Implementation Of The Principle Of Systematic Specification To Criminal Laws In Criminal Cases Of Corruption

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Abstract

This study aims to identify and analyze the application of the principle of systematic specificity in customs criminal law in corruption cases. The research method used is empirical research with case studies through a statutory approach. The results of the research show that the reformulation of the principle of systematic specificity in customs crimes is a derivative of the principle of lex specialis derogate legi generali. The principle of systematic specificity needs to be reformulated by adding paragraph 3 to the provisions of Article 63 of the Criminal Code so that the position, parameters and concept are clear so that it does not cause multiple interpretations. The principle of conditional systematic specificity needs to be studied as a personal subject, the object of the alleged act that was violated, the evidence obtained, as well as the environment and the area of offense before law enforcement.

I. Introduction

The growth of criminal law is so massive that the various crimes and violations codified in the Criminal Code cannot ensnare new crimes. In such a context, criminal law emerges outside of codification which is referred to as special criminal law. Regulation products are not only for the community, but are also intended to regulate and limit apparatus according to their functions and authorities. This is also the case with laws in the field of administration which contain criminal sanctions, which currently give rise to various law enforcement. Problems with the discretion possessed by administrative officials in resolving cases in the field of customs, which are regulated in laws in the field of administration which contain criminal sanctions (Darojad, 2018). Special criminal law can be described as lex specialis, but not all lex specialis pertain to special criminal law. In Indonesia, significant progress has been made with around 200 special criminal laws being implemented across different sectoral legislations.

The existence of criminal sanctions in administrative law enforcement, as stated by Logeman, is intended to provide principles that guide the government's participation in social and economic relations, namely rules that the government itself is given sanctions in the event of a violation. Criminal law's integration into different laws and regulations may either operate independently or supplement the realm of administrative law (Jennifer et al., 2022).

In this scenario, the role of criminal law is twofold: to provide support and simultaneously fulfill a more practical function by upholding regulations in various legal domains, including the customs sector within administrative law (De Benedetto, 2018; Setiadi, 2009). Administrative penal law, also known as "verwaltungs strafrecht," refers to the extensive utilization of criminal sanctions in order to reinforce the norms of administrative law. This legal framework falls within the scope of public welfare offenses, commonly referred to as "ordnungswidrigkeiten." (Kenedi, 2017).

Law enforcement is greatly affected by this scenario due to the existence of multiple laws governing an action. When an action falls under both the general criminal law (KUHP) and specific criminal laws, the solution becomes straightforward as the specific criminal law takes precedence. This principle is clearly outlined in Article 63, paragraph (2) of the Criminal Code, which states that if an act is covered by both a general criminal law and a specific criminal law, the provisions of the specific law should be applied. However, if an act is regulated If more than one law is specifically criminal in nature, the problem becomes complicated, especially in terms of law enforcement because there will be overlapping powers of various law enforcement officials, especially the authority of the National Police and Civil Servant Investigators (PPNS).

The government, particularly the DJBC (Directorate General of Customs and Excise), acts as a trade facilitator and creates customs legislation that anticipates societal progress by offering quicker, improved, and more affordable services and oversight. The Customs Law, initially established as the Law of the Republic of Indonesia Number 10 of 1995 and subsequently

modified to Law of the Republic of Indonesia No. 17 of 2006, focuses on addressing customs offenses in greater detail.

According to Muladi, there is ambiguity in the application of the ultimum remedium doctrine in criminal law (Januarsyah, 2017). Criminal law both in the sense of "ius peonale" which contains a prohibition against acts that are contrary to law (onrecht) and the imposition of suffering to those who violate the prohibition, as well as "ius puniendi" which reflects the right of the state or state instruments to threaten and imposing a penalty and or action against certain acts, is a law whose sanctions are felt to be far more severe compared to sanctions in other areas of law such as civil law sanctions and administrative law.

Criminal law is used carefully and truly operationalized as a remedy of last resort (ultimum remedium) and immediately is not utilized as the main remedy (primum remedium). Another term is "ultima ratio principle/regis".

Strengthening demands for the role of the state in realizing the welfare of its people requires the state to play an active role and take a major part in the socio-economic life of the community (Suryawati, 2021).

Interesting issues to examine regarding the lex specialist principle in criminal law have developed in such a way, not only limited to setting aside generally accepted laws (lex generalis) but also relating to special laws and provisions of articles in special laws. For the provisions of the article to be enforced in a special law, the principle of logical specificity applies (logische specialiteit) in the sense that criminal provisions are said to have a special character if the criminal provisions besides containing all elements of general criminal provisions also contain elements which special.

One of the cases that has been decided by the Corruption Crime Court at the Central Jakarta District Court is that in essence there has been an investigation into a customs crime that turned into a corruption crime. Instead of admitting that the defendant as the importer had given some money to Customs and Excise officials.

Oversight and sanctions for violations of the rules must be carried out without selective logging so that in the end it creates a deterrent effect for every subject of violation (detterent effect). Often in providing customs facilities, Customs and Excise officials are negligent about various things so that vulnerability arises and subsequently creates a loop hole for violations where as a result law enforcers other than DGCE Civil Servant Investigators (PPNS) can step in and drag this negligence as a basis to develop investigations and investigations if sufficient evidence is obtained.

Criminal law as the harshest sanction provided by law, that is when it is illustrated by juxtaposing criminal sanctions with civil sanctions (AR, 2009). Sanctions in the field of administrative law are better known as bestuursstrafrecht (state administrative criminal law). Administrative sanctions have the peculiarity that they originate from the government-citizen relationship.

In the Republic of Indonesia basically state administrators have an important role in the constitutional system which has the aim of providing justice and prosperity for every Indonesian people. The 1945 Constitution's Opening Mandate implies that the Indonesian State Government was established to safeguard the Indonesian nation and its people, preserve the unity of Indonesia, and advance the well-being of the public by promoting education and improving the lives of its citizens.

In various laws and regulations in the field of administration, usually it has been determined that there are Civil Servant Investigators (PPNS) who have the authority to investigate certain criminal cases in their respective environments. In essence, the formation of PPNS was intended to investigate minor cases, but was faced with violations of laws and regulations in the field of administration which in fact had relatively high corporal punishment and fines.

In order to establish the applicable special legislation, the principle of systematic specificity (systematische specialiteit) is employed, wherein the criminal provisions of the law that are distinct in nature take precedence over those in the existing special law. For instance, the Customs Law will be enforced despite the existence of Law No. 31 of 1999 jo. UU no. 20 of 2001 on the Eradication of Corruption Crimes (UU PTPK), which is a special law that encompasses certain offenses. This is stipulated in article 14 of Law no. 31 of 1999, which states that: "Individuals who breach the law and explicitly acknowledge that such breach constitutes a corrupt criminal act shall be subjected to the provisions outlined in this law."

The provisions outlined in Article 14 of Law no. 31 of 1999 serve as a way to acknowledge the principle of systematic specificity, as it is expressed in legislative regulations. The essence conveyed through the provisions of Article 14 is that the law on corruption is applicable exclusively when an act prohibited within administrative law is explicitly defined as a criminal act of corruption, falling under the jurisdiction of Law no. 31 of 1999 in conjunction with Law no. 20 of 2001.

The systematics specialties principle is intended to prevent and limit the existence of "all embracing acts" and "all purpose acts" of a special law and regulations. Therefore, the elements of unlawful acts and elements of detrimental to state finances in the anti-corruption law must be scrutinized in its use, because it does not necessarily apply to every criminal case, but depends on case-by-case legal facts.

In cases in the customs sector, the policies of public officials who should be included in the administrative domain are often charged using Law no. 31 of 1999 jo. Law No. 20 of 2001 concerning the Eradication of Corruption (PTPK Law).

Disagreements regarding the handling of criminal cases in the field of administration and corruption that are currently occurring, do not only concern the issue of criminalization of public officials. Another issue that often comes up is accusations of mixed administrative criminal law in the handling of corruption cases (Firmansyah & Syam, 2022; Wachid, 2015).

The trial process against public officials at the Corruption Court who was blamed for

violating the PTPK Law, shows a mix-up between the domain of administrative criminal law and the domain of criminal acts of corruption. In the customs case on behalf of Mokhammad Mukhlas (Head of PFPC II Sub-Directorate), Kamaruddin Siregar (Head of PFPD III Section), Hariyono Adi Wibowo (Head of PFPD II Section) and Dedi Aldrian (Head of PFPD III Section) Batam Customs Commission was blamed for committing a criminal act of corruption on his decision in giving approval for the release of goods in PPFTZ-01 made by the importer Irianto (PT Fleming Indo Batam). Even though the substance of the problem in the PT FIB case concerns the application of Article 102 letter h and/or Article 103 letter a RI Law Number 10 of 1995 dated 30 December 1995 concerning Customs as amended by RI Law Number 17 of 2006, which is clearly an administrative decision.

The various court decisions in this case raise questions about the accuracy in applying the law and sentencing the perpetrators as well as the application of the principle of systematic specificity. Cases of criminal prosecution of public officials on the basis of their policies and policies are one illustration of the mix-up between the administrative domain and the domain of criminal acts of corruption. Even though the two of them have different characteristics, so any alleged irregularities that occur will certainly be processed through a different legal mechanism.

The main impact caused by mistakes in applying the principle of systematic specificity will be criminogenic and victimogenic factors, especially in law enforcement. Errors in applying the principle of systematic specificity will lead to various forms of criminalization against them which are actually only administrative violations. The occurrence of criminalization that is not based on the perpetrator's material actions, in turn will give rise to new victims as a result of wrong application of the principles of law enforcement by law enforcement officials, for which it is necessary to conduct research.

As described above, the focus of research in this dissertation is based on the existence of a conflict between the principle of systematic specificity and law enforcement practices carried out by law enforcement officials. The provisions of Article 14 of the PTPK Law which cannot be formulated concretely and operationally are feared to cause criminogenic and victimogenic factors. Likewise with the provisions of Article 63 paragraph (2) of the Criminal Code, regarding idealistic concursus. In order to eliminate gaps in the application of the principle of systematic specificity, it is necessary to have clear parameters in order to deal with the phenomenon of the large number of laws in the administration sector that contain criminal sanctions (administrative penal law).

Several cases of customs crimes that were taken over became corruption cases, the first was the case of Kamaruddin Siregar, Dedi Aldrian, Hariyono Adi Wibowo as Document Examination Functional Officer at the Batam Customs and Excise KPU, and Mokhammad Mukhlas as the Head of PFPC II at the Batam Customs and Excise KPU which was terminated proven guilty of committing a criminal act of corruption in the Supreme Court Cassation Decision No: 4352 K/PID.SUS/2021 of 2021, and Drs. Irianto, as the importer, was found guilty of committing the

crime of corruption in case decision No: 4952 K/PID.SUS/2021.

Second, the case of Agus Sjafiin Pane as Document Examination Functional Officer at the KPU Director General of Customs and Excise Tanjung Priok in 2007-2008 who was found guilty of committing a crime of corruption in the decision of the DKI Jakarta High Court Number 14/PID/TPK/2009/PT.DKI jo. Decision of the Corruption Crime Court at the Central Jakarta District Court Number 09/PID.B/TPK/2009/PN.JKT.PST.

Furthermore, the case on behalf of Heru Sulastyono as Head of Export Sub-Directorate at the Customs and Excise head office in decision Number 2236 K/PID.SUS/2014 has been found guilty of committing a criminal act of corruption where in a customs crime case that was taken over into a corruption case, there has been criminalization of Customs and Excise officials who only exercise their authority as administrative officials.

Based on the results of research from Andhi Nirwanto (Nirwanto, 2015), which discusses the application of the principle of systematic specificity in administrative criminal law (administrative penal law) in the handling of criminal acts of corruption. The unique aspect of this research is the lack of a definitive stance in administrative criminal law, leading to challenges in implementing law enforcement measures. The study reveals that the absence of specific criteria hinders the proper application of the systematic specificity principle outlined in Article 14 of the Corruption Crime Eradication Law. Furthermore, the study suggests that political corruption, observed in various contemporary nations, has broader implications compared to corruption perpetrated by individuals without political influence (Alkostar, 2016).

Political corruption is closely linked to the exertion of power, with a greater prevalence in the realm of power preservation and enhancement. The combination of power abuse and the necessity for socio-political stability necessitates a proportional level of oversight over the utilization of power. The presence of widespread political corruption constitutes an exceptional offense within the system. Political corruption has a correlational relationship with legal ideology and the law enforcement system. This can be seen from the normalological consistency in the realm of cosmos, logos, technology and social reality. The conclusion of this dissertation research is that overcoming political corruption requires specific legal rules (nomologos) and law enforcement procedures (teknologos), because they involve crimes that have dimensions of political power and/or parties that have economic power. The logical consequence of the political and economic position of the perpetrators of such political corruption demands the application of reversal of evidence and the firmness of sentencing. Law enforcement with integrity is related to the prerequisite for the availability of software in law enforcement, namely the ideology of law enforcement.

Based on the description above, the purpose of this study is to find out and analyze the Application of the Systematic Specificity Principle in the Customs Crime Law in Corruption Crime Cases."

2. Research Method

The legal research conducted in this study involves empirical research and utilizes case studies. The researcher adopts a statutory approach, considering it as a self-contained system. The writing of this law incorporates secondary data, encompassing primary legal materials, secondary legal materials, and tertiary legal materials. Secondary data refers to information gathered from library sources, such as literature studies, documentary materials, scientific writings, and other relevant written sources that pertain to the researched problem.

The activities carried out in collecting data in this legal research are by collecting (documentation) secondary data in the form of expert opinions, writings in scientific books, documents, documentation, archives, literature, papers, and other library materials that are closely related to the problem that the author is researching. In normative legal research, data processing essentially means activities to systematize written legal materials.

3. Results and Discussion

Application of the Principle of Systematic Specificity in the Customs Crime Law

According to the provisions of Article 1 paragraph (3) of the Third Amendment of the 1945 Constitution, the State of Indonesia is a rule of law (rechtsstaat) which guarantees legal certainty (rechtzekerheids) and protection of human rights (human rights).

According to Article 1 paragraph (3) of the Third Amendment of the 1945 Constitution, Indonesia is a state governed by the rule of law (rechtsstaat) that ensures legal certainty (rechtzekerheids) and safeguards human rights (human rights).

The legal goals that are closely aligned with reality include legal certainty and legal benefits. Positivism emphasizes the importance of legal certainty, while functionalists prioritize the benefits derived from the law. One popular legal adage states "summon ius, summa injuria, summa lex, summa crux," which means that harsh laws can lead to injustice unless justice intervenes. Therefore, although justice is not the sole objective of the law, it is a fundamental goal, as it encompasses the essence of fairness.

Normatively, legal certainty is achieved when regulations are created and promulgated with clarity, ensuring a logical and unambiguous framework. Clarity refers to the absence of doubts or multiple interpretations, while logic ensures that the norms within the legal system are coherent, avoiding conflicts and contradictions.In reality the application of the rule of law often encounters several problems, namely starting from a legal vacuum (leemten in het recht), conflicts between legal norms (antinomy of law) and ambiguity of norms (vage normen) or unclear norms. In order to resolve these legal issues,

the principle of legal preference applies. The principle of legal preference is a legal principle that designates which law takes precedence in being enforced, if in an event the law is related to or is subject to several regulations.

Sidharta and Petrus Lakonawa argue that the principle of legal preference has a role as a conflict resolution between positive legal norms. If in a case there are a number of laws that apply to become positive law and there is a conflict between the positive laws, then the principle of legal preference is present according to its use to determine which statutory regulations should be used as a reference. Therefore, the principle of legal preference is referred to as legal remedies.

The principle known as Lex Systematische Specialiteit is based on the well-known legal concept of Lex Specialis derogat legi Generali. This principle is widely recognized within the legal community. Its essence lies in the notion that criminal provisions are considered special when legislators intend to apply them as distinct criminal provisions derived from existing specialized laws. To identify the particular law that should be applied, it becomes essential to analyze factors such as the individual involved, the violated object of the alleged act, the gathered evidence, as well as the surrounding environment and location of the offense.

Lex Specialis teachings have been increasingly developed in the understanding of Criminal Law. This teaching now does not merely talk about the exclusion of a general principle (lex generalis), but has provided solutions to criminal law of such complexity and form, because legislation which is special in nature and is extra-codified or located in outside the Criminal Code such as the Customs Law.

The principle of Lex Specialis has developed so that it not only regulates special laws overriding general laws, but also provides solutions for the application of a special law to other special laws. These solutions are reflected from the principles derived from the Lex Specialis principle, namely the Logische Specialiteit principle and the Systematische Specialiteit principle.

To determine the provisions (articles) that will be applied in/in a particular law, the Logische Specialiteit principle applies, which can be interpreted as Logical Specificity. That is, criminal provisions are said to be specific if these criminal provisions, in addition to containing other specific elements, also contain all elements of general criminal provisions.

The application of the Systematic Specificity principle is employed to ascertain the particular law that is being enforced. This principle, also known as the Systematische Specialiteit principle, suggests that criminal statutes are deemed specific if legislators intend for them to be treated as specific provisions or if they will become specific

provisions in relation to the existing special laws. This principle is used when a criminal act can be charged with two or more special laws (lex specialis) as in the example case, namely the Customs Law and the Corruption Law. The crime of corruption at that time really became one of the important reform agendas. This spirit is understandable because since the early days of independence, the hope of a clean, effective and efficient government has not been fully realized.

An ideal government free from corruption may indeed forever not materialize in reality, because this argument does contain elements of utopia. Oversight from the people as holders of sovereignty which is expected to be able to produce an accountable system is hindered by various political and procedural hurdles. But apart from that, since 1998 the problem of corruption has been designated by the State as a common enemy and requires accelerated steps in the form of formulating legal politics to eradicate corruption.

This can be observed in the wording of preamble points (a) and (b) of Law no. 31 of 1999 regarding the elimination of corrupt practices, which indicate that: "Corrupt practices cause significant harm to the financial resources of the state and the overall economy of the country, impeding national progress. Therefore, it is crucial to eliminate these practices in order to establish a fair and prosperous society based on the principles of Pancasila and the 1945 Constitution." "As a consequence of the prevailing corrupt practices, they not only have adverse effects on the state's finances and the country's economy but also hinder the advancement and continuity of national development, necessitating a high level of efficiency."

The role of administrative law cannot be ignored in relation to criminal acts of corruption, both in terms of preventive (prevention) and repressive (enforcement) (Hadjon, 2015). Hadjon further said, the main legal instrument to realize a clean government is administrative law. Because in carrying out each of its activities, an official (amsdragers) or civil servant (ambtenaren) is subject to and regulated by administrative law norms. Besides that, corruption is also related to the use of authority. This is something that often escapes the attention of law enforcers, even though an understanding of administrative law is very important so that the application and enforcement of law in corruption cases does not only focus on criminal aspects, but must be more proportional, effective and on target .

One of Merkel's German legal experts said “der strafe komt eine subsidiare stellung zu” (that the place of criminal law is always subsidiary to other legal remedies). In line with that, according to Eddy OS Hiariej, criminal law is the last law to be used if other legal instruments cannot be used or cannot function as they should. The ultimum remidium doctrine does not only apply to general crimes, but also to special crimes,

including in the settlement of corruption cases.

The ultimum remidium doctrine turns out that in reality law enforcement on corruption crimes is not always followed. This can be seen from the considerations of the TIPIKOR Law mentioned above, stating that corruption is an extraordinary crime so that extraordinary efforts are needed to deal with it. This argument is interpreted that the Corruption Law adheres to the premise of premium remedium, which means that criminal law is the primary and only means of beating against corruption crimes. The premium remedium teaching contained in the Corruption Law has implications for the closing of other legal remedies outside the framework (frame of thinking) of criminal law. Such a perspective on eradicating corruption and supported by the "all-round" mindset of criminal law by law enforcement officials, both at the Police, the Attorney General's Office and the Corruption Eradication Committee, has resulted in cases where the substance violates administrative law or civil law norms but is then prosecuted under criminal norms.

While the use of the term "can" in Article 2 paragraph (1) and Article 3 of the Corruption Law renders the offenses described in these articles as formal offenses, the Constitutional Court states that it is often exploited in practice to encompass various actions suspected of causing financial losses to the state. These actions include discretionary policies, decisions, and implementation of the Ermessen freies principle, which are considered urgent and lack a legal basis. Consequently, criminalization frequently ensues with allegations of authority abuse. Similarly, policies related to business, which are perceived as detrimental to state finances, are often treated as acts of corruption due to the formal nature of these two articles. This situation instills fear in public officials, impeding their willingness to enact policies and causing concern that their decisions may lead to criminal charges of corruption. The implications include hindered state administration processes, low budget absorption, and hindered investment growth.

The criminalization of policies arises from discrepancies in interpreting the term "can" regarding the impact on the state's finances or economy in corruption cases handled by law enforcement agencies. This discrepancy frequently gives rise to problems, ranging from determining the actual amount of state losses to determining which agency is authorized to calculate such losses. Consequently, the inclusion of the term "can" in Article 2 paragraph (1) and Article 3 of the Corruption Law creates legal uncertainty and blatantly contradicts the guarantee of everyone's right to feel safe and protected from fear, as stated in Article 28G paragraph (1) of the 1945 Constitution. Furthermore, the use of "can" in these articles contradicts the principle of formulating criminal offenses, which necessitates adherence to the principles that the law must be written (lex scripta),

interpreted as read (lex stricta), and devoid of multiple interpretations (lex certa). Thus, it contravenes the principle of the rule of law, as stipulated in Article 1 paragraph (3) of the 1945 Constitution.

The elements required for an offense under Article 2, paragraph 1 of the Corruption Law are: (1) any individual; (2) engaging in unlawful activities; (3) involving the enrichment of oneself/others/corporations; (4) causing harm to the state's finances or economy. On the other hand, the elements of the offense under Article 3 are: (1) any individual; (2) with the intention of benefiting oneself/others/corporations; (3) abusing their authority, opportunities, or means due to their position; (4) causing harm to the state's finances or economy. The fundamental aspect of the offense in Article 2, paragraph 1 is the commission of an unlawful act, while the core of the offense in Article 3 is the abuse of authority. Therefore, when referring to Article 2, paragraph 1 and Article 3 of the TIPIKOR Law, the actions of government bodies/officials or civil servants can be considered acts of corruption if they involve unlawful conduct and/or abuse of authority, resulting in harm to the state's finances or the country's economy. Ridwan illustrates the two aforementioned articles in the following manner:

"The charges against corruption are generally formulated in a subsidiary way, namely: first, the primair violated Article 2 paragraph (1) jo. Article 18 Law no. 31 of 1999 as amended and supplemented by Law no. 20 of 2001 concerning changes to Law no. 31 of 1999 concerning the Eradication of Corruption jo. Article 55 paragraph (1) 1st Criminal Code; second, the subsidiary violated Article 3 jo. Article 18 Law no. 31 of 1999 as amended and supplemented by Law no. 20 of 2001 concerning changes to Law no. 31 of 1999 concerning the Eradication of Corruption jo. Article 55 paragraph (1) 1st of the Criminal Code. The core of the offense (bestandeel delict) in the primary charge is an unlawful act (wederrechtelijkheid) which is a genus of delict, while the core of the subsidiary offense is the abuse of authority (detournement de puvoir) which is a species delict.

According to Indriyanto Seno Adji, within the legal framework of state administration, the boundaries that restrict the unrestricted exercise of authority by the state apparatus are known as "discretionary power" abuse and arbitrary use of authority. Similarly, in the field of criminal law, there are also criteria that impose limitations on the authority of the state apparatus, such as the concept of 'wederrechtelijkheid' and abuse of authority. The challenge arises when the state apparatus engages in actions that are considered abuses of authority and violations of the law. This becomes a test to assess deviations from the established norms within the state apparatus, whether in the realm of state administrative law or criminal law, particularly in cases involving corruption. However, the understanding of jurisdiction in relation to this issue remains quite limited in judicial practice.

In that context, it is realized that the concepts of "unlawful acts" and "abuse of authority"

are in a gray area. In this regard, Ridwan answered Indriyanto's question above, that which law will be used as a test for every official's activity is none other than administrative law, which contains government law norms (bestuursnorm) and apparatus behavior norms (gedragsnorm) because remembering these officials in carrying out their activities they are subject to and regulated by administrative law norms. In general, an official always has two legal positions (rechtpositie), namely as a representative (vertegenwoordiger) position. Officials who take actions for and on behalf of their position (ambtshalve) apply government norms (bestuursnorm) and carry the consequences of position responsibilities. Besides that, an official also has a position as a human being (natuurlijke person) who is subject to the norms of official behavior (gedragsnorm) and has the potential to commit acts of maladministration which bring consequences of personal responsibility. Criminal sanctions in the form of imprisonment or fines are applied to officials personally (in person) who commit acts of maladministration.

To be able to resolve the dispute, in prosecuting officials who are suspected of committing corruption, they must first use the legal norms used by officials when carrying out their activities, namely administrative law. If officials find violations of administrative law norms in both the category of government norms (bestuursnorm) and apparatus behavior norms (gedragsnorm) and there is an element of maladministration and there are financial/economic losses to the state, then the official concerned is determined as the perpetrator of a criminal act of corruption.

The fundamental principle in administrative law for assessing the validity of government officials' actions is the principle of legality (legaliteitsbeginsel). This principle mandates that every action carried out by a government official must be founded upon lawful authority as prescribed by the law, since each action performed by a government official constitutes the exercise of their official position. This principle became known as the phrase "geen bevoegdheid zonder verantwoordelijkheid" (no authority without accountability or reversed "zonder bevoegdheid geen verantwoordelijkheid" (without authority, action has accountability). Based on this principle, every act of government must be based on (1) authority lawful, (2) proper procedure, and (3) proper substance.

Customs crimes cannot be interpreted as corrupt acts, because based on a doctrinal academic approach through the Lex Specialis Systematic or Systematic Specificity principle, violations of the precautionary principle are an area of customs crime, not corruption. The foundation of legality should encompass all of these elements in order to prevent infringements upon the Concursus principle. Any actions that contravene the regulations are considered illegal, although they may not always be classified as corrupt deeds. The principle of systematic specificity serves as a method to deter, restrict, and redirect the notions of "illegal acts" and "abuse of power" within acts of corruption, ensuring that they do not encompass all-encompassing and indiscriminate actions.

To prevent misunderstandings regarding the concept of Systematic Specificity as an academic principle that may not be widely grasped by the legal community, particularly in the

context of the relationship between Administrative Penal Law and Criminal Law (Corruption), legislators, with Muladi as the Minister of Justice of the Republic of Indonesia at the time, sought to clarify this by explicitly outlining its interpretation in Article 14 of Law no. 31 of 1999.

Considering that there is already a Systematische Specialiteit (Systematic Specificity) principle as an academic recognition, doctrinal opinions have been formulated through legislative norms to provide limitations through Article 14 of Law no. 31 of 1999 which reads: "Any person who violates the provisions of the law which expressly states that a violation of the provisions of the law is a criminal act of corruption applies the provisions stipulated in this law".

So the meaning contained in the substance of this provision is that the law on corruption applies if certain acts are declared as criminal acts of corruption which are clearly stated as such in the extra-law on corruption laws. Thus, in the event that certain laws do not state so, then what applies is not the Corruption Law. So, it is not only the Corruption Crime Law that can cover all legislative products as unlawful acts that give the impression of being a cobweb. It is unacceptable for someone who violates the Customs Law but besides being charged with violating the Customs Law, is also charged under the Corruption Crime Law.

Reformulation of the Principle of Systematic Specificity in Customs Crime Laws in Future Corruption Crime Cases

The legal ideals contained in the Preamble of the 1945 Constitution are to create a prosperous, just and prosperous Indonesian society. To realize these ideals, the Indonesian nation carries out development in all areas of national and state life. In order to achieve this goal, a social defense policy was developed using law as the vehicle, through the formation of various laws and regulations. The law is perceived as the most powerful tool for monitoring the actions of government entities, essentially giving legitimacy to policies. In simpler terms, recognizing the importance of utilizing law in the creation and execution of public policies necessitates understanding the circumstances in which the law can effectively operate. This is because the law serves as a guiding principle that directs individuals towards specific ideals and conditions, while acknowledging the practicalities of the real world. Consequently, the state creates laws with complete awareness, intending to accomplish specific objectives.

Indonesia, as a state governed by the rule of law, necessitates that every aspect of societal, national, and governmental life be grounded in the legal framework established by the national legal system. This system comprises the laws applicable in Indonesia, encompassing various interconnected elements, which work together to address and resolve challenges encountered within the realms of society, nation, and state. These laws are founded upon the principles of Pancasila and the 1945 Constitution of the Republic of Indonesia.

Legislation plays a crucial role in criminal law by embodying the principle of legality, a fundamental aspect in this field. Yet, when it comes to ensuring legal certainty, both formal and material requirements must be met in the development of criminal laws and regulations. Formal

requirements involve clear and internally consistent formulation, maintaining a systematic relationship between rules within the same laws, adhering to standard structure and language, and establishing harmonization between different laws and regulations. While the material (substantial) requirements must pay attention to the signs in carrying out criminalization, the use of criminal sanctions and procedures/mechanisms of the criminal justice system.

The development of the lex systematische specialiteit principle is lex consumen derogat legi consumpte, where if there are two or more special criminal laws that regulate the same thing and cannot be resolved or in other words cause problems in law enforcement, the principle of lex consumen derogate legi consumpte is born (Agustina, 2015). Means that one special criminal law absorbs another special criminal law. The basis for forming a lex consumer derogate legi consumte is based on the dominant facts in a case.

The principle of lex systematische specialiteit is also utilized in Indonesian law, specifically in relation to the criminal offense of smuggling as stated in Law Number 10 of 1995 regarding Customs. When individuals smuggle goods into Indonesia, they evade paying duties, which can be seen as a form of self-enrichment that detrimentally affects the country's financial well-being. Consequently, this act satisfies all the fundamental elements of the corruption offense outlined in Article 2 of Law no. 31 of 1999, as amended by Law no. 20 of 2001. However, in this particular case, the crime of smuggling defined in article 102 of Law no. 10 of 1995 is applied.

The implementation of the law that will be used will affect the enforcement of criminal law because the formal criminal law regulated by the three laws is different. If using the law on general provisions on taxation, the enforcement of the law is carried out by tax investigators. If using the customs law, the enforcement of the law is carried out by the customs investigator. Furthermore, if using the law on corruption, law enforcement is carried out by the Corruption Eradication Commission (KPK) and the Attorney General's Office.

Special criminal law, also known as Bijzonder strafrecht, refers to a branch of criminal law that differs from the standard regulations in terms of both content and procedure. This means that these regulations deviate from the general provisions outlined in the Criminal Code, as well as the provisions found outside the Criminal Procedure Code (KUHAP). In Indonesia, numerous laws have been enacted subsequently, which not only include substantive criminal law provisions that deviate from the Criminal Code but also encompass procedural provisions that deviate from the Criminal Procedure Code. According to the authors, many of these laws are bijzonder delic or special criminal offenses which, if imposed together with provisions in the Criminal Code, then it is the provisions for specific crimes that must be used based on the postulate lex specialis derogat legi generali.

With Thus the lex specialis requirement as a special criminal law, namely: a) Stand-alone law and its material provisions deviate from the Criminal Code. b) Stand-alone laws and formal provisions diverge of the Criminal Procedure Code. c) Laws that stand alone but material provisions and form that deviates from the Criminal Code and the Criminal Procedure Code.

This means that in this interpretation there is a grammatical interpretation based on grammatical law, authentic (interpretation given by the law itself), systematic (interpretation that connects part of a law with other parts of the law). also), legal history such as legal provisions that have been enacted, extensive in the form of providing interpretation by extending the meaning of the actual term, analogous to terms based on provisions that have not been regulated by law, but have the same principle as something that has been regulated in law -law), and theologically based on the purpose of the law. To be able to say that a criminal provision is actually a special criminal provision.

In all countries, the presence of specific criminal laws separate from the general criminal legislation is observed. In the case of Indonesia, this is made possible through Article 103 of the Criminal Code. According to this article, the regulations outlined in Chapters I to VIII of Book 1 of the Criminal Code are applicable to criminal offenses mentioned in other laws and regulations, unless otherwise specified by the law. Therefore, the provisions stated within these eight chapters of Book 1 of the Criminal Code also extend to offenses outside the scope of the Criminal Code, unless otherwise specified by the law. In essence, the respective law establishes special regulations that deviate from the general rules.

To illustrate the concept of "systematic specificity," AZ Abidin and Andi Hamzah provide an instance of a smuggling crime case outlined in Law Number 10 of 1995 pertaining to Customs regulations. If an individual unlawfully imports goods into Indonesia, it implies their evasion of duties, constituting a form of self-enrichment that unequivocally jeopardizes the state's financial interests. Consequently, according to AZ Abidin and Andi Hamzah, this action encompasses all essential elements of the corruption offense delineated in Article 2 of Law Number 31 of 1999, as amended by Law Number 20 of 2001. However, the application of the corruption law might be limited since it possesses a general scope, while the criminal act of smuggling, as described in Article 102 of Law Number 10 of 1995, bears a distinct and specific nature.

The conception of the Logische Specialiteit principle or logical specificity and the systematische specialiteit principle or systematic specificity can be explained as follows:

1. The principle of logical specificity is applied to determine the enforced provisions in a special law. This principle states that criminal provisions are considered special if they contain all the elements of the general criminal provisions, in addition to other elements. For instance, in cases of murder committed by a mother against her child, Article 341 of the Criminal Code should be applied instead of Article 338. Similarly, in cases pertaining to Law No. 31 of 1999 as amended by Law No. 20 of 2001, Article 12B should be applied instead of Article 5 paragraph 1 letter a.
2. The principle of systematic specificity is used to determine the enforcement of a specific Special Law. This principle suggests that criminal provisions are deemed special if the legislator explicitly intends to enforce them as such, or if they possess inherent characteristics of specialty. Factors such as the personal subject, violated object, obtained evidence,

environment, and area of delict, particularly in the context of banking, determine the application of the Banking Law. Although other special laws (like the Corruption Law) may have overlapping elements, they are considered acceptable but not prioritized.

Using penal measures at customs has become necessary due to the fact that not all customs issues solely fall under administrative law, but also intersect with criminal law as stipulated in the Indonesian Constitution. This includes provisions outlined in the Criminal Code (KUHP) as well as those specified in the forestry law. Applying criminal law in the customs sector is challenging as it heavily relies on the administrative procedure itself for substantial evidence.

Considering the prevailing uncertainty and inconsistent interpretations of customs administration between the central and regional governments, utilizing the Corruption Crime Law or the Customs Law for customs violators proves beneficial. By engaging in discussions about employing criminal law in customs management, the aim is to prevent the unjust criminalization of innocent individuals resulting from legal confusion.

In addition to the Criminal Code, which governs general criminal law provisions and deviates from the Criminal Procedure Code, there are separate laws for specific criminal acts such as customs crimes and corruption crimes. While customs crimes possess their own legal domain, corruption crimes have a distinct legal framework. This distinction is essential for determining which acts qualify as criminal acts in the customs sector and which fall under the category of corruption crimes.

Indonesia recognizes two forms of criminal law. First is the Criminal Code (KUHP), which consolidates criminal law provisions into a single codification book, known as general criminal law or commune strafrecht. The second form involves criminal law dispersed across various specific laws, often concluding with penalties for violating specific articles within those laws. This second type is referred to as special criminal law and includes uncodified laws such as the Corruption Crime Eradication Law and the Money Laundering Law, as well as administrative law regulations containing criminal sanctions like the Customs Law. Additionally, it encompasses laws that address special offenses committed by specific groups or actions, such as the Wetboek van Militair Strafrecht Voor Indonesia, which was later amended and supplemented by Law No. 39 of 1947.

Comparison of Legal Systems for Customs Crimes and Corruption Crimes with Other Countries

Seeing the wide range of acts that are criminalized, the Corruption Law does not provide a general definition of corruption. The Corruption Law describes corruption through thirty types of actions regulated in 13 articles. In general, the thirty forms of corruption are grouped as follows:

1. State financial losses: Articles 2 and 3.
2. Bribery: Articles 5, 6, 13, 11, 12 (a, b, c, d).
3. Embezzlement in office: Articles 8, 9, 10 (a, b, c).

4. Blackmail: Article 12 (e, g, f)
5. Fraud: Article 7 Paragraph 1 (a, b, c,d), Article 7 paragraph 2, Article 12 (h).
6. Conflict of interest in procurement: Article 12 (i), and
7. Gratification: Article 12B in conjunction with Article 12C.

Besides that, the Corruption Law also criminalizes other acts related to corruption, namely:

1. Obstructing the process of examining corruption cases: Article 21,
2. Not giving information or giving incorrect information: Article 22 in conjunction with Article 28,
3. Banks that do not provide suspect account information: Article 22 in conjunction with Article 29,
4. Witnesses or experts who do not provide information or give false statements: Article 22 in conjunction with Article 35,
5. People who hold office secrets do not provide information or provide false information: Article 22 in conjunction with Article 35,
6. Witness who reveals the identity of the complainant: Article 24 in conjunction with Article 31.

From a comparative legal perspective, if you look at the regulations on corruption in the Netherlands, as the origin of our criminal law system, the provisions for corruption are still contained in the WvS and revolve around the crime of bribery which is divided as follows:

1. Active bribery involving public officials: Articles 177 WvS – 178 WvS
2. Passive bribery involving public officials: Article 363 WvS – 364 WvS
3. Active and passive bribery in the private sector: Article 328ter WvS. In England, the concept of corruption is also close to bribery, this is reflected in the 2010 Bribery Act which regulates 4 main crimes, namely: Two acts of bribery, both active and passive "the offering promising or giving of an advantage, and requesting, agreeing to receive or accept of an advantage; Bribery of foreign public officials; and the corporation's failure to prevent bribery from occurring to obtain or retain profits for the corporation.

When compared to the two countries mentioned above, which make bribery the core of criminal acts of corruption, the existence of Articles 2 and 3 of the Corruption Law on corruption and loss of state finances is a distinctive feature of the corruption eradication regime in Indonesia. This is reflected in the elements forming the article which in general can be categorized into three groups, namely: prohibited acts, the means used and the resulting consequences.

In Singapore, there are two regulations governing criminal acts associated with corruption. The first is the Prevention of Corruption Act, which addresses bribery between private entities and civil servants. The second is the Singapore Criminal Code, which handles bribery offenses involving civil servants. These regulations reflect Singapore's status as a business-oriented country. The Prevention of Corruption Act consists of two articles, Article 5 and Article 6, with a

maximum penalty of five years, extendable to seven years under certain circumstances. If corruption or bribery involves contracts between private parties and the government or public institutions, the penalty can increase to a fine of $100,000 or imprisonment for up to seven years, with cumulative effects. Articles 10 to 12 of the Prevention of Corruption Act specifically govern bribery in the context of government contracts, resulting in heightened criminal sanctions. Therefore, offenses related to the government carry additional elements. However, the criminal sanctions in the Prevention of Corruption Act remain comparatively lower than those stipulated in the Republic of Indonesia Law Number 20 of 2001, which amends the Corruption Crimes Law Number 31 of 1999.

Furthermore, Article 32, paragraph (2) of the Prevention of Corruption Act regulates gratuities. If a public official accepts gratuities without arresting the giver and taking them to the nearest police station without reasonable grounds, they may face a maximum fine of $5,000 or imprisonment for up to six months, or both. The public prosecutor holds the authority to grant permission to the director of CPIB Singapore or a special investigator at CPIB Singapore to conduct investigations based on written law. This authority includes all aspects related to police investigations as outlined in the Criminal Procedure Code. Such wide-ranging investigative power is not typically possessed by anti-corruption agencies in other countries. Thus, Singapore's CPIB can investigate various offenses, even those that do not strictly fall under the category of corruption offenses, as long as they receive an order from the Public Prosecutor (Article 19 of the Prevention of Corruption Act).

Under Article 20 of the Prevention of Corruption Act, the public prosecutor can also authorize the examination of bank records. This examination pertains to evidence of offenses listed in Articles 161 to 165 or Articles 213 to 215 of the Singapore Criminal Code. It includes individuals associated with the offender who provide assistance based on their government position or any department or public agency. The Singapore CPIB special investigator is empowered to enter the designated bank at any time and scrutinize various records, such as bank accounts, stock accounts, purchase accounts, expense accounts, and safe deposit boxes. They are authorized to disclose or submit all relevant information, including accounts, documents, or objects that are strongly suspected to be connected to the offense.

4. Conclusion

The principle of systematic specificity is not applied in a limited and consistent manner in customs crimes. This aspect is because, on the one hand, there is neglect of the provisions of the norms of Article 14 of the Corruption Crime Law and the unclear position, parameters and concept of the principle of systematic specificity. On the other hand, there is no common attitude, synergy and polarization of thinking in handling corruption cases.

The reformulation of the principle of systematic specificity in customs crimes is a derivative of the principle of lex specialis derogate legi generali. Therefore, so that the principle of

systematic specificity does not lead to multiple interpretations and becomes clear about its position, parameters and concept, it is necessary to reformulate the addition of paragraph 3 to the provisions of Article 63 of the Criminal Code with an editorial which states, "if two acts are included in a specific criminal rule, then the a special penal rule accompanied by systematic specific requirements as a parameter of implementation". The principle of conditional systematic specificity needs to be examined by personal subjects, the object of the alleged act that was violated, the evidence obtained, as well as the environment and the area of delict in the presence of law enforcers.

Suggestion

For further research, in order to achieve the goal of law that is just, beneficial and full of certainty, it can focus on researching in certain areas related to law enforcement on corruption so that it can be seen that the suitability of the principle of systematic specificity in customs crimes is consistent and maximal. And then it is hoped that more equitable reforms regarding law enforcement in Indonesia will be formed.

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