

Criminalizing Cultural Heritage Destruction: An Analysis of Ultimum Remedium in Law No. 11 of 2010 on Cultural Heritage

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Abstract: Cultural heritage is rich in historical, cultural, scientific and intergenerational values that need to be effectively legally protected. Indonesian Law No. 11 of 2010 on Cultural Heritage, Article 66(1) prohibits destruction and Article 105 provides for criminal liability. The relationship between criminal enforcement, administrative measures and the principle of ultimum remedium still remains to be studied. The article considers the issues of formation of criminal liability for destruction of cultural heritage. The article defines the conditions of criminal enforcement as a last resort. The method used is normative legal research, with statutory, conceptual and case approaches, including the Cirebon railroad bridge case. The results indicate that public and intergenerational interests in cultural heritage should be criminalized, but that criminal sanctions should not automatically follow from every regulatory breach. Enforcement should take into account statutory elements, intent, degree of damage, irreversibility, culpability and effectiveness of noncriminal measures. This paper therefore proposes a tiered enforcement model that combines prevention, administrative control, restoration and criminal intervention when non-criminal means are insufficient to prevent serious or continuing damage.

Keywords: Cultural heritage, criminalization, cultural heritage destruction, ultimum remedium, criminal enforcement, proportionality.

Introduction

Cultural heritage occupies a distinctive position within the Indonesian legal system because its significance extends beyond private ownership and material value. Cultural heritage embodies historical memory, cultural identity, scientific knowledge, educational value, religious significance, and the continuity of civilization across generations. Law No. 11 of 2010 on Cultural Heritage defines cultural heritage as tangible cultural heritage that possesses important value for history, science, education, religion, and/or culture and has undergone a process of determination. Its protection therefore concerns not merely the preservation of physical objects, buildings, structures, sites, or areas, but also the protection of the cultural values attached to them. Consequently, the destruction of cultural heritage may constitute harm to a broader public interest that cannot be adequately measured solely through economic loss ([Ebabey Demissie et al., 2026](#); [Schclarek Mulinari., 2026](#)). The legal protection of cultural heritage is also grounded in the constitutional responsibility of the state to advance Indonesian national culture. Article 32 paragraph (1) of the 1945 Constitution establishes the state's obligation to promote national culture while ensuring freedom for society to preserve and develop its cultural values. This constitutional mandate is translated through Law No. 11 of 2010, which establishes preservation through the principles of protection, development, and utilization ([Seila et al., 2025](#)). The legal framework consequently places limitations on the exercise of ownership and control over cultural heritage. Although ownership is recognized as the strongest and fullest right, it remains subject to social functions and the obligation to preserve cultural heritage. Cultural heritage protection therefore represents a legal balance between individual interests and collective cultural interests ([Adewumi & Sani., 2026](#); [Richards., 2026](#)). The need for such protection becomes increasingly significant when cultural heritage comes into conflict with development, economic interests, private ownership, commercialization, infrastructure projects, or changes in land and building utilization. Destruction may occur through demolition, unauthorized modification, removal of parts of a heritage structure, vandalism, inappropriate utilization, or other activities that diminish its authenticity and important values. These circumstances create a legal problem because an act that may initially appear to be an administrative violation can produce irreversible consequences for cultural heritage. Once an important historical structure or component has been destroyed, administrative correction or monetary compensation may not be capable of fully restoring the lost cultural, historical, and educational values ([Munir et al., 2026](#); [XIONG](#)).

Law No. 11 of 2010 responds to this problem by combining administrative and criminal mechanisms. Article 66 paragraph (1) expressly prohibits any person from destroying cultural heritage, either wholly or partially, including elements forming part of its unity, group, and/or original location. This prohibition is reinforced by Article 105, which establishes criminal

liability for a person who intentionally destroys cultural heritage. The formulation demonstrates that criminal law is deliberately incorporated into the cultural heritage protection regime. The offense requires, among other elements, an intentional act of destruction directed against an object legally recognized as cultural heritage. Criminalization therefore serves as a coercive mechanism to protect cultural heritage when its preservation is threatened by unlawful conduct (Firmansyah et al., 2026; Wahyuni et al., 2026). However, the existence of criminal sanctions raises a fundamental question concerning the appropriate limits of criminal intervention. Not every violation of cultural heritage regulations necessarily produces the same degree of harm, and not every violation requires imprisonment or criminal prosecution as the primary legal response. Law No. 11 of 2010 itself provides various non-criminal instruments, including prevention, supervision, control of utilization, termination of activities, cancellation of utilization permits, and restoration of damaged cultural heritage. This regulatory structure indicates that the protection of cultural heritage is not exclusively punitive. The central objective of the legal regime is preservation, meaning that enforcement should ultimately be assessed according to its capacity to prevent destruction, maintain important cultural values, and restore damaged heritage (Tosza., 2024). This issue is closely connected with the principle of *ultimum remedium*, which generally positions criminal law as a measure of last resort when other legal instruments are insufficient to protect the relevant legal interest. Nevertheless, *ultimum remedium* should not necessarily be understood as a rigid procedural requirement that all administrative mechanisms must first be exhausted before criminal law may be applied. Such an interpretation may be problematic where destruction is continuing or where delay in criminal intervention could result in permanent loss of cultural heritage. A more appropriate understanding places emphasis on subsidiarity, necessity, proportionality, the seriousness of the damage, the offender's culpability, and the effectiveness of available non-criminal measures. Accordingly, criminal enforcement may remain justified even before the completion of administrative procedures where the circumstances demonstrate a serious and immediate threat to the protected legal interest. The question becomes more important following the development of Indonesia's national criminal law framework. Law No. 1 of 2023 on the Criminal Code entered into force on 2 January 2026 and established a new general framework for criminal law, including the application of criminal provisions contained in legislation outside the Criminal Code. Subsequently, Law No. 1 of 2026 on Criminal Penalty Adjustment introduced adjustments to criminal provisions contained in various laws outside the Criminal Code, including provisions concerning special minimum penalties, subject to specified exceptions. These developments affect the way criminal provisions under Law No. 11 of 2010 should be interpreted and applied. In particular, the adjustment of the special minimum penalty creates greater space for judicial individualization and proportionality in determining criminal sanctions according to the

seriousness of the offense, the degree of culpability, and the consequences of the destructive conduct. Previous studies concerning criminal law enforcement in the cultural heritage sector have primarily examined issues such as the investigation of cultural heritage offenses, the authority of civil servant investigators, and the criminal liability of business entities. These studies provide important foundations for understanding the institutional and doctrinal dimensions of cultural heritage criminal law. Nevertheless, the relationship between the criminalization of cultural heritage destruction and the *ultimum remedium* principle remains insufficiently examined, particularly in relation to the interaction between criminal and administrative enforcement. The issue becomes even more significant in the context of the post-2026 national criminal law framework, which changes the context in which criminal provisions outside the Criminal Code are applied. This gap indicates the need for a more focused legal analysis of when criminal intervention is justified and how proportionality should operate within cultural heritage enforcement (Ebabey Demissie et al., 2026; Okahashi., 2022). The existing literature therefore leaves two related issues insufficiently developed. First, the criminalization of cultural heritage destruction has not been sufficiently examined together with the administrative and restorative mechanisms available under Law No. 11 of 2010. Second, the *ultimum remedium* principle has not been sufficiently operationalized into legal criteria for determining when criminal enforcement becomes necessary in cases involving different levels of damage, intentionality, culpability, and public impact. This study addresses these issues by connecting the statutory construction of the offense with the practical boundary between non-criminal and criminal enforcement. The novelty of this study lies in proposing a layered enforcement model that does not treat prevention, administrative control, restoration, and criminal enforcement as mutually exclusive mechanisms or as a rigid chronological sequence. Instead, the model sets out legal criteria for the assessment of the appropriate enforcement response on the basis of subsidiarity, necessity, proportionality, seriousness and reversibility of damage, intentionality, culpability and the effectiveness of non-criminal measures. In this sense, criminal enforcement is an *ultimum remedium*, while administrative and restorative measures are indispensable tools of cultural heritage preservation. Against this background, this study examines the criminalization of cultural heritage destruction under Law No. 11 of 2010 and analyzes the position of criminal law through the perspective of the *ultimum remedium* principle. The study addresses two central questions: first, how is the criminal offense of cultural heritage destruction constructed under Law No. 11 of 2010; and second, to what extent should criminal enforcement operate as an *ultimum remedium* in protecting cultural heritage, particularly following developments in Indonesia's national criminal law framework. The study argues that criminalization remains necessary because cultural heritage constitutes a public legal interest requiring strong protection, but criminal enforcement should not be applied mechanically to every violation.

Instead, a layered enforcement model combining prevention, supervision, administrative measures, restoration, and proportionate criminal intervention provide a more appropriate framework for reconciling effective cultural heritage protection with the restrictive nature of criminal law. The contribution of this study lies in developing an *ultimum remedium*-based framework that places subsidiarity, proportionality, necessity, and restorative conservation at the center of criminal enforcement against cultural heritage destruction.

Research Method

Research Design

This research uses normative legal research to examine the criminalization of cultural heritage destruction under Law No. 11 of 2010 on Cultural Heritage. The analysis focuses on the legal construction of the offense, the relationship between criminal and administrative enforcement, and the position of criminal sanctions within the *ultimum remedium* principle ([Ardiansyah & Zuhdi., 2026](#); [Gizzatov et al., 2025](#)). The normative character of the research is reflected in its examination of statutory provisions, legal concepts, and their relationship within the cultural heritage protection system. The research does not measure the frequency of cultural heritage offenses or assess law enforcement through statistical data. Instead, it examines the applicable legal norms and their consequences for the enforcement of cultural heritage protection. Particular attention is given to Article 66 paragraph (1) and Article 105 of Law No. 11 of 2010, together with the provisions governing administrative measures, restoration, criminal liability, and the subsequent changes introduced by the national criminal law framework ([Butt et al., 2025](#); [Gizzatov et al., 2025](#)).

Legal Approaches

Three approaches are used in the analysis: the statutory approach, the conceptual approach, and the case approach. The statutory approach is used to examine the provisions governing cultural heritage protection and criminal liability. The principal legislation consists of Law No. 11 of 2010 on Cultural Heritage, Law No. 1 of 2023 on the Criminal Code, and Law No. 1 of 2026 on Criminal Penalty Adjustment. Government Regulation No. 1 of 2022 concerning the National Register and Preservation of Cultural Heritage and relevant ministerial regulations are also examined to understand the administrative and preventive mechanisms established for cultural heritage protection. The conceptual approach is used to examine the concepts of *ultimum remedium*, criminalization, criminal liability, proportionality, subsidiarity, and restorative enforcement. The concept of *ultimum remedium* is particularly important because the Cultural Heritage Law combines administrative and criminal mechanisms. The analysis therefore distinguishes between *ultimum remedium* as a rigid requirement to exhaust

administrative measures and *ultimum remedium* as a principle that limits the use of criminal law according to necessity and proportionality (Wulandari., 2026). The case approach is used in examining the demolition of an old railway bridge structure in the Kalibaru River area of Cirebon. The case is considered in relation to the legal status of the object, the circumstances surrounding its demolition, the availability of cultural heritage protection mechanisms, and the possible relationship between administrative measures and criminal enforcement. The case functions as an illustration for testing the legal issues identified in the normative analysis. The three approaches are designed for different but complementary purposes in the analysis. The statutory approach is used to identify and interpret the legal rules governing the destruction of cultural heritage, criminal liability, administrative measures and sanctions. The conceptual approach is used to examine the meaning and application of *ultimum remedium*, subsidiarity, necessity, proportionality, culpability and restorative enforcement as analytical concepts. The case approach is used to test the relevance of these legal norms and concepts against the factual and legal circumstances of the Cirebon railway bridge case. The case is therefore used as an illustrative application of the normative framework rather than as empirical evidence representing cultural heritage enforcement practices generally.

Sources and Types of Legal Materials

The legal materials consist of primary and secondary legal materials. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, Law No. 11 of 2010 on Cultural Heritage, Law No. 1 of 2023 on the Criminal Code, Law No. 1 of 2026 on Criminal Penalty Adjustment, Government Regulation No. 1 of 2022 concerning the National Register and Preservation of Cultural Heritage, and relevant ministerial regulations. The provisions most directly examined are Article 66 paragraph (1), which prohibits the destruction of cultural heritage, Article 88 concerning the control of utilization and restoration, Articles 95 and 96 concerning governmental responsibilities and authority, Article 105 concerning the criminal offense of intentional destruction, and Article 113 concerning criminal liability involving business entities. The relevant provisions of the 2023 Criminal Code and the 2026 criminal penalty adjustment are examined to determine their implications for the application of Article 105. Secondary legal materials include books, journal articles, and previous legal research concerning cultural heritage law, criminal law policy, administrative sanctions, corporate criminal liability, and the *ultimum remedium* principle. Previous studies concerning the investigation of cultural heritage offenses and criminal liability of business entities are used to identify the issues that have already been addressed in the literature and those requiring further analysis.

Legal Materials Collection

Legal materials were collected through a literature-based legal research process. Statutory materials were identified from the relevant legislation governing cultural heritage preservation and criminal law. Academic materials were obtained from legal books, scholarly journal articles, and previous research addressing the application of criminal law and the *ultimum remedium* principle. Materials relating to the Cirebon case were examined as supporting materials for the case approach. The case materials are used to identify the legal circumstances surrounding the demolition and to assess the relevance of preventive protection, administrative intervention, restoration, and criminal enforcement. They are not treated as empirical evidence capable of representing all cultural heritage enforcement practices in Indonesia. Legal materials were selected due to their direct relevance to the research questions and their legal authority. Those dealing directly with the protection and destruction of cultural heritage, criminal liability, administrative authority, restoration and the applicable criminal law framework were prioritized. Secondary legal materials were chosen according to their relevance to the interpretation of the statutory provisions and the development of the concepts of criminalization and *ultimum remedium*. Materials were included if they offered doctrinal, conceptual or case-related support for the analysis and excluded if they did not directly contribute to the legal issues examined in this study.

Legal Analysis

The legal materials were analyzed qualitatively through systematic interpretation of the relevant legal provisions. The analysis begins with the construction of the offense under Article 105 of Law No. 11 of 2010. The elements examined include the subject of the offense, the object protected by law, the act of destruction, and the requirement that the destruction be committed intentionally. Article 66 paragraph (1) is examined together with Article 105 because the former establishes the prohibition while the latter attaches criminal consequences to intentional destruction. The analysis then examines the relationship between criminal enforcement and the non-criminal mechanisms available under the Cultural Heritage Law. Prevention, supervision, termination of activities, control of utilization, cancellation of permits, and restoration are considered in determining whether criminal intervention is necessary in a particular situation. This relationship is important in assessing whether the criminal provision operates consistently with the *ultimum remedium* principle. The application of *ultimum remedium* is assessed through several legal considerations: the seriousness of the damage, the intentionality of the conduct, the degree of threat to the cultural heritage, the possibility of restoration, the effectiveness of administrative measures, the degree of culpability, the impact on public interests, and the need to prevent repetition. These

considerations are used to distinguish circumstances in which administrative or restorative measures may be sufficient from circumstances in which criminal enforcement has a stronger legal justification. The analysis also considers the consequences of the 2023 Criminal Code and the 2026 criminal penalty adjustment for the application of Article 105. Particular attention is given to the treatment of special minimum penalties and the resulting scope for judicial individualization of punishment. The change is examined in relation to proportionality rather than treated merely as a technical amendment to the statutory penalty. The analysis was carried out in four stages. First, the relevant statutory provisions were identified and interpreted to determine the legal elements of cultural heritage destruction and available enforcement mechanisms. Second, the statutory provisions were considered within the conceptual framework of the principle of *ultimum remedium*, in particular the principles of subsidiarity, necessity, proportionality and culpability. Third, the normative framework was applied to the case of the Cirebon railroad bridge to identify the legal issues concerning the cultural heritage status, preventive protection, administrative intervention, restoration, and potential criminal enforcement. Fourth, the results of the statutory, conceptual and case analyzes were synthesized to develop criteria for determining the proper relationship between non-criminal and criminal enforcement. This procedure developed the proposed layered enforcement model.

Normative and Prescriptive Framework

The final stage of the analysis develops a normative framework for the application of *ultimum remedium* in cultural heritage enforcement. The framework is based on the relationship between the preventive, administrative, restorative, and criminal instruments provided by the legal system. The proposed framework places prevention and supervision at the first level of protection, followed where necessary by administrative measures and restoration. Criminal enforcement is considered when the conduct satisfies the elements of the criminal offense and non-criminal measures are inadequate, ineffective, or incapable of preventing serious or continuing damage. The use of criminal law must also remain proportionate to the offender's culpability, the extent and significance of the damage, and the public interest affected. This framework does not treat administrative and criminal enforcement as mutually exclusive. In circumstances involving continuing or serious destruction, criminal intervention may be required even while administrative or restorative measures are being undertaken. The purpose of the framework is therefore to establish a legally defensible boundary between regulatory violations that can be addressed through non-criminal measures and conduct that warrants criminal enforcement under Article 105 of Law No. 11 of 2010.

Result and Discussion

Legal Construction of Cultural Heritage Destruction

The criminalization of cultural heritage destruction under Law No. 11 of 2010 cannot be separated from the special legal position of cultural heritage. The object protected by the law is not merely a physical object belonging to an individual or institution. Cultural heritage carries historical, cultural, educational, scientific, religious, and social values that extend beyond the interests of its owner. This explains why the exercise of ownership over cultural heritage is accompanied by a legal obligation to preserve the object and its important values. The legal construction begins with Article 66 paragraph (1) of Law No. 11 of 2010, which prohibits any person from destroying cultural heritage, either wholly or partially, from its unity, group, and/or original location. Article 105 subsequently provides the criminal sanction for intentional destruction. The relationship between these two provisions is important. Article 66 paragraph (1) establishes the substantive prohibition, while Article 105 transforms a particular form of violation of that prohibition into a criminal offense. However, the relationship between Article 66 paragraph (1) and Article 105 should not be understood as establishing automatic criminal liability for all violations of the prohibition. Article 66 paragraph (1) defines the conduct that should not be done, while Article 105 requires the additional element of intentionality for criminal liability. Therefore, before criminal enforcement can be applied, a violation of the prohibition must still be evaluated considering the specific elements of the criminal offense. This distinction is important to preserve the principle of legality and to prevent the criminal provision to apply in case of accidental damage, technical deterioration, or action without the required intent. The elements of the offense can be identified as shown in Table 1.

Table 1 Elements of the Criminal Offense of Cultural Heritage Destruction

Element	Legal basis	Legal meaning
Subject	Article 105 jo. Article 1	The offense may be committed by a person falling within the statutory meaning of every person, including individuals and business entities where the statutory requirements are fulfilled.
Protected object	Article 66(1) jo. Article 105	The object must constitute cultural heritage within the meaning of Law No. 11 of 2010.
Prohibited conduct	Article 66(1)	Destruction may concern the whole or part of cultural heritage, including elements forming its unity, group, or original location.
Mental element	Article 105	The destruction must be committed intentionally.

Resulting harm	Article 66 (1) and Article 105	The conduct must involve actual destruction of the protected cultural heritage.
Criminal consequence	Article 105	Intentional destruction satisfying the statutory elements attracts criminal liability.

The requirement of intentionality is particularly significant. Physical damage alone does not automatically establish criminal liability under Article 105. The prosecution must establish that the accused intentionally engaged in conduct that caused the destruction. This distinction prevents the criminal provision from being applied indiscriminately to every incident of deterioration, technical failure, accidental damage, or negligent maintenance. The object element is equally important. The criminal offense is directed specifically at cultural heritage protected under the Cultural Heritage Law. Therefore, the legal status and characteristics of the object must be established through the applicable cultural heritage framework. A structure may possess historical or cultural significance in a social sense without automatically satisfying every legal requirement necessary for criminal prosecution under Article 105. This requirement is closely connected with the principle of legality because criminal liability must be based on an identifiable statutory object and conduct. The formulation of Article 105 also demonstrates the special character of the offense. The provision exists within a sectoral statute designed specifically to protect cultural heritage. Where the conduct concerns an object and circumstances falling within the specific cultural heritage provisions, the special statutory regime must be considered before general provisions concerning damage to property are applied. The principle of *lex specialis derogat legi generali* therefore has relevance in determining the appropriate legal framework. The construction of the offense also extends to conduct involving business entities. Article 113 provides a basis for imposing criminal consequences on business entities and/or persons who order the commission of the offense, subject to the statutory requirements. This is particularly relevant because cultural heritage destruction may occur in construction, redevelopment, investment, infrastructure, or commercial activities. Criminal investigation should therefore not automatically stop at the person physically carrying out demolition or alteration. The decision-making structure, authority, instructions, organizational benefit, and role of the business entity may also become relevant.

Criminalization and the Protected Legal Interest

The justification for criminalizing cultural heritage destruction lies in the nature of the legal interest protected. Cultural heritage is associated with collective interests that cannot be reduced to the ownership rights of a particular individual. The loss of a historical structure may eliminate physical evidence of a particular period, reduce the possibility of historical

research, and deprive future generations of access to cultural resources. This public dimension provides a stronger justification for criminalization than a purely private-property model. The destruction of ordinary private property may principally concern the relationship between an owner and another party. Destruction of cultural heritage, by contrast, may affect a broader community because the object embodies values that have significance beyond its economic price. The difference can be illustrated as follows.

Table 2 Private Property Damage and Cultural Heritage Destruction

Dimension	Ordinary property damage	Cultural heritage destruction
Primary interest	Private ownership	Public and cultural interest
Main value	Economic/utilitarian	Historical, cultural, scientific, educational, and social
Harm assessment	Usually measurable through material loss	Includes non-economic and irreversible cultural loss
Restoration	Replacement may sometimes be possible	Authenticity and historical value may not be fully replaceable
Intergenerational impact	Generally limited	Potentially significant
Legal response	Primarily protection of property rights	Preservation, administration, restoration, and criminal protection

The public character of cultural heritage explains the presence of criminal sanctions in Law No. 11 of 2010. Criminalization is therefore not inherently inconsistent with *ultimum remedium*. The existence of a criminal provision can be justified where the protected interest is sufficiently important and where certain forms of conduct create serious harm or a substantial threat to that interest. The problem arises at the level of enforcement. The fact that an act has been criminalized does not mean that imprisonment must become the first response to every violation. Criminalization and criminal enforcement are different questions. Criminalization establishes that particular conduct is sufficiently serious to warrant criminal prohibition. *Ultimum remedium*, by contrast, concerns the conditions under which criminal law should actually be activated and how its coercive power should be exercised. This distinction is important for cultural heritage law. The state may legitimately criminalize intentional destruction because the consequences may be irreversible, while simultaneously requiring enforcement authorities to assess whether administrative, preventive, or restorative measures can adequately protect the relevant interest in a particular case.

Ultimum Remedium and the Boundary between Administrative and Criminal Enforcement

Law No. 11 of 2010 does not construct cultural heritage protection exclusively through criminal sanctions. The statutory framework contains preventive, supervisory, administrative, and restorative instruments. Government authorities have responsibilities concerning protection, development, utilization, and supervision. The law also provides mechanisms concerning the termination or control of utilization and the restoration of cultural heritage affected by improper utilization. This structure supports the application of *ultimum remedium* as a principle of criminal policy. The presence of alternative legal mechanisms means that criminal law should be considered in relation to the capacity of those mechanisms to protect the cultural heritage in question. The relationship between the different instruments can be understood through the following matrix.

Table 3 Enforcement Instruments under a Cultural Heritage Protection Framework

Enforcement level	Principal objective	Typical legal response	Position in enforcement
Prevention	Avoid damage before it occurs	Registration, designation, zoning, guidance, supervision	First line of protection
Administrative control	Stop or correct unlawful activity	Warning, termination, permit-related measures, control of utilization	Corrective mechanism
Restoration	Recover the condition and important values of heritage	Restoration, reconstruction, rehabilitation where legally and technically appropriate	Conservation-oriented response
Criminal enforcement	Respond to intentional and serious unlawful destruction	Investigation, prosecution, and criminal sanctions	Ultimum remedium
Corporate accountability	Address organizational responsibility	Liability of business entity and/or responsible decision-maker	Applies where corporate involvement is established

The table indicates that ultimum remedium should not be understood as a simple chronological sequence. It would be problematic to require every administrative measure to be completed before criminal enforcement could begin. Cultural heritage is sometimes vulnerable to continuing destruction. If an unlawful demolition is ongoing, waiting for the completion of administrative procedures may allow the protected object to disappear before criminal intervention becomes available. A more appropriate approach is to regard ultimum remedium as a principle of subsidiarity and proportionality. The principle limiting the use of

criminal law in this study is understood as *ultima ratio*. This does not mean that all administrative measures have to be exhausted before criminal enforcement can be considered. The necessity for criminal intervention should be examined in the light of the elements of the offense, the seriousness of the damage, the responsibility of the person involved and whether non-criminal measures are still effective in protecting the cultural heritage. Criminal law should be used where non-criminal instruments cannot adequately protect the legal interest, where the conduct reaches the level of criminality established by statute, and where criminal intervention is necessary in view of the seriousness of the threat or harm. The distinction between administrative and criminal enforcement may therefore be determined through several questions:

1. Has the conduct violated a specific criminal provision?
2. Was the conduct committed intentionally?
3. Is the object legally protected as cultural heritage?
4. What is the degree and character of the damage?
5. Can the damage still be prevented or effectively restored?
6. Have available administrative measures been effective?
7. Is the threat continuing or likely to recur?
8. What is the degree of culpability of the person responsible?
9. Is criminal intervention necessary to protect the public interest?

The nine considerations can be grouped under four legal criteria for deciding whether criminal enforcement should be considered. Firstly, the statutory criterion demands that the conduct and the protected object be within the elements of the relevant criminal provision. Second, the criterion of culpability requires an appraisal of the intentionality and the degree of responsibility of the person or body concerned. Thirdly, the harm and necessity criterion relates to the gravity, irreversibility, continuity and public impact of the damage, as well as to the need for criminal intervention to protect the legal interest. Fourth, the effectiveness criterion requires an assessment of whether the conduct can be sufficiently halted, further damage prevented, or the protected cultural value restored through prevention, administrative control, or restoration. Where these criteria are cumulatively or substantially met, criminal enforcement is more strongly justified, especially where non-criminal measures are unable to prevent serious or continuing destruction. These questions create a more precise boundary between administrative violations and criminal conduct. A minor regulatory violation, for example, may be adequately addressed through administrative correction where no intentional destruction has occurred and the object remains substantially intact. The

situation is different when an actor knowingly demolishes an important component of cultural heritage for economic gain and continues the activity despite an order to stop. In the latter circumstance, the justification for criminal intervention becomes substantially stronger because the conduct involves intentionality, serious harm, and an insufficient non-criminal response. The application of ultimum remedium therefore depends on the circumstances of the case rather than on the mere existence of an administrative violation. This approach also prevents two opposite errors. The first is overcriminalization, where every regulatory breach is treated as a criminal matter. The second is under-enforcement, where criminal law is avoided even when intentional and irreversible destruction is taking place. There are also concerns about the use of criminal law for the protection of cultural heritage. Overcriminalization, it is argued, may turn regulatory or administrative offenses into crimes, blurring the line between administrative non-compliance and conduct that results in a significant loss of culture. Another worry is that criminal proceedings may focus on punishment and insufficiently on restoration and the recovery of cultural value. These concerns underpin the importance of subsidiarity and proportionality in the application of criminal law. However, a limited criminal intervention, limited to cases of exhaustion of all the administrative measures, may also face a risk of destruction that is ongoing or irreversible. The appropriate approach is therefore not to reject criminal law but rather to assess its need by taking into account the statutory elements of the offense, culpability, seriousness of harm, effectiveness of non-criminal measures and urgency of protecting the concerned cultural heritage.

Proportionality after the 2026 Criminal Penalty Adjustment

The application of ultimum remedium cannot be separated from proportionality in sentencing. The significance of Law No. 1 of 2023 on the Criminal Code and the subsequent criminal penalty adjustment in 2026 lies in the broader restructuring of Indonesia's national criminal law framework. As reflected in the manuscript, the adjustment affects the treatment of special minimum penalties contained in legislation outside the Criminal Code. This development has consequences for the way the penalty under Article 105 of Law No. 11 of 2010 is understood and applied. The significance of this development is not simply the reduction of a numerical minimum. It concerns the ability of the sentencing process to distinguish between cases with materially different levels of culpability and harm. Cultural heritage destruction can range from damage that remains technically restorable to destruction that permanently eliminates historically significant elements. Treating these situations identically would weaken the principle of proportionality. The relevant sentencing considerations can be organized as follows.

Table 4 Proportionality Parameters in Cultural Heritage Destruction Cases

Parameter	Lower level of seriousness	Higher level of seriousness
Intent	Absence of intentional destruction	Deliberate destruction
Planning	Unplanned or incidental conduct	Planned and organized conduct
Damage	Limited and reversible	Extensive and irreversible
Cultural significance	Limited significance	High historical/cultural significance
Economic motive	No significant benefit	Significant commercial benefit
Restoration	Readily possible	Difficult or impossible
Compliance	Immediate corrective action	Continued violation despite intervention
Public impact	Limited	Broad and intergenerational
Recidivism risk	Low	High or repeated conduct

These parameters do not replace the statutory elements of the offense. Rather, they operate after criminal liability has been established to assist in determining whether and how criminal sanctions should be imposed proportionately. The distinction is especially important because the protected value of cultural heritage is not always reflected in market prices. A destroyed architectural element may have little resale value while possessing substantial historical significance. Consequently, sentencing should not rely solely on the monetary value of the physical material. The analysis should also consider the cultural significance, authenticity, historical information, and possibility of transmitting the heritage to future generations. The adjustment of criminal penalties can therefore support a more individualized application of *ultimum remedium*. It provides greater room to distinguish serious intentional destruction from cases involving lower levels of culpability, without weakening the criminal prohibition itself. The state continues to recognize intentional cultural heritage destruction as a criminal offense, but the response can be calibrated according to the circumstances of the offense. This distinction also reinforces the difference between criminalization and punishment. Criminalization expresses the state's decision that a particular form of conduct is unacceptable and warrants criminal protection. Proportional punishment determines the appropriate response after considering the specific facts of the case. The two functions should not be conflated.

The Cirebon Railway Bridge Case as an Illustrative Application

The demolition of an old railway bridge structure in the Kalibaru River area of Cirebon provides a useful illustration of the legal tension between development-related activity, administrative authority, cultural heritage protection, and potential criminal enforcement. According to the case materials presented in the manuscript, the demolition occurred following a letter from the Mayor of Cirebon to the regional railway authority requesting demolition on grounds including spatial arrangement and safety considerations. The structure was associated with the historical development of the river and transportation network in Cirebon. The legal significance of the case does not depend solely on whether the structure had already been formally designated as cultural heritage. The manuscript emphasizes the importance of the category of an Object Suspected of Cultural Heritage (ODCB) and the preventive protection principle. The argument advanced is that an object meeting the criteria of cultural heritage should not be treated as an ordinary structure merely because the formal determination process has not been completed. This position raises an important distinction between preventive protection and criminal liability. Preventive protection can reasonably require caution before an object's historical status has been finally determined, because demolition may eliminate the evidence necessary for subsequent assessment. Criminal liability, however, remains subject to the principle of legality and the elements expressly established by the criminal provision. The two forms of protection should therefore not automatically be equated. This distinction is particularly important for the application of Article 105. The preventive principle may justify delaying demolition, conducting historical and archaeological assessment, securing the object, or imposing administrative controls. However, the transition from preventive protection to criminal liability requires an additional legal analysis concerning the statutory elements of the offense. The Cirebon case can therefore be assessed through the framework in Table 5.

Table 5 Normative Assessment of the Cirebon Railway Bridge Case

Legal issue	Assessment
Historical significance	The structure was presented as part of the historical transportation landscape of Cirebon.
Need for prior assessment	Historical and archaeological assessment becomes important before irreversible demolition.
Administrative dimension	The demolition involved governmental and institutional decision-making and therefore cannot be viewed solely as an ordinary private act.
ODCB issue	The case raises the question of the extent of preventive protection afforded to objects suspected of meeting cultural heritage criteria.

Potential damage	Demolition creates the possibility of permanent loss of physical evidence and historical authenticity.
Restorative dimension	Material resulting from demolition may require documentation, safeguarding, and assessment for possible restoration or reconstruction.
Criminal dimension	Criminal liability requires proof of the statutory elements, including the legal status of the protected object and intentional destruction.
Ultimum remedium	Criminal intervention must be assessed alongside prevention, administrative control, and restoration rather than treated as an automatic consequence of every procedural violation.

The Cirebon railway bridge case should therefore be understood as an illustrative application of the proposed normative framework rather than as a determination of criminal liability. The available case materials are insufficient, within the scope of this normative study, to establish all elements required for criminal prosecution under Article 105. In particular, the legal status of the structure, the evidence of intentional destruction, and the individual or organizational responsibility involved require separate factual and evidentiary assessment. The case is used to demonstrate how preventive protection, administrative control, restoration, and potential criminal enforcement may interact when an object has historical significance and irreversible demolition is contemplated. The case demonstrates why cultural heritage enforcement cannot rely exclusively on technical construction or safety considerations. Where an object has potential historical significance, the decision to demolish it may have consequences that cannot be reversed after the structure has disappeared. A precautionary assessment is therefore important before irreversible action is taken. At the same time, the case also illustrates why the legal status of ODCB requires careful treatment. Extending preventive protection to suspected cultural heritage objects may be necessary to prevent irreversible loss, but such preventive protection should not be confused with automatic criminal liability. The distinction preserves both the objective of cultural heritage conservation and the requirements of criminal legality. The case thus supports a layered understanding of ultimum remedium. Administrative and preventive mechanisms should operate before irreversible damage where possible. If destruction nevertheless occurs and the statutory elements of the criminal offense are established, criminal law may be activated. The existence of administrative measures does not eliminate criminal liability, while the existence of a criminal provision does not make every administrative irregularity a criminal offense.

A Layered Model of Cultural Heritage Law Enforcement

The preceding analysis supports a layered model of cultural heritage enforcement. The model is based on the premise that the principal objective of cultural heritage law is preservation, while criminal law provides an important coercive mechanism when other measures are inadequate or the conduct is sufficiently serious.

Table 6 Proposed Layered Enforcement Model

Layer	Legal function	Trigger	Principal response	Role of ultimum remedium
1. Prevention	Prevent potential damage	Object identified as having cultural heritage significance	Registration, assessment, supervision, guidance, zoning	Criminal law not yet required
2. Administrative control	Stop or correct unlawful activity	Regulatory violation or unauthorized activity	Warning, termination, permit-related measures, administrative action	Criminal law considered only if necessary
3. Restoration	Protect remaining cultural value	Damage has occurred but recovery remains possible	Restoration, reconstruction, rehabilitation, safeguarding	Criminal liability assessed separately
4. Criminal enforcement	Protect the legal interest through coercive sanctions	Statutory elements and intentional destruction established	Investigation, prosecution, punishment	Last resort where justified
5. Post-enforcement conservation	Prevent further loss	Criminal or administrative proceedings completed	Monitoring, conservation, restoration, institutional correction	Maintains protection beyond punishment

The transition between layers must be decided on the grounds of the state of the protected cultural heritage and the efficacy of the available legal response. Where damage can be prevented, prevention is still appropriate. Administrative control is applicable if an identifiable violation of regulation or unauthorized activity needs to be corrected or stopped. Restoration is needed when the damage has been done but the cultural value or the physical integrity can still be safeguarded or regained. Criminal enforcement may be contemplated where the statutory elements of the offense are established, the conduct involves the required culpability, and administrative or restorative measures are inadequate, ineffective or incapable of preventing serious or continuing destruction. These conditions give a substantial basis for moving between the layers, instead of treating the model as an automatic chronological sequence. The model differs from a purely sequential enforcement system. The

layers may overlap depending on the circumstances. Restoration may take place while a criminal investigation is underway. Administrative measures may continue after criminal proceedings have commenced. Preventive supervision may also remain necessary after a case has been resolved. The central principle is therefore not chronological priority but functional necessity. Each legal instrument should be used according to the function it can perform most effectively. Prevention is appropriate where damage can still be avoided. Administrative measures are useful for correcting regulatory violations and stopping activities. Restoration becomes important once damage has occurred. Criminal law becomes justified where intentional conduct satisfies the criminal provision and the seriousness of the conduct requires the state's coercive response. This model also provides a way to understand the relationship between ultimum remedium and cultural heritage conservation. The last-resort character of criminal law does not mean that criminal law is weak or optional. Rather, criminal law should be reserved for circumstances in which its coercive capacity is genuinely needed. The more serious, intentional, irreversible, and publicly harmful the destruction, the stronger the justification for criminal intervention. Three principles emerge from this model. First, subsidiarity. Criminal law should not replace administrative and conservation mechanisms that can effectively protect the cultural heritage. Where non-criminal measures are sufficient, they should be given appropriate priority. Second, proportionality. The intensity of the legal response should correspond to the seriousness of the conduct, the degree of culpability, the extent of damage, the cultural significance of the object, the benefits obtained by the offender, and the possibility of restoration. Third, restorative conservation. The success of enforcement should not be measured only by the conviction or punishment of an offender. Cultural heritage law ultimately seeks to preserve cultural value. An enforcement process that produces punishment but fails to protect or restore the remaining heritage cannot fully achieve the purpose of the legal regime. The three principles can be summarized in the following analytical framework. A decision-based framework can better demonstrate the layered enforcement model and the way the appropriate legal response is determined based on the nature of the threat, the extent of damage, the possibility for restoration and the effectiveness of non-criminal measures. The framework also provides clarity on the circumstances when criminal enforcement can be an ultimum remedium. The transition between layers must be decided on the grounds of the state of the protected cultural heritage and the efficacy of the available legal response. Where damage can be prevented, prevention is still appropriate. Administrative control is applicable if an identifiable violation of regulation or unauthorized activity needs to be corrected or stopped. Restoration is needed when the damage has been done but the cultural value or the physical integrity can still be safeguarded or regained. Criminal enforcement may be contemplated where the statutory elements of the offense are established, the conduct involves the required culpability, and administrative or restorative measures are

inadequate, ineffective or incapable of preventing serious or continuing destruction. These conditions give a substantive basis for the movement in between the layers rather than an automatic chronological sequence of the model, see Figure 1 below.

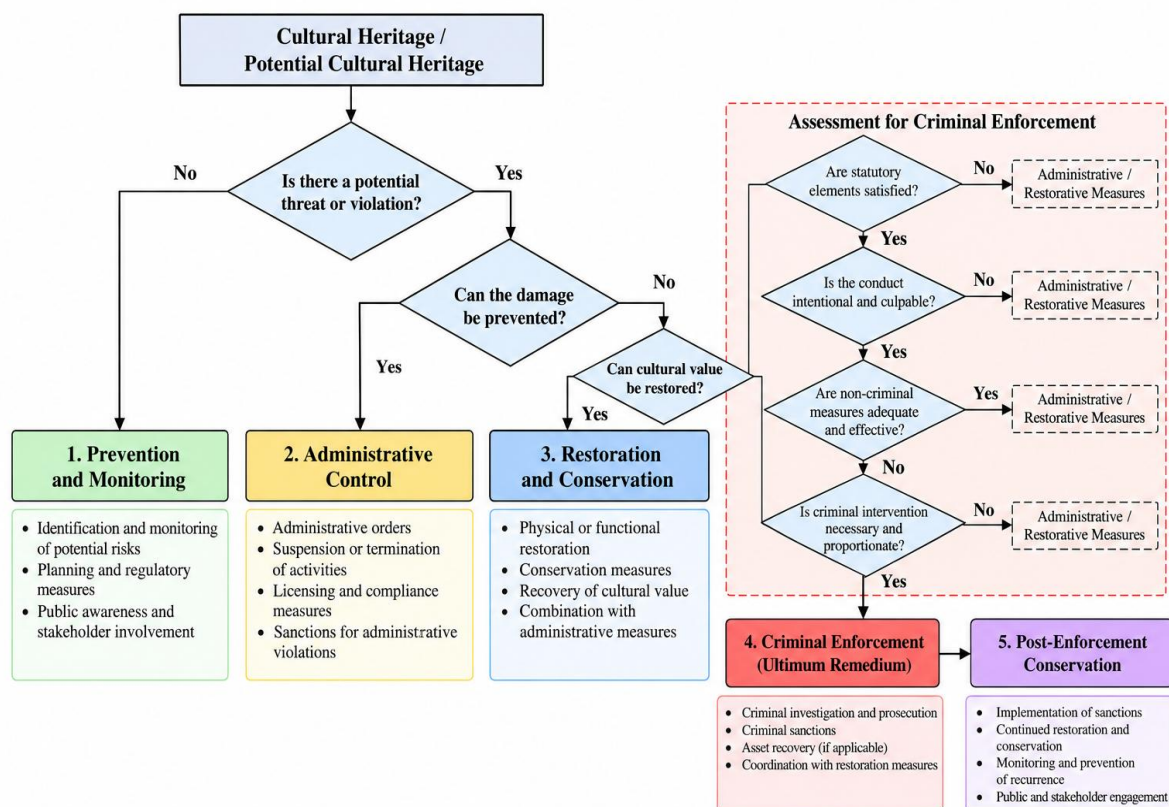


Figure 1 Proposed Layered Enforcement Model for Cultural Heritage Protection

Figure 1 shows that the proposed model does not establish a fixed sequence of all enforcement stages to be followed for each cultural heritage violation. The correct answer depends on the facts of the case. The first layer is prevention and surveillance where potential risks can still be identified and managed. Administrative control is used when a regulatory violation or unauthorized activity needs to be corrected or stopped, whereas restoration and conservation are relevant when damage has already occurred, but cultural value or physical integrity can still be protected or restored. Criminal enforcement is considered as an ultimum remedium and requires an independent assessment of the statutory elements, intentionality and culpability, seriousness of harm, effectiveness of non-criminal measures, and the necessity and proportionality of criminal intervention. If these requirements are not fulfilled, administrative or restorative measures can still be taken. Where the requirements are met and non-criminal measures are ineffective or inadequate to prevent serious or continuing destruction, criminal enforcement may be invoked. Post enforcement conservation must

follow legal enforcement to be able to implement ongoing protection, restoration and further loss prevention.

Table 7 Analytical Framework for Applying Ultimum Remedium

Principle	Core question	Relevant indicators	Legal consequence
Subsidiarity	Are non-criminal measures sufficient?	Effectiveness of supervision, administrative action, and restoration	If sufficient, criminal intervention may not be necessary
Necessity	Is criminal intervention required to protect the legal interest?	Continuing destruction, serious threat, repeated violation	Criminal enforcement may be justified
Proportionality	Is the criminal response appropriate to the conduct?	Intent, damage, cultural significance, benefit, culpability	Sanction should be individualized
Restoration	Can the cultural value still be protected or recovered?	Physical condition, authenticity, technical feasibility	Restoration should accompany enforcement where possible
Public interest	How extensive is the harm beyond the owner?	Historical, cultural, educational, scientific, intergenerational impact	Stronger protection may be warranted

The framework demonstrates that ultimum remedium is better understood as a decision-making principle than as a rigid procedural sequence. Such an interpretation is consistent with the special nature of cultural heritage protection, where delay may itself produce irreversible harm. The principle does not prevent criminal enforcement; it disciplines its use. The analysis also clarifies the relationship between the Cultural Heritage Law and the broader criminal law system. The incorporation of criminal provisions into a sectoral statute does not remove the need to apply general principles of criminal law. At the same time, the special purpose of cultural heritage protection must remain visible in the interpretation of the offense, assessment of harm, and determination of sanctions. The resulting legal position can be stated as follows: intentional destruction of cultural heritage warrants criminal protection because it affects a public legal interest of historical and intergenerational significance, but criminal enforcement should be activated and calibrated according to subsidiarity, necessity, and proportionality. Administrative and restorative mechanisms remain central to the preservation objective, while criminal law functions as a coercive instrument when those mechanisms cannot adequately protect the cultural heritage or when the seriousness of the conduct demands criminal intervention. This position avoids both an excessively punitive model and an excessively administrative model. The former risks treating every cultural heritage violation as a criminal matter; the latter risks failing to respond effectively to deliberate and irreversible destruction. A layered model provides a more balanced legal

framework by maintaining criminal law as a serious form of protection while preserving its character as *ultimum remedium*.

Conclusions

The justification for the criminalization of the destruction of cultural heritage under Law No. 11 of 2010 on Cultural Heritage is the nature of cultural heritage as a public legal interest. Cultural heritage embodies historical, cultural, scientific, educational and intergenerational values that cannot be measured simply by the economic value of the physical object, or by the ownership interests of a particular person. Therefore, Article 66 paragraph (1) together with Article 105 provides an important criminal protection mechanism against the intentional destruction of legally protected cultural heritage. But the presence of a criminal provision is not to say that all violations of cultural heritage regulations need to be prosecuted under criminal law. Law No. 11 of 2010 provides preventive, administrative, supervisory and restorative mechanisms which are still important to achieve its principal objective of preservation. Consequently, the principle of *ultimum remedium* requires the evaluation of criminal intervention on the basis of subsidiarity, necessity and proportionality. In cases where the violation is capable of being prevented or remedied through administrative or corrective measures such measures shall be considered an appropriate response. Criminal enforcement is more strongly warranted where the destruction is intentional, serious, irreversible, ongoing or causes substantial harm to cultural values and where non-criminal measures are inadequate to protect the relevant legal interest. The analysis of the Cirebon railroad bridge case emphasizes the necessity of distinguishing preventive protection from criminal liability. If objects are suspected of having a significance for the cultural heritage, they may need to be protected and assessed on a precautionary basis before any irreversible demolition takes place. Such preventive protection does not however in itself establish criminal liability. The principle of legality must be followed in criminal prosecution, and the statutory elements of the crime must be satisfied, which are the legal status of the protected object and the intent of the destructive action. In view of these findings, the study suggests a layered enforcement model that has prevention, administrative control, restoration and criminal enforcement with post-enforcement conservation as a continual measure. These mechanisms should not be considered mutually exclusive or as a strict sequence. Criminal law is still an important tool of protection, but it must be applied to conduct for which criminal sanctions are truly needed and proportionate. Thus, the principle of *ultimum remedium* provides a framework to ensure that the use of criminal law is thoughtful and proportional, as well as being able to maintain cultural heritage and its value for the future generation. This study is limited by the design of normative legal research and the use of the Cirebon railroad

bridge case as an illustration case, not empirical evidence that describes the cultural heritage enforcement practices throughout Indonesia.

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