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CRIMINAL LAW LIABILITY FOR PERPETRATORS OF EMBEZZLEMENT IN OFFICE FOR THE AGGRIEVED PARTY

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Abstrac: The crime of embezzlement in office is closely related to morality and trust in the honesty of individuals. These crimes, which are regulated in the Criminal Code (KUHP), are often difficult to identify because the perpetrators are in one institution, organization, or company. This study uses a juridical-normative approach to analyze legal norms related to embezzlement in office as a form of justice for the aggrieved party. Through a legislative, conceptual, and case study approach, this study explores relevant regulations, legal concepts, and court decisions, such as Decision Number 375/Pid.B/2024/PN Jkt.Br and Decision Number 396/Pid.B/2024/PN Jkt.Br. The sources of legal materials used include primary, secondary, and tertiary materials obtained through literature studies. Qualitative descriptive analysis techniques are applied to systematically manage data, while content analysis methods help to understand the meaning and relevance of the law in the context of this research. The results of the study show that the factors that influence the behavior of embezzlement in positions by employees include financial, psychological, and work environment factors. The study also found that embezzlement could be prevented by raising awareness of employee ethics and integrity and strengthening management oversight. Criminal law liability for company losses must be upheld to provide justice and sanctions for the perpetrators, in accordance with Article 374 of the Criminal Code.

Keywords: : Accountability, Criminal Law, Perpetrators, Embezzlement in Office

1. Introduction

Human life actually lives side by side and requires the role of others in meeting their needs. This is natural because humans in general are social creatures who need interaction between one individual and another.¹ The occurrence of these interactions will have a positive and even negative impact. The impact of negative interactions can cause losses to one of the parties so that this situation can be the cause of a crime or criminal act.

¹Meilanny Budiarti S. *Unravelling the basic concept of human beings as individuals through the social relations they build*, KS Proceedings: Research & PKM, Vol. 4, No. 2, (January 2017), p. 106.

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Crime is a complex phenomenon that can be understood from many different sides. That's why in our daily lives we can catch various comments about a crime event that is different from one another. In our experience, it is not easy to understand crime itself.²

We often encounter criminal acts or criminality in our daily lives without us realizing it. Along with the times, perpetrators of criminal acts in committing their crimes have used various methods to get their desires from others, namely in a way that certainly violates the provisions of the law and laws that are highly upheld in the Indonesian state.

Law has a function to achieve the order of human relations in life. The law maintains the necessities of life so that a balance is realized in social life that feels the inaccuracy of bonds and social pressure. In this case, the law has the meaning of being a guardian so that justice is always realized in social life.³ The law as a regulator of the public interest (the general public) is one of the characteristics of criminal law, namely public law. Public law is defined as a law that regulates the relationship between society and the state.

Criminal law is a public law which, in the sense according to Mezger quoted by Andi Sofyan, is "the rules of law that are binding on a certain act that meets certain conditions of a criminal consequence".⁴ However, the existence of criminal law as a regulator of public interest does not mean that criminal cases do not occur in society. This is because the principle of legality as an effort to eradicate criminal acts is not only preventive but also repressive, where there are various prohibited acts along with their sanctions. Therefore, if there is a person or legal entity as a subject who commits a criminal act, there are sanctions that the perpetrator of the criminal act will receive.

² Topo Santoso, *Criminology*, (PT Rajagrafindo Persada, Jakarta, 2001), p. 1.

³ Mohammed is here. *Introduction to Law*, (Jakarta: Kencana, 2015), p.4.

⁴ Andi Sofyan and Nur Azisa. *Criminal Law*, (Makassar: Pustaka Pena Press, 2016), p. 2.

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Criminal law as a tool or means to solve this problem and is expected to be able to provide the right solution. Therefore, the development of law and criminal law in particular, needs to be further improved in a directed and integrated manner, including the codification and unification of certain legal fields as well as the drafting of new legislation that is urgently needed to answer all challenges in the development of criminal acts.

Of the various types of criminal acts that occur in society, one of them is the crime of embezzlement. Embezzlement (*verduistering*) is an act of dishonesty by hiding another person's goods/property by one or more people without the knowledge of the owner of the goods with the aim of controlling or using it for other purposes.⁵ The regulation on embezzlement is contained in articles 372 to 377 of the Criminal Code (KUHP/KUHPidana).⁶

In this case, the author will say that the crime of embezzlement in office, which is regulated in Article 374 of the Criminal Code (KUHP), is embezzlement with aggravation. In general, this action is carried out by a person who has a position or position, where he uses the authority or rights he has incorrectly or deviantly. This action is contrary to the purpose and purpose of granting authority from the position he holds.⁷

In the Great Dictionary of the Indonesian Language (KBBI) Embezzlement is defined as the process, method and act of embezzlement (misappropriation) that uses goods illegally, while according to R. Soesilo embezzlement is a crime that is almost the same as theft in article 362. The difference is that in the theft of the goods owned it is not in the hands of the thief and still has to be "taken", while in the embezzlement of the time

⁵ *Ibid*, p. 339.

⁶ Andi Hamzah, *Criminal Code and Criminal Code*, (Rineka Cipta, Jakarta, 2012), p.56.

⁷ R. Soesilo, *Criminal Code and its comments are complete article by article*. (Bogor.Polite 1995), p. 268.

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of possession the goods are already in the hands of the perpetrator not by the means of crime.⁸

It is undeniable that the crime of embezzlement is rampant with various forms and developments that point to the increasing level of human intellect from the increasingly complex crime of embezzlement. The crime of embezzlement always exists in society, and even tends to increase and develop in society along with technological and economic advancements. The occurrence of the crime of embezzlement in office can certainly harm one party as in companies in general, it can be caused or affected by several factors, including internal factors of the perpetrator, namely factors that come from within the perpetrator of criminal acts and external factors, namely factors that come from outside the perpetrators of criminal acts.⁹

Based on the existence of several regulations that are *dass sollen* above, but in fact there is still a gap between *dass sollen* and *dass sein* that there are still cases of unlawful acts that violate these rules such as in Decision Number 375/Pid.B/2024/PN Jkt.Brt concerning the crime of Embezzlement in Office by the defendant Rizky Ramadhani bin M. Junaidi a worker or employee who serves as a deputy assistant store leader who embezzled the Urban Republic Mall Ciputra Shop Jakarta Lt.1 Mall Ciputra. By committing an arbitrary act of embezzling belongings belonging to the Urban Republic Mall Ciputra Jakarta Shop. So that the Urban Republic Mall Ciputra Jakarta store suffered material and immaterial losses.¹⁰

In addition, there is a case of embezzlement in office in Decision No. 396/Pid.B/PN Jkt.Brt carried out by Defendant I TARSONO Bin TASLIM, Defendant II Sudarman Als Maman bin Susyanto, Defendant III Somad Alamsyah bin Muhtadin, Defendant IV Ahmad

⁸ R. Soesilo, *Criminology (Knowledge of the Causes of Crime)*, (Politeia, Bogor, 2015), p. 87.

⁹ Yahman. *Characteristics of Fraud Default: Born from Contractual Relationships*, (Jakarta: Kencana, 2014), p. 126.

¹⁰ Decision Number 375/Pid.B/2024/PN Jkt.Brt.

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Riyan bin Busali, Defendant V Romli Als Cikoy bin Muhaji and Defendant VI Lukman Hidayat Als Dayat bin Sanudin, The defendants had embezzled the belongings belonging to PT. Cipta Niaga Semesta by exaggerating the goods issued from the warehouse of PT. Creating Universe Businesses Together, Thus Harming PT. Create a Universe Business.¹¹

The crime of embezzlement in office is a criminal act related to moral issues and a belief in a person's honesty. Therefore, the criminal act in this position initially begins from the existence of a party's trust in the other, which ends with the dishonesty of one of the parties, namely the perpetrator of embezzlement, especially the embezzlement that often occurs by the person who holds the goods and is related to his job or position.

Based on this background, the need for a more specific discussion in this study, the author will examine through the perspective of embezzlement in this position involves unlawful acts that can harm other people or companies. The form of embezzlement can be in the form of money, letters, goods, or documents that are misused by the perpetrator.

2. Method

The normative legal research method is a scientific research procedure to find the truth based on the logic of legal science from its normative side.¹² This research is qualitative related to analyzing a research that has problems by collecting data as research material. The source of legal materials used in a research can be in the form of data obtained through literature materials and/or directly from the community. Data obtained directly from the community is called primary data, while data obtained through literature and documentation materials is called secondary data.¹³

¹¹Decision Number 396/Pid.B/PN Jkt.Brt.

¹²Jhony Ibrahim, *Normative Research Theory and Methods*, (Malang: Banyumedia Publishing, 2007), p. 57.

¹³Ronny Hanitijo Soemitro, *Legal Research Methodology and Jurimetry* (Jakarta: Ghalia Indonesia, 1990), p. 10.

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3. Analysis or Discussion

A. Criminal Liability Regulation for Perpetrators of Embezzlement in Office for the Achievement of Justice for the Aggrieved Party

Based on the existence of several regulations that are *dass sollen* above, but in fact there is still a gap between *dass sollen* and *dass sein* that there are still cases of unlawful acts that violate these rules such as in Decision Number 375/Pid.B/2024/PN Jkt.BrT concerning the crime of Embezzlement in Office by the defendant Rizky Ramadhani bin M. Junaidi a worker or employee who serves as a deputy assistant store leader who embezzled the Urban Republic Mall Ciputra Shop Jakarta Lt.1 Mall Ciputra. By committing an arbitrary act of embezzling belongings belonging to the Urban Republic Mall Ciputra Jakarta Shop. So that the Urban Republic Mall Ciputra Jakarta store suffered material and immaterial losses.

In addition, there is a case of embezzlement in office in Decision Number: 396/Pid.B/PN Jkt.BrT committed by Defendant I TARSONO Bin TASLIM, defendant II Sudarman Als Maman bin Susyanto, Defendant III Somad Alamsyah bin Muhtadin, Defendant IV Ahmad Riyan bin Busali, Defendant V Romli Als Cikoy bin Muhaji and Defendant VI Lukman Hidayat Als Dayat bin Sanudin, The defendants had embezzled the belongings belonging to PT. Cipta Niaga Semesta by exaggerating the goods issued from the warehouse of PT. Creating Universe Businesses Together, Thus Harming PT. Create a Universe Business.

Juridically, embezzlement in office is a threatening criminal offense as stipulated in article 374 of the Criminal Code (KUHP) which reads: "Embezzlement committed by a person whose control over goods is committed because there is an employment relationship or because of search or because of getting wages for it. Threatened with imprisonment for a maximum of 5 (five) years".

As is known above, perpetrators who commit embezzlement in office are an unlawful act that can be sanctioned under criminal law. Universally, humans have needs that always want to be met, including clothing and food needs, either as a tool to sustain life, or only limited to fulfilling the desire to have or even as an increase in social status (standard of living). However, this expectation

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is not always fulfilled because of the various characteristics and ways of meeting the needs of human clothing and food which sometimes legalize all means, including committing the crime of embezzlement in office.

The existence of article 374 of the Criminal Code regarding embezzlement in office requires everyone who has an employment relationship in this case, including employees, to be able to account for their duties and responsibilities explicitly and implicitly so as not to be entangled in the crime of embezzlement. As one of the criminal offenses with aggravation, it provides justice to apply it in the case of embezzlement committed by employees who incidentally have an employment relationship.

The number of employees who are entangled in criminal cases, especially embezzlement in positions that lead to medical treatment by the judge's decision as described earlier, shows that there is still a lack of legal awareness in employees about the criminal liability they face after committing criminal acts.

Basically, the act of a person who has a position or position that uses the authority or rights he has in a deviant manner contrary to the purpose and purpose of the granting of authority from the position, as well as committing an act that is against the law so that the act harms other people or agencies/companies by embezzling either letters, goods, money and documents, then the act can be said to be embezzlement in office.

The view of the implementation of the legal system in Indonesia is an uninterrupted flow, which is carried out by the police with an investigation and forwarding the case to the Prosecutor's Office and the Prosecutor's Office to prosecute before the Court. The criminal justice system involves the enforcement of substantive criminal law, formal criminal law and criminal implementation law, in the form of preventive (prevention), repressive (suppression) and curative (control). Thus, there is a connection and interdependence between the criminal justice subsystems, namely the Police, the

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Prosecutor's Office, the Court and the Public Prosecutor's Office in dealing with non-criminal perpetrators of embezzlement in office in accordance with the applicable laws in Indonesia.¹⁴

The implementation of the purpose of punishment does not solely provide a criminal threat against every reprehensible act, which is inappropriate or detrimental to society. The provision of criminal threats must pay attention to the purpose of criminal law, namely 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 application of undesirable acts is an act that causes harm to the community.

Crime prevention by using criminal law means is the oldest way, the same master as human civilization. The use of criminal law is part of the policy / legal policy which is overall criminal politics or *social defence planning*, which is an integral part of the national development plan.¹⁵ Criminal Law Regulations in tackling the crime of embezzlement in office in the future in addition to penal efforts also by using non-penal measures. Non-penal efforts should be realized in strategic activities, both socially, economically and legally so that the crime of embezzlement in office can be minimized from an early age.

B. Criminal legal responsibility for the aggrieved party in the crime of embezzlement in office

The term criminal act comes from a term known in Dutch criminal law, namely *Strafbaar feit* *Strafbaar feit* consists of 3 (Three) words, namely *straf*, *baar* and *feit*. *Straf* translated as criminal and legal. *Baar* translated can or can. *Feit* is translated as acts, events, offenses and deeds, foreign criminal law experts use the terms criminal acts or criminal acts or criminal events, with these terms:¹⁶

- a. *A criminal offence* is a criminal incident.

¹⁴ Yoga Saputa Alam, Erlina B. Anggalana (2021). *Analysis of Perpetrators of Embezzlement in Office* (Study of Decision Number: 431/Pid.B/2020/PN.Tjk). *Journal of Pro Justitia*, Vol.2, No.2, p. 4.

¹⁵ Muladi and Barda Nawawi Arief, *Criminal Theories and Policies*, (P.T. Alumni, Bandung, 2010), p.149.

¹⁶ *Ibid*, p. 25.

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b. *Strafbaar handling* is used by criminal law scholars in Germany to define criminal acts.

To be able to determine exactly the time and place of the crime is not easy. This is because in essence criminal acts are a human act, where at the time of committing their actions, humans have often used tools that can work or can cause consequences at other times and places where the person has used the tools in question.

According to Van Bemmelen in the book Lamintang explains that what must be seen as the place and time of the crime is basically the place where a perpetrator has committed his acts materially. Which should be considered as a "*locus delicti*".

Criminal responsibility leads to people who commit criminal acts. A person will not be punished if there is no mistake. This is in accordance with the principle in the criminal law which reads *geen straf zonder schuld* (not punished if there is no mistake). This principle is not contained in Indonesian written law, but in Indonesia's unwritten law currently applies.

Embezzlement is an act of dishonesty by concealing another person's goods/property by one or more people without the knowledge of the owner of the goods with the aim of transferring ownership (theft), controlling, or using it for other purposes. Embezzlement can also be a form of financial fraud. For example, a lawyer can embezzle funds from accounts that have been entrusted to him by a client, a financial advisor can embezzle funds from investors, or a person can embezzle funds from his or her spouse. Embezzlement is classified as a type of violation of the law and is generally regulated by criminal law.¹⁷

P.A.F Lamintang explained his opinion regarding the crime of embezzlement, namely: The criminal act as referred to in CHAPTER XXIV OF THE CRIMINAL CODE is actually called "the crime of abuse of rights" or "breach of trust". Because in this mention, it is easier for everyone to understand what acts are prohibited and punished according to the regulations.¹⁸

¹⁷ Wirdjono Prodjodikoro, *Op Cit*, p. 183.

¹⁸ Tongat, 2006, *Material Criminal Law*, UMM Pres, Malang. p.57.

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Regarding the crime of embezzlement, it is regulated in article 372 of the Criminal Code. What includes embezzlement is the act of taking someone else's property partially or completely) where the control of the goods is already in the perpetrator's hands, but the possession occurs legally. For example, the possession of an item by the perpetrator occurs because the owner entrusts the item. Or the perpetrator's possession of goods occurs because of his duties or positions, for example a custodial officer. The purpose of embezzlement is to have goods or money that are in their control where the goods/money basically belong to someone else.

The crime of embezzlement in office is carried out by parties inside or outside the company, but in general it is carried out by parties within the company, because usually the party understands the internal control in the company where he works, so it is not difficult to commit embezzlement, especially in the company.¹⁹

The occurrence of the crime of embezzlement in office can certainly be detrimental to one party such as in companies in general, it can be caused or caused by several factors, including the internal factors of the perpetrator, namely the factor that comes from within the perpetrator of the crime and external factors, namely factors that come from outside the perpetrator of the criminal act as well as the case of the crime of embezzlement in office that occurs in the West Jakarta Region according to the Decision Number 375/Pid.B/2024/PN Jkt.Brt and Number 396/Pid.B/2024/PN Jkt.Brt.

Based on the description in Decision Number 375/Pid.B/2024.PN.Jkt. Brt. and Decision Number 396/Pid.B/2024.PN.Jkt. Brt. The problems that the author has described above contain various elements that influence a person to commit the crime of embezzlement.

The Defendants have been charged as mentioned in the Public Prosecutor's indictment, namely the actions of the defendants as regulated and criminally threatened in accordance

¹⁹ Mahendri Massie, *the crime of embezzlement in the use of office based on article 415 of the Criminal Code. Journal of Lex Crimen*. Vol. VI/No. 7/ Sep/2017, p.101.

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with Article 374 of the Criminal Code. Intentionally and unlawfully possessing the goods of something which wholly or partly belongs to another person, but which is not in his power because of a crime, is done by a person whose possession of the goods is due to the existence of an employment relationship or because of a search or because of obtaining wages for it.

In addition, the Panel of Judges has first considered the indictment of article 374 of the Criminal Code which has been fulfilled its elements, namely the element of whose goods, the element of deliberately and unlawfully owning the goods of something that wholly or partially belongs to another person, the element of goods that are in him is not due to a crime committed by a person whose control of the goods is due to a work relationship or because of a search or because of getting wages for it.

Furthermore, because the defendants' actions have fulfilled all the elements in Article 374 of the Criminal Code, it is based on the Law and the judge's belief. The panel is of the opinion that the defendant has been legally and convincingly proven to have committed the crime of "Embezzlement is carried out by a person who controls the goods because there is an employment relationship".

Based on the testimony of the witnesses and the testimony of the Defendant, it is connected with the evidence submitted to the trial, legal facts are obtained. From the facts obtained during the trial in this case, the Panel of Judges did not find things that could release the Defendant from the liability of criminal answers, either as a justification and/or a excuse for forgiveness, therefore the Panel of Judges concluded that the actions committed by the Defendant must be held accountable to him.

Because the Defendant is able to be responsible, the Defendant must be found guilty of the criminal act charged against the Defendant and therefore must be sentenced to a criminal offense. Before the Panel of Judges renders a verdict, it is necessary to consider the aggravating and mitigating factors in order to apply appropriate and fair punishment to the defendants:

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a. Aggravating circumstances:

- The defendant's actions resulted in losses to the Company.
- The Defendants have enjoyed the proceeds of their crimes.

b. Alleviating conditions:

- The defendants have never been convicted.
- The Defendants are the backbone of his family.

In this case, the Defendants have been subject to lawful arrest and detention, so the period of arrest and detention must be deducted entirely from the sentence imposed. Since the Defendants were detained and the detention of the Defendants was based on sufficient reasons, it was necessary to stipulate that the Defendants remain in custody.

Then based on the aggravating and mitigating matters above and seen from the criminal acts proven for the actions of the Defendants associated with the purpose of the crime including detention, general prevention (General Prevention), education for the defendants, so that the defendants realize and understand their mistakes and can become good members of society in the future, it is fair and appropriate if the defendants are sentenced to a crime as in the verdict below, namely in accordance with Article 374 of the Criminal Code.

Ruling on the defendants stated that the Defendants had been legally and convincingly proven guilty of committing the crime "Embezzlement was committed by a person who controlled the goods because there was an employment relationship".

In this case, the author also realizes that the problem of imposing a criminal sentence on someone is not an easy thing. Judges must not only base themselves on laws and regulations, but also pay attention to the feelings and public opinions of the public. In other words, as much as possible, the judge's decision must reflect the will of the law and the values that live in society. Therefore, in determining the severity or lightness of the crime to be given to the defendant, it must always be based on the principle of balance between the offense and the unlawful act of the defendant.

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So, according to the author in the criminal case decision of the West Jakarta District Court Number 375/Pid.B/2024.PN.Jkt. Brt. and the Decision of the West Jakarta District Court Number 396/Pid.B/2024.PN.Jkt. Brt. Namely the case of embezzlement in office because of controlling goods, the criminal act imposed on the defendants is appropriate because in the case in the judge's decision-making process, it is appropriate, namely in considering the demands of the public prosecutor in this case, then the panel of judges considers his criminal responsibility and based on the facts revealed in the trial and in deciding through evidence plus the judge's conviction has been fulfilled.

But judges should also be able to consider from all aspects that the punishment must have a deterrent effect for the perpetrator. One way is the application of strict penalties and in accordance with laws and regulations so that it can also be an instrument that can overcome and eradicate embezzlement and can prevent similar criminal acts from occurring in the future.

3. Conclusion

Based on the research carried out by the author, the author concludes as follows:

- A. The crime of embezzlement in office reflects moral problems and trust in the honesty of individuals. This action arises from trust between the parties involved, but ends with the dishonesty of the perpetrator, often the employee who manages the goods in the company. According to Article 374 of the Criminal Code (KUHP), this embezzlement is carried out by individuals who have power over goods due to employment relationships or rewards received.
- B. The main factor that causes embezzlement is the decline in employee mentality. The criminal liability of perpetrators of embezzlement in office, according to Article 374 of the Criminal Code, requires them to be responsible for losses suffered by the company. The aggrieved party can take legal steps by filing a case with the court.

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Sentencing is not only important for the judicial process, but also for achieving justice for the aggrieved company, thus creating clear legal accountability.

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Other Resources

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