

Insight

Resolving Criminal Offences of Embezzlement in the Industrial Raw Materials Distribution Chain through Restorative Justice at the Investigation Stage

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Introduction

In an era where business activities are highly complex, companies, particularly those focusing on the industrial raw materials distribution chain, are often faced with various legal disputes that must be resolved through litigation. One of the legal issues frequently faced by companies in the industrial raw materials distribution chain is embezzlement committed by third parties. Unfortunately, as is well known, litigation proceedings can take a long time to resolve, which is often at odds with the interests of companies seeking to settle disputes in a more efficient and straightforward manner. Moreover, there is a high risk of corrupt practices within the judicial process. This is evidenced by the large number of corruption cases involving members of the judiciary, even involving a Supreme Court judge.

However, Indonesia enacted Law No. 1 of 2023 on the Criminal Code (the “National Criminal Code”) and Law No. 20 of 2025 on the Code of Criminal Procedure (the “National Code of Criminal Procedure”) in 2023 and 2025, respectively. These two laws introduce a wide range of legal reforms. The National Criminal Code stipulates that corporations may be subjects of criminal law, while the National Criminal Procedure Code regulates the mechanism of restorative justice mechanism. Restorative justice is a method of resolving criminal offences outside the courts through dialogue and “penal mediation”, the restoration of the situation to its original state, and the offender’s voluntary willingness to pay compensation. Accordingly, this mechanism may provide a more efficient means of resolving criminal disputes, allowing companies to consider it as an alternative to the lengthy process of conventional litigation.

What is Restorative Justice?

Restorative justice is an alternative dispute resolution mechanism for resolving criminal cases and is often the preferred option. The various mechanisms for implementing restorative justice are set out in Article 79(1) of the National Code of Criminal Procedure:

“The Restorative Justice mechanism is implemented to restore the situation to its original state through:

- (a) forgiveness by the Victim and/ or the Victim’s family;*
- (b) the return to the Victim of any property obtained from the criminal offense;*
- (c) reimbursement of medical and/ or psychological treatment expenses;*
- (d) compensation for any other losses suffered by the Victim as a result of the criminal offense;*
- (e) repairing any damage caused by the criminal offense suffered by the Victim; or*
- (f) payment of compensation for losses resulting from the criminal offense.”*

However, not all criminal offences can be resolved through this mechanism. Article 80 (1) of the National Code of Criminal Procedure stipulates the requirements for the application of restorative justice as follows:

“Restorative justice mechanisms may be applied to criminal offences that meet the following criteria: a. criminal offences punishable only by a fine not exceeding Category III or by imprisonment for a maximum of 5 (five) years; b. offences committed for the first time; and/ or c. are not repeat offences, except for criminal offences for which the sentence is a fine or criminal offences committed through negligence”

Under subparagraph (a), restorative justice may be applied to criminal offences punishable only by a fine not exceeding Category III or by imprisonment for up to 5 (five) years. Under the National Criminal Code, there are eight categories of fines. The minimum fine is Rp1,000,000.00 (one million rupiah), which falls under Category I.

Meanwhile, the maximum fine is Rp50,000,000,000.00 (fifty billion rupiah), which falls under Category VIII. The categorisation system allows for differentiation based on the severity of criminal offences. The higher the category, the greater the impact in terms of loss, social harm, or the legal interest protected by the relevant provision. Consequently, the categorisation of fines also reflects the principle of proportionality in criminal sentencing.

An example of the application of restorative justice can be seen in the decision of the South Sulawesi High Prosecutor's Office to discontinue proceedings in an assault case involving a 19-year-old man, identified only by the initial F. The proceedings were discontinued after both parties, namely the victim and the suspect, agreed to settle the matter through mediation. Approval for the resolution of the case through restorative justice was granted after the subjective and objective requirements had been satisfied. The suspect was also recorded as a first-time offender, while the offense with which he was charged carries a maximum prison sentence of five years.

This demonstrates that the mechanism has positive implications for society, as it enables victims of criminal offenses to regain their sense of justice. Meanwhile, offenders are also allowed to directly rectify their wrongdoing, avoid the social stigma associated with imprisonment, and fulfill their obligation to compensate victims for their losses. Accordingly, criminal law enforcement is not limited to punishing offenders.

In this regard, embezzlement is one of the criminal offenses that may be resolved through the Restorative Justice mechanism, as set out in Article 486 of the National Criminal Code, are:

“Any person who unlawfully possesses an item that is wholly or partly the property of another person, which is in their possession not as a result of a criminal offence, shall be punished for embezzlement with imprisonment for a term of not more than 4 (four) years or a fine not exceeding Category IV.”

Accordingly, embezzlement is not excluded from the scope of the restorative justice mechanism solely because it carries a fine of up to Category IV. Although the fine exceeds the Category III threshold, the offence is punishable by imprisonment for a maximum of four years, which falls within the five-year threshold under Article 80 paragraph (1) letter (a) of the National Code of Criminal Procedure. Therefore, provided that the other applicable requirements are satisfied, including the first-time offender requirement and the absence of repeat offending, an embezzlement case may be resolved through the Restorative Justice mechanism

This mechanism is particularly beneficial to companies specializing in the industrial raw materials distribution chain. Such companies must, of course, establish partnerships with third parties to distribute their products. However, third parties may engage in embezzlement for personal gain, thereby causing losses to the company. Under the previous Code of Criminal Procedure, there were no provisions for restorative justice mechanisms. In other words, once an alleged criminal offense was substantiated and the case proceeded to the investigation stage, it would generally continue through the criminal justice process and potentially proceed to trial. However, with the entry into force of the National Code of Criminal Procedure, the parties now have an alternative means of resolving criminal cases through the restorative justice mechanism. Restorative justice mechanisms can help ensure that business relationships remain more sustainable. When business disputes are resolved through the courts, the business relationship can be said to have been damaged, even if both parties agree to settle amicably during the court proceedings.

Under this restorative justice approach, companies can still maintain good relations with their business partners. This mechanism provides swift redress of losses, helping to ensure the continuity of these partnerships. Consequently, the role of advocates has become increasingly crucial following the enactment of the National Code of Criminal Procedure. The role of an advocate is no longer limited to assisting clients in mitigating potential criminal risks arising within the business sphere; advocates also play a key role in guiding clients through dispute resolution via the restorative justice mechanism when a dispute occurs, as they are often best positioned to understand their clients' legal issues and circumstances.

Conclusion

Overall, restorative justice under the National Code of Criminal Procedure provides a more efficient and practical mechanism for resolving embezzlement cases in the industrial raw materials distribution chain. Since embezzlement under Article 486 of the National Criminal Code carries a maximum sentence of four years' imprisonment, it falls within the statutory threshold for the application of restorative justice. Therefore, provided that the other statutory requirements are fulfilled, companies affected by embezzlement may pursue restorative justice at the investigation stage as an alternative to conventional litigation.

The application of restorative justice offers not only efficiency in resolving criminal disputes but also prioritises the recovery of losses and the restoration of relationships between companies and their business partners. This is particularly relevant in the industrial raw materials distribution chain, where long-term business relationships and continuity of partnerships are essential. The restorative justice process affords advocates a more significant role in bridging the interests of the company—as the victim—and the suspect, namely the third party responsible for the embezzlement, when a dispute occurs. Where the interests of both parties are aligned, they may preserve their business relationship and maintain good relations with their business partners. In other words, restorative justice can serve as a balanced approach that protects the interests of victims, provides an opportunity for offenders to voluntarily compensate for losses, and promotes sustainable business relationships without necessarily resorting to lengthy court proceedings.

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