

Crime of Embezzlement in Employment Relationship

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Abstract

The worker was accused of embezzlement in the purchase of lunch boxes. Due to this incident, the worker was asked to resign. However, because the worker had no intention of taking control of the money, the worker refused the request from personnel to resign. For this refusal, the worker was reported to the police on charges of violating Article 372 and Article 374 of the Criminal Code. This study aims to analyze and find out the duties and authority of personnel in the company, then whether the worker's mistake is included in the violation and analyze the legal considerations of the Panel of Judges Number 1320/Pid.B/2019/PN.JKT.TIM whether it is in accordance with the applicable regulations. The research methods used are normative juridical and sociological juridical. The results showed that Personnel have the authority to provide guidance to workers if they make mistakes or violate company rules. Workers' mistakes are not included in violations of Criminal Code 372 or Criminal Code 374. Decision of the Panel of Judges Number 1320/Pid.B/2019/PN.JKT. TIM violates Article 2 of Indonesian Supreme Court Regulation Number 2 of 2012 concerning Adjustment of the Limits of Minor Crimes and the Amount of Fines in the Criminal Code, Limited Liability Company Law.

1. Introduction

Indonesia is a state of law, this is formulated in Article 1 paragraph (3) of the 1945 Constitution. Based on the formulation of the article, everything that will be done by every Indonesian citizen must be regulated in the applicable laws and regulations. All citizens are equal before the law and government and must uphold the law and government with no exceptions.¹

¹ Hernadi Affandi, 'Kontekstualitas Makna" Bersamaan Kedudukan" Di Dalam Hukum Dan Pemerintahan Menurut Undang-Undang Dasar 1945', *Padjadjaran Jurnal Ilmu Hukum (Journal Of Law)*, 4.1 (2017), 19–40.

Furthermore, Article 27 paragraph (2) formulates that: "Every citizen has the right to a job and a livelihood worthy of humanity."

The employment relationship between employers and employees is formulated in Law Number 13 Year 2003 on Manpower. If there is a dispute between employers and employees, it is regulated in Law Number 2 Year 2004 concerning Industrial Relations Dispute Resolution. The enactment of laws to protect all Indonesian citizens. Furthermore, Law No. 13/2003 on Manpower was enacted to protect the rights of workers and the rights of employers.

The rule of law according to Friedrich Julius Stahl must fulfill the main elements of the rule of law, namely recognizing and protecting human rights, the administration of the state must be based on the *trias politica*, in carrying out its duties the government must be based on the law, and there is a state administrative court.²

The understanding of the Indonesian state of law departs from the basic principle that the characteristics of a state of law protect its citizens in different ways.³ The rule of law is an understanding that develops and materializes as a reaction to the past, therefore the elements of the rule of law are rooted in the history and development of a nation. Every nation or state has a history that is not the same, therefore the understanding and content of the rule of law as a nation will be different as well.⁴

In Jimly Asshiddiqie's view, law is an order as a system of rules about human behavior. Thus the law does not refer to a single date rule (rule), but a set of rules (rules) that have a unity so that it can be understood as a system.⁵

Authority according to Stout is all the rules that are concerned with the acquisition and use of government authorities by public law subjects in public legal relations.⁶ Authority has a close relationship with the principle of legality, which is one of the main principles used as the basis for every administration of government and statehood in government or state organizers, so the State or government then regulates society for the

² Achmad Irwan Hamzani, 'Menggagas Indonesia Sebagai Negara Hukum Yang Membahagiakan Rakyatnya', *Yustisia Jurnal Hukum*, 3.3 (2014), 137-42.

³ S H Solahudin Pugung, *Perihal Tanah Dan Hukum Jual Belinya Serta Tanggung Jawab PPAT Terhadap Akta Yang Mengandung Cacat Perspektif Negara Hukum* (Deepublish, 2021).

⁴ Reynold Simandjuntak, 'Sistem Desentralisasi Dalam Negara Kesatuan Republik Indonesia Perspektif Yuridis Konstitusional', *De Jure: Jurnal Hukum Dan Syar'iah*, 7.1 (2015), 57-67.

⁵ Muhamad Harisman, 'Tata Cara Pengisian Jabatan Lembaga Kepresidenan Antara Negara Kesatuan Republik Indonesia Dengan Republik Islam Iran Dalam Sistem Presidensial' (Fakultas Hukum (UNISBA), 2016).

⁶ Fierany Pantow, Gustaaf Buddy Tampi, and Rully Mambo, 'Pelaksanaan Kewenangan Penyelenggaraan Pemerintah Desa Kanonang V Kecamatan Kawangkoan Barat Kabupaten Minahasa', *JURNAL ADMINISTRASI PUBLIK*, 5.84 (2019).

realization of welfare and justice for all people.⁷ Agussalim AG defines authority as the right to carry out one or more management functions which include regulation (regulation and standardization), management (administration), and supervision (supervision) or a particular matter.⁸

According to Thonmas Aquinas, Justice is the willingness to give every one what is rightfully his.⁹ According to Hans Kelsen, justice in the sense of legality is a quality that relates not to the content of a positive legal order, but to its application.¹⁰ According to Imanuel Khant, positive law is called fair if it meets the following requirements: a) it is ordered or enacted for the sake of the public good; b) it is enacted by legislators who do not abuse their legislative authority; and c) positive law provides an appropriate burden in the interests of the public good.¹¹

Law No. 13/2003 on Manpower regulates the employment relationship between employers and workers. A work relationship is a relationship between an employer and a worker/laborer based on a work agreement, which has elements of work, wages, and orders.¹² Labor is every person who is capable of doing work in order to produce goods and/or services both to meet their own needs and those of the community.¹³ Worker/labor is any person who works by receiving wages or compensation in other forms.¹⁴ Furthermore, an employer is an individual, entrepreneur, legal entity, or other entity that employs workers by paying wages or other forms of compensation.¹⁵

Every person has the right to live in physical and mental prosperity, to live in and obtain a good and healthy living environment, and to obtain health services. The working relationship between workers and employers is regulated in Law Number 13 of 2003 concerning Manpower. Based on the formulation of the article, to be prosperous everyone must work. In doing work, it can be with the government or private companies. The employment relationship is the relationship between employers and workers/laborers based on employment agreements, which have elements of work, wages,

⁷ Oksidelfa Yanto and M H SH, 'Negara Hukum Kepastian, Keadilan, Dan Kemanfaatan Hukum', *Edited By*, 1 (2020).

⁸ Vabella Tesalonika, Femmy Tulusan, and Rully Mambo, 'Kewenangan Dinas Pemberdayaan Perempuan Dan Perlindungan Anak Pada Edukasi Pelecehan Seksual Di Kota Bitung', *JURNAL ADMINISTRASI PUBLIK*, 7.106 (2021).

⁹ Darwati, *Perlindungan Hukum Tenaga Kerja Indonesia (TKI)* (Jakarta: Cintya Press, 2015).

¹⁰ Wira Iqomudin Akhyar, Haris Widiasmoro, and Layla Izza Rufaida, 'Kebijakan Bantuan Pangan Non Tunai Dalam Perspektif Filsafat Hukum Murni', *Reformasi Hukum*, 25.1 (2021), 41–56.

¹¹ Darwati.

¹² Pemerintah Pusat, *Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan* (Indonesia, 2003).

¹³ Pemerintah Pusat.

¹⁴ Pemerintah Pusat.

¹⁵ Pemerintah Pusat.

and orders.¹⁶ The agreement can be made in writing or orally as formulated in Article 51 and paragraph (2) Work agreements that are required in writing are implemented following applicable laws and regulations.

Manpower development is based on Pancasila and the 1945 Constitution of the Republic of Indonesia. Manpower development is organized on the principle of integration through cross-sectoral functional coordination at the central and regional levels.¹⁷ Manpower development aims to empower and utilize manpower optimally and humanely, realize equal employment opportunities and provide manpower following national and regional development needs, provide protection to manpower in realizing welfare, and improve the welfare of manpower and their families.¹⁸

If the employer wishes to terminate employment after obtaining a determination from the Industrial Relations Settlement Committee, the employer may do so after the worker/laborer has had a 3 (three) month work period. Workers/laborers who violate the provisions stipulated in work agreements, company regulations, or collective labor agreements, employers can terminate employment, after the workers/laborers concerned have been given the first, second, and third warning letters in a row.¹⁹

Termination of employment can be carried out if the worker commits an error as formulated in Article 161 of Law Number 13 of 2003 concerning Manpower, among others: 1) In the event that a worker/laborer violates the provisions stipulated in a work agreement, company regulation or collective labor agreement, the employer may terminate the employment relationship, after the worker/laborer concerned has been given the first, second and third warning letters consecutively; 2) The warning letters as referred to in paragraph (1) shall each be valid for a maximum of 6 (six) months, unless otherwise stipulated in the work agreement, company regulation or collective labor agreement; 3) Workers/laborers whose employment is terminated for the reasons referred to in paragraph (1) shall receive severance pay amounting to 1 (one) time the provisions of Article 156 paragraph (2), long service pay amounting to 1 (one) time the provisions of Article 156 paragraph (3) and compensation pay in accordance with the provisions of Article 156 paragraph (4).

Although the rules that protect labor are quite good, the problems that the author can get are not as beautiful as those formulated in the applicable laws and regulations. Worker (pseudonym A works at PT.X) which is engaged in the food sector. Due to the large number of orders and lack of equipment, the worker's supervisor asked worker A to buy a lunch box. In

¹⁶ Pemerintah Pusat.

¹⁷ Pemerintah Pusat.

¹⁸ Yanti Kirana, 'Tinjauan Yuridis Badan Penyelenggara Jaminan Sosial Ketenagakerjaan Terhadap Pekerja', *Jurnal Ilmiah Hukum Dan Keadilan*, 9.2 (2022), 71-87.

¹⁹ Pemerintah Pusat.

the initial purchase, the price of 1 (one) lunch box was Rp.1,500 per box. During the process, there was still a shortage of lunch boxes and the company asked the worker to buy an additional 400 boxes. In this case, the worker assigned to purchase lunch boxes, the first purchase costs Rp.1,500, - / box so that 5000 boxes are purchased. Because it is less workers are asked to buy back as many as 4,000 boxes. However, in the second purchase, the price was obtained at a different and cheaper place, namely Rp.1,275, - / box. So there is excess money for the purchase in the amount of Rp. (1500-Rp.1,275) x 4000 boxes, so that it is cheaper by Rp.900,000, - (Nine hundred thousand rupiah).

With this condition, the workers have not reported it to the company. However, management earlier questioned that the purchase was cheaper. The worker did not deny this, but had not yet returned the excess money because there was an urgent food order. The worker did not dispute and justified the situation, but when the worker returned the excess money the company did not accept it and asked the worker to resign. The worker refused the employer's request and eventually the worker was reported to the police, and the matter was escalated to the prosecution and the worker was arrested.

Based on the Regulation of the Supreme Court of the Republic of Indonesia Number 2 of 2012 concerning the Adjustment of the Limitation of Minor Crimes and the Amount of Fines in the Criminal Code, it is formulated that the crime of embezzlement of losses below Rp.2,500,000, 00 (two million five hundred thousand rupiah) may not be punished.

The results of Mahendri Massie's research ²⁰ show that the factors that cause the criminal act of embezzlement in office include a person's mentality, fulfillment of needs, the existence of intent and opportunity, and the greedy nature of humans. The juridical provisions of the criminal act of embezzlement by using the position are regulated in Book II of the Criminal Code Chapter XXIV Article 374 of the Criminal Code that criminal liability for the perpetrators of the criminal act of embezzlement is contained both in the general criminal provisions and the provisions of special criminal legislation.

Based on the results of Rahmad's research ²¹ there are two terms discussed, namely "participating in doing" and "helping to do". In "co-perpetration" there is conscious cooperation by the perpetrators who jointly carry it out intending to commit the criminal act. Whereas in "helping to commit", the will of the person helping to commit is only to help the main perpetrator achieve his or her goal, without having a goal of his or her own. If you feel that you have not committed the crime of participating in

²⁰ Mahendri Massie, 'Tindak Pidana Penggelapan Dalam Menggunakan Jabatan Berdasarkan Pasal 415 KUHP', *Lex Crimen*, 6.7 (2017).

²¹ Rahmad Roziwan Rahmad, 'Pertanggungjawaban Pelaku Tindak Pidana Turut Melakukan Penggelapan Karena Adanya Hubungan Kerja', *Jurnal Hukum Dan Etika Kesehatan*, 2022, 108-19.

embezzlement and/or fraud, you do not need to worry because to be able to declare someone as a perpetrator of fraud crime.

Noting the description above, the author conducts this research to analyze and know the duties and authority of personnel in the company, then whether the worker's mistake is included in the violation of Criminal Code Article 372 and Criminal Code Article 374, to find out and analyze whether the legal considerations of the Panel of Judges Number 1320/Pid.B/2019/PN. JKT. TIM, is following the applicable regulations.

2. Research Method

The methods used in this research are normative juridical and sociological juridical. Normative juridical legal research is legal research conducted by examining library legal materials related to labor issues or secondary data only.²² Furthermore, to find out how legal sanctions are imposed if the workforce makes mistakes. And to examine and analyze the functions and authorities of personnel in labor relations. Sociological juridical to find out how the implementation of the law on labor issues and how the functions and duties of personnel follow the applicable rules as formulated in the Law of the Republic of Indonesia Number 40 of 2007 concerning Limited Liability Companies and to find out how the labor inspectorate functions in straightening out the rules of law relating to employment.

This research is descriptive-analytical, namely legal studies by providing a detailed and systematic, factual, and comprehensive description of the problem under study.²³ The analysis uses the content analysis method, which describes the material of legal events or legal products in detail to facilitate interpretation in the discussion.²⁴

3. Results and Discussion

Indonesia is a state of law, this is formulated in Article 1 paragraph (3) of the 1945 Constitution. Taking into account the formulation of the problem, everything that will be done by every Indonesian citizen must be based on the law. According to Mochtar Kusumaatmadja, the rule of law is

²² Tantimin Tantimin and Elizabeth Sinukaban, 'Perlindungan Hukum Terhadap Hak Tenaga Kerja Perempuan Terkait Ketidaksetaraan Gender Di Indonesia', *Nusantara: Jurnal Ilmu Pengetahuan Sosial*, 8.3 (2021), 395–406.

²³ Sabian Utsman, 'Metodologi Penelitian Hukum Progresif: Pengembaraan Permasalahan Penelitian Hukum Aplikasi Mudah Membuat Proposal Penelitian Hukum' (Pustaka Pelajar, 2014).

²⁴ Rahmat Ramadhani and Ramlan Ramlan, 'Perjanjian Build Operate And Transfer (Bot) Lapangan Merdeka Medan Dalam Pandangan Hukum Administrasi Negara Dan Hukum Bisnis', *De Lega Lata: Jurnal Ilmu Hukum*, 4.2 (2019), 255–70.

that power is subject to the law and all people are equal before the law.²⁵ The theory of the rule of law was first put forward by Plato and then later emphasized by Aristotle. According to Plato, good government administration is governed by law. Furthermore, this concept was emphasized by Aristotle by stating that a good State is a State governed by a constitution and sovereignty of law.²⁶ Agussalim AG defines authority as the right to carry out one or more management functions which include regulation (regulation and standardization), management (administration), and supervision (supervision) or a particular matter.²⁷

Everyone has the right to work and to receive fair and decent compensation and treatment in labor relations. In a business to produce goods, there are employers, workers/laborers, and laborers with payment of wages. Employment issues that regulate the rights and obligations of workers and employers are regulated in Law Number 13 of 2003 concerning Manpower. The relationship between employers and workers is an employment relationship, namely the relationship between employers and workers/laborers based on a work agreement, which has elements of work, wages, and orders. Employers are individuals, entrepreneurs, legal entities, or other bodies that employ workers by paying wages or other forms of compensation.

Article 1 point 5 of Law Number 13 of 2003 concerning Manpower, formulates employers as :

- a. Person or individual, partnership, or legal entity that runs a self-owned company;
- b. Individuals, partnerships, or legal entities who independently run a company that is not theirs;
- c. Individuals, partnerships, or legal entities located in Indonesia representing companies as referred to in letters a and b which are domiciled outside the territory of Indonesia.

Workers/laborers are everyone who works by receiving wages or rewards in other forms. And Labor is everyone who can do work to produce goods and/or services both to meet their own needs and for the community. If the worker violates then the worker will get sanctions for termination of employment, with minor mistakes, and has been given a warning letter as formulated in Article 161 of Law Number 13 of 2003 concerning Manpower, namely:

²⁵ H Herri Swantoro and M H SH, *Harmonisasi Keadilan Dan Kepastian Dalam Peninjauan Kembali* (Kencana, 2017).

²⁶ Raimundus Bulet Namang, 'Negara Dan Warga Negara Perspektif Aristoteles', *Jurnal Ilmiah Dinamika Sosial*, 4.2 (2020), 247-66.

²⁷ Tesalonika, Tulus, and Mambo.

"In the event that workers/laborers violate the provisions stipulated in work agreements, company regulations or collective labor agreements, employers may terminate employment, after the workers/laborers concerned have been given the first, second and third consecutive warning letters."

Employers can also terminate the employment of workers if they commit serious misconduct as formulated in Article 158 paragraph (1) letter a of Law Number 13 of 2003 concerning Manpower, namely: "committing fraud, theft, or embezzlement of goods and/or money belonging to the company". Formulated in Article 151 of Law Number 13 Year 2003 concerning Manpower, if there is a problem between employers and workers, it must be resolved by deliberation. If the problem solving is unsuccessful, then the termination of the employment relationship can be completed after obtaining a determination from the Industrial Relations Court.

The worker (pseudonym Ali) was asked to buy lunch boxes, the first stage bought around 4000 boxes at a price of Rp.1,500,-/box for a total price of Rp.6,000,000 (six million rupiah), because it was not enough for the worker was told to buy another 2,800 boxes. Furthermore, the workers came to the market in the Mayestik area, and it turned out that the price was only Rp.1,275 / box. Based on this, there was an excess of money, namely Rp.1,500,- - Rp.1,275x 2,800=Rp.630,000,-. The worker's superior forgave the mistake because the worker was willing to return the remaining money and took into account that the worker's service to the company had been quite good and that he had never made a mistake. And the finance and personnel department still refused to return the money to the worker. A few months later there was a change in leadership because the old leader was retiring.

The retirement of the worker's supervisor made personnel and financial staff continue to ask workers to resign. Because the worker refused, the personnel reported the worker Ali to the East Jakarta Police, and the worker Ali was made a suspect, then the worker was processed on charges of violating Article 372 of the Criminal Code and Article 374 of the Criminal Code. And the case was submitted to the Prosecutor's Office, once at the Prosecutor's Office the worker was detained awaiting trial in the District Court. Noting in Article 98 of Law Number 40 of 2007 concerning Limited Liability Companies, namely, the Board of Directors represents the Company both inside and outside the court as *persona standi in judicio*. *Persona standi in judicio* means that the Board of Directors is entitled and authorized to act on behalf of the Company in a case in court. Based on Article 98 of Law No. 40/2007 on Limited Liability Companies, personnel have no right to report workers to the police. Personnel have the authority to provide guidance to workers and to act must be authorized by the Board of Directors.

Personnel should guide workers as formulated in Article 4 of Law Number 13 of 2003 concerning Manpower, namely Manpower development aims:

- a. to empower and utilize labor optimally and humanely;
- b. realizing equal employment opportunities and the provision of labor following the needs of national and regional development;
- c. protect manpower in realizing welfare; and
- d. to improve the welfare of labor and their families.

Does the worker's misconduct fall under the offense of Penal Code Article 372 and Penal Code Article 374

In the employment relationship, the company makes company regulations, but these rules must not violate Law Number 13 of 2003 concerning Manpower. Article 158 paragraph (1) letter stipulates that: committing fraud, theft, or embezzlement of goods and/or money belonging to the company. The excess money left over from the purchase of the lunch box wanted to be returned by the worker but was rejected by the agency, including the personnel. If the worker's actions are deemed unfavorable, the personnel/management is obliged to provide guidance. In this case, the worker's supervisor did not want to dispute the matter because the worker had good conduct in the employment relationship.

Legal considerations of the Panel of Judges Number 1320/Pid.B/2019/PN. JKT. TIM, is following the applicable regulations

As formulated in Article 98 of Law Number 13 of 2003 concerning Limited Liability Companies, the directors have the right to appear in and out of court for the benefit of the company. Based on this, the panel of judges should have rejected the personnel report, because there was no authority to make a police report, especially since the loss was below Rp 1,000,000 (One Million Rupiah). The Panel of Judges has violated Article 2 of the Regulation of the Supreme Court of the Republic of Indonesia No. 2 of 2012 concerning the Settlement of the Limits of Minor Crimes and the Amount of Fines in the Criminal Code. Workers have not received their rights as stipulated in the Law. The Theory of Justice according to Thomas Aquinas has not been fulfilled. The definition of authority according to Stout is an understanding derived from the law of government organization, which can be explained as all the rules relating to the acquisition and use of government authorities by public law subjects in public law relations.

4. Conclusion

Based on the research results, it can be concluded that personnel have the authority to provide guidance to workers if they make mistakes or

violate company rules. Then, the worker's mistake is not included in the violation of Criminal Code 372 or Criminal Code 374. Furthermore, the decision of the Panel of Judges Number 1320/Pid.B/2019/PN. JKT. TIM violates Article 2 of the Supreme Court Regulation Number 2 of 2012 concerning Adjustment of the Limits of Minor Crimes and the Amount of Fines in the Criminal Code, Limited Liability Company Law. Thus, it is recommended that personnel be sanctioned because they have harmed workers' rights. Then, the Police, Prosecutors and Judges who process crimes not in accordance with applicable laws should be given legal sanctions.

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