



Analyzing Embezzlement in Office in Indonesian Law: Legal Responsibility, Moral Implications, and Recommendations for Reform

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ARTICLE INFO

Keywords:

Crime; Embezzlement in Office; Accountability; Indonesian Penal Code.

DOI :

10.26532/jh.v40i1.38905

ABSTRACT

This research explores the issue of embezzlement in office settings within Indonesian law, particularly focusing on the moral and trust aspects of this crime. The main aim is to analyze the legal responsibility of embezzlers under current Indonesian laws, including the Indonesian Penal Code, and to suggest improvements for future regulations. The study employs a normative research method, examining existing laws through their hierarchy and how they relate to one another. The findings indicate that a perpetrator's intent and mental state are crucial in determining responsibility for embezzlement. The upcoming revisions to the Criminal Code aim to set clear goals for punishment, including preventing future crimes, protecting social norms, and treating convicts humanely. This aligns with Article 372 to Article 376 of the Penal Code, which address theft and embezzlement, emphasizing accountability without degrading human dignity. In conclusion, the research recommends that Indonesian laws regarding embezzlement should include provisions for restitution, encouraging offenders to return stolen funds to the victims. This approach not only promotes accountability but also helps rebuild trust within society. The implications suggest that a balanced legal framework, with punitive measures, could deter future embezzlement and strengthen public confidence in institutions.

1. Introduction

The Indonesian state is fundamentally a legal state, as articulated in Article 1, Paragraph 3 of the 1945 Constitution, which asserts that "The Indonesian state is a state of law."¹ This principle underscores the importance of the rule of law in maintaining order and justice within society. Criminal law serves as a vital mechanism for addressing conflicts and offenses that arise in people's lives. It provides a framework for determining acceptable conduct, with regulations that either mandate specific actions or prohibit certain behaviors, enforcing compliance

¹ Eko Hidayat., *Perlindungan Hak Asasi Manusia Dalam Negara Hukum Indonesia, Asas: Jurnal Hukum Dan Ekonomi Islam*, Vol.8, no.2, 2016, page. 85.

through criminal sanctions for violators.² In Indonesia, criminal law is categorized into two main types: the general criminal law encapsulated in the Criminal Code (KUHP) and special criminal law, which is governed by regulations outside the Criminal Code. The Criminal Code outlines fundamental offenses and penalties, while special criminal laws address specific issues not covered by the KUHP, such as corruption, narcotics, and cybercrime. This dual structure allows for a comprehensive legal approach to crime, ensuring that various social problems are addressed effectively while upholding justice and societal norms.³

Criminal law plays a crucial role in the punishment process, as it represents the final step in holding individuals accountable for their criminal actions. Without the element of punishment, declaring someone guilty becomes meaningless, as there are no clear consequences for their wrongdoing. The concept of error is central to determining punishment and how it is carried out, influencing both the legal framework and societal responses to crime. Criminal acts are defined by law as behaviors that violate legal norms, warranting punishment and involving a degree of wrongdoing. An individual is considered criminally responsible only if they have committed an act with a mistake or fault. This notion of mistake is evaluated through a societal lens, reflecting a normative understanding of the individual's actions at the time of the offense. Thus, the interplay between criminal acts, mistakes, and legal responsibility shapes the application of justice within the legal system.⁴

Embezzlement is defined as the unlawful possession of goods or property owned by another person, where the act itself is not inherently a crime. Furthermore, embezzlement, especially in office settings, is a pressing issue that undermines trust and integrity in organizations,⁵ as it involves the unlawful possession of goods or property entrusted to an individual in a position of authority.⁶ In Indonesia, this form of embezzlement is explicitly addressed in Chapter XXIV (Book II) of the Criminal Code (KUHP), specifically in Articles 372 through 376.⁷ These articles not

² Syamsuddin, Rahman., *Merajut Hukum Di Indonesia*, Jakarta, Mitra Wacana Media, 2014, page.192

³ Rodliyah., *Hukum Pidana Khusus Unsur dan Sanksi Pidananya*, Cetakan. ke-I, Jakarta, PT. Raja Grafindo Persada, 2017, page.19.

⁴ Adami Chazawi., *Percobaan dan Penyertaan: Pelajaran Hukum Pidana*, Jakarta, Rajawali Press, 2014, page. 99

⁵ The urgency to address embezzlement in office settings is heightened by its broader implications for society. When individuals in positions of trust exploit their authority for personal gain, it erodes public confidence in institutions and can lead to significant financial losses for organizations. Previous research has examined the motivations behind embezzlement, indicating that a combination of opportunity, rationalization, and moral disengagement often drives individuals to commit such acts. Understanding these factors is crucial for developing effective prevention strategies that promote ethical behavior and restore trust within organizations; See to, Gerhard Anders and Monique Nuijten., *Corruption and the Secret of Law: An Introduction*, *Corruption and the Secret of Law*, 12. Routledge, 2017; See to, Madelijne Gorsira, Adriaan Denkers, and Wim Huisman., Both sides of the coin: Motives for corruption among public officials and business employees, *Journal of Business Ethics*, Vol.151, no.3, 2018, page.179; See to, Pamela R. Murphy and M. Tina Dacin., Psychological Pathways to Fraud: Understanding and Preventing Fraud in Organizations, *Journal of Business Ethics*, Vol.101, no.4, 2011, page.610.

⁶ Hairunnisa Ismail., The Crime of Embezzlement in Criminology Studies, *Estudiante Law Journal*, Vol.5, no.3, 2023, page.635.

⁷ Article 372 outlines the basic definition of embezzlement, stating, "Anyone who intentionally and

only define the crime but also outline the legal repercussions, emphasizing the importance of accountability and serving as a deterrent against such misconduct.⁸

Previous research has explored embezzlement in office settings in Indonesian, focusing on various cases and legal decisions that highlight the legal framework and consequences faced by perpetrators. Thezar⁹ discusses embezzlement in office as governed by Article 374 of the Criminal Code, which serves as an aggravated form of embezzlement under Article 372. This regulation targets offenses in the private sector, while government-related cases fall under Law No. 20 of 2001 concerning Corruption Eradication. He references the Makassar District Court decision No. 411/B/2019, noting that while the prosecution's charges were valid, the imposed penalties were too lenient. Massie¹⁰ explores the underlying causes of embezzlement, identifying factors such as mentality, intent, opportunity, and greed, and emphasizes that accountability arises from both general and specific legal provisions within the Criminal Code.

Further analysis by Putra et al.¹¹ highlights the moral implications of embezzlement, focusing on the interplay between trust and dishonesty. Their examination of Articles 372 to 376 reveals that offenders can face up to five years in prison, as demonstrated in Decision No. 58/Pid.B/2021/PN Gin, where a three-year sentence was imposed. Ibrahim's study¹² of cooperative administrators illustrates that a chairman could not be held criminally liable due to good faith in management, as per Stabat District Court Decision No. 1110/Pid.B/2018/PN.Stb. Finally, Diezo¹³ analyzes corporate embezzlement, noting a defendant received a six-month sentence, lighter than the prosecutor's demand, which ultimately weakens the deterrent effect of the law.

This research has two main aims. First, it will explore the theoretical considerations surrounding embezzlement, focusing on the principles that define this crime in an office context. Second, it aims to reformulate the legal framework of criminal responsibility for embezzlement offenders, seeking to enhance accountability and ensure that the justice system effectively addresses these crimes. Together, these

unlawfully possesses an item that is wholly or partially owned by another person, but obtained it not through criminal means, shall be penalized for embezzlement." Additionally, Article 374 addresses aggravated embezzlement, which applies to cases where the offender has possession of the property due to a professional relationship, such as employment or contractual agreements. Those found guilty of aggravated embezzlement may face imprisonment of up to five years. The essential elements of embezzlement include: the involvement of an individual, intentional action, unlawful conduct, possession of property owned by another, and the requirement that this possession is not obtained through criminal means.

⁸ Jonaedi Effendi., *Cepat & Mudah Memahami Hukum Pidana*, Jakarta, Kencana, 2015, page.139

⁹ Muh. Thezar., Tindak Pidana Penggelapan Dalam Jabatan, *Alauddin Law Development Journal*, Vol.2, no.3, 2020, page.331.

¹⁰ Mahendri Massie., Tindak Pidana Penggelapan Dalam Menggunakan Jabatan Berdasarkan Pasal 415 KUHP, *Lex Crimen*, Vol.6, no.7, 2017, page.141.

¹¹ Ida Bagus Gede Arimbawa Putra, Anak Agung Sagung Laksmi Dewi, and Luh Putu Suryani., Analisis Yuridis Terhadap Tindak Pidana Penggelapan Dalam Jabatan Yang Dilakukan Secara Berlanjut, *Jurnal Konstruksi Hukum*, Vol.3, no.3, 2022, page.478.

¹² Evan Caesar Ibrahim., Pertanggungjawaban Pengurus Koperasi Dalam Tindak Pidana Penggelapan Dalam Jabatan, *Locus Journal of Academic Literature Review*, Vol. 12, no.3, 2023, page.646.

¹³ Firdaus Diezo., Penerapan Pidana Terhadap Pelaku Tindak Pidana Penggelapan Dalam Jabatan Pada Perseroan Terbatas, *Jurnal Sakato Ekasakti Law Review*, Vol.1, no.3, 2022, page.121.

aims will contribute to a deeper understanding of embezzlement and its implications for legal theory and practice. The novelty of this research lies in its focus on formulating a comprehensive framework for the criminal responsibility of perpetrators of embezzlement in office, as well as proposing arrangements in future regulations. Furthermore, it seeks to identify gaps in current legal frameworks and suggest reforms that enhance accountability and deterrence. This research not only addresses immediate legal implications but also emphasizes the need for proactive measures to prevent embezzlement in office settings. This study differs from previous research by synthesizing a theoretical legal framework that analyzes existing legal standards and case law regarding embezzlement in office, while also focusing on future arrangements for criminal liability. While earlier works often concentrated on specific cases or isolated aspects of the law, this study aims to integrate findings from multiple judicial decisions to provide a more comprehensive overview of the current state of criminal responsibility.

2. Research Methods

This research employs normative legal research,¹⁴ focusing on examining legal doctrines, norms, rules, principles, theories, and philosophies to address legal problems such as legal vacancies, conflicts of norms, and legal ambiguities.¹⁵ The methodology adopted is doctrinal legal research, which analyzes legal issues through relevant doctrines or previous legal opinions related to the topics being examined.¹⁶ Specifically, this study investigates the methodologies and stages of legal research, along with their unique characteristics and functions in resolving legal issues.

Key regulations referenced include Article 374 and Article 55, Paragraph (1) 1 of the Indonesian Criminal Code (KUHP), which pertain to embezzlement in office and complicity in crimes, respectively. The research also examines the Supreme Court decision Number: 387 K / Pid / 2018, concerning conviction for embezzlement. Relevant legal concepts include *Mens Rea*, which relates to the mental state of the perpetrator at the time of committing the offense and is crucial in determining criminal responsibility. Additionally, the concept of *Erfolgshaftung*, although not formally adopted in Indonesian law, refers to holding a person liable for the consequences of their actions even in the absence of a culpable mental state. A conceptual approach is utilized to frame the discussion and provide a comprehensive understanding of the subjects at hand.

3. Results and Discussion

3.1. Theoretical Considerations and Criminal Responsibility of Embezzlement in Office

The crime of embezzlement is intrinsically linked to moral and ethical

¹⁴ Theresia Anita Christiani., Normative and empirical research methods: Their usefulness and relevance in the study of law as an object, *Procedia-Social and Behavioral Sciences*, Vol.219, no.4, 2016, page.205.

¹⁵ Yati Nurhayati, Ifrani Ifrani, and M. Yasir Said., Metodologi normatif dan empiris dalam perspektif ilmu hukum, *Jurnal Penegakan Hukum Indonesia*, Vol.2, no.1, 2021, page.11.

¹⁶ Kornelius Benuf, Siti Mahmudah, and Ery Agus Priyono., Perlindungan Hukum Terhadap Keamanan Data Konsumen Financial Technology di Indonesia, *Refleksi Hukum: Jurnal Ilmu Hukum*, Vol.3, no.2, 2019, page.147.

considerations, as it revolves around trust established through a person's honesty.¹⁷ The criminal act of embezzlement begins with the emergence of trust between parties, which the perpetrator subsequently betrays by misappropriating the entrusted property or funds. Embezzlement typically occurs in situations where one individual has been given authority or access to another's assets, creating a fiduciary relationship based on confidence.¹⁸ When that trust is violated, particularly in the context of embezzlement in the office, it not only results in financial loss for the victim but also undermines the fundamental principles of honesty and integrity that are crucial in both personal and professional relationships.¹⁹

Some argue that the criminal act of embezzlement in office is akin to corruption,²⁰ as both involve unlawful actions taken by individuals to benefit themselves by abusing their authority, opportunities, or resources associated with their positions. This misconduct not only violates legal standards but also leads to financial losses for the company or the state. Essentially, embezzlement is categorized as a criminal act, placing it firmly within the realm of criminal law. In Indonesia, perpetrators of embezzlement in office face serious legal consequences, including a maximum prison sentence of five years, as stipulated in Article 374 of the

¹⁷ Howard E. Williams., *Investigating white-collar crime: embezzlement and financial fraud*, Springfield, Charles C Thomas Publisher, 2006, page.142.

¹⁸ Previous research highlights the intricate relationship between psychological factors, moral considerations, and the propensity for embezzlement and corruption. A study identifies three psychological pathways to fraud: lack of awareness, intuition coupled with rationalization, and reasoning. This framework underscores that individuals often commit fraudulent acts without fully recognizing their unethical behavior, primarily due to situational factors that diminish their moral awareness. When individuals encounter opportunities and pressures, their tendency to rationalize their actions—often to avoid negative emotions—plays a significant role in facilitating corruption; See to, Pamela R. Murphy and M. Tina Dacin., Psychological Pathways to Fraud: Understanding and Preventing Fraud in Organizations, *Journal of Business Ethics*, Vol.101, no.3, 2011, page.607; See, Moreover, another study reveals that moral conviction against corruption and the perceived norms among colleagues are critical determinants of whether individuals engage in corrupt practices. This suggests that the ethical environment within organizations significantly influences behavior. Public officials and business employees alike are affected by their moral beliefs and the behavior of those around them, indicating that corruption is not merely a product of economic incentives but is deeply rooted in social and ethical contexts; See to, Gorsira, Madelijne, Adriaan Denkers, and Wim Huisman., Both Sides of the Coin: Motives for Corruption Among Public Officials and Business Employees, *Journal of Business Ethics*, Vol.151, no.2, 2018, page.191. The anthropological perspective further complements these insights by emphasizing that understanding corruption requires a broader analysis of power relations and societal norms. The authors argue that public denunciation of corruption often contrasts with covert endorsement, revealing the complexities of ethical behavior in practice. This discrepancy highlights that anti-corruption efforts must consider not only individual motives but also the cultural and social frameworks that shape perceptions of integrity and honesty; See to, Anders, Gerhard, and Monique Nuijten., Corruption and the Secret of Law: An Introduction, In *Corruption and the Secret of Law*, Routledge, 2017.

¹⁹ Mahendri Massie., Tindak pidana penggelapan dalam menggunakan jabatan berdasarkan Pasal 415 KUHP, *Jurnal lex crimen*, Vol.6, no.7, 2017, page.101.

²⁰ Madelijne Gorsira, Adriaan Denkers, and Wim Huisman., Both Sides of the Coin: Motives for Corruption Among Public Officials and Business Employees, *Journal of Business Ethics*, Vol.151, no.4, 2018, page.191; See to, Elita Purnamasari., Kewenangan penyidik Polri dalam pemberantasan tindak pidana korupsi (Suatu tinjauan sosiologis), *Lex Publica*, Vol.4, no.1, 2017, page.681.

Criminal Code.²¹

Cases of embezzlement in office can be very diverse. Embezzlement is a dishonest act involving the concealment of another person's goods or property by one or more individuals without the owner's knowledge, with the intention of transferring ownership (theft), controlling the property, or using it for unauthorized purposes. Regulations regarding the criminal act of embezzlement in office are outlined in Article 374 of the Criminal Code, which provides a broad definition of this offense.²² However, the crime of embezzlement in the workplace consists of both subjective and objective elements. Subjectively, it involves intentional and unlawful actions taken by the perpetrator.²³ Objectively, as specified in Article 374, it includes the act of possessing property that is wholly or partially owned by another person, where the object is in the perpetrator's control not due to any lawful means.²⁴

Criminal liability for a defendant's actions is grounded in the theory of evidence, which asserts that a judge can determine guilt based on established legal standards. This framework is governed by laws that specify the rules of evidence, ensuring that the judge's decision is based on reliable and relevant information. The law delineates these rules in a precise manner, allowing judges to develop confidence in their judgments. This approach not only safeguards the integrity of the judicial process but also protects the rights of the accused, as it emphasizes the importance of due process and evidentiary standards in criminal proceedings.²⁵

In their study, Klimczak et al.²⁶ emphasize the growing scrutiny of financial misconduct, particularly in light of its economic benefits often outweighing litigation costs. While the neoclassical economic paradigm suggests that engaging

²¹ P.A.F. Lamintang., *Delik-Delik Khusus Kejahatan-Kejahatan terhadap Harta Kekayaan*, Bandung, Sinar Baru, 2009, page.28.

²² Deny Abrahams, Bahrul Amiq, Wahyu Prawesthi, and M. Khoidin., The Implementation of Material Criminal Law Against Criminal Act of Embezzlement in Office, *Yuris: Journal of Court and Justice*, Vol. 12, no.4, 2023, page.69.

²³ One notable case of embezzlement occurred at the West Manggarai Resort Police, involving RDL, the Chief Accountant of PT. D'Tour Pesona Indonesia (DPI). Following an investigation, RDL was detained at the local police headquarters on suspicion of embezzling hotel rental income reported by a victim identified as N. The investigation revealed that between November 2022 and February 2023, RDL allegedly embezzled IDR 159.6 million from the Loccal Collection Labuan Bajo Hotel's cash collection, funds that were not reported to the hotel owner. In addition to the hotel embezzlement, RDL was also suspected of misappropriating tax deposits owed to DPI for the periods of November 2021 and March 2022. His method involved creating fictitious reports that indicated the company's tax money had been deposited with the regional tax office; however, the money was actually diverted for personal use. This fraudulent activity occurred twice, amounting to a total of IDR 285.3 million; See to, Suimam., *Chief Accounting PT. DPI Ditetapkan Jadi Tersangka Penggelapan Dalam Jabatan*, November 8, 2023. <https://rri.co.id/index.php/hukum/435059/chief-accounting-pt-dpi-ditetapkan-jadi-tersangka-penggelapan-dalam-jabatan>.

²⁴ Andreas C. A. Loho., *Alasan Pemberat dan Peringan Pidana Terhadap Delik Penggelapan Dalam Kitab Undang-Undang Hukum Pidana*, Jurnal Fakultas Hukum Universitas Sam Ratulangi Manado, Vol.8, no,12, 2019, page.36.

²⁵ Andi Hamzah, *Hukum Acara Pidana Indonesia. Cetakan keenam*, Jakarta, Sinar Grafika, page.256.

²⁶ Karol Marek Klimczak, Alejo José G. Sison, Maria Prats, and Maximilian B. Torres., How to deter financial misconduct if crime pays?, *Journal of Business Ethics*, Vol.179, no.1, 2022, page.221.

in such misconduct may be rational, most professionals choose integrity over short-term gains. The findings advocate for reimagining financial practices through intrinsic motivations and a virtue ethics framework, linking ethical behavior to moral excellence as this approach could enhance accountability and inform more effective deterrence strategies against embezzlement in office.

In the context of errors in criminal law, experts provide various perspectives on how to define and understand this concept. According to Pompe,²⁷ errors are characterized by their disgraceful nature, implying that unlawful behavior within positive law arises from intention and negligence. This duality indicates a violation of legal standards and the potential for liability. Pompe states that an error exists if the actions performed by the defendant are "*verwijtbaar*" (blameworthy) and "*vermijdbaar*" (avoidable).²⁸ Pompe emphasizes that both intention and negligence are essential to determining one's responsibility for unlawful actions.

Conversely, Vos²⁹ identifies three specific criteria that define an error: (a) the capacity for responsibility of the individual who committed the act, suggesting that the person must have the ability to understand the consequences of their actions; (b) the significance of the internal state of the individual, which can manifest as either intentional behavior or negligence; (c) no fundamental reason to absolve the person of responsibility for their actions.³⁰ Simons defines error as a specific psychological state present in the person committing the criminal act, along with a relationship between that state and the actions taken, such that the individual can be blamed for their conduct.³¹

This demonstrates that the basis for criminal responsibility is the fault inherent in the perpetrator's mental state concerning their behavior, which can be punishable.³² This mental state allows for the attribution of blame to the perpetrator. In other words, accountability for a prohibited act depends on this internal connection.³³

In the legal context, it is widely recognized that a judge's considerations in each case contribute to a high degree of legal certainty. The actions of a judge are crucial in the administration of justice in Indonesia. Insufficient reasoning in judicial decisions may lead to grounds for appeal to a higher court. During court proceedings, the collection of evidence is essential, as judges rely on this evidence to inform their decisions. This process is vital for establishing that the alleged events actually occurred, ultimately facilitating a just and fair court ruling.

In the case of embezzlement, several cases illustrate the importance of judicial reasoning and evidence collection, as presented in the Supreme Court of the

²⁷ Willem Petrus Josef Pompe., *Handboek van het Nederlandse Strafrecht*, Zwolle, W.E.J. Tjeenk Willink, 1950, page.91.

²⁸ Krismiarsi., *Sistem Pertanggungjawaban Pidana Individual*, Semarang, Pustaka Magister, 2018, page.51.

²⁹ H.B. Vos., *Leerboek van Nederlandsch Strafrecht*. Haarlem, H.D. Tjeenk Willink, 1947, page.21.

³⁰ Teguh Prasetyo., *Kriminalisasi dalam Hukum Pidana*, Bandung, Nusa Media, 2010, page.50

³¹ D. Simons., *Leerboek van het Nederlandsche Strafrecht*, Groningen, P. Noordhoff, 1941, page.111.

³² Andi Hamzah., *Sistem Pidana dan Pemidanaan Indonesia*, Jakarta, Pradnya Paramita, 2003. Page.12.

³³ Tesselonika Novela Pangaila., *Pertimbangan Hakim Dalam Menjatuhkan Putusan Terhadap Tindak Pidana Umum. Lex Privatum*, Vol.4, no.3, 2016, page.8.

Republic of Indonesia's decision No. 387 K/Pid/2018.³⁴ In this case, the panel of judges concluded that the elements of Article 374 of the Criminal Code had been fulfilled, specifically the element stating, "The one who does it, the one who orders it to be done, and the one who participates in doing it." Based on this, the panel of judges also determined that the elements of Article 55, paragraph (1), point 1 of the Criminal Code had been satisfied. During the trial, the judges found no justification or reason for a pardon that would reduce or eliminate the defendant's criminal responsibility. Therefore, defendants can be held accountable for their actions, accept responsibility, and face legal punishment, including imprisonment.

The defendant charged with embezzlement in an office setting is deemed accountable for their actions under Article 374 of the Criminal Code, along with Article 55, paragraph (1), point 1 of the same code. The judge's evaluation in this case was both clear and precise, reflecting a thorough understanding of the nature of the embezzlement crime. This careful consideration of the legal provisions ensures that the appropriate standards are applied in determining the defendant's responsibility for the offense committed. This leads to the legal conclusion that the perpetrator was guilty. In making this decision, the judge must evaluate various pieces of evidence, including witness testimonies and confessions, which ultimately resulted in the defendant receiving a sentence of 1 year and 6 months in prison.

However, the legal system in Indonesia still shows disparities in how justice is administered, particularly regarding embezzlement in office. This issue reflects ongoing challenges in tackling crimes against property, which have significant economic impacts on individuals, private and public organizations and communities. The continued occurrence of these offenses indicates a need for stronger legal frameworks and enforcement measures to effectively deter such criminal activities and reduce their negative effects on society. Hence, judges play a vital role in the legal process, and their decisions should be based on a careful review of the evidence presented in court. To ensure justice is served, judges need to approach cases with fairness and thoroughness, making sure their rulings align with legal standards and factual information. By focusing on evidence-based decision-making, judges can help build greater legal certainty and trust in the judicial system, promoting a more equitable environment for everyone involved.

3.2. Reformulating Criminal Responsibility for Offenders of Embezzlement Crimes

Criminal responsibility, often referred to as criminal liability is a legal concept that holds individuals accountable for their actions or omissions when they are found

³⁴ In the case of embezzlement, several instances highlight the significance of judicial reasoning and evidence collection, as exemplified by the Supreme Court of the Republic of Indonesia's decision Number 387 K/Pid/2018. Head of Legal Information Center (*Kapuspenkum*) of Attorney General, Leonard Eben Ezer Simanjuntak announced that the Tabur Team from the Attorney General's Office, in collaboration with the Bengkulu High Prosecutor's Office, successfully apprehended fugitive Rosit Joko Santoso (55), who was wanted for the crime of "Embezzlement in Office Committed Together." Captured on September 2, 2021, at his residence in West Bekasi, Rosit was found guilty and sentenced to one year and six months in prison. See to, Admin, DPO Kasus Penggelapan Dalam Jabatan, Rosit Joko Santoso Diciduk Intel Kejaksaan." PJI. 2021. Accessed June 24, 2024. <https://pji.kejaksaan.go.id/index.php/home/berita/1789>.

to have committed a criminal offense.³⁵ This form of liability differs from civil liability, which arises from breaches of contract or tort. For an individual to be considered criminally liable, they must have acted either with intent or negligence; therefore, both *actus reus* (the physical act) and *mens rea* (the mental state) must be established.³⁶

In most legal systems, a person who commits a crime is held criminally responsible for their actions based on the premise that individuals have the freedom to choose their conduct and could have refrained from committing the offense.³⁷ Therefore, criminal responsibility necessitates not only the intention to perform the act (*mens rea*) but also that the act itself is voluntary and unlawful (*actus reus*).³⁸ Both elements must be proven beyond a reasonable doubt to secure a guilty verdict. If a mental disorder is present at the time of the alleged crime and significantly contributes to the commission of the offense, this may lead to a reduction in criminal responsibility or even serve as a complete defense against conviction or punishment.

Consequently, the mental condition of a suspect must be considered by decision-makers within the criminal justice system. This consideration is vital as it acknowledges the complexities of human behavior and the impact of mental health on an individual's capacity for judgment and self-control.³⁹ Understanding the interplay between mental health and criminal responsibility is essential for ensuring justice is served while also recognizing the rights and needs of individuals with mental health issues.

Criminal responsibility, encompasses not only legal considerations but also moral values and societal norms.⁴⁰ This duality highlights the importance of aligning legal frameworks with ethical standards to foster a sense of justice within society. Ultimately, the purpose of criminal accountability is to address the community's need for justice and to maintain social order, ensuring that individuals are held accountable for their actions in a manner that reflects societal expectations and ethical principles.⁴¹ In practical terms, criminal responsibility serves to establish

³⁵ Sneha Solanki., What Is Criminal Liability? — Legal Glossary, Thomson Reuters, January 23, 2024. <https://legal.thomsonreuters.com/blog/what-is-criminal-liability/>.

³⁶ Winnie Chan and Andrew P. Simester., Four functions of mens rea, *The Cambridge Law Journal*, Vol.70, no.2, 2011, page.391; See to, Cross, Noel., Criminal justice, actus reus and mens rea, *Forensic Psychology, Crime and Policing*, Vol.11, no 3, 2023, page.111; See to, Paul H. Robinson., Should the criminal law abandon the actus reus-mens rea distinction?, In *The structure and limits of criminal law*, Routledge, 2017.

³⁷ R. M. S., M. J. J. Kunst Van Es and J. W. De Keijser., Forensic mental health expert testimony and judicial decision-making: A systematic literature review, *Aggression and violent behavior*, Vol.51, no.3, 2020, page.101387.

³⁸ M. McGrath and B. E. Turvey., Ethical Issues for Treatment Staff in Forensic Settings, *Ethical Justice: Applied Issues for Criminal Justice Students and Professionals*, Vol.7, no.4, 2013, page.411.

³⁹ Georgios Tsimploulis, Gérard Niveau, Ariel Eytan, Panteleimon Giannakopoulos, and Othman Sentissi., Schizophrenia and criminal responsibility: A systematic review, *The Journal of nervous and mental disease*, Vol.206, no.5, 2018, page.375.

⁴⁰ Cordelia Fine and Jeanette Kennett., Mental impairment, moral understanding and criminal responsibility: Psychopathy and the purposes of punishment, *International journal of law and psychiatry*, Vol.27, no.5, 2004, page.433; See to, Grant Firkins., Rethinking causation in english criminal law, *The Journal of Criminal Law*, Vol.87, no.1, 2023, page.21.

⁴¹ Hanafi Amrani and Ali, Mahrus., *Sistem Pertanggung Jawaban Pidana*, Jakarta, Rajawali Pers,

whether a suspect or defendant can be deemed accountable for a specific criminal act. It plays a crucial role in the judicial process, guiding decisions about acquittals and convictions. By determining an individual's culpability, the legal system reinforces societal norms and provides a mechanism for delivering justice, thus upholding the integrity of both legal and moral standards within the community.⁴²

Criminal liability is intrinsically linked to societal accountability, serving a critical function in maintaining social order.⁴³ This accountability empowers the legal system to address criminal behavior, thereby functioning as a mechanism of social control intended to prevent the occurrence of criminal acts. In the common law system, the concept of criminal responsibility is closely tied to *mens rea*,⁴⁴ which refers to the mental state of the individual at the time of the offense. The notion of a "guilty mind" implies a subjective error in judgment, whereby a person is deemed guilty if their thoughts and intentions are found to be wrongful. Consequently, when criminal responsibility is established, the perpetrator of the crime is subject to punishment. Conversely, the absence of *mens rea* negates criminal liability, leading to the conclusion that the individual should not face punishment.⁴⁵

Doctrinally, responsibility for unintentional consequences is grounded in the principles of *Erfolgshaftung*. According to this doctrine, an individual can be held accountable for the outcomes of their actions without requiring a direct connection between the perpetrator's malicious intent (*dolus/culpa*) and the resultant harm, provided that the harm objectively occurs as a consequence of those actions. This concept can be referred to as the pure teaching of *Erfolgshaftung*. However, the current Indonesian Criminal Code does not incorporate or explicitly endorse the principles of *Erfolgshaftung*. The proposed New Criminal Code Concept remains undecided on this issue, while several other countries' Criminal Codes include specific provisions addressing it. Nevertheless, these provisions often include refinements or modifications that align with the principle of culpability, thereby deviating from a strict interpretation of pure *Erfolgshaftung*.⁴⁶

For comparison, the Korean Criminal Code (Article 15, paragraph 2) states that if a heavier penalty is threatened for certain consequences of a crime, the heavier penalty is not applied if the consequences cannot be imagined or foreseen. Similarly, the Norwegian Criminal Code (Article 43) stipulates that if the law designates an unintentional consequence of an act as subject to an aggravated crime, the more severe penalty is only imposed if the perpetrator could foresee

2015, page,131.

⁴² Farrel Gading Bayuaji., Pertanggungjawaban Pidana sebagai Syarat Mutlak dalam Penjatuhan Pidana, *Jurnal Tana Mana*, Vol.5, no,2, 2024, page.256; See to, Mahrus Ali, Wahyu Priyanka Nata Permana, Syarif Nurhidayat, M. Syafi'ie, Andy Nugraha Triwantoro, and Alif Lukmanul Hakim., Punishment without culpability in environmental offences, *Cogent Social Sciences*, Vol.8, no.1, 2022, page.2120475.

⁴³ Ribut Baidi, Deni Setya Bagus Yuherawan., Pertanggungjawaban Tindak Pidana Perbankan Perspektif Hukum Pidana Dan Undang-Undang Perbankan, *Journal Justiciabellen*, Vol.3, no.1, 2023, page.11.

⁴⁴ Kenneth H. Mayer and Hank F. Pizer., *The AIDS pandemic: Impact on science and society*, Elsevier, 2004, page.201.

⁴⁵ Evan Tiffany, Imputability, answerability, and the epistemic condition on moral and legal culpability, *European Journal of Philosophy*, Vol.30, no.4, 2022, page.1451.

⁴⁶ Syaiful Bakhri., *Perkembangan Stelsel Pidana Indonesia*, Jakarta, Total Media, 2009, page.2.

the possibility of that result occurring or, despite being capable of doing so, failed to prevent the consequences after realizing the danger. These examples illustrate how different legal systems approach the issue of accountability for unintentional actions, often requiring a degree of foreseeability or culpability to impose liability.

The German Criminal Code states that if the law threatens a heavier penalty for a certain consequence of an act, the perpetrator will be liable for the heavier penalty only if they cause that consequence to occur at least through negligence. Various examples of the above formulation suggest that, in order for a person to be held responsible for consequences that are genuinely undesirable or unintentional, an element of fault (*dolus* or *culpa*) is still required, even in its mildest form, namely *dolus eventualis* or *bewusste Schuld* (conscious negligence).⁴⁷

The responsibility for a criminal act lies primarily with the perpetrator, based on the justification for applying criminal penalties. A person is deemed to bear criminal responsibility when their actions violate the law. However, this responsibility can be diminished or lost if there are specific factors that affect the individual's capacity to be accountable for their actions. In such cases, the presence of these factors may hinder the person's ability to understand or control their behavior, leading to a potential reduction in their legal culpability. This concept acknowledges that not all individuals who commit crimes are fully capable of understanding the implications of their actions, thereby influencing the determination of their legal responsibility. In this regard, the primary aim of punishment under Indonesia's new Criminal Code (Law No. 1 of 2023) is to protect society, shifting from the older concept of punishment as mere retaliation. This reform emphasizes the importance of humanizing the defendant. Embezzlement in office often stems from the opportunity presented by certain job positions, leading to the violation of trust. Reporting these crimes typically arises from the financial losses incurred by companies or agencies affected by such acts. However, the Indonesian criminal justice system often neglects the interests of victims. Victims are frequently treated as mere evidence or witnesses, limiting their ability to advocate for their rights and seek redress. Although the Public Prosecutor represents victims in prosecuting offenders, the systemic focus on legal procedures often overlooks the actual suffering and losses experienced by victims.⁴⁸

The regulation of criminal liability for perpetrators of embezzlement in office, particularly concerning compensation within the Criminal Procedure Code, remains inadequate and requires further development to ensure justice and welfare for affected parties. One of the primary aims of compensation arrangements is to enhance justice for victims who have suffered losses due to the actions of defendants. A key area of focus in both victimology and criminal law is the evaluation of current compensation mechanisms, questioning whether these provisions meet the expectations set by victimologists. While the inclusion of compensation arrangements in the Criminal Procedure Code signifies progress compared to previous legal frameworks, such as the *Het Herziene Inlandsch Reglement* (HIR), there is still a pressing need to refine these systems. This

⁴⁷ Barda Nawawi Arief., *Perbandingan Hukum Pidana*, Jakarta, Rajawali Pres, 2010, page.111.

⁴⁸ Ilmuwani Lubis, Karolus Agung Dery Rianto, Irfan Rizky Pradya., Review of Criminal Law in Providing Legal Protection to Crime Victims in The Justice System Crime In Indonesia, *Journal Of International Islamic Law, Human Right and Public Policy*, Vol.1, no.4, 2023, page.153.

evolution reflects a commitment to alleviating human suffering and underscores the importance of recognizing human rights and responsibilities.

In cases of embezzlement in office, the perpetrator is expected to make efforts to return the stolen funds to the harmed party. This act of restitution can serve as a means for the offender to mitigate or possibly escape charges related to embezzlement. However, the amount returned should not exceed the original sum embezzled, ensuring that the financial losses experienced by the victim can be adequately addressed. This process emphasizes the importance of accountability and the potential for reparative measures in the context of financial crimes. However, obtaining payment of replacement money is not easy, as the problems encountered in practice are very diverse. One may even need to trace the whereabouts of the embezzled money, including the active assets of the perpetrator. Additionally, there may be attempts to conceal the embezzled money, particularly if the perpetrator engages in money laundering.⁴⁹

Preventive efforts aim to address the initial occurrence or emergence of a crime. Crime prevention is often preferred over attempting to rehabilitate offenders, as the criminological perspective emphasizes the importance of directing efforts to reduce the likelihood of recidivism. Repressive efforts, on the other hand, are measures taken after a crime has occurred. These countermeasures aim to respond to the actions of offenders, ensuring they understand the unlawfulness and societal harm of their behavior. The goal is to discourage not only the individual from reoffending but also to deter others from committing similar crimes, particularly given the significant penalties that may be imposed.⁵⁰

4. Conclusion

The basis for responsibility lies in the fault present within the perpetrator's conscience concerning their punishable behavior, which is assessed based on their mental state. Embezzlement in office is classified as a criminal act, thus falling under the purview of criminal law. Perpetrators of embezzlement may face a maximum prison sentence of five years, in accordance with Article 374 of the Criminal Code. The forthcoming Criminal Code aims to outline the objectives and guidelines for punishment, emphasizing prevention of criminal acts through the enforcement of legal norms to protect society. It seeks to rehabilitate offenders by providing guidance to help them become productive members of society, resolve conflicts arising from criminal behavior, restore societal balance, and foster a sense of peace. Additionally, punishment should not aim to inflict suffering or degrade human dignity. In cases of embezzlement, it is essential for the perpetrator to make efforts to return the embezzled funds to the harmed party.

⁴⁹ Yuriy Yu Nizovtsev, Oleg A. Parfylo, Olha O. Barabash, Sergij G. Kyrenko, and Nataliia V. Smetanina., Mechanisms of money laundering obtained from cybercrime: the legal aspect, *Journal of money laundering control*, Vol.25, no.2, 2022, page.299; See to, Sani Muhamad Isa and Johan Muliadi Kerta., Money laundering in corruption cases in Indonesia, *Journal of Money Laundering Control*, Vol.27, no.1, 2024, page.129.

⁵⁰ Hotma Partogu Sitompul, Hartanto Hartanto, Warasman Marbun, and Siswantari Pratiwi., Penjatuhan Pidana pada Pelaku Tindak Pidana Penggelapan Dilakukan Bersama-Sama dalam Jabatan Secara Berlanjut (Studi Kasus Putusan Nomor. 777/PID. B/2021/PN. BKS), *JIM: Jurnal Ilmiah Mahasiswa Pendidikan Sejarah*, Vol.9, no.1, 2024, page.3.

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