

The Doctrine of *Juridische/Systematische Specialiteit* in the Criminal Act of Misuse of Campaign Contribution Funds and Money Laundering

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Abstract

The principle of *lex specialis derogat legi generali* frequently proves inadequate in resolving normative conflicts, particularly between Article 339(1)(c) of the General Election Law and provisions in the Money Laundering Law (UU TPPU). The present article examines the use of the doctrine of *juridische/systematische specialiteit* as a more effective approach to addressing such legal overlaps. The objective of this study is to ascertain which legal norms apply in instances where the acceptance of campaign contributions intersects with money laundering offences. Utilising normative legal research methodologies, bolstered by conceptual and juridical analysis, this study ascertains that the doctrine of *juridische/systematische specialiteit* confers enhanced legal certainty in resolving conflicts between overlapping criminal provisions. This doctrine is consistent with the principles that guide the interpretation of criminal norms and ensures a more precise application of the law. The article concludes that, in cases involving the proceeds of suspected money laundering from election campaign contributions, the provisions of the Money Laundering Act should take precedence over those in the Election Act. This approach not only supports systematic legal interpretation but also strengthens the legal framework in combating financial crimes involving political funding.

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Introduction

Legal principles are essential instruments for analyzing both the substance and structure of law. This is as explained by Arief Sidharta, who stated that the existence of legal principles is necessary as a foundation for illustrating the interrelationship between legal substance and structure.¹

In the early development of legal science, one of the fundamental principles introduced was the principle of preference. The principle of preference itself is defined as a legal principle

¹ B. Arief Sidharta, *Meuwissen Tentang Pengembangan Hukum, Ilmu Hukum, Teori Hukum, dan Filsafat Hukum* (Bandung: PT Refika Aditama, 2013), 55.

used to determine which legal provision should be chosen to apply when, in a specific legal case, multiple applicable regulations exist.² In addition, the principle of preference is also understood as a legal principle aimed at resolving conflicts between positive legal norms to create harmonious, aligned, and consistent legal norms, thereby ensuring legal certainty in society.³ Based on these explanations, it can be understood that, in essence, the principle of preference should be the relevant principle to apply in the context where there is an overlap between one legal norm and another in a specific legal event. This includes determining which legal norm should be enforced when there is ambiguity regarding which norm applies in that specific case.⁴

The principle of preference itself consists of three (3) basic forms, namely: *lex superior derogat legi inferiori* (a higher-ranking provision overrides a lower-ranking provision), *lex posterior derogat legi priori* (a newer provision overrides an older provision), and *lex specialis derogat legi generali* (a specific provision overrides a general provision).⁵ Among these forms, one of the most frequently invoked in the analysis of a concrete legal case is *lex specialis derogat lege generali* (a specific provision overrides a general one). Unfortunately, in practice, this principle sometimes fails to resolve legal problems when the conflicting norms are no longer between a general norm and a specific norm, but rather between one special legal norm and another special legal norm.⁶

In the development of legislation in Indonesia, the increasing number of laws being enacted—many of which also contain special criminal provisions—has ultimately led to a significant number of criminal offenses being regulated under special laws.⁷ This has ultimately led to over-regulation. According to George Shultz, over-regulation occurs due to the belief among regulators that everything must either be mandated or prohibited.⁸ Additionally, over-regulation can also result from the existence of numerous legal norms across various laws and regulations that are drafted solely based on the scope of authority of each respective ministry. This issue is further compounded by the lack of a standardized understanding among lawmakers that the creation of a legal norm within legislation is, in essence, a process of harmonizing various interests.⁹ As a result, with the increasing number of criminal offenses regulated outside the Indonesian Penal Code (KUHP), multiple criminal legal norms are now found across different laws—*inter alia*, concerning the criminalization of acts involving the “*laundering (concealing/disguising) of the proceeds of crime.*” In relation to the criminalization of such acts, under the provision on campaign donation offenses regulated in the Election Law (UU Pemilu), such conduct constitutes one of the elements of the offense. However, a norm addressing the

² Shinta Agustina, “Implementasi Asas Lex Specialis Derogat Legi Generali dalam Sistem Peradilan Pidana,” *Masalah-Masalah Hukum* 44, no. 4 (2015): 504, <https://doi.org/10.14710/mmh.44.4.2015.503-510>.

³ I. Gede Agus Kurniawan, Putu Aras Samsithawrati, and Lourenco de Deus Mau Lulo, “Eksistensi Sanksi Administratif Bisnis Digital dalam Perspektif Economic Analysis of Law,” *Jurnal Ius Constituendum* 8, no. 1 (2023): 124.

⁴ Muh Afdal Yanuar, “Laundering of Proceeds Forest Destruction and Narcotics Crimes: A Resolution of the Conflict Norms,” *Mulawarman Law Review* 8, no. 1 (2023): 1–2, <https://doi.org/10.30872/mulrev.v8i1.1044>.

⁵ Nurfaqih Irfani, “Asas Lex Superior, Lex Specialis, dan Lex Posterior: Pemaknaan, Problematika, dan Penggunaannya dalam Penalaran dan Argumentasi Hukum,” *Jurnal Legislasi Indonesia* 16, no. 3 (2020): 319.

⁶ Irfani, “Asas Lex Superior, Lex Specialis, dan Lex Posterior.”

⁷ B. R. Hidayat, Ufran Ufran, and Rodliyah Rodliyah, “Kebijakan Legislasi ‘Cyber Sex’ pada Forum Anonymous Chatbot Telegram Menurut Undang-Undang ITE,” *Indonesia Berdaya* 4, no. 2 (2023): 486, <https://doi.org/10.47679/ib.2023431>.

⁸ Clifford M. Hardin, “The Effects of Over-Regulation,” *Food, Drug, Cosmetic Law Journal* 34, no. 1 (1979): 51.

⁹ Nelci Priskila Kulle, “Simplifikasi Regulasi Sebagai Bentuk Penyelesaian Over Regulation dalam Sistem Peraturan Perundang-Undangan Di Indonesia,” *Jurnal Studia Legalia: Jurnal Ilmu Hukum* 4, no. 2 (2023): 184.

same conduct has also been regulated under the criminal provisions of the Anti-Money Laundering Law (TPPU Law).

It is widely understood that Law Number 8 of 2010¹⁰ concerning the Prevention and Eradication of Money Laundering (hereinafter referred to as the TPPU Law) regulates, among other things, the offense of passive money laundering, as outlined in Article 5 paragraph (1) of the TPPU Law.¹¹ This provision prohibits and criminalizes any person who receives or controls the placement, transfer, payment, grant, donation, deposit, exchange, or use of assets which they know or reasonably should suspect to be the proceeds of crime. Furthermore, Law Number 7 of 2017¹² concerning General Elections (hereinafter referred to as the *Election Law*) contains a provision that specifically regulates a matter similar or identical to that of Article 5 paragraph (1) of the TPPU Law—namely, Article 339 paragraph (1)(c) in conjunction with Article 527 of the Election Law. This provision prohibits election participants, campaign implementers, and campaign teams from receiving campaign donations that originate from the proceeds of crime proven by a court decision with permanent legal force (*in kracht van gewijsde*) and/or are intended to conceal or disguise the proceeds of crime. These two provisions overlap and are both still in effect. In relation to this legal issue, clarity is needed in concrete legal cases as to which norm should be applied. Unfortunately, this legal problem cannot be resolved if the analytical tool used is the principle of *lex specialis derogat legi generali* (a component of the principle of preference), because both applicable legal norms (*in casu*, Article 5 paragraph (1) of the TPPU Law and Article 339 paragraph (1)(c) jo. Article 527 of the Election Law) are special norms (*lex specialis*).

The next question that arises is: what instrument or principle should be used to resolve this legal issue when the principle of preference fails to do so? The relevance of applying the principle of preference lies in its function of identifying which provision should be applied when, in a concrete legal case, multiple regulations or provisions are applicable.¹³ In relation to this legal issue, even though the principle of *lex specialis derogat lege generali* cannot be applied, there still exists another concept that can be operated in this context—namely, the doctrine of *juridische/systematische specialiteit*, which was first introduced by Ch. J. Enschede. The scope of this doctrine applies when one special legal norm (*lex specialis*) conflicts with another special legal norm (*lex specialis*). In such a case, what must be examined is the intent of the legislator behind the creation of each respective special law.¹⁴ The contextualization of this doctrine in the present paper will be elaborated further in the discussion section.

This article is written to critique the misconceptions and misunderstandings in contextualizing the *juridische/systematische specialiteit* doctrine correctly, particularly in the relationship between the Anti-Money Laundering Law (TPPU Law) and the Election Law in the regulation of criminal offenses related to election campaign donations. Specifically, it addresses the article titled “*The Intersection Between the Crime of Money Laundering and Election Offenses in the Context of Election Campaign Funding*” authored by Aditya Wiguna

¹⁰ *Undang-Undang Republik Indonesia Nomor 8 Tahun 2010 Tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang* (Jakarta: Lembaran Negara Republik Indonesia Tahun 2010 Nomor 122, 2010).

¹¹ Muh Afdal Yanuar, “Risiko dan Possibilitas Penyalahgunaan Asetripto dalam Kejahatan Pencucian Uang,” *Majalah Hukum Nasional* 52, no. 2 (2022): 182, <https://doi.org/10.33331/mhn.v52i2.170>.

¹² *Undang-Undang Republik Indonesia Nomor 7 Tahun 2017 Tentang Pemilihan Umum* (Jakarta: Lembaran Negara Republik Indonesia Tahun 2017 Nomor 182, 2017).

¹³ Agustina, “Implementasi Asas Lex Specialis Derogat Legi Generali dalam Sistem Peradilan Pidana,” 504, as cited in Muh Afdal Yanuar, “Rasionalitas dan Konsekuensi Pengaturan Tindak Pidana Pencucian Uang ke dalam Kitab Undang-Undang Hukum Pidana Baru,” *Negara Hukum: Membangun Hukum untuk Keadilan dan Kesejahteraan* 14, no. 1 (2023): 56, <https://doi.org/10.22212/jnh.v14i1.3812>.

¹⁴ P. A. F. Lamintang, *Dasar-Dasar Hukum Pidana Indonesia* (Bandung: PT Citra Aditya Bakti, 2011), 713–14.

Sanjaya.¹⁵ Sanjaya¹⁶ uses the *juridische/systematische specialiteit* doctrine as a conceptual foundation, but fails to analyze the legislative intent (*bedoeling des wetgever*) behind either the Election Law or the TPPU Law. In fact, according to the perspective of Ch. J. Enschede, a fundamental requirement in applying this doctrine is to examine the intent of the legislator. These errors and misinterpretations form the distinctive elements of this article, which will be further explored in the analysis.

This article aims to examine the rationale for adopting the *juridische/systematische specialiteit* doctrine as the appropriate concept for analyzing conflicts between one special norm and another, and to determine which legal provision should apply in the overlap between the criminal act of receiving election campaign donations and the crime of money laundering, based on the *juridische/systematische specialiteit* doctrine, particularly in cases involving money laundering through campaign donations. This article employs normative legal research, using both a conceptual approach and a statutory approach.¹⁷ The conceptual approach applies the principle of preference and the theory/doctrine of *juridische/systematische specialiteit* as the primary analytical tools. The statutory approach is manifested through the use of the TPPU Law and the Election Law in analyzing the legal issues discussed in this paper.

Discussion

The Rationality of Applying the *Juridische/Systematische Specialiteit* Doctrine in Conflicts Between *Lex Specialis* Provisions

Legal issues have become an inevitability, as there is almost no legal reality that is free from legal problems. Legal issues may arise due to the gap between *ius constituendum* (law in idea) and *ius constitutum* (law in books), between *ius constitutum* (law in books) and *ius operatum* (law in reality), or due to the emergence of *vage normen* (normative ambiguity), overlapping norms (*juridische antinomie*), or legal vacuums.¹⁸ Therefore, an instrument is needed to resolve such legal problems. The appropriate instrument to address these issues is the legal principle. Why? This question can be answered through at least two perspectives from legal scholars. First, *Kraan*, who states that legal principles serve as 'sweeping statements' or solutions formulated in absolute terms to resolve various types of legal problems.¹⁹ Second, *Van der Velden*, who states that legal principles serve as a foundational benchmark to be used as a guideline or standard for behavior.²⁰

The legal principle commonly used to resolve conflicts between legal norms is the principle of preference, which *inter alia* includes *lex specialis derogat lege generali* (a specific provision overrides a general one). Unfortunately, this principle, in the context of a conflict between one special norm and another special norm, cannot be applied and instead allows the legal problem (conflict between special norms) to persist.²¹

In the development of criminal law, regarding the occurrence of conflicts between special norms, there are at least two principles that are commonly introduced and used to analyze and determine which norm should be applied, namely:

¹⁵ Aditya Wiguna Sanjaya, "The Intersect of Money Laundering and Electoral Crimes in the Context of Election Campaign Finance," *AML/CFT Journal: The Journal of Anti Money Laundering and Countering the Financing of Terrorism* 2, no. 1 (2023): 35–44, <https://doi.org/10.59593/amlcft.2023.v2i1.70>.

¹⁶ Ibid.

¹⁷ Peter Mahmud Marzuki, *Penelitian Hukum (Edisi Revisi)*, 9th ed. (Jakarta: Kencana, 2014), 133–35.

¹⁸ I. C. Van der Vlies, *Handboek Wetgeving*, trans. Linus Doludjawa (Jakarta: Direktorat Jenderal Peraturan Perundang-undangan Departemen Hukum dan Hak Asasi Manusia RI, 2005), 225; Muh Afdal Yanuar, *Kerahasiaan Bank dan Anti-Tipping Off Di Sektor Perbankan* (Jakarta: Kencana, 2023), 141.

¹⁹ Sudikno Mertokusumo, *Teori Hukum (Edisi Revisi)* (Yogyakarta: Cahaya Atma Pustaka, 2014), 46.

²⁰ Mertokusumo, *Teori Hukum (Edisi Revisi)*.

²¹ Yanuar, "Laundering of Proceeds Forest Destruction and Narcotics Crimes," 3.

- a. *Juridische/systematische specialiteit*. This doctrine was first introduced by Ch. J. Enschede in his article titled “*Lex Specialis Derogate Lege Generali*” published in *Tijdschrift van het Strafrecht*.²² In this concept, it is explained that even if a criminal norm does not contain all the elements of its *lex generalis*, it can still be regarded as a specific criminal provision if the legislator indeed intended for that provision to serve as a special criminal norm.²³ Furthermore, the existence of the *juridische/systematische specialiteit* doctrine can be positioned as an important effort in the harmonization and synchronization of (special) laws that contain criminal sanctions.²⁴
- b. *Lex consumens derogat legi consumptae (The Principle of Absorption)*. Through this principle, when there is more than one norm regulating a particular legal relationship, only the norm that comprehensively and thoroughly encompasses the validity of the violation should be applied, prevailing over the other legal norms.²⁵ In other words, this principle is understood to mean that the basis for determining which special criminal provision overrides another is by identifying which norm has the most dominant legal facts in a given criminal case.²⁶

Based on that two concepts above can be understood as follows: the *juridische/systematische specialiteit* doctrine heavily relies on the intent of the legislator (*bedoeling des wetgever*), whereas *lex consumens derogat legi consumptae* depends greatly on which legal facts are most dominant in a given criminal case. Since the legislative intent is something fixed and certain once a law is enacted, while the dominant legal facts can only be determined in practice (depending on the factual circumstances in the field), it can be concluded that the *juridische/systematische specialiteit* doctrine better reflects legal certainty than the *lex consumens derogat legi consumptae doctrine*.

In the interpretation of a legal norm, there is a legal principle known by the term *das fundamentalnormen des rechtstaat*. Within this principle, there are derivative principles referred to as the 'principle of proportionality' and the 'principle of subsidiarity.' 'Proportionality' means a balance between the means and the ends. Meanwhile, 'subsidiarity' means that in cases where it is difficult to propose multiple alternative legal solutions, the legal option that should be chosen is the one that causes the least harm.²⁷ It can be stated through the interpretive instrument that, since one of the fundamental purposes of law is to achieve legal certainty (*rechtzekerheid*),²⁸ then the *prima facie* consideration in determining which principle or legal

²² Lamintang, *Dasar-Dasar Hukum Pidana Indonesia*, 714.

²³ J. M. Van Bemmelen, *Ons Strafrecht I: Algemeen Deel Het Materiele Strafrecht* (Groningen: H. D. Tjeenk Willink, 1971), 340; Yanuar, “Laundering of Proceeds Forest Destruction and Narcotics Crimes,” 3–4; Yonathan Aryadi Wicaksana, “Dualisme Pemaknaan Asas Lex Specialis Derogat Legi Generali,” *Jurnal Verstek* 9, no. 3 (2021): 684.

²⁴ Marchellino Christian Nathaniel Mewengkang, “Penerapan Asas Kekhususan Sistematis sebagai Limitasi Antara Hukum Pidana dan Hukum Pidana Administrasi,” *Lex Crimen* 7, no. 8 (2018): 157–64.

²⁵ Mirgen Preņçe, “Difference between the Offense of Abuse of Duty and Violation of Rules at Work,” *EIRP Proceedings* 17, no. 1 (2022): 62; Sławomir Joachimiak, “Glosa Do Wyroku SN z Dnia 16 Stycznia 2014 r., V KK 21313 (Dotycząca Kwalifikacji Prawnej Przestępstwa z Art. 244 k.k. Oraz Przestępstwa 178 § 1 i 4 k.k.),” *Ius Novum* 10, no. 4 (2016): 391; Dariusz Pożaroszczyk, “Kwalifikacja Prawna Propagowania Idei Zbrojnego Dżihadu Oraz Rozpowszechniania Innych Materiałów Ułatwiających Działalność Terrorystyczną,” *Przegląd Bezpieczeństwa Wewnętrzznego* 11, no. 20 (2019): 161.

²⁶ Edward Omar Sharif Hiariej, “Asas Lex Specialis Systematis dan Hukum Pidana Pajak,” *Jurnal Penelitian Hukum De Jure* 21, no. 1 (2021): 5.

²⁷ Jan Remmelink, *Hukum Pidana: Komentar atas Pasal-Pasal Terpenting dari Kitab Undang-Undang Hukum Pidana Belanda dan Padanannya dalam Kitab Undang-Undang Hukum Pidana Indonesia*, trans. Tristam Pascal Moeliono (Jakarta: PT Gramedia Pustaka Utama, 2003), 46.

²⁸ Elyana Novira, Prima Resi Putri, and Zarfinal, “The Right of Ownership by The State in the Acceleration of Public Infrastructure Development (A Philosophical Study of Land Ownership Rights by the State in the Convergence of Justice and Legal Certainty),” *Baltic Journal of Law & Politics* 16, no. 3 (2023): 746.

norm should be applied in a concrete legal case must be the provision that offers greater legal certainty. Moreover, by achieving legal certainty through the interpretation of law, the resulting harm can be minimized. This aligns with the two derivative principles of *das fundamentalnormen des rechtstaat*.

The most fundamental basis for interpreting a criminal offense (delict) is the intent of the legislator (*bedoeling des wetgever*). This can be referred to through the views of two prominent scholars in criminal law, namely:

- a. Vos. He stated that a delict is *wesenschau* in nature, meaning that an act is considered the embodiment of a criminal offense not solely based on the conformity of the act to the legal elements of the offense. Rather, it must also be examined whether the act truly reflects the intent of the legislator.²⁹
- b. Pompe. He stated: '*voor de strafwet, indien de tekst voor onderscheidene uitlegging vatbaar is, men veeleer moet nagaan welke de bedoeling des wetgevers geweest is, den zich aan de letterlijke zijn van de tekst te binden,*' which means: 'For criminal law, if the text is open to multiple interpretations, it is better to examine what the legislator actually intended (*bedoeling des wetgever*) in formulating the provision, rather than merely interpreting the criminal offense based on the literal wording of the statute.'³⁰

From the views of the two legal thinkers above, it can be understood that, essentially, the interpretation of criminal norms (*delicts*) must be based on the intent of the legislator (*ratio legis* of criminal legislation).³¹ These essential thoughts regarding the interpretation of *delicts* are, in fact, consistent with the *juridische/systematische specialiteit* doctrine. Thus, the application of this doctrine in interpreting a criminal legal norm aligns with the fundamental principles of criminal norm interpretation.

Although the author agrees with the existence of the *juridische/systematische specialiteit* doctrine as a foundational basis for interpreting criminal law, the author believes that due to the development of law, the considerations regarding the existence of a legal norm are not only found in the *ratio legis* of a statute, but may also include legal considerations of a norm's constitutionality. If the norm has been subject to constitutional review, then in interpreting that norm, it is also necessary to take into account the *ratio decidendi* (judicial reasoning) of the Constitutional Court's decision concerning the constitutionality of the provision.³²

Based on the above explanation, it can be stated that the rationale for using the *juridische/systematische specialiteit* doctrine as the basis for analyzing and determining which norm should be applied when there are two or more legal norms each governed under a special statute is as follows:

- a. The *juridische/systematische specialiteit* doctrine provides a greater sense of legal certainty compared to *lex consumens derogat legi consumptae* in determining which specific norm should be applied, which aligns with the principle of *das fundamentalnormen des rechtstaat*; and
- b. In interpreting a criminal legal norm, the *juridische/systematische specialiteit* doctrine is consistent with the fundamental basis of criminal norm interpretation, which must be grounded in the *bedoeling des wetgever* (intent of the legislator).

²⁹ H. B. Vos, *Leerboek van Nederlands Strafrecht: Derde Herziene III* (Harlem: H.D. Tjeenk Willink & Zoon N.V., 1950), 35.

³⁰ W. P. J. Pompe, *Handboek van Het Nederlandse Strafrecht* (Zwolle: N.V. Uitgeversmaatschappij W.E.J. Tjeenk Willink, 1959), 54–55.

³¹ Yanuar, "Laundering of Proceeds Forest Destruction and Narcotics Crimes," 7.

³² Yanuar, 8.

Provisions That Should Apply in the Overlap Between the Criminal Act of Receiving Election Campaign Donations and the Crime of Money Laundering Based on the *Juridische/Systematische Specialiteit* Doctrine

Regulation of election campaign donations, there is one provision that regulates an act overlapping with, *inter alia*, the crime of money laundering, namely Article 339 paragraph (1) (c) in conjunction with Article 527 of the Election Law (UU Pemilu). One of the prohibited sources of campaign donations is that which originates from the proceeds of a criminal act—either because it has been proven by a court ruling that has obtained in *kracht van gewijsde* (permanent legal force), or because it is intended to conceal or disguise the proceeds of crime. The following is an analysis based on each element contained in Article 339 paragraph (1)(c) of the Election Law.

a. *First*, regarding the element of "campaign donations sourced from the proceeds of a criminal act based on a court decision with *in kracht van gewijsde*." The first point to understand about this offense element is that the object prohibited as a source of campaign funds under this provision is wealth or property that has been determined by a court ruling—having obtained permanent legal force (*in kracht van gewijsde*)—to be the result of a criminal act. *Second*, not all proceeds of a criminal act necessarily involve money laundering. Only those proceeds that are in a concealed or disguised condition are considered as involving money laundering. This needs to be clarified in light of the interpretive paradigm put forward by Sanjaya, who stated:³³

“Although the diction used in formulating each of the two provisions differs, they share the same core idea—namely, the prohibition against receiving money or assets derived from criminal acts, especially when considering the explanation of Article 339 paragraph (1)(c) of the Election Law, **which explicitly links this provision to the Anti-Money Laundering Law (TPPU Law)**. This provision is, in fact, relevant to the definition of money laundering, which is a process undertaken to transform the proceeds of crime so that they appear to be the result of legitimate activities, as their origin has been disguised or concealed.”

In response to Sanjaya’s view, the following points need to be conveyed:

1) In the elucidation of Article 339 paragraph (1)(c) of the Election Law, it is stated that: *"The criminal act referred to in this provision is in accordance with the provisions of the law governing the prevention and eradication of money laundering, as well as other crimes such as gambling and drug trafficking."* This means that the interpretation which views Article 339 paragraph (1)(c) of the Election Law as overlapping solely with the crime of money laundering is incorrect. This is because the element of "proceeds of crime" in the provision is not exclusive to money laundering. Money laundering can only be said to occur when the origin of the criminal proceeds is hidden or disguised.³⁴ Furthermore, the explanation of Article 339 paragraph (1)(c) of the Election Law does not refer exclusively to the Anti-Money Laundering Law (TPPU Law), but also includes other criminal offenses such as gambling, drug trafficking, and others regulated under different laws.

In the context of the money laundering based on the TPPU Law, in addition to the element of "proceeds of crime," there is another inseparable element—namely, the element of "with the intent to conceal or disguise the origin of the proceeds of crime."

³³ Sanjaya, “The Intersect of Money Laundering and Electoral Crimes in the Context of Election Campaign Finance,” 38–39.

³⁴ Money laundering is a series of acts (*actus reus*) carried out upon the proceeds of crime with the intent to conceal or disguise those proceeds.

Mahkamah Agung RI, *Naskah Akademis: Money Laundering* (Jakarta: Puslitbang Hukum dan Peradilan Mahkamah Agung RI, 2006), 56–57.

The phrase "*with the intent*" (*met oogmerk*) itself implies that the act and its consequences are deliberate.³⁵ Furthermore, because the conduct criminalized under Article 3 of the TPPU Law ends with the phrase "*or other acts*", and this is combined with the phrase "*with the intent to conceal or disguise the assets (proceeds of crime)*", the phrase "*with the intent to conceal/disguise the proceeds of crime*" must be interpreted to include any act carried out by a perpetrator of a crime, as long as the consequence of that act results in the proceeds being concealed (i.e., appearing difficult to identify as proceeds of crime) or disguised (i.e., appearing as though they are legitimate assets).³⁶

Sanjaya's earlier statement, which uses the explanation of Article 339 paragraph (1)(c) of the Election Law as the basis for claiming that "*especially when considering the explanation of Article 339 paragraph (1)(c) of the Election Law, which explicitly links the provision to the Anti-Money Laundering Law (TPPU Law)*",³⁷ is a premature assumption. This is because the explanation of Article 339 paragraph (1)(c) of the Election Law itself contains the phrase "*as well as other crimes such as gambling and drug trafficking*", indicating that the connection between this provision and the criminal norms in the TPPU Law (money laundering offenses) is not absolute. In that provision, the money laundering norm applies absolutely only when referring to the phrase/element "*and/or with the intent to conceal or disguise the origin of the proceeds of crime.*" In contrast, the phrase/element "*proceeds of crime that have been proven by a court decision with permanent legal force*" does not necessarily constitute a manifestation of the crime of money laundering.

- 2) Sanjaya stated that "*the concept of passive money laundering is regulated both by the Election Law and the Anti-Money Laundering Law (TPPU Law).*"³⁸ However, it must be understood that not every act of receiving the proceeds of a crime automatically constitutes money laundering. As previously explained, money laundering requires that the proceeds of the crime be concealed or disguised. As long as the proceeds are not concealed or disguised, no money laundering offense has occurred. This raises the question: why did Sanjaya not link Article 339 paragraph (1)(c) of the Election Law—insofar as it concerns the element "*proceeds of crime proven by a court decision that has obtained permanent legal force*"—to other criminal offenses also related to receiving the proceeds of crime, such as the offense of fencing (*heling*)? In fact, the offense of fencing also overlaps with that element. Indeed, when the element of "*with the intent to conceal or disguise the proceeds of crime*" is not proven in the offense committed by the donor of the campaign funds, and when the predicate crime that generated those funds has been established by a final court decision (*in kracht van gewijsde*), the receipt of such funds by the campaign donation recipient overlaps with the offense of fencing—not with the offense of money laundering. The analysis shows that the reasoning put forward by Sanjaya is premature.
- b. *Second*, regarding the element of "*receiving election campaign donations derived from the proceeds of crime that are intended to conceal or disguise the proceeds of crime.*" Sanjaya argued that "*the concept of passive money laundering is equally regulated by the Election*

³⁵ E. Y. Kanter and S. R. Sianturi, *Asas-Asas Hukum Pidana di Indonesia dan Penerapannya* (Jakarta: Storia Grafika, 2002), 183.

³⁶ Muh Afdal Yanuar, *Tindak Pidana Pencucian Uang dan Perampasan Aset* (Malang: Setara Press, 2021), 140.

³⁷ Sanjaya, "The Intersect of Money Laundering and Electoral Crimes in the Context of Election Campaign Finance," 38.

³⁸ Sanjaya, 39.

*Law and the TPPU Law, and both hold the status of special criminal offenses (bijzonder delict). This indicates an intersection between the TPPU Law and the Election Law in terms of the regulation of passive money laundering, ...*³⁹ It must be understood that even if the campaign donation given by the donor to the recipient is proven to originate from the proceeds of a crime committed “*with the intent to conceal or disguise the proceeds of crime,*” this does not automatically make the campaign fund recipient a passive money launderer. It is true that Article 5 paragraph (1) of the TPPU Law contains the elements “*receives, controls, or uses the proceeds of crime.*” However, it should be noted that the act committed under Article 5 paragraph (1) of the TPPU Law (passive money laundering) is an act that is linked to the act of the offender in Article 3 of the TPPU Law (active money laundering). A passive money launderer is **someone who receives or controls the proceeds of crime that have been laundered (concealed/disguised) by the active money launderer.** This is the distinguishing element between Article 5 paragraph (1) of the TPPU Law and Article 480 of the Indonesian Penal Code (KUHP) on fencing. Therefore, if the element “*with the intent to conceal or disguise the proceeds of crime*” is not present or cannot be proven in the act committed by the campaign donation donor, then the act of the recipient does not constitute passive money laundering. Rather, the recipient's act constitutes the offense of *fencing*.⁴⁰ Furthermore, it should also be understood that receiving the proceeds of crime does not always mean the recipient is merely a passive actor. It is possible that the act of receiving the proceeds of crime from the perpetrator may constitute part of providing means or opportunity to complete the money laundering process conducted by the *materiële dader* or *intellectuele dader* (material or intellectual perpetrator) of active money laundering.⁴¹ In such a context, the act of receiving the proceeds of crime by that individual does not make them a passive money launderer, but rather an *accomplice (medeplechtigheid)* to the active money launderer as defined under Article 3 of the TPPU Law. These explanations demonstrate that Sanjaya’s view, which generalizes all acts of receiving criminal proceeds in the context of campaign donations as constituting passive money laundering, is also a premature and oversimplified conclusion

It is important to understand that the *juridische/systematische specialiteit* doctrine is a concept that can be applied to analyze and determine which legal norm should prevail when there are two or more special norms (*lex specialis*) regulating a specific legal event. The concept introduced by Enschede presents the understanding that even if a criminal norm does not contain all the elements of its *lex generalis*, *it may still be regarded as a special criminal norm if the legislator indeed intended for it to function as such.*⁴² Moreover, the existence of the

³⁹ Sanjaya, 39.

⁴⁰ Yanuar, *Tindak Pidana Pencucian Uang dan Perampasan Aset*, 14–15.

⁴¹ For example, in a bribery case, A is a public official who is about to receive a bribe. In order to receive the bribe from the briber, A instructs B to provide a nominee account (controlled by B) to temporarily hold the bribe money from the giver. Once the bribe money is deposited into the nominee account, B promptly transfers the entire amount to A. In this context, A is the party with the intent to conceal or disguise the origin of the proceeds of crime (the perpetrator under Article 3 of the TPPU Law), while B is the party who provides the means or opportunity that constitutes a necessary element for the completion of the offense under Article 3 of the TPPU Law committed by A. In other words, although B's act involves receiving the proceeds of crime, from a criminal law perspective, B is considered a perpetrator under Article 3 of the TPPU Law in conjunction with Article 56 of the Indonesian Penal Code (KUHP)—that is, an accomplice (*medepleger*) to the offense under Article 3 of the TPPU Law.

⁴² Van Bemmelen, *Ons Strafrecht I: Algemeen Deel Het Materiele Strafrecht*, 340.

juridische/systematische specialiteit doctrine can be positioned as an important effort in the harmonization and synchronization of (special) laws that include criminal sanctions.⁴³

Sanjaya's article titled "*The Intersection Between the Crime of Money Laundering and Election Offenses in the Context of Election Campaign Funding*" states that in order to determine which special law should be applied, the principle of *systematische specialiteit*, or systematic specificity, is applicable. This means that a criminal provision is considered special if the legislator indeed intended for it to be enforced as a special criminal provision—or, in other words, it becomes a "special provision among existing special provisions."⁴⁴ Based on that perspective alone, there is certainly no error, and it aligns with the view previously expressed by Enschede. However, further, Sanjaya also presents his analysis regarding the application of this principle by relying on indicators such as the legal subject (*addressat*) and the intended use of the proceeds of crime, without examining the *bedoeling des wetgever* (intent of the legislator) behind each of the respective laws being linked—namely, the TPPU Law and the Election Law. Ultimately, Sanjaya concludes that based on the *juridische/systematische specialiteit* doctrine, the provision that should be applied is Article 339 paragraph (1)(c) of the Election Law, which he argues derogates the provisions within the TPPU Law.

Sanjaya's view represents a significant error, as it demonstrates a fallacy of misplaced concreteness⁴⁵ in the construction of his reasoning. This is because, on one hand, he asserts that the *juridische/systematische specialiteit* doctrine is based on the intent of the legislator (*bedoeling des wetgever*) in determining which specific special criminal provision should be chosen and applied. However, in his analysis, there is no discussion at all of the legislative intent behind either the Election Law or the Anti-Money Laundering Law (TPPU Law) in criminalizing the act of "*laundering (concealing/disguising) the proceeds of crime*" within those respective laws.

It is important to understand that among the various laws that criminalize the act of "*laundering the proceeds of crime*," only the criminalization found in the Anti-Money Laundering Law (TPPU Law) is based on the *bedoeling des wetgever* (intent of the legislator). In relation to this premise, it must first be understood that the criminalization of "*laundering the proceeds of crime*" initially originated in *Article 3 paragraph 1(b) and (c) of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*⁴⁶ (hereinafter referred to as *the 1988 Vienna Convention*), which was ratified by Indonesia through Law Number 7 of 1997,⁴⁷ and *Article 6 paragraph 1 of the United Nations Convention Against Transnational Organized Crime* (hereinafter referred to as the 2000 Palermo Convention), which was ratified by Indonesia through Law Number 5 of 2009.⁴⁸ *Article 6 of*

See also: Wicaksana, "Dualisme Pemaknaan Asas Lex Specialis Derogat Legi Generali," 684.

⁴³ Mewengkang, "Penerapan Asas Kekhususan Sistematis Sebagai Limitasi antara Hukum Pidana dan Hukum Pidana Administrasi," 53.

⁴⁴ Sanjaya, "The Intersect of Money Laundering and Electoral Crimes in the Context of Election Campaign Finance," 39.

⁴⁵ This type of fallacy occurs when a premise is mistakenly believed to be in accordance with reality. For further information, see: John Prausnitz, "The Fallacy of Misplaced Concreteness," *Biophysical Journal* 108, no. 3 (2015): 453, <https://doi.org/10.1016/j.bpj.2014.11.3486>.

⁴⁶ United Nations, *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* (New York: United Nations, 1988), https://www.unodc.org/pdf/convention_1988_en.pdf.

⁴⁷ *Undang-Undang Republik Indonesia Nomor 7 Tahun 1997 Tentang Pengesahan United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 (Konvensi Perserikatan Bangsa-Bangsa Tentang Pemberantasan Peredaran Gelap Narkotika Dan Psikotropika, 1988)* (Jakarta: Lembaran Negara Republik Indonesia Tahun 1997 Nomor 17, 1997).

⁴⁸ *Undang-Undang Republik Indonesia Nomor 5 Tahun 2009 Tentang Pengesahan United Nations Convention Against Transnational Organized Crime (Konvensi Perserikatan Bangsa-Bangsa Menentang Tindak Pidana Transnasional Yang Terorganisasi)* (Jakarta: Lembaran Negara Republik Indonesia Tahun 2009 Nomor 5, 2009).

the *Palermo Convention 2000*, the topic title is related to “*Criminalization of the laundering of proceeds of crime.*” This explanation proves that the legal basis for the criminalization of “*laundering the proceeds of crime*” refers solely to the norms established in these two conventions. Furthermore, in the FATF Recommendations, which serve as the grand design for implementing the AML/CFT regime in every country,⁴⁹ include Recommendation 3, which states: “*Countries should criminalise money laundering on the basis of the Vienna Convention and the Palermo Convention.*” Furthermore, in the preamble to the enactment of the TPPU Law (as a manifestation of the *ratio legis* behind its formulation), it is stated “That Law Number 15 of 2002 concerning the Crime of Money Laundering, as amended by Law Number 25 of 2003, **needs to be adjusted to the evolving needs of law enforcement, practices, and international standards (in casu, the FATF Recommendations)**, and therefore must be replaced with a new law.” This demonstrates the embodiment of the *ratio legis* of the TPPU Law, which *inter alia* aims to **harmonize Indonesia’s anti-money laundering framework with international standards as outlined in the 40 FATF Recommendations.**⁵⁰ Based on the above explanation and with reference to the the *ratio legis* or *bedoeling des wetgever* (intent of the legislator) of that TPPU Law clearly shows that the legislator indeed intended to criminalize the act of “*laundering the proceeds of crime*” within the TPPU Law. However, this is different in the context of the Election Law (UU Pemilu). Neither the preamble of the Election Law nor its academic draft contains any indication that the legislator intended to harmonize the provisions on the criminal offense of receiving election campaign contributions in the Election Law with the *1988 Vienna Convention* or the *2000 Palermo Convention*, both of which serve as the foundational references for the criminalization of “*laundering the proceeds of crime.*” The drafters of the Election Law clearly did not intend to criminalize “*laundering the proceeds of crime*” through the criminal provisions in the Election Law. Therefore, since there is no *bedoeling des wetgever* (legislative intent) to criminalize “*laundering the proceeds of crime*” within the Election Law, while there is such legislative intent within the TPPU Law, the application of the *juridische/systematische specialiteit* doctrine leads to the conclusion that, in the case of money laundering occurring through the receipt of campaign donations, the applicable provision should be found in the TPPU Law—not in the Election Law. This is precisely the point that Sanjaya failed to understand and explain in his article. Based on the foregoing analysis, Sanjaya’s statement in his article that “*going forward, active money laundering provisions should be formulated within the Election Law*” is clearly unreasonable and should be disregarded. Having understood which legal framework should apply—and the rationale for that choice (namely, the TPPU Law)—the next important step is to elaborate on how to create harmonization between the two relevant provisions found in these two separate

⁴⁹ Financial Action Task Force, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation* (Paris: FATF, 2023), 7.

⁵⁰ The intent of the legislator in enacting the Anti-Money Laundering Law (TPPU Law) (*ratio legis* of its enactment) is as follows:

- a. To establish the integrity and stability of the national financial system free from money laundering;
- b. To reduce the level of crime motivated by wealth accumulation, while also preventing the recurrence and expansion of such crimes;
- c. To enhance coordination among law enforcement agencies in preventing and combating money laundering;
- d. To increase state revenues through the confiscation and forfeiture of criminal proceeds; and
- e. *To align Indonesia’s anti-money laundering regime with international standards as set out in the 40 FATF Recommendations.*

For further information, see: Direktorat Hukum PPATK, *Modul Workshop Terpadu Penanganan Tindak Pidana Pencucian Uang* (Jakarta: PPATK, 2015), 65–66, as cited in: Muh Afdal Yanuar, *Permasalahan Hukum Seputar Perampasan Aset Dalam Undang-Undang Nomor 8 Tahun 2010 Tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang dan Upaya Pengoptimalisasiannya* (Jakarta: PPATK, 2022), 5–6.

laws: specifically, the money laundering offense in the TPPU Law and Article 339 paragraph (1)(c) of the Election Law. In this regard, it is recommended that, should the Election Law be amended in the future and Article 339 paragraph (1)(c) is retained, an additional provision should be incorporated. This provision should at the very least state: “If, based on preliminary evidence, the campaign donation as referred to in Article 339 paragraph (1)(c) is found to contain elements or indications of a money laundering offense, then the election participant, campaign organizer, and campaign team who received the donation shall be subject to legal proceedings under the law governing money laundering offenses.” Furthermore, if a *judicial review* of this provision is brought before the Constitutional Court, the Court should adopt this recommendation as a constitutional requirement for interpreting Article 339 paragraph (1)(c) of the Election Law, in order to maintain its constitutionality.

Conclusion

The *juridische/systematische specialiteit* doctrine is the appropriate concept for analyzing conflicts between special norms because it more accurately reflects legal certainty in determining which specific provision should apply. Moreover, in interpreting a criminal legal norm, this doctrine aligns with the fundamental basis of interpretation, which must be rooted in the *bedoeling des wetgever* (intent of the legislator).

Accordingly, in the event of “*laundering the proceeds of crime*” through the receipt of election campaign donations, the provision that should be applied—based on the *juridische/systematische specialiteit* doctrine—is that found in the Anti-Money Laundering Law (TPPU Law), and not Article 339 paragraph (1)(c) of the Election Law.

The recommendation that can be proposed is that, in the event the Election Law is amended, a complementary provision should be added to support Article 339 paragraph (1)(c), which at the very least states: “*If, based on preliminary evidence, the campaign donation as referred to in Article 339 paragraph (1)(c) is found to contain elements or indications of a money laundering offense, then the election participant, campaign organizer, and campaign team who received the campaign donation shall be subject to legal proceedings in accordance with the law governing money laundering offenses.*” Additionally, if a *judicial review* of this provision is submitted to the Constitutional Court, the Court should treat this recommendation as a constitutional requirement in interpreting Article 339 paragraph (1)(c) of the Election Law, in order to ensure the continued constitutionality of the provision.

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