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Criminal Liability of Third Parties in the Crime of Embezzlement in Indonesia

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Abstract: The function of law as a social controller is very important, especially in formulating effective policies and law enforcement, including in the context of criminal law that is oriented towards deterrent and restoration effects. This research aims to explore the criminal liability of third parties in the crime of embezzlement in Indonesia. The formulation of the problem includes the concept of third parties in embezzlement and their criminal liability. The method used is normative juridical legal research with statutory and conceptual approaches, and qualitative data analysis. The results show that third parties can be involved either directly or indirectly in the criminal act of embezzlement, and can be subject to criminal sanctions if proven to have knowledge of the origin of illegally obtained money. Legal handling of these third parties is important to close the loopholes for the main perpetrators and prevent money laundering. This research provides new insights into the complexity of criminal liability in embezzlement cases and its implications for law enforcement in Indonesia.

Keyword: Criminal Law, Embezzlement, Third Party, Criminal Liability, Law Enforcement.

INTRODUCTION

The function of law as a social controller is an important thing to apply, especially in formulating a policy and the law itself or being able to guarantee law enforcement which leads to controlling the community itself (Rahma et al., 2022). This context also applies to criminal law, which was originally oriented towards providing a deterrent effect that has changed to providing restoration (Ma'ruf et al., 2023). Even so, this can provide an understanding that criminal law can be an instrument in law enforcement in the form of social engineering from Roscoe Pound (Sundari et al., 2024). Thus, criminal law is present to provide a sense of security and peace to the community in preventing and taking action against crimes that occur in society with the aim of restoring the situation, both victims, perpetrators, and the community affected by the crime that occurred.

Legal certainty is the main funnel in law enforcement (Handayani & Angrayni, 2023). Every step taken by law enforcement officials must be based on the law itself (Abdullah, 2016). The theory of legal objectives is not just a display, but must be used as the main foundation in

ensuring that the law exists and must implement the three objectives of the law, namely legal certainty, legal benefits, and legal justice (Muslih, 2017). Although the law is also considered as a means of social control, the characteristics of the law that must be written also prioritize aspects of legal certainty, in addition to the aspects of legal expediency and justice itself (Martinelli et al., 2023). Legal certainty guarantees the existence of the law itself which is written by reflecting certainty for the community (Wantu, 2012). Legal expediency guarantees the happiness and benefits of the law that has been made. Legal justice guarantees a sense of fairness that is inferred from the laws that have been made (Rais, 2017). The context of these three things must synergize in giving birth to the ideal law in society.

Law exists as a sign of the existence of society itself (*ubi ius ubi societas*) (Hadi, 2017). Law requires harmony and peace among the community and the social life of the community (Ahadi et al., 2023). Law contains honest and peaceful life in the whole society. Moreover, law enforcement must be based on the applicable positive law. This is highlighted when indeed the Indonesian constitution has emphasized the existence of an Indonesian state based on the rule of law as referred to in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which reads that “The State of Indonesia is a state of law.” The law must be enforced in order to create the ideals of the law itself, as well as the ideals of the Indonesian nation contained in the Preamble of the 1945 Constitution (Indah, 2019). The existence of law is analogous to the main foundation of a house that becomes a country. Norms as a guide to life become a guide as it should be done in life (Lailam, 2014).

This context also applies to criminal law enforcement which must prioritize legal certainty for officials to act, especially in this case is criminal law (Sinaga, 2018). A criminal offense can be interpreted as an act that is prohibited by law and anyone who commits an act that is prohibited will be given sanctions (Lahabu et al., 2023). In addition to this, there is also an etymology of offense that is determined based on the values upheld in a society. In this case, it includes the crime of embezzlement. The crime of embezzlement is defined as embezzlement means having goods or anything that belongs to another person but the act is not a crime (Hartanti et al., 2021). This context provides a view that the ownership of goods for embezzlement is not a crime at first, but gradually it can become a crime. This can be seen in Article 372 of the Criminal Code which states that “Any person who intentionally unlawfully possesses property, wholly or partially belonging to another, but which is in his possession by reason of no crime, shall, being guilty of embezzlement, be punished by a maximum imprisonment of four years or a maximum fine of nine hundred rupiahs.”

A criminal offense (*strafbare feiten*) is a person's act (*menselijke gedraging*) formulated in the wet, which has a nature contrary to the law, which deserves criminal punishment (*strafwaardig*) and is committed with fault (I. B. G. A. Putra et al., 2022). Crime can be defined as behavior that violates the applicable criminal rules, which can cause harm to individuals or legal entities, both materially and formally (Sari, 2021). This criminal act is committed by one or more people by using a certain mode or method in the application of this behavior. When looking at the legal subject, criminal acts are specified into two, namely criminal acts that everyone can do (*delik communia*) and criminal acts that only someone has specific qualities that can do it (*delik propria*) (Harahap et al., 2023).

The crime of embezzlement often also involves many people who ensnare third parties. This causes the number of parties involved to make the crime complex and the number of suspects in the case. As a result, law enforcers often expand the scope of their investigations so that often a case has more than one suspect who is already involved in the crime. However, this has led to confusion in law enforcement that includes a third party in the crime of embezzlement who is not given the same punishment as the main perpetrator of embezzlement. It could be that the third party is the brain of the crime, not the main perpetrator. This is a question

regarding the liability of third parties in the crime of embezzlement, which in some cases is not only 1 (one) person, but more than 1 (one) person.

As is the case in the case of Andika Surachman as the President Director of PT First Anugerah Karya Wisata who was convicted of embezzlement as well as being exposed to the money laundering article of PT First Travel in Decision Number 83/Pid.B/2018/PN.Dpk. The case has also been decided up to the level of cassation and judicial review so that the sentence of the convicted person is inkracht or legally binding. In this case, the convict was charged with multiple articles, namely Article 378 jo. Article 55 paragraph (1) to 1 of the Criminal Code Jo. Article 64 paragraph (1) of the Criminal Code and there are indications of money laundering in the second charge, namely Article 3 of Law No. 8 of 2010 concerning Prevention and Eradication of Money Laundering in conjunction with Article 55 paragraph (1) to 1 of the Criminal Code jo. Article 64 paragraph (1) of the Criminal Code. In the verdict, the defendant was charged with multiple articles from all articles charged by the public prosecutor (Pengadilan Negeri Depok, 2018).

Moreover, in this case there are often cases of purchasing assets or goods resulting from embezzlement. Whereas previously the buyer of the asset did not know that the goods were the result of embezzlement. When examined further, the legal relationship between the buyer and seller indicated by the embezzlement is also the realm of civil law in the form of buying and selling. This becomes a problem when in the future the buyer (third party) is investigated or followed up in the criminal responsibility of the buyer itself. This creates a question regarding the criminal liability of the third party which is the focus of this research.

In every research, there will be a review of previous research to show similarities and differences with this research. The first research is a research written by Lukmanul Hakim and Yunita with the title "Analysis of the Legal Relationship between Goods / Vehicle Providers (Dealers) and Financing Companies in the Event of Vehicle Embezzlement by Consumers". The research discusses embezzlement that occurs with the subject of a vehicle that has been given a fiduciary guarantee. In addition, the study also said that in the settlement of this crime, peace was also made to reduce the prolonged conflict between the perpetrator, victim, and third parties who were affected by the previous embezzlement crime (Hakim & Yunita, 2023). The similarity between this research and the aforementioned research is that both also discuss the crime of embezzlement. The difference between this research and the aforementioned research is that this research will discuss in depth related to third person criminal liability which is not discussed further in the aforementioned research.

The second research is a study written by Ferdy Saputra, Yusrizal, and Budi Bahreisy with the title Responsibility of Company Directors Suspected of Embezzlement in the Position of Company Money. The research discusses the responsibility of the company brought to the GMS to later find out who is responsible, whether it is the directors or supervisors of the company who are responsible for managing the company in the forum. The research also provides suggestions in the form of changes to Law No. 40 of 2007 concerning Limited Liability Companies by including legal remedies for company directors and / or boards of commissioners who do not carry out company management and supervision based on the principle of fiduciary duty (Saputra et al., 2023). The similarity between the two studies is that both studies discuss the crime of embezzlement. The difference between the two studies is that the research focuses on the responsibility of the board of directors in financial management when there is a criminal act of embezzlement concerning company finances, either directly or indirectly. Meanwhile, this research will discuss the liability of third parties who are not only companies, but can also be individuals who are held accountable in the future.

The third research is a research written by Mahendru Massie with the title of the Crime of Embezzlement in Using Position Based on Article 415 of the Criminal Code. The research discusses the factors behind the criminal act of embezzlement in office which includes a

person's mentality, fulfillment of needs, the existence of biases and opportunities, as well as the atamak nature of humans. Then the research also discusses the elements contained in Article 374 of the Criminal Code which consists of the elements contained in Article 372 of the Criminal Code with aggravation because it is carried out in office (Massie, 2017). The similarity between the two studies is that they discuss the crime of embezzlement. However, the difference is that the research focuses on embezzlement crimes committed in office which can be related to corruption. This research will discuss the criminal act of embezzlement committed by a third party and analyze its criminal law liability. From the background explanation above, the following problem formulations are formulated: 1) what is the concept of third parties in the crime of embezzlement in Indonesia; and 2) how is the criminal liability of third parties in the crime of embezzlement in Indonesia?

METHOD

The type of research used in this study uses normative juridical legal research with a criminal law approach and a conceptual approach. Juridical legal research is legal research with a literature study conducted by examining library materials or secondary data only (Marzuki, 2017). The approach of criminal law legislation is used to analyze the discussion of criminal liability of third parties in the crime of embezzlement based on relevant laws and regulations such as Law No.1 of 2023 concerning the Criminal Code and Law No. 8 of 1981 concerning Criminal Procedure Law. While the use of a conceptual approach is used to analyze the role of third parties in the criminal act of embezzlement based on theories and expert views on criminal law, embezzlement, criminal liability, and civil law related to restitution. The data analysis technique used in this research uses qualitative methods as an effort to find answers to the problems in the research. The results of the data analysis are presented descriptively.

RESULTS AND DISCUSSION

Third Party Concept in the Crime of Embezzlement in Indonesia

Third parties become parties involved in criminal acts, either directly or indirectly. The context of a third party being involved is when it directly has the motive and intention to commit a criminal offense and has a direct effect on the criminal offense. A third party is indirectly involved when the third party is unconsciously "involved" in the criminal offense even though the third party does not have the intention to commit the criminal offense. However, third parties can be charged when they have a real and concrete role in supporting the crime even though they have no intention to do so. This is important for investigators in finding people or legal subjects involved in explaining a criminal offense to its roots.

In criminal law, the concept of third parties in the crime of embezzlement refers to individuals or entities that are not directly involved in the act of embezzlement but play a role in facilitating, concealing, or benefiting from the proceeds of the crime (Harahap et al., 2023). These third parties can be people or companies that help divert or hide illegally obtained assets. For example, a person who knows that the money he receives is the result of embezzlement but still receives and uses the money, can be considered a third party involved in the crime of embezzlement.

Legally, third parties in embezzlement cases can be subject to criminal sanctions if it is proven that they knew or should have known of the illegal origin of the money in accordance with the provisions in the Criminal Code. The Criminal Code stipulates that individuals or entities who intentionally or negligently participate in a crime, even if they only act as facilitators or beneficiaries, may be subject to penalties (Saputra et al., 2023). This includes criminal sanctions such as fines, imprisonment, as well as forfeiture of assets obtained from the proceeds of crime.

Identifying and prosecuting third parties in embezzlement offenses requires a comprehensive investigation and sufficient evidence to prove their involvement (Suhaemin et al., 2024). Investigators and prosecutors must show that the third party had knowledge of the underlying crime and actively or passively participated in the concealment or use of the embezzled proceeds. The prosecution of these third parties is important to close the loopholes for the main embezzlers and prevent wider money laundering, while upholding justice and providing a deterrent effect.

However, this can be seen from the point of view of agreement law which requires prior consensus from the parties to the agreement (Riandini & Gusrianti, 2021). The concept of a third party is usually a guarantor in the agreement. This becomes natural when the agreement becomes the primary agreement and requires an *assesoir* agreement as a complementary agreement to ensure that the parties can fulfill their respective responsibilities (Apriani & others, 2022). Especially in the role of a creditor, the debtor has the right to ask a third party, usually a notary, to guarantee the land that is confirmed through a mortgage so that the debtor has a guarantee when the creditor does not fulfill its obligations in accordance with the agreement (ROZAQI, 2024). Although the concept of a third party in the crime of embezzlement is a different concept, the description of the third party is that the third party becomes a party who provides security when viewed in the context of treaty law.

The concept of a third party in the crime of embezzlement is someone who conducts a transaction with someone (the perpetrator of the crime at a later date) and is then indirectly involved in the crime of embezzlement. This context can be seen by investigators when there is indeed a plot between the third party and the perpetrator of the crime (M. J. A. Putra et al., 2023). Investigation certainly functions as a forum to seek the material truth of a criminal offense. This is confirmed in Article 1 point 2 of Law No. 8 of 1981 concerning Criminal Procedure which reads that "Investigation is a series of investigator actions in the case and in the manner regulated in this law to seek and collect evidence with which the evidence makes light of criminal acts that occur and to find the suspect." The context of the investigation according to Article 1 number 2 requires investigators to look for all evidence relevant to a criminal offense in order to make light of a criminal offense, especially in this case the crime of embezzlement (Ridwan et al., 2020). When in the discovery of evidence in the investigation, it is found that there is a deliberate act of a third party to be able to own a certain item, this can be a party when subjected to other criminal offenses because it indirectly commits a criminal offense as well.

The meaning of the third party is also often unintentional or even unaware that the assets purchased are the result of a criminal offense (Umara, 2017). This provides a blurred source of assets for the perpetrator of the crime so that it is not open to the buyer who then becomes a third party in the crime of embezzlement. This terminology is slightly contradictory to the agreement between the two parties because public and private law must be separated in the context of law enforcement. However, there are several things that can affect the agreement between the two parties when there is a criminal offense involved.

As is known, an agreement is a legal relationship between several legal objects that have a relationship between a person or several people thereof binding themselves to do or not do things against the parties who bind themselves in it (DEWI, 2024). From this understanding, an engagement is related to the elements that exist: First, there is a legal relationship. A legal relationship is defined as a relationship that is regulated and recognized by law. A regulated relationship is usually referred to as an obligation born by law. For example, the attachment between parents and their children in caring for their children is born by law because they have given birth to them in the world (Gumanti, 2012). Recognized relationships are usually based on agreements. It is said so because legal relationships are made by several parties that bind the two or more parties and apply like laws to those who bind themselves in it. Second, between

a person and one or more people. It is intended that the obligation can apply to a person and several people, which in this case are legal subjects or persons with rights and obligations granted by law. Third, doing or not doing and giving something. Doing or not doing something and giving something in an engagement is called an achievement, or the object of the engagement (Werdiningsih, 2023). Legal subjects can make steps in determining the contents of the agreement.

According to Article 1313 of the Civil Code, an agreement is defined as “an act by which one or more people bind themselves to one or more people.” According to Subekti, an agreement is a legal relationship between two or more people, based on the parties being entitled to demand something from the other party, and the other party is obliged to fulfill the request (Subekti & Marbun, 2023). The context of this understanding requires an agreement which is defined as the right of one party to demand from the other party and the other party is obliged to fulfill the fulfillment of these demands to the other party (Yunus, 2019). Thus, the agreement is important for both parties in fulfilling their rights and obligations as stated in it. This is also reinforced by the provisions of Article 1338 paragraph (1) of the Civil Code which reads that “All agreements made legally shall apply as laws for those who make them”: The article indicates that all agreements apply like laws to those who bind themselves. Indirectly obliges the parties to carry out all their rights and obligations as stated in the agreement.

But of course there will be a connection with the criminal act of embezzlement which has a slice with civil law, especially in the context of agreements. Criminal acts are also one of the reasons for the cancellation of the valid requirements of the agreement as referred to in Article 1320 of the Civil Code which reads that the valid requirements of the agreement are: 1) agreement of the parties; 2) capacity to make an agreement; 3) regarding a certain matter; and 4) a halal cause (Moertiono, 2021). This context is closely related to point 4 of the valid requirements of the agreement, namely a lawful cause. A lawful cause is also defined as a certain thing, a lawful cause. A cause is defined as a forbidden thing if it is prohibited by law, or contrary to decency or public order (Hidayat, 2023). A lawful cause is not fulfilled when it is found in the future that the assets that have been traded to third parties by the perpetrator of the crime, the agreement is null and void and has the potential to be confiscated as evidence of embezzlement (I. B. G. A. Putra et al., 2022). However, this has already happened when the verdict is legally binding, in which case the assets can be confiscated for the public interest and put into the state treasury.

Then, the concept of embezzlement punishment cannot be separated from the role of the official who did it. The concept of embezzlement committed by an official can be categorized as a corruption crime if state money is harmed by the official's actions. However, after the enactment of Law No. 1 of 2023 on the Criminal Code (hereinafter referred to as the New Criminal Code), the provision of embezzlement in office is regulated in Article 415 of the New Criminal Code which reads that “An official or other person who is assigned to carry out a public office continuously or temporarily, who intentionally embezzles money or securities kept by virtue of his office, or allows the money or securities to be taken or embezzled by another person, or helps as an accomplice in the act, shall be punished by a maximum imprisonment of 7 years.” In accordance with this article, a person who holds an office when committing an act of embezzlement still falls into the criminal realm of embezzlement due to office which has been clearly regulated in the New Criminal Code. This context provides legal clarity in the criminalization of officials who commit embezzlement in office.

The position of a third party can also be a key witness in a criminal offense. Especially in this case, the third witness has conducted a sale and purchase transaction with the perpetrator of the crime. This also fulfills the provisions of Article 1 point 26 of the Criminal Procedure Code which reads that “A witness is a person who can provide information for the purpose of investigation, prosecution and trial of a criminal case that he himself heard, he himself saw and

he himself experienced.” From this formulation, it appears that a witness is someone who directly hears, sees, or experiences an event that is suspected of being a criminal offense. With his knowledge, he is expected to provide information that explains the criminal event. The testimony of this witness is very important so that the law, especially criminal law, can be enforced. This provision may impose an obligation on third parties to be available as witnesses in court to be questioned by the judge and the parties. Although in this case, of course, the witness can prove the existence of embezzlement committed by the perpetrator if the witness can provide strong evidence for his statement to the judge and strengthen his argument.

Thus, the concept of a third party can be interpreted as a party who consciously or unconsciously conducts a sale and purchase transaction with the perpetrator of the crime of embezzlement before finally being determined and punished based on a legally binding decision. This is reasonable because when it is legally binding, the assets that have been purchased by the third party to the perpetrator can be confiscated and returned to the state. Moreover, the third party here made a transaction with the perpetrator so that it has the potential to participate in committing a criminal offense when the third party is not cooperative in revealing the criminal act that occurred.

Third Party Criminal Liability in the Crime of Embezzlement in Indonesia

Responsibility in criminal law can be defined as criminal liability, in Dutch referred to as *torakenbaarheid*, in English criminal responsibility or *criminallibility* (Rodhiyah et al., 2022). Then etymologically, criminal responsibility is defined as a means of imposing punishment on the perpetrator because of actions that violate what is prohibited and cause prohibited conditions as referred to by law (Sumarna, 2021). Moreover, criminal responsibility is closely related to the process of transferring the law in the criminal act to the perpetrator. According to Simons' review, *strafbaarfeit* must be a human action which is contrary to the applicable legal provisions, the act is carried out by a person who can be held accountable and the person can be questioned (Ahmad et al., 2019). A person in taking responsibility for his behavior in criminal law is to continue the punishment that objectively exists in the criminal act subjectively committed by the perpetrator (Rangkuti et al., 2015). Criminal liability is determined based on the fault of the perpetrator and not only with the fulfillment of all elements of the criminal offense. In addition, a person is declared to have guilt for his actions must be linked to the issue of criminal liability.

Van Hamel stated that criminal responsibility is a normal state and psychological maturity that brings 3 (three) kinds of abilities to: a) understand the meaning and consequences of his own actions; b) realize that his actions are not justified or prohibited by society; and c) determine the ability to act. Then according to Mulyatno, the terminology of punishment comes from the word *straf* and the term *punished* comes from *gestraft* which is a conventional term (Candra, 2013). The context of the translation is the disapproval of the term. According to him, *straf* is translated as punishment. Further in his explanation, he interprets that “punished”, means “treated by the law”, both in the perspective of criminal law and civil law. Thus, punishment is the result or consequence of the application of the law which has a broader spectrum than the crime itself, this is because it also includes the judge's decision in the realm of private law. In some literatures, the requirements for criminal responsibility can be seen from 3 (three) things, namely *dolus*, *culpa*, and the absence of reasons for the elimination of punishment. In terms of *dolus*, the definition can be seen in the Criminal Code of 1809 which provides an understanding that “intentional is the ability with which there is a willingness to do or not do an act prohibited or ordered by law.” The definition of *dolus* is reiterated in *Memorie Van Toelichting (MvT)* which explains *dolus* as “consciously intending to commit a certain crime.” In this case, it is also necessary to pay attention to the principle of criminal law which does not only look at guilt, it must look at the certainty aspect contained in the principle of legality

which states that “geen straf zonder schuld or keine straft ohne schuld” or can also be referred to as the principle of mens rea or the principle of culpability” (Sarungallo et al., 2023). The context of this principle requires the term “no punishment without fault” which must also be balanced with the provisions in various positive laws that embrace the principles of strict liability and vicarious liability (Latukau & Uar, 2021).

Apart from guilt based on the element of intent, another element that needs to be fulfilled by the perpetrator in order to be held accountable under criminal law is the element of negligence (culpa) (Andira, 2015). Negligence itself in itself the perpetrator has a lack of thought, ignorance, and lack of wisdom. Thus, when viewed from conscious negligence, there is gross negligence and slight negligence. However, there is also conscious negligence when the perpetrator can foresee what will happen next or the consequences of his/her actions, but when he/she does so, it will still lead to serious consequences for others despite the perpetrator's precautions. Unconscious negligence is when the perpetrator is unable or unwilling to realize or foresee the consequences of what the perpetrator has done.

A person is convicted when it is sufficient if it is contrary to the law and proven by 2 (two) pieces of evidence. Although his actions have fulfilled the formulation of the offense in the law, if there is no fault, then no punishment can be imposed on him. In this case, it can be concluded that criminal responsibility in general relates to criminal acts in which there must previously be guilt, whether in the form of error (dolus) or negligence (culpa) itself, which then the subject of law can be given punishment as legal responsibility.

In relation to the concept of a third party in the crime of embezzlement, the third party must be sought for his motive in conducting transactions with the perpetrator of the crime of embezzlement. If the third party did it intentionally, then it can be said that he is responsible on the basis of fault (dolus). However, if the third party conducts the transaction without knowing that the assets purchased are the proceeds of embezzlement, then it can be said to be included in the offense of negligence (culpa). This can be found in the process of investigating and investigating criminal offenses which must be underlined that it must be based on 2 (two) pieces of evidence before determining a person is guilty and can be punished as referred to in Article 183 of the Criminal Procedure Code which reads that “The judge may not impose a sentence on a person unless with at least two valid means of evidence he is convinced that a criminal offense has actually occurred and that the defendant is the one guilty of committing it.” The context of the article requires that judges should not be arbitrary in imposing punishment on third parties who conduct transactions with the perpetrators of embezzlement crimes.

In terms of the theory of criminal liability, there are 3 (three) theories that require this. First, the concept of strict liability which requires criminal liability without fault (Karlina & Putra, 2023). This concept provides an understanding that the perpetrator can be punished if he commits an act as formulated in the law without looking at his mind and intention in committing the act. This concept developed in the UK with the development of the doctrine that mens rea cannot be maintained in every criminal case there. According to the doctrine of strict liability, a person can already be held criminally liable even though there is no fault (mens rea) in that person. Despite the context of this doctrine, many argue otherwise. For example, there are those who argue that this principle requires no fault at all as long as it fulfills the formulation of the article in the law can be applied, unless a large error is applied to the perpetrator. Others state that the application of this principle must be made more precise depending on the factual cases that occur in court.

Secondly, the concept of vicarious liability which requires a person's criminal responsibility for the wrongful acts committed by others (the legal responsibility of one person for the wrongful acts of another). Roeslan Saleh in his book calls for vicarious liability as an exception to the principle of fault. He believes that in general, a person is responsible for his own actions.

However, there is something called vicarious liability where a person is responsible for the actions of others. It is the law that determines who is considered as the perpetrator responsible for the criminal offense that occurred (Candra, 2013). There are also other reasons that suggest criminal law needs to require vicarious liability, which in this case can be seen in corporate criminal acts that punish directors when there is a criminal offense within the scope of the company that is their responsibility in accordance with the provisions of the Limited Liability Company Law.

Third, the concept of *erfolgschaftung*, which requires fault, is mainly limited to acts committed intentionally by the perpetrator of the criminal offense. The criminalization of *culpa* offenses is only an exception when the law states so. Only liability for certain consequences of a criminal act, for which the law increases the punishment, is only imposed on the defendant if he or she deserves to be punished when he or she foresees the possibility of an outcome of the event or if there is at least negligence in the event (Candra, 2013). Thus, this concept requires fault before a person can be convicted of behavior that is in accordance with the provisions of the law.

The context in the case of PT First Travel was sentenced using the *erfolgschaftung* method of liability, which requires a minimum of 2 (two) pieces of evidence and the judge's conviction. As known above, the *erfolgschaftung* method of liability believes in the existence of intentional wrongdoing of the perpetrator and requires evidence. In Decision Number 83/Pid.B/2018/PN.Dpk there are many pieces of evidence that prove that the perpetrator committed embezzlement. Thus, the perpetrator named Andika Surachman as the President Director of PT First Anugerah Karya Wisata was sentenced to imprisonment for 18 (eighteen) years and a fine of Rp. 10,000,000,000.00 (ten billion rupiah) provided that if the fine is not paid, it will be replaced by imprisonment for 8 (eight) months each.

Contextualization with third parties in the crime of embezzlement can be held accountable by *erfolgschaftung* which provides responsibility to third parties based on fault or negligence with prior proof. Criminal punishment can only be given when there are 2 (two) pieces of evidence and the conviction of the judge. However, the punishment will still be carried out when the verdict is legally binding and the assets will be returned after the verdict is legally binding as well. Then with a permanent legal force decision, the transaction between the perpetrator and the third party will be null and void as it violates the lawful cause provision of Article 1320 of the Civil Code. Thus, this will provide legal certainty to third parties and those harmed by the actions taken by the perpetrators of criminal acts.

CONCLUSION

The conclusion of the discussion is that third parties can be involved in the crime of embezzlement either directly or indirectly, with roles ranging from facilitators, beneficiaries, to key witnesses. Even though they have no intention or awareness of the crime that has occurred, third parties can still be subject to criminal sanctions if they are proven to know or should have known the origin of the illegal money. A comprehensive investigation and sufficient evidence are needed to show the involvement of third parties in embezzlement. In the context of contract law, third parties usually act as guarantors, and if involved in a crime, the agreement made can be null and void. Therefore, the concept of third parties in the crime of embezzlement includes various roles that must be carefully identified by investigators to uphold justice and prevent wider money laundering.

Liability in criminal law refers to the concept of fault (*dolus*) and negligence (*culpa*) and contains what is contained in the theory of strict liability and vicarious liability. Criminal liability does not only depend on providing elements of a crime, but also on the fault of the perpetrator. According to Simons and Van Hamel, a person is responsible for his/her actions if the actions are contrary to the law and are carried out with full understanding and awareness. In the crime

of embezzlement, a third party can be held responsible based on intent or ignorance of the origin of the assets transacted. The strict liability theory requires responsibility without regard to the perpetrator's intention, while the vicarious liability theory allows a person to be responsible for the actions of others, especially in a corporate context. The concept of *erfolgschaftung* emphasizes that guilt must be proven before a person can be punished. In the legal process, two pieces of evidence and the judge's conviction are needed to determine guilt and impose a sentence. This context also requires an agreement that is void by law between the two parties, which is also a form of third party liability, even though it is not in the context of criminal law. This provides legal certainty and ensures that transactions involving the proceeds of a crime can be canceled by law.

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