The Urgency of Enforcement of The Implementation of The *Ultimum Remedium* Principle Against Environmental Crimes in Indonesia

Frenki Hamonangan Turnip, Rahmayanti, Suci Ramadani.

Abstract

The ultimum remedium principle is a doctrine in criminal law that places criminal sanctions as the last resort after administrative and civil law instruments have proven ineffective in addressing violations. In the context of environmental law in Indonesia, the implementation of this principle becomes problematic when serious environmental violations that cause significant harm to communities and ecosystems are sanctioned only with administrative penalties, resulting in a lack of deterrent effect. This study aims to analyze the urgency of applying the ultimum remedium principle in the enforcement of environmental law in Indonesia by examining normative, juridical, and practical aspects. The research method used is normative juridical, employing statutory, conceptual, and case approaches. The results of the study indicate that although the ultimum remedium principle is regulated in Law No. 32 of 2009 on Environmental Protection and Management, its implementation has been inconsistent. Many corporate offenders responsible for pollution are only subject to administrative sanctions without criminal prosecution, thus weakening the deterrent effect of environmental criminal law. Therefore, the ultimum remedium principle remains necessary but should be applied selectively and proportionally to prevent impunity for serious environmental offenders.

Keywords*: Ultimum Remedium,* Law Enforcement, Environment, Criminal Law, Corporation.

Frenki Hamonangan Turnip
Universitas Pembangunan Panca Budi, Medan
e-mail: turnipfrengky@gmail.com

Rahmayanti, Suci Ramadani
e-mail: rahmayanti@dosen.pancabudi.ac.id, suciramadani@dosen.pancabudi.ac.id.
2nd International Conference on Islamic Community Studies (ICICS)
Theme: History of Malay Civilisation and Islamic Human Capacity and Halal Hub in the Globalization Era

Introduction

The environment constitutes an essential element for the continuity of human life and must be protected and managed sustainably. Within the context of national law, environmental protection not only possesses an ecological dimension but also carries juridical and moral values. The state, through its legal instruments, is obliged to guarantee that every citizen has the right to a good and healthy environment, as stipulated in Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia.

However, in practice, environmental degradation and pollution in Indonesia continue to occur massively, both by individuals and corporations. Numerous cases of environmental violations have caused not only ecological losses but also threatened the socio-economic life of communities. One prominent example is the 2019 forest and land fire (*karhutla*) case in Riau Province, in which PT Adei Plantation and Industry was convicted for deliberately burning land, resulting in severe air pollution and significant harm to surrounding residents. Nevertheless, the case sparked debate because criminal sanctions were imposed directly without prior administrative measures, even though environmental law principles position criminal sanctions as *ultimum remedium*—a last resort to be used only after administrative sanctions have proven ineffective (Ismidar, 2022).

Another case illustrating similar issues is the Citarum River pollution in West Java, where several textile companies were found to have discharged toxic waste into the river without proper permits. The government, through the Ministry of Environment and Forestry (MoEF), responded firmly by imposing administrative sanctions such as the temporary suspension of industrial activities. However, as pollution continued, criminal proceedings were eventually initiated. This case demonstrates that the *ultimum remedium* principle in environmental law can be effective when applied gradually and proportionally.

In practice, however, many law enforcement officials tend to disregard the *ultimum remedium* principle by immediately charging offenders under criminal provisions without considering administrative measures first. This tendency stems from the limited understanding and weak coordination among law enforcement institutions the Attorney General's Office, the National Police, and the Ministry of Environment and Forestry in systematically enforcing environmental law (Ramadani, 2022). Consequently, the primary goal of environmental criminal law to restore environmental functions often shifts merely toward providing a deterrent effect on offenders, without achieving actual ecological recovery.

In this context, the *ultimum remedium* principle holds a crucial position. It emphasizes that criminal law should be used only as a last resort when administrative or civil legal remedies are no longer capable of restoring environmental balance (Arief, 2019). Thus, this principle is not intended to weaken criminal sanctions but rather to ensure that law enforcement is conducted fairly, proportionally, and in alignment with the goal of environmental sustainability.

Several legal scholars also assert that the application of the *ultimum remedium* principle constitutes an integral part of the concept of ecological justice, which prioritizes environmental restoration as the main focus of law enforcement (Siregar, 2020). This view is consistent with the opinion of Rahmayanti, 2023 who states that *"the implementation of the ultimum remedium principle is not merely a limitation on the use of criminal sanctions, but rather a mechanism to balance ecological interests and the pursuit of justice."*

Considering these circumstances, this research is of significant importance since there remains a discrepancy between the normative concept of the *ultimum remedium* principle as stipulated in Law No. 32 of 2009 on Environmental Protection and Management and its enforcement in practice. Therefore, a deeper analysis is required to determine how the *ultimum remedium* principle is implemented within Indonesia's legal system and why it holds high urgency to be upheld in realizing effective and just environmental criminal law enforcement.

Problem Formulation

Based on the background outlined above, the research questions examined in this study can be formulated as follows:

1. How is the principle of ultimum remedium applied in law enforcement against environmental crimes in Indonesia, based on Law Number 32 of 2009 concerning Environmental Protection and Management?
2. Why is it urgent to consistently enforce the principle of ultimum remedium to ensure the effectiveness of environmental criminal law and protect the public's right to a healthy environment in Indonesia?

Research Methodology

This study employs a normative juridical legal research method, which is an approach that examines the prevailing legal norms, legal principles, and legal doctrines that have developed in the practice of environmental law enforcement in Indonesia (Soekanto, 2006). This method was chosen because the focus of the research is to analyze the application of the *ultimum remedium* principle within the context of statutory regulations and its implementation in the environmental criminal law system.

The research utilizes several approaches, namely:

1. Statutory Approach, which examines various laws and regulations related to environmental law enforcement, including the 1945 Constitution of the Republic of Indonesia, Law No. 32 of 2009 on Environmental Protection and Management, Law No. 11 of 2020 on Job Creation (Environmental Cluster), and relevant provisions of the Criminal Code (KUHP).
2. Conceptual Approach, which studies concepts and theories concerning the *ultimum remedium* principle, environmental criminal law, and corporate criminal liability based on the views of legal experts (Ismaidar, 2022). This approach is crucial to understanding the philosophical and doctrinal foundations of criminal sanctions in environmental cases.
3. Case Approach, which analyzes concrete cases of environmental law violations in Indonesia, such as forest fires in Riau, mining waste pollution in Kalimantan, and river pollution by industries in West Java. This approach assists the researcher in assessing how far the *ultimum remedium* principle has been implemented in practice within the environmental criminal justice system.

The data sources in this research consist of secondary data, which include primary, secondary, and tertiary legal materials:

1. Primary legal materials, including statutory regulations such as Law No. 32 of 2009, the Criminal Code (KUHP), and court decisions related to environmental criminal acts.[13]
2. Secondary legal materials, consisting of literature, books, journals, research findings, and scholarly works written by legal scholars such as Rahmayanti, Suci Ramadani, Ismaidar, Muhammad Arif Shalepi, and Muhammad Azhali Siregar, which are relevant to this topic (Rahmayanti, 2023).
3. Tertiary legal materials, including legal dictionaries, legal encyclopedias, and official online resources from government agencies such as the Ministry of Environment and Forestry (MoEF) (KLHK, 2024).

The data collection technique used is library research, conducted by reading, recording, and examining legal materials relevant to the research problem (Ramadani, 2022). The data are analyzed qualitatively and descriptively, aiming to describe and interpret legal data to obtain a

systematic overview of the urgency of applying the *ultimum remedium* principle in environmental criminal law enforcement in Indonesia (Shalepi, 2021).

Results

4.1 The Application of the Ultimum Remedium Principle in Environmental Law Enforcement in Indonesia

The *ultimum remedium* principle is a criminal law doctrine that positions criminal sanctions as the last resort after administrative and civil legal instruments are deemed ineffective in addressing a violation (Rahmayanti, 2023). In the context of environmental law, this principle aims to ensure that law enforcement does not immediately resort to criminal measures without first going through processes of guidance and restoration. This principle is regulated in Article 95 of Law No. 32 of 2009 on Environmental Protection and Management (PPLH Law), which stipulates that criminal sanctions shall be applied only when administrative sanctions are no longer effective or when violations cause serious harm to the environment.

However, the implementation of the *ultimum remedium* principle in the practice of environmental law enforcement in Indonesia often provokes debate. Many cases of pollution and environmental destruction that should have been prosecuted criminally are instead resolved through administrative sanctions such as warnings, temporary suspension of industrial activities, or revocation of business licenses (Ramadani, 2022). This indicates that criminal law instruments have not been optimally used as tools of law enforcement capable of producing a deterrent effect.

According to Rahmayanti, the application of the *ultimum remedium* principle should consider the degree of fault, the consequences caused, and the intention of the offender. If the violation is committed intentionally or results in severe pollution, it would be inappropriate for law enforcement to stop at the administrative level. Thus, environmental criminal law should not be viewed merely as a "complementary" mechanism but as a primary instrument to uphold ecological justice.

Ismaidar further emphasizes that the implementation of the *ultimum remedium* principle in environmental law must not diminish its essential function, which is to maintain a balance between development interests and environmental protection (Ismaidar, 2022). Therefore, law enforcement officers need a comprehensive understanding of when administrative measures can be considered ineffective, thereby necessitating the imposition of criminal sanctions

In practice, however, many law enforcement officers remain hesitant to apply criminal sanctions, assuming that administrative penalties are sufficient (Shalepi, 2021). In fact, in cases such as river pollution, forest fires, and hazardous industrial waste disposal, the elements of unlawful conduct, culpability, and tangible harm to the public are often fulfilled for criminal prosecution. This highlights the need for better coordination and harmonization among environmental law enforcement institutions — namely the Ministry of Environment and Forestry (MoEF), the National Police, and the Attorney General's Office — to prevent the *ultimum remedium* principle from becoming an excuse for weak law enforcement

4.2 Environmental Law Enforcement in Indonesia: Between Administrative and Criminal Law

Environmental law enforcement in Indonesia consists of three legal instruments: administrative, civil, and criminal, as regulated in Articles 76–97 of the Environmental Protection and Management Law (PPLH Law). Theoretically, administrative enforcement is prioritized because it serves a preventive and corrective function, while criminal enforcement is repressive in nature. However, in practice, the dominance of administrative sanctions gives the impression that perpetrators of environmental pollution receive lenient treatment.

According to Suci Ramadani, the tendency of government authorities to prioritize administrative sanctions is influenced by economic and investment considerations. Local

governments often fear that imposing criminal sanctions on corporations may discourage regional investment and affect economic stability. Such an attitude weakens the function of environmental criminal law as a means to protect public interests.

For example, in the case of forest and land fires involving PT Bumi Mekar Hijau in South Sumatra, the court imposed only administrative sanctions and civil compensation without initiating criminal proceedings against the corporate perpetrators, even though the ecological damage covered thousands of hectares. This case illustrates how the *ultimum remedium* principle is often used as a pretext to avoid criminal prosecution of major corporate violators.

Meanwhile, Muhammad Arif Shalepi stresses that environmental criminal law should not depend on the failure of administrative law. In cases involving *mens rea*—where violations are committed intentionally or through gross negligence—criminal sanctions must be applied immediately because the resulting harm to the public and threats to human life cannot be postponed.

Therefore, the urgency of environmental criminal law enforcement must be grounded in the principle of proportionality, which requires that sanctions correspond to the level of violation and the impact it causes. This principle aligns with the spirit of restorative environmental justice, which seeks to balance environmental restoration with the realization of justice for affected communities.

4.3 The Urgency of Enforcing the *Ultimum Remedium* Principle in Indonesia's Environmental Law System

The urgency of enforcing the *ultimum remedium* principle lies in its function to ensure legal certainty and justice in the application of sanctions for environmental violations. According to Muhammad Azhali Siregar, 2023 criminal law should not be disregarded when a violation results in systemic environmental damage and threatens the sustainability of future generations.

This principle is crucial in reaffirming that criminal law serves as an instrument of last resort, not as an instrument of no resort. Therefore, the urgency of applying the *ultimum remedium* principle is to ensure that perpetrators of serious environmental violations do not escape criminal accountability.

In addition, the enforcement of environmental criminal law carries an educational value. According to Rahmayanti, imposing criminal sanctions on corporate offenders can promote compliance with environmental standards and enhance legal awareness within the business sector. The existence of criminal liability serves as a deterrent, encouraging business actors to operate more cautiously and responsibly to avoid violating environmental regulations.

The implementation of this principle also aligns with the concept of sustainable development, which is an international mandate and has been integrated into Indonesia's national policy framework. Therefore, the *ultimum remedium* principle holds strategic urgency in achieving a balance between environmental protection and national economic interests.

4.4 Case Studies of Environmental Violations and the Application of the *Ultimum Remedium* Principle

One concrete example of environmental violations in Indonesia is the Citarum River pollution case, caused by industrial waste from textile factories in West Java. Although it was proven that hazardous and toxic waste (B3) had been discharged into the river, many of the offenders were only subjected to administrative sanctions. In fact, such actions clearly meet the elements of environmental criminal offenses as stipulated in Articles 98 and 99 of the Environmental Protection and Management Law (PPLH Law).

Another example is the forest and land fires that occurred in Riau and Kalimantan between 2019 and 2023, caused by land-clearing practices through burning. Despite causing significant state losses and widespread suffering among local communities, the legal process

against corporate perpetrators often ended merely with administrative fines and civil compensation. In this context, the *ultimum remedium* principle was applied inappropriately, as it effectively protected the perpetrators from criminal liability.

From Ismaidar's perspective, this practice reflects the weak understanding of law enforcement officials regarding the role of criminal law as a primary instrument for environmental protection. She emphasizes that the application of the *ultimum remedium* principle must be accompanied by clear and objective parameters, so that it does not become a shield for corporations or individuals committing serious environmental violations.

4.5 Academic Analysis and Critical Perspectives on the Enforcement of the *Ultimum Remedium* Principle

Based on academic perspectives, the application of the *ultimum remedium* principle must be selective and proportional. Rahmayanti argues that the urgency of this principle is not to avoid criminal prosecution, but rather to ensure effective and equitable law enforcement. Meanwhile, Suci Ramadani emphasizes that without the firm implementation of criminal sanctions, environmental law would merely become a symbolic norm lacking any deterrent effect.

Furthermore, in the context of national development, ensuring legal certainty in criminal prosecution for environmental violations represents the state's responsibility to fulfill citizens' constitutional right to a healthy environment. Therefore, the *ultimum remedium* principle must be enforced to protect public interests, not corporate ones.

From these various academic perspectives, it can be concluded that the urgency of enforcing the *ultimum remedium* principle cannot be overlooked. It serves as a fundamental pillar in Indonesia's environmental criminal law system, ensuring a balance between economic utility, ecological justice, and legal certainty for society as a whole.

Conclusion

Based on the description and analysis discussed in the previous chapter, two main points can be concluded as follows:

1. Application of the Ultimum Remedium Principle in Environmental Law Enforcement in Indonesia
   The application of the ultimum remedium principle in environmental law enforcement in Indonesia is normatively regulated in Law Number 32 of 2009 concerning Environmental Protection and Management, which places criminal law as a last resort after administrative and civil efforts have failed to restore environmental functions. However, in practice, the implementation of this principle remains inconsistent. Law enforcement officials tend to immediately use criminal sanctions without first considering administrative mechanisms. This creates an imbalance between the goals of environmental restoration and providing a deterrent effect on perpetrators. Therefore, more selective law enforcement based on the principles of ecological justice is needed.
2. The Urgency of Enforcing the Ultimum Remedium Principle in Achieving Effective Environmental Criminal Law
   The ultimum remedium principle is crucial in the environmental criminal law system because it maintains a balance between development interests and environmental protection. Implementing this principle does not weaken criminal sanctions, but rather strengthens the effectiveness of the law by ensuring that enforcement is proportional and oriented toward environmental restoration, rather than solely punishing perpetrators. Therefore, consistent application of the ultimum remedium principle will support the principle of environmental sustainability and guarantee the public's right to a clean and healthy environment, as guaranteed by the constitution.

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