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Indonesian Law Enforcement against Recipients of Transfer Errors Banking Funds through the Application of the Crime of Embezzlement and Onverschuldige Betaling

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ABSTRACT : For Indonesia that is developing continually and continuously, banks as intermediary institutions through their function transfer of funds has a major role in supporting the improvement of the national economy. Therefore, its implementation must be based on the precautionary principle. The risk of errors in sending funds transfers has an impact on reducing public trust in banking institutions, and can also harm the interests of both the sender and the recipient of funds. In addition, it has legal consequences, both civil and criminal. This issue is interesting to study in order to find out (1) Indonesia's national legal policy regarding legal certainty in the implementation of fund transfers; and (2) enforcement of Indonesian laws against recipients due to a bank transfer error. The results of the study: (1) In order to ensure security, smooth operation, and certainty in the implementation of fund transfer activities, the Indonesian government passed Law No. 3 of 2011; and (2) The application of the principle of *onverschuldigde betaling* according to the concept of civil law and the application of the crime of embezzlement are law enforcement instruments in resolving problems due to bank fund transfer errors.

KEYWORDS : Bank, Fund Transfer Error, *Onverschuldigde Betaling*, Embezzlement.

I. INTRODUCTION

Indonesia was colonized by the Dutch for three and a half centuries, but the concept of a rule of law (*Rechtstaats)* Indonesia was not based on the Continental European system but was based on Pancasila as a manifestation of the legal awareness of the people and *volksgeist* (soul of the nation) of Indonesia as reflected in Article 1 paragraph (3) of the Amendment. the fourth constitution of 1945 which states that: "The State of Indonesia is a State of Law" [1].

The concept of the rule of law Pancasila is closely related to the welfare state (*welvaartsstaat)* as mandated in the 4th paragraph of the Preamble to the 1945 Constitution, where in the understanding of the rule of law, the government is not only responsible for running the state, but is also responsible for ensuring the realization of a just and prosperous society [2]. In realizing this mandate, the government placed Article 33 of the 1945 Constitution as the basis of Indonesian economic democracy and the highest source of law in the national economy, one of which is in the banking sector.

According to Law No. 10 of 1998, the banking sector has a strategic position as an intermediary institution to collect and channel public funds [3]. In addition, banks have a vital function as a support for financial system stability, monetary stability, payment systems, including fund transfer activities. Therefore, the Indonesian government passed Law no. 3 of 2011 concerning Fund Transfer which provides benefits for customers and for banks. In addition, it plays an important role in the national economy to facilitate the exchange of goods and services that are integrated with global financial markets. For customers, fund transfers make it easy to send money to several places at once by simply filling out a form provided by the bank, so the time required is quite short, with low shipping costs. In addition, the sender is guaranteed the security of the money sent will arrive at the destination account. Then, the sending bank gets the advantage of receiving income in the form of fees and commissions, while the receiving bank receives cash and funds that settle as long as the money sent has not been withdrawn or disbursed by the receiving customer.

However, even though the transfer of funds provides many advantages, in its implementation it is inseparable from the shortcomings and risks, including restrictions on funds that can be transferred, limiting the number of transactions per day and the number of outputs, the risk of possible hacking, and leakage of the card owner's personal data. Therefore, in carrying out its role and function, banks are required to implement principles in *prudential banking* order to provide security, smooth transactions, as well as assurance of certainty

for the parties involved in conducting fund transfer activities, including maintaining the bank's image as *agents of trust* [4], [5]. Bank negligence in carrying out funds transfer orders has a considerable impact in addition to reducing public confidence in banking institutions, it is also detrimental to the public providing and receiving funds transfer services, as well as the risk of legal liability both civil and criminal prosecution, one of which is related to cases of wrong transfers bank funds.

In 2020, Bank Central Asia (BCA) as one of the largest banks in Indonesia received the spotlight from various parties, namely law enforcement, banking, and academics. One of the employees of Bank Central Asia (BCA) with the initials "NK" made a mistake in inputting transferring funds so funds of 51 million rupiah entered into the accounts of other parties [6]. Due to negligence in transferring funds, the bank employee has made a replacement to BCA, and then the person concerned demands a refund from the recipient with the initials "A". Receiving party transfer assumes that the incoming funds come from the *fees* it receives as a business broker vehicle, so that those concerned use them to pay for their daily needs. By therefore, the person concerned cannot refund the transfer error in full in the amount of IDR. 51 million, but made a refund in installments. But the "NK" did not accept it so that the problem is resolved through criminal law channels as a Criminal Act Embezzlement.

This problem raises pros and cons, because someone must be convicted for an error in transferring funds which was not done due to his / her own fault, but was caused by the negligence of a bank employee. In this regard, the issue of fund transfer errors is interesting to be studied carefully comprehensively from two perspectives, namely the perspective of criminal law through criminal action instruments embezzlement and a civil law perspective through the application of the principle *Onverschuldigde Betaling.*

II.TRANSFER OF BANKING FUNDS AS ONE OF BANKING FUNCTIONS

The development of the banking world begins trading activities from the time of Babylon which continued to the times of ancient Greeks and Romans, with its main task as a place to exchange money) .This can be seen from the word "bank" is derived from Italian *banque*or *banca* which means a bench in a marketplace [7].

In its development, according to Article 1 paragraph (2) of Law no. 7 of 1992 which has been amended by Law no. 10 of 1998 concerning Banking that: "Banks are business entities that collect funds from the public in the form of savings and distribute them to the public in the form of credit and or other forms in order to improve the standard of living of the people at large". In addition, several scholars provide definitions regarding banks. According to cashmere, a bank is a financial institution whose main activity is to collect funds from the public and channel these funds back to the public and provide other banking services [8]. Then, according to Maryanto Supriyono, the Bank is one of the financial institutions that operates the same as other companies, with the aim of seeking profit, a place or media for the circulation of money, media for the entry and exit of money with the parties involved such as *suppliers* (suppliers), *buyers* (buyers), third parties, relations, and others.

Referring to some of the definitions of a bank above, it can be concluded that banking business activities include: First, collecting funds from the public in the form of deposits in the form of demand deposits, time deposits, savings, and/or other equivalent forms. Second, channeling funds to the public in the form of working capital loans, investment loans and consumer loans. Third, offering other financial services in the form of money transfers or remittances, clearing, buying and selling of foreign currencies, issuing bank references, bank guarantees, buying and selling *L/C* and documentary letters of credit, collections, *safe deposit boxes*, and securities [9].

Money transfer known as "*bank transfer*", "*remittance"*, or "*payment order*" is one of the bank services to carry out customer orders to send an amount of money in rupiah or foreign currency to other parties (companies, institutions, or individuals), both domestically and abroad [10]. An increase in bank fund transfer activities, from the number of transactions, the nominal value of transactions, and the type of media used, needs to be supported by guarantees of security and smoothness of fund transfer transactions as well as certainty for the parties involved in organizing fund transfer activities. Therefore, the Indonesian government passed Law no. 3 of 2011 concerning Fund Transfers. According to Article 1 number 1 of Law no. 3 of 2011 that bank transfer is a series of activities starting with an order from the Originator which aims to transfer an amount of funds to the Recipient stated in the Funds Transfer Order until the Fund is received by the Beneficiary.

In fund transfer activities, apart from involving the subject of the transfer of funds, it is also related to the object of transfer. According to Article 1 numbers 3, 6, 7, and 13 of Law No. 3 of 2011 the parties involved in fund transfer activities, namely: First, the Bank as the Fund Transfer Provider. Second, *Sender* is an Originator, Executing Originator, and all Successor Providers issuing a Funds Transfer Order. Third, an *Originator* is the party that first issues a Funds Transfer Order. Fourth, Executing Originator is an Executor receiving a Funds Transfer Order from an Originator to pay or order another Provider to pay a certain amount of funds to the Beneficiary. Fifth, Beneficiary Provider is an Originating Provider, Successor Organizer and/or Final Executing

Beneficiary receiving a Funds Transfer Order, including the central bank and other Providers conducting inter-Provider payment settlement activities. Sixth, Next Executor is a Receiving Provider other than the Originating Provider and the Final Executing Beneficiary. Seventh, Final Executing Beneficiary is a Provider making payments or delivering funds resulting from transfers to the Beneficiary. Finally, the *Beneficiary* is the party named in the Funds Transfer Order to receive the funds resulting from the transfer.

Then, according to Article 1 point 4 of Law 3 of 2011, that the object of the transfer of funds, namely (a) cash delivered by the sender to the executing recipient; (b) money stored in the Sender's Account at Executing Beneficiary; (c) money stored in the Account of Executing Beneficiary with other Executing Beneficiaries; (d) money stored in the Account of the Beneficiary at the Final Executing Beneficiary; (e) money stored in the Account of Executing Beneficiary which is allocated for the benefit of Recipients who do not have an Account at the Provider; and / or (f) overdraft or credit facilities provided by Providers to Sender.

Funds transfer transactions can be carried out in 3 ways, namely:

1. Bank Indonesia *Real Time Gross Settlement (BI-RTGS system*), which is regulated according to Bank Indonesia Regulation Number 10/6/PBI/2008, namely an electronic fund transfer system between participants, especially banks. in rupiah currency which settlement is done in real time per individual transaction [11].
2. The Traffic Giro (LLG) system is an inter-bank transfer service that uses clearing facilities, which is a procedure for calculating accounts payable in the form of commercial papers and securities from one bank to another so that the settlement is easy, safe, and can be used. facilitate demand deposit payments.
3. Fund transfers involve only 1 (one) bank, where both the sender and the recipient have an account at the same bank, either at 1 (one) bank office, or between 1 (one) bank office which is the same as a bank branch, or between these branches. Thus, the sending party gives transfer instructions to the bank by debiting the account at the bank, or transferring cash and crediting it to the recipient's account also at the bank. In this case the bank carries out 2 (two) different functions and legally these functions mutually separate, namely the debiting function and crediting function.

Along with the increasingly complex and developing products, activities and information technology, apart from having a positive impact on improving the Indonesian economy, on the other hand, banking institutions are very vulnerable to being used as a medium for money laundering and or terrorism financing in carrying out their crimes through the use of money transfer transaction instruments [12]. In response to the possibility of these problems, then the bank in carrying out its functions perform funds transfer activity, must pay attention to the principle of trust *(fiduciary relation principle*), the principles Prudence (prudential banking *principles),* and the principle of know your customer, known as *know Your Customer principles*.

II. IMPLEMENTATION OF THE PRINCIPLES OF ONVERSCHULDIGDE BETALING AND THE CRIMINAL OF EMBEZZLEMENT TO THE RECIPIENT ERROR BANKING TRANSFER

Onverschuldige Betaling Perspective In Civil Law

According to the provisions of Article 5, paragraph (1) of Law No. 3 of 2011 on transfer of funds and Article 1 (5) of the Undang No. 10 of 1998 concerning Banking, Fund Transfer orders that have received acceptance are valid as an agreement. The agreement is a field of civil law (*privat recht*) [13], which is a concordance of European Civil Law called the *Burgerlijk Wetboek (BW)* 1847 which is translated into Indonesian as the Civil Code. Civil Law is a series of regulations that regulate the interests of individual citizens of one country and the interests of other individual citizens [14].

The independence of the Indonesian nation on August 17, 1945 was the culmination point of the Indonesian nation's struggle to escape colonialism and Dutch legal politics. Then, one day after Indonesia's independence, namely on August 18, 1945, the Indonesian national constitution was based on the *drawn up volume of* the independent Indonesian nation as a reflection of the aspirations, will and desires of the people. This is in line with the Mirror Thesis theory pioneered by Vago that "*Every legal system stands in a close relationship to the ideas, aims and purposes of society. Law reflects the intellectual, social, economic, and political climate of its time*" [15].

Therefore, after Indonesia's independence, there are pros and cons related to the enactment of BW as part of Indonesia's positive national law [16]. The first opinion, to abolish the position of BW on the grounds that there are several provisions that are not in accordance with the values or with the personality and development of an independent Indonesian society. In contrast to the first opinion, we still consider BW / Civil Code as a law that is valid legally in the Indonesian legal system. This is based on Article 1 of the Transitional Rules of the 1945 Constitution which states: "All existing laws and regulations are still valid as long as a new one has not been held according to this Basic Law ".

Systematics *Burgerlijk Wetboek consists* of: First, the subject of people (*Van Personen),* which regulates the law of persons and family law. Second of the Objects (*Van Zaken*), which regulates objects. Third, regarding the Engagement (*Van Verbintenissen),* which regulates the law of property relating to the rights and obligations that apply to certain people or parties. Fourth, with regard to proof and time (*lapse Van Bewijaeu Veryaring) [17]*.

Referring to the systematic *Burgerlijk Wetboek,* bank Fund Transfers that have obtained acceptance are valid as an agreement as stipulated in Book III of the Civil Code on Engagement (*Van Verbintenissen)* Articles 1233 to Article 1864. An engagement is a legal relationship between two or more people in which one party is entitled to achievement and the other party is obliged to fulfill the achievement. In accordance with Article 1233 of the Civil Code, the engagement comes from agreements and laws. Then the engagement that originates from the law is divided into an engagement that originates from the law alone and the law because of human actions. Furthermore, the engagement that originates from the law due to human actions is divided into two. First, according to the law, for example, the management of other people's interests voluntarily which is referred to as the Dutch term zaakwaarneming Article 1354 of the Civil Code, and payments for which there is no debt obligation in the Dutch term *onverschuldigde against* Article 1359 of the Civil Code. Second, an agreement that originates from a law that is against the law is called the Dutch term with *onrechtmatige daad* as regulated in Article 1365 of the Civil Code [18].

Referring to the two sources of the agreement, the transfer of funds is an agreement. According to Article 1313 Chapter II Book III of the Civil Code of an agreement is: "A legal act whereby one or more people bind them selves to one or more other people." An agreement can also be interpreted as an event in which a person promises to another person or both promise to carry out something, which is termed in language. The Netherlands as "*overeenkomst*" [19].

Then, Sudikno Mertokusumo defines an agreement as "a legal relationship between two or more parties based on an agreement to cause legal consequences. The two parties agree to determine rules or rules or rights and obligations, which bind the parties to obey and carry out the violation of which can be subject to certain sanctions" [20].

Funds Transfer as an agreement is not only based on the general provisions of Book III of the Civil Code, but is also based on special provisions as regulated in Law No. 10 of 1998 concerning Banking and Law No. 3 of 2011 concerning Fund Transfers. Therefore, the legal relationship between the parties in the fund transfer activity has their own uniqueness and is a separate and independent agreement.

For example, the legal relationship between the agreement that causes the Fund Transfer between the Originator and the Beneficiary, can be based on a business agreement legal relationship that requires the debtor to fulfill its obligation to make payments. The parties make an agreement that payment is made by bank transfer of funds, and upon receipt of the funds, the legal relationship between the business agreement between the sender and the recipient cancels Furthermore, the *remitter, transferor,* mandates the bank to send money to the recipient of the shipment. If the sender is a customer of the sending bank, it will be debited from his account, but if the sender is not a customer, the deposit is made in cash. Then, the Sending Bank (*remitting bank, bank transferor sends a*) as the bank that gets instructions from the sender sum of money to the Beneficiary (*transferee).* Lastly, The Paying Bank *(paying bank)* will be paid to the beneficiary *(beneficiary, transferee)* in accordance with the instructions given sender *(remitter, transferor),*as well as the sender's bank *(remitting bank, bank transferor*). From the description, The legal relationship between the sender and the bank is based on the legal relationship of the power of attorney agreement as regulated in Article 1792 of the Civil Code, namely "an agreement whereby a person gives power to another party who receives it for and in his name to carry out an affair ".

In funds transfer activities, if the parties related to the fund transfer activities have carried out their obligations properly, then this legal relationship is terminated. But it becomes a problem if the bank makes a mistake transferring funds to another party that is not in accordance with the mandate from the sender. Fund transfer error is "an incident in which one legal subject, either a person or a legal entity, receives an amount of money without any legal rights from another legal subject who thinks he is obliged".

From a civil law perspective, bank errors in transferring funds can be resolved through the following steps: First, the bank asks the teller to be accountable for compensation based on the work agreement between Law 13 of 2003 concerning Manpower. Furthermore, the teller asks the recipient who is not entitled to return the funds based on the provisions of Article 1359 of the Civil Code known as "*Onverschuldigde Betaling*", and in Article 812 paragraph 1 of the German Civil Code known as *unjustified enrichment.*

"*Onverschuldigde Betaling"* according to Article 1359 of the Civil Code is: "Actions that give rise to an agreement that gives authority to a person who has made a payment to demand back what he has paid". Then, what is meant by *unjustified enrichment* is a person who, without a legal justification, obtains wealth at the expense of another person, either because the delivery or other basis is obligatory to return it. *Onverschuldigde Betaling* qualifies as an agreement that is born from a law not a *quasi contract* [21], which is an agreement that occurs automatically because of a situation or event that imposes an obligation on the party to fulfill it

regardless of whether the person wants it or not. Examining the concept of *Onverschuldigde Betaling*, the receipt of funds due to a bank transfer error creates a legal bond between the paying party and the recipient of it, and obliging to return it regardless of whether the recipient agrees or not.

According to the views of some philosophers, the receipt of payments that have no debt obligation either based on the concept of *Onverschuldigde Betaling* or *unjustified enrichment* imposes an obligation on the recipient of the transfer to return it. This is in line with the philosophy of justice, good faith, and morality. According to Upianus, justice is the will that continues and continues to give to each what is their right (as "*"justitia est constans et perpetua voluntas ius suum cuique tribuendi)"*or " "tribuere cuique suum" - "to give everybody his own", that gives everyone what is due" [22]. Good faith in the agreement which according to the Dutch language is called "*tegoede trouw*", and from English it is called "*in good faith*" [23] is a doctrine that comes from Roman law, starting from the doctrine *ex bona fides*, where every legal act must be based on good faith and the parties may not take advantage of misleading actions against either party [24].

Then morality/morality comes from the Greek language, namely *mos* (plural mores), which has the same meaning as *ethos* [25], is the highest norm that determines whether a person's behavior is good or bad from an ethical point of view. Moral functions as an ethical foundation that gives humans the obligation to carry out moral commands, for example orders to do good to fellow humans, orders to keep promises, and orders to be honest, including not taking the rights of others that are not theirs [26].

The Crime of Embezzlement

Criminal law is one of the sub-systems of Indonesian law, which is forced to protect human interests in social life. In the Criminal Code, the term criminal offense is known which in Latin is called *Delictum* or *Delicta*, in English it is known as *Delict*, and in Dutch it is known as *Straf bare Feiten [27]*, which consists of three words, namely *straf, baar* and *feit. Straf is* defined as criminal and law, *baar is* defined as can or may, while *feit* is defined as an act, event, and act or part of a reality.

Moeljatno gave a view that a criminal act is an act that is prohibited by a legal rule, the prohibition is accompanied by certain criminal sanctions for anyone who violates these rules[28]. Furthermore, according to Simon, a criminal act is an action or act that is punishable by law, contrary to the law and committed by someone who is able to be responsible for his actions [29] [30].

The elements of a criminal act are as follows: 1. The act must be a human act, 2. the act must be prohibited and punishable, 3. the act is against the law, 4. must be committed by someone who can be held responsible, 5 The act must be blamed on the maker [31]. However, according to the principle of legality (*Principle of legality*), which is known in Latin as *Nullum Delictum Nulla Poena Sine Praevia Lege Prorit*, it is stated that there is no offense, no punishment, before there are provisions that regulate it first [32]. In accordance with the formulation of Article 1 paragraph (1) of the Criminal Code, criminal law in Indonesia as well as criminal law in other *civil law system* countries is a criminal law that originates from statutory regulations. Therefore, according to von Feurbach, analogy should not be used to determine the existence of a criminal act, and the criminal law rules cannot be retroactive.

Based on this legality principle, in order to hold the recipient of a fund transfer with bad intentions to account as a criminal act, on March 23, 2013 the Government of Indonesia passed Law No. 13 of 2013 concerning Fund Transfers in which Article 85 provides a rule that: "Any person who deliberately controls and recognizes the funds resulting from the transfer as his own, which is known or should be known about the fund is not entitled to be sentenced to imprisonment of up to 5 (five) years or a fine. a maximum of IDR 5,000,000,000.00 (five billion rupiah)".

Fund transfer activities are related to the banking function. In banking legal theory, there are terms known as banking crime and banking crime. The term banking crime is the formulation of offenses as regulated in Law Number 7 of 1992 jo. Act Number 10 of 1998 concerning Banking and Act Number 23 of 1999 jo. Act Number 3 of 2004 concerning Bank Indonesia. Criminal acts in the banking sector, in addition to crimes stipulated in the Law on Banking and the Law on Bank Indonesia, are also regulated by other criminal acts in various laws, such as the Criminal Code, Law Number 1 Year 1999 jo. Law Number 21 concerning Eradication of Corruption, Law Number 8 of 2010 concerning Eradication of Money Laundering, Law Number 3 of 2011 concerning Fund Transfers [33], [34].

Studying the two banking legal theories above, the control and recognition of funds from the transfer of funds are categorized as criminal acts in the banking sector. Then, seen from the various criminal acts, the control and recognition of the proceeds from the transfer are categorized into the form of embezzlement (*verduistering)* as regulated in Book II Chapter XXIV of the Criminal Code. In terminology, "darkening" comes from the word "dark" which is defined as: blurred, unclear, uncertain, and others. In the Big Indonesian Dictionary, embezzlement is defined as the process, method, and act of embezzling (misusing) the use of goods illegally. Van Haeringen defines the term embezzlement as "*geheeldonkermaken"* or "*uitstraling van lichtbetalen*", which means "to make everything dark" or "to block the beam of light". Embezzlement is a dishonest act by hiding other people's goods / assets by one or more people without the knowledge of the owner

of the goods with the aim of transferring property (stealing), controlling, or being used for other purposes [35].

The Criminal Code (KUHP) regulates the article on the criminal act of embezzlement in Article 372 of the Criminal Code, which reads "Whoever deliberately and illegally claims to be his own property (*zichtoekennen)* something that belongs wholly or partly to other people, but that is there. in his power not due to a crime, threatened with embezzlement, with a maximum imprisonment of four years or a maximum fine of sixty rupiah [36]. According to Andi Hamzah, the core part of the offense or criminal act of embezzlement as regulated in Article 372 of the Criminal Code are as follows: First, Intentionally: Second, Against the law; Third, owning an item; Fourth, Wholly or partly belonging to other people; Fifth, what is in his power is not because of crime [37].

The crime of embezzlement of banking funds is a form of crime (*rechtsdelicten)*, which is against justice, where prosecution can only be carried out if there is a complaint from the injured party. Therefore, in order to sue the recipient of a fund transfer error as the perpetrator of a criminal act of embezzlement in the banking sector, according to the formulation of Article 372 of the Criminal Code, the following elements must be met: First, the objective element in which (a) the act has; (b) An object / object which according to its nature can be moved which is called a movable object; (c) Partially or wholly owned by others; and (d) Objects are in his possession not because of evil. Second, the subjective element, namely the existence of (a) Intentional; and (b) Unlawful.

With the fulfillment of the elements of the criminal act of embezzlement as stipulated in Article 372 of the Criminal Code, according to Hans Kelsen's opinion as a pioneer of pure legal theory, the perpetrator must be responsible as a sanction for the illegal use of other party's funds.

There are differences in the application of sanctions to the party controlling the proceeds from the transfer between the provisions of Law No. 3 of 2011 with the application of sanctions according to the provisions of the Criminal Code. Article 85 Law No. 3 of 2011 imposes a maximum imprisonment of 5 (five) years or a maximum fine of Rp.5,000,000,000.00 (five billion rupiah), while Article 372 of the Criminal Code provides a maximum criminal sanction of four years or a maximum fine of nine hundred rupiahs" .

If in an event (law) is related or violated by several regulations, where an action is included in a general criminal provision, and also included in a special criminal provision, then in accordance with the *lex specialis derogate legi generali* principle normalized in Article 63 paragraph (2) of the Criminal Code , then special provisions are applied, regardless of whether the specific ones are punished more severely or lighter than the general ones [38]. Therefore in line with the *lex specialis derogate legi generali principle*, the provisions of Article 85 of Law No. 3 of 2011 concerning Funds Transfer overriding the provisions of Article 372 of the Criminal Code.

However, according to Nolte's opinion which is corroborated by Van Hattum's opinion, that the principle *lex specialis derogate legi generali* can only be applied if an act fulfills all the elements of a criminal act regulated in a criminal provision, also fulfills the elements formulated in another criminal provision, which The elements of the first criminal provision are incorporated into it [39].

Examining the two concepts of Indonesian law enforcement against recipients of fund transfer errors due to bank negligence, can be done in 2 ways. First, apply the provisions for the crime of embezzlement in the field of bank fund transfers as stipulated in Article 85 of Law No. 3 of 2011, if it meets the following elements:

1. Against the law;
2. Harm to society;
3. Prohibited by criminal rules;
4. The perpetrator will be punished with punishment; and
5. The perpetrators can be held accountable.

Second, applying the provisions of civil law through the instrument "*Onverschuldigde Betaling*" Article 1359 of the Civil Code, if there is no malicious intention to control the transfer error funds, and have good faith to return the transfer funds. In accordance with the provisions of Article 1362 of the Civil Code, if the recipient of the transfer of funds has good intentions, he is only burdened with the obligation to return the transferred funds in accordance with the amount received. However, if the recipient of the fund transfer has bad faith, then he will be burdened with the responsibility of returning the transfer funds accompanied by compensation.

IV. CONCLUSION

The increase in bank fund transfers from the number of transactions, the nominal value of the transactions, and the type of media used have played an important role in supporting the progress of Indonesia's national economic development. Therefore, in ensuring the security, smoothness of fund transfer transactions, and providing certainty for parties involved in the implementation of fund transfer activities, the Indonesian government passed Law No. 3 of 2011 concerning Fund Transfers. Indonesian law enforcement against the abuse of receipt of bank fund transfers is carried out through two approaches, namely private law and criminal law. From the perspective of civil law, law enforcement is carried out through the application of the principle *Onverschuldigde Betaling* according to Article 1359 of the Civil Code. From a criminal legal point of view, law

enforcement is based on two rules, namely the provisions on the Crime of Embezzlement as regulated in Article 372 of the Criminal Code and Article 85 of Law No. 3 of 2011 concerning Fund Transfers. Of the two provisions of the criminal law, through the application of the principle *lex specialis derogate legi generali*, the provisions of Article 85 of Law No. 3 of 2011 concerning Funds Transfer overriding the provisions of Article 372 of the Criminal Code.

REFERENCES

[1] Hamzani, Achmad Irwan, Menggagas Indonesia sebagai negara hukum yang membahagiakan rakyatnya, *Yustisia, 90(0),* 2014, 139.

[2] Ridlwan, Zulkarnain, Negara hukum Indonesia kebalikan nachtwachterstaat, *Fiat Justitia Jurnal Ilmu Hukum, 5(2),* 2012, 149.

[3] Gazali, Djoni S., dan Usman Rachmadi, *Hukum perbankan* (Jakarta: Sinar Grafika, 2010)

[4] L. Elly A.M. Pandiangan dan Hendri Jayadi, Hubungan hukum antara nasabah penyimpan dana dengan bank dalam prespektif hukum perjanjian di Indonesia, *Tô-râ*: *Hukum untuk mengatur dan melindungi masyarakat*, *4(3),* 2018, 94.

[5] Djasmin, Yusman Alim, Penerapan prinsip-prinsip tentang perbankan syariah hubungannya dengan otoritas jasa keuangan, *Maku Lex Crimen, VI(1),* 2017, 40.

[6] Kompas (2021) *Kronologi kasus bca salah transfer rp 51 juta, ardi dipenjara karena pakai* uang yang belum tentu haknya. https://regional.kompas.com/read/2021/02/25/06364911/kronologi-kasus-bca-salah-transfer-rp-51-juta-ardi-dipenjara

[7] Fuady, Munir, *Hukum perbankan modern* (Bandung: Citra Aditya Bakti, 2003).

[8] Kasmir, *Manajemen perbankan* (Jakarta: PT Raja Grafindo Persada, 2010).

[9] Siamat Dahlan, *Dasar-dasar perbankan* (Jakarta:PT. Bumi Aksara, 2004).

[10] Hermansyah, *Hukum perbankan nasional di Indonesia* (Bandung: Kencana, 2005).

[11] Widyawati Erna, Purwadi Ari, dan Subagiyo Dwi Tatak, Pertanggungjawaban teller bank akibat terjadinya kesalahan terhadap transfer dana nasabah, *Perspektif Kajian Masalah Hukum Dan Pembangunan, 23(1),* 2018, 3.

[12] Novitiyaningsih Leny Eka, Nasution Krisnadi, Prinsip mengenal nasabah pada bank umum dalam mencegah tindak pidana pencucian uang, *Jurnal Hukum Bisnis Bonum Commune, 2(1),* 2019, 56-57.

[13] Vollmar, Peng*antar studi hukum perdata* (Jakarta:Rajawali,1989).

[14] Hariyanto Erie, Burgelijk wetboek (menelusuri sejarah hukum pemberlakuannya di Indonesia) *al-Ihkâm IV(1),* 2009, 143.

[15] Tongat, Prasetyo Said Noor, Aunuh Nu'man, Fajrin Yaris Adhial, Hukum yang Hidup dalam Masyarakat dalam Pembaharuan Hukum Pidana Nasional The Living Law in the National Criminal Law Reform, *Jurnal Konstitusi, 17(1),* 2020, 168.

[16] Maharani Aisyah, Ironi kitab undang-undang hukum perdata dalam sistem hukum di Indonesia, *RechtsVinding Media Pembinaan Hukum Nasional*, 2020, 1.

[17] Hariyanto Erie, Burgelijk wetboek (menelusuri sejarah hukum pemberlakuannya di Indonesia) *al-Ihkâm IV(1),* 2009, 143.

[18] Suharnoko, *Hukum perjanjian, teori dan analisis kasus*, (Jakarta:Prenada Media Group, 2004).

[19] Hartana, Hukum perjanjian dalam perspektif perjanjian karya pengusahaan pertambangan batubara, *Jurnal Komunikasi Hukum 2(2),* 2016, 149.

[20] Mertokusumo Sudikno, *Mengenal hukum (suatu pengantar)* (Yogyakarta: Liberty, 1985).

[21] Hartkamp, Arthur S. Marianne M.M.Tillema, *Contract law in the Nederland* (Kluwer International: AH Alphen aan den Rijn, 2011).

[22] Notohamidjojo, O, *Masalah : keadilan* (Semarang: Tirta Amerta, 1971).

[23] Syaifuddin, Muhammad, *Hukum kontrak memahami kontrak dalam perspektif filsafat, teori, dogmatik dan praktik hukum (seri pengayaan hukum perikatan*) (Bandung: Mandar Maju, 2012).

[24] Arnita Simamora Tan Kamello Novalia, Sembiring, Rosnidar. Leviza, Jelly. Asas itikad baik dalam perjanjian pendahuluan (voor overeenkomst) pada perjanjian pengikatan jual beli rumah (Studi putusan pengadilan negeri Simalungun no. 37/PDT/PLW/2012/SIM), *USU Law Journal, 3(3),* 2015, 89.

[25] Chang, William, *Pengantar teologi moral* (Yogyakarta: Kanisius, 2001)

[26] Luthan, Salman, Dialektika hukum dan moral dalam perspektif filsafat hokum, *Jurnal Hukum IUS QUIA IUSTUM, 4(19),* 2012, 518.

[27] Samidjo, *Ringkasan dan tanya jawab hukum pidana* (Bandung: Penerbit. Armico, 1985).

[28] Moeljatno, *Asas-asas hukum pidana* (Jakarta: PT Rineka Cipta, 2009).

[29] Effendi Erdianto, *Hukum pidana Indonesia* – suatu pengantar (Bandung:PT Rafika Aditama, 2011).

[30] Hamzah Andi, *Hukum acara pidana Indonesia* (Jakarta: Sinar Grafika, 2004).

[31] Moeljatno, *Asas-asas hukum pidana* (Jakarta: PT Rineka Cipta, 2009).
[32] Mukhlis, R, Tindak pidana di bidang pertanahan di kota Pekanbaru, *Jurnal Ilmu Hukum, 4(1),* 2015, 203.
[33] Effendy Marwan, *Tipologi kejahatan perbankan dari perspektif hukum pidana* (Jakarta: Sumber Ilmu Jaya, 2012)
[34] Nurani Widianika, Lukitasari Diana, Tindak pidana transfer dana melalui perintah transfer dana palsu yang dilakukan oleh nasabah pt bank international Indonesia tbk (Studi putusan pn Surakarta nomor: 108/Pid.SUS/2014/PN.Skt.), *Recidive, 3(3),* 2014, 358.
[35] Datau Rivaldo, Penggelapan dana simpanan nasabah sebagai kejahatan perbankan, *Lex Privatum, V(1),* 2017, 116.
[36] Anhar, Tinjauan yuridis terhadap tindak pidana penggelapan dengan pemberatan yang dilakukan secara berlanjut (Studi kasus putusan pengadilan negeri palu No.12/Pid.B/2009/PN.PL), *Jurnal Ilmu Hukum Legal Opinion, I(2),* 2014, 182.
[37] Hamzah Andi, *Delik-delik tertentu (specialedelicten) di dalam kuhp* (Jakarta: Sinar Grafika, 2009).
[38] Agustina Shinta, Implementasi asas lex specialis derogat legi generali dalam sistem peradilan pidana, *MMH, 44(4),* 2015, 504.
[39] Nolte H.J.A. *Het strafrecht in de afzonderlijke wetten: rechtshistorisch, rechtsfilosophisch en systematische bewerkt* (Utrecht:Dekker & Van De Vegt NV, 1949).