



Dadan Taufik  
Fathurohman  
king\_jalaby@yahoo.com  
Law Faculty  
Swadaya Gunung Jati  
University



Rafa Rizqullah  
rafrizy4@gmail.com  
Law Faculty  
Swadaya Gunung Jati  
University



Safina Ni'mah Azzahra  
safinaazzahra20@gmail.co  
m  
Law Faculty  
Swadaya Gunung Jati  
University



Wahyu Bassevi Putra  
wahyubasseviputra@gmail.co  
m  
Law Faculty  
Swadaya Gunung Jati  
University

## ANALYSIS OF JUDGES' CONSIDERATIONS IN DECIDING EMBEZZLEMENT CASES

(Study of Decision Number 65/Pid.B/2024/PN. Sbr)

Dadan Taufik Fathurohman<sup>1</sup>, Rafa Rizqullah<sup>2</sup>, Safina Ni'mah Azzahra,<sup>3</sup> Wahyu Bassevi Putra<sup>4</sup>

<sup>1234</sup> Lecture Law Faculty, Swadaya Gunung Jati University, Cirebon. Indonesia.

**Corresponding Author: Email kingjalaby@yahoo.com**

### Abstract

**Background.** The Indonesian Criminal Code regulates criminal acts and criminal sanctions based on the crime or violation committed. The crime of embezzlement is one of the most common. Embezzlement is hiding someone else's property without the owner's knowledge with the intention of controlling or using it for other purposes.

**Aims.** In this study, we discuss the crime of embezzlement, especially that related to work, and the judge's consideration when making decisions about decision No. 65/Pid.B/2024/PN. Sbr. Normative and empirical juridical research methods are used, and the embezzlement of Article 372 of the Criminal Code shows that the elements are fulfilled in this case.

**Methods.** This study used normative juridical methods and case study approaches (Decisions). Some sources, namely primary and secondary legal materials, are sourced from the study of applicable laws and regulations and are relevant to decision No. 65/Pid.B/2024/PN. Sbr. They are also supported by

literature studies, document studies, journals, and other sources that contain matters relevant to the study of this decision.

**Result.** The application of material criminal law to embezzlement in employment relations No. **65/Pid.B/2024/Sbr.** In our opinion, it fulfills Article 372 of the Criminal Code. In article 374 of the Criminal Code, the element of the crime of embezzlement of office is not fulfilled, because Oman's brother, Abdul Rochman Bin Badri (Alm), does not work as an employee in Deni Purwanto's company.

**Conclusion.** The judge decided that there is no legal evidence of embezzlement in office as in the primary indictment of the Public Prosecutor, that this case is a civil dispute.

**Implementation.** It would be good to file this case civilly as stated in Article 1865 of the BW.

**Keywords:** Embezzlement Crime, Judge's Consideration, Judge's Decision.

## INTRODUCTION

The meaning of embezzlement is in Article 372 of the Criminal Code which reads "Whoever deliberately and unlawfully possesses something that wholly or partially belongs to another person, but which is in his power not because of a crime is threatened by embezzlement, with a maximum prison sentence of 4 years or a maximum fine of Rp900 thousand".

Whether intentionally or not, if a person violates the law by taking part in or all of the property belonging to another person in his power, this action is a criminal act of embezzlement, including funds or money. Funds embezzlement occurs when a person who is given a trust takes funds or money owned by the trust giver.<sup>1</sup> As happened in the case we discussed in this journal, a person has an employment relationship and is given the trust to manage the money from the company's transaction results, but after he controls the money from the transaction, the company owner requires the person concerned to use his money for personal purposes.

Embezzlement and theft are similar criminal acts, but there are differences, one of which is that in the crime of embezzlement, the goods are already in the possession of the perpetrator of the crime without going through a crime or against the law. The following are some elements of embezzlement:

1. Whoever (there is a perpetrator);
2. Deliberately against the law;
3. Owning something that in whole or in part belongs to another person and the Goods are in his power not because of evil.<sup>2</sup>

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<sup>1</sup> "Money Embezzlement Acts: Know the Types, Punishments, and Case Examples"

<https://www.hukumku.id/post/penggelapan-uang>, accessed March 21, 2025

<sup>2</sup> R. Soesilo, *The Criminal Code (KUHP) and its Complete Commentaries Article by Article*, Politeia, Jakarta, 2013, p. 258

Article 374 of the Criminal Code regulates the crime of embezzlement with aggravation, where a criminal act committed by a person who has power over an item because there is a relationship of employment, disbursement, or to get wages for it, the act can be sentenced to a maximum of 5 years in prison.<sup>3</sup> Some of the elements are because:

1. There is a working relationship;
2. Livelihood/profession; and
3. Get paid for it.<sup>4</sup>

According to Prof. Dr. Wirjono Prodjodikoro, embezzlement in Article 374 is embezzlement with qualifications, namely because it is carried out by a person who receives objects by performing certain legal relationships. This legal relationship can occur because of a job, a position or to earn wages.<sup>5</sup> Meanwhile, according to Prof. Dr. Moeljatno, the difference between Article 372 and 374 lies in the aggravating circumstances in Article 374, namely due to the existence of a working relationship or position that is abused by the perpetrator, which should be a factor to further maintain trust.<sup>6</sup>

It can be concluded that embezzlement regulated in Article 372 of the Criminal Code regulates embezzlement in general, while in article 374 of the Criminal Code it is regulated regarding embezzlement in office with the threat of heavier punishment. These differences are relevant in the process of analyzing our evidence in decision no. **65/Pid.B/2024/PN. Sbr.**, the judge tried the defendant for embezzlement of company funds obtained from the sale and purchase transaction through the defendant as an intermediary in the sale and purchase process. This is interesting because the defendant is tried by Article 372 and not by Article 374, where the defendant is actually a co-worker and works *freelance* for the company.

Our research in the judgment No. **65/Pid.B/2024/PN. Sbr** with the help of the Field Experience Practice Agency (PPL), namely the Legal Aid Office (KBH) of the AYO Center which is located on Jalan Kapten Damsur Gg. Ketandan V N0. 27 Kebonbaru Village, Kejaksaan District, Cirebon City as well as Legal Advisor from Mr. Oman Abdul Rochman Bin Badri (Alm) as the Convict in this case and the materials we need for the preparation of this journal were obtained from the KBH AYO Center so that the preparation of this journal uses documents in accordance with the facts in the trial. In connection with this, at the same time

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<sup>3</sup> <https://swarajustisia.unespadang.ac.id/index.php/UJSJ/article/view/447>

<sup>4</sup> <https://www.hukumonline.com/klinik/a/penggelapan-dalam-jabatan--ranah-pidana-atau-perdata-cl5886/>

<sup>5</sup> Prodjodikoro, Wirjono, *Certain Criminal Acts in Indonesia*. (Bandung: Refika Aditama, 2012), 37-38

<sup>6</sup> Moeljatno, *Principles of Criminal Law*. (Jakarta: Rineka Cipta, 2015), 142-143.

carry out the completion of the final report of the PPL period. We intend to conduct research on the decision No. **65/Pid.B/2024/PN. Sbr**, with the title "Analysis of Judges' Considerations in Deciding Embezzlement Cases (Study of Decision Number. **65/Pid.B/2024/PN. Sbr**)".

## RESEARCH METHODS

In this study, we used normative juridical methods and case study approaches (Decisions). Some sources, namely primary and secondary legal materials in this study, are sourced from the study of applicable laws and regulations and are relevant to decision No. **65/Pid.B/2024/PN. Sbr**. As well as supported by literature studies, document studies, journals and other sources that contain matters relevant to the study of this decision.

## LITERATURE REVIEW

Criminalization is an action taken against a person who commits a criminal act. These actions are usually justified because they have a positive impact on the perpetrator, the victim, or the community. Punishment is not given because someone has committed a bad act; rather, they are given to prevent others from committing the same evil deeds. Criminalization is not intended as an attempt at revenge. Instead, it is meant to educate people who commit crimes and prevent similar crimes from happening. Moeljatno distinguishes between the definitions of punishment and criminality. He disagreed with the conventional theory that the word "punishment" comes from the word "straf" and that the word "punished" comes from the word "gestraft". This is because straf means punishment, and straf recht means punishments. Moeljatno said that being convicted means being treated by the law, both civil and criminal. Punishment is the result or consequence of the application of the law; It is broader because it covers judges' decisions in the field of civil law.<sup>7</sup>

Based on the theory of absolute punishment, the imposition of criminal sanctions has a retributive purpose, namely punishment as a commensurate retribution for the perpetrators of criminal acts. This theory holds that people who commit offenses should bear punishment as a result of the offense they committed. Perpetrators of criminal acts must receive appropriate sanctions which is a legal obligation. Johannes Andenaes said that crime is a way to fulfill justice, and it is only fair for the victim if the perpetrator is also given a commensurate punishment. In this theory, the focus of imposing criminal sanctions is how punishment impacts

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<sup>7</sup> Moeljatno, Building Criminal Law, Bina Aksara, Jakarta, 1985, p. 40

the perpetrator and society. The purpose of punishment, according to relative theory, is to achieve benefits (utility) for society; In this case, protect the community from violations. In their book *Criminal Theories and Policies*, Muladi and Barda Nawawi Arief explain that the purpose of crime is not "quia peccatum est" (because people commit crimes) but "nepeccetur" (so that people do not commit crimes).<sup>8</sup>

Punishing the perpetrator is one way to achieve this goal. Punishment has the expected deterrent effect, namely special deterrence, which will prevent the perpetrator from committing the same mistake in the future, and general deterrence, which will prevent society from being induced to make the same mistake in the future. Combined criminal theory combines absolute and relative theories; Punishment is used to prevent, rehabilitate, and protect society. According to this theory, criminalization has many purposes, including supporting justice, a deterrent effect, and an opportunity for perpetrators to return to society. Andi Hamzah said that some combined theories focus on retaliation, while others hope that the element of retribution is balanced with the element of prevention. (In combined criminal theory, punishment is not only used to retaliate against the perpetrator but also to prevent, rehabilitate, and protect society).

It is very important to know clearly what happened in a criminal act. Some violations of the law must be recognized, including embezzlement. Embezzlement is having something or something that belongs to someone else but not doing something illegal. Article 372 of the Criminal Code (KUHP) states: "Whoever deliberately unlawfully owns something or wholly or partially belongs to another person, but who is in his power not because of a crime is threatened by embezzlement, with a maximum penalty of four years or a fine of up to nine hundred thousand rupiah".<sup>9</sup>

Because the essence of the criminal act regulated in Chapter XXIV of the Criminal Code is "abuse of rights" or "abuse of trust", it is more appropriate to use the term "abuse of rights" or "abuse of trust". Because this mention will make it easier for everyone to understand what acts are actually prohibited and criminally threatened in the provision. In terms of this definition of embezzlement, Tongat states that: when an object is in the power of a person not because of a criminal act, but because of a lawful action, such as storage, custody agreements,

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<sup>8</sup> "Criminal Theory Adopted in Indonesia," <https://www.hukumonline.com/klinik/a/teori-pemidanaan-yang-dianut-di-indonesia-lt674e50ca59f0e/> accessed on March 21, 2025

<sup>9</sup> Tongat, *Material Criminal Law*, UMM Press, Malang, p. 57

and so on. The person entrusted to store and so on then illegally owns the item for himself, which is considered "embezzlement".<sup>10</sup>

The Dutch people see the word *verduistering*, which in our language is translated as embezzlement, with a broad meaning (*figuurlijk*), not with the actual meaning of making something unlit or dark. This is closer to the idea that the inmate is abusing his right as the owner or controller of an object. Any right must not exceed his right as a person entrusted with the right to control an object, not because of a crime.<sup>11</sup>

## RESULTS AND DISCUSSION

### Case Chronology

Oman Abdul Rochman works at Deni Purwanto's salt warehouse as a warehouse keeper and confidant to sell salt. Abdul Rochman's Oman wage system is based on commission: Rp 150 per kilogram for the sale of salt and Rp 25 per kilogram for the purchase of salt from farmers. There is no written work agreement, only a verbal agreement.

On January 3 and 4, 2019, Oman Abdul Rochman ordered 40,000 kg (40 tons) of salt from Deni Purwanto. Oman Abdul Rochman claimed the order was on behalf of Sucipto from Tangerang. Deni Purwanto ordered his staff to make a road letter on behalf of Sucipto (Road Letter No. 7643 dated January 3, 2019, and No. 7644 dated January 4, 2019). On January 5, 2019, Deni Purwanto made an invoice for the sale of the salt.

The Defendant who is a confidant of the witness DENI PURWANTO as the owner of PT Samudra Garam Indonesia and the Defendant was given verbal duties by the witness DENI PURWANTO, among others, to sell the salt belonging to the witness DENI PURWANTO, including receiving payment money, if there is a person who orders salt to the witness DENI PURWANTO through the Defendant, the witness DENI PURWANTO will provide a fee of Rp. 150,- (one hundred and fifty rupiah) per kilogram for the salt that was successfully sold, then the witness SUCIPTO sent salt through the Defendant as much as 40 (forty) tons to be delivered to the address of Jalan Bayur Kali, Number 198, Tangerang, Banten, then the Defendant conveyed the order of the witness SUCIPTO to the witness DENI PURWANTO so that the witness DENI PURWANTO sent salt to the witness SUCIPTO in 2 shipments from the salt warehouse owned by the witness DENI PURWANTO which is located at Jalan Raya

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<sup>10</sup> Ibid. p. 60

<sup>11</sup> C.S.T. Kansil and Christine S.T. Kansil, *Dictionary of Various Legal Terms*, Pustaka Sinar Harapan, Jakarta, p. 252

Kanci, Wage Block, Pangarengan Village, Pangenan District, Cirebon Regency where the first was 20 (twenty) tons which was equipped with a road letter No: 7643 dated January 3, 2019 and the second was 20 (twenty) tons with a road letter No. 7644 dated January 04, 2019 so that the total salt sent was 40 (forty) tons with a total price of Rp 108,000,000,- (one hundred and eight million rupiah) and the letter of jaian was made by the witness staff DENI PURWANTO who was the witness HANAFIA FERDIANA Binti NURKARIM after delivery was then invoiced by the witness MIRAYANTI alias YANTI binti HASAN with no. 00007643 dated January 5, 2019 and no. 00007643 dated January 05, 2019. However, after the invoice was submitted, the Defendant did not also hand over the payment money on the grounds that the SUCIPTO agent had not made the payment, so around February 2019 the witness DENI PURWANTO immediately confirmed the identity of the witness SUCIPTO by contacting the witness SUCIPTO. It was known that the witness SUCIPTO had made the payment by way of transfer to a BCA account in the name of OMAN ABDUL RACHMAN with account number 30402\*\*\*\*\* on January 4, 2019 amounting to Rp. 90,000,000 (ninety million rupiah) on January 7, 2019, amounting to Rp. 24,000,000,- (twenty-four million rupiah) so that the total transferred by the witness SUCIPTO was Rp. 114,000,000,- (one hundred and fourteen million rupiah) of which Rp. 108,000,000,- (one hundred and eight million rupiah) was the price of 40 tons of salt that should have been handed over to the witness DENI PURWANTO and Rp. 6,000,000,- (six million rupiah) was the Defendant's wages from the sale, but the Defendant did not hand over the payment money to the witness DENI PURWANTO.

### **Juridical Considerations**

We try to provide other views or perspectives on 2 of the 5 Judges' Considerations, more precisely on Points 3 and 4, which we think can be seen from other perspectives in considering the Memorandum of Defense (Pledoi) from the Defendant's Legal Counsel. We provide relevant laws and regulations as comparative material and the basis of our opinion in the analysis of decision No. **65/Pid.B/2024/PN. Sbr.**

In the conclusion of the application for Judge's Consideration, Defense (Pledoi) and response to the Public Prosecutor's Replica, the Defendant's Duplicate Legal Counsel contained:

3. That we, the legal advisory team, believe that this problem is not a criminal offense, but there is a civil dispute (*prejudicieele geschi*) which, from the beginning, there was

a buying and selling of Australian salt between the witness and the defendant until a record of debts and receivables appeared;

4. That in the trial process sought is material truth that has the intention and purpose to state a truth about an event, so that it can be understood by reason about the event with the incompleteness of the witnesses presented in this trial process, it is very possible to make a mistake in considering a decision concerning the fate of a person;

The Judge's response to the Defendant's Legal Counsel's Plea was:

3. Regarding point 3, the Panel of Judges responded that even if in the opinion of the Defendant's Legal Counsel this case there is a civil dispute, it would be better for the Defendant's Legal Counsel to file this case civilly as stated in Article 1865 of the Civil Code which reads that every person who postulates that he has a right, in order to enforce his own rights or deny a right of another person points to an event, required to prove the existence of such rights or events, to this point the Hakim Assembly also responded that the sale and purchase of Australian salt was not as postulated by the Defendant's Legal Counsel, namely the sale and purchase of Australian salt between Witness Deni Purwanto and the Defendant in light of the legal facts revealed at the trial of Witness Deni Purwanto ordered the sale of salt belonging to Witness Deni Purwanto to the Defendant by getting a fee of Rp150, 00 (one hundred and fifty rupiah) per kilogram and after that the Defendant sold the salt to Witness Sucipto, so in this case there was never a purchase and sale agreement between Witness Deni Purwanto and the defendant Oman Abdul Rochman Bin Alm Badri;
4. Regarding point 4, the Panel of Judges responded that in Indonesia's formal criminal law system, the burden of proving the existence or not of a crime lies with the Public Prosecutor. This is as implied in Article 66 of the Criminal Code that the Suspect or Defendant is not burdened with the obligation of proof. In the explanation of Article 66 of the Criminal Code, it is stated that this provision embodies the principle of presumption of innocence. The Public Prosecutor acts as an officer who is authorized to make every effort to prove the charge of guilt against the Defendant. Thus, the Public Prosecutor at the trial has felt that the proof is sufficient, so that, according to the Public Prosecutor, there is no need to prove further.

## ANALYSIS AND DISCUSSION

Regarding the response of the Panel of Judges in point 3, the Panel of Judges stated that there had never been a sale and purchase agreement between Witness Deni Purwanto and the defendant Oman Abdul Rochman Bin Alm Badri, but the legal facts revealed at the trial of Witness Deni Purwanto ordered the sale of salt belonging to Witness Deni Purwanto to the Defendant by receiving a fee of Rp150.00 (one hundred and fifty rupiah) per kilogram. We are of the opinion that the fee of Rp. 150.00 one hundred and fifty rupiah) per kilogram of salt sales is an agreement between Witness Deni Purwanto and the defendant Oman Abdul Rochman Bin Alm Badri, where in the Civil Code/BW Article 1320, the conditions for the validity of the marriage are regulated, including:

- Agreements of the parties
- Ability to make alliances
- A certain thing
- A halal cause

So that the agreement meets the legal requirements of the deal in civil law, there is also no provision in the Article that an agreement must be made in writing to be valid. Article 1339 of the Civil Code explains, "An agreement is not only binding for the things expressly stated in it, but also for everything that, according to the nature of the agreement, is required by propriety, custom or law. These articles are the basis for us to argue that this case is a civil dispute, especially since the beginning of the sale and purchase of Australian salt between the witness and the defendant, until a record of debts and receivables appeared.

Regarding the response of the Panel of Judges in point 4, we believe that the Panel of Judges should consider the presence of witnesses who can benefit or incriminate the Defendant, as stipulated in Article 160 paragraph (1) letter c of the Criminal Code which reads "In the event that there are witnesses, both favorable and incriminating to the defendant who are listed in the letter of transfer of the case and/or requested by the defendant or legal counsel or the public prosecutor during the trial or before the verdict is rendered, the presiding judge of the trial is obliged to hear the testimony of the witness."<sup>12</sup> From the reading of the Article, we conclude that there is an obligation of the Presiding Judge (specifically mentioned in the article) as the leader of the trial, to ensure the conduct of the trial in accordance with legal procedures

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<sup>12</sup> <https://www.pn-sabang.go.id/?p=1656#:~:text=c.%20Dalam%20hal%20ada%20saksi,sidang%20wajib%20mendengar%20keterangan%20saksi> accessed on March 24, 2025

and to lead the deliberations of the Panel of Judges to produce a fair verdict.<sup>13</sup> Of the 8 Witnesses who were taken under oath in the Investigation, only 4 Witnesses were presented to the trial, including:

1. Deni Purwanto was sworn in on March 24, 2023;
2. Miryanti alias Yanti was sworn in on June 6, 2023;
3. Sucipto was sworn in on November 20, 2023;
4. Ibn Hajar was sworn in on November 30, 2023.

Meanwhile, the 4 witnesses who were not presented to the trial include:

5. Hanafia Ferdian was sworn in on July 6, 2023;
6. Suhandi alias Andi was sworn in on June 6, 2023;
7. Warkina was sworn in on August 14, 2023;
8. Tardi was sworn in on August 14, 2023.

The incompleteness of the witnesses presented affects the verdict, so the Panel of Judges needs to consider the presence of witnesses, both mitigating and incriminating for the Defendant.

Moreover, the statement of Witness Miryanti alias Yanti Kami considers invalid because it does not meet the formal requirements, namely: "There is no employment relationship with one of the parties by receiving wages unless the Law stipulates otherwise" that with these formal conditions, therefore, the Witness Miryanti does not meet the formal requirements or cannot be considered valid as a means of proof and the testimony of Witness Deni Purwanto is not not a Witness "*unus testis nullus testis*" Moreover, the one who gave the information was the witness of the victim himself.

### **Non-Juridical Considerations**

The content of Article 372 of the Criminal Code reads: "Anyone who deliberately and resists the law claims to be his property in whole or in part, namely that of others, but what exists in terms of his power is not due to a crime."

The elements in Article 372 of the Criminal Code include:

1. Whoever;
2. Deliberately resisting the law, admitting to owning one's own goods, is not a crime.

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<sup>13</sup> <https://pn-bandaaceh.go.id/tugas-pokok-fungsi/#:~:text=Ketua%20selaku%20Hakim%20Pengadilan%20adalah,perkara%20perdata%20di%20tingkat%20pertama> accessed on March 24, 2025

The Panel of Judges considers one by one whether the elements of the article are fulfilled or not for the acts committed by the Defendant in this case, as follows:

### **Who's Element**

Considering that the elements of who are all legal subjects of the perpetrator of a criminal act, in this case a human being without exception who can account for his actions without any reason that can erase his guilt, both the excuse of forgiveness and the subsequent justification at the time of the first trial of the Public Prosecutor has confronted the Defendant who, after being asked for his identity, confessed to OMAN ABDUL ROCHMAN BIN BADRI (ALM) as in the indictment of the public prosecutor. According to Maielis Hakim's observation, the Defendant is physically and mentally healthy and able to answer all questions correctly. Therefore, the Panel of Judges concluded that the Defendant is a legal subject who can be held legally responsible.

Considering that from the above considerations, the Panel of Judges thinks that the element of "Who" has been legally and convincingly established according to the law;

### **Deliberately resisting the law, claiming to be one's property, the goods of something, not because of a crime.**

Considering that the element "Intentionally and unlawfully possessing something that wholly or partially belongs to another person, but which is in his power not due to a crime" based on the above provisions and connected with the testimony of witnesses, the testimony of the Defendant and evidence that corresponds to each other, the legal fact is obtained that the Defendant who is a confidant of Witness Deni Purwanto as the owner of PT. Samudra Garam Indonesia and the Defendant were given verbal duties by Witness Deni Purwanto, among others, to sell salt belonging to Witness Deni Purwanto, including receiving payment money if anyone ordered salt to Witness Deni Purwanto through the Defendant, then Witness Deni Purwanto would provide a fee of Rp150.00 (one hundred and fifty rupiah) per kilogram for salt that was successfully sold, then Witness Sucipto ordered 40 (forty) tons of salt through the Defendant to be delivered to the address Jalan Bayur Kali, Number 198, Tangerang, Banten. Furthermore, the Defendant conveyed the order to Witness Deni Purwanto after there was permission from Witness Deni Purwanto as the owner of the salt The Defendant sent salt to Witness Sucipto by way of 2 (two) stages of delivery from the salt warehouse owned by Witness Deni Purwanto which is located at Jalan Raya Kanci, Blok Wage, Pangarengan

Village, Pangenan District, Cirebon Regency where the first one was 20 (twenty) tons which was completed with a road letter Number 7643 dated January 3, 2019 and which the second was 20 (twenty) tons with a letter of passage Number 7644 dated January 4, 2019 so that the total salt sent was 40 (forty) tons with a total price of Rp108,000,000.00 (one hundred and eight million rupiah) and the road letter was made by the staff of Witness Deni Purwanto after delivery was made then an invoice was made by Witness Mirayanti Alias Yanti Binti Hasan with Number 00007643 dated January 5, 2019 and Number 00007643 dated January 5, 2019, However, after the invoice was submitted, the Defendant did not also hand over the payment money on the grounds that Witness Sucioto had not made the payment Around February 2019, Witness Deni Purwanto immediately confirmed to Witness Sucioto by way and was known to contact Witness Sucioto if Witness Sucioto had made the payment by way of transfer to a BCA account in the name of Oman Abdul Rachman with the number account 30402\*\*\*\*\* on January 4, 2019 amounting to Rp90,000,000.00 (Ninety million rupiah) and on January 07, 2019 amounting to Rp24,000,000.00 (twenty-four million rupiah) so that the total transferred by Witness Sucioto was Rp114,000,000.00 (one hundred and fourteen million rupiah) where Rp108,000,000.00 (one hundred and eight million rupiah) was the price of 40 (forty) tons of salt that should have been handed over to Witness Deni Purwanto and Rp6,000,000, 00 (six million rupiah) is the Defendant's wages or commission (fee) from the sale, but the Defendant did not hand over the payment money to the Witness Deni Purwanto,

Considering the above considerations, the Panel of Judges is of the opinion that the element "Intentionally and unlawfully possessing something that wholly or partially belongs to another person, but which is in his power not due to a crime" has been legally and convincingly fulfilled according to the law.

The elements in Article 374 of the Criminal Code include:

1. Whoever;
2. Intentionally unlawfully possessing something that wholly or partially belongs to another person, which is not due to a crime;
3. People do it because of their work/position relationship or because they get wages.

The Panel of Judges considers one by one whether the elements of the article are fulfilled or not for the acts committed by the Defendant in this case, as follows:

### **Who's Element**

That what is meant by whomever here is a person/person as a legal subject who is able to be responsible according to the law who is charged with committing a criminal act as contained in the public prosecutor's indictment, therefore the emphasis of this element is the existence of the legal subject on whether or not he is proven to have committed an act depending on the proof of these elements, the person in this case is the defendant Oman alias Oman Abdul Rochman Bin Badri (Alm) who throughout the examination of this case was mentally and mentally healthy, so that according to the Panel of Judges, the defendant is a person who can be responsible according to the law and according to the considerations mentioned above, the element of who has been fulfilled.

### **Elements Deliberately and Unlawfully Possess Goods Something Wholly or Partially Belongs to Another, But Which Is in His Power Not Due to Crime**

Based on the description mentioned above, it is connected with the facts revealed at the trial and under the evidence in the form of sworn witness statements, the defendant's testimony and letter evidence supported by evidence, then legal facts can be obtained under the legal facts on the element of Intentionally and Unlawfully Possessing Goods Something Wholly or Partially Belonging to Someone Else, But what is in his power is not because of the above crime. According to the considerations mentioned above, the element of having something wholly or partially belongs to someone else, but what is in his power is not, because the crime has been fulfilled.

### **What Is Done By A Person Whose Control Over Goods Is Due To An Employment Relationship, Or Because Of Disbursement, Or Getting Wages For It**

Considering, that the employment relationship as intended in Article 374 of the Criminal Code is not fulfilled in the Defendant's actions because the acts committed by the Defendant are not based on an employment relationship which based on the definition of an employment relationship is a relationship between an employer and a worker/laborer based on an employment agreement that has elements of workers, wages and orders; Weigh that the "Which is done by a person whose use of the goods is caused by an employment relationship" is not fulfilled based on the above description. The Panel of Judges believes this element is not legally and convincingly proven according to the law.

It can be concluded from the Judge's Consideration in considering the fulfillment of the elements in Article 372 and Article 374 that all aspects of Article 372 of the Criminal Code have been met. The Defendant must be declared to have been legally and convincingly proven to have committed a criminal act as charged in the Public Prosecutor's Subsidy indictment. Meanwhile, because the Public Prosecutor's Primary Indictment was not fulfilled because there was no Employment Appointment Letter/evidence showing that the Defendant was an employee/official worker of Mr. Deni Purwanto, the Defendant must be declared legally and convincingly unproven to have committed a criminal act as charged in the Public Prosecutor's Primary Indictment, thus the Tribunal has the right to acquit the Defendant from the Primary Indictment.

## CONCLUSION

The application of material criminal law to the crime of embezzlement in employment relations No. **65/Pid.B/2024/Sbr**. In our opinion, it fulfills the elements in article 372 of the Criminal Code. In article 374 of the Criminal Code the element of the crime of embezzlement of office is not fulfilled, because Oman's brother Abdul Rochman Bin Badri (Alm) does not work as an employee in Deni Purwanto's company. The judge decided that there is no legal evidence of embezzlement in office as in the primary indictment of the Public Prosecutor that this case is a civil dispute, It would be good to file this case civilly as stated in article 1865 of the BW.

## BIBLIOGRAPHY

- "Money Embezzlement Acts: Know the Types, Punishments, and Case Examples"  
<https://www.hukumku.id/post/penggelapan-uang>, accessed March 21, 2025
- R. Soesilo, *The Criminal Code (KUHP) and its Complete Commentaries Article by Article*, Politeia, Jakarta, 2013, p. 258  
<https://swarajustisia.unespadang.ac.id/index.php/UJSJ/article/view/447>  
<https://www.hukumonline.com/klinik/a/penggelapan-dalam-jabatan--ranah-pidana-atau-perdata-c15886/>
- Prodjodikoro, Wirjono, *Certain Criminal Acts in Indonesia*. (Bandung: Refika Aditama, 2012), 37-38
- Moeljatno, *Principles of Criminal Law*. (Jakarta: Rineka Cipta, 2015), 142-143.
- Moeljatno, *Building Criminal Law*, Bina Aksara, Jakarta, 1985, p. 40

"Criminal Theory Adopted in Indonesia,"  
<https://www.hukumonline.com/klinik/a/teori-pemidanaan-yang-dianut-di-indonesia-1t674e50ca59f0e/>) accessed March 21, 2025.

Tongat, Material Criminal Law, UMM Press, Malang, p. 57  
Ibid. p. 60

C.S.T. Kansil and Christine S.T. Kansil, Dictionary of Various Legal Terms, Pustaka Sinar Harapan, Jakarta, p. 252

<https://www.pn-sabang.go.id/?p=1656#:~:text=c.%20Dalam%20hal%20ada%20saksi,sidang%20wajib%20mendengar%20keterangan%20saksi> accessed on March 24, 2025

<https://pn-bandaaceh.go.id/tugas-pokok-fungsi/#:~:text=Ketua%20selaku%20Hakim%20Pengadilan%20adalah,perkara%20perdata%20di%20tingkat%20pertama> accessed on March 24, 2025