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Jl. Veteran No. 53 A Lamongan
Email : fh@unisla.ac.id
ISSN Online : 2775 – 1090 ISSN Print : 2775 – 2011
https://jurnalhukum.unisla.ac.id/index.php/independent

Legal Review of Embezzlement of Funds in Corporate Crimes

Dhevi Nayasari Sastradinata [1], Hadzitoqitun Nahdliyah [2], Kidung Alfiani Sidiq[3]
dhevinayasarisastradinata@gmail.com, hadziqotunnahdliyah89@gmail.com, alfianisidiq25@gmail.com

Law Faculty University Of Islam Lamongan
Law Faculty University Of Islam Lamongan
Law Faculty University Of Islam Lamongan

ABSTRACT

One prevalent form of criminal offense within society is embezzlement, and this crime continues to occur across various sectors of society, spanning individuals from different socioeconomic backgrounds. This research aims to examine how embezzlement of funds is regulated within a corporation and to explore the accountability of embezzlers in corporate crimes. The study employs a juridical normative method, utilizing primary legal resources. The findings indicate that implementing direct criminal accountability on public corporations in the context of embezzlement unveils several relevant considerations. Placing public corporations as entities directly responsible for criminal acts sends a strong signal that any unlawful actions will not be tolerated, regardless of the perpetrators within the corporation. Involving senior officials or corporate leaders in criminal accountability encourages transparency and accountability within the corporate leadership structure, emphasizing the importance of integrity in decision-making processes. The restitution of rights for aggrieved victims emerges as a key aspect in addressing embezzlement crimes.

Keywords: embezzlement; criminal offense; criminal accountability; corporation

Introduction

Human social interaction naturally brings positive and negative impacts. Negatively, this interaction can cause harm and trigger criminal acts. Along with the evolution of the times and technological advances, criminal acts often occur around us without us realizing it..[1] Law plays an important role in creating social balance, protecting the interests of society, and ensuring justice. Criminal law, which

[1] Windy, Baharudin, Misnah Irvita, Tinjauan Yuridis Upaya Penyelesaian Penggelapan Dana Arisan Secara Mediasi (Studi Kasus Di Desa Batu Betumpang), Sekolah Tinggi Ilmu Hukum Pertiba Pangkalpinang, 2023

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regulates the relationship between individuals and the state, serves to safeguard the public interest and ensure justice in social life.[2]

In Indonesia, the principle of the rule of law is regulated in the Constitution Article 1 paragraph (3) which states that Indonesia is a rule of law. This emphasizes that activities and decisions, both from society and government, must be based on applicable laws to reduce conflicts of interest..[3] Law Number 1 of 1946 concerning Criminal Law Regulations provides a legal basis for the application of the Criminal Code to maintain public order in communal life..[4]

Legal regulations provide guidelines for society on the limits in fulfilling their interests, prevent reckless actions, and emphasize the importance of complying with legal provisions. However, in the modern era, people's consumer behavior can cause an imbalance between desires and the availability of resources, potentially triggering violations of the law in meeting needs.[5]

Embezzlement is an example of a criminal offense involving abuse of trust. Although the punishment has been regulated, this crime still often occurs with various modes of operation, involving individuals from various levels of society..[6] Embezzlement, regulated in the Criminal Code, is having goods that are partly or wholly owned by another person without permission, with the threat of imprisonment of up to four years or a maximum fine of nine hundred rupiah. The main difference with theft is that embezzlement occurs after the stolen object is in the hands of the perpetrator..[7]

The case of PT. First Travel is a real example of embezzlement in the workplace, where the owner and employees are suspected of using company funds for personal gain. They were charged with fraud, embezzlement, and money

[2] Muhamad Sadi Is. *Pengantar Ilmu Hukum*. Kencana. Jakarta. 2015. h. 4.
[3] Adrian Sutedi. *Hukum Perbankan Suatu Tinjauan Pencucian Uang, Merger, Likuidasi, dan Kepalitan*. Sinar Grafika. Jakarta. 2007. h.1.
[4] Sri Wahyuningsih Yulianti, Kebijakan Penegak Hukum Terhadap Kejahatan Kekerasan Kepada Anak Dalam System Peradilan Pidana Di Indonesia, Universitas Sebelas Maret, 2022
[5] Rahman Syamsuddin. *Merajut Hukum Di Indonesia*. Mitra Wacana Media . Jakarta. 2014. h.192.
[6] Rivaldo Datau. Penggelapan dana simpanan nasabah sebagai kejahatan perbankan. *Lex Privatum*. 2017
[7] R. Soenarto Soerodibroto. *KUKHP dan KUHAP*. Raja Grafindo Persada. 2015.h. 238.

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laundering. Many victims, around 63,310 people, suffered a total loss of Rp. 905,330,000,000,-.[8]

Research Methods

The research method applied is normative legal research, also known as doctoral legal research. This method focuses on the analysis of what has been regulated in laws and regulations (law in books) or legal concepts as rules or norms that regulate human behavior. The data source used in this method is secondary law. This study uses a statutory and conceptual approach because the method is normative juridical. The statutory approach involves an analysis of all related laws, while the conceptual approach includes a review of views in legal science to find relevant ideas..[9]

The legal materials used in this study consist of primary, secondary, and tertiary legal materials. Primary legal materials are legal materials that have binding legal force, such as laws and regulations that are relevant to the object of research. In this thesis, the primary legal materials that will be used include the 1945 Constitution of the Republic of Indonesia, the Criminal Code (KUHP), and Law Number 40 of 2007 concerning Limited Liability Companies. In addition, secondary legal materials include books and scientific writings related to the object of research. While tertiary legal materials provide explanations or instructions on primary or secondary legal materials, and can come from sources such as dictionaries and encyclopedias. By utilizing these three types of legal materials, research can be carried out comprehensively and in-depth.

In the process of collecting primary data related to legal research, the methods used include literature study and documentation. Literature study involves analyzing relevant written sources, while documentation collects data from existing documents such as archives and reports. The collected data is analyzed using a qualitative approach, combining findings from literature study with practical facts to

[8] John Jotham Terrace, Dkk, Tanggung Jawab PT. First Anugerah Karya Wisata First Travel Terhadap Korban. Fakultas Sosial Dan Hukum Universitas Negeri Manado, 2023

[9] Suteki dan Galang Taufani. *Metodologi Penelitian Hukum (Filsafat, Teori, dan Praktik).* Raja Grafindo Persada. Jakarta. 2018. h.215.

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explain the relevant legal basis. Conclusions and suggestions are drawn from the research results to provide valuable contributions in the context studied.

Research Results and Discussion

1. Criminal Liability

A person can be held criminally responsible for either intentional actions (opzet) or negligence (culpa), depending on the proof of the elements of the crime. Criminal responsibility is closely related to the fulfillment of the elements of the crime and if proven, criminal sanctions will be imposed.[10] Criminal responsibility determines whether a person will be punished or acquitted, depending on the objective and subjective violations. Objective violations refer to acts that violate the law, while subjective refers to the perpetrator. A person is only held accountable if proven guilty, making criminal responsibility a response mechanism to agreed violations.[11]

Experts provide similar views on the concept of criminal responsibility. Simosis emphasizes that a person is responsible for a criminal act if they are aware of the violation of the law and are able to control their will. Van Hamel highlights the individual's ability to understand, realize, and control their actions. Pompe emphasizes that criminal responsibility involves the individual's ability to understand the consequences of their actions and control their will.[12]

The principle of legality, also known as "nullum delictum nulla poena sine pravia lege", states that a person can only be punished for his actions if the actions violate the law. This principle states that there is no criminal penalty unless it is regulated in previous laws. This is reflected in Article 1 of the Criminal Code which states that criminal penalties can only be given in accordance with the provisions of the law that existed before the action was committed..[13]

[10] H.M. Rasyid Ariman dan Fahmi Raghib. *Hukum Pidana*. Setara Press. Malang. 2015. h 205
[11] Chairul Huda. *Dari Tindak Pidana Tanpa Kesalahan Menuju Kepada Tiada Pertanggung jawab Pidana Tanpa Kesalahan*. Kencana. Jakarta. 2006. h 68
[12] Eddy O.S. Prinsip-Prinsip Hukum Pidana. Cahaya Atma Pustaka. Yogyakarta .2014. h 121
[13] Helen Sondang Silviana Sihaloho, Perbandingan Asas Legalitas Kitab Undang-Undang Hukum Pidana (KUHP) Dan Hukum Islam, Fakultas Hukum Universitas Lancing Kuning, 2021

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2. Law Enforcement in Handling Corporate Embezzlement Crimes

Law enforcement against criminal acts of embezzlement by corporations is essential to maintain the integrity and public trust in the legal and economic systems. Supreme Court Regulation Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations provides guidance for law enforcement in handling cases involving corporations. This regulation regulates the criteria for corporate misconduct, the process of investigation, prosecution, trial, and criminalization of corporations. With clear provisions, this regulation ensures criminal responsibility not only for individuals but also for corporate entities involved in criminal acts.

Law enforcement must gather sufficient evidence to prove corporate wrongdoing, including the involvement of individuals with top management. Corporate trials are arranged to ensure proper representation in court. Penalties can include fines, confiscation of profits, or dissolution of the corporation. The implementation of the verdict must be transparent to maintain public trust. Responsive and professional law enforcement in responding to public reports ensures effective law enforcement.

The effectiveness of law enforcement in embezzlement cases depends on adequate infrastructure and human resources. Public awareness of the importance of law enforcement in handling embezzlement cases is still low, so many cases are not reported to the authorities. The culture that supports embezzlement is also an obstacle, difficult to change because it has become a habit. Weaknesses in law enforcement are not only caused by weak institutional structures or legislation, but also by other factors such as lack of professionalism. Law enforcers must be seriously committed to prosecuting embezzlement crimes, while improving the substance of the law is also important to handle such cases.[14]

[14] Nurbaiti Syarif, Penegakan Hukum Dalam Penanganan Tindak Pidana Penggelapan, Fakultas Hukum Universitas Tulang Bawang Lampung, 2020

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3. Accountability of Perpetrators of Criminal Acts of Embezzlement in Corporations

Criminal, derived from the Dutch word "straf," is a legal consequence of an act that violates the prohibition of criminal law. In criminal law, a prohibition is called a criminal act. The Criminal Code regulates material criminal law, while the Criminal Procedure Code regulates formal criminal law. However, sometimes there are special criminal laws that regulate both..[15] Criminal law provides sanctions to strengthen compliance with norms outside its scope. One common crime is embezzlement, which can be punished with imprisonment or a fine. Article 372 of the Criminal Code stipulates a maximum imprisonment of 4 years or a maximum fine of Rp. 900,- for embezzlement.[16]

According to P.A.F. Lamintang, for those who commit embezzlement in office and not in public office, the threat of punishment is a maximum of 5 (five) years in prison. However, for perpetrators of embezzlement in public office, the minimum sentence is 3 (three) years in prison, with a maximum of 15 (fifteen) years, and a minimum fine of Rp. 150,000,000,- (one hundred and fifty million rupiah) and a maximum of Rp. 750,000,000,- (seven hundred and fifty million rupiah).[17]

Criminal sanctions that can be applied to corporations are influenced by their status as subjects of criminal law. Although some types of criminal sanctions regulated in Article 10 of the Criminal Code cannot be applied to corporations, lawmakers still recognize the human rights of perpetrators of crimes. Criminal sanctions are basically punishments that limit human rights, although the protection of human rights remains a principle that must be upheld. In criminal law, criminal sanctions are considered important to provide a deterrent effect on perpetrators of crimes and protect the public interest. In the context of human needs, there are two

[15] Fatmawati L., dkk, Penegakan Hukum Pidana Terhadap Tindakan Gelandangan Dan Pengemis Di Tempat Umum, Universitas Sulawesi Tenggara, 2021

[16] Agung Kurniawan, dkk, Tindak Pidana Percurian Kendaraan Bermotor Dengan Penipuan Dan Penggelapan: Studi Kasus Putusan Nomor 145.Pid.B/2023/PN Medan, Fakultas Ilmu Sosial Universitas Negeri Medan, 2023

[17] P.A.F. Lamintang. *Delik-Delik Khusus Kejahatan-Kejahatan terhadap Harta Kekayaan*. Sinar Baru. Bandung. 2009. h 142

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types of needs: essential and existential needs, which also reflect the same human rights..[18]

Decision Number 3096 K/Pid.Sus/2018 related to the First Travel case confirms the rejection of the cassation against First Travel bosses, Andika Surachman, and Anniesa Hasibuan. This decision confirms that First Travel's assets were seized by the state, so that tens of thousands of pilgrims who were victims of fraud could not recover their losses through legal channels.[19] Around 63,000 pilgrims were victims according to the prosecutor's indictment, while PKPU data shows the number of victims is around 58,000 pilgrims. This decision reflects the Supreme Court's agreement with previous courts, which determined that First Travel's assets must be seized by the state.

Andika Surachman and Anniesa Hasibuan, the bosses of First Travel, were found guilty in a case of fraudulent hajj and umrah funds. Decision Number 3096 K/Pid.Sus/2018 rejected their appeal, upholding the previous court decision. They were sentenced to prison and fined. Meanwhile, First Travel, as a corporation, was also found guilty and its assets were confiscated by the state. This shows the legal responsibility of the corporation for the actions of its leaders. Assets confiscated by the state were not immediately returned to the victims, but were confiscated by the state, The victims of the First Travel case, which included tens of thousands of prospective hajj and umrah pilgrims, faced significant financial losses because their funds were not used for their intended purpose. Although First Travel's assets were confiscated for the state, the victims were unable to recover their money through legal channels. This highlights the need for stronger legal protections for consumers and more effective redress mechanisms for victims of this type of economic crime.[20] In conclusion, the First Travel case reflects criminal penalties for perpetrators, confiscation of corporate assets, and uncertainty for victims regarding the return of

[18] Dwi Fajriyah Suci A., Purwoto AM., Endah Sri Astuti, PERTANGGUNGJAWABAN PIDANA KORPORASI DALAM PERKARA KEBAKARAN HUTAN (STUDI PUTUSAN NOMOR : 287/PID/SUS/2014/PT.PBR). Fakultas Hukum Universitas Diponegoro. 2016

[19] Putusan Mahkamah Agung Nomor 3096 K/Pid.Sus/2018, diakses pada https://putusan3.mahkamahagung.go.id/direktori/putusan/ed7885998418c93b3b1a6c05f6f77e4e.html

[20]Mawarni, I. A., Asmawi, A., & Siradj, M. Tindak Pidana Penipuan dan Pencucian Uang Yang Dilakukan Oleh PT. First Anugerah Karya Wisata (Studi Kasus: Putusan Nomor: 3096 K/Pid. Sus/2018), Fakultas Hukum, UIN Jakarta, 2020, terbitan ke-1.

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their funds, highlighting weaknesses in the victim redress system in cases of major corporate fraud.

Conclusion

In Indonesia, embezzlement is regulated in the Criminal Code and other laws. Article 372 of the Criminal Code regulates embezzlement of goods in general with a maximum penalty of four years in prison. Meanwhile, Article 374 regulates embezzlement in office with a maximum penalty of five years in prison. The new law that will come into effect in 2026 adds criminal provisions for embezzlement. Law enforcement is carried out by officers in accordance with applicable provisions. Law enforcement against embezzlement crimes involves an investigation process by law enforcement officers, the preparation of indictments by public prosecutors, and the courts to determine the appropriate punishment, aiming to ensure that perpetrators receive punishment commensurate with their actions and provide a deterrent effect and legal protection for the community. Law enforcement against corporate embezzlement crimes in Indonesia still faces many challenges, including inadequate legal sanctions, lack of professionalism of law enforcement, and low public legal awareness. To increase effectiveness, a revision of the law is needed to increase sanctions, improve the competence of law enforcement, and educate the community. Corporations as legal entities can be subject to criminal liability with sanctions including fines, administrative penalties, and other additional sanctions to ensure crime prevention and protection of public interests.

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