

The Analysis of Legal Evidence Case on Criminal Employment through Electronic Systems

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Abstract.

The purpose of this study is to find out and analyze legal evidence related to criminal acts of embezzlement through an electronic system. To find out and analyze the basis of judges' considerations in making decisions on criminal acts of embezzlement through an electronic system. The method used by the researcher is empirical juridical approach and the specifications in this study include descriptive analysis. As for the sources and types of data in this study, secondary data were obtained from literature studies. Data analyzed qualitatively. Based on the results of the study that Legal Evidence Regarding the Crime of Embezzlement Through Electronic Systems that the power of proving electronic evidence in criminal procedural law, the strength of all evidence is essentially the same, no one exceeds the other. Evidence in criminal procedural law does not recognize hierarchy. It's just that there are provisions that require the connection between one evidence and another. Therefore, in criminal procedural law there is complementary evidence.

Keywords: Crime; Electronic; Evidence; System.

1. Introduction

The life of the nation and state, security is a determining factor in the life of the nation and state, the implementation of a sovereign and authoritative government, which is the main condition supporting the realization of a just, prosperous, prosperous and civilized civil society system based on Pancasila and the 1945 Constitution of the Republic of Indonesia. 1945 Indonesia. Domestically, the Police carry out law enforcement efforts through the process of investigating and investigating criminal acts as regulated in Act No. 2 of 2002 concerning the Indonesian National Police.¹

The role of information and communication technology in the era of globalization has been placed in a very strategic position because it represents a world without boundaries, distance, space, and time. The use of the influence of globalization through information and communication technology has changed people's lifestyles, and developed in a new life order and encouraged social, cultural, economic, defense, security, and law enforcement changes.² The development of information technology should be anticipated with the fast laws governing them.

¹Ni Made Srinetri, Umar Ma'ruf, (2020), *Progressivity Of Criminal Handling Fraud And Disease By The Directorate Of The General Criminal Investigation Of Central Java Regional Police (POLDA)*, in *Jurnal Daulat Hukum* Volume 3 (1), Published Master Of Law, Faculty of Law Unissula, p. 229, <http://jurnal.unissula.ac.id/index.php/RH/article/view/8777/4076>

²Sunarto, Siswanto, (2009), *Hukum Informasi dan Transaksi Elektronik: Studi Kasus Prita Mulyasari*, Jakarta: Rineka Cipta. p. 39.

The negative impact must be anticipated and overcome by law relating to the use of information and communication technology.³

Information and communication technology has also changed human behavior in society and civilization globally.⁴ With the advent of the Internet, there is a new kind of world that was previously unknown to humans, a world called virtual world? The emergence of cyberspace has changed the habits of many people, especially in their lives used to use the internet. Starting from changing the ways and means of business transactions or banking transactions carried out using the internet that take place in cyberspace called electronic transactions (e-commerce), education (electronic education), health (tele-medicine), transportation, industrial tourists, the environment, to the entertainment sector.⁵

Information technology is believed to bring great benefits to countries in the world.⁶ There are at least two advantages brought by the existence of information technology. First, information technology drives the demand for information technology products themselves. Second, facilitate financial business transactions in addition to other businesses.⁷ The two advantages mentioned above confirm that there has been a change in the pattern of transactions and socialization patterns of the community, from conventional methods to more effective and efficient electronic methods.⁸

Crime in society develops along with the development of society itself, because crime is a product of society and this needs to be tackled.⁹ This is considering that crime will not go away on its own, on the contrary, criminal cases are becoming more frequent and the most dominant is the type of crime against assets, especially the crime of embezzlement. That crimes against property will appear to be increasing in developing countries. This increase is in line with the development and economic growth.¹⁰ Law is a combination of the rules of life and coercion, containing orders, prohibitions or permission to do or not do something, and with the intent to regulate order in people's lives.¹¹

³Vitriano Aditya Morradi and Munsharif Abdul Chalim, (2019), *Criminal Law Enforcement Policies In Prevention Efforts Of Information Technology Crime in Jurnal Daulat Hukum* Volume 2 (2), Published Master Of Law, Faculty of Law Unissula, p. 249, <http://jurnal.unissula.ac.id/index.php/RH/article/view/5545/3375>

⁴Ahmad M. Ramli (2004). *Cyber Law and Intellectual Property in the Indonesian Legal System*. Jakarta: Rafika Aditama. p. 1.

⁵Zaldy Kurniawan, (2018), Police Role In The Handling Of Hate Speech, in *Jurnal Daulat Hukum* Volume 1 (2), Published Master Of Law, Faculty of Law Unissula, p. 317, <http://jurnal.unissula.ac.id/index.php/RH/article/view/3260/2396>

⁶Budi Suhariyanto, (2013), *Tindak Pidana Teknologi Informasi (Cybercrime) Urgensi Pengaturan dan Celah Hukumnya*, Depok: Rajagrafindo Persada. np. 1

⁷Agus Raharjo, (2002), *Cybercrime: Pemahaman dan Upaya Pencegahan Kejahatan Berteknologi*, Bandung: Citra Aditya Bakti. p. 1

⁸Timbul Mangaratua Simbolon, Gunarto, Umar Ma'ruf, (2018), *Kebijakan Hukum Pidana Terhadap Tindak Pidana Penghinaan Atau Pencemaran Nama Baik Melalui Internet Di Indonesia Sebagai Cybercrime*, in *Jurnal Daulat Hukum* Volume 1 (1), Published Master Of Law, Faculty of Law Unissula, p. 14, <http://jurnal.unissula.ac.id/index.php/RH/article/view/2560/1917>

⁹Kumanto Sunarto, (2000), *Pengantar Sosiologi*, Jakarta: Akademika Presindo. p. 187

¹⁰Soerjono Soekanto, (2005), *Sosiologi Suatu Pengantar*, Jakarta: Rajawali Press. p. 2

¹¹Junaedi, Sri Endah Wahyuningsih and Ira Alia Maerani, (2020), *Responsibilities Of The Corporate Director Against The Dark Criminal Action In The Position Based On The Decision Of The Court* Sumber

Proof of a criminal act is provisions that contain outlines and guidelines on ways that are justified by law to prove the guilt that has been charged against the defendant, proof is also a provision that regulates evidence that is justified by law and which may be used by judges. prove the guilt of the accused. Evidence can be seen as a central point in the trial process in court, because in this evidence, the fate of the defendant will be determined. If the results of the evidence with the evidence determined by law are not sufficient to prove the guilt of the accused, the defendant is acquitted of the law. On the other hand, when the guilt of the defendant can be proven, the defendant is found guilty and therefore sentenced to a crime.¹²

The research objectives to be achieved from this research are basically divided into: To find out and analyze legal evidence related to criminal acts of embezzlement through an electronic system. To find out and analyze the basis of judges' considerations in making decisions on criminal acts of embezzlement through an electronic system.

2. Research Methods

The research approach in this thesis is juridical empirical.¹³ Specifications of this research, the method used is descriptive analysis method. The data analysis method used in this study is a qualitative analysis method, which is an analysis that is non-statistical or non-mathematical.

3. Results and Discussion

3.1. Legal Evidence Regarding the Crime of Embezzlement Through Electronic Systems

Proof is part of the Criminal Procedure Code which regulates various kinds of legal evidence according to the judge. Evidence is everything that has to do with an act where the evidence can be used as evidence to convince the judge of the truth of a crime or in other words the submission of evidence in evidence aims to find a material truth about the events that occurred so that the judge can give the fairest possible verdict.¹⁴

Indonesian laws and regulations are regulated in Article 1(1) of the Criminal Code which is commonly referred to in Latin as *Nullum Delictum Nulla Poena Sine Praevia lege*. New discoveries in the field of technology, revolutions, modernization of education, etc. occur in one place and will soon be known by other people who are far from that place.¹⁵

Of Cirebon Regency (Studies on Decision No.202 / Pid.B / 2019 / PN.Sbr), in *Jurnal Daulat Hukum* Volume 1 (1), Published Master Of Law, Faculty of Law Unissula, p. 41, <http://jurnal.unissula.ac.id/index.php/RH/article/view/8433>

¹²Andri Winjaya Laksana, *Cybercrime Dalam Perspektif Hukum Pidana Positif* Fakultas Hukum Unissula Jurnal Hukum Unissula Vol.35 No.1 (2019)

¹³Bambang Waluyo, (2002), *Penelitian Hukum Dalam Praktek*, Jakarta: Sinar Grafika.p.15

¹⁴Lilik Mulyadi. (2012). *Bunga Rampai Hukum Pidana Indonesia Perspektif Teoretis dan Praktik*. Bandung: Alumni. p. 93

¹⁵Soekanto, S. (1977). *Kesadaran hukum dan kepatuhan hukum*. *Jurnal Hukum & Pembangunan*, 7(6), p. 462–470.

The Crime of Theft of Money in an Account Using an Internet Media Bank in accordance with the provisions of Article 362 of the Criminal Code Act No. 19 of 2016 concerning Amendments to Act No. 11 of 2008 concerning Information and Electronic Transactions. So far, computer misuse in Indonesia has only been charged with criminal law provisions, namely Article 362 concerning theft, Article 378 concerning embezzlement of public funds, and Article 263 concerning counterfeiting. However, with the development of the times, of course the quality of criminal activities using computers as a means or tool is also increasing, and special rules are needed to reduce the threat of computer abuse.

The Law on Information and Electronic Transactions also provides legality for law enforcement officers to conduct or request wiretapping. Elucidation of Article 31 explains that wiretapping is allowed according to the law is wiretapping carried out within the framework of the law and at the request of law enforcement officials.¹⁶

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 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".¹⁷

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.¹⁸ 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.¹⁹

¹⁶Aga Wigana, and Maryanto, (2020), *The Strength of Proof of Telephone Tapping As Electronic Evidence in Revealing Corruption Cases*, in *Jurnal Daulat Hukum* Volume 1 (1), Published Master Of Law, Faculty of Law Unissula, p. 102, <http://jurnal.unissula.ac.id/index.php/RH/article/view/8399/3941>

¹⁷Insan 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,

¹⁸Wirjono Prodjodikoro, (2003), *Tindak-Tindakan Pidana Tertentu di Indonesia*, Jakarta: Refika Aditama. p. 31.

¹⁹Tito 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>

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3.2. Basis for Judges' Consideration in Making Decisions Against Crime of Embezzlement Through Electronic Systems

Banking crimes through the skimming method are still common.²⁰ ATM burglary using skimming technique is a sophisticated modus operandi in bank burglary which violates several criminal rules in the ITE Law and the Criminal Code.²¹ As an account holder or an Automated Teller Machine (ATM) card, you have to be careful. Because skimmers have sophisticated ways to break into Automated Teller Machines (ATMs). Usually they are enough with a computer/laptop, software decoder to a special card encoder. Blank magnetic card and its reader.

The crime of bank robbery through ATM is included in the type of criminal act of theft because burglary includes taking the rights of others that should not belong to the ATM account burglar.

The judge's consideration is a decision that is determined by the judge to settle the case in an ongoing trial. The decision is a judge's decision on the case he is handling with the meaning of ending a case before the judge. The judge's decision is the end of the process of examining a case. But in one case the judge's decision can also be overturned by the High Court of the Supreme Court.²²

The judge's first consideration is a juridical consideration, namely, legal considerations in order to find juridical facts revealed before the trial and the law is stipulated as something that must be included in the decision. In the juridical considerations there are: the Public Prosecutor's Indictment, Defendant's Statement, Witness Statement, Evidence, Articles contained in criminal law. In the second judge's consideration, the non-juridical considerations are: the background of the accused, the legal consequences of the defendant, the background of the defendant, the legal consequences of the defendant.

The above discussion in terms of the crime of breaking into Automated Teller Machines (ATM) accounts can be qualified as a crime of theft according to Article 362 of the Criminal Code, and is also qualified in Act No. 11 of 2008 concerning Information and Electronic Transactions in Article 30 paragraphs 1 and 3, and Article 36 of Act No. 11 of 2008 concerning Information and Electronic Transactions,

²⁰Ekawati, D. (2018). *Perlindungan Hukum terhadap Nasabah Bank yang Dirugikan Akibat Kejahatan Skimming Ditinjau dari Perspektif Teknologi Informasi dan Perbankan*. *Unes Law Review*, 1(2). Retrieved from <http://garuda.ristekbrin.go.id/documents/detail/895120>

²¹Enrick, M. (2019). *Pembobolan ATM Menggunakan Teknik Skimming Kaitannya dengan Pengajuan Restitusi*. *Jurist-Diction Law Journal*, 2(2). Retrieved from <https://e-journal.unair.ac.id/JD/article/view/14252>

²²Arto, M. (2004). *Praktek Perkara Perdata pada Pengadilan Agama, Cetakan V*. Yogyakarta: Pustaka Pelajar. Retrieved from <http://pustakapelajar.co.id/buku/praktek-perkara-perdata-padapengadilan-agama/>

and Article 81 of Act No. 3 of 2011 concerning Funds Transfer, as well as Article 83 Paragraph 2 of Act No. 3 of 2011 concerning Funds Transfer. Speaking of legal sanctions against perpetrators of criminal acts of breaking into automated teller machines (ATM) accounts, the perpetrators will certainly be subject to criminal sanctions.

Unfortunately, the ITE Law still has special limitations due to the dimension of consumer protection.²³ Article 52 paragraph (3) of Act No. 11 of 2008 is aimed at if the crime is committed against Computers and/or Electronic Systems as well as Electronic Information and/or Electronic Documents belonging to the Government and/or strategic bodies including but not limited to defense institutions, banks central, banking, financial, international institutions, aviation authorities are threatened with a maximum sentence of a maximum criminal penalty of each Article plus two thirds. If according to Article 86 of Act No. 3 of 2011 concerning Funds Transfer, if it is carried out by management, officials, and/or employees of the Provider, the maximum principal penalty is plus 1/3 (one third).

In criminal law, there are material offenses and formal offenses. The material offense is an offense whose formulation focuses on the consequences that are prohibited and are threatened with punishment by law. In other words, it is only called the formulation of the consequences of actions. For example Article 338 concerning murder. Whereas what is meant by formal offenses are offenses whose formulation focuses on acts that are prohibited and threatened with criminality by law, in the sense that the formulation of the act is clear. For example Article 362 concerning theft.²⁴

This crime of burglary of accounts through Automated Teller Machines (ATM) is included in the crime of theft because burglary includes taking other people's rights that should not belong to the burglar's Automated Teller Machine (ATM) account. Basically, every act that contains elements of crime, whether it takes or robs other people of the rights that are considered as an act of violating the law/crime, whether intentionally or unintentionally, is threatened with criminal punishment by law, each of which has a criminal threat sanction that is his actions must be accounted for and have been declared as an act which is a crime, of course, it can be punished according to the applicable law.²⁵

Judges' Basis for Judgment in Imposing Decisions on the Crime of Embezzlement Through the Electronic Case System, in this case it can be said that the judge's considerations in deciding cases are not only based on the law as a reference, but many other considerations are made when viewed from the juridical aspect of the judge. will take into account the statements of witnesses, the indictment of the public prosecutor, the statements of the defendant and the supporting evidence of course the judge will also consider the non-juridical aspects such as looking at the background of the defendant, the condition of the defendant, the attitude and faith of the accused as a religious person. These considerations are carried out in deciding cases in order to create justice for every citizen and protect

²³Samudra, AH (2019). *Modus Operandi dan Problematika Penanggulangan Tindak Pidana Penipuan Daring*. *Mimbar Hukum*, 31(1). Retrieved from <https://jurnal.ugm.ac.id/jmh/article/view/34786>

²⁴Prodjodikoro, W. (2003), *Tindak-tindak Pidana Tertentu di Indonesia*. Bandung: Refika Aditama.

²⁵Prasetyo, T. (2010). *Hukum Pidana*. Jakarta: Rajawali Pers

the human rights of every citizen of the Republic of Indonesia who highly upholds human rights.

4. Conclusion

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