

THE JURIDICAL REVIEW ON THE MISAPPROPRIATION OF FOUNDATION FUNDS IS REVIEWED BASED ON LAW OF THE REPUBLIC OF INDONESIA NUMBER 8 OF 2010 CONCERNING THE PREVENTION AND ERADICATION OF MONEY LAUNDERING

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ABSTRACT

This study aims to find out and analyze the criminal act of embezzlement in educational foundations. As well as knowing and analyzing the factors of embezzlement in the foundation. This research belongs to the normative type of research. So it can be seen that it can be concluded that the Criminal Linkage can clearly be seen in Article 2 paragraph (1) of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering. Predicate crime is a crime that triggers (source) the occurrence of money laundering crimes, so the handling of money laundering cases has an important meaning for the return of state assets related to the eradication of corruption.

Keywords: *Misappropriation of Funds, Foundations, Money Laundering*

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INTRODUCTION

At this time, we often encounter criminal acts or criminality in our daily lives without us realizing it. Along with the times, criminal offenders in committing their crimes have used various ways to get their wishes from others, namely in ways that certainly violate the provisions of the law and laws that are highly upheld in the Indonesian state (Handayani, 2018).

Law has a function to achieve order in human relations in life. The law safeguards the necessities of life in order to achieve a balance in social life that feels inaccurate ties and social pressures. In this case, the law has the meaning of being a guardian so that justice is always realized in social life (Muhamad Sadi, 2015). The law as a regulator of public interest (general public) is one of the properties of criminal law, namely public law.

Public law is defined as the law that regulates the relationship between society and the state. Criminal law is public law which in Mezger's sense. What is quoted by Andi Sofyan is "legal rules that bind to a certain act that meets certain conditions, a criminal effect" (Sofyan & Azisa, 2016).

However, the existence of criminal law as a regulator of public interest does not mean that there are no criminal cases in the community. This is because there is a principle of legality as an effort to eradicate criminal acts not only preventive but also repressive, where there have been various prohibited actions and sanctions.

Therefore, if there is a person or legal entity as a subject who commits a criminal act, there are sanctions that the perpetrator of the criminal act will receive. Foundations are included in the category of legal entities that have been regulated by law that have aims and objectives for social, religious and humanitarian domains.

The establishment of a foundation is on the basis of segregated wealth or the absence of ownership and is intended entirely for the community interested in the Foundation. The Foundation as a legal entity does not become a private ownership of a person but collectively as a whole becomes the owner. According to Paul Scholten, a foundation is a legal entity that meets the elements of:

1. Have their own property, which comes from a certain legal act, namely separation.
2. Have your own (certain) goals.
3. Have equipment (organization) (National et al., 2013).

Foundations have more value than other legal entities, which have space to move in accordance with the implementation of social activities such as education, health and religion which in general have not been handled by other forms of legal entities (Wulandari, 2016).

The role of the Foundation as an institution or legal entity has a variety of activities with social purposes such as providing moral education to abandoned and orphaned children, providing scholarships to underprivileged students, providing assistance to a disaster, and so on. This is in line with the background of the birth of Law 28 of 2004 concerning Amendments to Law 16 of 2001 concerning Foundations which emphasizes that Foundations must have social and humanitarian goals.

The definition of embezzlement is regulated in the criminal code (KUHP), which reads: "Whoever intentionally and unlawfully possesses something that wholly or partly belongs to another person, but which is in his power not for a crime is threatened with embezzlement, with a maximum imprisonment of four years or a maximum fine of nine hundred rupiah."

Embezzlement is a crime that is almost the same as theft. The difference is if theft is carried out when the stolen object is not yet in the hands of the perpetrator, while embezzlement is carried out when the stolen object is already in the hands of the perpetrator. Money laundering is the illegal process of making large amounts of money generated from criminal activities, such as drug trafficking, corruption, or terrorist financing. Make it look like it came from a legitimate source.

Based on the background of the problem that has been described, the formulation of the problem in this study is as follows:

1. How is corruption related to money laundering?
2. What are the factors for embezzlement in the foundation?

The purpose of this study is in accordance with the formulation of the problem that has been put forward. Therefore the research objectives are:

1. Knowing the relationship between corruption and money laundering.
2. Knowing the factors of embezzlement in the foundation.

METHOD

The research method used in this study is the normative legal research method. Normative legal research is legal research conducted by examining library materials or secondary data (Soekanto, 2007).

According to Peter Mahmud Marzuki (Marzuki, 2017), normative legal research is a process to find a rule of law, legal principles, and legal doctrines to answer the legal issues faced. In this type of legal research, often the law is conceptualized as what is written in laws

and regulations or the law is conceptualized as rules or norms that are a benchmark for human behavior that is considered appropriate (Amiruddin, 2012).

RESULTS AND DISCUSSION

A. The Relationship Between Corruption and Money Laundering

Money laundering and corruption have a very close relationship. This can clearly be seen in Article 2 paragraph (1) of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering. The formulation of offenses in the TPPU Law and the proof of original criminal acts are regulated in Article 3, Article 4, and Article 5. That from the formulation of the article mentioned above, it appears that the criminal act of money laundering has special characteristics that are different from other crimes, namely that the crime of money laundering is a follow-up crime.

While the proceeds of crime processed by money laundering are referred to as core crimes or predicate crimes. So when viewed from the chronology of actions, it is impossible to do money laundering without predicate crime (no money laundering without core crimes) first (Ginarsih, n.d.) .

Predicate crime is a crime whose results are committed or processed money laundering, which in the TPPU Law is regulated in Article 2, which consists of 26 types of crimes and plus all crimes whose criminal threat is 4 years and above. In addition, it should also be understood that money laundering is a follow-up crime whose occurrence depends largely on the existence of the original crime, although between the two each qualifies as a separate crime so that therefore the examination should be concurrent and made in one file with a cumulative arrangement.

This understanding will have direct implications for proof, namely that each crime, both predicate crime and follow-up crime, must be proven because it refers to the necessity of a cumulative indictment, which must be combined in the *concursum realist* approach. The necessity of merging charges also appears in the provisions of Article 74 and Article 75 of the TPPU Law. From the provisions of the article mentioned above. That the criminal act of corruption is one of the original types of criminal acts related to money laundering. Predicate crime is a crime that triggers (source) the occurrence of money laundering (Muhammad Yusuf, et al 2011: 97).

B. Criminal act of embezzlement in educational foundations.

The hope and trust of the community in schools is very high, in order to create the progress of children who will become the successors of the nation in the future. Professionalism as an educator is increasingly expected to increase. One of the consequences of these demands will be to make teachers a subject of gossip if there is social anxiety in the community (Hardianti et al., 2020).

The reference to this is certainly not a light job for educators, which therefore needs extra struggle for educators who are required to always be professional individuals. The role of the foundation management is very important here, namely as an organ that becomes the daily executor in carrying out the Foundation's activities and is responsible for the benefit of children.

These roles and positions require administrators or educators to be able to develop management and management optimally so that they can avoid abuse that has legal consequences (Fathor Rachman, 2021: 21). One of the most sensitive parts and the cause of

conflict and division is financial problems (Editor RAS, 2010: 62). It can be seen from the event that this crime similar to embezzlement has existed since hundreds of years ago.

This makes the basis that the problem of wealth has been ingrained and developed from time to time, because basically wealth (money) is a need to meet human needs (Humris, 2014). The causes of embezzlement consist of internal factors and external factors. Internal factors are causes that come from one's personal self or individual attitudes.

While external factors come from a person's system or environment so that the person is encouraged to commit criminal acts (Fikri, n.d.) .

a. Internal Factors (individual) Internal factors that can influence the occurrence of embezzlement include, among others, namely (Sudarmanto et al., 2020):

1. Attitude (Materialistic).

Some people in society consider that wealth, material possessions or many are a measure of a person considered successful and respected so that wealth is placed as the highest goal and value of every thought, speech, and action (Sumadi, 2019).

As a result, society competes to be able to obtain as much wealth as possible, which can sometimes turn a person into a dark eye and violate the provisions of the law.

2. Weak religious knowledge.

The main factor in the violation of the rights of others is the lack of adequate education or religious knowledge (Suyanto, 2010).

3. Consumptive lifestyle.

It is a lifestyle where a person who excessively buys a good or service by prioritizing his wants over his needs and economically will cause waste.

This can also make a person cross the limit of ability to get his desire by using property that does not belong to him without permission with the intention of possessing the item.

b. External factors

There are several things that can make a person encouraged or motivated to commit embezzlement, including (Supramono, 2020):

1) Weak Rule of Law and Light Penalties

2) Low salary

3) Weak supervision

The criminal act of embezzlement will be very detrimental, the impact is not only on one person, but many people because of the property jointly owned by an organization or corporate institution. The first effort that must be taken by the state to be able to prevent and eradicate property crime is to form a law that prohibits and punishes perpetrators of criminal acts severely (Jahja & SH, 2012).

Based on the purpose of criminal law, there are countermeasures so that criminal acts do not occur around the community. Van Hammel as quoted by (Ardiansyah, 2017) shows that these efforts include general and specific preventions, which are as follows:

- a. Prioritizing criminal objectives to maintain the rule of law.
- b. The Criminal Law must contain a frightening element so as to prevent the perpetrators of criminal acts who have the opportunity not to carry out their bad intentions.
- c. Criminal law must have elements of correcting the convicted because of the criminal conviction in written law so that the community does not commit a crime.

- d. Crime has an element of destroying criminal perpetrators that is impossible to repair (Ardiansyah, 2017).

Countermeasures against criminal acts are various proactive and reactive activities directed at perpetrators and victims, and in the social and physical environment, carried out before the incident and after.

There are three main ways to overcome criminal acts or crimes, namely (Alwan Hadiyanto, et al. 2021: 131):

- 1) Pre-emptive, which is one of the efforts usually made by the police to prevent crime.
- 2) Preventive, namely preventive efforts are a follow-up to pre-emptive efforts that are still in the prevention stage before the crime occurs.
- 3) Repressive, namely this is done when a criminal event has occurred, namely in the form of law enforcement against the perpetrator with the imposition of punitive sanctions in accordance with his actions.

CONCLUSION

Based on the explanation above, it can be concluded that the Linkage of the Crime can clearly be seen in Article 2 paragraph (1) of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering. Predicate crime is a crime that triggers (source) the occurrence of money laundering crimes, so that the handling of money laundering cases has an important meaning for the return of state assets related to the eradication of corruption.

The formulation of offenses in the TPPU Law and the proof of original criminal acts are regulated in Article 3, Article 4, and Article 5. From the formulation of the articles mentioned above, it appears that money laundering has special characteristics that are different from other crimes. Namely that money laundering is a follow-up crime, while the proceeds of crime processed by money laundering are referred to as core crimes or predicate crimes. When viewed from the chronology of actions, it is impossible for money laundering to occur without a predicate crime first.

It is necessary to carry out preventive and repressive supervision from various elements of society so that the implementation of activities in the Foundation, especially education, can run well according to applicable regulations.

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