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The Antinomy of The Application of The Principle of Premium Remedium in Enforcing the Criminal Act of Corruption For State Financial Loss

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ABSTRACT

Premium Remedium as a legal principle, with regard to prioritizing the imposition of criminal sanctions, should not be a form of application of absolute theory but as a form of application of expanded integrative theory in the aim of punishment as a guarantee of legal protection and certainty for every citizen seeking justice, in accordance with the mandate of Article 28 D of the 1945 Constitution. The application of the principle of premium remedium in law enforcement for criminal acts of corruption causing losses to state finances, is faced with positive law which places the function of administrative law as a premium remedium in law enforcement for acts that are detrimental to state finances, which is a reality of legal antinomy. The issue raised is what legal principles are the basis for the implementation of the provisions of Law Number 31 of 1999 (UUPTPK) concerning the Eradication of Premium Remdium Corruption Crimes.

The type of research used is normative research, namely research that primarily examines positive legal provisions, legal principles, legal principles and legal doctrine in order to answer the legal issues faced using a problem approach, statutory regulation approach, conceptual approach, philosophical approach. The legal materials used are primary legal materials and secondary legal materials.

The research results show that the functionalization of the Corruption Eradication Law is Premium Remedium in law enforcement for offenses involving state financial losses, which is in contradiction with the Premium Remedium nature which is explicitly normatively attached to administrative law as a means of resolving state financial losses based on the provisions of Article 14 UUPTPK. The Premium Remedium principle attached to the a quo Eradication of Corruption Crimes is based on the principle of retributive justice or absolute theory which is not commensurate with the aim of expanded integrative punishment as contained in Law Number 1 of 2023 concerning the Criminal Code which has restorative justice as its core.

Key words: Premium Remedium Principle, criminal acts of corruption, legal antinomy
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A. Introduction

The term "antinomy" comes from the Latin antinomia which means "anti-nomos" or contradiction of norms. Literally, antinomy means "a contradiction between two apparently equally valid principles or between internal principles correctly drawn from such" - a contradiction between two things that appear equally, in a valid principle-a rule that applies or is simplified means a contradiction within a law itself.[1]

Every conflict in legal theory or legal regulation material can be classified as an antinomy. This means that, theoretically, antinomy is a concept of conflict which is the basis for carrying out an analytical process regarding the norms and values contained in a legal rule. These pillars of antinomies form the foundation of law to be proportional and balanced, reducing tensions between one pillar and another.[2]In our legal system, we often find antinomies [3] because antinomies are basically the evolution between two norms or two values in one controversial law.

In contrast to the meaning of norm conflict, in the context of norm derogation the essence is a conflict between two norms which is based on the conflicting nature of the law contained in a norm, but the two conflicting norms both have the validity of their application, the jurisdictional consequence of which is that the

[1]Zainal Arifin Mochtar & Eddy O.S Hiariej, *Dasar-Dasar Ilmu Hukum-Memahami Kaedah, Teori, Asas, dan Filsafat Hukum,* Red & White Publishing, Indonesia, 2021, p. 183
[2]Zainal Arifin Mochtar & Eddy O.S Hiariej, *ibid*, p. 195
[3]Sudikno Mertokusumo, *Penemuan Hukum sebuah Pengantar*, Maha Karya Pustaka, Cet. 1, Jogjakarta, 2020, p. 21

validity of one legal norm can negate the validity of the other legal norm in resolving a concrete legal problem at hand. Meanwhile, in antinomy, legal norms require a balance between conflicting or controversial norms.

In law enforcement, criminal acts of corruption cause losses to state finances, Article 2 and Article 3 of Law no. 31 of 1999 (UUPTPK) concerning the Eradication of Corruption Crimes is a premium remedy or first legal remedy, as stated in the general explanation of Law no. 20 of 2001 concerning Amendments to Law no. 31 of 1999, which provides juridical consequences for the inability to work the validity of administrative law in resolving mall-administrative actions that cause state financial losses, based on Law no. 30 of 2014 concerning Government Administration and Law no. 15 of 2004 concerning Examination of State Financial Management and Responsibility jo. Law Number 15 of 2006 concerning the Financial Audit Agency (UUBPK).

The validity of the application of these two administrative legal means which are premium remedium is based on the norm provisions of Article 14 UUPTPK which reads "Every person who violates the provisions of the law which expressly states that the violation of the provisions of the law is a criminal act of corruption, the provisions regulated in this law apply".

The provisions of Article 14 a quo implicitly reflect that UUPTPK is an ultimum remedium and administrative legal means as a premium remedium in law enforcement for mall-administrative actions that are detrimental to state finances. Therefore, the premium remedium nature of the provisions of Article 2 and Article 3 UUPTPK which are premium remedium is a contradiction to the norm provisions of Article 14 which places Law no. 30 of 2014 and Law no. 15 of 2004 jo. Law no. 15 of 2006 as administrative legal advice of a premium remedium nature.

Based on the provisions of Article 20 paragraph (3) of Law no. 15 of 2004 also implicitly reflects the premium remedium nature of the a quo law as a legal means of administering the settlement of state financial losses as reflected in Supreme Court Circular Letter no. 4 of 2016 dated 9 December 2016 in the formulation of letter A concerning the Criminal Chamber Legal Formulation number 5 states that "The time requirement of 60 (sixty) days for the return of state financial losses on the recommendation of the Financial Audit Agency/Financial and Development Supervisory

Agency/inspectorate in accordance with article 20 paragraph (3) of law number 15 of 2004 concerning the examination and management of state financial responsibilities does not apply to defendants who are not officials (private) who return corruption state finances within this time limit, these provisions only apply to government administrators, but are not binding, where if losses to state finances by government administrators are applied after the 60 (sixty) day time limit, it is the investigator's authority to carry out legal proceedings if indications of criminal acts of corruption are found."

Based on the background description above, the researcher formulated the problem as: what are the legal principles that form the basis for the application of UUPTPK provisions that are premium remedium.

B. Research Methods

Researchers use Normative Juridical research methods. This research is normative legal research to examine and analyze the functionalization of the provisions of the Corruption Eradication Law which are premium remedium in law enforcement. In normative legal research, only library materials or secondary data are studied which include primary legal materials and secondary legal materials.

C. Results and Discussion

1. Administrative Legal Means as a Premium Remedy for Settlement of State Financial Losses

Empirically, in practice, the application of the principle of premium remedium as a basis for prioritizing the application of a legal instrument is always confronted or conflicted with the principle of ultimum remedium as a basis for the application of other legal means as a subsidiary. Therefore, in interpreting the principle of premium remedium, it cannot be separated from the principle of ultimum remedium, because ultimum remedium is the opposite of premium remedium.

Conventional criminal law experts have long been of the opinion that criminal law has an "Ultimum Remedium" function in relation to acts that are not classified as criminal acts (pure crimes), such as crimes in the field of finance and banking, crimes in the field of taxation, environmental crimes, crimes related to fraud and fraudulent acts. "Utimum Remedium" means that criminal sanctions are imposed/applied when administrative sanctions and civil sanctions cannot enforce or provide a deterrent effect against crime.[1]

In relation to criminal law, one of the cornerstones of the modern school of criminal law is ultimum remedium. This doctrine emphasizes that criminal law is the ultimate weapon or last means used to resolve a legal problem. Frank Von Lizt, as one of the figures who continued the modern trend in criminal law, stated that criminal law is a substitute for other areas of law. Likewise, G. E. Mulder stated that criminal law is the

[1] Romli Atmasasmita, *Hukum dan Penegakan Hukum,* Kencana, Edisi Pertama, Jakarta, 2021, p. 5.

outermost circle of law that must be enforced. German legal expert Merkel stated "der strafe comt eine subsidiare stellung zu" (That the place of criminal law is always subsidiary to other legal remedies). Dutch jurist, Modderman, at the time of drafting Wetboek Van Strafrecht emphasized that the state is obliged to take action against legal violations or injustices that cannot be adequately addressed by other legal means. Thus, punishment is and will continue to be viewed as the ultimum remedium. The opposite of the ultimum remedium doctrine is premium remedium, meaning that other legal means are used as the main means to enforce the law.

Regarding the resolution of state financial losses as a result of unlawful acts and/or abuse of authority, normatively there are three administrative law instruments as a means of law enforcement:

1. Law Number 15 of 2004 concerning Audit of Financial Management and Responsibility;
2. Law Number 30 of 2014 concerning Government Administration; And
3. Law Number 15 of 2006 (BPK).

State financial losses, in criminal acts of corruption, are the main elements of the offense of state financial losses in Article 2 and Article 3 UUPTPK. In Law Number 15 of 2006, state financial losses are the result of unlawful acts, whether intentional or negligent, as stipulated in Article 1, points 15 and 16, as acts of administrative malfeasance. And in Law Number 30 of 2014, state financial losses are the result of abuse of authority as regulated in the provisions of Article 20 paragraph (2) letter c.

Even though there are no explicit provisions in these administrative legal instruments which form the normative basis that these two laws are the main means for resolving state financial losses arising from unlawful acts and/or abuse of authority, the monitoring mechanism for the management of state financial responsibilities based on the provisions contained therein, describes these two administrative legal means as functioning as a "Premium Remedium" in resolving state financial losses and the Corruption Eradication Law Article 2 and Article 3 as the "Ultimum Remedium".

Specifically regarding Law Number 15 of 2006 as the object of this research, there are norms or provisions that regulate the settlement of state financial losses that arise as a result of "unlawful" actions. What is meant by unlawfulness in this law is not the nature of unlawfulness but acts against the law. So it can be concluded that against the law what is meant is against the law in the formal sense, namely violating positive legal regulations that regulate the management and responsibility of state finances. Therefore, it includes acts of abuse of authority as a species of unlawful acts as genius.

Article 1 point 15 of this law reads: "state/regional losses are a shortage of money, securities and goods in real and definite amounts as a result of unlawful acts, whether intentional or negligent." And Article 1 point 16 reads: "Compensation is an amount of money or goods that can be valued in money that must be returned by a person or entity that has committed an unlawful act, either intentionally or negligently."

The discovery of state financial losses according to Law Number 15 of 2006 is the result of BPK examinations carried out differently on state financial management entities for compliance and obedience in managing state finances in accordance with their position and authority which includes planning, implementation of supervision and accountability. State financial losses resulting from audit findings are determined by the BPK with a BPK decision regarding the amount of state financial losses and the party who is obliged to pay compensation and guarantee the implementation of compensation, the BPK monitors its implementation. The time for implementing the obligation to follow up on BPK recommendations, including paying compensation, is no later than 60 (sixty) days, starting from the time the BPK audit report is received by the official who is obliged to follow up. If during a BPK audit, elements of a criminal act of corruption are found, then within a maximum period of 1 (one) month after the existence of a criminal element is discovered, the BPK will report the results to the competent authority in accordance with the provisions of statutory regulations.

These provisions are an implementation of the BPK's authority in examining the management and accountability of state/regional finances, which in essence limits the exercise of the authority of other institutions or agencies based on other legal means. Including legal means for criminal acts of corruption, even though normatively the law on eradicating corruption is Premium Remedium in resolving state financial losses, because this limitation implicitly implies that Law Number 15 of 2006 is Premium Remedium in resolving state financial losses. These restrictions are reflected in the provisions of Article 14 UUPTPK which reads: "any person who violates the law expressly declares that the violation of the provisions of this law is a criminal act of corruption, the provisions regulated in this law apply."

In Law Number 15 of 2006, there is no provision that expressly states that state financial losses are the result of criminal acts of corruption, however, it is an act of Mall administration in the form of an unlawful act in the formal sense. As has been explained. Therefore, the provisions of Article 14 of the Corruption Eradication Law can be referred to as exception provisions to the Premium Remedium nature of the provisions of UUPTPK, as in Law Number 20 of 2001.

In the history of the development of criminal law, the Premium Remedium principle is related to the Ultimum Remedium principle which is attached to criminal law as a last resort or remedy to resolve concrete legal problems and the Premium Remedium principle is attached to administrative law or civil law as a first

effort or remedy to resolve concrete legal problems. This means that criminal law functions as an Ultimum Remedium, that is, if administrative law as a Premium Remedium or first effort does not work effectively, then criminal law functions as an Ultimum Remedium or subsidiary.

The existence of the ultimum remedium which is attached as a function of criminal law from a historical aspect, started with the formulation and discussion of Wetboek van Strafrecht (WvS) or the Draft Dutch Criminal Code in Twee de Kammer, namely the Dutch Parliament in 1809. During the debate between Moedderman as the Dutch Minister of Justice which essentially questioned the use of WvS if it had become a Criminal Code. Moedderman stated that the criminal threat contained in the WvS design would only be used if a legal violation could no longer be resolved by other legal means. Criminal threats must be an Ultimum Remedium or last resort.[1]

Moedderman's view was criticized by L. H. C. Hulsman, who said that criminal law is no different from other areas of law, so that in law enforcement, the status will be the same, namely upholding involvement in society.[2] The same criticism was conveyed by A. Mulder in his lecture entitled Humane Spanningen in het Starfrecht, which emphasized that criminal law basically has the same goal as other laws, namely enforcing the law. Criminal law does not have its own characteristics so it is less logical to place it as an Ultimum Remedium.[3]

Regarding Moedderman's view regarding the Applicability of Criminal Law as an Ultimum Remedium, De Ruiter emphasized again on the Use of Criminal Law, that criminal sanctions can only be applied if administrative sanctions fail to be enforced, because administrative sanctions are still considered lighter than criminal sanctions.[4] In essence, De Ruiter supports Moedderman's view of criminal law as the Ultimum Remedium.

The term criminal law as Ultimum Remedium in various literature, especially in relation to environmental criminal law, is often referred to by another term, namely the principle of subsidiarity, meaning that criminal law is a subsidiary to other fields of law.[5] Thus, the principle of Ultimum Remedium contains the same meaning as the principle of subsidiarity, which in essence is placing criminal law as a last resort, when other legal means cannot resolve legal violations that have occurred. The Principle of Subsidiarity or Ultimum Remedium in Common Law literature, this principle is often referred to as last resort or Ultima Ratio, meaning the final remedy or goal.[6]

Also normatively, the principle of premium remedium is attached to administrative legal means, which can be found in the general explanation of Law Number 32 of 2009 concerning Environmental Protection and Management, at Point 6 which states: enforcement of environmental criminal law continues to pay attention to the principle of ultimum remedium which requires the implementation of criminal law enforcement as a last resort after administrative law is deemed unsuccessful. Apart from that, it can also be implicitly found in Article 100 paragraph (2) of the a quo Law which states "criminal acts that violate waste water quality standards, emissions and nuisance quality standards can only be imposed if the administrative sanctions that have been imposed are not complied with or the violation is committed more than once". This means that administrative law functions as a premium remedium and criminal law functions as an ultimum remedium.

2. Functionalization of Corruption Crime Provisions as a Premium Remedium

The general explanation of Law Number 20 of 2001 concerning amendments to Law Number 31 of 1999, explains that: "provisions regarding 'reverse evidence' need to be added to UUPTPK as provisions that are "Premium Remedium" and at the same time contain a reventive nature specifically for civil servants as intended in article 1 number 2 regarding state administration as intended in article 2 of Law Number 28 of 1999 concerning State administrators are clean and free from corruption, collusion and nepotism so as not to commit criminal acts of corruption.

From the formulation of the explanation of Law Number 20 of 2001, that the nature of the Premium Remedium for eradicating criminal acts of corruption, and at the same time contains the nature of special prevention for civil servants and state administrators not to commit criminal acts of corruption, it can be

[1] . M. Van Bemmelen, *Hukum Pidana I., Hukum Pidana Bagian Umum,* terjemahan oleh Hasan, Bina Cipta, Bandung, 1987, p 14

[2] J. M. Van Bemmelen, *Ibid*, p. 14

[3] J. M. Van Bemmelen, *Ibid*, p. 14

[4] J. M. Van Bemmelen, *Ibid*, p. 15.

[5] Andi Hamzah, *Penegakan Hukum Lingkungan, Envirmental Law, Enforcement*, Alumni, Bandung, 2016, p. 61

[6]Topo Santoso, *Hukum Pidana suatu Pengantar*, Jaya Grafindo Persada, Bandung, 2020, p. 23

interpreted that the Law on the Eradication of Corruption Crimes as a Premium Remedium aims to prevent or provide a deterrent effect against committing acts of corruption by civil servants and/or state administrators. Therefore, the nature of Premium Remedium cannot be interpreted as an extraordinary action, which is intended as a consequence of a criminal act of corruption as an extraordinary crime.

The Law on the Eradication of Corruption Crimes has limitatively formulated extraordinary measures in eradicating criminal acts of corruption as "extra ordinary crimes", including the application of a reverse proof system, namely proof that is charged to the Defendant and an expansion of the source of obtaining legal evidence in the form of instructions.

The nature of the Premium Remedium of the Law on the Eradication of Corruption Crimes, in terms of its nature as the main remedy, which differentiates it from the Ultimum Remedium principle as the final remedy which is the nature of criminal law lies in the desire to apply harsh sanctions against criminal acts of corruption.[1] Therefore, the nature of the Premium Remedium in the Corruption Eradication Law is that it is a state "penal policy" to prioritize criminal sanctions, thereby eliminating the application of administrative sanctions as a Premium Remedium, which doctrinally is the main remedy in resolving the issue of state financial losses due to abuse of authority or unlawful acts as one of the essential elements of criminal acts of corruption.[2]

The development of the implementation of the Premium Remedium principle in eradicating criminal acts of corruption indicates that criminal acts of corruption are detrimental to the interests of the state and the people in general, so criminal sanctions are the main choice, because the nature of the Ultimum Remedium prioritizes the interests of the perpetrators of criminal acts, so it does not accommodate the interests of the state or the public interest.[3]

The existence of criminal sanctions is intended as a coercive or auxiliary tool or guarantee that criminal law norms are adhered to as well as legal consequences for people who have violated criminal law norms. Criminal law sanctions have a preventive effect on violations of legal norms.[4] As a control tool, the function of criminal law is a subsidiary (Ultimum Remedium). This means that criminal law can only be used if other legal means do not function properly to overcome the problem at hand. The principle of Ultimum Remedium differentiates criminal law from other laws because its application is placed at the end if administrative and civil law does not function as it should.[5]

Criminal sanctions are often synonymous with "conviction" or giving/imposing a crime as a narrowing of the term "punishment" which comes from the word "straaf" and the term "sentenced" which comes from the words "wordt ges traft". According to Moelyatno, these are conventional terms. Moelyatno does not agree with these terms and uses the unconventional terms "criminal" to replace the word "straaft" and "threatened criminal" to replace the words "wordt ges straaft"

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In terms of crime or punishment, there are theories of punishment as the basic justifications and objectives of crime, which traditionally, theories of punishment in general can be divided into three groups of theories, namely: 1. Absolute Theory or Theory of Retribution (retributive theory), 2. Relative Theory or Theory of Purpose (ulitarian/doelhtheorieen) and 3. Combined Theory (vernings theory).

In the academic text of Law Number 1 of 2023 concerning the new Criminal Code (KUHP), the criminal aspect or punishment as the third pillar of the criminal system structure, it is formulated that there is a utilitarian view and an integrative approach as far as punishment is concerned, it is stated that the purpose of punishment is:

a) Prevent the commission of criminal acts by enforcing legal norms for the sake of protecting society;
b) Socializing convicts by providing guidance so that they become good and useful people and are able to live in society;
c) Resolving conflicts caused by criminal acts, restoring balance and bringing a sense of peace in society;
d) Free the convict from feeling guilty.

[1] Nandang Sambas-Ade Mahmud, *Perkembangan Hukum Pidana dan Asas-Asas dalam RKUHP*, PT Refika Aditama, Cet. Ke-I, Bandung, 2019, p. 7

[2] Ibid. p. 10.

[3] Dalam Muladi dan Barda Nawawi Arief, *Teori-Teori Dan Kebijakan Pidana*, Cet. Ke-4, PT Alumni, Bandung, 2010, p. 1

[4] Ibid. p. 10.

[5] Ibid. p. 10.

Consistent with the academic text, Articles 51 and 52 of the Criminal Code (New) which formulate criminalization aims to:

a) Prevent the commission of criminal acts by enforcing legal norms for the protection and guidance of society;
b) Socializing convicts by providing coaching and mentoring so that they become good and useful people;
c) Resolving conflicts caused by criminal acts, restoring balance and bringing a sense of security and peace in society;
d) Foster a sense of remorse and relieve the convict of guilt. It is further emphasized in the provisions of Article 52 that punishment is not intended to degrade human dignity.

Thus, the Indonesian criminal law system adheres to an integrative theory which is expanded in terms of criminal purposes, and does not adhere to an absolute theory. Linked to the application of the Premium Remedium principle in eradicating criminal acts of corruption, it requires the application of harsh sanctions or punishments to perpetrators of criminal acts, so that the emphasis of law enforcement on criminal acts of corruption is oriented towards the perpetrators and not oriented towards recovering or rescuing state financial losses as a result of criminal acts of corruption. Therefore, law enforcement for criminal acts of corruption is not an alternative or subsidiary effort to administrative law enforcement efforts which function as a Premium Remedium and are oriented towards recovering and saving state financial losses as the main objective of administrative law enforcement for actions that cause state financial losses as regulated in the provisions of Law Number 15 of 2006 in conjunction with Law Number 15 of 2004.

Paying attention to the philosophical basis of Law Number 20 of 2001 concerning Amendments to the PTPK UU, the formulation of the Premium Remedy nature of law enforcement for criminal acts of corruption, because criminal acts of corruption have occurred widely, not only harms state finances, but has also constituted a violation of the social and economic rights of society at large, so that criminal acts of corruption need to be classified as crimes whose eradication must be carried out in an extraordinary manner. Thus, it can be said that the Premium Remedium nature of the Corruption Crime Law is a consequence of the Corruption Crime as an extraordinary crime, for which criminal law sanctions need to be applied as a first resort, eliminating the validity of the norms or provisions of administrative law.

Thus, the researcher can conclude that Premium Remedium as a legal principle embedded in the Corruption Eradication Law is a moral policy that is not a form of the legal concept of Premium Remedium which is embedded in administrative legal means in its function as the main remedy.

In connection with the functionalization of the UUPTPK which is premium remedium in law enforcement of criminal acts of corruption for state financial losses based on the legal norms of Article 2 and Article 3 UUPTPK, legal facts are found that are controversial with the norms of the provisions of Article 14 UUPTPK which places other laws, namely administrative legal means which are premium remedium in law enforcement of state financial losses. Relating to the context of this research is UUBPK in conjunction with Law number 15 of 2004 concerning Examination of State Financial Accountability Management as the main legal means of law enforcement for state financial losses caused by unlawful acts whether intentional or negligent. This illustrates the conflict between the principle of premium remedium which is attached to the provisions of Article 2 and Article 3 of UUPTPK as a means of criminal law in enforcing the law for unlawful acts or abusing authority which is detrimental to state finances with the principle of premium remedium which is attached to UUBPK in conjunction with Law number 15 of 2004 based on the norms of the provisions of Article 14 UUPTPK as a means of administrative law in enforcing the law for unlawful acts which are detrimental to state finances.

Judging from the theory of collectivism and individualism put forward by W. Friedmann above as a form of legal antinomy, it can be said that the premium remedium nature attached to UUPTPK as a means of criminal law is a manifestation of the application of collectivism theory and the premium remedium nature attached to UUBPK in conjunction with Law number 15 of 2004 as a means of administrative law, is a manifestation of the ideology or theory of individualism. In this way, it can be qualified as placing the premium remedium characteristic in UUPTPK and UUBPK as an antinomy or conflict between the collectivism ideology which underlies the premium remedium functionalization of UUPTPK and the individualism ideology which underlies the premium remedium characteristic attached to UUBPK. Due to prioritizing the application of criminal law by imposing criminal sanctions, it focuses on protecting public interests as a form of collectivism without considering individual interests. Meanwhile, prioritizing the application of administrative legal means with the imposition of administrative sanctions focuses on balancing public interests and individual interests as a form of individualism.

From the aspect of prioritizing the imposition of criminal sanctions on criminal acts of corruption causing losses to state finances based on the functionalization of UUPTPK as a premium remedium, prioritizing criminal sanctions is also a manifestation of the ideals of justice to be achieved in law enforcement for criminal acts of corruption causing losses to state finances which in ratio legal contradiction with the norms of Article 14 UUPTPK which is the basis for ensuring prioritization of the application of administrative sanctions. The reality

of this contradiction can be qualified as an antinomy between the pillars of the ideal of justice and the pillars of the ideal of legal certainty as a result of the premium remedium functionalization of UUPTPK. Prioritizing the imposition of criminal sanctions for acts that are detrimental to state finances as a result of the functionalization of the UUPTPK is of a premium remedium nature, empirically in the practice of law enforcement for criminal acts of corruption causing losses to state finances. Articles 2 and Article 3 of the UUPTPK are used as a basis for legal reasoning to eliminate the premium remedium function attached to the UUBPK norms in conjunction with Law number 15 of 2004 based on the norms of Article 14 of the UUPTPK which have worked, effectively achieving the goal of returning state financial losses; Prioritizing the imposition of criminal sanctions is a form of application of criminal sanctions based on the absolute theory or theory of retribution, which is philosophically not adhered to in the Indonesian criminal law system, which adheres to an integrative theory or combined theory in the purpose of punishment.

Law number 01 of 2023 concerning the (new) Criminal Code has formulated the objectives of punishment in Article 51 which essentially consists of; 1. Prevention objectives (Article 51 letter a), 2. Rehabilitation objectives (Article 51 letter b), 3. Restorative objectives (Article 51 letter c), 4. Corrective objectives (Article 51 letter d), and also confirmed in Article 52 which states "punishment is not intended to degrade human dignity". Therefore, it can be said that the Indonesian criminal law system adheres to an integrative theory in punishment, so that it prioritizes the imposition of criminal sanctions for acts detrimental to state finances based on the norms of Article 2 and Article 3 UUPTPK by eliminating the priority of administrative sanctions based on law enforcement UUBPK Jo. UU no. 15/2004 is the application of the aim of punishment as retaliation for the perpetrator's actions based on the absolute theory (retaliation theory). Andi Hamzah said that the purpose of punishment formulated in the Draft Criminal Code is a combined theory in a broad sense, including prevention efforts, correction, peace in society, and the release of guilt for the convict (similar to expiation).[1]

From the antinomic aspect, the functionalization of the UUPTPK is of a premium remedium nature, which is based on the general explanation of Law number 20 of 2001 concerning amendments to the UUPTPK, as the basis for prioritizing the application of criminal law means for corruption, Article 2 and Article 3 as a manifestation of the ideals of justice, in contradiction with the norms of the provisions of Article 14 UUPTPK as the basis for legal certainty in prioritizing the operation of the UUBPK as an administrative legal means in enforcing the law for acts that are detrimental to state finances. Thus, the reality of the controversy or conflict can be qualified as an antinomy between the ideals of justice and the ideals of certainty as a result of the premium remedium functionalization of UUPTPK.

In solving such antinomies, it is not uncommon for conflicts to occur between legal certainty, justice and expediency. If we stick too much to legal certainty, justice and benefit will be sacrificed. If we stick to the benefits of justice and legal certainty it will be sacrificed and so on.[2] Therefore, in enforcing the law there must be a compromise between the three elements, namely legal certainty (rechtssicherkeit), expediency (zwechmassigkeit), and justice (gerechtigkeit). These three elements must receive attention in a proportionally balanced manner. However, in practice it is not always easy to achieve a proportionally balanced compromise between these three elements

In connection with solving the problem of the antinomy between legal certainty and justice, the researcher is guided by Hans Kelsen's view of pure legal theory. According to Kelsen, pure legal theory is a theory of positive law. He tries to question and answer the question, what is the law? And isn't that how the law should be? So Kelsen believes that justice as it is usually questioned should be excluded from legal science. It is an ideological concept, an "irrational" ideal, he said that "generally expressed opinion states that justice exists, but this opinion cannot provide clear boundaries, giving rise to contradictory justice. How justice.[3]

Based on Kelsen's view, solving the antinomy of applying the premium remedium principle of UUPTPK with UUBPK is to be guided by the principle of conflict of norms to find which law has priority in its application based on the applicable positive law provisions, namely the provisions of UUPTPK Article 2 and Article 3 which have priority in its validity based on the nature of premium remedium which is emphasized in the general explanation of Law number 20 of 2021 concerning Amendments to UUPTPK or UUBPK is a means of administrative law whose application is prioritized based on the premium remedium nature contained in Article 14 UUPTPK. For this reason, the perspective of law enforcers, especially judges, in interpreting Article 14

[1] Andi Hamzah, *Sistem Pidana dan Pemidanaan Indonesia-dari Retribusi ke Reformasi*, Pradnya Paramita, Cet. I, Jakarta, 1986, p. 24

[2] Ibid. p. 11

[3] Sudikno Mertokusumo, *Mengenal Hukum suatu Pengantar*, Cet. I, Maha Karya Pustaka, Jogjakarta, 2021, p. 223-224

UUPTPK and applying it in accordance with applicable general principles is very important in solving this legal antinomy, in order to realize legal certainty.[1]

The description above illustrates that the legal principles that form the basis for the implementation of UUPTPK provisions are premium remedium, namely the principles of retributive justice and the principle of legal certainty which are not commensurate with the principles of restorative justice adopted in Law no. 1 of 2023 concerning the Criminal Code.

D. Closing

The conclusions in this article are:

1. The Premium Remedium Principle is a general legal principle that can be attached to administrative legal facilities and criminal legal tools as an initial effort to resolve a concrete legal problem in law enforcement.
2. The legal principles that form the basis for the application of the premium remedium principle in the PTPK UUPTPK are the principle of retributive justice or absolute justice and the principle of legal certainty.

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