Ultimum Remedium dalam Hubungannya dengan Pertanggungjawaban Pidana Korporasi di Indonesia = Ultimum Remedium in Relation to The Corporate Criminal Liability in Indonesia.

Ginting, Arija Br, author

Abstrak

ABSTRAK
Karakteristik delik korporasi yang berbeda dari street crime membuat sejumlah ahli memandang bahwa ultimum remedium tidak lagi relevan dalam konteks pertanggungjawaban pidana korporasi. Pertanyaannya adalah (1) bagaimanakah konsep dan makna ultimum remedium dalam hukum pidana dan kaitannya dengan Hak Asasi Manusia? (2) bagaimana perumusan ultimum remedium di dalam konteks pertanggungjawaban pidana korporasi? dan (3) bagaimanakah implementasi ultimum remedium dalam pertanggungjawaban pidana korporasi di Indonesia?. Penelitian ini bersifat yuridis-normatif dengan multi-pendekatan. Wawancara dilakukan untuk mengklarifikasi data sekunder yang ada. Hasilnya menunjukkan bahwa sejak tahun 1955-2016 terdapat 115 UU yang menempatkan korporasi sebagai subjek delik, diantaranya korupsi, perpajakan, lingkungan hidup, dan pencucian uang. Keempat UU yang dianalisis menunjukkan bahwa administrative penal law cenderung bersifat ultimum remedium dibandingkan UU Pidana. PERMA No.13 Tahun 2016 cenderung bersifat primum remedium karena substansinya lebih banyak memuat aturan prosedural daripada substantif. Sedangkan RKUHP 2015 memiliki pola ultimum remedium yang kuat, yakni adanya pedoman pemidanaan, double track system, dan pidana tambahan berupa pembubaran korporasi merupakan sarana terakhir. Putusan hakim cenderung bersifat primum remedium (analisis dilakukan terhadap putusan PT Giri Jaladhi Wana, Asian Agri Group, dan PT Kallista Alam). Pengecualian ultimum remedium seperti itu boleh saja dilakukan mengingat karakteristik delik korporasi, yakni serius, lintas batas, mengancam sendi perekonomian, dan korban yang samar dan luas. Namun demikian, terdapat pula kemungkinan penerapan ultimum remedium melalui partisipasi korporasi dalam kebijakan hukum pidana.
<hr>
ABSTRACT
The characteristics of corporate offense that are different from street crime make some experts consider that ultimum remedium is no longer relevant in the context of corporate criminal liability. The questions are (1)how is the concept and meaning of ultimum remedium in criminal law and its relation to human rights? (2)how is ultimum remedium formulated within the context of corporate criminal liability? and (3)how is the implementation of ultimum remedium in corporate criminal liability in Indonesia?. This research is juridical-normative with multi-approach. Interviews are

conducted to clarify the existing secondary data. The results are: Since 1955-2016 there are 115 laws that place corporations as the subject of offenses, including corruption, taxation, environment, and money laundering. The four laws analyzed indicate that administrative penal law tends to be ultimum remedium compared to the Criminal Acts. Supreme Court Regulation No.13 of 2016 tends to be primum remedium because the substance contains more prosedural law than substantive. While Model Penal Code 2015 has a strong ultimum remedium pattern, namely the sentencing guidelines, double track system, and corporate dissolution is a last resort of additional criminal sanction. The judge's verdict tended to be primum remedium (analysis was made on PT Giri Jaladhi Wana, Asian Agri Group and PT Kallista Alam). Such exclusion of ultimum remedium are justifiable because of corporate offences that are serious, transboundary, threatening the economic pillar, and the vague and widespread of victim. However, there is also the possibility of applying ultimum remedium through corporate participation in criminal law policy.