



## Improving the Implementation of the *Ultimum Remedium* Principle in Law Enforcement against Crimes Committed by Corporations

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**Abstract.** *This study examines the strengthening of the ultimum remedium principle in handling corporate crimes as part of a more proportional, efficient, and equitable criminal justice system reform. The ultimum remedium principle views criminal law as a last resort, used after other legal mechanisms, such as administrative resolution, mediation, or administrative sanctions, are deemed inadequate. The application of this principle becomes increasingly important in the corporate context to prevent the negative impact of repressive punishment on business entities that play a strategic role in the national economy. The significant impact of corporations on society and the economy necessitates a more careful and prudent approach to handling corporate crimes. This study uses a normative juridical method with statutory, conceptual, and case study approaches. In analyzing the application of the ultimum remedium principle, this study identifies that although this principle has been incorporated into several laws and regulations, its implementation remains weak. Factors contributing to this include limited understanding of the principle among law enforcement officials, suboptimal technical guidelines regarding the application of the ultimum remedium principle, and public pressure that tends to encourage a repressive approach in handling corporate crimes. Therefore, this study recommends strengthening regulations, increasing the capacity of law enforcement officials, and developing integrated guidelines to ensure the consistent and effective application of the ultimum remedium principle in handling corporate crimes. The application of this principle is also in line with the restorative justice approach, which aims to provide more humane and corrective punishment and create sustainable change for corporations and society.*

**Keywords:** *Corporate Crime, Criminal Law, Law Enforcement, Restorative Justice, Ultimum Remedium.*

### 1. BACKGROUND

In the modern criminal law system, the approach to law enforcement is not only oriented towards punishment, but also considers the effectiveness, efficiency, and benefits of law for society at large. One of the prominent principles in this framework is the *ultimum remedium* principle, which is the principle that places criminal law as the last resort after other legal mechanisms are deemed unable to provide a fair and effective solution. In the context of corporate crime, the application of this principle is important because it is closely related to the complexity of the corporate structure, the purpose of recovering losses to the state or society, as well as consideration of the economic and social impacts of criminalizing legal entities.

Corporate crime is a crime committed by a legal entity or corporation as an entity, not by an individual. In practice, corporate crime often involves various forms of serious offenses such as corruption, environmental pollution, tax violations, and violations against consumers. However, given that corporations play an important role in the country's economy, the direct

and repressive use of criminal instruments against corporations can actually have a negative domino effect, such as disruption of economic stability and disruption of workers' rights.

Therefore, the application of the *ultimum remedium* principle in handling corporate criminal offenses is a more proportional approach. This principle encourages the settlement of corporate cases through administrative, civil, or other non-penal mechanisms first before imposing criminal sanctions. This approach not only aims to provide a deterrent effect, but also prioritizes the recovery of losses, improvement of corporate governance, and prevention of repeated violations of the law.

However, the application of this principle in Indonesia still faces various challenges. Among them are the suboptimal legal instruments that regulate corporate criminal liability in detail, the lack of understanding of law enforcement officials in comprehensively investigating corporate crimes, and the lack of consistency in judicial practices that prioritize the *ultimum remedium* principle. In various cases, the repressive approach is often the main choice, without considering other alternative legal solutions that are more constructive and sustainable.

This situation emphasizes the urgency to strengthen the position of the *ultimum remedium* principle in handling corporate crimes. This strengthening includes aspects of regulation, the establishment of guidelines for handling corporate cases, to strengthening the capacity of law enforcement agencies in applying a proportional and restorative justice-oriented approach. Thus, the handling of corporate crime is not only able to enforce the law, but also support the sustainability of a law-abiding and ethical business world.

Normatively, the *ultimum remedium* principle is also in line with the principles of certainty and justice in modern criminal law, as reflected in the spirit of Law No. 40/2007 on Limited Liability Companies, Law No. 32/2009 on Environmental Protection and Management, and the evolving doctrine of corporate criminal liability in the Criminal Code (KUHP). The reform of Indonesian criminal law through the Criminal Code also provides clearer space for the application of this principle, including against corporate actors.

Thus, strengthening the *ultimum remedium* principle in handling corporate crimes is not only relevant, but also urgent as part of an adaptive, fair, and pro-substantive justice criminal law reform.

## **2. THEORETICAL STUDY**

### **Criminal Law and the Principle of *Ultimum Remedium***

The *ultimum remedium* principle is an important principle in modern criminal law theory which states that criminal law should be used as a "last resort" when other legal means are deemed ineffective to resolve a violation of the law. This principle was born from the idea that criminal law is repressive, coercive, and causes heavy social stigma. Therefore, its use must be selective and proportional.

According to Barda Nawawi Arief, criminal law is not the only instrument in overcoming social problems, but must be placed proportionally among other social norms (religious norms, norms of decency, and other legal norms such as administrative and civil). Therefore, the *ultimum remedium* approach places criminal law only as the last means of protection after other alternatives cannot provide justice or social order.

### **Theory of Corporation in Criminal Law**

Corporate crime is a crime committed by a legal entity, not an individual. Theoretically, the imposition of crimes against corporations was initially rejected because corporations are considered fictitious entities that do not have will or feelings. However, in the development of modern law, identification theory and collective knowledge theory paved the way for corporate criminal liability.

According to Eddy O.S. Hiariej, corporations can be subject to criminal liability if the criminal offense is committed by the management, employees, or agents of the corporation in the context of carrying out corporate functions or interests. This theory supports the principle that corporations are no longer just economic entities, but also subjects of criminal law.

However, punishment against corporations has specificity because it is different from individuals. Prison sanctions cannot be imposed on legal entities, so the approach used must be more flexible, one of which is by prioritizing the *ultimum remedium* principle so as not to necessarily harm third parties such as workers, consumers, or shareholders who are not directly involved.

## **3. RESEARCH METHOD**

This research uses a normative juridical method that focuses on the study of applicable positive legal norms. This approach aims to examine the *ultimum remedium* principle in the framework of Indonesian criminal law, especially in relation to the handling of corporate crime. The research is conducted by reviewing relevant laws, legal doctrines, and court decisions, in order to understand how the principle is applied both theoretically and in practice.

The type of research used is normative legal research (doctrinal legal research), namely research that relies on primary legal sources in the form of laws and regulations and secondary legal materials in the form of legal literature, books, scientific journals, and opinions of experts. This research is descriptive analytical, by systematically describing the application of the *ultimum remedium* principle and evaluating the effectiveness and challenges of its application in the context of law enforcement against corporations.

#### **4. RESULT AND DISCUSSION**

In modern criminal law, the *ultimum remedium* principle has an important role in determining a fair, proportional and efficient law enforcement strategy. This principle contains the idea that criminal law must be used as the *last resort* in resolving violations of the law, and instead prioritizes settlement through other legal mechanisms such as administrative law, civil law, or other non-penal alternatives. The application of this principle becomes increasingly crucial in the context of corporate crime, given the characteristics of corporations as legal entities that do not have physical form, but have great economic power and broad social impact.

Corporations are often involved in criminal offenses related to violations of environmental law, taxation, banking, and money laundering. However, not all of these violations must be resolved through criminal channels. The direct use of criminal sanctions against corporations can have negative consequences, such as harming workers, investors, and the wider community who depend on the existence of corporations. Therefore, the *ultimum remedium* principle demands that the handling of violations committed by corporations prioritize preventive and corrective approaches rather than repressive.

In Indonesian practice, this concept has actually been recognized and even accommodated in a number of laws and regulations. For example, Law No. 32/2009 on Environmental Protection and Management explicitly states that administrative sanctions must take precedence, and criminal sanctions are only imposed if the perpetrator does not comply with administrative measures. This is a concrete form of the application of the *ultimum remedium* principle. In addition, Law No. 5/1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition and Law No. 8/2010 on the Prevention and Eradication of Money Laundering Crimes also provide room for administrative and civil remedies before resorting to criminal proceedings.

However, in reality, the application of the *ultimum remedium* principle to corporations still faces various obstacles. One of the main causes is that there is no uniform perception among law enforcement officials on how this principle should be applied. In addition, public

pressure and political interests often make law enforcement officials prefer the repressive route, even though this approach is not always effective in solving the root of the problem or encouraging improvements in the internal corporate system.

Structural weaknesses in regulations also hamper the strengthening of this principle. Many regulations do not have a detailed technical mechanism to determine when an administrative or civil approach is deemed ineffective, so that crime becomes relevant. As a result, law enforcement officers do not have adequate guidelines in considering whether a violation by a corporation should be resolved through a criminal approach or whether a warning, administrative fine, or improvement of the company's internal system is sufficient.

Strengthening the *ultimum remedium* principle is also closely related to the concept of restorative *justice*, which is a legal approach that emphasizes the recovery of victims' losses, the responsibility of the perpetrators, and the improvement of social relations. In the corporate context, restorative justice can be applied through compensation schemes to consumers, restoration of the damaged environment, or improvement of corporate governance so as not to repeat similar violations. This approach is considered more adaptive, humanist, and has a long-term impact than simply imposing fines or dissolving corporations.

The Supreme Court through Supreme Court Regulation (Perma) No. 13/2016 on Procedures for Handling Crimes by Corporations has tried to answer this challenge by providing a clearer legal framework on how corporations can be held criminally liable. However, the regulation has not been fully implemented optimally, especially at the investigation and prosecution levels. Law enforcers at the operational level still need special training and debriefing in order to understand and apply the *ultimum remedium* principle appropriately and proportionally.

Thus, strengthening the *ultimum remedium* principle is not enough with normative changes, but must be accompanied by reforming the law enforcement structure, increasing the capacity of law enforcement human resources, and strengthening a legal culture that does not merely make punishment a symbol of legal success. In the context of a modern criminal law system based on a balance between justice, certainty, and benefit, *the ultimum remedium* approach is a middle ground that is able to prioritize the principle of prudence without ignoring the interests of legal protection for the community.

Strengthening this principle is also important to build a healthy business climate. Corporations that realize that the legal system provides room for improvement and recovery will be more encouraged to comply with the law voluntarily. Conversely, an excessive criminal approach can actually create fear and legal uncertainty that is counterproductive to investment

and national economic growth. Therefore, the formulation of criminal law policies against corporations in the future must place the *ultimum remedium* principle as a basic principle that is not only used as a slogan, but is actually operationalized in every stage of case handling.

## **5. CONCLUSION AND SUGGESTION**

### **Conclusion**

The application of the *ultimum remedium* principle in handling corporate criminal offenses is part of criminal law reform efforts aimed at creating a more proportional, efficient and equitable law enforcement system. This principle places criminal law as the last means in resolving violations of the law, after administrative, civil, or other alternative efforts are deemed inadequate. In the context of corporations, this approach becomes very relevant because it concerns legal entities that contribute greatly to the national economy and absorb a large number of workers.

However, in practice, the application of the *ultimum remedium* principle is still not optimal. The repressive approach is still often used as the main choice by law enforcement officials in handling violations committed by corporations. This is due to the weak understanding of this concept, the uneven implementation of technical guidelines such as Perma No. 13/2016, as well as concerns about the creation of impunity if the non-penal approach is overly prioritized. In fact, the *ultimum remedium* principle is in line with the principles of modern criminal law that emphasize prevention, recovery, and guidance, not merely punishment. This approach also supports the principle of restorative justice, which prioritizes corporate responsibility to repair losses and improve its internal systems. Therefore, strengthening this principle is very important to encourage law enforcement that is not only effective, but also adaptive to the complexity of the business world and the social dynamics of society.

### **Suggestion**

Strengthening the *ultimum remedium* principle in handling corporate crime must be done comprehensively through harmonization of laws and regulations that provide clarity and legal certainty regarding the stages of resolving violations by corporations. Law enforcement officers, especially investigators and prosecutors, need to be given adequate technical training and conceptual understanding of the application of this principle so that they can choose a proportional legal settlement path according to the level of violation.

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