

Legal Analysis of the Criminal Act of Embezzlement in Office that is Continuously Committed: A Case Study of the Decision of the Mempawah District Court

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Abstract. *Information technology systems have now penetrated nearly every aspect of human life, attracting significant attention from people worldwide and transforming their lifestyles. Advances in computer technology have coincided with changes in society, encompassing social values, norms, behavioral patterns, the organization, and the structure of societal institutions. In this context, criminal law forms part of a country's overall legal system. Criminal law is a subset of public law, which regulates the relationship between the state and individuals and the public interest, in contrast to private law, which regulates relationships between individuals and private interests. Acts prohibited by criminal law and punishable by law are known as criminal acts or offenses. In the Criminal Code (KUHP), criminal acts are classified into two types: crimes and violations. Examples of crimes include theft, embezzlement, assault, and murder, while violations include delinquency, begging, and vagrancy. Crime in society develops in line with the development of society itself, as crime is a product of society and needs to be addressed. This is because crime will not disappear on its own; instead, criminal cases are becoming more frequent, with the most dominant type being crimes against property, particularly embezzlement. Crime against property will likely increase in developing countries. This increase is in line with economic development and growth. Crime, as a social phenomenon occurring on earth, will likely never end, in line with the development and social dynamics that occur in society. This criminal problem appears to continue to grow and will never recede, both in terms of quality and quantity. This development causes unrest for both society and the government. Based on the First National Law Seminar in 1963, it was suggested that the purpose of Indonesian criminal law is to prevent obstacles to the creation of the society that the Indonesian people aspire to, by establishing prohibited acts and the penalties threatened to violate these prohibitions. Criminal acts are contrary to the order desired by law and are detrimental to society, and are therefore strictly prohibited. A good legal system will certainly be useless if not enforced. For this, quality resources and supporting facilities and infrastructure are needed. Furthermore, broad public support is a prerequisite for achieving just law enforcement. The use of criminal law with negative sanctions should be viewed as a last resort/subsidiary measure, prioritizing sanctions in other legal fields. If criminal law is to be involved, the lighter sanctions should be used among the many alternative sanctions threatened.*

Keywords: *Criminal Act; Embezzlement; Position.*

1. Introduction

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 create an orderly, prosperous and just social, national and state life in order to achieve the goals of the state as mandated in the preamble to the 1945 Constitution of the Republic of Indonesia.¹

Information technology systems have now penetrated nearly every aspect of human life, attracting significant attention from people worldwide and transforming their lifestyles. Advances in computer technology have been accompanied by changes in society, encompassing social values, norms, behavioral patterns, the organization, and the structure of societal institutions. In this context, criminal law forms part of the overall legal system in force in a country. 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 relationships between individuals and private interests. Acts prohibited by criminal law and punishable by law are known as criminal acts or offenses. In the Criminal Code (KUHP), criminal acts are classified into two types: crimes and violations. Examples of crimes include theft, embezzlement, assault, and murder, while examples of violations include delinquency, begging, and vagrancy.²

Crime in society develops along with the development of society itself, because crime is a product of society and this needs to be addressed.³ This is because crime will not disappear on its own. Instead, criminal cases are becoming more frequent, with the most prevalent being property crimes, particularly embezzlement. Property crimes will likely increase in developing countries. This increase is in line with economic development and growth.⁴ Crime, as a social phenomenon occurring on earth, will likely never end, keeping pace with the developments and social dynamics within society. This criminal problem appears to be constantly evolving and will never recede, both in terms of quality and quantity. This development is causing concern for both society and the government.⁵

Based on the First National Law Seminar in 1963, it was suggested that the purpose of Indonesian criminal law is to prevent obstacles to the creation of the society the Indonesian people aspire to, by establishing prohibited acts and the penalties threatened for violators of these prohibitions. Criminal acts are contrary to the order desired by law and are detrimental to society, and are therefore strictly prohibited. A good legal rule will certainly be useless if it is not enforced. For this, quality resources and supporting facilities or infrastructure are needed. Furthermore, broad public support is a prerequisite for the realization of just law enforcement. The use of criminal law with negative sanctions should be seen as a last resort/subsidiary, namely by prioritizing types of sanctions in other legal fields, and if criminal law is to be involved, the lighter sanctions should be used among the many alternative sanctions threatened.⁶

2. Research Methods

The approach method used in this research is a normative legal approach. The normative legal approach is legal research conducted by examining library materials or secondary data as the basis for research by conducting a search of regulations and literature related to the problem being studied.⁷

3. Results and Discussion

3.1. General Overview of Criminal Liability

Based on foreign terms, criminal liability is also known as theorekenbaardheid or criminal responsibility, which refers to the punishment of an offender with the aim of determining whether a defendant or suspect can be held responsible for a criminal act.

According to Article 34 of the Draft New Criminal Code, criminal liability is defined as the extension of objective blame for a criminal act based on applicable legal provisions. Subjectively, the perpetrator meets the requirements in the (criminal) law to be subject to criminal punishment for their actions. Meanwhile, the requirement for criminal liability or the imposition of a penalty is that there must be an element of fault, either intent or negligence.⁸

Article 27 of the 1982/1983 Criminal Code concept states that criminal responsibility is the continuation of objective condemnation for illegal actions and applies subjectively to perpetrators who fulfill the legal requirements and can be punished for their actions.⁹

Based on the draft of the 2004/2005 New Criminal Code, Article 34 defines criminal responsibility as follows: "Criminal responsibility is the extension of objective blame for a criminal act and subjectively to a person who meets the requirements to be punished for that act."

According to the explanation given: "A criminal act does not stand alone; it is meaningful only when there is criminal responsibility." This means that every offender is not automatically punished. Because they are punishable, they must be criminally responsible. Criminal responsibility arises from the extension of objective blame (vewijbaarheid) for an act declared a criminal act, and subjectively to a perpetrator of the crime who meets the requirements to be punished.

⁷ Soerjono Soekanto & Sri Mamudji, *Penelitian Hukum Normatif (Suatu Tinjauan Singkat)*, Rajawali Pers, Depok, 2019, p. 13-14.

⁸ Hamzah Hatrik, *Asas Pertanggungjawaban Korporasi Dalam Hukum Pidana Indonesia*, Raja Grafindo, Jakarta, 1996, p. 11

⁹ Djoko Prakoso, *Pembaharuan Hukum Pidana Di Indonesia*. Liberty, Yogyakarta, 1987. P. 75.

Master of Law, UNISSULA

According to Pompee, the Dutch equivalents of criminal responsibility are *aansprakelijk*, *verantwoordelijk*, and *toerekenbaar*. The person is *aansprakelijk* or *verantwoordelijk*, while *toerekenbaar* is not the person, but the act for which the person is held responsible.¹⁰

The policy of establishing a criminal accountability system as a criminal policy is a matter of selecting from various alternatives. Therefore, the selection and definition of a criminal accountability system are inseparable from various reasonable and prudent issues, in accordance with the circumstances and developments of society.

Roeslan Saleh stated that: "Criminal accountability is defined as the continuation of objective blame in a criminal act and subjectively fulfilling the requirements for punishment for those actions."¹¹ Objective blame refers to an action committed by a person that is prohibited. The indicator is an action, whether in the formal legal sense or against substantive law. Subjective blame refers to the person committing the prohibited act. Even if a person has committed a prohibited act through no fault of their own, there is no criminal liability.

Fault, in a broad sense, can be equated with the understanding of responsibility in criminal law. It implies the blameworthiness of the perpetrator or their actions. Therefore, when we say that someone is guilty of a crime, it means they can be prosecuted for their actions. Essentially, criminal liability is a mechanism created to respond to violations of a specific, agreed-upon act.¹²

Based on the explanation above, criminal liability is burdensome/imposes responsibility on the perpetrator of the crime, in relation to the basis for imposing criminal sanctions. If an act or action is unlawful, then a person will be held criminally liable. If an element is found within the individual that causes the person to lose the capacity to be responsible, then that person can lose their responsibility.

3.2. General Overview of Criminal Acts

The current Criminal Code is a "Dutch legacy" that existed before Indonesian independence. Based on the Koninglijke Besluit (KB) in 1915, a law was enacted called the "Wetboek van Strafrecht voor Nederlands Indie" (Wetboek van Strafrecht voor Nederlands Indie), which came into effect in the Dutch East Indies on January 1, 1918. The law contains the term *strafbaarfeit*.

Moelyatno and Roeslan Saleh use the term criminal act, although they do not translate *strafbaarfeit*. Utrecht adopted the term "criminal camouflage" as a criminal case, but Moelyatno rejected the term "criminal event." He argued that the term only identifies specific events. For example, a specific event, such as a person's death, is not prohibited. Criminal law

¹⁰ Andi Hamzah, *Op.Cit*, p.131

¹¹ Roeslan Saleh dalam Hanafi Amrani dan Mahrus Ali, *Sistem Pertanggungjawaban pidana Perkembangan dan Penerapan*, PT Rajawali Press, Jakarta, 2015, p.21.

¹² Hanafi Amrani dan Mahrus Ali, *Op. Cit* , p. 21

Master of Law, UNISSULA

does not prohibit the death of a person, but it does prohibit the death of someone else.¹³ However, all laws now use the term "criminal act," such as the Economic Crimes Law, the Immigration Crimes Law, and the Corruption Eradication Law.

"Crime" is a legal concept, distinct from the terms "evil act" or "crime" (Crime or Verbrechen or misdaad). It is interpreted criminologically and psychologically. Scholars disagree on the content of the concept of "criminal act." As a general overview, Moelyatno and Djoko Prakoso state that the legal definition of a crime or criminal act is "an act prohibited by law, the violation of which is subject to sanctions."¹⁴

According to Sudarto, punishment is defined as suffering deliberately inflicted on someone who commits an act that meets certain requirements. Meanwhile, according to Roeslan Saleh, punishment is a reaction to a crime, and this takes the form of suffering deliberately inflicted by the state on the perpetrator of the crime.¹⁵

Unlike Moeljatno, Dutch criminal law experts Enschade, Yonkers, Pompe, and Simmons define a crime as human behavior that constitutes a crime and violates the law and is subject to disciplinary action. Enschade, Yonkers, Pompe, and Simmons' simple definition encompasses both crime and criminal liability, as well as the imposition of punishment for violating the law, as a necessary element of criminal liability.

However, Dutch criminal law experts also define it more explicitly. Criminal liability, like Vos Hewinkel Slinga, excludes criminal liability. They believe that crime is a single term, and ultimately, all actions chosen after consideration are punishable by a crime, either by doing something or refraining from doing something, or consisting of crimes and violations. This view separates criminal acts from actual criminal liability to facilitate the prosecution of someone who has committed a crime based on evidence.

3.3. General Overview of the Crime of Embezzlement

The crime of embezzlement is regulated in Chapter XXIV, Articles 372 through 377 of the Criminal Code. In its basic form, it is stated as follows: "Anyone who intentionally and unlawfully appropriates property that is wholly or partially owned by another person and is in his control, not through a crime, shall be punished for embezzlement, with a maximum imprisonment of four years or a maximum fine of nine hundred rupiah."

The crime as referred to in Chapter XXIV of the Criminal Code is more accurately referred to as "the crime of abuse of rights" or "abuse of trust." This is because the essence of the crime regulated in Chapter XXIV of the Criminal Code is "abuse of rights" or "abuse of trust." This

¹³ Andi Hamzah, *Op.Cit*, p. 86.

¹⁴ Djoko Prakoso dan Agus Imunarso. *Hak Asasi Tersangka dan Peranan Psikologi dalam Konteks KUHAP*. Bina Aksara, Jakarta, 1987. p. 137

¹⁵ Muladi, *Lembaga Pidana Bersyarat*. Alumni, Bandung, 1985. p. 22.

Master of Law, UNISSULA

terminology makes it easier for everyone to understand the actions that are actually prohibited and punishable by the provisions.

Then, Adami Chazawi added an explanation regarding embezzlement based on Article 372 of the Criminal Code, which is stated as follows:¹⁶

"The word verduistering, which in our language is literally translated as embezzlement, is given a broad (figuurlijk) meaning in the Dutch community, not its literal meaning of making something obscure or dark. It is closer to the notion that the perpetrator abuses their right to control (own) an object, a right that must not exceed their right as someone entrusted with control of the object, not through a crime."

M. Sudrajat defines the crime of embezzlement as follows:¹⁷

"Embezzlement is the embezzlement of property that should be under the perpetrator's control, by means other than committing a crime. Therefore, the property was entrusted to the perpetrator by the owner. Essentially, the perpetrator failed to fulfill the trust bestowed upon him or her by the person entitled to the property."

We can also see several explanations regarding the meaning of the word embezzlement. C.S.T. Kansil and Christine S.T. Kansil define embezzlement in its entirety:

"Embezzlement is the act of anyone who unlawfully possessing property that belongs, in whole or in part, to another person, and whose possession is not due to a crime. He or she is guilty of a crime, for example, under Article 372 of the Indonesian Criminal Code, which qualifies as verduistering or embezzlement."

Therefore, embezzlement can be interpreted as a deviant act that abuses the trust placed in another person from the beginning, when the property was in their possession, not as the result of a crime.

4. Conclusion

Application according to the Criminal Code in the case of criminal acts of embezzlement in office that are carried out continuously case study of decision 186/Pid.B/2025/PN Mpw, In decision Number 186/Pid.B/2025/PN Mpw, the application of the Criminal Code (KUHP) to the criminal act of embezzlement in office that is 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 that are carried out repeatedly or continuously as a series of criminal acts. In the decision, the panel

¹⁶ Adami Chazawi, *Pelajaran Hukum Pidana Bagian I*, Raja Grafindo, Jakarta, 2002, p. 43

¹⁷ M. Sudrajat Bassar, *Tindak-tindak Pidana Tertetu Dalam KUHP*, Remaja Karya, Bandung, 1984, p.74

Master of Law, UNISSULA

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 the punishment reflects the consideration of the severity of the consequences of the actions and their continuity. The Judge's Considerations in Handing Down a Verdict on the Perpetrator of the Criminal Act of Embezzlement in Office which was carried out continuously in the decision 186/Pid.B/2025/PN Mpw 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. 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.

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