

## LEGAL ANALYSIS OF LEGAL PROTECTION FOR VICTIMS OF THE CRIMINAL ACTS OF EMBAGARY OF TWO-WHEEL VEHICLES (STUDY OF DECISION NUMBER 858/PID.B/2025/PN.LBP)

**Belovit Eva Lubis<sup>1</sup>, Hisar Siregar<sup>2</sup>, Samuel Situmorang<sup>3</sup>**

<sup>1,2,3</sup>Faculty of Law, Universitas HKBP Nommensen Medan

**Email:** [belovit.lubis@student.uhn.ac.id](mailto:belovit.lubis@student.uhn.ac.id)<sup>1</sup>, [hisar.siregar@uhn.ac.id](mailto:hisar.siregar@uhn.ac.id)<sup>2</sup>, [samuel.situmorang@uhn.ac.id](mailto:samuel.situmorang@uhn.ac.id)<sup>3</sup>

Received : 10 February 2026

Accepted : 08 March 2026

Revised : 20 February 2026

Published : 19 March 2026

### Abstract

This study examines legal protection for victims of motorcycle imbezzlement and a critical analysis of the judge's considerations in Decision Number 858/Pid.B/2025/PN.LBP using a normative juridical method with statutory, case, and conceptual approaches. Defendant Muklis Pranoto was proven to have embezzled the victim's motorcycle by pawning it for Rp. 500,000 from a value of Rp. 7,000,000 for online gambling, and was sentenced to 2 years in prison under Article 372 of the old Criminal Code (Article 486 of the National Criminal Code). The judge's selection of Article 372 was dogmatically correct, as criminal intent arose only after legal possession of the vehicle, rendering Article 378 inapplicable. However, serious gaps in victim protection were identified: the prosecutor did not seek restitution, the seeking mechanism (Articles 98–101 of the Criminal Procedure Code) was not pursued, and the judge did not order residual restitution of Rp. 6,500,000. Restorative justice evaluation reveals the verdict only partially fulfills restorative elements, lacking formal dialogue, full restitution, and LPSK involvement. Systemic reform in the implementation of Law No. 31 of 2014 and Supreme Court Regulation No. 1 of 2022 is urgently needed.

**Keywords :** *Embezzlement, Victim Protection, Restitution, Restorative Justice, Breach of Trust, Alternative Indictment*

### A. INTRODUCTION

Legal protection for victims of crime is the most important part of a just criminal justice system. According to Philipus M. Hadjon, legal protection for the people is the protection provided to the dignity and honor, as well as the recognition of human rights held by legal subjects based on legal provisions from arbitrariness<sup>1</sup>. This theory serves as a normative basis for the state to guarantee the fulfillment of the rights of every citizen who becomes a victim of a crime, including the crime of embezzlement of two-wheeled motor vehicles which is increasingly common in Indonesia. Moeljatno explained that an act can be categorized as a crime if the act is prohibited by law, is threatened with criminal sanctions, and the act is against the law<sup>2</sup>. Embezzlement as a form of crime against assets is now regulated in Article 486 of the New Criminal Code, which was previously regulated in Article 372 of the Old Criminal Code with a maximum prison sentence of five years. The crime of embezzlement has characteristics that distinguish it from other property crimes, namely the existence of a breach of trust where the perpetrator obtains legal control of the goods first before changing his actions to an unlawful act. Two-wheeled vehicles are a vital asset for Indonesians. Data from the Indonesian National Police Traffic Corps (Korlantas Polri) shows that the number of motorcycles in Indonesia has reached over 140 million units<sup>3</sup>. Therefore, the high public dependence on two-wheeled vehicles is directly proportional to the increasing potential for embezzlement crimes targeting these assets, particularly those

<sup>1</sup> Philipus M. Hadjon, *Legal Protection for the Indonesian People*, Bina Ilmu, Surabaya, 1987, p. 20.

<sup>2</sup> Moeljatno, *Principles of Criminal Law*, Rineka Cipta, Jakarta, 2002, p. 56.

<sup>3</sup> Traffic Corps of the Republic of Indonesia National Police, *Registered Motor Vehicle Data 2023*, Korlantas Polri, Jakarta, 2023, p. 5

## LEGAL ANALYSIS OF LEGAL PROTECTION FOR VICTIMS OF THE CRIMINAL ACTS OF EMBAGARY OF TWO-WHEEL VEHICLES (STUDY OF DECISION NUMBER 858/PID.B/2025/PN.LBP)

Belovit Eva Lubis et al

exploiting relationships of trust between parties.<sup>4</sup> Andi Hamzah stated that in embezzlement (*verduistering*), the perpetrator initially obtained control over the goods legally, but then intentionally changed the legal position of control into an unlawful act for the benefit of himself or others<sup>5</sup>. PAF Lamintang also explained that the element of "owning" (*zich toeigenen*) in the act of embezzlement refers to the perpetrator's actions acting as if he were the owner of the object, even though he was only the holder or custodian<sup>6</sup>. In Decision Number 858/Pid.B/2025/PN.LBP, Defendant Muklis Pranoto alias Muklis, a 33-year-old bricklayer from Dusun III, Baru Village, Batang Kuis District, Deli Serdang Regency, was accused of embezzling a black Honda Beat vehicle with No. Pol BK 6491 ACQ No. Rangka MHIJF5135CK037380 No. Mesin JF51E3030130 belonging to the victim witness Erwin Syahrial. The brief chronology of the case is that the defendant who was at the victim's house was asked to look for a builder, then borrowed a two-wheeled vehicle from the victim. However, in the middle of the trip, an evil intention arose to embezzle the vehicle, and he then pawned it to someone named Tio for IDR 500,000.00, even though the vehicle's value was estimated at around IDR 7,000,000.00. The money from the pawn was used by the defendant to play online gambling. In the end, the Panel of Judges sentenced him to 2 (two) years in prison, lighter than the Public Prosecutor's demand of 2 years and 6 months, taking into account, among other things, that the defendant and the victim had reconciled and the defendant had never been convicted.

This case reflects a classic breach of trust incident in the crime of embezzlement, while also exposing systemic weaknesses in the implementation of legal protection for victims. The criminal justice system in Indonesia still faces serious challenges in providing adequate protection. Dikdik M. Arief Mansur and Elisatris Gultom note that Indonesian criminal law has historically been more oriented towards punishing perpetrators than restoring victims' rights<sup>7</sup>. This situation is exacerbated by victims' limited knowledge of their rights and the lack of proactive efforts by law enforcement officials to facilitate restitution. Normatively, Law Number 31 of 2014 concerning Witness and Victim Protection regulates the victim's rights to restitution, compensation, and legal aid<sup>8</sup>. The system of combining compensation claims as regulated in Articles 98 to 101 of the Criminal Procedure Code should be a means for victims to obtain compensation for losses in one judicial process, but is rarely utilized. This study will examine first, legal protection for victims of embezzlement crimes according to Indonesian law in Decision Number 858/Pid.B/2025/PN.LBP and second, a critical analysis of the judge's considerations from a juridical, philosophical, sociological, and restorative justice perspective.

From a dogmatic criminal law perspective, the issue of qualifying the act in this case also raises fundamental issues related to the distinction between the crimes of fraud (*oplichting*) and embezzlement (*verduistering*). These two crimes often appear similar on the surface, but they have fundamental structural differences that directly impact the quality of legal protection for victims. Article 378, which was previously replaced by Article 492 of the New Criminal Code, regulates the crime of fraud (*oplichting*), which requires the perpetrator to actively attempt deception, false names, false circumstances, or a series of lies used to induce the victim to hand over goods. Evil intent in fraud must already exist and be actualized before or at the time of handover. In contrast, Article 372 of the old Criminal Code, which is now replaced by Article 486 of the New Criminal Code, concerning embezzlement (*verduistering*), requires that control over the goods has been legally obtained first, and unlawful intent only arises after that control

---

<sup>4</sup>Putu Gede Satria Krismajaya, "The Role of Police Investigators in Motor Vehicle Embezzlement Crimes (Case Study at East Denpasar Police Station)," *Journal of Legal Analysis (JAH)* 3, No. 2, 2020, p. 201.

<sup>5</sup>Andi Hamzah, *Principles of Criminal Law*, Rineka Cipta, Jakarta, 2010, p. 98.

<sup>6</sup>PAF Lamintang, *Basics of Indonesian Criminal Law*, PT Citra Aditya Bakti, Bandung, 1997, p. 184.

<sup>7</sup> Dikdik M. Arief Mansur and Elisatris Gultom, *The Urgency of Protecting Crime Victims: Between Norms and Reality*, PT RajaGrafindo Persada, Jakarta, 2007, p. 31.

<sup>8</sup> Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims, Article 6 paragraph (1)

occurs. Wir jono Prodjodikoro explained that the fundamental difference between the two lies in the time when evil intent arises, if in fraud evil intent precedes the handover of goods, while in embezzlement evil intent arises after legal control of goods. This conceptual distinction between fraud and embezzlement is crucial in criminal justice practice, particularly when the Public Prosecutor drafts an alternative indictment that encompasses both articles simultaneously. In such situations, the judge is required to carefully identify which article best aligns with the facts of the trial. As Yahya Harahap emphasized, in an alternative indictment, the judge is free to determine which charge to prove based on its consistency with the facts of the trial, without having to sequentially prove or reject the other charges.<sup>9</sup> The Lubuk Pakam District Court Decision Number 858/Pid.B/2025/PN.LBP presents relevant legal issues in this situation. The defendant was alternatively charged with violating the previous Article 378 which was replaced by 492 of the New Criminal Code Regarding (fraud) or Article 372 replaced by Article 486 of the New Criminal Code Regarding (embezzlement) for his actions in borrowing a Honda Beat motorcycle belonging to the victim Erwin Syahrial for a legitimate reason, but then pawning the vehicle to a third party without the owner's permission. The trial facts revealed that the defendant's malicious intent arose in the middle of the trip, after legal control of the vehicle was obtained, so the Panel of Judges immediately chose the second alternative charge. In addition, the defendant's actions occurred in March 2025, so the connection to Article 486 of the National Criminal Code (Law Number 1 of 2023) needs to be considered within the framework of the *lex mitior* principle. Based on the explanation above, this study aims to analyze legally that the judge's choice of the alternative charge of Article 372 which was replaced by 486 of the New Criminal Code was correct, then the elements of Article 378 of the Criminal Code were not fulfilled in this case and is there any form of legal protection provided to victims of the crime of embezzlement of two-wheeled vehicles in the decision as well as a critical analysis of the judge's considerations from a legal, philosophical, sociological and restorative justice perspective in relation to the fulfillment of the victim's right to restitution.

## **B. RESEARCH METHOD**

This research uses a normative juridical research method, namely legal research conducted by examining library materials or secondary data consisting of primary, secondary, and tertiary legal materials. The approaches used include the statute approach, the case approach, and the conceptual approach<sup>10</sup>. Primary data comes from the Lubuk Pakam District Court Decision Number 858/Pid.B/2025/PN.LBP.<sup>11</sup> Secondary data were obtained from scientific literature, law books, journal articles, and laws and regulations. Data analysis was conducted qualitatively using descriptive-analytical techniques that systematically describe applicable legal provisions and critically analyze their application through a case study of the<sup>12</sup> *a quo* decision.

## **C. DISCUSSION AND RESEARCH RESULTS**

### **Legal Protection for Victims of Criminal Acts of Embezzlement of Two-Wheeled Vehicles in Decision Number 858/Pid.B/2025/PN Lbp**

#### **1. Normative Legal Protection for Victims**

Legal protection is the basic foundation for a just criminal justice system. Muchin emphasizes that legal protection is an activity to protect individuals by harmonizing the relationship of values or rules that are embodied in attitudes and actions in creating order in social interactions between fellow human beings<sup>13</sup>. Philipus M. Hadjon

---

<sup>9</sup>Muhammad Ridwan Lubis, et al., "Increasing Public Legal Awareness: Understanding the Differences Between Fraud and Embezzlement," *Journal Bulletin of Community Engagement* 3, No. 2, 2023, p. 262.

<sup>10</sup> Sri Mamudji, Soekanto and Soerjono. *Normative Legal Research: A Brief Review*, Raja Grafindo Persada, Jakarta, 2004, p. 34

<sup>11</sup>Peter Mahmud Marzuki, *Legal Research*, Kencana Prenada Media Group, Surabaya, 2005, p. 47.

<sup>12</sup>D. Tan, "Legal Research Methods: Analyzing and Reviewing Methodologies in Conducting Legal Research," *Nusantara, Journal of Social Sciences* 8, No. 8, 2021, p. 2465.

<sup>13</sup> Muchsin, *Protection and Legal Certainty for Investors in Indonesia*, Sebelas Maret University, Surakarta, 2003, p. 14.

distinguishes two forms of legal protection : preventive legal protection, which aims to prevent disputes from occurring, and repressive legal protection, which aims to resolve disputes that have already occurred <sup>14</sup>. In the case of the crime of embezzlement of two-wheeled vehicles, Article 372 of the old Criminal Code, which has now been replaced by Article 486 of the National Criminal Code (Law No. 1 of 2023), provides preventive protection through the threat of criminal penalties as a deterrent effect, while repressive protection is realized through compensation and restitution mechanisms. From a formal legal perspective, Article 98–1 01 of the Criminal Procedure Code opens up space for victims to file for a combined compensation claim (voeing) <sup>15</sup>. However, in Decision Number 858/Pid.B/2025/PN Lbp, there was no submission of a claim for combined losses from the victim, even though the victim suffered real material losses of Rp7,000,000.00 <sup>16</sup>. The judge did not inform the victim of this right, and the prosecutor did not file a restitution claim. a double omission that must be criticized. Viewed from the perspective of Law Number 31 of 2014 concerning Witness and Victim Protection, victims of motor vehicle theft in principle have the right to restitution <sup>17</sup>. There is no information in the decision indicating the involvement of the Witness and Victim Protection Agency (LPSK) or any attempt by the public prosecutor to file a restitution claim. This reflects a clear gap between legal protection norms and their implementation in the judicial process . Supreme Court Regulation Number 1 of 2022 actually provides detailed technical procedures for restitution requests, but this regulation has not been optimally utilized in the case a quo.

## **2. Analysis of the Fulfillment of the Elements of Article 372 of the Criminal Code (Article 486 of the National Criminal Code) in Decision 858/Pid.B/2025/PN Lbp**

Based on the trial facts, the panel of judges directly chose the second alternative charge of violating Article 372 of the old Criminal Code which was replaced by Article 486 of the New Criminal Code and proved all its elements <sup>18</sup>. Moeljatno explained that the elements of a crime include human actions , which are prohibited by legal regulations , which are against the law , and which are carried out with error by legal subjects who can be held criminally responsible.<sup>19</sup> Article 372 of the old Criminal Code carried a maximum sentence of four years, while its replacement, Article 486 of the National Criminal Code, carries a maximum sentence of five years. The judge's application of Article 372 of the old Criminal Code is in line with the principle of *lex mitior*, which prioritizes the application of rules that are more favorable to the defendant, despite other considerations .<sup>20</sup> The following legal analysis of the fulfillment of each element of the crime of comparative embezzlement is not clearly documented in the decision. a procedural weakness that needs to be corrected in future judicial proceedings . based on the trial facts:

### **a. The element of “Whoever”**

Defendant Muklis Pranoto, also known as Muklis, a 33-year-old man working as a bricklayer, appeared in court and confirmed his identity. Moeljatno explained that the elements of a crime include human actions prohibited by law, unlawful, and actions committed through error by a legal subject who can be held criminally responsible.

<sup>14</sup> Philipus M. Hadjon, *Op.Cit.* , p. 29.

<sup>15</sup> Criminal Procedure Code (KUHP), Article 98 paragraph (1).

<sup>16</sup> Decision of the Lubuk Pakam District Court Number 858/Pid.B/2025/PN.LBP, pp. 7-8.

<sup>17</sup> Law Number 31 of 2014 concerning Protection of Witnesses and Victims, Article 7A.

<sup>18</sup> Decision of the Lubuk Pakam District Court . *Opcit.* p. 13.

<sup>19</sup> Moeljatno, *Op.Cit.* , p. 63.

<sup>20</sup> S. Ismawati and MF Hertini, "Transformation of Criminal Policy in the National Criminal Code, Towards a Just and Humanistic Criminal System," *Simbur Cahaya* , No. 2, 2025, p. 285.

There was no evidence that the defendant was legally incompetent or mentally ill. Therefore, these elements were met without dispute.

**b. The element of “Intentionally and Unlawfully”**

The trial facts revealed that the defendant initially borrowed a Honda Beat vehicle BK 6491 ACQ for a legitimate purpose, namely to find a builder at the victim's request. However, in the middle of the trip, the intention to embezzle the vehicle arose. The defendant then pawned it to someone named Tio for IDR 500,000.00, and the proceeds were used to play online gambling. PAF Lamintang explained that the element of intent (*opzet/dolus*) includes three components, namely; the perpetrator intended his actions (*wil*), the perpetrator knew his actions were against the law (*weten*), and the perpetrator intended the consequences of his actions (*willen het gevolg*). All components were fulfilled. The use of money for online gambling emphasized the fully conscious unlawful nature, so that this element was fulfilled with the quality of direct intent (*dolus directus*).

**c. The element of “Owning Something Belonging to Someone Else”**

The black Honda Beat vehicle with license plate number BK 6491 ACQ is the legal property of the victim, Erwin Syahrial. The defendant did not have ownership rights to the vehicle and admitted this in court. Andi Hamzah explained that the act of selling, pawning, gifting, or using goods contrary to their intended purpose is a concrete form of the act of "possession" in the crime of embezzlement. Pawning a vehicle for Rp. 500,000.00 from a market value of Rp. 7,000,000.00 reflects a clear exploitation of the trust given. The pawn value, which is far below the market value, actually strengthens the evidence that the defendant was aware of the lack of trust. the right to the vehicle.

**d. The element of "Goods in His Control Not Due to Crime"**

The victim voluntarily handed over the vehicle keys based on a relationship of trust, both are cousins and the defendant had previously borrowed the same vehicle and returned it in good order. The defendant's possession of the vehicle was initially legal (*rechtmatige inbezitneming*). This is the fundamental difference between embezzlement (*verduistering*) and theft, where in embezzlement, possession is obtained legally and only later transformed into an unlawful act. The decision has correctly identified this differentiating characteristic, justifying the application of Article 372 of the old Criminal Code instead of Article 362 (theft).<sup>21</sup>

**3. Factors Influencing the Effectiveness of Legal Protection for Victims**

Based on a study of Decision Number 858/Pid.B/2025/PN Lbp, there are 4 main factors that influence the effectiveness of legal protection for victims, namely:

1. Low legal awareness of victims<sup>22</sup> where the victim does not understand his right to file a lawsuit for consolidation of losses in the criminal process, thus losing the opportunity to obtain formal recovery of losses.
2. The prosecution's orientation is still retributive. Dikdik M. Arief Mansur and Elisatris Gultom highlight that the retributive paradigm measures the success of a prosecution by the verdict handed down, rather than by the recovery of the victim's losses<sup>23</sup>.
3. Restitution procedures are complex and not yet integrated. Although the right to restitution is legally regulated in Law No. 31 of 2014 and Supreme Court Regulation No. 1 of 2022, the procedure still requires active initiative from victims, who in many cases lack sufficient legal capacity.

---

<sup>21</sup> FF Engka, "The Crime of Serious Embezzlement (Article 374 of the Criminal Code) and Use of Goods (Article 315 of the Criminal Code) by the Goods Holder Due to His Work," *LEX PRIVATUM* 11, No. 3, 2023, p. 5.

<sup>22</sup> Muhammad Rendi Ismail Saputra, "Analysis of Law Enforcement in Handling Criminal Acts of Embezzlement", *Journal of Social, Political, and Legal Sciences* 2, No. 3, 2024, p. 27.

<sup>23</sup> D ikdik M. Arief Mansur and Elisatris Gultom, *Op.Cit.* , p. 79.

4. The judicial sentencing paradigm has not fully accommodated the principles of restorative justice. Agus Raharjo and Angkasa emphasized the importance of professional law enforcement officers in ensuring the comprehensive fulfillment of victims' rights<sup>24</sup>.

5.

## **B. Analysis of the Judge's Considerations in Decision Number 858/Pid.B/2025/PN Lbp**

### **1. Legal Facts Revealed at the Trial**

Based on the trial facts stated in Decision Number 858/Pid.B/2025/PN Lbp<sup>25</sup>, the defendant was proven legally and convincingly guilty of committing the crime of embezzlement based on Article 372 of the old Criminal Code which has now been replaced by Article 486 of the New Criminal Code. The chronology of the actions includes:

- a. The defendant was at the victim Erwin Syahrial's house on Sunday, March 16, 2025 at approximately 08.00 WIB
- b. The victim asked the defendant to look for a builder and the defendant borrowed a black Honda Beat motorbike with the number plate BK 6491 ACQ.
- c. On the journey, the defendant had the intention to embezzle the vehicle;
- d. The defendant pawned his vehicle to someone named Tio (DPO) for IDR 500,000.00
- e. The money from the bet is used to play online gambling
- f. The victim suffered a loss of around Rp. 7,000,000.00 and
- g. The defendant and victim have reconciled, the defendant has never been convicted and admitted his actions.

Based on the trial facts from the Decision, it states that the defendant and the victim have reconciled, however, there is no explanation of the peace system, whether it was carried out through formal mediation, whether the victim has received compensation for residual losses, however, it can be seen in the decision of the case that there was no remaining compensation given to the victim so that there is a need for protection assistance for the victim to obtain restitution so that the victim's rights are fulfilled so that this clarity is important so that it does not have a direct impact on the consideration of restorative justice in the decision.

### **2. Judge's Considerations from a Legal Perspective**

Legally, the judge sentenced him to two years in prison, less than the prosecutor's demand of two years and six months. The mitigating factors considered were:

- 1) The defendant has never been convicted
- 2) The defendant admitted his actions and
- 3) The defendant and the victim have made peace.

In this case, the legal return of the vehicle does not remove criminal responsibility. The crime of embezzlement was completed (*voltooid delict*) when the defendant pawned the vehicle to a third party (Tio). Then the most obvious legal weakness is that the judge did not order restitution for the residual loss of Rp6,500,000.00 (the difference between the vehicle value of Rp7,000,000.00 and the pawn price of Rp500,000.00). Article 7A of Law Number 31 of 2014 explains that victims of criminal acts have the right to receive restitution. Furthermore, the judge did not document the consideration of the *lex mitior* principle clearly in the decision, even though Article 486 of the National Criminal Code (maximum 5 years) is heavier than Article 372 of the old Criminal Code (maximum 4 years), so that the application of Article 372 is actually more beneficial to the defendant.

Analysis from a legal perspective explains that:

1. The legal return of the vehicle does not eliminate criminal liability. The crime of embezzlement (*voltooid delict*) was indeed committed when the defendant pawned the vehicle to Tio. This is the correct position dogmatically under criminal law.

---

<sup>24</sup> Agus Raharjo and Angkasa, "Police Professionalism in Law Enforcement", *Journal of Legal Dynamics 11*, No. 3, 2011, p. 393.

<sup>25</sup> Decision of the Lubuk Pakam District Court, *Op.cit.*, pp. 12-15.

2. However, based on Article 197 paragraph (1) letter f of the Criminal Procedure Code which requires that sentencing decisions include mitigating circumstances, the judge's consideration of the peace and confession of the defendant can be procedurally justified.
3. The obvious legal weakness is that the judge did not order restitution for the remaining loss of Rp6,500,000 (the difference between the vehicle's value of Rp7,000,000 and the pawn price of Rp500,000). Article 7A of Law Number 31 of 2014 emphasizes that victims of criminal acts have the right to receive restitution<sup>26</sup>. The absence of this restitution order constitutes a legal omission that should not occur in modern decisions that are oriented towards victim protection.
4. There is also a discrepancy between the judge's consideration, which cited the fact that "the defendant and victim have reconciled" as a mitigating factor, and the lack of further explanation regarding the substance of that settlement, including whether the victim has received adequate compensation. A settlement without material restitution cannot be fully categorized as a mitigating factor within the scope of restorative justice.

### **3. Judge's Consideration from a Philosophical Perspective**

Philosophically, the judge considered that the purpose of punishment is not solely retaliation, but rather to encourage the perpetrator to improve themselves and restore balance. This approach is in line with Articles 51–58 of Law Number 1 of 2023 concerning the National Criminal Code, which mandates that the purpose of punishment be oriented towards rehabilitation and reconciliation<sup>27</sup>. Muchsin explained that the theory of integrative punishment emphasizes the balance between retributive and restorative justice. However, the judge's philosophical considerations stopped at returning the vehicle as a mitigating factor, without continuing with restitution as a concrete step towards comprehensive victim recovery.<sup>28</sup> Mardjono Reksodiputro stated that balancing the interests of the defendant, victim, and society is crucial. Satjipto Rahardjo, who emphasized progressive law as an instrument of good for all parties, demands more than just reducing the sentence. he demanded real reparations for the victims<sup>29</sup>.

### **4. Judge's Considerations from a Sociological Perspective**

Soerjono Soekanto explained that law cannot be separated from the social conditions in which it applies.<sup>30</sup> In this case, the crime occurred in a situation of interpersonal trust. The defendant is the victim's cousin, and the victim's vehicle had previously been borrowed and returned by the defendant. Such a breach of trust is morally more serious than embezzlement by an unknown person. Sociologically aggravating factors include the material loss of Rp7,000,000.00, which is a real value for the lower-middle class. Then, the embezzled money was used for online gambling, not for urgent needs, and the act damaged the trust structure in family relationships. PAF Lamintang said that Indonesian cultural values recognize the act of restitution as a reflection of the perpetrator's moral awareness.

## **C. Restitution as a Foundation Towards Restorative Justice**

### **1. Analysis of Victim Losses and Recovery Status in the Decision**

The physical return of the vehicle by the defendant to the victim constitutes partial restitution in kind which does not cover all losses. Article 1 number 5 of Law Number 31 of 2014 defines restitution as compensation which

---

<sup>26</sup> Criminal Procedure Code (KUHP), Article 197 paragraph (1) letter f, Law Number 1 of 2023 concerning the National Criminal Code, Article 52 paragraph (1), Law Number 31 of 2014 concerning Protection of Witnesses and Victims, Article 7A.

<sup>27</sup> Law Number 1 of 2023 concerning the National Criminal Code, Articles 51-58 concerning the Purpose of Criminalization.

<sup>28</sup> Muchsin, *Op.Cit.*, p. 20.

<sup>29</sup> Mardjono Reksodiputro, *Human Rights in the Criminal Justice System*, LPKM University of Indonesia, Jakarta, 1994, p. 97.

<sup>30</sup> Soerjono Soekanto, *Introduction to Legal Research*, UI -PRESS, Jakarta, 1986, p. 78.

# LEGAL ANALYSIS OF LEGAL PROTECTION FOR VICTIMS OF THE CRIMINAL ACTS OF EMBAGARY OF TWO-WHEEL VEHICLES (STUDY OF DECISION NUMBER 858/PID.B/2025/PN.LBP)

Belovit Eva Lubis et al

can be in the form of return of property, payment of compensation, or reimbursement of costs. There is a remaining loss of Rp6,500,000.00 which is not recovered, plus immaterial losses in the form of psychological disturbance to the victim, replacement transportation costs while the vehicle was lost, and time spent on legal proceedings which were not considered at all in the decision.

Based on the analysis of the victim's losses in Decision Number 858/Pid.B/2025/PN Lbp, there are ( four ) components of losses, which are:

1. The total value of the embezzled vehicles is Rp. 7,000,000.00, which has been explicitly stated in the indictment and the public prosecutor's demands.
2. The physical return of the vehicle by the defendant was assessed as equivalent to the value of the vehicle, which was around IDR 7,000,000.00, and was used by the panel of judges as a mitigating factor in considering the sentencing.
3. There was a residual loss of Rp6,500,000.00, representing the difference between the vehicle's market value of Rp7,000,000.00 and the pawn price of only Rp500,000.00. This residual loss component received no restitution order from the panel of judges, and this is a serious weakness of the decision.
4. There are also immaterial losses, including the victim's psychological distress, replacement transportation costs while the vehicle is out of the victim's possession, and time spent following the legal process. However , all of these immaterial losses were not mentioned or considered in the decision.
- 5.

## 2. Restitution Mechanisms Available but Not Followed

Normatively, the restitution system can be pursued through two paths, namely the system of combining compensation claims (voeging) based on Articles 98–101 of the Criminal Procedure Code and a request for restitution to the LPSK based on Article 7A of Law Number 31 of 2014 in conjunction with PERMA Number 1 of 2022. However, in the a quo case, both systems were not implemented properly by the victim, by the prosecutor, or on the judge's initiative. This is a failure of the institutional triad that must be a serious concern for the renewal of the implementation of Indonesian criminal justice.<sup>31</sup>

## D. Evaluation of the Suitability of the Decision with Restorative Justice Criteria

NA Saleh explained that restorative justice aims to restore the balance disturbed by crime through dialogue, recognition, and restoration involving all parties <sup>32</sup>. Normatively, this principle has been regulated through Article 5 paragraph (1) letter k of Law No. 31 of 2014, Prosecutor's Regulation No. 15 of 2020, and Police Regulation No. 8 of 2021. The following is a comprehensive analysis of the suitability of Decision No. 858/Pid.B/2025/PN Lbp with the criteria of restorative justice:

### 1. Reparative Action by the Defendant Partially Fulfilled

The embezzled Honda Beat was eventually physically returned to the victim and was considered a mitigating factor by the panel of judges, contributing to the reduction of the sentence from 2 years and 6 months to 2 years in prison. However, the return of the vehicle in kind does not cover the full restitution of the losses. There is an unrecoverable residual loss of Rp6,500,000.00. Restitution in kind alone is insufficient without further compensation for the economic value lost while the vehicle was in the hands of a third party.

### 2. Confession and Remorse of the Defendant ( Partially Fulfilled )

The defendant admitted all of his actions in court, expressed remorse, and promised not to repeat them. This attitude is a crucial element of restorative justice. However, a confession in court is qualitatively different from a confession in a formally facilitated mediation session. In ideal restorative justice, the confession is made in the presence of the victim in a safe and structured forum, not merely as a mitigating strategy. The verdict did not clarify

---

<sup>31</sup> Amin Suhaemin, et al., "Criminal Case Handling Mechanism at the Cirebon City District Attorney's Office," *Journal of Islamic Law and Jurisprudence* 6, No. 1, 2024, p. 85.

<sup>32</sup> NA Saleh, *Restorative Justice* , PT. Literasi Indonesia Group, Makassar, 2025, p. 34.

whether the defendant apologized directly to the victim outside the courtroom, or whether the victim genuinely accepted the apology.

### **3. Facilitated Dialogue and Mediation ( Not Fulfilled )**

The verdict mentions that "the defendant and the victim have reconciled" as a mitigating factor, but does not explain the process of that reconciliation. Prosecutor's Office Regulation No. 15 of 2020 requires that termination of prosecution based on restorative justice must be carried out through a structured, documented, and recorded process by the prosecutor. conditions that were not met in this case. Peace without formal documentation and without mediator facilitation cannot be fully categorized as an application of restorative justice.

### **4. Comprehensive Restitution Order ( Not Fulfilled )**

significant weakness in the verdict. The panel of judges did not include any restitution clause in the verdict, even though there were proven and measurable material losses, namely residual losses of Rp6,500,000.00 plus immaterial losses. Article 7A of Law No. 31 of 2014 expressly states that victims of criminal acts are entitled to restitution. The voeing system based on Articles 98–101 of the Criminal Procedure Code should be informed to victims. PERMA No. 1 of 2022 provides clear technical procedures. However, in this case, none of these systems were followed. either by the victim, by the prosecutor, or on the judge's initiative.

### **5. Community and Third Party Involvement ( Not Fulfilled )**

The Witness and Victim Protection Agency (LPSK), community leaders, or any official mediation agency were involved in this case. The LPSK, as the agency mandated by Law No. 31 of 2014 to provide protection and assistance to victims, was not involved at all during the investigation. Within the ideal framework of restorative justice, community involvement plays a crucial role in ensuring that the healing process is not merely bilateral between the perpetrator and the victim, but also takes into account the broader social impact of the crime. In this case, the breach of trust within a familial relationship (the defendant is the victim's cousin) had social impacts that went beyond mere material losses, a dimension the judicial process completely neglected .

### **6. Judge's Orientation to Victim Recovery ( Partially Fulfilled )**

The judge considered the reconciliation and the return of the vehicle as mitigating factors, resulting in a reduction of the sentence from 2 years and 6 months to 2 years. This measure reflects a sensitivity to restorative principles in sentencing considerations. However, this orientation stops short. Reducing sentencing without an order for restitution only benefits the defendant, while the victim remains materially unrecovered. Satjipto Rahardjo emphasized progressive law as an instrument for bringing good to all parties, not just the defendant. Therefore, the judge's considerations fall short of comprehensive restorative justice standards. Upon closer examination, the verdict in this case contains initial elements consistent with the spirit of restorative justice, including the return of the vehicle, the defendant's confession, and reconciliation with the victim. However, when measured against comprehensive restorative justice criteria, the a quo verdict does not fully reflect this paradigm. From a legal policy perspective, the Public Prosecutor should consider terminating the prosecution based on restorative justice (Prosecutor's Regulation No. 15 of 2020) or filing a formal restitution claim. Only if these conditions are met can the verdict be said to fully reflect the principles of restorative justice as mandated by Articles 51-58 of the National Criminal Code and Law No. 31 of 2014.

## **E. Systematic Comparison of Article 378 or replaced by Article 492 of the Criminal Code and Article 372 replaced by Article 486 of the new Criminal Code in Case Decisions 858/ Pid.B/ 2025 /Pn.Lbp**

Wirjono Prodjodikoro explained that the fundamental difference between fraud and embezzlement lies in the time of the emergence of malicious intent, where in fraud the malicious intent precedes the delivery of goods, while in embezzlement the malicious intent arises after the legal possession of goods<sup>33</sup>. According to the doctrine of criminal procedure law put forward by Yahya Harahap, in an alternative indictment the judge is free to determine which charges will be proven based on their suitability with the facts of the trial, without having to prove or reject other charges sequentially.

---

<sup>33</sup>Wirjono Prodjodikoro, *Certain Criminal Acts in Indonesia* , Eresco, Bandung, 1986, p. 98.

## LEGAL ANALYSIS OF LEGAL PROTECTION FOR VICTIMS OF THE CRIMINAL ACTS OF EMBAGARY OF TWO-WHEEL VEHICLES (STUDY OF DECISION NUMBER 858/PID.B/2025/PN.LBP)

Belovit Eva Lubis et al

A systematic comparison between Article 378 or replaced by 492 of the new Criminal Code on fraud and Article 372 or replaced by 486 of the new Criminal Code on embezzlement with the facts of case 858/Pid.B/2025/Pn.Lbp can be explained that from the time of the emergence of evil intent (*dolus*), Article 378 or replaced with Article 492 of the New Criminal Code which requires evil intent to have existed before or at the time of delivery of goods, while Article 372 or replaced with Article 486 of the New Criminal Code requires new intent to arise after legal possession of goods. Therefore, in the facts of this case, the defendant's evil intent arose in the middle of the journey, namely after the vehicle was already in his legal possession, so this element is in accordance with Article 372 of the Criminal Code or replaced with Article 486 of the New Criminal Code. Viewed from the perspective of how to obtain control of goods, Article 378 or replaced now with 492 of the New Criminal Code It requires that control be obtained through deception or lies, while Article 372 or replaced with Article 486 of the new Criminal Code requires control to be obtained legally (*rechtmatige inbezitneming*). The trial facts show that the victim handed over the vehicle to the defendant voluntarily based on trust, so this aspect is also in accordance with Article 372 or replaced with Article 486 of the new Criminal Code. If seen in terms of whether or not there is an active means of deception, Article 378 or now replaced by 492 of the new Criminal Code Therefore, making deception an absolute requirement (*conditio sine qua non*), while Article 372, or its replacement with Article 486 of the new Criminal Code, does not require this. In this case, there was no evidence of active deception by the defendant, so the elements of Article 378 or its replacement with Article 486 were not fulfilled.

Then in terms of trust relationship (breach of trust), in Article 378 or now replaced by 492 of the new Criminal Code if the trust relationship is not a fundamental element, while in Article 372 or replaced by Article 486 of the new Criminal Code the trust relationship is actually the basis for obtaining legal control of goods. In this case, the defendant is the victim's cousin with a strong trust relationship, so that all aspects of the comparison consistently lead to the fulfillment of Article 372 of the Criminal Code. Based on the explanation above, it is clear that all the differentiating aspects point to the fulfillment of the elements of Article 372 or its replacement with Article 486 of the new Criminal Code, which is not Article 378 or its replacement with 492 of the new Criminal Code. So that the fact of intention The crime arose during the journey, control was obtained legally through borrowing and lending based on family trust, and the absence of active means of deception, overall forming a clear pattern of embezzlement. The judge correctly dismissed the fraud charge because the trial facts objectively did not support the fulfillment of its main elements. Thus, the explanation from the analysis that reviewed the decision of the case stated that the judge's choice of Article 372 of the Criminal Code was dogmatically correct, but the decision was not optimal in ensuring real recovery for the victim through the available restitution mechanisms.

### CONCLUSION

Based on the results of the research and discussion, the Panel of Judges' choice to apply the second alternative charge based on Article 372 of the old Criminal Code (Article 486 of the National Criminal Code) in Decision Number 858/Pid.B/2025/PN.LBP is dogmatically correct. All elements of embezzlement are proven to be fulfilled legally and convincingly, because the defendant's evil intent only arose in the middle of the trip after the vehicle was in legal control, so that the elements of Article 378 of the Criminal Code regarding fraud are not fulfilled. The principle of *lex mitior* also supports the application of Article 372 of the old Criminal Code because the threat is lighter than Article 486 of the National Criminal Code. However, legal protection for victims in this case contains a serious gap between norms and their implementation. The three pillars of law enforcement prosecutors, judges, and accompanying officers both did not utilize the available restitution mechanisms. The prosecutor did not file a restitution demand, the voeing mechanism based on Articles 98–101 of the Criminal Procedure Code was not carried out, the LPSK was not involved from the investigation stage, and the judge did not provide residual restitution of Rp6,500,000.00 for the proven losses. The physical return of the vehicle only constitutes partial restitution in kind which does not meet the standards for comprehensive recovery as mandated by Article 7A of Law No. 31 of 2014.

Furthermore, when assessed using the six criteria for restorative justice, this decision is only in the transitional phase. Some of the restorative elements have been partially fulfilled, namely the return of the vehicle, the defendant's confession, and the existence of peace. However, formal dialogue, comprehensive restitution orders, and community and LPSK involvement have not been realized at all. The reconciliation between the defendant and the victim has not been formally documented and is not accompanied by clear residual compensation, so it cannot be qualified as a comprehensive implementation of restorative justice as stipulated in Law No. 31 of 2014 and Articles 51–58 of the National Criminal Code.

## **SUGGESTION**

1. To the Public Prosecutor: in every embezzlement case that results in measurable material losses, the prosecutor should proactively file a restitution claim based on Article 7A of Law No. 31 of 2014 and utilize the voeging mechanism (Articles 98–101 of the Criminal Procedure Code). Prosecutor's Regulation No. 15 of 2020 should also be considered if the requirements for termination of prosecution based on restorative justice are met.
2. To the Panel of Judges: judges need to actively inform victims of their right to restitution, consider orders for residual restitution for proven losses, ensure that peace is used as a mitigating factor accompanied by verified material recovery, and document consideration of the *lex mitior* principle explicitly in the decision.
3. To the LPSK (Corruption Eradication Commission) and the Government: The LPSK needs to expand its support for embezzlement victims from the investigation stage. The government needs to establish a framework requiring prosecutors to file for restitution *ex officio* in every case with measurable material losses, and to expand the dissemination of PERMA No. 1 of 2022 to all law enforcement officials and the public.
4. To Policymakers: A structured, institution-based criminal mediation mechanism is needed for embezzlement cases with moderate losses, so that the principles of restorative justice can be implemented consistently and not rely on ad hoc initiatives from the parties. Systemic reform of Law No. 31 of 2014 and PERMA No. 1 of 2022 is urgently needed to ensure real recovery for victims.

## **REFERENCES**

### **Buku**

- Hamzah, Andi. (2010). *Asas-Asas Hukum Pidana*. Jakarta: Rineka Cipta.
- Hadjon, Philipus M. (1987). *Perlindungan Hukum Bagi Rakyat Indonesia*. Surabaya: Bina Ilmu.
- Harahap, Yahya. (2009). *Pembahasan Permasalahan dan Penerapan KUHAP*. Jakarta: Sinar Grafika.
- Lamintang, P.A.F. (1997). *Dasar-Dasar Hukum Pidana Indonesia*. Bandung: PT Citra Aditya Bakti.
- Mansur, Dikdik M. Arief dan Elisatris Gultom. (2007). *Urgensi Perlindungan Korban Kejahatan: Antara Norma dan Realita*. Jakarta: PT RajaGrafindo Persada
- Marzuki, Peter Mahmud. (2005). *Penelitian Hukum*. Surabaya: Kencana Prenada Media Group.
- Moeljatno. (2002). *Asas-Asas Hukum Pidana*. Jakarta: Rineka Cipta
- Moleong, Lexy J. (2017). *Metodologi Penelitian Kualitatif, Edisi Revisi*. Bandung: PT Remaja Rosdakarya.
- Muchsin. (2003). *Perlindungan dan Kepastian Hukum bagi Investor di Indonesia*. Surakarta: Universitas Sebelas Maret.
- Prodjodikoro, Wirjono. (1986). *Tindak-Tindak Pidana Tertentu di Indonesia*. Bandung: Eresco.
- Rahardjo, Satjipto. (2000). *Ilmu Hukum*. Bandung: PT Citra Aditya Bakti.
- Reksodiputro, Mardjono. (1994). *Hak Asasi Manusia dalam Sistem Peradilan Pidana*. Jakarta: LPKM Universitas Indonesia.
- Saleh, N.A. (2025). *Restorative Justice*. Makassar: PT. Literasi Indonesia Group.
- Soekanto, Soerjono. (1986). *Pengantar Penelitian Hukum*. Jakarta: UI-Press
- Soekanto, Soerjono dan Sri Mamudji. (2004). *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*. Jakarta: Raja Grafindo Persada.
- Subekti, R. (2007). *Kitab Undang-Undang Hukum Pidana Indonesia*. Jakarta: Intermedia
- Yulia, Rena. (2010). *Viktimologi: Perlindungan Hukum terhadap Korban Kejahatan*. Yogyakarta: Graha Ilmu.

### **Jurnal**

- Engka, F.F. (2023). "Delik Penggelapan Berat (Pasal 374 KUHP) Dan Pemakaian Barang (Pasal 315 KUHP) Oleh Pemegang Barang Karena Pekerjaannya." *LEX PRIVATUM* 11(3): 3-11.
- Ismawati, S. dan Hertini, M.F. (2025). "Transformasi Kebijakan Pidana Dalam KUHP Nasional, Menuju Sistem Pidana Yang Berkeadilan Dan Humanis." *Simbur Cahaya*(2): 283-306.
- Krismajaya, Putu Gede Satrya.(2020)"Peran Penyidik Kepolisian Dalam Tindak Pidana Penggelapan Kendaraan Bermotor (Studi Kasus Di POLSEK Denpasar Timur)." *Jurnal Analisis Hukum (JAH)* 3(2): 200-204.
- Lubis, Muhammad Ridwan, dkk. (2023). "Peningkatan Kesadaran Hukum Masyarakat: Memahami Perbedaan Tindak Pidana Penipuan Dan Penggelapan." *Journal Bulletin of Community Engagement* 3(2): 261-268.

# LEGAL ANALYSIS OF LEGAL PROTECTION FOR VICTIMS OF THE CRIMINAL ACTS OF EMBAGARY OF TWO-WHEEL VEHICLES (STUDY OF DECISION NUMBER 858/PID.B/2025/PN.LBP)

Belovit Eva Lubis et al

Raharjo, Agus dan Angkasa. (2011). "Profesionalisme Polisi Dalam Penegakan Hukum." *Jurnal Dinamika Hukum* 11(3): 389-401

Saputra, Muhammad Rendi Ismail. (2024). "Analisis Penegakan Hukum Dalam Penanganan Tindak Pidana Penggelapan Dalam Hukum Pidana." *Jurnal Ilmu Sosial, Politik, Dan Hukum* 2(3): 25-31.

Suhaemin, Amin, dkk. (2024). "Mekanisme Penanganan Perkara Pidana Di Kejaksaan Negeri Kota Cirebon." *Journal of Islamic Law and Yurisprudance* 6(1): 83-98.

Tan, D. (2021). "Metode Penelitian Hukum: Mengupas dan Mengulas Metodologi dalam Menyelenggarakan Penelitian Hukum." *Nusantara: Jurnal Ilmu Pengetahuan Sosial* 8(8): 2463-2478.

## Peraturan Perundang-Undangan

Republik Indonesia. Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

Republik Indonesia. Kitab Undang-Undang Hukum Pidana (KUHP) WvS, Staatsblad 1915 Nomor 732.

Republik Indonesia. Undang-Undang Nomor 8 Tahun 1981 tentang Hukum Acara Pidana (KUHAP).

Republik Indonesia. Undang-Undang Nomor 13 Tahun 2006 tentang Perlindungan Saksi dan Korban.

Republik Indonesia. Undang-Undang Nomor 31 Tahun 2014 tentang Perubahan atas Undang-Undang Nomor 13 Tahun 2006 tentang Perlindungan Saksi dan Korban.

Republik Indonesia. Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana (KUHP Nasional).

Mahkamah Agung Republik Indonesia. Peraturan Mahkamah Agung Nomor 1 Tahun 2022 tentang Tata Cara Penyelesaian Permohonan dan Pemberian Restitusi dan Kompensasi kepada Korban Tindak Pidana.

Kejaksaan Republik Indonesia. Peraturan Kejaksaan Nomor 15 Tahun 2020 tentang Penghentian Penuntutan Berdasarkan Keadilan Restoratif.

Kepolisian Negara Republik Indonesia. Peraturan Kepolisian Nomor 8 Tahun 2021 tentang Penanganan Tindak Pidana Berdasarkan Keadilan Restoratif

## Putusan Pengadilan

Pengadilan Negeri Lubuk Pakam. Putusan Nomor 858/Pid.B/2025/PN Lbp.