

**TINJAUAN YURIDIS PERBEDAAN TINDAK PIDANA PENIPUAN DAN
TINDAK PIDANA PENGGELAPAN DALAM PUTUSAN NOMOR
416/PID.B/2021/PN BYW**

**Oleh:
Firda Ilmi Awaliyah
E1A019218**

Abstrak

Tindak pidana penipuan dan tindak pidana penggelapan merupakan kejahatan terhadap harta benda kekayaan. Tindak pidana penipuan dalam bentuk biasa diatur Pasal 378 KUHP, sedangkan tindak pidana penggelapan dalam bentuk biasa diatur Pasal 372 KUHP. Ancaman pidana dalam Pasal 378 KUHP berupa pidana penjara, sedangkan dalam Pasal 372 berupa pidana penjara atau denda. Putusan Pengadilan Negeri Banyuwangi Nomor 416/Pid.B/2021/PN Byw, Penuntut Umum mengajukan dakwaan alternatif yaitu dakwaan alternatif kesatu Pasal 378 KUHP dan dakwaan alternatif kedua Pasal 372 KUHP. Majelis hakim dalam pertimbangannya menilai bahwa Terdakwa terbukti secara sah dan meyakinkan bersalah melakukan tindak pidana penipuan sebagaimana dakwaan alternatif kesatu sehingga dakwaan alternatif kedua tidak perlu dibuktikan. Majelis hakim memutuskan bahwa Terdakwa dijatuhi pidana penjara selama 1 (satu) tahun dan 6 (enam) bulan. Metode penelitian yang digunakan dalam penelitian ini adalah yuridis normatif. Spesifikasi penelitian ini adalah perspektif analisis. Metode pengumpulan bahan hukum dilakukan dengan inventarisasi bahan hukum untuk bahan hukum primer, dan studi pustaka untuk bahan hukum sekunder. Hasil dari penelitian ini menunjukkan bahwa tindakan Terdakwa tidak menggunakan unsur nama palsu, martabat palsu, tipu muslihat ataupun rangkaian kebohongan sehingga tidak tepat apabila dikenai tindak pidana penipuan. Objek tindak pidana yaitu mobil berada dalam penguasaan Terdakwa bukan karena kejahatan sehingga tindak pidana yang dilakukan Terdakwa dapat dikategorikan sebagai tindak pidana penggelapan karena telah memenuhi unsur-unsur dalam Pasal 372 KUHP.

Kata Kunci : Tindak Pidana Penipuan, Tindak Pidana Penggelapan, Pertimbangan Hukum Hakim.

**JURIDICAL REVIEW THE DIFFERENCES IN THE CRIMINAL ACTION
OF FRAUD AND THE CRIMINAL ACTION OF EMBEZZLEMENT IN
DECISION NUMBER 416/PID.B/2021/PN BYW**

**By:
Firda Ilmi Awaliyah
E1A019218**

Abstract

Criminal acts of fraud and criminal acts of embezzlement are crimes against property and wealth. The crime of fraud in the usual form is regulated by Article 378 of the Criminal Code, while the crime of embezzlement in the usual form is regulated by Article 372 of the Criminal Code. The criminal threat in Article 378 of the Criminal Code is in the form of imprisonment, while in Article 372 it is in the form of imprisonment or fines. Banyuwangi District Court Decision Number 416/Pid.B/2021/PN Byw, the Public Prosecutor submitted an alternative indictment, namely the first alternative indictment of Article 378 of the Criminal Code and the second alternative indictment of Article 372 of the Criminal Code. The panel of judges in their considerations considered that the Defendant was legally and convincingly proven guilty of committing a criminal act of fraud as in the first alternative indictment so that the second alternative indictment does not need to be proven. The panel of judges decided that the Defendant was sentenced to imprisonment for 1 (one) year and 6 (six) months. The research method used in this research is normative juridical. The specification of this research is an analytical perspective. The method of collecting legal materials is carried out by taking inventory of legal materials for primary legal materials, and studying the literature for secondary legal materials. The results of this study indicate that the Defendant's actions did not use elements of a false name, false dignity, deception or a series of lies so that it would be inappropriate if he was subjected to a criminal act of fraud. The object of the crime, namely the car, was in the control of the Defendant not because of a crime so that the crime committed by the Defendant could be categorized as a crime of embezzlement because it fulfilled the elements in Article 372 of the Criminal Code.

Keywords: Fraud Crime, Embezzlement Crime, Judge's Legal Considerations.