


Systematic Specialist Lex Principle in Determining State-Owned Bank Employees as Suspects on Charges of Corruption

Azhar AR¹, Mhd. Azhali Siregar², Suci Ramadhani³

^{1,2,3}Program Magister Ilmu Hukum, Universitas Pembangunan Pancabudi, Medan, Indonesia

Article Info	ABSTRACT
<p>Keywords: Lex Specialist Systematic, Action Criminal Corruption, Banking Law, State-Owned Bank Employees, Legal Certainty.</p>	<p>Study This aiming for to study implementation lex specialis principle systematic in determination suspect state-owned bank employee who is suspected do act criminal corruption. In Indonesia, it often happen overlap overlap between provision Constitution Banking and Law Action Criminal Corruption, which gives rise to uncertainty law and differences judge's decision. Lex specialis principle systematic emphasize election provision more laws specific moment happen clash between law. Approach research used is legal normative with method descriptive analytical, relying on studies bibliography and analysis decision courts, including Decision Supreme Court Number 2405 K/ Pid.Sus /2016. Research results show that provision Constitution Banking should more prioritized in context banking, although there is inconsistency in its implementation by the authorities enforcer law. The need for strengthening understanding to principles law criminal special and application lex specialis principle systematic in a way consistent for ensure certainty law and justice in the sector banking.</p>
<p>This is an open access article under the CC BY-NC license</p> 	<p>Corresponding Author: Azhar AR Program Magister Ilmu Hukum, Universitas Pembangunan Pancabudi, Medan, Indonesia adek170873@gmail.com</p>

INTRODUCTION

The state, through its legal instruments, is obliged to create a sense of security and justice for the perpetrators. The law functions as a tool to provide protection and certainty for every citizen in exercising their rights and obligations (Basuki & Fitrianto, 2024). Speak about act criminal corruption We must know origin of the word corruption originate from Language Latin *corruption*, next mentioned that corruption That originate from from the word *corrumpere*, a Latin word which is more old. From another language that down Lots Language Europe such as corruption and *corrupt* (English), corruption (French) and *corruptie / korruptie* (Dutch) which of this is Dutch brought to Indonesia to become corruption (Aziz, 2011).

Legal basis or principle law No lah a rule the law in force in a way concrete, but a principle the basis of nature general. Considering the Principle of Lex Specialis Systematic is determination a provision Constitution Which one specifically applies, then applicable principle *Systematic Specialty* or systematic specificity, meaning provision criminal in realm banking become act criminal corruption so the law that should be used.

Initially , the legal principles that influence all over regulation criminal contained in Article 1 paragraph (1) of the Criminal Code, it is known with the term " *nullum delictum, nulla*

pen sine praevia lege poenali” which is the principle This arise as reaction to condition law where people can prosecuted and convicted with arbitrary (Tresna, 2020). In the context of criminal law, the main objective of law enforcement is to provide a deterrent effect for perpetrators while protecting victims so they can obtain justice (Rahmayanti, 2024).

Decision Supreme Court Number 2405/ Pid.Sus /2016 on use *lex specialis* principle systematic in act criminal banking become act criminal corruption. Analysis results can be concluded that Use *lex specialis* principle systematic in act criminal banking Decision Supreme Court Number 2405 K/PID.SUS/2016 is act criminal in environment banking remember Because That Banking Services Act can diqualified as Constitution Criminal special , with thus Banking Services Act own equal position with Constitution Action Criminal Corruption namely You're welcome fulfil qualification as Constitution criminal special that regulates a prohibition and regulation sanctions criminal if existence a actions that can harm finance banking and the State.

The effectiveness of criminal law is not only determined by the severity of the sanctions, but also by how consistently the regulations are implemented and enforced (Suci Ramadani, 2021). Can be concluded That case act criminal in environment banking more prioritize Constitution banking compared to with Constitution act criminal corruption, because state finances and corporation in the form of a state-owned company Banking such as Bank Rakyat Indonesia more prioritize Constitution Banking and Administration Finance . Progress a economy a country does not off from role and function banking in it that is :

1. Distributor, namely channeling funds from public to the party in need.
2. The orderly, if happen congestion payment in a sector economy, then the bank can using existing funds to him For help finish problem the .
3. Supervisor, bank does not just as distributor credit but also supervise whether credit disbursed can used in accordance its purpose.
4. Mentor, guiding bank recipient credit so that credits are obtained No vain However can useful in accordance with objective given to him credit.
5. The center of activity, namely the bank, becomes center activity in transaction payments and money (Bambang, 2025) circulatio.

Formation Constitution special provisions that are outside the Criminal Code are sectora. Each forms rule in accordance sector. Condition This own potential allusion One with others. For determine Constitution Whichever one is specifically applied, then applicable principle *special case systematic* or systematic specificity. In the fourth the decision under investigation No there is none of them the decision that applies principle *special case systematic*. Where it should be principle *special case systematic* That must applied to fourth the decision under investigation in study This. Cause the occurrence difference judge's decision in apply principle *special case systematic* is Because varying understanding to Loss State finances by law enforcers the law that has impact to attitudes and opinions they.

The principle of *lex specialis* sistema is a legal principle that states that if there is a conflict between two special legal provisions (*lex specialis*), the more specific, detailed, and systematic provision will take precedence. This principle is very important in handling criminal cases involving special laws, such as banking, taxation, or corruption laws.

The existing legal regulations are (*das sollen*) while the legal events are concrete (*das sein*). The legal situation that does not exist or is unclear or vague and the mandate of Article 10 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power states that the court may not refuse to examine, try and decide a case submitted to it, on the grounds that the law does not exist or is unclear (*rechtsweigerung*).

Banking institutions Alone is form institution finance so that No surprising If act criminal law in the field of banking tend to be money as target, with corruption as one of the type. Action criminal banking Alone own a number of dimensions Can in the form of act crime somebody against the bank, action bank crimes against other banks or bank crimes against individual. As for the dimensions room act criminal banking No limited to a place certain Can crossing territorial boundaries a country. Likewise the dimensions time Can happen instantaneous, but also lasting some time while room scope act criminal banking covering overall scope life in the banking world both written or not written also includes customary norms in a banking. Scope Can individual or legal entities (*corporations*) (Djumhana, 2024).

There is a principle that assumes the judge knows all law (*ius curia novit*) to be a number of reason importance done invention law. Provision special interpreted with "legislation" criteria criminal special" and provisions general interpreted with criteria " legislation criminal general". Not interpreted as special law but the law separately (*afzonderlijk*) outside the Criminal Code. Furthermore it is said that legislation criminal special is all legislation outside the Criminal Code which contains provision criminal, whereas legislation criminal general is the Criminal Code and all legislation that changes and adds to the Criminal Code.

The formation of special laws outside the Criminal Code is sectoral. Each law establishes regulations according to its sector. This situation has the potential for conflict. It is possible that a criminal act in one special law may also be contained or regulated in the criminal provisions of another special law. A criminal act regulated in a general provision is also regulated in a special provision. Under the principle of *lex specialis derogat legi generali*, the special provision can immediately be determined to take precedence over the general provision.

Under examination case act criminal corruption , interesting For notice a number of case presented by Prof. Mr. Dr. Lit SZ Abidin (Andi, 2020) that Lots very cases in Indonesia that have systematic specificity This or the principle of " *Systematic" Specialiteit*" was violated by the Prosecutor and Judge in the decision, because weakness knowledge principles law criminal law among enforcer law, including the Supreme Court Justice. For example smuggling existing taxes Constitution taxation that regulates the crime in a way special sued and convicted by the judge including Supreme Court with offense corruption (enriching) self Alone Because No pay tax). Crime smuggling convicted as subversion, whereas what is actually obviously including offense corruption, for example case Budiadji (Former Cadologist) East Kalimantan) was convicted with lifelong life Because indictment has do offense subversion.

More selection critical will happen to provisions that must be met used on one regulated act more from One provision special. According to Prof. Indriyanto Seno Adji, SH, MH, for determine Constitution Which one specifically applies, then applicable principle *special case systematic* or specificity systematic, meaning provision criminal nature special if former

Constitution of course mean to For enforce provision criminal the as a provision criminal nature special or He will nature special from special that has been there is. For example , the subject personal, object Allegation the violated act , tool evidence obtained environment and area where the crime is located in context banking , then Constitution Banking is enforced, even though Constitution Special others (such as Constitution Action Criminal Corruption own element crime that can be covers it) is its acceptability (Indrianto, 2006).

The issue of the principle of *lex specialis systematicis*, however, is also present in several charges brought against the accused for further examination in court. The principle of *lex specialis systematicis* serves to determine which of two or more special laws should be applied in a case. This principle emphasizes systematic specificity, namely laws that specifically regulate a particular area of law, including the subject, object, and scope of the regulated act.

If an act that fulfills the elements of a criminal act of corruption is also regulated by banking law, then the more systematic banking provisions (for example, because they more specifically regulate acts within the banking environment) will take precedence. In the case of tax crimes that can also be considered criminal acts of corruption, the principle of *lex specialis systematic* helps determine whether tax law (which is more specific regarding taxation) or corruption law (which is more general) will be applied. According to Siregar et.al (2025), The main objective of law enforcement is not only to impose punishment, but also to ensure the creation of order, justice and protection for the wider community.

This principle provides legal certainty for perpetrators and victims of crime by clearly determining which law should be applied. This principle helps maintain justice in the criminal law system by preventing misinterpretation or misuse of the law. This principle helps prevent legal conflicts that can cause uncertainty and confusion in the application of the law. The principle of *lex specialis derogat legi generali* (special law overrides general law) is more general and simply states that special law overrides general law. The principle of *lex specialis systematic* is more specific and focuses on specific, more systematic laws.

This research focuses on two main issues related to the application of the *lex specialis systematic* principle in the context of law enforcement against corruption. First, how judges construct their thinking in applying the *lex specialis systematic* principle in the process of law enforcement against corruption. This aims to understand the juridical approach and legal logic used by judges when facing corruption cases that are related to specific and general regulations. Second, why there are differences in judges' decisions in applying this principle to law enforcement against corruption. This question leads to an effort to identify the factors underlying the emergence of differences in legal interpretation and considerations among judges, even when facing cases with similar legal substance.

The principle of systematic *lex specialis* is a very important legal principle in the criminal law system, especially in cases involving conflicts between specific laws. This principle ensures that more appropriate and systematic laws are applied, thereby providing legal certainty, justice, and preventing legal conflicts.

RESEARCH METHODS

This research which will be used in this research is of a normative juridical nature, namely research which is carried out by examining secondary legal materials or research based on standard rules which have been recorded which is also called library research which is basic data which is classified as secondary data (Soerjono, 2011).

This type of normative legal research encompasses legal principles and legal synchronization. It analyzes the use of the principle of *lex specialis systematich* in a single criminal act that violates two specific criminal provisions. In this normative legal research, the author examines legal principles starting from specific areas of legal systems, by first identifying the legal rules formulated in specific legislation. Another name for normative legal research is doctrinal legal research (Bambang, 2019).

Judging from its nature, this research is descriptive in nature, which aims to accurately describe the characteristics of an individual, condition, symptom or certain group, or to determine the spread of a symptom, or to determine whether or not there is a relationship between a symptom and other symptoms in society. Descriptive legal research is explanatory in nature and aims to obtain a complete picture (description) of the legal conditions that apply in a certain place and at a certain time, or regarding existing legal symptoms or certain legal events that occur in society.

The data collection technique is carried out by means of library research, namely research carried out by examining library materials to obtain secondary data in the form of books, both from personal collections and from libraries, articles taken from print media and electronic media, government documents, including laws and regulations related to the problems being researched.

In normative legal research, data can be analyzed qualitatively or quantitatively. In this research, after the necessary data is collected, it is processed, organized, and analyzed qualitatively. Qualitative data management is a research method that emphasizes the analysis of the dynamics of the relationships between observed phenomena using scientific logic. The data is not analyzed using statistics, mathematics, or numbers, or anything similar, but rather is described descriptively.

RESULTS AND DISCUSSION

Chronology Determination Suspect

The applicant (Eko Santoso) was appointed as suspect by the South Kalimantan High Prosecutor's Office on November 25, 2024 for suspicion corruption in financing BTN iB construction to PT Alfath Salima Mulia worth Rp5.8 billion. The determination This based on results exposure and report investigation which states existence deviation. Applicant is *Deputy Branch Manager Business* at BTN Syariah Banjarmasin whose duties are covers planning, coordination, reporting and control risk in field financing and funding. He No own authority single in giving credit.

Determination based on claims a number of buyer the house that bought cash from the developer and not accept certificate or IMB. However, financing to the actual developer

through contract musyarakah, of a nature business pure, and its collateral in the form of SHGB which has registered as right liability.

The buyers do lawsuit civil case at Banjarmasin District Court with registration number : at the Banjarmasin District Court with registration number : 94/ Pdt.G /2022/ PN.Bjm filed by 18 Plaintiffs with Decision lawsuit Cannot be accepted ; 5/ Pdt.G /2023/ PN.Bjm filed by 8 Plaintiffs , with Decision lawsuit revoked ; 25/ Pdt.G /2023/ PN.Bjm filed by 1 Plaintiff with Decision lawsuit revoked ; and Number 64/ Pdt.G /2023/PN Bjm filed by 1 Plaintiff with results Peace , which is partly big lawsuit No accepted or revoked . Dissatisfaction they to be continued with complaint to The High Prosecutor's Office, which became base investigation to suspicion corruption.

Analysis State Losses

In the case a quo, one of the the basis used by investigators For set suspect to Applicant is existence Allegation loss state finances that arise from the financing process BTN iB construction to PT. Alfath Salima Mulia. However, after traced more continue, no found fact or convincing evidence that shows has happen loss real and certain state finances. Based on principle law in act criminal corruption as set up in Article 2 and Article 3 of the Law Number 31 of 1999 in conjunction with Law Number 20 of 2001, elements state losses must be can proven in a way concrete with calculation by authorized institutions, such as the Audit Board Finance (BPK) or a competent independent auditor.

In the case of This, PT. Bank Tabungan Negara (Persero) Tbk, Banjarmasin Sharia Branch Office as the party providing financing has accept settlement from party debtor, namely PT. Alfath Salima Mulia, amounting to Rp2,586,909,401,- on August 30, 2023. Furthermore, the bank has also deliver return as many as 71 Building Use Rights Certificates (SHGB) to debtor as part from settlement obligations that are accompanied with Minutes of Handover official. This shows that obligation main in financing has completed and not There is credit that is experiencing congestion or loss in form detrimental default the bank party financial. In fact, collateral in the form of certificate registered land in right liability previously has ensure full settlement financing if happen fail pay.

Furthermore, the fact that there is no official audit report from the Supreme Audit Agency (BPK) or any concrete state loss calculation report is a strong indicator that the allegations of state losses are extremely weak. Even if there were a calculation report by the BPKP used by investigators, its validity and objectivity must still be tested in relation to actual losses, not potential estimates or hypothetical losses. In the context of criminal law on corruption, state losses cannot be based solely on potential losses or assumptions resulting from banking policies deemed deviant.

In the absence of evidence showing that the Applicant has enriched himself, benefited another person or a corporation, and in the absence of any real and definite state losses, the basic elements of the crime of corruption as required by law are not fulfilled.

Response South Kalimantan High Prosecutor's Office

In the case of determination suspect to Applicant, Prosecutor from The South Kalimantan High Prosecutor's Office provides a firm and systematic response on the arguments put forward in application pretrial motion. The prosecutor argued that

determination suspect has done in accordance with provision applicable legislation, in particular referring to Article 1 number 14 of the Criminal Procedure Code, Article 183, and Article 184 paragraph (1) of the Criminal Procedure Code, as well as Decision Court Constitution Number 21/PUU-XII/2014. In the decision the confirmed that determination somebody as suspect only can done if has at least two tools were found valid evidence as meant in Article 184 of the Criminal Procedure Code, namely information witness, statement experts, letters, instructions, and information the accused. The prosecutor asserted that in case this, tool proof has collected in a way legal and procedural in stage investigation, not at the stage investigation, as required by the Court Constitution.

The prosecutor also said that the process of determining suspect to Applicant No done in a way haphazard. Has been done a series inspection witnesses and experts, as well as collected evidence in the form of documents and instructions relevant laws. Including among others is results inspection to a number of witnesses and experts who support existence suspicion deviation in the BTN iB financing process, as well as report results calculations by BPKP which become tool proof letter in case this. With Thus, according to the Prosecutor, it has been fulfilled element the existence of " evidence" Quite a start " as required by criminal procedure law For set somebody as suspect. The prosecutor even to mention that determination This has through a legitimate investigation process and based on a letter order investigation issued in a way gradual and tiered in accordance development case.

More continued, the Prosecutor responded to the Applicant's objection that the suspect determination was carried out prematurely and without an objective legal basis. According to the Prosecutor, this is baseless because all stages have been carried out in accordance with the principles of criminal law and the principles of fair investigation. In this case, the existence of expert testimony, letters, and interrelated witness evidence is considered sufficient to establish the existence of a criminal act in the financing carried out. The Prosecutor also rejected the claim that the suspect determination was made without considering state losses, because the potential for state financial losses in the management of public funds is sufficient basis for legal action at the investigation stage.

Even though thus, from a critical perspective, the prosecutor's response demonstrates a rigid formal approach and a lack of consideration for the systematic aspects of selecting legal norms. The prosecutor adhered to the Corruption Law without further examining whether the substance of the alleged offense could be more appropriately explored within the framework of the Banking Law as *lex specialis*.

Violation of the Principle of *Lex Specialis Systematic*

Implementation law in case determination suspect to State-owned Bank employees by the South Kalimantan High Prosecutor's Office showed indication strong has the occurrence violation to principle *Lex Specialist Systematic*. This principle is development from principle *special case derogatory legion generali*, which is principle confirm that provision law special must put aside provision general if arrange incident the same law. However, *Lex Specialis Systematic* more carry on load approach systematically, with consider No only the existence of more legal norms specific, but also relevance context sectoral, subject law, object actions, and environment law place the occurrence crime. In the context of the a quo case, which

concerns activity banking specifically related giving facility financing by the Banjarmasin Sharia Branch Office to PT. Alfath Salima Mulia, it is clear that incident law This happen within the jurisdiction banking that has set up in a way special in Constitution Number 10 of 1998 concerning Banking.

Instead of apply provision in Constitution Banking, which is more appropriate For to study suspicion deviation administrative or error policy financing by bank officials, investigators precisely apply Constitution Number 31 of 1999 in conjunction with Law No. 20 of 2001 concerning Eradication Action Criminal Corruption. In fact, the Corruption Law is a *lex generalis* whose scope is wide and not in a way specific arrange technical operational banking. Actions The applicant is considered as deviation in the financing process construction, not yet fulfil element offense corruption Because No existence proof real state losses, as well as No there is action enrich self Alone or other people. In case This is the provision of Article 49 paragraph (2) of the Banking Law has give enough space For handle potential violation ethics or error professionally by bank officials without must direct drag it to realm criminal corruption that brings implications heavy in a way law and social.

When the authorities enforcer law No apply principle *Lex Specialist Systematic*, then enforcement law become No proportional and deviated from principle justice as well as certainty law. Determination suspect on base provision law that does not in accordance context, moreover done before ensure existence real and definite state losses, constitute form criminalization to policy the professional that should be corrected through track administrative and internal corporate matters. In the context of This, the pretrial judge was also assessed No dig more deep and only evaluate aspect formal from determination the suspect, namely fulfillment of two tools evidence, without test whether the laws used Already in accordance in a way systematic with environment law place incident happen.

Enforcement law that ignores principle *Lex Specialist Systematic* will create uncertainty in the business world, especially sector finance and banking, because every policy business at risk criminalized if No accompanied with understanding comprehensive juridical. Within the framework of the rule of law, this This become threat for protection law to profession and institution finance in action in corridor regulation sectoral. Therefore that, existence and understanding principle *Lex Specialist Systematic* absolute required No only in study academic, but also in practice justice so that the implementation law No solely based on amount tool evidence, but also accuracy use of appropriate norms with characteristics incident the law.

Judge Pra's View Justice

Judge Pra's View Justice in the case a quo shows very limited approach in evaluate validity determination suspect to Applicant. Judge only focus examination on aspects formal, namely whether investigator has have at least two tools valid evidence in accordance with provisions of Article 184 paragraph (1) of the Criminal Procedure Code. This in accordance with provision in Article 2 paragraph (2) of the Regulations Supreme Court of the Republic of Indonesia (PERMA) Number 4 of 2016 concerning Prohibition Review of Decision Pretrial motion, which states that pretrial only can test validity determination suspect based on aspect formal and not material. With Thus, the pretrial judge No do evaluation to weight or strength

proof from tool evidence submitted investigators, and not consider in a way substantive whether articles used precise and relevant with characteristics the matter.

Limitations this judge's view become highlight important Because precisely cause error in implementation more laws wide. In the case of this, the judge ignored approach *Lex Specialist Systematic*, namely a the principle that prioritizes importance use law criminal the most suitable special with context crime. In the context of banking, especially Again concerning suspicion deviation in giving financing, should be used provision in Constitution Number 10 of 1998 concerning Banking, which is special arrange about action criminal offences that can be carried out by bank officials. Provision in Constitution Action Criminal Corruption of course own coverage wide, but No means in a way automatic used in every suspicion violation finance, especially If violation the more appropriate qualified as violation administrative or ethics in context banking.

Pretrial judge's error the more seen when No There is consideration or analysis to subject law (bank employee), room scope work (policy financing), as well as internal bank mechanisms that are collectively and through a tiered process. Judges should more careful in see that object case No stand in room empty, but is at in system regulation sector complex and regulated finance in a way special. If the judge is able apply principle *Lex Specialist Systematic*, then can seen that suspicion act criminal should under review through Banking Law Framework moreover before, before to drop classification as act criminal corruption that has consequence law more heavy.

By relying solely on the validity of two pieces of evidence without considering the substance of the application of the norm, the pretrial judge in this case failed to provide comprehensive legal protection. This not only harms the Applicant as an individual, but also sets a bad precedent in law enforcement practices, which should uphold the principles of justice and proportionality. In fact, if the judge were aware of the systematic nuances in sectoral criminal law, then a test should have been conducted to determine whether law enforcement had appropriately considered the applicability of more specific laws. Effective law enforcement must always be accompanied by mechanisms for monitoring and protecting the legal rights of the parties to the case (Suci Ramadani et.al, 2021). Therefore, the pretrial judge's view, which is limited only to formal aspects, is considered to have narrowed the scope of legal protection and demonstrates a lack of synchronization between formal procedures and the substance of legal justice.

CONCLUSION

The principle of *Lex Specialis Systematis* is derived from the principle of *lex specialis derogat legi generali*, which emphasizes the importance of applying the most contextually relevant law to a criminal act. This principle is known in legal literature as *juridical speciality* according to Remmelink and *logische specialiteit* according to Enschede. In the pretrial case related to the determination of a state-owned bank employee as a suspect by the South Kalimantan High Prosecutor's Office, the judge only considered the formal aspect of the fulfillment of two valid pieces of evidence as regulated in the Criminal Procedure Code, without paying attention to the specific banking context which would actually be more appropriate to use the Banking

Law as a legal basis. This error demonstrates a disregard for the principle of *Lex Specialis Systematis*, where the Corruption Crime Law should not be applied if there are specific criminal provisions in other sectoral laws that are more appropriate. The formulation of criminal acts as regulated in Article 49 paragraph (2) of Law Number 10 of 1998 concerning Banking clearly shows that the actions of bank employees related to receiving rewards or abuse of authority in providing credit facilities are included in banking crimes, not necessarily qualified as criminal acts of corruption. Therefore, the determination of the suspect in this case reflects an error in the application of legal principles, which should have been avoided if the principle of *Lex Specialis Systematis* had been used correctly. In line with these conclusions, the author recommends that the Supreme Court of the Republic of Indonesia actively promote an understanding of the principle of *Lex Specialis Systematis* to all law enforcement officials, particularly judges, to avoid errors in the application of the law to cases within the scope of sectoral regulations. Furthermore, it is also important that the Corruption Law contain explicit provisions confirming that norms in the Corruption Law cannot be applied if there are other specific criminal provisions that are more appropriate and relevant to the same legal event. This is expected to strengthen legal certainty and prevent the criminalization of policies or administrative errors that do not actually fulfill the elements of a criminal act of corruption.

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