



Law Enforcement for the Crime of Embezzlement and Customers in Banking Crimes (Study on Police North Sumatra Region)

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Abstract

Banking crime is increasingly developing its modus operandi, especially in the area of embezzlement of customer funds, especially with advances in technology, so law enforcement requires more systematic or integrated tools that are carried out consistently from various existing law enforcement factors. The formulation of the problem in this research is how to regulate criminal acts of embezzlement of customer funds in banking activities, what the modus operandi of criminal acts of embezzlement of customer funds in banking crimes, and the legal consequences and how the law is enforced by the North Sumatra Regional Police for criminal acts of embezzlement of customer funds in banking crimes. The research method is normative juridical and the method used in analyzing data is qualitative and descriptive methods. The results of the research and discussion in this thesis show that legal enforcement of the criminal act of embezzlement of customer funds in banking crimes is not the same as general criminal enforcement, but instead uses *lex specialis* decorates and uses special laws. The stages of investigation carried out include arrest, detention, embezzlement, confiscation, summons, and filing.

Keywords: Law Enforcement; Customer Funds; Banking Crime.

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INTRODUCTION

In the development of banking in general, including the banking law section, there is a close continuous, or unbroken relationship between current banking law and past banking law. This development also illustrates that the law continues to change. The growth, change, and even disappearance of a legal institution are determined by various factors that exist in society, including political, economic, religious, and technological factors (Hermansyah, 2014).

In the case of embezzlement of customer funds, this is a type of crime in the banking sector carried out by bank employees or bank employees with various modus operandi (Halim et al., 2022). The modus operandi includes ways of entering data or identity or signatures without permission which results in the loss of customer deposits at the bank, whether in the form of time deposits or savings, because they are withdrawn and/or taken by other people who are not legally authorized, in other words, they are not the owners of the funds. the account.

The security of customer funds deposited with a bank is an important part of this legal relationship, considering that in reality funds deposited with a bank can be lost, either due to the actions of bank employees to embezzle the funds or by other parties by breaking into the deposit funds (Ginting et al., 2022; Raja Lubis et al., 2022). Considering that there is a legal relationship, of course, if the customer's savings funds are embezzled by the bank employee himself, of course, this will be an important part of the scope of banking crime which, according to Muhammad Djumhana, explains as follows: "This act or act of embezzlement can also occur with the help of a computer. or at least misuse of computer facilities. This can happen by tricking the computer system used at the bank so that a savings/deposit is not entered into the computer data center (Djumhana, 2006).

The use of a computerized system in banking is related to its function, namely, it is faster and clearer in determining and managing banking data such as bank customer data, but it can also be misused by unauthorized parties. Theft of bank customer information or data can be done in various ways such as: "Breaking credit card numbers (Maskun, 2013). Bank employees who are in charge of collecting customer funds and administering or bookkeeping breaking into customers' credit cards for their benefit, is a banking crime and is punishable by crime based on the provisions of the applicable banking law, in Article 49 paragraph (1) of Law No. 10 of 1998 directors, members of the board of commissioners, bank employees intentionally:

1. Making or causing false entries in bookkeeping or the reporting process, as well as in documents or reports on business activities, transaction reports, or bank accounts.
2. Changing, obfuscating, hiding, deleting, or eliminating a recording in the bookkeeping or a report, as well as in a document or report on business activities, transaction reports or a bank account, or intentionally changing, obfuscating, eliminating, hiding or destroying such bookkeeping records, is threatened with imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years as well as a fine of at least Rp. 10,000,000,000,- (ten billion rupiah) and a maximum of Rp. 200,000,000,000,- (two hundred billion rupiah).

Based on the criminal provisions that can be applied to the crime of embezzlement of bank customer deposit funds, the position of bank employees is very risky of becoming perpetrators or participating in crimes involving theft of bank customer deposit funds carried out by bank employees themselves or in collaboration between the bank employees concerned and other parties, so that customer savings funds for example Rp. 100,000,000,- (one hundred million rupiah) are reduced to Rp. 75,000,000,- (seventy-five million rupiah), perhaps even the entire customer savings funds become lost without being withdrawn by the entitled customer and owner.

Several studies have been conducted by other researchers, such as the article entitled "Misuse of Customer Savings Funds as a Banking Crime" published in the journal 67 JL Pol'y & Globalization in 2017 discussing the wrong or illegal use of customer savings funds in the banking context. This article explores cases or situations where financial institutions or individuals involved in banking have misused or inappropriately used customer funds, which may result in criminal or legal action. The article also discusses the legal and ethical implications of such actions, as well as the regulatory or protective measures that exist to prevent and address such

unauthorized actions in the banking industry (Pelupessy, 2017). The title of the article, Legal Protection for Bank Customers regarding Misuse of Savings Funds by Officials at Bank Branch Offices, by Nanda Yuliska and Benny Djaja, states that banks as places where public funds are stored often face legal problems that can harm customers. This article discusses the problem of misuse of savings funds by customers experienced by an eSport athlete with the initials WE, where his money was misused by the head of the Maybank branch office with the initials CA. Bank Maybank was tested in the context of banking law, consumer protection law, and Bank Indonesia Regulation Number 22/20/Pbi/2020 relating to Bank Indonesia consumer protection (Yuliska & Djaja, 2023). Other research is also about banking crime, namely Rural banks fraud: a story from Indonesia by Taofik Hidajat, which aims to highlight the causes of fraud in village banks in Indonesia and provide recommendations for reducing this financial crime. This research uses secondary data from research reports, journal articles, magazine articles, and online news related to fraud cases in village banks, by applying the Fraud Diamond approach to analyze these problems. The key findings are that factors such as financial and non-financial pressures, opportunities created by weak oversight and governance, justification for fraud, as well as the capabilities of perpetrators, are all causes of fraud in banks, with opportunity being the largest contributor. The novelty of this paper lies in discussing the causes of fraud in village banks which can provide lessons for management and related authorities (Hidajat, 2020).

Based on the background and previous research described, this article aims to describe the regulations regarding criminal acts of embezzlement of customer funds in banking activities, the modus operandi of criminal acts of embezzlement of customer funds in banking crimes, and the legal consequences and how the law is enforced by the North Sumatra Regional Police for the criminal act of embezzlement of customer funds, banking crime.

RESEARCH METHODS

This research uses normative juridical and the methods used to analyze data are qualitative and descriptive methods. The approach is normative juridical with an approach based on the main legal material by examining theories, concepts, legal principles, and statutory regulations related to this research. (Nasution, 2008). The normative juridical approach used refers to the laws and regulations in force in Indonesia, namely laws and other regulations such as Civil Law, Criminal Law, Banking, and Legal Regulations related to legal studies of criminal acts of embezzlement of customer funds. in banking crimes. Qualitative research methods are descriptive and tend to use analysis, while descriptive research is a research method that attempts to describe and interpret objects according to what they are (Rindjin, 2000)

The nature of the research is that the approach taken in this research is descriptive analysis that leads to normative legal research, namely a form of legal writing that is based on the characteristics of legal science which is based on the characteristics of normative legal science. This normative legal research includes research on legal principles, research on legal systematics, research on the level of legal synchronization, legal history research, and legal comparative research.

The techniques and data collection used in this research was carried out using library research, namely research carried out on various reading sources, books, statutory regulations, legal magazines, and opinions of scholars; and field research (Field Research), namely research carried out directly in the field, in this case at the North Sumatra Regional Police (POLDA SUMUT).

Data analysis in this research is legal material obtained by the author, analyzed using qualitative analysis, and then presented descriptively, namely by explaining, describing, and describing the problems and their solutions related to the problem formulation created.

RESULTS AND DISCUSSION

General Overview of Banking in Indonesia

Banking in Indonesia has many forms and types that are influenced by environmental conditions, both in terms of socio-cultural and natural aspects and the history of its development. Indonesian banking has characteristics that may be slightly different from the banking style common in other countries, but in general, the Indonesian banking style remains the same as that which applies everywhere in the world. ²⁰ These characteristics are heavily influenced by the ideology of Pancasila and the goals of the state stated in the 1945 Constitution (UUD 1945) and its amendments. These characteristics are clear in Indonesian banking life (Djumhana, 2006), as follows:

1. In conducting its business, Indonesian banking is based on economic democracy using the principle of prudence. Its main function is to collect and manage public funds and aims to support the implementation of national development to increase equality, economic growth, and national stability towards improving the welfare of the people at large.
2. Indonesian banking as a means to maintain the continuity of the implementation of national development as well as to create a just and prosperous Indonesian society based on Pancasila and the 1945 Constitution, the implementation of Indonesian banking must pay a lot of attention to harmony, harmony, and balance of the elements of the development trilogy.
3. In carrying out its functions and responsibilities to society, Indonesian banking must always move quickly to face increasingly severe and widespread challenges, both in national and international economic development.

Banking which is based on economic democracy means that the public must play an active role in banking activities, while the government, including in this case Bank Indonesia and the Financial Services Authority, acts to provide direction and guidance for the growth of the banking world while creating a healthy climate for its development. The goal of achieving national development goals is not excessive if banking is placed strategically so that the government carries out strict guidance and supervision over these banking institutions. Everything is based on the premise that banking institutions are well protected and entrusted to them by the public, and can channel public funds into productive areas for achieving development targets (Syahfitri, 2022).

Legal Aspects of Embezzlement of Customer Funds in Banking

Article 49 of Law of the Republic of Indonesia Number 10 of 1998 concerning amendments to Law of the Republic of Indonesia Number 7 of 1992 concerning Banking.

1. Members of the Board of Commissioners, Directors, or bank employees who deliberately:
 - a. making or causing false entries in bookkeeping or the reporting process, as well as in documents or reports on business activities, transaction reports, or bank accounts;
 - b. omit or not include or cause not to be recorded in the bookkeeping or reports, as well as in documents or reports on business activities, transaction reports, or bank accounts;
 - c. changing, obfuscating, hiding, deleting, or eliminating a recording in the bookkeeping or a report, as well as in a document or report on business activities, transaction reports or a bank account, or intentionally changing, obscuring, eliminating, hiding or destroying such bookkeeping records, is punishable by imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a fine of at least IDR 10,000,000,000.00 (ten billion rupiah) and a maximum of IDR 200,000,000,000.00 (two hundred billion rupiah).
2. Members of the Board of Commissioners, Directors, or bank employees who deliberately:
 - a. requesting or receiving, permitting or agreeing to receive a reward, commission, additional money, services, money or valuables, for his benefit or the benefit of his family, to obtain or attempt to obtain for another person in obtaining a down payment, bank guarantee, or credit facilities from banks, or in the context of purchasing or discounting by banks on bills of exchange, promissory notes, checks, and trade papers or other evidence of obligations,

or to provide approval for other people to carry out withdrawals of funds that exceed their credit limit at the bank ;

- b. failure to carry out the necessary steps to ensure the bank's compliance with the provisions of this Law and the provisions of other laws and regulations that apply to banks, is punishable by imprisonment for a minimum of 3 (three) years and a maximum of 8 (eight) years. as well as a fine of at least IDR 5,000,000,000.00 (five billion rupiah) and a maximum of IDR 100,000,000,000.00 (one hundred billion rupiah)."

The Crime of Embezzlement in the Criminal Code. Furthermore, the rules regarding the criminal act of embezzlement of goods with certain objects and subjects as well as the respective criminal threats are regulated in Article 362 in conjunction with 363 of the Criminal Code and Articles 373 to Article 377 of the Criminal Code. These provisions are described in the Criminal Code as follows:

Article 362

Any person who takes an item, which wholly or partly belongs to another person, to possess the item against his or her right, shall be punished, for theft, by imprisonment for a maximum of five years or a fine of up to Rp. 900 (Criminal Code 35, 364, 366, 486).

Chapter 373 of the Criminal Code

The act formulated in article 372, if the 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.

Chapter 375 of the Criminal Code

Embezzlement committed by people who are forced to give goods to keep, or committed by guardians, administrators or executors of wills, administrators of social institutions foundations, against goods controlled by him in this way are punishable by a maximum imprisonment of six years.

Modern law has an instrumental nature and function, namely that law is a means of change. Law will bring about changes through the creation of laws that serve as a means of channeling policies which in this way can mean creating new situations or changing something that already exists. The active role of the law itself is that it is used as a means to produce certain effects, namely the desired goals.

Indonesia has an instrumental view of law which was implemented starting in the second replica (1973-1979) and continues to be implemented with all its improvements until now. This view can be seen from the development movement in the legal sector which is directed at accommodating legal needs by the legal awareness of society which is developing towards modernization according to the levels of development progress in all fields to achieve legal order and certainty.

The aim of Law Number 7 of 1992 concerning banking and the amendment law is clear that banking is directed to support the continuity and improvement of development implementation, as well as to be able to accommodate demands for banking services so that they can play a better role in supporting the development process. Banking also continues to have a responsive attitude towards the surrounding environment so that it can play a role in improving the standard of living of many people, equal distribution of development and results as well as increasing economic growth and national stability can be realized more realistically in the context of realizing a just and prosperous society based on Pancasila and the 1945 Constitution, Therefore, the instrumental nature and function of law has been implemented well in Law Number 7 of 1992 concerning Banking and its amendment Law, namely Law Number 10 of 1998.

Due to changes in the economy and incomplete regulations in Law Number 7 of 1992, in 1998 changes were made to this Law, resulting in Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking. The main considerations for making these changes include facing the development of a national economy that is moving fast, competitive, and integrated with the global economy, as well as facing the challenges of an

increasingly complex banking world and an increasingly advanced financial system, apart from that, also to adapt to the ratification of several international agreements in the field of trade in goods and services (Djumhana, 2006).

These things provided the impetus for changes to Law Number 7 of 1992 concerning Banking, including (Princess, 2023):

- a. There is a need for a unified institution to carry out bank guidance and supervision because initially they were separate, namely bank licensing was with the Minister of Finance, while guidance and supervision was with Bank Indonesia.
- b. The need to enforce the principle of prudence in banking.
- c. There is an increase in community aspirations and needs, for example in the banking sector which is based on sharia principles.
- d. There is an increase in community aspirations and needs in terms of function
- e. social control over banking institutions, especially regarding bank secrets, so that they are more easily accessible because not all aspects administered by banks are things that must be kept secret.
- f. There is an increase in community aspirations and needs for the growth of permanent public deposit insurance institutions.
- g. There is an increase in community aspirations and needs for greater opportunities for foreign parties to participate in owning a national bank.

The development of Indonesian banking during the deregulation period was based on policies with weak support because they were only based on the provisions of Presidential Decrees or other regulations originating only from the executive. Such conditions are very inappropriate from a positive legal perspective because the policy material contained in the Presidential Decree often shifts the rules contained in higher regulations such as laws. In such conditions, it is time for total change and improvement, that is, policies should not be patchwork and only solve problems temporarily. This intention was then followed up by the government in 1992 by proposing to the DPR to replace Law Number 14 of 1967 concerning the Principles of Banking. This change aimed to support continuity and increase the implementation of development as well as to be able to accommodate the growing demand for banking services. The replacement of these regulations means that national banks can be expected to be better prepared and able to play a better role in supporting the development process which is increasingly faced with the challenges of economic development (Shomad et al., 2005).

Programs and efforts to strengthen national banking law have succeeded in completing improvements and changes to regulations in the banking sector, namely with the ratification of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking and then following the enactment of Law Number 23 of 1999 concerning Bank Indonesia as well as its ratification. Law Number 24 of 1999 concerning Foreign Exchange Traffic and the Exchange Rate System as a replacement for Law Number 32 of 1964 concerning Foreign Exchange Traffic Regulations. The process of strengthening banking law will also have an impact on improving national banking, namely making Bank Indonesia independent. The first step for this was to replace the Law regarding the Central Bank. Law Number 13 of 1968 concerning the Central Bank was replaced by Law Number 23 of 1999 concerning Bank Indonesia. The replacement law brought many changes, including:

- a. Bank Indonesia has the authority to set monetary targets and exercise monetary control;
- b. Bank Indonesia, with the status of an independent monetary authority, currently no longer provides program credit;
- c. Bank Indonesia in carrying out its duties and functions in its activities can accommodate Sharia principles;
- d. Bank Indonesia, in carrying out its duties of bank regulation and supervision, has the authority to regulate and grant permits and impose sanctions;

- e. Bank Indonesia as an independent state institution is outside the government, independent, and free from interference from the government and other parties, but is obliged to fulfill the principle of public accountability so that it is obliged to submit its policy plans to the President and DPR;
- f. Bank Indonesia is prohibited from purchasing government debt securities for itself, except in the secondary market, and is also prohibited from providing credit to the government.

Alternative Mechanism for Settlement of Banking Disputes

A dispute can be described as a situation where a party feels disadvantaged by another party. The party who feels disadvantaged conveys his dissatisfaction to the second party, and if the second party does not respond and satisfy the first party, and shows differences of opinion between them, then what is called a dispute occurs. ³² A dispute is a dispute or conflict that occurs between individuals or groups who have the same relationship or interest in an object of ownership, which gives rise to legal consequences for one another. According to Rachmadi Usman, a dispute is a conflict between two or more parties that originates from different perceptions about an interest or property right which can give rise to legal consequences for both of them. In the legal context, what is meant by dispute is a dispute that occurs between parties due to a violation of the agreement that has been stated in a contract, either in part or in whole. General overview of banking mediation Dispute resolution is an effort to restore the relationship between the disputing parties to its original state. By returning to this relationship, they can have both social and legal relations. In general, the principles that apply to alternative banking dispute resolution (Sembiring & Sh, 2011) are as follows:

- a. The principle of good faith, namely the desire of the parties to determine the resolution of the dispute they will or are currently facing.
- b. The contractual principle, namely the existence of an agreement stated in written form regarding how to resolve disputes.
- c. The principle of binding, namely that the parties are obligated to comply with what has been agreed.
- d. The principle of freedom of contract, namely that the parties can freely determine what the parties wish to regulate in the agreement as long as it does not conflict with the law and morality. This also means agreement regarding the place and type of dispute resolution that will be chosen.
- e. The principle of confidentiality, namely that the resolution of a dispute cannot be witnessed by other people because only the parties to the dispute can attend the examination of a dispute.

Dispute resolution can be achieved through two events, namely: Litigation (court) Litigation dispute resolution is a dispute resolution carried out through court. Dispute resolution through litigation can be said to be dispute resolution that forces one party to resolve the dispute through court. Dispute resolution through litigation must of course follow formal court requirements and procedures and as a result, the period for resolving a dispute becomes longer.

Non litigation (non court)

Non-litigation means resolving legal issues outside of court. This non-litigation route is known as Alternative Dispute Resolution. Settlement of cases outside of court is recognized in Indonesian laws and regulations. First, in the explanation of Article 3 of Law Number 14 of 1970 concerning Basic Provisions of Judicial Power, it is stated that settlement of cases outside of court, based on peace or through referees (arbitration) is still permitted." Second, in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution Article 1 number 10 states, "Alternative Dispute Resolution is an institution for resolving disputes or differences of opinion through procedures agreed upon by the parties, namely settlement outside the court using consultation, negotiation, mediation, or expert assessment" (Nawawi Arief, 2008).

Settlement of banking disputes outside of court can be done in various ways, namely:

Mediation. Etymologically, mediation comes from the Latin word "mediare" which means being in the middle. This meaning refers to the role of a third party as a mediator in carrying out its duties to mediate and resolve disputes between parties and also means a neutral and impartial position in resolving disputes. Black's Law Dictionary defines mediation: "Mediation is a private, informal dispute resolution process in which a neutral third person, the mediator helps disputing parties to reach an agreement". "...the mediator has no power to impose a decision on the parties". Emphasize the resolution of these disputes.

Arbitrage. Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution in Article 1 Paragraph (1) states that "Arbitrator (referee) is a method of resolving a civil dispute outside the general court based on an arbitration agreement made in writing by the parties to the dispute." Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution states the definition of an arbitration institution, namely a body chosen by the parties to a dispute to provide decisions regarding certain disputes, this institution can also provide (Moeljatno, 2021).

Regulations regarding the Criminal Act of Embezzlement of Customer Funds in Banking Activities

The Criminal Code (KUHP) regulates several articles relating to the crime of embezzlement, including Article 372 of the Criminal Code, which states "Anyone who intentionally and unlawfully claims as his property (zieh toeegenen) something which wholly or partly belongs to another person. other things, but which are in his power not because of a crime, are threatened with embezzlement, with a maximum imprisonment of four years or a maximum fine of sixty rupiahs."

Terminologically, evasion comes from the word "dark" which can generally be interpreted as: vague, unclear, uncertain, and so on. An embezzlement is a dishonest act of hiding other people's goods/property by one or more people without the knowledge of the owner of the goods to transfer ownership (stealing), controlling it, or using it for other purposes. The crime of embezzlement according to Article 372 of the Criminal Code is ordinary embezzlement like the crime of theft according to Article 362 of the Criminal Code, however, the difference is that for thieves, the object is not yet in the perpetrator's hands with a binding opinion regarding a particular legal relationship if a dispute has not yet arisen.

Adjudication. Adjudication is a method of resolving disputes through adjudicators to hand down decisions that arise between the parties. The adjudicator is usually selected by LAPS from the LAPS Adjudicator List. A method of resolving disputes through a third party (adjudicator) to make decisions on disputes that arise between the parties in question. There is usually more than one adjudicator. Because the final result of the settlement is a decision, the adjudicator is usually a panel of adjudicators (a minimum of three people). The adjudication decision is binding on the LJK, so if the consumer agrees to the adjudication decision, even if the LJK does not agree, then the LJK is obliged to implement the adjudication decision. On the other hand, if the consumer does not agree to the adjudication decision even though the LJK agrees, then the decision cannot be implemented. Law enforcement by the North Sumatra Regional Police for criminal acts of embezzlement of banking crime customer funds.

Banking crimes are all types of unlawful acts related to activities in carrying out bank business. All actions that are contrary to the laws and customs related to the banking world. Criminal acts in the banking sector are all types of unlawful acts related to activities in carrying out banking business, both the bank as a target and the bank as a means.

An investigation is a series of investigative actions in terms and according to the methods regulated by law to search for evidence of what happened and to find the suspect (Article 1 point 2 of Law Number 8 of 1981 concerning the Criminal Procedure Code). In this case, the investigation into the criminal act of embezzlement of customer funds was carried out by the Special Criminal Investigation Unit of the North Sumatra Regional Police. Based on the results of an interview with

Mr. Romi Pulungan, a member of sub-directorate 2 of the North Sumatra Police Criminal Investigation Unit, the investigation carried out was not the same as a general criminal investigation, but instead used Lex specialize decorate and used Special Laws.

CONCLUSION

The application of law to criminal acts of embezzlement of customer savings funds can be carried out based on various statutory regulations, such as the Criminal Code which regulates embezzlement, and banking crimes, especially Article 49 paragraph (1) of Law no. 7 of 1992 in conjunction with Law no. 10 of 1998. Embezzlement of customer funds in banking crime is a type of banking crime committed by bank employees or bank employees with various modus operandi (how they work), such as falsifying data or identity or signatures, which results in the loss of customer savings at the bank in the form of deposits, time deposits or savings, because they are withdrawn and/or taken by someone else who is not legally the owner. Law enforcement against banking crimes in banking crimes at Bank Bri Simpang Amplas Unit based on police report number LP/198/VII/2019/SPKT Sbr began with reports from customers who lost money from their accounts. From the results of the investigation, embezzlement had occurred which was carried out by bank employees and transferred to personal accounts. So, based on the suspect's confession and supported by evidence, investigators applied Article 49 Paragraph 1 letter b and Paragraph 2 letter b of Banking Law No. 10 of 1998.

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