

Legal Analysis of Criminalization of Perpetrators of Embezzlement Based on Justice (Study of Decision Number: 96/Pid.B/2023/PN PKL)

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Abstract. *Embezzlement is included in the type of crime against property. Because the crime of embezzlement is one type of crime that occurs in society with various forms that develop and lead to increasing a person's intellect from an act of embezzlement. People who commit crimes will be held accountable for the act with a criminal penalty if they have made a mistake, a person has a mistake if at the time of committing an act seen from the perspective of society shows a normative view regarding the commission of a crime. The approach method used is normative juridical, namely a library legal research conducted by examining library materials or secondary data only using deductive thinking methods. The writing specifications use descriptive analysis, the sources and types of data used are secondary data. The data collection method is by collecting data using secondary data collection methods. The problems are analyzed with the theory of punishment, the theory of legal certainty and the theory of justice. The punishment of the perpetrator of the crime of embezzlement based on Decision Number 96/Pid.B/2023/PN Pkl the judge has considered that this element has been fulfilled and proven legally and convincingly according to law. Therefore, all elements of Article 372 of the Criminal Code charged by the public prosecutor are in accordance with the evidence submitted by the Public Prosecutor where the defendant MS alias RYN has been proven legally and convincingly guilty of committing the crime of embezzlement in accordance with Article 372 of the Criminal Code, the judge imposes a criminal sentence on the defendant with imprisonment for 2 (two) years in accordance with the judge's decision that has been imposed on the defendant. The judge's consideration is one of the most important aspects in determining the realization of the value of a judge's decision that contains justice (ex aequo et bono) and contains legal certainty. Based on several legal considerations where the judge first outlined the elements of Article 372 of the Criminal Code charged by the public prosecutor that the defendant*

was proven guilty of committing embezzlement by imposing a prison sentence of 2 (two) years on the defendant.

Keywords: *Criminalization; Embezzlement; Justice.*

1. Introduction

Indonesia is a developing country and of course it is not free from the problem of property crimes, especially embezzlement of motor vehicles. Property crimes are still relatively high. The increase compared to the crime rate that often occurs in developed countries still seems reasonable. Because the level of economic and social life of developed countries is better and the level of legal awareness is also higher compared to developing countries. Therefore, it is not surprising that the problem of crime or criminality in Indonesia is a result of the lives of its people.¹

This crime of embezzlement begins with the existence of a party's trust carried out by the perpetrator of the crime of embezzlement. In comparison with theft, embezzlement has fundamental differences. Although both types of violations are related to crimes against property and involve goods that are partially or wholly owned by another individual, in embezzlement, before the perpetrator commits the crime, the goods are already in his possession, and are not the result of a crime. On the contrary, in theft, before the crime occurs, the goods are in the possession of another person (the victim).²

Embezzlement is included in the type of crime against property. Because the crime of embezzlement is one type of crime that occurs in society with various forms that develop and lead to increasing a person's intellect from an act of embezzlement.³ Meanwhile, a person who commits a crime will be held responsible for the act with a criminal penalty if he is at fault. A person is at fault if at the time of committing the act, seen from the perspective of society, it shows a normative view regarding the commission of a crime.⁴

The higher the public's need for cars as a means of transportation, the higher the risk of violations of the law by a group of criminals against car misuse. One of the crimes regarding the misuse of car vehicles is the crime of embezzlement of cars

¹Indrawan, 2008, Journal of Juridical Study of the Criminal Act of Embezzlement of Two-Wheeled Motor Vehicles (Case Study at the Sukoharjo District Court), Sebelas Maret University, Surakarta, p. 2.

²Mahrus Ali and Deni Setya Bagus Yuherawan, 2021, Corruption Crimes, Sinar Grafika, Jakarta, p. 147.

³Ahmad Ghifar Al Ahfaqsyi and Siti Rodhiyah Dwi Istinah, Manifestation Of Criminal Sanctions In The Judicial Process On Criminal Actor Of Negligence (Culpa), Law Development Journal Volume 2 No 2, June, 2020, p.10.

⁴Barda Nawawi Arief, 2003, Problems of Law Enforcement and Crime Prevention Policies, Citra Aditya Bakti, Bandung, p.23.

by renting cars. The rampant crime is caused by the ease of someone to rent their car to another party with only a sense of trust in that person.⁵

Abuse of trust is the main element of the crime of embezzlement, for example someone borrows a car from his friend or rents it for a certain reason so that the owner without any suspicion on the basis of trust then lends or rents the car he owns to his friend with a prior agreement. However, the borrower or renter does not return the car but instead sells the car to someone else.

As with the case that will be studied by the Author in this writing, the embezzlement case tried by the Pekalongan District Court in Decision Number 96/Pid.B/2023/PN Pkl that the defendant was charged by the Public Prosecutor was legally and convincingly proven to have committed a crime in a single indictment, namely violating Article 372 of the Criminal Code which was carried out in the manner that the defendant MS bin Alm Aswani intended to rent 1 (one) unit of KBM Toyota Avanza 1.3 Veloz Nopol G 9486 NM belonging to the Witness for 1 (one) month with a rental fee of IDR 5,000,000, - (five million rupiah) belonging to the witness ISM bin Slamet. Then Witness ISM bin Slamet wanted to collect his vehicle rental fee from the Defendant and looked for the Defendant at his house but he was not there, then Witness ISML bin Slamet tried to check the whereabouts of his car via GPS and its position was in the Kesesi area of Pekalongan Regency, then Witness ISM bin Slamet tried to find and succeeded in finding the car then Witness ISM bin Slamet reported the Defendant to the Pekalongan City Police. That because he was unable to pay his debt to Witness HARNOTO of IDR 150,000,000, - (one hundred and fifty million rupiah) without the knowledge of Witness ISMAIL, which witness ISM bin Slamet suffered a loss of around IDR 150,000,000, - (one hundred and fifty million rupiah).

Based on the problems above, regarding the many phenomena of criminal acts of embezzlement, people who do not know the rules for the community should be careful and vigilant, such as the case registered at the Pekalongan District Court Number 96/Pid.B/2023/PN Pkl tThis has become a special attraction for the author to study this matter in more depth by conducting research, for writing a thesis entitled "**LEGAL ANALYSIS OF CRIMINAL PUNISHMENT AGAINST PERPETRATORS OF THE CRIMINAL ACT OF EMBASEMENT BASED ON JUSTICE (Study of Decision Number: 96/Pid.B/2023/PN PKL)**".

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 basic materials for research by conducting a search for regulations and literature related to the problems being studied. Data collection is carried out through library studies by reviewing literature related to

⁵H. Ridwan Hasibuan, 1994, *Criminology in the Narrow Sense and Forensic Sciences*, USU Press, Medan, p. 20.

research problems. The data analysis technique is qualitative analysis in the form of exposure, description, and description of the research results.

3. Results And Discussion

3.1. Criminalization of the Implementation of Criminalization Against Perpetrators of Embezzlement Based on Justice (Study of Decision Number 96/Pid.B/2023/PN Pkl)

One form of criminal act against property that often occurs in society is the crime of embezzlement. The definition of embezzlement according to Lamintang is the abuse of rights or abuse of trust by someone where the trust is obtained without any unlawful elements. It could be through a written or unwritten agreement made by the perpetrator and the victim before finally being embezzled by the perpetrator of the crime of embezzlement.⁶

And if viewed from the objective of the criminal event "error aspect", namely that the undesirable consequences of the Law, which are carried out by the perpetrator, can be aggravated to him. Criminal acts that are prohibited in Indonesia along with sanctions, have been regulated in the Criminal Code or the legal provisions have been regulated according to the crime he committed. Often the act committed is embezzlement. Embezzlement is a dishonest act by hiding goods or property of another person by one or more people without the knowledge of the owner of the goods with the aim of controlling, or using it for other purposes. The regulation of the crime of embezzlement is contained in Article 372 of the Criminal Code, but the author will discuss the Crime of Embezzlement in office in Article 374 of the Criminal Code.⁷

Criminal liability is basically directed at understanding the punishment of the perpetrator of the crime. As stated above, a crime is an act that can be punished, where the act refers to both the perpetrator and the consequences of the act. The crime which is actually the official term of the Criminal Code is called a crime. A crime means an act whose perpetrator can be recognized by criminal law and the perpetrator can be said to be a criminal subject.⁸ In this way, a person who commits a criminal act will be held criminally responsible for his actions if he makes a mistake. A person has a mistake if at the time of committing the act, from the perspective of society, it shows a normative view regarding the commission of a criminal act.⁹

⁶Mahendri 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

⁷Anggalana & Muhammad Raies Juliansa, Legal Analysis of Criminal Acts of Embezzlement in Office Committed by Debt Collectors at PT. Federal International Finance (FIF) Lampung Branch, *Law Journal*, Volume 7 No. 2, January 2024, p. 261.

⁸Wirjono Prodjodikoro, 2008, *Principles of Criminal Law in Indonesia*, Refika Aditama, Bandung, p.58.

⁹Barda Nawawi Arief, 2003, *Problems of Law Enforcement and Crime Prevention Policy*, Citra Aditya Bakti, Bandung, p. 23.

the facts revealed in the trial in the form of witness statements, defendant statements and evidence, namely that in the criminal act of embezzlement. Then the panel of judges based on the legal facts presented in the trial, both witness statements and other evidence, gave a verdict against the defendant MS alias RYN that it had been legally and convincingly proven guilty of committing the crime of embezzlement. Sentencing the defendant MS alias RYN to 2 years in prison.

The judge's considerations in giving a verdict on the crime of theft with violence by the defendant MS alias RYN with legal considerations based on the judge's considerations of the legal facts revealed in the trial and the Law have been applied as something that must be included in the verdict, as in Article 372 of the Criminal Code concerning Embezzlement.

In the theory of punishment, there is something called the absolute theory or retribution. According to this theory, punishment is imposed solely because a person has committed a crime or criminal act. This theory was introduced by Kent and Hegel. The Absolute Theory is based on the idea that punishment is not intended to be practical, such as correcting criminals, but punishment is an absolute demand, not just something that needs to be imposed but becomes a necessity, in other words, the essence of punishment is retribution (revenge). The absolute theory views that punishment is retribution for mistakes that have been made so that it is oriented towards actions and lies in the occurrence of the crime itself. This theory emphasizes that sanctions in criminal law are imposed solely because a person has committed a crime which is an absolute consequence that must exist as a retribution to the person who committed the crime so that the sanctions aim to satisfy the demands of justice.¹⁰

Although the perpetrator was found guilty and sentenced to 2 years in prison, the verdict was not comparable to the losses suffered by the victim. The victim suffered significant financial losses, amounting to Rp150,000,000 (one hundred and fifty million rupiah) which, when viewed from its material value, is much greater than the criminal sanctions received by the perpetrator. If viewed in this verdict, it can give the impression that the sentence imposed is not proportional to the impact of the losses suffered by the victim, so it requires a deeper analysis of the judge's considerations in balancing the interests of the victim and the perpetrator. This is important to ensure that punishment not only provides a deterrent effect for the perpetrator, but also reflects adequate protection for the victim, in accordance with the principle of justice.

3.2. Judge's Considerations in Sentencing Perpetrators of Embezzlement Based on Justice (Study of Decision Number 96/Pid.B/2023/PN Pkl)

The decision-making process carried out by a judge in a case is considered very important and influential, because the judge is a law enforcement officer who is

¹⁰ <https://www.lawyersclubs.com/theoretica-pemidanaan-dan-besar-pemidanaan/> accessed on August 24, 2024 at 15.58 WIB

obliged to uphold the values of justice. So in every decision, the judge must also pay attention to the values that live in society. The judge has a very big responsibility because the judge must be required to provide a decision that can reflect a sense of justice, guarantee legal certainty and can provide benefits to society.

In trying a criminal case, a judge must try to find and prove the material truth based on the facts in the trial, with sufficient reasons and considerations, such as the trial facts, to convince the judge that a crime has occurred and the defendant is guilty of committing the crime.¹¹

The provisions regarding the judge's considerations are regulated in Article 197 paragraph (1) letter d of the Criminal Procedure Code which stipulates: Considerations are compiled in brief regarding the facts and circumstances along with the evidence obtained from the examination at trial which is the basis for determining the defendant's guilt. The judge's considerations consist of legal considerations and facts in the trial. In addition, the panel of judges must master or be familiar with the theoretical and practical aspects, jurisprudence and case position being handled.¹²

In the case of decision Number 96/Pid.B/2023/PN Pkl defendant MS alias RYN has committed a criminal act of embezzlement. The defendant's actions were carried out on May 8, 2022 at around 21.00 WIB. The defendant contacted Witness ISML by telephone intending to rent 1 (one) unit of KBM Toyota Avanza 1.3 Veloz Nopol G 9486 NM belonging to the witness for 1 (one) month with a rental fee of IDR 5,000,000, - (five million rupiah). Then on Monday, May 9, 2022, the defendant met Witness ISML in the parking lot of the Pekalongan City DPRD, Jalan Mataram No. 3 Podosugih Village, West Pekalongan District, Pekalongan City to pick up the car to be rented and Witness ISML handed over 1 (one) unit of KBM Toyota Avanza Veloz 1.3M/B Nopol G 9486 NM Year 2017 black color Noka: MHKM5EA4JHK023759 Nosin: 1NRF363709 in the name of SRI HARYATI address Jalan Agung No. 16 RT 02 RW 05 Mulyoharjo Village, Pemalang District, Pemalang Regency. The defendant paid the rent to Witness ISML every month since May, June, July and August 2022.

In providing considerations for handing down a verdict on a criminal case of embezzlement, the judge looks at 3 aspects, namely:

a. Legal considerations, the judge in this case is related to the principle of legality as regulated in Article 1 paragraph (1) of the Criminal Code, namely that no act may be punished except by the force of criminal provisions in existing legislation before the act was committed. And it must also be considered whether the defendant's actions fulfill the elements of the crime charged.

¹¹<http://digilib.unila.ac.id/64577/3/3.pdf> accessed on Wednesday, September 25, 2024 at 14.31 WIB.

¹²Lilik Mulyadi, 2007, Judge's Decision in Criminal Procedure Law, PT Citra Aditya Bakti, Bandung, pp. 193-194.

b. Philosophical considerations, the judge must consider whether the verdict to be handed down to the defendant has fulfilled the sense of justice of various parties, especially the sense of justice for the victim, the sense of justice for the defendant and also the sense of justice for the community.

c. Sociological considerations, judges consider whether the punishment imposed can achieve the general objective of criminal procedural law, namely to create order in society or create public order.

In the court decision Number 96/Pid.B/2023/PN Pkl the judge has considered that this element has been fulfilled and proven legally and convincingly according to the law. Therefore, because all elements of Article 372 of the Criminal Code have been fulfilled, the Defendant must be declared legally and convincingly proven to have committed the crime of continuous embezzlement as a continued act as charged in the First alternative charge. Because the First charge has been proven, the Second charge does not need to be considered anymore. The judge stated that the Defendant MS alias RYN above, was proven legally and convincingly guilty of committing the crime of continuous embezzlement as a continued act as in the first alternative charge. Sentencing the defendant MS alias RYN to a prison sentence of 2 (two) years.

that in imposing a sentence, the judge must base it on two valid pieces of evidence, the judge obtains the conviction that the crime charged actually occurred and the defendant committed it and is regulated in Article 184 of the Criminal Procedure Code. Based on the decision of the Court Number 96/Pid.B/2023/PN Pkl, according to the author, he agrees with the decision of the panel of judges who believe that the charges charged by the defendant, then what is proven in court is the charge in Article 372 of the Criminal Code, therefore this element is proven as a fact in court, so the verdict/content of the panel of judges' decision is correct which states that the defendant in the decision has been legally proven to have committed the crime of embezzlement.

The purpose of criminalization, in addition to ensuring order and peace, is also intended to ensure legal certainty, *rechtzekerheid*, in human relations. Van Kan argues that the law aims to protect the interests of each human being so that those interests cannot be disturbed. Thus, the purpose of criminalization is to realize the creation of order, peace and justice through the imposition of real Sanctions.¹³

4. Conclusion

The punishment of the perpetrator of the crime of embezzlement based on Decision Number 96/Pid.B/2023/PN Pkl the judge has considered that this element has been fulfilled and proven legally and convincingly according to the law. Therefore, all elements of Article 372 of the Criminal Code charged by the public prosecutor are in accordance with the evidence submitted by the Public

¹³RO Siahaan, 2009, Criminal Law I, Rao Press, Cibubur, p. 18.

Prosecutor where the defendant MS alias RYN has been proven legally and convincingly guilty of committing the crime of embezzlement in accordance with Article 372 of the Criminal Code, the judge imposed a criminal sentence on the defendant with imprisonment for 2 (two) years in accordance with the judge's decision that has been imposed on the defendant. The purpose of this punishment is not to hurt or humiliate people, nor as an arena for giving rewards, but to prevent the repetition of criminal acts, and most importantly to improve the perpetrator's personality so that in the future he can realize his mistakes.

The judge's consideration is one of the most important aspects in determining the realization of the value of a judge's decision that contains justice (*ex aequo et bono*) and contains legal certainty. The judge's consideration in imposing sanctions on case Number 96/Pid.B/2023/PN Pkl is based on several legal considerations where the judge first describes the elements of Article 372 of the Criminal Code charged by the public prosecutor that the defendant was proven guilty of embezzlement by imposing a prison sentence of 2 (two) years on the defendant MS alias RYN.

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