

The Criminal Law Enforcement on the Criminal Act of Employment

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Abstract.

The aims of this research are: To find out and analyze the law enforcement of the crime of embezzlement in office. To find out and analyze the factors causing the occurrence of criminal acts of embezzlement in office. This study uses an empirical juridical approach, with descriptive analytical research specifications. The data used in this research is secondary data obtained through literature study. The method of data collection is obtained from literature study, then analyzed qualitatively. The result of this research is that the law enforcement of the crime of embezzlement in office is carried out through a penal approach, namely by means of legal remedies. Legal efforts with the penal route focus on repressive actions, namely eradication and crackdown actions to overcome the problem of criminal acts of embezzlement. Legal policies in the effort to enforce criminal law against criminal acts of embezzlement are included in social policies, namely policies or rational efforts in order to achieve public welfare.

Keywords: Crime; Enforcement; Perpetrator.

1. Introduction

The State of Indonesia is a constitutional state, based on Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia (hereinafter abbreviated as UUD 1945). That everyone who is in the territory of Indonesia is obliged to obey the laws that apply in Indonesia and no one can be immune to the law, and all actions must be based on and have consequences in accordance with the laws and regulations in the Unitary State of the Republic of Indonesia aimed at realizing social life, an orderly, prosperous and just nation and state in the context of achieving the goals of the state as mandated in the Preamble to the 1945 Constitution of the Republic of Indonesia.¹

Based on the law, it provides an understanding that the appreciation, practice, and implementation of human rights as well as the rights and obligations of citizens to uphold justice should not be abandoned by every citizen, every state administrator, every state institution, and community institutions both at the center and at the center areas that need to be realized also in and with this criminal procedural law.²

Law is a social rule made by certain institutions, such as the government, so that it strictly prohibits and forces people to behave in accordance with the wishes of the regulator. Violations of these legal norms range from fines to corporal

¹Beno, Gunarto and Sri Kusriyah, (2020), *Implementation of Fully Required Elements in the Crime of Planning Murder (Case Study in Blora State Court)*, Jurnal Daulat Hukum Volume 3 Issue 1, p. 109, <http://jurnal.unissula.ac. en/index.php/RH/article/view/8404/4058>

² Hubert Armano Thomas, Sahatman Malau, (2020), *Analysis Of The Van Recht Vervolging Onslag Case Decision In Theft In The Household*, Jurnal Hukum Unissula, Volume 37 No. 1. p. 37

punishment (imprisonment to the death penalty). The characteristics are as follows:³ Definite rules (written); Bind everyone; Have law enforcement tools; Made by ruler; Forcing; and The sanctions are heavy.

Law has several roles in regulating people's behavior. There are three main roles of law in society, namely as follows:⁴first, as a means of social control, secondly as a means to facilitate the process of social interaction and thirdly as a means to create certain conditions.

An act that constitutes a crime or violation is formulated in the laws of the Republic of Indonesia (hereinafter abbreviated as UURI) as an act that endangers a legal interest. By stipulating a prohibition to carry out an act accompanied by threats or criminal sanctions for anyone who violates it or acts against the law, it means that the law has provided legal protection for these legal interests.⁵

Based on the opinion of Sri Endah Wahyuningsih, that the law is based on Pancasila and the 1945 Constitution in accordance with the demands of development and is able to respond to the development of society both at the national and global levels. Legal development aims to accelerate and improve reform activities and the establishment of a national legal system in all its aspects, ensure the preservation and integrity of the nation, as well as provide benchmarks, directions and encouragement in social change towards the realization of a just and prosperous society based on Pancasila and the 1945 Constitution.⁶

Various criminal acts that occur in the community, one of which often occurs is the crime of embezzlement. The crime of embezzlement is a crime that begins with the existence of a trust in another person, and that trust is lost due to a lack of honesty. Even today there are many cases of embezzlement with various modes which show the increasing level of crime that occurs.⁷

The crime of embezzlement which is a crime often occurs in various fields and even the perpetrators in various walks of life. Both the bottom layer and the top layer who committed this crime. Seeing the many cases of embezzlement that occurred in Indonesia, of course, this is very worrying. Misuse of Trust dominates as an element of this embezzlement crime.⁸ The crime of embezzlement is regulated in the Criminal Code (hereinafter abbreviated as the Criminal Code) (Article 372 (ordinary embezzlement), Article 373 (mild embezzlement), Article 374 and Article 375 (expanded embezzlement) and Article 376 (embezzlement in the family).

The purposes of this writing and research are: To find out and analyze the law enforcement of the crime of embezzlement in office. To find out and analyze the factors causing the occurrence of criminal acts of embezzlement in office.

³ Wawan Muhwan Hariri, (2012), *Pengantar Ilmu Hukum*, Bandung : Pustaka Setia. p. 39

⁴ Teguh Prasetyo, (2011), *Kriminalisasi dalam Hukum Pidana*. Bandung : Penerbit Nusa Media.

⁵ Mizan, (2000), *Perlawanan dalam Kepatuhan*, Bandung : Media Utama. p. 24

⁶ Sri Endah Wahyuningsih, (2013), *Prinsip-Prinsip Individualisasi Pidana dalam Hukum Pidana Islam*, Semarang : Badan Penerbit Universitas Diponegoro.

⁷ R. Abdoel Djamali, (2005), *Pengantar ilmu Hukum Indonesia*, Jakarta : Raja Grafindo Persada, p. 26

⁸ WA Bonger, (1970), *Pengantar Tentang Kriminologi*, Jakarta : Ghalia Indonesia, p. 54

2. Research Methods

The approach method used in this research was empirical juridical.⁹ The specifications in this study were descriptive analytical.¹⁰ The data used in this research was secondary data. The method of data collection was obtained from literature study, then analyzed qualitatively.

3. Result and Discussion

3.1. Law Enforcement of the Crime of Embezzlement in Position

Pretrial is an institution that was born from the idea of carrying out supervisory actions against law enforcement officers (Police, Prosecutors and Judges) so that in carrying out their authority they do not abuse their authority, because internal supervision is not enough within the legal apparatus apparatus itself, but also cross supervision is needed between fellow law enforcement officers.¹¹

The Criminal Justice System is a criminal law enforcement process, therefore the criminal justice system is closely related to the criminal legislation itself, both substantive criminal law and criminal procedural law.¹² It is said so because criminal legislation is basically law enforcement in abstracto which will be realized in criminal law enforcement in concreto.¹³ According to Mardjono, the Criminal Justice System (SPP) or Criminal Justice System (CJS) is a system in a society to deal with crime problems and to be able to distinguish between the Criminal Justice Processes (CJP) and the Criminal Justice System (CJS). Criminal Justice Process (CJP) is each stage of a decision that confronts a suspect in a process that leads to a criminal determination. Meanwhile, the Criminal Justice System (CJS) is the interconnection between the decisions of each agency involved in the criminal justice process.¹⁴

Position is the most prestigious thing in an institution, both private and public, criminal acts in the name of office are increasingly happening, one of which is the crime of embezzlement which today has a higher intellectual level of crime. The crime of embezzlement is a crime related to moral or mental problems and a belief in someone's honesty. Therefore, this crime begins with the existence of a party trust committed by the perpetrator of the crime of embezzlement. The crime of embezzlement is one type of crime against human wealth which is regulated in the Criminal Code (KUHP). The crime of embezzlement itself is regulated in the

⁹Soejono Soekamto, (2007), *Pengantar Penelitian Hukum*, Print. III, UI Press, p. 5

¹⁰Saifuddin Azwar, (2014), *Metode Penelitian*, Yogyakarta : Pustaka Pelajar, p. 7

¹¹Dodik Hartono, Maryanto, Djauhari, (2018), *Peranan Dan Fungsi Praperadilan Dalam Penegakan Hukum Pidana Di Polda Jateng*, Jurnal Daulat Hukum Vol. 1. No. 1. p. 54, <http://jurnal.unissula.ac.id/index.php/RH/article/view/2564/1921>

¹²Achmad Budi Waskito, (2018), *Implementasi Sistem Peradilan Pidana Dalam Perspektif Integrasi*, Jurnal Daulat Hukum Vol. 1. No. 1, p. 288, <http://jurnal.unissula.ac.id/index.php/RH/article/view/2648/1992>

¹³Romli Atmasasmita in Edi Setiadi and Kristian, (2017), *Sistem Peradilan Pidana Terpadu Dan Sistem Penegakan Hukum Di Indonesia*, Jakarta : Prenadamedia Group, p. 28.

¹⁴Mardjono in Aminanto, (2017), *Politik Hukum Pidana Disparitas Putusan Hakim Dalam Tindak Pidana Korupsi*, Jember : katamedia, p. 16

second book on crime in Article 372 - Article 377 of the Criminal Code (KUHP). The criminal act of embezzlement is regulated in Book II Chapter XXIV of the Criminal Code (KUHP), entitled "embezzlement".¹⁵

The formulation of "criminal acts" contained in Article 372 of the Criminal Code Book II of the Criminal Code is intentionally owned by violating the law an item wholly or partly belongs to another person and is under his control (*onder zich hebben*) than by committing a crime. The element of possessing goods in violation of the law is sufficiently discussed in the crime of theft.¹⁶ It was also added that the goods must be under the control of the principal in a way other than by committing a crime. Thus, it is illustrated that the goods are entrusted by the owner or can also be entrusted as entrusted or can be considered entrusted to the Defendant. So, in essence, with the act of embezzlement, the Defendant does not fulfill the belief that the person left behind is or may be deemed to have been delegated to him by the person entitled to an item.¹⁷

Efforts to enforce the law against perpetrators of criminal acts of embezzlement can be penalized by using the means of criminal law (*ultimum remedium*). This is because it considers the frequency of occurrence of criminal acts of embezzlement. The crime of embezzlement almost occurs in all regions of Indonesia and occurs to all Indonesian people, only the frequency of this crime is experienced by people with greater opportunities. Feelings of fear from the perpetrator so that the potential perpetrator discourages from carrying out the crime of embezzlement. In connection with the evidentiary process by law enforcement, the criminal act of embezzlement is carried out by a perpetrator against the victim with the intention of controlling and embezzling something belonging to the victim. In criminal acts of embezzlement these elements are not found when studying the modus operandi in carrying out their crimes, the perpetrators of criminal acts of embezzlement usually go directly to the victim for a crime, but the evidence regarding the crime of embezzlement is seen from the effects that arise after the occurrence of the crime of embezzlement.

Theoretically, in the theory of criminal law enforcement, it is explained that efforts to enforce criminal law are carried out by:

- Non-penal (preventive), namely prevention before the occurrence of a crime with more directed to the process of socializing the laws and regulations, especially those that regulate decency.

¹⁵Insan Al Ha Za Zuna Darma Illahi, Ira Alia Maerani and Aryani Witasari, (2019), *Prevention and Enforcement Efforts against Embezzlement of Car Rental Crime in Police Resort City of Semarang (Case Study No. Bp / 87 / K / Bap / VII / 2018 / Reskrim on 6 June 2018)*, in *Jurnal Daulat Hukum* Volume 2 (4), Published Master Of Law, Faculty of Law Unissula, p. 633,

¹⁶Wirjono Prodjodikoro, (2003), *Tindak-Tindak Pidana Tertentu di Indonesia*, Jakarta : Refika Aditama .p. 31.

¹⁷Tito Dwi Anggoro, (2018), *Implementation Enforcement Embezzlement Of Rental Vehicle Crime In Polsek Banyuurip Satker Polres Purworejo*. in *Jurnal Daulat Hukum* Volume 1 (3), Published Master Of Law, Faculty of Law Unissula, p. 629, <http://jurnal.unissula.ac.id/index.php/RH/article/view/3347/2475>

- Penal (repressive) is eradication after the occurrence of a crime by conducting an investigation by police investigators which can then be processed through the courts and given sanctions in accordance with applicable regulations.¹⁸

The crime of embezzlement in office has been stipulated in Article 374 of the Criminal Code (KUHP). The crime of embezzlement in office is a crime of embezzlement with weighting. These weights are as explained by R. Soesilo in his book:¹⁹

- The defendant was entrusted with keeping the embezzled items due to an employment relationship (*personlijke diensbetekking*), for example the relationship between the employer and the housemaid or the employer and the worker;
- The defendant kept the goods because of his position (*beroep*), for example, a laundry man who embezzled the clothes he washed, a watchmaker, shoes, bicycles, and so on. Darkened shoes, clocks, bicycles that were handed over to him for repair.
- Because they get wages (not wages in the form of goods), for example a station worker who brings a passenger's goods for money, the goods brought are then embezzled.

What needs to be considered in determining the article on the perpetrator of the crime of embezzlement in office is to pay attention to the position held by the perpetrator of the crime of embezzlement in office. Article 374 of the criminal law code is only intended for perpetrators of criminal acts in private positions. Meanwhile, if the perpetrator of the crime of embezzlement in that position commits embezzlement by taking advantage of his position in the government sphere, then his act cannot be subject to Article 374 of the Criminal Code.

Cases of criminal acts of embezzlement, regarding criminal law enforcement are actually not only how to make the law itself, but also about what law enforcement officials do in anticipating and overcoming problems in law enforcement. Therefore, in dealing with problems in criminal law enforcement that occur in society, especially in cases of criminal acts of embezzlement, it is carried out by applying criminal law (criminal law application) or in a preventive and repressive manner. Combating crime is a way or effort to overcome an act which, although it is not specified in the law as a criminal act, but as an *onrecht*, namely as an act that is contrary to the law.

According to Article 372 of the Criminal Code: Whoever intentionally and against the law owns something which wholly or partly belongs to another person, but which is in his control not because of a crime, is threatened with embezzlement, with a maximum imprisonment of four years or a maximum fine of nine hundred rupiah. Meanwhile, in Article 374 of the Criminal Code: Embezzlement of goods due to an employment relationship or because of a search or because of receiving wages for this, is punishable by a maximum imprisonment of five years. Regarding article 372 of the Criminal Code, R. Soesilo in his book the Criminal Code (KUHP) and his comments are complete article by article²⁰ said that

¹⁸Barda Nawawi Arief, (2015), *Perbandingan Hukum Pidana*, Depok : Raja Grafindo Persada, p. 113.

¹⁹ R. Soesilo, (1995), *Kitab Undang-Undang Hukum Pidana (KUHP)*, Bogor : Politeria, P. 259

²⁰ R. Soesilo, (1989), *Kitab Undang-Undang Hukum Pidana*, Bogor: Politera, p. 258

embezzlement is a crime that is almost the same as theft in Article 362 of the Criminal Code. The difference is that in the case of theft, the property is still not in the hands of the thief and must still be taken, while in embezzlement when it is owned, the goods are already in the hands of the perpetrator of the crime, not by means of crime.

Meanwhile, regarding Article 374 of the Criminal Code, R. Soesilo explained that this was embezzlement by weighting. The weightings referred to are: 1. The defendant is entrusted with keeping the embezzled goods due to his employment relationship. 2. The defendant kept the goods because of his position. 3. Because they get money wages, not wages in the form of goods. Regarding the elements of the crime of embezzlement, namely: 1. Subjective element, this element is in the form of the perpetrator's intention to embezzle other people's property which is formulated in the article of the law through the word: "deliberately". 2. The objective element, which consists of: - Whoever element The above element indicates a person, if that person fulfills all the elements of the crime of embezzlement, then he is called the perpetrator or "dader" of the crime concerned. - The element of controlling against the law. The element of controlling against the law (intention to possess), the purpose of this element is the unilateral control by the holder of an object, as if he were the owner, contrary to the rights that made the object belong to him. - Element of an object An object which according to its nature can be moved or in practice is often called a "moving object". - The element is partly or wholly owned by another person. - The element of the object is not in him because of the crime. Objects that are in his power are not due to crime, there must be a direct, real relationship between the perpetrator and an object. So in my opinion, your case has fulfilled the subjective element of embezzling other people's property on purpose. Article 374 of the Criminal Code explains that this is embezzlement by weight. The weightings are: 1. The defendant was entrusted with keeping the embezzled goods because of his employment relationship. 2. The defendant kept the goods because of his position.

Law enforcement of the crime of embezzlement in office is carried out through a penal approach, namely by means of legal remedies. Legal efforts with the penal route focus on repressive actions, namely eradication and crackdown measures to overcome the problem of criminal acts of embezzlement. Legal policies in the effort to enforce criminal law against criminal acts of embezzlement are included in social policies, namely policies or rational efforts in order to achieve public welfare.

3.2. Factors Causing the Occurrence of the Crime of Embezzlement in Position

Law enforcement cannot be separated from its own legal fundamentals, namely the achievement of justice and social benefits. Justice can be realized, one of which can be realized if the perpetrator is given a reward commensurate with his actions (the principle of criminal individualism), so it is not the same punishment for the same act. Whether the appropriate legal action is imposed on the perpetrator of a crime depends on the factors surrounding the act, such as

motives, environmental conditions, and the characteristics of the perpetrator himself.²¹

The factors behind the perpetrators of criminal acts committing criminal acts are motivated by various things, ranging from greedy and corrupt behavior solely to seek the wealth of an extravagant life, environmental factors or other factors such as economic factors, namely compulsion due to conditions of deficiency in meet the necessities of life.

The crime of embezzlement can be caused by several supporting factors as it is known that embezzlement is included in the crime section regulated in Article 372 of the Criminal Code. Embezzlement is included in the type of crime against property. Crimes that occur in social life are a phenomenon that continues to be in the spotlight. Talking about the emergence of embezzlement, it cannot be separated from the causes of the emergence of crime itself. Therefore, the factors causing the emergence of criminal acts of embezzlement cannot be separated from theories in criminology about the emergence of crime or the causes that encourage someone to commit a crime. According to WABonger criminology is a science that aims to have the widest possible symptoms of crime (theoretical criminology or pure criminology). Theoretical criminology is a science based on experience, which, like other sciences of its kind, pays attention to symptoms and tries to investigate the causes of these phenomena in a way that exists within them. Investigating the causes of the symptoms of these crimes is called etiology.²²

In line with this thought, in an introductory book on criminology, in 1981, it was explained that one of the structural problems that need to be considered in the analysis of Indonesian criminology is the problem of poverty. In criminological theory, this situation is actually considered very important because poverty is a form of structural violence with very many victims. One of the causes of crime in Indonesia is the economic crisis, including income inequality and economic injustice.²³

Factors that cause the occurrence of the crime of embezzlement in office are: The existence of intention and opportunity. The greedy nature of the accused. The mentality of the accused is one of the factors that lead to the occurrence of the crime of embezzlement. Employees who are not mentally strong will be easily influenced to take actions that are not in accordance with the dignity of employees as officers. On the other hand, employees who are mentally strong cannot be influenced by the existence of opportunities or opportunities for embezzlement.

4. Conclusion

Law enforcement of the crime of embezzlement in office is carried out through a penal approach, namely by means of legal remedies. Legal efforts with the penal route focus on repressive actions, namely eradication and crackdown measures to overcome the problem of criminal acts of embezzlement. Legal policies in the effort to enforce criminal law against criminal acts of embezzlement are included in social policies, namely policies or rational efforts in order to

²¹ M.Ali Zaidan, (2015), *Menuju Pembaruan Hukum Pidana*, Jakarta : Sinar Grafika .p. 284

²² Indah Sri Utari, (2012), *Aliran dan Teori Dalam Kriminologi*, Semarang : Dua Satria Offset. p. 3

²³ Anang Priyanto, (2012), *Kriminologi Ombak*, Yogyakarta, p. 19

achieve public welfare. Factors that cause the occurrence of the crime of embezzlement in office are: The existence of intention and opportunity. The greedy nature of the accused. The mentality of the accused is one of the factors that lead to the occurrence of the crime of embezzlement. Employees who are not mentally strong will be easily influenced to take actions that are not in accordance with the dignity of employees as officers. On the other hand, employees who are mentally strong cannot be influenced by the existence of opportunities or opportunities for embezzlement.

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