

ARTIKEL ILMIAH

**ANALYSIS OF THE IMPLEMENTATION OF THE ULTIMUM REMEDIUM
PRINCIPLE IN ENVIRONMENTAL VIOLATIONS IN INDONESIA**



DISUSUN OLEH:

**NAMA : M. RIZA KURNIAWAN
NIM : 223020601190**

**KEMENTERIAN PENDIDIKAN TINGGI, SAINS DAN TEKNOLOGI
UNIVERSITAS PALANGKA RAYA
FAKULTAS HUKUM**

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Nama : M. Riza Kurniawan

NIM : 223020601190

Bidang : Hukum Pidana

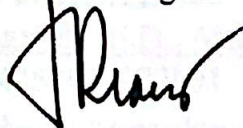
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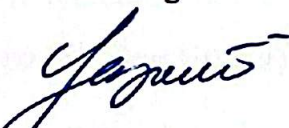
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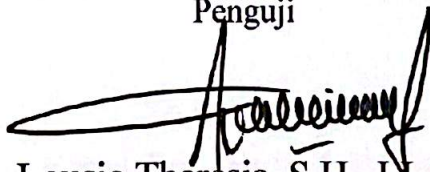
Dr. Heriamariaty, S.H., M.Hum
NIP. 197304252002122001

Pembimbing Pendamping



Rizki Setyobowo Sangalang, S.H., M.H
NIP. 198707242019031010

Penguji



Lousie Theresia, S.H., LL.M
NIP. 198305272010122005

Mengetahui,
Ketua Jurusan Ilmu Hukum



Ivans Januardy, S.H., M.H
NIP. 199001062015041001



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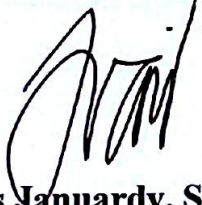
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NIP. 197304252002122001 (Pembimbing Utama)
2. Rizki Setyobowo Sangalang, S.H., M.H.
NIP . 198707242019031010 (Pembimbing Pendamping)

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NIP. 199001062015041001

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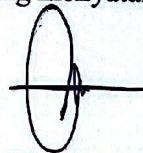
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223020601190

KATA PENGANTAR

Puji dan syukur penulis panjatkan kehadirat Allah SWT atas segala limpahan rahmat, hidayah, serta karunia-Nya, sehingga penulis dapat menyelesaikan penulisan artikel yang berjudul “Analysis Of The Implementation Of The Ultimium Remedium Principle In Environmental Violations In Indonesia”. Tanpa pertolongan dan kehendak-Nya, perjalanan panjang dalam proses penulisan artikel ini tidak akan mampu penulis lalui.

Artikel ini disusun sebagai salah satu syarat untuk memperoleh gelar Sarjana Hukum pada Fakultas Hukum Universitas Palangka Raya. Proses penulisan artikel ini bukanlah perjalanan yang singkat dan mudah. Berbagai tantangan, keterbatasan, serta dinamika selama pelaksanaan penelitian menjadi bagian dari proses pembelajaran dan pendewasaan bagi penulis. Setiap kesulitan yang dihadapi memberikan pelajaran berharga tentang ketekunan, kesabaran, dan arti sebuah perjuangan.

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Profession : Fakultas Hukum, Universitas Palangka Raya
Email Address : rizakurniawanprg@gmail.com
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ANALYSIS OF THE IMPLEMENTATION OF THE ULTIMUM REMEDIUM PRINCIPLE IN ENVIRONMENTAL VIOLATIONS IN INDONESIA

M. Riza Kurniawan^{1*}, Heriamariaty², Rizki Setyobowo Sangalang³, Louise Theresia⁴

¹ Fakultas Hukum, Universitas Palangka Raya, Palangka Raya, Indonesia

e-mail: rizakurniawanprg@gmail.com

² Fakultas Hukum, Universitas Palangka Raya, Palangka Raya, Indonesia

e-mail: heriamariaty@law.upr.ac.id

³ Fakultas Hukum, Universitas Palangka Raya, Palangka Raya, Indonesia

e-mail: rizkisetiobowo@law.upr.ac.id

⁴ Fakultas Hukum, Universitas Palangka Raya, Palangka Raya, Indonesia

e-mail: theresia.louise@gmail.com

*Corresponding Author

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Abstract: Law Number 32 of 2009 concerning Environmental Protection and Management emphasizes the principle of ultimum remedium as a last resort in enforcing environmental criminal law, where criminal sanctions are only applied after administrative and civil efforts have failed. However, the ambiguity of this regulation, such as the lack of objective parameters to determine the effectiveness of administrative sanctions, creates implementation inconsistencies, leading it to often rely on the subjectivity of law enforcers. This study aims to analyze the application of the ultimum remedium principle in environmental violations in Indonesia and identify optimization efforts. Using a normative juridical method with a statutory and conceptual approach, this study examines primary legal materials (the Criminal Code and Law Number 32 of 2009), secondary (literature and journals), and tertiary through library studies and analysis. The study's results indicate that this principle is effective in encouraging preventive and restorative approaches. However, its implementation is still weak due to subjectivity and a lack of technical guidelines. Optimization efforts include regulatory updates with clear parameters, increasing law enforcement capacity through training, strengthening technology-based administrative oversight, and reforming the legal system to support ecological justice and sustainable development. These recommendations are expected to reduce the risk of overcriminalization and increase the effectiveness of environmental protection in Indonesia.

Keywords: The principle of ultimum remedium; environmental law; Law Number 32 of 2009.

Introduction

The environment plays a vital role in supporting the sustainability of life and sustainable development. To prevent and address environmental pollution and damage, a well-planned management system supported by adequate legal instruments is required. Therefore, Law Number 32 of 2009 concerning Environmental Protection and Management was enacted as a legal basis for protecting and managing the environment through a series of integrated, sustainable actions. Efforts are directed at achieving environmental conditions free of pollution and damage, encompassing the stages of planning, use of ecological resources, control, maintenance, supervision, and law enforcement. To carry out environmental management to prevent and address environmental pollution and damage while maintaining the quality of environmental management, it is necessary to formulate comprehensive policies supported by relevant programs. Given that ecological management involves various interrelated aspects, it is essential to align the vision and mission between the central and regional governments to ensure the effective implementation of

these policies.¹ These provisions are also emphasized in Law Number 32 of 2009 concerning Environmental Protection and Management, which also regulates the legal principle known as the principle of *ultimum remedium*.²

In the framework of a comprehensive legal review, it is imperative to assert that the principle of *ultimum remedium* does not stand in isolation. Rather, it is an integral component of criminal policy (*strafrechtspolitik*) which positions criminal law as the *last resort* in social control. This construction mandates that criminal sanctions should only be deployed when other legal avenues, such as administrative or civil law, have proven ineffective or have reached a point of saturation in providing protection for the legal interests of society.³

In the context of environmental law, this approach aligns with the modern environmental governance paradigm, which prioritizes a preventive approach and a restorative approach over mere personal retribution. This is consistent with the principles of sustainability and preservation mandated under Article 2 letter b of Law Number 32 of 2009 concerning Environmental Protection and Management (UU PPLH).⁴ Consequently, the application of this principle must be analyzed not only normatively through statutory text but also in relation to the holistic objectives of sustainable environmental protection.⁵

The application of *ultimum remedium* also reflects a significant paradigm shift from an anthropocentric to an ecocentric perspective in legal philosophy. Under this view, the law does not merely protect human interests through the threat of imprisonment for environmental offenders. Instead, it prioritizes the safety and integrity of the ecosystem itself as an independent legal subject. The restoration of environmental functions, as regulated in Article 54 of the UU PPLH, is often more urgent than the incarceration of an individual. Criminal law should therefore be used strategically to support ecological recovery rather than just to punish human conduct. This approach ensures that the environment is treated with the respect necessary for biological and ecological stability.

Despite its noble intent, the discourse surrounding this principle is increasingly relevant due to inconsistencies in Indonesian environmental law enforcement. There is often a palpable indecisiveness in determining when criminal sanctions should be applied independently or concurrently with other measures. This indecisiveness indicates a significant legal gap between the normative standards written in law and actual field practice. Such a gap carries the risk of creating a state of under-enforcement, where serious environmental crimes go unpunished. Conversely, it can also lead to over-criminalization, which hinders business certainty without offering any real solutions to ecological damage. Clearer parameters are needed to ensure that law enforcement is both fair and effective in protecting the nation's resources.

Environmental criminal law serves as a strategic tool for upholding justice and acting as a preventative measure against widespread ecological violations. In this specific context, the principle of *ultimum remedium* plays a crucial role in preventing the potential abuse of state power. By requiring that administrative and civil remedies be exhausted first, the state ensures that criminal intervention is reserved for the most egregious cases. This hierarchy of enforcement is designed to encourage corporate and individual compliance through corrective rather than purely punitive means. It fosters a legal culture where the primary objective is the cessation of harm and the repair of the damaged environment. Thus, the principle acts as a safeguard for both the environment and the due process rights of the citizens.

The urgency of this discourse becomes increasingly relevant when linked to the dynamics of environmental violations in Indonesia, which frequently exhibit inconsistencies in enforcement. Indecisiveness in determining the parameters for when criminal sanctions may be applied independently or concurrently indicates a significant legal gap between normative standards and field practice. This carries the risk of creating a state of under-enforcement, where environmental crimes are left without deterrent

¹ Ina Herlina. (2017). "Environmental Problems and Environmental Law Enforcement in Indonesia." *Galuh Justisi*, Vol. 3 No. 2, pp. 1-16

² Reza Meilanda Lesmana. (2020). "Implementation of the *Ultimum Remedium* Principle on Perpetrators of Criminal Acts of Violating Waste Quality Standards (Analysis of Article 100 of Law 32 of 2009)." *Multidisciplinary Treasury*, Vol. 1 No. 1, pp. 31-45.

³ Sudikno Mertokusumo, *Mengenal Hukum: Suatu Pengantar*, (Yogyakarta: Cahaya Atma Pustaka, 2007), p. 124.

⁴ Law Number 32 of 2009 concerning Environmental Protection and Management, Article 2 letter b.

⁵ Jimly Asshiddiqie, *Green Constitution: Nuansa Hijau Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*, (Jakarta: Rajawali Pers, 2009), p. 88.

sanctions, or over-criminalization, which may hinder business certainty without offering solutions to actual ecological damage.⁶

In this context, environmental criminal law serves as a strategic tool in upholding justice and as a preventative measure against ecological violations, where the principle of *ultimum remedium* plays a crucial role. This principle states that criminal action should be the last resort after administrative, civil, or other remedial efforts have failed, to prevent the abuse of state power. In Indonesia, the regulatory framework for handling environmental violations is primarily governed by Law Number 32 of 2009. This law aims to integrate sustainable and participatory principles into every level of ecological management across the archipelago. It includes specific provisions for criminal sanctions intended to deter perpetrators who knowingly damage or pollute vital ecosystems. However, the implementation of these sanctions is often complicated by the inherent complexities of proving environmental harm. The law seeks to balance the need for economic development with the non-negotiable requirement of environmental preservation. Without a clear and functional legal framework, the goal of achieving a "green" economy remains difficult to reach.

A significant problem remains regarding the ambiguity found within the specific articles of the UU PPLH. Specifically, Article 98 imposes criminal sanctions for violations but fails to explicitly define the operational limits of the *ultimum remedium* principle. This lack of clarity leaves law enforcement officers struggling to distinguish between initial remediation efforts and necessary criminal measures. As a result, enforcement remains inconsistent, with some cases handled only through administrative fines while others proceed directly to court. This inconsistency can lead to perceptions of injustice and a lack of transparency in the legal process. Without a clear statutory definition, the principle remains a theoretical concept rather than a practical enforcement tool.

This legal ambiguity is further exacerbated by a lack of clear technical guidelines or implementing regulations from the executive branch. In the absence of these guidelines, the implementation of the principle depends heavily on the subjective interpretations of individual judges and prosecutors. Such subjectivity often leads to different outcomes for similar environmental offenses across different regions of Indonesia. Furthermore, a lack of coordination between government agencies often results in overlapping jurisdictions and conflicting enforcement actions. These systemic issues weaken the overall effectiveness of environmental protection efforts and diminish public trust in the legal system. Technical clarity is therefore essential to transform the principle into a consistent and predictable legal standard.

To bridge these gaps, Indonesia must focus on formulating comprehensive policies that are supported by relevant and detailed implementing programs. These programs should aim to synchronize the understanding of *ultimum remedium* among all stakeholders, including the police, prosecutors, and environmental agencies. Improving the quality of environmental management requires a shift toward more scientific and data-driven evidence in legal proceedings. By clarifying the triggers for criminal action, the state can provide better legal certainty for businesses while ensuring that ecological damage is addressed. Ultimately, a refined legal approach will ensure that the environment is protected through a balanced and sophisticated application of the law.

In Indonesia, the application of the *ultimum remedium* principle in handling environmental violations is regulated by Law Number 32 of 2009, which serves as the primary legal framework for environmental protection and management. This law aims to integrate sustainable and participatory principles into ecological management, including criminal sanctions for perpetrators who damage ecosystems. However, ambiguity in this law is a significant problem. Specifically, Article 98 of Law Number 32 of 2009 imposes criminal sanctions for environmental violations but does not explicitly define the limits of the *ultimum remedium* principle. This creates ambiguity, as law enforcement often struggles to distinguish between initial remediation efforts (such as administrative sanctions) and criminal measures, leading to inconsistent enforcement. Some environmental pollution cases are handled solely administratively, without regard for this principle, while others proceed directly to criminal proceedings, potentially violating human rights and the principle of justice. This ambiguity is exacerbated by the lack of clear technical guidelines or implementing regulations, which leaves the principle's implementation dependent on subjective interpretations by judges and prosecutors, as well as on a lack of coordination between government agencies.⁷

⁶ Satjipto Rahardjo, *Penegakan Hukum: Suatu Tinjauan Sosiologis*, (Jakarta: Genta Publishing, 2009), p. 45.

⁷ Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation*, (London: Clarendon Press, 1823), p. 170.

Method

This final analysis regarding the application of the *ultimum remedium* principle in Indonesian environmental violations is conducted using a normative juridical research method. This approach focuses on the study of law as a system of norms, rules, and principles found within statutory frameworks. The primary legal materials for this study include the Indonesian Criminal Code (KUHP) and Law Number 32 of 2009 concerning Environmental Protection and Management, along with its subsequent amendments. By examining these statutes, the research identifies the foundational legal basis for environmental enforcement and its specific limitations. Furthermore, secondary legal materials such as legal literature, peer-reviewed scientific articles, and established academic perspectives are utilized to provide a comprehensive legal context.

To deepen the analysis, a conceptual approach is employed to scrutinize the various doctrines and theories of criminal law associated with the *ultimum remedium* doctrine. This principle fundamentally asserts that criminal law must serve only as a last resort when other legal avenues have failed. This approach allows for a critical examination of how this doctrine is interpreted within the specific landscape of Indonesian environmental crimes. It enables the research to assess whether the current legal construction effectively balances punitive measures with the necessity for administrative compliance. Consequently, the conceptual approach helps bridge the gap between abstract legal theory and its practical necessity in modern environmental protection.⁸

The research also explores the urgent need for applying this principle consistently to address the unique challenges of ecological law enforcement. It evaluates whether the existing regulations provide sufficient clarity to prevent either under-enforcement or the excessive use of criminal sanctions. By analyzing the adequacy of current laws, the research seeks to identify potential legal voids that lead to inconsistent judicial outcomes. This evaluation is critical for ensuring that environmental law serves its true purpose of ecological restoration rather than just individual punishment. Ultimately, the study aims to provide a more structured framework for when the state should transition from administrative warnings to criminal prosecution.

Finally, the combination of normative juridical and conceptual approaches ensures that the analysis is grounded in both statutory reality and legal philosophy. This methodology allows for a holistic review of how *ultimum remedium* functions as a safeguard against the abuse of state power in the environmental sector. It highlights the importance of aligning the mission of law enforcement agencies to achieve a more predictable and fair legal system. By synthesizing legislative texts with academic discourse, the research provides a clear roadmap for improving environmental governance in Indonesia. This thorough examination ensures that the resulting recommendations are legally sound and practically applicable to future environmental disputes.

Results and Discussion

Legal Principles in Environmental Violations in Indonesia

Principles are fundamental principles that provide the primary foundation for establishing truth and for thinking and forming opinions. In a legal context, legal principles are general principles within the legal system that reflect ethical values recognized by society. These principles then serve as the basis for formulating concrete legal norms. If legal principles are codified into clear, operational legal regulations, they can be applied to regulate certain legal events. Conversely, if legal principles have not been institutionalized in normative legal provisions, they cannot be used directly in regulating a legal event.⁹

In relation to the regulation of environmental crimes under Law Number 32 of 2009 concerning Environmental Protection and Management, the principle of *ultimum remedium* is one of the fundamental principles. This principle places criminal law enforcement as a last resort, considering the characteristics of criminal sanctions, which are essentially intended to cause suffering. In the criminal law system, the principle of *ultimum remedium* indicates that criminal law is used only when other legal instruments are no longer effective. In the context of environmental law enforcement, the principle of *ultimum remedium* holds that criminal law is used only after administrative mechanisms have failed, serving as a last resort for ecological

⁸ Marzuki, P. M. (2017). *Penelitian Hukum: Edisi Revisi*. Jakarta: Prenada Media Group. (Discussing the Conceptual Approach and Legal Doctrines).

⁹ Havinanda, F. (2020). *Legal Politics in the Reform of the Environmental Criminal Law System and Its Impact on the Enforcement of Environmental Crime Law*. *Al-Hikmah Law Journal: Media for Communication and Information on Law and Society*, 1(1), p. 112.

recovery and protection. Then, the second *primum remedium*: if an act is considered truly detrimental to the interests of the state and the people, both according to applicable laws and public sentiment, criminal sanctions are the leading choice. *Primum remedium* is the opposite of *ultimum remedium*, where the enforcement of criminal law through criminal sanctions in the form of imposing suffering on an individual or corporation is prioritized in law enforcement, including the enforcement of environmental law.¹⁰

Theoretically, the application of *ultimum remedium* can be dissected through the lens of theories of punishment, specifically the utilitarian theory which emphasizes deterrence and the utility of the law. From a utilitarian standpoint, punishment is only justified if it produces a greater good for society compared to the suffering inflicted upon the offender.¹¹ In an environmental context, if administrative sanctions in the form of government coercion (*bestuursdwang*) are sufficient to stop pollution, then criminal intervention becomes socially and legally inefficient.

Furthermore, restorative theory plays a crucial role by focusing primarily on the repair of damage. Given that ecological damage is often irreversible or difficult to rectify, an approach emphasizing compensation and environmental cleanup is more theoretically sound than mere corporal punishment.¹² Criminal law must be positioned as a supplementary instrument (*subsidiarity*) that functions when civil and administrative accountability mechanisms fail to satisfy the requirements of ecological justice.

The relevance of the "law as a tool of social engineering" theory, as proposed by Roscoe Pound, serves as an essential analytical instrument in this study. Environmental law, including the operationalization of the *ultimum remedium* principle, must be capable of directing the behavior of society and business actors toward voluntary ecological compliance.¹³ However, without rigid and measurable parameters, the law loses its engineering function because it creates an environment of uncertainty regarding the boundaries of actions that may lead to criminal sanctions.

This concept of social engineering must be translated into a criminal policy capable of balancing economic interests with environmental protection. Article 100 of the UU PPLH, which regulates administrative sanctions for violators of environmental quality standards, is a manifestation of the legislature's intent to prioritize guidance over *pro-justitia* action.¹⁴ Uncertainty in the interpretation of this article is often a weakness exploited by corporations to evade more stringent legal responsibilities.

Application of the *Ultimum Remedium* Principle in Environmental Violations in Indonesia

In explanation, Constitution Number 32 of 2009 concerning Protection and Management of the Environment and Life adhered to known principles as ultimate remedies. On this basis, the enforcement law is an alternative law, so that, lastly, the mechanisms of enforcement law, such as civil and legal administration, must be prioritized first. If the effort is made to enforce the law through the second instrument, the No capable finish and stop occurrence action criminal environment life as arranged in the Constitution Number 32 of 2009, then the implementation of criminal law can be done. In context, threats, sanctions, and criminal provisions in the Constitution, the No always The same or even can provide more light than with limit maximum regulated criminal law in the Criminal Code (KUHP), so that allows dropping criminal with a higher level of low. Condition: This potential creates ambiguity in the practice of criminal law enforcement, life, especially in the judge's expected decision, capable of giving effect to a deterrent *effect* against the perpetrator. because of that, the enforcement law environment life through instrument law criminal law in essence related to How three problem main in law criminal formulated in regulation legislation as means engineering social, which includes: (1) formulation action criminal, (2) responsibility criminal, and (3) the imposition of sanctions, okay in the form of criminal and disciplinary sanctions.¹⁵

The meaning of the principle of *ultimum remedium* is emphasized in Article 100 paragraph (2) of Law Number 32 of 2009, which states that anyone who violates wastewater quality standards, emission quality standards, or disturbance quality standards can only be subject to criminal sanctions if the

¹⁰ Pratiwi, Kania Tamara, Siti Kotijah, and Rini Apriyani. "Application of the *Primum Remedium* Principle in Environmental Crimes." *Sasi* 27.3 (2021): 363-375.

¹¹ *Ibid.*

¹² Muladi, *Kapita Selekta Sistem Peradilan Pidana*, (Semarang: Badan Penerbit Universitas Diponegoro, 1995), p. 18.

¹³ Roscoe Pound, *An Introduction to the Philosophy of Law*, (New Haven: Yale University Press, 1922), p. 99.

¹⁴ Article 100 paragraph (1) of Law Number 32 of 2009.

¹⁵ Nyoman Serikat Putra Jaya, (2005). *Selected Chapters on Criminal Law*, Semarang: UNDIP Publishing Agency, p. 253.

administrative sanctions that have been previously imposed are not complied with or if the violation is committed repeatedly.¹⁶

The principle of *ultimum remedium* was first proposed by Mr. Modderman, who at that time served as the Dutch Minister of Justice. In his presentation, he explained that the principle of *ultimum remedium* can be applied in cases of certain legal violations, especially when other law enforcement measures are deemed no longer effective in resolving the breach.¹⁷

Legal violations that allow the application of the *ultimum remedium* principle include, first, breaches of the law that are *conditio sine qua non*, and second, violations of the law that are serious and cannot be resolved through administrative law mechanisms. Thus, the *ultimum remedium* principle is understood as the last legal recourse available to law enforcement officers. This understanding is reinforced by Remmelink's opinion, which holds that criminal law enforcement under the *ultimum remedium* principle can be carried out only if other legal means, such as administrative sanctions, fail to deter. The perpetrator shows no sense of guilt for the actions he has committed.

In the explanation of number 6 of Law Number 32 of 2009 concerning Environmental Protection and Management, it is explained that criminal law enforcement is carried out by considering the application of minimum criminal sanctions compared to maximum criminal sanctions, the development of evidentiary instruments, the regulation of criminal sanctions for violations of environmental quality standards, the harmonization of the implementation of criminal law enforcement, and regulations regarding criminal acts committed by corporations. The application of the *ultimum remedium* principle in handling environmental violations in Indonesia is of high urgency, as this principle, as regulated in Law Number 32 of 2009 concerning Environmental Protection and Management, requires administrative and civil legal measures as the initial step before the imposition of criminal sanctions. This approach encourages the application of preventive and restorative mechanisms, thereby making them more effective at suppressing the occurrence of sustainable, complex ecosystem damage.¹⁸ This principle increases law enforcement efficiency by reducing the burden on the courts through relatively fast settlement mechanisms, such as mediation, which, in practice, has been reported to save time in handling deforestation cases in Kalimantan. Without the application of the *ultimum remedium* principle, there is potential for *overcriminalization*; therefore, a strong and consistent implementation of the *ultimum remedium* principle is needed to accelerate environmental restoration efforts.¹⁹

Administrative law enforcement, as regulated in Article 76 of Law Number 32 of 2009 concerning Environmental Protection and Management, includes several forms of administrative sanctions, including:

1. written warning
2. government coercion
3. freezing of environmental permits
4. Revocation of environmental permits

Thus, these administrative sanctions have several weaknesses in law enforcement practices, as outlined in the previous paragraph, particularly regarding the lack of clear parameters and detailed explanations of the criteria for success or failure in administrative law enforcement. This condition ultimately creates uncertainty in determining when criminal law enforcement can be pursued as a follow-up step.

Mardjono Reksodiputro expressed his views on environmental pollution prevention strategies linked to criminal law enforcement. According to him, in cases of violations of water quality standards, emission quality standards, and ecological disturbance quality standards, criminal sanctions should be used as an alternative to administrative sanctions. In addition, criminal sanctions can only be imposed if the perpetrator is proven to have knowingly and intentionally violated the provisions of the quality standards that pose a threat to public health. In terms of criminal liability for corporations as perpetrators of pollution that violates water waste quality standards, emission quality standards, and environmental disturbance quality standards, the party responsible for representing the corporation is the corporation's board of

¹⁶ Bimantara, Bobby, Somawijaya Somawijaya, and Imamulhadi Imamulhadi. "Investigation of Environmental Crimes Through the Application of the *Ultimum Remedium* Principle in Connection with Law Number 32 of 2009 Concerning Environmental Protection and Management." *Padjadjaran Legal Axis Journal* 2.2 (2021): 366-381.

¹⁷ Dian Adriawan Dg Tawang. (2020). "Application of the *Ultimum Remedium* Principle in Environmental Criminal Law Provisions in Indonesia." *Supremacy of Law* Vol. 16 No. 1, pp. 48-61.

¹⁸ Maria SW Sumardjono, *Indonesian Environmental Law* (Jakarta: PT RajaGrafindo Persada, 2014), pp. 245-248.

¹⁹ Ifahda Pratama Hapsari. (2020). "Affirmative Action as a Form of Justice in Providing the *Ultimum Remedium* Principle in Environmental Enforcement Efforts Due to Forest Fires." *Justiciablen Journal*, Vol. 2 No. 2, pp. 53-79.

directors.²⁰

Criminal law enforcement against environmental violations, as stipulated in Article 100 of Law Number 32 of 2009, is a legal instrument intended as a last resort. Therefore, the application of criminal sanctions in this context is not intended to restore the polluted environment, but rather to deter perpetrators.²¹

In the methodological aspect, the normative approach utilized in this study must be operationally manifested through vertical and horizontal synchronization analysis of relevant regulations. This analysis includes testing the consistency between the Indonesian Penal Code (KUHP), the UU PPLH, and its amendments in Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law.²² The fundamental changes in the Job Creation Law, which shifted several criminal sanctions toward administrative sanctions, demand a re-examination of the standing of the *ultimum remedium* principle.

This analytical method also involves in-depth legal interpretation techniques, particularly systematic and teleological interpretations. Systematic interpretation is required to understand the interconnectedness between administrative sanctions in Articles 76 through 82 of the UU PPLH and the criminal provisions in Chapter XV of the same law.²³ Meanwhile, teleological interpretation aims to uncover the original intent of the legislators regarding whether environmental criminal law was intended to protect administrative values (*administrative-dependent crimes*) or pure ecological values. This analysis is not merely descriptive of existing articles but is also argumentative in criticizing emerging legal loopholes. For instance, the lack of clarity between pure administrative violations and violations that are *mala in se* (inherently evil) in environmental crimes often obscures the application of the *ultimum remedium* principle.²⁴ This has the potential to create enforcement disparities that harm both the environment and the investment climate in Indonesia.

Furthermore, this synchronization must observe how derivative regulations, such as Government Regulations on the implementation of environmental protection, provide technical guidelines for environmental inspectors. Without alignment between the primary law and its implementing regulations, the *ultimum remedium* principle remains a mere theoretical jargon without practical application for law enforcement officers in the field.²⁵

On a practical level, the primary weakness in implementing the *ultimum remedium* principle lies in the absence of objective indicators to assess the failure of administrative sanctions. Article 100 paragraph (2) of the UU PPLH states that criminal penalties can only be imposed if the administrative sanctions imposed are not complied with or if the violation is committed more than once. However, the definitions of "non-compliance" and "frequency of violations" are often subjective in the hands of law enforcement, creating space for corrupt practices or an abuse of discretion.

Therefore, it is necessary to formulate Standard Operating Procedures (SOPs) containing quantitative and qualitative indicators, such as the level of toxicity of the waste discharged, the extent of the damage, and the compliance record of the business entity. Without these parameters, the broad discretion held by Environmental Civil Servant Investigators (PPNS) can lead to inconsistencies that undermine legal certainty, as guaranteed under Article 28D paragraph (1) of the 1945 Constitution.

In the context of corporate criminal liability, the application of *ultimum remedium* must consider the economic capacity and influence of the perpetrator. Corporations, as legal subjects, often possess significant resources to lobby for light administrative sanctions. In certain conditions, particularly for severe, systemic violations with widespread impacts on public health, a *primum remedium* approach (criminal law as the primary tool) should be considered to provide a commensurate deterrent effect.

The provisions regarding corporate responsibility in Article 116 of the UU PPLH affirm that criminal charges can be brought against the business entity and/or the person giving the order. [^16] The application

²⁰ Mardjono Reksodiputro. (1982). *Review of the Development of Special Crimes in a Modernizing Society*, Bandung: Bina Cipta, p. 76

²¹ Imam Budi Santoso & Taun. (2019). "Application of the *Ultimum Remedium* Principle in the Enforcement of Environmental Criminal Law." *University of Bengkulu Law Journal*, Vol. 3 No. 1, pp. 15-22.

²² Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law.

²³ Moeljatno, *Asas-Asas Hukum Pidana*, (Jakarta: Bina Aksara, 1983), p. 56.

²⁴ Barda Nawawi Arief, *Masalah Penegakan Hukum dan Kebijakan Hukum Pidana dalam Penanggulangan Kejahatan*, (Jakarta: Kencana, 2007), p. 112.

²⁵ Koesnadi Hardjosoemantri, *Hukum Tata Lingkungan*, (Yogyakarta: Gadjah Mada University Press, 2005), p. 312.

of the *ultimum remedium* principle must not become a shield for corporations to conduct a cost-benefit analysis where paying administrative fines is deemed cheaper than meeting standard environmental management requirements. Here, criminal law must act as a stabilizer when administrative sanctions are no longer capable of altering corporate behavior.

Efforts to Optimize the Implementation of the *Ultimum Remedium* Principle in Environmental Violations in Indonesia

Law Number 32 of 2009 includes provisions for criminal enforcement. However, its implementation still relies on the subjectivity of law enforcers, as there are no clear parameters for determining when administrative sanctions have failed. This creates the potential for inconsistencies in legal implementation. Criminal enforcement is generally focused on serious violations, such as pollution that violates quality standards and is carried out deliberately, especially by corporations, with directors as the responsible parties. Therefore, more detailed operational guidelines are needed, especially regarding indicators of the success of administrative sanctions and objective parameters for activating criminal sanctions. This is necessary so that the application of the *ultimum remedium* principle is not subjective and is not interpreted arbitrarily, either by perpetrators of environmental crimes, and also needs to emphasize the collaborative role between ecological services, law enforcement officials, civil society, and the business world in creating just and sustainable environmental law enforcement. The *ultimum remedium* principle must be interpreted as part of an environmental management system that emphasizes prevention, recovery, and ecological justice, not merely as a means of punishment.

To optimize the implementation of this principle, several strategic steps must be taken, including increasing the capacity and understanding of law enforcement officials and related agencies regarding the principle of *ultimum remedium* and environmental law enforcement mechanisms through ongoing training, so that legal decisions are appropriate, proportional, and just.²⁶ Furthermore, administrative law enforcement needs to be strengthened through stricter, more routine supervision and the use of technologies such as environmental sensors and drones. This way, minor violations can be handled directly through swift, effective administrative sanctions, without the need for expensive, lengthy criminal proceedings. This step must also be supported by efforts to increase education and legal awareness for business actors and the general public, through a broad national campaign. The goal is for them to truly understand the importance of complying with environmental regulations, so that cases of violations that ultimately require criminal prosecution can be drastically reduced.

The system law environment needs to be reformed to adapt to changing social, economic, and technological conditions. This is important for improving the management environment and creating more effective enforcement laws, for example, by renewing supporting rules and fostering an innovation-friendly environment. Besides that, handling serious and repeated environmental violations must be carried out by an honest and trustworthy system, with judges and officers professional, expert, and knowledgeable, with the law correct and principles ultimate *Remedium* through special training. The goal is to implement punishment criminally, not haphazardly. Still, it can serve as a strong deterrent to protect the environment without making the wrong person feel no fair, and at the same time help create a friendly investment environment in the long term.²⁷

From a comparative law perspective, several advanced jurisdictions have implemented a more measurable "compliance-based enforcement" approach. This approach prioritizes the fulfillment of obligations through environmental audit mechanisms and improvements to the corporation's internal systems before criminal options are pursued. Indonesia could adopt clearer parameters for determining the transition from administrative to criminal sanctions by referencing international best practices that prioritize transparency.

Inter-agency coordination is also a crucial pillar for the success of this principle. Fragmented enforcement between the Ministry of Environment and Forestry (KLHK), the Police, and the Attorney General's Office often results in overlapping authority or a "passing of the buck." What is required is an integrated environmental law enforcement system that allows for real-time data exchange regarding the administrative compliance status of a company.

²⁶ Takdir Rahmadi, *Environmental Law in Indonesia (Third Edition)*, (Jakarta: Rajagrafindo Persada, 2020), pp. 267-270.

²⁷ Franky Butar Butar, *Environmental Law Enforcement: Administrative, Civil, and Criminal*, (Surabaya: Airlangga University Press, 2025), p. 85

Strengthening technology-based supervision, as envisioned in the spirit of digital governance, can minimize subjectivity in law enforcement. The use of digital monitoring systems, such as automated water and air quality sensors, can provide objective data to determine whether a violation has exceeded administrative tolerance limits and must enter the criminal realm. This would reduce reliance on manual assessments, which are prone to manipulation.

In conclusion, the *ultimum remedium* principle in environmental law should not be interpreted as an attempt to weaken law enforcement, but as an effort to position the law proportionally. Effective environmental law enforcement is that which integrates prevention, supervision, and restoration synergistically. With clear parameters, strong regulatory synchronization, and the utilization of technology, the primary goal of environmental protection for future generations can be achieved while maintaining legal certainty for all stakeholders.

Conclusion

Based on the research results and discussions that have been obtained, the conclusion obtained is that the principal ultimate Remedium in context of violation environment living in Indonesia, as arranged in Constitution Number 32 of 2009 concerning Protection and Management Environmental Life (PPLH), placing enforcement law criminal as an effort law final after mechanism of administration and civil fail finish violation . Principle: This aims for a push approach, preventive and restorative, reducing the burden on the court, as well as preventing *overcriminalization*, by focusing on the deterrent effects for perpetrators without direct repair of the environmental damage that has occurred. its implementation reinforced by Article 100 paragraph (2) of the Law , which limits criminal penalties for violations standard wastewater quality , emissions , or recurring disturbances or No obedient to sanctions administration . However, the implementation principle has weaknesses, such as subjectivity in enforcing laws and consequences, a lack of clear parameters for evaluating success, and sanctions administration (e.g., reprimand in writing, coercion by the government , freezing, or revocation of permission). This causes ambiguity and confusion, especially in judges' decisions aimed at giving effect to deterrence.

For optimize implementation principle this, is required step strategic like update guidelines operational with indicator objective, improvement capacity apparatus through training sustainable, strengthening supervision administration use technology, campaign education law, as well as system reform laws that emphasize collaboration inter- party approach This will ensure enforcement proportional, just and sustainable laws, encouraging compliance voluntary, and support development friendly environment in the middle challenge change climate. Thus, the principle ultimate Remedium is not just tool criminalization, but rather a part of system management, an effective environment

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PALANGKA RAYA (73111)
KALIMANTAN TENGAH TELP / FAX : (0536) 32 20252 / (0536) 32 41152
WEBSITE: law.upr.ac.id

DAFTAR PENILAIAN ARTIKEL PENGGANTI SKRIPSI

Pada Hari ini Selasa Tanggal 10 Bulan Februari Tahun 2026 telah dinilai Artikel Mahasiswa Fakultas Hukum Universitas Palangka Raya

Nama : M. Riza Kurniawan

NIM : 223020601190

Judul Artikel : Analisis Penerapan Asas Ultimum Remedium Dalam Pelanggaran Lingkungan Hidup Di Indonesia

No.	Aspek Yang Dinilai	Nilai		Keterangan
		Angka	Huruf.	
1.	Sistematika	80	A	Lulus
2.	Isi (Content)	80	A	Lulus
3.	Analisis	80	A	Lulus
4.	Bahasa	79	B+	Lulus
5.	Aktualisasi/Relevansi	80	A	Lulus
6.	Kemampuan Mempertahankan	79	B+	Lulus

Catatan Perbaikan :

Lulus DENGAN REVISI

1. Nilai Akhir : Jumlah / aspek yang dinilai
2. Standar Penilaian :
 - 80-100 = A
 - 75-79 = B+
 - 70-74 = B
 - 65-69 = C+
 - 56-64 = C
 - 40-55 = D
 - < 40 = E

Palangka Raya, 10 Februari 2026
Penguji,

Lousie Theresia, S.H., LL.M
NIP. 198305272010122005



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FAKULTAS HUKUM

KAMPUS UPR TUNJUNG NYAIRO JALAN II. TIMANG KOTAK POS 2 / PLKUP
PALANGKA RAYA (73111)
KALIMANTAN TINGGI TELP / PAX : (0536) 32 20252 / (0536) 32 41152
WEBSITE : law.upr.ac.id

DAFTAR PENILAIAN ARTIKEL PENGGANTI SKRIPSI

Pada Hari ini Kamis Tanggal 22 Bulan Januari Tahun 2026 telah dinilai Artikel Mahasiswa Fakultas Hukum
Universitas Palangka Raya

Nama : M. Riza Kurniawan

NIM : 223020601190

Judul Artikel : Analisis Penerapan Asas Ultimum Remedium Dalam Pelanggaran
Lingkungan Hidup Di Indonesia

No.	Aspek Yang Dinilai	Nilai		Keterangan
		Angka	Huruf.	
1.	Sistematika	80	A	
2.	Isi (Content)	80		
3.	Analisis	80		
4.	Bahasa	80		
5.	Aktualisasi/Relevansi	80		
6.	Kemampuan Mempertahankan	80		

Catatan Perbaikan :

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4. Standar Penilaian :

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Palangka Raya, 10 Februari 2026
Pembimbing,

Dr. Heriamariaty, S.H., M.Hum
NIP. 197304252002122001



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KAMPUS UPR TUNJUNG NYAHU JALAN II. TIMANG KOTAK POS 2 / PLKUP
PALANGKA RAYA (73111)
KALIMANTAN TINGGI TELP / FAX : (0536) 32 20252 / (0536) 32 41152
WEBSITE : law.upr.ac.id

DAFTAR PENILAIAN ARTIKEL PENGGANTI SKRIPSI

Pada Hari ini Selasa Tanggal 10 Bulan Februari Tahun 2026 telah dinilai Artikel Mahasiswa Fakultas
Hukum Universitas Palangka Raya

Nama : M. Riza Kurniawan
NIM : 223020601190
Judul Artikel : Analisis Penerapan Asas Ultimum Remedium Dalam Pelanggaran
Lingkungan Hidup Di Indonesia

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		Angka	Huruf.	
1.	Sistematika	80		
2.	Isi (Content)	80		
3.	Analisis	80		
4.	Bahasa	80		
5.	Aktualisasi/Relevansi	80		
6.	Kemampuan Mempertahankan	80		

Catatan Perbaikan :

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5. Nilai Akhir : Jumlah / aspek yang dinilai
6. Standar Penilaian :
- 80-100 = A
- 75-79 = B+
- 70-74 = B
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- < 40 = E

Palangka Raya, 10 Februari 2026
Pembimbing,


Rizki Setyobowo Sangalang, S.H., M.H.
NIP. 198707242019031010



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Kampus UPR Tunjung Nyaho, Jalan Yos Sudarso, Palangka Raya (73111) Kalimantan Tengah
Laman : <https://fh.upr.ac.id>

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Nomor : 638/UN24.7/EP/2026

Sehubungan dengan pelaksanaan Tugas Akhir sebagai syarat kelulusan bagi mahasiswa Program Studi Ilmu Hukum Fakultas Hukum Universitas Palangka Raya, dengan ini menyatakan bahwa:

Nama : M. RIZA KURNIAWAN
NIM : 223020601190
Program Studi : S1 Ilmu Hukum
Dosen Pembimbing : 1. Dr. Heriamariaty, S.H., M.Hum
2. Rizki Setyobowo Sangalang, S.H., M.H

Telah menyelesaikan Penulisan Artikel sebagai Tugas Akhir Pengganti Skripsi bagi Mahasiswa Fakultas Hukum Universitas Palangka Raya dengan judul "*Analysis Of The Implementation Of The Ultimium Remedium Principle In Environmental Violations in Indonesia*" Pada Al-Bayyinah Journal. Vol 10, 2026. ISSN: 1979-7485; E- ISSN : 2580-5088621-4105 (SINTA 3).

Demikian Surat Keterangan ini diberikan, untuk dapat dipergunakan sebagaimana mestinya.

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An. Dekan
Wakil Dekan Bidang Akademik,



Aris Toteles, S.H., M.H
NIP. 197905062003121002





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UNIVERSITAS PALANGKA RAYA
FAKULTAS HUKUM

Kampus UPR Tunjung Nyaho, Jalan Yos Sudarso, Palangka Raya (73111), Kalimantan Tengah
Laman : <https://fh.upr.ac.id>

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NIM : 223020601190
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Nama Jurnal : Al-Bayyinah
Indeksasi Jurnal : Sinta 3

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No	Unsur Kelayakan	Range Kelayakan				
		Tidak Layak (1)	Kurang (2)	Cukup (3)	Baik (4)	Sangat Baik (5)
1.	Judul Artikel				✓	
2.	Abstrak				✓	
3.	Pendahuluan			✓		
4.	Penelitian Terdahulu/ <i>Literature Review</i>			✓		
5.	Metode Penelitian				✓	
6.	Hasil dan Pembahasan			✓		
7.	Kesimpulan			✓		

8.	Sitasi dan Daftar Pustaka				✓	
9.	Novelty/Kebaharuan			✓		
10.	Hasil Korespondensi			✓		

No.	Unsur Verifikasi	Keterangan Verifikasi
1.	Reputasi Jurnal	Sinta 3
2.	Link Indeksasi Reputasi Jurnal	https://sinta.kemdiktisaintek.go.id/journals/profile/4904

Berdasarkan hasil verifikasi kelayakan, artikel ilmiah yang telah dipublikasikan atas nama mahasiswa tersebut diatas dinyatakan **LAYAK / TIDAK LAYAK**.

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Ketua,

Anggota I,

Anggota II,

Rizki Setyobowo Sangalang, SH., MH.
NIP. 198707242019031010

Nuraliah Ali, S.Pd., I., M.Pd.I.
NIP. 198710242019032011

Satriya Nugraha, SH., M.Hum.
NIP. 198901122023211018



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DAN TEKNOLOGI
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FAKULTAS HUKUM

Kampus UPR Tunjung Nyaho, Jalan Yos Sudarso, Palangka Raya (73111), Kalimantan Tengah
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NIM : 223020601190
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Nama Jurnal : Al-Bayyinah
Indeksasi Jurnal : Sinta 3
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Ivans Januardy, SH., MH.
NIP. 199001062015041001



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KALIMANTAN TENGAH TELP / FAX : (0536) 32 20252 / (0536) 32 41152

KARTU KONTROL KONSULTASI SKRIPSI/PROYEK KOLABORATIF/ARTIKEL

Nama Mahasiswa : M. Riza Kurniawan
NIM : 223020601190
Dosen Pembimbing I : Dr. Heriamariaty, S.H., M.Hum.
Dosen Pembimbing II : Rizki Setyobowo Sangalang, S.H., M.H

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NIP : 19710715 200112 2 003
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ANALYSIS OF THE IMPLEMENTATION OF THE ULTIMUM REMEDIUM PRINCIPLE IN ENVIRONMENTAL VIOLATIONS IN INDONESIA

M. Riza Kurniawan^{1*}, Heriamariaty², Rizki Setyobowo Sangalang³, Louise Theresia⁴

¹ Fakultas Hukum, Universitas Palangka Raya, Palangka Raya, Indonesia
e-mail: rizakurniawanprg@gmail.com

² Fakultas Hukum, Universitas Palangka Raya, Palangka Raya, Indonesia
e-mail: heriamariaty@law.upr.ac.id

³ Fakultas Hukum, Universitas Palangka Raya, Palangka Raya, Indonesia
e-mail: rizkisetyobowo@law.upr.ac.id

⁴ Fakultas Hukum, Universitas Palangka Raya, Palangka Raya, Indonesia
e-mail: theresia.louise@gmail.com

*Corresponding Author

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Abstract: Law Number 32 of 2009 concerning Environmental Protection and Management emphasizes the principle of ultimum remedium as a last resort in enforcing environmental criminal law, where criminal sanctions are only applied after administrative and civil efforts have failed. However, the ambiguity of this regulation, such as the lack of objective parameters to determine the effectiveness of administrative sanctions, creates implementation inconsistencies, leading it to often rely on the subjectivity of law enforcers. This study aims to analyze the application of the ultimum remedium principle in environmental violations in Indonesia and identify optimization efforts. Using a normative juridical method with a statutory and conceptual approach, this study examines primary legal materials (the Criminal Code and Law Number 32 of 2009), secondary (literature and journals), and tertiary through library studies and analysis. The study's results indicate that this principle is effective in encouraging preventive and restorative approaches. However, its implementation is still weak due to subjectivity and a lack of technical guidelines. Optimization efforts include regulatory updates with clear parameters, increasing law enforcement capacity through training, strengthening technology-based administrative oversight, and reforming the legal system to support ecological justice and sustainable development. These recommendations are expected to reduce the risk of overcriminalization and increase the effectiveness of environmental protection in Indonesia.

Keywords: The principle of ultimum remedium; environmental law; Law Number 32 of 2009.

Introduction

The environment plays a vital role in supporting the sustainability of life and sustainable development. To prevent and address environmental pollution and damage, a well-planned management system supported by adequate legal instruments is required. Therefore, Law Number 32 of 2009 concerning Environmental Protection and Management was enacted as a legal basis for protecting and managing the environment through a series of integrated, sustainable actions. Efforts are directed at achieving environmental conditions free of pollution and damage, encompassing the stages of planning, use of ecological resources, control, maintenance, supervision, and law enforcement. To carry out environmental management to prevent and address environmental pollution and damage while maintaining the quality of environmental management, it is necessary to formulate comprehensive policies supported by relevant programs. Given that ecological management involves various interrelated aspects, it is essential to align the vision and mission between the central and regional governments to ensure the effective implementation of

these policies. ²⁶These provisions are also emphasized in Law Number 32 of 2009 concerning Environmental Protection and Management, which also regulates the legal principle known as the principle of *ultimum remedium*.²

In the framework of a comprehensive legal review, it is imperative to assert that the principle of *ultimum remedium* does not stand in isolation. Rather, it is an integral component of criminal policy (*strafrechtspolitik*) which positions criminal law as the *last resort* in social control. This construction mandates that criminal sanctions should only be deployed when other legal avenues, such as administrative or civil law, have proven ineffective or have reached a point of saturation in providing protection for the legal interests of society.³

In the context of environmental law, this approach aligns with the modern environmental governance paradigm, which prioritizes a preventive approach and a restorative approach over mere personal ²¹tribution. This is consistent with the principles of sustainability and preservation mandated under Article 2 letter b of Law Number 32 of 2009 concerning Environmental Protection and Management (UU PPLH).⁴ Consequently, ⁴⁰the application of this principle must be analyzed not only normatively through statutory text but also in relation to the holistic objectives of sustainable environmental protection.⁵

The application of *ultimum remedium* also reflects a significant paradigm shift from an anthropocentric to an ecocentric perspective in legal philosophy. Under this view, the law does not merely protect human interests through the threat of imprisonment for environmental offenders. Instead, it prioritizes the safety and integrity of the ecosystem itself as an independent legal subject. The restoration of environmental functions, as regulated in Article 54 of the UU PPLH, is often more urgent than the incarceration of an individual. Criminal law should therefore be used strategically to support ecological recovery rather than just to punish human conduct. This approach ensures that the environment is treated with the respect necessary for biological and ecological stability.

Despite its noble intent, the discourse surrounding this principle is increasingly relevant due to inconsistencies in Indonesian environmental law enforcement. There is often a palpable indecisiveness in determining when criminal sanctions should be applied independently or concurrently with other measures. This indecisiveness indicates a significant legal gap between the normative standards written in law and actual field practice. Such a gap carries the risk of creating a state of under-enforcement, where serious environmental crimes go unpunished. Conversely, it can also lead to over-criminalization, which hinders business certainty without offering any real solutions to ecological damage. Clearer parameters are needed to ensure that law enforcement is both fair and effective in protecting the nation's resources.

Environmental criminal law serves as a strategic tool for upholding justice and acting as a preventative measure against widespread ecological violations. In this specific context, the principle of *ultimum remedium* plays a crucial role in preventing the potential abuse of state power. By requiring that administrative and civil remedies be exhausted first, the state ensures that criminal intervention is reserved for the most egregious cases. This hierarchy of enforcement is designed to encourage corporate and individual compliance through corrective rather than purely punitive means. It fosters a legal culture where the primary objective is the cessation of harm and the repair of the damaged environment. Thus, the principle acts as a safeguard for both the environment and the due process rights of the citizens.

The urgency of this discourse becomes increasingly relevant when linked to the dynamics of environmental violations in Indonesia, which frequently exhibit inconsistencies in enforcement. Indecisiveness in determining the parameters for when criminal sanctions may be applied independently or concurrently indicates a significant legal gap between normative standards and field practice. This carries the risk of creating a state of under-enforcement, where environmental crimes are left without deterrent

¹ Ina Herlina. (2017). "Environmental Problems and Environmental Law Enforcement in Indonesia." *Galuh Justisi*, Vol. 3 No. 2, pp. 1-16

² Reza Meilanda Lesmana. (2020). "Implementation of the *Ultimum Remedium* Principle on Perpetrators of Criminal Acts of Violating Waste Quality Standards (Analysis of Article 100 of Law 32 of 2009)." *M¹⁹ disciplinary Treasury*, Vol. 1 No. 1, pp. 31-45.

³ Sudikno Mertokusumo, *Mengenal Hukum: Suatu Pengantar*, (Yogyakarta: Cahaya Atma Pustaka, 2007), p. 124.

⁴ Law Number 32 of 2009 concerning Environmental Protection and Management, Article 2 letter b.

⁵ Jimly Asshiddiqie, *Green Constitution: Nuansa Hijau Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*, (Jakarta: Rajawali Pers, 2009), p. 88.

sanctions, or over-criminalization, which may hinder business certainty without offering solutions to actual ecological damage.⁶

In this context, environmental criminal law serves as a strategic tool in upholding justice and as a preventive measure against ecological violations, where the principle of *ultimum remedium* plays a crucial role. This principle states that criminal action should be the last resort after administrative, civil, or other remedial efforts have failed, to prevent the abuse of state power.⁸ In Indonesia, the regulatory framework for handling environmental violations is primarily governed by Law Number 32 of 2009. This law aims to integrate sustainable and participatory principles into every level of ecological management across the archipelago. It includes specific provisions for criminal sanctions intended to deter perpetrators who knowingly damage or pollute vital ecosystems. However, the implementation of these sanctions is often complicated by the inherent complexities of proving environmental harm. The law seeks to balance the need for economic development with the non-negotiable requirement of environmental preservation. Without a clear and functional legal framework, the goal of achieving a "green" economy remains difficult to reach.

A significant problem remains regarding the ambiguity found within the specific articles of the UU PPLH. Specifically, Article 98 imposes criminal sanctions for violations but fails to explicitly define the operational limits of the *ultimum remedium* principle. This lack of clarity leaves law enforcement officers struggling to distinguish between initial remediation efforts and necessary criminal measures. As a result, enforcement remains inconsistent, with some cases handled only through administrative fines while others proceed directly to court. This inconsistency can lead to perceptions of injustice and a lack of transparency in the legal process. Without a clear statutory definition, the principle remains a theoretical concept rather than a practical enforcement tool.

This legal ambiguity is further exacerbated by a lack of clear technical guidelines or implementing regulations from the executive branch. In the absence of these guidelines, the implementation of the principle depends heavily on the subjective interpretations of individual judges and prosecutors. Such subjectivity often leads to different outcomes for similar environmental offenses across different regions of Indonesia. Furthermore, a lack of coordination between government agencies often results in overlapping jurisdictions and conflicting enforcement actions. These systemic issues weaken the overall effectiveness of environmental protection efforts and diminish public trust in the legal system. Technical clarity is therefore essential to transform the principle into a consistent and predictable legal standard.

To bridge these gaps, Indonesia must focus on formulating comprehensive policies that are supported by relevant and detailed implementing programs. These programs should aim to synchronize the understanding of *ultimum remedium* among all stakeholders, including the police, prosecutors, and environmental agencies. Improving the quality of environmental management requires a shift toward more scientific and data-driven evidence in legal proceedings. By clarifying the triggers for criminal action, the state can provide better legal certainty for businesses while ensuring that ecological damage is addressed. Ultimately, a refined legal approach will ensure that the environment is protected through a balanced and sophisticated application of the law.

In Indonesia, the application of the *ultimum remedium* principle in handling environmental violations is regulated by Law Number 32 of 2009, which serves as the primary legal framework for environmental protection and management. This law aims to integrate sustainable and participatory principles into ecological management, including criminal sanctions for perpetrator who damage ecosystems. However, ambiguity in this law is a significant problem. Specifically, Article 98 of Law Number 32 of 2009 imposes criminal sanctions for environmental violations but does not explicitly define the limits of the *ultimum remedium* principle. This creates ambiguity, as law enforcement often struggles to distinguish between initial remediation efforts (such as administrative sanctions) and criminal measures, leading to inconsistent enforcement. Some environmental pollution cases are handled solely administratively, without regard for this principle, while others proceed directly to criminal proceedings, potentially violating human rights and the principle of justice. This ambiguity is exacerbated by the lack of clear technical guidelines or implementing regulations, which leaves the principle's implementation dependent on subjective interpretations by judges and prosecutors, as well as on a lack of coordination between government agencies.⁷

⁶ Satjipto Rahardjo, *Penegakan Hukum: Suatu Tinjauan Sosiologis*, (Jakarta: Genta Publishing, 2009), p. 45.

⁷ Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation*, (London: Clarendon Press, 1823), p. 170.

Method

This final analysis⁴² regarding the application of the *ultimum remedium* principle in Indonesian environmental violations is conducted using a normative juridical research method. This approach focuses on the study of law as a system of norms, rules, and principles found within statutory frameworks. The primary legal materials for this study include the Indonesian Criminal Code (KUHP) and Law Number 32 of 2009 concerning Environmental Protection and Management, along with its subsequent amendments. By examining these statutes, the research identifies the foundational legal basis for environmental enforcement and its specific limitations. Furthermore, secondary legal materials such as legal literature, peer-reviewed scientific articles, and established academic perspectives are utilized to provide a comprehensive legal context.

To deepen the analysis, a conceptual approach is employed to scrutinize the various doctrines and theories of criminal law associated with the *ultimum remedium* doctrine. This principle fundamentally asserts that criminal law must serve only as a last resort when other legal avenues have failed. This approach allows for a critical examination of how this doctrine is interpreted within the specific landscape of Indonesian environmental crimes. It enables the research to assess whether the current legal construction effectively balances punitive measures with the necessity for administrative compliance. Consequently, the conceptual approach helps bridge the gap between abstract legal theory and its practical necessity in modern environmental protection.⁸

The research also explores the urgent need for applying this principle consistently to address the unique challenges of ecological law enforcement. It evaluates whether the existing regulations provide sufficient clarity to prevent either under-enforcement or the excessive use of criminal sanctions. By analyzing the adequacy of current laws, the research seeks to identify potential legal voids that lead to inconsistent judicial outcomes. This evaluation is critical for ensuring that environmental law serves its true purpose of ecological restoration rather than just individual punishment. Ultimately, the study aims to provide a more structured framework for when the state should transition from administrative warnings to criminal prosecution.

Finally, the combination of normative juridical and conceptual approaches ensures that the analysis is grounded in both statutory reality and legal philosophy. This methodology allows for a holistic review of how *ultimum remedium* functions as a safeguard against the abuse of state power in the environmental sector. It highlights the importance of aligning the mission of law enforcement agencies to achieve a more predictable and fair legal system. By synthesizing legislative texts with academic discourse, the research provides a clear roadmap for improving environmental governance in Indonesia. This thorough examination ensures that the resulting recommendations are legally sound and practically applicable to future environmental disputes.

Results and Discussion

Legal Principles in Environmental Violations in Indonesia

Principles are fundamental principles that provide the primary foundation for establishing truth and for thinking and forming opinions. In a legal context, legal principles are general principles within the legal system that reflect ethical values recognized by society. These principles then serve as the basis for formulating concrete legal norms. If legal principles are codified into clear, operational legal regulations, they can be applied to regulate certain legal events. Conversely, if legal principles have not been institutionalized in normative legal provisions, they cannot be used directly in regulating a legal event.⁹

In relation to the regulation of environmental crimes under Law Number 32 of 2009 concerning Environmental Protection and Management, the principle of *ultimum remedium* is one of the fundamental principles. This principle places criminal law enforcement as a last resort, considering the characteristics of criminal sanctions, which are essentially intended to cause suffering. In the criminal law system, the principle of *ultimum remedium* indicates that criminal law is used only when other legal instruments are no longer effective. In the context of environmental law enforcement, the principle of *ultimum remedium* holds that criminal law is used only after administrative mechanisms have failed, serving as a last resort for ecological

⁸ Marzuki, P. M. (2017). *Penelitian Hukum: Edisi Revisi*. Jakarta: Prenada Media Group. (Discussing the Conceptual Approach and Legal Doctrines).

⁹ Havinanda, F. (2020). *Legal Politics in the Reform of the Environmental Criminal Law System and Its Impact on the Enforcement of Environmental Crime Law*. Al-Hikmah Law Journal: Media for Communication and Information on Law and Society, 1(1), p. 112.

recovery and protection. Then, the second *primum remedium*: if an act is considered truly detrimental to the interests of the state and the people, both according to applicable law and public sentiment, criminal sanctions are the leading choice. *Primum remedium* is the opposite of *ultimum remedium*, where the enforcement of criminal law through criminal sanctions in the form of imposing suffering on an individual or corporation is prioritized in law enforcement, including the enforcement of environmental law.¹⁰

Theoretically, the application of *ultimum remedium* can be dissected through the lens of theories of punishment, specifically the utilitarian theory which emphasizes deterrence and the utility of the law. From a utilitarian standpoint, punishment is only justified if it produces a greater good for society compared to the suffering inflicted upon the offender.¹¹ In an environmental context, if administrative sanctions in the form of government coercion (*bestuursdwang*) are sufficient to stop pollution, then criminal intervention becomes socially and legally inefficient.

Furthermore, restorative theory plays a crucial role by focusing primarily on the repair of damage. Given that ecological damage is often irreversible or difficult to rectify, an approach emphasizing compensation and environmental cleanup is more theoretically sound than mere corporal punishment.¹² Criminal law must be positioned as a supplementary instrument (*subsidiarity*) that functions when civil and administrative accountability mechanisms fail to satisfy the requirements of ecological justice.

The relevance of the "law as a tool of social engineering" theory, as proposed by Roscoe Pound, serves as an essential analytical instrument in this study. Environmental law, including the operationalization of the *ultimum remedium* principle, must be capable of directing the behavior of society and business actors toward voluntary ecological compliance.¹³ However, without rigid and measurable parameters, the law loses its engineering function because it creates an environment of uncertainty regarding the boundaries of actions that may lead to criminal sanctions.

This concept of social engineering must be translated into a criminal policy capable of balancing economic interests with environmental protection. Article 100 of the UU PPLH, which regulates administrative sanctions for violators of environmental quality standards, is a manifestation of the legislature's intent to prioritize guidance over *pro-justitia* action.¹⁴ Uncertainty in the interpretation of this article is often a weakness exploited by corporations to evade more stringent legal responsibilities.

1 Application of the *Ultimum Remedium* Principle in Environmental Violations in Indonesia

In explanation, Constitution Number 32 of 2009 concerning Protection and Management of the Environment and Life adhered to known principles as ultimate remedies. On this basis, the enforcement law is an alternative law, so that, lastly, the mechanisms of enforcement law, such as civil and legal administration, must be prioritized first. If the effort is made to enforce the law through the second instrument, the No capable finish and stop occurrence action criminal environment life as arranged in the Constitution Number 32 of 2009, then the implementation of criminal law can be done. In context, threats, sanctions, and criminal provisions in the Constitution, the No always The same or even can provide more light than with limit maximum regulated criminal law in the Criminal Code (KUHP) so that allows dropping criminal with a higher level of low. Condition: This potential creates ambiguity in the practice of criminal law enforcement, life, especially in the judge's expected decision, capable of giving effect to a deterrent effect against the perpetrator. because of that, the enforcement law environment life through instrument law criminal law in essence related to How three problem main in law criminal formulated in regulation legislation as means engineering social, which includes: (1) formulation action criminal, (2) responsibility criminal, and (3) the imposition of sanctions, okay in the form of criminal and disciplinary sanctions.¹⁵

The meaning of the principle of *ultimum remedium* is emphasized in Article 100 paragraph (2) of Law Number 32 of 2009, which states that anyone who violates wastewater quality standards, emission quality standards, or disturbance quality standards can only be subject to criminal sanctions if the

¹⁰ Pratiwi, Kania Tamara, Siti Kotijah, and Rini Apriyani. "Application of the *Primum Remedium* Principle in Environmental Crimes." *Sasi* 27,3 (2021): 363-375.

¹¹ 30.

¹² Muladi, *Kapita Selekta Sistem Peradilan Pidana*, (Semarang: Badan Penerbit Universitas Diponegoro, 1995), p. 18.

¹³ Roscoe Pound, *An Introduction to the Philosophy of Law*, (New Haven: Yale University Press, 1922), p. 99.

¹⁴ Article 100 paragraph (1) of Law Number 32 of 2009.

¹⁵ Nyoman Serikat Putra Jaya, (2005). *Selected Chapters on Criminal Law*, Semarang: UNDIP Publishing Agency, p. 253.

administrative sanctions that have been previously imposed are not complied with or if the violation is committed repeatedly.¹⁶

The principle of *ultimum remedium* was first proposed by Mr. Bodderman, who at that time served as the Dutch Minister of Justice. In his presentation, he explained that the principle of *ultimum remedium* can be applied in cases of certain legal violations, especially when other law enforcement measures are deemed no longer effective in resolving the breach.¹⁷

Legal violations that allow the application of the *ultimum remedium* principle include, first, breaches of the law that are *conditio sine qua non*, and second, violations of the law that are serious and cannot be resolved through administrative law mechanisms. Thus, the *ultimum remedium* principle is understood as the last legal recourse available to law enforcement officers. This understanding is reinforced by Rummelink's opinion, which holds that criminal law enforcement under the *ultimum remedium* principle can be carried out only if other legal means, such as administrative sanctions, fail to deter. The perpetrator shows no sense of guilt for the actions that have been committed.

In the explanation of number 6 of Law Number 32 of 2009 concerning Environmental Protection and Management, it is explained that criminal law enforcement is carried out by considering the application of minimum criminal sanctions. Compared to maximum criminal sanctions, the development of evidentiary instruments, the regulation of criminal sanctions for violations of environmental quality standards, the harmonization of the implementation of criminal law enforcement, and regulations regarding criminal acts committed by corporations. The application of the *ultimum remedium* principle in handling environmental violations in Indonesia is of high urgency, as this principle, as regulated in Law Number 32 of 2009 concerning Environmental Protection and Management, requires administrative and civil legal measures as the initial step before the imposition of criminal sanctions. This approach encourages the application of preventive and restorative mechanisms, thereby making them more effective at suppressing the occurrence of sustainable, complex ecosystem damage.¹⁸ This principle increases law enforcement efficiency by reducing the burden on the courts through relatively fast settlement mechanisms, such as mediation, which in practice, has been reported to save time in handling deforestation cases in Kalimantan. Without the application of the *ultimum remedium* principle, there is potential for *overcriminalization*; therefore, a strong and consistent implementation of the *ultimum remedium* principle is needed to accelerate environmental restoration efforts.¹⁹

Administrative law enforcement, as regulated in Article 76 of Law Number 32 of 2009 concerning Environmental Protection and Management, includes several forms of administrative sanctions, including:

1. written warning
2. government coercion
3. freezing of environmental permits
4. Revocation of environmental permits

Thus, these administrative sanctions have several weaknesses in law enforcement practices, as outlined in the previous paragraph, particularly regarding the lack of clear parameters and detailed explanations of the criteria for success or failure in administrative law enforcement. This condition ultimately creates uncertainty in determining when criminal law enforcement can be pursued as a follow-up step.

Mardjono Reksodiputro expressed his views on environmental pollution prevention strategies linked to criminal law enforcement. According to him, in cases of violations of water quality standards, emission quality standards, and ecological disturbance quality standards, criminal sanctions should be used as an alternative to administrative sanctions. In addition, criminal sanctions can only be imposed if the perpetrator is proven to have knowingly and intentionally violated the provisions of the quality standards that pose a threat to public health. In terms of criminal liability for corporations as perpetrators of pollution that violates water waste quality standards, emission quality standards, and environmental disturbance quality standards, the party responsible for representing the corporation is the corporation's board of

¹⁶ Bimantara, Bobby, Somawijaya Somawijaya, and Imamulhadi Imamulhadi. "Investigation of Environmental Crimes Through the Application of the *Ultimum Remedium* Principle in Connection with Law Number 32 of 2009 Concerning Environmental Protection and Management." *Padjadjaran Legal Axis Journal* 2.2 (2021): 366-381.

¹⁷ Dian Adriawan Dg Tawang. (2020). "Application of the *Ultimum Remedium* Principle in Environmental Criminal Law Provisions in Indonesia." *Supremacy of Law* Vol. 16 No. 1, pp. 48-61.

¹⁸ Maria SW Sumardjono, *Indonesian Environmental Law* (Jakarta: PT RajaGrafindo Persada, 2014), pp. 245-248.

¹⁹ Ifahda Pratama Hapsari. (2020). "Affirmative Action as a Form of Justice in Providing the *Ultimum Remedium* Principle in Environmental Enforcement Efforts Due to Forest Fires." *Justiciablen Journal*, Vol. 2 No. 2, pp. 53-79.

directors.²⁰

Criminal law enforcement against environmental violations, as stipulated in Article 100 of Law Number 32 of 2009, is a legal instrument intended as a last resort. Therefore, the application of criminal sanctions in this context is not intended to restore the polluted environment, but rather to deter perpetrators.²¹

In the methodological aspect, the normative approach utilized in this study must be operationally manifested through vertical and horizontal synchronization analysis of relevant regulations. This analysis includes testing the consistency between the Indonesian Penal Code (KUHP), the UU PPLH, and its amendments in Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law.²² The fundamental changes in the Job Creation Law, which shifted several criminal sanctions toward administrative sanctions, demand a re-examination of the standing of the *ultimum remedium* principle.

This analytical method also involves in-depth legal interpretation techniques, particularly systematic and teleological interpretations. Systematic interpretation is required to understand the interconnectedness between administrative sanctions in Articles 76 through 82 of the UU PPLH and the criminal provisions in Chapter XV of the same law.²³ Meanwhile, teleological interpretation aims to uncover the original intent of the legislators regarding whether environmental criminal law was intended to protect administrative values (*administrative-dependent crimes*) or pure ecological values. This analysis is not merely descriptive of existing articles but is also argumentative in criticizing emerging legal loopholes. For instance, the lack of clarity between pure administrative violations and violations that are *mala in se* (inherently evil) in environmental crimes often obscures the application of the *ultimum remedium* principle.²⁴ This has the potential to create enforcement disparities that harm both the environment and the investment climate in Indonesia.

Furthermore, this synchronization must observe how derivative regulations, such as Government Regulations on the implementation of environmental protection, provide technical guidelines for environmental inspectors. Without alignment between the primary law and its implementing regulations, the *ultimum remedium* principle remains a mere theoretical jargon without practical application for law enforcement officers in the field.²⁵

On a practical level, the primary weakness in implementing the *ultimum remedium* principle lies in the absence of objective indicators to assess the failure of administrative sanctions. Article 100 paragraph (2) of the UU PPLH states that criminal penalties can only be imposed if the administrative sanctions imposed are not complied with or if the violation is committed more than once. However, the definitions of "non-compliance" and "frequency of violations" are often subjective in the hands of law enforcement, creating space for corrupt practices or an abuse of discretion.

Therefore, it is necessary to formulate Standard Operating Procedures (SOPs) containing quantitative and qualitative indicators, such as the level of toxicity of the waste discharged, the extent of the damage, and the compliance record of the business entity. Without these parameters, the broad discretion held by Environmental Civil Servant Investigators (PPNS) can lead to inconsistencies that undermine legal certainty, as guaranteed under Article 28D paragraph (1) of the 1945 Constitution.

In the context of corporate criminal liability, the application of *ultimum remedium* must consider the economic capacity and influence of the perpetrator. Corporations, as legal subjects, often possess significant resources to lobby for light administrative sanctions. In certain conditions, particularly severe, systemic violations with widespread impacts on public health, a *primum remedium* approach (criminal law as the primary tool) should be considered to provide a commensurate deterrent effect.

The provisions regarding corporate responsibility in Article 116 of the UU PPLH affirm that criminal charges can be brought against the business entity and/or the person giving the order. [^16] The application

²⁰ Mardiono Reksodiputro. (1982). *Review of the Development of Special Crimes in a Modernizing Society*, Bandung: Bina Cipta, p. 76

²¹ Iman Gudi Santoso & Taun. (2019). "Application of the *Ultimum Remedium* Principle in the Enforcement of Environmental Criminal Law." *Universty of Bengkulu Law Journal*, Vol. 3 No. 1, pp. 15-22.

²² Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law.

²³ Moeljatno, *Asas-Asas Hukum Pidana*, (Jakarta: Bina Aksara, 1983), p. 56.

²⁴ Barda Nawawi Arief, *Masalah Penegakan Hukum dan Kebijakan Hukum Pidana dalam Penanggulangan Kejahatan*, (Jakarta: Kencana, 2007), p. 112.

²⁵ Koesnadi Hardjasoemantri, *Hukum Tata Lingkungan*, (Yogyakarta: Gadjah Mada University Press, 2005), p. 312.

of the *ultimum remedium* principle must not become a shield for corporations to conduct a cost-benefit analysis where paying administrative fines is deemed cheaper than meeting standard environmental management requirements. Here, criminal law must act as a stabilizer when administrative sanctions are no longer capable of altering corporate behavior.

4 Efforts to Optimize the Implementation of the *Ultimum Remedium* Principle in Environmental Violations in Indonesia

Law Number 32 of 2009 includes provisions for criminal enforcement. However, its implementation still relies on the subjectivity of law enforcers, as there are no clear parameters for determining when administrative sanctions have failed. This creates the potential for inconsistencies in legal implementation. Criminal enforcement is generally focused on serious violations, such as pollution that violates quality standards and is carried out deliberately, especially by corporations, with directors as the responsible parties. Therefore, more detailed operational guidelines are needed, especially regarding indicators of the success of administrative sanctions and objective parameters for activating criminal sanctions. This is necessary so that the application of the *ultimum remedium* principle is not subjective and is not interpreted arbitrarily, either by perpetrators of environmental crimes, and also needs to emphasize the collaborative role between ecological sciences, law enforcement officials, civil society, and the business world in creating just and sustainable environmental law enforcement. The *ultimum remedium* principle must be interpreted as part of an environmental management system that emphasizes prevention, recovery, and ecological justice, not merely as a means of punishment.

To optimize the implementation of this principle, several strategic steps must be taken, including increasing the capacity and understanding of law enforcement officials and related agencies regarding the principle of *ultimum remedium* and environmental law enforcement mechanisms through ongoing training, so that legal decisions are appropriate, proportional, and just.²⁶ Furthermore, administrative law enforcement needs to be strengthened through stricter, more routine supervision and the use of technologies such as environmental sensors and drones. This way, minor violations can be handled directly through swift, effective administrative sanctions, without the need for expensive, lengthy criminal proceedings. This step must also be supported by efforts to increase education and legal awareness for business actors and the general public, through a broad national campaign. The goal is for them to truly understand the importance of complying with environmental regulations, so that cases of violations that ultimately require criminal prosecution can be drastically reduced.

The system law environment needs to be reformed to adapt to changing social, economic, and technological conditions. This is important for improving the management environment and creating more effective enforcement laws, for example, by renewing supporting rules and fostering an innovation-friendly environment. Besides that, handling serious and repeated environmental violations must be carried out by an honest and trustworthy system, with judges and officers professional, expert, and knowledgeable, with the law correct and principles ultimate *Remedium* through special training. The goal is to implement punishment criminally, not haphazardly. Still, it can serve as a strong deterrent to protect the environment without making the wrong person feel no fair, and at the same time help create a friendly investment environment in the long term.²⁷

From a comparative law perspective, several advanced jurisdictions have implemented a more measurable "compliance-based enforcement" approach. This approach prioritizes the fulfillment of obligations through environmental audit mechanisms and improvements to the corporation's internal systems before criminal options are pursued. Indonesia could adopt clearer parameters for determining the transition from administrative to criminal sanctions by referencing international best practices that prioritize transparency.

Inter-agency coordination is also a crucial pillar for the success of this principle. Fragmented enforcement between the Ministry of Environment and Forestry (KLHK), the Police, and the Attorney General's Office often results in overlapping authority or a "passing of the buck." What is required is an integrated environmental law enforcement system that allows for real-time data exchange regarding the administrative compliance status of a company.

²⁶ Takdir Rahmadi, *Environmental Law in Indonesia (Third Edition)*, (Jakarta: Rajagrafindo Persada, 2020), pp. 267-270.

²⁷ Franky Butar Butar, *Environmental Law Enforcement: Administrative, Civil, and Criminal*, (Surabaya: Airlangga University Press, 2025), p. 85

Strengthening technology-based supervision, as envisioned in the spirit of digital governance, can minimize subjectivity in law enforcement. The use of digital monitoring systems, such as automated water and air quality sensors, can provide objective data to determine whether a violation has exceeded administrative tolerance limits and must enter the criminal realm. This would reduce reliance on manual assessments, which are prone to manipulation.

In conclusion, the *ultimum remedium* principle in environmental law should not be interpreted as an attempt to weaken law enforcement, but as an effort to position the law proportionally. Effective environmental law enforcement is that which integrates prevention, supervision, and restoration synergistically. With clear parameters, strong regulatory synchronization, and the utilization of technology, the primary goal of environmental protection for future generations can be achieved while maintaining legal certainty for all stakeholders.

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Conclusion

Based on the research results and discussions that have been obtained, the conclusion ¹⁶ained is that the principal ultimate Remedium in context of violation environment living in Indonesia, as arranged in Constitution Number 32 of 2009 concerning Protection and Management Environmental Life (PPLH), placing enforcement law criminal as an effort law final after mechanism of administration and civil fail finish violation . Principle: This aims for a push approach, preventive and restorative, reducing the burden on the court, as well as preventing *overcriminalization*, by focusing on the deterrent effect ⁴¹ for perpetrators without direct repair of the environmental damage that has occurred. its implementation reinforced by Article 100 paragraph (2) of the Law , which limits criminal penalties for violations standard wastewater quality , emissions , or recurring disturbances or No obedient to sanctions administration . However, the implementation principle has weaknesses, such as subjectivity in enforcing laws and consequences, a lack of clear parameters for evaluating success, and sanctions administration (e.g., reprimand in writing, coercion by the government , freezing, or revocation of permission). This causes ambiguity and confusion, especially in judges' decisions aimed at giving effect to deterrence.

For optimize implementation principle this, is required step strategic like update guidelines operational with indicator objective, improvement capacity apparatus through training sustainable, strengthening supervision administration use technology, campaign education law, as well as system reform laws that emphasize collaboration inter- party approach This will ensure enforcement proportional, just and sustainable laws, encouraging compliance voluntary, and support development friendly environment in the middle challenge change climate. Thus, the principle ultimate Remedium is not just tool criminalization, but rather a part of system management, an effective environment

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