



Implementation of the principle of *Lex Specialis Systematis* in criminal acts of corruption in Indonesia

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Abstract

The principle of *lex specialis systematis* is a legal principle that states that criminal provisions are special if the lawmakers do intend to enforce the criminal provisions as a special criminal provision or it will be special from the existing special. In law enforcement in Indonesia, this principle plays an important role in applying appropriate special criminal provisions to a criminal act that violates several special criminal provisions, such as the Plantation Law, the Environmental Law and the Corruption Crime Law. This study aims to analyze the application of the principle of *lex specialis systematis* in cases that meet the delinquency of corruption and fulfill the elements of the articles of the Plantation Law and the Environmental Law which are hierarchically the same as special criminal laws, as well as their impact on legal certainty and justice in Indonesia. The method used is a normative juridical approach with an analysis of laws and regulations, court decisions, and legal doctrines. The results of the study show that the application of the principle of *lex specialis systematis* has been applied in article 14 of the Corruption Crime Law which states that if it violates the provisions of the law which expressly states that the violation of the provisions of the law is a corruption crime, then what is applied is the Corruption Crime Law, but it is often faced with interpretation challenges by law enforcement and there is also no law on corruption. Special Crimes in Indonesia which expressly states that violations of the provisions of the law are crimes of corruption. Therefore, a consistent and comprehensive understanding of this principle is needed to prevent the occurrence of norm conflicts and provide legal certainty in handling corruption crimes.

Keywords: *Lex specialis systematis*, corruption crimes, criminal law, legal certainty

Introduction

Seeing the development of an increasingly advanced society, the criminal acts that arise also tend to increase and become more complex. One of the complexities of criminal acts today is a defendant who commits two or more crimes either simultaneously or separately. Cases of crimes committed more than one by a defendant and each of which has not yet been decided by a judge between the crimes are referred to as *concursum*. The *concursum* referred to above is divided into three types, namely *concursum idealis* (concurrency of regulations), continuing acts (*voortgezette handeling*) and *concursum realis* (concurrency of acts) (Keintjem, F.A: 2021) ^[14].

To provide a clearer picture of the meaning of combined criminal acts, the opinions of legal scholars are first put forward in providing a definition of this combined criminal act. Combined criminal acts are often termed *concursum* or *samenloop*, meaning the simultaneous commission of a criminal act by one person (Guraba, *et al*: 2018) ^[9].

From the definition above, there are three things that need to be considered, namely the definition of combined committing a crime itself and regarding participation and also regarding repeated criminal acts. In the crime of participation (*deelneming*) several people are involved in one punishable act, while in the combination of several acts or *concursum* there are several punishable acts committed by one person, as in *recidive*. However, in *recidive*, several criminal acts that have been committed are interspersed by a court decision that has permanent force, so that the convict is declared to have repeated the crime. Meanwhile, in the combination of committing a crime, the perpetrator has consecutively committed several criminal acts without

giving the court the opportunity to try and sentence one of the acts.

The combination of committing a crime is also often equated with the concurrency of committing a crime, namely a person who commits one act that violates several legal provisions or commits several criminal acts, each of which. The concurrency of committing a crime is also often equated with the concurrency of committing a crime, namely a person who commits one act that violates several legal provisions or commits several criminal acts, each of which stands alone and will be tried at the same time, one of which has not yet received a final decision (Arzola, R.R: 1988) ^[3].

Concurrency of committing a crime (*concursum*) is regulated in Articles 63 to 71 of Book I Chapter VI, Criminal Code, the concept of concurrency of committing a crime in the Criminal Code has three types, namely, concurrency of regulations (*concursum idealis*), continuing acts and concurrency of acts (*concursum realis*). From these articles, it can later erase the impression that has existed in society that a person who commits a combination of several criminal acts will receive a multiple punishment according to the actions he has committed.

Legal rules containing the principle of *lex specialis derogat legi generali* are included in the category of rule of *recognitio*. The principle of *lex specialis derogat legi generali* regulates legal rules that can be recognized as one of the rules that are enforced and this principle is a secondary rule that is not only to regulate primary rules but also involves the limitations of the usefulness of the authority of the existing apparatus in creating repression (Muflih Fahren: 2023) ^[17].

The principle of *lex specialis derogat legi generali* is a legal principle that is tasked with providing an application policy that is tasked with regulating its authority (Darmawan F.S & Tawang, D.A.D: 2018) ^[6]. In other words, not about the formulation of a policy regarding its law, but rather involved by game rules in implementing the principle of *lex specialis derogat legi generali* (Saputro H.D: 2016) ^[23].

The principle of *lex specialis derogat legi generali* is mainly applicable in the enforcement of criminal law for legal certainty. The principle of *lex specialis derogat legi generali* is a Latin term for legal principles that mean that special rules override general rules (As' ali, S: 2018) ^[4]. The principle of *lex specialis derogat legi generali* is one of the principles of preference in legal science that indicates which law takes precedence if in a legal event related to or violated several regulations (Agustina, S: 2015) ^[1]. The principle of *lex specialis derogat legi generali* is not known by legal practitioners, but is known and applies in the enforcement of criminal law for legal certainty. According to criminal law doctrine, the principle of *lex specialis derogat legi generali* has two characteristics, namely a special rule that is logical and a special rule that is systematic/juridical (Hiariej, E. O. S: 2021) ^[12]. Then, there is a principle in the principle of *lex specialis derogat legi generali*, namely the provisions found in general legal rules remain valid unless specifically regulated in the special legal rules, the provisions of *lex specialis* must be equal to the provisions of *lex generali* and the provisions of *lex specialis* must be in the same legal environment as *lex generali*. The Commercial Code and the Civil Code are both included in the civil legal environment. Based on the principle of *lex specialis derogat legi generali*, general rules do not only have validity as existing laws, special rules are valid laws that have binding force to be applied to concrete events. As long as it is not regulated in reverse, the principle of *lex specialis derogat legi generali* can be applied to other laws outside the Criminal Code as regulated in Article 103 of the Criminal Code which states, "this provision applies to all acts for which other statutory provisions threaten the said criminal penalty, unless the law stipulates otherwise" (Darmawan, F. S., & Tawang, D. A. D: 2018) ^[6].

An example of a law that regulates the principle of *lex specialis derogat legi generali* is contained in Article 63 paragraph (2) of the Criminal Code, namely if an act falls under a general criminal rule, it is also regulated in a special criminal rule, then only the special one is applied. One of the legal rules contained in the principle of *lex specialis derogat legi generali* applies not in responding to an act with a criminal rule in the Criminal Code, but is prioritized over criminal rules in laws outside the Criminal Code.

Administrative Penal Law is an administrative law that has criminal sanctions. Administrative laws and regulations in Indonesia often include criminal sanctions as a form of consequence for certain violations. This shows the overlap between administrative law and criminal law, where the administrative mechanism functions as an initial step to prevent or overcome violations, while criminal law is used as an "ultimum remedium" (last resort) if the violation cannot be resolved administratively or has a serious impact on society. Administrative Penal Law is often regulated in special laws or regulations related to certain sectors, such as the environment, plantations, forestry and taxation.

The teaching of *lex specialis* has increasingly developed in the understanding of criminal law. The teaching of *lex*

specialis is no longer just discussing the exclusion of a general principle (*lex generalis*), but has provided legal solutions that are so complex and in form, because there have been special and extra-codified legislation or outside the Criminal Code. However, the principle of *lex specialis derogat legi generali* provides a basis that special provisions of law override general provisions, when the special provisions conflict with the general provisions.

Meanwhile, the principle of *lex specialis derogat legi generali* in criminal law has also developed. There is something known as the principle of *lex specialis systematicis*, a legal principle that states that criminal provisions that are special if the legislators do intend to enforce the criminal provisions as a special criminal provision or it will be special from the existing special, and against the principle of *lex specialis systematicis* also experienced a development known as the principle of *lex consumer derogat legi consumte*, literally meaning that one law absorbs another law, (Ifrani: 2017) ^[13].

Therefore, what if there is a legal event where the elements of a crime from several special laws have been fulfilled, which if referring to Article 7 paragraph (1) of Law Number 12 of 2011 concerning the Formation of Legislation, in terms of the legal hierarchy in Indonesia are in the same position, such as the Plantation Law, the Environmental Law, and others which are administrative laws with criminal sanctions (administrative penal law) besides that the elements of a corruption crime are also fulfilled which are special criminal laws, then which special laws should be used. (Ramadhan, A.A: 2024) ^[22].

Research Method

In accordance with the title and problems to be discussed in this study and to provide useful results, this study was conducted with normative legal research (normative legal research method). The normative legal research method is library legal research conducted by examining library materials or secondary data alone. This research was conducted to obtain materials in the form of: theories, concepts, legal principles, and legal regulations related to the subject matter (Soejono Soekanto: 2013).

Discussion

Based on the results of the research that has been carried out, the application of the Systematic Lex Specialist Principle provides a basis if there are several special provisions in several laws, then the Systematic Lex Specialist principle can be applied which has also undergone developments known as the principle of *lex consumer derogat legi consumte*. This means that it depends on the criminal event/criminal act which is the crime. For example, there is a criminal event where in the criminal event there are several crimes, namely crimes as regulated in the Forestry Law, the Plantation Law, or other laws.

While at the same time in the criminal event there is a corruption crime, then the corruption crime is applied to the provisions as regulated in Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law No. 20 of 2001 concerning Amendments to the Corruption Law.

Furthermore, it can be explained that Indonesia recognizes two forms of criminal law, namely First, criminal law which is collected by uniting it in one codification book. In this

case it is known as the Criminal Code. This is called general criminal law or general criminal law (*commune strafrecht*). Second, criminal law is spread across various specific laws. Usually in the last section (as a rule of sanctions) contains the threat of criminal punishment for violations of certain articles of the relevant law. This second type is often referred to as special criminal law Administrative Penal Law is administrative legislation that has criminal sanctions. Included in special criminal law are

1. Uncodified laws. For example, the Corruption Eradication Law, the Money Laundering Law.
2. Administrative legal regulations containing criminal sanctions; for example, the Forestry Law, the Banking Law, the Plantation Law, the Job Creation Law, and other laws.
3. Laws containing special criminal penalties (*ius singulare, ius speciale*) containing offenses for certain groups of people or related to certain acts. For example, the *Wetboek van Militair Strafrecht Voor Indonesia* which was later amended and supplemented by Law No. 39 of 1947 concerning Adjusting the Military Criminal Law (*Staatsblad 1934, No.167*) to Current Conditions and is known as the Military Criminal Law In the context of criminal law, which was revoked by Law No. 5 of 1950 concerning the Establishment of the “Emergency Law concerning the Composition and Powers of the Courts/Prosecutors in the Military Court Environment” (Emergency Law Number. 16 of 1950), as a Federal Law.

There are three measurements that are the parameters for a law to be qualified as a systematic *lex specialis* principle. First, the material criminal provisions in the law deviate from the existing general provisions. Second, the law regulates formal criminal law which also deviates from the provisions of criminal procedure in general. Third, the legal address or subject in the law is special.

The dynamic doctrine of the teachings and principles of *Lex Specialis* is closely related to the teachings of the *concorus* and *deelneming* principles which, if misunderstood, will be an indicator of the ability of law enforcers to understand the principles of Criminal Law. According to the Criminal Code system, the imposition of the main penalty may only be one type in the case of only one criminal act being committed, namely one of the main penalties that is threatened alternatively in the relevant criminal act article, it is not permissible to impose the main penalty, which is not threatened in the relevant criminal act article.

So, to avoid mistakes in understanding the principle of *lex specialis systematicis* (systematic speciality) and the principle of *Lex consumer derogat legi consumte* (one law absorbs another law) as academic doctrines that are not necessarily understood by the legal community, especially in the relationship between administrative legislation with criminal sanctions (administrative penal law) and Criminal Law (Corruption), the Law Makers (especially Muladi). As the Minister of Justice of the Republic of Indonesia provide an explicit understanding through Article 14 of Law. No. 31 of 1999, which states the provisions of the law that expressly state that violations of the provisions of the law as a criminal act of corruption apply to the provisions regulated in the corruption law can also be used to prosecute other crimes related to state financial losses and the state economy

such as; forestry crimes, tax crimes, capital market crimes and other crimes.

From the provisions of Article 14 of the Corruption Law, it can be said that it is a provision that can expand the scope of the provisions of the Corruption Law to other provisions of legislation, where the provisions of the Corruption Law can absorb the provisions of other special laws. So that Article 14 of the Corruption Law which explicitly states the provisions of the law that firmly states that violations of the provisions of the law as a criminal act of corruption are subject to the provisions regulated in the corruption law can also be used to prosecute other crimes related to state financial losses and the state economy such as; forestry crimes, tax crimes, capital market crimes and other crimes. From the provisions of Article 14 of the Corruption Law, it can be said that it is a provision that can expand the scope of the provisions of the Corruption Law to other provisions of legislation, where the provisions of the Corruption Law can absorb the provisions of other special laws. However, the provisions of Article 14, in addition to being an expansion of the scope, also serve as a limitation of the implementation of the Corruption Law so that the corridor of the legal principle of *lex specialis* systematic *derogate lex generali* must be considered in expanding the scope of the Corruption Law. Until now, there has been no other special legislation that explicitly designates violations of the provisions of the law as a criminal act of corruption.

The Corruption Law regulates criminal acts of corruption in Indonesia, the regulations of which are outside the Criminal Code or can also be called *lex specialis*, where the Criminal Code is its *legi generali*. However, it is not only the Corruption Eradication Law that is regulated outside the Criminal Code. Such as the Plantation Law, the Environmental Law, and other laws that are administrative penal law products that contain provisions governing criminal sanctions. In the context of criminal law in Indonesia, almost two hundred laws that are qualified as special criminal laws are broadly divided into internal special criminal laws (special criminal laws in the form of criminal laws) and external special criminal laws (special criminal laws that are not criminal laws).

The more difficult the interpretation of the law, the more difficult it will be to determine which law to use. A law enforcer must have confidence that the rules to be used are indeed true after going through a period of research or consideration by the judge. The judge considers with other member judges which rules will be used if faced with two specific rules that are identical or tend to be the same. In other words, if the two laws have the same specificity, in article 14 of the Corruption Law, in this case what needs to be known is the facts that arise from the two specific rules that is how the facts are, whether the facts that emerge violate one law or violate another law. If the law can be determined, it will be easy for the judge to decide the case. The case that occurs will be decided as as possible.

Thus, the rules used based on dominant facts must be used in resolving two rules that regulate the same. Of course, this really requires experts who can interpret it. The interpretation is not only limited to the basics, but also in depth so that it achieves what is sought. The search for facts must also go through the stages of investigation, investigation, witness statements, expert witnesses, and the judge's conviction. The judge's conviction will later be able to decide a case that is being tried in court.

So if faced with two special rules that are identical or tend to be the same, then law enforcement officers consider the concretization of the Principle of *lex specialis systematicis*, meaning that criminal provisions are special if the legislators do intend to enforce the criminal provisions as special criminal provisions or they will be special from the existing special provisions and the principle of *lex consumer derogat legi consumte* literally means that one law absorbs another law, which means that if an act meets the elements of a crime contained in several special criminal law provisions such as the Environmental Law, Plantation Law and other special laws, in addition to that, it also meets the crime of corruption, then the special criminal law that is in fact more dominant in the case is used. Therefore, to determine which special law is enforced if an act meets the elements of a crime contained in several special criminal law provisions (administrative penal law) and the elements of the crime of the Corruption Law, the principle of *lex specialis systematicis* or systematic specialness applies and the principle of *lex consumer derogat legi consumte*. The position of the principle of systematic specialization (*specialis systematicis*) and the principle of *lex consumer derogat legi consumte* is currently only found in Article 14 of the Corruption Law. So that in the case of Criminal Acts in the Fields of Forestry, Banking, Plantations, and others (administrative penal law) based on the provisions of the principle of *lex specialis systematicis* or systematic specialization and the principle of *lex consumer derogat legi consumte*, which have been concretized in Article 14 of the Corruption Law, the Corruption Law can be imposed if it also meets the formulations of elements of criminal acts of corruption, such as:

The perpetrators of the crime are civil servants or state administrators or people who have legal relations with state administrators. Against the law/abusing authority or violating the rules that have been set by law; Enriching oneself, others, or corporations; which can harm state finances or the state economy but in tax crimes must fulfill administrative procedures after which they can be subject to corruption.

Conclusion

Based on the research that has been conducted, the following conclusions can be drawn: If a legal event meets the elements of a crime contained in several provisions of special criminal law (administrative penal law) and elements of a crime in the Corruption Eradication Law, then the principle of *lex specialis systematicis* or systematic specificity and the principle of *lex consumer derogat legi consumte* apply, the position of the principle of *lex specialis systematicis* and the principle of *lex consumer derogat legi consumte* is currently only found in Article 14 of the Corruption Eradication Law, and criminal acts in the fields of forestry, banking, plantations and others can be subject to the Corruption Eradication Law if they have met the formulations of the elements of criminal acts of corruption.

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