

The Implementation of Criminal Sanctions against Persons of the Criminal Action of Embracing Money Around

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Abstract. *Cases of embezzlement of online gatherings must be dealt with firmly considering the large negative impact that is detrimental to society. However, the evidentiary system in online gathering embezzlement cases creates difficulties. Even though Law No. 11 of 2008 concerning Information and Electronic Transactions (UU ITE), in fact it has not been able to overcome the criminal acts that have occurred, especially the embezzlement of online social gathering money. Meanwhile, the Law on embezzlement has been drafted so much as in book II Chapter XXIV of the Criminal Code which consists of Articles 372, 373, 374, 375 and 376, but has not been able to deter the perpetrators of online arisan. This also applies to social gatherings that are held offline. Therefore, in accordance with the judge's consideration in case 288/Pid.B/2016/PN.Smg which stated that the defendant was detained. However, the victims of arisan embezzlement have suffered material losses. The thesis entitled Application of Criminal Sanctions against Criminals Against Arbitrators of Money Arising (Case Study at the Semarang District Court) aims to examine and analyze criminal sanctions; consideration of judges in applying criminal sanctions and constraints as well as solutions in applying criminal sanctions to the perpetrators of the crime of embezzlement of money gathering at the Semarang District Court. This research uses a case study approach and is a type of normative juridical research. The data used is secondary data using legal materials related to narcotics and judicial power. The results of the study proved that the defendant was sentenced to 1 year and 10 months in prison. The balance of judges deciding cases is based on some evidence and there are obstacles to insufficient evidence. The solution is that it is hoped that the public will increase awareness in transactions and collaborate with the National Police to solve problems. The community is expected to be careful when participating in social gatherings both online and offline and must always use valid transaction evidence when handing over money and communications related to transactions to back up if something goes wrong.*

Keywords: Criminal; Embezzlement; Sanctions.

1. Introduction

Crime as a social phenomenon that occurs on earth may never end in line with developments and social dynamics that occur in society. Crime is a form of deviant behavior that always exists and is inherent in every form of society, criminal law as a tool or means of solving problems, is expected to be able to provide the right solution. In the view of the law, everyone has the right to recognition, guarantees, protection and/or fair legal certainty, and to equal treatment before the laws in force in Indonesia.¹Every human being has the right to equal treatment before the law, which means that the law is needed without regard to anyone who needs help.

Basically the law is made with the aim of protecting society from existing social problems, and in principle the law is also a statement and a variety of facts to guarantee the adjustment of freedom in a person's will. In law, if we can uphold the law and truth, then it also means that we comply with applicable laws.²Compliance contained in the law itself is also due to legal awareness and/or sincerity to comply with the law.

If everyone has legal awareness and obeys the law, the occurrence of a crime will decrease. As is the case with the crime of embezzlement of social gathering money which has been happening lately. Basically the mechanism for arisan activities is carried out by receiving arisan money from each member, where after the members receive the arisan money, then they propose who wants to withdraw and who wants to withdraw, offers a discount for those who have not withdrawn, then after the arisan money has been collected, then will be paid to members who withdraw. Then for members who have not withdrawn, they will get a payment discount, so the amount paid will continue to decrease if we have not withdrawn according to the offer that is attractive. The way to commit fraud and/or embezzlement is by saying that someone is withdrawing whose name is person A, for example, even though person A does not receive withdrawal money. This arisan embezzlement explained to its members by giving a piece of paper, and collecting arisan members was by cajoling and seducing them by saying that those who draw the last arisan will get the benefits.³

Arisan is a form of collecting money by lottery and the mechanism is regulated in

¹Loden Marpaung, *Criminal Case Handling Process (Investigation and Investigation)*. Jakarta: Sinar Graphics, 2008. p.7

²Sudarto, *Criminal Law 1 (Sudarto Foundation d/a Faculty of Law UNDIP: Semarang, 2013)*, p.6.

³Andriani and Suriani, *Juridical Review of the Crime of Arising Money Embezzlement (Case Study No. 139/Pid.B/2018/Pn.Kis)* Pioneer Journal of LPPM Asahan University Vol. 6 No. 1 January 2020. Pg. 16

such a way by the head of the arisan group in collecting money and withdrawing money using the lottery method or determining the winner by mutual agreement, each arisan group will collect money according to the agreement between group members, so the mechanism for these members the obligation to hold a meeting in the next period the gathering will be held. Arisan operates outside the formal economy as another system for saving money. Arisan is also used as another way to save, because when we participate in arisan we will be forced to pay contributions, which means we are forced to save. Technological developments are increasingly rapid and there are more and more virtual world users, so now social gatherings are also following developments with the internet through social media. Arisan held on social media is often called "Online Arisan", online arisan is carried out without meeting directly with the chairman (owner) of the arisan. Arisan online is one of the positive impacts that arise from the results of technological advances.

The crime of embezzlement is a crime committed by someone as a result of committing an act that is not openly. The term embezzlement is used by people to refer to the type of crime which in book II Chapter XXIV of the Criminal Code is a translation of the word "Verduistering" (Dutch). The rise of cases of embezzlement of online gatherings due to existing technology is of course troubling for the community. Technological developments that should be used for something positive so that it has positive benefits for life but is misused for personal gain without thinking about the huge negative impact and harming others. It can be said that technology can be used for good things but if it is used by people who responsible for causing harm to others.

This case of embezzlement of online gatherings must be dealt with firmly considering the large negative impact that can be detrimental to society. Seeing this fact, strict law enforcement should be carried out. The evidentiary system in this online gathering embezzlement case creates difficulties. Weak regulations governing online gathering embezzlement have made this case more and more common, especially in Indonesia. In addition, the government is still unable to trace sites that lead to fraud and embezzlement. So to reduce cybercrime in Indonesia is very difficult to do. This is a difficulty in cases of embezzlement of online gatherings using electronic media through social media which require parties who are competent in the electronic field. For this reason, the government in Indonesia has drafted Act No. 11 of 2008 concerning Electronic Information and Transactions (UU ITE) which aims to make the use of technology more orderly and not to be used arbitrarily by the people of Indonesia. Basically, the crime of embezzlement from social gathering money can be committed by anyone against anyone, including people who are already trusted. The crime of embezzlement of arisan money also occurs in conventional arisan as in the case above. Which is like one of the cases that has occurred and has been decided by the Semarang District

Court. Basically, the crime of embezzlement from social gathering money can be committed by anyone against anyone, including people who are already trusted. The crime of embezzlement of arisan money also occurs in conventional arisan as in the case above. Which is like one of the cases that has occurred and has been decided by the Semarang District Court. Basically, the crime of embezzlement from social gathering money can be committed by anyone against anyone, including people who are already trusted. The crime of embezzlement of arisan money also occurs in conventional arisan as in the case above. Which is like one of the cases that has occurred and has been decided by the Semarang District Court.

This study aims to analyze the application of criminal sanctions for embezzlement of social gathering money at the Semarang District Court.

2. Research Methods

This research is a normative juridical research, with the specification of a descriptive research analysis using secondary data collection methods which are analyzed qualitatively.

3. Results and Discussion

3.1 Application of the Criminal Sanction for Arising Money at the Semarang District Court

In the Criminal Code (KUHP), the words "embezzlement" and "embezzlement" are words that refer to criminal acts where if an item is in the power of a person not because of a crime but because of a lawful act, then the person who is entrusted to store and so on, control the goods for self-interest unlawfully, then that person means committing embezzlement.

According to book II Chapter XXIV of the Criminal Code, the forms of punishment that can be imposed on perpetrators of embezzlement are imprisonment and fines.⁴ Depending on the weight and qualifications of the embezzlement committed. Penalties imposed on embezzlement perpetrators vary from a minimum imprisonment of 3 (three) months to a maximum of 6 (six) years in prison. The penalties for fines also vary, ranging from a fine of at least Rp. 250, - (two hundred and fifty rupiah) up to a fine of Rp. 900,- (nine hundred rupiah).

Provisions regarding criminal penalties as stipulated in Articles 372, 373, 374, 375 of the Indonesian Criminal Code do not apply to civil servants because of their position. Because the type of embezzlement of civil servants because of their

⁴Sianturi, Criminal Acts in the Criminal Code and its Description, (Jakarta: Alumni, 1983), page 163.

position is not regulated in Book II of Chapter XXIV of the Criminal Code but in Chapter XXVIII of the Criminal Code. Embezzlement committed by civil servants in their positions is called embezzlement of office. Provisions regarding embezzlement of office are regulated in Articles 415 and Article 417 of the Criminal Code which specifically regulate a civil servant who because of his position of money or valuable papers who in his position control over these objects allows others to take them or embezzle them. The formulation of Articles 415 and 417 of the Criminal Code was adopted by Law no. 31 of 1999 jo. Law No. 21 of 2001.⁵

In the aspect regarding certain qualities as a civil servant, there are issues related to inclusion issues, namely for people who are not civil servants who are involved with civil servants. According to Adam Chazawi, to a person who is not a civil servant who is involved in a crime of office with a civil servant, the other person can be punished as a person who orders a criminal act to be committed, this element is contained in Chapter V Article 55 of the Criminal Code which states that to a person who intentionally persuading to commit an act may be subject to criminal sanctions under Article 163 of the Criminal Code, namely, imprisonment for a maximum of 4 (four) years in prison and a fine of up to Rp. 4.500,- (four thousand five hundred rupiah)⁶.

Determination of sanctions for perpetrators of embezzlement committed by a person can be determined from the class of embezzlement he is committing. Because, from this classification, it can be seen whether the crimes committed include light embezzlement, serious embezzlement, on position or as a delict. This greatly affects the punishment that will be imposed on him.

On the one hand, the punishment given to the perpetrators of criminal acts is not only intended to give suffering to the perpetrators or create a deterrent, but on the other hand, it is also intended to enable the perpetrators to return to live in society as they should.⁷

3.2. Judge's Considerations on the Application of Criminal Sanctions in the Semarang District Court

Based on the results of a review of the judge's decision No. 288/Pid.B/2016/PN.Smg it is known that the embezzlement occurred around May 2015 at around 10.00 WIB at the Tambak Lorok Kongsu Market, North Semarang.

A court decision is a judge's statement uttered in a court session which can be in

⁵Victor M. Situmorang, *Crime of Civil Servants*, (Jakarta: Rineka Cipta), page 26

⁶Lamintang, *Special Crimes Against Property*, (Bandung: Sinar Baru, 1988), p. 50.

⁷Tolib Setiady, *Principles of Indonesian Panitensier Law*, (Bandung: Alfabeta, 2010), page 21.

the form of conviction, acquittal, or release from all charges. Decision making is needed by the judge to impose a sentence or sentence to be given to the defendant. The judge's consideration is the basis of the judge's argument in deciding a case or a stage where the panel of judges considers the facts revealed during the trial.⁸

The judge's legal considerations in imposing a sentence on a case pay attention to (1) the indictment of the Public Prosecutor; (2) testimony of witnesses who were present at the trial; (3) the Defendant's statement, evidence, subjective and objective requirements; (4) the results of the community advisor's report, and (5) mitigating and aggravating matters. The Panel of Judges in determining whether or not someone can be proven guilty and can be sentenced, then all of the elements charged by the Public Prosecutor against him must be proven and fully fulfilled.

The basic considerations used by the Judge in imposing a sentence in the decision Number 288/Pid.B/2016/PN.Smg which are based on the facts in the trial and also the judge's sense of justice refers to the articles relating to criminal acts which is conducted. As for the consideration of the judge in imposing a sentence against the defendant, among others⁹:

First, the Public Prosecutor charged the defendant with alternative forms of indictment, namely the first charge of violating Article 378 in conjunction with Article 65 paragraph (1) of the Criminal Code or the second in violation of Article 372 in conjunction with Article 65 paragraph (1) of the Criminal Code.

Second, the Public Prosecutor's indictment is alternative in nature, so in considering the Public Prosecutor's indictment, which is in accordance with the facts obtained at trial, namely violating Article 372 in conjunction with Article 65 paragraph (1) of the Criminal Code, the elements of which are as follows:

Whoever intentionally and unlawfully owns goods which are wholly or partly owned by another person and the goods are in his hands not because of a crime in the case of concurrent several acts which must be seen as acts that stand alone so that they constitute several crimes.

It is clear that those who commit the crime of embezzlement must be given criminal sanctions or accountability by the members of the arisan who are harmed, in the form of replacing money or by reporting to the authorities (the police). In this case the defendant has been subject to legal detention, so the

⁸Junaidi Efendi, *Reconstruction of the Basic Legal Considerations of Judges*, (Jakarta: Kencana, 2014), p. 124.

⁹Judge's Decision Number 288/Pid.B/2016/PN.Smg p.11.

detention period must be deducted entirely from the sentence imposed. Because the accused was detained and the detention of the accused was based on sufficient reasons, it was necessary to determine that the accused remained in detention and was sentenced to a criminal sentence, so the defendant was charged with paying court money.

The judge's consideration was also assessed from the aggravating and mitigating circumstances of the defendant. This means that before imposing a sentence on the defendant, the Panel of Judges will first consider aggravating circumstances and mitigating circumstances for the defendant as follows: (1) aggravating circumstances, namely the actions of the defendant harming other people, and the defendant has enjoyed the results. (2) Mitigating circumstances, namely the defendant confessed frankly and expressed regret for his actions and promised not to repeat it again in the future.

Based on the mitigating and aggravating circumstances for the defendant, and taking into account article 372 Jo article 65 paragraph 1 of the Criminal Code and Act No. 8 of 1981 concerning Criminal Procedure Code and other relevant laws:

JUDGE:

1. Defendant I Jumirah Binti Alm Maderun mentioned above was proven legally and convincingly guilty of committing the crime of "Continuous embezzlement"
 2. Sentenced a sentence against the Defendant with imprisonment for 1 (one) year and 10 (ten) months;
 3. Stipulates that the detention period that has been served by the Defendant is deducted in its entirety from the sentence imposed;
 4. Stipulate that the Defendant remains in custody;
 5. Establish evidence in the form of:
 - 1 (one) small green book
 - 1 (one) small red booklet
- Remain attached to the case file;
6. Charged the Defendant to pay court fees of Rp. 2,000, - (two thousand rupiah).

3.3 Obstacles and Solutions in the Implementation of Criminal Sanctions for Arising Money in the Semarang District Court

3.3.1 Obstacles in the Implementation of Criminal Sanctions for Arising Money in the Semarang District Court

The crime of embezzlement continues to occur in the midst of society due to several factors, the first of which is the weakness of law in Indonesia. This can be seen in Article 372 of the Criminal Code for the perpetrators of the crime of embezzlement, only sentenced to a maximum of 4 (four) years in prison. Any person who intentionally and unlawfully owns property which wholly or partly belongs to another person, but which is not in his power because of a crime, is threatened with embezzlement, by a maximum imprisonment of four years or a maximum fine of nine hundred rupiahs. What's more, most people do not want to report acts of embezzlement to law enforcement agencies because they are not materially harmed or lack knowledge about the law.

The second factor is the result of poverty in Indonesia that exists in the community, thus making people need high needs in order to support their daily lives and then be able to protect, prosper and send their children to school, as a result these people become victims of embezzlement from the perpetrators of embezzlement crimes. . The perpetrators of embezzlement take advantage of the poverty conditions of the community or a family under the guise of giving as a businessman, or by making social gatherings and others so that people are easily deceived by persuasion to get materials or money easily.

Next is the third factor, namely the weakness of security devices in the community. This can be seen that the perpetrators of embezzlement in carrying out embezzlement are no longer looking for prey by directly meeting potential victims, but the perpetrators of embezzlement use technological means, namely using internet facilities to find victims of crime, so to uncover this crime a system-based device is needed. technology.

3.3.2 Solutions in the Implementation of Criminal Sanctions for Arising Money at the Semarang District Court

Law enforcement officials must make preventive efforts to play a more active role in disseminating information about acts of embezzlement, especially in cases of embezzlement of social gathering money. Law enforcement officials start from the police who must eradicate crimes that often occur in the community.

Preventive efforts include, the crime of embezzlement can be made peace outside the realm of crime between the perpetrator and the victim. This can be done if the victim agrees to do so.

4. Conclusion

Determination of sanctions for perpetrators of embezzlement committed by a person can be determined from the class of embezzlement he is committing. This greatly affects the punishment that will be imposed on him. On the one hand, the punishment given to the perpetrators of criminal acts is not only intended to give suffering to the perpetrators or create a deterrent, but on the other hand, it is also intended to enable the perpetrators to return to live in society as they should. The judge's legal considerations in imposing a sentence on a case pay attention to (1) the Public Prosecutor's indictment can be proven and fully fulfilled; (2) testimony of witnesses who were present at the trial; (3) the Defendant's statement, evidence, subjective and objective requirements; (4) the results of the community advisor's report, and (5) mitigating and aggravating matters.

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