

ABSTRAK

Pajak dengan fungsi *budgeter*-nya menempatkan pajak sebagai sumber pendapatan negara terbesar untuk membiayai pembangunan. Upaya mengoptimalkan pendapatan negara dari pajak melalui UU KUP s.d.t.d. UU HPP mengakomodir penerapan sanksi pidana untuk menegakan hukum pajak. Meskipun demikian, penggunaan instrument pidana ini haruslah ditempatkan sebagai opsi terakhir. Secara tekstual, *ultimum remedium* sudah tidak dijumpai dalam UU KUP s.d.t.d. UU HPP sehingga dikhawatirkan menimbulkan ketidakpastian hukum namun secara substansi asas ini dapat dijumpai dalam penerapan beberapa pasal terutama Pasal 44B ayat (2b) yang mengakomodir peniadaan pidana penjara bagi wajib pajak yang melakukan pembayaran pokok pajak beserta sanksi administrasinya pada tahap persidangan.

Penelitian ini bertujuan untuk mengetahui dan menganalisis mengapa *ultimum remedium* menjadi *raison d'être* rumusan Pasal 44B ayat (2b) serta implementasinya ditinjau dari prinsip *certainty* perpajakan. Metode penelitian yang digunakan dalam penelitian ini adalah metode normative empiris sehingga tidak hanya menyajikan hasil penelitian dalam tataran teori tetapi juga praktek. Spesifikasi penelitian yang penulis gunakan yakni deskriptif analisis dengan teknik pengumpulan data melalui studi kepustakaan dan studi lapangan melalui wawancara mendalam kepada pihak-pihak yang terkait dalam penelitian.

Dari hasil penelitian, asas *ultimum remedium* menyediakan alternatif jenis sanksi yang dapat dijatuhkan kepada pelaku tindak pidana pajak sehingga mendorong pelaku untuk melakukan pelunasan pokok pajak beserta sanksi administrasinya agar terhindar dari sanksi pidana penjara sekaligus mendorong kepatuhan Wajib Pajak dan sebagai alat untuk mendorong optimalisasi penerimaan pendapatan negara. Meskipun berdasarkan hasil penelitian, menunjukan adanya kesepahaman antara Penuntut Umum dan Hakim dalam menerapkan asas *ultimum remedium* dalam Pasal 44B ayat (2b) namun secara normative masih terdapat celah dimungkinkannya penjatuhan pidana penjara terhadap terdakwa yang telah membayar pokok pajak beserta sanksi administransi sehingga masih diperlukan revisi terhadap ketentuan tersebut untuk lebih menjamin kepastian hukum.

Kata kunci : prinsip *certainty*, *ultimum remedium*, hukum pidana pajak

ABSTRACT

Tax with its budgetary function places tax as the largest source of state income to finance development. Efforts to optimize state revenues from taxes through the KUP Law up to. The HPP Law accommodates the application of criminal sanctions to enforce tax law. However, the use of this criminal instrument must be placed as a last option. Textually, *ultimum remedium* is no longer found in the KUP Law up to the HPP Law. It is feared that the HPP Law will create legal uncertainty, although in substance this principle can be found in the application of several articles, especially Article 44B paragraph (2b) which accommodates the elimination of imprisonment for taxpayers who make principal tax payments along with administrative sanctions at the trial stage.

This research aims to determine and analyze the *raison d'etre* of the formulation of Article 44B paragraph (2b) and its implementation in terms of the principle of tax certainty. The research method used in this research is an empirical normative method so that it not only presents research results at a theoretical level but also in practice. The research specifications that the author uses are descriptive analysis with data collection techniques through literature studies and field studies through in-depth interviews with parties involved in the research. From the research results, the ultimum remedium principle provides alternative types of sanctions that can be imposed on perpetrators of tax crimes, thereby encouraging perpetrators to pay off the tax owed along with administrative sanctions in order to avoid imprisonment, while encouraging tax payer compliance and as a tool to encourage optimization of state revenue.

From the research results, the ultimum remedium principle provides alternative types of sanctions that can be imposed on perpetrators of tax crimes, thereby encouraging perpetrators to pay off the principal tax along with administrative sanctions in order to avoid imprisonment, while encouraging taxpayer compliance and as a tool to encourage optimization of state revenue receipts. Although based on the research results, it shows that there is an understanding between the Public Prosecutor and the Judge in applying the principle of ultimum remedium in Article 44B paragraph (2b), normatively there is still a gap in the possibility of imposing a prison sentence on defendants who have paid the principal tax along with administrative sanctions so that revisions are still needed. These provisions are to further guarantee legal certainty.

Key word : principle of certainty, *ultimum remedium*, tax criminal law