

Criminal Liability of Perpetrators of Embezzlement in Office within a Limited Liability Company

ABSTRACT

Embezzlement in office is a criminal offense that frequently occurs in the corporate world, particularly within Limited Liability Companies (PT). This crime involves individuals within the company who abuse their position or the trust granted to them to unlawfully appropriate the company's assets. Under Indonesian criminal law, embezzlement in office is regulated under Article 374 of the Criminal Code (KUHP). This journal aims to examine the forms of legal responsibility imposed on perpetrators of embezzlement in office within a PT, as well as the possibility of corporate criminal liability. The research method used is normative juridical, employing a statutory and case study approach. The results of the study indicate that perpetrators of embezzlement in office bear personal criminal liability; however, under certain conditions, the corporation itself may also be held criminally liable if the offense is committed on behalf of or for the benefit of the company.

Keywords: embezzlement, office, criminal liability, limited liability company, corporate law

INTRODUCTION

A Limited Liability Company (PT), as a form of legal entity, possesses assets that are separate from those of its founders. As a legal entity, a PT plays a significant role in economic growth and national development. However, with the evolution of the business world, various forms of abuse of authority have emerged within companies, including the criminal act of embezzlement in office. Embezzlement in office is typically committed by insiders such as directors, managers, or staff members who have access to or authority over the company's assets. Such abuse results in significant financial losses for the company and undermines the trust of investors and shareholders. This phenomenon raises important questions about the form of criminal liability applicable to the perpetrators and whether the corporation itself can also be

held legally accountable for the actions of individuals who serve within its organizational structure.

RESEARCH METHODS

This research employs a normative juridical method, focusing on the analysis of relevant statutory regulations, legal doctrines, and court decisions related to embezzlement by individuals within a Limited Liability Company (PT). As a legal entity, a PT has assets separate from its founders and plays a significant role in national economic development. However, abuse of authority, particularly embezzlement by insiders such as directors or managers, has become increasingly common. These acts cause significant losses to the company and erode investor and shareholder trust. Therefore, this study seeks to examine the forms of criminal liability that can be imposed on the perpetrators and whether the corporation itself can be held legally accountable for the actions of individuals acting within its organizational structure. Data collection is conducted through literature review, legal document analysis, and case studies.

RESULT AND DISCUSSION

Elements of the Criminal Act of Embezzlement in Office

Article 374 of the Indonesian Criminal Code (KUHP) states that embezzlement in office refers to embezzlement committed by a person who, due to their position, has been entrusted with the control of certain goods. The elements of this article include:

- a) The perpetrator holds a position or office that grants the authority to control the goods.
- b) The goods under control belong to another party (in this case, the company/PT).
- c) The perpetrator abuses the entrusted authority to embezzle the goods.

- d) The act is committed intentionally and with the unlawful intent to own the goods.

In the context of a PT (Limited Liability Company), the perpetrator can be a director, financial manager, or accounting staff who is authorized to manage the company's finances. If such a person abuses their authority for personal gain, their actions are categorized as embezzlement in office.

Individual Criminal Liability

Individual criminal liability for embezzlement in office refers to the basic principle of criminal law, which holds a person accountable if:

- a) An unlawful act is committed.
- b) The act is accompanied by intent or negligence.
- c) The perpetrator is capable of being held legally responsible.

An individual holding a position in a PT is personally liable for their criminal actions, without excluding the possibility of civil liability to the PT. In certain cases, the company may file a civil lawsuit to seek compensation for the losses incurred.

Corporate Criminal Liability

Corporate criminal liability is increasingly recognized in modern criminal law. Under several sectoral laws such as the Anti-Corruption Law and Environmental Law, corporations can be treated as legal subjects in criminal proceedings. This principle is also supported in the latest draft of the Indonesian Criminal Code (RKUHP), which accommodates corporate criminal liability. A corporation can be held liable if:

- a) The crime is committed by a corporate officer or representative.
- b) The act is carried out in the course of the corporation's business activities.
- c) The act benefits the corporation.

Therefore, if embezzlement is committed by a director for the benefit of the company (e.g., falsifying financial reports to increase stock value), the corporation itself may also be held criminally liable.

Case Study

In the Supreme Court Decision Number 2049 K/Pid/2012, a company's finance director was convicted for embezzling corporate funds for personal use. The panel of judges found the defendant guilty of violating Article 374 of the Criminal Code and sentenced them to imprisonment. However, in this case, the company was not held criminally liable because the act was committed solely for the perpetrator's personal gain and not in the interest of the corporation.

CONCLUSION

Embezzlement in office is a crime committed by an individual holding a specific position or title within a company by abusing the trust granted to them to unlawfully take control of the company's assets. In the context of a Limited Liability Company (PT), the perpetrator is personally criminally liable, as stipulated in Article 374 of the Indonesian Criminal Code (KUHP). However, under certain circumstances, if the act is committed in the name of or for the benefit of the company and provides an advantage to the corporation, then the corporation itself may also be held criminally liable. This highlights the importance of a strong internal control system and strict legal enforcement in prosecuting both the individual offender and the corporation that may benefit from the crime.

REFERENCES

Kitab Undang-Undang Hukum Pidana (KUHP)

Undang-Undang No. 40 Tahun 2007 tentang Perseroan Terbatas

Muladi & Barda Nawawi Arief. (2010). Teori-Teori dan Kebijakan Pidana.

Jakarta: PT Raja Grafindo Persada.

R. Soesilo. (1996). Kitab Undang-Undang Hukum Pidana serta Komentarkomentarnya. Jakarta: Politeia.

Putusan Mahkamah Agung No. 2049 K/Pid/2012

Andi Hamzah. (2008). Asas-Asas Hukum Pidana Korporasi. Jakarta: Sinar Grafika.