




# The Ultimate Remedium Principle in the Strategy of Returning and Recovering Corruption Crimes

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Article Info	Abstract	
<p><b>Keywords:</b> Criminal law; Ultimate Remedium; Corruption.</p>	<p><b>Introduction:</b> The problem of corruption is not new in a country. So that the application of the ultimum remedium principle in corruption crimes provides a deterrent effect for the perpetrators to recover assets from state losses. The ultimum remedium principle places criminal law as a last resort in realizing legal justice, legal certainty, and legal benefits.</p> <p><b>Purposes of the Research:</b> This study aims to determine the principle of criminal law as a last resort (Ultimate Remedium) as an Effort in the Eradication of Corruption and how effective the ultimum remedium principle is in eradicating corruption.</p> <p><b>Methods of the Research:</b> The research method used is normative research. Normative or doctrinal legal research is a legal research that puts the law as a building system of norms. The technique of data collection is done by literature study.</p> <p><b>Results of the Research:</b> The study results show that the ultimum remedium principle is very effective if the punishment given to the perpetrators of corruption is in the form of hefty penalties to provide a deterrent effect and provide an example for the community not to do so. This study concludes that the ultimum remedium principle is the last step in achieving legal justice, legal certainty, and legal benefits. So that an integral criminal justice system is carried out with a systemic approach with related policy arrangements in the field of structuring legal substance, legal structures or institutions, and legal culture.</p>	

## 1. INTRODUCTION

Corruption is getting special attention compared to other crimes in various parts of the world. This phenomenon is understandable considering the negative impact caused by this crime. The effect can touch multiple areas of life. Corruption is a serious problem; this crime can endanger stabilization and politics and damage democratic values and morality because this act gradually seems to become a culture. Corruption is a threat to the ideals of a just and prosperous society.<sup>1</sup> The current development process can positively impact various

<sup>1</sup> Firdaus, A, Suhaidi, Sunarmi, and Jelly Leviza. 2020. "Environmental Criminal Responsibility for Mining Corporation Through the Ultimum Remedium Principle" 413 (Icolgis 2019): 48-50. <https://doi.org/10.2991/assehr.k.200306.179>.

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fields, including infrastructure, economy, and people's lives. In addition, it also results in changes in the social conditions of the community, which have negative social impacts such as criminal acts that are very disturbing to the community.<sup>2</sup> Crimes can harm state finances, weaken the economy, and prevent national development. The crime in question is quite a phenomenon, and much talked about is corruption.<sup>3</sup>

The problem of corruption is not new in a country's legal and economic issues because the problem of corruption has existed for thousands of years in developed and developing countries.<sup>4</sup> In the modern sense, the history of corruption may not be as old as other crimes such as murder, robbery, and theft. However, if we look at the various definitions and limitations formulated, corruption derives from multiple crimes such as theft, robbery, and abuse of power and public trust.<sup>5</sup>

It realizes the complexity of the corruption problem during a multidimensional crisis and the real threat that will inevitably occur, namely the impact of this crime. So corruption can be categorized as a national problem that must be faced seriously through a balance of firm and clear steps by involving all the potential in society, especially the government and law enforcement officers. The increase in rampant corruption will bring disaster not only to the life of the national economy but also to the nation and state. The Transparency International Indonesian survey results show that Indonesia is ranked 126th out of 180 countries surveyed. In the era of globalization, efforts to restore/recover stolen state assets (stolen asset recovery) through corruption tend not to be easy. The perpetrators of criminal acts of corruption have extraordinary and challenging to reach access to hiding or laundering the proceeds of corruption.<sup>6</sup>

The placement of criminal law as the last instrument (*ultimum remedium*) is the harshest law among other legal mechanisms that control people's behavior. In addition, it should be understood that the determination of criminal sanctions is measured and careful because it is related to the policy of eliminating freedom from human rights, which is legalized by law.

## 2. METHOD

The type of research in writing this journal is normative research. Normative or doctrinal legal research is legal research that puts the law as a building system of norms.<sup>7</sup> In normative legal research, the law is conceptualized as what is written in laws and regulations (law books).<sup>8</sup> The secondary data used in this study include the following: 1) Primary legal materials are regulatory documents that are binding and determined by the

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<sup>2</sup> Puspita, Shintiy. 2014. "Tanggungjawab hukum Dalam Konteks Perbuatan Melawan Hukum Terhadap Tindak Pidana Korupsi." *Arena Hukum* 7 (3): 431-57. <https://doi.org/10.21776/ub.arenahukum.2014.00703.7>.

<sup>3</sup> Bunga, Marten. 2020. "Pemberantasan Tindak Pidana Korupsi." *Encephale* 15 (1): 1-30. <http://dx.doi.org/10.1016/j.encep.2012.03.001>.

<sup>4</sup> Saputra, Roni. 2018. "Pertanggungjawaban Pidana Korporasi Dalam Tindak Pidana Korupsi." *Spektrum Hukum* 15 (1): 44. <https://doi.org/10.35973/sh.v15i1.1109>.

<sup>5</sup> Sudjana, Eggi. 2008. *Republik Tanpa KPK Koruptor Harus Mati*. Jakarta: JP Books.

<sup>6</sup> Halimang. 2020. *Pendidikan Anti-Korupsi Pendekatan Hukum Di Indonesia*. Edited by Asnawan. Yogyakarta: BILDUNG.

<sup>7</sup> Fajar, Mukti, and Yulianto Achmad. 2015. *Dualisme Penelitian Hukum Normatif & Empiris, Cet. III*. Yogyakarta: Pustaka Pelajar.

<sup>8</sup> Amiruddin, and Zainal Asikin. 2016. *Pengantar Metode Penelitian Hukum, Cet. IX*. Jakarta: Raja Grafindo Persada.

competent authorities. This research includes the 1945 Constitution, Law Number 20 of 2001 concerning the Eradication of Corruption Crimes; 2) Secondary legal materials, namely all relevant documents such as books, seminars, legal journals, magazines, newspapers, scientific papers, and several sources from the internet related to the material being studied; 3) Tertiary legal materials are all documents containing concepts and information that support primary and secondary legal materials, such as dictionaries, encyclopedias, and so on. Data collection techniques are carried out using library research (library research) and conducting direct interviews with informants (field research). The results of the assessment activities are then systematically summarized as the essence of the results of the document study review. Processing, analysis, and construction of normative legal research data can be done by analyzing the legal rules. Then construction is carried out by entering articles into categories based on the notions of the legal system. Conclusion To answer the problem is done by using deductive logic. The deductive method is used by reading, interpreting, and comparing the relationships of related concepts, principles, and rules to obtain conclusions from the formulated writing objectives.

### 3. RESULTS AND DISCUSSION

#### 3.1 The Principles of Ultimate Remedium in Criminal Law as an Effort to Eradicating Corruption

Criminal law is known as an *ultimum remedium* principle; some argue that *ultimum remedium* is just a term. *Ultimum remedium* means that norms or rules in other legal fields such as constitutional law and state administrative law must be resolved with administrative sanctions, and norms in civil law must be resolved with civil sanctions. However, suppose administrative sanctions and civil sanctions are considered insufficient to achieve the goal of creating order and solving problems in society. In that case, criminal sanctions are only used as a last resort.<sup>9</sup> In other words, when a case can still be resolved through other legal remedies such as kinship, negotiation, mediation, or administrative law, the path should be taken first before deciding to take an illegal legal settlement.<sup>10</sup> This is not without reason; criminal law does have a dark history; Van Hamel stated that the meaning of criminal or *Straf* according to positive law is extraordinary suffering that has been imposed by the competent authority to impose a criminal on behalf of the state as the person in charge of the crime general law order for a violator, namely simply because that person has violated a legal regulation that the state must enforce<sup>11</sup>. Suffering and the means to achieve suffering itself. Whereas punishment on the one hand is not only intended to provide suffering or provide a deterrent effect to violators, but on the other hand it is also to prepare violators so that they can be accepted and live appropriately in society.<sup>12</sup>

Criminal law sanctions that are mainly applied are sanctions for deprivation of independence. If not used carefully, they have the potential to violate the constitutional rights of citizens. On that basis, it is vulnerable to abuse if the purpose of punishment is a form of revenge. Therefore, the purpose of imposing criminal sanctions is influenced by the reasons that are used as the basis for threatening and imposing criminal sanctions. So

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<sup>9</sup> Prodjodikoro, Wirjono. 2003. *Asas-Asas Hukum Pidana Di Indonesia*. Bandung: Eresco.

<sup>10</sup> Fitri, Sheila Maulida. 2020. "Eksistensi Penerapan *Ultimum Remedium* Dalam Sistem Hukum Pidana Indonesia." *De Jure* 2 (3): 16-27.

<sup>11</sup> Pangabean, Mompang L. 2005. *Pokok-Pokok Hukum Penitensier Indonesia*.

<sup>12</sup> Syari, Fakultas. 2019. "Kebijakan Penegakan Hukum Dalam Sistem Peradilan Pidana Indonesia" 6 (2): 33-54.

ideally, in this context, the reason for punishment is not only retaliation but also must provide benefits, as well as a combination of retaliation that has a purpose or revenge given to the perpetrator with a specific meaning and purpose.<sup>13 14 15</sup> Consistent and integrated law enforcement is essential for the realization of the pillars of legal justice, legal certainty, and legal benefits. The posts of legal justice, legal certainty, and the use of Law are the main foundations of the democratization process. Democratization is one of the principles of good governance. So that the People's Consultative Assembly (MPR) issued MPR Decree Number XI/MPR/1998 concerning State Organizers that were Clean and Free from Corruption, Collusion, and Nepotism. By the Government and the House of Representatives (DPR), the MPR stipulation was later translated into Law no. 28 of 1999 concerning State Administrators that are Clean and Free from Corruption, Collusion, and Nepotism. Steps to reform the Law in the context of creating good governance are followed by efforts to amend Law no. 3 of 1971 to become Law no. 31 of 1999 concerning the Eradication of Corruption. However, it turns out that Law no. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption did not last long. The absence of transitional rules has amended the newly ratified Law with new provisions through Law no. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning the Eradication of Corruption Crimes.<sup>16</sup>

Furthermore, consistent and integrated law enforcement will also benefit the community, namely the emergence of a deterrent effect to prevent someone who wants to commit corruption. Another benefit is the growth of public trust in law enforcement efforts and law enforcement officials so that public support for law enforcement agencies will be strengthened. On the other hand, if there is inconsistency and incoherence in law enforcement, the public will judge that in the law enforcement process, there is a tug of war of interest, so that trust in law enforcement will weaken. The implication is that this will undermine the community's legal culture and compliance with the law.

Reform of the law for eradicating corruption by establishing an independent institution in the context of eradicating corruption, namely the Corruption Eradication Commission (after this referred to as KPK) through Law no. 30 of 2002 concerning the Corruption Eradication Commission as an implementation of the provisions of Article 43 of Law no. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law no. 20 of 2001 concerning Amendments to Law no. 31 of 1999 concerning the Eradication of Corruption. Thus, eradicating corruption should not only be concentrated in one institution. Even law enforcers are aware of the importance of integration in the eradication of corruption by putting a joint agreement between the Indonesian Attorney General's Office, the National Police, and the KPK Number: KEP-049/A/JA/03/2012, B/23/III/2012, Number: SPJ-39/01/03/2012, dated March 29, 2012. The scope of the collective agreement includes: a) Prevention of criminal acts of corruption; b) Handling

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<sup>13</sup> Maerani, Ira Alia. 2015. "Implementasi Ide Keseimbangan Dalam Pembangunan Hukum Pidana Indonesia Berbasis Nilai-Nilai Pancasila." *Jurnal Pembaharuan Hukum* 11 (2): 329-38. <http://jurnal.unissula.ac.id/index.php/PH/article/view/1364>.

<sup>14</sup> Irmawanti, Noveria Devy, and Barda Nawawi Arief. 2021. "Urgensi Tujuan Dan Pedoman Pidanaan Dalam Rangka Pembaharuan Sistem Pidanaan Hukum Pidana." *Jurnal Pembangunan Hukum Indonesia* 3 (2): 220.

<sup>15</sup> Firdaus, Rudy Hendra Prapahan & Aras. 2019. "Pembaharuan Kebijakan Hukum" 12 (3): 369-78.

<sup>16</sup> Pratama, Mochamad Ramdhan, and Mas Putra Zenno Januarsyah. 2020. "Penerapan Sistem Pertanggungjawaban Pidana Korporasi Sebagai Subjek Tindak Pidana Dalam Undang-Undang Pemberantasan Tindak Pidana Korupsi." *Jurnal Wawasan Yuridika* 4 (2): 240. <https://doi.org/10.25072/jwy.v4i2.350>.



cases of criminal acts of corruption; c) Refund of state losses in cases of criminal acts of corruption; d) Legal protection for whistleblowers and witnesses of perpetrators who cooperate (whistleblower or justice collaborator) in disclosing corruption; e) Personnel assistance in handling corruption cases; f) Joint education/training in handling corruption cases;

Criminal law reform that supports efforts to implement criminal law as an *ultimum remedium* through the following measures, First, the application of decriminalization policies in various statutes and regulations in Indonesia. This is because there are many types of actions that are categorized as criminal acts (criminalization) or make them a violation in other legal fields; for example, in the case of defamation, it is no longer an act that violates criminal law but can be resolved with different legal approaches. Second is the reorientation of the criminal procedural law system that allows for the possibility of a criminal case settlement process outside the court.

### **3.2 The Effectiveness of the Principles of Ultimate Remedium in Returning and Restoring Assets for Corruption Crimes**

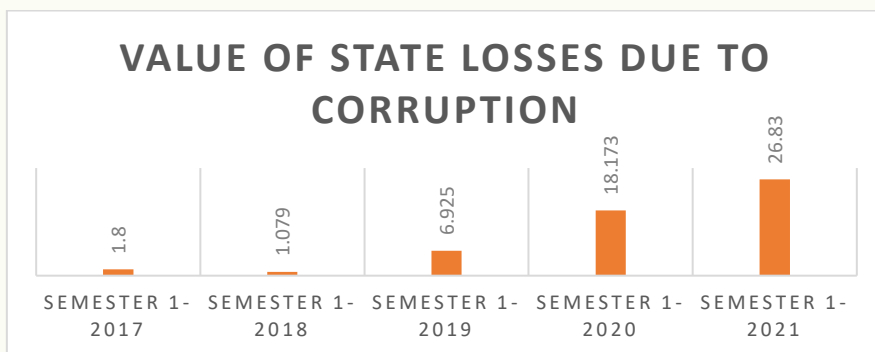
The conception of criminal law places criminal law as the *ultimum remedium*. An act that is not a criminal act means that the determination of an act is categorized as a criminal act. Hence, it is necessary first to see whether the act is a *mala in se* or a *mala prohibita*. If the act is categorized as *mala prohibita*, then determining the status as a criminal act is an open legal policy from the legislators. Indeed, the problem of sanctions is an essential issue in criminal law because it is seen as a reflection of norms and rules that contain values in a society. The existence of regulation and imposition of sanctions arises due to the reaction and needs of the community towards violations/crimes. For this reason, as a community representative, the State uses its authority to overcome the problem through criminal policy.<sup>17</sup> In essence, criminal law aims to regulate and provide protection for the order of people's lives. The purpose of criminal law is to control social life or to carry out orders in society and protect legal interests against acts that want to injure them (*rechtsguterschutz*) with sanctions in the form of criminal sanctions sharper in nature when compared to sanctions contained in other legal fields. In the criminal sanction, there is a tragic (something sad) so that the criminal law is said to be "slicing its own flesh" or as a "double-edged sword," which means that the criminal law is indeed aimed at protecting legal interests (such as life, property, independence, honor), but if there is a deviation from the application of the criminal law itself, it violates the violator's legal rights.

Corruption is often called an extraordinary crime because corruption tends to be carried out by several people in a systematic and planned manner. In criminology, corruption is often referred to as white-collar crime committed by people who are considered to have positions and are pretty influential in society. Still, they are the ones who do things that harm the community for their jobs. The crime of corruption is an act against the law, contrary to the essential character of the Indonesian nation, which has been rooted and embedded in every human being and the culture inherent in it. Meanwhile, the nature of corruption will form a moral that tends to be capitalist and individualistic and does not think about the surrounding environment. This trait does not reflect the nation's personality,

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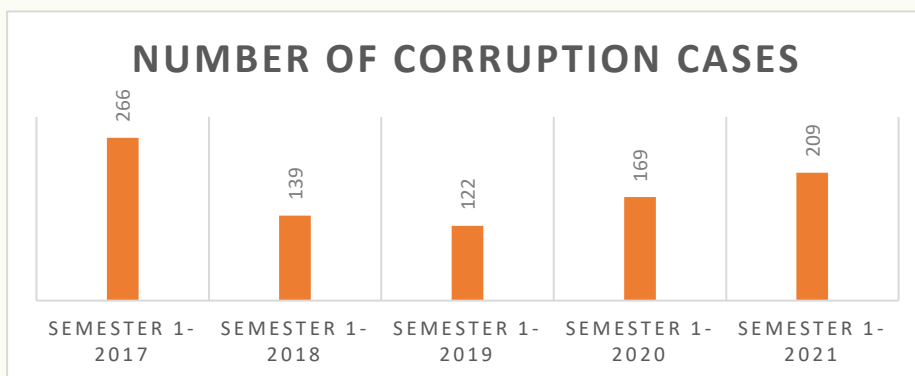
<sup>17</sup> Anindyajati, Titis, Irfan Nur Rachman, and Anak Agung Dian Onita. 2016. "Konstitusionalitas Norma Sanksi Pidana Sebagai *Ultimum Remedium* Dalam Pembentukan Perundang-Undangan." *Jurnal Konstitusi* 12 (4): 872. <https://doi.org/10.31078/jk12410>.

character, and greatness.<sup>18 19</sup> Based on ICW data in semester 1 2020, the value of state losses from corruption cases amounted to Rp. 18.173 trillion, then in semester 1 of 2021, the deal reached Rp. 26.83 trillion. In other words, there was an increase in the value of state losses due.



**Figure 1. The Value of State Losses Due to Corruption**

Factors causing corruption such as greed and greed, income inequality, consumptive lifestyle, inadequate income, negative values that live in society, and religious teachings are not appropriately applied. The causes of corruption described above are evidence that the community's understanding and introduction regarding the value of God and the value of humanity as the values that radiated in Pancasila, there is no reasonable relationship between humans and their creators, and there is no reasonable relationship between humans.<sup>20</sup> The anti-corruption non-governmental organization Indonesia Corruption Watch (ICW) released a Report on the Trends of Enforcement of Corruption Cases for Semester 1 2021. Based on data collected by ICW, the number of corruption cases prosecuted during the first six months of 2021 reached 209 points. This number increased compared to the same period in the previous year, which was 169 cases, as shown in Figure 2.<sup>21</sup>



**Figure 2. Number of Corruption Cases**

<sup>18</sup> Nugroho, Nunung. 2017. "Urgensi Pembaruan Kitab Undang-Undang Hukum Pidana Dalam Dinamika Masyarakat Indonesia." *Jurnal Spektrum Hukum* 14 (1): 44-70.

<sup>19</sup> Sibuea, Haris Yonatan Parmahan. 2014. "Kebijakan Hukum Pidana Dalam Penanggulangan Tindak Pidana Korupsi Yang Dilakukan Oleh Pejabat Legislatif Negara." *Info Singkat Hukum* 6 (18): 2.

<sup>20</sup> Simanjuntak, Supriardoyo, and Kornelius Benuf. 2020. "Relevansi Nilai Ketuhanan Dan Nilai Kemanusiaan Dalam Pemberantasan Tindak Pidana Korupsi." *DIVERSI: Jurnal Hukum* 6 (1): 22. <https://doi.org/10.32503/diversi.v6i1.890>.

<sup>21</sup> Javier, Faisal. 2021. "ICW: Angka Penindakan Kasus Korupsi Semester 1 2021 Naik Jika Dibandingkan Tahun Sebelumnya." *Tempo*, September 2021. <https://data.tempo.co/data/1208/icw-angka-penindakan-kasus-korupsi-semester-1-2021-naik-jika-dibandingkan-tahun-sebelumnya>.

Eradication of corruption is a top priority to improve the welfare of the people and the strength of the Unitary State of the Republic of Indonesia (NKRI) in the context of achieving national goals. Therefore, the policy of optimizing corruption eradication must be followed with a comprehensive, integral, and holistic strategy to achieve the expected results.<sup>22</sup> Observing the causes of corruption, it can be concluded that they are related to human aspects, regulations, bureaucracy, political will, commitment, and consistency of law enforcement and community culture. For this reason, in general, the strategy implemented includes the following aspects: a) Increasing the Integrity and Ethics of State Administrators; b) Consolidation and Acceleration of Bureaucratic Reform; c) Strengthening Society's Anti-Corruption Culture; and d) Firm, Consistent, and Integrated Law Enforcement.

In essence, efforts to realize good governance, clean, and free from corruption cannot only be carried out by state apparatus or government agencies. Because in nature, there are 3 (three) stakeholders in good, clean, and free governance, namely: the state, the private sector, and the community. State or government, the concept of government is a state activity, but further than that, it also involves the private sector and community institutions; private sector, private sector actors, include private companies that are active in interactions in the market system, such as trade processing industry, banking, and cooperatives, including informal sector activities; and society, in the context of the state, community groups are basically in the middle or between the government and individuals, which include both individuals and community groups that interact socially, politically and economically.<sup>23</sup> The practice of corruption affects the attitude and mentality of the community in the administration of the state. It also dramatically determines efforts to realize good, clean, and free corruption governance. So far, society's values only respect a person from the material aspect, so the community's attitude tolerates corrupt behavior. Especially if the proceeds of corruption are partly donated to the community for social and religious activities, it is as if this has blotted out the sins of the perpetrators of crime. Therefore, it is necessary to straighten society's values like this because it tends to encourage corrupt practices.

Efforts to straighten societal values can be made through legal counseling, anti-corruption education that was started early in school, the formation of an anti-corruption community, exemplary, and anti-corruption campaigns carried out in various media, especially the mass media. With a massive anti-corruption campaign movement and instilling anti-corruption values from an early age, it is hoped that it will increase public understanding of how dangerous corruption is for the life of the nation and state. In addition, perpetrators must realize that the benefits derived from corruption are not proportional to their suffering. Such conditions should ideally be strengthened by understanding and practicing national values, Pancasila, and Indonesian nationalism.

#### 4. CONCLUSION

The *ultimum remedium* principle is the last step in achieving legal justice, legal certainty, and legal benefits. So that an integral criminal justice system is carried out with a

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<sup>22</sup> Halimang. 2020. *Pendidikan Anti-Korupsi Pendekatan Hukum Di Indonesia*. Edited by Asnawan. Yogyakarta: BILDUNG.

<sup>23</sup> Sedarmayanti. 2012. *Good Governance (Kepemerintahan Yang Baik) : Membangun Sistem Manajemen Kinerja Guna Meningkatkan Produktivitas Menuju Good Governance (Kepemerintahan Yang Baik)*. Bandung: Mandar Maju.

systemic approach with related policy arrangements in the structuring of legal substance and legal structures or institutions and legal culture

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Simanjuntak, Supriardoyo, and Kornelius Benuf. 2020. "Relevansi Nilai Ketuhanan Dan Nilai Kemanusiaan Dalam Pemberantasan Tindak Pidana Korupsi." *DIVERSI: Jurnal Hukum* 6 (1): 22. <https://doi.org/10.32503/diversi.v6i1.890>.

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