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## IMPACT OF IMPLEMENTATION OF DECISION NUMBER: 150/PID.B/2019/PN.LBO IN THE CASE OF EMPLOYMENT OF POSITION

Riskawati Malapo<sup>1</sup>, Moh. Rusdiyanto U. Pulu hulawa<sup>2</sup>, Nuvazria Achir<sup>3</sup>

<sup>1</sup>Faculty of Law, Universitas Negeri Gorontalo, Indonesia. E-mail: [riskamalapo68@gmail.com](mailto:riskamalapo68@gmail.com)

<sup>2</sup>Faculty of Law, Universitas Negeri Gorontalo, Indonesia. E-mail: [mohamadrusdiyanto@yahoo.co.id](mailto:mohamadrusdiyanto@yahoo.co.id)

<sup>3</sup>Faculty of Law, Universitas Negeri Gorontalo, Indonesia. E-mail: [ulfa@ung.ac.id](mailto:ulfa@ung.ac.id)

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Embezzlement is one of the criminal acts that can harm many people, especially if it is done by taking advantage of positions as regulated in Articles 372-376 of the Criminal Code. One of them in the decision 150/pid.b/2019/pn.lbo seen legal norms that were ignored by the judge, namely the norms of certainty, justice and benefit. pid.b/2019/pn.lbo and to find out the impact of the application of sanctions on the decision number: 150/pid.b/2019/pn.lbo. The research method used is normative legal research with a statutory approach. The results of the research show that the punishment in Decision Number: 150/pid.b/2019/pn.lbo has not fulfilled justice and legal certainty because the sentence imposed by the judge is only 10 months in prison. Meanwhile, legal benefits have been achieved because of the punishment imposed because later the cooperative and the victim will feel more calm and secure in conducting transactions at the Karya Cipta Savings and Loans cooperative. Furthermore, the juridical implications that arise are the non-fulfillment of the mandate of Article 374 of the Criminal Code regarding embezzlement with weights. The fact is that the defendant structurally has a position in the Karya Savings and Loans Cooperative which makes the sentence more severe

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## 1.Introduction

The problem of crime in Indonesia today deserves to be discussed, because it is a concern for the value of public safety. Due to the increasing number of crimes in various regions, especially in Indonesia, so that it becomes a controversy for everyone. Crime is a social disease. Various criminal factors are difficult to remove from people's minds.

The emergence of crime is influenced by the environment itself, even the economic situation of the perpetrators of crime can make them commit crimes. The criminals themselves come from various groups and different thoughts, from robbing, cheating, stealing, molesting, raping, corruption, corporate crime, human rights violations, terrorism and many more, even from the poor to the rich, the uneducated and the highly educated. So education does not guarantee that they will not commit crimes.<sup>1</sup>

The community will state that an act is called a crime if the behavior has a detrimental impact on the community concerned, the loss can be measured based on property, or physical, while deviant behavior is measured based on its incompatibility with the moral standards adopted by the community.<sup>2</sup>

As regulated in Articles 372-376 of the Criminal Code, embezzlement is a crime that always occurs and can occur in all aspects of life, so that criminals at the social level can commit criminal acts of embezzlement both at the lower and upper levels. Embezzlement is a crime that begins with a great sense of trust in others, and that trust is lost due to a lack of honesty. Article 374 of the Criminal Code explains that anyone in possession of goods resulting from embezzlement due to work relations, search or taking salary is threatened with a maximum imprisonment of five years.<sup>3</sup>

Eradication of criminal acts of embezzlement must be prosecuted in a manner that is in accordance with that contained in the Criminal Code, and involves the potential that exists in society, especially the government and law enforcement officers. Law enforcement in Indonesia is carried out by authorized state officials. The state apparatus authorized to examine criminal cases are the police, prosecutors and courts. Police, Prosecutors and Judges are three elements of law enforcement, each of which has a different role in accordance with their field. The three of them together have in common in their main goal, namely the re-adoption of prisoners.

In this day and age, crime no longer occurs directly, but we often encounter crime indirectly, for example, indirect crimes that occur in companies. This type of crime is very detrimental to the company which usually includes corruption, theft, and

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<sup>1</sup> Topo Santoso, Eva Achjani zulfa, *Criminology*, Depok : Rajawali Press, 2017. Page 2.

<sup>2</sup> Muhammad Mustofa, *criminology research methodology*, Jakarta : PT tambara jaya, 2013, page 10.

<sup>3</sup> See article 374 (KUHP)

embezzlement in office. With the progress of human civilization, this crime develops both to the perpetrator and the victim.

As regulated in Articles 372-376 of the Criminal Code, embezzlement is a crime that always occurs and can occur in all aspects of life, so that criminals at the social level can commit criminal acts of embezzlement both at the lower and upper levels. Embezzlement is a crime that begins with a great deal of trust in another person, and that trust is lost because of a lack of honesty. Article 374 of the Criminal Code explains that anyone who owns goods resulting from embezzlement due to employment, searches or taking salaries is threatened with a maximum imprisonment of five years.<sup>4</sup>

One of the cases of embezzlement in the position appointed in this study is the case that occurred in the cooperative of copyright works funds. The suspect is HERMANTO IBRAHIM alias ANTO, who is an employee of the cooperative. The perpetrator is alleged to have taken advantage of his position as a co-operative mantri by falsifying files as if there were customers who borrowed money from the office, but in reality there were no customers who borrowed money and the money was taken by the defendant for his personal needs, and not deposited. to the cashier.

His actions caused huge losses to the company. The suspect is subject to criminal sanctions in Article 374 of the Criminal Code in conjunction with Article 64 paragraph (1), namely punishment with weighting. In this criminal case No. 150/pid.b/2019/pn.lbo the panel of judges decided that the defendant was sentenced to 10 months, while the prosecutor demanded the suspect with 1 year 6 months reduced for 1 month the defendant was detained.

The author argues that there are legal norms that are ignored by judges, namely the norms of certainty, justice and expediency. Due to the certainty of the sentence charged with a criminal offense but the decision to give a very light sentence, so that the sense of justice in the community is not fulfilled, and does not provide benefits, the perpetrator who commits embezzlement involving his position should be punished with a weight so that people do not follow suit. Otherwise, as explained in Article 374 of the Criminal Code, a person who is involved in a criminal act of embezzlement involving a position will be sentenced to a maximum imprisonment of 5 (five) years.

With the decision issued by the Limboto District Court in this case, it can have a negative impact on people who can commit or repeat their actions again, even this track record can be carried out by other people because the decision is considered too weak, and this decision is considered unable to provide deterrent effect on the perpetrators of embezzlement. But it will only provide an opportunity for the perpetrator to repeat his actions again.

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<sup>4</sup> See article 374 (KUHP)

Table 1 data on criminal cases of embezzlement in office at the Limboto District Court in 2015-2019.

No	year	Number of cases
1	2015	11
2	2016	11
3	2017	9
4	2018	10
5	2019	12

Limboto District Court data source

Based on the data in the table above, it shows that cases of embezzlement that occurred in the Limboto District Court have increased every year. Due to the provision of criminal sanctions against perpetrators of embezzlement in office is considered too light and not burdensome.

Based on the description of the problem above, the identified problems that will be studied are: What is the impact of implementing the decision number: 150/pid.b/2019/pn.lbo?

## 2. Method

Both problems will be analyzed normatively. According to Soerjono Soekanto, from the point of view of its objectives, legal research basically consists of normative research (which includes research on principles, legal systematics, level of legal synchronization, and legal comparisons) and empirical/sociological legal research (which is carried out by identifying laws and looking at legal effectiveness).<sup>5</sup>

The method of analysis and the following steps are used for qualitative processing.<sup>6</sup>

1. Clarify the legal material obtained from the research based on the problems that exist in the research.
  2. Systematize the results of clarification of legal materials
- Analyzing legal materials compiled as a basis for drawing conclusions at a later date.

## 3. Case Review on Decision Number: 150/pid.b/2019/pn.lbo

The indictment is an important basis in criminal proceedings because the indictment is based on the things contained in the letter, the judge examines and decides on a criminal

<sup>5</sup> Soerjono Soekanto, Introduction to Legal Research. Jakarta: UI Press, 2014, p. 51.

<sup>6</sup> Amanda HendiatiSyarif, Thesis: "juridical position on land rights due to natural disasters in Palu", (Gorontalo: State University of Gorontalo, 2019). hlm.47-48

case. The importance of the indictment because the indictment creates limitations in the examination of the case.<sup>7</sup>

The indictment is also very important in the examination of criminal cases, the indictment becomes the basis and determines the limitations in the examination. The decision taken by the judge may only be related to events that are limited by the indictment. The defendant cannot be punished for a crime that is not stated in the indictment. Likewise in criminal acts, which even though they are mentioned in it, but if the crime can only be punished in certain circumstances which in fact exist, but are not accused. Likewise, it cannot be punished if the crime has occurred differently than what has been stated in the indictment.

Hermanto Ibrahim alias Anto, as an orderly or collector at the Gorontalo Regency Work Cipta Dana Savings and Loan Cooperative based on Decree Number :10/SK/KSP\_KCD/VII/2018 dated 12 July 2018 signed by Ahmad Ali as Chair of the Gorontalo Province Karya Cipta Dana Cooperative, on an unknown day in the period between September 2018 and October committing a criminal act of embezzlement which took place at the Karya Cipta Dana Savings and Loans Cooperative Office, precisely in Bulota Village, Talaga Jaya District, Regency has intentionally violated the law an item wholly or Part of it belongs to the Karya Cipta Dana Savings and Loans Cooperative of Gorontalo Regency, which is in its control not because of a crime, which was committed by a person whose control over the goods was due to an employment relationship or because of a search or because he received wages for it, which was carried out by the defendant in the following ways: as follows:<sup>8</sup>

1. Whereas the Karya Cipta Dana Savings and Loan Cooperative of Gorontalo Regency is a legal entity in the form of a cooperative that is engaged in the savings and loan business in the form of funds to the public, as stipulated in the Deed of Establishment No. 33/BH/xxii /XII/2014 dated December 22, 2014.
2. That the mechanism or procedure for borrowing funds by the community until the funds can be disbursed has been determined by the Karya Cipta Dana Savings and Loans Cooperative, Gorontalo Regency, namely the customer who will borrow funds submits a loan application verbally to the minister and then the minister writes it down in the taxation book (evidence). a request to be submitted to the leadership for approval) is then submitted to the leadership, after the taxation book is approved by the leadership then it is handed over to the cashier, after the cashier receives the taxation book then the cashier gives the morning bill (money to be disbursed) to the mantri to be handed over to the customer, after the money is handed over to the customer by the incumbent and a promis is made (proof of delivery of money to the customer and no

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<sup>7</sup> Andi Hamzah, Op.Cit, p. 167

<sup>8</sup> Decision of the Judge of the Limboto District Court Number: 150/Pid.B/2019/PN.Lbo.

evidence of the customer making a deposit) then the promissory note is submitted again to the leadership for checking, after that the mantri just does the billing by bringing the promissory note that.

3. That the defendant HERMANTO IBRAHIM alias ANTO based on Decree Number :10/SK/KSP\_KCD/VII/2018 dated July 12, 2018 which was signed by Ahmad Ali as the Head of the Karya Cipta Dana Cooperative of Gorontalo Province who decided that the defendant was officially placed in the Weekly Unit of the Savings and Loans Cooperative Karya Cipta Dana Gorontalo Regency as of July 14, 2018 as an employee of the Karya Cipta Dana Savings Cooperative of Gorontalo Regency with the position of mantri or collector who has duties, among others, to collect installments from customers and then deposit the installments of these customers to the Savings and Loans Cooperative Office. Karya Cipta Dana Gorontalo Regency and handed over loan money from savings and loan cooperatives to customers with a salary of Rp. 1,693,800,- and an oil ration of Rp.35,000,- per month plus transportation of Rp.16,000,-/day as well as dining facilities at the Karya Cipta Dana Savings and Loans Cooperative office, Gorontalo Regency.
4. Whereas starting from the execution of the Defendant's duties as a mantri or collector, the Defendant's intention arose to obtain a sum of money from the execution of his duties, so to realize the defendant's intention, at an unknown time in the period between September 2018 to October 2018, the defendant as Mantri applied for a loan to the Karya Cipta Dana Cooperative by using the name of the customer who pretended to be borrowing but in fact did not borrow (fictitious customer) in the amount of Rp. 15,110,000, - (fifteen million one hundred and ten thousand rupiah) namely to 23 (twenty three) fictitious customers.
5. That at an undetermined time from September 2018 to October 2018, the defendant as the Mantri who should have deposited customer loan installments to the cashier of the Karya Cipta Dana Cooperative did not deposit to the cashier of the Karya Cipta Dana Cooperative the loan installments submitted from 64 (sixty four) customers in the amount of Rp. 11,140,000, - (eleven million one hundred and forty thousand rupiah) to the defendant.
6. That on October 29 2018, the Defendant's actions were known by witness Jafar Aliwu as the Head of Mantri of the Cipta Karya Dana Savings Cooperative of Gorontalo Regency who was in charge of supervising the ministers and also the customers after receiving a report from witness Riski Sarton who stated that when witness Riski Sarton did
7. billing to customers, there are several customers who say that they no longer have the remaining installments as much as billed and based on the report, witness Jafar Aliwu then checked the promissory note to be matched with the installment book then it turned out that after checking there was a mismatch

between the promissory note and the installment book where it was found that many promissory notes had been torn up but in the installment book they were not recorded, besides that witness Jafar Aliwu received a report from witness Vivin Tolinggolo as the cashier who stated that the defendant did not deposit the loan installments from the customer to the cashier, and on both reports then the Savings Cooperative Pinjam Karya Cipta Dana Gorontalo Regency conducted an audit and found a loss of Rp. 26,259,000, - (twenty six million two hundred and fifty nine thousand rupiah) with details on the use of a promis (fictitious customer) of Rp. 15,110,000 (fifteen million one hundred and ten thousand rupiah) and installments not deposited at the cashier (lack of installments) in the amount of Rp.11,149,000, - (eleven million one hundred and forty-nine thousand rupiah) where the money is Rp. 26,259,000, - (twenty six million two hundred and fifty nine thousand rupiah) was used by the defendant to buy liquor, karaoke, buy cigarettes, and was used for the defendant's household needs.

Therefore, against the defendant's actions, the public prosecutor filed a demand to impose a criminal sentence against HERMANTO IBRAHIM with imprisonment for 1 (one) year and 6 (six) months reduced as long as the defendant is in detention for 1 month while with the defendant's order to remain detained.

### **3.1. Impacts From the Application of Sanctions in Decision Number : 150/pid.b/2019/pn.lbo**

The judge's consideration is one of the most important aspects in determining the realization of the value of a judge's decision that contains justice (*ex aequo et bono*) and contains legal certainty, besides that it also contains benefits for the parties concerned so that the judge's considerations must be addressed carefully, both , and careful. If the judge's considerations are not thorough, good, and thorough, then the judge's decision that comes from the judge's considerations will be annulled by the High Court/Supreme Court.

Judges in examining a case also require evidence, where the results of the evidence will be used as consideration in deciding the case. Proof is the most important stage in the examination in court. Proof aims to obtain certainty that an event/fact submitted has actually occurred, in order to obtain a true and fair judge's decision. In principle, the task of the judge is to make decisions that have legal consequences for other parties. However, the judge cannot refuse to make a decision if the case has already been started or examined. The freedom to make judgments for judges is absolute and no party can intervene in making decisions. This aims to ensure that court decisions are truly objective. In addition, court decisions by judges must be accountable to God Almighty.

The basis of judges in making court decisions needs to be based on theory and interrelated research results so that maximum and balanced research results are

obtained at the theoretical and practical levels. One of the efforts to achieve judicial legal certainty, where judges are law enforcement officers through their decisions can be a benchmark for achieving legal certainty.

The judge's freedom in examining and adjudicating a case is a crown for judges and must be guarded and respected by all parties without exception, so that no one party can interfere with the judge in carrying out his duties. The judge in making a decision must consider many things, whether it is related to the case being examined, the level of actions and mistakes committed by the perpetrator, to the interests of the victim and his family as well as taking into account the sense of community justice.

In this decision the imposition of criminal sanctions by judges that are too light and not in accordance with the indictment can have a negative impact, namely it will cause other actors to commit criminal acts, because the criminal sanctions given by the judge are relatively small, although the judge must know what is meant by when committing a crime, and must understand the adoption of the offence. law What is the punishment for people who impose sanctions to achieve In making laws, judges must not only enforce the law from the law itself, but also seek the welfare of society.

The basis of judges in making court decisions needs to be based on theory and interrelated research results so that maximum and balanced research results are obtained at the theoretical and practical levels. One of the efforts to achieve judicial legal certainty, where judges are law enforcement officers through their decisions can be benchmark for achieving legal certainty

Analysis In decision number: 150/pid.b/2019/pn.lbo the implication that was caused by the judge with the decision of 10 months to the defendant from the 1 year 6 month charge. In principle, it has consequences both juridically and sociologically. The juridical implication that arises is the non-fulfillment of the mandate of Article 374 concerning embezzlement with weights. Where the defendant structurally has a position in the Cipta Dana Savings and Loans Cooperative, he should receive the maximum punishment according to the demands. Sociologically this has an impact on the level of public confidence that the losses incurred both materially and immaterially will have a bad impact on workers who work in the Savings and Loans cooperative, namely the level of trust and integrity that will be questioned.

The impact of the decision number: 150/pid.b/2019/pn.lbo:

- 1. Does not give a deterrent effect**

Darkness in human life is not a new thing, but has existed along with human age itself. At present, embezzlement is very familiar to the ears and is considered something very bad and causes the nation to fall. This problem needs to be made something that must be tackled together and must be fought together. Because the meaning of embezzlement in this position is the abuse of power that harms



the company in ways that are contrary to the applicable legal provisions. In the Criminal Code, it has been stated that embezzlement with the holder of the goods due to work relations or searches or to receive wages, will be punishable by a maximum imprisonment of five years. In Article 374 of the Criminal Code regarding embezzlement with weights regulates this.

It is understood that the deterrent effect must be carried out by giving the severest punishment. This is solely as a severe punishment for the defendant who abuses his position and authority to commit a criminal act of embezzlement that harms many people.

Analysis of the decision issued by the Limboto District Court in this case, can have a negative impact on people who can commit or repeat their actions again, even this track record can be carried out by others because the decision is considered too weak, and this decision is considered unable to provide deterrent effect on the perpetrators of embezzlement, but only provides an opportunity for the perpetrators to repeat their actions again.

## **2. Repeating Case Polarization**

The analysis in decision number 150/pid.b/2019/pn.lbo The imposition of a sentence of only 10 months in prison makes the polarization of embezzlement cases with positions that will continue to be repeated or increase. due to the fact that in the limboto district court cases of embezzlement have increased every year from 2015 to 2019. This resulted in light sentences that were not comparable to the losses suffered by the Karya Cipta Dana Savings and Loans Cooperative. This loss is not only material, but the integrity and public trust in the Karya Cipta Dana Savings and Loans Cooperative will be much reduced.

Therefore, the judge in deciding this case must firmly enforce the sentence and it is necessary to support efforts such as increasing honesty and involving the community in law enforcement. Based on the defendant's actions as regulated in the Criminal Code, it is stated that embezzlement with the holder of the goods due to work relations or searches or to receive wages, will be punishable by a maximum imprisonment of five years. In Article 374 of the Criminal Code regarding embezzlement with weights regulates this.

In this decision, the judge should have given the criminal sanction so that it will not result in additional cases, and can make the perpetrators deterrent from their actions, and will not give rise to new perpetrators.

## **3. Ineffective Law Enforcement**

Law enforcement officials have been entrusted with carrying out law enforcement processes to ensure that the rule of law operates in the manner prescribed by the rule. to ensure that laws are enforced and enable law enforcement officials to use coercive measures when necessary.

Law enforcement also includes the values of justice contained in the sound of formal rules or values of justice that live in society. Things are different

in a narrow sense, then law enforcement is only limited to the enforcement of formal and written regulations issued by the institution authorized to issue these rules. However, in the field of law enforcement, it is not as beautiful as described by legal theories and the regulations that have governed it. There are more than one problems of law enforcement and in order to be able to discuss law enforcement more deeply and to be able to clarify the problem, it is necessary to pay attention to what factors can affect the effectiveness of law enforcement.

The task of the judge is in a very decisive role in the ethics of an expected decision, in this case the judge plays a role in his own independence so that a judge's confidence will be obtained to be able to decide fairly and wisely.

The analysis of ineffective law enforcement on decision number: 150/pid.b/2019/pn.lbo as described previously must have a positive effect with a deterrent effect, therefore the judge in deciding this case must provide criminal sanctions in accordance with the actions taken. It is also stated that under the Criminal Code, it is stated that embezzlement with the holder of the goods due to work relations or searches or to receive wages, will be punishable by a maximum imprisonment of five years. In Article 374 of the Criminal Code regarding embezzlement with weights regulates this.

In the judge's decision on this case, it will only have an impact on ineffective law enforcement and will lead to repeated crimes and become routine cases handled by the Limboto District Court.

#### **4. Loss of Public Trust**

In the context of the state, trust is the basic foundation in the success of the wheels of government. Trust in the wheels of government simply involves the government and the people. As the most important domain in a country, society has an important role in maintaining the integrity and stability of the country. Therefore, the government should not underestimate the effect of public trust in the government.

Public trust, especially justice seekers, in judicial apparatus and institutions, including the belief that judicial processes and decisions must be carried out and handed down for the purpose of upholding a just law, so as to restore public trust and confidence in the Court.

Courts have long been considered as a last resort to achieve the supreme rule of law, especially for victims who have suffered losses. Under the law, a defendant with a light sentence will have the potential to provide negative access to court by the public, especially for victims.

Analysis of decision number: 150/pid.b/2019/pn.lbo case of embezzlement in office. The defendant who embezzled customer money which reached tens and the amount of money embezzled was large for the size of the cooperative. the defendant must be punished severely to reduce the affectiveness both vertically and horizontally. And by

looking at the number of cases that are increasing every year in the Limboto District Court area.

In this decision the judge should give criminal sanctions in accordance with his actions under the Criminal Code, it is stated that embezzlement with the holder of the goods due to work relations or searches or to receive wages, will be punished with a maximum imprisonment of five years. In Article 374 of the Criminal Code regarding embezzlement with weights regulates this. By providing these criminal sanctions, it can restore public trust and confidence in the Court.

#### **4. Conclusion**

In the decision number: 150/pid.b/2019/pn.lbo the implications are juridical and sociological. The juridical implication that arises is the non-fulfillment of the mandate of Article 374 of the Criminal Code regarding embezzlement with weights. The fact is that the defendant structurally has a position in the Cipta Dana Savings and Loans Cooperative which makes the punishment more severe. While sociologically this has an impact on the level of public trust in the Savings and Loans Cooperative of Cipta Dana, or

1. Does not give a deterrent effect
2. Repeating Case Polarization
3. Ineffective Law Enforcement
4. Loss of Public Trust

#### **5. Suggestion**

In every court decision, it must be able to fulfill 3 legal aspects, namely: Certainty, justice and legal benefit so that later the decision can fulfill legal requirements in society. There needs to be consistency in decisions based on Article 374 of the Criminal Code regarding the crime of embezzlement with weights. This is to provide a deterrent effect on the perpetrators. Where the position in charge is a mandate that must be accounted for.

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