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Legal Responsibility for the Concurrent Crimes of Fraud and Embezzlement

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Abstract
The legal regulation on concurrent criminal acts serves as a guideline for addressing situations where an individual commits multiple offenses that have not yet been adjudicated by the court. This regulation ensures a structured approach to resolving such cases and determining appropriate penalties. In the context of crimes such as fraud and embezzlement, concurrent penalties involve a legal assessment that views each criminal act as distinct and separate, even if they were committed in a connected or sequential manner. This perspective is crucial because it recognizes the individuality of each offense, leading to the imposition of penalties that reflect the seriousness and impact of each act. The combination of concurrent penalties thus ensures that justice is served in a manner that acknowledges the complexity and multiplicity of criminal behavior, providing a comprehensive resolution that addresses all aspects of the crime(s) committed. This approach not only upholds the principles of fairness and proportionality in sentencing but also reinforces the legal system's commitment to treating each offense with the gravity it deserves.

Keywords: Legal Liability, Fraud, Embezzlement

INTRODUCTION

The essence of the purpose of criminal law according to its meaning is to regulate the relationship between citizens and the state and emphasizes the general interest or public interest.[1]Criminal law can be broadly interpreted as part of the entire law in force in a country that establishes the basis and rules to determine which acts may not be carried out, which are prohibited, which are accompanied by threats or sanctions in the form of certain criminal penalties for anyone who violates the prohibition, determines when and in what cases those who have violated the prohibitions can be subject to or imposed the criminal penalties as threatened, determines in what manner the imposition of the criminal penalties can be carried out if someone is suspected of having violated the prohibition.[2]

Law is a norm that has certain goals with various limitations. In relation to these legal norms, judges have a very central and crucial role where judges have the authority to decide a case based on the applicable legal norms. As in criminal cases, judges determine whether the criminal provisions are binding or not, if they are binding, whether the defendant has committed a criminal act as referred to in the laws and regulations.[3]

One of the principles known in Indonesian criminal law is the principle of legality or often referred to as the principle of nullum delictum, nulla poenasine praevia lege poenali. This principle of legality is contained in Article 1 paragraph (1) of the Criminal Code (KUHP) which states that an act cannot be punished, except based on the strength of existing

[1]Prasetyo Teguh, Criminal Law, Raja Grafindo Persada, Jakarta, 2012, page 1.
[2]Moeljatno, Principles of Criminal Law, Bina Aksara, Jakarta, 2015, page 1.
[3]D. Schaffmeister, et al., Criminal Law, Citra Aditya Bakti, Bandung, 2013, page 21.

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criminal law provisions. The principle of legality in criminal law is the basis for judges to determine whether a criminal regulation can apply to a particular crime.

Seeing the development of society that is increasingly advanced, the criminal acts that arise also tend to increase and become more complex. One of the complexities of criminal acts today is a defendant who commits two or more criminal acts either simultaneously or separately. Criminal acts committed more than one by a defendant and each has not yet had a judge's decision between the criminal acts is called concursus.

The definition of concurrency in the Criminal Code has not been explained directly in the articles but the elements of concurrency are in the articles of the Criminal Code. The elements of concurrency are divided into three parts, namely concurrency of regulations is contained in Article 63 of the Criminal Code which states that an act falls under more than one criminal rule, continuing acts are contained in Article 64 of the Criminal Code which states that if someone commits several acts, each of which is a crime or violation between the acts there is such a relationship that it must be viewed as one continuing act, while the last is concurrency of acts is contained in Article 65 of the Criminal Code which states that if someone commits an act, each of the acts stands alone as a crime (crime/violation).

Judges who have the right to try joint cases are faced with a difficulty in passing a verdict on the defendant. The difficulty for judges in joint cases is in the system of imposing sanctions adjusted to the crime committed. In relation to this, judges must not have a subjective view in passing a verdict but must have an objective view that can be scientifically tested for truth.

One of the cases of concurrent acts that can test the objectivity of judges in making decisions is the case of concurrent acts, seen from the case of concurrent acts, the relationship between one crime and another, each standing alone, committed by one person. In cases of concurrent acts, in theory, the judge in considering the decision does not look at the type or relationship between one crime and another. The judge in deciding a case in a case of concurrent acts must be in accordance with the provisions contained in Articles 65 to 71 of the Criminal Code. These provisions regulate the system of imposing sanctions on concurrent acts. Seen from the article that regulates the imposition of sanctions on cases of concurrent acts, the sanctions given vary depending on the type of crime committed.

This study specifically discusses the crime of concurrent acts as regulated in Article 65 of the Criminal Code which states: In the case of concurrent acts that must be viewed as separate acts so that they constitute several crimes, which are threatened with the same basic punishment, then only one punishment is imposed and the maximum punishment imposed is the maximum amount of punishment threatened for the act, but may be more than the maximum of the most severe punishment plus one third.

Based on this, the author will discuss further in a study entitled legal responsibility for the concurrency of criminal acts of fraud and embezzlement with the main discussion of the regulation of concurrency of criminal acts based on Indonesian criminal law and the combination of concurrent penalties for criminal acts of fraud and criminal acts of embezzlement.

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METHOD

This research is descriptive in nature, namely research conducted to describe the research object.[4]The type of legal research conducted by the researcher is normative legal research. This research focuses on positive legal norms in the form of laws and regulations relating to the concomitant acts of fraud and embezzlement. Normative legal research is also called doctrinal legal research. In doctrinal research, law is conceptualized as what is written in laws and regulations. The type of data in this study is secondary data, which is carried out by means of library studies or literature searches in libraries for relevant written legal materials. Literature is obtained through reading references, viewing, listening to seminars, scientific meetings, and internet media.

The data analysis used in this study is qualitative analysis, namely data analysis based on understanding and systematic data processing obtained through the results of literature study research. Primary legal materials in the form of laws and regulations applicable in Indonesia are described.

RESULTS AND DISCUSSION

Arrangement of Concurrent Criminal Acts Based on Indonesian Criminal Law

The word perbarengan is a translation of the word samenloop/ concursus, which is from Dutch. Moeljatno and SR Sianturi use the term "perbarengan", while Karni chooses the term "bertindihi tempat".[5] Basically, what is meant by concurrent acts is the occurrence of two or more criminal acts by one person where the first criminal act has not been punished or the initial criminal act has not been limited by a judge's decision.[6]

In Chapter V Book 1 of the Criminal Code, the focus is on the concurrency of two or more criminal acts that are accounted for by one person or several people in the context of participation. The criminal acts that have occurred are in accordance with the formulation in the legislation, while the incident itself can be just one act, two or more acts in succession. In the case of two or more acts which are each separate offenses, it is required that one of them is not yet a separate offense and one of them has never been tried.[7]In the case of the first possibility where there is a concurrency and there is no aggravation but rather mitigation. This opinion is not generally applicable because there are several forms of concurrency with their own criminal sentencing systems and it also depends on the type and maximum penalty threatened in each of the concurrency offenses.[8]

According to HM Rasyid and Fahmi Raghib, the main issue in this concurrent teaching is the calculation of the severity of the punishment imposed on someone who has committed several criminal acts. In principle, this concurrent teaching relies on the heaviest

[4]Bambang Waluyo, Legal Research in Practice, Sinar Grafika. Jakarta, 2012, page 8.
[5]HM Rasyid Ariman and Fahmi Raghib, Criminal Law, Setara Press, Malang, 2016, page 171.
[6]Adami Chazawi, Criminal Law Lessons II, Raja Grafindo Persada, Jakarta, 2016, page 109.
[7]EY Kanter and SR Sianturi, Principles of Criminal Law in Indonesia and Their Implementation, Storia Grafika, Jakarta, 2012, page 391.
[8]Adami Chazawi, Crimes Against Body and Life, Raja Grafindo Persada, Jakarta, 2001, page 111.

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punishment. However, in practice no difficulties arise, based on this, when judges face incidents like this, they rarely impose the heaviest penalties.[9]

From the previous explanation of the doctrine of concurrency, there are three things that need to be considered, namely the understanding of concurrency in committing the crime itself and regarding participation and also regarding repeated criminal acts. In the crime of participation, several people are involved in one punishable act, while in combination there are several punishable acts committed by one person, as in recidivism. However, in recidivism, several criminal acts that have been committed are interspersed by a court decision that has permanent force, so that the convict is declared to have repeated the crime. Meanwhile, in a joint crime, the perpetrator has consecutively committed several criminal acts without giving the court the opportunity to try and sentence one of the crimes.[10]

The legal regulation on concurrent is basically a provision on how to resolve cases and impose penalties in the event that there is more than one criminal act where all of the criminal acts have not been examined and decided by the court. The provision on concurrent regulates how to try or examine (resolve cases) and the method or system of imposing penalties on one perpetrator who has committed several criminal acts, all of which have not been examined and decided by the court. The law requires that several criminal acts be filed in one case file and tried in one case by one panel of judges, such a regulation can be seen in Article 141 of the Criminal Procedure Code (KUHAP), such a regulation is related to the method or system of imposing penalties.[11]

There are two reasons why the legislators want joint criminal acts to be tried simultaneously and decided in one criminal decision and not imposed separately, meaning that the joint criminal acts are not punished in full according to their respective criminal threats, namely;[12]

1. Psychological considerations mean that serving a single sentence for a long period of time is felt to be more severe than serving a sentence twice for the same amount of time.
2. Consideration from the perspective of the perpetrator's guilt, meaning that the perpetrator's guilt in committing the next crime is considered lighter than the guilt in committing the first crime. This consideration is put forward in connection with the assumption that the imposition of criminal penalties is basically a warning by the state to the perpetrator about his guilt for committing a crime.

The limitations of joint criminal acts are as follows:[13]

1. One act carried out (active/passive) by a person which results in two/more criminal acts as defined in the legislation;

[9]HM Rasyid Ariman and Fahmi Raghib, Op.Cit., page. 173.
[10]Aruan Sakidjo and Bambang Poernomo, Basic Criminal Law General Rules of Codified Criminal Law, Ghalamania Indonesia, Jakarta, 1998, page 169.
[11]Prisilia Anggraini Evelyn Terisno and Yuliana Angela, Imposition of Two Criminal Case Decisions in the Same Object of Case (Study of Decision Number 2135 K/Pid.Sus/2016), Indonesia Journal of Criminal Law, Vol.1, No. 1, 2019, page 26
[12]Adami Chazawi, Op.Cit., page 161.
[13]EY Kanter and SR Sianturi, Op.Cit., page 391.

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2. Two or more acts carried out (active/passive) by a person which result in two or more criminal acts as defined in the legislation; and
3. Two or more actions carried out (active/passive) by a person continuously, resulting in two or more criminal acts (usually of the same type) occurring.

The use of concurrent teachings in the criminal law system can help judges when faced with perpetrators of criminal acts in court who in their actions apparently committed 2 (two) or more criminal acts, whether they are crimes, violations or crimes regulated by more than one different law, by considering the size/severity of the criminal act. The judge can determine what type of punishment is imposed and what the maximum is, because each formulation of a criminal act has a different type of criminal threat and maximum size.

Based on this, to determine the sentencing system, the type of concurrency must first be determined because each type of concurrency has its own sentencing system. There are 2 (two) views that discuss concurrency, namely those that view concurrency as a problem of giving punishment and those that view concurrency as a special form of criminal offense.[14]

In criminal law, this concurrent offense consists of 3 (three) things, namely concurrent regulations (concurcus idealis), concurrent acts (concurcus realis) and continuing acts (vorgezette handelings). The three forms of concurrent are intended to facilitate the imposition and calculation of sanctions for several criminal acts committed by one person who commits a crime.

The three things are explained as follows:

1. Concursus of regulations (concursus idealis)

   Concurrency of regulations, namely an act that falls under more than one criminal regulation. What is meant is that the existence of concurrency is only in the mind, the act committed is only one act but has violated several articles of criminal law.[15]

   The criminal punishment system used in this regulation is the absorption system.[16]The provisions regarding concurrent regulations are regulated in Article 63 of the Criminal Code:

   1) If an act falls under more than one criminal provision, then only one of these provisions will be imposed, and if they differ, the one that contains the most severe principal criminal threat will be imposed.
   2) If an act falls within a general criminal regulation, and is also regulated in a special criminal regulation, then only the special one will be applied.

   Article 63 paragraph (1) can be concluded that the realization of concurrent regulations is basically if one form of action carried out by a person violates more than one criminal regulation, while Article 63 paragraph (2) concludes that if there is a criminal act that is included in the special regulation, then the general rules must be set aside. An example of an act referred to in Article 63 is a person cycling on a prohibited road without

[14]Aruan Sakidjo and Bambang Poernomo, Op.Cit., page 169.
[15]Erdianto Effendi, Op.Cit., page 184.
[16]Ismu Gunadi and Jonaedi Efendi, Quick and Easy Understanding of Criminal Law, Kencana, Jakarta, 2014, page 76.

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a bell or someone driving a car that results in the death of a motorcyclist and causes another person to be injured.[17]

Several legal experts provide information regarding idealistic concursus relating to an act as follows:[18]

a. Hazewinkel Suringa, "If an act that has fulfilled a formulation of a crime, at the same time also falls under other criminal regulations". For example: rape on a public road, in addition to falling under Article 285 of the Criminal Code (rape) also falls under Article 281 of the Criminal Code (violating public morality).
b. Pompe, "If a person commits a concrete act directed towards one goal, it is an object of legal regulation". For example: having sex with his own child who is not yet 15 years old, this act falls under Article 294 of the Criminal Code (indecent acts with his own child who is not yet of age) and Article 287 of the Criminal Code (having sex with a woman who is not yet 15 years old outside of marriage).
c. Taverne, "When viewed from the perspective of criminal law there are two or more acts and these acts cannot be considered independent of each other."
d. Van Bemmelen, "If you violate one legal interest, you automatically commit another feit."

2. Ongoing actions (forgezette handelings)

Continuing acts are regulated in Article 64 of the Criminal Code.[19]The system of giving punishment for this continuing act uses the absorption system. The conditions for an act to be considered as a continuing act are as follows:[20]

a. A crime or violation in itself is the execution of a forbidden will;
b. The crime or violation is of the same type; and
c. The time interval between crimes or violations is not very long.

Article 64 paragraph (1) of the Criminal Code states that: If several acts are connected, so that they must be viewed as one continuing act, then only one criminal provision is used even though each act is a crime or violation. If the punishments are different, then the regulation that uses the heaviest main punishment is the one that is used.

Based on the provisions of Article 64 paragraph (1) it can be concluded that continuing acts or actions occur if each of the actions is a crime or violation, but there is such a connection that it must be viewed as a continuing act. A person commits several acts (crimes or violations) and these acts are related in such a way that they must be viewed as one continuing act.[21]An example of such a continuing act is A who controls the cash where he works, decides to take some of the contents of the cash for himself. To carry out this intention, he takes several times in a short time interval a certain amount.[22]

[17]Erdianto Effendi, Op.Cit., page 184.
[18]Barda Nawawi Arief, Summary of Criminal Law Lecture II, Rajawali Press, 2006, page 49.
[19]Andi Hamzah, Criminal Law Terminology, Sinar Grafika, Jakarta, 2007, page 173.
[20]Ismu Gunadi and Jonaedi Efendi, Op.Cit., page 77.
[21]Erdianto Effendi, Op.Cit., page 185.
[22]Leden Marpaung, Principles of Criminal Law Practice Theory, Sinar Grafika, Jakarta, 2016, page 36.

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The condition for the formulation of a continuous act is when the perpetrator commits several acts, each of which constitutes a crime or violation and between the acts there is a relationship in such a way that they must be viewed as one continuous act. The element "there is such a relationship" in continued actions by MvT provides three conditions as follows:[23]

a. The actions that occur are the manifestation of the same will decision;
b. The crimes that occur must be of the same type; and
c. The time between these actions is not too long.

Regarding MvT's explanation of the requirement for continued acts, Simons disagrees. Regarding the requirement "there is one volitional decision", Simons interprets it generally and more broadly, namely "it does not mean that there must be a will for each crime". Based on this broad understanding, as long as the act is carried out in order to carry out one goal and the acts do not need to be of the same type. For example, to take revenge on B, A carries out a series of acts in the form of spitting, tearing his clothes, hitting and finally killing.[24]

3. Concurrence of actions (concurcus realis)

Joint acts occur when a person commits several acts, each of which stands alone as a crime (does not need to be the same and does not need to be related). This is regulated in Article 65, Article 66 and Article 67 of the Criminal Code. An example of joint acts is, one day someone commits theft, a few days or months later commits fraud, a few months later commits murder.[25]

The characteristics of joint actions are:[26]

a. A maker;
b. A series of criminal acts committed by him;
c. The crimes do not need to be of the same type or related to each other;
d. Among these crimes there was no judge's decision.

Article 65 of the Criminal Code reads as follows:

1) In the case of a combination of several acts, each of which must be considered as an act in its own right and each of which is a crime which is threatened with a similar main punishment, only one punishment is imposed.
2) This maximum penalty is the highest amount of punishment determined for the act, but cannot be more than the maximum maximum penalty plus one third.

As stipulated in Article 65 of the Criminal Code, it discusses the combination of crimes with similar punishments. Article 65 paragraph (1) of the Criminal Code can be concluded that if someone commits several crimes, they will be given only one punishment if the punishment threatened is a similar punishment. While Article 63 paragraph (2) of the Criminal Code concludes that the punishment must not be more than

[23]R. Soenarto Soerodibroto, Criminal Code and Criminal Procedure Code Complete with Supreme Court and Hoge Raad Jurisprudence, Rajawali Pers, Jakarta, 2004, page 58.
[24]Barda Nawawi Arief, Op.Cit., page 50.
[25]Ismu Gunadi and Jonaedi Efendi, Op.Cit., page 78.
[26]Teguh Prasetyo, Criminal Law Revised Edition, Raja Grafindo Persada, Jakarta, 2012, page 179.

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the maximum for the most serious crime plus one third. For example, A commits two types of crimes, each of which is threatened with a sentence of 9 months imprisonment and 2 years imprisonment. In this case, all types of punishment (imprisonment and detention) must be imposed. The maximum is 2 years plus (1/3 x 2) years = 2 years 9 months or 33 months. Thus, the punishment imposed, for example, consists of 2 years imprisonment and 8 months imprisonment.[27]

Article 67 of the Criminal Code states that: If the death penalty or life imprisonment is imposed, then no other punishment may be imposed other than revoking certain rights, confiscating confiscated goods and announcing the judge's decision.

Article 70 of the Criminal Code reads as follows:

1) If as referred to in Article 65 and Article 66 of the Criminal Code there is a combination of a violation with a crime or between a violation and a violation, then the punishment shall be imposed for each violation without any reduction.
2) For violations, the total sentence of imprisonment, including substitute imprisonment, must not exceed one year and four months. The sentence in lieu of imprisonment, must not exceed eight months.

Article 70 of the Criminal Code contains a combination of crimes with violations or violations with violations. So in this case each crime must be sentenced separately as well as violations must be sentenced separately. If there is a prison sentence, this is not more than one year and four months, while regarding the prison sentence in lieu of a fine, it must not be more than eight months. Example: A commits two violations, each of which is threatened with imprisonment of 6 months and 9 months, then the maximum is (6+9) months = 15 months.[28]The punishment system used in Article 65 of the Criminal Code and Article 66 of the Criminal Code is said to adopt a cumulative system, while Article 70 of the Criminal Code is said to adopt a strengthened absorption system, while violations are called pure cumulative.[29]

Combined Concurrent Punishment for Criminal Acts of Fraud and Criminal Acts of Embezzlement

Fraud can be defined as an act or making of someone who is dishonest or speaks lies with the intention of misleading or tricking others for their own or a group's benefit.[30]The definition of fraud from a legal perspective has not yet existed, except for what is formulated in Article 378 of the Criminal Code, namely: Anyone who with the intention of benefiting himself or another person unlawfully by using a false name or false dignity, by trickery or a series of lies, moves another person to hand over something to him or to give a loan or write off a receivable, is threatened, because of fraud, with a maximum imprisonment of 4 (four) years. The formulation of fraud in Article 378 of the Criminal Code is not a definition but

[27]HM Rasyid Ariman and Fahmi Raghib, Op.Cit., page. 175.
[28]Ibid., page 188.
[29]Leden Marpaung, Op.Cit., page 36.
[30]S. Ananda, Big Indonesian Dictionary, Kartika, Surabaya, 2009, page 364.

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only to determine the elements of an act so that it can be said to be fraud and the perpetrator can be punished.[31]

The crime of fraud, the basic form of which is the act of telling lies directed at another person with the aim of benefiting oneself or another person, so that the legal provisions are in accordance with the legal provisions on the crime of fraud as regulated in Chapter XXV Book II and extending from Articles 378 to 395 of the Criminal Code.[32]Article 378 of the Criminal Code concerns the crime of fraud in the narrow sense, while other articles contain other crimes that are fraudulent in the broad sense. In the broad sense, fraud is a lie made for personal gain, although it has a deeper legal meaning, the exact details vary in different jurisdictions.[33]

Based on the formulation of Article 278 of the Criminal Code, the crime of fraud has the following main elements:[34]

1. With the intention of benefiting oneself or others unlawfully

   In simple terms, the explanation of this element is the perpetrator's immediate goal, meaning that the perpetrator wants to gain profit. The profit is the perpetrator's main goal by means of breaking the law, if the perpetrator still needs other actions, then the intention cannot be fulfilled, thus the intention is intended to benefit and break the law, so the perpetrator must know that the profit that is the goal must be against the law.
2. By using one or more means of deception (false names, false dignity/false circumstances, deception and a series of lies)

   The meaning is that the nature of fraud as a crime is determined by the means by which the perpetrator moves others to hand over goods. The means of movement used to move others are as follows:[35]

   a. A fake name, in this case, is a name that is different from the real name, even though the difference seems small. It is different if the fraudster uses another person's name that is the same as his own, then he can be accused of committing deception or committing a false act;
   b. Deception, what is meant by deception are actions carried out in such a way that the action creates trust or confidence in the truth of something in other people. If this deception is not a word but a deed or action;
   c. False dignity/state, the use of false dignity or state is when someone makes a statement that he is in a certain state, which state gives rights to the person in that state; and
   d. A series of lies, a few lies alone are considered insufficient as a driving force. Based on this, the series of lies must be said in an organized manner, so that it is a story that can be accepted logically and correctly, thus one word strengthens/justifies the words of others.

[31]SA Soehandi, Popular Police Dictionary, Wira Raharja Cooperative, Semarang, 2010, page 78.
[32]SR. Sianturi, Criminal Acts of the Criminal Code and Their Descriptions, Gunung Mulia, Jakarta, 2008, page 631.
[33]Wirjono Prodjodikoro, Certain Criminal Acts in Indonesia, Refika Adityama, Bandung, 2008, page 36.
[34]R. Soenarto Soerodibroto, Criminal Code & Criminal Procedure Code, Rajawali Press, Jakarta, 2012, page 241
[35]Ibid., page 242.

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3. Motivating others to hand over something or give credit or write off a debt

In the act of moving another person to hand over goods, it is implied that there is a causal relationship between the driving tool and the handover of goods. This was emphasized by the Hoge Raad in its arrest dated August 25, 1923, namely that there must be a causal relationship between the efforts used and the intended handover. The handover of goods that occurs as a result of the use of driving tools is considered not sufficiently proven without explaining the influence caused because the use of these tools creates a situation that is right to mislead a normal person, so that the person is deceived by it, the driving tools must create a drive in the soul of a person so that the person hands over an item.[36]

Based on the opinions that have been put forward regarding the crime of fraud, a person can only be said to have committed the crime of fraud as referred to in Article 378 of the Criminal Code, if the elements referred to in Article 378 of the Criminal Code are fulfilled, then the perpetrator of the crime of fraud can be sentenced according to his actions.

Furthermore, the crime of embezzlement as commonly used by people to refer to the type of crime in Book II Chapter XXIV of the Criminal Code is a translation of the word verduistering in Dutch. The qualified crime or the one called embezzlement is regulated in Article 372. Many elements resemble the crime of theft, only the existence of the goods intended to be owned in the hands of the perpetrator of the embezzlement is not because it is like theft. The definition of ownership is also like in theft.[37]

The word verduistering which in Indonesian is literally translated as embezzlement, for the Dutch people is given a broad meaning, not interpreted as the actual meaning of the word as making something unclear or dark. It is closer to the understanding that the perpetrator abuses his rights as the one who controls an object (owns), which rights must not exceed his rights as someone who is trusted to control the object not because of a crime.[38]

The formulation of the crime of embezzlement is regulated in Article 372 of the Criminal Code, namely: Anyone who intentionally and unlawfully possesses an item which is wholly or partly owned by another person and the item is in his possession not because of a crime, shall be punished for embezzlement, with a maximum prison sentence of four years or a maximum fine of Rp. 900,-.

The crime of embezzlement in its principal form is regulated in Article 372 of the Criminal Code and has the following elements:

1. Subjective elements
   a. Whoever

The term "whoever" refers to a person, who if that person fulfills all the elements of a criminal act contained in the crime, then he is called the perpetrator of the crime in question.

   b. Deliberately

[36]Ibid., page 243.
[37]Tongat, Material Criminal Law, UMM Press, Malang, 2006, page 57.
[38]Adami Chazawi, Criminal Law (Criminal System, Theories of Punishment and Limits of the Applicability of Criminal Law), Rajawali Pers, Jakarta, 2008, page 70.

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Intentionally or opzettelijk, this element is an element that is inherent in the subject of the crime, as well as inherent in the perpetrator's personality. Because it is an element of the crime of embezzlement, this element must automatically be charged by the prosecutor in his indictment and because this element is charged against the defendant, it must also be proven in court examining the defendant's case.[39]

In order for someone to be declared a defendant because they have fulfilled the elements of intent as required in the formulation of Article 372 of the Criminal Code, then in the court examining the case the defendant must be able to prove that the perpetrator truly:[40]

1) Wanting or intending to take control of an object unlawfully, an act that is contrary to one's legal obligations or contrary to the rights of others;
2) Knowing that what he controls is an object;
3) Knowing that some or all of the objects he wants to control belong to someone else; and
4) Knowing that the object was in his possession was not due to a crime.

The intent shown in all the elements behind it must be proven in court. Therefore, the relationship between the person who controls and the goods controlled must be so direct that to do something with the goods the person does not need any other action.[41]

If the defendant's will and knowledge as referred to are proven, then it can be said that the defendant fulfills the element of intention contained in the formulation of Article 372 of the Criminal Code.

c. Against the law

An object belonging to another person is in the control of a person because of an unlawful act (a crime) or because of an act in accordance with the law. Adami Chazawi explains that as a condition of this embezzlement, the object in the control of the perpetrator must be due to an act in accordance with the law such as because of a deposit, loan, rental agreement, pawn and so on.[42]

Basically, against the law is the reprehensible or prohibited nature of a certain act. In the doctrine, there are two types of against the law, namely against formal law and against material law. Against formal law is against written law while against material law is an act that is against the principles of law in society, both written and unwritten. In relation to intent, it is important to know that the intent of the perpetrator must also be shown in this element of against the law.

2. Objective elements

a. Claiming to be one's own

The act of possessing is an act of controlling an object as if he were the owner of the object. This definition can be explained thus, that the perpetrator by carrying out

[39]PAF Lamintang and Theo Lamintang, Crimes Against Property, Sinar Grafika, Bandung, 2013, page 113.
[40]Ibid., page 14.
[41]Adami Chazawi, Crimes Against Property, Bayu Media, Jakarta, 2016, page 83.
[42]Ibid., page 80.

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the act of possessing an object that is in his control is carrying out an act as the owner does an act against the object. Therefore, as an element of the crime of embezzlement, this element has a different position from the same element in the crime of theft even though it has the same meaning.[43]

In the crime of theft, the element of control is a subjective element, but in the crime of embezzlement, this element is an objective element. In the case of the crime of theft, control is the purpose of the crime of theft. In this case, this element does not need to be implemented when the prohibited act (i.e. taking the item) is completed. In this case, it only needs to be proven that the perpetrator had the intention to control the item for himself, without needing to prove that the item actually belongs to him. Meanwhile, in the crime of embezzlement, the act of control is a prohibited act. Because this act is a prohibited act, there is no embezzlement if the act of control has not been completed.[44]

It can be concluded that in the crime of embezzlement, the element of the act of control must have been carried out or completed, for example by selling the object, using it yourself, etc. If the control does not conflict with the nature of the right by which the object can be under his control, then this does not fulfill the elements in Article 372 of the Criminal Code.

b. An object

Although Article 372 of the Criminal Code on the crime of embezzlement does not regulate the nature of the object, whether it is movable or what is often called movable, it does not rule out the possibility that embezzlement can also be carried out on intangible objects.[45]

The definition of goods that are under his control as having a relationship and are very close to the goods, the indicator of which is that if he wants to do something against the goods, he can do it directly without having to do something else first, there are only tangible and movable objects and this is not possible for intangible and fixed objects.[46]

c. Partly or wholly owned by another person

A person can be said to embezzle if either part or all of it belongs to another person. For example, a person may not control something for himself if he has a joint business with another person.[47]

d. Being in his power is not because of a crime

In the crime of embezzlement, the act of controlling not because of a crime is not a main characteristic. This element is a differentiator from the crime of theft. The word is in it according to Hoge Raad is "Showing the necessity of a direct relationship

[43]Adami Chazawi, Op. Cit., page 72.
[44]Tongat, Op. Cit., page 59.
[45]PAF Lamintang and Theo Lamintang, Op.Cit., page 118.
[46]Adami Chazawi, Op. Cit., page 77.
[47]PAF Lamintang and Theo Lamintang., Op. Cit., page 128.

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that is real or between the perpetrator and an object, namely so that his act of unlawfully controlling the object is seen as a crime of embezzlement, not theft".[48]

In theft, control is the perpetrator's goal so that the element of control does not need to be implemented at the time of the prohibited act. In this case, the perpetrator's intention must be proven. While in embezzlement, control is not the perpetrator's goal so that the act of control in embezzlement must be present in the perpetrator.

If an item is in the control of a person not because of a crime but because of a legitimate act, then the person who is trusted to store and so on controls the item for his own benefit unlawfully, then that person is committing embezzlement. It can be said that the crime of embezzlement has an element of intent to control an item that is partly or wholly owned by another person but is not carried out by criminal means, but on the basis of trust such as because it is lent, deposited, rented, entrusted, guaranteed and so on.

There are four ways of calculating criminal penalties in conjunction depending on the type of conjunction, namely as follows:[49]

1. Pure absorption (absorption) method for the concurrency of regulations and ongoing actions

   According to Article 63 paragraph (1) of the Criminal Code, if an act falls under more than one criminal regulation, then only one of those regulations will be imposed. If they differ, the one containing the most severe principal criminal threat will be imposed. If a person commits an act that violates several criminal provisions, then only one of those provisions will be imposed. If there is a difference between those provisions regarding the type of principal criminal penalty (vide Article 10 letter a of the Criminal Code), then the provision that has the most severe principal criminal threat will be imposed.

   According to Article 63 paragraph (2) of the Criminal Code, if an act falls within a general criminal provision, and is also regulated in a special criminal provision, then only the special one will be applied. According to this article, if among the provisions there are general criminal provisions and special criminal provisions, then only the special criminal provision will be applied.

   According to Article 64 paragraph (1) of the Criminal Code, if between acts, although each is a crime or violation, there is a connection in such a way that it must be viewed as one continuing act, then only one criminal provision is applied. If different, the one applied is the one containing the most severe principal criminal threat. In continuing acts, only one criminal provision is imposed. If there is a difference regarding the principal criminal threat, then the provision that has the most severe principal criminal threat is applied.

   As for the calculation method of pure absorption for the concurrency of regulations and continuing acts such as example A committing 1 type of crime but can be

[48]Ibid., page 129.

[49]Maramis Frans, General and Written Criminal Law in Indonesia, Rajawali Pers, Jakarta, 2013, page 227.

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punished with 3 punishments, each of which is threatened with imprisonment of 1 year, 2 years and 3 years. According to this system, the only punishment that can be imposed is the heaviest punishment, namely 3 years in prison. This heaviest punishment seems to swallow or absorb other lighter punishments.[50]

2. The absorption method is sharpened for the concurrent acts of crimes which are threatened with similar principal penalties.

   This method is applied to the concurrency of acts in crimes that are threatened with the same principal punishment. For some crimes, only one maximum punishment is imposed, namely the maximum amount threatened for the crimes, but may not be more than the maximum of the most severe punishment plus one third (Article 65 paragraph (1) and (2) of the Criminal Code).

   As for the calculation method of absorption punishment which is sharpened for the concurrency of acts for crimes that are threatened with similar principal punishments, such as an example if someone commits several acts that are several crimes that are threatened with separate punishments, then according to this system in essence only 1 (one) punishment can be imposed, namely the most severe. But in this case it is aggravated by adding one third of the most severe. If we take the example above, then according to this system, A who commits 2 crimes, each of which is threatened with separate punishments but the punishments are similar, for example, the first criminal charge is 4 years in prison and the second is 6 years in prison, the sentence is 6 years. If it is aggravated 6 years plus the first sentence but it cannot be heavier than the maximum amount of the most severe (second) sentence.[51]

3. A softened cumulative (addition) method for concurrent acts of crimes that are subject to different principal penalties.

   According to Article 66 paragraph (1) of the Criminal Code, in the case of several acts being committed together, each of which must be viewed as an independent act, thus constituting several crimes, which are subject to different principal penalties, then a sentence is imposed for each crime, but the total may not exceed the maximum of the most severe penalty plus one third. If there is a combination of several crimes which are subject to different principal penalties, then a sentence is imposed for each crime (cumulative) but the maximum total may not exceed the maximum of the most severe penalty plus one third, this means that there is a cumulative sentence but it is softened (reduced).

   As for the method of calculating cumulative (additional) penalties that are softened for the concurrency of acts for crimes that are threatened with different principal penalties, such as for example if someone commits several acts that are several crimes that are threatened with separate penalties but with different principal penalties, then according to this system, all sentences are imposed. However, the number of penalties must be limited, namely the amount must not exceed the most severe penalty plus one

[50]I Made Widnyana, Principles of Criminal Law, Fikahati Aneka, Jakarta, 2010, page 271.
[51]Ibid., page 272.

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third of the cumulative penalty. In practice, the theory of hard absorption adopted by Article 65 of the Criminal Code adheres to the first opinion, which is no different from the theory adopted by Article 66, only the type of punishment received is different or the same.[52]

4. Pure cumulative method for violations (overtrading)

   According to Article 70 paragraph (1) of the Criminal Code, if there is a concurrency as referred to in Article 65 and Article 66, either a concurrency of a violation with a crime, or a violation with a violation, then for each violation a separate punishment will be imposed without reduction.

   As for the method of calculating pure cumulative punishment for violations such as an example if someone commits several acts which are several crimes that are threatened with separate punishments, then according to this system each punishment threatened for each crime is imposed. If we take the example, then according to this system, A who committed 3 crimes, each of which is threatened with separate punishments, is subject to a sentence of 6 years, namely 1 year + 2 years + 3 years.[53]

Law enforcement in the Indonesian criminal justice system is stated in the Criminal Procedure Code which is the basis and guideline for law enforcers in carrying out their duties and functions in the process of investigation and inquiry, prosecution and examination in court. The process that will lead to the formation of a judge's decision. Criminal procedure law is a set of legal provisions that regulate the way in which criminal law regulations must be enforced in the event of a violation or the way the state uses its criminal rights or the right to punish it in the event of a violation.[54]

Criminal procedural law as one of the instruments of the criminal justice system in principle has the main function of seeking and finding the truth, making decisions by judges and implementing the decisions that have been taken. The truth in question is material truth, complete truth or at least the closest to the truth of a criminal case by honestly and appropriately applying the provisions of procedural law to find out who can be accused of violating the law and then requesting an examination and court decision to find out whether a crime has been proven and whether the accused person can be blamed.[55]

CONCLUSION

The legal regulation regarding concurrent is basically a provision regarding how to resolve cases and impose penalties in cases where there is more than one criminal act where all of the criminal acts have not been examined and decided by the court. The combined punishment for concurrent crimes of fraud and embezzlement includes concurrent crimes of several acts that must be viewed as stand-alone acts so that they constitute several criminal acts. Based on Article 65 paragraph (1) and (2) of the Criminal Code for several criminal acts, only one maximum penalty is imposed, namely the maximum amount threatened for

[52]Ibid., page 272.
[53]Ibid., page 273.
[54]R. Subekti and Tjicitrosoedibiyo, Legal Dictionary, Pradnya Paramitha, Jakarta, 2003, page 53.
[55]Andi Hamzah, Indonesian Criminal Procedure Law, Sinar Grafika, Jakarta, 2008, page 8.

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the criminal act, but it must not be more than the maximum of the most severe penalty plus one third.

Indonesian criminal law needs to develop, because Indonesian society has also developed. Only imposing the main punishment regulated in Article 10 of the Criminal Code is not enough, because only the element of revenge is the goal of punishment, with conservative thinking and a restorative approach to justice as an alternative to criminal punishment and it is hoped that Indonesian society will receive education and guidance on the consequences that will be received if they commit a crime. The crime of fraud is sometimes difficult to distinguish from the crime of embezzlement, the Panel of Judges in the trial must conduct an examination and prove legally and convincingly whether the elements of the criminal act of fraud or embezzlement have been proven in the person and actions of the defendant.

REFERENCES

Teguh, Prasetyo, Hukum Pidana, Raja Grafindo Persada, Jakarta, 2012.
Moeljatno, Asas-Asas Hukum Pidana, Bina Aksara, Jakarta, 2015.
Schaffmeister, D., dkk, Hukum Pidana, Citra Aditya Bakti, Bandung, 2013.
Waluyo, Bambang, Penelitian Hukum Dalam Praktek, Sinar Grafika. Jakarta, 2012.
Ariman, H.M. Rasyid dan Raghib, Fahmi, Hukum Pidana, Setara Press, Malang, 2016.
Chazawi, Adami, Pelajaran Hukumn Pidana II, Raja Grafindo Persada, Jakarta, 2016.
Kanter, E.Y. dan Sianturi, S.R., Asas-Asas Hukum Pidana di Indonesia dan Penerapannya, Storia Grafika, Jakarta, 2012.
Chazawi, Adami, Kejahatan Terhadap Tubuh dan Nyawa, Raja Grafindo Persada, Jakarta, 2001.
Sakidjo, Aruan dan Poernomo, Bambang, Hukum Pidana Dasar Aturan Umum Hukum Pidana Kodifikasi, Ghalamania Indonesia, Jakarta, 1998.
Terisno, Prisilia Anggraini Evelyn dan Angela, Yuliana, Penjatuhan Dua Putusan Perkara Pidana Dalam Suatu Objek Perkara Yang Sama (Kajian Putusan Nomor 2135 K/Pid.Sus/2016), Indonesia Journal of Criminal Law, Vol.1, No. 1, 2019.
Gunadi, Ismu dan Efendi, Jonaedi, Cepat dan Mudah Memahami Hukum Pidana, Kencana, Jakarta, 2014.
Arief, Barda Nawawi, Sari Kuliah Hukum Pidana II, Rajawali Pers, 2006.
Hamzah, Andi, Terminologi Hukum Pidana, Sinar Grafika, Jakarta, 2007.
Soerodibroto, R. Soenarto, KUHP dan KUHAP Dilengkapi Yurisprudensi Mahkamah Agung dan Hoge Raad, Rajawali Pers, Jakarta, 2004.
Prasetyo, Teguh, Hukum Pidana Edisi Revisi, Raja Grafindo Persada, Jakarta, 2012.
Marpaung, Leden, Asas Teori Praktik Hukum Pidana, Sinar Grafika, Jakarta, 2016.
Ananda, S., Kamus Besar Bahasa Indonesia, Kartika, Surabaya, 2009.
Soehandi, S.A., Kamus Populer Kepolisian, Koperasi Wira Raharja, Semarang, 2010.
Sianturi, SR, Tindak Pidana KUHP Berikut Uraiannya, Gunung Mulia, Jakarta, 2008.
Prodjodikoro, Wirjono, Tindak-tindak Pidana Tertentu di Indonesia, Refika Adityama, Bandung, 2008.

DOI: https://doi.org/10.5281/zenodo.12736451

Soerodibroto, R. Soenarto, KUHP & KUHAP, Rajawali Pers, Jakarta, 2012.

Tongat, Hukum Pidana Materiil, UMM Press, Malang, 2006.

Chazawi, Adami, Hukum Pidana (Stelsel Pidana, Teori-Teori Pemidanan dan Batas Berlakunya Hukum Pidana), Rajawali Pers, Jakarta, 2008.

Lamintang, P.A.F. dan Lamintang, Theo, Kejahatan Terhadap Harta Kekayaan, Sinar Grafika, Bandung, 2013.

Chazawi, Adami, Kejahatan Terhadap Harta Benda, Bayu Media, Jakarta, 2016.

Frans, Maramis, Hukum Pidana umum dan Tertulis di Indonesia, Rajawali Pers, Jakarta, 2013.

Widnyana, I Made, Asas-Asas Hukum Pidana, Fikahati Aneka, Jakarta, 2010.

Subekti, R. dan Tjicitrosoedibiyo, Kamus Hukum, Pradnya Paramitha, Jakarta, 2003.

Hamzah, Andi, Hukum Acara Pidana Indonesia, Sinar Grafika, Jakarta, 2008.

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