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The Implementation of Material Criminal Law Against Criminal Act of Embezzlement in Office

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ABSTRACT

The crime often committed is embezzlement, dishonesty by hiding other people's goods/assets by one or more people without the owner's permission to control or use it for other purposes. In Article 374 of the Criminal Code, the term embezzlement in the office can be said to be a crime of embezzlement with a weighting. The method used in this research is normative juridical research that examines or analyzes primary and secondary legal materials by understanding law as a set of rules or positive norms in the statutory system that regulates human life. Based on the research result, the application of material criminal law to cases of criminal embezzlement in the office is implemented based on legal facts, including the statements of witnesses, statements of the accused, letters, and the presence of evidence. Besides that, before the judge imposes a sentence, he needs to consider what can aggravate and mitigate the defendant to apply a sentence commensurate with the act and provide justice for the defendant and a deterrent effect against a decision.

Keywords: *Crime, Embezzlement in Office, Fraud*

INTRODUCTION

According to the Preamble of Republic Indonesia's 1945 Constitution which stated "By the Grace of Allah the Almighty and motivated by a noble desire as a life of a free nation, Indonesian people declare their independence," and "a composition of Republic Indonesia which is sovereign by people based on Belief in the One and Only God." The state is founded on faith in one Almighty God according to Article 29 of 1945 Constitution. Every citizen has the freedom to have their own religion and to conduct their religious activities without interference from the government. This shows that Indonesia is a country based on religion and gives its citizens the freedom to implement their religious law.

Although a nation that adheres to religious ideals ought to have its citizens implement their religions and be mindful of the restrictions from the religious law for not committing crimes, in reality, many crimes have affected the nation's economy and other individuals in many ways. Humans need to work as professionals in conducting their lives based on their expertise. Regarding profession, it is affiliated with an institution or group, which is undoubtedly inextricably linked to the concept of trust. Naturally, someone trusted by an organization has a position that someone has to take care of it once the element of confidence has been implemented. However, when a person's requirements increase and the income of these workers is insufficient to cover those wants, it is conceivable that someone may intend to commit fraud.

Fraud is a violation or a criminal event. According to L.J Van Apeldoorn said a criminal event seen objectively is "an action (doing or neglecting to do) that is contrary to positive law",¹ and when viewed from a subjective perspective of a criminal event "terms of error" (schuklzide), called that the consequences that are not desired by law, conducted by perpetrator, can be burdened to him.² Criminal acts that are prohibited in Indonesia along with sanctions have been regulated in Criminal Code (KUHP) according to the crime he committed. The crime that often committed is embezzlement, as an act of dishonesty by hiding other people's goods/assets by one or more people without the owner permission with the aim of controlling, or using it for other purposes.³ The regulations for embezzlement are contained in Article 372 of the Criminal Code, but this research will discuss the criminal act of embezzlement in office in Article 374 of the Criminal Code. In essence, embezzlement refers to the actions of a person in a position who uses the power or rights that are granted to him improperly, deviates from the intent and

¹ Elias Zadrach Leasa, "Aspek Legal Spirit Undang-Undang Nomor 23 Tahun 2004 Tentang Penghapusan Kekerasan Dalam Rumah Tangga," *SASI* 24, no. 2 (February 28, 2019): 168, <https://fhukum.unpatti.ac.id/jurnal/sasi/article/view/131>.

² Agus Rusianto, *Tindak Pidana & Pertanggungjawaban Pidana: Tinjauan Kritis Melalui Konsistensi Antara Asas, Teori, Dan Penerapannya*, Cet. 1. (Jakarta: Kencana, 2016).

³ Raden Soesilo, *Kitab Undang-Undang Hukum Pidana (KUHP) Serta Komentar-Komentarnya Lengkap Pasal Demi Pasal* (Bogor: Politeia, 2013).

purpose of holding that position, and commits acts that are illegal and harm other people or organizations. This includes embezzling letters, items, money, and documents. Then, the behavior can be referred to as office theft.

Fraud is a crime occurred in the whole world, including Indonesia. Transparency International ranked Indonesia to 107 of 175 countries with a value of Corruption Perception Index (CPI) 34 below Singapore, Malaysia, Philippines, and Thailand. CPI ranks the countries based on how often corruption occurs in the public sector.⁴ The criminal offense of embezzlement in the workplace, also known as embezzlement with weighting is governed by Article 374 of the Criminal Code which states "Embezzlement committed by people who have control over goods is due to a work relationship, because of searching, or because they get paid for it, shall be punished with a maximum imprisonment of five years." The definition of the crime of embezzlement in office is actually not stated clearly, but the offense itself is made up of subjective elements (*Mens Rea*) in the form of intent, guilt, and breaking the law, as well as objective elements (*actus Reus*) in Article 374 of the Criminal Code in the form of the act of possessing, where the object of the crime is an object that is partially or entirely owned by another person and the object is in his control without due cause. In addition, there are several special elements that are used against criminal acts of embezzlement in positions, such as work relationships, positions, and receiving special wages. In Article 374 of the Criminal Code, the term embezzlement in office can be said to be a crime of embezzlement with a weighting. According to R. Soesilo in his book states that article 374 is commonly referred to as "Error with Weighting", that the weighting is in terms of:

- a. The defendant was entrusted with keeping the embezzled goods because of his work relationship (*persoonlijke dienstbetrekking*), for example the relationship between the employer and the domestic helper or the employer and the worker.
- b. The defendant kept the goods because of his position (*beroep*), for example the cleaners embezzled the clothes that were washed to him, the watchmen, shoesman, mechanic embezzled the shoe, watch and bicycle that were repaired by them.
- c. Since he gets a monetary wage (not in kind), for example a station worker bringing passengers' goods for a monetary wage, he embezzles the goods.⁵

⁴ Aditya Pandu Wicaksono and Dekar Urumsah, "Factors Influencing Employees to Commit Fraud in Workplace Empirical Study in Indonesian Hospitals," *Asia Pacific Fraud Journal* 1, no. 1 (February 3, 2017): 1, <http://apfjournal.or.id/index.php/apf/article/view/1>.

⁵ Iskandar Iskandar, Oheo K. Haris, and Herman Herman, "Pertanggungjawaban Pidana Pengawas Pemasaran Kredit Pada Perusahaan Finance Criminal Accountability for Credit Marketing Supervisors at the Finance Company," *Halu Oleo Legal Research* 1, no. 2 (July 29, 2019): 173, <http://ojs.uho.ac.id/index.php/holresch/article/view/6150>.

The cases of embezzlement in this position were very diverse. Not only taking money and writing false reports, but the perpetrator also has responsibility which is given in the form of a special element, namely position. Not only that, embezzlement in this position is very similar to criminal acts of corruption that the perpetrators of these crimes can be subject to Article 374 of the Criminal Code. Embezzlement in the word means taking away an object or property or government funds. But in jurisprudential terms, embezzlement means stealing another movable property other than amulet and by trickery and resorting to force.⁶ This research aims to examine and understand the legal material related to criminal case of embezzlement conducted by employee in their institution.

RESEARCH METHODOLOGY

Research is a process of collecting, processing, presenting and analyzing data in an event. In order to obtain a study result that can be accounted for scientifically, the method used is normative juridical research. Normative legal research is to examine or analyze primary legal materials and secondary legal materials by understanding law as a set of rules or positive norms in statutory system that regulates the human life.⁷ Normative legal research limits its focus to the study of the law as an object and excludes all non-legal information.⁸ This research examine the laws and regulation applied for the ilegal act of embezzlement in institution or organizational environment.

RESULT AND DISCUSSION

In the theory of criminal liability, criminal responsibility is intended to determine whether a person is accountable for a crime that has occurred or not.⁹ In other words, if it is established that someone broke the law and that their violation was either intentional or negligent, they must be held criminally liable. The crime of embezzlement can be caused by several supporting factors. As is known, embezzlement is included in crime section regulated in the Criminal Code (book two) Articles 372-377, and the embezzlement is included in the types of crimes against property. The crimes that occur in social life are phenomena that remain to be in the spotlight.

⁶ Zarifeh Rezazadeh Hamidieh, "Investigating the Crime of Embezzlement of Managers from the Perspective of Criminological Theories," *Journal of Positive School Psychology* 6, no. 12 (2022): 1154–1166.

⁷ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: Rajawali Pers, 2015).

⁸ Shahrul Kresna Imansyah, "Trading in Influence as a Crime in Indonesia Criminal Law System: A Juridical Study," *YURIS, Journal of Court and Justice* 1, no. 2 (2022).

⁹ Abdurrahman Alhakim and Eko Soponyono, "Kebijakan Pertanggungjawaban Pidana Korporasi Terhadap Pemberantasan Tindak Pidana Korupsi," *Jurnal Pembangunan Hukum Indonesia* 1, no. 3 (September 24, 2019): 322–336, <https://ejournal2.undip.ac.id/index.php/jphi/article/view/6166>.

When discussing the origins of a crime's emergence, it is impossible to separate them from the causes of embezzlement. This is so because embezzlement, as previously mentioned, is one of the offenses covered by the Criminal Code. Therefore, the reasons of embezzlement cannot be separated from criminological ideas about the origins of crime or the elements that motivate people to commit crime generally, such as:

1) Italian Theory or Theory of Anthropology

Anthropology means the science of human beings and is a very old term. Previously, this term was used in another sense, called the science of the characteristics of human body. In the view of criminology, it studies the causes of crime by studying the shape of a person's body. This Anthropology Theory developed around 1830-1870 by Gall and Spurzheim. According to Yoseph Gall that human talent and character are determined by the brain and vice versa, and the brain also influences the shape of the skull. Therefore, the skull can be observed and measured. Then the nature, character and talents of humans can be studied scientifically. Ambroso states that causes or other factors which state that the causes or factors that encourage a person to commit a crime are inherent in the person's own personality such as heredity, degenerative nature or suffering from a disease (disability). In other words, the motivations behind criminal behavior are internal in nature and originate from the individual, either as a result of genetics or specific physical traits.

- a. Anthropology of criminals: the general understanding from an anthropological point of view is a separate kind of human being (genus home delinguenes), like negroes, they were born that way. They are not a predisposed position for crime but a prodstination and no environmental influences can change it. The inner traits from birth can be recognized from the presence of stigmas born, and a type of criminal that can be recognized.
- b. Hypothesis of atavism: The issue is how to explain the existence of these abnormal beings (born criminals). In order to solve this issue, a very clever hypothesis is accepted, according to which people are morally deficient by nature but can gradually acquire moral traits. A criminal is an atavistic symptom, means that he can suddenly revert to traits that his closest ancestors did not have but his more distant ancestors have (called distant inheritance).
- c. Pathology hypothesis: states the criminal is an epileptic
- d. Type of criminal: The characteristics based on Lambroso are seen in criminals, for example, the skull (thief) is smaller compared to other people and abnormalities in the skull, in his brain there is a peculiarity that seems to be reminiscent of animal brains, though this cannot be pointed out, there is a specific criminal disorder, and his facial features

are also different from ordinary people (wide jawbone, squinty face, curved back of the forehead bone, lack of feeling and likeness).

2) French Theory or Environmental Theory

The famous figure of this theory is A. Lacassagne (1843-1924).¹⁰ He rejected the atavism hypothesis that stated by Lombroso, and he formulated the Environmental Theory as follows "The social environment we live in is the most crucial factor. The social environment in which we live is a breeding ground for evil; the villain is the germ, a concept that only has significance when it encounters the seed that will enable it to flourish. In other words, because crime is caused by environmental factors, those factors are changed and burdened to create a decent environment as a form of punishment when crime happens. Another important figure in environmental theory is Gabriel Tarde (1843-1904) a lawyer and sociologist. He resisted anthropological teachings from the start because, in his view, crime is not an anthropological phenomenon but a sociological one like other social events, that governed by imitation. According to him, crime is the result of imitation. In social life, everything significant is done with authority. In fact, the imitation in society does have a very large influence. Even though human life is very unique, it can be understood that many people are habituated by their surroundings. According to environmental theory of economics which began to influence in the 18th century and the beginning of 19th century, it was assumed that economic conditions caused evil actions to arise. According to F. Turati, he stated that not only lack and misery can lead to crime, but also driven by the desire to have something that is closely related to current economic system which encourages economic crime. According to N. Collajani, it shows that the emergence of economic crimes with social pathological symptoms originating from political crimes has a relationship with critical conditions. He emphasizes that both the economic system and the common factors in property crimes encourage selfishness that draws closer to crime."¹¹

3) Theory of Bio-Sociological

This idea was developed by E. Ferri, who claimed that every crime is the product of factors found in the individual, society, and physical state, with the individual being the most crucial fixed factor.

- a. Circumstances that impact the person from the moment of birth till the act is committed.
- b. The individual talent. In this Bio-Sociological theory, Ferri gives the formula that every crime = (surrounding circumstances + talent) with

¹⁰ Joel P. Fredo Tambunan, Baktiar Simatupang, and Mangasa Manurung, "Police Efforts in Overcoming the Theft with Violence in South Nias District," *Jurnal Prointegrita* 3, no. 3 (2019): 384–395.

¹¹ Listiya Fadhilia and Ainal Hadi, "Tinjauan Kriminologis Terhadap Tindak Pidana Illegal Logging Di Kabupaten Aceh Selatan," *Jurnal Ilmiah Mahasiswa Bidang Hukum Pidana* 2, no. 2 (2018): 375–385.

the surrounding circumstances. Then, the conditions that surround people have a dual impact, affecting them from birth such that they have a distinct self when they committing crime. In other words, the environment or the circumstances of the person are frequently what determines outcomes.

4) Spiritualist Theory

This theory associates crime with belief in religion, that the human behavior is closely related to trust. Religious people will have good behavior compared to people who are not religious. F.A.K. Krauss thinks this way: the estrangement from God, the attitude on life, and the perspective on the world that create an entirely empty base in terms of moral impulses, are ideas that are more prevalent among the lower strata of society, and they are a dark foundation on which rottenness and evil develop.

5) Mr. Paul Moedikno Moeliono Theory

According to Mr. Paul Moedikno Moeliono the causes of crime can be classified as follows:

a. "your fault"

According to this group, the criminal acts are a reflection of the perpetrator's own will. In a strict sense, if you do something wrong, you are responsible for it because society and other people are not responsible for it.

b. "no one is guilty"

Proposes that heredity, cultural biology, environment, talent + physique, religious feelings are factors in the occurrence of crime.

c. "environmental fault"

This perspective believe that the wrong environment can lead to crime.

d. Combination group

This group states that crime arises because of a combination in humans, called ideas, ego, and super ego.

e. Dialogue group

This group states that humans are always in dialogue with the environment, they are influenced and influence the environment. Influencing the environment means giving structure to the environment while being influenced by the environment means humans are influenced by environmental conditions.

The factors that lead to the occurrence of the crime of embezzlement based on data obtained in general are:

- a. One of the causes of the crime of embezzlement is the mindset of the workforce. The employees with weak mental fortitude are more susceptible to being persuaded to perform in a manner that is beneath their dignity as officers. Employees with a strong mentality, on the other hand,

cannot be swayed by opportunities or theft-related chances. When a chance arises, employees who base their behavior on dedication won't steal since they believe that their job is a requirement.

- b. Families put pressure on each other to make ends meet, which has the effect of encouraging people to spend more than they can afford on their budgets. This is one of the factors in meeting one's basic requirements.
- c. Opportunity and intention. The development of illegal actions of embezzlement, which were agreed upon by some of the informants as the subjects of the investigation, is driven by intentions and opportunities. No matter how strong the purpose, when there is no chance, the criminal act of embezzlement cannot be conducted. Conversely, when there is no intention to conduct embezzlement because of a decent attitude, but there is an opportunity, embezzlement cannot be conducted.
- d. Greed is the nature of humans, where the possibility of a person committing the crime of embezzlement is not because the person is poor or has insufficient income. It is possible that people who are rich but still have the desire to enrich themselves. It is themselves who is responsible for the factors that lead to such unlawful actions of embezzlement.¹²

CONCLUSION

The application of material criminal law to cases of criminal embezzlement in office is implemented based on legal facts, including the statements of witnesses, statements of the accused, letters, and the presence of evidence. In a case applied to violating the criminal provisions of Article 374 of the Criminal Code, the demands of Public Prosecutor in the indictment have fulfilled all of its elements. The judge's legal considerations for the crime of embezzlement in office are based on evidence, namely witness testimony and the defendant's statement, accompanied by evidence presented in the indictment by the public prosecutor as well as complete facts at trial, strengthened by the judge's own convictions. Besides that, before the judge imposes a sentence, he need to consider the things that can be aggravating and mitigating the defendant in order to apply a sentence commensurate with the act and can provide justice for the defendant and a deterrent effect against a decision.

¹² Mahendri Massie, "Tindak Pidana Penggelapan Dalam Menggunakan Jabatan Berdasarkan Pasal 415 KUHP," *Lex Crimen* 6, no. 7 (2017): 101–107.

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