

Criminal Liability of Perpetrators of Criminal Acts of Embezzlement in Office Based on the Value of Justice

Bangga Prahara

Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia, E-mail:
bangga8star@gmail.com

Abstract. *The purpose of the study is to examine and analyze the criminal liability of perpetrators of embezzlement in office based on justice. The research method used is the statute approach, which is a study that prioritizes legal materials in the form of laws and regulations as basic reference materials in conducting research. The results of the research by the panel of judges at the Purworejo District Court who examined and tried the case stated that the defendant had been proven legally and convincingly guilty of committing the crime of embezzlement in office continuously as regulated and subject to criminal penalties in Article 374 in conjunction with Article 64 paragraph (1) of the Criminal Code by sentencing the defendant to imprisonment for 1 (one) year and 4 (four) months minus the time the defendant was in temporary detention with an order that the defendant remain in detention.*

Keywords: *Criminal; Embezzlement; Responsibility.*

1. Introduction

The criminal law applicable in Indonesia can be divided into two types, criminal law known in the Criminal Code (KUHP) and Special Criminal Law which is regulated outside the KUHP.¹ Furthermore, the definition of criminal law is a collection of regulations that regulate actions, both ordering someone to do or carry out something, and prohibiting someone to do or carry out something that is regulated in the law with criminal sanctions for those who violate it.²

Criminal law does not only provide an understanding of acts prohibited by a legal rule, which prohibition is accompanied by a threat (sanction) in the form of a certain penalty for anyone who violates the prohibition, but also includes matters relating to the imposition of criminal penalties and how the penalty can be implemented. The prohibition is directed at an act, a condition or incident

¹Rodliyah, 2017, Special Criminal Law, Elements and Criminal Sanctions, First Edition, PT. Raja Grafindo Persada, Jakarta, p.1

²Rahman Syamsuddin, 2014, Knitting Law in Indonesia, Mitra Wacana Media, Jakarta, p.192

caused by a person's behavior or actions. The threat of criminal penalties or sanctions are directed at the perpetrator who commits a criminal act, usually referred to as "whoever", namely the perpetrator of the criminal act as a legal subject, namely the supporter of rights and obligations in the legal field.³

In general, criminal law is the most important part of punishment, because it is the culmination of the entire process of holding someone responsible for committing a crime. Criminal law without punishment means declaring someone guilty without any definite consequences for the mistake. Thus, the concept of guilt has a significant influence on the imposition of punishment and the process of its implementation.⁴

The issue of abusing authority becomes a problem in a company or in managing a country. Understanding what is actually meant by abuse of authority. If examined more specifically, the concept of abuse of authority must be seen from what is misused or abused when the person concerned has a position. In carrying out abuse of authority, it must be used for individual interests or to gain power for unilateral interests.⁵

One type of Criminal Act that exists in the context of community life is the crime of embezzlement in office. The crime of embezzlement in office itself has similarities and differences with the crime of corruption. The similarities between the crime of embezzlement in office and the crime of corruption are both committing unlawful acts because of their position. While the difference is that the crime of corruption is detrimental to state finances, the crime of embezzlement in office does not harm state finances, but rather harms a company.⁶

Embezzlement is regulated in CHAPTER XXIV (Book II) of the Criminal Code (KUHP) Article 372 (ordinary embezzlement), Article 373 (minor embezzlement), Article 374 and Article 375 (aggravated embezzlement) and Article 376 (embezzlement

³Chairul Huda, 2006, From No Crime Without Fault Towards No Criminal Responsibility Without Fault, Kencana Prenada Media, Jakarta, p. 127

⁴Ira Alia Maerani, Siti Rodhiyah Dwi Istinah. "The Formulation of the Idea of Forgiveness in Indonesian Criminal Law Policy (A Study Based on Restorative Justice & Pancasila Values)". *Journal of Legal Sovereignty* Volume 5 Issue 4, December 2022, Url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/24290/7688> accessed February 20, 2024.

⁵Robertus Dicky Armando, Gde Made Swardana, Sagung Putri ME Purwani, tt, Legal Analysis of Abuse of Authority in Criminal Acts of Corruption Based on Law Number 20 of 2001, Specialization Study Program in Criminal Law, Faculty of Law, Udayana University, p.7

⁶Doni Cakra Gumilar, Sri Endah Wahyuningsih and Jawade Hafidz. The Formulation of a Special Minimum Criminal Threat System Formulation in the Corruption Law. *Law Development Journal*. Volume 5 No. 1, March 2023, (54-70), Url: <https://jurnal.unissula.ac.id/index.php/ldj/article/view/30035/8108> accessed February 20, 2024

within the family).⁷The crime of embezzlement in office is often referred to as aggravated embezzlement, which is expressly stated in Article 374 which reads: "Embezzlement in office is embezzlement committed by a person whose control over goods is due to an employment relationship or because of a livelihood or because they receive wages for it, and is subject to a maximum prison sentence of five years."

One of the cases of embezzlement in office in the Purworejo District Court decision with Number: 76/Pid.B/2021/PN Pwr. The actions committed by the defendantYear2019 to September 2020 worked at BTPN Syariah Mobile Marketing Sharia (MMS). The defendantworked at BTPN Syariah MMS as a PKWT I Employee based on a Fixed Term Employment Agreement Letter No. 93496 PKWT/BTPNS/CHC/V/2019 dated May 31, 2019 and started working on June 18, 2019 as a CO (Community Officer) with a monthly salary of Rp. 2,000,000,- (two million rupiah). This study aims to determinecriminal responsibility of perpetrators of criminal acts of embezzlement in office based on justice.

2. Research Methods

The approach method using a statute approach is a research that prioritizes legal materials in the form of statutory regulations as basic reference material in conducting research.⁸In addition, it also uses a case approach (Case Approach) the approach is carried out by conducting a case study related to the legal issues faced. The specifications used are descriptive analytical, providing systematic, logical exposure, analyzing it in order to study library materials, legislation, applicable legal norms and analyzed to draw conclusions. The data sources used secondary data consist of primary legal materials in the form of legislation related to the legal research being conducted.

Data collection methods with the main activities carried out are literature studies, reviewing, analyzing and processing literature, laws and regulations, judges' decisions and articles or writings related to the problems to be studied. Data analysis methods are carried out qualitatively with data analysis methods by grouping and selecting data obtained from literature studies.

3. Results and Discussion

The rule of law as stated in the 1945 Constitution of the Republic of Indonesia means that the state adheres to and is based on the law (*rechtsstaat*), not based on subjective decisions which are only based on power alone (*machtstaat*).⁹The meaning of a state based on law is that state power is limited by law, meaning

⁷Jonaedi Effendi, 2015, *Quick & Easy Understanding of Criminal Law*, First Edition, Kencana, Jakarta, p. 139

⁸Amirudin and Zainal Asikin, 2004, *Introduction to Legal Research Methods*, Raja Grafindo Persada, Jakarta, p.118

⁹Diana Halim Koentjoro, 2004, *State Administrative Law*, Ghalia Indonesia, South Bogor, p. 34

that all attitudes, behavior and actions, whether carried out by the rulers or state apparatus or by citizens, must be based on law.

The existence of criminal law as a means to resolve problems that are able to provide solutions to problems in society to create order, security and peace in society as an effort to prevent or enforce the law after violations that harm society occur.¹⁰One of the functions of law as a rule or attitude of human behavioral actions. Human behavioral problems are influenced not only by the emergence of obedience or compliance with the law, but also behavioral actions that are positive or negative in nature, there are violations of the law.¹¹

Every perpetrator of a crime who has met the objective and subjective requirements will be held accountable for his actions. In being held accountable for his actions, the perpetrator will only face law enforcement officers.¹²Legal reality is not always as expected. One of the criminal penalties or punishments is not a pleasant thing for someone who is convicted. Criminal penalties also cost relatively a lot, for example in the process of court costs, prison, parole.¹³

The crime of embezzlement is a crime related to morals or mentality and trust built on a person's honesty. The crime of embezzlement begins with the emergence of a party's trust which is carried out through the perpetrator of the crime of embezzlement. The crime of embezzlement is part of a crime against human wealth which is expressly stated in the Criminal Code (KUHP).¹⁴Meanwhile, the crime of embezzlement in office is often referred to as aggravated embezzlement, which is expressly stated in Article 374, which states: Embezzlement in office is embezzlement committed by a person whose control over goods is due to an employment relationship or because of a livelihood or because they receive wages for it, and is subject to a maximum prison sentence of five years.

The crime of embezzlement in office is carried out by people inside or outside the company, in terms of aspects, the person is very knowledgeable about the

¹⁰Sri Endah Wahyuningsih, *Model for Developing Criminal Law Principles in the Criminal Code Based on the Values of Belief in the Almighty God*, Journal of Legal Sovereignty *Vol 2, No 2, 2018*, Url: <https://jurnal.unissula.ac.id/index.php/ldj/article/view/30035/8108> accessed February 20, 2024.

¹¹ Soerjono Soekanto, 2005, *Effectiveness of Law and the Role of Sanctions*, Remaja Karya, Bandung, p. 10

¹² Ali Imron, "Transformation of Islamic Law into Indonesian National Law", Journal of Islamic Legal Thought al-Ahkam Vol.5 No.2 April 2012, IAIN Walisongo Semarang, p.128

¹³ Mahrus Ali, 2015, *Basics of Criminal Law*, Sinar Grafika, Jakarta, p.206

¹⁴ Mahendri Massie, Criminal act of embezzlement in using office based on article 415 of the Criminal Code, Jurnal lex crimen, Vol.6, No. 7, September 2017, p. 101

internal regulations of a company where the person holds the job.¹⁵ So it is easy for parties to carry out an action that falls into the category of criminal acts of embezzlement.¹⁶

One of the cases of embezzlement in office in the Purworejo District Court decision with Number: 76/Pid.B/2021/PN Pwr. The actions committed by the defendant Year 2019 until September 2020 worked at BTPN Syariah Mobile Marketing Sharia (MMS). Furthermore, there is tThe findings were conveyed to the Business Manager of BTPN Syariah MMS Kutoarjo, witness AW, who forwarded them to witness EW Bin SU as the Coordinator of Business Manager (BM) and Community Officer (CO) of BTPN Syariah Mobile Marketing Sharia (MMS) in the Purworejo and Wonosobo areas. The Anti Fraud Management (AFM) Team of the Head Office of PT. Bank BTPN Syariah Tbk (BTPN Syariah) conducted an inspection at the centers, one of which was the Bandung Selis A Kutoarjo Center. The team met with Ms. UMS and obtained information that the customer in the name of UMS applied for a loan through the defendant as CO but did not receive the loan, however, the customer in the name of UMS was entered into the BTPN system, which was known that all the disbursement of financing in the name of the customer was used by the defendant.

Facts revealed at trial p's actions Criminal responsibility cannot be separated from discussions about criminal acts. A person cannot be held responsible for being punished if he does not commit a crime. In imposing a criminal act, the elements of a criminal act and criminal responsibility must be fulfilled. So that in the trial, the defendant's actions as regulated and threatened with criminal penalties in Article 374 in conjunction with Article 64 paragraph (1) of the Criminal Code. While the main element of a criminal act is that there must be a certain consequence of the perpetrator's actions in the form of losses to the interests of others, indicating that there must be a causal relationship (*causaal vervand*) between the perpetrator's actions and the loss of certain interests.¹⁷ An act is considered to have violated the law and can be subject to criminal sanctions, must be fulfilled by two elements, namely the *actus reus* element and the *mens rea* element. The *actus reus* element is the essence of the crime itself or the act committed, while the *mens rea* element is the perpetrator's mental attitude at the time of committing the act.

¹⁵ Muhammad Baharuddin and Akhmad Khisni, Effectiveness of Pleidooi by The Supreme Of Criminal Murder, Law Development Journal Volume 2 No 2, June, 2020, url : <http://jurnal.unissula.ac.id/index.php/RH> accessed February 20, 2024

¹⁶ Zainudin Hasan, Accountability of Perpetrators of Criminal Acts of Embezzlement in Office, Journal of Law, Vol.11, No.1, September 2010, p. 40.

¹⁷ Wirjono Projodikoro, 2003, Principles of Criminal Law in Indonesia, Refika Aditama, Bandung, p. 61

A person can be said to be a perpetrator if his actions have fulfilled all the elements of the crime charged. Therefore, during the examination in court, no justification or excuse was found for the defendant's actions, so the defendant must be held accountable for his actions and it is only right that the defendant be sentenced to a punishment commensurate with his actions.¹⁸ In court has been proven legally and convincingly according to the law. So that all elements have been proven, then the defendant has been proven legally and convincingly to have committed the crime of embezzlement in office continuously as regulated and threatened with punishment in Article 374 in conjunction with Article 64 paragraph (1) of the Criminal Code. In this case, the thing that must be proven does not recognize and is not subject to assumptions, but must be proven at least to meet the minimum requirements of proof. The law of proof is made to guarantee legal certainty and justice for everyone, to avoid the arbitrariness of judges in issuing a decision or verdict on a case they are handling.¹⁹

In order for a person to be held accountable, there still needs to be a condition that the person who committed this act was at fault or guilty. (*subjective wrestling*). In other words, the person must be able to responsible for his actions or if seen from an angle his actions, his actions must be accountable to people. In order to be punished, a person must be held accountable answer according to the Criminal Code (KUHP). To determine whether there is a legal subject's fault in the above case, several elements must be fulfilled, including:

- a. There is the ability to be responsible for the maker
- b. The spiritual relationship between the perpetrator and his actions, which is intentional (*dolus*) or negligence (*culpa*).
- c. There is no reason to erase mistakes or there is no reason to forgive.²⁰

The existence of criminal responsibility is a necessary condition, namely the maker must be able to be responsible, in other words, there must be the ability to be responsible from the maker. M According to Titik Triwulan, liability must have a basis, namely something that gives rise to a legal right for someone to sue another person and at the same time something that gives rise to a legal

¹⁸English: Sri Endah Wahyuningsih, *Model for Developing Criminal Law Principles in the Criminal Code Based on the Values of Belief in the Almighty God*, Journal of Legal Sovereignty *Vol 2, No 2, 2018*, [Url: https://jurnal.unissula.ac.id/index.php/RH/article/view/26722/7395](https://jurnal.unissula.ac.id/index.php/RH/article/view/26722/7395) accessed February 20, 2024.

¹⁹Andi Ahmad Suhar Mansyur, 2013, Normative Legal Analysis of Forgery of Authentic Deeds Carried Out by Notaries, Journal of the Faculty of Law, Brawijaya University, p. 2

²⁰Widya Hari Sutanto and Umar Ma'ruf, The Role of State Attorney Prosecutors to Restore State Financial Losses in Criminal Actions of Corruption to Make Justice, Law Development Journal Volume 3 Issue 1, March, 2021. [Url: http://jurnal.unissula.ac.id/index.php/RH/article/view/13882/5379](http://jurnal.unissula.ac.id/index.php/RH/article/view/13882/5379) accessed February 20, 2024

obligation for another person to provide accountability.²¹In the trial, the Defendant was physically and mentally healthy, could follow and answer all questions asked smoothly so that Article 44 of the Criminal Code (KUHP) did not apply to him and from the statements of the witnesses and the Defendant's confession which had confirmed the identity. The Defendant was indeed the person suspected of committing the crime as stated in the Public Prosecutor's indictment. In addition, the fulfillment of the elements of the Article charged by the public prosecutor in the trial did not invalidate the Defendant. So that the responsibility for the crime of embezzlement in the verdict of the Purworejo District Court based on justice has been proven legally and convincingly guilty of committing the crime of embezzlement with aggravation, which is expressly stated in Article 374 of the Criminal Code.

Criminal liability is carried out on the legal principle of no crime without fault. No crime here means that it can be meant that there is no criminal liability. Criminal liability can only occur if there is a criminal act, so this principle is also implied, no criminal liability without fault.²²The existence or absence of a crime does not depend on whether someone commits the act. Thus it does not depend on the existence of criminal responsibility of the perpetrator. The error in a violation of norms, usually an unlawful act from the external aspect. The internal aspect related to the will of the perpetrator is an error. An error is meaningless without being against the law. In criminal law there is not only moral error but also legal error, juridical error for the sake of justice.²³

Panel of judges at Purworejo District CourtThe person examining and trying the case stated that the defendant had been proven legally and convincingly guilty of committing the crime of continued embezzlement in office as regulated and threatened with punishment in Article 374 in conjunction with Article 64 paragraph (1) of the Criminal Code. Sentencing the defendant to a prison sentence of 1 (one) year and 4 (four) months minus the time the defendant was in temporary detention with an order that the defendant remain in detention.

4. Conclusion

Criminal liability for perpetrators of criminal acts of embezzlement in office is based on justice incontext of actiondefendant, the panel of judges at the Purworejo District Court who examined and tried the case stated that the defendant had been proven legally and convincingly guilty of committing the crime of embezzlement in office continuously as regulated and threatened with

²¹Titik Triwulan and Shinta Febrian, 2010, Legal Protection for Patients, Prestasi Pustaka, Jakarta, p.48

²²Dyane, Criminal Responsibility for Children as Perpetrators of the Crime of Theft with Violence (Study of Case Decision Number: 4/Pid.Sus-Anak/2017/PN Pbr), JOM Faculty of Law Volume V Number 1, April 2018, p.4

²³Ibid,

punishment in Article 374 in conjunction with Article 64 paragraph (1) of the Criminal Code. Sentencing the defendant to a prison sentence of 1 (one) year and 4 (four) months minus the time the defendant was in temporary detention with an order that the defendant remain in detention.

5. References

Journals:

Ali Imron, "Transformation of Islamic Law into Indonesian National Law", Journal of Islamic Legal Thought al-Ahkam Vol.5 No.2 April 2012, IAIN Walisongo Semarang.

Doni Cakra Gumilar, Sri Endah Wahyuningsih and Jawade Hafidz. The Formulation of a Special Minimum Criminal Threat System Formulation in the Corruption Law. Law Development Journal. Volume 5 No. 1, March 2023, (54-70),

Url: <https://jurnal.unissula.ac.id/index.php/ldj/article/view/30035/8108> accessed February 20, 2024.

Dyane, Criminal Responsibility for Children as Perpetrators of the Crime of Theft with Violence (Study of Case Decision Number: 4/Pid.Sus-Anak/2017/PN Pbr), JOM Faculty of Law Volume V Number 1, April 2018.

Ira Alia Maerani, Siti Rodhiyah Dwi Istinah. "The Formulation of the Idea of Forgiveness in Indonesian Criminal Law Policy (A Study Based on Restorative Justice & Pancasila Values)". *Journal of Legal Sovereignty* Volume 5 Issue 4, December 2022, Url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/24290/7688> accessed February 20, 2024.

Mahendri Massie, Criminal act of embezzlement in using office based on Article 415 of the Criminal Code, Jurnal lex crimen, Vol.6, No. 7, September 2017.

Muhammad Baharuddin and Akhmad Khisni, Effectiveness of Pleidooi by The Supreme Of Criminal Murder, Law Development Journal Volume 2 No 2, June, 2020, url : <http://jurnal.unissula.ac.id/index.php/RH> accessed February 20, 2024.

Sri Endah Wahyuningsih, Model for Developing Criminal Law Principles in the Criminal Code Based on the Values of Belief in the Almighty God, Journal of Legal Sovereignty Vol 2, No 2, 2018, Url: <https://jurnal.unissula.ac.id/index.php/ldj/article/view/30035/8108> accessed February 20, 2024.

Widya Hari Sutanto and Umar Ma'ruf, The Role of State Attorney Prosecutors to Restore State Financial Losses in Criminal Actions of Corruption to Make Justice, Law Development Journal Volume 3 Issue 1, March, 2021.

Url:<http://jurnal.unissula.ac.id/index.php/RH/article/view/13882/5379> accessed February 20, 2024

Zainudin Hasan, Accountability of Perpetrators of Criminal Acts of Embezzlement in Office, Law Journal, Vol.11, No.1, September 2010

Books:

Amirudin and Zainal Asikin, 2004, Introduction to Legal Research Methods, Raja Grafindo Persada, Jakarta.

Andi Ahmad Suhar Mansyur, 2013, Normative Legal Analysis of Forgery of Authentic Deeds Carried Out by Notaries, Journal of the Faculty of Law, Brawijaya University.

Chairul Huda, 2006, From No Crime Without Fault Towards No Criminal Responsibility Without Fault, Kencana Prenada Media, Jakarta.

Diana Halim Koentjoro, 2004, State Administrative Law, Ghalia Indonesia, South Bogor.

Jonaedi Effendi, 2015, Quick & Easy Understanding of Criminal Law, First Edition, Kencana, Jakarta.

Mahrus Ali, 2015, Basics of Criminal Law, Sinar Grafika, Jakarta.

Rahman Syamsuddin, 2014, Knitting Law in Indonesia, Mitra Wacana Media, Jakarta.

Robertus Dicky Armando, Gde Made Swardana, Sagung Putri ME Purwani, tt, Legal Analysis of Abuse of Authority in Criminal Acts of Corruption Based on Law Number 20 of 2001, Criminal Law Specialization Study Program, Faculty of Law, Udayana University, Udayana.

Rodliyah, 2017, Special Criminal Law, Elements and Criminal Sanctions, First Edition, PT. Raja Grafindo Persada, Jakarta.

Soerjono Soekanto, 2005, Effectiveness of Law and the Role of Sanctions, Remaja Karya, Bandung.

Titik Triwulan and Shinta Febrian, 2010, Legal Protection for Patients, Prestasi Pustaka, Jakarta.

Wirjono Projodikoro, 2003, Principles of Criminal Law in Indonesia, Refika Aditama, Bandung.