

Legal Analysis of Criminal Punishment Against Perpetrators of Crimes Human Rights Based Embassy Criminal (Case Study of Criminal Case Decision Number: 14/Pid.B/2023/Pn.Sgr)

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Abstract. *The 1945 Constitution of the Republic of Indonesia, in Article 1 paragraph*

(3) states that the Republic of Indonesia is a country of law, as a country of law, Indonesia has regulations to protect the interests of society, but in its implementation, there are still many crimes that occur among the people, one of which is the crime of embezzlement. The problem in this study is to find out the construction of the Crime of Embezzlement in the concept of legal certainty, as well as to find out and analyze the punishment of perpetrators of the Crime of Embezzlement based on human rights. The research approach used in this study is through a normative legal approach using secondary data obtained through literature studies, then data analysis is carried out using qualitative descriptive analysis. Based on the research results, the construction of the crime of embezzlement in the concept of legal certainty is regulated in Article 372 of the Criminal Code. This article discusses embezzlement in the sense of ordinary embezzlement or principal embezzlement, and the law Article 28 D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, third amendment, states that everyone has the right to recognition, guarantee of protection and certainty of fair law and equal treatment before the law. Meanwhile, the punishment of the perpetrator of the crime of embezzlement is based on a case study in the decision at the Singaraja District Court Case Number 14/Pld.B/2023/PN.Sgr, namely the imposition of a sentence for the crime of embezzlement is a judge's consideration, where the defendant KUY has been legally and convincingly proven guilty of committing the crime of embezzlement in accordance with Article 372 of the Criminal Code, and the purpose of the sentence and other factors in accordance with the purpose of the sentence by taking into account various considerations of the judge, the judge imposed a sentence on the defendant with imprisonment for 4 (four) months and 15 (fifteen)

days in accordance with the judge's decision that has been imposed on the defendant which is in accordance with the provisions of applicable laws and regulations.

Keywords: *Criminalization; Construction; Embezzlement.*

1. Introduction

The 1945 Constitution of the Republic of Indonesia, in Article Article 1 (3) states that the Republic of Indonesia is a country based on law, so that every human or social activity that is part of their life activities must be based on existing regulations and applicable norms in society.

The law applied in Indonesia then becomes a reference in Indonesian society in behaving, so that violations do not occur. causing society to receive sanctions in its retaliation, but not it is inevitable that violations of applicable laws and regulations will occur increasingly increasing. One of the violations that often occurs among society is a criminal act of embezzlement, where the misuse belief dominates as the main element in the occurrence of this crime.

The crime of embezzlement is regulated in CHAPTER XXIV (Book II) of the Criminal Code, which is stated in In Articles 372-377 in basic form it is stated as follows: "*Goods whoever intentionally and unlawfully possesses the same goods one or more parts belong to another person and are under his control, not for a crime, convicted of embezzlement, with a life sentence four years or a maximum fine of nine hundred rupiah*".

One of the cases has been tried at the Singaraja District Court in Decision Number 14/Pid.B/2023/PN. Sgr. The crime of embezzlement committed by the defendant KUY, in the criminal act committed by the defendant KUY, that the defendant has been involved in violation of basic rights individuals such as property rights to MA victims, where the perpetrators embezzlement can arbitrarily take someone else's property without consent or fair compensation. From this case, it resulted in the defendant KUY has been proven legally and convincingly guilty of committing the crime of embezzlement which violates Article 372 of the Criminal Code, so that the Defendant KUY was sentenced to 4 (four) years and 15 (fifteen) days in prison.

Based on the description of the background of the problem above, the author interested in researching and studying in the form of a scientific thesis entitled "Legal Analysis of Criminal Punishment for Perpetrators of the Crime of Embezzlement" Based on Human Rights (Case Study of Criminal Case Decision Number: 14/Pid.B/2023/PN.Sgr)".

2. Research Methods

The approach method used by the author in compiling the journal using normative legal methods. The research specifications used in this study is a descriptive analysis type. In this study the author focuses on library research (*library research*) and materials primary material in the form of applicable laws and secondary material in the form of expert opinions, law books, journals and magazines.

The data collection technique used in this study was literature study, by collecting data from the results of a review of

library materials and secondary data which include primary legal materials, secondary legal materials secondary law and tertiary legal materials. Data analysis techniques in research This is done by analyzing qualitative data, namely giving meaning and interpreting each data, after it has been processed it is then manifested in form sentences systematically to draw conclusions about objects which is being researched.

3. Results And Discussion

3.1. Construction of the Criminal Act of Embezzlement in the Concept of Certainty Law

Construction of the crime of embezzlement in the concept of legal certainty regulated in Article 372 of the Criminal Code, which describes embezzlement as an action when someone intentionally and unlawfully control goods that are wholly or partly owned by another person, which is in his power not because of a crime.

Construction can be interpreted as the arrangement and relationship of words in sentences or groups of words, which directly affect the meaning contained in a sentence or expression.¹Certainty perspective law, Article 372 of the Criminal Code is in line with Article 28D paragraph (1) of the Law The 1945 Constitution of the Republic of Indonesia, which states that every people have the right to recognition, guarantees, protection and legal certainty fairness and equal treatment before the law.

1. Objective Elements

a. Own

It is an action that reflects the desire to exercise real power over an object, so that the action can indicate the owner. Having with against the law means that he is not the owner of an item but act like an owner.

b. Goods that wholly or partly belong to another person The item must be interpreted as an item of value or goods have economic value for someone. The goods must exist its owner, an object that does not have an owner cannot be an object embezzlement.

c. The goods are in his possession or are not in his possession due to a crime.

The perpetrator must have control of the goods, and the goods must be the

owner is entrusted to the perpetrator, until the goods are with the perpetrator legally not because of a crime.⁶

2. Subjective elements

a. Intentionally

Intentionally or intentionally is an error in criminal act of embezzlement, the perpetrator is in a conscious state and knowing that the perpetrator committed the crime of embezzlement so that the perpetrator can be held accountable.

b. Against the law

The perpetrator committed the act of possessing it without rights or not have the power to own the item. Based on the descriptions above, if it is related to construction criminal act of embezzlement within the framework of legal certainty, then the perpetrator The crime of embezzlement can be prosecuted under Articles 372 to 377 contained in Chapter XXIV Book II of the Criminal Code (KUHP). These articles clearly regulate various types of embezzlement with certain elements that must be met to enforce criminal sanctions against perpetrators. Any form of embezzlement has special characteristics, so that the application of the law is very dependent on how the embezzlement case occurred, as well as the role of the perpetrator in carrying out the crime. In this case, the judge plays a central role with the authority and obligation to Carefully examine and determine the elements that have been fulfilled in every action of the perpetrator. The judge must ensure that all the elements that stipulated in the law have been fulfilled before deciding on sanctions appropriate for the perpetrator. This assessment process is very important to ensure that the criminal act committed by the perpetrator truly fulfills the qualifications stipulated in the law, so that the application of sanctions law can be given appropriately, fairly, and in accordance with the law. applies. The judge's decision does not only reflect efforts to maintain justice for victims, but also provides legal certainty for perpetrators and society as a whole. The judge's decision should not be just that legal formalities, but must really consider every aspects of the case being tried, including the impact of the crime towards victims and society. The above description, if linked to the theory of legal certainty, Article 372- 377 Chapter XXIV Book II of the Criminal Code has provided a clear legal basis and firm, both for the perpetrators and victims of criminal acts of embezzlement. Certain This law is not only important for victims who suffer losses, but also for perpetrators who must be processed through fair legal procedures. This principle of legal certainty includes protection of victims' rights, including restitution for losses suffered, as well as the rights of the perpetrator to receive a fair and non-discriminatory trial. However, even though the law has provided a clear and firm framework, implementation law in the field still requires extra attention. The application of articles- the article must be carried out consistently and with great care so as not to cause injustice.

3.2. Legal Analysis of Criminalization of Criminal Acts Human Rights Based Embezzlement

According to case number: 14/Pld.B/2023/PN.Sgr which the author raised, the defendant was proven legally and convincingly in court through the evidence presented that the defendant committed the act with intentionally and not due to his negligence. In addition, the defendant is legally competent individuals, so they can be held accountable for his actions before the law. Therefore, the accused must be held accountable for his actions before the law, and This accountability is reflected through a criminal penalty. a accountability is reflected in a criminal sentence, a criminal sentence not only intended to punish, but also to provide an effect educate perpetrators of criminal acts, so that they can realize their mistakes what has been done and not repeat the same action in the future front. Therefore, in Decision Number 14/Pld.B/2023/PN.Sgr the panel the judge sentenced the defendant to 10 years in prison 4 (four) months 15 (fifteen) days, during which the decision is made carried out by the panel of judges through the considerations of the judges who have in accordance with the legal facts and elements that have been revealed in in court.

Based on the theory of legal responsibility, a person is responsible legally responsible for a certain act or that he bears responsibility legal responsibility, the subject means that he is responsible for a sanction in the case of a contrary act. In this context, the decision of the criminal case Number 14/Pid.B/2023/PN.Sgr has clearly reflects the application of the theory of legal responsibility. The defendant, whose initials are KUY, has been held accountable for criminal acts the embezzlement he committed, in accordance with the provisions of criminal law applicable in Indonesia. The defendant is subject to criminal sanctions as a form of the consequences of his actions which have materially harmed the victim. The theory of legal responsibility has been applied, but the author is of the opinion that the criminal decision handed down in this case does not fully reflect justice, especially for victims.

Even though the defendant has been sentenced to 4 (four) months in prison 15 (fifteen) days, the punishment is considered disproportionate to the financial losses experienced by the victim. The victim in this case experienced significant financial losses, namely IDR 65,000,000.00 (sixty five million rupiah) and IDR 22,000,000.00 (twenty two million rupiah). rupiah). If viewed from a material value perspective, the losses experienced the victims are far more significant than the criminal sanctions received by the defendant.

In addition to the significant financial losses experienced by victims, There are several other reasons why the verdict in this case has not been made yet.

completely fair. First, there is a discrepancy between the duration of the sentence and the level of seriousness of the acts committed by the accused.

Not only violated the victim's trust by pawning the car he had rented, The defendant also repeatedly delayed payments and extended the deadline. rent without payment. This action shows the defendant's intention to harm the victim, which should be responded to with appropriate punishment. heavier than 4 months and 15 days in prison. The duration of the sentence seems too light considering the seriousness and recurrence of the criminal act committed by the defendant.

Second, the lack of financial recovery efforts for victims in the verdict. This also shows that justice has not been fully achieved. Although the victim's car was returned as evidence, no compensation or recovery of financial losses suffered by the victim. The victim lost income from rental fees that should be received, besides also having to endure the stress and discomfort caused by the defendant's actions. Without despite the obligation to compensate, the victim still has to bear the burden of the loss which shows that this decision has not provided a sense of complete justice.

In addition, the defendant's actions involved a third party, namely KW, who received the car as collateral, added the complexity of this case. The defendant not only committed a violation towards the victim directly, but also involves other people in it the criminal process. The decision did not take into account This third party involvement ignores the broader impacts of crimes committed by the accused. Lastly, the defendant's promises of payment were not fulfilled from the start. be an indication of bad faith in his actions. Since the agreement the first lease, the defendant had shown a pattern of delaying payments, which continued until the car was finally pawned without his knowledge. victim. The defendant's confession to the act only came

after the victim found out the whereabouts of the car through a third party and reported it to the police, indicating that the accused did not have self-awareness to admit his mistakes without external pressure. This is further strengthens the view that harsher penalties and sanctions a fairer approach needs to be applied in this case.

Overall, the verdict handed down in this case is not yet fully reflects justice for the victim. Although the defendant proven guilty, light sentence, internal imbalance compensation for losses, third party involvement, and patterns of delay payments that are intentionally disproportionate to the judge's decision Singaraja District Court decided case Number: 14/Pld.B/2023/PN.Sgr. which only imposes a criminal penalty on the Defendant, therefore with imprisonment for 4 (four) months and 15 (fifteen) days.

4. Conclusion

Based on the research results and discussions that have been described in Chapter 3 (three) it can be concluded that the construction of the crime of embezzlement in the concept of legal certainty is regulated in Article 372 of the Criminal Code, this article discussing embezzlement in the sense of ordinary

embezzlement or embezzlement principal, which occurs when someone intentionally controls against the law an object which is wholly or partly wealth other people, but that person gets the goods inside his power is not due to crime. and the law article 28 D paragraph (1) The 1945 Constitution of the Republic of Indonesia, third amendment that everyone has the right to recognition, guaranteed protection and certainty fair laws and equal treatment before the law. Meanwhile, the legal analysis of the punishment of perpetrators of criminal acts embezzlement based on case studies in decisions at the District Court Singaraja Case Number 14/Pld.B/2023/PN.Sgr, the Defendant was proven to have committed criminal act of embezzlement and sentenced to 4 months and 15 days in prison, in accordance with the principle of legal responsibility. However, the author considers that the punishment is not commensurate with the victim's losses which amount to more than IDR 87,000,000.00, so it does not reflect substantive justice.

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