

JURIDICAL ANALYSIS OF THE CRIME OF EMPLOYMENT IN THE POSITION BY THE CASHIER AND ADMINISTRATIVE OFFICERS CV. RAJAWALI MAS PERKASA IN CASE NO. 49/PID.B/2016/PN.PBR

Amri Albadru Lopa

Fakultas Hukum Universitas Islam Riau Pekanbaru

Keywords

Juridical analysis
Criminal act
Embezzlement
Position

Abstract. Crimes and violations are complex phenomena that are understood from various different sides, so that comments or opinions about a crime and violation are often different from one another. Therefore, the legislators in this country focus on making and implementing regulations that apply to crimes and violations that arise against public order, scientific facts, criminal acts of decency, and crimes that threaten the security of the State in case No.49/Pid. .B/PN.Pbr. The main method in this study aims to find out the evidence of the elements of a criminal act imposed in the decision No.49/Pid.B/2016/PN. Pbr and to find out what is the basis for judges' considerations in imposing criminal charges against defendants of embezzlement in office by cashiers and administrative officers CV. Rajawali Mas Perkasa. The research used is library research and field research with descriptive research type, namely analyzing data obtained from field studies and literature by explaining and describing the reality of objects. The approach to the problem is carried out in a juridical manner, namely a study of the laws and regulations. The data used are primary data obtained directly from the object of research in the field and secondary data obtained from the results of library studies. This research was conducted at the Pekanbaru District Court. The result of this research is that it is known that the evidence for the elements of a criminal act applied in the case of Decision No.49/Pid.B/2016/PN.Pbr. evidence. The defendant was charged with committing a criminal act of embezzlement in office as contained in Article 374 of the Criminal Code and Article 372 of the Criminal Code. Knowing the basis of the judge's consideration in imposing a crime against the defendant of embezzling CV. Rajawali Mas Perkasa, where in this case the panel of judges decided that the defendant was proven to have violated the indictment of Article 374 of the Criminal Code regarding embezzlement, the panel of judges gained their conviction by emphasizing the legal values of the trial process, namely the evidence and facts revealed in court.

e-mail : albadrulopa56@gmail.com

Copyright 2021 JMS

1. INTRODUCTION

Crimes and violations are complex phenomena that are understood from various different sides, so that comments or opinions about a crime and violation are often different from one another. Therefore, the legislators in this country focus on making and implementing regulations that apply to crimes and violations that arise against public order, crimes of decency, and crimes that threaten state security.[1]. An act that constitutes a crime and or a violation is formulated in a law because the act is considered by the legislators as an act that endangers a legal interest.[2]. By setting a prohibition on committing an act accompanied by threats or criminal sanctions for anyone who violates it or acts against the law, it means that the law has provided legal protection for these legal interests.[3].

Among several crimes related to assets and objects, there is a crime known as embezzlement where abuse of trust dominates as the main element in the occurrence of this crime. The crime of embezzlement is regulated in the Criminal Code in article 372 (ordinary embezzlement), article 373 (mild embezzlement), article 374 and article 375 (embezzlement with weighted) and article 376 (embezzlement in the family). Article 374 of the Criminal Code (embezzlement with retaliation) is an article charged by the public prosecutor in the case that I raise in this title because the crime of embezzlement was carried out by cashiers and administrative employees who have a working

relationship with CV. Rajawali Mas Perkasa where the perpetrator works,[4]. "Whoever intentionally and unlawfully owns something which wholly or partly belongs to another person, but which is in his control not because of a crime committed by a person whose control over the goods is due to a work relationship or because of a search or because of getting wages for is punishable by a maximum imprisonment of five years[5]."

The perpetrator Vivi Harlio Sipahutar alias Vivi is an employee of CV. Rajawali Mas Perkasa who serves as cashier and administrative officer who is in charge and responsible for his work carrying out bookkeeping administration, company financial transactions related to sales, purchases, and warehouse parts, namely withdrawing money from the bank (cash back), billing or receiving and paying and stock of goods by making cash reports at the end of each month by means of a computerized system proposed by the perpetrator to witness Gusti alias Atek as the leader of the perpetrator. However, the perpetrator has taken and used the cash that is in the possession of the perpetrator for personal interests which was carried out in stages without the knowledge and permission of the witness Gusti alias Atek or other share owners.[6]. To cover the money belonging to the company that has been taken by the perpetrators, the perpetrators manipulated data computerized as if there had been a capital abolition transaction amounting to Rp. 45,996,000, - and the transaction for dividend distribution of capital withdrawals amounting to Rp. 117,000,000, - before the perpetrator resigned from his job as an employee of CV. Rajawali Mas Perkasa.

The offense of embezzlement is regulated in Article 372, Article 373, Article 374 and Article 375. Article 376 of embezzlement between families, which applies the same as Article 367 (theft offense). Article 372, origin 374, and Article 375 of the Criminal Code[7]. If the theft is carried out as a profession (beroep), then the right to carry out work (beroep or profession) can be revoked. Embezzlement (verduistering) is regulated in chapter XXIV (book II) of the Criminal Code Articles 372 – 377[8]. The juridical definition of embezzlement itself is regulated in the provisions of Article 372 of the Criminal Code[7]. The definition of embezzlement itself is not specifically formulated in the Criminal Code. Darkening does not mean making something dark or not bright, but has a broader meaning. The problem raised in this research is the juridical analysis of the crime of embezzlement in office based on the decision of the District Court No.49/Pid.B/2016/PN.Pbr[9].

2. METHOD

2.1 Types and Nature of Research

This research is seen from the type that is classified into normative/qualitative legal research. Where the research is conducted by reviewing document studies, using various secondary data such as laws and regulations, court decisions, legal theories, and can be in the form of opinions of scholars. [10]. By explaining the existing data with words or statements, not with numbers. The nature of this research is descriptive which provides a clear description of the Application of the Criminal Law of Embezzlement in Position by Cashiers and Administrative Officers CV. Rajawali Mas Perkasa in Limapuluh Subdistrict, Pekanbaru City, Riau Province and the Judge's Consideration of Case No. 49/Pid.B/2016/PN.Pbr.

2.2 Data and Data Sources

Viewed from the point of view of the type of data collected in this study, it can be classified as secondary which consists of:

- a. Primary Legal Materials, namely data obtained based on Case No.49/Pid.B/2016/PN.Pbr.
- b. Secondary Legal Materials, namely data obtained by the library, data obtained by the author from materials through books, scientific works in the form of opinions of scholars, opinions of experts and other sources that are closely related to the subject matter of thesis writing.
- c. Tertiary legal materials, namely data obtained to support secondary legal materials and secondary legal materials by providing understanding and understanding of other legal materials such as bibliographies, library catalogs, directories, and reading lists. Encyclopedias and textbooks are examples of materials that cover both secondary and tertiary data, present on the one hand commentary and analysis, and on the other hand provide a summary of available material for a

topic, the Encyclopedia Britannica is clearly a form of analytical material which is a characteristic material of secondary data. In addition, they also try to provide a comprehensive discussion regarding tertiary data.

2.3 Data Analysis and Conclusion Drawing

After the authors obtained good data sourced from the Case file No.49/Pid.b/2016/PN.Pbr, then the data was sorted and the writer processed and presented it in the form of a description with an explanation given according to the research problem. Furthermore, the authors conduct an analysis by providing interpretations and linking to the opinions of experts and applicable laws and regulations, the internet and the results of other people's research. After the two data are presented, the writer conducts an analysis by comparing the data with laws and legal theories related to research, from the results of the comparison, it can be seen from the similarities and differences between the results of the research and the legal provisions,

3. RELUST AND DISCUSSION

3.1 Application of Criminal Law Against Embezzlement Cases in Positions Performed by Cashiers and Administrative Officers CV. Rajawali Mas Mighty

The application of the law referred to here is in the form of a process and mechanism for resolving criminal cases based on the Criminal Procedure Code, covering three stages in the case of case No.49/Pid.b/2016/PN.Pbr, as follows:

1. Examination Stage at Investigation Level

An investigation is a series of actions by an investigator to seek and find an event that is suspected of being a criminal act, in order to determine whether or not an investigation can be carried out, an investigator's action to seek and collect evidence, which with that evidence makes clear about the criminal act that occurred, in order to find the suspect. In this stage the investigator has started to investigate an event that is suspected to be a criminal act, the investigator because of his obligation has the authority to summon people to be heard and examined as suspects or witnesses, the investigator notifies the Public Prosecutor (Vide Article 109 paragraph (1) of the Criminal Procedure Code), notification of the commencement of the investigation is carried out with the SPDP (Letter of Notification of the Commencement of Investigation), which is accompanied by:

- a) Police report
- b) Witness BAP resume
- c) Suspect's BAP Resume
- d) News of the arrest
- e) Minutes of detention
- f) Minutes of the search
- g) Minutes of confiscation.

Main Activities in Investigation:

- 1) Investigation: a series of investigators' actions to seek and find an event that is suspected of being a criminal act, in order to determine whether or not an investigation can be carried out.
- 2) Enforcement: any legal action taken against a person or thing that is related to the criminal act that occurred.
- 3) Examination: an activity to obtain information, clarity and identity of a suspect and/or witness or evidence, as well as elements of a criminal act that occurred, so that the role of a person or evidence in the criminal act becomes clear.
- 4) Enforcement: any legal action taken against a person or property that is related to the criminal act that occurred, which can be in the form of:
 - (a) Summoning
 - (b) Arrest
 - (c) Detention
 - (d) Search
 - (e) Foreclosure,

Examination is an activity to obtain information, clarity and identification of suspects and/or witnesses or evidence, as well as elements of criminal acts that occurred, so that the role or position of a person or evidence in the criminal act that occurs becomes clear. Settlement and Submission of Case Files Is the final activity of the investigation of criminal acts, including:

- a) Resume Making
- b) Compilation of the contents of the case file
- c) Filing.

Submission of Case Files:

The first stage: investigators only submit case files.

Second Stage: in the event that the investigation has been declared complete (P.21), the investigator submits the responsibility of the suspect and the evidence

2. Prosecution stage

FIRST As regulated and subject to criminal sanctions in Article 374 of the Criminal Code.
SECOND As regulated and subject to criminal sanctions in Article 372 of the Criminal Code.

- a. To declare the defendant VIVI HARLIO SIPAHUTAR Alias VIVI guilty of committing the crime of “employment embezzlement” as regulated in Article 374 of the Criminal Code, as in the First Indictment and Article 372 of the Criminal Code in the Second Indictment.
- b. Sentenced imprisonment for the defendant VIVI HARLIO SIPAHUTAR alias VIVI for 2 (years) years and 6 (six) months in prison reduced for the period of detention that has been served and by order the defendant remains detained.
- c. State the evidence:
 - 1) 1 (one) copy consisting of 14 (fourteen) sheets of CV.Rajawali Mas cash financial statements for January 2014
 - 2) 1 (one) copy consisting of 10 (ten) cash financial statements of CV Rajawali Mas for February 2014
 - 3) 1 (one) copy consisting of 4 (four) cash financial statements of CV Rajawali Mas for December 2014
 - 4) 1 (one) copy consisting of 4 (four) cash financial statements of CV Rajawali Mas for January 2015
 - 5) 1 (one) copy consisting of 4 (four) cash financial statements of CV Rajawali Mas for February 2015
 - 6) 1 (one) copy consisting of 5 (five) sheets of cash financial statements of CV Rajawali Mas for March 2015 made by suspect VIVI HARLIO SIPAHUTAR Alias VIVI
 - 7) 1 (one) copy consisting of 5 (five) sheets of updated cash financial statements of CV Rajawali Mas for March 2015
 - 8) 1 (one) copy consisting of 2 (two) ledger sheets of CV Rajawali Mas report for January 2014
 - 9) 1 (one) copy consisting of 2 (two) ledger sheets of CV Rajawali Mas report for February 2014
 - 10) 1 (one) copy consisting of 2 (two) ledger sheets of CV Rajawali Mas report for December 2014
 - 11) 1 (one) copy consisting of 2 (two) ledger sheets of CV Rajawali Mas report for January 2015
 - 12) 1 (one) copy consisting of 2 (two) ledger sheets of CV Rajawali Mas report for February 2015
 - 13) 1 (one) copy consisting of 2 (two) ledger sheets of CV Rajawali Mas report for March 2015
 - 14) 5 (five) pieces of proof of clearing bank CV Rajawali Mas each dated December 24, 2015
 - 15) 3 (three) bank statements of CV Rajawali Mas at QNB Kesaawan from December 2014 to March 2015
 - 16) 2 (two) sheets of QNB kesawan's bank mutation books. WIDYATI WILIAN (CV Rajawali Mas) January 2014
 - 17) 3 (three) sheets of QNB kesawan's bank mutation books. WIDYATI WILIAN (CV Rajawali Mas) December 2014
 - 18) 2 (two) sheets of QNB kesawan's bank mutation books. WIDYATI WILIAN (CV Rajawali Mas) January 2014

- 19) 2 (two) sheets of QNB kesawan's bank mutation books. WIDYATI WILIAN (CV Rajawali Mas) January 2015
 - 20) 2 (two) sheets of QNB kesawan's bank mutation books. WIDYATI WILIAN (CV Rajawali Mas) February 2015
 - 21) 4 (four) sheets of QNB kesawan's bank mutation books. WIDYATI WILIAN (CV Rajawali Mas) March 2014
 - 22) 2 (two) sheets of QNB Bank ledger an. WIDYATI WILIAN (CV Rajawali Mas) January 2014
 - 23) 2 (two) sheets of QNB Bank ledger an. WIDYATI WILIAN (CV Rajawali Mas) February 2014
 - 24) 2 (two) sheets of QNB Bank ledger an. WIDYATI WILIAN (CV Rajawali Mas) December 2014
 - 25) 2 (two) sheets of QNB Bank ledger an. WIDYATI WILIAN (CV Rajawali Mas) January 2015
 - 26) 2 (two) sheets of QNB Bank ledger an. WIDYATI WILIAN (CV Rajawali Mas) February 2014
 - 27) 2 (two) sheets of QNB Bank ledger an. WIDYATI WILIAN (CV Rajawali Mas) March 2014
 - 28) Statement of suspect VIVI HARLIO SIPAHUTAR dated October 7, 2015.
 - 29) VIVI HARLIO SIPAHUTAR's final salary payment slip
- d. Determining the Defendant

The defendant was charged with paying a court fee of Rp. 1000, - (one thousand rupiah), thus the criminal charge that was handed down to the defendant VIVI HARLIO SIPAHUTAR for his actions. Considering that the Panel of Judges will then consider whether based on these legal facts, the defendant can be declared to have committed the crime he is accused of. Article 109 paragraph (1) of the Criminal Procedure Code: the investigator notifies the prosecutor's office of the start of the investigation with the SPDP. SPDP is managed by: Kasi Pidum/Pidsus. Kasi appoints research prosecutors, with the following tasks:

- 1) Follow and monitor the progress of the investigation according to the SPDP
- 2) Prepare instructions for investigators
- 3) Conduct research on: case files, suspects and evidence
- 4) Researching, whether the perpetrator is single or more
- 5) Are the criminal provisions applied in accordance with the facts/events?
- 6) Can the suspect be arrested?
- 7) Is the evidence valid evidence?
- 8) Is every element of a criminal act supported by sufficient evidence?
- 9) Do you have to submit to the trial, in accordance with the criminal provisions suspected by the investigator?
- 10) Construct some of the criminal acts that occurred and who the potential suspects are.

Attorney:

- 1) Issuing SP-3, because there is not enough reason to bring it to court:
 - a) there is not enough evidence
 - b) Tsk/Tdw's actions are not criminal acts
 - c) case closed by law
- 2) Combining cases: several cases are combined in 1 (one) indictment, if at the same time or almost the same time they are carried out by the same person, there is a relationship with one another.
- 3) Splitting cases, if in one case file there are several defendants.
- 4) Delegating the case to the District Court

3. Examination Stage in Court

The case concerning the issue of the crime of embezzlement with a position carried out by a private employee who worked at CV. Rajawali Mas Perkasa, Jl. Setia Budi No. 198 district. Fifty Kota Pekanbaru, who served as cashiers and administrative officers, namely:

Full name : VIVI HARLIO SIPAHUTAR aka VIVI
Place of birth : Pekanbaru
Age/Date of Birth : 27 Years / 05 October 1988
Gender : Woman

Nationality : Indonesia
Religion : Christian
Work : Entrepreneur
Education : Bachelor of Economics (S-1)

The company where the defendant works is engaged in the field of shipping services. The defendant has a position as a cashier and administrative officer in the company whose task is to carry out the administration of the company's financial transaction books related to sales, purchases and warehouse parts, namely withdrawing money from the bank (cash back), billing or receiving and paying as well as stock of goods by making reports. cash at the end of each month submitted by the defendant to witness Gusti alias Atek as the leader of the defendant, but at a certain time in the period from January 1, 2014 to January 1, 2015 gradually without the knowledge and permission of the witness the owner of the defendant's shares has taken and used cash that is in the possession of the defendant for the personal interest of the defendant.

The actions of the defendant who had violated the authority of the position he held were finally known by the company and suffered a loss of approximately Rp. 162,996,000,- (one hundred and sixty-two million nine hundred and ninety-six thousand rupiah). Because of the defendant's actions, the CV. Rajawali Mas Perkasa reported the incident to the Pekanbaru City Limapuluh Police Station for further processing. Article 183 of the Criminal Code has also explicitly stated that a judge may not impose a sentence on a person unless at least two valid pieces of evidence and the judge obtains the belief that a criminal act actually occurred was committed by the defendant.

3.2 Legal Considerations of the Panel of Judges Against Cases of Embezzlement in Position Conducted by Cashiers and Administrative Officers CV. Rajawali Mas Mighty

"Judges as court organs are considered to understand the law. seeker of justice comes to him to ask for justice. If he does not meet the written law, he is obliged to multiply the unwritten law to make decisions based on the law as a wise person and fully responsible to God Almighty, himself, as well as the community, nation and state.

1. Legal Considerations of the Panel of Judges

Articles that have been contained in the law, the judge's decision must be based on two conditions, namely: (1) a minimum of 2 pieces of evidence; (2) from the evidence, the judge obtains the conviction that the defendant is guilty of a criminal act. The various types of evidence are regulated in Article 184 of the Criminal Code, namely: (1) Witness testimony; (2) Expert testimony; (3) letter; (4) Instructions; (5) Defendant's statement. From the evidence above that the proof of criminal cases is more focused on witness statements. The judges' considerations are:

(a) Judge's Consideration of the Public Prosecutor's Indictment

Considering that the Public Prosecutor has indicted the defendant with an alternative charge, the Panel of Judges will directly consider the most appropriate indictment with the legal facts at trial as the first indictment is regulated in article 374 of the Criminal Code whose elements are as follows:

1. Elements of "whoever"
2. The element "Intentionally and against the law owns something that wholly or partly belongs to another person, but which is in his control not because of a crime"
3. The element "It is carried out by a person whose control over the goods is due to an employment relationship or because of a search or because he gets wages for it".

(b) Judge's Consideration of Witness Evidence

The judge's consideration of witness evidence lies in whether or not a witness's testimony is valid. Evidence of witness testimony is regulated in Article 185 of the Criminal Procedure Code. In case Number 49/Pid.B/2016/PN.Pbr the witnesses presented at the trial were witnesses Gusti, Edy Effendi, Ily Mariana, Witanoto Winata Kasinaga, Hendrik Parengkuan, Edi Saputra, Hariyanto, Seprian Martopo, all of whom stated that the defendant had computerized data manipulation in CV administration finance. Rajawali Mas Perkasa for personal interests carried out in stages, the funds should be used for company finances. This is also reinforced by the defendant's statement which stated that the defendant had no objections and confirmed the indictment submitted by the public

prosecutor.

3.3 The Basis of the Panel of Judges to Adjudicate the Crime of Embezzlement Using Position in Case No. 49/Pid.B/2016/PN.Pbr

Based on the above legal facts, if they are related to the elements of Article 374 of the Criminal Code as referred to in the Subsidiary Indictment of the Public Prosecutor, the Panel of Judges concludes that these facts have fulfilled all the elements of the indictment, therefore the Defendant must be punished according to his actions.

1. Declare that the Defendant VIVI HARLIO SIPAHUTAR, alias VIVI above, has been legally and convincingly proven guilty of committing the crime of "embezzlement in office" as stated in the First Indictment.
2. Therefore, the defendant is sentenced to imprisonment for 1 (one) year and 3 (three) months.
3. Determining the period of arrest and detention that the defendant has served is deducted entirely from the sentence imposed.
4. Determine that the defendant remains in custody
5. Determine evidence in the form of:
 - 1) 1 (one) copy consisting of 14 (fourteen) sheets of CV.Rajawali Mas cash financial statements for January 2014
 - 2) 1 (one) copy consisting of 10 (ten) cash financial statements of CV Rajawali Mas for February 2014
 - 3) 1 (one) copy consisting of 4 (four) cash financial statements of CV Rajawali Mas for December 2014
 - 4) 1 (one) copy consisting of 4 (four) cash financial statements of CV Rajawali Mas for January 2015
 - 5) 1 (one) copy consisting of 4 (four) cash financial statements of CV Rajawali Mas for February 2015
 - 6) 1 (one) copy consisting of 5 (five) sheets of cash financial statements of CV Rajawali Mas for March 2015 made by suspect VIVI HARLIO SIPAHUTAR Alias VIVI
 - 7) 1 (one) copy consisting of 5 (five) sheets of updated cash financial statements of CV Rajawali Mas for March 2015
 - 8) 1 (one) copy consisting of 2 (two) ledger sheets of CV Rajawali Mas report for January 2014
 - 9) 1 (one) copy consisting of 2 (two) ledger sheets of CV Rajawali Mas report for February 2014
 - 10) 1 (one) copy consisting of 2 (two) ledger sheets of CV Rajawali Mas report for December 2014
 - 11) 1 (one) copy consisting of 2 (two) ledger sheets of CV Rajawali Mas report for January 2015
 - 12) 1 (one) copy consisting of 2 (two) ledger sheets of CV Rajawali Mas report for February 2015
 - 13) 1 (one) copy consisting of 2 (two) ledger sheets of CV Rajawali Mas report for March 2015
 - 14) 5 (five) pieces of proof of clearing bank CV Rajawali Mas each dated December 24, 2015
 - 15) 3 (three) bank statements of CV Rajawali Mas at QNB Kesaawan from December 2014 to March 2015
 - 16) 2 (two) sheets of QNB kesawan's bank mutation books. WIDYATI WILIAN (CV Rajawali Mas) January 2014
 - 17) 3 (three) sheets of QNB kesawan's bank mutation books. WIDYATI WILIAN (CV Rajawali Mas) December 2014
 - 18) 2 (two) sheets of QNB kesawan's bank mutation books. WIDYATI WILIAN (CV Rajawali Mas) January 2014
 - 19) 2 (two) sheets of QNB kesawan's bank mutation books. WIDYATI WILIAN (CV Rajawali Mas) January 2015
 - 20) 2 (two) sheets of QNB kesawan's bank mutation books. WIDYATI WILIAN (CV Rajawali Mas) February 2015
 - 21) 4 (four) sheets of QNB kesawan's bank mutation books. WIDYATI WILIAN (CV Rajawali Mas) March 2014
 - 22) 2 (two) sheets of QNB Bank ledger an. WIDYATI WILIAN (CV Rajawali Mas) January 2014

- 23) 2 (two) sheets of QNB Bank ledger an. WIDYATI WILIAN (CV Rajawali Mas) February 2014
- 24) 2 (two) sheets of QNB Bank ledger an. WIDYATI WILIAN (CV Rajawali Mas) December 2014
- 25) 2 (two) sheets of QNB Bank ledger an. WIDYATI WILIAN (CV Rajawali Mas) January 2015
- 26) 2 (two) sheets of QNB Bank ledger an. WIDYATI WILIAN (CV Rajawali Mas) February 2014
- 27) 2 (two) sheets of QNB Bank ledger an. WIDYATI WILIAN (CV Rajawali Mas) March 2014
- 28) Statement of suspect VIVI HARLIO SIPAHUTAR dated October 7, 2015.
- 29) VIVI HARLIO SIPAHUTAR's final salary payment slip
Returned to witness GUSTI Alias ATEK

6. Charged the defendant to pay court fees in the amount of Rp. 2,000, - (two thousand rupiah).

3.4 Judges' Basis in Considering Criminal Sanctions Against Perpetrators of the Crime of Embezzlement Using Position in Case No. 49/Pid.B/2016/PN.Pbr

The judge includes mitigating things in aggravating matters in the consideration of his decision, not only intending to find the right measure of the sentence to be handed down but showing the nature that the judge is "wise", wise is a noble trait of judges. . And the wisdom possessed by the judge, in accordance with his code of ethics, is a trait desired by Allah SWT, God Almighty, so that it becomes in harmony with Pancasila and the 1945 Constitution, namely "God Almighty". With this principle, Pancasila is a moral rather than a judge. Weigh,

Aggravating Matters:

- 1) The defendant's actions caused losses to CV. Rajawali Mas Perkasa; Relieve Matters:
 - a. That the Defendant has never been convicted;
 - b. Whereas the Defendant is still young and is expected to be able to be fostered;

Considering, whereas as long as the Defendant is in detention before this decision is pronounced, the entire sentence will be deducted from the sentence imposed. Considering, that since the Defendant is being held in detention against the Defendant for sufficient reasons, then based on article 193 paragraph (2) sub b of the Criminal Procedure Code, it is necessary It was determined that the Defendant would remain in custody. Considering that another consideration from the Tribunal was that in considering and deciding this case, it was not representing anyone and not for any other reason, but the Tribunal remained solely on the principle of representing justice. In view of the laws and regulations and other regulations related to this case; Considering that apart from that, the Defendant is also burdened with paying the costs of this case, the amount of which will be determined in the verdict. Considering, that from the facts obtained during the trial in this case. The Panel of Judges did not find things that could release the Defendant from criminal responsibility, either as a justification or excuse for forgiveness, therefore the Panel of Judges concluded that the actions committed by the Defendant must be held accountable to him. Considering, that because the Defendant is capable of being responsible, the Defendant must be found guilty of the criminal act that he is accused of and based on Article 33 paragraph (1) of the Criminal Procedure Code against the Defendant himself must be sentenced. The judge's decision (the court) invites two kinds of material, namely: considerations and the dictum (order) of the decision. Considerations in decisions that lead to a dictum (amar) must be supported by judgments (considerations) that are juridical in nature. Meanwhile, what is in the consideration of the decision must be supported or parallel to the minutes of the trial. A decision that is not confirmed by matters in the minutes of the trial, then the decision is not sufficiently motivated can be annulled.

After analyzing the case file of the Criminal case No.49/Pid.B/2016/PN.Pbr, the authors draw conclusions regarding the considerations of the panel of judges as follows:

1. That the defendant has legally and responsibly committed a criminal act of embezzlement by using his position. This statement is reinforced by the fulfillment of the elements of a criminal act, both objective and subjective elements charged against the accused perpetrators of the crime of embezzlement with positions, namely the elements contained in Article 374 of the Criminal Code.
2. Aggravating Special Elements, namely: The element is carried out by the person holding the item in connection with his work or position because he gets wages. This is evidenced by the statements of

witnesses, namely witness Gusti and who stated in his statement that the defendant worked at CV. Rajawali Mas Perkasa with the position of cashier and administrative officer in charge of carrying out the administration of the company's financial transaction books related to sales, purchases and warehouse parts, namely withdrawing money at the bank, billing or receiving and paying as well as stock of goods by making cash reports at the end of each month. submitted by the defendant to Gusti as the leader, and the defendant is not allowed to withdraw money from the bank except with permission from Gusti as the leader or permission from the donor or CV's financier. The other Rajawali Mas Perkasa.

3. Based on the information above, the special aggravating elements contained in Article 374 of the Criminal Code have been fulfilled because the defendant used the position he had and the defendant gained the trust of the leadership through the tasks given had been abused by the defendant by conducting bank transactions or withdrawing money without the knowledge of the leadership. . Thus the special aggravating elements have been fulfilled.

Based on the description above, the judges' consideration is right for the perpetrators of the crime of embezzlement because the perpetrators of the crime of embezzlement have legally fulfilled the elements of a criminal act which is a requirement for a person to be subject to criminal liability against him.

4. CONCLUSION

The application of criminal law to the crime of embezzlement in office is appropriate where the public prosecutor charges the defendant with an indictment that has been described by the Public Prosecutor in the District Court's decision in accordance with the provisions of article 143 paragraph (2) of the Criminal Procedure Code and the material criminal law as charged in the first indictment, namely the defendant violated Article 374 of the Criminal Code or the second indictment of Article 372 of the Criminal Code, among the elements indicted by the public prosecutor which was considered legally and convincingly proven was Article 374 of the Criminal Code because the defendant in committing the crime of embezzlement was an employee who served as a cashier and CV administrative officer. . Rajawali Mas Perkasa and was found guilty of committing the crime of "Employment in Position" in the First indictment. Judge's legal considerations in the case of decision No.49/Pid.B/2016/PN.Pbr, based on considerations of facts in the trial that arose. Furthermore, the panel of judges proved the juridical considerations submitted by the Public Prosecutor. Before the Panel of Judges imposes a sentence, first consider the aggravating and mitigating factors for the defendant. In this case, the panel of judges stated that the first indictment was Article 374 of the Criminal Code concerning Embezzlement in Position and Article 372 of the second indictment. However, the panel of judges declared the defendant guilty of committing a criminal offense under Article 374 of the Criminal Code concerning "Embroidery in Position" by the Public Prosecutor.

5. REFERENCE

- [1] H. Agustina, D. Suprijatna, and A. L. Hakim, "ANALISIS YURIDIS TINDAK PIDANA PENGGELAPAN YANG TIMBUL DARI HUBUNGAN SEWA MENYEWAWA MOBIL DIKAITKAN DENGAN PASAL 372 KUHP," *DE RECHTSSTAAT*, vol. 2, no. 2, 2016, doi: 10.30997/jhd.v2i2.675.
- [2] T. Sofiani, "Perlindungan Hukum Pekerja Perempuan Sektor Informal," *Muwazah*, vol. 9, no. 2, 2017.
- [3] "TINDAK PIDANA PENGGELAPAN DALAM MENGGUNAKAN JABATAN BERDASARKAN PASAL 415 KUHP," *LEX Crim.*, vol. 6, no. 7, 2017.
- [4] "TINDAK PIDANA PENGGELAPAN DALAM JABATAN (PASAL 374 KUHP) SEBAGAI BAGIAN DARI KEJAHATAN TERHADAP HARTA KEKAYAAN (KAJIAN PUTUSAN MAHKAMAH AGUNG NOMOR 1243/K/PID/2015)," *LEX Crim.*, vol. 7, no. 8, 2018.
- [5] S. Warjiyati, "Analisis Yuridis Tindak Pidana Pencabulan Anak di Bawah Umur," *Al-Jinayah J. Huk. Pidana Islam*, vol. 4, 2018.

- [6] “–KAJIAN YURIDIS TINDAK PIDANA PERBANKAN TERHADAP PERHIMPUNAN DANA MASYARAKAT BERDASARKAN UNDANG-UNDANG NOMOR 10 TAHUN 1998,” *LEX Crim.*, vol. 7, no. 3, 2018.
- [7] S. Hidayat, “Tinjauan Yuridis Kewenangan Komisi Pemberantasan Korupsi Melakukan Penyidikan Penggabungan Perkara Tindak Pidana Korupsi dan Pencucian Uang,” *Halu Oleo Law Rev.*, vol. 1, no. 2, 2018, doi: 10.33561/holrev.v1i2.3641.
- [8] M. I. M. Harahap, “Analisis Yuridis Tindak Pidana Korupsi dengan Menggunakan Jabatan (Studi Putusan No. 296/Pid.B/2010/PN.Mdn),” *J. Educ. Hum. Soc. Sci.*, vol. 1, no. 1, 2018, doi: 10.34007/jehss.v1i1.1.
- [9] A. Anas and M. Marlina, “Analisa Yuridis Penyidikan Tindak Pidana Illegal Logging oleh Polres Tapanuli Tengah,” *J. Mercat.*, vol. 11, no. 1, 2018, doi: 10.31289/mercatoria.v11i1.1602.
- [10] I. D. G. A. Wiranjaya and I. G. P. Ariana, “Perlindungan hukum terhadap pelanggaran privasi konsumen dalam bertransaksi online,” *J. Ilmu Huk.*, vol. 6, no. 1, 2017.