

## Relationship Of The Crime Of Embezzlement Of Inheritance Rights In The Family Environment

Andre Sutjahja<sup>1</sup>, Subekti<sup>2\*</sup>, Suhartoyo<sup>3</sup>  
Universitas Dr Soetomo, Indonesia<sup>1,2,3</sup>

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Corresponding Author:

Author Name : Subekti

[subekti@unitomo.ac.id](mailto:subekti@unitomo.ac.id)

**Abstract:** *The crime of embezzlement is a criminal act against human property as regulated in the Criminal Code (KUHP). Embezzlement can occur at all levels of society, from lower to upper classes, and often stems from trust that is later broken due to dishonesty. Even within families, a lack of mutual trust can lead to such crimes. This research examines the criminal responsibility of family members who embezzle inherited property. The study uses a normative juridical approach, analyzing secondary legal sources such as laws, books, and encyclopedias. The findings reveal that embezzlement of inherited assets involves unlawfully controlling property or rights that should be distributed among heirs. Inheritance consists of assets left by a deceased person (the heir) for their family (heirs) and must be divided according to legal provisions. Article 367 of the KUHP categorizes theft within a family as embezzlement when committed by a family member. Meanwhile, Article 376 states that embezzlement within a family is a complaint offense, meaning prosecution can only proceed if the victim files a report. If the report is withdrawn, legal proceedings are halted. Thus, family embezzlement cases often depend on the victim's decision to pursue legal action.*

**Keywords:** *Embezzlement in the Family, Complaint Offenses and Family Settlement*

## INTRODUCTION

Embezzlement of inheritance is a form of crime that has been regulated in Indonesian criminal law. This crime occurs when a person who is supposed to divide the inheritance fairly misuses or hides a certain part of the property for personal gain. In many cases, these acts of embezzlement are carried out secretly, even without the knowledge of the other heirs, thus causing injustice in the distribution of inheritance. Inheritance itself is a collection of rights and obligations left by the heir to his heirs, including valuable assets in the form of property, money, and other valuables. Therefore, embezzlement of inheritance is not only a violation of the law, but also disrupts the stability of family relationships and hurts the sense of justice that every individual in the family should uphold.<sup>1</sup>

<sup>1</sup> Faturrahman, N., & Kasmarani, Y. (2022). Perlindungan Hukum Dan Pencegahan Tindak Kekerasan Terhadap Anak Angkat Dalam Hubungan Keluarga. *Ta'zir: Jurnal Hukum Pidana*, 6(1), 24-37.

In Indonesian criminal law, embezzlement of inheritance is included in the category of embezzlement as regulated in Articles 372 to 376 of the Criminal Code (KUHP).<sup>2</sup> These articles contain two main elements, namely the subjective element and the objective element. The subjective element includes the intention or will of the perpetrator in embezzlement, which is often driven by the desire to gain personal gain by ignoring the rights of other heirs. Meanwhile, the objective element refers to the physical act of the criminal act, such as hiding or taking inheritance rights without the consent of other heirs. Thus, a person who is proven to meet these elements can be subject to criminal sanctions according to the provisions of the applicable law, either in the form of imprisonment or fines, depending on the severity of his actions.

In the Indonesian legal system, inheritance consists of two types, namely movable and immovable objects. Movable objects include cash, vehicles, or jewelry, while immovable objects include land and buildings.<sup>3</sup> The distribution of inheritance must be carried out fairly based on the applicable inheritance law, both civil law and Islamic law. However, in practice, there is often abuse or embezzlement committed by one of the heirs who has more access to the estate, especially if he or she is entrusted to manage the estate. Another factor that often triggers the embezzlement of inheritance is the lack of transparency in the management of family assets and the imbalance of information between one heir and another.<sup>4</sup>

Embezzlement in the family environment is a special concern in the criminal law, as regulated in Article 376 of the Criminal Code. This article stipulates that the criminal act of embezzlement committed by family members against other family members is a complaint offense. This means that legal action can only be taken if the victim or the aggrieved heirs report the incident to the authorities. In this context, the law provides an opportunity for families to resolve problems internally before bringing the case to the legal realm. However, in many cases, family settlement efforts often reach an impasse, especially if the embezzlement party refuses to take responsibility or instead tries to disguise their actions so that they cannot be legally proven.

In addition, Article 375 of the Criminal Code also states that embezzlement can be carried out by parties who have certain obligations to the property in question, such as guardians, curators, administrators, or executors of the will.<sup>5</sup> This shows that the crime of embezzlement of inheritance is not only committed by fellow heirs, but also by parties who are given the responsibility to manage or maintain the property. Abuse of authority in heritage management often leads to lengthy legal conflicts between the parties involved. Moreover, if the contested inheritance has a very high economic value, the potential for disputes that occur can be even greater, even to the point of causing divisions in the family.

<sup>2</sup> Putra, C. H., Asikin, Z., & Djumardin, D. (2024). Perjanjian Kerjasama Pengelolaan Villa (Studi Putusan Mahkamah Agung Nomor 42/Pk/Pdt/2021). *Jurnal Education And Development*, 12(1), 378-385.

<sup>3</sup> Nawangsari, A. D. (2021). Perspektif Hukum Akad Rahn Tanah Dengan Jaminan Hak Tanggungan Di Pt Pegadaian Syariah. *Jurnal Ilmiah Mahasiswa Hukum [Jimhum]*, 1(4).

<sup>4</sup> Prayuti, Y., Gunawan, G., Anggraeni, H. Y., Herlina, E., Rasmiaty, M., Kurniasih, I., ... & Sugiarto, R. D. (2024). *Menjawab Kompleksitas Hukum Di Tengah Masyarakat Waris, Perlindungan Konsumen, Dan Perjanjian*. Penerbit Widina.

<sup>5</sup> Togatorop, D., & Wulan, E. R. (2024). Limitation Of The Crime Of Embezzlement Of Foundation Financial Management. *Jurnal Hukum Sehasen*, 10(1), 83-96.

However, even though embezzlement in the family is a complaint offense, it does not mean that the law cannot provide protection to victims. In cases where embezzlement occurs that harms a person's inheritance, the victim can file a report with the police or file a civil lawsuit to claim his or her rights. If it is proven that there is an element of intentionality in the act of embezzlement, the perpetrator can be sentenced in accordance with the applicable provisions of the Criminal Code. Therefore, understanding the legal mechanism in resolving inheritance disputes is very important for every citizen. A clear legal process can be an effective means of avoiding injustice and ensuring that the rights of heirs are protected.

Settlement of cases of embezzlement of inheritance can be done through legal channels or family mediation. In many cases, mediation efforts are often chosen to avoid prolonged conflicts that can damage family relationships. However, if mediation does not yield results, legal channels are the last option to ensure that inheritance rights can be enforced. Therefore, it is important for heirs to have a good understanding of inheritance law in order to avoid embezzlement or abuse of inheritance rights. Education on legal procedures and consultation with legal experts can help in preventing errors in inheritance management.

With the existence of regulations that regulate the crime of embezzlement of inheritance rights in the family environment, it is hoped that the community can better understand their rights and obligations in the distribution of inheritance. Strict law enforcement against cases of inheritance embezzlement is also an important step in ensuring justice and order in the distribution of inheritance rights. In addition, awareness of the importance of transparency in heritage management can help prevent similar cases from happening in the future. Thus, justice in the distribution of inheritance can be realized in accordance with the legal principles applicable in Indonesia, as well as prevent families from prolonged conflicts that can permanently damage family relationships

## METHOD

The method used uses normative juridical research which is the content of legislation, literature materials, scientific articles or books. The result of this study is that embezzlement of property abuses their right to control an object and rights that should not be passed through from the right as a person is given the trust to own the object not because of a crime.

## DISCUSSION

In the event that the crime of inflating is committed in the family environment, the offense of inflating is a complaint offense. So even if there is a complaint to the police and the victim withdraws, the prosecution process will be stopped because of the withdrawal. This is in accordance with the purpose of criminal procedure law to seek restorative justice, namely true justice regarding who exactly the perpetrators of crimes must be tried and prosecuted.<sup>6</sup> And in the event that the complaint has been filed, then the victim who is still part of the heir's family wishes to withdraw his complaint (in the case of the victim including the family as referred to in article 367 of the Criminal Code), then the complaint can be withdrawn/withdrawn within a period of 3 (three) months after the submission of the complaint. see article

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<sup>6</sup> Nasution, N. P. A., Hamdani, F., & Fauzia, A. (2022). The Concept Of Restorative Justice In Handling Crimes In The Criminal Justice System. *European Journal Of Law And Political Science*, 1(5), 32-41.

75 of the Criminal Code). In embezzlement offenses, the act of mastery is not the result of the offense, it is not the main characteristic.<sup>7</sup> This element is what distinguishes it from the crime of theft. As we know, property can be controlled by a person, it cannot be prosecuted criminally. Possession of property by a person can arise due to lease agreements, sale and purchase agreements, loans, and others. If an object is in someone's possession not because of a criminal act, but because of a lawful act, then the person who is responsible for the storage, and so on, unlawfully takes possession of the object for his own benefit, then no one commits embezzlement. The act of control is not only limited to the unlawful possession of a real object, therefore it can be said to be embezzlement, it can also be said to be misappropriation, namely the act of unlawful control of objects that are not his right. directly controlled by the person.<sup>8</sup>

The revocation of the police report/report will end the prosecution of embezzlement if it is carried out in the family environment. Embezzlement comes from the Dutch word meaning "verduistering". Verduister, which actually means "embezzlement", has a very broad meaning in Dutch society, but it is interpreted as a word that means something that is neither light nor dark. However, it is interpreted that a perpetrator abuses his right to control (own) an object, a right that cannot be obtained from the right of a person who is not given the right to control the object on the basis of a criminal act has become... The KBBI Dictionary defines embezzlement as the process and way of unlawful confiscation of property.

According to R. Soesilo, embezzlement is a criminal act that is almost the same as theft in the sense of article 362 of the Criminal Code. The difference lies in the theft of goods that are not in the hands of the thief and should still be taken, while the difference in embezzlement is that the perpetrator has taken possession of goods that do not belong to him and this is not a criminal offense.<sup>9</sup> The crime of embezzlement is part of all articles that regulate embezzlement in articles 372 to 376 of the Criminal Code.<sup>10</sup> There are two groups of elements, namely subjective elements and objective elements. The criminal threat of embezzlement is anchored in the Criminal Code, in the main form or also called ordinary embezzlement, which is a criminal act that is equated with theft, regulated in article 372 of the Criminal Code "whoever deliberately controls an item that is the whole or part of it". He gives some of it to another person and the goods are in his hands without it being a criminal offense, then he will be convicted of embezzlement with a maximum prison sentence of four years or a maximum fine of 900 lire.

There is also embezzlement in the family in article 376 "the provisions in article 376 of the Criminal Code apply to the crimes described in this chapter". Types

1. If the husband himself commits the act or helps another person to rob his wife's property or vice versa, the husband and wife do not have separate property and do not separate in bed, then the perpetrator cannot be prosecuted.

<sup>7</sup> Adriansyah, I. R. (2023). *Penghentian Penyidikan Atas Perbuatan Yang Diduga Merupakan Tindak Pidana Penipuan Dan Penggelapan Dihubungkan Dengan Kuhp* (Doctoral Dissertation, Fakultas Hukum Universitas Pasundan).

<sup>8</sup> Syarifuddin, H. M., & Sh, M. H. (2020). *Prinsip Keadilan Dalam Mengadili Perkara Tindak Pidana Korupsi: Implementasi Perma Nomor 1 Tahun 2020*. Prenada Media.

<sup>9</sup> Lintjewas, C. F. (2022). *Delik Pencurian Yang Dikualifikasi (Diperberat) Dalam Pasal 363 Dan Pasal 365 Kuhp Sebagai Kejahatan Terhadap Harta Kekayaan. Lex Crimen, 11(2)*.

<sup>10</sup> Daulay, F. S. (2025). *Perlindungan Hukum Hak-Hak Tersangka Dalam Proses Penyidikan Tindak Pidana Penggelapan Sepeda Motor (Studi Penelitian Di Kepolisian Sektor Patumbak)* (Doctoral Dissertation).

- a. If the husband himself commits embezzlement or helps others steal his wife's property, or vice versa, while both have separate or inseparable property due to marriage, if the person who commits the embezzlement is a blood relative or relative, either directly or indirectly, or laterally, criminal action can be taken against them only if there is a complaint from the aggrieved party.

Inheritance is one of the civil laws in civil law. Anyone who deliberately takes advantage of the inheritance rights of another person can be prosecuted and tried in a civil court regulated based on the provisions of article 830 of the Civil Code, which reads "what happens is only inheritance". because of death." In this case, after death, the transfer of all rights, obligations and inheritance passes to the heirs.

Embezzlement of inheritance carried out by biological children is prosecuted because it is an irregularity in the family, there is no prosecution against the perpetrator, and the perpetrator is still prosecuted even though he participates in the prosecution.<sup>11</sup> This is in accordance with the provisions of article 372 of the Criminal Code which reads: "Whoever deliberately or unlawfully takes all or part of the property of another person and is in his possession, even if he does not control it." a criminal. The "act" is threatened with a maximum prison sentence of 4 (four years).

There is also an element of embezzlement that arises from the objective act of controlling an object, such as someone else's property, because the act is not a criminal act and the subjective element is evil and against the law.<sup>12</sup> Charges are imposed against a person who, due to his position as a guardian, curator, administrator of a will, or administrator of a social institution, is obliged to maintain and utilize property. And the biological mother gets half of her husband's property. According to Article 832 of the Civil Code: According to the law, blood families, both legal and illegitimate, as well as the husband or wife who has lived the longest, have the right to become heirs. Unlawful acts, one of which is tangible, is land, but in the form of deprivation of the rights of heirs, including unlawful acts that are subjective and directed at others and therefore cause losses, thus depriving them of rights by occupying or similar, secret use of inherited land, clandestine transfer, or mortgage debt obligations as referred to in Article 1.365 of the Civil Code are understood as mortgages.

Embezzlement of property is included in civil discipline related to the unlawful use of rights or land, in accordance with article 1.365 of the Civil Code. The punishment given to a person who misuses inheritance in Islam is explained by the punishment in verse 10 of Surah An-Nisa. According to the heirs who feel that their rights have been violated, their land was sold without their knowledge and also have the right to file a civil lawsuit for unlawful acts regulated in article 1.365 of the Criminal Code which reads as follows. : "Any act that violates the law and causes harm to another person, obliges the person who caused the harm because of his fault to make amends for that loss.

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<sup>11</sup> Erlina, B., Ramadan, S., & Saputra, R. (2023). Analisis Pertimbangan Hakim Dalam Sengketa Perbuatan Mengalihkan, Menjaminkan Secara Sepihak Harta Warisan (Studi Putusan Nomor: 27/Pdt. G/2022/Pn. Tjk). *Pagaruyuang Law Journal*, 7(1), 63-88.

<sup>12</sup> Amaliah, S. N., Simanungkalit, D. A. L., Permana, F. R., & Tarina, D. D. Y. (2023). Analisis Yuridis Terhadap Kasus Penyalahgunaan Dana Yayasan Pembina Universitas Muria Kudus. *Jurnal Ekonomi, Sosial & Humaniora*, 5(02), 13-20.

But if it is too late or the price has to be paid after the deadline, then the seller must return it and also compensate the other heirs who suffer. If it is not paid, it becomes a debt and a sin that leads to death.

Acts that include embezzlement are regulated in Article 372 of the old Criminal Code, which is still valid on the date of issuance of this article, and based on Article 486 of Law 1/2023 of the new Criminal Code, which is valid for three years from the date of issuance of this article. date. the call, which is 2026, as at:

Article 372 of the Criminal Code	Article 486 of Law 1/2023
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. <sup>13</sup>	Every Person who unlawfully possesses an Item that is partially or wholly owned by another person, which is in his power not due to a Criminal Act, is convicted of embezzlement, with a maximum prison sentence of 4 years or a maximum fine of category IV, which is Rp 200 million. <sup>14</sup>

According to P.A.F. Lamintang in his book "Special Crimes Against Property" states that the crime of embezzlement regulated in Article 372 of the Criminal Code contains the following criminal elements (p. 105):

- A. The subjective element is intentionality
- B. Objective elements:
  - illegal control;
  - an object;
  - be partially or wholly owned by another person; AND
  - Being with him has nothing to do with evil.
  - Don't stay with him because of crime.

This act of embezzlement is also illustrated by R. Soesilo in his book Criminal Code and his commentary which is complete article by article (p. 258), for example, A borrows B's bicycle and then resells it without permission from B or A (Treasurer) maintains the state of the money in its circulation and then uses the money for his own needs.

R. Soesilo (p.258) adds that sometimes it is very difficult to distinguish between theft and embezzlement, for example A finds money on the street and takes it. If at the time of withdrawal there is an intention to have money, then the incident is considered theft. If at the time of receiving A he thinks: "I will give the money to the police" and actually hands it over, then A has not committed any crime, but if before arriving at the police station he already has the intention to get money. money and spend it, then commit embezzlement..<sup>15</sup>

<sup>13</sup> P.A.F. Lamintang. Dasar-Dasar Hukum Pidana Indonesia. Bandung: Pt. Citra Aditya Bakti, 1997;

<sup>14</sup> P.A.F. Lamintang. Delik-Delik Khusus Kejahatan-Kejahatan Terhadap Harta Kekayaan. Bandung: Sinar Baru, 2009;

<sup>15</sup> Ibid



Based on Article 486 of Law 1/2023, in the crime of embezzlement, the property in question is actually in the possession of the perpetrator.<sup>16</sup> In contrast to robbery where the goods are not yet in the hands of robbers. If there is an intention to possess property illegally, it also determines the difference between embezzlement and theft. If at the time of taking the goods there was already an intention to take over, then the act was included in the crime of theft. However, in the case of embezzlement, the intention to take only arises if the object in question remains in the hands of the perpetrator for a certain period of time. Another aspect of embezzlement is that the perpetrator possesses property that he does not want as a result of his crime, such as goods controlled by the perpetrator, as collateral for a loan and then sells the loan without the owner's consent.

Deviation committed by a family if the perpetrator of the deviation is the older brother or sister of the mother or father. Based on Article 376 of the Criminal Code and Article 490 of Law 1/2023, it should be noted that the provisions of Article 367 of the Criminal Code and Article 481 of Law 1/2023 apply to criminal acts regulated in the embezzlement Chapter.

For this reason, it is necessary to describe the formulation in Article 367 paragraph (2) of the Criminal Code and Article 481 paragraph (2) of Law 1/2023 which reads as follows:

Article 367 paragraph (2) of the Criminal Code	Article 481 paragraph (2) of Law 1/2023
If he (the maker or helper of any of the crimes in this chapter) is a husband (wife) who is separated by table and bed or separated by property, or if he is a blood or blood relative, in either a straight line or a deviant line of the second degree, then prosecution may be brought against that person only if there is a complaint of the crime	Criminal prosecution can only be carried out on the complaint of the Victim if the perpetrator as intended in paragraph (1) is the husband or wife of the Victim of the Crime who is separated from the table and bed or separated from the Property, or is a blood or blood family either in a straight line or in a sideways line up to the second degree.

R. Soesilo also said in the same book (p. 256) that if the perpetrator of the embezzlement or the one who supported it was a relative mentioned in the second paragraph of this article, then the perpetrator of the criminal act could only be prosecuted on the basis of. 'Complaint of one of the parties, the owner of the goods (infringement claim).

PAF Lamintang in his book Indonesian Criminal Law (pp. 217-218) states as follows: Reporting a criminal act is a criminal act that can only be prosecuted if there is a complaint from the aggrieved party. In addition, common law criminal acts are criminal acts that can be prosecuted for free. It's a family affair, although the mother's older brother can be prosecuted for embezzlement under article 372 of the Criminal Code or article

<sup>16</sup> Karina, I., & Sinaga, M. (2023). Pemidanaan Terhadap Residivis Penggelapan Mobil Rental. *Jurnal Justia*, 5(2), 15-28.

486 of Law 1/2023 if the mother claims ownership of money. However, we recommend that you first resolve the matter peacefully, as criminal proceedings should only be carried out as a last resort. (last option) when all such efforts have been made.

Misuse of property is a violation of your right to control the goods and rights that should not be granted to the rights of the person entrusted with the goods.<sup>17</sup> It is not because of a crime There is also an element of embezzlement inherent in the text of the law on embezzlement control, Articles 372 to 376 of the Criminal Code. It is divided into 2 groups, namely the subjective element and the objective element. So, you have a structured human process for determining the land. Land is included in inheritance and is part of inheritance. Receiving inheritance according to civil inheritance law The joint owner has rights and obligations as heirs. For example, if someone wants to sell inherited land that belongs to them, then it must be done with the consent of their spouse. If it is sold without the consent of the spouse, it is considered null and void according to the law. as it should be, the division of marital inheritance must be done through a process. Inheritance law Not only one side Inheritance law creates rules that govern the process of inheriting or bequeathing property to posterity. Civil inheritance law establishes four reasons why a person can lose inheritance:

The heirs can lose their inheritance rights if they are proven to have committed certain actions that are contrary to the law. For example, if an heir is convicted of murder or attempted murder against the heir, then he or she is not entitled to receive an inheritance. In addition, heirs who are found guilty of defamation and complain to the heirs of a criminal offense that is threatened with a penalty of four years or more can also lose their inheritance rights.<sup>18</sup> Similarly, the use of force to prevent the heir from writing or canceling his or her will can be an excuse for the heir not to acquire his or her rights. Not only that, heirs who embezzle, damage, or forge wills can also be subject to sanctions that result in loss of inheritance rights. However, inheritance in civil law includes not only property, but also rights and obligations, including obligations to credit. Meanwhile, in Islamic law, inheritance consists of property donated by the heir as well as left joint property, which in its use, such as the sale of inherited land, must have the consent of the spouse or other heirs.<sup>19</sup>

## CONCLUSIONS

The country's criminal law provides legal protection against embezzlement cases due to inheritance disputes by providing the possibility for the aggrieved party to report the incident to the police. Embezzlement of inheritance in the family often occurs when one party uses or controls the property without the knowledge of the other family members, such as father, mother, child, brother, or sister. From a civil law perspective, this kind of dispute can actually be resolved in a familial manner, especially if there is good faith on the part of the disputing party to reach a fair agreement for all parties. However, if this embezzlement involves

<sup>17</sup> Ramires, M. F., & Lyanthi, M. E. (2024). Analisis Yuridis Terkait Pidana Penggelapan Sertifikat Hak Milik: Studi Putusan Nomor 253/Pdt. G/2020/Pn Byw Dalam Kasus Perumahan Garuda Regency Banyuwangi. *Bureaucracy Journal: Indonesia Journal Of Law And Social-Political Governance*, 4(3), 2716-2729.

<sup>18</sup> Syailendra, M. R., Aulia, D., & Purba, N. D. (2023). Penggelapan Harta Waris Menurut Peraturan Perundangan Di Indonesia (Studi Kasus: 1264/Pdt. G/2020/Pa. Pra). *Unes Law Review*, 5(4), 1735-1743.

<sup>19</sup> Ibid



an element of intentionality and there is no internal resolution, then this case can be categorized as a criminal act of embezzlement based on the complaint complaint. This means that the legal process can only run if there is a report from the aggrieved party. Uniquely, in the context of criminal law, complaints that have been filed can be withdrawn if the parties choose to resolve the problem familially. Thus, the legal mechanism provides space for families to consider the best steps in resolving inheritance disputes, both through legal channels and a more harmonious family approach.

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