

Juridical Review Of The Crime Of Motorcycle Stealing Related To Article 372 Of The Criminal Code (Study Of Decision Number: 1367/Pid.B/2019/Pn Denpasar)

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Abstract

This research aims (1) To analyze whether the perpetrator's actions fulfill the elements of the criminal act of motorcycle embezzlement under Article 372 of the Criminal Code (Study of District Court Decision Number 1367/Pid.B/2019/PN Dps), and (2) To analyze the judge's considerations in deciding the criminal act of motorcycle embezzlement based on Decision Number 1367/Pid.B/2028/PN Dps. This research uses normative legal research, is typically conducted through document studies, using legal sources such as legislation, court decisions, legal theories, and scholars' opinions on the cases being handled. The data analysis technique used in this research is qualitative data analysis. The research results indicate that (1) In Decision Number: 1367/Pid.B/2019/PN Denpasar, the defendant was legally found guilty of committing the criminal act of embezzlement as regulated in Article 372 of the Criminal Code, which was not in accordance with the facts presented at trial. The element of unlawfulness was not fulfilled; thus, the defendant was legally proven to have violated Article 378 of the Criminal Code concerning Fraud. (2) The judge's decision in Decision Number: 1367/Pid.B/2019/PN Denpasar was inappropriate, as the judge sentenced the defendant to 10 months in prison, which is less than the penal threat stipulated in Article 372 of the Criminal Code, where the maximum penalty is four years, contradicting the principles of legality and justice for the defendant.

1. Introduction

Motorcycle embezzlement is a form of criminal offense that often occurs in the community. This crime harms the victim financially and can also have a significant psychological impact on the victim. In the context of criminal law in Indonesia,

motorcycle embezzlement is regulated in Article 372 of the Criminal Code (KUHP). The crime of embezzlement in Indonesia is currently one of the causes of the deterioration of the material welfare system that ignores the values of life in society.

The crime of embezzlement is expressly regulated in CHAPTER XXIV Article 372 of the Criminal Code, which basically explains as follows: "Any person who intentionally and unlawfully possesses property which wholly or partially belongs to another and is in his possession by reason of no crime, shall, being guilty of embezzlement, be punished with a maximum imprisonment of four years or a maximum fine of nine hundred thousand rupiahs". From the formulation of the article, it can be seen that there is a subjective element, namely "Whoever" and an objective element, namely "Deliberately and unlawfully possesses property that wholly or partially belongs to another and is in his possession not by reason of a crime". (Santos et al., 2021).

Judges in making decisions must pay attention to all aspects of it, must be done carefully, avoiding inaccuracies, both formal and material in nature up to the technical skills in making it. In practice at trial, negligence is often committed by judges in terms of interpreting the elements of the offense contained in the Criminal Code Article to prove the criminal act committed by the defendant. When the judge misinterprets the elements of the offense in the Article of the Criminal Code, the decision can be null and void, in this case the judge is required to be careful in analyzing the facts at trial.

Between the two criminal offenses, there are differences when viewed from the elements of the criminal offense, in the case of embezzlement there is a criminal act to own the goods on the basis of a legal act. Whereas in the crime of fraud, the perpetrator makes an effort to own the goods by unlawful means. Although the imprisonment is equally threatened with 4 years, the crime of fraud is considered more severe than embezzlement because in Article 372 of the Criminal Code the punishment is alternative, namely imprisonment or fine, while Article 378 of the Criminal Code the punishment is only a single imprisonment.

Based on the description above, the author is interested in examining the Decision of the Denpasar District Court with the defendant I Gede Teja Saputra where the defendant was charged with an alternative charge of embezzlement or fraud. In the final trial examination, the judge issued a verdict in case number: 1367/Pid.B/2019/PN Dps, the first thing that is interesting to study in the decision is if you look at the ratio decidendi of the judge stating "That based on the analysis and facts revealed in court with each element of the criminal offense contained in Article 378 of the Criminal Code, the Panel of Judges is of the opinion that all essential elements of the criminal offense contained in the Article in the alternative charge have been fulfilled and therefore according to the law. The defendant is legally and convincingly proven guilty of committing a criminal offense as regulated and punishable in Article 378 of the Criminal Code", but it turns out that in the verdict "the defendant is proven to have committed the crime of embezzlement". As it is known that embezzlement in Article 372 of the Criminal Code and fraud in Article 378 of the Criminal Code are different criminal offenses, the author is interested in analyzing whether the actual actions committed by the defendant when looking at the facts contained in the trial. The second legal issue that the author found for analysis was also contained in the decision, where the verdict stated that the defendant was proven to have committed the crime of embezzlement, as it is

known that embezzlement is regulated in Article 372 of the Criminal Code where the maximum penalty is no more than 4 years, but in this case "the judge sentenced the Defendant therefore to imprisonment for 10 (ten) years", with the imposition of 10 years for the defendant the author will analyze whether this is permitted by law, especially for judges in making criminal case decisions.

Based on this description, the researcher is interested in conducting an assessment of this problem in relation to the applicable regulations, namely article 372 of the Criminal Code (KUHP), hence the research title as follows: " Juridical Review of the Crime of Embezzlement of Motorbikes Linked to Article 372 of the Criminal Code (Study of Decision Number: 1367/Pid.B/2019/PN Dps)" .

2. Research Methods

The type of research used in writing this thesis is normative. *Normative law research* uses normative case studies in the form of legal behavior products, for example reviewing laws. The subject of study is law which is conceptualized as norms or rules that apply in society and become a reference for everyone's behavior. So that normative legal research focuses on the inventory of positive law, legal principles and doctrines, legal discovery (Siburian et al., 2020) in cases in concreto, legal systematics, the level of synchronization, comparative law and legal history. Based on the explanation above, the author decided to use normative legal research methods to research and write this thesis discussion as a legal research method.

Legal research in general has several *approaches*. The approaches used in this research are *statute* approach, *conceptual* approach, and *case* approach. This research is normative legal research, while the data sources used in this research are primary legal materials, secondary legal materials, and tertiary legal materials. In this research, the review is carried out using a qualitative method where this research is reviewed by the method of interpretation (interpretation) of legal materials that have previously been processed. The application of the interpretation method (interpretation) as a method used to interpret the law, to find out the issues contained in legal materials, especially in primary law if there is a vacuum of legal norms, the concept of legal conflicts and unclear norms in the law (Muhaimin, 2020: 67).

3. Results and Discussion

3.1 The judge's decision in fulfilling the elements of the crime of motorcycle embezzlement against the defendant

The objective element in the embezzlement case based on Decision Number 1367/Pid.B/2019/PN Dps is that I Gede Teja Saputra deliberately mortgaged a motorcycle borrowed from the victim named Nyoman Sukeyasa and pawned it to a witness named Gusti Ketut Nilawati with a nominal value of Rp. 2,000,000 (two million rupiah). The perpetrator of pawning the victim's motorcycle intentionally without the knowledge of the owner is one of the criminal acts, this is in line with (Moeljatno , 2002) that a criminal act is an act that is prohibited by the rules of criminal law and threatened with punishment for anyone who violates the prohibition.

The subjective element in the embezzlement case with the defendant I Gede Teja Saputra was proven to have unlawfully controlled this can be seen from the results of decision Number 1367/Pid.B/2019/PN Dps which explained that the proceeds from the pawnshop of a motorcycle belonging to I Nyoman Sukeyasa to Gusti Ketut Nilawati

with a nominal value of Rp. 2,000,000 (two million rupiah) were used by the perpetrator to play gambling. In this case the perpetrator tried to control the money with a nominal value of Rp. 2,000,000 which was the result of a pawnshop where the pawned motorcycle did not belong to the perpetrator. The objects as evidence of embezzlement are 1 (one) unit of Honda Vario motorcycle, 2018, gray color, Nopol / TNKB: DK 3554 UAK, Noka: MHIJFZ116JK385986, Nosin: JFX1E-1383623. This is in line with the statement (Lamintang & Lamintang, 2013) that the main form of the legislator has included the element of intent or *opzettelijk* as one of the elements in the crime of embezzlement. The element of intentionally is the only subjective element in the criminal offense of embezzlement, which is an element that is attached to the subject of the criminal offense or attached to the person of the perpetrator.

3.2 The basis for the judge's consideration in deciding the crime of embezzlement of a motorcycle based on decision Number 1367/Pid.B/2019/PN Dps

Criminalization is the imposition of punishment as a legitimate effort based on the law to impose suffering on someone who through the criminal justice process is proven legally and convincingly guilty of committing a criminal offense. So, the criminalization talks about the process of imposing the law itself. Criminal punishment needs to be imposed on someone who violates the applicable norms, namely norms that reflect the values and structure of society which is a symbolic reaffirmation of violations against the common conscience as a form of disapproval of certain behaviors. It takes the form of consequences that are painful or at least unpleasant.

The purpose of punishment, according to Plato and Aristotle, is that "punishment is imposed not because of having committed a crime, but so that no crime is committed, this is a fact that criminal law is preventive or preventive so as not to commit a crime or offense". Whereas "*treatment*" does not require a relationship with the act. We treat the person because we think or assume that he will become better. We can also hope or think that the person who is subject to punishment will become better, but not because we do so, because the main objective is to prevent wrongdoing and not to improve the person of the offender."

The judge in examining a criminal case, seeks and seeks and proves the material truth based on the facts revealed in the trial, and holds firm to the indictment formulated by the public prosecutor, if the indictment formulated by the public prosecutor, if the indictment contains deficiencies or errors, then the judge will find it difficult to consider and assess and apply criminal provisions in the criminal case. A criminal offense causes a disaster for its victims where there is always an underlying thing (cause) by giving birth to an effect. In the explanation using deductive logic, a criminal offense is a responsibility given for his actions. A criminal offense is an unlawful act that has been committed either intentionally or unintentionally by someone whose actions can be held accountable and by law has been declared a punishable act. If someone commits a criminal offense then his actions must be held accountable.

When the evidentiary process is declared complete, the judge makes a decision. Based on Article 1 point 11, a court decision is a judge's statement pronounced in an open court session, which can be in the form of punishment or acquittal or release from all legal charges in the case and in the manner regulated in this law. The court decision is the output of a judicial process which includes the process of examining witnesses, examining the defendant, and examining evidence. The definition of the judge's

consideration by calling it *ratio decidendi* is the legal reasons used by the judge to arrive at his decision. Based on Article 197 letter (d), it formulates considerations that are concisely compiled regarding the facts and circumstances along with the evidence obtained from the examination at the trial which is the basis for determining the guilt of the defendant.

That according to the author in the first legal issue the judge has been inconsistent in handing down the decision as described in his consideration (*ratio decidendi*) stating that the defendant was proven with the elements of Article 378 of the Criminal Code on fraud while in the verdict the judge stated that the defendant was proven to have committed embezzlement as regulated in Article 378 of the Criminal Code. There is uncertainty in the decision, so the author will explain the criminal acts of fraud and embezzlement which are regulated in Book II regarding crimes, regarding embezzlement is regulated in Article 372 of the Criminal Code which is formulated: "Any person who intentionally and unlawfully possesses property which wholly or partially belongs to another person, 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". Whereas fraud is regulated in Article 378 of the Criminal Code which is formulated: "Any person who, with intent to unlawfully benefit himself or another, by means of a false name or false dignity, deceit, or a series of falsehoods, induces another person to deliver any property to him, or to give a debt or to cancel a debt, shall, being guilty of fraud, be punished by a maximum imprisonment of four years".

In providing a court decision there are several considerations used by the judge to determine the sentence imposed on the defendant. What is meant by the element "whoever" is a person or legal entity as a legal subject who commits a criminal offense and or does not commit an act so that it can be punished and is able to take responsibility for his actions. That in every legal subject closely attached to the ability to be responsible are things or circumstances that can result in the person who has committed an act that is expressly prohibited and threatened with punishment by law (offense), can be punished (Satochid Kartanegara mentions *strafuitsluitings gronden*).

The legal subject that shows the person or human being who commits a criminal act, confirmed by Moeljatno (Criminal Acts and Responsibility in Criminal Law, (Bina Aksara 1983, p. 11) explains that criminal acts are given the meaning of acts that are prohibited and threatened with punishment, whoever violates the prohibition, related to criminal responsibility for people who commit criminal acts should see whether there are justifying or excusing reasons for their actions, as stated by Roeslan Saleh (Criminal Acts and the Supreme Court of the Republic of Indonesia Criminal Responsibility, Aksara Baru, 1983 Hal. 8), that criminal responsibility is viewed from the state of his soul is normal, so that his function is normal as well, then investigate whether someone is declared wrong or not wrong in terms of the nature of the person who issued the criminal offense itself or in other words must be considered for the existence of guilt, namely the relationship between the mind and the actions committed. Moeljatno (Bina Aksara, 1987 Hal 165) explains that the ability to be responsible must fulfill:

1. The ability to distinguish between good and bad actions that are lawful and unlawful.
2. The ability to determine his will according to his consciousness about the good and bad of the action. According to Moeljatno (Criminal Act and Criminal Liability, Bina

Aksara, 1983, p. 5) what is meant by criminal act is defined as the same as criminal event or strafbaar feit. According to Pompe, "*strafbaar feit*" is actually nothing other than an act which according to a statutory formulation has been declared as a punishable act.

Thus, the element of "Possessing property which wholly or partially belongs to another person, but which is in his possession not due to crime" has been proven legally and convincingly according to the law, because all elements of Article 372 of the Criminal Code have been fulfilled, the Defendant must be declared legally and convincingly proven to have committed the crime as charged in the Single Indictment. Therefore, I Gede Teja Saputra was sentenced to 10 months imprisonment starting from the first day of detention.

Based on the aforementioned description, it can be seen that the element that makes the difference whether the defendant's actions are proven to have committed embezzlement as stipulated in Article 372 of the Criminal Code or proven to have committed fraud as stipulated in Article 378 of the Criminal Code can be proven by the way the defendant controls the goods described, as the element of goods in his control is not fulfilled due to a crime, so the actions committed by the defendant are not the crime of embezzlement. If one of the elements in the criminal offense is not fulfilled, it cannot be blamed for the criminal offense of embezzlement. Then the defendant's actions can be proven by the existence of an element of deceit and a series of lies. What is meant by deceit is deceit is a series of words, but from an action that is such that the action causes trust in another person (who is deceived). Meanwhile, a series of lies is a series of false words or words contrary to the truth that give the impression as if what is said is true (Chazawi, 2016). If in these facts there are elements of deception and a series of lies, then the defendant's actions constitute fraud.

That based on the aforementioned facts, if it is seen that the difference between Article 372 of the Criminal Code and Article 378 of the Criminal Code is one of which concerns the way in which the defendant controls the goods, then in this case the following legal facts can be seen:

1. The defendant received a motorcycle from the victim, in this case the object that was previously in the hands of the victim was transferred to the defendant.
2. The object of the transfer was because the defendant was going to help the defendant to be taken to the residence of the defendant's friend.
3. That when the defendant had borrowed it, the defendant had the intention of pawning it.

It can be concluded that the transfer of the victim's property was caused by false pretenses, deceit and a series of lies as evidenced by the absence of the victim's vehicle after the defendant borrowed it on the grounds that he was going to a friend's house. Therefore, based on the manner in which the defendant borrowed the vehicle from the victim, the defendant's actions constituted fraud.

4. Conclusion

In Decision Number: 1367/Pid.B/2019/PN Dps which stated that the defendant was legally proven guilty of committing the crime of embezzlement as stipulated in Article 372 of the Criminal Code did not match the facts in the trial. The defendant's actions from the start were seen to move the victim by making an unlawful effort, namely false

representation, a series of lies, and deception so that the victim handed over a motorcycle vehicle to the defendant and the defendant's actions were proven by evidence at trial. The element of not being against the law is not fulfilled, so the defendant is legally proven to have violated Article 378 of the Criminal Code, namely Fraud . The Judge's Decision in Decision Number: 1367/Pid.B/2019/PN Dps is not appropriate or not appropriate as it should be that the judge in deciding the imprisonment of 10 years exceeds the provisions of the criminal penalty of Article 372 of the Criminal Code, where the criminal penalty in Article 372 of the Criminal Code is a maximum of four years which is contrary to the principle of legality, and the principle of justice for the defendant.

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