patterns regarding the application of restorative justice in the resolution of embezzler cases in of

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ABSTRACT

The pattern of punishment is the basis of the question of why someone is convicted or not convicted for the criminal law maker. Restorative justice is a legal product that prioritizes the recovery of victims, perpetrators, and related communities in minor criminal cases as stated in the Regulation of the Chief of the Indonesian National Police Number 8 of 2021. However, the Criminal Investigation Unit of the Bangka Resort Police were able to resolve a case of embezzlement in office that allegedly violated Article 374 of the Criminal Code by using a restorative justice approach. This study aims to determine the investigator's consideration in applying restorative justice in embedded cases in the Bangka Police Criminal Investigation Unit and the pattern of punishment. The research method used is juridical-empirical with a statutory approach and a case approach. The consideration of investigators in applying for restorative justice in cases of embezzlement in office at Satreskrim Polres Bangka is the revocation of the report from the reporting party with an amicable agreement and the reported party is willing to compensate for the losses caused by his actions and the reported party is not a recidivist. The pattern of punishment for the application of restorative justice in the settlement of entanglement cases in this position is based on the aim of restoring the parties by considering the awareness, responsibility, and peaceful agreement of the parties which is more beneficial than the punishment that should be received and getting their rights and obligations fairly.

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1. Introduction

Embezzlement in office is a criminal act committed by a person who controls an item due to an employment relationship by taking part or all of the item for personal gain. (Farid & Hasan, 2022). The crime of embezzlement in office is a crime that is continuous with moral problems and a

sense of trust in a person's sense of honesty. The perpetrator of embezzlement in this position took advantage of his position to commit an act against the goods under his control (Lawalata et al., 2022). In general, the crime of embezzlement in office is an unlawful act committed because of or for certain motives (Zaini et al., 2023). The element of the crime of embezzlement in Article 374 of the Criminal Code is anyone who intentionally and unlawfully possesses an object which wholly or partly belongs to another person who is under his or her control not because of a crime. In detail, the elements of embezzlement in office are an unlawful act which is punishable by criminal sanctions, which is committed by a person or corporation in their legitimate work or in their pursuit/business in the industrial or trade sector and for the purpose of obtaining money or wealth, avoiding payment of money. or avoid loss/loss of wealth and obtain business profits or personal benefits (Nusantara, 2021).

In resolving cases of embezzlement in office, the role of a law is needed to limit and impose sanctions on every perpetrator of embezzlement in office (Aulia, 2021). Law is not just a symbol of regulations in a country that is passive, on the contrary, the role of law proves that law is progressive and moves according to its function. Law in this case is a means of realizing justice, benefit and legal certainty for all parties who are entitled to it. In making legal regulations, the pattern of punishment is certainly used as a reference (Saleh & Asrawi, 2022). Technically, juridically, the scope of punishment patterns includes issues that are correlated with the type of sanction, the severity of the sanction and the formulation of the sanction, all of which should ideally exist before criminal legislation is created. (JULIANTO ADI PRASETYO, 2021). The criminal system in Indonesia has adopted a double track system where the sanctions system in criminal law does not only contain types of criminal sanctions, but also types of action sanctions where the punishment system in criminal law is oriented towards the perpetrator and the act. (Ardika et al., 2020).

This case occurred in Labu Village, Puding Besar District, Bangka Regency. Starting from a report from Sahro as Manager of PT. Mitra Argo Sembada stated that there was a reduction in the MS plate of 16 millimeters on Wednesday (20/7/2022). After that, Sahro cut a quarter of the plate with the aim of identifying whether there was a possibility that it would disappear again the next day. It turned out that the next day, Thursday (21/7/2022), the items that were cut the previous day were no longer there. Then the strongest suspicion is that this plate was taken because there was no program instructed to the night fitter. Then, Sahroh ordered Rasiandi to monitor activities in the factory area. It turned out that reported ZH was moving from the factory area to the back of the workshop and there was plate cutting activity behind the workshop. After learning about the incident, Sahroh conducted an interrogation and ZH admitted that he had done the same thing twice. The case was held in the Parai Hall of the Bangka Police, which was attended by the Head of the Criminal Investigation Unit of the Bangka Police, Akp Rene Zakari, the KBO of the Criminal Investigation Unit of the Bangka Police, Aipda Erwin, the Head of the Criminal Investigation Unit of the Puding Besar Police, Aipda Heriadi, personnel from the legal section, the professional and security section, the supervisory section of the Bangka Police and the reporter and reported party.

The application of restorative justice in embezzlement criminal cases at first glance appears to be better than the conventional criminal system and judicial process which takes a long time and costs a lot of money for both the victim and the government in terms of facilitating the examination process, up to the execution process in embezzlement cases. Alone. Even so (Djunaedi, 2023), there are several qualifications that must be met so that a case can be resolved using restorative justice (Wulandari, 2020). Based on the Republic of Indonesia State Police Regulation Number 8 of 2021, the handling of criminal acts based on restorative justice is carried out in activities carrying out criminal investigation functions, namely investigations or investigations that can be carried out to resolve minor criminal acts. (Irawan et al., 2022). The case above is certainly not classified as a light crime because embezzlement in office is punishable by a maximum prison sentence of five years. Based on this, the author is interested in conducting research to find out more regarding investigators' considerations for implementing restorative justice in cases of embezzlement in office and regarding the pattern of punishment. (Gindriansyah et al., 2022).

2. Method

Research methods are defined as an initial way to final propositions in a particular field of knowledge to conduct or carry out research (Wahyudi et al., 2019). Research means a search again, namely a search for true (scientific) knowledge, because the results of this search will be used to answer certain problems. The type of research used in this research is empirical juridical (Izzati, 2021). Empirical legal research is field legal research that begins with collecting social or legal facts and uses interviews and juridical research instruments to compare field facts with existing regulations. (Armia, 2022). In this research, the author analyzes and examines the implementation of restorative justice in resolving cases of embezzlement in office by the police, especially at the Bangka Police Criminal Investigation Unit. According to Peter Mahmud Marzuki, there are 5 approaches used in legal research, namely the statutory approach, case approach, historical approach, comparative approach and conceptual approach. (conceptual approach).³¹ In its implementation, this legal research uses a law approach and a case approach. Data collection techniques are techniques or methods used to obtain the information needed to achieve research objectives (Huda & S HI, 2021). The data collection techniques used in this research are field research and literature study. This library study is a method used to obtain data and information through reading, reviewing books, journals and printed media reference materials available in the library. (Adlini et al., 2022).

3. Analysis and Results

3.1. Crime, Sentencing, Restorative Justice and Embezzlement in Office.

Criminal act or strafbaar feit in Dutch means criminal act, delict, criminal act or punishable act. A criminal act is defined as an act that is prohibited by a prohibitive legal regulation which is accompanied by threats (sanctions) in the form of certain penalties, for anyone who violates the prohibition. (Sagala, 2019). Crimes regulated in book II of the Criminal Code are acts that are contrary to justice, regardless of whether the act is punishable by law or not, while violations regulated in book III of the Criminal Code are acts that the public only realizes as a criminal act, because of the law. - the law formulates it as an offense. An intentional offense is when the criminal act is consciously aware that there is a certainty of the outcome of an act or at least the possibility of an outcome as a result of an act. Negligence is also through a construction, but the difference between intentional and in principle is that the perpetrator has no awareness of the results or consequences of his actions (Pransetyo, 2023).

Punishment means how the crime is carried out or how the sentence is determined. In the application of criminal law, it cannot be separated from the type of crime, the severity of the criminal sanctions and the method in which the crime is carried out (Supriadi, 2019). However, before this is determined, determined and implemented, there is of course a policy process that takes into account the existence of criminal law and its function. So we need a pattern of punishment which then finds a policy that becomes a guideline for punishment so that the crime can then be implemented. A pattern of punishment is a guideline for making or drafting sentences for law makers. Sentencing patterns refer to references or guidelines for the creation/drafting of crimes to create laws at the policy stage for law makers. ⁴³ Penalty patterns are basically an implied symptom of the criminal threat contained in the formulation of criminal acts in legislation which It can be seen that there is a desire from the legislator regarding the amount and type of punishment that should be imposed on a person who is proven to have committed a criminal act.

Restorative justice is the resolution of criminal acts by involving the perpetrator, victim, the perpetrator's family, the victim's family, community leaders, religious leaders, traditional leaders or stakeholders to work together to find a fair solution through equality by emphasizing restoration back to its original state. (Widiatmika, 2023). The definition of restorative justice is also

expressed by several experts. Yoachim A. in his book provides a definition of restorative justice, namely a form of justice that focuses on the needs of victims, perpetrators of crimes and society. Ahmad S. also wrote that restorative justice is a concept responding to developments in thinking about the criminal justice system with an emphasis on community involvement and the needs of victims who feel excluded by the mechanisms that work in the criminal justice system currently available.

This theory of restorative justice originates from the development of thinking about the theory of punishment, where previously there was a retributive theory that looked backwards at the offense as the basis for punishment, coupled with a conflicting utilitarian theory that looked forward to the benefit of society. (Sari, 2017). The theory of retributive justice which views punishment as retribution is in conflict with the theory of restorative justice and the utilitarian theory which looks to the future. However, in restorative justice theory, punishment must be avoided by healing the victim's wounds through reconciliation. In its implementation, the Police have a legal basis as a guide for carrying out restorative justice, namely the Republic of Indonesia National Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice. Criminal acts that can be resolved using restorative justice are minor crimes. Handling of criminal acts based on restorative justice must meet both general requirements and/or special requirements. General requirements apply to the handling of criminal acts based on Restorative Justice at the Implementation of Investigation or Investigation Function stage, while special requirements only apply to the handling of Criminal Acts based on Restorative Justice at the Investigation or Investigation stage.

The crime of embezzlement is regulated in Chapter XXIV Article 372 to Article 377 of the Criminal Code. Based on Article 372, anyone who intentionally and unlawfully possesses something which wholly or partly belongs to another person, but which is in his control not because of a crime, is threatened with embezzlement, with a maximum imprisonment of four years or a maximum fine of nine hundred rupiah. . Based on Article 373, the act formulated in Article 372 if what is embezzled is not livestock and the price is not more than twenty-five rupiah, is threatened with light embezzlement with a maximum imprisonment of three months or a maximum fine of two hundred and fifty rupiah. Based on Article 374, embezzlement committed by a person whose control of goods is due to a work relationship or because of a search or because he received wages for this, is punishable by a maximum imprisonment of five years. Based on Article 375, embezzlement committed by a person who is forced to be given an item to keep, or committed by a guardian, administrator or executor of a will, administrator of a social institution or foundation, with respect to an item controlled by him as such, is punishable by a maximum prison sentence. six years.

3.2. Sentencing Patterns Regarding the Implementation of Restorative Justice in Resolving Cases of Embezzlement in Office

When viewed from the theory of punishment, the restorative justice approach is closer to the relative theory (goal) (Ibipurwo et al., 2022). This theory views that the purpose of punishment is to enforce order (law) in society where a crime can be punished or the imposition of a crime has a specific aim, namely improving mental attitudes or making the perpetrator no longer dangerous so that he can be accepted again among society. (Supriyanto, 2024). In this way, it is hoped that it can prevent people from committing similar crimes. Relative theory directly pays attention to the condition of the perpetrator and then tries to recover. However, on the other hand, with relative theory, the perpetrator can be held responsible for the losses experienced by the victim so that the victim can also get back his rights fairly. Apart from that, the community

can also be indirectly touched to provide an improved understanding of the perpetrator's existence, so that people's fear, trauma, and even feelings of hatred towards the perpetrator of the crime can be healed and they can be accepted again among the general public.

In line with this, the restorative justice approach considers that all related parties feel losses from the consequences of someone's crime, so it is necessary to pay attention to their rights and obligations in a fair and beneficial manner for the parties. The victim is the first party who is most harmed by the crime. Victims suffer directly from crimes. He suffered physically and mentally. It could be that he suffered material loss, whether money or other assets. She may also suffer a loss of honor due to ridicule, humiliation, harassment, or rape. In addition, criminals suffer losses as well. By committing a crime, a criminal experiences mental decline. He lost his self-control and ability to follow his conscience. He gives in to bad temptations, and loses his ability to choose what is good and right. Instead he chose the bad and wrong. He lost his honor and dignity as a human being. Community life and society are also harmed by crime. The order of living together becomes chaotic(Sharif, 2020). The authority of the law is undermined by the audacity of the lawbreakers who have violated it. Peace is lost, replaced by fear, anxiety, mutual suspicion and feelings of pressure, lest another crime will occur. Social relations between citizens are damaged by blaming each other, or losing mutual trust.

When viewed from legal objectives, this restorative justice approach prioritizes justice and legal benefits for the parties. Restorative justice directly pays attention to the needs of victims so that victims can get their rights fairly. Perpetrators of crimes also receive justice in accordance with the agreement with the perpetrators to take responsibility for their actions and fulfill their obligations. Apart from that, the perpetrator is also given the opportunity to apologize to the victim by admitting his mistake. In this case, the victim understands better what he is experiencing and why the perpetrator committed his detrimental act. From this, more benefits are found where the parties who are brought together can restore their condition or relationship. Perpetrators of crimes also have different needs from the needs of victims. As a human person, he needs the opportunity to be responsible for his actions. He needs to admit his crimes and all the impacts of his evil actions. Based on this confession, it is then mutually agreed that the compensation and compensation that must be borne by the perpetrator of the crime will be given to the victim. Such a confession is not possible in the judicial process, because what occurs in the judicial process is a trial that conveys accusations and gives the perpetrator of the crime the opportunity to deny or defend himself. Responsibility and recognition of the perpetrator of the crime will truly occur if there is dialogue and discussion between the victim and the perpetrator. Such dialogue and discussions will occur in meetings between victims and perpetrators following the principles of restorative justice(Setyowati, 2020).

Restorative justice pays attention to these needs as obligations and responsibilities that arise due to criminal acts. The perpetrator of the crime is obliged to repair the damage suffered by the victim, and society. Obligations towards the victim are carried out first by admitting that he is guilty(Naim et al., 2022). This confession is important, because it is proof of recognition of the suffering experienced by the victim. Victims need to be heard and acknowledge their suffering. Acknowledgment and apology are important processes in healing the victim's emotional wounds and mental suffering. After that, the perpetrator of the crime has an obligation to redress physical and material suffering. This obligation can be fulfilled by providing compensation to pay for the costs of healing physical injuries and replacing the victim's material losses. As explained above, crime also has a negative impact on society and the order of living together. So the perpetrator of the crime must express his confession and apology to the community or someone who is trusted

to represent him. He must also provide compensation to repair the damage that has occurred in society resulting from the crimes he has committed.

In this research, the author conducted research related to resolving cases of embezzlement in office using restorative justice at the Bangka Police Criminal Investigation Unit. This case occurred at PT. Mitra Agro Sembada, Bangka district. It started with the victim's report to the Puding Besar Police which was then followed up by the Criminal Investigation Unit of the Puding Besar Police. Subsequently, this case was withdrawn by the Police to be handled directly by the Bangka Police Criminal Investigation Unit. This case is based on a complaint letter from brother Sahro Alfabari bin Sabit Hasani as manager of PT Mitra Argo Sembada on Sunday, July 24 2022, who is suspected of committing a criminal act of embezzlement in office which is alleged to violate Article 374 of the Criminal Code. A series of investigative activities was carried out to search for and discover a series of suspected criminal acts. After examining witnesses, information was obtained that there had been embezzlement in positions at PT. Mitra Agro Sembada, Labu Village, Puding Besar District, Bangka Regency, found that employees of PT. Mintra Agro Sembada cuts the 16 millimeter iron plate using a blender and takes the iron plate out of PT and sells it. After learning about the incident, Sahroh conducted an interrogation of the perpetrator with the initials ZH and as a result the perpetrator admitted that he had taken it twice.

Based on the results of the author's interview with Mr. Yufiansyah as Head of Unit 3 of the Bangka Police Criminal Investigation Unit, he stated that restorative justice is under IDR 2,500,000. If the loss of the crime is less than IDR 2,500,000 and the perpetrator is not a recidivist, restorative justice can be carried out. However, if the loss is above IDR 2,500,000 and the perpetrator is a recidivist then restorative justice cannot be carried out. The first consideration for the Police to carry out restorative justice is a request to withdraw the complaint report. This case has not yet been reported to the police, it has only just arrived at the public complaint report. If in the middle of the process the complaint is withdrawn then it cannot be continued. In this case, the company PT. Mitra Agro Sembada as the reporter withdrew its report. Based on the investigation report (BAP), Mr. Yufiasyah said that there were several procedures needed to carry out restorative justice in this case. Starting from the reporting party (Sahroh) and the reported party (ZH) submitting a written request to the Head of the Bangka Police for the withdrawal of the report. The application letter is accompanied by a peace statement document and proof that the victim's rights have been restored. The application for approval to carry out a special case title is submitted to the Head of the Bangka Resort Police. Investigators invite conflicting parties and facilitate or mediate between parties. Based on the application letter, investigators at the Investigation stage carry out research on the completeness of the documents, clarification of the parties and this is stated in the minutes.

In the case title, accompanied by a statement letter, ZH as the respondent agreed to compensate for all losses suffered by the reporter. The reporting party is willing to withdraw the report, and is accompanied by a letter of peace between the two parties and there is an agreement that the case will not be continued. In this case, the reporter and the respondent agreed to reconcile, but ZH as the perpetrator had to compensate all the company's losses due to his criminal actions, and the company took the decision to fire ZH as a company employee. The research results and clarification results are fulfilled, then the submission of a request for approval to carry out a special case title, preparation of a report on the results of a special case title, issuance of a research termination order and research termination letter for valid reasons. The results of additional examinations and clarification results have been fulfilled, then proceed with the preparation of a report on the results of a special case title and the issuance of an order to stop the investigation and a decree to stop the investigation for legal reasons.

In resolving this case, the perpetrator, victim and witnesses from the company were present to provide information as evidence. The case held in the Parai Hall of the Bangka Police was attended by the Head of the Criminal Investigation Unit of the Bangka Police, Akp Rene Zakari, the KBO of the Criminal Investigation Unit of the Bangka Police, Aipda Erwin, the Head of the Criminal Investigation Unit of the Puding Besar Police, Aipda Heriadi, personnel from the legal section, the professional and security section, and the implementation of restorative justice was accompanied by supervision from the Bangka Police supervisory section. So, if you look at the procedures for implementing restorative justice, the procedures are in accordance with Perpol Number 8 of 2021 concerning handling criminal acts based on restorative justice. Restorative justice can only be given once. If you commit the same or different criminal act in the future after receiving restorative justice, you cannot be given restorative justice again. There is no fee charged for resolving cases using restorative justice as long as the perpetrator is willing to compensate for material and immaterial losses from his actions experienced by the reporter, according to the agreement between the reporter and the reported party. Likewise, in other cases of minor crimes, the same applies.

3.3. Sentencing Patterns Regarding the Implementation of Restorative Justice in Resolving Cases of Embezzlement in Office

Sentencing patterns are guidelines for legislators to carry out their function as legislators into a criminal law product. The legislative policy stage is operationally part of the planning and crime prevention mechanism at an early stage and is also a statutory policy (Asmadi, 2021). The pattern of punishment is the basis for the question of why someone is or is not convicted. Sentencing patterns always follow the development of human civilization so that the formulation of laws needs to be carefully considered regarding relevance, effectiveness and ease of implementation so that they run well.

Good law is a law that is in accordance with the laws that exist in society as a reflection of the values that apply in that society. These values cannot be separated from the attitudes and characteristics that every person who is a member of society should have. 81 These values contain a sense of what every person should have, namely justice. So it is important to pay attention to whether the value of justice can be achieved depending on the law itself, how the law is implemented by law enforcers or the extent to which the results are in accordance with the ideas and sense of justice that live in society. The pattern of punishment must be clear so that it can be used as a guide, so that there is consistency and clarity in legislative products, and consistency can be found in punishment. If you look at the definition of restorative justice as outlined in Perpol Number 8 of 2021, there is certainly a purpose in it. Restorative justice is the resolution of criminal acts by involving the perpetrator, victim, perpetrator's family, victim's family, community leaders, religious leaders, traditional leaders or stakeholders to jointly seek a just resolution through peace with an emphasis on returning to the original state. In this definition, it can be clearly seen that there is a goal emphasized in it, namely emphasizing restoration back to its original state. This speaks about the benefits of law for people who are trying to restore the situation to the good situation before (Maulidar, 2023).

The pattern of punishment in making regulations regarding restorative justice can be seen directly from the meaning and objectives of restorative justice. The aim of restorative justice is to restore the condition of victims, perpetrators and the relevant communities. When referring to the goal, of course it is in accordance with the action sanctions. The law in this case condemns the action, not the person. The perpetrator is given space to realize his mistakes, compensate for the losses resulting from his actions, be willing to make peace with the perpetrator and improve

himself. Not only the perpetrator, the victim also gets space to obtain their rights, receive compensation for the losses they have experienced, forgive the perpetrator, and other possibilities to anticipate that similar actions that could harm them do not occur. Likewise with the community, they are given space to realize their role and involve themselves in the process of resolving a case resulting from a wrong action.

Restorative justice does not have absolute control over the enforcement of criminal law. The concept of restorative justice also recognizes the existence of criminal sanctions. With the limitations in the conditions for implementing restorative justice, it certainly leads the perpetrator to the state to take its role in bringing the perpetrator to justice. (Arifin, 2023). This means that there is a limit to the actions that can be forgiven for their actions and if they exceed that limit then ultimately the perpetrator can be punished with a crime commensurate with their actions. In implementing sanctions, the aim is to make criminals aware of the meaning of responsibility so that they can improve their behavior and not repeat the mistake again. After there was a sentencing pattern regarding restorative justice, a rule was formed which became a sentencing guideline in resolving restorative justice criminal cases. Restorative justice is implemented in minor crimes. As a continuation, the police have sentencing guidelines regarding restorative justice. Perpol Number 8 of 2021 is a reference for the police to carry out restorative justice for minor crimes. This Perpol regulates the terms and conditions and how to apply them. It's just that the severity of the criminal threat is not explained and only mentions minor criminal acts.

4. Conclusion

The investigator's considerations for applying restorative justice in cases of embezzlement in office at the Bangka Police Criminal Investigation Unit are the withdrawal of the report from the reporting party, the reported party is willing to compensate for losses due to his actions which are detrimental to the company, there is an agreement between both parties to make peace, and the perpetrator or reported party is not a recidivist. The resolution of cases of embezzlement in this position does not cause unrest in society and is in accordance with the terms and procedures for resolving criminal acts based on restorative justice as stated in the Republic of Indonesia State Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice. The pattern of punishment in making regulations regarding Restorative justice is seen from the meaning and objectives of restorative justice, namely restoring the condition of victims, perpetrators and the relevant communities. The pattern of punishment for the application of restorative justice in resolving cases of embezzlement in this position is that it focuses on the goal of recovery, where the awareness, responsibility and peace agreement of the parties which, when compared with the punishment that should be received, is more beneficial and obtains their rights and obligations fairly. After knowing what the investigator considers in applying restorative justice in cases of embezzlement in office at the Bangka Police Criminal Investigation Unit, it is necessary to further clarify the limits of the severity of crimes that can be given restorative justice so that in its application there is legal certainty. The punishment pattern for the application of restorative justice in resolving cases of embezzlement in this position is still incomplete so there is a blurring of norms. Therefore, especially in the police, qualifications regarding minor crimes, the severity of sanctions and the maximum losses that can be given by restorative justice should be included in the Perpol on restorative justice with more concrete conditions so that implementation does not have too many interpretations.

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