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## THE REVITALIZATION OF ULTIMUM REMEDIUM IN THE REFORM OF INDONESIA'S CRIMINAL JUSTICE SYSTEM

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### Abstract

This study examines the revitalization of the principle of ultimum remedium in the reform of Indonesia's criminal justice system, which reflects a paradigm shift from a retributive approach to restorative, corrective, and rehabilitative approaches, as embodied in Law No. 1 of 2023 on the National Criminal Code. The issue examined is the deviation in the application of the ultimum remedium principle, which in practice has shifted to primum remedium, resulting in criminal law often being used as the primary means of punishment. This situation fuels overcriminalization and increases the burden on correctional institutions. This study employs a normative legal method using legislative, conceptual, and historical approaches through qualitative analysis of primary and secondary legal sources. The results of the study indicate that although the National Criminal Code has strengthened alternative sentencing and restorative justice, the application of the principle of ultimum remedium remains hindered by the legal culture of law enforcement officials, the broad scope of discretion, and inconsistencies in law enforcement practices. Revitalizing the principle of ultimum remedium is necessary so that criminal law truly serves as a last resort in resolving cases, thereby creating a penal system that is proportional, humane, and oriented toward substantive justice and the protection of human rights.

**Keywords:** Ultimum remedium, Penal system, Restorative justice

### Abstrak

Penelitian ini membahas revitalisasi asas ultimum remedium dalam pembaruan sistem pidana di Indonesia yang menunjukkan pergeseran paradigma dari pendekatan retributif ke restoratif, korektif, dan rehabilitatif sebagaimana tercermin dalam Undang-Undang Nomor 1 Tahun 2023 tentang KUHP Nasional. Permasalahan yang dikaji adalah penyimpangan penerapan asas ultimum remedium yang dalam praktiknya berubah menjadi primum remedium, sehingga hukum pidana sering digunakan sebagai sarana utama. Kondisi ini memicu overkriminalisasi dan meningkatkan beban lembaga pemasyarakatan. Penelitian ini menggunakan metode hukum normatif dengan pendekatan peraturan perundang-undangan, konseptual, dan historis melalui analisis kualitatif terhadap bahan hukum primer dan sekunder. Hasil penelitian menunjukkan bahwa meskipun KUHP Nasional telah memperkuat pidana alternatif dan keadilan restoratif, penerapan asas ultimum remedium masih terkendala budaya hukum aparat

*penegak hukum, luasnya diskresi, dan ketidaksinkronan praktik penegakan hukum. Revitalisasi asas ultimum remedium diperlukan agar hukum pidana benar-benar menjadi upaya terakhir dalam penyelesaian perkara, sehingga tercipta sistem pemidanaan yang proporsional, humanis, serta berorientasi pada keadilan substantif dan perlindungan hak asasi manusia.*

**Kata kunci:** *Ultimum remedium, Sistem pemidanaan, Keadilan restoratif*

## INTRODUCTION

Criminal law is an important tool for the state to maintain order, justice, and public safety. In practice, criminal law functions not only as a means of enforcing sanctions for offenses but also as a social mechanism to maintain balance in community life. However, developments in Indonesia over the past few decades have revealed a problematic trend. This is influenced by the dominance of a positivist-retributive approach within the criminal justice system, which places greater emphasis on punishment than on broader goals of rehabilitation or prevention. For years, the enforcement of national criminal law has been positioned as the primary means (*primum remedium*) for resolving various societal issues, rather than as a last resort as intended by the principle of *ultimum remedium* itself (Yoserwan, 2019). In practice, the “ultimum remedium” principle is often understood merely as a normative concept lacking strong binding force in the formulation and implementation of criminal policy, so that imprisonment remains the primary option even when the offense in question could actually be resolved through non-penal mechanisms (Tomayahu et al., 2025).

This situation is exacerbated by the phenomenon of over-criminalization—that is, the tendency of lawmakers to criminalize numerous acts without clear boundaries in the application of criminal law. Tomayahu et al. (2025) found that overcriminalization in Indonesia is driven by ambiguous legal norms, weak law enforcement capacity, cultural biases, and a lack of restorative justice mechanisms—which, in turn, make vulnerable groups—such as children, drug users, and low-income communities—more susceptible to disproportionate criminalization. Consequently, the penal system focuses more on punishment than on resolving conflicts fairly and proportionally, and this ultimately leads to a structural crisis in the national correctional system.

The dominance of this retributive approach is evident in the overcrowding at State Detention Centers (Rutan) and Correctional Institutions (Lapas). Data from the Directorate General of Corrections at the Ministry of Law and Human Rights shows that out of 531 operational Lapas/Rutan with a total capacity of approximately 140,424 people, the actual number of inmates reaches around 265,346—representing an overcrowding rate of 89 percent (Directorate General of Corrections, 2024). The National Commission on Human Rights (Komnas HAM) has even emphasized that overcrowding in correctional facilities is a source of human rights violations, as it directly impacts health services, security, and the effectiveness of inmate rehabilitation (Latuharhary, 2021). The Institute for Criminal Justice Reform, in collaboration with UNODC, also notes that the issue of overcrowding in Indonesia is structural in nature and rooted in criminal policies that rely too heavily on custodial sentences (Novian et al., 2018). This situation places a burden on the state budget, reduces the effectiveness of inmate rehabilitation, and fosters

dehumanization within the penal system, as the excessive use of imprisonment may actually run counter to the very purpose of the law and produce outcomes that contradict the ideals of rehabilitation.

Recognizing these structural issues, the reform of the national criminal law has begun to gain momentum through the enactment of Law No. 1 of 2023 on the National Criminal Code (KUHP Nasional), which takes effect on January 2, 2026. This Criminal Code aims to break free from the legacy of colonial law, strengthen democratic principles, and unify the national criminal justice system based on the values of Pancasila. This reform does not merely replace old regulations but fundamentally transforms the underlying philosophy and objectives of criminal punishment. Nugraha et al. (2025) demonstrate that the transformation of the National Criminal Code brings comprehensive changes compared to the colonial Criminal Code, not only in terms of the substance of offenses but also in its philosophy of punishment. In line with this, Luthfia (2024) argues that the enactment of the National Criminal Code marks a fundamental shift in Indonesia's concept of criminal punishment with far-reaching implications, including for law enforcement across various fields.

The National Criminal Code shifts the paradigm of criminal punishment from retributive to corrective, restorative, and rehabilitative. Punishment is no longer understood solely as retribution but rather as an effort to restore social balance, repair the relationship between the offender and the victim, and protect the victim's interests (Nasution et al., 2024). The National Criminal Code also strengthens the principle of individualized sentencing by providing judges with greater discretion to determine penalties based on the offender's personal circumstances, while simultaneously introducing new primary forms of punishment outside of imprisonment, namely supervised probation and community service. Firdaus and Koswara (2024) analyze that supervised release serves as a concrete manifestation of the principle of balance between the interests of the offender, the victim, and society, while Wicaksana and Januarsyah (2025) emphasize that community service is designed to focus on rehabilitation, social responsibility, and the restoration of social balance as a concrete instrument of this restorative and rehabilitative paradigm. Some studies even explicitly link community service to efforts to address prison overcrowding (Jamilah & Disemadi, 2020; Abdullah et al., 2024; Mushaddiq & Tarmizi, 2024), as this punishment is served outside of prison without losing its punitive nature. Furthermore, the National Criminal Code limits the use of short-term prison sentences, provides flexibility in the imposition of fines, recognizes "living law," and classifies the death penalty as a special, alternative punishment subject to a probationary period—all of which indicate a policy direction aimed at reducing reliance on imprisonment.

Nevertheless, the revision of these legal norms does not automatically ensure their effective implementation in practice. Since the new Criminal Code (KUHP) and Criminal Procedure Code (KUHAP) officially took effect on January 2, 2026, various groups—including the Deputy Minister of Law and members of Commission III of the Indonesian House of Representatives—have cautioned that the greatest challenge lies in the readiness of law enforcement agencies—including the Police, the Prosecutor's Office, the Courts,

and the Correctional Institutions—to implement this new paradigm consistently and responsibly (Adang Daradjatun in the Indonesian House of Representatives, 2025). It was further noted that a more humanistic and rehabilitation-oriented approach must truly become institutionalized as part of the work culture of law enforcement agencies, rather than merely a change in the text of the law (Indonesian House of Representatives, 2025). Other challenges include institutional adaptation, the readiness of implementing regulations, and the potential for constitutional challenges to several new provisions before the Constitutional Court (Hukumonline, 2026). In other words, the success of criminal sentencing system reform ultimately depends on the alignment of criminal policies, the readiness of implementing regulations, and a comprehensive shift in perspective within the criminal justice system—not merely on editorial changes to legal provisions.

Previous studies have shown that research on the reform of the criminal sentencing system in the National Criminal Code has so far remained fragmented into distinct, standalone themes. Some studies focus on the doctrinal aspects of the “ultimum remedium” principle and critiques of overcriminalization (Yoserwan, 2019; Tomayahu et al., 2025), while others highlight the crisis of overcrowding in prisons and detention centers as a standalone structural issue (Novian et al., 2018; Latuharhary, 2021), and still others examine specific types of alternative punishments—such as probation or community service—from a normative perspective, without fully linking them to the paradigm shift in sentencing or the challenges of their implementation (Firdaus & Koswara, 2024; Wicaksana & Januarsyah, 2025; Jamilah & Disemadi, 2020). These studies generally still employ a legal-normative approach to the text of the National Criminal Code prior to the law’s full entry into force, and thus have not yet extensively addressed the dynamics of its application during the transitional period following January 2, 2026.

The research gap identified in the above discussion lies in the absence of a comprehensive study that simultaneously addresses three key aspects: the paradigm shift in criminal punishment from retributive to corrective-restorative-rehabilitative approaches within the National Criminal Code; the structural issue of prison and detention center overcrowding, which serves as the urgent rationale for this shift; and the real challenges of implementing alternative sentencing and the principle of ultimum remedium in practice during the early stages of the National Criminal Code’s implementation. Previous research has tended to address these three issues separately, even though they are intertwined and equally critical to the success of national criminal law reform.

The novelty of this study lies in its effort to integrate an analysis of the shift in the National Criminal Code’s normative paradigm with the reality of institutional readiness and the legal culture of law enforcement officials during the transitional period following the law’s enactment on January 2, 2026 a relatively recent development, meaning that academic studies on its implementation, particularly regarding the effectiveness of alternative sentencing in addressing the overcrowding crisis, remain very limited. Thus, this study does not merely examine the norms contained in the National Criminal Code but also situates them within the context of ongoing implementation challenges.

The urgency of this research is based on two main considerations. First, the crisis of overcrowding in prisons and detention centers which has reached an overcapacity rate of 89 percent (Directorate General of Corrections, 2024) constitutes a humanitarian and human rights issue that demands an immediate response through the optimization of alternative sentencing and the principle of *ultimum remedium*. Second, the transition period for the implementation of the National Criminal Code beginning in early January 2026 is a critical phase that will determine whether the vision of a paradigm shift in criminal sentencing will truly materialize in practice or be hindered by resistance from the old legal culture, as has been warned by various groups at both the legislative and executive levels (Indonesian House of Representatives, 2025; Hukumonline, 2026). A timely study of this transition period is essential so that potential gaps between norms and practice can be identified early on, before they become entrenched patterns that are difficult to correct.

Based on the background, prior research, existing gaps, and the urgency outlined above, this study aims to analyze the paradigm shift in criminal punishment from retributive to corrective, restorative, and rehabilitative approaches within the National Criminal Code (KUHP), as well as its implications for efforts to address prison and detention center overcrowding; and to examine the challenges in implementing the principle of *ultimum remedium* and alternative punishments—particularly supervised release and community service—during the transitional period of the National Criminal Code’s implementation, in order to formulate strategic steps that can support the achievement of more humane, proportional, and recovery-oriented sentencing objectives.

## METHOD

This study employs a normative legal research method, which examines law as a written norm by analyzing principles, rules, doctrines, and the harmonization of applicable laws and regulations (Soekanto & Mamudji, 2001). The normative legal approach was chosen because the focus of this study is to analyze the paradigm shift in criminal punishment under Law No. 1 of 2023 on the National Criminal Code and its implications for the principle of *ultimum remedium* and alternative punishments, which are fundamentally derived from the study of positive legal norms (Ibrahim, 2012). This study employs three approaches simultaneously: the statutory approach (*statute approach*) to examine the National Criminal Code and its implementing regulations, the conceptual approach to unpack the concepts of “*ultimum remedium*,” restorative justice, and alternative sanctions; and a limited case approach to examine developments in practice during the transitional period of the National Criminal Code’s implementation (Marzuki, 2017).

The legal materials used consist of three types. Primary legal materials include Law No. 1 of 2023 on the Criminal Code and its implementing regulations. Secondary legal materials include books, scholarly journals, previous research findings, and official announcements from state institutions relevant to the reform of the criminal justice system. Tertiary legal sources consist of legal dictionaries and encyclopedias used to clarify technical terms (Firmanto et al., 2024). Data collection was conducted through

library research by systematically cataloging and analyzing legal documents, national journals, and other relevant literature (Marzuki, 2017).

Data analysis was conducted using a descriptive-qualitative approach, which involves describing, interpreting, and connecting the collected legal materials to address the research questions, and then drawing prescriptive conclusions as a contribution to the development of criminal law scholarship (Marzuki, 2017; Ibrahim, 2012).

## **RESULT AND DISCUSSIONS**

### **A. The Misapplication of the *Ultimum Remedium* Principle in the Indonesian Criminal Justice System**

The current state of criminal law enforcement in Indonesia indicates a shift in perspective regarding the function of criminal law. Fundamentally, criminal law in Indonesia adheres to the principle of *ultimum remedium*, which holds that criminal penalties should be used as a last resort when other legal avenues such as administrative or civil law—are no longer effective in resolving a violation (Yoserwan, 2019). However, in practice, a trend has emerged where criminal law is increasingly being treated as the primary recourse (*primum remedium*) by law enforcement officials, thereby blurring the function of criminal law as a last resort. Consequently, the principle of *ultimum remedium* tends to be understood merely as a normative concept lacking strong binding force in both the formulation and implementation of criminal policy (Tomayahu et al., 2025).

This lack of clarity not only violates the principles of proportionality and legal certainty but also distances the judicial system from the utilitarian core purpose of the law: to provide comprehensive benefits while maintaining a balance of justice for society. When criminal law is overused without considering other legal instruments, the restorative and corrective values of justice are neglected, leading to a backlog of cases in the criminal justice system because many parties still do not understand that criminal law should be used as a last resort (Tomayahu et al., 2025).

This phenomenon can be seen more clearly through criminalization policies in Indonesia's criminal law reforms, one of which concerns the regulation of criminal offenses related to supernatural powers or the supernatural. The new Criminal Code, specifically Article 252, stipulates that any person who claims to possess supernatural powers and offers services that may cause illness, suffering, or death to others may be punished by imprisonment for a maximum of one year and six months or a Category IV fine (Geotimes, 2026). This policy essentially serves a social purpose: it acts as a preventive measure to protect the public from fraud or extortion, while also preventing instances of vigilante justice by the public, which often result in loss of life.

From the perspective of formal, rational law, the provisions of this article have sparked quite profound legal debate, as evidence regarding supernatural matters tends to be abstract and cannot be perceived by the five senses or explained through legal logic based on empirical facts (Ishwara, 2023). Consequently, in response to public unrest, criminal law has been expanded to cover areas that actually lie beyond the scope of what can be proven under substantive criminal law. Such criminalization policies risk being

ineffective in the judicial process, as the evidence relies heavily on the perpetrator's confession which, legally speaking, carries weak probative value and is prone to abuse or arbitrary actions (Ishwara, 2023).

This situation is further complicated by a significant gap between written legal provisions and their implementation on the ground, particularly in specialized areas of criminal law such as taxation. In principle, the “ultimum remedium” doctrine is actually well-established for example, through provisions allowing taxpayers to correct their own errors or the termination of investigative proceedings once state losses have been repaid (Anggraeniko, 2020). However, due to the absence of clear numerical thresholds or criteria regarding the minimum amount of state loss as the basis for determining a case, law enforcement officials possess a very broad scope of discretion; as a result, cases involving small amounts are sometimes still rigorously prosecuted, while larger cases may instead be selectively resolved (Anggraeniko, 2020). This indicates that criminal law sometimes does not fully function as a last resort but instead becomes a practical tool for achieving specific law enforcement objectives.

The principle of ultimum remedium in Indonesia's criminal justice system also faces challenges in the reform of national criminal law through the new Criminal Code (KUHP). Article 613 of the KUHP requires the alignment of all criminal provisions outside the KUHP including those in other laws and local regulations—with the new national criminal justice system; in fact, Article 613(3) explicitly states that for administrative laws carrying criminal penalties, corrective measures and the imposition of administrative sanctions must be prioritized over criminal sanctions, as a concrete manifestation of the ultimum remedium principle (Hukumonline, 2026b). This provision reflects efforts to harmonize the criminal sanction system in Indonesia, while also providing a sufficiently broad transitional period for law enforcement.

During this transitional period, there may be inconsistencies between the “ultimum remedium” principle in criminal law reform and its implementation in practice. Law enforcement officials may face uncertainty in assessing whether a criminal law provision aligns with the principle that criminal law should be used as a last resort (Hukumonline, 2026a). Consequently, the principle of ultimum remedium may once again be undermined, either due to law enforcement practices that tend to be repressive or because of the complexity of aligning regulations within the national criminal law reform.

## **B. The Urgency of Revitalizing the Ultimum Remedium Principle in the Reform of Indonesia's Penal System**

Revitalizing the ultimum remedium principle is of utmost importance in efforts to reform the penal system in Indonesia. Essentially, this principle positions criminal law as a last resort in resolving a legal issue, after various other instruments—such as administrative law, civil law, or alternative dispute resolution mechanisms—have failed to provide effective solutions (Yoserwan, 2019). However, in practice, criminal law is often used as the first step in addressing various legal violations. This situation indicates a shift in the approach to law enforcement that leads to *overcriminalization* as well as an increasing

reliance on imprisonment as the most frequently imposed sanction (Tomayahu et al., 2025).

The urgency of revitalizing the principle of *ultimum remedium* is increasingly evident through the reform of national criminal law embodied in Law No. 1 of 2023 on the Criminal Code (KUHP). This legislation marks a paradigm shift in criminal sentencing—moving from an approach focused on retribution toward one that prioritizes corrective, restorative, and rehabilitative values (Nasution et al., 2024). Under this approach, punishment is not intended solely to inflict suffering on the offender but also to restore the victim's losses, promote the offender's social reintegration, and maintain balance in society. In line with this paradigm, imprisonment is positioned as a last resort (*ultimum remedium*) to be applied only when other measures fail to optimally achieve the objectives of law enforcement.

In addition to being reinforced through reforms to substantive criminal law in Law No. 1 of 2023 on the Criminal Code (KUHP), the principle of *ultimum remedium* is also reflected in criminal procedure law through Law No. 8 of 1981 on the Criminal Procedure Code (KUHAP). Essentially, the Criminal Procedure Code serves as the foundation for law enforcement officials to prioritize judicial processes that guarantee the protection of human rights, including the principles of simple, swift, and cost-effective trials (Ogala & Viqria, 2026). In practice, although it does not explicitly mention the principle of *ultimum remedium*, the Criminal Procedure Code still allows for the resolution of cases outside of court through the mechanism of discontinuing prosecution under certain circumstances, as further reinforced by policies on discontinuing prosecution based on restorative justice (Ogala & Viqria, 2026). This demonstrates that criminal procedure law in Indonesia does not focus solely on punishment but also prioritizes effectiveness and proportionality in the law enforcement process.

The reinforcement of the “*ultimum remedium*” principle is also clearly evident in Law No. 11 of 2012 on the Juvenile Criminal Justice System (SPPA). This law explicitly positions imprisonment as a last resort in handling children in conflict with the law and mandates the application of restorative justice and diversion approaches at every stage of the judicial process (Marlina, 2013). These provisions reflect a more progressive shift in perspective—namely, avoiding the use of harsh criminal penalties against children and prioritizing their rehabilitation and social reintegration into society. Thus, the SPPA can be understood as a concrete manifestation of the application of the “*ultimum remedium*” principle within Indonesia's criminal justice system, making it more humane and focused on protecting vulnerable groups.

Furthermore, reinforcing the principle of “*ultimum remedium*” is crucial for addressing various structural issues within Indonesia's criminal justice system, particularly the problem of overcrowding in correctional facilities. The high reliance on imprisonment for various types of criminal offenses, including minor offenses, has led to a continuous increase in the number of inmates in prisons and detention centers, resulting in overcrowding of approximately 89 percent of available capacity (Directorate General of Corrections, 2024). This situation has led to a decline in the effectiveness of rehabilitation

programs, an increased burden on the state budget, and a heightened risk of human rights violations against inmates (Latuharhary, 2021). Therefore, the application of the “*ultimum remedium*” principle through the strengthening of alternative sentencing options and a restorative justice approach must be optimized as an effort to reduce reliance on imprisonment (Wicaksana & Januarsyah, 2025).

The strengthening of the “*ultimum remedium*” principle is closely linked to the development of the concept of *restorative justice*, which is increasingly being accepted within Indonesia’s legal system. This approach emphasizes efforts to restore the harm suffered by victims, hold perpetrators accountable, and repair social relationships disrupted by criminal acts. Through this approach, case resolution does not necessarily have to result in criminal punishment, particularly for minor offenses and first-time offenders (*first offender*) (Marlina, 2013). Thus, the application of *restorative justice* can serve as an effective means to implement the principle of *ultimum remedium* more optimally in law enforcement practice.

From a human rights perspective, reinforcing the principle of *ultimum remedium* is indeed necessary to ensure that the principle of proportionality in sentencing is properly applied. This is because criminal law is by its nature strict and directly restricts an individual’s rights; therefore, its application must be carried out with caution and balance (Latuharhary, 2021). Punishment as a last resort reflects respect for human rights while preventing the abuse of state authority through the imposition of excessive sanctions. Thus, reinforcing the principle of *ultimum remedium* is a crucial step toward establishing a criminal justice system that is fairer, more humane, and oriented toward substantive justice that can be tangibly felt.

Reaffirming the principle of *ultimum remedium* is a vital step in reforming Indonesia’s criminal justice system. This reinforcement is not only intended to reduce the excessive use of prison sentences but also to establish a criminal justice system that is more balanced, effective, and aligned with the objectives of modern criminal punishment as stipulated in the National Criminal Code (Nasution et al., 2024). Thus, criminal law can once again be positioned as a last resort in resolving legal conflicts within society.

## CONCLUSIONS

It can be concluded that reinforcing the principle of *ultimum remedium* in Indonesia’s criminal justice system is essential to affirm that criminal law should be used as a last resort in law enforcement, not as the primary option for every type of offense. Strengthening this principle is also consistent with the evolution of legal perspectives toward a more humanistic, balanced, and restorative justice-oriented approach. Thus, it is hoped that this will reduce the tendency toward excessive criminalization and further encourage the resolution of cases through non-criminal channels in certain instances. Therefore, the reform of Indonesia’s criminal justice system should focus not only on the imposition of sanctions but also on the protection of human rights and the achievement of criminal justice objectives that are more effective, fair, and in line with the needs of society.

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