

A Legal Analysis Of The Acquitting Verdict For Criminal Act Of Embasement Rice Sale Funds

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Article Info	ABSTRACT
Keywords: Legal Review, Criminal Responsibility, Criminal Act of Embezzlement.	Among several criminal acts related to wealth and property, there is a criminal act known as embezzlement, the crime of embezzlement as regulated in Book II (Two) of the Criminal Code, in Chapter XXIV, concerning Crimes Against Wealth and Property, in criminal acts there is a principle that the suspect is not considered guilty if no one can prove that he is guilty based on the principle of law, where in the case study of the court decision in case No. 276 / Pid.B / 2023 / PN Bnj. The formulation of the problem in this study is How is the Legal Regulation on the Crime of Embezzlement, How is the Criminal Accountability for the Perpetrators of the Crime of Embezzlement and How is the author's analysis of the legal evidence of the acquittal given by the judge in trying the case of embezzlement in court in the study of court decision No. 276/Pid.B/2023/PN Bnj. This research was conducted with a descriptive approach with a qualitative method with a type of normative juridical research based on secondary data sources taken from case studies of court decisions and laws with analysis using related legal materials. The results of this study obtained results in the form of knowledge related to the form of legal conception related to proving charges of embezzlement in court which were proven based on evidence in the form of invoices which were acts of default and included in the scope of money debts. In this case, the author found how the legal conception in proving charges of embezzlement in court influenced the results of the decision where in the chronology of the case in case No. 276/Pid.B/2023/PN Bnj in proving the elements in Article 372 of the Criminal Code related to the crime of embezzlement has been fulfilled and should be punished with a criminal penalty of a maximum imprisonment of 4 years and a maximum fine of Rp. 900 thousand but the judge sentenced him by considering Article 191 paragraph 2 of the Criminal Code by declaring the defendant free from all legal charges.
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INTRODUCTION

The development of the era is currently quite rapid, not only in the fields of industrial engineering, technology, and trade but also in the field of law. The development of the era is currently followed by the very rapid development of life which has resulted in high crime in Indonesia today. Progress and implementation in all fields including social, political,

economic and cultural which have negative impacts in the form of increasing quality and quantity for public morals, so it is very possible that this will spur the development of crime.

The problem of crime is also a complex and interesting phenomenon to discuss. Understanding from various different sides, so that opinions about a crime problem often differ from one another. Therefore, the formation of regulations in this country emphasizes the creation and implementation of regulations that apply to criminal acts and violations that arise from the development of criminal acts. Current criminal acts greatly affect human development and their tendencies and abilities in carrying out criminal behavior. Furthermore, humans influence the people around them and their environment more in an effort to meet physical, mental and social needs, both positively and negatively. Crime as something that hinders freedom of life, expression, and demands humans to behave more consumptively.

Excessive consumer behavior must of course be in accordance with the material and material conditions of the person himself. But in fact, many people seem to forget that excessive consumer behavior will harm themselves. If the person is blind, then they will take a "shortcut" to meet their needs, by justifying any means that result in a loss for someone in this case a victim. One form of loss is loss of wealth. Among several crimes related to wealth and property, there is a crime known as embezzlement where abuse of trust dominates some of the main elements of the occurrence of a crime of embezzlement.

The crime of embezzlement is a crime that often occurs in various fields and even the perpetrators are from various levels of society. Seeing the many cases of embezzlement that occur in Indonesia, of course this is very concerning. The crime of embezzlement as regulated in Book II (Two) of the Criminal Code, in Chapter XXIV, concerning Crimes Against Property and Assets, in Article 372 (ordinary embezzlement), Article 373 (minor embezzlement), Article 374 and Article 375 (aggravated embezzlement), and Article 376 (embezzlement within the family).

The determination of the punishment given for the actions of the perpetrator of the crime of embezzlement must be proven based on the available evidence and based on the provisions of the law related to the Law governing the crime of embezzlement. The act of embezzlement usually involves the act of hiding, transferring, or using someone else's property without permission or legal rights, with the aim of enriching oneself or others or to harm the owner of the property.

A Criminal Act has a principle that the suspect is not considered guilty if no one can prove that he is guilty based on the legal principles that serve as guidelines for the court in assessing the evidence presented. Principles such as the principle of testimony, the principle of openness, the principle of consistency, and the principle of freedom from coercion are principles that must be considered in the process of proving the charge of embezzlement.

Finding Facts - Facts that have been collected and explained and proven, then the court has the right to make an indictment and determine a sentence that is believed to be relevant and reliable with the case being tried. In the Decision of Case No. 276 / Pid.B / 2023 / PN Bnj with the defendant Sri Wahyuni charged with the charge of being proven guilty of committing the crime of embezzlement based on Article 372 of the Criminal Code

and Article 378 of the Criminal Code which is an article on fraud and embezzlement. Where the defendant took 250 sacks of rice with the GP brand with a written note signed by the defendant and witnesses, and on the agreed day the defendant did not come to hand over the proceeds of the sale and did not have good faith to make the payment and ran away without responsibility.

Literature Review

Criminal Act of Embezzlement

The definition of embezzlement according to Article 372 of the Criminal Code "The criminal act of embezzlement is anyone who intentionally and unlawfully owns something that is wholly or partly owned by another person, but which is in his control not because of a crime is threatened because of embezzlement, with a maximum imprisonment of four years or a maximum fine of nine hundred rupiah".

According to R. Soesilo, embezzlement is: "a crime that is almost similar to theft in Article 362, the difference is that in theft the goods owned are not yet in the hands of the thief and must still be "taken" while in embezzlement when owned the goods are already in the hands of the perpetrator of the act by means of a crime.

The elements of the criminal act of embezzlement contained in Article 372 have two elements, namely objective elements and subjective elements. The objective elements are: owning; goods that are wholly or partly owned by another person; the goods are in his possession or in his control not because of a crime. While the subjective element, namely intentionally; unlawfully.⁶ The meaning of possessing is every act of controlling goods or something with the will to control goods with his/her real power and is an act as the owner of the goods, which does not give the owner the opportunity to ask for it back, even refusing to return or hiding or denying the goods that have been received and controlled can be stated as an act of possession.

"Intentionally" means that the act carried out by the perpetrator has been realized and known when controlling the goods in his/her possession, by not wanting to return them and the act carried out is realized to be unlawful or against the will of the owner of the goods. The goods controlled are solely intended for goods, which are wholly or partly owned by another person, and realizing that the goods controlled are not due to a crime, but rather goods in his/her control. Control of the goods for his/her personal interests

Meanwhile, according to Wawan Tunggal Alam, the crime of embezzlement has the following elements:

- a. Possessing unlawfully
- b. Goods belonging to another person
- c. The goods are in his/her hands not because of a crime
- d. The goods were there before the embezzlement was committed.

The Criminal Code (KUHP) has classified the forms of embezzlement as follows:

- a. Embezzlement in the Main Form

Embezzlement in the main form has been regulated in Article 372 of the Criminal Code. This crime is called "ordinary embezzlement". It is a crime that is almost the same as theft in Article 362, the only difference is that in embezzlement, the goods

taken to be owned are already in the hands of the perpetrator not through crime or the goods have been entrusted to him. The elements of the crime of embezzlement in the main form are as follows:

1. Objective Elements, consisting of a.) The act of owning
 2. An Object
 3. Which partly or wholly belongs to another person
 4. Which is in his power not because of a crime 2.) Subjective Elements, consisting of Intentionally, Against the law
- b. Embezzlement in a Minor Form
- Minor embezzlement has been regulated in Article 373 of the Criminal Code (KUHP). Namely, it is "an act formulated in Article 372, if what is embezzled is not livestock and its value is not more than twenty-five rupiah, it is threatened as minor embezzlement with a maximum prison sentence of three months or a maximum fine of two hundred and fifty rupiah".

Employment Relationship.

Article 374 of the Criminal Code states that the crime of serious embezzlement is, "embezzlement committed by a person who is forced to be given goods to be stored or committed by a guardian, conservator, administrator, or executor of a will, administrator of a social institution, or foundation, against goods that are controlled, as such, is threatened with a maximum imprisonment of six years"

Which constitutes the crime of serious embezzlement, namely as follows:

- a. Embezzlement committed by a person because he is forced to be told to store the goods (for example because of a fire, flood, or disaster. The person is forced to entrust his goods to another person, then the person who stores the goods then embezzles them).
- b. Embezzlement committed by a guardian, curator, administrator, people who carry out a will, or administrator of a charity hall against an item that is in their hands because of that position

Proof

Definition of Proof in the legal context is the process of proving the truth or falsity of a fact in court. Proof involves the presentation of valid evidence in accordance with applicable legal provisions. The main purpose of proof is to provide a strong basis for the judge in making a fair and correct decision based on the facts revealed during the trial. Proof is also one of the main pillars in the criminal justice system which ensures that justice is upheld through a transparent process and based on legally proven facts. Proof in the legal context is the process carried out in court to determine the truth of disputed facts. This process involves the presentation of legally valid evidence, with the aim of providing the judge with confidence regarding the events or actions that are charged or defended.

METHOD

This study uses a normative study approach method that is descriptive analysis in nature which aims to obtain concrete information and data related to the forms of legal review of

the legal concept in proving the charge of embezzlement in court reviewed from court decision No. 276 / Pid.B / 2023 / PN Bnj which is the discussion in this study. 11 In this study, the data collection needed is data collection carried out by collecting documents that can be used as references and data collection through information obtained from related parties according to the case study raised. Documentation study is one way in which qualitative research visualizes the perspective of the subject in this study. The type of data in this study is obtained from secondary data in the form of basic data related to and obtained directly from the object of data research directly through court case decision data, secondary data in this study is a statutory approach.

RESULT

Legal Regulations on the Crime of Embezzlement

Legal regulations on the crime of embezzlement aim to determine the application of legal principles and applicable laws and regulations in the process of proof/disclosure in an embezzlement case. Embezzlement is regulated in the Indonesian Criminal Code (KUHP), specifically in Article 372. Proof in the crime of embezzlement must meet several criteria, including:

a. Sufficient Initial Evidence

To go through the investigation process, there must be sufficient initial evidence. This can be in the form of a report from the victim, witness, or other evidence that shows the existence of unlawful control of goods by the suspect.

b. Valid Evidence

According to Article 184 of the Criminal Procedure Code (KUHAP), valid evidence includes the following:

1. Witness Statements
2. Expert Statements
3. Expert Witnesses
4. Clues
5. Defendant's Statements

In embezzlement cases, evidence such as ownership documents, witnesses who know about the control of the goods, and expert statements can be very helpful.

c. Relevance of Evidence

The evidence is related to each other to form a series of facts that show that the suspect actually committed the crime of embezzlement.

Proof in the indictment of a criminal act of embezzlement must meet the applicable principles, such as:

a. Principle of Legality

No act can be punished unless there is a law that regulates it (*nullum crimen sine lege*). Therefore, the crime of embezzlement is clearly prohibited by law and has been clearly regulated regarding the legal sanctions for the crime of embezzlement.

b. Principle of Presumptio Innocentiae

Everyone is presumed innocent until proven guilty. This means that the burden of

proof is on the public prosecutor to prove all elements of embezzlement.

c. Principle In Dubio Pro Reo

If there is doubt in the evidence, then the doubt must be in favor of the defendant (the decision must be in favor of the defendant).

In practice, the court will consider all evidence presented by the prosecutor and defense. The judge will assess whether the evidence legally and convincingly proves all elements of the crime of embezzlement. The judge will also see whether the investigation and prosecution process has been in accordance with applicable legal procedures to ensure that the defendant's rights are not violated.

How is Criminal Responsibility for Perpetrators of Embezzlement? Definition of Criminal.

Responsibility Legal expert Moeljatno said that the ability to be responsible must have the ability to distinguish between good and bad actions according to the law and those that are against the law. Then there must be the ability to determine one's will according to the awareness of the good and bad of an action. There are 3 requirements regarding criminal responsibility. The requirements include¹⁴:

- a. The possibility of determining one's will towards an action
- b. Knowing the true intention of the action
- c. The awareness that it is prohibited in society. Criminal responsibility in Dutch is called *teorekenbaarheid* or in English, criminal responsibility which leads to the punishment of the perpetrator with the intention of determining whether a defendant or suspect can be held responsible for a crime.

The crime of embezzlement is a crime in which the explanation of the form of action and sanctions for the crime have been clearly regulated in book II of the Criminal Code, in CHAPTER XXIV, concerning crimes against wealth and property, in article 372 related to ordinary embezzlement, 373 related to minor embezzlement, 375 related to embezzlement with aggravation and article 376 embezzlement in the family. In the crime of embezzlement, the perpetrator cannot be subject to criminal sanctions as regulated in the legal provisions of the Criminal Code related to the crime of embezzlement if there is no strong evidence that he is guilty based on the legal principle of legality which explains that no act can be punished unless there is a law that regulates the crime of embezzlement is an act that is clearly regulated in the Criminal Code, then based on the principle of *presumptio Innocentiae* which explains that everyone is considered innocent until there is evidence that can prove that the act of embezzlement exists. If the court has collected complete evidence of a criminal act in the form of embezzlement, the court judge has the right to charge and determine the sentence.

The defendant should have been sentenced to a maximum of 4 years in prison and a maximum fine of Rp. 900 thousand based on Article 372 of the Criminal Code with the public prosecutor's indictment of 3 years in prison with evidence in the form of a rice collection note, but the judge sentenced him by considering Article 191 paragraph 2 of the Criminal Code by stating that the defendant was free from all legal charges, so based on the author's analysis, there is an oddity in the application of the concept of proof to the results of the trial process.

CONCLUSION

The conclusion of this study is: Legal regulations related to embezzlement are based on Article 372 of the Criminal Code which explains that the crime of embezzlement is anyone who intentionally and unlawfully owns something that is wholly or partly owned by another person, but which is in his power not because of a crime is threatened because of embezzlement, with a maximum imprisonment of four years or a maximum fine of nine hundred rupiah. Criminal responsibility that has been carried out for the crime of embezzlement has elements that have been fulfilled by the defendant; a. The possibility of determining his will towards an act; b. Knowing the true intention of the act; c. Awareness that it is prohibited in society. The Judge In giving a verdict to the defendant should provide the fairest possible justice to the two parties, namely; the victim and the perpetrator The author refutes the acquittal given by the judge because the author is of the opinion that the judge did not provide justice to the victim who had been harmed from many sides such as; a. Time and Energy to Search for the Defendant who fled so that the time to take care of his business was left behind; b. The victim suffered material losses in the form of money that had been taken by the defendant due to the inability to pay and also a business that was not well managed because of looking for the defendant who had run away; c. The judge did not explain in the next decision which aimed to explain the status of the loss that was the victim's right for the perpetrator's actions.

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