

Continuous Embezzlement in Office According to the Criminal Code

Raja Toga Paruhum¹⁾ & Jawade Hafidz²⁾

¹⁾Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: Rajatogaparuhum.std@unissula.ac.id

²⁾Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: Jawadehafidz@unissula.ac.id

Abstract. *The law also plays a role in protecting individual rights, ensuring that everyone gets equal and fair treatment in the eyes of the law. Therefore, the law is very important in building a stable and just social order. That every person in the territory of Indonesia is obliged to comply with the laws and regulations in force in Indonesia and no one can be immune from the law, and all actions must be based on and have consequences in accordance with the laws and regulations in the Unitary State of the Republic of Indonesia, which aims to realize an orderly, prosperous and just life in society, nation and state in order to achieve the goals of the state as mandated in the opening of the 1945 Constitution of the Republic of Indonesia. This criminal law is included in public law which regulates the relationship between the state and individuals and the public interest, in contrast to private law which regulates the relationship between individuals and personal interests. Acts that are prohibited by criminal law and are subject to punishment are known as criminal acts or offenses. In the Criminal Code (KUHP), criminal acts are classified into two types, namely crimes and violations. Examples of crimes include theft, embezzlement, assault, and murder, while examples of violations include delinquency, begging, and vagrancy. Talking about professions, of course, one of them is bound to an organization or agency that is certainly inseparable from the element of trust. Someone who has received trust in an agency certainly has a position or title when the element of trust has been carried out, of course someone is obliged to maintain it. The crime of embezzlement which is a crime often occurs in various fields and even the perpetrators are in various levels of society. Both the lower and upper classes commit this crime. Seeing the many cases of embezzlement that occur in Indonesia, of course this is very concerning. Abuse of Trust dominates as an element of this crime of embezzlement. The crime of embezzlement is regulated in the Criminal Code (hereinafter abbreviated as the Criminal Code) Article 372 (ordinary embezzlement), Article 373 (minor embezzlement), Article 374 and Article 375 (aggravated embezzlement) and Article 376 (embezzlement within the family).*

Keywords: *Committed; Continuously; Criminal; Law; Office.*

1. Introduction

Along with the development of the times, the Law functions as a state tool that has an important role in organizing, reconciling, and regulating the lives of society. Its main goal is to create justice and balance between the rights and obligations of each individual. In this context, the law is not just a rule, but also an instrument that ensures that every member of society can live a harmonious and orderly life. With the law, society has clear guidelines in interacting with each other, so that conflicts can be minimized and dispute resolution can be carried out fairly. The law also plays a role in protecting individual rights, ensuring that everyone gets equal and fair treatment in the eyes of the law. Therefore, the law is very important in building a stable and just social order. That every person in the territory of Indonesia is obliged to comply with the laws and regulations in force in Indonesia and no one can be immune from the law, and all actions must be based on and have consequences in accordance with the laws and regulations in the Unitary State of the Republic of Indonesia, which aims to realize an orderly, prosperous and just life in society, nation and state in order to achieve the goals of the state as mandated in the opening of the 1945 Constitution of the Republic of Indonesia.¹

Information technology systems have now penetrated almost every aspect of human life, attracting great attention from many people around the world and changing their lifestyles. Advances in computer technology go hand in hand with changes in society, which include social values, social norms, behavioral patterns, organizations, and structures of social institutions. In this context, criminal law becomes one part of the overall legal system that applies in a country. This criminal law is included in public law which regulates the relationship between the state and individuals and the public interest, in contrast to private law which regulates the relationship between individuals and personal interests. Acts that are prohibited by criminal law and are subject to punishment are known as criminal acts or offenses. In the Criminal Code (KUHP), criminal acts are classified into two types, namely crimes and violations. Examples of crimes include theft, embezzlement, assault, and murder, while examples of violations include delinquency, begging, and vagrancy.²

Law has several roles in regulating the behavior of society. The main roles of law in society are three, namely: first, as a means of social control, second as a means to facilitate the process of social interaction and third as a means to create certain conditions.³ According to Sri Endah Wahyuningsih, the law is based on Pancasila and the 1945 Constitution in accordance with the demands of development and is able to respond to the development of society both at the national and global levels. Legal development aims to accelerate and improve the activities of renewal and the formation of a national legal system in all its aspects, ensure the sustainability and integrity of the nation, and provide benchmarks, direction and

¹Beno, Gunarto and Sri Kusriyah, Implementation of Fully Required Elements in the Crime of Planning Murder (Case Study in Blora State Court), *Jurnal Daulat Hukum Volume 3 Issue 1*, 2020, p. 109,

²Soerjono Soekanto, *Pokok-Pokok Sosiologi Hukum*, Jakarta: Rajawali Press, 1980, p. 87–88

³Teguh Prasetyo, *Criminalization in Criminal Law*, Publisher Nusa Media: Bandung, 2011, p. 26.

encouragement in social change towards the realization of a just and prosperous society based on Pancasila and the 1945 Constitution.⁴

Talking about professions, of course, one of them is bound to an organization or agency that is certainly inseparable from the element of trust. Someone who has received trust in an agency certainly has a position or title when the element of trust has been carried out, of course someone is obliged to maintain it. However, along with the development of the times, a person's needs are increasing and the salary or wages of the worker are not sufficient for their needs, so that it is likely to give rise to someone's intention to commit fraud. According to Cleiren, the core of the crime of embezzlement is the abuse of trust in the person who embezzles. The classic boundary between theft and embezzlement is that in theft "takes" (wegnemen) goods that are not yet in his possession, while in embezzlement the goods are already in his control. The crime of embezzlement is a crime with action (gedragsdelicten) or a crime of commission. The time and place where the embezzlement occurs is the time and place where the will is carried out which is already clear.⁵

The crime of embezzlement which is a crime often occurs in various fields and even the perpetrators are in various levels of society. Both the lower and upper classes commit this crime. Seeing the many cases of embezzlement that occur in Indonesia, of course this is very concerning. Abuse of Trust dominates as an element of this crime of embezzlement.⁶ The crime of embezzlement is regulated in the Criminal Code (hereinafter abbreviated as the Criminal Code) Article 372 (ordinary embezzlement), Article 373 (minor embezzlement), Article 374 and Article 375 (aggravated embezzlement) and Article 376 (embezzlement within the family).⁷ Law enforcement and justice must go hand in hand to maintain integrity and morality in society. Overall, law serves as a crucial foundation in society to ensure order and justice, and regulate relations between individuals and between individuals and the state.⁸ The development of technology has brought changes in social dynamics that affect various aspects of life, including criminal law which plays an important role in combating crime. Embezzlement, as a form of crime, shows the complexity of law enforcement, especially in the context of ethics and trust. Therefore, effective and fair law enforcement is very necessary to maintain social order and community morality, while at the same time adapting to the times.

2. Research Methods

The approach method used in this study is the normative legal approach. The normative legal approach is a legal research conducted by examining library materials or secondary data as

⁴Sri Endah Wahyuningsih, *Prinsip-Prinsip Individualisasi Pidana dalam Hukum Pidana Islam*, Semarang : Badan Penerbit Universitas Diponegoro, 2013.

⁵Andi Hamzah, *Delik-Delik Tertentu dalam KUHP*, Jakarta : Sinar Grafika , 2016, p. 64.

⁶W.A. Bonger, *Pengantar Tentang Kriminologi*, Jakarta : Ghalia Indonesia, 1970, p. 54

⁷Arigonnanta Bagus Wicaksono, Gunarto, *Penegakan Hukum Penyelidikan Dan Penyidikan Terhadap Pelaku Tindak Pidana Penggelapan Dalam Jabatan (Studi Di Wilayah Hukum Kepolisian Resor Kuningan Jawa Barat)*, *Jurnal Hukum Unissula*, 2022, p. 5.

⁸R. Soesilo, *Kitab Undang-Undang Hukum Pidana (KUHP) serta Komentar-Komentar Lengkapnya Pasal demi Pasal*, Bogor : Politeia, 2013, p. 259.

Master of Law, UNISSULA

basic materials for research by conducting a search for regulations and literature related to the problems being studied.⁹

3. Results and Discussion

3.1. Implementation in Cases of Criminal Acts of Embezzlement in Office which are carried out continuously according to the Criminal Code

Law has an important function in social life as a tool to create justice, order, peace and order, but also to ensure legal certainty.¹⁰ The function of law is to achieve orderly human relations in life. Law maintains the needs of life in order to realize a balance in social life that feels the inappropriateness of bonds or social pressure. So that law has a meaning as a guard so that justice is always realized in social life in society.

The purpose of law is to protect society from existing social problems, and in principle law is a statement and a variety of realities to guarantee the adjustment of a person's freedom of will.¹¹ Upholding the law can be interpreted as obeying the law. Compliance with the law is caused by legal awareness and sincerity in obeying the law. Citizens who do not uphold the law are said to have committed a violation of the law. The assumption that a person has committed a legal act must first be proven to be true carefully and thoroughly because of the presumption of innocence.

As is known, embezzlement is included in the crime section regulated in the Criminal Code (book two) Articles 372-377. Embezzlement is included in the type of crime against property. Crimes that occur in community life are a phenomenon that continues to be in the spotlight.¹² Talking about the emergence of embezzlement, it cannot be separated from the causes of the emergence of the crime itself. This is because embezzlement as previously described is part of the crime regulated in the Criminal Code.

This is because embezzlement is part of the crimes regulated in the Criminal Code. Therefore, the factors causing the emergence of embezzlement crimes cannot be separated from the theories in criminology about the emergence of crimes or the causes that drive someone to commit crimes.

Embezzlement of office that has recently been rampant in all sectors of life, resulting in state financial losses reaching billions of rupiah. Basically, embezzlement of office is a criminal act of corruption that is fought by the entire community. And the increase in criminal acts of corruption has caused the decline of the Indonesian economy, for that serious law

⁹Soerjono Soekanto & Sri Mamudji, *Normative Legal Research (A Brief Review)*, Rajawali Pers, Depok, 2019, pp. 13-14.

¹⁰Andi Hamzah, *Bunga Rampai Hukum Pidana dan Acara Pidana*, Jakarta : Ghalia Indonesia, 2001, p. 3.

¹¹Sri Warjiyati, *Memahami Dasar Ilmu Hukum, Konsep Dasar Ilmu Hukum*, Jakarta: Kencana, 2018, p.73

¹²Adam Chazawi, *Kejahatan Terhadap Harta Benda*, Jakarta : Bayu Media, 2006, p.70

enforcement efforts are needed. Various actions that are classified as criminal acts of corruption are regulated in various laws and regulations.

In general, these laws and regulations can be categorized into two, namely corruption in the Criminal Code and outside the Criminal Code. Criminal acts regulated in the Criminal Code include bribery, embezzlement, extortion, crimes related to contracting or partners, crimes related to justice, crimes exceeding the limits of authority, and crimes of aggravating witnesses.

The crime of embezzlement can be caused by several supporting factors. As is known, embezzlement is included in the part of the crime regulated in the Criminal Code (book two) Articles 372-377. Embezzlement is included in the type of crime against property. Crimes that occur in community life are phenomena that continue to be in the spotlight. Talking about the emergence of embezzlement, it cannot be separated from the causes of the crime itself. Embezzlement as described previously is part of the crime regulated in the Criminal Code. Therefore, the factors causing the emergence of the crime of embezzlement cannot be separated from the theories in criminology about the emergence of crime or the causes that drive someone to commit a crime in general.

One of the factors that causes the occurrence of criminal acts of embezzlement is the mentality of employees. Employees who are not mentally strong will be easily influenced to take actions that are not in accordance with the dignity of employees as officers. On the other hand, employees who are mentally strong cannot be influenced by the opportunity or chance to commit embezzlement. Employees who base themselves on devotion consider that their position is a mandate so they will not commit embezzlement even if there is an opportunity.¹³

Embezzlement can be committed by parties inside or outside the office, agency, or company environment, but is generally committed by parties inside the company environment, because usually these parties understand the internal controls in the company where they work so it is not difficult to commit embezzlement. Every company or institution is also vulnerable to embezzlement.¹⁴

Embezzlement can be committed by parties inside or outside the company or agency environment, but is generally committed by parties inside the company environment, because usually these parties understand the internal control in the company where they work so it is not difficult to commit embezzlement. The crime of embezzlement regulated in Article 374 of the Criminal Code in doctrine is also referred to as a *gequalificeerde verduistering* or as embezzlement with qualifications, namely a crime with aggravating elements.¹⁵

¹³Mahendri Messie, *Op. Cit.*, p. 3

¹⁴Subandi, Andri Winjaya Laksana, Pertanggungjawaban Pidana Terhadap Pelaku Tindak Pidana Penggelapan Dalam Jabatan (Studi Kasus Pengandilan Negeri Semarang), *Jurnal Hukum Unissula*, 2024, p. 68.

¹⁵P.A.F. Lamintang dan Theo Lamintang, *Delik-Delik Khusus Kejahatan Terhadap Harta Kekayaan*, Jakarta : Sinar Grafika, Edisi 2, Cetakan 1, 2009, p. 133.

Embezzlement in office is a special form of embezzlement crime regulated in Article 374 of the Criminal Code (KUHP). This article states that embezzlement committed by someone who controls an item because of an employment relationship, position, or because they are paid, is subject to a maximum prison sentence of five years. The essence of this article is that the perpetrator legally owns the item because of his position, but then abuses that trust to control the item unlawfully. This crime has certain elements that must be met in order for someone to be charged with Article 374 of the Criminal Code. First, the perpetrator must have control over the item, not because of ownership, but because of an employment relationship or trust. Second, the control is obtained because of work, position, or because the perpetrator is given a task or salary to manage the item. Third, the perpetrator intentionally embezzles or misuses the item for his own benefit. Fourth, the act is carried out unlawfully, which means the perpetrator does not have the right to own the item.

Embezzlement in office is different from ordinary embezzlement as regulated in Article 372 of the Criminal Code. In ordinary embezzlement, the perpetrator does not need to have a working or position relationship with the victim, while in embezzlement in office, such a relationship is an important element. In addition, the maximum penalty for ordinary embezzlement is four years in prison, while for embezzlement in office it reaches five years in prison. In other words, because the perpetrator abuses the trust in his position or job, it is considered more severe and deserves a higher criminal threat.

Article 374 of the Criminal Code stipulates that embezzlement in office can be punished with a maximum imprisonment of five years. This shows that the law places a breach of trust committed in an employment relationship as a serious act. In some cases, additional or aggravating penalties can also be imposed if the losses incurred are very large or the perpetrator is a public official who abuses his authority.

Under the judicial process, it is important to prove the existence of an employment relationship or trust that gives the perpetrator access or power over the embezzled goods. In addition, it must be proven that the perpetrator intentionally and unlawfully controls the goods, and that the act causes harm to the entitled party. Without evidence of an employment relationship and intent to possess goods illegally, the charge of embezzlement in office can be dropped or reduced to ordinary embezzlement.

Furthermore, in the new Criminal Code, the crime of embezzlement in office is regulated in Book Two on Criminal Acts, specifically in the Chapter on Embezzlement. The article regulating embezzlement in office has undergone an expansion of understanding and adjustment of the structure of legal language that is more modern and systematic. The related article generally maintains the substance of Article 374 of the old Criminal Code, but with a format and formulation that is clearer and more adaptive to the development of the times. The new Criminal Code also places more emphasis on abuse of trust in the context of employment or office relationships.

The crime of embezzlement in office in the new Criminal Code is regulated in Article 522 of Law Number 1 of 2023 concerning the Criminal Code. This article is part of Book Two, Chapter

XXXII concerning Criminal Offenses against Assets, and specifically regulates embezzlement committed in office or because of trust given by another party to the perpetrator.¹⁶ This regulation will come into effect in 2026, replacing the old Criminal Code which is a colonial legacy.

Embezzlement in office according to the new Criminal Code is the act of embezzling another person's property that is under the perpetrator's authority due to a work relationship, position, or certain task, which is then controlled or used for one's own interests unlawfully. This means that a person who was originally given the trust to manage or hold an item, actually abuses that trust by making the item seem like it is personal property.¹⁷

According to the new Criminal Code, the distinction between ordinary embezzlement and embezzlement in office is maintained, but with a more explicit wording. Ordinary embezzlement occurs when someone controls goods due to ordinary civil relations (for example, borrowing or consigning), while embezzlement in office occurs when the perpetrator obtains goods because of his position, work, or tasks entrusted to him. The criminal threat for embezzlement in office is also heavier than ordinary embezzlement, to emphasize that abuse of trust in office is a serious moral and legal violation.

The new Criminal Code still provides a prison sentence for perpetrators of embezzlement in office. Although the wording of the law has been updated, the substance of the law has not changed much from the old Criminal Code, namely a maximum prison sentence of 5 (five) years or a fine with a certain category according to the classification of fines updated in the new Criminal Code. The new Criminal Code also recognizes a more proportional sentencing principle, where judges can consider factors such as losses incurred, motives, and efforts to restore losses in imposing sentences.

The new Criminal Code emphasizes the principle of restorative justice and the purpose of punishment that is not only punitive, but also repairs and restores losses. In the crime of embezzlement in office, efforts to restore losses or reconcile with victims can be important considerations in the legal process. The new Criminal Code also encourages a diversion approach or out-of-court settlement in certain cases, especially if the value of the loss is not large and the perpetrator shows good faith.¹⁸

The application of the crime of embezzlement in office according to the old Criminal Code (Article 374 of the Criminal Code) focuses on the abuse of trust given due to employment relationships. The old Criminal Code uses rigid terminology and is not very detailed in explaining the elements of the crime, such as the definition of "control due to employment relationships" and does not explicitly contain the principle of punishment oriented towards restorative justice. The maximum criminal threat is 5 years in prison, and law enforcement tends to be retributive, namely emphasizing the punishment of the perpetrator without

¹⁶Law Number 1 of 2023 concerning the Criminal Code, Article 522.

¹⁷ <https://siplawfirm.id/tindak-pidana-penggelapan/?lang=id>

¹⁸Law Number 1 of 2023 concerning the Criminal Code, Chapter II concerning Criminalization (Articles 54–62).

Master of Law, UNISSULA

considering in depth the repair of the relationship or voluntary restitution of the victim's losses.

In contrast, the new Criminal Code (Law No. 1 of 2023) maintains the essence of embezzlement in office, but updates the legal formulation with a more modern and systematic language structure, and provides space for the application of the principle of restorative justice. In Article 522 of the new Criminal Code, the maximum criminal threat is also 5 years or a fine of up to category V (IDR 500 million), but law enforcement is more flexible: judges are allowed to consider peaceful efforts, restitution of losses, and other mitigating circumstances. This shows a paradigm shift from mere punishment towards restoration and proportionality in sentencing, in accordance with the spirit of national criminal law reform.

Both the old and new Criminal Codes regulate the crime of embezzlement in office with a maximum penalty of 5 years, the new Criminal Code provides important updates in the form of clearer formulation of norms and a more just and humane approach to sentencing. By incorporating the principle of restorative justice and providing flexibility to judges in considering factors such as restitution and peace, the new Criminal Code reflects the development of modern criminal law that not only emphasizes punishment, but also on restoration and fair resolution for all parties.

Departing from the case study of decision 270/Pid.B2024/PN Ptk, defendant JUTET alias MARTO alias AFUK, son of LIE CHIN HIONG, on a day and date that can no longer be remembered around September 2023, October 2023, November 2023, December 2023, January 2024 or at least in 2023 to 2024 at Jalan. Ir. H. Juanda No. 16 B, Block BB, Kel. Darat Sekip, Kec. Pontianak City, Pontianak City or at least in a place that is still included in the jurisdiction of the Pontianak District Court which has the authority to try, committing a crime has committed an act that must be considered a continued act intentionally and unlawfully possessing something that is wholly or partly owned by another person, but which is in his control not because of a crime, which is carried out by a person whose control over the goods is due to an employment relationship or because of a search or because of receiving wages.

Taking into account, Article 374 of the Criminal Code in conjunction with Article 64 paragraph (1) of the Criminal Code and Law Number 8 of 1981 concerning Criminal Procedure Law and other relevant laws and regulations, the court declares that the Defendant Jutet alias Marto alias Afuk, son of Lie Chin Hiong (deceased) above, has been proven legally and convincingly guilty of committing the crime of "Embezzlement in Office which is carried out continuously" as in the First indictment, and sentences the Defendant therefore to 2 (two) years in prison.

Implementation according to the Criminal Code in cases of criminal acts of embezzlement in office carried out continuously case study of decision 270/Pid.B2024/PN Ptk, In decision Number 270/Pid.B/2024/PN Ptk, the application of the Criminal Code (KUHP) to criminal acts of embezzlement in office carried out continuously refers to Article 374 of the Criminal Code in conjunction with Article 64 paragraph (1) of the Criminal Code. Article 374 of the Criminal Code stipulates that embezzlement committed by a person because of his position or because

of his livelihood is punished more severely than ordinary embezzlement, because there is an element of trust that is violated. Meanwhile, Article 64 paragraph (1) of the Criminal Code is used to ensnare the defendant for his actions which are carried out repeatedly or continuously as a series of criminal acts. In the decision, the panel of judges considered that the defendant was legally and convincingly proven to have embezzled funds belonging to the company where he worked continuously for a certain period, so that his punishment reflects the consideration of the severity of the consequences of the act and its continuity.

3.2. Judge's Considerations in Handing Down a Verdict on a Perpetrator of the Crime of Embezzlement in Office which is carried out continuously.

Judges in examining a case also require evidence, where the results of the evidence are used as consideration in deciding the case. Evidence is the most important stage in the examination in court. Evidence aims to obtain legal certainty that an event/fact submitted actually occurred, in order to obtain a true and fair judge's decision. The judge cannot make a decision before it is clear to him that the event/fact actually occurred, namely its truth is proven, so that there is a legal relationship between the parties.¹⁹

The decision of the judge or court is an important and necessary aspect, because it helps clarify criminal cases and helps the defendant have legal certainty regarding his status and prepare for the legal process, appeal, cassation and pardon. On the other hand, from the perspective of the judge who tries this case, the judge's decision is the result of a reflection of the values of justice. Obtaining the truth, Human Rights (HAM), the highest law or facts fairly, qualitatively and based on facts and the ethics, mentality and morality of the judge concerned.²⁰

The freedom granted by the state to judges includes freedom of judgment, freedom from outside interference, freedom of opinion in formulating laws, freedom to explore values, rights in accordance with a sense of social justice, including the freedom to deviate from written law if not re-tested according to the sense of social justice. The freedom of judges here does not mean unlimited freedom, because the principle of non-application of the law must not conflict with the law on equality and must guarantee human rights (HAM) and the right to access justice.²¹

Law Number 48 of 2009 concerning the Judiciary, Article 8 paragraph (1), states: "Any person who is suspected, arrested, detained, charged, and/or tried, is considered innocent until a court decision is given. "and declares his guilt and receives permanent legal consequences." Article 1 number 11 of the Criminal Procedure Code regulates that a Court decision is a statement by the Judge during a public trial, which can be in the form of a sentence, acquittal or a statement of not guilty of all legal charges and according to the provisions of the law, a

¹⁹Muhammad Baharuddin and Akhmad Khisni, Effectiveness of Pleidooi by The Supreme Of Criminal Murder, *Law Development Journal*, Volume 2 No 2, June, 2020, p.13

²⁰Lilik Mulyadi, *Hukum Acara Pidana*, Bandung : Citra Aditya Bakti, 2017, p. 152-153

²¹P.A.F Lamintang & Theo Lamintang, *Op. Cit.*, p.1

Master of Law, UNISSULA

court decision is valid and only has legal force if the decision is taken before a public hearing in court.²²

Basically, to find the truth, the judge is bound by the statements and formal evidence in the trial so as to find an indication of the case. Article 188 Paragraph (1) of the Criminal Procedure Code states, "An indication is an act, event or condition, which due to its correspondence, either between one and the other, or with the crime itself, indicates that a crime has occurred and who the perpetrator is."²³

Based on the Case Study of Decision 270/Pid.B2024/PN Ptk. That based on the evidence and evidence submitted, the following legal facts were obtained:

1. That, the Defendant worked at PT Cita Sukses Pratama as a Salesman in the Pontianak City Area and Ketapang Regency since November 2019 as per Decree (SK) Number: SI (CSP/1911i0001 dated November 1, 2019, with a basic monthly salary of Rp2,100,000.00 (two million one hundred thousand rupiah) excluding allowances who have the task and responsibility to offer and market goods belonging to PT. Cita Sukses Pratama, receive requests to order goods from stores to PT. Cita Sukses Pratama (sales order), make collections and receive payments for goods that have been received by the store and make deposits of collection money to PT. Cita Sukses Pratama by the defendant visiting the stores to ask and record the goods lacking or goods that have run out, then the defendant sends the notes via Whatsapp to the Invoice/Note Opening (Sales Order) section, after the Sales Order is approved, then the Invoice/note opening sends a Delivery Note (delivery letter) to the PT. Cita Sukses Pratama warehouse, then the warehouse section issues The goods according to the defendant's order were then sent and delivered to the shops by the Expedition and after the goods were received by the shops, the billing period was set at around 3-4 months from when the goods were received by the shop owner;
2. That for payments in the Pontianak City and Ketapang Regency areas, the defendant collected money from sales from shops and consumers paid in cash to the defendant and transferred directly to PT. Cita Sukses Pratama, after the defendant received the money from the sales, the defendant then deposited the money to the finance department of PT. Cita Sukses Pratama.
3. That based on the defendant's Sales Order to the Invoice/Note Opening section, the warehouse section of PT. Cita Sukses Pratama in Pontianak has sent goods to the shops.
4. That regarding the total bill for goods belonging to PT. Cita Sukses Pratama for 27 (twenty seven) shops located in Ketapang Regency and 2 (two) shops located in Pontianak City since September 2023 to January 2024 amounting to Rp130,773,028.00 (One Hundred Thirty Million Seven Hundred Seventy Three Thousand Twenty Eight Rupiah) the defendant told witness Linda Julita that the 29 (twenty nine) shops had not made any

²²Andri Winjaya Laksana, *Pemidanaan Cybercrime Dalam Perspektif Hukum Pidana Positif*, *Jurnal Hukum Unissula*, Vol. 35, No. 1, 2019.

²³Dian Yustisia Nabila & Jawade Hafidz, *Penerapan Alat Bukti Petunjuk Oleh Hakim Dalam Menjatuhkan Putusan Tindak Pidana Pembunuhan (Studi Kasus Di Pengadilan Negeri Rembang)*, *Jurnal Ilmiah Sultan Agung Universitas Islam Sultan Agung Semarang*, 15 March 2023, p.5.

- payments and the defendant made a Receivables Receivable (RTP) for the 29 (twenty nine) shops and then the Receivables Receivable (RTP) the defendant submitted to witness Linda Julita as evidence that the shops had not made payments;
5. That, on Wednesday, February 20, 2024, Mr. Liena with the position of Operational Manager of PT. Cita Sukses Pratama ordered witness Linda Julita to conduct an Internal Audit on the problem of store receivables that were due but had not been deposited for more than 3 (three) months, then collect directly from the store via office telephone, and it was discovered that 29 (twenty-nine) stores had made cash payments to the Defendant by attaching a photo of the original invoice and the original white delivery note;
 6. That after clarification was made to the Defendant, the Defendant admitted to having used the bill money from 29 (twenty nine) stores amounting to Rp130,773,028.00 (One Hundred Thirty Million Seven Hundred Seventy Three Thousand Twenty Eight Rupiah) for personal interests without the permission of the management of PT. Cita Sukses Pratama;
 7. That due to the defendant's actions, PT. Cita Sukses Pratama suffered a loss of Rp130,773,028.00 (One Hundred Thirty Million Seven Hundred Seventy Three Thousand Twenty Eight Rupiah).

Considering, that the Panel of Judges will then consider whether based on the legal facts above, the Defendant can be declared to have committed the crime with which he is accused;

Considering that the Defendant has been charged by the Public Prosecutor with an alternative charge, so that the Panel of Judges, by taking into account the legal facts above, directly chose the First alternative charge as regulated in Article 374 of the Criminal Code in conjunction with Article 64 paragraph (1) of the Criminal Code, the elements of which are as follows:

1. The element "Whoever";
2. The element "Deliberately and against the rights";
3. The element of "Owning Something Which is Wholly or Partly the Property of Another Person";
4. The element "The Goods Were in His Hands Not Due to a Crime";
5. The element "carried out by a person who holds the goods in connection with his work or position or because he receives wages";
6. The element "Committing several acts which are related in such a way that they must be viewed as one continuing act".

Considering, that based on legal facts number 4 to number 6 it has been revealed that based on the results of an internal audit conducted on Wednesday, February 20, 2024 by PT. Cita Sukses Pratama, there was a total bill for goods belonging to PT. Cita Sukses Pratama for 27 (twenty seven) shops located in Kab. Ketapang and 2 (two) shops located in Pontianak City since September 2023 to January 2024 amounting to Rp130,773,028.00 (One Hundred Thirty Million Seven Hundred Seventy Three Thousand Twenty Eight Rupiah) has matured but there has been no deposit for more than 3 (three) months so that direct collection was carried out to the shop via office telephone, and it was discovered that 29 (twenty nine) shops had made cash payments to the Defendant by attaching a photo of the original invoice and the original white delivery note which after clarification was made to the Defendant, the Defendant

admitted to having used the bill money from 29 (twenty nine) shops amounting to Rp130,773,028.00 (One Hundred Thirty Million Seven Hundred Seventy Three Thousand Twenty Eight Rupiah) for personal interests without the permission of the management of PT. Cita Sukses Pratama, therefore the Panel of Judges considered the defendant's actions in not depositing the debt collection money for 29 (twenty nine) shops which should belong to PT Cita Sukses Pratama because it was a bill from the company where the Defendant worked, could be categorized as an act of "Owning".

Considering that based on legal facts number 4 to number 6 it has been revealed that based on the results of an internal audit conducted on Wednesday, February 20, 2024 by PT. Cita Sukses Pratama, there was a total bill for goods belonging to PT. Cita Sukses Pratama for 27 (twenty seven) shops in Ketapang Regency and 2 (two) shops in Pontianak City from September 2023 to January 2024 amounting to Rp130,773,028.00 (One Hundred Thirty Million Seven Hundred Seventy Three Thousand Twenty Eight Rupiah) which was due but there had been no payment for more than 3 (three) months and after direct collection was carried out by PT. Cita Sukses Pratama to the shop conducted by witnesses Linda Julita and witness Andreanto, it was found that bills for 29 (twenty nine) shops had been paid in cash to the Defendant, where after clarification was made with the Defendant, the Defendant admitted to having used the bill money from 29 (twenty nine) shops amounting to Rp130,773,028.00 (One Hundred Thirty Million Seven Hundred Seventy Three Thousand Twenty Eight Rupiah) for personal interests.

Considering, that the Defendant's actions used the bill money from 29 (twenty nine) shops amounting to Rp130,773,028.00 (One Hundred Thirty Million Seven Hundred Seventy Three Thousand Twenty Eight Rupiah) by the Defendant telling witness Linda Julita that the bill for the 29 (twenty nine) shops had not been paid, then the Defendant made a Receivables Receivable (RTP) for the 29 (twenty nine) shops and then the Receivables Receivable (RTP) was submitted by the Defendant to witness Linda Julita as evidence that the shops had not made payments so that for the actions carried out by the Defendant, the Defendant freely used the bill money from the 29 (twenty nine) shops amounting to Rp130,773,028.00 (One Hundred Thirty Million Seven Hundred Seventy Three Thousand Twenty Eight Rupiah) for personal interests;

Considering, that based on the considerations that have been explained above, the Panel of Judges is of the opinion that the defendant's control over the bill deposit money amounting to Rp130,773,028.00 (One Hundred Thirty Million Seven Hundred Seventy Three Thousand Twenty Eight Rupiah) is an improper act, because the Defendant does not have the right to do so; Considering, that based on the considerations above, the Panel of Judges is of the opinion that the element of "Intentionally and Against Rights" has been fulfilled by the Defendant's Actions;

Considering, that because all the elements accompanying the element "Whoever" in Article 374 of the Criminal Code in conjunction with Article 64 paragraph (1) of the Criminal Code have been fulfilled by the defendant's actions, in this case the Panel considers the element "Whoever" to have been fulfilled;

Master of Law, UNISSULA

Considering, that because all the elements of Article 374 of the Criminal Code in conjunction with Article 64 paragraph (1) of the Criminal Code have been fulfilled, the Defendant must be declared to have been proven legally and convincingly to have committed the crime as charged in the First Alternative indictment;

Considering that in the trial, the Panel of Judges did not find anything that could eliminate criminal responsibility, either as a justification or excuse, then the Defendant must be held responsible for his actions and must be declared guilty and sentenced to a criminal penalty;

Considering that in this case the Defendant has been subject to lawful arrest and detention, the period of arrest and detention must be deducted in full from the sentence imposed;

Considering, that because the Defendant is being detained and the detention of the Defendant is based on sufficient grounds, it is necessary to determine that the Defendant remains in detention.

Considering, that in order to impose a criminal penalty on the Defendant, it is necessary to first consider the aggravating and mitigating circumstances of the Defendant;

Aggravating circumstances:

- The Defendant's actions have caused losses to PT. Cita Sukses Pratama;

Mitigating circumstances:

- The defendant admitted frankly and regretted his actions; - The defendant behaved politely during the trial;
- The defendant has never been convicted;

The basis for criminal responsibility is error, where the error can be intentional (*opzet*) or negligent (*culpa*).²⁴ This shows that the basis for being held accountable for a person's actions is placed in the concept or basis of thought on whether or not the elements of a crime are proven. If the elements of a crime are proven, then the guilt is also proven and automatically punished, so that criminal responsibility is attached to the elements of the crime.²⁵

Criminal liability as a psychological condition, so that the application of a criminal provision from a general and personal perspective is considered appropriate as a basis for responsibility in criminal law is a certain psychological condition in a person who commits a criminal act and there is a relationship between that condition and the act committed in such a way that the person can be blamed for committing the act. The Criminal Code (KUHP) does not clearly state the criminal liability system adopted. Several articles in the Criminal Code (KUHP) often mention errors, either intentional or negligent, but not regarding the definition of error, intentional and negligent are not explained by law.

²⁴Musa Darwin Pane, Op. Cit., 2017, p. 54.

²⁵H.M. Rasyid Ariman dan Fahmi Raghieb, Op. Cit., 2015, p. 205.

Based on the decision 270/Pid.B/2024/PN Ptk, the application of the theory of criminal responsibility refers to the fulfillment of the elements of guilt (schuld) and the ability to be responsible (toerekeningsvatbaarheid) of the defendant for the criminal act of embezzlement in office which was carried out continuously. The defendant is considered to have awareness and will in carrying out the act, and knows that his actions are against the law because he took advantage of the trust given by the company. Thus, according to the theory of criminal responsibility, the defendant can be held accountable for his actions because he has met the requirements of an unlawful act, guilt, and the ability to be legally responsible.

The idea of justice in relation to law has long been put forward by Aristotle and Thomas Aquinas, who said the following:²⁶

"Justice forms the substance of the law, but its heterogeneous substance is composed of three elements: an individual element: the suum cuique tribuere (individual justice): a social element: the changing foundation of prejudgments upon which civilization reposes at any given moment (social justice), and a political element, which is based upon the reason of the strongest, represented in the particular case by the state (justice of the state)."

This shows that there is a reciprocal influence between law and justice, namely that law is created based on values or moral rules that are fair, which already exist and which have lived in society, so the task of the legislator is only to formulate what already exists. While on the other hand there is a possibility that the formulation of the law itself is only to provide interpretation, or provide new norms including norms of justice. Regarding what is meant by justice includes two things, namely those concerning the nature of justice and those concerning the content or norms, to act concretely in certain circumstances.

According to decision 270/Pid.B/2024/PN Ptk, the judge's considerations according to the theory of justice are evident from efforts to balance legal certainty, protection of victims (companies), and the subjective conditions of the defendant. The judge considers the material losses caused by ongoing embezzlement and violation of the trust given in office, but also takes into account mitigating factors, such as the defendant's confession, regret, and never having been convicted before. This approach reflects the principle of retributive and corrective justice, namely providing appropriate punishment while considering the humanitarian aspects and rehabilitation of the perpetrator.

The Judge's considerations in the decision 270/Pid.B/2024/PN Ptk confirmed that the defendant was legally and convincingly proven to have committed the crime of embezzlement in office which was carried out continuously, as regulated in Article 374 of the Criminal Code in conjunction with Article 64 paragraph (1) of the Criminal Code. The judge stated that the defendant's actions were detrimental to the company and damaged trust in the employment relationship, so that he deserved to be sentenced to a criminal sentence. However, in making the decision, the judge also considered mitigating factors such as the defendant's confession, cooperative attitude during the trial, and never having been

²⁶Radbruch & Dabin, *Op. Cit.*, 1950, p. 432.

Master of Law, UNISSULA

convicted before, so that the final decision reflects a balance between aspects of justice, benefit, and legal certainty.

The Judge's Considerations in Sentencing the Perpetrator of the Criminal Act of Embezzlement in Office which was carried out continuously in decision 270/Pid.B/2024/PN Ptk confirmed that the defendant was legally and convincingly proven to have committed the criminal act of embezzlement in office which was carried out continuously, as regulated in Article 374 of the Criminal Code in conjunction with Article 64 paragraph (1) of the Criminal Code. The judge stated that the defendant's actions were detrimental to the company and damaged trust in the employment relationship, so that he deserved to be sentenced to a criminal sentence. However, in handing down the verdict, the judge also considered mitigating factors such as the defendant's confession, cooperative attitude during the trial, and never having been convicted before, so that the final verdict reflects a balance between aspects of justice, benefit, and legal certainty.

4. Conclusion

Implementation according to the Criminal Code in cases of criminal acts of embezzlement in office carried out continuously case study of decision 270/Pid.B/2024/PN Ptk, In decision Number 270/Pid.B/2024/PN Ptk, the application of the Criminal Code (KUHP) to criminal acts of embezzlement in office carried out continuously refers to Article 374 of the Criminal Code in conjunction with Article 64 paragraph (1) of the Criminal Code. Article 374 of the Criminal Code stipulates that embezzlement committed by a person because of his position or because of his livelihood is punished more severely than ordinary embezzlement, because there is an element of trust that is violated. Meanwhile, Article 64 paragraph (1) of the Criminal Code is used to ensnare the defendant for his actions which are carried out repeatedly or continuously as a series of criminal acts. In the decision, the panel of judges considered that the defendant was legally and convincingly proven to have embezzled funds belonging to the company where he worked continuously for a certain period, so that his punishment reflects the consideration of the severity of the consequences of the act and its continuity. The Judge's Considerations in Sentencing the Perpetrator of the Criminal Act of Embezzlement in Office which was carried out continuously in decision 270/Pid.B/2024/PN Ptk confirmed that the defendant was legally and convincingly proven to have committed the criminal act of embezzlement in office which was carried out continuously, as regulated in Article 374 of the Criminal Code in conjunction with Article 64 paragraph (1) of the Criminal Code. The judge stated that the defendant's actions were detrimental to the company and damaged trust in the employment relationship, so that he deserved to be sentenced to a criminal sentence. However, in handing down the verdict, the judge also considered mitigating factors such as the defendant's confession, cooperative attitude during the trial, and never having been convicted before, so that the final verdict reflects a balance between aspects of justice, benefit, and legal certainty.

5. References

Journals:

- Andri Winjaya Laksana, Pemidanaan Cybercrime Dalam Perspektif Hukum Pidana Positif, *Jurnal Hukum Unissula*, Vol. 35, No. 1, 2019.
- Arigonnanta Bagus Wicaksono, Gunarto, Penegakan Hukum Penyelidikan Dan Penyidikan Terhadap Pelaku Tindak Pidana Penggelapan Dalam Jabatan (Studi Di Wilayah Hukum Kepolisian Resor Kuningan Jawa Barat), *Jurnal Hukum Unissula*, 2022,
- Beno, Gunarto and Sri Kusriyah, Implementation of Fully Required Elements in the Crime of Planning Murder (Case Study in Blora State Court), *Jurnal Daulat Hukum Volume 3 Issue 1*, 2020,
- Dian Yustisia Nabila & Jawade Hafidz, Penerapan Alat Bukti Petunjuk Oleh Hakim Dalam Menjatuhkan Putusan Tindak Pidana Pembunuhan (Studi Kasus Di Pengadilan Negeri Rembang), *Jurnal Ilmiah Sultan Agung Universitas Islam Sultan Agung Semarang*, 15 March 2023,
- Muhammad Baharuddin and Akhmad Khisni, Effectiveness of Pleidooi by The Supreme Of Criminal Murder, *Law Development Journal*, Volume 2 No 2, June, 2020,
- Subandi, Andri Winjaya Laksana, Pertanggungjawaban Pidana Terhadap Pelaku Tindak Pidana Penggelapan Dalam Jabatan (Studi Kasus Pengandilan Negeri Semarang), *Jurnal Hukum Unissula*, 2024,

Books:

- Adam Chazawi, *Kejahatan Terhadap Harta Benda*, Jakarta : Bayu Media, 2006,
- Andi Hamzah, *Bunga Rampai Hukum Pidana dan Acara Pidana*, Jakarta : Ghalia Indonesia, 2001,
- Andi Hamzah, *Delik-Delik Tertentu dalam KUHP*, Jakarta : Sinar Grafika , 2016,
- H.M. Rasyid Ariman dan Fahmi Raghieb, *Op. Cit.*, 2015,
- Lilik Mulyadi, *Hukum Acara Pidana*, Bandung : Citra Aditya Bakti, 2017,
- Mahendri Messie, *Op. Cit.*,
- Musa Darwin Pane, *Op. Cit.*, 2017,
- P.A.F. Lamintang dan Theo Lamintang, *Delik-Delik Khusus Kejahatan Terhadap Harta Kekayaan*, Jakarta : Sinar Grafika, Edisi 2, Cetakan 1, 2009,
- R. Soesilo, *Kitab Undang-Undang Hukum Pidana (KUHP) serta Komenta-Komenta Lengkapnya Pasal demi Pasal*, Bogor : Politeia, 2013,
- Radbruch & Dabin, *Op. Cit.*, 1950,
- Soerjono Soekanto & Sri Mamudji, *Normative Legal Research (A Brief Review)*, Rajawali Pers, Depok, 2019,

Master of Law, UNISSULA

Soerjono Soekanto, *Pokok-Pokok Sosiologi Hukum*, Jakarta: Rajawali Press, 1980,

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

Sri Warjiyati, *Memahami Dasar Ilmu Hukum, Konsep Dasar Ilmu Hukum*, Jakarta: Kencana, 2018,

Teguh Prasetyo, *Criminalization in Criminal Law*, Publisher Nusa Media: Bandung, 2011,

W.A. Bonger, *Pengantar Tentang Kriminologi*, Jakarta : Ghalia Indonesia, 1970,

Internet:

<https://siplawfirm.id/tindak-pidana-penggelapan/?lang=id>

Regulation:

Law Number 1 of 2023 concerning the Criminal Code, Article 522.

Law Number 1 of 2023 concerning the Criminal Code, Chapter II concerning Criminalization (Articles 54–62).