



The Imposition of Criminal Sanctions for Embezzlement Viewed From Comparative Analysis

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Abstract: The purpose of this study was to find out the comparative imposition of sanctions on the crime of embezzlement at the Limboto District Court and the implications of the crime of embezzlement in office. The type of research used is normative legal research, with statutory and case approaches. Comparative of the imposition of sanctions and the way the judge applies the decision, namely the judge gives a very light decision on Decision Number 151/Pid.B/2019/PN.Lbo with the relief that the defendant is 8 months pregnant and there is government regulation No. 32 of 1999 in Article 20 Pregnant women convicts while in the penitentiary the detention of pregnant women prisoners is not made and the judge in implementing the decisions in both cases takes decency in the trial to lighten his decision.

Keywords: Comparative; Criminal act; Embezzlement.

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1. Introduction

Indonesia is the highest agreement of the state's formers, even though it experienced a constitutional test when the 1945 Constitution was amended into the Constitution of the United Republic of Indonesia in 1949, even so, the recognition of the regions under the auspices of the State of Indonesia is still recognized.¹

An absolute requirement for state sovereignty is the existence of a society that obeys the constitution and its government.² Because the essence of the constitution is the conception of the state which is the basis and limitation of the constellation of the state administration system. ³Therefore, in legal politics, legal discovery and new law-making that is by the goals of the State is a value that must be implemented to achieve legal supremacy and justice.⁴

Crime is referred to as turning behavior, which is always present in people's lives, therefore it is a way to deal with crimes carried out by groups who lack responsibility. In the eyes of the community, there are many times when crimes occur or violate laws and regulations and guidelines, and standards that apply to society. Any violators of existing legal guidelines will be subject to sanctions as disciplinary action in response to activities that violate the legal guidelines that have been carried out.⁵

Concretely, there are two objectives of criminal law, namely:⁶

1. To scare every people should not do bad deeds;
2. To educate people who have done bad deeds to be good and can be accepted again in the life of their environment.

In our daily lives, even in society, in order to make ends meet, there are often crimes and violations committed by certain people and people who threaten some members of society, which in law is known as criminal acts.⁷ Ordinary embezzlement is almost the same crime as theft. However, the difference is that in theft, the goods that are owned are still not in the hands of the thief and must still be taken. Meanwhile, when embezzlement was owned, the goods were already in the hands of the manufacturer, not by way of crime. Grave embezzlement can be interpreted as the defendant was entrusted with entrusting the embezzled goods because of his work relationship (persoonlijke dienstbetrekking), the defendant kept the goods because of his position (beroep) and because he was paid money (not wages in the form of goods). The

¹Novendri M. Nggilu, "Tinjauan Yuridis Pengaturan Sanksi Pidana Dalam Peraturan Daerah Provinsi Gorontalo," *Lambung Mangkurat Law Journal* 5, no. 2 (2020): 109-121. 110

² Mellisa Towadi and Nur Mohamad Kasim, "An Indication of China ' s Policy towards Uighurs and Its Implications by International Law Aspects," *Jambura Law Review* 3, no. 1 (2021): 55-71., 69

³Ahmad dan Novendri M. Nggilu, "Denyut Nadi Amandemen Kelima UUD 1945 Melalui Pelibatan Mahkamah Konstitusi Sebagai Prinsip the Guardian of the Constitution," *Jurnal Konstitusi* 16, no. 4 (2019): 785-8. 791

⁴Mohamad Hidayat Muhtar, "Model Politik Hukum Pemberantasan Korupsi Di Indonesia Dalam Rangka Harmonisasi Lembaga Penegak Hukum," *Jambura Law Review* 1, no. 1 (2019): 68-93. 73

⁵C.S.T.Kansil, *Pengantar Ilmu Hukum Dan Tata Hukum Indonesia* (Jakarta: Balai Pustaka.).hal. 38

⁶R. Abdoel Djamali, *Pengantar Hukum Indonesia* (Depok: Raja Grafindo Persada, 2019).

⁷Dian Ekawaty Ismail and Mohamad Taufiq Zulfikar Sarson, "Criminology Analysis of Women's as Perpetrators of Domestic Violence Crimes," *Jambura Law Review* 3, no. 1 (2021): 57-76. 58

offense of embezzlement is regulated in Article 372, Article 373, Article 374, and Article 375. Article 376 concerns embezzlement between families, which applies the same as Article 367 of the Criminal Code (delict of theft).⁸

According to Prof. van Bemmelen, what is seen as the place and time in which a crime is committed is basically a place where an offender has materially committed his actions. Those considered as locus delicti are:⁹

- a. The place where this actor has done his own thing
- b. The place where the tool used by a person works, etc

Crime has become a universal phenomenon, meaning that there is no society without crime. At first the crime was caused by the factor of poverty. Thus, in a society experiencing a shortage of natural resources, crime will be rife in that society.¹⁰

The crime of embezzlement is a crime that often occurs in various fields, even the perpetrators are in various levels of society. Both the lower layer and the upper layer committed this crime. Seeing the many cases of embezzlement that have occurred in Indonesia, of course, this is very concerning.¹¹ As happened in the province of Gorontalo.

The crime of embezzlement has two elements, namely objective elements and subjective elements:¹²

- a. Objective elements
 - Claimed to be his own
 - Something stuff
 - Wholly or Partially belongs to someone else
 - Those who are in his power are not because of crime
- b. Subjective elements
 - The element of intention
 - Elements against the law

The crime of embezzlement in office is regulated in article 374 of the Criminal Code. It is an aggravating crime of embezzlement in the main form in article 372 of the Criminal Code. This concerns how the juridical provisions against criminal acts of embezzlement in office and how to enforce the law against perpetrators of criminal acts of embezzlement in office. Article 374 of the Criminal Code is only intended for perpetrators of criminal acts of embezzlement in private positions. Meanwhile, if the

⁸Riswan Munthe Edianto Sihalo, Ridho Mubarak, "Tindak Pidana Penggelapan Dalam Jabatan Dilakukan Oleh Sales Executive Hotel the Hill Sibolangit Medan (Studi Kasus Putusan Nomor: 1170/Pid.B/2016/PN. Mdn)," *Juncto: Jurnal Ilmiah Hukum* 2, no. 1 (2020): 25-26.

⁹Evi Hartanti, *Corruption Crime* (Jakarta: Sinar Graphic Offset, 2016).8

¹⁰M.Ali Zaidan, *Kebijakan Kriminal* (Jakarta Timur: Sinar Grafika, 2016). 1

¹¹Teddy Irawan dan Muhammad Yamin Lubis, "Analisis Yuridis Penerapan Sanksi Pidana Dan Pemutusan Hubungan Kerja Oleh Perusahaan Terhadap Pelaku Tindak Pidana Penggelapan Dalam Jabatan (Studi Putusan Nomor 440/Pid.B/2019/Pn Blt)," *Ilmiah Metadata* 4, no. 3 (2022). 48

¹²Andi R, "Tinjauan Yuridis Tindak Pidana Penggelapan Jaminan Fidusia Di Kota Makassar," *Jurnal Hukum* 2, no. 3 (2020): 317-18.

perpetrator of the crime of embezzlement holds a position in the government sphere, this is specifically regulated in another law, namely Law No. 20 of 2001 concerning corruption.¹³

Acts of corruption and criminal acts of embezzlement in office actually have differences. In terms of understanding, Article 11 paragraph (1) letter a Law number 3 of 1971 concerning the eradication of criminal acts of corruption has stated that corruption is "an act against the law of enriching oneself or another person, or an entity that directly or indirectly harms the state finances or the country's economy, or he knows or should reasonably suspect that the act is detrimental to the state finances or the country's economy."¹⁴

In 2019 and 2020, in Gorontalo Province there were 2 cases of embezzlement with weights where these cases occurred in the same company with the chronology as follows:

1. In the village of Mongolato, Telaga sub-district, embezzlement has been carried out whose control over goods, namely money belonging to PT. NUSA SURYA CIPTANA [NSC] Finance Gorontalo Branch in the amount of Rp. 159,830,566 (one hundred fifty nine million eight hundred thirty thousand five hundred sixty six rupiah). This is because there is a work relationship or because of the search or because of getting paid for it by means of the perpetrator who is the Accounting Dealer Head [ADH] has used his position by making fictitious postings of customer payments where the posting in the system is worth Rp. 326,900,566 (three hundred twenty six million nine hundred thousand five hundred sixty six rupiah) while the perpetrator physically only deposited Rp. 167,070. 000 (one hundred sixty seven million seventy thousand rupiah) so that there is a difference of Rp. 159,830,566 (one hundred fifty nine million eight hundred thirty thousand five hundred and sixty six rupiah) which of the amount of money embezzled by the perpetrators was used for personal daily needs and buying mobile phones and after that the perpetrator explained that which one not only did the perpetrator himself commit the act of embezzlement, but there were also some employees of PT. NUSA SURYA CIPTADANA (NSC) Finance of the Gorontalo branch also participated in the embezzlement. However, for now the perpetrators cannot prove one by one. So the perpetrator had violated and was subject to Article 374 of the Criminal Code and the perpetrator was sentenced to imprisonment for 4 (four) months. 566 (one hundred fifty nine million eight hundred thirty thousand five hundred sixty six rupiah) which of the amount of money embezzled by the perpetrator was used for personal daily needs and buying a mobile phone and after that the perpetrator explained that which one was not only the perpetrator himself committed the act of embezzlement, but there were some employees of PT. NUSA SURYA CIPTADANA (NSC) Finance of the Gorontalo branch also participated in the embezzlement. However, for now the perpetrators cannot prove one by one. So the perpetrator had violated and was subject to Article 374 of the Criminal Code and the perpetrator was sentenced to imprisonment for 4 (four) months. 566 (one hundred fifty nine million eight hundred thirty thousand five hundred sixty six rupiah) which of the amount of money embezzled by the perpetrator was used for personal daily needs and buying a mobile phone and after that the perpetrator explained that which one was not only the

¹³Muh. Thezar, "Tindak Pidana Penggelapan Dalam Jabatan," *Alaudin Law Development Journal* 2, no. 3 (2020): 328

¹⁴Muh T, "Tindak Pidana Penggelapan Dalam Jabatan," *Jurnal Hukum* 2, no. 3 (2020): 328-29.

perpetrator himself committed the act of embezzlement, but there were some employees of PT. NUSA SURYA CIPTADANA (NSC) Finance of the Gorontalo branch also participated in the embezzlement. However, for now the perpetrators cannot prove one by one. So the perpetrator had violated and was subject to Article 374 of the Criminal Code and the perpetrator was sentenced to imprisonment for 4 (four) months.

2. Located in the Gorontalo Region PT. It started when the Honda Blade motorbike in Red and Black color with Police Number DM 2368 BZ belonging to the witness was withdrawn by PT.NSC Finance Gorontalo Region then on June 1 2018 the perpetrator asked the witness for a sum of Rp. 5,000,000 (Five Million Rupiah) as payment for the motorbike owned by the witness which had been withdrawn by NSC Finance on the grounds that it had been in arrears for 7 (seven) months but when the witness and his wife returned on June 2 2018 to the NSC Finance office and met with the perpetrator then the witness showed proof of payment of the installments motorbike to perpetrator after the witness showed proof of payment for the witness' motorbike installments which were paid regularly and were never in arrears, then the perpetrator reduced the witness' repayment fee to Rp. Apart from Rp. 3,000,000 (Three Million Rupiah) the perpetrator also used office cash of Rp. 2,000,000 (Two Million Rupiah) and the defendant was subject to Article 374 of the Criminal Code and the perpetrator was sentenced to imprisonment for 6 (six) months and 10 (six) months. ten) days

2. Method

The research method used in this paper is normative research using a statutory research approach and a case approach. The legal materials used are primary, secondary, and tertiary with library research data collection techniques. and scientific journals as a form of effort to obtain clarity from something that is held.

3. Comparative Analysis of Imposing Sanctions Against the Crime of Embezzlement at the Limboto District Court Decisions Number 151/Pid.B/2019/PN.LBo and Number 7/Pid.B/2020/PN.LBo

The imposition of sanctions can be interpreted broadly as a process of awarding or imposing a sentence by a judge, it can be said that the criminal system includes all statutory provisions governing how criminal law is enforced or operationalized concretely so that a person is subject to sanctions (criminal law). legislation regarding criminal law can be seen as a unified criminal system.

1. In Decision Number 151/Pid.B/2019/PN.Lboregarding the criminal act of embezzlement in office, namely the defendant AT who worked as ADH at the company PT.NSC Finance Gorontalo Branch, which has been legally proven to have embezzled repeatedly and embezzled money with a nominal value of hundreds of millions of rupiah, by making fictitious posts and using the money to meet her personal needs and was charged with Article 374 of the Criminal Code, but with the condition of being 8 months pregnant, the defendant was sentenced to only 4 months in prison.

2. In Decision Number 7/Pid.B/2020/PN.Lbo regarding the case of the crime of embezzlement in office and the crime of fraud the defendant with the initial S who served as Brand Manager at the company PT.NSC Finance Gorontalo Branch had committed fraud against the victim by asking for money in the amount of Rp. 5,000,000.00 (five million rupiah) as payment for the motorbike belonging to the victim because he had been in arrears for 7 months. By bringing evidence of a smooth deposit, the defendant asked the victim to pay only Rp. 3,000,000.00 (three million rupiahs) and this was considered as payment for the motorbike and the defendant also used office cash to meet his personal needs in the amount of Rp. 2,000,000.00 (two million rupiahs). So with this the defendant was charged with two articles namely Article 374 of the Criminal Code and Article 378 of the Criminal Code but, the court's decision against defendant S was only charged with one indictment, namely Article 374 of the Criminal Code. In this decision the judge stated that defendant S had been legally and convincingly proven guilty by being sentenced to 6 months and 10 days in prison.

From the second cases regulated in the crime of embezzlement with weighting, namely in article 372 of the Criminal Code are as follows:

1. The element of whoever, is an address norm that refers to the perpetrator of a crime, where the perpetrator is a legal subject who is responsible for his actions both physically and spiritually.
2. The intentional element, that is a form of error that is broadly formulated in which the perpetrator knows and wants the act he is doing, including knowing that the act is a crime and wants the act to be committed.
3. The element of owning unlawfully (*Zich Wederrechtelijk Toeigenen*), that unilateral control by the holder of an object as if he were the owner, is contrary to the rights that make the object in his possession; With this matter, the formulation of the element intentionally is connected with the element of possessing against the law, then the act of unlawfully possessing is an act that has been intentional and the act of possessing must have been completed, for example that the object has been sold, exchanged, or used alone. .
4. An object, is that the act of controlling for himself unlawfully must be directed at "objects that are tangible and move"

In article 372 of the Criminal Code, which is the main offense of Article 374 of the Criminal Code, the determining element is unlawful possession where using company money that is not in accordance with its designation is a form of fulfillment of this element.

From this description, the considerations of the judges in comparative cases Decision

No. 151/Pid.B/2019/PN.Lbo and No. 7/Pid.B.2020/PN.Lbo namely: First, with the defendant the initials AT, where in the judge's considerations the defendant was proven to have committed the crime of embezzlement in office as written in Decision Number 151/Pid.B/2019/PN.Lbo which is described on page 23 as follows: "Considering, that the Panel of Judges based on the description of evidence and considerations mentioned above, agrees with the Prosecutor's Indictment In general, all the elements in the first indictment have been fulfilled and the defendant has been legally and convincingly proven to have committed the crime of embezzlement as regulated in Article 374 of the Criminal Code, as described in the indictment.

Second, with the initial defendant S, where in the judge's consideration the defendant was legally proven to have committed the crime of embezzlement as written in Decision Number 7/Pid.B/2020/PN.Lbo and was charged with two charges, namely the indictment of Article 374 of the Criminal Code and Article 378 of the Criminal Code . In the description on page 23 as follows: "Considering, whereas during the trial there were no excuses or justifications found in the defendant that could eliminate the criminal act he committed, it means that the defendant can be held accountable according to law for the actions he committed. Therefore the accused must be punished according to his guilt.

With the results of a comparison of the cases written, it was found that the Court Decisions Number 151/Pid.B/2019/PN.Lbo and Number 7/Pid.B/2020/PN.Lbo legally contained similarities in the crime of embezzlement in the same position but the criminal sanctions given the sentence imposed was different and too light on the actions committed by the defendants, namely a sentence of 4 months and 6 months and 10 days, the sentence given by the panel of judges to the defendant, especially in Decision Number 151/Pid.B/2019/PN.LBo with the defendant being relieved 8 (eight) months pregnant.

With this in accordance with Government Regulation no. 32 of 1999 concerning Terms and Procedures for the Implementation of the Rights of Correctional Assisted Citizens Article 20 which states that:

1. Inmates and correctional students who are sick, pregnant or breastfeeding, have the right to receive additional food according to doctor's instructions;
2. Additional food is also provided to inmates who perform certain types of work;
3. Children of female convicts who are brought to the Correctional Institution or who are born in the Correctional Institution may be given additional food on the advice of a doctor, up to a maximum of 2 (two) years old
4. In the event that the child as referred to in paragraph (3) has reached the age of (2) years, it must be handed over to the father or family or other party with the approval of the mother and made in one official report.
5. In the interests of the child's health, the Head of the Correctional Institution may determine additional food other than what is meant in paragraph (3) based on the doctor's consideration.

So the children born to pregnant female convicts while in the Correctional Institution do not cause the pregnant female convicts to have their detention postponed. The execution of the sentence must still be carried out, the children of pregnant female convicts are cared for and raised in the Correctional Institution until they are 2 (two) years old, after reaching the age of 2 (two) years their care is given to the family.

Likewise, in Indonesian Criminal Law, pregnant women are still punished for the crimes they have committed. While in prison, pregnant women and the child they are carrying have their needs met by the State. In accordance with Government Regulation No. 32 of 1999 that pregnant convicts are given food according to the doctor's instructions and children who are born also receive additional food according to the doctor's instructions. In addition, in essence the judge's consideration should also contain the following matters:

- a. There is a juridical analysis of the decision in all aspects concerning all the facts/things that were proven in the trial.
- b. All parts of the plaintiff's petition must be considered/tried one by one so that the judge can draw conclusions about whether or not the claim has been proven and can be granted/not in the verdict.

The judge uses juridical considerations which are based on the facts revealed in the trial by law which have been stipulated as things that must be included in the decision. The considerations of the judges who are classified as juridical considerations for Decisions Number 151/Pid.B/2019/PN.Lbo and Number 7/Pid.B/2020/PN.Lbo will be systematically described as follows:

- a. The public prosecutor's indictment
- b. Defendant's statement
- c. Witness statement
- d. Evidence
- e. Articles of criminal law regulations

And in this case the judge does not use non-juridical considerations by looking at the background of the defendant's behavior, the consequences of the defendant's actions, the defendant's self-condition, the defendant's socio-economic condition and the defendant's religious factors, which should be in the concept of the Criminal Code one that judges must consider is social justice the defendant's economy, for example the level of income and cost of living. This provision is not yet binding on the court because it is still a concept. However, these socio-economic conditions are based on facts and must be revealed in court. As you know, there are things that as a reason for consideration by the judge in increasing and mitigating the prison sentence that will be imposed on the defendants, these reasons are:

- a. Never been convicted or recidivist

With

the intention that the defendant before committing a crime, the defendant has never

been punished for committing a crime before. This is a record of his own consideration for the judge to make a decision against the defendant as a basis for mitigating criminal sanctions.

- b. Polite in court
During the trial, everyone in the courtroom, including the defendant, must be polite and obedient in their behavior, speak good words, and comply with all the rules of their own value for the judge as a consideration for the decision to reduce the imposition of criminal sanctions.
- c. There is regret for not repeating it
After the defendant admits his actions and regrets what he has done, and the defendant promises not to repeat his mistakes again, then this can lighten the criminal witness that the defendant will impose.
- d. The accused is the backbone of the family
This was used as a consideration by the judge so that the defendant would not remain in detention for too long considering the defendant as the backbone of the family.

Furthermore, the following are the reasons to be considered by the judge in increasing the imposition of sanctions:

- a. This act disturbed the community
All criminal acts will certainly cause anxiety for the community, including criminal acts of embezzlement in office and criminal acts of fraud. Especially in the community around the occurrence of these crimes. This unrest arises from the fear that the community will be the next victim. It is this public unrest that must be taken into consideration by the judge in making a decision. This is used to prevent the recurrence of incidents and gain public trust again.
- b. Causing huge losses for the company
The crime of embezzlement in office has very detrimental consequences for the company and the victim. So this is taken into consideration for the judge as a weighting reason in imposing a prison sentence in the decision in the decision against the defendant.
- c. Result of embezzlement
As the perpetrators know, the results of embezzling company money are used for daily personal needs and buying branded goods. So this is taken into consideration by the judge as a weighting reason in imposing criminal sanctions.
- d. Planned results
The perpetrators of criminal acts have planned or prepared to carry out their actions, so this must be used as a weight for the judge in making a decision.

Based on the considerations and Decision Number 151/Pid.B/2019/PN.LBo and Decision Number 7/Pid.B/2020/PN.LBo the judge imposed Article 374 of the Criminal Code in accordance with the alternative indictment of the Public Prosecutor, This is of course based on facts- the facts revealed in the trial and the fulfillment of the elements in Article 374 of the

Criminal Code. Therefore the two defendants received prison sentences AT: 4 (four) months and S: 6 (six) months 10 days, which is lower than the demands of the public prosecutor.

In that case, the crime of embezzlement in this position is a crime with weighting. The weighting itself means that the perpetrators of criminal acts should be given a deterrent effect on crimes committed for certain reasons.

The author considers that the prison sentence given is too light compared to the sentence in Article 374 of the Criminal Code, which is a maximum of 5 (five) years in prison. The imposition of prison sentences which are much lighter than the demands of the Public Prosecutor and also lighter than the provisions of this law is what is feared will not have a deterrent effect on the perpetrators so they do not repeat their actions or learn from other parties who have not committed the relevant crime. The judge in this case also considered the polite behavior of the defendant, the defendant acknowledged his actions and would not repeat his actions again as a mitigating factor, in examining and deciding criminal cases, judges were required to seek material truth.

The author is of the opinion that the defendant's behavior in court cannot be a concrete basis that the defendant truly respects the court or is simply an act to obtain leniency. So there is a possibility that the thought arises that people who commit criminal acts, especially embezzlement with large amounts, will be given light sentences as long as they are polite in court. For the decision-making process carried out by the Panel of Judges in accordance with the applicable legal rules, namely based on at least two valid pieces of evidence, in cases of criminal acts of embezzlement in office committed by each defendant, the author has observed that the evidence The judge uses witness testimony and the defendant's statement.

The results of a comparative comparison between the two decisions, that there was a leniency for each defendant who did not comply with Article 374 of the Criminal Code and a sentence that was too light did not necessarily mean that the two defendants regretted it. So with this the Panel of Judges should have sentenced the defendants who fulfill the elements of Article 374 of the Criminal Code of embezzlement to a maximum of 5 years in prison and must be punished as severely as the losses suffered by the victim may not necessarily be able to be replaced.

3. 1 Implications of Embezzlement in Office 151/Pid.B/2019/PN.LBo and Number 7/Pid.B/2020/PN.LBo

In practice, sometimes people are dissatisfied and even think that the laws in Indonesia do not bring justice to their people and even more ironically think that the law is only in favor of certain groups who are certainly superior in various aspects, such as economic, political, and so on. This condition shows that in fact the practice of law in this country has not given satisfaction to the people or those who are the object of the law itself which is indeed very much in contradiction with the ideal purpose of law. If it is associated with the Antinomy theory, these are two different things but complement each other. As a result of contemplating

values, legal norms in their implementation are always found to have unavoidable clashes between the principles of justice and the principle of legal certainty.¹⁵

Antinomy is a condition that contradicts one another (a conflict between elements), but cannot be separated because they both need each other. In other words, antinomy is a conflict between two elements, but both need each other.¹⁶

In the implications of Decision Number 151/Pid.B/2019/PN.Lbo and Number 7/Pid.B/2020/PN.Lbo the author uses 3 (three) basic legal values, namely:

1. Legal Certainty

Legal certainty is a question that can only be answered normatively, not sociologically. Legal certainty normatively is when a regulation is made and promulgated with certainty because it regulates clearly and logically. Clear in the sense that it does not cause doubts (multi-interpretation) and logical in the sense that it becomes a system of norms with other norms so that they do not clash or give rise to norm conflicts. Norm conflict arising from rule uncertainty can take the form of norm contestation, norm reduction or norm distortion.

There are three important things that must be considered in the application of criminal law, as mentioned in the literature review section, one of which requires the existence of criminal sanctions referred to in the Criminal Code which can only be imposed on criminals that have been predetermined in the law. Decision Number 151/Pid.B/2019/PN.LBo and Decision Number 7/Pid.B/2020/PN.Lbo decided that the actions of the defendants AT and SY were not in accordance with the crime as formulated in the Criminal Code; Imposing prison sentences for only 4 months and 6 months and 10 days with light sanctions, the author uses legal certainty to examine the problem side of decisions that are not in accordance with the Criminal Code.

So in terms of Legal Certainty to Decisions Number 151/Pid.B/2019/PN.LBo and Number 7/Pid.B/2020/PN.LBo given a more severe punishment in accordance with Article 374 of the Criminal Code which reads:

"Error which is committed by a person whose control over goods is due to a working relationship or because of search or because he gets wages for it, is punishable by a maximum imprisonment of five years."

Opinion of the authors The criminal sanctions received by the defendants AT and SY for their mistakes, however, in the consideration of the mitigating judges, it was stated that the actions of each defendant harmed others and the defendant had enjoyed the results of his actions and there was no logical consideration that could mitigate the sentence. Whereas the imposition of a sanction of 4 months and 6 months and 10 days is not appropriate and must be given a severe penalty and in this case it does not reflect legal certainty.

2. Expediency (zwech matigheid or doelmatigheid or utility)

¹⁵L.j. Van Apeldoorn, *Pengantar Ilmu Hukum* (Bandung: PT. Pradnya Paramita, 2021).

¹⁶Wantu Fence M, "Antinomi Dalam Penegakan Hukum Oleh Hakim," *Mimbar Hukum* 3, no. 19 (2007): 389-90.

A judge's decision that reflects expediency is when the judge does not only apply the law textually, but the decision can be executed in real terms so as to provide benefits for the interests of the litigants and benefits for society in general. The decision issued by the judge is a law which must maintain a balance in society, so that people will again have complete trust in law enforcement officials. Judges in their legal considerations with good reason can decide on a case by placing a decision when it is closer to justice and when it is closer to legal certainty.

In Decision Number 151/Pid.B/2019/PN.LBo and Decision Number 7/Pid.B/2020/PN.LBo, they have caused quite a large loss to the company and also to the community, so in this case, the judge's punishment for This type of crime must provide benefits, especially for the convict while undergoing his sentence and after he leaves the Penitentiary to return to society.

The provision of an unfair sentence will affect the survival of the convict later, with the leniency of the sentence given by the Panel of Judges to each defendant and for the author, law enforcement for this case should be better at pursuing and prioritizing the use of law. So with this also in the two decisions there is no legal benefit given by the judge.

3. Justice

Legal justice according to LJ Van Apeldoorn should not be seen as synonymous with equalization, justice does not mean that everyone gets the same share. This means that justice requires that each case must be weighed separately, meaning that being fair to one person may not be fair to another. The purpose of the law is to regulate the association of life peacefully if it leads to just rules, meaning rules where there is a balance between the interests protected, and everyone gets as much as possible which is his share.

In the two decisions Number 151/Pid.B/2019/PN.LBo and Number 7/Pid.B/2020/PN.LBo when prioritizing the element of "justice" the judge may not discriminate between the plaintiff and the defendant. In essence, so as not to issue arbitrary policies, the fulfillment of one of the elements of these three values, especially justice cannot be carried out simultaneously, partly because there are differences in portions, justice is also often at odds with the law, even though the law is formed with justice, there are still gaps in inequality. justice in it, this is usually done in order to provide legal certainty and benefit.

And in the two decisions Number 151/Pid.B/2019/PN.LBo and Number 7/Pid.B/2020/PN.LBo for the writer the judge did not reflect justice because the sentence given by the defendant was too light and not in accordance with the provisions of the Criminal Code, Because in this case it was not an ordinary crime of embezzlement but embezzlement with a position, so the sentence given should be logical with the provisions of the Criminal Code, a maximum of 5 years in prison. And the implication of embezzlement in office is to provide an application that is quite logical and in terms of legal certainty, benefits and justice for the two decisions.

4. Conclusion

In a comparative analysis of Court Decisions Number 151/Pid.B/2019/PN.LBo and Number 7/Pid.B/2020/PN.LBo legally there are similarities in the crime of embezzlement in the same position, namely in Article 374 of the Criminal Code but

the criminal sanctions given by the defendants, namely a sentence of 4 months and 6 months and 10 days, the writer is not satisfied with the sentence given by the panel of judges to the defendant, especially in Decision Number 151/Pid.B/2020/PN.Lbo which is basically given very much relief low due to being 8 months pregnant, with this matter in accordance with government regulation No. 32 of 1999 in Article 20 a pregnant female convict cannot make the convict delay her detention period and the judge's considerations in imposing sanctions and imposing sanctions on these two cases of embezzlement are seen from the polite behavior of the defendant and others, by imposing sanctions that are too low for each defendant it is not certain that there will be remorse for the defendant and the author's opinion that the defendant behaved politely in court cannot be a concrete basis that the defendant truly respects the court or is simply an act to obtain leniency. by imposing sanctions that are too low for each defendant it is not certain that there will be remorse for the defendant and the author's opinion that the defendant behaved politely in court cannot be a concrete basis that the defendant truly respects the court or is simply an act to obtain leniency.

The implications of embezzlement in office by using three values, namely Legal Certainty, Benefit, and Justice.

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