

THE CRIMINAL ACT OF EMBEZZLEMENT BY USING POSITION IN THE SALE OF AUTOMOBILE SPEARPARTS (Study of Decision Number 2218/Pid.B/2023/PN Mdn)

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ABSTRACT

The factors that cause the occurrence of criminal acts of embezzlement in office are a person's mentality, fulfillment of needs, the existence of intention and opportunity, and human greed. The crime of embezzlement of office is regulated in Article 374 of the Criminal Code. The occurrence of criminal acts of embezzlement in office is related to assets and objects, there is a criminal act known as embezzlement where abuse of trust dominates as the main elements of this crime. Criminal liability for the perpetrator of the crime of embezzlement in office in decision Number 2218 / Pid.B / 2023 / PN Mdn is that the defendant is sentenced to 3 (three) years in prison. The actions committed by the defendant clearly violate the provisions as stipulated in Article 374 of the Criminal Code, the elements of which are. The criminal sanctions imposed are lighter than the demands of the Public Prosecutor who demanded a prison sentence of 3 (three) years and 6 (six) months. The judge's legal considerations in applying criminal sanctions for the crime of embezzlement in office in decision Number 2218 / Pid.B / 2023 / PN Mdn against the perpetrator of the crime of embezzlement in office can be accounted for the actions carried out with the consideration that at the time of committing his actions the defendant was aware of the consequences, the perpetrator in committing his actions was in a healthy condition and was capable of considering his actions. The Panel of Judges in the trial did not find anything that could eliminate criminal liability, either justification or excuse.

1. Introduction

A state based on law is characterized by several principles, including that all actions or conduct of individuals, whether individuals or groups, the people or the government, must be based on existing legal provisions and regulations before the act or conduct is carried out or based on applicable regulations.

Law enforcement is an inseparable part of the law itself; in fact, law enforcement reflects the law in a country. Law enforcement can also be defined as the upholding or maintaining of the law by law enforcement when a violation of the law has occurred, is about to occur, or is likely to be violated. Article 27 of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia) states, "All citizens are equal,

without exception. This equality before the law, including in law enforcement, serves as a guide for law enforcers in carrying out their duties."

Criminal law functions to regulate and organize community life to create and maintain public order. Human life is filled with various interests and needs, which are not only different from one another but also often conflict. In order to fulfill these needs and interests, humans behave and act.

To prevent a person's attitudes and actions from harming the interests and rights of others, the law provides guidelines in the form of certain limitations so that people cannot act and behave freely in order to achieve and fulfill their interests. This function is present in every type of law, including criminal law.

Crime in society develops in line with the development of society itself, because crime is a product of society and this needs to be addressed. Many criminal phenomena emerge in various regions. Indonesia is a controversial issue for all levels of society. Every day, the mass media reports on various crimes occurring in this country. These crimes are undoubtedly influenced by the modernization of a nation.

Crime, as a social phenomenon occurring across the globe, will likely never end, keeping pace with the developments and social dynamics within society. This criminal problem appears to be constantly evolving and will never recede, both in terms of quality and quantity. This development is causing concern for both the public and the government.

The rise in crime is increasingly prevalent with the times. This is inextricably linked to increasingly sophisticated developments, which inevitably lead to increasingly sophisticated methods of criminals, both in terms of thought (modus) and technology. These developments significantly influence various parties/individuals to resort to various means to fulfill their desires, namely by justifying any means that will ultimately result in losses for individuals.

The form of loss experienced by a victim of a crime is the loss of property. To protect a person's property, the Criminal Code (hereinafter abbreviated as KUHP) classifies acts that can cause loss of property as crimes against property, as regulated in Book II of the KUHP. Several crimes related to property and objects include a crime known as embezzlement, where abuse of trust is a dominant element in this crime.

Embezzlement, a crime that is frequently committed in various sectors, is even perpetrated by perpetrators from all levels of society. Both the lower and upper classes commit this crime. The numerous cases of embezzlement in Indonesia are certainly very concerning. Abuse of trust is the dominant element in this crime.

Embezzlement has always existed in society and tends to increase and develop in line with technological and economic advances. Embezzlement is a crime related to moral issues and trust in someone's honesty. Therefore, this crime initially stems from trust between one party and another, which ultimately results in dishonesty on the part of one party, the perpetrator of the embezzlement.

Embezzlement is a crime related to moral or mental issues and a belief in someone's honesty. Therefore, this crime stems from trust in the perpetrator of the embezzlement.

2. Research Method

This paper employs normative juridical legal research, referring to legal norms, specifically through the use of library or secondary sources. This research is descriptive and analytical, revealing laws and regulations related to the legal theories that are the object of the study.

Data collection focused on the underlying issues, ensuring that the research discussion did not deviate or become unclear. Both primary and secondary data were used for data collection.

The data collection method used was library research, which involves collecting data through a review of library or secondary data, including primary, secondary, and tertiary legal materials.

The data collected through the library study were analyzed using qualitative analysis. Qualitative analysis is based on the paradigm of the dynamic relationship between theories, concepts, and data, which constitutes feedback or a constant modification of theories and concepts based on the collected data and related to the crime of embezzlement in office.

3. Research Results And Discussion

The causal factors of crime are crucial elements that must be understood before determining preventive and remedial measures. The clearer and more precise the causal and contributing factors are, the easier it will be to identify the true motivations for committing a crime, regardless of whether the motivation originates internally or externally (environmentally).

Each person has a distinct personality and behavioral characteristics. This personality can be seen through their behavior within society. Good behavior will earn them respect from society, but conversely, bad behavior will create chaos within society. This behavior is also closely related to needs. If one's needs

are not met properly, one's desires will easily lead to criminal acts, as they are not balanced by strong faith.

Each person possesses different talents and interests. Talents are present from birth and serve as a measure for society in determining a person's ability to master a particular field. If someone has talent in a particular field, it's easier for them to master that field. Talent is good if it involves positive things. Innate talent, if difficult to direct or control properly, can lead to bad behavior in that person, who tends to commit crimes that disturb society due to negative characteristics.

A person's mental state is an inner state that encompasses their way of thinking and feeling. If a person's mental state is low, it can lead to deviant behavior. Examined more deeply, it can be said that a person's mental state is formed by intelligence coupled with moral rules that enable a person to recognize and evaluate actions. Intelligence is defined as a collection of abilities that enable a person to acquire knowledge and apply that knowledge in relation to the environment and the problems that arise.

This state is also influenced by emotional power, which reflects a person's psyche when facing a problem. The emotional power within a person's psyche usually arises spontaneously and is easily changed (unstable), always eager to learn and try something new. Typically, a mature person acts and thinks maturely when facing a problem.

The connection with the crime of embezzlement committed by prisoners is that the individual is unable to use their intelligence to correctly assess the merits and demerits of their behavior. This low mental and emotional well-being results in an inability to control themselves, leading many to fall into the crime of embezzlement.

The concept of criminal responsibility is not solely a legal matter but also concerns the moral values or general decency embraced by a society or group within society. This is done to ensure that criminal responsibility is achieved in a manner that fulfills justice. Criminal responsibility is a form of determining whether a suspect or defendant is held accountable for a crime that has occurred. In other words, criminal responsibility is a form of determining whether an individual is acquitted or convicted.

The burden of responsibility placed on the perpetrator of the crime is related to the basis for imposing criminal sanctions. A person will be held criminally responsible if an act or situation they commit is unlawful. However, this responsibility can be lost if an element within them is found that causes them to lose their capacity for responsibility.

According to Chairul Huda, the basis for a criminal act is legality, while the perpetrator's criminal liability is based on fault. This means that a person will be held criminally responsible if they have committed an act that is wrong and contrary to the law. In essence, criminal responsibility is a mechanism created to respond to violations of a specific, agreed-upon act.

Criminal responsibility requires the perpetrator to be capable of responsibility. It is impossible to hold someone accountable if they are unable to do so. The crime of embezzlement in office, when viewed from the perspective of positive Indonesian criminal law, can be categorized as a crime.

When imposing a criminal sentence on an individual, in this case, a perpetrator of embezzlement in office, Moeljatno argues that it must first be established that the perpetrator has committed a criminal act that is unlawful, both formally and materially. Only then can the criminal act be linked to the elements of fault, thus establishing the existence of fault that results in the defendant's conviction.

The element of fault is a primary element in criminal responsibility. In the definition of a criminal act, criminal liability is not included. A criminal act only refers to whether the act is unlawful or prohibited by law. Whether a person who commits a crime is then punished depends on whether the perpetrator has an element of fault or not.

Criminal responsibility in the common law system is always linked to mens rea and punishment. Criminal responsibility is related to society, namely the relationship of responsibility to society as a function. Here, accountability has the power to impose penalties, so accountability here serves as a social control function to prevent criminal acts in society. In addition, criminal liability in the common law system is related to mens rea, that criminal liability is based on a mental state, namely a guilty mind. Guilty mind means a subjective error, namely a person is declared guilty because the perpetrator is deemed to have a wrong mind, so that person must be responsible. The existence of criminal liability is imposed on the perpetrator, so the perpetrator of the crime must be punished. The absence of a wrong mind (no guilty mind) means there is no criminal liability and results in the perpetrator not being punished.

Fault, as part of mens rea, is also defined as a violation of a rule or a violation of statutory regulations. Anyone who violates the law is held accountable for their actions. Fault, as an element of responsibility, in this view provides a guarantee for an individual and controls the freedom of others. This guarantee protects an individual from the actions of others who violate the law, and serves as a control, as everyone who violates criminal law is subject to criminal responsibility.

Conscious negligence, or negligent negligence, is negligence that is consciously recognized, where the perpetrator is aware of the risk but still acts, hoping that the negative consequences or risks will not occur. Unconscious negligence, or negligent negligence, is negligent when someone is unaware of the risk or adverse consequences of their actions. The perpetrator acts in this way due to, among other reasons, a lack of forethought or a lack of awareness of the potential risks. Conscious negligence is negligence that someone is aware of when they fail to perform an act that will result in a consequence prohibited by criminal law. Unconscious negligence, on the other hand, refers to the perpetrator's failure to consider the consequences of their actions. If they did, they would not have committed the act.

The capacity for responsibility is also related to the age of the perpetrator. This means that only perpetrators who meet a certain age limit have the capacity to take responsibility and are required to be accountable for their actions. This is because certain ages can influence a person's psychological well-being.

Essentially, children at certain ages are not yet fully aware of their actions, meaning they are unable to distinguish between right and wrong, which also affects their ability to repent for their actions. If a child commits a crime and is subject to criminal proceedings, their psychological well-being will be affected in adulthood.

These external or internal factors prevent the perpetrator from acting otherwise, resulting in their guilt being erased. This means that, in this case, the perpetrator of the crime has grounds for expungement, so accountability in this matter is awaited until it can be ascertained whether or not there is an element of excuse in the perpetrator of the crime. Even if the perpetrator of the crime can be blamed, this blame cannot be extended to them because the perpetrator could not have done anything other than commit the crime.

A justification in criminal law doctrine is a reason that eliminates the illegality of an act. A justification and an excuse are distinguished because they have different functions. This difference exists because a justification is a reason to "justify" an unlawful crime, while an excuse leads to forgiveness for someone even if they have violated the law through the crime they have committed.

Perpetrators of embezzlement in office must be punished for their actions; in other words, law enforcement must be carried out against perpetrators of embezzlement in office. Conceptually, the essence and meaning of law enforcement lies in the activity of harmonizing the relationship between values outlined in solid rules and attitudes as a series of final stage values to create, maintain and defend peace in social life.

In relation to the criminal liability of perpetrators of embezzlement in office based on the Medan District Court Decision Number 2218/Pid.B/2023/PN Mdn, the criminal sanctions for those who commit this crime are as regulated in Article 374 of the Criminal Code. All elements of Article 374 of the Criminal Code have been proven, therefore the Defendant must be declared legally and convincingly proven to have committed the crime as charged in the first indictment, thus the defendant is sentenced to 3 (three) years in prison.

Based on the decision, which states that the defendant has been legally proven to have committed the crime of embezzlement committed by a person who controls the goods due to an employment relationship as regulated and threatened in Article 374 of the Criminal Code, the Judge sentenced the defendant to 3 (three) years in prison.

4. Conclusion

Factors contributing to the crime of embezzlement in office include a person's mentality, the fulfillment of needs, the existence of intent and opportunity, and human greed. The crime of embezzlement in office is regulated by Article 374 of the Criminal Code. The occurrence of embezzlement in office, related to assets and property, is a crime known as embezzlement, where abuse of trust is the dominant element in this crime.

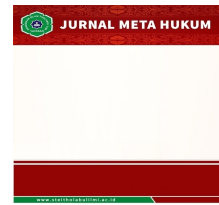
The criminal liability for the perpetrator of the crime of embezzlement in office, according to Decision Number 2218/Pid.B/2023/PN Mdn, is that the defendant is sentenced to three years' imprisonment. The defendant's actions clearly violate the provisions stipulated in Article 374 of the Criminal Code, including its elements. The criminal penalty imposed is lighter than the Public Prosecutor's demand for three years and six months' imprisonment.

The judge's legal considerations in applying criminal sanctions for embezzlement in office in decision Number 2218/Pid.B/2023/PN Mdn against the perpetrator of the crime of embezzlement in office can be held responsible for the actions carried out with the consideration that at the time of committing his actions the defendant was aware of the consequences that would arise, the perpetrator in committing his actions was in a healthy condition and capable of considering his actions. The Panel of Judges in the trial did not find anything that could eliminate criminal responsibility, either justification or excuse.

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