Legal Regulations Regarding Criminal Acts Of Corruption Through Embezzlement Of State Finances In Indonesia

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Abstract
Corruption remains one of the most persistent threats to state finance and national development in Indonesia, with embezzlement committed by public officials constituting one of its most common forms. This study aims to examine how Indonesian positive law regulates corruption committed through the embezzlement of state finance and to identify the legal issues that arise in its enforcement. This research uses a normative juridical method with a statutory approach and a conceptual approach, analyzing Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, particularly Articles 8, 9, and 10, in relation to Articles 415-417 of the Indonesian Criminal Code (KUHP) and the concept of state finance under Law Number 17 of 2003. The results show that the The legal framework already provides a broader definition of "public official" and heavier criminal sanctions than the Criminal Code, thus reflecting the principle of lex specialis and premium remedium against corruption. However, enforcement still faces obstacles such as the difficulty of proving intent, overlapping authority among law enforcement institutions, weak internal control systems, and limited asset recovery mechanisms. The study concludes that strengthening internal supervision, inter-agency synergy, whistleblower protection, and asset recovery instruments is necessary to optimize the eradication of corruption committed through the embezzlement of state finance in Indonesia.

Keywords: corruption; embezzlement; state finance; criminal law; Indonesia

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Introduction

Corruption is a form of extraordinary crime that remains a serious challenge for Indonesia. As a nation based on the rule of law that upholds the principles of good governance, Indonesia has established a comprehensive legal framework to eradicate corruption. However, corruption persists in various forms, including embezzlement of state funds by civil servants or state officials authorized to manage state funds or securities.

Embezzlement is essentially a conventional crime regulated in the Criminal Code (KUHP), specifically in Article 372 for ordinary embezzlement and Articles 415 to 417 for embezzlement committed by civil servants in their positions. When the act is related to state finances and is committed by civil servants or state administrators, the legislators place it as a criminal act of corruption as regulated in Articles 8, 9, and 10 of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption (hereinafter referred to as the Corruption Law). This regulation broadens the scope of legal subjects and increases the criminal threat compared to the provisions in the Criminal Code, as a form of criminal law policy that is premium remedium against perpetrators of corruption.

Despite the legal framework in place, law enforcement against state financial embezzlement still faces various obstacles. Proving intent, limitations in internal oversight systems within agencies, overlapping authority among law enforcement officials, and weak asset recovery mechanisms are factors that contribute to the suboptimal eradication of this crime. This situation raises questions about the extent to which existing legal regulations are able to effectively address and prevent the practice of state financial embezzlement.

Based on the above description, this research is formulated into two problems, namely: (1) how is the legal regulation of the crime of corruption through embezzlement of state finances in Indonesia; and (2) what are the legal obstacles faced in its enforcement. This research aims to analyze the regulatory framework that regulates embezzlement of state finances as a crime of corruption and formulate steps to optimize its law enforcement, so that it is expected to provide academic and practical contributions to the development of special criminal law in Indonesia.

Literature Review

2.1 The Concept of Criminal Acts of Corruption

According to Articles 2 and 3 of the Corruption Law, the crime of corruption essentially includes unlawful acts committed to enrich oneself, another person, or a corporation, which can harm state finances or the state economy, including acts of abusing authority, opportunities, or means available to him due to his position or position. The element of state financial loss is one of the central elements that distinguishes corruption from ordinary property crimes.

2.2 The Concept of Embezzlement in Criminal Law

Embezzlement (verduistering) is regulated in Article 372 of the Criminal Code as the act of intentionally and unlawfully possessing goods that are partially or wholly owned by another person, which are in his control not because of a crime. The fundamental difference between embezzlement and theft lies in the control of the goods: in embezzlement, the goods are already legally in the control of the perpetrator before being misused, while in theft, the control is obtained through an unlawful act from the beginning. Specific provisions regarding embezzlement by civil servants are regulated in Articles 415 to 417 of the Criminal Code.

2.4 Embezzlement as a Corruption Crime in the Corruption Eradication Law

Article 8 of the Corruption Law threatens a prison sentence of at least three years and a maximum of fifteen years and a fine of at least Rp. 150,000,000.00 and a maximum of Rp. 750,000,000.00 for civil servants or people other than civil servants who are assigned to carry out a public office continuously or temporarily, who intentionally embezzle money or securities held because of their position, or allow the money or securities to be taken or embezzled by others, or assist in such acts. Article 9 regulates the falsification of books or lists specifically

for administrative examinations, while Article 10 regulates the act of embezzling, destroying, damaging, or making unusable goods, deeds, letters, or lists used to provide evidence before authorized officials. These three articles basically adopt the formulation of Articles 415 to 417 of the Criminal Code, but with a much heavier criminal threat and a broader scope of the definition of civil servants, as defined in Article 1 number 2 of the Corruption Law, which also includes employees in state-owned or regional-owned enterprises as well as parties who receive salaries or wages from state finances.

2.4 State Finance Concept

Law Number 17 of 2003 concerning State Finance defines state finance broadly, namely all state rights and obligations that can be valued in money, as well as everything in the form of money or goods that can be owned by the state in connection with the implementation of these rights and obligations, including state assets separated in state or regional companies. This definition is reinforced by Law Number 1 of 2004 concerning State Treasury which regulates the management and accountability of state finances. This broad scope is the basis for the application of Article 8 of the Corruption Eradication Law to acts of embezzlement that occur not only in government agencies, but also in state/regional-owned enterprises.

2.5 Previous Research

Several previous studies have examined Article 8 of the Corruption Eradication Law from the perspective of comparing the elements of the offense with Article 415 of the Criminal Code, and generally concluded that the scope of legal subjects in the Corruption Eradication Law is broader than that of the Criminal Code. However, studies specifically linking the regulation of state financial embezzlement with aspects of state financial governance and asset recovery efforts are still relatively limited. This study seeks to fill this gap by placing the issue of state financial embezzlement within the framework of specific criminal law and integrated state financial governance.

Research Methodology

This research uses a normative legal research method (normative juridical), namely research that examines law as a written norm by examining primary and secondary legal materials. The approaches used are the statute approach and the conceptual approach.

The primary legal materials in this study include the 1945 Constitution of the Republic of Indonesia, the Criminal Code, Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, Law Number 17 of 2003 concerning State Finances, Law Number 1 of 2004 concerning State Treasury, and Law Number 19 of 2019 concerning the Corruption Eradication Commission. Secondary legal materials were obtained from books, scientific journals, and previous research results relevant to the topic of embezzlement of state finances.

The data collection technique was conducted through library research, which involved tracing, identifying, and collecting relevant legal materials. The collected data was then analyzed qualitatively using a deductive method, drawing conclusions from general legal norms and then applying them to the specific problem of state financial embezzlement, thus obtaining a comprehensive picture of the regulations and obstacles to their enforcement.

Results

4.1 Legal Regulations on Embezzlement of State Finances as a Criminal Act of Corruption

The analysis results show that embezzlement of state funds is specifically regulated in Articles 8, 9, and 10 of the Corruption Eradication Law as a form of criminal law policy that places the act more severely than ordinary embezzlement in the Criminal Code. Article 8 requires the perpetrator to be a civil servant or a person assigned to carry out a public office, there must be intent, and the act of embezzling money or securities held because of their position. The threat of imprisonment of three to fifteen years in Article 8 is much heavier than the maximum threat of five years in Article 415 of the Criminal Code, which reflects the

application of the principle of lex specialis derogat legi generali as well as premium remedium to perpetrators of corruption.

The expanded definition of civil servant in Article 1, number 2 of the Corruption Eradication Law also contributes to this regulation's advantage over the Criminal Code, as it also encompasses individuals receiving salaries or wages from state or regional funds, employees of state-owned/regional-owned enterprises, and those receiving state assistance. This expansion aligns with the broad definition of state finances in Law Number 17 of 2003, allowing embezzlement within state-owned enterprises and institutions managing public funds to be prosecuted under the same provisions.

4.2 Obstacles in Law Enforcement against Embezzlement of State Finances

Although the regulatory framework is quite comprehensive, this study identified several obstacles to its enforcement. First, proving intent and a causal relationship between the perpetrator's actions and the resulting state financial losses often requires complex evidence and expert testimony, particularly in cases of administrative and phased embezzlement. Second, there is potential for overlapping investigative authority between the Police, the Prosecutor's Office, and the Corruption Eradication Commission (KPK) in the early stages of case handling, despite a coordination mechanism regulated through the Letter of Notification of Commencement of Investigation.

Third, weak internal government control systems in some agencies allow embezzlement to persist for long periods before detection. Fourth, asset recovery mechanisms are not yet fully effective, as criminal convictions are not always followed by the full restitution of state financial losses, especially if the proceeds of crime have been transferred or stored abroad.

4.3 Efforts to Optimize Law Enforcement

Based on these findings, optimizing law enforcement against state financial embezzlement can be done through several steps. First, strengthening the government's internal control system and the role of the inspectorate as an early detection instrument. Second, strengthening synergy between the Corruption Eradication Commission, the Supreme Audit Agency, and the Financial Transaction Reports and Analysis Center in identifying indications of embezzlement from an early stage. Third, strengthening protection for whistleblowers, as stipulated in Law Number 13 of 2006 as amended by Law Number 31 of 2014 concerning Witness and Victim Protection, so that the public and internal employees are more willing to report indications of embezzlement. Fourth, strengthening asset recovery mechanisms through optimizing civil lawsuits as stipulated in Articles 32 to 34 of the Corruption Law and international legal cooperation for the tracking and return of assets held abroad.

Conclusion

Based on the results of the research and discussion, it can be concluded that Indonesian positive law has regulated the crime of corruption through embezzlement of state finances comprehensively through Articles 8, 9, and 10 of the Corruption Law, with a broader scope of legal subjects and heavier criminal threats compared to the provisions on embezzlement in the Criminal Code. This regulation is also connected to the broad concept of state finances as stipulated in Law Number 17 of 2003, thus also encompassing embezzlement that occurs within the environment of state/regional-owned enterprises.

However, law enforcement still faces obstacles such as the difficulty of proving intent, the potential for overlapping authority among law enforcement officials, weak internal control systems, and suboptimal asset recovery mechanisms. Therefore, strengthened internal oversight, inter-agency synergy, whistleblower protection, and more effective asset recovery mechanisms are needed to more effectively eradicate corruption through embezzlement of state funds in Indonesia.

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