

Research Article

Legal Review of Legal Protection for Motorcycle Owners in Cases of Embezzlement and the Responsibility of Related Parties

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Abstract: This study analyzes the legal review of legal protection for motorcycle owners in cases of embezzlement. To anticipate the development of society in relation to changes in crime, efforts can be made to plan the creation of criminal law that accommodates all the dynamics of society. This is a policy issue, namely regarding the selection of means in regulating social life. The crime of theft is regulated in the Criminal Code book II chapter XXII Articles 362 to Article 367. Indonesia is a country that is included in the category of developing countries and of course cannot be separated from the problems that have been raised above. Crimes that occur in developing countries are still relatively high. Therefore, it is not surprising that the problem of crime or criminality in Indonesia is a result of the life of its people. Crime can be interpreted criminologically and juridically. One example of a crime is the crime of embezzlement which is regulated in Articles 372 to 377 of the Criminal Code. The normative juridical research method with a descriptive approach, this study reveals that legal protection for motorcycle owners in embezzlement cases is based on Article 372 of the Criminal Code and Law Number 8 of 1981 concerning Criminal Procedure Law. The concept of imposing criminal penalties on embezzlement crimes in Indonesia. Article 372 of the Criminal Code and Law Number 8 of 1981 concerning Criminal Procedure Law. Thus, the judge sentenced the defendant to 3 (three) years in prison.

Keywords: Criminal Law; Document Falsification; Land Registration; Title Document; Village Head.

1. Introduction

Background

The Unitary State of the Republic of Indonesia is a state based on law, not a state based on power. Therefore, one indicator of its achievement is the formation of conditions and the ability of citizens or society to obey the law, or even a law-abiding society. (Siregar, A. R. M., 2019). The Republic of Indonesia is a state based on law, as stipulated in the 1945 Constitution. This means that the Republic of Indonesia is a state that upholds human rights and guarantees all citizens equal status before the law and government, and is obliged to uphold the law and government without exception. The State of Indonesia aims to realize a prosperous, just, prosperous, and equitable society, both materially and spiritually, based on Pancasila and the 1945 Constitution. Law enforcement must be carried out firmly and consistently. Law is a collection of regulations (commands and prohibitions) that regulate the order of a society and therefore must be obeyed by that society. (C.S.T. Kansil, 1989).

Criminal acts are a form of "deviant behavior" that is inherent in society. Advances in science and technology influence ways of thinking, behaving, and acting. These changes in attitudes, perspectives, and orientations of citizens influence legal awareness and assessments of behavior. To anticipate societal developments related to these changes in crime, efforts can be made to plan the creation of criminal laws that accommodate all societal dynamics. This constitutes a policy issue, namely regarding the selection of means to regulate social life. (Arif Gosita, 2001)

Article 17 of Law No. 2 of 2002 of the Republic of Indonesia stipulates that officers of the National Police of the Republic of Indonesia carry out their duties and authorities throughout the territory of the Republic of Indonesia, specifically in the jurisdictions where the officers are assigned in accordance with statutory regulations. This law expressly states that the authority of the National Police of the Republic of Indonesia is to conduct investigations and inquiries into all criminal acts in accordance with criminal procedure law and other statutory regulations. However, preventive measures remain a priority through the development of preventive measures and the general obligation of the police to maintain public order and security.

In this regard, every officer of the Indonesian National Police (Polri) has discretionary authority, namely the authority to act in the public interest based on their own judgment. Article 2 of Law No. 2 of 2002 concerning the Indonesian National Police (Polri) defines the police as the maintenance apparatus for domestic security. The police's function is to maintain security and public order, enforce the law, protect, serve, and provide services to the community. Population growth, societal development, and advances in science and technology have led to an increase in the number and types of crimes. Crime is a problem that occurs in society, caused by certain factors, such as economic disparity.

Crime can be detrimental and cause unrest in society. In the legal concept, anyone who commits a crime will be subject to legal sanctions commensurate with their actions. The methods used can both violate and not violate legal norms. One form of crime that frequently occurs in society is theft. The crime of theft is regulated in Book II, Chapter XXII, Articles 362 to 367 of the Indonesian Criminal Code.

Indonesia is a developing nation and is certainly not immune to the problems outlined above. Crime rates in developing countries remain relatively high. This increase, compared to crime rates in developed countries, still seems reasonable. This is because the economic and social standard of living in developed countries is better, and legal awareness is higher than in

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developing countries. Therefore, it is not surprising that the problem of crime in Indonesia is a consequence of the lives of its people. Crime can be defined criminologically and legally.

Crime, in the criminological sense, is a human act that violates the basic norms of society. It is defined as an act that violates the established rules of society. Juridical crime, in the criminal law sense, is criminal behavior or an act defined by criminal law, defined as a crime defined by criminal regulations. One example of a crime is embezzlement, which is regulated in Articles 372 to 377 of the Indonesian Criminal Code. Motorized vehicles are a vital means of transportation and are valuable assets, with increasing numbers of owners and those seeking to own them. The increasing number of motorized vehicles naturally brings with it increasing challenges of embezzlement.

The term "embezzlement," as commonly used to describe this type of crime, as outlined in Book II, Chapter XXIV (24) of the Indonesian Criminal Code, is a translation of the Dutch word "verduistering" (Effendy, Rusli, and Poppy Andi Lolo, 1989). Motor vehicle embezzlement is influenced by opportunities and convenience, based solely on trust. Currently, cases of motor vehicle embezzlement frequently occur, with individuals using various methods to commit motorcycle embezzlement, including the act committed by Dedi Harianto, also known as "datok," who stole a motorcycle while traveling on Jalan Bromo, Gang Sahabat, Binjai Village, Medan Denai District, Medan City. This is as referred to in Article 372 of the Indonesian Criminal Code and Law Number 8 of 1981 concerning Criminal Procedure.

Based on Medan District Court Decision Number 1979/Pid.B/2023/PN Mdn, Defendant Dedi Harianto alias Datok violated Article 372 of the Criminal Code and Law Number 8 of 1981 concerning Criminal Procedure. Therefore, the judge sentenced the Defendant to three years in prison.

Law Number 8 of 1981 concerning Criminal Procedure, Article 372 of the Criminal Code concerning embezzlement, states: "Anyone who intentionally and unlawfully appropriates property that belongs wholly or partially to another person, by exploiting an opportunity given to him by reason of his position or occupation, or by reason of employment, or by reason of trust, shall be subject to a maximum imprisonment of five years or a maximum fine of nine hundred million rupiah."

On Saturday, July 8, 2023, at approximately 3:00 PM WIB, witness Pardamean Harahap (victim witness) was chatted with by an unknown man via Social Media (FB) whose inbox message offered a job vacancy. The victim witness was then interested and agreed to meet and see the workplace. Furthermore, through an inbox message, the victim witness was invited to meet on Jalan Tuba IV Medan in front of An-Nizam School. After agreeing, the victim witness went to meet the man by riding 1 (one) blue Honda Vario motorcycle with Police Number BK 3543-AKX towards Jalan Tuba IV Medan.

Arriving at Jalan Tuba IV Medan, precisely in front of An-Nizam School, he met the defendant. After meeting, the victim and the defendant went to Jalan Bromo Medan by motorcycle. At that time, the victim was riding pillion with the defendant. When passing Jalan Bromo, Gang Sahabat, Binjai Village, Medan Denai District, Medan City, the hat worn by the defendant fell on the road, so the defendant told the defendant to get off the motorcycle and said, "Bro, please get my hat." Then the victim got off the motorcycle to get the defendant's hat. However, when the victim got off to get the defendant's hat, the defendant immediately

ran away by taking the motorcycle and leaving the victim from the scene. Due to the defendant's actions, witness Pardamean Harahap (victim) suffered a loss of approximately Rp. 24,000,000 (twenty-four million rupiah).

Based on the descriptions above, the researcher is interested in conducting research in the form of a journal with the title "LEGIDAL REVIEW OF LEGAL PROTECTION FOR MOTORCYCLE OWNERS IN CASES OF EMBEZZLEMENT (Case Study: Number: 1979/Pid.B/2023/PN Mdn).

Problem Formulation

1. What are the legal provisions in Indonesia regarding the crime of motorcycle embezzlement based on the Criminal Code (KUHP)?
2. How is the analysis of criminal decisions regarding the crime of embezzlement in Indonesia?

Research Objectives

1. To understand the legal regulations.
2. To understand the causal factors of perpetrators of embezzlement.
3. To understand the legal analysis of legal protection for motorcycle owners in embezzlement cases.

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Originality of Writing

The authenticity of this research is based on several previous studies that share relatively similar characteristics in terms of the study theme, although differing in subject criteria and analytical methods. The author includes data from two previous studies and identifies the differences between the three studies. These two studies are:

1. Thesis of Muhammad Iqbal, 1800874201042, Student of Law Study Program, Faculty of Law, Batanghari University, With the research title of Criminal Acts of Embezzlement of Two-Wheeled Motor Vehicles in the Jurisdiction of the Jambi Sector Police Outside the City of Muaro Jambi Regency. By discussing the factors that cause the occurrence of criminal acts of embezzlement of two-wheeled motor vehicles in the Jurisdiction of the Jambi Sector Police Outside the City of Muaro Jambi Regency? What efforts have been made by the Police in overcoming criminal acts of embezzlement of two-wheeled motor vehicles in the Jurisdiction of the Jambi Sector Police Outside the

City of Muaro Jambi Regency? and What is the modus operandi carried out by the perpetrators of criminal acts of embezzlement of two-wheeled motor vehicles in the Jurisdiction of the Jambi Sector Police Outside the City of Muaro Jambi Regency?. (Iqbal Muhammad, 2022)

2. Akbar Sobur, 30301800026, a student in the Department of Criminal Law, Faculty of Law, Sultan Agung Islamic University (UNISSULA), with the thesis entitled "Juridical Review of Law Enforcement Against Motorcycle Theft Perpetrators (Case Study of Demak)," discusses how law enforcement is conducted against motorcycle theft perpetrators at the Demak Police Station. This thesis discusses the obstacles and solutions faced in enforcing the law against motorcycle theft perpetrators at the Demak Police Station. (Sobur Akbar, 2021)

The two theses above have similarities with the author's thesis, namely both discuss the crime of embezzlement. However, there are still differences between the thesis above and the author's thesis, namely the author discusses how to regulate legal protection for motorcycle owners in cases of embezzlement based on the legal provisions in force in Indonesia, how is the Juridical Review of Legal Protection for Motorcycle Owners in Embezzlement Cases (Case Study: Number: 1979 / Pid.B / 2023 / PN Mdn).

2. Literature review

Definition of Legal Review

According to the Big Indonesian Dictionary, the definition of review is to study carefully, examine (to understand), a view, an opinion (after investigating, studying, etc.) (Ministry of National Education, 2012). According to the Legal Dictionary, the word "juridical" comes from the word "Yuridisch," which means according to law or from a legal perspective. (M. Marwan and Jimmy P, 2009). It can be concluded that legal review means to study carefully, examine (to understand), a view or opinion from a legal perspective. A review is the activity of summarizing a large amount of raw data, then grouping or separating relevant components and parts, and then linking the collected data to answer a problem. A review is an attempt to describe consistent patterns in the data so that the results of the analysis can be studied and interpreted and have meaning. (Surayin, 2005)

Definition of Legal Protection

In general, protection means protecting something from harm, which can be an interest or an object or property. Furthermore, protection also implies the protection provided by one person to a weaker person. Thus, legal protection can be defined as all government efforts to ensure legal certainty and provide protection to its citizens so that their rights as citizens are not violated, and those who violate them will be subject to sanctions in accordance with applicable regulations. (Patent Holders Need Legal Protection, 2004).

The definition of protection is a place of refuge, an act (action, etc.) that protects. In the Big Indonesian Dictionary (KBBI), protection is defined as the method, process, and act of protecting. Meanwhile, law is a regulation made by the government or that applies to everyone in society (the state). Legal protection is defined as protection provided to legal subjects in the form of legal instruments, both preventive and repressive, written and unwritten. In other words, legal protection is a reflection of the function of law, namely the

concept that law can provide justice, order, certainty, benefit, and peace. (Rahayu, 2009). The opinions quoted from several experts regarding legal protection are as follows:

1. According to Satjito Rahardjo, legal protection is an effort to protect an individual's interests by allocating a Human Right, the authority to act in accordance with those interests. (Rahadjo, 2003)
2. According to Setiono, legal protection is an action or effort to protect society from arbitrary actions by authorities that violate the rule of law, to create order and peace, thus enabling people to enjoy their dignity as human beings. (Sutiono, 2004)
3. According to Muchsin, legal protection is an activity to protect individuals by harmonizing the relationships between values or rules that are embodied in attitudes and actions, creating order in social interactions between people. (Muchsin, 2003)
4. According to Hetty Hasanah, legal protection is any effort to guarantee legal certainty, thereby providing legal protection to the parties involved or those taking legal action. (Hetty Hasanah, 2015)

According to Law Number 40 of 1999 concerning the Press, legal protection is a guarantee of protection from the government and/or society to citizens in carrying out their functions, rights, obligations, and roles in accordance with the provisions of applicable laws and regulations. In Law Number 23 of 2004 concerning the Elimination of Domestic Violence, legal protection is all efforts aimed at providing a sense of security to victims carried out by the family, advocates, social institutions, police, prosecutors, courts, or other parties, either temporarily or based on a court decision. Meanwhile, legal protection is stipulated in Government Regulation No. 2 of 2002 concerning Procedures for Protection of Victims and Witnesses in Serious Human Rights Violations, legal protection is a form of service that must be carried out by law enforcement officers or security officers to provide a sense of security, both physical and mental, to victims and witnesses, from threats, harassment, terror, and violence from any party, which is given at the stage of investigation, inquiry, prosecution, and/or examination in court. Protection can be considered legal if it contains the following elements:

1. Government protection for its citizens.
2. Guarantee of legal certainty.
3. Relates to citizens' rights.
4. There are sanctions for violators.

Definition of Owner

In the KBBI (Big Indonesian Dictionary), an owner means a person or party who owns or controls something. More broadly, an owner is someone who has rights over something, whether it be an object, a right, or something abstract. In law, an owner (or rights holder) is an individual or legal entity that holds rights to an object, whether tangible (such as land, a building, or a vehicle) or intangible (such as intellectual property rights). The owner has certain privileges and responsibilities regarding the object they own, which are regulated by law.

Definition of a Motorcycle

A motorized vehicle is a vehicle propelled by technical equipment for movement and used for land transportation. Generally, motorized vehicles use an internal combustion engine (a tool or device for moving or making something that is driven by wheels, driven by human power or a motor, using fuel oil or natural energy). Motorized vehicles have wheels and usually

travel on roads. (Motorized Vehicles, 2022) Based on Law Number 22 of 2009 concerning Road Traffic and Transportation, technical equipment can be a motor or other equipment that functions to convert a specific energy source into the motive power of the motorized vehicle in question. The term "motorized vehicle" in this provision is defined as being installed in a location appropriate to its function. Included in the definition of a motorized vehicle are trailers or attached trailers coupled to a motorized vehicle as a tow truck. (General Explanation of Law Number 22 of 2009 concerning Road Traffic and Transportation)

Definition of the Crime of Embezzlement

Tongat provides an explanation of the crime of embezzlement as follows (Tongat, 2006):

The crime as referred to in Chapter XXIV of the Criminal Code is more accurately referred to as "crime of abuse of rights" or "abuse of trust." This is because the essence of the crime regulated in Chapter XXIV of the Criminal Code is "abuse of rights" or "abuse of trust." This terminology makes it easier for everyone to understand what actions are actually prohibited and punishable by law under these provisions.

Furthermore, Tongat emphasized the definition of embezzlement, stating (Ibid., p. 60):

If an object is in the possession of another person not due to a criminal act, but due to a legitimate act, such as storage, a consignment agreement, and so on. Then, the person entrusted with the storage and so on unlawfully takes possession of the object for themselves, then that person has committed "embezzlement."

Then, Adami Chazawi added an explanation regarding embezzlement based on Article 372 of the Criminal Code, as follows (Adami Chazawi, 2006):

The word "verduistering," which in our language is literally translated as embezzlement, is given a broad (*figurlijk*) meaning in Dutch, not its literal meaning, which means making something obscure or obscure. It is closer to the understanding that the perpetrator abuses their right to control an object (owner), a right that must not exceed their right as someone entrusted with control of the object, not through a crime.

From several definitions and explanations of the word embezzlement, we can also see C. S. T. Kansil and Christine S. T. Kansil's comprehensive definition of embezzlement as follows (C.S.T. Kansil and Christine S.T. Kansil, 2000): Embezzlement: Anyone who unlawfully possesses property that belongs wholly or partially to another person and whose possession is not due to a crime is guilty of committing an ex-criminal offense. Article 372 of the Criminal Code is classified as "verduistering" or "embezzlement".

Research Nature

By its nature, this research is descriptive. Descriptive methods include descriptions and depictions of situations or events. In other words, descriptive research is the accumulation of basic data in a purely descriptive manner without necessarily seeking or explaining interconnections, testing hypotheses, making predictions, or deriving meaning and implications. Although research aimed at discovering these things may incorporate descriptive methods (Syadiah Sukmadinata, 2013). In this thesis, the author aims to describe the Legal Review of Legal Protection for Motorcycle Owners in Embezzlement Cases (Case Study: Number: 1979/Pid.B/2023/PN Mdn).

Research Type

This research is normative legal research (Hasibuan, S.A., 2019). The Normative Legal Approach is a legal research method that principally examines legal principles in legislation, jurisprudence, and doctrine, conducted qualitatively. (Munir Fuadi, 2018)

Data Collection Method

The legal sources used were secondary data, obtained through literature review by reading scientific books, documents, and laws and regulations related to the research. This type of data was obtained through libraries or documentation at relevant agencies. (Batubara, S.A., 2019). The research was conducted by reading books, laws, and literature related to the Legal Review of Legal Protection for Motorcycle Owners in Embezzlement Cases (Case Study: Number: 1979/Pid.B/2023/PN Mdn).

Data Types

a. Primary Legal Materials

The provisions of Article 372 of the Criminal Code concerning embezzlement and the Republic of Indonesia government regulations, Law Number 8 of 1981 concerning Criminal Procedure.

b. Secondary Legal Materials

Secondary legal materials provide explanations of primary legal materials, such as research results or the opinions of legal experts. (Bambang Waluyo, 2012)

c. Tertiary Legal Materials

Tertiary legal materials provide guidance and explanations of primary and secondary legal materials (Ibid).

Data Analysis

In this study, the author used a qualitative data analysis method. Qualitative data means that the collected data is not in the form of numbers that can be measured. (Suratman) The author analyzed the obtained data to provide a general and comprehensive overview of the Legal Review of Legal Protection for Motorcycle Owners in Embezzlement Cases (Case Study: Number: 0 1979/Pid.B/2023/PN Mdn).

3. Research Results

Based on research into the Medan District Court Decision Number: 1979/Pid.B/2023/PN Mdn with the defendant Dedi Harianto alias Datok, who committed the crime of embezzlement of a motorbike belonging to witness Pardamean Harahap, I will explain it in several points below:

1. Qualification of the Defendant's Acts

The defendant's deliberate act of stealing the victim's motorcycle by pretending to drop his hat, thus catching the victim off guard, fulfills the elements of the crime of embezzlement as referred to in Article 372 of the Criminal Code. The elements fulfilled are: The embezzled item belonged to another person, namely the Honda Vario motorcycle belonging to the victim-witness. The item was in the defendant's possession due to the victim's trust, which permitted the defendant to ride the motorcycle. The defendant intentionally and unlawfully appropriated the item for his own benefit by fleeing with the motorcycle.

2. Judge's Considerations in the Verdict

The Medan District Court judge considered: The victim's witness testimony and the evidence presented at trial. The victim suffered material losses of Rp 24,000,000 due to the loss of the motorcycle. The defendant's actions were committed through a method that violated the victim's trust. Based on these considerations, the judge found the defendant legally and convincingly guilty of embezzlement and sentenced him to three years in prison.

3. Legal Protection for Motor Vehicle Owners

This case demonstrates that legal protection for motor vehicle owners in Indonesia is readily available through: Repressive protection, namely the imposition of criminal sanctions on perpetrators in accordance with Article 372 of the Criminal Code. Preventive protection, through police authority under Law No. 2 of 2002, which includes investigations, inquiries, and efforts to maintain public order and security.

4. Social and Criminological Impact

The crime of motor vehicle embezzlement causes unrest and significant losses in society. Factors influencing the prevalence of these cases include: Low public legal awareness. Economic factors, particularly social inequality. Opportunities for crime supported by relationships of trust between individuals.

5. Relevance to the Theory of the Rule of Law

This decision demonstrates that Indonesia, as a state based on the rule of law, upholds the principles of legal certainty, justice, and expediency. Judges impose criminal sanctions in accordance with statutory provisions, ensuring that victims receive legal certainty, perpetrators receive appropriate retribution, and the public feels secure in law enforcement.

4. Conclusion

Based on the description and discussion in this journal research, it can be concluded that: **(1)** Indonesia, as a state governed by law, places law as the foundation for the administration of national and state life. Therefore, every form of crime, including embezzlement, must be prosecuted in accordance with applicable laws and regulations, **(2)** The crime of motorcycle embezzlement, as stipulated in Article 372 of the Criminal Code, is a crime that disturbs the public because it involves valuable and vital assets in everyday life. Trust is the primary loophole exploited by the perpetrator in committing this crime, **(3)** In the motorcycle embezzlement case involving defendant Dedi Harianto alias Datok, the Medan District Court Decision Number 1979/Pid.B/2023/PN Mdn demonstrated that the perpetrator was legally and convincingly proven guilty of embezzlement, and was sentenced to three years in prison. This decision reflects law enforcement efforts aimed at providing legal certainty, a sense of justice, and a deterrent effect for perpetrators, **(4)** Legal protection for motor vehicle owners in cases of embezzlement is realized through criminal law mechanisms, namely the process of investigation, inquiry, prosecution, and court decision. This protection is not only repressive (imposing criminal sanctions), but also needs to be strengthened with preventive measures through increasing public legal awareness, vigilance, and police oversight in maintaining security and order, **(5)** Therefore, the crime of motor vehicle embezzlement is not only a legal issue, but also a social problem influenced by economic conditions, trust, and technological

developments. Therefore, crime prevention must be carried out comprehensively, involving law enforcement officials, the community, and improving the legal protection system to ensure the rights of vehicle owners are guaranteed.

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