

# The Innovation of Criminal Law Interpretation Model in Indonesia through Rule of Lenity Approach

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**Abstract.** *This research aims to explore and develop an innovative concept of criminal law interpretation in Indonesia through the Rule of Lenity (RoL) approach. The RoL principle, originating from the common law system, emphasizes that ambiguous criminal provisions must be interpreted narrowly and always in favor of the defendant. Within Indonesia's civil law system, adopting RoL has the potential to strengthen legal certainty, safeguard defendants' human rights, and reduce the risk of arbitrariness in law enforcement practices. The study employs normative legal research methods, focusing on theoretical foundations of the principle of legality, established doctrines of statutory interpretation, and comparative analysis of RoL application in common law jurisdictions, particularly the United States. The findings suggest that RoL in Indonesia should only serve as a last resort, applied strictly when all existing interpretative methods still leave unresolved ambiguity. This ensures that RoL does not undermine legal predictability while simultaneously upholding fairness in criminal adjudication. The conclusion highlights the necessity of explicitly regulating RoL within Indonesian positive law. Such regulation would provide judges with clearer guidance, reinforce protections for defendants, and contribute to achieving a balanced criminal justice system. Ultimately, the integration of RoL offers a pathway for Indonesia to harmonize its civil law tradition with a principle that enhances justice and prevents potential abuse of prosecutorial and judicial discretion.*

**Keywords:** *Ambiguity; Criminal; Legality; Interpretation.*

## 1. Introduction

Legal certainty, clarity and firmness have a very high position in criminal law compared to other fields of law. (Alice Ristroph, 2020) The principles of *nullum crimen sine lege* and *nulla poena sine lege* emphasize that a person can only be convicted based on legal provisions that have been clearly stipulated beforehand in the law. In its development, the principle of legality includes three important foundations as formulated by Anselm von Feuerbach, namely no punishment without law, no punishment without criminal acts, and every criminal act must be accompanied by threats of sanctions that have been determined by law. Thus, the principle of legality not only ensures that criminal law comes from written rules, but also prohibits its

retroactive application and limits the room for interpretation for law enforcers, thus preventing arbitrariness and creating legal certainty. (Erwin Susilo, 2025)

However, in material criminal law there is an exception that is favorable to the defendant, namely through the principle of *lex favor reo*, which stipulates that if there is a change in the rules after a criminal act is committed but before the verdict, the rules that are most favorable to the defendant must be applied (Fauzan Safri Hummam and Khalid, 2024: 343-350). The *lex mitior* principle is also present as a principle that requires the application of lighter rules for defendants in similar conditions (Liviu Alexandru Lascu, 2022). These two principles are also known as *transitoir* principles (VL Benabou and E Jeuland, 2022).

In addition, the principle of *in dubio pro reo*, which means that doubts must be interpreted in favor of the defendant, is very relevant to protect the rights of the defendant from convictions that are not based on certainty of proof (Fabio Indìo Massimo Poppi, 2024). This principle is a direct derivative of the principle of presumption of innocence, which requires the release of the defendant if there is still doubt about his guilt (José María Peláez Mejía, 2021). In the context of criminal procedure law, the principle of *favor defensionis* serves to protect the defendant's right to defend himself without fear that his defense efforts will turn against him (Aleksandr A. Trefilov, 2022).

Thus, favorable provisions for defendants can arise from changes in the law (through *lex favor reo* and *lex mitior*), inconclusive evidentiary results (*in dubio pro reo*), as well as in procedural protection (*favor defensionis*). However, in Indonesia, there is no study that specifically regulates how to apply these principles when dealing with laws that contain ambiguity or double meaning, so this is a gap that needs to be studied further to ensure legal protection for defendants. In this context, the Rule of Lenity (RoL) is a very relevant principle, which is the principle of criminal law interpretation that requires the court to interpret unclear provisions narrowly and in favor of the defendant. This principle not only complements the principle of legality, but also emphasizes the importance of legal certainty, prevents abuse of power, and safeguards the rights of defendants from being convicted on the basis of ambiguous rules (Steffen Seitz, 2024: 427-478). In general, RoL originated from the English common law tradition, which was later adopted in the US legal system (Jacob Wood, 2024).

Considering that RoL can be one of the approaches for judges in interpreting and finding law, especially in countries with common law traditions, while in Indonesia until now there has been no study that specifically discusses it, based on the literature search that has been carried out, this matter becomes important to be researched as a form of development and renewal of national law. Indonesia with the characteristics of a legal system that is influenced by the civil law tradition, makes this research has its own novelty because it will adjust the concept of RoL which comes from the common law tradition to in the context of the Indonesian legal system. This is the main novelty of this research. In order to achieve this goal, this research will examine two issues, namely: first, how the conception of RoL as a principle of interpretation in favor of the defendant; and second, how the concept of legal interpretation with the RoL approach is ideal to be applied in the Indonesian legal system.

## 2. Research Methods

The research method used in this paper was normative legal research method with statutory approach, conceptual approach, and case approach (Peter Mahmud Marzuki Peter Mahmud Marzuki, 2017). The research was conducted by examining the applicable laws and regulations in Indonesia, particularly the Criminal Code (KUHP) and Law No. 1 of 2023 on the Criminal Code, as well as reviewing literature, doctrine, and court decisions, both from national and international legal practices, especially the decisions of the United States Supreme Court which are references for the application of RoL. This approach was used to develop an ideal conception of RoL-based criminal law interpretation that could be adopted in the Indonesian legal system.

## 3. Results and Discussion

### 3.1. The Conception of Rule of Lenity As Principle of Interpretation in Favor of The Defendant

RoL is a principle in criminal law that asserts that if a criminal provision has a double meaning or ambiguity, the judge is obliged to interpret it narrowly and choose the most favorable interpretation for the defendant. Hopwood states that this principle is derived from the principle of *strict construction of penal statutes*, which requires judges to carefully examine the text of the law, pay attention to the rules of language, and understand the legal structure. If after these steps there is still reasonable doubt, the judge should not interpret by searching for the legislator's intent, but should favor the defendant (Shon Hopwood, 2020). Wilson asserts that RoL is rooted in the constitutional principle that guarantees everyone clear notice of prohibited conduct. This principle asserts that the authority to make law lies with the legislature, not judges (Maisie A. Wilson, 2021). Therefore, RoL is a shield against over-criminalization, disproportionate criminal threats, and arbitrary law enforcement.

Hulicki and Reid emphasize that this principle not only protects individual liberty, but also holds lawmakers and prosecutors accountable for drafting legal provisions clearly (Maciej Hulicki, et al., 2024). Nam added that RoL guarantees *fair notice*, which is legal certainty for the public regarding punishable acts (Jeesoo Nam, et al., 2023). Swain emphasized that this principle reflects the separation of powers, so that judges may not expand the meaning of punishment beyond the clear provisions (Caroline Swain, 2025: 51-77). Therefore, the application of this principle is an important element in protecting the rights of individuals from being punished based on unclear rules, while ensuring that the legal process takes place fairly.

As already mentioned, historically, RoL originated from the English *common law* tradition and was later adopted in the US legal system as part of the principle of legality. This principle aims to prevent convictions based on ambiguous rules (Sira Grosso, 2020). Goldberg and Willigan assert that the RoL limits the power of the state by prohibiting courts from expanding the scope of punishment without an explicit statement from the legislature (Kate Goldberg, 2021: 157–169). Primus and Hill state that RoL ensures legal certainty and fairness by providing clear limits to prevent judges from making new law (Eve Brensike Primus, 2022: 170–183). Johnson also noted that although in modern practice its application is limited, the principle remains

important as a reminder that no one should be harmed by legal uncertainty (Joel S. Johnson, 2024).

A number of important United States Supreme Court decisions, such as *Bell v. United States* (1955), *Burrage v. United States* (2014), *Yates v. United States* (2015), *Van Buren v. United States* (2021), and *Wooden v. United States* (2022), demonstrate the application of this principle in the face of legal ambiguity (Jens David Ohlin, 2016). Even in *United States v. Wiltberger* (1820) and *McBoyle v. United States* (1931), the Supreme Court affirmed the importance of narrow interpretation to protect defendants from over-criminalization (Hulicki and Reid). These decisions show that the RoL serves as a safeguard of the defendant's human rights from excessive sanctions due to ambiguous rules (Joshua S Ha, 2022: 45–65).

Functionally, RoL guides judges to interpret criminal provisions carefully, in order to protect human rights, legal certainty, and prevent abuse of power (Brandon Hasbrouck, 2022). Furthermore, according to Vaishampayan, this principle also maintains a balance between the power of the state and the protection of the general public, by preventing the expansion of interpretations that incriminate individuals without explicit clarity from the law (Saumya Vaishampayan, 2021: 537–549).

Based on this description, RoL has a strategic position in criminal law as a principle that aims to protect the human rights of the defendant from the threat of unclear punishment, and as a controlling instrument for state power so as not to be arbitrary in interpreting criminal provisions. The application of this principle encourages legal certainty, accountability of lawmakers, and maintains a balance between state power and the protection of individual freedom.

### **3.2. The Conception of Rule of Lenity based on Legal Interpretation Ideal for Indonesian Legal System**

The principle of legality in criminal law means that no act can be punished unless it has been regulated in advance in the legislation. This principle is reflected in the adage "*Nullum delictum, nulla poena sine praevia lege*," which was born as an effort to prevent arbitrariness—the authority of the authorities in determining punishable acts (Ulfa Anaria, 2020). This principle of legality has four important elements: (Brian T. Austin, 2020)

1. Not retroactive (*lex praevia*), meaning that criminal law only applies forward and a person cannot be punished based on rules that only appear after the act has been committed;
2. No use of analogies (*lex stricta*), i.e. the prohibition of expanding the meaning of criminal rules through analogical interpretations that can aggravate punishment, so that all criminal rules must be interpreted strictly; third,
3. The existence of legal certainty (*lex certa*), where criminal rules must be formulated clearly, firmly, and not cause multiple interpretations;

4. It must be written (*lex scripta*), which means that criminal offenses and their sanctions can only be regulated in written provisions, not through custom or unwritten law.

In line with the principle of legality, Article 1 paragraph (2) of the Criminal Code contains the transitory principle which states that "if there is a change in the rules after the act is committed, the most favorable provisions for the perpetrator shall be applied." This provision is then reaffirmed in Article 3 of Law No. 1 of 2023 on the Criminal Code which will take effect in 2026, where it is stated that "the new regulation is applied, unless the old regulation is more favorable; if the act is no longer considered a criminal offense, the legal process is terminated and the suspect, defendant, or convict is released; and if the verdict of conviction is legally binding, the execution of the sentence is abolished or adjusted to a lighter punishment, without giving them the right to claim compensation."

Furthermore, as an implementation of the *lex stricta* principle, Law No. 1 of 2023 expressly prohibits the use of analogies, as stated in Article 1 paragraph (2), to prevent judges from expanding the meaning of criminal rules through analogical reasoning which can lead to legal uncertainty and potentially incriminate the perpetrator. In simple terms, analogical interpretation is a method of legal interpretation by comparing a new legal rule or event with an existing legal rule. In this method, judges look for important similarities between the current situation and past legal rules, then use the reasons underlying the old rules to decide new cases. So, even though there is no written rule that directly regulates, judges can draw legal conclusions based on the similarity of principles and objectives of pre-existing laws (Joesph Blocher et al., 2023). Since analogy is prohibited as an instrument of interpretation in criminal law, judges may use the following interpretations in criminal law: (Suyanto, 2018)

**Table 1. Methods of Criminal Law Interpretation**

No.	Type of Interpretation	Brief Explanation	Example
1	Authentic Interpretation	The official interpretation of the legislator is usually contained in the explanation of the article.	Article 98 of the Penal Code: 'Night' means the time between sunset and sunrise.
2	Interpretation According to the Explanation of the Law (MvT)	If it is not in the article, the meaning of the term can be sought in the <i>Memorie van Toelichting</i> (MvT).	Interpretation of the meaning of gratuity from the explanation of the article.
3	Jurisprudential Interpretation	If there is no law or explanation, a court decision with permanent legal force is used.	Supreme Court Decision No. 117 K/Kr/1968 dated July 27, 1969 is that in an emergency ( <i>noodtoestand</i> ), it must be considered that there is a conflict between legal interests and legal obligations, or between two legal obligations, so that the actions taken can be justified.

4	Grammatical Interpretation	Interpretation based on colloquial meanings.	The word 'entrusted' is interpreted as 'handed over' (Article 432 of the Indonesian Criminal Code).
5	Historical Interpretation	Interpretation based on the history of the birth of the law.	Examine the history of the formation of the law, either through explanatory memory, minutes of meetings, public views, as well as the intention of the legislator when formulating the regulation.
6	Logical Interpretation	Interpretation using common sense.	Participation in the act does not require hitting, it is sufficient to restrain the victim (Article 55 of the Criminal Code).
7	Systematic Interpretation	Interpretation based on the relationship between provisions in the legal system.	The meaning of theft in Article 363 of the Criminal Code plus the element of aggravation.
8	Teleological Interpretation	Interpretation based on the purpose of the law.	Article 98 of the Criminal Code aims to make it easier for victims to obtain compensation.
9	A <i>Contrario</i> Interpretation	Interpretation with reverse logic.	Article 285 of the Criminal Code only applies to male perpetrators.
10	Restrictive Interpretation	Narrow the meaning of terms so as not to go beyond the provisions.	Article 346 of the Criminal Code only applies if the fetus is still alive.
11	Extensive interpretation	Expand the meaning of words without going outside the rules.	Conducting electricity without permission is considered theft.

**Source:** Researcher Elaboration from Suyanto, *Introduction to Criminal Law* (Sleman: Deepublish, 2018).

The table above explains the various methods of criminal law interpretation used by judges to find the meaning of a term or legal norm when it is not directly explained in the law. Authentic interpretation comes directly from the lawmakers, while interpretation through statutory explanation is used if it is not found in the article. If both are inadequate, judges can refer to jurisprudence as a source of meaning. In addition, interpretation can be done through grammatical approach (grammatical), history of law formation (historical), common sense (logical), relationship between articles (systematic), and based on legal objectives (teleological). There are also methods of interpretation with reverse logic (*a contrario*), limiting meaning (restrictive), or expanding meaning (extensive), but still not violating the principle of legality.

Interpretation in criminal law needs to be done carefully so that judges do not impose punishment on someone for an act that is not actually a criminal offense. In this context, judges should not only consider acts that are included in *malum in se*, which are acts that are basically wrong and reprehensible according to moral and social logic, such as murder,

robbery, and rape, which naturally deserve to be punished (Youngjae Lee, 2021). However, judges also need to understand that criminal law does not only regulate morally wrong acts, but also includes *mala prohibita*, which is an act that is considered unlawful solely because it is prohibited by statutory regulations, even though the act is not morally wrong (Stephen Bero and Alex Sarch, 2020).

Thus, interpretation in criminal law has a very important role as a bridge between written norms and their application in reality. Judges are required to adhere to the principle of legality with all its limitations, and be careful in distinguishing actions that include *malum in se* and *mala prohibita*, so that the application of punishment does not cause injustice. The use of appropriate interpretation methods, ranging from authentic to teleological interpretation, is an important instrument for judges to provide legal certainty regarding an act that is punishable and not.

It should be realized that in the practice of criminal law, judges are often faced with statutory provisions that are formulated very broadly, too generally, and sometimes even less rationally (Joshua Kleinfeld, 2021). These legal provisions are often deliberately designed with an *open-textured* nature and are not always compiled in detail (Leifan Wang, et al., 2023). *Open texture* is a concept in legal science that explains that terms in laws and regulations inherently contain uncertainty of meaning. This means that words or phrases in the law do not always have a single definition, but can have different meanings depending on the social context, culture, development of time, and the concrete circumstances of the case (Clement Guitton et al., 2024).

According to H.L.A. Hart, *open texture* is the nature of the rule of law which shows that in its application there will always be new cases or special circumstances that cannot be fully regulated by the legal text. In these conditions, the rule of law becomes limited in scope and provides space for judges to exercise authority based on legal reasoning. Hart described that every rule has a "*core of certainty*" and a "*penumbra of doubt*", i.e. the part that is clear to apply and the vague part that requires interpretation from the judge when faced with a situation that is not explicitly regulated (O G Itodo, 2021). Due to the openness of statutory texts, and possibly in the criminal field, careful and responsible interpretation is essential to prevent violations of the principle of legality and protect everyone from potential injustice.

In applying the law, judges must first examine the legal provisions, which in syllogism are known as major premises. Syllogism itself is a logical way of thinking that compiles two interconnected statements (premises), namely the major premise (rule of law) and the minor premise (fact or event), to then draw conclusions from the relationship between the two. In its construction, syllogisms usually use words such as "all," "some," or "none," which indicate the relationship between rules and facts, resulting in a logical and systematic decision (Michael Henry Tessler, 2022).

In order to find the correct legal meaning to be applied in sentencing, judges need to use holistic methods of interpretation, as listed in **Table 1**. Among these methods, special attention needs to be paid to extensive interpretation. Extensive interpretation is a method in

which the judge expands the meaning of a legal provision to include concrete conditions that are not expressly mentioned in the norm, but are still in line with the intent and purpose of the rule. In Indonesian criminal law, extensive interpretation differs from analogy, as it does not create a new norm or compare one event to another but rather only expands the scope of the norm without going beyond the confines of the existing legal text (Faidatul Hikmah, 2024: 392–404). As such, extensive interpretation is an important tool to carefully fill legal gaps, as it is closely related to analogical interpretation.

However, if the judge has conducted a comprehensive interpretation using all available methods, but the major premise (the rule of law) still contains ambiguities that cannot be eliminated, then the norm cannot be forced to convict the defendant. Under these conditions, RoL is an appropriate and relevant approach to be applied in the interpretation of criminal law in Indonesia. In *United States v. Lanier*, the United States Supreme Court affirmed that RoL is a principle that states that ambiguities in criminal law must be interpreted in favor of the defendant (Brian G. Slocum and Nadia Banteka, 2024).

However, the application of RoL in Indonesia needs to be governed by strict requirements. **First**, following Hopwood's view, modern RoL should only be applied after a judge has used all available methods of legal interpretation (**see Table 1**) and still finds *grievous ambiguity* (Hopwood). This means that if the legal provision is clear or the legislative intent can be understood through reasonable means of interpretation, then RoL should not be used to impose a meaning that is more favorable to the defendant (F. Andrew Hessick and Carissa Byrne Hessick, 2021). This is in line with the decision in *Callanan v. United States* (1961), where the United States Supreme Court emphasized that RoL should only be applied at the end of the legal interpretation process, after the judge has attempted to fully understand the intent of the statute. RoL should not be used from the outset simply to be lenient with offenders, as the judge's function is to interpret the law objectively, not to grant automatic leniency (Robert Leider, 2021).

**Secondly**, as Wilson explains, RoL is only applied when, after all forms of interpretation have been undertaken (Wilson), severe vagueness remains. This was affirmed in *Shular v. United States*, 140 S. Ct. 779, 787–88 (2020), in a concurring opinion by Justice Kavanaugh, who stated that the Court has repeatedly emphasized that RoL applies only when there is a very serious ambiguity—that is, a situation where, even after using all methods of interpretation, the court remains unable to ascertain the legislative intent and can only guess (Lane Shadgett, 2021).

**Third**, it is important to understand that RoL is not a policy intended to always favor the defendant. RoL is only a last resort, used as a final effort to deal with the vagueness of criminal law norms after all interpretive approaches have been taken. With this principle, criminal law is expected to remain rational, limited, balanced, and reasonable. This is an important safeguard so that criminal law is not used arbitrarily and does not become a tool of oppression (Terry Skolnik, 2020: 663–707).

The concept of RoL-based legal interpretation in the Indonesian criminal law system can be an ideal complement to the principle of legality, as long as it is applied carefully and responsibly.

RoL is not present to weaken the law or provide benefits to the defendant, but as a corrective tool that keeps law enforcement from deviating from the principle of legality. In the face of norms that are ambiguous and difficult to understand even after all methods of interpretation have been applied, RoL serves as the last line of defense to prevent unfounded convictions and potential abuse of power by the state. Going forward, the adoption of RoL in criminal law practice in Indonesia needs to be explicitly regulated and practiced with strict supervision. Judges must always place RoL as the last step after conducting all efforts of legal interpretation. Thus, criminal law does not become a tool of oppressive power, but remains an instrument that guarantees justice, legal certainty, and protection for all citizens.

#### 4. Conclusion

The Rule of Lenity (RoL) principle in the Indonesian criminal law system is an approach to legal interpretation that favors the defendant. RoL, which originates from the common law tradition of England and the United States, requires judges to choose the narrowest interpretation favorable to the defendant if a criminal norm remains ambiguous after all methods of legal interpretation have been used. RoL serves as an important instrument to protect the rights of defendants, maintain legal certainty, and prevent abuse of power by the state. In the context of Indonesia, which has a civil law tradition, the application of RoL is novel and requires special adaptation. The application of RoL in Indonesia should be done strictly as a last resort after judges have used all available methods of interpretation and still found severe ambiguities. Thus, RoL will not be misused to give unfounded advantages to the defendant, but instead strengthen the principles of legality and legal justice.

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