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Comprehensive Evaluation Of Law Enforcement Against Embezzlement Due To Position Case Study: Decision 315/Pid.B/2023/Pn.Gsk

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Abstract: Abuse is a willful and unlawful act of taking someone else's property. This crime is characterized by a breach of trust and often occurs at various social levels. By raising the legal issue of the crime of embezzlement committed by Dwi Zahrul Fitriana Binti Djumadi Hari Santoso (deceased) who was committed during her term of office as a result of employment, search, or receiving wages in case number 315/Pid.B/2023/PN Gsk. This study examines thoroughly the criminalization of fraud in the term of office of Dwi Zahrul Fitriana Binti Djumadi Hari Santoso (expired) so that later the local area will be more careful in acting. This research uses an empirical legal approach method. The examination used is a subjective examination. The verdict determined that the defendant had taken funds from PT Cipta Mandiri Nusantara Abadi and did not return them. The defendant was found guilty of the charges of the panel of judges and sentenced to two years and six months in prison for violating the Criminal Procedure Code and Article 374 of the Criminal Code. The Panel of Judges' considerations, including aggravating and mitigating circumstances, have met the principles of legal certainty, justice, and expediency, in accordance with empirical analysis.

Keyword: Crime, Embezzlement, Law Enforcement.

INTRODUCTION

According to Zaini *et al.* (2023), embezzlement is the deliberate and unlawful taking of another person's property. This crime often occurs at various social levels and is characterized by a violation of trust. In general, Indonesian people recognize criminal law as a regulation that can punish someone for doing or not doing something that is declared as a prohibited act and is punishable by criminal law based on statutory regulations. An act must violate the law or violate society's legal consciousness in order to be considered a criminal act. Unless there is justification, every crime is always considered illegal (Suhendar *et al.*, 2024). In accordance with the provisions of the Criminal Procedure Code, the police carry out investigations into general criminal acts regulated in the Criminal Code (KUHP).

One of the criminal acts covered by the Criminal Code is embezzlement which is a crime against property. The crime of embezzlement is actually outlined in the second book of violations in Articles 372 to 377 of the Criminal Code. This is a crime that often occurs and can occur in any field, and the perpetrators come from various levels of society, from the

lowest to the highest. The dishonesty of other people can result in a loss of trust in other people, which results in the crime of embezzlement. Article 372 of the Criminal Code states that anyone who intentionally and unlawfully owns something that belongs to another person, either in whole or in part, but because of a criminal act that is not within his control, is threatened with embezzlement and up to four years in prison or a fine of nine hundred rupiah. According to Article 374 of the Criminal Code which regulates attachment for wages, work carried out by someone who controls goods because of their work relationship, profession, or because they receive wages for it is also punishable by a maximum prison sentence of five years.

Gresik District Court Decision Number 315/Pid.B/2023/PN Gsk, where a person named Dwi Zahrul Fitriana Binti Djumadi Hari Santoso (deceased), an employee of PT Cipta Mandiri Nusantara Abadi invested company money because of work relations, information, or inequality, shows there was a criminal act of embezzlement that occurred in Gresik. The embezzlement offense committed during the time of Dwi Zahrul Fitriana Binti Djumadi Hari Santoso (late) emphasized the importance of justice and effective law enforcement. This case shows that breaches of trust and embezzlement can occur among officials in authority, threatening social stability and public trust in institutions and individuals. Therefore, the findings of this research require a law enforcement process in order to increase public trust in the legal system.

The main objective of this research is to conduct a comprehensive evaluation of law enforcement officers involved in the criminal act of embezzling money from their term of office committed by Dwi Zahrul Fitriana Binti Djumadi Hari Santoso (deceased). The aim of this study is to identify strengths and weaknesses in law enforcement and provide suggestions for future improvements. In a broader sense, the aim of this research is to increase public awareness of the importance of honesty and law enforcement at all levels of society.

Previous research includes Law Enforcement Analysis of the Crime of Evasion of Position (Muhammad Falah, 2024) and Legal Analysis of the Crime of Evasion of Position Committed by Debt Collectors at PT Federal International Finance (FIF) Lampung Branch (Muhammad Raies and Anggalana, 2024). However, this research adds Gresik Regency and a different object case as a new object under study with case number 315/Pid.B/2023/PN Gsk which has never been discussed by any research. This research formulates the problem of how the court decision in case number 315/Pid.B/2023/PN Gsk describes the criminal case of embezzlement due to position and the factors that caused the defendant to not commit the crime. Therefore, the research title was changed to "Comprehensive Evaluation of Law Enforcement Against the Crime of Embezzlement Due to Position: Case Study of Decision Number 315/Pid.B/2023/PN Gsk." The formulation of the research problem is as follows: (1) Factors What factors cause the criminal act of embezzlement due to position in decision number 315/Pid.B/2023/PN Gsk, (2) Application of criminal regulations to the crime of embezzlement due to position in decision number 315/Pid.B/2023/PN Gsk, (3) The thoughts of authorized officials regarding the criminal act of embezzlement due to position in decision number 315/Pid.B/2023/PN Gsk?.

METHOD

Utilizing empirical legal methods to obtain accurate and objective research is the problem approach taken in this research (Saptomo, A, 2010). Empirical juridical methodology is a methodology that is completed by focusing on law as a general rule or reality obtained impartially in the field, to obtain reliable information and data. Direct interviews with parties who know and are related to the topic being discussed are used in this method (Abdulkadir Muhammad, 2004).

Sources and types of data are based on primary data that the author obtained directly from the community through research conducted in the field by interviewing people and

making observations related to the main problem that is the subject of the research. Apart from that, data obtained from the literature is referred to as secondary data. This information is obtained from reading legal documents and literature. Primary legal data, secondary legal data and tertiary legal data are included in this secondary data.

The legal rules that form the primary data are as follows:

- a. Law no. 1 of 1946 of the Criminal Code which was ratified by Law no. 73 of 1985.
- b. Criminal Procedure Code (KUHAP) no. 8 of 1981.
- c. Circular Letter of the Attorney General of the Republic of Indonesia No. SE 004/JA/11/1993 concerning Preparation of Indictment Letters. A/11/1993 from the Attorney General of the Republic of Indonesia.

The secondary data used is:

- a. Decision No. 315/Pid.B/2023/PN Gsk on behalf of the defendant Dwi Zahrul Fitriana Binti Djumadi Hari Santoso (deceased) in the case of embezzlement due to his position in Menganti Gresik.

Tertiary information is legal material that provides significant guidance or explanation of primary and secondary legal materials. The following are the sources used in this research:

- a. Gresik District Public Prosecutor : 1 person
- b. Gresik District Court Judge : 1 person
- Total : 2 persons.

RESULTS AND DISCUSSION

Factors Causing the Crime of Embezzlement Due to Position in (Study Decision Number 315/Pid.B/2023/PN Gsk)

The crime of embezzlement involves trust in a person's honesty as well as moral or mental issues. As a result, perpetrators of embezzlement crimes violate the trust of other parties to commit this crime. According to Article 374 of the Criminal Code, embezzlement is a crime. Among the types of crimes against property is embezzlement. Crime related to social life is a phenomenon that continues to attract attention.

The author is of the opinion that the defendant committed the crime of embezzlement because of his employment relationship, search, or because he was paid, intentionally and unlawfully possessing goods which were wholly or partly for the benefit of another person. This is because the fraudster or perpetrator in the case of Decision Number 315/Pid.Sus/2023/PN Gsk works at PT Cipta Mandiri Nusantara Abadi. It is known that the defendant was involved in a criminal act against the law because there were elements of an unlawful act, namely intentionally stealing goods that were in the control of another person or a legal entity. The company suffered a loss of Rp. 85,507,000. based on the audit results because the defendant marked up employee salaries and added the names of employees who were not on the payroll. Therefore, the embezzlement committed by the defendant resulted in the company suffering losses.

The findings of an interview conducted in March 2024 with Agung Nugroho Suryo Sulistio who served as Member Judge at the Gresik District Court showed that based on his position, he was of the opinion that the factors that caused the crime of embezzlement to occur were related to criminological aspects related to crime. Typically, the following factors contribute to the emergence of crime or encourage a person to commit it:

- a. Mindset is one of the variables that causes criminal demonstrations of fraud. Employees who lack mental fortitude will be easily persuaded to act in a way that upholds the employee's honor and dignity as an official.
- b. The influence of a consumer lifestyle can encourage someone to spend more money than they can afford, and family pressure to make ends meet is one of the factors.

- c. Opportunities and intentions are present. That the emergence of criminal acts of embezzlement is driven by intention and opportunity. If there is no opportunity, no matter how big the intention, embezzlement cannot occur.
- d. The nature of human greed, where a person's potential to commit embezzlement crimes is not limited by poverty or income. Potential individuals are people who are rich but want to advance themselves. The factors that cause the illegal act of embezzlement to occur come from individuals.

Application of Criminal Law to the Crime of Embezzlement Due to Position (Study Decision Number 315/Pid.B/2023/PN Gsk)

The term "embezzlement that takes advantage of position at work" or "embezzlement that is caused by attachment to work" (zijn persoonlijke dienstbetrekking) refers to the employee's work relationship with his superior and not the employment relationship (AMBT). Legality is the basis of a crime, and guilt is the basis of a person's punishment. This means that a person cannot be held responsible and punished if he has no fault. Criminal liability in foreign languages is referred to as toereken-baarheid, criminal obligation, criminal risk, criminal liability here is expected to determine whether a person can be punished or not for the actions they have committed. Article 374 of the Criminal Code defines embezzlement as an aggravating offense. As with other embezzlement offenses, the offense of embezzlement with aggravation is an embezzlement offense which, because there are other disturbing components, means the criminal threat becomes more severe.

The author is of the opinion that the Defendant can be considered to be of sound mind, so he deserves to be blamed and punished by taking into account the indictment submitted by the Public Prosecutor, namely Article 374 of the Criminal Code (KUHP). With these charges and other related regulations and guidelines, the Gresik District Court Judge tried the Defendant. Declare that the Defendant can be legally and convincingly proven guilty of committing the crime of "Continuous embezzlement in office" as stated in the Public Prosecutor's single indictment, punishing the Defendant with imprisonment for 1 (one) year and 6 (six) months. Deciding on the evidence that has been introduced in the reality of the regulations currently in force, in accordance with the evidentiary guarantee which is not expressly stipulated by the Panel of Judges at the Class IA Gresik District Court, and charging the Defendant to pay a court fee of Rp. 5,000, - (5,000). Rp. 5,000,- (five thousand rupiah).

Results of a meeting with Nur Afrida as Public Prosecutor at the Gresik District Prosecutor's Office in March. States that the use of criminal regulations against perpetrators of criminal acts of embezzlement is also referred to as a criminal act of certified theft. According to Article 374 of the Criminal Code, embezzlement carries a potential maximum sentence of five years in prison. As a result, the criminal system consists of a single sentence, namely only imprisonment, with a maximum threat of five years and a minimum of one day. Based on Article 12 Paragraph 2 of the Criminal Code which states that "The penalty is imprisonment for a certain period, a minimum of one day and a maximum of fifteen consecutive years," the judge is free to impose a sentence ranging from one day to a maximum of five years.

Judge's Consideration of the Crime of Embezzlement of Position (Decision Study 315/Pid.B/2023/PN Gsk)

As a court of first instance and *judex facti*, the Panel of Judges at the Gresik Class IA District Court examines, decides and decides cases. The Panel of Judges will then decide this case themselves in accordance with Decision Number: 315/Pid.B/2023/PN Gsk, Article 374 of the Criminal Code, Law Number 8 of 1981, namely concerning Criminal Procedure Law, Law. Number 48 of 2009 concerning Judicial Power, and other related regulations. The

author is of the opinion that, in accordance with the principles of legal certainty, justice and expediency, the Panel of Judges has implemented its decision in a balanced or proportional manner. The Panel of Judges has applied the principle of legal certainty by applying the Article in accordance with the elements of the criminal act proven to have been committed by the Defendant.

"Every person" and "Embezzlement committed by someone who controls goods due to an employment relationship or because of a search or because of receiving wages for it" were considered by the Panel of Judges as elements of a single indictment. The Public Prosecutor has filed charges against the Defendant. "Everyone", namely a natural person who is the subject of criminal law and whose identity is stated in the general summons for prosecution and who can be held responsible for the criminal act. Based on information at the trial, the Public Prosecutor has presented a person named Dwi Zahrul Fitriana before the trial. The person's identity is exactly the same as that stated in the Public Prosecutor's indictment, so there will be no confusion regarding the person brought to trial. If he is able to answer well during the test, then he is declared physically and mentally healthy. As a result, these characteristics have been realized.

The element "Embezzlement committed by a person whose control over goods is due to an employment relationship or because of a search or because they receive wages for it". Based on the facts revealed at trial, the defendant is an employee of PT Cipta Mandiri Nusantara Abadi with his address at Menganti Pengampon Gang Mosque No. 17 Gresik who operates in the construction sector with the position of cashier with a salary of IDR 3,000,000.00 since October 2020 with the task of calculating and recapping employee salaries. Whereas the project foremen who were absent were sent to the defendant every Saturday morning, then the defendant began calculating the salaries of these field employees, where for the workmen the salary was Rp. 95,000.00, coolie Rp. 85,000.00 then there is food money in 1 day you get 3 times food money for a total of Rp. 39,000.00 and there is overtime.

That after the calculation was carried out, it was then submitted to witness Budi Santoso as the Finance Manager of PT Cipta Mandiri Nusantara Abadi and handed over the salary money to the defendant to be handed over to field employees and to foremen outside the city. The defendant asked witness Ninik for help to transfer it to the foreman and hand it over. cash to witness Ninik Suliyanti. That starting in May 2021, the defendant, who received employee absences from the foremen every week, entered fictitious names in the calculation of employee salary payments for 1 or 2 fictitious employees, thereby adding approximately Rp. 1,200,000,- every week and the defendant enjoyed this money with the reason is to help with the treatment of his sick parents and their daily living needs. That the defendant's act of entering a fictitious name was carried out until December 2021 and was discovered by the company and an internal audit of PT Cipta Mandiri Nusantara Abadi was carried out as a result of which the company suffered a loss of up to IDR 85,507,000.00 (eighty-five million five hundred and seven thousand rupiah) and Until this case was tried, it had not been returned by the defendant.

That the defendant used the money to pay for his parents' medical treatment and pay for his daily life. Thus this element has been fulfilled.

Based on the results of an interview in March 2024, Supreme Judge Nugroho Suryo Sulistio at the Fresik Class IA District Court was of the opinion that the judge used the ratio decidendi theory for decisions which were based on a fundamental philosophical basis. This theory considers all aspects related to the subject of the disputed case, then looks for statutory regulations relevant to the subject of the disputed case as a legal basis for passing a decision, and the judge's considerations. Therefore, the additional criminal provisions are intended to correct the defendant so that he does not repeat his actions and realize his mistakes, as well as to provide a warning so that other people do not commit the actions that the defendant

committed. Criminal provisions regarding sanctions against defendants are not intended to mitigate the acts committed. However, the judge in this case made the right decision. Even though there are advantages and disadvantages to this decision, the judge's decision must be respected and cannot be questioned. The author emphasizes that a judge is bound by the principle of judicial independence in deciding a case and deciding whether or not someone is appropriate to be sentenced to a criminal sentence. The judge's decision is based on the judge's beliefs and not just based on existing evidence.

Discussion

This research evaluates the criminal act of embezzlement due to position based on a case study at PT Cipta Mandiri Nusantara Abadi, where an employee was proven to have embezzled Rp. 85,507,000 by manipulating the payroll. This criminal act of embezzlement reflects the abuse of trust given to the perpetrator because of his position in the company, who exploits system weaknesses for personal gain. Criminological factors that contributed to this case include a weak employee mentality, pressure to make ends meet, the presence of intention and opportunity, and greed. This crime causes significant losses to the company both financially and morally.

Employee mentality is the main factor in the occurrence of criminal acts of embezzlement. Mentally weak employees are more susceptible to the temptation to commit crimes, especially when there is an opportunity to do so undetected. On the other hand, employees who have a strong mentality and view their position as a mandate are less likely to be easily influenced by opportunities to commit crimes. A strong mentality is usually based on solid moral principles, professional ethics, and a commitment to integrity.

Pressure to make ends meet is also a significant driver for employees to commit embezzlement. In this case, family pressure and consumer lifestyle factors can encourage individuals to look for quick ways to earn money, even if it means breaking the law. Difficult economic conditions and financial demands that exceed a person's capabilities are often the reasons behind the decision to commit the crime of embezzlement. This shows that economic and social aspects play an important role in influencing criminal behavior.

Intention and opportunity are two interrelated factors in the occurrence of criminal acts of embezzlement. The intention to commit a crime will not be realized without an opportunity that allows the perpetrator to do it. In this case, the defendant had access to the payroll system which gave him the opportunity to manipulate. On the other hand, without intention, the opportunity will not be utilized to commit a crime. This combination of intention and opportunity is the key to understanding how and why criminal acts of embezzlement occur.

Greed is an internal factor that encourages individuals to commit embezzlement, even though their basic financial needs have been met. This trait reflects the desire to enrich oneself without paying attention to the negative impact it has on other people or the organization. In this context, embezzlement perpetrators are not only motivated by economic needs, but also by the urge to continue to increase personal wealth. This shows that the motivation behind the crime of embezzlement can be very complex and is not always directly related to financial difficulties.

The application of the law to the criminal act of embezzlement due to position is carried out based on Article 374 of the Criminal Code, which regulates embezzlement with aggravation. In this case, the defendant was sentenced to prison for two years and six months. The opinion of Nur Afrida, Public Prosecutor, emphasized that embezzlement due to office is a serious crime that requires strict punishment to provide a deterrent effect and restore public trust. The sentence imposed must also take into account the level of harm caused and the breach of trust committed by the defendant.

In considering the decision, Supreme Judge Nugroho Suryo Sulistio used the ratio decidendi theory, which pays attention to all aspects related to the case and looks for relevant statutory regulations and legal bases. The application of criminal sanctions in this case aims not only to repay the actions committed, but also to improve the defendant's behavior and provide a warning to the public not to commit similar crimes. These considerations reflect a holistic approach to enforcing the law, where punitive and rehabilitative goals go hand in hand.

The judge in this case has fulfilled the elements of a good decision by imposing a balanced and fair sentence, upholding the principles of justice and legal certainty. Appropriate law enforcement and comprehensive consideration by judges shows serious efforts to uphold law and justice proportionally, as well as providing a deterrent effect which is expected to prevent similar criminal acts from occurring in the future.

CONCLUSION

The author concludes that the actions committed in case 315/Pid.B/2023/PN Gsk constitute embezzlement due to position. It is known that the defendant took money from PT Cipta Mandiri Nusantara Abadi and has not returned it. Application of Criminal Law in Decision 315/Pid.B/2023/PN Gsk, the defendant was charged with Article 374 of the Criminal Code and Law Number 8 of 1981 concerning Criminal Procedure Law because he was proven to have committed the crime of embezzling his position. The defendant was sentenced to two years and six months in prison. According to the considerations of the Panel of Judges in Decision Number 315/Pid.B/2023/PN Gsk, the elements of the criminal act committed by the defendant occurred in reality or were real events that occurred (*dassein*) and fulfilled the elements. Good decisions and considerations are non-judicial in nature, namely things that burden and mitigate forgiveness in implementing decisions in accordance with the principles of legal certainty, justice and benefit in a balanced or proportional manner to the substance.

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