



# Expansion The Meaning Of Principle Lex Specialis Derogat Lex Generalis

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Info Artikel	Abstract
<b>Masuk:</b> 20 Nov 2023	The aim of writing this article is to determine the expansion of the meaning of the principle of lex specialis derogate legi generali which occurs in cases of same-sex sexual harassment. This research is normative legal research that uses a case approach and a conceptual approach. The legal materials used are primary legal materials and secondary legal materials. The technique for collecting and analyzing legal materials used in writing this article is literature study. The result of this research is that the principle of lex specialis derogate legi generali, when implemented in certain cases, can have an expanded meaning. The first meaning is that specific laws override general laws, while the expansion of the intended meaning in a particular case can be interpreted as the textual suitability of the law and the case that occurred.
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## INTRODUCTION

The third legal concept presented by Soetandyo Wignjosoebroto, law is what judges decide in concreto and is systematized as judge made law (Helmi, 2020). In this case, the judge through his ratio decidendi (legal considerations) can create a new law, that is why what is produced from a decision is a new legal product that must be obeyed in certain cases (in concreto). In a criminal case, there is an act of someone who materially/physically only commits one act, but violates several provisions of criminal law at once (eendaadsche samenloop), both general criminal law and special criminal law. We can look at several examples of cases, for example someone who wants to steal a gold necklace in a jewelry store that has a display case, that person cannot take the gold necklace without breaking the glass first, so that this act has violated several articles that apply in the Criminal Code, namely Article 362. About Theft and Article 406 on Vandalism, as well as the Hoge Raad Judgment regarding the case of confiscation, a thief who sells stolen goods for profit (Hafizah et al., 2022).

The case above is interesting because his actions have not only violated one article in the Criminal Code, but have violated several articles in the Criminal Code. Then it will be more interesting when this one act turns out to be in violation of the laws and regulations outside the Criminal Code, such as the case that is currently being studied by researchers. Broadly speaking, the case that happened to a piano trainer with the initials A made him feel down, because he did not expect that the work he had been involved in had ended up at the "green table". Starting from B, who is a piano tutor from A, complaining of tiredness to A while teaching B the piano at his home on Tuesday, January 10, 2017 at 19.30 WIB, then A took the initiative to massage B's thighs. A's actions were recorded by CCTV cameras and discovered by parent B, finally parent B reported this incident to the authorities because they considered the actions taken by A had abused B as their child. When entering the trial process, the Public Prosecutor makes an alternative indictment. The first indictment uses Article 82 paragraph (1) Attachment to Law Number 17 of 2016 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection to become Law Jo. Article 76E of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection and the Second Indictment uses Article 292 of the Criminal Code. Then the Panel of Judges in a Decision with Case Register Number: 114/Pid.Sus/2019/PN.Skh sentenced to imprisonment for 5 (five) years 6 (six) months taking into account the elements of Article 82 paragraph (1) of Law Number 17 Year 2016 Jo. Article 76E of Law Number 35 of 2014 concerning Child Protection.

Observing the case currently being studied by the author, there is a legal issue where one such act is formulated in the Criminal Code and legislation outside the Criminal Code raises a principle that is often applied, namely the principle of lex specialis derogat legi generali. In general, the Criminal Code is indeed abolished by laws and regulations outside the Criminal Code, but in the case above there is a different phenomenon because the Criminal Code textually regulates in more detail what actions meet the formulation of the act, which is more in line with the conditions in the Criminal Code (Ariyanti, 2019). Compared to laws and regulations which are lex specialis. Then the question arises whether the principle of lex specialis derogat legi generali is interpreted as a principle that negates general laws against special laws

or studies more deeply about the fulfillment of actions against the textual formulation of a law. This means that there is a sharp discourse whether the principle is interpreted as a forum for a law, in this case the Criminal Code (*legi generali*) and laws outside the Criminal Code (*Lex Specialis*) or the problem is more about the substance / content of a text that meets a deeds? Observing the many rhetorical questions raises an urgency for the importance of a study of the *lex specialis derogat legi generali* principle which examines whether this principle follows the container theory or the content theory. This is a legal issue as well as the urgency that the *lex specialis derogat legi generali* principle is not monofaceted but multifaceted (Nurfaqih Irfani, 2020).

The meaning of the *Lex Specialis Derogat Legi Generali* principle is still a matter of debate among practitioners and academics. Because there are several opinions that have different interpretations. The first opinion says that the application of the *Lex Specialis Derogat Legi Generali* principle is considered a forum, so laws outside the Criminal Code must be prioritized. (Agustina, 2015). However, there are opinions that think that this container theory is not always correct. This opinion states that there is a synchronization between actions and correlations (what is written in the text), which then emphasizes content theory. So in the context of 2 (two) laws that both regulate the same thing, directly linking these actions according to which text is appropriate. Because of the urgency that the author described above, it will have an impact. If it is not studied in depth, it will cause stagnation/stopping of scientific development because understanding the principle is only as a monofaceted principle, where the *lex specialis derogat legi generali* principle is only understood as a container, not as content. Based on the explanation of the legal issues above, the authors are interested in exploring this study in the form of legal writings or journals by examining it with a basic approach on the one hand and on the other hand with a casuistic approach.

## METHOD

Legal research is a know-how activity in legal science, not just know-about. As a know-how activity, legal research is carried out to solve legal issues faced. This is where the ability to identify legal problems is needed, perform legal reasoning, analyze the problems encountered and then provide solutions to these problems (Marzuki, 2022).

The research method used in this study is a type of normative or doctrinal research using primary legal materials and secondary legal materials in the form of laws, judges' verdict and reference books or journals related to the legal issues being studied. Then the analysis step uses deductive analysis with major and minor premises which are then drawn conclusions.

## RESULT AND DISCUSSION

The researcher will present the results of the research which is a study of the case raised by the researcher and made into writing this law. The descriptions of the results of this research will start from A who is a private piano tutor who was brought in by B's parents to teach B, then on Tuesday 10 January 2017 at 19.30 WIB, A arrived at B's house in Sukoharjo and went straight to the family room where A will teach B about materials related to playing the piano. About half an hour later B complained to A that he was tired, who then took the initiative to massage B on the grounds that A had little massage skills. Finally A touches the groin of B and massages that part. A stood up from his seat and walked to the bathroom, after coming from the bathroom A bent down and kissed the cheek of B who at that time was sitting facing the piano, then A sat next to B and hugged B with his right hand and his left hand went into B's shorts. to massage the tired part, but A accidentally touched B's genitals so that B had an erection. Then A said to B "is it up or not?" then B answered "down" then A replied "if the bird goes down when it's tense it's not good, because when it's tense the bird is filled with blood" then B just answered "hems" and A again said "don't raise it yet". Then based on the Psychological Evaluation Report dated August 9, 2017 and May 13, 2019 conducted by a Psychologist, it was stated that B had an unpleasant experience due to allegations of continuous sexual abuse, which had an impact on academic, emotional and behavioral aspects.

This condition has a negative impact on the subsequent mental development of B, if it does not get proper treatment or action from the adults around him. A's obscene act to B was recorded by a CCTV camera and indirectly seen by B's parents, finally B's parents reported the matter to investigators at the Sukoharjo Resort Police. For the actions committed by the Defendant in the case above, the Defendant was charged with an alternative indictment. The first indictment was charged with Article 82 paragraph (1) Attachment to Law Number 17 of 2016 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection to become Law Jo. Article 76E of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. On the basis of the indictment that has been stated above, the Panel of Judges is of the view that the defendant's actions have fulfilled the elements in Article 82 paragraph (1) Attachment to Law Number 17 of 2016 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law No. Law Number 23 of 2002 concerning Child Protection became Law Jo. Article 76E of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, and does not comply with Article 292 of the Criminal Code. Then the Panel of Judges sentenced to imprisonment for 5 (five) years and 6 (six) months and a fine of Rp. 1.00.00.00 (one billion rupiah) and if the defendant is unable to fulfill the said fine, it will be replaced with imprisonment for 6 (six) months.

Observing the results of the research above, as the researchers have described, it can be seen that in the case of same-sex sexual harassment, there appears to be a textual dualism, namely on the one hand it is regulated in a special law and on the other hand it is regulated in a general law. This textual dualism then gave rise to a dualism of different perspectives, on the one hand with regard to the regulation of the Criminal Code which is more general in nature when compared to the Child Protection Act. However, the textual arrangement in the Criminal Code is more specifically referring to the defendant's actions compared to the Child Protection Act. Then it can be seen that there is a dualism of views in interpreting the principle of *Lex Specialis Derogat Legi Generali*. Soedarto emphasized that special criminal law is a criminal law provision that is set for a special group of people or related to special acts. The location of the specificity of special criminal law is the existence of provisions that deviate from general criminal law (Takdir., 2013).

A different opinion was expressed by Lamintang stating that there are two ways of looking at a criminal law provision, in order to be able to say whether a criminal provision is a special criminal provision or not. These methods are:

1. How to Look Logically

According to a logical view, a criminal provision can be considered as a special criminal provision, if the criminal provision in addition to containing other elements also contains elements of a general criminal provision. The specificity of a criminal law provision based on a logical view is commonly referred to as *Logische Specialiteit* or logical specificity.

2. How to View Juridically or Systematically

This method considers that a criminal law provision even though it does not contain all the elements of a general criminal provision, is still considered a specific criminal provision, that is, if it can be clearly seen that the legislator intends to enforce the criminal provision. as a special criminal provision. This perspective is usually called the *Juridische Specialiteit/Systematische Specialiteit* (P.A.F Lamintang, 1984: 684-685).

Observing the opinions of the experts above, Soedarto emphasizes the principle of *Lex Specialis Derogat Legi Generali* on which laws are more specific in terms of their embodiment in a law that is more general in nature/the main law. Meanwhile, Lamintang has the view that it is the substance of the more specific text formulation that becomes *Lex Specialis* for the existence of provisions that are *Lex Generali*. This is then seen as the theory of content/substance.

Observing the dialectic that occurs in how to interpret the *Lex Specialis Derogat Legi Generali* principle, it can be grouped into 2 perspectives, namely the container theory and the content theory. The container theory views that when everything is regulated in a special provision, the arrangement will override a general provision. Then the content theory views that when looking at a criminal act, the content of a criminal provision is more appropriate for the criminal act. The point is that when the criminal act is associated with the textuality of the sound of a formulation of certain criminal provisions, it is closer to where the formulation of the text is with the criminal act. That is the guideline which is more specific among several products of legislation, because legislation has hierarchical equality.

## CONCLUSION

Based on the results of the presentation and discussion that has been discussed by the researcher in previous chapters, the researcher can draw the conclusion that observing the dialectic that occurs in how to interpret the *Lex Specialis Derogat Legi Generali* principle, it can be grouped into 2 perspectives, namely the theory of container and the theory of content. . The container theory views that when everything is regulated in a special provision, the arrangement will override a general provision. Then the content theory views that when looking at a criminal act, the content of a criminal provision is more appropriate for the criminal act. The point is that when the criminal act is associated with the textuality of the sound of a formulation of certain criminal provisions, it is closer to where the formulation of the text is with the criminal act.

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