

CRIMINAL RESPONSIBILITY IN THE CRIME OF EMBEZZLEMENT IN OFFICE (STUDY OF SUPREME COURT RULING NUMBER: 1741 K/ PID/2012)

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Abstract: The crime of embezzlement is also called abuse of trust or crime of abuse of rights. Because the essence of this criminal act is abuse of rights or abuse of trust. One of the cases involving the crime of embezzlement in office is the Supreme Court decision number: 1741 K/Pid/2012. Dr. Muhammad Rasyid Ngah Sp.P has been legally and convincingly proven guilty of committing the crime of embezzlement in office as regulated in article 374 of the Criminal Code. The problems examined in this research are, how is the legal regulation of criminal acts of embezzlement in office and what is the criminal responsibility for criminal acts of embezzlement in office regarding the Supreme Court Decision Number: 1741 K/Pid/2012. This research uses doctrinal legal research or normative legal research. The legal regulations for the crime of embezzlement in office are regulated in the Criminal Code Article 374. In accordance with the evidentiary system and the facts of the trial as well as the elements of criminal responsibility of the defendant, Dr. Muhammad Rasyid Ngah is innocent and must be free from all charges and decisions of the panel of judges and restore the good name of the defendant both in his position and dignity as before.

INTRODUCTION

The paradigm in the field of law enforcement views the growth of crime rates with the level of progress in science and technology as a positive or proportional relationship, namely that crime will always develop in line with the progress achieved in the field of science and technology. This can be seen from what is experienced by developing countries and developed countries, where every achievement of progress in the field of economics and science and technology is always followed by a tendency and increase in deviations and new crimes in the economic and social fields.

Of the various kinds of criminal acts that occur in society, one of them is the

crime of embezzlement by using a position or employment relationship which has been stated in the Criminal Code. In fact, nowadays there are many criminal acts of embezzlement in position in various forms and forms. developments that point to the increasingly high level of intellectuality of crimes of embezzlement in increasingly complex positions.

One of the cases involving the crime of embezzlement in office is the Supreme Court decision number: 1741 K/Pid/2012. In the indictment the defendant was named Dr. Muhammad Rasyid Sp.P, on Friday 3 July 2010, or at any other time in 2010, residing on Jalan Mayjend. HT. Rizal Nurdin No.10 or Jalan Pantai Kunci Kec. Perbaungan district. Serdang Berdagai or at least in another place that is still included in the jurisdiction of the Lubuk Pakam District Court.

Intentionally possessing against the rights of an item in the form of a grant letter dated 06 July 2009 and a certificate from PGI Cikini Hospital dated 06 July 2009 as proof of ownership of 1 (one) unit of X-Ray Klinographe Polyphos-300 Single Tube medical equipment and a permit letter the use of nuclear energy for the use of medical equipment which in whole or in part belongs to the person who holds it because of a crime committed by the person who holds the item in connection with his work or position or because he receives monetary wages.

The criminal case mentioned above is interesting to observe, because in the prosecutor's demand letter and in the judge's decision, the term embezzlement in office is used in Article 374 of the Criminal Code. The criminal act of embezzlement regulated in Article 374 of the Criminal Code is referred to in doctrine as *gequalificeerde verduistering*. or as embezzlement with qualifications, namely a criminal act with aggravating elements.

The criminal act of embezzlement in one's own position by the legislator is regulated in Article 415 of the Criminal Code. The word for position in Dutch is called *ambt*, which is usually used to refer to a certain work environment in carrying out state duties or governmental duties. It seems clear that what is regulated in Article 374 of the Criminal Code is not about criminal acts of embezzlement committed in office, but only criminal acts of embezzlement committed by perpetrators in certain functions. The word *function* itself is usually used by people to indicate a certain work environment that has nothing to do with carrying out state duties or governmental duties.

Based on this, the author wants to formulate several problems from the objects used in this research, namely, how the legal regulation of criminal acts of embezzlement in office and what criminal responsibility for criminal acts of embezzlement in office is based on the Supreme Court Decision Number: 1741 K/ Pid/2012 . The aim of this research is essentially to find out and analyze the legal regulations regarding the criminal act of embezzlement in office and to find out and analyze criminal liability in the criminal act of embezzlement in office regarding the Supreme Court decision Number: 1741 K/ Pid/2012.

This research is very important to carry out because the public is also obliged to understand that the criminal act of embezzlement does not only occur in social life, but more specifically, embezzlement can occur in the world of work in terms of positions. For this reason, researchers feel it is very important to examine embezzlement in office to be able to find differences in criminal offenses between criminal acts of embezzlement in general and criminal acts of embezzlement in office. Therefore, the author is interested in discussing this matter in the research entitled "**Criminal Responsibility in the Crime of Embezzlement in Office (Study of Supreme Court Decision Number: 1741 K/ Pid/2012)**".

RESEARCH METHODS

The type of research used is doctrinal legal research or normative legal research, namely legal research that uses secondary data sources with an emphasis on theoretical and qualitative analysis which is also referred to as library research or document study.³ In this type of legal research, law is often conceptualized as what is written in statutory regulations (law in books) or law is conceptualized as rules or norms which are benchmarks for human behavior that is considered appropriate. By using descriptive research in the field of law, this research attempts to describe inconcreto events to be consulted with a set of applicable positive legal norms, which are related to the problem that is the object of research.

This research is descriptive analytical, meaning that this research does not only describe by analyzing a situation or symptom, both at the positive legal and empirical levels, but also wants to provide proper regulations (das sollen) and solve legal problems related to criminal liability in the crime of embezzlement in position. This

research was conducted based on the Supreme Court Judge's Decision Number: 1741 K/Pid/2012, which was previously based on the Judge's Decision at the Lubuk Pakam District Court and the North Sumatra High Court.

The data source is the place where the data is obtained. The data sources used in this research come from secondary data, secondary data sources are data obtained from library materials or literature that are related to the research object. In legal literature, the data source is called legal material. Legal materials are anything that can be used or is needed for the purpose of analyzing applicable law.

The legal materials studied and analyzed in this research consist of primary legal materials, namely legal materials that are binding, and consist of basic rules. The primary legal materials used in this research are (1) the 1945 Constitution of the Republic of Indonesia, (2) the Criminal Code, (3) the Criminal Procedure Code, (4) Law Number 48 of 2009 concerning Judicial Power, and (5) Supreme Court Decision Number: 1741 K/Pid/2012.

Secondary legal materials are legal materials that provide an explanation of primary legal materials. Such as the results of legal research, the results of legal scientific essays, or mass media related to the subject of discussion, namely criminal liability in the crime of embezzlement in office. Tertiary legal materials are materials that provide instructions and explanations for primary legal materials and secondary legal materials, namely in the form of general Indonesian dictionaries, encyclopedias, legal magazines, the internet and so on.

The data collection tools used in this research are decision studies and document studies or conducting library research. Researchers in this case use literature study methods aimed at searching for concepts, theories, opinions or discoveries that are closely related to the main problem. The literature in question is in the form of statutory regulations, scientific works of scholars and others.

After the data is collected and processed, the next activity is data analysis. The data analysis used in this research is qualitative analysis, namely analysis carried out by describing the data in the form of sentences that are arranged systematically, clearly and in detail, which are then interpreted to obtain a conclusion regarding criminal responsibility in the crime of embezzlement in office (Decision Study No. 1741 K/Pid/2012). From the results of this analysis, it can be continued by drawing specific

conclusions based on general facts, and then suggestions can be made from these various conclusions.

RESULTS AND DISCUSSION

A. Legal Regulation of the Crime of Embezzlement in Office

The offense of embezzlement is regulated in Article 372, Article 373, Article 374 and Article 375 of the Criminal Code. Article 376 concerns embezzlement within the family, which applies the same as Article 367 of the Criminal Code (theft offense). Article 377 of the Criminal Code regarding additional penalties in the form of announcement of the Judge's decision and revocation of rights is imposed for evasion of Article 372, Article 374 and Article 375 of the Criminal Code. If the theft is committed as a profession, then the right to carry out work (a profession) can be revoked.

According to Cleiren, the core of the embezzlement offense is abuse of trust. It always involves unlawfully having an item entrusted to the person who embezzles it. The classic boundary between theft and embezzlement is that in theft, "taking" (wegnemen) an item that is not yet in his possession, whereas in embezzlement the item is already within his control. The offense of embezzlement is an offense of committing (gedragsdelicten) or an offense of commission. The time and place where embezzlement occurs is the time and place where a real will is carried out.

The criminal act of embezzlement is regulated in Chapter XXIV (Book II) of the Criminal Code (KUHP), apart from being regulated in Chapter XXIV there is a formulation of embezzlement, namely Articles 415 and 417 which are criminal acts of embezzlement in office, which have been included in criminal acts Corruption is regulated in Law Number 31 of 1999 and Law Number 20 of 2001, therefore it is included in the Chapter on crimes in office (Chapter XXVIII).¹³

Embezzlement in the main form is regulated in Article 372 of the Criminal Code. This crime is called "ordinary embezzlement". It is a crime that is almost the same as theft in Article 362, the only difference is that in the case of theft, the goods taken for possession are not yet in the hands of the perpetrator, whereas in the crime of embezzlement, the goods taken for possession are already in the hands of the perpetrator, not through a crime or have been entrusted to him.

There are two elements contained in Article 372, namely objective elements and subjective elements. Objective elements, namely: having; goods which wholly or partly belong to another person; the goods are in his possession or control, not because of a crime. Meanwhile, the subjective element, namely intentionally; against the law. The intention to own is any act of controlling goods or a desire to control goods based on his real authority and is an act as the owner of the goods, which does not give the owner the opportunity to ask for it back, even refusing to return or hiding or denying that the goods received and controlled have been obtained. declared as an act of possession.

Intentionally, the act carried out by the perpetrator was aware and aware that when he took control of the goods in his possession, he did not want to return it and the act carried out was realized to be against the law or the will of the owner of the goods. Controlled goods is solely aimed at goods, which wholly or partly belong to another person, and realizing that the goods being controlled are not due to a crime, but are goods under his control. Control of the goods for personal interests.

The difference between the crimes of embezzlement and theft that needs to be paid attention to is the way an item is taken. In case of theft, the goods are taken from the owner without permission, whereas in embezzlement, the taking of the goods is already in the hands of the guilty person, not because of a crime, for example, the goods entrusted or entrusted to him cannot be accounted for, even the goods in his control are misused for his personal interests.

1. Ordinary embezzlement (Article 372 of the Criminal Code).

The offenses listed in Article 372 of the Criminal Code are the main offenses. All types of embezzlement must fulfill the core part of the offense of Article 372 plus other core parts. In the offense of embezzlement there is a qualifying offense if it is committed if it is carried out in a profession.¹⁶ Embezzlement in its basic form is regulated in the provisions of Article 372 of the Criminal Code which states:

"Any person who intentionally and unlawfully claims as his own property something which wholly or partly belongs to another person, but which is in his control not because of a crime, is threatened, for embezzlement, with a maximum penalty of four years or a maximum fine of sixty rupiah. "

Article 372 of the Criminal Code has its equivalent in the Criminal Code (Ned.W.v.S), namely article 321 which has the same sound except that the threat of

imprisonment is lighter, namely a maximum of three years, whereas in the Criminal Code Indonesia has a maximum of four years in prison. What is a bit strange, but understandable, is that the threat of a fine in the Netherlands is category V (one hundred thousand guilders), for embezzlement, whereas for theft offenses there the threat of imprisonment is higher, namely four years in prison, but the threat of a fine is lower, namely category IV (twenty five thousand guilders).

Perhaps the legislators in the Netherlands viewed people who embezzled as having more money or sometimes being smarter than thieves. The core part of the offense in Article 372 of the Criminal Code is that intentionally, and unlawfully, possessing an item which is entirely or belongs to another person, which is in his or her control, not because of a crime. The core part of the offense is intentionally committing this offense (*gedragsdelicten*) or commission offense. It cannot be done through negligence (*culpa*).

This intentional act was carried out against the law (without the permission of the person who had it). This section is the same as the theft offense. It's not there because of a crime, for example because the item was borrowed, rented or entrusted. In the case of an offense that qualifies as defined in Article 374, the goods are in his possession because of that person's work or (so called) profession. Investigators can also carry out transactions for simple embezzlement offenses. This means that no prosecution will be carried out if the loss is reimbursed.

The crime of embezzlement regulated in Article 373 of the Criminal Code (KUHP) is a light crime of embezzlement. The objective elements, namely having; goods which wholly or partly belong to another person; the goods are in his possession or control, not because the price is not more than Rp. 250,- (two hundred and fifty rupiah).¹⁹ While the subjective element, intentionally; against the law. Some of the elements of embezzlement mentioned above have been discussed in the previous discussion.

Of the elements of embezzlement mentioned above, the only element that has not been discussed in the previous discussion is the element "in his power and not because of a crime".²⁰ Before discussing the element "which is in his power not because of crime", there is an element that needs to be stated again, even though it has been mentioned in the previous discussion. This element is the element of "mastering". This

element needs attention, because as an element of the crime of embezzlement, this element has a different position to the same element in the crime of "theft" even though it has the same meaning.

In the crime of theft, this 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 aim 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 has to be proven that the perpetrator has 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 controlling is a prohibited act. Because the act is a prohibited act, there is no embezzlement if the act of controlling has not been completed. Thus, it can be concluded that the criminal act of embezzlement requires that the act of controlling must have been carried out or completed, for example the goods have been sold, used personally, exchanged and so on. Now let's look at the element that the goods must be in their power, not because of a crime.

That in the crime of embezzlement, the element of possession of goods, not because of a crime, is the main characteristic. This element is an element that differentiates it from the crime of theft. In the crime of theft, it is clear that the "control of goods" by the perpetrator was carried out against the law. Meanwhile, in the crime of embezzlement, the control of goods by the perpetrator is not the result of a criminal act.

As is known, the fact that an item can be in that person's control does not always have to be due to a criminal act. Control of goods by someone can occur, for example because of a rental agreement, loan, sale and purchase and so on. If an item is in someone's control not because of a criminal act, but because of a legal act, for example due to storage, an agreement to store the goods and so on, then the person who is entrusted with storing and so on controls the item for himself unlawfully, then the person This means committing "embezzlement".

2. Embezzlement in Office (Article 374 of the Criminal Code).

As stated above, this offense is called a qualified offense, meaning an offense (embezzlement, Article 372 of the Criminal Code as the main offense), plus one more core part of the offense, namely that it is committed because of an employment relationship

or because of one's livelihood or because one receives wages. the penalty is increased from four years to five years in prison. An aggravated criminal act is a criminal act of embezzlement in its basic form, because there are other aggravating elements, the criminal threat in legal language is qualified embezzlement.

Embezzlement with aggravation in Article 374 of the Criminal Code states:

"Embezzlement committed by a person whose control of goods is due to a work relationship or because of his (livelihood) livelihood or because he receives wages for it, is punishable by a maximum imprisonment of five years."

The criminal act of embezzlement regulated in Article 374 of the Criminal Code is a criminal act of embezzlement with aggravation or while in office. The elements contained in this criminal act are; Objective element, having; goods which are wholly or partly criminal; personal working relationships; work relationship in his livelihood or profession; earn money. Meanwhile, the subjective element is intentionally, against the law. Elements of weighting include:

- a. The defendant was entrusted with keeping items that were embezzled because of his employment relationship (*personlijke dienstbetrekking*), for example the relationship between an employer and a domestic helper or an employer and a worker.
- b. The defendant kept the items because of his position (*Beroep*), for example the laundry worker embezzled the clothes he washed, the watchmaker, shoes, bicycles, and so on. Embezzling shoes, watches, bicycles handed over to him for repair.
- c. Because they get paid money (not wages in the form of goods), for example a station worker carrying someone's luggage for a cash wage, he embezzles the goods.

Several elements of the crime of embezzlement above have been discussed in the previous section so no further discussion is needed. Some elements that still require explanation are:

- a. The element of "employment relationship" is a relationship that occurs because of an employment agreement, either verbally or in writing. By employment relationships we do not only mean employment relationships that occur in companies, but also

include employment relationships that occur individually.

- b. In an individual work relationship, for example, the relationship between an employer and his household servant. So if, for example, an employer hands over money to his domestic servant to shop at the market and then the servant uses the money himself, then the servant has committed the crime of embezzlement. In this case, the embezzlement by weighting with the weighting element is due to an employment relationship.
- c. The element of livelihood, in this case what is meant by "livelihood" is when someone does work for other people in a limited and certain (but permanent) manner. For example, a cashier or paymaster for a company. Thus, if a cashier, for example, controls an object (belonging to the company) which is not due to a crime, then he commits an act that is contrary to the nature of the object where the object is within his control, then the cashier can be charged under the provisions of Article 374 of the Criminal Code. .
- d. The "reward" element. For example, if someone performs a certain act for another person, and for that act he receives a reward. For example, a car guard is a car guard. When it comes to maintaining that. Someone has received a reward and then that person and then that person takes control of the car (in the form of, for example, selling, exchanging and renting out, etc.) unlawfully, then the owner of the car can be charged with a criminal offense under Article 374 of the Law. Criminal. It should be stated that the compensation that a person must receive does not have to be due to a written agreement.

B. Criminal Liability in the Crime of Embezzlement in Office (Supreme Court study Number: 1741 K/ Pid/2012)

The Criminal Code does not explicitly state what is meant by criminal liability, but criminal liability is regulated negatively, usually using the phrase "not punished" (Articles 48, 49, 50, 51 of the Criminal Code), "not can be accounted for" (Article 44 paragraph (1) and (2) of the Criminal Code) and others. Such arrangements gave rise to theories about criminal responsibility in civil law in the Netherlands, and especially in Indonesia which adopted the Dutch Criminal Code.

Criminal responsibility in foreign languages is referred to as "toereken-

baarheid", "criminal responsibility", "criminal liability", this criminal responsibility is intended to determine whether a person can be held responsible for the crime or not for the action committed. ²⁶In Indonesian, the word responsibility means the state of having to bear everything (if something happens, you can be sued, blamed, sued, and so on). To assume is defined as being willing to bear the costs (managing, maintaining), guaranteeing, expressing a state of willingness to carry out obligations. The theory of criminal responsibility is a theory that examines and analyzes the willingness of legal subjects or perpetrators of criminal acts to bear costs or losses or carry out crimes for their mistakes or negligence. ²⁷Criminal liability in the common law system is always associated with mens rea and punishment. Criminal responsibility has a relationship with society, the relationship between criminal responsibility and society is criminal responsibility which has a function. The function of criminal responsibility has the power to impose punishment, so that it can be used as social control so that criminal acts do not occur in society. The function of criminal responsibility is as a means of prevention, prevention not only as a manifestation of individuals but also as a general deterrence for society. Criminal liability is a preventive method of criminal law.²⁸

Based on the theory and applicable laws and regulations and related to the elements of the defendant's actions, it can be concluded that the evidence in the criminal case of embezzlement in office based on the decision of the Lubukpakam district court was not proven by Dr. Muhammad Rasyid Ngah as the defendant in this criminal act did not fulfill the elements of the criminal act and the unlawful nature of the defendant. Therefore, in this decision the judge as God's representative was wrong in applying it and proving the defendant guilty. Because the elements of the criminal act against the defendant Dr. Muhammad rasyid ngah. Because based on evidence and statements from witnesses as well as the defendant's statement based on Article 184 of the Criminal Code and based on the chronology of the indictment, the public prosecutor explained that there was an agreement between the owner of Indah Perbaungan Hospital and Dr. Muhammad Rasyid refused to buy an X-ray equipment. Based on this agreement, the criminal element of embezzlement in office cannot be fulfilled, because the agreement is a civil element.

Regarding the judge's consideration regarding the money for obtaining a permit to operate an X-ray equipment that the defendant requested from the victim, based on the

testimony of several witnesses which became a fact of the trial, the witnesses also knew that the defendant had made an application for the permit, but because he was hampered by the terms of management, the permit it's not finished yet. Therefore, the defendant's actions to obtain the permit have been carried out, so that the elements of Article 374 of the Criminal Code are not fulfilled and the defendant should be free from prosecution and court decisions as well as the elements of the criminal act of embezzlement in office as stated above.

Based on the indictment of the defendant Dr. Muhammad rasyid ngah in the second indictment has violated the provisions of Article 378 (fraud) and the elements of that article cannot be fulfilled. Because based on the defendant's statement based on the chronology of events contained in the indictment, there is not a single element that states that Dr. Muhammadi Rasyid did not commit an act that was against the law or violated the elements of a criminal act of fraud. Because during the examination of the defendant and the witness's statements were also in sync, stating that the defendant was Dr. Muhammad rasyid ngah did not carry out a series of lies or deception to obtain an object or goods. Therefore, the elements of Article 378 of the Criminal Code stated in the indictment of the two defendants are not fulfilled. Therefore, if the elements of fraud are not fulfilled, the defendant should be freed from the legal demands and sanctions that the defendant has received.

Based on the author's analysis above, a conclusion is drawn regarding the proof of criminal cases in the case of embezzlement in the position of study of the Supreme Court decision Number 1741 K/Pid/2012 which is not based on the theory of evidence based on the judge's belief for logical reasons. In this case the judge made a mistake in considering, examining and proving the legal facts at trial. Based on the provisions of Article 184 paragraph (1) of the Criminal Procedure Code, all the evidence presented at trial in the form of witness statements, instructions and the defendant's statements show that they are in agreement with each other. The explanatory provisions of this article, when linked to the evidence presented at trial, are not relevant and there is no correspondence between other pieces of evidence. Therefore, the judge examined and adjudicated this case by misapplying the law and not based on the judge's beliefs, and did not look at the laws and regulations related to this case.

Dr. Muhammad Rasyid Ngah Sp.P has been legally and convincingly proven

guilty of committing the crime of "deliberately possessing against the rights of an item which wholly or partly belongs to another person and the item is in his hands not because of a crime committed by the person who controls the item because of his position or because of his work or because he received wages for it" as stipulated and threatened in the first primary charge of violating Article 374 of the Criminal Code and subsidiary Article 372 of the Criminal Code.

Considering, therefore, the element of the goods in his hands is not due to a crime committed by the person who controls the goods because of his position or because his work or because he has received wages for it has also been fulfilled;

Considering, that by fulfilling all the elements of this indictment, the defendant's actions have been legally and convincingly proven to violate the article as charged in the primary indictment, Article 374 of the Criminal Code, so that the subsidiary indictment does not need to be proven further and the defendant must be declared legally and convincingly guilty of committing the act.

The Considering that, during the examination of this case, no justification or excuse was found for the defendant himself or his actions, in addition to being found guilty, the defendant must also be sentenced to a crime according to the level of his guilt, taking into account the aggravating and mitigating factors of the crime.

The things that aggravate the defendant are that the defendant does not admit his guilt, and the things that mitigate the defendant are that the defendant has never been convicted, and the defendant is old. The decision from the Supreme Court was to sentence the defendant, Dr. Muhammad Rasyid Ngah Sp.P, to prison for 1 (one) year and 6 (six) months minus the time the defendant was in temporary detention. As explained above regarding the elements of criminal responsibility in the crime of embezzlement in office, an analysis can be drawn between a criminal act and what criminal liability is in a criminal act. Criminal liability in the crime of embezzlement in office at the Lubuk Pakam district court, Supreme Court decision number: 1741 K/Pid/2012).

It has been mentioned in the previous discussion that there are definitions of error (in the form of intention and negligence) and unlawfulness as elements of criminal acts, and there are also errors and unlawfulness as elements of criminal liability. Mistakes and the nature of unlawfulness which are not elements of a

criminal act or as a basis for determining criminal liability are the basis for the judge's considerations which are found by examining the purpose of establishing legal norms in the Law and the legal interests that are intended to be protected by the legal norms in the Law. Reasons for forgiveness and justification, whether regulated in criminal law or based on jurisprudence, are also the basis for criminal responsibility.²⁹

The elements that must be considered by the judge to determine criminal liability are the nature of the violation of the law which is assessed teleologically and is not an element of a criminal act, the error is assessed teleologically and is not an element of a criminal act, there is no justification, there is no excuse, and able to take responsibility.

After explaining the elements of the theory of responsibility and considerations in the Supreme Court decision above, the elements of criminal responsibility can be drawn, namely the following elements. Criminal responsibility in criminal law is known by the existence of several main elements, namely:

1. Elements of a person's actions, deeds or actions. This person's actions are the connecting point and basis for the award of punishment.

In the judge's consideration the above elements of the defendant's actions were not fulfilled. The defendant's actions in terms of obtaining an operational permit for the X-ray equipment were carried out by the defendant, the defendant had written an application to apply for a permit for the X-ray equipment, the defendant's statement was also in line with the statements of the witnesses so that based on the elements of the action above, the defendant's actions were not intentional or unlawful. So in this case the element of action is not fulfilled in criminal liability for embezzlement in office based on Supreme Court decision Number: 1741 K/Pid/2012.

2. The element of person or perpetrator, the person or perpetrator is the subject of a criminal act or a human being. The relationship between the elements of the person or perpetrator regarding spiritual matters, namely the fault of the perpetrator of the crime. Only with this inner connection can prohibited actions be held accountable to the perpetrator and this will only be achieved if there is a criminal act for which the perpetrator can be punished.

Looking at the perpetrator element in the Lubuk Pakam District Court's decision

number, the decision is linked to the element of the defendant's actions and cannot be suspected of being the perpetrator or person or thing because the defendant in this case did not commit the crime of embezzlement in office.

3. Criminal elements (for those who violate the prohibition). Punishment is suffering that is intentionally imposed on a person who commits an act that meets certain requirements.

The criminal element in the crime of embezzlement in office in the Supreme Court decision Number: 1741 K/Pid/2012 cannot be fulfilled because the defendant did not commit any criminal element because the defendant's actions in this case had entered into a sale and purchase agreement between the defendant and the victim based on a written agreement. made between the defendant and the victim so that based on the agreement letter the panel of judges should decide that this case is free from criminal elements because the plaintiff in this case has civil elements.

Based on the analysis of responsibility above, it can be concluded regarding criminal responsibility in the crime of embezzlement in office, Supreme Court decision Number: 1741 K/ Pid/2012 that after analyzing the elements of criminal responsibility and linking it with the analysis of the evidence of the judge's considerations in this decision, an analysis can be drawn that criminal liability in the crime of embezzlement in office does not fulfill the elements of accountability because based on the evidence, namely witness statements and defendant statements as well as documentary evidence submitted to the trial, there is no element of the occurrence of a criminal act or crime, so in this case the supreme court's decision must acquit the defendant because in this case the defendant did not commit any element of a criminal act. Therefore, the defendant should not be held responsible for this crime and should be free from criminal responsibility.

Criminal liability in the crime of embezzlement based on Supreme Court decision Number: 1741 K/ Pid/2012 in the author's opinion is very inappropriate and does not look at the evidentiary system in deciding this case. Therefore, in considering and deciding this case, the judge should be guided by criminal procedural law and the provisions of the law and linked to the system of evidence and criminal accountability in order to achieve a legal objective. Because in this case the judge must have confidence in the guidelines of the law to examine and try this case.

CONCLUSION

Based on the research results, it can be concluded that the legal regulations for the crime of embezzlement in office are regulated in the Criminal Code Article 374. Judges' considerations in enforcing criminal law in the crime of embezzlement in office regarding the Supreme Court decision Number: 1741 K/ Pid/2012 does not reflect a consideration based on legal facts and the judge's beliefs. In this case the panel of judges erred in applying the law. The panel of judges should have acquitted the defendant of the charges and demands because there was no evidence to show that the defendant had committed the crime of embezzlement in office. Criminal liability in the criminal act of embezzlement in office regarding the Supreme Court decision Number: 1741 K/Pid/2012 cannot be held accountable. Because it is in accordance with the evidentiary system and the facts of the trial as well as the elements of criminal responsibility of the defendant, Dr. Muhammad Rasyid Ngah is innocent and must be free from all charges and decisions of the panel of judges and restore the defendant's good name both in his position and dignity as before.

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