

## Legal Analysis of Criminal Penalty for Embezzlement in Office Based on Legal Certainty

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**Abstract.** *The aim of this research is to describe and analyze the implementation of criminalization of perpetrators of embezzlement in office based on legal certainty, to describe and analyze the obstacles and solutions in the implementation of criminalization of perpetrators of embezzlement in office. This legal research uses an empirical legal research approach. The criminal act of embezzlement in office, as regulated in Article 374 in conjunction with Article 64 Paragraph (1) of the Criminal Code, is a crime that involves abuse of trust in work relationships, both in the private and government sectors, and has a significant impact on companies, society and the state. Sentencing, such as in case Number 18 K/Pid/2021, which sentenced the perpetrator to 1 year in prison, reflects the principles of justice and legal certainty, but needs to be balanced with efforts to restore the victim's losses. Obstacles such as difficulties in proving, weak internal supervision, limited awareness of companies to report, the length of the legal process, and social and political influences often slow down the law enforcement process and reduce the deterrent effect. To overcome this, it is necessary to strengthen the company's internal monitoring system, use technology in managing evidence, educate companies about the importance of reporting cases, reform the justice system to speed up the legal process, and increase the integrity of law enforcement officials through transparency and independent supervision. This approach is expected to ensure the implementation of sentences that are more effective, fair, and provide an optimal deterrent effect for perpetrators and protection for victims.*

**Keywords:** *Certainty; Conviction; Embezzlement; Legal.*

### 1. Introduction

The Republic of Indonesia is a country based on law (*Law State*), not a state based on power alone (*State*) is expressly regulated in the body, namely in Article 1 paragraph (3) of the 1945 Constitution. In the concept of a state

based on law, it is idealized that the commander in all dynamics of state life is the law. This will of course run well when carried out correctly by the legal subjects within it.

The entry of globalization in various areas of life along with the demands of the development of the times, leads society towards a practical lifestyle. Science and technology are also developing every day. Whether we realize it or not, the increasing development of various areas of life also encourages a moral crisis. This moral crisis occurs because of the inability to capture incoming information and culture, allowing crimes or criminal acts to arise.

This development greatly influences various parties or individuals to do and justify any means that can result in losses in terms of wealth that will be suffered by someone who becomes a victim of the crime. Crime cannot disappear by itself, instead it will continue to grow along with the development and social dynamics that occur in society.

Criminal law as a tool or means of resolution is expected to be able to provide the right solution. Crimes that are rampant and continue to develop to this day are crimes against property. According to Adami Chazawi, crimes against property are in the form of attacks on people's legal interests over property. people (not belonging to the perpetrator). One of the crimes that is a crime against property is the crime of embezzlement.

The crime of embezzlement is one type of crime against human wealth regulated in the Criminal Code (hereinafter referred to as the Criminal Code). The crime of embezzlement itself is regulated in the second book on crimes in Article 372 - Article 377 of the Criminal Code, which is a crime that often occurs and can occur in all fields, even the perpetrators in various levels of society, from the lower class to the upper class can commit the crime of embezzlement which is a crime that begins with a trust in others, and that trust is lost, due to weak honesty. Article 374 of the Criminal Code is basically just an aggravation of Article 372 of the Criminal Code, namely if it is done in a position relationship, so if Article 374 of the Criminal Code can be proven, then Article 372 of the Criminal Code can automatically be proven as well.

The crime of corruption and the crime of embezzlement in office actually have differences. In terms of understanding, Article 11 paragraph (1) letter a of Law Number 3 of 1971 concerning the Eradication of Criminal Acts of Corruption states that corruption is "an unlawful act of enriching oneself or another person, or an Agency, which directly or indirectly harms state finances or the state economy, or is known or reasonably suspected by him that the act is detrimental to state finances or the state economy."<sup>5</sup>Meanwhile, the Criminal Act of Embezzlement in Office

according to Article 374 of the Criminal Code (KUHP) is embezzlement committed by a person whose control over goods is due to an employment relationship or because of a search or because they receive wages for it.

Embezzlement can be committed by parties inside or outside the company environment, but is generally committed by parties inside the company environment, because usually these parties understand the internal controls in the company where they work, so it is not difficult to commit embezzlement. Every company or institution is also susceptible to embezzlement, especially within a company.

Based on Umar Ma'ruf's opinion, "The many criminal acts committed by the community, especially murder, have forced the police, namely investigators, to conduct investigations and in uncovering a crime, evidence is needed." From this opinion, to clarify the existence of a crime, an investigation and evidence are needed. If the crime is committed in carrying out a profession, the perpetrator may be subject to additional punishment in the form of revocation of the right to carry out that profession or revocation of the right to practice a certain profession.<sup>9</sup> Officials who commit embezzlement are included in the realm of criminal law. Based on the articles above, perpetrators of criminal acts of embezzlement in office for those who do not hold public office can be sentenced to a maximum of 5 years in prison based on Article 374 of the Criminal Code, or sentenced to a maximum of 5 years in prison or a maximum fine of IDR 500 million based on Article 488 of Law 1/2023. Meanwhile, for perpetrators of embezzlement who are officials or other people assigned to carry out a public office, they have the potential to be sentenced to a maximum of 7 years in prison as regulated in Article 415 of the Criminal Code.

## **2. Research Methods**

This legal research uses an empirical legal research approach method. Empirical legal research is legal research using legal principles and principles in reviewing, viewing, and analyzing problems in research, in addition to reviewing the implementation of law in practice.<sup>10</sup> The empirical research method is a combination of doctrinal legal research methods and empirical legal research methods, so what is done by the researcher is a document study accompanied by a field study. The document study in this study is a literature study using laws and regulations. The data analysis used in this study is a descriptive analysis. *Qualitative* namely, data that has been obtained from field studies and literature studies will be collected and grouped systematically according to the facts and characteristics of the objects being studied precisely and then analyzed qualitatively with the aim of obtaining a conclusion from the research problem.

### 3. Results and Discussion

#### 3.1. Implementation of Criminal Punishment for Perpetrators of Embezzlement in Office Based on Legal Certainty

Criminal law is a combination of several rules that regulate acts that all involve committing an act or doing something, or limit committing an act or doing something that is clearly stated in the regulations in the Law and Regional Regulations that can be subject to criminal penalties.<sup>12</sup>The criminal law that serves as a guideline in Indonesia is specified in criminal law which is commonly known as the Criminal Code (KUHP) and Special Criminal Law which is regulated outside the Criminal Code.

Criminal act (*strafbare fast*) is someone's action (*to make a mess*) which is formulated in the wet, which has a nature that is contrary to the law, which is worthy of being subject to criminal punishment (*war*) and done wrong. A crime can be interpreted as a behavior that goes against the rules that apply criminally which can cause losses to individuals or legal entities both materially and formally. This crime is committed by one or more people based on certain modes or methods in implementing the behavior. If viewed from the legal subject, criminal acts are specified into two, namely criminal acts that everyone can do (*communal crime*) and crimes that only someone with specific qualities can commit (*criminal offense*).

The crime of embezzlement is one type of crime that occurs in society with various forms that develop and lead to an increase in a person's intellect from a complicated act of embezzlement. The crime of embezzlement in office lives in community life, and can even increase and grow in community life that follows the rate of growth and development of technology and the economy. The crime of embezzlement in office is a crime that is continuous with moral problems and a sense of trust in a person's honesty. In relation to this, the crime comes from a person's sense of trust in another person, which ends with the emergence of a sense of dishonesty by a person, namely the perpetrator of the embezzlement in office itself.

Criminal acts are a general term used in Indonesian law, the meaning or significance of the term criminal acts

Criminal law is more focused on an act that contains the meaning of doing or acting with a consciousness which is related to a person's inner attitude that is very close to the act or action. The actions and actions in question have parts or characters that are contrary to the law of a legal regulation that does not justify the act which makes the act subject to criminal penalties. Embezzlement is a process, method and behavior that uses

goods that are contrary to the rules. Embezzlement can also be interpreted as a behavior that can eliminate someone's trust by not keeping promises without good behavior. Embezzlement is a dishonest act that has the aim of controlling property or other purposes where the goods are not his, embezzled without the owner's knowledge. Crimes that occur in society give rise to something that becomes the focus of community life, regarding the causes of this embezzlement is closely related to the factors that cause the emergence of the crime itself.

The factors causing the occurrence of embezzlement crimes are closely related to the thoughts or theories in criminology regarding the occurrence of crimes or the causes that trigger someone to commit crimes. Embezzlement can be committed by anyone including those who work as employees in an agency itself, both internal and external employees, but are generally committed by internal employees of the agency because in reality these parties already understand how to hold control within the agency so that committing embezzlement crimes is an act that can be said to be easy to do.

Embezzlement that takes advantage of a position in a job or embezzlement that is caused by work ties or employment relationships (*zijn persoonlijke dienstbetrekking*) is an employment relationship that is not a civil service relationship (*ambt*), but the working relationship between an employee and his superior.

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The definition of employment relationship is that the work occurs because of a bond in a job, for example an employee of an Agency. Hoge Raad in his view said that having power over himself because of a bond in work is a provision of a person's personal circumstances. The element of intent in committing this crime of embezzlement can be seen if it fulfills the elements, namely a person in committing this crime knows his actions, realizes that the action he does, namely controlling property that is not his, is an act that is contrary to applicable regulations, an act that is also not in accordance with his legal obligations or is not in accordance with the property rights of others, a person who commits this crime of embezzlement through a sense of awareness in himself that gives his own will to do the act with the awareness that he is doing this to property, which is also done in a state of awareness that the property belongs to someone, half or completely, a person who commits embezzlement knows and consciously understands that the property belonging to someone is in his power not due to a crime.

Embezzlement in office has a significant impact on the company, not only financially but also on the trust that is the basis of the employment relationship. In this case, the crime was committed continuously, as

regulated in Article 64 Paragraph (1) of the Criminal Code, which increases the criminal liability of the Defendant. The judge took into account the fact that the crime was committed over a certain period of time, involved many consumers, and had a significant loss value for the company.

However, from a broader law enforcement perspective, criminalization of perpetrators of embezzlement in office needs to be balanced with efforts to restore the losses suffered by the victim. In this case, the mechanism for returning the losses carried out by the Defendant has not been revealed. Therefore, additional punishment in the form of returning losses or compensation to the company should be part of the judge's considerations.

Overall, the punishment in this case has been carried out based on the principle of justice, but in the future it is necessary to pay attention to the aspect of recovering the victim's losses to achieve more comprehensive justice. Law enforcement against embezzlement in office must be a lesson for individuals who have responsibilities in the organization to maintain the integrity and trust given.

Legal certainty can be interpreted as someone will be able to obtain something that is expected in certain circumstances. Certainty is interpreted as the clarity of norms so that they can be used as guidelines for the community that is subject to this regulation. The understanding of certainty can be interpreted that there is clarity and firmness.

to the implementation of law in society. This is to avoid many misinterpretations. Legal certainty is the clarity of behavioral scenarios that are general and binding on all citizens including their legal consequences. Legal certainty can also mean things that can be determined by law in concrete matters.

### **3.2. Obstacles and solutions in the implementation of criminal penalties for perpetrators of embezzlement in office**

The crime of embezzlement in office is an unlawful act committed by a person with a certain position. The crime of embezzlement is an act that can harm the company, society and the state. Embezzlement can only be committed by a person who holds a certain position which is carried out on an item or in his authority. The crime of embezzlement also conflicts with religious norms and legal norms.<sup>18</sup> Contrary to religious norms because religion prohibits abusing authority for personal or group interests.

While embezzlement is the abuse of authority over certain goods that can harm others. Likewise with legal norms, embezzlement is contrary to laws and regulations that regulate criminal acts. Criminalization of perpetrators

of embezzlement in office often faces various obstacles that can affect the effectiveness of the law enforcement process. These obstacles can come from various aspects, both those related to the perpetrators, victims, legal institutions, and the legal framework itself. The following are some of the main obstacles and solutions in criminalizing perpetrators of embezzlement in office:

**Difficulty of Proving in Cases of Embezzlement in Office** One of the main obstacles in prosecuting perpetrators of embezzlement in office is the difficulty of proving.

Embezzlement in office usually involves the management of complex financial and administrative documents. As a crime that is an abuse of trust, proof requires the excavation of elements of the perpetrator's intention and will to misuse the goods or money entrusted to him. This element is not always directly visible, but requires in-depth evidence and detailed, such as transaction documents, financial reports, and communication records.

Often, embezzlers have full access to documents relevant to their actions. This access allows them to manipulate data, create fake documents, or even destroy evidence. When physical evidence is destroyed or manipulated, it makes it much more difficult for law enforcement to prove the crime. In some cases, the companies that are victims also have weak or unstructured record-keeping systems, so the information needed to uncover the embezzlement is not properly documented.

The difficulty of proof is also increased because embezzlement in office is often carried out over a long period of time and involves many small transactions that individually appear reasonable but when taken together show a pattern of criminal activity. Law enforcement officers need specialized expertise in finance and forensics to identify these patterns and uncover the perpetrator's evil intentions. This process takes a long time and is often disproportionate to the losses suffered by the victim.

In an effort to overcome the difficulty of proof, companies can improve their internal monitoring and audit systems. The use of modern technology, such as accounting software and digital transaction recording systems, can help create an audit trail that makes it easier for law enforcement to identify violations. On the other hand, law enforcement officers need to continue to develop their ability to handle digital evidence and work with professional auditors to ensure that cases of embezzlement in office can be uncovered and processed effectively.

**Limited Awareness and Willingness to Report in Cases of Embezzlement in**



Office One of the significant obstacles in handling embezzlement cases in office is the limited awareness and willingness to report from the victimized company or organization. Many companies are reluctant to bring such cases to the legal realm because they are worried about the negative impact on the company's reputation. Disclosure of embezzlement cases to the public or authorities can create the perception that the company has weaknesses in financial management or internal supervision. This has the potential to reduce trust from business partners, customers, or even investors.

This concern is particularly felt by companies that rely heavily on an image of professionalism and public trust, such as companies in the financial, technology, or service sectors. In an effort to protect the company's image, many managements choose to resolve this issue internally. Steps that are often taken are through mediation with the perpetrator, requesting voluntary restitution of losses, or dismissing the perpetrator from office without involving further legal proceedings.

While internal resolution may seem like a quick and less risky solution, this approach has significant drawbacks. First, internal resolution does not provide a sufficient deterrent effect, either to the perpetrator or to other employees in the company. Without the threat of real punishment, there is a possibility that similar cases will occur again in the future. Second, by not involving the legal process, the company loses the opportunity to obtain justice through formal mechanisms, including the possibility of a more secure recovery of losses.

Lack of willingness to report is also often caused by the company's lack of understanding of the importance of following up on embezzlement cases legally. Some companies may not realize that reporting cases to the authorities is not only to punish the perpetrators but also to send a message to the public that the company has integrity in handling violations. In addition, involving the law can open up opportunities for companies to learn from the case and improve their monitoring systems.

To overcome these obstacles, there needs to be education and outreach to companies about the importance of involving the legal process in cases of embezzlement in office. Law enforcement officers also need to ensure that reporting of such cases can be done with guaranteed confidentiality, to reduce concerns about reputational impacts. On the other hand, companies also need to develop a zero tolerance policy towards embezzlement and strengthen internal systems to minimize risks and encourage a culture of transparency.

Weak Internal Supervision as a Cause of Embezzlement in Office



Embezzlement in office often occurs due to weak internal supervision in a company or organization. Inadequate internal supervision opens up opportunities for irresponsible individuals to abuse the trust given to them. When there is no strong control mechanism, actions such as data manipulation, abuse of authority, or embezzlement of funds can be carried out easily without being detected for a long time.

One of the main causes of weak internal supervision is the ineffectiveness of the audit system. Internal audits that are rarely or not thorough allow suspicious financial activities to go unnoticed. For example, if financial records or inventory of goods are not checked regularly and in detail, perpetrators can take advantage of this gap to commit repeated embezzlement. In cases of embezzlement that is carried out continuously, as regulated in Article 64 Paragraph (1) of the Criminal Code, weak supervision is a factor that prolongs the time for perpetrators to commit crimes.

In addition, the lack of segregation of duties in the organizational structure also contributes to weak supervision. When one individual has full access to various functions, such as procurement, recording, and storage of funds, the risk of abuse of authority becomes higher. For example, in the case of an employee who is responsible for receiving and depositing money, without independent verification from other parties, acts of embezzlement can be carried out more freely.

Reliance on manual systems or lack of use of technology in supervision are also factors that worsen this condition. Manual systems are often prone to errors and manipulation, while the use of modern technology such as accounting and risk management software can help create a more transparent and difficult to manipulate system.

To overcome these weaknesses, companies need to strengthen internal supervision through several strategic steps. First, implement a clear separation of duties system to reduce the potential for abuse of authority. Second, conduct regular internal audits by involving professional auditors to ensure that every transaction is recorded and verified correctly. Third, adopt modern technology to facilitate financial monitoring and create an accurate audit trail. In addition, employee training on the importance of integrity and good governance also needs to be improved to build a more transparent and responsible work culture.

**Lengthy Legal Process as an Obstacle to Criminal Prosecution in Cases of Embezzlement in Office** One of the significant obstacles in handling embezzlement cases in Indonesia is the lengthy legal process that must be gone through. This process involves several stages starting from investigation, inquiry, prosecution, to court decisions. Each stage often takes

quite a long time due to various factors, such as complexity of cases, limited resources of law enforcement officers, and density of caseloads in the courts.

The length of the legal process can have a serious impact on victims, especially companies or organizations that suffer losses due to embezzlement. Financial losses experienced by the company cannot be immediately recovered, while the company's operational activities may be disrupted. In addition, in cases where the perpetrator has access to hide or transfer assets from the crime, the long time provides an opportunity for the perpetrator to complicate the process of recovering losses.

Factors that prolong the legal process also include difficulties in collecting evidence, especially if the perpetrator has manipulated or destroyed important documents. The investigation and inquiry process often requires additional time to reconstruct lost data or search for other supporting evidence. In addition, if the case involves complex transactions or multiple parties, the time required to examine all aspects of the case becomes even longer.

At the court level, the limited number of judges and court capacity are also factors that affect the length of the legal process. Cases of embezzlement in office are often given lower priority than other criminal cases that are considered more urgent, such as violent crimes or major corruption. This causes trials to often be delayed or take place in several stages with long intervals.

To overcome these obstacles, reforms are needed in the justice system to speed up the handling of embezzlement cases in office. One step that can be taken is to adopt digital technology to facilitate the management of evidence and case administration, so that the legal process becomes more efficient. In addition, increasing the number of human resources in the police, prosecutors, and courts can help reduce the workload and speed up the resolution of cases.

On the other hand, companies as victims can play a more active role in supporting the legal process, such as providing relevant documents and information in a timely manner. With better coordination between victims and law enforcement officers, it is hoped that the legal process can take place more quickly, so that recovery of losses can be carried out immediately and the deterrent effect on perpetrators can be achieved optimally.

Social and Political Influence as Obstacles to Criminalizing Cases of Embezzlement in Office Social and political influence often becomes an obstacle in the criminal process, especially in cases of embezzlement in

office. Perpetrators who have strong social or political connections tend to use their networks or power to influence the course of the legal process. This influence can occur at various levels of the legal process, from the investigation stage to the court decision, thus creating injustice in law enforcement.

During the investigation and inquiry stage, perpetrators with strong connections often try to use their influence to pressure law enforcement officers not to continue the case or reduce the priority of handling it. This can be done through direct pressure or through the intervention of parties with authority in law enforcement institutions. As a result, the legal process is slowed down or even stopped altogether, even though there is sufficient evidence to continue the case.

#### **4. Conclusion**

The crime of embezzlement in office, as regulated in Article 374 in conjunction with Article 64 Paragraph (1) of the Criminal Code, is a form of crime committed by abusing the trust given in an employment relationship, both in the private and government sectors. This case reflects the importance of trust and integrity in employment relationships, while emphasizing the need for strict law enforcement to provide a deterrent effect for the perpetrators. In the court ruling on case Number 18 K/Pid/2021, the judge properly considered the legal facts and elements of the crime, including the elements of intent and continuity of the act, thus imposing a 1-year prison sentence on the perpetrator. This punishment was carried out with the principles of justice and legal certainty, although it needs to be balanced with efforts to restore the victim's losses. This case also highlights the importance of strengthening internal supervision in organizations, moral integrity, and the application of work ethics to prevent similar crimes in the future. The punishment of perpetrators of embezzlement in office is faced with various obstacles, such as difficulty in providing evidence, limited company awareness to report, weak internal supervision, the length of the legal process, and social and political influences. These obstacles not only slow down the law enforcement process, but also have the potential to reduce the deterrent effect and justice for victims. To overcome these obstacles, it is necessary to strengthen the company's internal monitoring system, use technology to facilitate evidence management, educate companies about the importance of reporting cases, reform the justice system to speed up the legal process, and improve the integrity of law enforcement officers through transparency and independent supervision. With these steps, it is hoped that the criminalization of embezzlers will be in office can be implemented more effectively, fairly, and provide an optimal deterrent

effect.

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