

The Criminal Responsibility Against Persons of The Crime of Embezzation in Office

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Abstract. *The crime of embezzlement in office is regulated in Article 374 of the Criminal Code. The crime of embezzlement in office is a crime of embezzlement with aggravation. The aim of this research is to find out and analyze the criminal liability of perpetrators of criminal acts of embezzlement in office; and knowing and analyzing regulations against perpetrators of criminal acts of embezzlement in office in the future. This legal research uses an empirical legal research approach. The research results show that even though the perpetrator has returned the company money he used, it does not rule out the possibility that the victim as the company owner will still bring a case and submit it to court. However, the law must still be enforced because the perpetrator did make a mistake. Regulations against perpetrators of criminal acts of embezzlement in office in the future, apart from using penal measures, also use non-penal measures. The non-penal efforts undertaken should be realized in strategic activities, both socially, economically and legally, so that criminal acts of embezzlement in office can be minimized from an early age.*

Keywords: Actor; Criminal; Embezzlement; Liability.

1. Introduction

The Republic of Indonesia is a state based on law (*Rechtsstaats*), not a state based on mere power (*Machtsstaat*). It is regulated expressly within the body, namely in article 1 paragraph (3) of the 1945 Constitution. being the commander in chief in all the dynamics of state life is the law¹. Crime in society develops along with the development of society itself, because crime is a product of society and this needs to

¹ Laurensius Arliman, Mewujudkan Penegakan Hukum Yang Baik Untuk Mewujudkan Indonesia Sebagai Negara Hukum, Jurnal Al Qadau, Vol 8 No 1 2021, p.509-534

be overcome.² This is because crime will not disappear by itself, on the contrary, criminal cases are becoming more frequent and the most dominant are types of criminal acts against assets, especially those which include the crime of *embezzlement*. That crimes against property will appear to increase in developing countries. This increase is in line with economic development and growth.³

The crime of *embezzlement* is a type of crime against human property which is regulated in the Criminal Code (hereinafter referred to as the Criminal Code). The crime of *embezzlement* itself is regulated in the second book on crimes in Article 372-Article 377 of the Criminal Code, which is a crime that occurs very often and can occur in all fields, even perpetrators at various levels of society, from the lower levels to the upper levels of society can also committing the crime of *embezzlement*, which is a crime that originates from trust in another person, and that trust is lost due to a lack of honesty. Article 374 of the Criminal Code is basically just an aggravation of Article 372 of the Criminal Code, namely if it is carried out in an official relationship, so that if Article 374 of the Criminal Code can be proven, then Article 372 of the Criminal Code can also be proven by itself⁴. The crime of corruption and the crime of *embezzlement* in office actually have differences. In terms of understanding, Article 1 paragraph (1) letter a of Law Number 3 of 1971 concerning the Eradication of Corruption Crimes has stated that corruption is the act of unlawfully committing an act of enriching oneself or another person, or an entity, which directly or indirectly harms state finances or the state economy, or he knows or reasonably suspects that such actions are detrimental to state finances or the state economy⁵.

The act of *embezzlement* can be carried out by parties inside or outside the company environment, but in general it is carried out by parties within the company environment, because usually these parties understand the internal controls within the company where they work, so it is not something that it is difficult to commit *embezzlement*. Every company or institution is also vulnerable to *embezzlement*, especially within companies⁶. Based on Umar Ma'ruf's opinion, "The large number of criminal acts committed by the public, especially murder, makes it necessary for police officers, namely investigators, to carry out investigations and to

² Kumanto Sunarto, *Pengantar Sosiologi*, Akademika Presindo, Jakarta, 2000, p.187

³ Soerjono Soekanto, (2005), *Sosiologi Suatu Pengantar*, Rajawali Press, Jakarta, p. 2

⁴ R. Soenarto Soerodibroto, (2011), *KUHP & KUHP, cetakan kelimabelas*, Raja Grafindo Persada, Jakarta, p.231-240

⁵ Rodliyah, (2017), *Hukum Pidana Khusus (Unsur & Sanksi Pidananya)*, Raja Grafindo Persada, Depok, p.23-24

⁶ Mahendri Massie, *Tindak Pidana Penggelapan dalam Menggunakan Jabatan Berdasarkan Pasal 415 KUHP. Jurnal Lex Crimen*. Vol. VI/No. 7/Sep/2017, p. 101

uncover a criminal act, evidence is needed." From this opinion, to make it clear that a criminal act exists, it is necessary to have an investigation and evidence⁷. Law enforcement against crime in Indonesia, specifically in punishment, should refer to a normative approach that punishes criminals so that it can have a deterrent effect⁸.

The criminal act of *embezzlement* is regulated in Article 372 of the old Criminal Code which is still in effect at this time and Article 486 of Law No. 1 of 2023 concerning the new Criminal Code which has only come into effect 3 years from the date of promulgation, namely 2026⁹. The criminal act in these articles is known as *embezzlement* in principal form. According to Article 372 of the Criminal Code, perpetrators of *embezzlement* can be sentenced to a maximum of 4 years in prison or a maximum fine of IDR 900 thousand. Then, according to Article 486 of Law 1/2023, perpetrators of *embezzlement* can be sentenced to prison for a maximum of 4 years or a maximum fine of IDR 200 million.

To provide limitations in this research, a sample of cases was taken that occurred in the jurisdiction of the Gunung Sugih District Court, where the Defendant was declared to have been legally and convincingly proven guilty of committing the crime of "Collectively Committing *Embezzlement* in Office". Starting on Sunday 14 November 2021 at approximately 07.00 WIB, the Defendant worked as a casual daily laborer at PT. Tunas Baru Lampung Div. III Terbanggi Besar Sugarcane Plantation received an order to pick up fertilizer at the PT Warehouse. Tunas Baru Lampung Div. III Terbanggi Besar Sugarcane Plantation and took it to the location where the fertilization process will be carried out, namely in the Block D Div III PT Sugarcane Plantation Area. Tunas Baru Lampung whose address is Kamp. Banjar Ratu, District. Way Pengubuan, Kab. Central Lampung as many as 77 (seventyseven) Saks/Sacks with assistance/helpers who are on the People Wanted List (hereinafter abbreviated as DPO) and Brother Jayadi (DPO). Then at around 11.00 WIB, Brother J (DPO), who served as a helper unloading fertilizer from the tractor, invited the Defendant and Brother Z (DPO) to embezzle the fertilizer with the aim of selling it¹⁰.

If a crime is committed while carrying out a search/profession, the perpetrator may

⁷ Wahyu Sudrajad, Umar Ma'ruf, Rekonstruksi Sebagai Upaya Mengungkap Tindak Pidana Pembunuhan Berencana (Studi Kasus Wilayah Hukum Polsek Banyumanik Semarang), *Jurnal Hukum Khaira Ummah*, Vol. 12. No. 3 September 2, p.1-6

⁸ Andri Winjaya Laksana, Tinjauan Hukum Pidanaan Terhadap Pelaku Penyalahguna Narkotika Dengan Sistem Rehabilitasi, *Jurnal Pembaharuan Hukum*, Volume II No. 1 January - April 2015, p.74-85

⁹ Article 624 of Law Number 1 of 2023 concerning the Criminal Code

¹⁰ Zulfi Diane Zaini, Yulia Hesti, Bayu Chandra Wijaya, Pertanggungjawaban Pidana Pelaku Penggelapan Dalam Jabatan di PT. Tunas Baru Lampung (Studi Putusan Nomor 96/PID.B/2022/PN.GNS), *Yustisi Jurnal Hukum & Hukum Islam*, Vol 10 No 2, June 2023, p. 151-161

be subject to additional punishment in the form of having his or her right to carry out that search revoked or having the right to practice a certain profession revoked.

In previous research conducted by Zulfi Diane Zain regarding the criminal liability of perpetrators of *embezzlement* in office, it was stated that criminal liability for the crime of *embezzlement* in office can be punished based on Article 374 of the Criminal Code in conjunction with Article 55 paragraph (1) 1st of the Code¹¹. Another research conducted by Muhammad Haeykel regarding the responsibility of perpetrators of criminal acts of *embezzlement* committed by gold shop employees also stated that perpetrators of criminal acts of *embezzlement* in office can be held responsible for their actions with the consideration that at the time of committing the act the defendant was aware of the consequences, the perpetrator when carrying out his actions, he is in a healthy condition and is capable of considering his actions. The Panel of Judges in the trial did not find anything that could eliminate criminal liability, either justification or excuse reasons.¹²

The aim of this research is to find out and analyze the criminal liability of perpetrators of criminal acts of *embezzlement* in office; and knowing and analyzing regulations against perpetrators of criminal acts of *embezzlement* in office in the future.

2. Research Methods

This legal research uses an empirical legal research approach. Empirical juridical research, namely legal research using legal principles and principles in reviewing, viewing and analyzing problems in research, in addition to reviewing the implementation of law in practice.¹³ The empirical research method is a combination of doctrinal legal research methods and empirical legal research methods, so what the researcher carried out was a document study accompanied by field studies. The document study in this research is literature using statutory regulations.

3. Result and Discussion

3.1. Forms of Criminal Responsibility for Perpetrators of the Crime of

¹¹ Zulfi Diane Zaini, Yulia Hesti, Bayu Chandra Wijaya, pertanggungjawaban pidana pelaku penggelapan dalam jabatan di pt. Tunas baru lampung (Studi Putusan Nomor 96/PID.B/2022/PN.GNS), *Yustisi (jurnal hukum & Hukum Islam)*, Vol. 10 No. 2 June 2023, p.151-160

¹² Muhammad Haeykel, Danialsyah, Indra Gunawan Purba, Pertanggung Jawaban Pelaku Tindak Pidana Penggelapan Yang Dilakukan Karyawan Toko Emas (Studi Putusan Pengadilan Negeri Medan No.2284/Pid.B/2022/PN Mdn), *Jurnal Meta Hukum*, Vol.2 No.3, November 2023, p.141-153

¹³ Ronny Hanitijo Soemitro, (1990), *Metodologi Penelitian Hukum & Jurimetri*, Ghalia Indonesia, Jakarta, p. 33

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From the perspective of Anthropology as the science of humans and the characteristics of the human body, this is a very old term. This means that this term is used in another sense, namely the science of the characteristics of the human body. In the view of criminology, it studies the causes of crime by studying a person's body shape. This school of anthropology developed around 1830-1870, pioneered by Gall and Spurzheim. According to Yoseph Gall, human talent and character are determined by the brain and conversely the brain also influences the shape of the skull. Therefore, the skull can be observed and measured, so human nature, character and talents can be studied scientifically.¹⁴

One of the factors that causes the crime of *embezzlement* to occur is the employee's mentality. Employees who are not mentally strong will be easily influenced to take actions that are not in accordance with the employee's honor and dignity as an officer. On the other hand, mentally strong employees cannot be influenced by opportunities or opportunities to commit *embezzlement*. Employees who base themselves on service consider that their position is a trust so they will not commit *embezzlement* even if there is an opportunity.¹⁵

The criminal act of *embezzlement* regulated in Article 374 of the Criminal Code in the doctrine is also referred to as *gequalificeerde verduistering* or as *embezzlement* with qualifications, namely a criminal act with aggravating elements.¹⁶ Various types of trust are used as problems that aggravate *embezzlement* in the main form, namely 3 types of relationships between the perpetrator who is given trust and another person (victim) who gives trust in a work environment outside the government.¹⁷

The criminal act of *embezzlement* in office can also be called corruption, the difference is that corruption is carried out by state officials and can harm state finances. Currently, corruption does not only occur in government circles but also occurs in many private companies, causing these companies to experience losses. As explained previously, the crime of *embezzlement* is a crime related to moral or mental issues and a belief in someone's honesty. The crime of *embezzlement* is a

¹⁴ H.M. Ridwan & Ediwarman. S, (1994), *Azas-Azas Kriminologi*, USU Press, Medan, p.65

¹⁵ Mahendri Messie. Tindak Pidana Penggelapan Dalam Menggunakan Jabatan Berdasarkan Pasal 415 KUHP. *Lex Crimen* Vol. VI/No. 7/Sep/2017. p.3

¹⁶ P.A.F. Lamintang & Theo Lamintang, (2009), *Delik-Delik Khusus Kejahatan Terhadap Harta Kekayaan*, Sinar Grafika, Edisi 2, Cetakan 1, Jakarta, p.133.

¹⁷ H.A.K. Moch. Anwar (Dading), (1994), *Hukum Pidana Bagian Khusus (KUHP Buku II) Jilid I*, PT. Citra Aditya Bakti, Cetakan ke VII, Bandung, p.37.

type of crime against human property.

The party who commits fraud usually has a position or authority and also the trust they get from other people (victims) who provide trust in a work environment. His actions will be held accountable for the mistakes he makes because the criminal acts he commits can harm other people and can also cause the company where he works to suffer losses.

Criminal liability is not possible without someone having previously committed a criminal act.¹⁸ Thus, criminal responsibility is always focused on the perpetrator of the criminal act. J.E Jonkers stated that there are three conditions regarding criminal responsibility, including the possibility of determining one's will regarding an act, knowing the true intention of the act, and realizing that it is prohibited in society.¹⁹ It is also explained that a person can be said to be capable of responsibility if the person fulfills three conditions, namely, the state of the person's soul is such that he can understand the value of his actions and because he also understands the value of his actions. The state of the person's soul is such that he can determine his will regarding the actions he performs. The person must be aware of which actions are prohibited and which actions are not prohibited by law.²⁰

Regarding sentencing, it is not only important for judges and the judicial process. This pattern of sentencing is very important for the overall legal process, especially in terms of law enforcement. One of the elements that must be maintained so that the law enforcement process runs smoothly is high trust and respect for the law. It is very likely that this will not be achieved if the variations in punishment are too large. This also concerns the issue of fairness (proportionality), which is usually expected to come from the court as an institution or the judiciary as a process. As long as the institution does not pay attention to the consequences and punishment, it will be difficult to institutionalize the public's trust in the courts. What is hoped by the largest part of the community and members of the community is that the sentence imposed will really make a significant difference in reducing the crime of *embezzlement* in office that occurs in society.

¹⁸ Chairul Huda, (2011), *Dari 'Tiada Pidana Tanpa Kesalahan' Menuju Kepada Tiada Pertanggungjawaban Pidana Tanpa Kesalahan*, Kencana Prenada Media Group, Edisi Pertama, Cetakan ke-4, Jakarta, p.40.

¹⁹ Adami Chazawi, (2005), *Pelajaran Hukum Pidana Bagian I: Stelsel Pidana, Tindak Pidana, Teori-Teori Pemidanaan & Batas Berlakunya Hukum Pidana*, PT. RajaGrafindo Persada, Edisi 1, cetakan 2, Jakarta, p.147-148.

²⁰ Tongat, (2006), *Hukum Pidana Materil*, UMM Press, Edisi Pertama, Cetakan Ketiga, Malang, p.5.

3.2. Regulations Against Perpetrators the Crime of *Embezzlement* in Office in the Future

The criminal justice system involves the enforcement of criminal law, both substantive criminal law, formal criminal law and criminal implementation law, in preventive (prevention), repressive (suppression) and curative (control) forms. In this way, it appears that there is a connection and interdependence between the criminal justice subsystems, namely the Police, Prosecutor's Office, Courts and correctional institutions in dealing with perpetrators of criminal acts of *embezzlement* in office in accordance with the laws in force in Indonesia.²¹

The implementation of the purpose of punishment does not merely provide a criminal threat for every act that is disgraceful, immoral or detrimental to society. The provision of criminal threats must take into account the objectives of criminal law, namely that the provision of criminal threats must strive to create a just and prosperous society based on Pancasila and must be neutral. It can try to stimulate or try to prevent. This is for the welfare and protection of the community. The implementation of undesirable actions is actions that cause harm to members of the community.

Sentencing provides an opportunity to make changes or adjustments to the prisoner's sentence. Offenders who have been sentenced to a crime or whose actions have legal force can still be subject to changes or adjustments taking into account the development of the prisoner and the purpose of the sentence. Law enforcement officers carry out their respective roles and functions in the criminal justice system to tackle crime, with the aim of preventing people from becoming victims of crime, resolving crime cases that occur so that people are satisfied that justice has been upheld and the guilty are punished and ensure that those who have committed crimes are not punished. repeat the crime again.

The crime of *embezzlement* is a criminal act related to morals or mentality and a belief in a person's honesty. Therefore, this criminal act begins with a party's belief that the perpetrator of the criminal act of *embezzlement* has committed it. The crime of *embezzlement* is a type of crime against human property regulated in the Criminal Code.²²

²¹ Yoga Saputra Alam, Erlina B, Anggalana, Analisis Putusan Terhadap Pelaku Tindak Pidana Penggelapan Dalam Jabatan (Studi Putusan Nomor: 431/Pid.B/2020/PN Tjk), *Jurnal Pro Justitia*, Vol. 2, No. 2, 2021, p.32-39

²² Mahendri Massie. Op.Cit, p.101

law enforcement regarding economic losses suffered by private companies must be enforced to provide legal certainty even though this does not harm state finances and the state economy, because the state must guarantee the rights of every citizen as a legal subject, both individuals and legal entities.²³ The criminal act of *embezzlement* can be committed by parties inside or outside the company environment or is generally carried out by parties within the company environment, because usually these parties understand the internal controls within the company where they work so it is not something that it is difficult to commit a crime of *embezzlement*. With this criminal case of *embezzlement*, values and ethics are very important in law enforcement, which is the basis for morals, values and ethics which become custom, which comes from the Latin word (*mos*), meaning custom or way of life. Morals are used for actions that are bound by good and bad values in society as a dignified human being.

Violations and acts against the law must be dealt with in law enforcement. The legal norms to be enforced include the meaning of formal law and material law. Formal law only concerns written laws and regulations, while material law also includes the understanding of the values of justice that exist in society.²⁴

In Article 374 of the Criminal Code itself it is not clearly formulated what elements of error must be fulfilled, but this does not mean that there is no need to confirm in the judicial process what form of error has been committed so that it deserves to be punished, as is the principle "there is no crime without error" so that it is obligatory for law enforcers in particular the prosecutor as a public prosecutor is to explain and prove the fulfillment of the elements of error in criminal trials, so that conclusions can then be drawn regarding criminal responsibility by the perpetrator of a criminal act as stated by Mezger in Sudarto. Guilt is the entire condition that provides the basis for self- deprecation of the perpetrator.

Criminal law policy is essentially an effort to create criminal laws and regulations to suit the conditions at a certain time (*ius constitutum*) and in the future (*ius constituendum*). The logical consequence is that criminal law policy is identical to penal reform in the narrow sense, because as a criminal law system it consists of structure, substance and legal culture. Because legislation is part of the substance of law, criminal law reform, in addition to updating legislation, also updates the basic

²³ Muh. Tezar. ST. Nurjannah. Tindak Pidana Penggelapan Dalam Jabatan. *Alauddin Law Development Journal (ALDEV)*, Vol. 2, No. 3, 2020, p.2

²⁴ Edward Pakpahan, Penegakkan Hukum Terhadap Tindak Pidana Penggelapan Dalam Jabatan, *Jurnal Kajian Hukum*. Vol. 1, No. 1, 2020, p.62

ideas and science of criminal law.²⁵

According to Barda Nawawi Arief, the concept of an integral criminal law prevention policy contains the consequence that all rational efforts to overcome crime must form an integrated whole. This means that policies for dealing with criminal law must be combined between penal and non-penal, which covers a very broad area in the field of social policy or national development.²⁶

As has been understood, the use of criminal law as a means to tackle crime is still something that is commonly used in various countries, including Indonesia. This can be seen from the practice of legislation so far, showing that the use of criminal law is part of the legal policy or politics adopted in Indonesia.

Prevention crime using criminal law is the oldest method, as old as human civilization. The use of criminal law is part of legal policy/politics which as a whole constitutes criminal politics or social defense planning, which is an integral part of national development plans. Criminal law regulations in dealing with criminal acts of *embezzlement* in office in the future, apart from using penal measures, also use non-penal measures. Non-penal efforts undertaken should be realized in strategic activities, both socially, economically and legally, so that criminal acts of *embezzlement* in office can be minimized from an early age²⁷.

4. Conclusion

The results of the research and discussion show that the form of criminal responsibility for perpetrators of criminal acts of *embezzlement* in office is the criminal act of *embezzlement* in office which is regulated in Article 374 of the Criminal Code in the doctrine also referred to as a *gequalificeerde verduistering* or as *embezzlement* with qualifications, namely a criminal act with elements which are burdensome, as well as regulations for perpetrators of criminal acts of *embezzlement* in office in the future, apart from using penal measures, they also use non-penal measures. The non-penal efforts undertaken should be realized in strategic activities, both socially, economically and legally, so that criminal acts of *embezzlement* in office can be minimized from an early age.

²⁵ Sudarto, (2006), *Kapita Selekta hukum Pidana*, Alumni, Bandung, p.159

²⁶ Barda Nawawi Arief, (2000), *Kebijakan Legislatif dalam Penanggulangan Kejahatan dengan Pidana Penjara*, Badan Penerbit Universitas Diponegoro, Semarang, p.34

²⁷ Muladi & Barda Nawawi Arief, (2010), *Teori-Teori & Kebijakan Pidana*, P.T. Alumni, Bandung, p.149

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