

The Liability of Criminal Law for Perpetrators of Goods Embezzlement

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Abstract

The crime of embezzlement has become one of the causes of violations of social rights and the erosion of social values in community life. However, is it already optimal in its law enforcement, especially in the criminal accountability that should be imposed on the perpetrators of embezzlement? This research aims *first* to understand the regulation of criminal liability for embezzlement offenders and *second*, to examine the challenges that constitute weaknesses in the criminal liability itself, which result in the persistence of such crimes, and the efforts to address them. This research method uses normative legal research. This research method uses legislative techniques related to the review of all relevant legal guidelines and policies. This approach is used to understand the regulations on criminal liability for perpetrators of embezzlement. In addition, this research also uses a conceptual and case-based approach. The results of this research are, *first*, that criminal liability for the perpetrator of embezzlement is based on three main elements: the defendant's ability to account for their actions, the presence of an element of fault, and the absence of exculpatory or justificatory reasons. These elements serve as a guide for judges in determining criminal sanctions. *Second*, in the enforcement of criminal accountability, there are three main hindering factors: the substance of the law, the structure of the law, and the facilities and infrastructure. To overcome these obstacles and minimize embezzlement crimes, efforts are needed through criminal law and preventive and repressive measures.

Keywords: Criminal Law; Embezzlement; Goods; Liability; Obstacle;



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Introduction

Law has an important function as a social controller that must be applied, especially in formulating policies and laws or ensuring law enforcement that leads to the control of society itself (Rahma et al., 2022). This also applies to criminal law, which initially aimed at providing a deterrent effect but has now shifted towards restoration. Criminal law is present to provide a sense of safety and peace to the community by preventing and addressing crimes that



occur in society and restoring the situation, both for the victims, perpetrators, and the community affected by the crime. Legal certainty is the central pillar of law enforcement. This is closely related to the development of criminal acts that continue to be a complex societal problem (Athallah & Lewoleba, 2024).

As time goes by, criminal acts are becoming more rampant. This is inseparable from the increasingly sophisticated development of the times, making it possible for the modus operandi of criminal offenders to become more advanced as well, both in terms of thinking and technology (Wahyunita & Safitri, 2021). This development has also influenced various individuals to fulfill their desires, even though means that harm others. One form of loss experienced by someone who becomes a victim of a crime is the loss in terms of wealth. Among several criminal acts related to property and goods, there is a crime known as embezzlement (Megawati et al., 2023).

Embezzlement is dishonesty by an individual or the concealment or removal of another party's property/wealth without the owner's knowledge to control or possess the property for personal gain, harming the owner (Hartono et al., 2024). This crime can occur in various layers of society, from the lowest to the highest social strata. Starting from the element of trust in others, embezzlement arises due to a lack of honesty. Embezzlement is regulated in the second book on crimes in Articles 372 to 377 of the Criminal Code (KUHP). The same article has regulated the criminal threat for the perpetrator of embezzlement (Harahap et al., 2023).

Embezzlement is an act that is almost the same as theft. The fundamental difference is that in theft, the property owned by another person is still under their ownership and must be taken by the thief. In embezzlement, the perpetrator already possesses and holds the item without committing a crime (Mustika, 2023). Based on the Criminal Code, there are five forms of embezzlement, namely: first, the main form of embezzlement; second, embezzlement in a lighter form; third, embezzlement with aggravating elements; fourth, embezzlement by guardians and others; and fifth, embezzlement within the family scope. The crime of embezzlement also has subjective and objective elements. The objective element involves the ownership of an item (*zicht toe. gene*); a specific item (*evening went*); the item is partially or wholly owned by someone else; the item is in his possession not due to a crime; the subjective element includes intentional embezzlement (*opzettelijk*); and embezzlement that violates the law (Satria & Firman, 2022).

In Indonesia, the number of embezzlement crimes has been increasing yearly. Based on data from the Operations Control Bureau, National Police Headquarters of the Republic of Indonesia, in 2022, the number of

embezzlement cases was 11,689. Next, in 2023, it increased to 27,049 cases. In 2024, there were several cases of embezzlement, including, *first*, the embezzlement case in Decision Number 71/Pid.B/2024/PN Mdn. In this ruling, there is a criminal act of embezzlement of PT. Erakarya Konstruksi Nusantara's property was committed by its employee, namely the defendant Evianto Als Iyan, and his accomplices. Based on the revealed facts, the defendant and his friends committed the act of possessing and selling items belonging to PT. Erakarya Konstruksi Nusantara, precisely two iron items of the HNP/Hbeam type, shares the proceeds from selling the company's property. Therefore, the defendant is charged with the crime of embezzlement.

Second, the embezzlement case in Decision Number 120/Pid.B/2024/PN Blb. In this ruling, there is a case of embezzlement committed by the defendant, Rama Pratama, namely the embezzlement of Rahmat's property. Based on the results of the investigation and the facts, it is stated that the defendant, Rama Pratama, is legally proven guilty of committing the crime of embezzlement of 1 motorcycle belonging to Rahmat by the elements of Article 372 of the Criminal Code, namely intentionally and unlawfully possessing an item that is wholly or partially owned by another person, but which is in his possession not due to a crime.

Third, the embezzlement case in Decision Number 1430/Pid.B/2024/PN Sby. In this ruling, a case of embezzlement of property belonging to CV Keluarga Jaya was committed by the defendant, Moch Ardi Saputra, the container driver, for the shipment of scrap iron belonging to CV Keluarga Jaya. Based on the revealed facts, the defendant committed the embezzlement of the old scrap iron belonging to CV Keluarga Jaya, where during the delivery of the goods, the items arrived at the destination not in the correct quantity or were reduced.

From the cases above, embezzlement crimes imply that they will bring negative aspects, such as violations of social rights and the erosion of social values in community life. This is due to the lack of criminal accountability that should be imposed on the perpetrators of embezzlement (Kusuma & Asri, 2024). For that reason, it is necessary to conduct a more in-depth study regarding the regulation of criminal liability for perpetrators of property embezzlement, particularly from the elements, sanctions, and factors influencing the severity of the punishment. In addition, it is also necessary to examine the challenges and weaknesses of criminal liability itself, which result in the persistence of such crimes, and the efforts to address them.

Several previous studies on a similar theme to this writing, namely the research by (Rahmad, 2022), this study focuses on the qualification of being



an accomplice in embezzlement due to a work relationship and analyzes the criminal responsibility of the accomplice in committing the crime. *Second*, the research by (Faizin et al., 2024), focuses on legal liability in embezzlement crimes in general. *Third*, the research by (Ramasari et al., 2024), focuses on the forgery of power of attorney in fraud and embezzlement of compensation money and the legal accountability of the perpetrators of such crimes. *Fourth*, the research (Farid & Hasan, 2022), focuses on the criminal sanctions for perpetrators of embezzlement in office as a form of criminal accountability for such offenses and examines the judge's considerations in imposing sentences for cases of embezzlement in office. *Fifth*, the research by (Perdana et al., 2024), focuses on the criminal responsibility of notaries who commit the crime of embezzlement of land title certificates, which is part of the notary's duties.

Several studies have investigated the legal accountability of embezzlement perpetrators. However, there are still gaps. The gap in the current literature is not just the absence of research; it is a significant void that needs to be filled (Sutrisni et al., 2024). The emergence of this gap signals the need for more research on criminal liability for perpetrators of embezzlement, especially embezzlement in the form of goods. The number of embezzlement crimes has been increasing every year, which signals that the criminal accountability of the perpetrators is less effective in creating a deterrent effect. However, there is little research investigating the causes of the weaknesses in the criminal accountability of perpetrators of property embezzlement. Therefore, the main focus of this research is not only to fill that gap but also to potentially influence the optimization of regulations regarding the criminal accountability system for perpetrators of property embezzlement and efforts to address property embezzlement crimes justly.

Methodology

This research uses normative legal research. This research method uses legislative techniques related to the review of all relevant legal guidelines and policies (Prastyanti & Sharma, 2024). This approach is used to understand the regulations on criminal liability for perpetrators of embezzlement. In addition, this research also uses a conceptual and case-based approach. Secondary legal materials, including journals and books that discuss criminal liability for perpetrators of theft, then used in the research to explain the primary legal materials obtained from the literature study related to the secondary legal materials (Rochmah & Simangunsong, 2023).

Results and Discussion

Forms of The Liability of Criminal Law towards Perpetrators Embezzlement of Goods

An unlawful act committed intentionally or unintentionally by someone who can be held accountable for their actions and declared punishable by law (DP et al., 2024). The act of embezzling property that does not belong to oneself constitutes a crime that will cause material and immaterial losses to the victim. Hence, the aggrieved parties can report the incident to the authorities. To delve into how the crime of embezzlement is accounted for under Indonesian law, the researcher will first analyze it by considering the elements of the crime in the Criminal Code. In criminal law, something is said to be a crime when the wrongful act is formulated in a delict or offense, and the perpetrator can be punished. The term "tindak pidana" or "strafbaarfeit" in Dutch is "Strafbaar," meaning "punishable," and "Feit," meaning "part of a reality." (Atmaja & Meitridwiasiti, 2024).

First, for the existence of a strafbaarfeit, there is a requirement that there is an action prohibited or mandated by law, where the violation of such prohibition or obligation has been declared as a punishable act; *second*, for such an action to be punishable, it must meet the elements of the offense as formulated in the law; and *third*, every strafbaarfeit as a violation of the prohibition or obligation according to the law is essentially an unlawful act or an "onrechtmatige handeling" (Idris et al., 2024). The crime of embezzlement has been regulated in the Criminal Code, specifically in Articles 372 to 377 of the Criminal Code. It includes elements that must be fulfilled for the act to be classified as a criminal act of embezzlement (Wahyudi, 2021).

From the research conducted on cases of embezzlement, the elements of the embezzlement crime in the provisions of Article 372 of the Criminal Code begin with the word "whoever" directed at the perpetrator of the embezzlement crime. Article 55 of the Criminal Code regulates and determines the perpetrators of the criminal act. Article 55 of the Criminal Code stipulates that, *first*, one is punished as a perpetrator of a crime if they fulfill the elements: a. those who commit, order to commit, and participate in the act; and b. those who give or promise something by abusing power over dignity with violence, threats, or deception or by providing opportunities, means, or information, intentionally encouraging others to commit the act. *Second*, only the intentionally encouraged act is taken into account, along with its consequences (Nasution, 2022). The crime of embezzlement, as stated in Article 372 of the Criminal Code above, contains the following elements, the subjective element being intentional. Furthermore, there is an objective element: unlawfully controlling an object, either in whole or part, belonging to someone else and having it not due to a crime (Ikra, 2023).

Detailed elements are found if the Criminal Code is violated, and subsequently proof is required, accountability for the act will be demanded. Criminal liability is the most fundamental responsibility. This means that each person realizes the act of embezzlement depending on their accountability



(Putra & Ali, 2022). In his theory of legal responsibility, Hans Kelsen states that a person has legal responsibility for a certain act or that they bear legal responsibility, meaning that they are responsible for a sanction in the case of a wrongful act (Putri et al., 2024). Furthermore, Hans Kelsen divides responsibility into: *First*, individual accountability, that is, an individual is responsible for his violations; second, collective accountability means that an individual is responsible for a violation committed by another person; third, liability based on fault which means that an individual is responsible for the violation he commits because it is intentional and presumed to cause harm; fourth, absolute accountability, which means that an individual is responsible for violations committed by him or her due to unintentional and unforeseen circumstances (Heliyana, 2024). Based on this theory, related to the accountability of perpetrators of embezzlement of goods in the cases in this study, namely:

First, the case of embezzlement in Decision Number 71/Pid.B/2024/PN Mdn carried out by the defendant Evianto Als Iyan and his friends, who were sentenced to 2 years in prison for embezzlement of 2 iron bars belonging to PT Erakarya Kontruksi Nusantara on consideration of Article 374 of the Criminal Code jo Article 55 paragraph (1) 1 of the Criminal Code. From the criminal sanctions received, the perpetrators of criminal acts who participated in embezzlement in the case are, according to Hans Kelsen's theory, namely collective responsibility because the defendant is responsible for the criminal act of embezzlement committed jointly with his friends. In addition, criminal sanctions are imposed by accountability based on mistakes. In this case, the perpetrator committed embezzlement deliberately and caused losses to the owner of the embezzled goods. As a consequence, he must be responsible for his actions.

Second, the case of embezzlement in Decision Number 120/Pid.B/2024/PN Blb. In this verdict, the defendant, Rama Pratama, committed a criminal act of embezzlement, namely, the embezzlement of a motorcycle belonging to Rahmat. Considering Article 372 of the Criminal Code, the perpetrator was sentenced to 1 year and 6 months in prison from the criminal sanctions received by the perpetrators of embezzlement in the case by Hans Kelsen's theory, namely individual responsibility. The perpetrator is responsible for the violation he commits himself. In addition, criminal sanctions are imposed by accountability based on mistakes. In this case, the perpetrator committed embezzlement deliberately and caused losses to the owner of the embezzled goods. As a consequence, he must be responsible for his actions.

Third, the case of embezzlement in Decision Number 1430/Pid.B/2024/PN Sby. In this verdict, there is a criminal act of embezzlement of goods belonging to CV Keluarga Jaya in the form of a cargo of scrap metal scrap goods carried out by the defendants Moch Ardi Saputra and

Moch Arif. Based on Article 374, jo. Article 55 paragraph (1) jo. Article 65, paragraph (1) of the Criminal Code, is sentenced to 1 year and 4 months in prison. From the criminal sanctions received, the perpetrators of criminal acts who participated in embezzlement in the case are, according to Hans Kelsen's theory, namely collective responsibility because the defendant is responsible for the criminal act of embezzlement committed jointly with his friends. In addition, criminal sanctions are imposed by accountability based on mistakes. In this case, the perpetrator committed embezzlement deliberately and caused losses to the owner of the embezzled goods. As a consequence, he must be responsible for his actions.

Based on these cases, criminal liability for the perpetrators of the crime of embezzlement of goods is based on the existence of elements, namely the ability of the defendant to account for his actions, the existence of elements of error, and the absence of excuses and justifications for the defendant to commit the mistake (Karwanto et al., 2023). This provision can be used as a reference for judges in imposing criminal sanctions for perpetrators of embezzlement. For the imposition of criminal sanctions to be appropriate and proportionate in the context of efforts to overcome crimes, judges in imposing criminal sanctions against perpetrators must consider various aspects of the substance of criminal sanctions and these regulations. Here, it can be seen that there is the freedom of a judge to be able to impose criminal sanctions contained in each of his decisions (Nusantara, 2021).

Criminal liability begins at the examination time as a suspect in his actions, as stipulated in the Examination Report (BAP). At the examination stage, after the trial begins, the judge always asks for the defendant's identity and health as a formal condition for continuing the trial. Then, in the judge's decision that the defendant is found guilty by the judge, the judge will impose a fine with the fine that must be paid by the verdict (the person who is punished). If the convict does not pay the fine, it can be replaced with an additional penalty in the form of an alternative crime, as imposed in Article 30 of the Criminal Code. (Putra & Ali, 2022).

Weaknesses and Efforts to Enforce Legal Liability for the Crime of Embezzlement of Goods

Legal Liability for perpetrators of property embezzlement crimes has several weaknesses in its implementation—*first*, the factor of legal substance. In legal accountability for perpetrators of embezzlement, the criminal sanctions in the Criminal Code (KUHP) are still weak because the penalties are insufficient to provide a deterrent effect, and there are also no implementing regulations needed to enforce the law (Zhang & Dong, 2023). This, of course, influences the perpetrators to commit embezzlement crimes continuously. *Second*, the factor of the legal structure. There are still many law enforcers who are not professional in carrying out their duties, which affects their performance and hinders law enforcement in handling embezzlement crimes,



resulting in continued embezzlement crimes that cannot be addressed optimally. The researcher analyzes that the fact that law enforcement officers are less professional can obstruct law enforcement in handling embezzlement crimes. Less professional law enforcement officers can certainly not conduct investigations correctly by the applicable laws, resulting in these officers applying articles that do not adhere to the prevailing legal principles. (Basrah & Pratama, 2024).

Third, the factor of facilities and infrastructure. Law enforcement in handling embezzlement crimes is less than optimal or can be said to be ineffective due to the lack of adequate facilities and infrastructure, the limited unique operational budget from the state for law enforcement in handling embezzlement crimes, and the absence of a Special Supervisory and Monitoring Team for law enforcement in handling criminal acts, which coordinates with relevant parties specifically to oversee the activities of embezzlement crime perpetrators (Gottschalk, 2022). Theoretically, the implementation of criminal law functions in the context of law enforcement in holding perpetrators of embezzlement accountable, which can be interpreted as a means of crime prevention (Seto et al., 2023). However, in practice, efforts to realize law enforcement in holding perpetrators of embezzlement accountable face various obstacles, mainly related to the lack of facilities or infrastructure from the government, which does not adequately consider the importance of addressing the consequences of embezzlement. Law enforcement in handling embezzlement crimes still faces obstacles due to the limited number of law enforcement personnel, especially in the field of violent crimes, inadequate facilities or infrastructure, and the absence of a unique budget from the state for law enforcement in handling embezzlement crimes. In addition, the incomplete equipment needed can make law enforcement officers' performance not optimal (Basrah & Pratama, 2024).

These weaknesses require efforts that can minimize the occurrence of embezzlement crimes. The field of criminal policy encompasses initiatives and law enforcement strategies aimed at preventing and combating crime. Social policies include measures for public safety and law enforcement, and criminal policies are interconnected (social defense policies). Therefore, if the prevention of embezzlement is carried out through criminal law, criminal policy, or both, particularly at the stage of concrete law enforcement (integrated criminal law enforcement), it is necessary to adhere firmly to these principles—the goals and direction of social policy, which are focused on social welfare and social defense. The Criminal Code has not explicitly restricted it, but the negative impact caused by its inclusion is what the community feels. The judge must have the courage and conviction to handle it reasonably and consider other evidence or indicators presented in court. Although criminal law does not mention the crime of embezzlement, it is important to ensure that justice is upheld.

There are two efforts to tackle the crime of embezzlement, among others (Saputra, 2024). *First*, preventive law enforcement efforts, which involve

preventing crime before it occurs, focus more on socializing regulations, particularly those governing embezzlement offenses. Preventive law enforcement efforts against embezzlement are indirectly carried out without using criminal or penal law means, such as establishing law enforcement policy measures like legal socialization by the local police's Sat Binmas and Sat Jatanras regarding embezzlement. Second, reviewing and establishing resolution steps with the main tasks and functions of the Police Resort and Police Sector in law enforcement in handling embezzlement crimes, and third, coordinating in socialization and understanding of law enforcement in handling embezzlement crimes and progressively establishing and enhancing cooperation with community leaders..

Second, the repressive law enforcement efforts involve eradication after a crime, with investigations conducted by police investigators, which can subsequently be processed through the courts and sanctioned according to the applicable regulations. Based on the description, it can be analyzed that cases of embezzlement crimes serve as evidence of the government's and law enforcement's crucial role. Thus, comprehensive law enforcement is necessary. Law enforcement in handling embezzlement crimes repressively is carried out after the occurrence or existence of the crime. This action can be juridical based on the provisions in Article 372 of the Criminal Code.

In cases of embezzlement, regarding the enforcement of criminal law, it is not only about how to create the law itself but also about what law enforcement officials do to anticipate and address issues in law enforcement. Therefore, addressing issues in the enforcement of criminal law that occur in society, particularly in cases of embezzlement, is carried out through the application of criminal law or preventive and repressive measures. (Ilham et al., 2023). Crime prevention is a method or effort to address actions that, although not defined in the law as criminal acts, are considered onrecht, meaning actions contrary to the law. Law enforcement should harmonize the values or norms present in society. Law enforcement on embezzlement can be applied through criminal law, prevention without punishment, and influencing public perception of crime and approaches through mass media (Syarif, 2020).

Theoretically, the law enforcement mentioned above, the researcher analyzes that in a specific sense, law enforcement in handling embezzlement crimes is an application in a penal manner. The penal approach can be understood as addressing issues by applying criminal law instruments. This strategy is carried out in two ways, namely, the imposition of formal criminal sanctions as a last resort (*Ultimum Remidium*) and the execution of criminal penalties carried out within the framework of the criminal justice system. The goals of this can be differentiated into three: the short-term goal is the resocialization (reintegrating) of the offender, the medium-term goal is to prevent the occurrence of crime, and the long-term goal is to achieve social welfare. The article applies to Article 372 of the Criminal Code, where the offender is charged with embezzlement under a specific *modus operandi*. (Syarif, 2020).



The crime of embezzlement requires special attention and in-depth analysis from law enforcement institutions to develop effective prevention and handling strategies. The success of law enforcement in embezzlement cases heavily depends on the synergy between the community and law enforcement agencies, considering that the essence of a comprehensive law enforcement system fundamentally lies in harmonizing values and norms within society.

Conclusion

Based on the results and discussion, it can be concluded that, *first*, criminal liability for the perpetrator of the crime of embezzlement is based on the presence of elements such as the defendant's ability to account for their actions, the element of fault, and the absence of excuses and justifications for the defendant to commit the offense. These provisions can serve as a reference for judges in imposing criminal sanctions on perpetrators of embezzlement. *Second*, there are three inhibiting factors in enforcing accountability against embezzlement perpetrators: the substance of the law, the structure of the law, and the infrastructure. Therefore, these weaknesses require efforts that can minimize the occurrence of embezzlement crimes. These efforts in society, especially regarding embezzlement cases, are carried out through criminal law or preventive and repressive measures.

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