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# The Sculling Crime in Work Relationship over Plantation Service, Sago Drugging Case Study

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The judicial process will be ends with a final decision (verdict). Here, the imposition or release of criminal sanctions (punishment), in the judgment has been considered over verdict. Before arriving at this stage, there are steps that must be carried out beforehand, namely the stage of proof in imposing a crime against the defendant. In imposing a crime, the judge must have analyse based on two valid evidence with the two pieces of evidence also judge is convinced that the criminal act charged has actually occurred and it was the defendant who committed it. This is regulated in Article 183 KUHAP. Thus, the purpose of this study to examine and analyse the authority of the prosecutor over judges panel in imposing a sentence on the defendant. In this study, the proposed method to examine and analyse the strength of the items or evidence were obtained through the expert witnesses and field witnesses. Here, we analyse empirical juridical legal studies are examines the applicable legal provisions and a society reality condition. In this study, the processing data was used qualitative methods with draws conclusions using legal logic. The result shows the judges' considerations and decisions are sometimes different from the demands of the public prosecutor. In addition, the evidence and considerations used by the panel of judges also differ from the evidence received from expert witnesses, field witnesses, letters and instructions from investigators. However, the judges have a strength evidence to determine authority by obtain relationship.

**Keywords:** Authority, Attorney, Panel of Judges, Investigation, The Crime of Embezzlement.

## 1. INTRODUCTION

As a country located in the tropical region, with the huge carbohydrate-producing plants. In general, carbohydrates are obtained from grains such as rice, wheat, corn, and the like, from tubers such as cassava, sweet potato, taro and others, as well as in plants that store carbohydrates or starch in sago stalks [1, 2, 3]. Carbohydrates that come from whole grains can also be processed into starch before consumption. Here, indonesia is a country that has been blessed by God with a wealth of natural resources that support the lives of its people, ranging from maritime wealth to unstoppable forest wealth. The only problem that arises is in managing the resources of this wealth so that it becomes something useful [4, 5]. One of Indonesia's significant forest assets is sago palm (Metroxylon). Here, sago is the grain or flour obtained from the terraces of the sago palm or thatch trees (Metroxlon sago Rottb). The largest land distribution for sago trees in Indonesia is found in several areas, namely -

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Papua, Maluku, Riau, Central Sulawesi and Kalimantan [6, 7, 8]. The potential of sago in the land of Papua is one of the food crop commodities that can be used as a potential source of carbohydrates in Indonesia. However, Sago enthusiasts are still limited and decreasing. Sago flour has physical characteristics similar to tapioca flour. In cooking recipes, sago flour which is relatively difficult to obtain is often replaced with tapioca, even though the two are actually different. Sago is a staple food for people in Maluku and Papua who live on the coast. Sago is eaten in the form of papeda, a kind of porridge, or in other forms [9, 10, 11].

Meranti is one of the National Food Security Development Areas because it is the largest producer of sago in Indonesia. In addition, there are coconut, rubber, coffee, areca nut and fisheries. The area of sago plants in the Meranti Islands (44,657 Ha / 2006) is 2.98% of the national sago plant area. Sago plantations in Meranti have become the main source of income for nearly 20% of the people of Meranti. Sago or thatch is included in the type

of tropical palme plants that produce starch in the stem (steam). A stick of sago palm ready for harvest can produce 180 - 400 kg of dry sago flour. Mature sago palms or harvest ripe (ready for harvest) aged 8 to 12 years or as high as 5-12 meters. Production of sago (Sago Flour) in the Meranti Islands per year reached 440,339 tons (2006). The annual productivity of sago palms (existing conditions) in producing sago starch in the Meranti Islands reaches 9.89 tonnes / ha [12, 13, 14]. In 2006 in the Meranti Islands over 440,000 tonnes of sago starch was produced from sago processing plants (sago refineries). It is estimated that there are 50 sago refineries using semi-mechanical technology and still using sunlight for drying (drying). There are two sago refineries that have operated and processed modern sago with a design capacity of 6,000 and 10,000 tons of dry sago starch per year. In addition, the waste from processing sago tual in the form of sago stem bark (uyung), can be developed into bio-energy as a substitute for kerosene or made pellets as a mixing material for coal fuel for export to Europe which Finish investors are starting to find out.

Thus, this study will analyze the embezzlement of sago tual, in this case that occurred from August 15, 2009 to February 22, 2010 or at least at some time from 2009 to 2010, located in Sungai Makam Desa Tanjung, Tebing Tinggi District. According to article 372 of the Criminal Code, the criminal act of embezzlement is anyone who deliberately and unlawfully owns property wholly or partly belonging to another person and who have a crime especially in Indonesia [15, 16]. Here, the threatened with embezzlement with a maximum imprisonment of four years or a maximum fine of nine hundred rupiahs [17]. Here, Meranti or at least in a place that is still included in the jurisdiction of the Bengkalis District Court which has the right to examine and adjudicate this case, deliberately and against the law possesses something that is wholly or partly owned by other people. Here, the under their control not because a crime, which is committed by a person whose possession of goods is due to a work relationship. The Defendant to harvest 42 (forty two) lanes /  $\pm$  12 hectares (approximately twelve hectares) of Sago Plantation located in Sungai Makam, Tanjung Village, Tebing Tinggi District, Meranti Islands Regency [18, 19, 20]. The duties of the Defendant including:

- a) Laborers to harvest / cut sago trees;
- b) Counting the tual of sago that has been harvested;
- c) Delivering sago that has been cut down to the sago factory
- d) Oversee the logging process until it reaches the sago refinery;
- e) Reported the sago plantation harvest
- f) The Defendant received a wage from Witness Hendi Dharma Als Abun of Rp.5,500 (five thousand five hundred thousand rupiah) for each tual;
- g) Then the Defendant started work by appointing Witness Ayam Als Asau as the head of the laborer who cut sago tual with a wage of Rp. 5,000 (five thousand

rupiah) for each tual in the garden of Witness Hendi Dharma Als Abun until 7600 (seven thousand six hundred) were collected. tual, after the job is finished Witness Ayam Als Asau receives a wage of Rp. 38,000,000 (thirty-eight million rupiah) with details of Rp. 5,000 x 7600 tual;

- h) On January 15, 2010, the Defendant reported to Witness Hendi Dharma Als Abun that the sago tual harvest had been completed with the yield of 5035 (five thousand and thirty-five) tuals, whereas the sago tuals harvested were 7600 (seven thousand six hundred) tuals, and;
- i) The defendant's actions, Witness Hendi Dharma Als Abun suffered a loss of  $\pm$  100,000,000, - (one hundred million rupiah);

Furthermore, the defendant's actions are regulated and punishable under Article 374 of the Criminal Code with prosecutor has complete evidence. Here, a criminal decision no 659 of 2015 stated that the defendant does not legally and convincingly proven guilty of committing a criminal act. The evidence that has been collected is ignored and the decision is only based on the Judge's conviction.

## 2. METHODOLOGY

In this study, we proposed several methods to achieve a goal by searching, taking notes, formulating, and analyzing to compile a report. The term methodology comes from the word method which means the way, however, according to custom the method is formulated with the possibilities of a type used in research and assessment.

So, the data or information collected in research must be relevant to the problems at hand. This means that the data is related, recognizable and accurate. Here, a very unique thing done by researchers in conducting research. Furthermore, a scientific research can be trusted if it is prepared using appropriate methods. In this thesis research, the research method used is the normative juridical research method, intended to conduct an assessment of criminal law and the application of crime as a means of criminal law policy, in the context of the development and renewal of Indonesian criminal law. Based on the results of the criminal verdict no 659 of 2015 stated that the defendant was not legally and convincingly proven guilty of committing a criminal offense as regulated and threatened with punishment in Article 374 of the Criminal Code [21, 22]. The prosecutor has complete evidence, but the evidence that has been collected is ignored and the decision is only based on the judge's conviction. Thus, in this study we collecting research data and comparing it with predetermined standard sizes. In this case we use several appropriate research tools in order to obtain maximum results, as follows:

#### A. Types of research

The type of research in this research is juridical empirical which in other words is a type of sociological legal research and can also be called field research, which examines the applicable legal provisions and what happens in reality in society. Or in other words, namely a research conducted on the actual situation or real conditions that occur in society with the intention of knowing and finding the facts and data needed, after the required data is collected then it leads to problem identification which ultimately leads to problem solving [23, 24]. This study is included in empirical research, because it wants to know the form of legal consideration of the case of embezzlement of sago at the plantation service and the criminal decision of embezzlement in work relations in the case study of criminal verdict.

#### B. Research Approach

The approach method is used in this study to identify and conceptualize law as real and functional social institutions in real life systems. The sociological juridical approach is to emphasize research aimed at gaining empirical legal knowledge by going directly to the object, namely knowing the legal considerations of the case of embezzlement of sago at the plantation service and the decision of embezzlement in work relations in the case study of criminal verdict No. 659 [25, 26]. The statute approach is carried out by examining all regulations or statutory regulations related to the legal issue to be studied, namely research on the norms contained in cases of embezzlement in work relations.

#### C. Research sites

The preparation of this thesis will be preceded by an initial research. The author conducts initial research in the form of data collection that supports the problem under study. Furthermore, the authors in this study conducted research at the Bengkalis District Court which handled the Crime of Embezzlement of Tual Sago Rumbia and the author also conducted research on witnesses and scientific reports on Sago from expert witnesses from the Department of Animal Husbandry and Food Security and Inspection Report (BAP) in the case of the crime of embezzlement of tual sago [27, 28].

#### D. Types and Sources of Data

The data obtained that will be used by the author in this study such as Primary data, namely data obtained directly from the source regarding the issues that are the subject of discussion, through interviews with sources who are considered to have relevance and competence with existing problems while a secondary data, namely data obtained indirectly from the field, in the form of a number of information obtained from documents, case files, literature books, magazines, archives, books from

previous research and legal regulations related to the problem under study.

Furthermore, the primary legal materials used in this research are legal materials consisting of binding laws and regulations, including the Criminal Code (KUHPidana), the Criminal Procedure Code (KUHP) and Court Decisions. Negeri Bengkalis, which includes matters relating to the handling of the crime of embezzlement of Tual Sago [29, 30, 31]. The secondary Legal Materials, namely legal materials that provide explanations for primary legal materials, namely the work of legal experts in the form of books, research results, notes, documentation of studies, and other references related to the problem under study Tertiary legal materials from this research are legal materials that provide instructions or explanations for primary and secondary legal materials, namely the legal dictionary and the Indonesian dictionary.

#### E. Data collection technique

To capture the data that will be needed as material for analysis in this study, data collection techniques will be used such as Documentation study interview and data analysis. Here, we use data collection technique by collecting and analyzing documents, both written documents, images and electronics, namely in the form of a number of information obtained from documents, case files, literature books, magazines, archives, books of previous research results and legal regulations related to the problem under study. The documents that have been obtained are then analyzed (parsed), compared and combined (synthesized) to form a systematic, coherent and complete study result while in Interview's process the form of questions and answers which were carried out directly to the respondent in this case were the witnesses and the Bengkalis District Court Judges who handled the case. Afterward all data collected, both primary data and secondary data, will be analyzed qualitatively, namely a description according to quality, which applies to the fact that primary data is associated with secondary data theories. The data are presented descriptively, namely by explaining and collecting the problems associated [32, 33].

### 3. RESULT AND DISCUSSION

Chronology of Decision Number: 659 / Pid.B / 2015 / PN.Bls In 2014, witness Suyanto Dharma harvested sago on a 12-ha land and received 9,000 tuals. The victim Hendi Dharma, through the history of sago cutting which was reported by the defendant Hee Eng, only received 5,000 tuals in 2009 and 4,000 tuals in 2012/100% difference compared to 2014. A suspicion arose so that witness Suyanto Dharma reported it to the Meranti Islands Police. Through the investigators' examination, the chicken witness was summoned, the witness Adi Putra, the witness Anen, it was known that the 2009

harvest was 7800 tual but through the records of the victim and the defendant only 5000 tual. Through expert witnesses it was also explained that the victim's sago garden was good, healthy, without pests, and harvesting sago could naturally get 9,000 tual and the yield of 4000 - 5000 tual was impossible because it was too little. Because it has been proven according to the investigators and the public prosecutor (JPU) that the defendant committed the crime of embezzlement, so the case was continued in the trial process at the Bengkalis District Court. The results of the trial of the defendant were acquitted and the testimony of the expert witnesses was ignored. So that at the Bengkalis District Court the defendant was acquitted, but the prosecutor made an appeal. The final status of the cassation, the panel of judges at the level of cassation strengthened the verdict of the Bengkalis District Court, so that the defendant was also acquitted, for the same reasons as the Bengkalis District Court, namely the defendant was selective cutting, witness Suyanto Dharma fell aground.

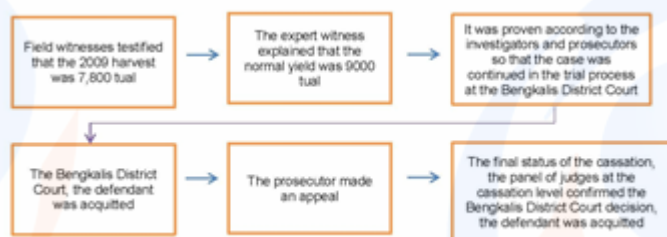


Figure 1. Case Report Process Mechanism Witness Suyanto Dharma

#### A. Legal Considerations by Judges Against Perpetrators of Embezzlement (Case Study of Decision 659 / Pid.B / 2015 / PN Bls) and Author Analysis

A judicial process ends with a final verdict (verdict) in which there is the imposition / release of criminal sanctions (punishment), and in that decision the judge expresses his opinion about what has been considered and what is the verdict. Before arriving at this stage, there are steps that must be carried out beforehand, namely the stage of proof in imposing a crime against the defendant. In imposing a crime, the judge must be based on two valid evidences, then the two pieces of evidence, the judge is convinced that the criminal act charged has actually occurred and it was the defendant who committed it. This is regulated in Article 183 KUHAP. Apart from that the judge needs to do is to be able to convict the perpetrator, indicating that the crime he committed fulfills the elements stipulated in the law. From the point of view of the occurrence of actions and the ability to be responsible, a person will be held accountable for his actions and deeds as well there is no reason to justify / forgive or negate the nature of being against the law for the crime he committed.

In the decision No: 659 / Pid.B / 2015 / PN Bls, the decision-making process carried out by the Panel of Judges according to the author is not in accordance with the applicable legal rules as described by the previous author, namely based on two valid evidence, where in the case In this case, the evidence used by the Judge is the testimony of the defendant, the witness of the accused whose competence is not tested at all and the conviction of the judge, while the witnesses presented by the public prosecutor, expert witnesses and evidence of scientific works resulting from field surveys from the Office of Animal Husbandry and Food Security are not. be considered. In this case the Panel of Judges based on the facts that arose in the trial was contrary to the facts on the ground, as in the judgment of the Panel of Judges, it was believed that the differences in sago harvest yields could be influenced by the procedures or techniques for harvesting / cutting sago trees, because the Defendant was harvesting sago trees. using selective cutting method / technique, namely selecting sago trees that are really ready to harvest which are cut / harvested, whereas if Suyanto Dharma, ST. Als Ahau harvested the sago trees by means of the aground cutting technique, namely sago trees that were still young which were not yet harvested were also harvested / harvested so that the number could be higher.

Assessing the procedure for the sago cutting technique that was presented by expert witnesses by the public prosecutor who had surveyed the field and concluded that the sago harvest produced by 7600 tual was reasonable while the 5035 harvests from the defendant was impossible because it was too little, if the Panel of Judges had confidence in making a verdict. is a method / technique of cutting sago, according to the author's opinion the Panel of Judges should question the field witnesses and expert witnesses regarding the method / technique of cutting sago or more perfect in addition to the field trial (Field Check) by the Panel of Judges and the Expert Witnesses explaining to convince the Panel of Judges. Regarding the reasons for termination of employment, we can refer to Law no. 13 of 2003 concerning manpower articles 161, 162, and 163 of Law no. 13/2003, which among others reads such as a worker or laborer violates the provisions stipulated in a work agreement, company regulation or collective working agreement, the entrepreneur can terminate the employment relationship after the worker or laborer has been given the first, second, and third warning letters in succession. Here, the warning letters referred to are each valid for a maximum of 6 (six) months, unless otherwise stipulated in the work agreement, company regulations, or collective working agreement. Workers or laborers who experience termination of employment for the reasons referred to receive severance pay amounting to 1 (one)

time, period of service pay for 1 (one) time, and compensation for rights. Furthermore, workers or laborers who resign on their own accord receive compensation for their rights. For workers or laborers who resign on their own accord, whose duties and functions do not directly represent the interests of the entrepreneur, apart from receiving compensation for rights, a large separation fee is given and its implementation is regulated in a work agreement, company regulations, or collective working agreement. Here, workers or laborers who are absent for 5 (five) working days or more consecutively without written information accompanied by legal evidence and have been summoned by the employer 2 (two) times properly and in writing may be terminated due to qualifying resignation. A written statement with valid evidence must be submitted no later than the first day the worker or laborer enters work.

The worker or laborer concerned has the right to receive compensation money and a large separation fee and its implementation is regulated in a work agreement, company regulations, or collective working agreement. Regarding the calculation of severance pay, it is regulated in Law no. 13 of 2003 concerning manpower article 156. However, the description cannot be shown here because it is too long. Before terminating a worker or laborer, you need to see whether the worker violates the provisions stipulated in the employment agreement, company regulations, or the collective labor agreement that you have agreed with the worker or laborer. Thus, workers or laborers who experience termination of employment for the reasons referred to receive severance pay amounting to 1 (one) time, period of service pay for 1 (one) time, and compensation for rights. So, there is no need to wait for a resignation letter from the worker. You can terminate your job by filing a lawsuit at the local Industrial Relations Court. However, it's a good idea to carry out deliberations with your workers by holding negotiations regarding severance pay, service awards, and replacement money. The provisions for termination of employment on the grounds that the worker / laborer committed a serious mistake are regulated in Article 158 paragraph (1) ("Manpower Law"). Among these are when workers commit fraud, theft or embezzlement of company property and / or money; provide false or falsified information so as to harm the company and various other actions. However, then there was a decision by the Constitutional Court ("MK") which canceled Article 158 of the Manpower Law, namely the Constitutional Court Decision Number 115 / PUU-VII / 2009 of 2009. Based on the MK decision, the Minister of Manpower and Transmigration issued a Circular of the Minister of Manpower and Transmigration No. SE-13 / MEN / SJ-HK / I / 2005 dated 7 January 2005 ("SE Minister of Manpower and Transmigration"). This Circular Letter of the Minister of Manpower and Transmigration affirms

that if an employer wants to do a layoff because a worker has committed a serious mistake, there must be a criminal judge's decision with permanent legal force first. Thus, the guilt must be proven first through the criminal justice mechanism. So, there will be no layoffs due to serious mistakes without a court decision having permanent legal force.

### *B. Judge Legal Considerations*

Considering, the defendant HEE ENG Als AING has been brought to trial with the charges: First (Combined / Mixed): Articles 372 and 374 of the Criminal Code or Second 378 KUHP contains the trial the Public Prosecutor has presented 6 (six) witnesses and 1 (one) expert witness, each of whose statements have been heard under path, namely public prosecutor demands embezzlement, in which a harvest dispute occurred between the defendant and the reporting witness. This has been proven by the results of research by expert witnesses and field witnesses. Meanwhile, what is called by the panel of judges that there has never been a reporting of loss is a criminal act of theft, not a criminal act of embezzlement. The Panel of Judges confuses / equates the crime of embezzlement with the crime of theft. Whereas what the public prosecutor is prosecuting is only the crime of embezzlement. Based on the above considerations, according to the opinion of the Panel of Judges, the Defendant was not legally and convincingly proven guilty of committing a crime as stated in the Second Public Prosecutor's indictment, and therefore the Defendant must be acquitted of the Second Public Prosecutor. Here, the Defendant was not legally and convincingly proven guilty of committing a criminal act as in the First Indictment Primair, Subsidair, and the Second Indictment the Public Prosecutor and the Defendant were acquitted of the First Primair, Subsidair, and Second indictments. The Public Prosecutor, the Pledoi (Defense) of the Legal Counsel for the Defendant, does not need to be considered again.

In this case the current status of the Defendant's detention was not detained, because due to the city detention period that the Defendant was serving had expired, the Panel of Judges no longer needed to order the Defendant to be released. Furthermore, the Defendant was not legally and convincingly proven guilty of committing a criminal act as in the First Indictment Primair, Subsidair, and the Second Indictment, the Public Prosecutor, and the Defendant was acquitted of the First Primair, Subsidair, and Second Public Prosecutor charges, the right -The right of the Defendant must be restored in terms of ability, position and dignity due to convincingly proven guilty of committing a criminal act as in the First Indictment Primair, Subsidair, and the Second Indictment, the Public Prosecutor, and the Defendant was acquitted of the First Indictment Primair, Subsidair, and the Second

Public Prosecutor's indictment, it is appropriate Article 222 Paragraph (1) of the Criminal Procedure Code, the cost of this case is borne by the State.

#### 4. CONCLUSION

The judges' judgments and decisions sometimes differed from the demands of the public prosecutor. The principle or principle of ultra vires in the verdict is that the judge must not exceed the request of the parties, only applies to civil cases, because the civil proceedings were born due to the Plaintiff's lawsuit, therefore the verdict must not exceed what is requested in the lawsuit and the answers of the parties. Whereas in a criminal case that was born because of a violation of the "public interest" in casu criminal law (KUHP), the limit on the size of the verdict was based on the MAXIMUM THREAT OF the provisions of the article being violated, NOT the prosecutor's demands.

The evidence and legal considerations used by the panel of judges may differ from the evidence received from expert witnesses, field witnesses, letters and instructions from investigators, but the power of evidence is still determined by the judge's authority by considering the relationship between the evidence. Thus, it is recommended that the public prosecutor and the panel of judges have the same view in determining the appropriate punishment for lawbreakers in order to create social justice in society. In considering the panel of judges, it is better if the evidence comes from expert witnesses who have knowledge in their fields as well as field witnesses whose competence has been tested.

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