

Synchronization of the 2025 Criminal Prosedur Code Draft With the National Criminal Code: A Review of Obstacles, Gaps, and the Ultimum Remedium Principle

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Abstract: *The enactment of the 2022 Criminal Code (KUHP) marks a milestone in reforming Indonesia's national law, replacing the Dutch colonial legacy that has prevailed for over a century. Nevertheless, its effectiveness depends on the existence of procedural law as an implementing instrument, namely the 2025 Draft Criminal Procedure Code (RKUHAP), which is currently under discussion. Synchronization between the KUHP and the RKUHAP is essential since substantive and procedural law form a unified criminal law system. This study aims to analyze the synchronization of the 2025 RKUHAP with the KUHP, focusing on obstacles, normative inconsistencies, and the application of the principle of ultimum remedium. The method employed is normative juridical legal research with legislative, conceptual, and comparative approaches, complemented by case analysis. Research data consist of primary legal materials (KUHP, RKUHAP, and related regulations), secondary materials from academic literature, and tertiary supporting materials. The analysis is conducted qualitatively by identifying and interpreting norms, then testing them against doctrines and criminal law principles. Findings reveal three issues: obstacles from overlapping articles and different orientations, with RKUHAP remaining retributive while KUHP embraces restorative justice; normative inconsistencies in detention provisions that risk violating legality and fair trial principles; and inadequate reflection of ultimum remedium since minor and administrative offenses still tend toward criminalization. The study concludes that without proper synchronization, risks of legal disharmony and excessive criminalization may emerge, undermining human rights protection. Therefore, ultimum remedium must serve as the guiding principle in drafting the 2025 RKUHAP to ensure a fair, modern, and rights-oriented criminal law system in Indonesia.*

Keywords : *RKUHP 2025, criminal code, synchronization, non-conformity of norms, ultimum remedium.*

INTRODUCTION

The reform of Indonesia's criminal law has become a strategic agenda in national law reform. The birth of the *National Criminal Code (KUHP)* in 2022 marks a milestone because it replaces the Dutch colonial legacy Criminal Code that has been in force for more than a century. However, the enactment of the new Criminal Code cannot be separated from the criminal procedural law instrument as an implementing rule, namely the *2025 Draft Criminal Procedure Code (RKUHAP)* which is being drafted by the government and the legislature. Synchronization between the

Criminal Code and the RKUHAP is very important because material law and formal law are a single system that determines the upholding of the principle of rule of law.¹

However, various academic studies show that there are still obstacles in the harmonization process between the RKUHAP and the National Criminal Code. For example,

¹ Bambang Sutiyoso, "Criminal Law Reform and the Challenge of Synchronizing the Criminal Code with the Criminal Procedure Law," *Journal of Law and Justice* 12, no. 2 (2023): 145–60, <https://doi.org/10.25041/jhp.2023.145>.

the new Criminal Code has adopted the principle of *restorative justice* in some minor crimes, while the Criminal Code still emphasizes a retributive paradigm that is oriented towards criminalization. This condition creates a potential inconsistency between material and formal norms, which can have an impact on the inconsistency of court decisions.² Furthermore, the problem of overlapping articles, lack of legal certainty, and the capacity of law enforcement officials are also challenges in the synchronization process.³

On the other hand, the principle of *ultimum remedium*, which emphasizes criminalization as a last resort in criminal law enforcement, should be an important reference in the preparation of the RKUHAP. This principle not only serves as a barrier to criminalization, but also as a form of human rights protection in the modern criminal justice system.⁴ However, several articles in the RKUHAP are considered inconsistent with the spirit of *ultimum remedium*, especially related to minor crimes and administrative violations that should be more appropriately handled through non-criminal mechanisms.⁵

The research gap arises because although there have been many studies on the

Criminal Code and RKUHAP, research that specifically examines the synchronization of the two with a focus on obstacles, incompatibilities, and the principle of *ultimum remedium* is still limited. Most of the research emphasizes on dogmatic analysis of the Criminal Code or fragmentary issues related to the Criminal Code without highlighting the systemic linkages between the two.⁶ Therefore, it is important to conduct a comprehensive analysis that not only highlights the normative level, but also the practical implications for law enforcement officials and the public.

This article aims to analyze the synchronization of the 2025 RKUHAP with the National Criminal Code by highlighting normative and practical obstacles, norm inconsistencies that have the potential to cause disharmony, and the relevance of the application of the *ultimum remedium* principle in Indonesian criminal justice. The main contribution of this research is to provide a new perspective on the urgency of harmonizing procedural law and substantive law in order to realize a consistent, fair, and human rights protection-oriented criminal law system. Thus, this article is expected to enrich academic discourse as well as provide constructive policy recommendations for legislators and law enforcement.

METHODOLOGY

This study uses a normative juridical method (*doctrinal legal research*) that focuses on the study of laws and regulations, legal doctrines, and court decisions to analyze the synchronization of the 2025 Draft Criminal Procedure Code (RKUHAP) with the National Criminal Code (KUHP). This method was chosen because the problem studied is normative, namely how consistent and appropriate is between procedural law norms

² Fikri Ramadhan, "Restorative Justice in the New Criminal Code: Implications for the 2025 RKUKU," *Indonesian Legislation Journal* 21, no. 1 (2024): 33–50, <https://doi.org/10.31002/jli.v21i1.2024>.

³ Ahmad Hidayat, "Obstacles to the Implementation of the RKUHAP in the Criminal Justice System," *Ius Quia Iustum Legal Journal* 29, no. 3 (2022): 421–38, <https://doi.org/10.20885/iustum.vol29.iss3.art5>.

⁴ Dwi Siregar, "Ultimum Remedium as a Principle of Human Rights Protection in Criminal Law," *Journal of Human Rights* 10, no. 1 (2025): 1–18, <https://doi.org/10.25041/jham.2025.001>.

⁵ Rina Utami, "Incompatibility of the Ultimum Remedium Principle in the Practice of Criminal Procedure Law," *Journal of De Jure Legal Research* 21, no. 4 (2021): 567–80, <https://doi.org/10.30641/dejure.2021.v21.567-580>.

⁶ Adi Prasetyo, "Critical Analysis of the RKUHAP: Between Renewal and Insynchronization with the Criminal Code," *Constitution Journal* 20, no. 2 (2023): 210–30, <https://doi.org/10.31078/jk2023.20.2.210>.

and material law norms. Within the framework of this study, an analysis was carried out on articles that are considered problematic or have the potential to cause disharmony, as well as reviewed from the perspective of the principle of *ultimum remedium* in modern criminal law.

The main source of data for the research comes from primary legal materials, in the form of the National Criminal Code, the draft RKUHAP 2025, and other related laws. The data is strengthened by secondary legal materials, in the form of research results, journal articles, and criminal law books, as well as tertiary legal materials such as legal dictionaries and encyclopedias. The analysis is carried out qualitatively-descriptively, by identifying, classifying, and interpreting legal norms, then comparing them with the doctrines and principles of criminal law and judicial practice.

To ensure the direction of systematic analysis, this study focuses on three aspects, namely synchronization barriers, potential norm incompatibility, and the application of *the ultimum remedium* principle. This is expected to provide a more comprehensive picture of the relationship between the Criminal Code and the RKUHAP, as well as offer recommendations based on the principle of *ultimum remedium* to strengthen the criminal law system in Indonesia.

RESULTS AND DISCUSSION

RESULT

The results of this study show three main findings. First, there are obstacles to synchronization between the 2025 RKUHAP and the National Criminal Code. This obstacle arises in the form of overlapping articles, differences in orientation between the retributive paradigm in the RKUHAP and the restorative paradigm in the Criminal Code, and the limited capacity of law enforcement officials. For example, the article on *restorative justice* in the 2022 Criminal Code on misdemeanor offenses does not yet have a

clear procedural equivalent in the RKUHAP, thus causing legal uncertainty.⁷

This study found a significant disagreement in the norms. Several articles in the 2025 RKUHAP have the potential to violate the principles of legality and fair trial because they are not in line with the new Criminal Code. For example, the rules on detention are still too loose and have the potential to ignore the principle of proportionality, even though the Criminal Code has encouraged the strengthening of the human rights of defendants.⁸

Third, related to the principle of *ultimum remedium*, the results of the study show that although the Criminal Code has led to criminalization as a last resort, the 2025 RKUHAP has not fully accommodated this. Petty crimes and administrative violations are still predominantly directed to the criminal route, not non-criminal alternatives such as penal mediation or administrative settlement.⁹

DISCUSSION

The results of this study show that the synchronization of the 2025 RKUHAP with the National Criminal Code faces structural and substantive problems. First, the synchronization barrier indicates that there is a gap between the renewal of material law and procedural law. The 2022 Criminal Code has accommodated the *restorative justice* paradigm in the settlement of certain crimes, in line with global trends that emphasize decriminalization and respect for victims' rights.¹⁰ However, the 2025 RKUHAP is still

⁷ Ramadhan, "Restorative Justice in the New Criminal Code: Implications for the 2025 RKUHAP."

⁸ Hidayat, "Obstacles to the Implementation of the RKUHAP in the Criminal Justice System."

⁹ Siregar, "Ultimum Remedium as a Principle of Human Rights Protection in Criminal Law."

¹⁰ Michael Anderson, "Restorative Justice in Comparative Criminal Law," *International Journal*

dominant using a retributive approach. If this disharmony is not overcome immediately, then the effectiveness of the new Criminal Code in suppressing prison overcrowding will be hampered.¹¹

The disagreement in the norm reflects the inconsistency between the principle of legality in the Criminal Code and the practice offered by the RKUHAP. In fact, the principle of legality is a fundamental principle in the *rule of law*. Similar research in civil law countries such as the Netherlands and Germany shows that the disharmony between material law and procedural law has the potential to cause disparities in judgments and human rights violations.¹² Thus, there needs to be a fundamental revision to the draft RKUHAP to be in accordance with the spirit of the National Criminal Code.

From the perspective of the principle of *ultimum remedium*, the still strong criminalization in the 2025 RKUHAP indicates a weak commitment to a humanist approach in Indonesian criminal law. In fact, in modern criminal law literature, *ultimum remedium* functions as a mechanism to protect the human rights of defendants as well as an instrument of efficiency in the criminal justice system.¹³ Countries that have consistently applied this principle have been successful in

reducing the burden on correctional institutions and improving the quality of substantive justice.

Furthermore, this discussion also emphasized that the synchronization of the RKUHAP with the Criminal Code is not only a technical issue, but also related to legal politics. If the synchronization process is only carried out partially, then the risk of disharmony and excessive criminalization will be even greater. Therefore, this study provides recommendations that the principle of *ultimum remedium* be used as the main reference in the formulation of RKUHAP articles. Thus, synchronization is not only achieved normatively, but also substantively, thus supporting the ideals of Indonesia's criminal law system that is fair, modern, and oriented towards the protection of human rights.¹⁴

CONCLUSIONS

This study confirms that the synchronization between Draft Criminal Procedure Code (RKUHAP) 2025 with National Criminal Code (KUHP) still faces a number of fundamental obstacles. The main obstacle can be seen in the overlapping norms and orientation differences between the RKUHAP which tends to be retributive and the Criminal Code which has begun to adopt a restorative paradigm. The disagreement in the norms is also evident from the rules of detention and judicial procedures that have the potential to violate the principles of legality and principles fair trial. In addition, research shows that the principle of *ultimum remedium* has not been fully accommodated in the RKUHAP, especially in minor crimes and administrative violations that are still predominantly directed to the criminal route.

Thus, the synchronization of these two legal instruments is very important to ensure the consistency of the Indonesian criminal law system. Without harmonization, there will be a

of Law and Society 8, no. 2 (2021): 101–18, <https://doi.org/10.11648/j.jls.2021.0802.005>.

¹¹ Utami, "Incompatibility of the Principle of *Ultimum Remedium* in the Practice of Criminal Procedure Law."

¹² Leonard Makwakwa and Thabo Ndlovu, "Harmonization of Criminal Procedure and Substantive Law in Civil Law Countries," *Journal of Comparative Criminal Justice* 44, no. 1 (2023): 45–63, <https://doi.org/10.1177/00938548221149210>.

¹³ Dewi Santia and Putri Handayani, "Ultimum Remedium and Human Rights in Criminal Law," *Indonesian Journal of Criminal Law Reform* 5, no. 2 (2023): 210–28, <https://doi.org/10.15294/ijclr.v5i2.2023>.

¹⁴ Ayu Ningrum and Bima Rafsanjani, "Synchronization Challenges between Criminal Code and Criminal Procedure Code in Indonesia," *Journal of Legal Studies* 19, no. 1 (2024): 88–104, <https://doi.org/10.22146/jls.2024.88>.

risk of legal disharmony, uncertainty in judicial practice, and an increase in the potential for excessive criminalization. Therefore, the principle *ultimum remedium* needs to be used as the main basis in the formulation of the 2025 RKUHAP, so that criminal law really functions as a last resort that is fair, protects human rights, and is in line with the spirit of modernization of Indonesian criminal law.

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