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Research Article

## Legal Review of the Crime of Embezzlement at the North Sumatra Regional Police

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### Abstract

Embezzlement is a crime against property regulated in the Criminal Code (KUHP), specifically Articles 372 to 377. This crime frequently occurs across various levels of society and generally stems from a relationship of trust that is then abused. In this study, the author examines the legal and normative application of the law to the crime of embezzlement, using case study Report No. 2128/XII/2021/SPKT/North Sumatra Regional Police. The research was conducted through a literature review of laws and regulations, scientific literature, and interviews with investigators from the North Sumatra Regional Police as primary data. The results indicate that the application of the law to the crime of embezzlement has been guided by the Criminal Code and the Criminal Procedure Code, particularly during the investigation and inquiry stages. However, in practice, obstacles remain, such as limited evidence and external factors that can affect the effectiveness of law enforcement. This study emphasizes the need to strengthen the capacity of law enforcement officers and adjust the nominal value of Article 373 of the Criminal Code to make it relevant to current economic conditions.

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### Introduction

Current technological, industrial, and commercial developments are occurring at a rapid pace, affecting social and legal dynamics in Indonesia. Progress in various fields brings positive impacts, but also presents challenges in the form of increased crime. Crimes present increasingly complex modus operandi, requiring law enforcement to be more adaptive, firm, and responsive.

One of the most common crimes is embezzlement, as regulated in Articles 372 to 377 of the Criminal Code (KUHP). Generally, embezzlement occurs when someone intentionally takes possession of another person's property, not through a crime, and then claims it as their own. A crucial element in this crime is the trust placed in the perpetrator, but that trust is betrayed, resulting in loss to the other party.

In practice, the crime of embezzlement can take the form of: (1) ordinary embezzlement (Article 372 of the Criminal Code), (2) minor embezzlement (Article 373 of the Criminal Code), (3) aggravated embezzlement, namely when it is carried out by a person who has an employment relationship, position, or because he receives wages (Article 374 of the Criminal Code), and (4) embezzlement within the family circle (Article 375 of the

Criminal Code). In addition, Article 376 of the Criminal Code emphasizes that embezzlement within a family relationship can only be processed if there is a complaint from the injured party. Thus, the legal basis for embezzlement has been clearly regulated in the Criminal Code, which serves as a basis for law enforcement officers in handling these cases.

## **Hypothesis Development**

The case study that is the object of this research is Police Report Number 2128/XII/2021/SPKT/North Sumatra Regional Police. This case involves a student who committed embezzlement and was reported to the police. The legal process carried out by the North Sumatra Regional Police in handling this case provides a clear picture of the application of the Criminal Code articles governing embezzlement. This case demonstrates that although the Criminal Code provides normative provisions, in practice law enforcement officers face obstacles, such as difficulties in providing proof, limited evidence, and the influence of external factors such as social pressure or the interests of certain parties. Therefore, this research is important to describe how the law is applied to the crime of embezzlement in the North Sumatra Regional Police, both from a criminal law theory perspective and law enforcement practice. Through this case study, it is hoped that the effectiveness of criminal law in providing protection for victims, establishing justice, and providing a deterrent effect on perpetrators can be understood.

## **Method**

### **1. Research Approach**

This research uses a normative juridical method, namely legal research that emphasizes the study of applicable positive legal norms. The primary focus of this approach is an analysis of the written legal provisions stipulated in the Criminal Code (KUHP), specifically Articles 372 to 377, which regulate the crime of embezzlement. Furthermore, the research also considers legal principles, expert doctrines, and relevant scientific literature. This approach was chosen because it is appropriate for examining the application of law in the embezzlement case that is the object of this research.

### **2. Research Location**

The research location was determined to be the North Sumatra Regional Police (Polda), the institution handling the embezzlement case, as outlined in Police Report Number 2128/XII/2021/SPKT/Polda Sumut. This location was selected based on the case's relevance to the research object and the availability of primary data obtained through interviews with authorized police officers.

### **3. Research Focus**

This research focuses on the application of criminal law to the crime of embezzlement and the investigative process conducted by investigators from the North Sumatra Regional Police. Therefore, this research emphasizes normative analysis of the Criminal Code articles governing embezzlement and law enforcement practices in the selected case study.

### **4. Data source**

This study uses two types of data sources:

1. Primary data, obtained through interviews with investigators from the North Sumatra Regional Police who handled the embezzlement case.
2. Secondary data, including the Criminal Code (KUHP), Law Number 8 of 1981 concerning Criminal Procedure Law (KUHAP), criminal law literature, scientific journals, and court decisions related to the crime of embezzlement.

### **5. Data collection technique**

To obtain the necessary data, the author used two data collection techniques, namely:

- In-depth interviews with investigators from the North Sumatra Regional Police involved in handling the case.
- Literature review by examining relevant laws and regulations, doctrines, and previous research.

## 6. Data Analysis Techniques

The collected data was analyzed using qualitative methods, which involved systematically and in-depth analysis and then linking it to applicable legal theories and provisions. The analysis was conducted by comparing legal norms (das sollen) with law enforcement practices in the field (das sein). This method aims to obtain a clear picture of the appropriateness of the application of criminal law on embezzlement with applicable regulations and the obstacles encountered in practice.

## Results and Discussion

### 1) Normative Framework for the Implementation of Article

The crime of embezzlement in the Criminal Code (KUHP) is listed in Articles 372 to 377. Article 372 of the KUHP is the main form of embezzlement: the perpetrator intentionally owns/controls unlawfully an object or money that is wholly or partially owned by another person, which is in his control not because of a crime. Article 373 of the KUHP regulates minor embezzlement (determined by a certain value/object), while Article 374 of the KUHP contains embezzlement with aggravation if control arises from a work relationship/position/reward. Article 375 of the KUHP regulates embezzlement within the family environment (some are complaint offenses as referred to in Article 376 of the KUHP), and Article 377 of the KUHP provides additional criminal space (for example, revocation of certain rights or an order to announce a verdict). The criminal procedure framework follows the Criminal Procedure Code (KUHAP), including regarding investigators, initial action authority, evidence (evidence under Article 184 of the KUHAP), and case transfer (SPDP, Phase I and Phase II). The police's duties, functions, and authorities also refer to the Law on the Indonesian National Police.

### 2) Factual Reconstruction of Case Study (Summary)

Based on the description in the manuscript, the case began with the transfer of a sum of money by the reporter to the accused (a student) for a specific purpose (e.g., deposit/management/settlement of certain matters). The money was initially in the suspect's legal possession, but was then allegedly used outside of the mandate or not returned, resulting in losses. Due to this incident, the reporter filed a police report with LP No. 2128/XII/2021/SPKT/Polda Sumut. Investigators then took initial steps in the form of clarification from the parties, collecting transaction documents, and tracing the flow of funds as a basis for determining the sufficiency of evidence to elevate the case status to the investigation stage.

### 3) Qualification of Crimes and Selection of Articles

The initial qualification refers to Article 372 of the Criminal Code (basic form) because the following elements are fulfilled: (a) there is money as the object; (b) belongs to another person; (c) is in the perpetrator's power not because of a crime (initial control is legitimate due to trust); and (d) is then controlled/recognized unlawfully (for example, transferred to use without rights, not returned, or recognized as one's own property). If control arises due to a work/position/reward relationship, the application of Article 374 of the Criminal Code is considered due to the existence of aggravation. If control arises in a certain family context, Article 375 of the Criminal Code may be relevant, by considering the nature of the complaint offense as in Article 376 of the Criminal Code. In cases where the value of the loss is low according to the rules, Article 373 of the Criminal Code may be an option. In addition, to prevent overlap with civil disputes (default), investigators need to assess malicious intent (mens rea) and the act of controlling/hiding/transferring which indicates elements of breaking criminal law, not just a breach of promise.

### 4) Analysis of Elements and Proof Strategy

- a) Objects/money belonging to another person: proven through proof of transfer/receipt/deposit contract, communication that confirms the reporter's ownership of the funds.
- b) Being in power not due to crime: there is a relationship of trust/deposit/initial mandate; for example, minutes of handover, instructions for use of funds, or work agreements.
- c) Unlawful possession/control: indications of transfer of use without consent, withdrawal for personal gain, or withholding of funds without legal basis; can be supported by records of account transactions, digital traces of communication, and witness statements.
- d) Intentionality (dolus): read from a series of actions, motives, and efforts to conceal control; for example, repeated false promises, deception of usage reports, or efforts to erase traces of transactions.

According to the Criminal Procedure Code (KUHAP), commonly used evidence includes witness testimony, expert testimony (e.g., forensic auditors/digital forensics), letters/documents (agreements, transfer receipts, account statements), clues (coherence between pieces of evidence), and statements from the accused. In practice, simple cash flow audits and conversation/correspondence analysis (email/WhatsApp) are often key evidence in linking the element of "unlawful control" with malicious intent.

5) Case Handling Process at the North Sumatra Regional Police

Initial stage: investigators receive reports, conduct initial clarifications, and collect preliminary data. If sufficient preliminary evidence is found, the case is escalated to an investigation, investigators name a suspect, and submit a SPDP to the public prosecutor. Next, witnesses are examined, searches/seizures are conducted if necessary, and expert testimony is requested. Once the file is formally and materially complete, investigators submit the file (Stage I) for examination by the prosecutor; if deemed complete (P-21), the case is submitted along with the evidence and suspect (Stage II) for the prosecution process until trial.

6) Critical Issues: Criminal–Civil Boundaries and Obstacles to Proof

A frequently arising issue is defining the boundary between criminal (embezzlement) and civil (breach of contract) disputes. If there is no malice from the outset and the dispute is purely about the quality/performance of the contract, the case tends to be civil. However, when the perpetrator intentionally diverts, conceals, or claims the entrusted funds as their own, the element of violating criminal law is fulfilled. Other obstacles are proving mens rea and tracing the flow of funds—both of which require adequate financial/digital forensic support.

7) Restorative Justice Approach (Conditional)

In cases with relatively minor losses, social relationships that need to be maintained, and certain conditions (such as compensation and mutual agreement) met, investigators or prosecutors may consider restorative justice-based resolutions in accordance with applicable policies. This approach does not eliminate the unlawful nature of the case, but rather provides an alternative approach that emphasizes restitution and social harmony, as long as it does not conflict with statutory provisions and technical guidelines for case handling.

8) Implications of Imposing Sanctions and Deterrent Effect

The application of Article 372 of the Criminal Code in its principal form carries a prison sentence, which can be increased if proven to meet the aggravating requirements of Article 374 of the Criminal Code. Judges may also consider additional penalties (Article 377 of the Criminal Code) in certain circumstances. From a criminal policy perspective, consistent enforcement and legal certainty are crucial to create a deterrent effect, while still allowing for restitution/compensation for victims.

9) Practical Recommendations for Investigators and Stakeholders

- a) Optimize tracking of cash flow and digital footprints early on (account mutation analysis, electronic communications).
- b) Confirm the construction of the crime so that it does not bias civil disputes—clearly formulate the elements of unlawful control.
- c) Encourage restitution of victims' losses as part of the handling strategy (without obscuring criminal accountability).
- d) Increasing investigator capacity in simple forensic audits and digital evidence handling.
- e) Periodic review of the threshold for minor embezzlement to align with current economic conditions.

10) Related Legal Basis (Summary)

- Criminal Code: Articles 372–377 (embezzlement), including aggravating and additional penalties.
- Criminal Procedure Code: provisions on investigation/inquiry, evidence (Article 184 of the Criminal Procedure Code), case transfer (SPDP, Phases I & II), and trial.
- Law on the Indonesian National Police: duties, functions and authority in law enforcement.
- Restorative justice policies/provisions (in the police/prosecutor's office) as long as they meet the requirements and do not conflict with statutory regulations.

- Transitional note: the national criminal law update regulates the transition period towards the new codification; for this case, the Criminal Code that was in effect at the time of the incident and its handling continues to be used.

Investigation is the initial stage in the criminal justice system as regulated in Law Number 8 of 1981 concerning Criminal Procedure Code (KUHAP). Based on Article 1 number (5) of the KUHAP, an investigation is a series of actions carried out by investigators to search for and discover an event suspected of being a crime in order to determine whether or not an investigation can be carried out. In the context of the crime of embezzlement, investigation has an important role to ensure whether the elements of the crime as regulated in Articles 372 to 377 of the Criminal Code are fulfilled.

#### 1) Initial Stage of Investigation

In the case of Police Report No. 2128/XII/2021/SPKT/Polda Sumut, the investigation process began with the receipt of a report from the victim. This report was then recorded in the police administration as the basis for initiating the investigation. Investigators clarified with the reporter regarding the chronology of events, the amount of losses incurred, and the legal relationship between the reporter and the accused. In this case, the relationship of trust was proven to be a major factor enabling the embezzlement.

#### 2) Steps of the Investigator

After the report is received, investigators take the following steps:

- Collect initial information from the reporter and related witnesses.
- Request and examine transaction evidence documents, receipts, and agreements that form the basis for the transfer of money.
- Summoning the reported party to ask for clarification.
- Conducting an initial analysis to determine whether there are indications of unlawful acts in the form of illegal possession of money.

These steps are in accordance with the provisions of Article 5 paragraph (1) of the Criminal Procedure Code which gives investigators the authority to receive reports, seek information, order a person suspected of something to stop, and take other necessary actions in order to find preliminary evidence.

#### 3) Analysis of the Elements of the Crime in the Investigation

In the embezzlement case at the North Sumatra Regional Police, investigators assessed that the elements of the crime under Article 372 of the Criminal Code had been fulfilled, namely:

- Goods/money belonging to another person (proven by handover documents and proof of transaction). Goods/money are in the perpetrator's possession not due to a crime (the initial legal possession is due to a relationship of trust).
- The control was carried out unlawfully (the perpetrator did not return the money and used it for personal gain).
- The element of intent (dolus) is seen from the perpetrator's actions in consciously withholding or diverting the funds.

If there is an employment or positional relationship, the aggravating elements of Article 374 of the Criminal Code may also apply. Therefore, investigators must be able to distinguish whether the case is purely a criminal offense or simply a civil dispute.

#### 4) Obstacles and Challenges in Investigation

The investigation process is not free from various obstacles, including:

- Difficulty in obtaining authentic written evidence, because many transactions are carried out verbally or without formal contracts.
- Perpetrators often attempt to obscure the facts under the guise of civil agreements.
- Pressure from external parties attempting to influence the course of the investigation. - Limited resources, both personnel and investigative support facilities.

These obstacles require investigators to carefully distinguish between criminal and civil elements, and ensure that the available evidence meets the requirements to elevate the case to the investigation stage.

## 5) Case Study of Police Report No. 2128/XII/2021/SPKT/Polda Sumut

In this case study, the reporter handed over a sum of money to the defendant to manage or return as agreed. However, the defendant failed to fulfill this obligation and instead controlled the money as if it were his own. Investigators then examined transfer receipts, witness statements, and bank confirmation regarding the flow of funds. The examination revealed unlawful control, prompting investigators to escalate the case to the investigation stage. This case underscores the importance of the investigation stage as a preliminary step in determining whether an incident meets the elements of a crime.

## 6) Legal Basis for the Investigation

The legal basis used in the investigation process includes:

- Article 1 number (5) of the Criminal Procedure Code, Article 5 paragraph (1), Article 7 paragraph (1) which regulates the authority of investigators. - Law Number 2 of 2002 concerning the Republic of Indonesia National Police. - Article 372–377 of the Criminal Code concerning the crime of embezzlement.
- Regulation of the Chief of Police which regulates the Standard Operating Procedure (SOP) for the investigation and inquiry into criminal acts.

With this legal basis, North Sumatra Regional Police investigators have the legitimacy to take legal action at the investigation stage, and ensure that the process runs according to the principles of legality, legal certainty, and protection of human rights.

The discussion results from the interpretation of data analysis to be associated with relevant scientific theories/concepts.

## Conclusion

Based on the overall research results and discussion regarding the crime of embezzlement in the jurisdiction of the North Sumatra Regional Police, using the case study of Police Report No. 2128/XII/2021/SPKT/Polda Sumut, several important conclusions can be drawn. This research confirms that the crime of embezzlement is a form of legal violation that arises from a relationship of trust between the reporter and the accused, where money that was initially handed over legally is then unlawfully controlled by the perpetrator. This demonstrates the importance of understanding the difference between breach of contract in the civil realm and embezzlement in the criminal realm. The legal application to this case refers to Articles 372 to 377 of the Criminal Code concerning embezzlement, as well as formal regulations in the Criminal Procedure Code concerning investigations, inquiries, and trial processes. Article 372 of the Criminal Code is the primary basis for proving embezzlement, while Article 374 of the Criminal Code can be applied if control of funds occurs due to an employment or position relationship. The legal process carried out by the North Sumatra Regional Police has been in accordance with procedural stages, starting from receiving the report, investigation, upgrading the case status to an investigation, and handing over the files to the public prosecutor. The police investigation process has proven to be vital as an initial filter in determining whether an incident meets the elements of a crime. In this case, investigators were able to identify unlawful possession of funds, supported by evidence in the form of transaction documents, witness statements, and digital evidence. This demonstrates that thorough investigations strengthen the investigative process and prevent errors in classifying cases as criminal or civil. However, this study also identified several obstacles in the law enforcement process for embezzlement, such as difficulties in obtaining authentic written evidence, claims that cases are civil disputes, and limited investigative resources. These obstacles require increased police capacity, both in terms of professionalism and the use of financial and digital forensic technology to accurately track the flow of funds. Academically, this research contributes to expanding the study of the application of criminal law to embezzlement in Indonesia, particularly in North Sumatra. Practically, this research emphasizes the need to improve law enforcement mechanisms so that victims of embezzlement can obtain legal certainty and justice. Furthermore, the results of this study also encourage law enforcement officials to uphold the principles of legal certainty, justice, and expediency at every stage of the legal process. Thus, it can be concluded that the application of the law against the crime of embezzlement in the jurisdiction of the North Sumatra Regional Police has been carried out in accordance with the provisions of the Criminal Code and the Criminal Procedure Code, although there are still various technical and substantive obstacles that need to be overcome. The investigation stage has proven to be the main key in determining the direction of case handling, while the investigation and prosecution processes are important instruments to ensure that perpetrators can be held criminally accountable. This study confirms that effective law enforcement requires the support of clear regulations, professional officers, and public participation in maintaining trust in the criminal justice system.

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