

Deviation of Criminal Law Principles in Embezzlement of Joint Property Committed by Husband or Wife

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Abstract

This study aims to determine the deviation of criminal law principles in the embezzlement of joint assets committed by a husband or wife in marriage. Therefore, criminalization is an ideal policy formulation to overcome this deviation. This study uses normative legal research with a legislative approach that examines the Criminal Code, especially the crime of family embezzlement. In addition, a conceptual approach is also used to determine the deviation of criminal law principles so that efforts are obtained to overcome deviations from criminal law principles. This study concludes that there is a deviation of criminal law principles in the crime of embezzlement of joint assets committed by a husband or wife during marriage. This deviation is based on the inconsistency between the formulation of the crime which states that it cannot be prosecuted with the principle of criminal responsibility which regulates the reasons for eliminating the crime, namely the reason for forgiveness and the reason for justification. Furthermore, moral norms cannot prevent the prosecution of a criminal act, as long as there is a complaint from the victim as the concept of the complaint crime. Therefore, as a repressive effort in providing legal protection for victims, a formulation policy is needed by criminalizing embezzlement of joint assets committed by a husband or wife during marriage by eliminating the phrase "it is impossible to hold criminal charges".

Keywords: Deviation of Criminal Law Principles, Embezzlement of Joint Assets, Marriage.



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INTRODUCTION

Marriage is a physical and mental bond between husband and wife to form a lasting and happy family as stipulated in Article 1 of Law Number 1 of 1974 concerning Marriage, hereinafter referred to as the Marriage Law. In addition, marriage is also a legal event that has legal consequences for the relationship between husband and wife. One of the legal consequences is related to property in marriage where there is mixing of property (Mustaghfiroh & Melinda, 2022). Article 1 Letter (f) of the Compilation of Islamic Law hereinafter referred to as KHI states that marital property or hereinafter referred to as joint property (Syirkah) is property obtained during the marriage period either individually or jointly by husband and wife.

Property in marriage or commonly referred to as "gono-gini" property has different names (Mustaghfiroh & Melinda, 2022). The Minangkabau community, for example, calls it harta

suarang. In contrast to East Sumatra, the Pontianak community calls it the livelihood property. Meanwhile, the Balinese call the common property with the term Sasuhun Sarembat. The difference in these terms illustrates the cultural style and structure of the community. Where in customary law there are still 3 (three) customary arrangements related to the position of property in marriage, namely: patrilineal, matrilineal and parental (Felicia et al., 2023). In the patrilineal customary arrangement, the regulation of property in marriage does not recognize the separation of property and the wife is subject to the husband and the husband's kinship law so that the property is controlled by the husband. Meanwhile, in matrilineal and parental customary arrangements, the separation of property is recognized, which consists of inherited property obtained and controlled by each and joint property obtained and controlled jointly (Hadikusuma, 2014).

The use of joint property must obtain permission from each party, namely the husband or wife. This is regulated in Article 36 Paragraph (1) of the Marriage Law. The article regulates that a husband or wife can act regarding joint property based on the consent of the parties. Thus, when there is no consent from the parties, the husband or wife cannot act on the joint property. If a husband or wife acts in their own interests on joint property without the consent of the parties, it becomes a legal problem both civilly and criminally.

Research related to the legal issues of joint property is basically done with various perspectives or diverse objects. The following 4 (four) previous studies are specifically related to the topic of this research: first, research on deviations from inheritance law (Dul Jalil, 2022). Second, research on the deviation of the principle of good faith in a lease agreement (Christy, 2022). Third, research on the criminalization of embezzlement of *nikah siri* property (Mansari et al., 2023). Fourth, research on embezzlement of “*gono gini*” property after divorce (Ariani et al., 2022).

These studies contribute thoughts and information related to legal deviations by offering solutions that can be done when legal deviations occur. On the other hand, research related to embezzlement of marital property provides an overview of the criminalization and law enforcement process. However, the studies in the previous research still show a significant gap. Previous research predominantly discusses civil law so that the solution offered is civil law. Furthermore, in terms of research related to embezzlement of marital property, it is still dominated by embezzlement carried out after divorce and marriages conducted *siri*. Therefore, research that specifically examines criminal law deviations, especially with regard to provisions related to embezzlement of joint property, is still very limited. This imbalance raises fundamental questions related to legal issues that occur when the embezzlement of joint property committed by the husband or wife is carried out during the marriage, causing impacts and losses and injustice to one of the parties between them.

Based on this, this research will focus on the legal issues of joint property with the scope of criminal law studies. This is because there are still many criminal cases related to joint property committed by husbands or wives during marriage that have not received proper and fair legal resolution, such as the case of car embezzlement committed by the husband of actress Kimberly Ryder in May 2023 (Fawdi, 2024). Then in the case of car embezzlement committed by the husband as stated in Decision Number 57/Pid.B/2021/PN.Cag (Mansari et al., 2023).

Although the two cases are different, where in the case of car embezzlement experienced by the artist Kimberly Ryder, it was carried out while still in a marriage, so that until now, even though they have divorced, the case is still unfinished and the legal process carried out only through mediation which always fails (Nurrijal, 2025).

Furthermore, a case decided by the District Court of Calang, Aceh, Indonesia with case number 57/Pid.B/2021/PN.Cag related to the embezzlement of a car which was joint property and was carried out by the husband without the consent and knowledge of the wife, the judge found the husband guilty and sentenced him to criminal sanctions. However, in this case, the marriage was held in betrothal and was not recorded in the civil registry. Moreover, the case or *tempus delicti* of the case was after the divorce. Therefore, the criminal process can be carried out so that the judge decides the case and punishes the perpetrator with the ordinary embezzlement article as stipulated in Article 372 of the Criminal Code (Mansari et al., 2023).

Both cases are criminal law issues related to joint property that occur in Indonesia which are regulated in the offense of embezzlement in the family. Indonesia has regulated criminal offenses against joint property in the type of family embezzlement offense as contained in Article 376 Paragraph (1) of the Criminal Code (hereinafter referred to as the Criminal Code). The provision states that embezzlement committed by a husband or wife cannot be prosecuted as long as there has been no divorce between the two. Thus, when one of the husband or wife commits a criminal act of embezzlement of marital property, it cannot be prosecuted criminally. This provision causes harm to one of the parties, so the state needs to be present in resolving criminal law issues related to joint property.

The results of the author's previous research found that Indonesia as a state of law as stated in Article 1 paragraph (3) of the 1945 Constitution hereinafter referred to as the 1945 Constitution has provided protection for property in marriage (Supriadi, 2019). However, legal protection of marital property is still limited to inherited property. Meanwhile, there is no legal protection regarding joint property. Furthermore, the current legal protection is limited to preventive protection which can be found in Article 119 of the Civil Code. Apart from the Civil Code, the Marriage Law has also provided the same arrangements related to marital agreements.

Repressive protection that is expected when there is a legal case against embezzlement of joint property committed by a husband or wife during the marriage period has not been accommodated by the state. Even the current provisions, as stipulated in Article 376 paragraph (1) of the Criminal Code, state explicitly that no criminal prosecution can be carried out. This provision is not in accordance with the general provisions contained in the first book of the Criminal Code.

General provisions as stated in the first book of the Criminal Code are general rules containing principles in criminal law that guide the application of criminal law. The incompatibility of the offense formulation with the general provisions can be said as a deviation from the principles of criminal law. Deviations from the principles of criminal law can lead to unfair application of the law, legal uncertainty and do not provide legal protection for victims. Therefore, this research is important to ascertain deviations from the principles of criminal law in the provisions of Article 376 paragraph (1) of the Criminal Code so that the principles of criminal law that are deviated from by these provisions can be known.

Furthermore, this research is expected to offer solutions in overcoming deviations from the principles of criminal law so that embezzlement offenses in the family, especially those related to joint property, can provide justice and legal certainty as well as legal protection that is currently still not fulfilled by the state. Legal protection is intended to ensure justice, safety and security of citizens (Prayoga et al., 2023). Therefore, legal protection consists of 2 (two) forms, namely preventive legal protection and repressive legal protection. Preventive legal protection aims to prevent the violation or injury of one's rights. Meanwhile, repressive legal protection aims to resolve violations that have occurred (Almaida, 2021).

Therefore, this study aims to examine the deviation of criminal law principles in the provisions of Article 376 Paragraph (1) of the Criminal Code and efforts to overcome these deviations through policy formulation in the form of criminalization of embezzlement of joint property committed by husband or wife during marriage as a form of repressive legal protection. Thus, this research is expected to be a recommendation for lawmakers in formulating offenses that are just and in accordance with the principles of criminal law.

RESEARCH METHODS

This research uses normative research methods by analyzing doctrinal studies and legislation (Yanova et al., 2023). Therefore, this research will examine the principles of criminal law with the formulation of family embezzlement offense in the Criminal Code. This research uses the statute approach to analyze the formulation of offenses related to embezzlement in the family. In addition, this research also uses a conceptual approach to analyze concepts, theories or principles in criminal law related to this research (Rosidi et al., 2024).

The data sources in this research utilize primary legal materials in the form of the Criminal Code, Civil Code, Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, Constitutional Court Decisions and Supreme Court Decisions, as well as other relevant laws and regulations. Secondary legal materials in this study are literature relevant to the object of this research on the principles of criminal law and embezzlement and related to marital property. The literature is not limited to books, but can also be the results of scientific works or previous research. Meanwhile, tertiary legal materials in this research are in the form of Indonesian dictionaries or legal dictionaries.

Data collection in this study uses legal material collection techniques through literature studies or document studies. Literature studies are conducted to obtain a theoretical basis by collecting written legal materials in the form of related laws and regulations and then analyzing them in depth using literature obtained from books or scientific works and the results of previous studies. In addition, the analysis in this research uses qualitative analysis. This is because qualitative analysis focuses on in-depth study and analysis of *das solen* or legal norms in this case Article 376 paragraph (1) of the Criminal Code and *das sein* or legal reality obtained from judge decisions or jurisprudence (Syahputra, 2024). It aims to describe the deviation of criminal law principles in Article 376 paragraph (1) of the Criminal Code so that it is expected to offer solutions in overcoming these deviations.

RESULT AND DISCUSSION

Analysis of the Formulation of the Delict of Embezzlement of Joint Property

The offense of embezzlement of joint property is regulated in Article 376 paragraph (1) of the Criminal Code which states that no prosecution can be carried out against the perpetrator who is a husband or wife unless they are separated by a dining table and bed or separated by property. Or in other words, when embezzlement is committed by a husband or wife during the marriage period or there is still a marital bond, the embezzlement crime cannot be prosecuted.

R. Soesilo argues that disputes between husband and wife over property are not in accordance with the values of decency prevailing in society (Soesilo, 1995). Therefore, the legislator formulated the offense of Article 376 paragraph (1) by adding the phrase “no prosecution can be made”. Furthermore, Soesilo states that it is not morally appropriate for 2 (two) people who are still husband and wife to dispute in court about property even though there is a property separation agreement between the two. Soesilo's opinion seems to state that criminal acts can be deviated from by “impropriety” or not in accordance with the values of decency. Whereas decency is internal and when violated causes regret, shame or social sanctions in the form of social exclusion (Aristi et al., 2024). Therefore, it should be returned to each individual as has been done by the legislators by categorizing embezzlement in the family as a complaint offense (Adhy et al., 2025), so that the victim, who in this case is still in a family bond, determines whether to complain or not.

Furthermore, the prosecution of the perpetrator of embezzlement of joint property is considered as something that violates the norms of decency so that it can lead to social sanctions. Social sanctions for this cannot be justified because anyone who has rights can defend their interests (Lim, 2025). In other words, when a husband or wife becomes a victim of embezzlement of joint property committed by one of the parties between them, then either of them has the right to claim the rights that have been deprived without having to care about the social sanctions that will arise from the prosecution. This can be said as a legal defense for what is deemed unfair so that it is allowed to carry out or impose sanctions on the perpetrator, not directly but must be in accordance with procedures even though the provisions governing this do not accommodate demanding justice and victims' rights.

Therefore, the formulation of the offense in Article 376 paragraph (1) of the Criminal Code with the phrase “prosecution cannot be carried out while still in the bonds of marriage” can be declared not in accordance with the general provisions contained in the first book of the Criminal Code. The general provisions contained in the first book of the Criminal Code are guidelines in the application of criminal law which contains the principles of criminal law. The incompatibility of the offense formulation is due to deviations from the principles of criminal law. The following are deviations from the principles of criminal law:

Deviations from the Principle of Legality

There is no punishment without guilt “*Geen Straf Zonder Schuld*” is a manifestation of the principle of legality of criminal law which guarantees legal certainty for victims (Gunarto, 2012). This means that, as long as the act causes harm to the victim, the act is a criminal act so that it can be punished. Therefore, embezzlement of joint property committed by a husband or

wife, whether committed in a marriage or not, both of them still cause victims so that it can be declared a criminal act.

Furthermore, the provisions of Article 376 Paragraph (1) of the Criminal Code are the interests of each individual and not the public interest so that there is no reason for the termination of prosecution by anyone. This is different when the act is in the public interest which can be terminated by the attorney general or known as deponering (Agustalita & Yuherawan, 2023). Deponering is an implementation of the principle of opportunism owned by the attorney general which gives the public prosecutor the authority not to prosecute a case in the public interest as regulated in Article 35 letter (c) of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, hereinafter referred to as the Prosecutor's Office Law (Yudha, 2020). Deponering can only be carried out when the termination of the case has greater benefits.

Van Bemmelen mentions 3 (three) reasons for not prosecuting, namely (Hamzah, 2008): first, in the interests of the state, in this case the prosecution raises uproar in the community so that it has the potential to harm the state. Second, in the interests of the wider community, in this case the act is no longer socially relevant to be held accountable due to changes in public thinking. Third, personal interest, in this case if there is a personal will that does not want prosecution.

Thus, the reason for the non-prosecution of embezzlement committed by a husband or wife in a marital relationship is due to the value of decency, where the value of decency as opined by R. Soesilo is not part of the public interest and the termination of prosecution actually causes injustice and loss of protection for victims. So that the provisions of Article 376 paragraph (1) of the Criminal Code deviate from the principle of legality because it negates the prosecution of the perpetrators of embezzlement of joint property committed during marriage.

Deviation from the Principle of Criminal Liability

The legal postulate that states *nemo punitur sine injuria, facto, seu defalta* or translated as no one is punished unless he has done wrong (Frans, 2022). In other words, the postulate provides a limitation that a person who commits a mistake cannot be excluded from being punished or held accountable. Criminal law regulates criminal responsibility based on a person's psychological state and the relationship between psychology and the acts committed (Ida & Suryawati, 2023). In other words, criminal responsibility is not solely related to the act or mistake but also there are circumstances or conditions related to the psychology of the perpetrator. Therefore, when embezzlement of joint property committed by a husband or wife should be held criminally liable. This is based on the prerequisites for liability in criminal law, namely the relevance of the perpetrator's rational capacity.

In addition, criminal liability is also closely related to causation or known as causality (Hiariej, 2024). This is because, some actions formulated in an offense must be seen by basing the actions that cause the consequences as can be seen in the material offense. Furthermore, liability can also be seen when an act is relevant to be held accountable because there is an error and the consequences of the error. Criminal liability, criminal law also regulates the reasons for criminal erasure, namely (Hiariej, 2024):

- 1) Justification

Justification is a reason for not being convicted or sentenced because it negates the unlawfulness of the criminal act. Examples of justification are as follows:

- a) Force or overmacht as stipulated in Article 48 of the Criminal Code;
- b) Forced defense or noodweer as stipulated in Article 49 Paragraph (1) of the Criminal Code;
- c) Executing a law order as stipulated in Article 50 of the Criminal Code; and
- d) Executing an order of responsibility as stipulated in Article 51 Paragraph (1) of the Criminal Code.

2) Forgiving Reasons

Forgiving reasons are reasons for not being convicted or sentenced to criminal sanctions because forgiving reasons negate the element of guilt in the perpetrator. Examples of forgiving reasons are as follows:

- a) Inability to take responsibility as stipulated in Article 44 of the Criminal Code;
- b) Force or overmacht as stipulated in Article 48 of the Criminal Code;
- c) Excessive defense or noodweer exces as stipulated in Article 49 Paragraph (2) of the Criminal Code; and
- d) Carrying out an official order without authority as stipulated in Article 51 Paragraph (2) of the Criminal Code.

Based on these provisions, it can be stated that punishment or criminal responsibility when there are justification or excuse reasons as described above. The justification reason emphasizes more on the objective element or criminal act (*actus reus*) while the excuse is more on the subjective element or inner attitude of the perpetrator (*means rea*) (Juniarti et al., 2024).

In addition to criminal liability and reasons for criminal expungement, the formulation of Article 376 Paragraph (1) of the Criminal Code is not in accordance with Article 36 Paragraph (1) of the Marriage Law which states clearly and explicitly that the husband or wife can act on the joint property with the consent of both parties. This is reinforced by court decisions or jurisprudence as follows:

1) Supreme Court Decision No. 701K/Pdt.1977

This Supreme Court decision states that the sale and purchase of land which is joint property must be approved by the wife or husband. Therefore, when a sale and purchase is made without the consent of the husband or wife, the sale and purchase is considered invalid and void ab initio. Null and void (*void ab initio*) is defined when an agreement contains one of the objective conditions (Ariani et al., 2022).

2) Constitutional Court Decision Number 64/PUU-X/2012

This Constitutional Court decision granted a request for a judicial review of Article 40 of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking where the Constitutional Court stated that the provisions of the article were contrary to the 1945 Constitution and did not have binding legal force as long as they were not interpreted to include the interests of the court regarding joint property in divorce cases. Previously, the provisions of Article 40 of the Banking Law regulated customer confidentiality where banks were obliged to keep the information of depositing customers and their deposits confidential with the exception of several things, but the exception did not

include the interests of divorce courts and the division of joint property of depositing customers.

When interpreted grammatically or linguistically (Hasibuan & Nst, 2023), “marital period” or “in the bond of marriage” refers to time. In criminal law, the time when a criminal offense occurs is referred to as *tempus delicti* (Jumardin et al., 2024) which has 5 (five) meanings as follows (Hiariej, 2024):

- 1) The act occurs after being qualified as a criminal offense;
- 2) The act is committed, by looking at the ability to be responsible of the perpetrator;
- 3) The act is committed after the perpetrator is of legal age;
- 4) Expiration; and
- 5) Certain circumstances that can aggravate the punishment of the perpetrator.

Looking at the five important meanings of *tempus delicti*, it can be interpreted that when the act occurs (in a marriage bond) the act of embezzlement is still classified as a criminal offense, but because the marriage bond eliminates the unlawful nature of the act. Therefore, it is questionable whether marital ties become an excuse for criminal erasure in this case when negating the unlawful nature means it becomes an excuse. Whereas as described above, justification is only related to force, forced defense, statutory orders and official orders.

Thus, Article 376 paragraph (1) of the Criminal Code cannot be used as a justification for criminal liability. This is because the provisions related to the reasons for the elimination of punishment, both justification and excuse, are regulated separately in the first book which regulates general provisions. The arrangement is not without reason but aims to classify the basic principles that apply generally and the classification of acts and consequences and sanctions based on the impact caused.

The deviation of the principles of criminal law in the provisions of Article 376 paragraph (1) of the Criminal Code has an impact on the absence of legal protection for victims of embezzlement of joint property committed by husbands or wives in marriage. Therefore, efforts are needed to overcome deviations from the principles of criminal law in the provisions of Article 376 paragraph (1) of the Criminal Code. Thus, the state is present in providing repressive legal protection to victims.

Policy Formulation as a Form of Repressive Legal Protection

As described in the discussion above, the provisions of Article 376 Paragraph (1) deviate from the basic principles of criminal law. So that it can be stated that there is a legal vacuum (*rechtvacuum*) related to the criminal law enforcement process. This is because criminal law enforcement is needed as a form of repressive legal protection or in other words, there are no rules governing criminalization of embezzlement of joint property committed by husbands or wives during marriage (Ariani et al., 2022). Thus, repressive legal protection efforts are needed in the form of criminalization to regulate this matter (Ritonga et al., 2024). These efforts can be made through legal formulation policies to be able to provide justice for the parties, so that no more parties are harmed by the criminal act of embezzlement of joint property.

Criminal law formulation policy is the initial and basic process in the criminal law enforcement process, before the application process and the execution process (Saragih & Azis, 2020). The formulation policy will affect the criminal law enforcement policy and criminal

countermeasures (Arief, 2012). Therefore, the formulation policy must be appropriate and reflect the protection of victims. The right formulation policy that provides protection for victims is carried out through criminalization in accordance with the criminal politics of the Indonesian Nation (Handoko 2019). Indonesian criminal politics aims to provide protection and public welfare (Situmeang, 2022).

Thus, criminalization as a policy must have indicators in order to be in accordance with the objectives of criminal politics. These indicators are used as guidelines for criminalization or decriminalization. The following are indicators in the application of criminalization (Situmeang, 2022):

- 1) No over-criminalization or misuse of criminal law;
- 2) Not temporary;
- 3) There must be actual and potential victims;
- 4) Consideration of costs and outcomes;
- 5) Obtaining public support;
- 6) Easy to enforce;
- 7) Contains an element of danger even though it is small; and
- 8) Understood as a warning to curb and limit freedom.

Based on the criminalization guidelines, the author argues that the embezzlement of joint property committed by a husband or wife in a marriage bond can be criminalized by eliminating the phrase “cannot be prosecuted”. Thus, embezzlement of joint property committed by a husband or wife can be held criminally responsible as long as one party feels aggrieved. In other words, it is included in the complaint offense so that it does not cause over criminalization.

Furthermore, by eliminating the phrase “cannot be prosecuted”, it is clear that it will cause actual and potential victims. In addition, the formulation process at the legislative level also does not incur large costs with balanced results. Then, the law enforcement process can also be carried out easily and has met other criminalization guidelines such as causing little harm and curbing and limiting freedom. However, what needs to be considered is related to public approval, socialization and understanding are needed to the public regarding the criminalization policy against embezzlement of joint property. although in its enforcement it only involves the parties to a marriage, namely the husband and wife.

This criminalization can be a repressive effort in providing legal protection to victims of the crime of embezzlement of joint property. as previously described that legal protection is the right of citizens and the state is obliged to protect each of its citizens (Prayoga et al., 2023). In addition, the criminalization of embezzlement of joint property is also a form of restoring deviations from the principles of criminal law that have been deviated from by the provisions of Article 376 Paragraph (1) of the Criminal Code. Furthermore, criminalization by only eliminating the phrase “cannot be prosecuted” has major implications for the formulation of the offense, where the unlawful nature of the act remains so that criminal liability can be imposed.

Criminal responsibility is not merely oriented towards punishment and criminal sanctions in the form of imprisonment. However, the author argues that accountability means the ability to be responsible for what has been done. Thus, the concept of criminalization that the author

offers is not focused on prison sanctions but on broader criminal liability. Furthermore, the responsibility can be in the form of fines, or recovery for victims through restorative justice and restitution (Jiwanti, 2023). Thus, the concept of criminalization that the author tries to offer against embezzlement of joint property committed by a husband or wife is in accordance with the objectives of punishment, namely prevention, rehabilitation, correctional and restoration (Dharmawan et al., 2024).

CONCLUSION

Based on the explanation described above, it can be concluded that the formulation of the offense contained in Article 376 Paragraph (1) of the Criminal Code states that the perpetrator cannot be prosecuted while still in a marriage. The formulation of the offense is not in accordance with the general provisions contained in the first book of the Criminal Code which guides the application of criminal law because it contains the principles of criminal law. The inconsistency occurs due to a deviation from the principles of criminal law. 2 (two) Principles of criminal law that are deviated from by Article 376 paragraph (1) of the Criminal Code are first, the legality of criminal law where the principle of legality guarantees legal certainty and justice for victims. Furthermore, the principle of legality in criminal law states that there is no punishment without fault is the basis for determining the existence of losses arising to victims as a result of actions committed by the perpetrator. Thus, there is no reason why prosecution cannot be conducted as long as it is not in the public interest. Second, the principle of criminal liability where the phrase “no prosecution can be made” negates the unlawful nature of the act. In addition, in criminal liability there are justification reasons where justification reasons only consist of force, forced defense, statutory orders and orders of responsibility. Furthermore, the provisions of Article 376 Paragraph (1) of the Criminal Code are general provisions that should be contained in the first book, so that these provisions violate the systematics in criminal law.

Therefore, countermeasures are needed against the provisions of Article 376 Paragraph (1), namely by formulating policies by conducting appropriate criminalization policies and providing legal protection as a form of repressive efforts against embezzlement of joint property committed by husbands or wives. Criminalization is carried out by removing the phrase “cannot be prosecuted” so that it is in accordance with the criminalization guidelines, one of which is not over criminalization and easy law enforcement and low cost. By removing the phrase “cannot be prosecuted”, it restores the individual's right to complain or not complain and restores the nature of the law so that the perpetrator can be held criminally liable. In addition, such criminalization is not oriented towards punishment and prison sanctions but on prevention, protection and recovery or restoration as the purpose of punishment.

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