

The Role of Ultimum Remedium Principles as a Basis for Thinking of the Implementation of Criminal Law in Resolving Legal Problems

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Abstract. This study aims to find the principle of ultimum remedium is one of the principles contained in criminal law, especially in resolving legal problems. The type of legal research using is a normative juridical research method because in this paper it examines a principle which is the basis of thought or instructions for the implementation of a branch of law. The results of this study is that criminal law as a rule has sanctions in the form of suffering / suffering for people who violate the provisions contained in the criminal law, it is necessary to pay attention to and implement the ultimum remedium principle in criminal law enforcement where the ultimum remedium principle directs. and make criminal law a means or last resort in solving a legal problem that occurs. This is intended so that a legal violation is not immediately subject to a criminal sanction, because the criminal sanction is pain / suffering, it must be balanced between the action taken and the reaction in the sense of the stages of legal settlement so that there is no legal decision that deviates from the purpose of the law. criminal law itself is manifested in providing legal certainty and justice for the community.

Keywords: ultimum remedium, criminal law, criminal law.

1. Introduction

When talking about legal science, it cannot be separated from the principles contained therein. The principles of law are parts or aspects that are very fundamental to the science of law itself. The existence of legal principles in a branch of legal science is very important considering these legal principles are the instruments, the basis for thinking, and the guidelines for the development of each branch of law science, both in the process of making, implementing, and enforcing law so that it is in accordance with the objectives of science. law itself in creating justice, benefit, and legal certainty in the life of society in general.

According to H.J. Homes, in his book "Betekenis van de Algemene Rechtsbeginselen voor d praktijk" states that legal principles should not be considered as concrete legal norms, but need to be seen as general foundations or directives for applicable law. Then also according to G.W. Paton, the principles of law is a broadly formulated thought which becomes the basis for the rules of law[1].

Criminal law is a branch of legal science that contains or is based on legal principles. One of the principles contained in criminal law is the principle of ultimum remedium which is the knot and characteristic of criminal law in the process of implementing and enforcing the law.

In the dynamics of the development of criminal law, the principle of *ultimum remedium* plays a role as a basis or guide - instructions in implementing or enforcing laws related to criminal law need to be analyzed or studied, because there is still an overlap of society, especially legal actors in making a criminal law product which contains provisions for criminal sanctions and settling a criminal case using the *ultimum remedium* principle[2]. Legal actors are more likely to directly use the *ultimum remedium* principle rather than the *primus remedium* principle in making a criminal law product that contains criminal sanctions arrangements and resolves a criminal case, so the question arises how the true role of the principle of *ultimum remedium* as an basis for thinking of the implementing of criminal law, especially in resolving legal problems. From these questions, it is intended for the public to know and understand more clearly the true role of the *ultimum remedium* principle in criminal law, so that the community will not experience any doubts or overlaps in whether or not the *ultimum remedium* principle is used in implementing or criminal law enforcement[3].

2. Method

The method used in this paper is a normative juridical research method. The normative juridical research method is defined as a method of research on statutory regulations, both in terms of the hierarchy of legislation (vertical), as well as the harmonious relationship of legislation (horizontal)[4]. Collecting Data of this study using statute approach which can be interpreted as the main legal material by examining theories, concepts, legal principles and laws and regulations about criminal law. Data will analysis using qualitative descriptive analysis because in this paper it examines a principle which is the basis of thought or instructions for the implementation of a branch of law.

3. Result and Discussion

The Existence of The Principle of *Ultimum Remedium* in Criminal Law

The principle of *ultimum remedium* is one of the principles in criminal law. The principle of *ultimum remedium* is an important or essential thing in criminal law because it has a meaning as a means or last resort in the enforcement of criminal law. Criminal law has the meaning as a law of distress / suffering for people who violate the provisions regulated in it. Suffering for people who violate the provisions of the criminal law contained in the criminal law itself has a special character that is different from other branches of law. In the suffering contained in the criminal law, one of which is the deprivation or limitation of freedom for people who violate the provisions of the criminal law, in this case the death penalty and imprisonment decided by the judge for people who have violating the norms that have been regulated in the criminal law. So from this, criminal law should be viewed as a means or last resort (*ultimum remedium*) that must be used in correcting the behavior of people who deviate from the legal norms prevailing in society[3].

The word *ultimum remedium* was used for the first time by the Dutch minister of justice, Mr. Modderman in front of the parliament of the Netherlands, in response to a statement by a member of parliament, Mr. Mackay, who said that he had failed to find a legal basis regarding the need for a sentence for someone who had committed an offense. According to Mr. Modderman "The principle of *ultimum remedium* not only can always be read in the rules, but also repeatedly said, although it may be in other forms. The principle of *ultimum remedium* is that what is punishable is first of all violations of the law. This is a *conditio sine qua non*.

Second, that what is punishable is violations of the law, which according to experience cannot be eliminated by other means[5].

The punishment should be a last resort. Basically, there must be objections to every threat of punishment. However, this does not mean that we should ignore the determination of when a person can be punished, but it is true that there one must make judgments about the advantages and disadvantages and must keep the punishment really a curative effort and not make the disease worse". Then Professor van Bemmelen disagrees with Mr. Modderman which views the criminal law as an ultimum remedium. Professor van Bemmelen is of the opinion that the condition that has been put forward by Mr. Modderman is as if the criminal law must be ultimum remedium in nature, it should also be considered, because the criminal procedural law has given such great authority to the police and to the public prosecutor. Then Professor van Bemmelen defines the ultimum remedium as a "tool", not as a tool to restore injustice or to recover losses, but as a tool to restore an uneasy situation in society, if something is not done about the injustice, then it can cause people will take the law into their own hands[6].

Judging from the opinion of Mr. Modderman and Professor van Bemmelen, the principle of ultimum remedium in criminal law has an important and consultative nature. The principle of ultimum remedium gives that criminal law has its own place among other laws, that is because when other branches of law cannot fully address the problems and dynamics of existing legal developments or are being faced in people's lives, criminal law is present as a means. or the last resort (ultimum remedium) to sustain and resolve problems and dynamics of legal developments that exist or are being faced in people's lives that previously could not be fully handled or resolved by other branches of law[7].

Determination of sanctions in a criminal rule is not only technical, but is an integral part of the substance or material of legislation, so it must be understood comprehensively. Criminal law recognizes the principle of ultimum remedium as an aspect or nature of criminal law. The principle of ultimum remedium means the last means or last remedy for the act committed by the perpetrator of the criminal act. In other words, that the imposition of criminal sanctions should not be a drug that is more evil than a disease. The principle of ultimum remedium as an aspect or nature of criminal law also aims to avoid over - criminalization, that crime is the most recent tool owned by the state to tackle crimes, but also that criminal law can be followed by other forms of sanctions. The factors that must be considered in order to maintain the ultimum remedium principle as a characteristic of criminal law include:

- 1) Not using criminal law emotionally.
- 2) Not using criminal law if the victim or loss is not clear.
- 3) Not using criminal law if the cost of punishment is greater than the loss for the criminal act committed.
- 4) Not using criminal law if the punishment is deemed ineffective[8].

Then based on this, the imposition of sanctions in a criminal rule made by an authorized official such as a local regulation which contains criminal sanctions must be in accordance with the law concerning the formation of statutory regulations and does not necessarily impose criminal sanctions as regulated in article 10 of the Criminal Code, but also prior to stipulating other sanctions such as fostering sanctions and written warning sanctions in a criminal regulation made by authorized officials such as local regulation, so that this will realize legal functions in addition to creating order and protect the community, as well as to educate or direct the community towards the right direction and action. In addition, it is also in accordance with the nature of criminal law as ultimum remedium.

The role of the principle of *ultimum remedium* as an basis for thinking of the implementing of criminal law, especially in resolving legal problems. According to Professor van Hamel, criminal law is all the basics and rules adopted by a country in implementing legal order (*rechtsorde*), namely by prohibiting what is against the law and imposing sorrow on those who violate these prohibitions[9]. From Professor van Hamel's opinion, the criminal law has a sinister sanction. Sanctions that are sorrowful / suffering from the criminal law are in the form of deprivation and limitation of human rights owned by people who violate the provisions of the criminal law, for example the existence of imprisonment and death penalties which make the human rights to freedom of life owned by people. those who violate the provisions of the criminal law are lost, so that in imposing criminal sanctions it should not be arbitrary, there must be a balance between the action committed by the person who commits the criminal act and the reaction in the sense of the process of settling the criminal act that occurred[10]. Then in the settlement of a criminal act that occurs, all these things are not immediately resolved or processed in accordance with the provisions of the existing criminal law, because there are still other ways or efforts that can be taken to solve an act. the crime that happened. For example in cases of fights and cases of traffic accidents where the victim of the case did not get the consequences that were so harsh or fatal. In accordance with the balance between the actions committed by the person who committed the criminal act and the reaction in the sense of the settlement of the criminal act that occurred, then the settlement of the case is not immediately resolved or processed according to the provisions of criminal law, but there are still efforts the path taken in advance in resolving the case is such as conducting mediation between those concerned or carrying out other peace paths. These things are the true role of the principle of *ultimum remedium* which makes criminal law a last resort or means of resolving a legal problem, in that sense seeing the balance between the action and reaction of a legal problem that occurs, when the legal problem has an unexpected result. so severe or fatal to the victim, the parties involved in a legal issue can first take other routes or methods such as mediation, conciliation, or using the provisions of other branches of law in resolving legal issues. a legal problem. If a legal problem cannot be fully resolved by other means, then criminal law is the last means or measure in resolving a legal problem.

4. Conclusion

Criminal law contains sanctions that are in the form of grief / suffering, one of which is the deprivation or limitation of freedom for people who violate the provisions of the criminal law, in this case there is a death penalty or imprisonment which is decided by a judge for people. who have violated the norms stipulated in the criminal law. so that in imposing criminal sanctions it cannot be arbitrary, there must be a balance between the action committed by the person who commits the criminal act and the reaction in the sense of the process of settling the criminal act that occurred. Then in the settlement of a criminal act that occurs, all these things are not immediately resolved or processed in accordance with the provisions of the existing criminal law must be adjusted to the consequences obtained by the victim, if the consequences received by the victim are not so severe. or fatal, then there are still other ways or efforts that can be taken to resolve a criminal act that has occurred, such as mediation and peace pathways. Then also the imposition of sanctions in a criminal rule made by an authorized official such as a local regulation which contains criminal sanctions does not necessarily impose criminal sanctions as regulated in article 10 of the Criminal Code, but also prior to stipulating other sanctions such as fostering sanctions and written reprimand sanctions in a criminal rule made by an authorized official such as a local regulation, so that this will realize

legal functions in addition to creating order and protecting society, as well as to educate or direct the community towards the right direction and action. Such matters constitute the true role of the *ultimum remedium* principle which makes criminal law the last resort or means in solving a legal problem, then as a basis or guide in the enforcement of criminal law, as well as delivering or making criminal law have its own place in among other branches of law.

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