



# Analysis of the Application of the Ultimum Remedium Principle in the Legal Process of Juvenile Offenders

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education to create a more humane child protection system that focuses on child safety.

**Abstract:** The application of the principle of ultimum remedy under the legal age of children who commit crimes is an effort to protect the health of children and ensure a more humane approach in the criminal system. This shows that after alternative forms of education, such as diversification and restorative justice, have been discussed, child care or education should be the last option. The purpose of this study is to analyze the mechanisms underlying the application of as ultimum remedy as well as the legal procedures applied to children who deviate and act like criminals. The method used in this study is normative juridical regarding laws, cases, and conceptual. The results of the study indicate that the implementation of as ultimum remedy still faces many challenges, such as a lack of understanding of the legal system, lack of rehabilitation facilities, and lack of attention to diversion of implementation. In addition, older children have a higher sensitivity to criminal acts, therefore a more comprehensive approach is needed in handling them. The principle of ultimum remedy can be integrated into child protection practices by complying with a set of rules that encourage cooperative conflict resolution. This study recommends training of law enforcement officers, improving rehabilitation facilities, and integrating legal

**Keywords:** Ultimum Remedium, Juvenile Crime, Diversion, Juvenile Criminal Justice System

## Introduction

Juvenile delinquency refers to unlawful acts committed by children or adolescents under the legal age of 18. In Indonesia, juvenile criminal offenses are regulated under Law Number 11 of 2012 on the Juvenile Criminal Justice System (SPPA). A child involved in a criminal offense is referred to as a "child in conflict with the law", rather than a "criminal offender" (SPPA, 2012).

In recent years, juvenile delinquency has become a growing issue in Indonesia, with the number of cases involving minors continuing to rise. This phenomenon poses significant challenges to the criminal justice system, particularly in establishing appropriate and enforceable legal standards for young offenders. One notable case illustrating this issue occurred in Bandung in 2024, where a group of 18-year-olds was involved in an assault on

two young men. This case highlights the necessity of considering juvenile actions in relation to legal proceedings to ensure that they receive the appropriate level of protection.

In Indonesia, juvenile offenders are safeguarded by Law Number 11 of 2012 on the Juvenile Criminal Justice System (SPPA), which promotes a restorative justice approach. This approach aims to ensure that any punishment imposed not only supports the child's development but also safeguards their safety and well-being, with the expectation that they will recover positively after undergoing the judicial process.

Nevertheless, there remains a lack of alignment between the principle of *ultimum remedium* as outlined in the SPPA and its actual implementation in legal practice. This disparity arises from differences between formal and informal legal paradigms, the inadequate consideration of customary mechanisms within formal legal procedures, and the inability of law enforcement officials to fully comprehend and accommodate local legal traditions. As a result, children involved in criminal offenses often undergo legal procedures that are less comprehensive, which hampers the potential benefits of community-based resolutions.

According to KOMNAS PA (National Commission for Child Protection), as of 2023, 3,547 cases of child abuse were recorded. Unlike previous years, 2023 saw a 30% increase in such cases, as reported by Acting Chairman of KOMNAS PA, Lia Latifah, during the 2023 End-of-Year Report Press Conference in Jakarta. Lia Latifah further detailed that of these cases:

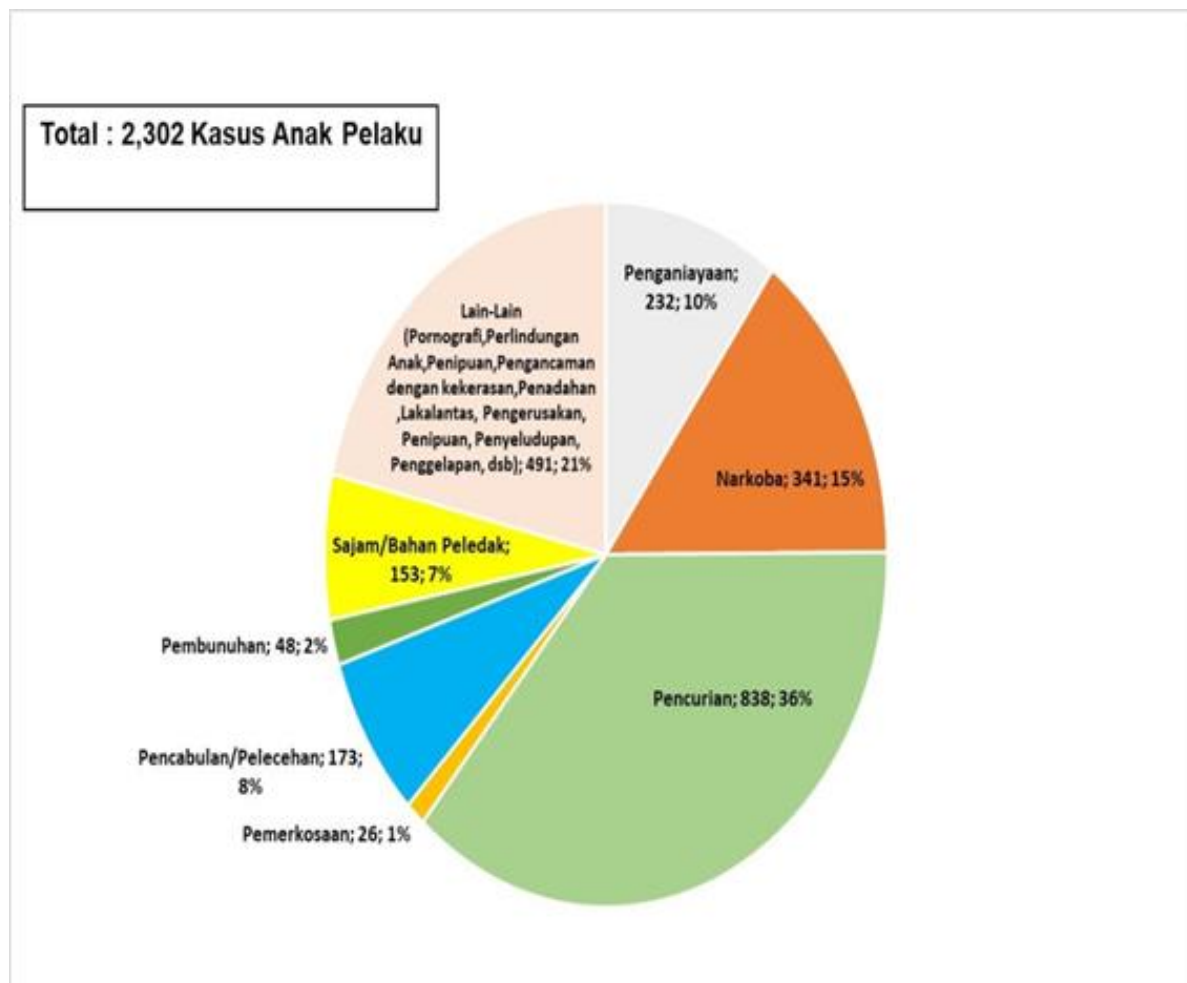
- 958 cases (27%) involved physical violence,
- 674 cases (19%) involved psychological violence, and
- 1,915 cases (54%) involved sexual violence (Antara News, 2024).

Additionally, 213 cases of child sexual abuse were perpetrated by members of the victims' own community. KOMNAS PA's 2023 data also revealed:

- 16,720 cases of bullying involving children,
- 10,314 cases related to child pornography victims, and
- 9,721 cases of pornographic content exposure among children.

Moreover, crime statistics compiled by BPHN (National Law Development Agency) present an overview of criminal activities from 2020 to 2022 (Antara News, 2024).

Scheme 1



Source: [In Indonesia, juvenile offenders often fall victim to a judicial system that lacks sufficient understanding and support for their psychological and social development. The legal processes they undergo frequently result in stigma, trauma, and negative emotions, which can hinder their rehabilitation. Therefore, the primary corrective measure in cases involving juvenile offenders should ensure that they are not only treated legally but also provided with adequate protection and encouragement for their personal growth and development.](https://bphn.go.id/publikasi/berita/2023031708412683/bphn-aeuroemengasuhaeur-<u>ini-jenis-tindak-kejahatan-dan-perilaku-kriminal-anak-yang-menjadi-fokus-bphn-untuk-dicegah</u></a></p>
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The application of the *ultimum remedium* principle in criminal law is one of the most fundamental legal principles aimed at protecting individual rights, especially for children who may be harmed during legal proceedings. This principle asserts that criminal prosecution should only be used as a last resort after all other possible avenues for

resolution have been exhausted and proven ineffective. The application of this principle becomes increasingly relevant in juvenile justice, as it underscores the unique characteristics and needs of child offenders.

Despite the existence of regulations designed to protect children within the legal system, such as Law Number 11 of 2012 on the Juvenile Criminal Justice System, issues persist in their implementation. Numerous cases show that juvenile offenders are still treated similarly to adult offenders, without addressing their social and rehabilitative needs as future contributors to society. This highlights the necessity for a thorough analysis of the application of the *ultimum remedium* principle in juvenile legal proceedings, as well as the need for its effective implementation in law enforcement practices.

Through this analysis, practical solutions and recommendations are expected to be developed to enhance child protection within the formal legal system. Furthermore, this study aims to answer the following key questions:

1. What are the mechanisms for implementing the *Ultimum Remedium* Principle in the legal process of juvenile offenders?
2. What are the legal procedures for handling juvenile offenders who are neglected by the system?

By analyzing the extent to which the legal system applies this principle, this study seeks to ensure the protection of children's rights and their rehabilitation in criminal cases. It also aims to provide theoretical and practical contributions for legal practitioners, academics, and researchers. Ultimately, it is hoped that juvenile offenders will be given the opportunity to reform and reintegrate into society without suffering from severe stigmatization and discrimination.

## **Methodology**

This research employs a normative legal research approach, which relies on legal materials such as legislation, the Criminal Code (KUHP), legal theories, and the opinions of previous legal scholars. The study also applies a statutory approach, a case approach, and a conceptual approach.

The legal materials used in this research consist of primary, secondary, and tertiary legal materials. Primary legal materials include statutory regulations, analyzed through the statutory approach. Secondary legal materials consist of relevant data collected from specific document studies, such as internet sources, legal journals, books, and scholarly articles. The research method adopted is library research, which involves collecting legal literature.

Additionally, this study employs a juridical-normative qualitative data analysis, in which the collected legal materials are examined, discussed, and interpreted. Through this process, the researcher formulates conclusions based on the analyzed legal materials.

## **Result and Discussion**

### **Supervision Mechanism of the *Ultimum Remedium* Principle in the Legal Process for Juvenile Offenders**

The application of the *ultimum remedium* principle in the juvenile criminal justice system aims to ensure that legal proceedings against children are conducted as a last resort. This principle, which emphasizes restorative and diversionary practices, is outlined in Article 2(d) of Law No. 11 of 2012 on the Juvenile Criminal Justice System (*UU SPPA*). However, in practice, the implementation of this principle often encounters various obstacles.

One of the most crucial factors is the supervision mechanism concerning the application of the final resort principle. Many cases show that law enforcement officials, such as police officers, prosecutors, and judges, still predominantly apply formal legal procedures, despite the fact that alternative measures such as diversion should be prioritized. This issue can be attributed to a lack of understanding or insufficient capacity to implement restorative care initiatives. For example, in a 2023 case involving a 16-year-old involved in theft in Bandung, the child was discreetly dismissed, despite the *UU SPPA* requiring alternative resolutions for minors. This indicates that the application of the *ultimum remedium* principle remains ineffective.

To improve the supervision mechanism, the following measures are necessary:

- 1. Training for law enforcement officials** on the application of the *ultimum remedium* principle and restorative justice.
- 2. Establishment of an independent supervisory team** to ensure compliance with this principle at every stage of the legal process.
- 3. Enhanced coordination among judicial institutions, social agencies, and the community** in handling children in conflict with the law (KPAI, 2025).

### **Legal Procedures for Handling Abandoned Children in Conflict with the Law**

Abandoned children often fall victim to criminal activities due to their lack of protection and adequate support. This highlights the significant impact of environmental factors such as social neglect, economic pressure, or exploitation. When dealing with abandoned children, the following legal procedures should be followed:

## 1. Identification of the Child's Condition

Before initiating legal proceedings, it is essential to assess the child's condition, including their social status, health, education, and emotional needs.

## 2. Diversion as the Primary Solution

According to Article 7 of the *UU SPPA*, diversion is mandatory for children under a certain age who have not committed serious offenses. Diversion aims to transition cases out of the formal judicial process by involving the community, family, victims, and offenders in resolution efforts.

## 3. Rehabilitation and Social Integration

Physical and psychological rehabilitation is crucial for children to improve their well-being. The government must provide specialized education and rehabilitation programs tailored for these children (KPAI, 2025).

## 4. Restorative Healing

Legal procedures should also support restorative practices that strengthen the bond between victims and offenders, ensuring that children have opportunities for recovery and reintegration into society.

For instance, the case of a child arrested in Surabaya in 2022 for running a red light underscores the need for a more humane approach. The child had committed a minor offense, but their social background as an abandoned child was a significant factor that needed to be considered. The judge ultimately decided to place the child in a social welfare institution instead of imposing a prison sentence (KPAI, 2025).

This decision aligns with the principles of the *UU SPPA*, which promote child protection and cooperation rather than severe punishment. With appropriate legal procedures, abandoned children can benefit from self-improvement and positive development without experiencing stigma or discrimination.

## Conclusion

Based on the research conducted on the application of primary legal remedies in the judicial process for children who commit crimes under the age of 18, the following conclusions can be drawn:

- 1. Mechanism of the *Ultimum Remedium* Principle:** The implementation of the *ultimum remedium* principle in the juvenile justice process still faces various challenges. Although it is outlined in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (*UU SPPA*), its practical application remains less than ideal. Many cases indicate that children are often exposed to the formal legal system without engaging in recreational activities or restorative practices, which should be prioritized. This occurs due to a lack of

understanding of the legal system, insufficient rehabilitation facilities, and inadequate supervision.

2. **Neglected Legal Procedures for Children in Conflict with the Law:** Children in vulnerable situations have a high risk of becoming involved in criminal activities. An optimal legal process should prioritize the identification of children, diversion, rehabilitation, and social reintegration. However, in practice, interactions with these children often fail to improve their social and psychological well-being. Inhumane treatment can negatively impact their condition, ultimately hindering their social and rehabilitative progress.
3. **Application of Primary Legal Remedies in Customary Law:** In the context of customary law, *ultimum remedium* has been implemented with principles that support cooperative conflict resolution. Compared to punitive measures, customary law often emphasizes social relationships and balance. Therefore, the application of this principle can be more effective if it integrates established customary practices with relevance and contextual adaptation to local community values.

### Recommendations

Based on the findings, the following recommendations are proposed:

1. **Implementation of the Ultimum Remedium Principle:** The government must ensure comprehensive training for legal practitioners on the *ultimum remedium* principle and restorative justice. An independent mechanism should be established to consistently uphold this principle at every stage of the legal process. Additionally, strengthening the capacity of juvenile rehabilitation institutions by providing adequate rehabilitation and educational facilities is essential.
2. **Handling of Neglected Children in Conflict with the Law:** The government must ensure that the legal system's treatment of children is based on their social and psychological needs. Diversion and restorative practices should be prioritized, particularly for children from vulnerable family backgrounds. Collaboration between the government, social organizations, and the wider community is necessary to ensure that these children receive adequate protection and guidance.
3. **Integration of Customary Law Approaches:** The application of the *ultimum remedium* principle should support customary legal approaches that facilitate peaceful conflict resolution. This can reduce the stigma surrounding children involved in criminal activities and strengthen social relationships within communities. The government should facilitate communication between customary law communities and judicial institutions to develop child welfare models based on local legal traditions.
4. **Increasing Public Awareness:** Education and public awareness campaigns on child protection should be prioritized, both for the general public and family members, to

prevent children from becoming victims of criminal activities. Mass media and educational institutions should actively contribute to spreading awareness about the importance of rehabilitation and education for children in conflict with the law.

By implementing these measures, it is hoped that the application of the *ultimum remedium* principle in Indonesia's juvenile justice system will be more effective, providing better protection for children while fostering a fairer and more humane society.

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