International Journal of Health, Economics, and Social Sciences (IJHESS)
Vol. 7, No. 3, July 2025, pp. 1188~1192
DOI: 10.56338/ijhess.v7i3.8187
Website: https://jurnal.unismuhpalu.ac.id/index.php/IJHESS

The Application of the Ultimum Remedium Principle in the Handling of Minor Crimes in Indonesia

Mery Rohana Lisbeth Sibarani[1*], Aribandi[2], Aliman[3], Ade Ari Gumilar[4], Liza Utama[5]
[1]Universitas Kristen Indonesia
[2]Universitas Indonesia Timur
[3]Universitas Indonesia Timur
[4]Universitas Mayasari Bakti Kota Tasikmalaya
[5]Politeknik Negeri Sriwijaya

Article Info

Article history:

Received 24 May, 2024
Revised 07 Jun, 2024
Accepted 15 Jul, 2025

Keywords:

Ultimum Remedium, Minor Offenses, Law Enforcement, Criminal Justice Policy, Indonesian Criminal Law

ABSTRACT

The principle of ultimum remedium serves as a fundamental concept in criminal law, emphasizing that criminal sanctions should be the final recourse after other legal remedies are deemed insufficient. This doctrine arises from the understanding that criminal law is inherently repressive and should only be employed when non-penal approaches fail to resolve legal issues. In Indonesia, the application of this principle in handling minor criminal offenses remains problematic. Although recent legal reforms have begun to incorporate restorative justice mechanisms, punitive approaches still dominate in practice. Many individuals committing petty crimes continue to be prosecuted through formal judicial proceedings and subjected to imprisonment, despite the relatively minor harm caused. This study explores the extent to which the ultimum remedium principle has been implemented in the enforcement of minor criminal offenses in Indonesia. It also examines the challenges hindering its effective application and offers potential policy recommendations. Using a normative juridical approach, this research analyzes statutory provisions and relevant case studies. The findings indicate that the principle has not been fully realized, primarily due to inconsistent enforcement practices among law enforcement officials and the underdevelopment of alternative dispute resolution frameworks outside the court system.

Corresponding Author:
Mery Rohana Lisbeth Sibarani
Universitas Kristen Indonesia
Email : merysibaranidosen@gmail.com

INTRODUCTION

In modern legal systems, criminal law functions as a tool for social control, enabling the state to maintain public order and safeguard societal interests. As the most coercive form of legal intervention often involving the deprivation of fundamental rights such as personal liberty criminal sanctions must be applied with restraint. They are intended to serve as a last resort (ultimum remedium), only to be employed when other legal mechanisms have failed to achieve justice or deterrence (Purwoleksono, 2014).

The ultimum remedium principle emerges from concerns over the adverse consequences of excessive reliance on punitive measures. Overcriminalization can overwhelm the justice system and lead to disproportionate penal responses. Within this framework, criminal law should be reserved for circumstances where alternative approaches such as administrative sanctions, civil remedies, or mediation prove inadequate (Lubis, 2020). This principle is thus essential for building a fair, efficient, and rights-oriented legal system.

In Indonesia, discussions around the need for broader application of ultimum remedium have intensified, particularly within the framework of criminal law reform. The newly ratified Indonesian Criminal Code (RKUHP), enacted at the end of 2022, includes provisions that encourage non-penal dispute resolution mechanisms such as restorative justice and diversion programs, especially for low level offenses (Widayati, 2019). However, the practical implementation of this principle faces numerous obstacles, including gaps in subsidiary regulations, weak inter-agency coordination, and entrenched formalistic legal culture among law

enforcement.

Empirical data reveal that many minor offenses such as petty theft, simple assault, minor fraud, or non-lethal fights continue to be prosecuted through formal court processes, often resulting in custodial sentences. This underscores a punitive, retributive orientation in legal enforcement that sidelines alternative resolutions (Zahra & Sularto, 2017). The result is an overburdened criminal justice system and chronic overcrowding in correctional facilities. According to the Directorate General of Corrections (Ditjen PAS), as of January 2024, approximately 36% of incarcerated individuals were serving sentences for minor crimes that could have been resolved through non-carceral means.

This over reliance on penal approaches contributes to multiple systemic issues: the erosion of defendants' fundamental rights, the disproportionate criminalization of the poor, and the failure of prisons to fulfill rehabilitative objectives. In fact, correctional institutions often foster criminal subcultures, thereby increasing the likelihood of recidivism and impeding social reintegration (Policy, 2020). These challenges highlight the urgent need to adopt restorative and non-punitive frameworks in Indonesia's criminal justice policies.

While regulations such as National Police Regulation No. 8 of 2021 concerning Restorative Justice provide a legal foundation for out of court settlements, the effectiveness of such instruments heavily depends on law enforcement officers' awareness and commitment particularly at the grassroots level. A study by the Indonesian Center for Law and Policy Studies (Sihombing & Nuraeni, 2023) found that restorative justice practices remain sporadic and lack institutional consistency across regions.

Another significant barrier is the absence of a unified Standard Operating Procedure (SOP) that clearly outlines cross-institutional implementation of the ultimum remedium principle between the police, prosecution, and judiciary. Additionally, a performance-oriented legal culture, which prioritizes quantitative metrics such as the number of cases prosecuted, continues to incentivize punitive measures over dialogical or restorative methods (Delvi, 2023).

Given these complexities, it is imperative to reformulate Indonesia's criminal policy to explicitly support the application of ultimum remedium. This reform should include revising and harmonizing existing legislation to legitimize out-of-court resolutions, enhancing law enforcement capacity through continuous training in restorative practices, developing integrated SOPs across justice institutions, and fostering public and customary law engagement in resolving minor offenses.

This article seeks to provide a comprehensive examination of the practical application of the ultimum remedium principle in addressing minor criminal offenses in Indonesia. The analysis focuses on identifying the extent of its implementation, the key barriers involved, and the necessary policy reforms to improve its adoption. By doing so, this study aims to offer both theoretical insight and practical recommendations for building a more equitable and effective criminal justice system.

Moreover, this research will explore how existing laws accommodate the ultimum remedium principle and assess the effectiveness of these frameworks in curbing excessive criminalization. Case studies from various regions in Indonesia will illustrate how restorative justice is applied as a primary vehicle for implementing this principle. The analysis will also incorporate sociological and criminological perspectives to better understand the broader social implications of punitive approaches to low-level offenses.

RESEARCH METHODOLOGY

This study adopts a normative juridical method, which focuses on examining primary and secondary legal materials relevant to the central research issue. This approach was selected due to the study's primary objective: to assess the extent to which the ultimum remedium principle is applied in the handling of minor criminal offenses in Indonesia, as reflected in statutory provisions and prevailing legal practices (Zainuddin & Karina, 2023).

The primary legal materials analyzed include statutory instruments such as the Indonesian Criminal Code (KUHP), Law No. 11 of 2012 on the Juvenile Criminal Justice System, Supreme Court Regulation No. 2 of 2012 regarding the Adjustment of Minor Crime Thresholds, as well as technical regulations issued by law enforcement agencies. In addition, secondary legal sources comprise academic literature, legal journals, and prior research related to the ultimum remedium principle, criminal law reform, and restorative justice approaches.

Data analysis was conducted qualitatively by interpreting legal norms and doctrines drawn from both academic and practical perspectives. This analysis seeks to identify inconsistencies between the normative concept of ultimum remedium and its actual implementation by law enforcement authorities, particularly in the context of minor criminal offenses.

The study also incorporates a limited case study approach by utilizing secondary data from correctional institution reports, criminal statistics published by Statistics Indonesia (BPS), and annual reports from institutions such as Legal Aid Foundations (LBH) and the Judicial Commission. This empirical perspective aims to illustrate the real-world impact of the suboptimal application of the ultimum remedium principle on individuals involved in low-level criminal conduct.

DISCUSSION

The Principle of Ultimum Remedium in Criminal Law

The ultimum remedium doctrine refers to the idea that criminal law should serve as a last resort in resolving societal legal conflicts. Within criminal law theory, this principle was developed as a safeguard against arbitrary or excessive criminalization, ensuring that criminal justice does not become a tool of state repression. As noted by Saputri and Sulastri (2025), criminal sanctions should only be imposed when other legal mechanisms particularly those of administrative or civil nature are no longer adequate or fail to provide the necessary deterrence and legal protection.

This principle is closely associated with efforts to establish a legal system that is more humane, efficient, and proportionate. Criminal law, by its very nature, involves the most severe form of legal coercion, as it can infringe upon fundamental human rights such as liberty, physical integrity, and personal dignity. Therefore, law enforcement authorities are expected to first exhaust non-penal avenues such as administrative sanctions, official warnings, civil fines, or restorative justice measures like penal mediation and diversion before resorting to punitive prosecution.

In the context of minor offenses typically those that cause minimal harm, pose no significant public threat, and involve non-dangerous individuals a non carceral approach is particularly appropriate. Minor infractions, such as petty theft, loitering, or minor verbal insults, should not trigger full-scale criminal proceedings, which tend to be resource-intensive and time-consuming. Many modern justice systems, including those in the Netherlands, Germany, and Japan, have adopted penal policies that strictly limit criminalization to behaviors that genuinely endanger public interests (Horder, 2016). These approaches reflect a rational use of resources and uphold the principle of legal economy by avoiding unnecessary prosecutions for trivial matters.

In Indonesia, the concept of ultimum remedium has started to gain formal recognition in several statutory frameworks. For instance, Law No. 11 of 2012 concerning the Juvenile Criminal Justice System mandates that restorative justice and diversion should be prioritized in handling cases involving children, particularly for minor offenses. Additionally, Supreme Court Regulation No. 2 of 2012 sets a material loss threshold to define minor offenses, implicitly acknowledging that not all violations require criminal sanctions. Nevertheless, actual implementation remains limited. A repressive mindset still prevails among many law enforcement officers, and the criminal justice system has yet to institutionalize a coherent strategy for applying non-penal alternatives in general criminal proceedings.

The Handling of Minor Criminal Offenses in Indonesia: Practical Realities

In practice, the implementation of the ultimum remedium principle in Indonesia's criminal justice system, particularly in the context of minor offenses, remains far from ideal. Numerous low-level cases such as petty theft involving insignificant financial losses, minor assault, or light property damage are still routinely processed through formal judicial procedures and result in custodial sentences. This persists despite the availability of more proportionate and less punitive alternatives. The prevailing tendency among law enforcement actors including police, prosecutors, and judges is to adopt repressive rather than restorative or administrative approaches.

For instance, a 2023 report by the Jakarta Legal Aid Institute (LBH Jakarta) documented that a considerable number of minor criminal cases were handled formally, without consideration for penal mediation or alternative dispute resolution, even when the offenses had minimal societal impact (Polii, 2025). In addition, data on prison overcrowding from the Directorate General of Corrections (Ditjen PAS) show that a significant portion of inmates are serving sentences for minor offenses or non-violent drug-related crimes many of which could have been resolved without incarceration (Yulianti, 2020).

One of the key factors contributing to this issue is the institutional unpreparedness and limited understanding of the ultimum remedium principle among law enforcement personnel. In many cases, investigators prefer to refer cases to court under the pretext of ensuring "legal certainty," even when restorative justice measures would be more appropriate. This approach runs counter to the broader objectives of criminal law reform in Indonesia, which emphasize efficiency, humanism, and the alleviation of overcrowding in correctional facilities.

Another significant obstacle is the absence of binding technical regulations and normative guidelines that clearly instruct law enforcement officers on how to apply the ultimum remedium principle. Although restorative justice has been introduced through instruments such as Supreme Court Circular Letters (SEMA) and National Police Regulations, their application remains inconsistent and fragmented across jurisdictions. The successful implementation of this principle requires not only a comprehensive legal framework but also strong political will and cooperation from all actors within the criminal justice system (Ariyanti, 2019).

Challenges in Implementing the Principle of Ultimum Remedium

The implementation of the ultimum remedium principle in Indonesia's criminal justice system continues to face both structural and cultural obstacles. One of the main challenges stems from the entrenched punitive mindset among law enforcement officers. In many instances, litigation and criminal prosecution are still viewed as the only legitimate and authoritative means of upholding justice. This belief is rooted in a traditional paradigm that equates successful law enforcement with harsh sentencing, often sidelining alternative dispute resolutions such as penal mediation or restorative justice, which are perceived as less effective in creating deterrence.

Another major challenge is the absence of well-established institutional frameworks for non-penal approaches. Although restorative justice is gaining traction in public discourse and certain pilot initiatives, its application remains inconsistent and fragmented across different regions. Many police departments, prosecutors' offices, and courts lack clear operational guidelines for implementing such measures. As a result, restorative justice ideally a primary option for minor offenses and social conflicts often becomes an ad hoc policy, driven more by individual discretion or public pressure than by systemic design (Al Banna, 2025).

A further complication is the lack of adequate training and conceptual understanding among law enforcement personnel regarding the function and importance of ultimum remedium. Many officials are unaware that this principle is part of a modern criminal justice policy focused on procedural efficiency and the protection of human rights. Legal education, particularly within institutions that train police and prosecutors, tends to give limited attention to themes like decriminalization or the diversification of sanctions. Consequently, legal practitioners often interpret legal issues in a binary way: if a law is broken, punishment must follow (Kenedi, 2017). This lack of readiness contributes to resistance against more humane and proportionate reforms in criminal law.

This situation is further exacerbated by the absence of comprehensive evaluations regarding the excessive use of punitive responses in minor cases. In fact, evidence shows that overcrowding in correctional facilities is largely driven by inmates convicted for minor offenses or low-level drug use. This indicates that prioritizing punitive measures is not only inefficient, but also intensifies social problems and strains the state budget. Without serious efforts to raise awareness, provide in-depth training, and establish firm regulatory support for the application of ultimum remedium, criminal justice reform in Indonesia risks remaining a rhetorical aspiration with little real-world impact.

Reform Initiatives and Policy Alternatives

The reform of Indonesia's criminal law system reflects a shift in paradigm from a retributive approach to a more restorative and human-centered model. The enactment of the new Criminal Code (KUHP) in 2022 marks a significant milestone in this transformation. The updated code provides room for implementing the principle of ultimum remedium, particularly in dealing with minor offenses and administrative violations. This approach aims not only to reduce the burden on judicial and correctional institutions but also to create a legal system that is more equitable and aligned with the social realities of Indonesian society (Hadiyah, 2018).

One concrete measure is the issuance of Indonesian National Police Regulation (Perkapolri) No. 8 of 2021, which outlines procedures for handling criminal cases based on restorative justice principles. This regulation offers a practical framework for law enforcement officers to address cases by focusing on repairing the relationship between the offender, the victim, and the community. In this context, restorative justice is not limited to compensating material losses but also includes addressing the emotional and social harm caused by the crime. Nevertheless, implementation at the grassroots level continues to face obstacles, including limited understanding among law enforcement personnel and the lack of institutional infrastructure in certain regions (Risal, 2023).

For the principle of ultimum remedium to be consistently enforced, there must be more detailed and binding secondary regulations. These should clearly define the types of cases eligible for non-penal resolution, the procedural steps for penal mediation, and the roles of each party involved, including neutral facilitators or mediators. Additionally, strengthening the capacity of law enforcement officers through ongoing training is essential. This training should not only cover legal knowledge but also include psychosocial approaches, empathetic communication, and conflict resolution techniques (Akbar, 2022).

Beyond institutional reforms, active participation from civil society is crucial in building a more responsive and context-sensitive legal system. The involvement of traditional leaders, community figures, and grassroots organizations can be instrumental in resolving minor disputes locally. Such engagement not only expedites case resolution but also reinforces community-based values. Countries like Canada and New Zealand, which have successfully integrated restorative justice into their legal frameworks, can serve as models for developing inclusive and localized policy initiatives.

CONCLUSION

The application of the ultimum remedium principle in addressing minor criminal offenses in Indonesia is a crucial step toward fostering a more humane, efficient, and substantively just criminal justice system. This principle underscores that criminal law should serve as a last resort, particularly in cases involving minimal harm or private disputes. Nevertheless, in practice, a punitive approach remains predominant, with excessive criminalization of minor infractions. Such a tendency not only burdens law enforcement agencies and correctional institutions but also undermines the rehabilitative function of punishment.

Several challenges hinder the effective implementation of this principle, including a rigid and repressive legal culture, insufficient regulatory frameworks that support non-penal resolutions, and limited human resource capacity to understand and apply restorative justice principles. Legal reforms, such as the enactment of the 2022 Indonesian Criminal Code (RKUHP) and supporting regulations like National Police Regulation No. 8 of 2021, represent significant initial steps. However, the success of ultimum remedium implementation requires coordinated efforts among policymakers, law enforcement, civil society, and legal education institutions to develop a justice system that prioritizes restoration over retribution.

By promoting alternative mechanisms such as penal mediation, restorative justice practices, and community-based resolutions, Indonesia can shift towards a criminal law system that is not solely punitive but also restorative and inclusive. This approach is essential to ensure that the law functions not merely as a tool of state control but as a vehicle for achieving social justice for all citizens.

REFERENCES

Akbar, M. F. (2022). Pembaharuan Keadilan Restoratif Dalam Sistem Peradilan Pidana Indonesia. Masalah-Masalah Hukum, 51(2), 199-208.

Al Banna, N. H., Ardana, N. N., Kurniawan, M. F., & Prasetyo, R. D. (2025). Analisis Ketimpangan Keadilan di Indonesia: Potret Buram Hukum yang Berpihak pada Kuasa. Pancasila: Jurnal Keindonesiaan, 5(1), 125-134.

Ariyanti, V. (2019). Kebijakan penegakan hukum dalam sistem peradilan pidana Indonesia. Jurnal yuridis, 6(2), 33-54.

Delvi, D. (2023). Reorientasi dan Reformasi Budaya Hukum Terhadap Pemberantasan Tindak Pidana Korupsi Berdasarkan Hukum Pidana Administrasi (Adminstrative Penal Law) (Doctoral dissertation, Universitas Kristen Indonesia).

Hadiyah, H. (2018). Pengaruh Kesadaran Wajib Pajak, Pemahaman Perpajakan, Dan Sanksi Perpajakan Terhadap Kepatuhan Wajib Pajak (Studi Empiris Pada Lembaga Kajian Dan Advokasi Independensi Peradilan Dan Pusat Studi Hukum Dan Kebijakan Indonesia) (Doctoral Dissertation, Universitas Mercu Buana Jakarta).

Horder, J. (2016). Ashworth's principles of criminal law. Oxford University Press.

Kenedi, J. (2017). Kebijakan kriminal (criminal policy) dalam negara hukum indonesia: upaya mensejahterakan masyarakat (social welfare). Al-Imarah: Jurnal Pemerintahan dan Politik Islam, 2(1), 17.

Lubis, F. (2020). Bunga Rampai Hukum Acara Pidana.

Policy, P. (2020). Pidana kerja sosial: Kebijakan penanggulangan overcrowding penjara. Jurnal IUS Kajian Hukum Dan Keadilan, 8(1).

Polii, V., & Polii, D. J. (2025). Akses Keadilan Bagi Kelompok Rentan: Studi Empiris Mengenai Hambatan Struktural Dalam Sistem Peradilan. Perkara: Jurnal Ilmu Hukum Dan Politik, 3(1), 655-674.

Purwoleksono, D. E. (2014). Hukum Pidana. Airlangga University Press.

Risal, M. C. (2023). Analisis Kritis Terhadap Implementasi Restorative Justice Dalam Sistem Peradilan Pidana. Jurnal Al Tasyri'Iyyah, 55-70.

Saputri, A. S., & Sulastri, L. (2025). Penerapan Asas Ultimum Remedium dalam Pemidanaan Tindak Pidana Pencucian Uang. Journal of Mandalika Literature, 6(1), 244-250.

Sihombing, L. A., & Nuraeni, Y. (2023). efektifkah restoratif justice? Suatu kajian upaya optimalisasi sistem peradilan pidana di indonesia. Jurnal Hukum Mimbar Justitia, 9(2), 273-304.

Widayati, L. S. (2019). Pidana Tutupan dalam RUU KUHP: dari Perspektif Tujuan Pemidanaan, Dapatkah Tercapai. Jurnal Negara Hukum, 10(2).

Yulianti, W. D. (2020). Upaya Menanggulangi Over Kapasitas Pada Lembaga Pemasyarakatan di Indonesia. Al-Qisthu: Jurnal Kajian Ilmu-Ilmu Hukum, 18(2).

Zahra, A., & Sularto, R. B. (2017). Penerapan Asas Ultimum Remedium Dalam Rangka Perlindungan Anak Pecandu Narkotika. Law Reform, 13(1), 18-27.

Zainuddin, M., & Karina, A. D. (2023). Penggunaan metode yuridis normatif dalam membuktikan kebenaran pada penelitian hukum. Smart Law Journal, 2(2), 114-123.