

THE APPLICATION OF THE LEX SPECIALIS SYSTEMATIS PRINCIPLE IN THE ENFORCEMENT OF SPECIAL CRIMINAL LAW

Shilvi Grisminarti^{1*}, Faizin Sulistio², Abdul Madjid³

¹Master of Law, Faculty of Law, Universitas Brawijaya Malang, Indonesia

^{2,3}Faculty of Law, Universitas Brawijaya, Indonesia

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Abstract

This paper discusses the application of the *lex specialis systematis* principle in special criminal law as a solution to address overlapping regulations in its enforcement. This issue arises when law enforcers must choose the applicable legal provision in cases where a single criminal act is prohibited by multiple special criminal laws. In cases of pornographic content dissemination, challenges emerge due to overlapping regulations, including the Pornography Law, the Electronic Information and Transactions (ITE) Law, and the Sexual Violence Crime Law (TPKS). Each of these laws prohibits the dissemination of pornographic content (revenge porn) but assigns different legal subjects for criminal liability. This paper examines how law enforcers apply the *lex specialis systematis* principle as a guideline to determine the most appropriate legal provision, while also considering its implications for justice and legal certainty. This study underscores the importance of *lex specialis systematis* in ensuring clarity and effectiveness in handling complex criminal cases, particularly in pornographic content dissemination. Using a normative juridical method, this research analyzes existing legal norms through literature studies. It establishes parameters for law enforcers on how to apply the *lex specialis systematis* principle when multiple laws of equal standing regulate the same offense.

Keywords: *Lex Specialis Systematis, Revenge Porn, Special Criminal Law.*

INTRODUCTION

The enforcement of criminal law in Indonesia presents challenges due to the introduction of temporary special provisions aimed at addressing legal issues not encompassed by the Criminal Code (KUHP). These special regulations serve as legislative responses to emerging legal gaps. Consequently, the current legal framework distinguishes between criminal offenses codified within the KUHP and those governed by separate special criminal laws, reflecting the dynamic and adaptive nature of Indonesia's criminal justice system (Rodliyah & Salim, 2017). Criminal offenses codified within the Criminal Code (KUHP) are classified as General Criminal Offenses (Tindak Pidana Umum), whereas those falling outside its scope are designated as Special Criminal Law. In this legal framework, special criminal law has evolved as a response to the dynamic nature of societal issues and the absence of specific statutory provisions within the KUHP. Consequently, this body of law is formally recognized under the *lex specialis* doctrine, which governs the application of specialized legal norms in cases where general criminal law is insufficient (Marianna, 2015).

The distinctive nature of criminal offenses outside the Criminal Code (KUHP) lies in the fact that certain offenses are not explicitly regulated within the KUHP. This is consistent with the provision under Article 103 of the KUHP reads as follows

"The provisions in Chapters I to VIII of this Code shall also apply to acts punishable under other legislative enactments, unless otherwise prescribed by law."

Consequently, this article serves as a legal basis for the evolution of special criminal laws beyond the KUHP, reinforcing their role as a material source of law within Indonesia's criminal justice system (Sutarto, 2022).

Article 63(2) of the Criminal Code (KUHP) reads as follows *"If an act falls under both a general criminal provision and a special criminal provision, the special provision shall prevail."* This principle further solidifies the authority of special criminal law in the enforcement of criminal justice in Indonesia. However, despite the implicit recognition of special criminal law under Articles 103 and 63(2) of the KUHP, its implementation remains fraught with legal challenges. Various issues persist in the enforcement of special criminal law, necessitating careful legal consideration.

A fundamental issue when multiple special criminal laws regulate the same prohibited act under different statutes. This raises the question of which provision law enforcement authorities should apply. For instance, in cases concerning the dissemination of pornographic content, prior to the advancement of information and telecommunication technology and the subsequent social transformations, KUHP was considered adequate in governing criminal acts. However, as societal complexities have evolved, Article 282(1) of the KUHP, which initially regulated offenses related to obscenity, has proven insufficient in addressing sexual offenses committed through electronic or digital means. Moreover, the KUHP lacks a clear and comprehensive definition of morality-related crimes, creating significant legal uncertainty.

With the rapid advancement of technology and the increasing prevalence of morality crimes committed through electronic media, there is an urgent need to develop a more adaptive and comprehensive legal framework. The traditional criminal law system, as codified in the KUHP, is no longer capable of effectively accommodating emerging forms of criminal conduct stemming from globalization and the digital era. As a result, an evolving legal system is imperative to ensure that criminal law remains effective, responsive, and capable of addressing contemporary legal challenges. (Samsudin et al., 2024)

Accordingly, special criminal provisions governing the dissemination of pornographic content have been established across multiple special criminal statutes, including: *First*, Article 4(1) in conjunction with Article 29 of Law No. 44 of 2008 on Pornography (hereinafter referred to as the Pornography Act); *second*, Article 27(1) in conjunction with Article 45(1) of Law No. 19 of 2016 amending Law No. 11 of 2008 on Electronic Information and Transactions (hereinafter referred to as the ITE Law); and *third*, Article 14(1) of Law No. 12 of 2022 on Sexual Violence Crimes.

The existence of multiple special criminal laws that uniformly prohibit the dissemination of pornographic content, yet hold equal legal standing, presents a legal dilemma. This necessitates a critical examination of the applicable statutory framework, particularly in determining which legal provision law enforcement authorities should apply in cases involving overlapping regulations. Furthermore, it raises fundamental questions regarding the criteria used to establish prosecutorial discretion—specifically, whether a defendant should be prosecuted under a provision that prescribes a more severe or a more lenient penalty in its enforcement.

LITERATURE REVIEW

I. The Principle of Lex Specialis Systematis

The principle of Lex Specialis Systematis represents an evolution of the doctrine of Lex Specialis Derogat Legi Generali, which establishes that a criminal provision is considered more specific when the legislator explicitly intends for it to serve as a special criminal provision, characterized by greater specificity and detailed regulation (Zainal Andi, 2009).

The application of the lex specialis systematis principle, also known as lex systematische specialiteit, constitutes a legal doctrine governing the prosecution of offenses under special criminal law. This principle dictates that when an individual's conduct violates provisions of two or more special criminal statutes, the enforcement of criminal liability must be determined based on a systematic approach, ensuring the appropriate application of the most relevant legal framework within the criminal justice system (Omar & Hiariej, 2021). The lex specialis systematis principle dictates that when two special laws (lex specialis) potentially govern a particular act, priority must be accorded to the statute that is more systematically structured and comprehensive. This prioritization is determined based on a set of legal considerations to ensure the coherent, consistent, and effective application of the relevant legal framework (Kusumo, 2020).

II. Special Criminal Law

Schaffmeister contends that there are two approaches to determining whether a criminal provision constitutes a specialized criminal norm: first, through a logical assessment, known as *logische specialiteit* (logical specificity), and second, through a systematic analysis, referred to as *systematische specialiteit* (systematic specificity) (Danil, 2005).

Paul Scholten differentiates between general criminal law and special criminal law not on the basis of Article 103 of the Criminal Code but by defining general criminal law as the body of criminal law that applies universally. In contrast, special criminal law encompasses legislative provisions that do not inherently constitute criminal law but impose criminal sanctions, commonly referred to as administrative penal law (Hamzah, 2014).

RESEARCH METHOD

This research adopts a normative juridical approach, utilizing both statutory and case-based by analyzing legal principles, legal norms, and judicial decisions as the primary objects of examination, complemented by an analytical approach to reviewing and assessing relevant legal literature.

The primary legal sources in this research consist of legal principles, statutory provisions, and court decisions that have acquired final and binding legal force. Secondary legal sources include expert opinions, relevant legal documents, and scholarly articles pertaining to the subject matter, particularly those examining the *lex specialis systematis* principle and the criminal offense of disseminating pornographic content (*revenge porn*) within the framework of Indonesia’s positive law.

RESULT AND DISCUSSION

I. The Principle of *Lex Specialis Systematis* in the Enforcement of Special Criminal Offenses

One of the specialized criminal offenses governed by multiple special criminal statutes is the prohibition against the dissemination of pornographic content (*revenge pornography*), which is expressly prohibited under three distinct special criminal laws: the Pornography Law, the Electronic Information and Transactions Law, and the Sexual Violence Crimes Law. Each of these statutes constitutes a *lex specialis* to the Criminal Code. Accordingly, in prosecuting the offense of disseminating pornographic content (*revenge pornography*), law enforcement authorities must be guided by the *lex specialis systematis* principle to determine the applicable legal framework. Prior to selecting the appropriate legal provision for enforcement, it is imperative to first analyze the conceptual foundation of the *lex specialis systematis* principle and its practical application in the enforcement of special criminal law.

The *lex specialis systematis* principle is an evolution of the *lex specialis derogat legi generali* principle, which signifies that a criminal provision is considered more specific if the legislature explicitly intends to establish it as a special criminal provision that is more detailed and specific (Zainal Andi, 2009).

The application of *lex specialis systematis* principle, also referred to as *lex systematische specialiteit*, pertains to the enforcement of a legal doctrine governing the prosecution of criminal offenses committed by an individual who has violated specialized criminal law provisions. This principle allows for the concurrent application of two or more special criminal statutes within the framework of criminal law (Omar & Hiariej, 2021).

The term *systematische specialiteit* was first introduced by Ch.J. Enschede, referring to a criminal provision that classifies a general regulation as a special regulation when it is evident that the legislature deliberately intended to establish the provision as one of a specialized nature. This concept is also referred to as *systematische specialiteit* or systematic specificity (Lamintang, 1983). The principle of *Lex Specialis Systematis* stipulates that in cases where two special legal provisions (*lex specialis*) potentially regulate a particular act, priority shall be accorded to the more systematic statute, considering various legal factors (Kusumo, 2020).

To determine whether a special criminal provision qualifies as *lex specialis systematis*, it can be assessed based on the substantive elements of the provision, namely: (Toripalu, 2019) 1. Its specialized material scope, 2. Its specialized formal characteristics, and 3. Its specific addressee (subject of regulation). The principle of *lex systematische specialiteit* holds its position within the hierarchy of legal principles through its application process. It concerns the determination of which legal provision governs a specific special criminal offense, whether it falls under a specialized criminal provision or a special criminal statute (Siregar, 2022).

Statute	Article 4(1) in conjunction with Article 29 of the Pornography Act	Article 27(1) in conjunction with Article 45(1) of the Electronic Information and Transactions Law (UU ITE)	Article 14(1) of the Law on Sexual Violence Crimes (UU TPKS)
Punishment	A minimum imprisonment term of 6 (six) months and a maximum of 12 (twelve) years and/or a fine ranging from a minimum of	A maximum imprisonment term of 6 (six) years and/or a fine of up to Rp1,000,000,000.00 (one billion rupiah).	A maximum imprisonment term of 4 (four) years and/or a fine not exceeding Rp200,000,000.00 (two hundred million rupiah).

	Rp250,000,000.00 (two hundred fifty million rupiah) to a maximum of Rp6,000,000,000.00 (six billion rupiah).		
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Table 1. Sentencing Comparison in the Criminal Offense of Pornographic Content Distribution Under Special Criminal Law

II. The Application of *Lex Specialis Systematis* Principle by Law Enforcement in Resolving Criminal Offenses of Pornographic Content Distribution (Revenge Porn) in Court Decisions.

District Court Decision Number 71/Pid.Sus/2023/PN Pdl.

The criminal case of pornographic content distribution (Revenge Porn) was committed by Alwi Husen Maolana in Pandeglang by disseminating an obscene video depicting sexual intercourse between the Defendant and the Victim. The video was sent via direct message from the Defendant’s Instagram account to the Victim’s friend. The Defendant was subsequently convicted and sentenced to 6 (six) years of imprisonment and a fine of Rp1,000,000,000.00 (one billion rupiah), with a subsidiary penalty of 3 (three) months' imprisonment. In this case, the court found the Defendant guilty of violating Article 45(1) in conjunction with Article 27(1) of the Electronic Information and Transactions Law (UU ITE). In this case, the defendant was charged under an alternative indictment by the Public Prosecutor. First, the defendant’s actions were in violation of the criminal provisions set forth in Article 45(1) in conjunction with Article 27(1) of the Electronic Information and Transactions Law (ITE Law).

Second, the defendant’s actions violated the provisions of Article 45B in conjunction with Article 29 of the ITE Law. The authority to determine the applicable statute in the prosecution of a criminal case lies with investigators and public prosecutors, in accordance with the *dominus litis* principle. This principle affirms that the public prosecutor has the discretion to select the legal provisions to be applied in the enforcement of criminal law. As the prosecuting authority and the holder of the *dominus litis* role, the Prosecutor’s Office plays a pivotal and central role in the administration of justice and serves as the primary decision-maker in the application of the law once the case is brought before the court (Ardiani Nurul et al., n.d.). The application of the Electronic Information and Transactions Law (UU ITE) in this case indicates that the investigators and public prosecutors elected to apply the UU ITE in adjudicating the matter, while other special criminal provisions that also regulate and satisfy the elements of the defendant’s conduct—specifically concerning the criminal offense of disseminating pornographic content (*revenge porn*)—were not invoked by the investigators and public prosecutors in resolving this case.

An analysis of the comparative table of special criminal statutes governing the dissemination of pornographic content suggests that prosecution could have alternatively been pursued under the Pornography Law, which would have subjected the defendant to a more severe penalty. This is because the Pornography Law explicitly prescribes a minimum imprisonment term of 6 (six) years. Conversely, if the prosecution had been conducted under the Law on the Crime of Sexual Violence (UU TPKS), the legal consequence would have been a potentially more lenient sentence, as the UU TPKS stipulates a maximum imprisonment term of 4 (four) years. The selection of the applicable statute falls within the authority of the investigators and public prosecutors, who determine which law may be applied to the defendant in accordance with the *lex specialis systematis* principle. Meanwhile, in this case, the panel of judges rendered a verdict based on the first alternative charge presented by the public prosecutor and pursued during the prosecution process. As a result, the defendant was sentenced to 6 (six) years of imprisonment and fined Rp1,000,000,000.00 (one billion rupiah), with a subsidiary penalty of 3 (three) months of imprisonment in the event of non-payment of the fine.

District Court Decision Number 555/Pid.B/2022/PN Jkt. Brt.

The case concerning the dissemination of pornographic content (*revenge porn*) involving Muhamad Tamrin in West Jakarta pertains to the unlawful distribution of obscene material featuring a minor victim. The content consisted of a sexually explicit video call recording between the defendant and the victim, which the defendant disseminated to his acquaintances and the victim’s family via his WhatsApp account.

As a result of his actions, the defendant was convicted and sentenced to 5 (five) years of imprisonment and a criminal fine of Rp300,000,000.00 (three hundred million rupiah). In the event of non-payment of the fine, a subsidiary imprisonment term of 3 (three) months was imposed. In this case, the court found the defendant guilty of violating the provisions of Article 11 in conjunction with Article 4(1)(c) in conjunction with Article 37 of the Pornography Law. This case underscores the legal framework governing offenses related to the dissemination of pornographic

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content, particularly involving minors, and illustrates the enforcement of Indonesia's special criminal statutes in addressing such violations.

In this case, the defendant was charged under an alternative indictment, with the primary charge ultimately leading to conviction being Article 11 in conjunction with Article 4(1)(c) in conjunction with Article 37 of Law No. 44 of 2008 on Pornography. The application of the Pornography Law in this case demonstrates that the investigators and public prosecutors elected to prosecute under the Pornography Law in adjudicating the matter, while other special criminal provisions that also govern and fulfill the elements of the defendant's conduct specifically concerning the criminal offense of disseminating pornographic content (*revenge porn*) were not invoked by the investigators and public prosecutors in resolving this case.

A comparative analysis of special criminal provisions applicable to the dissemination of pornographic content suggests that prosecution could have alternatively been pursued under the Electronic Information and Transactions Law (UU ITE), which would have resulted in a lower sentencing exposure, as the UU ITE expressly prescribes a maximum imprisonment term of 6 (six) years. Conversely, if the prosecution had been conducted under the Law on the Crime of Sexual Violence (UU TPKS), the legal consequence would have been a potentially more lenient sentence, as the UU TPKS stipulates a maximum imprisonment term of 4 (four) years. The determination of the applicable statute falls within the discretion of the investigators and public prosecutors, who have the authority to decide which law shall be applied to the defendant, in accordance with the *lex specialis systematis* principle.

The Judges decision in this case, using the first alternative charge brought by the Public Prosecutor, as indicted and pursued during the prosecution process. As a result, the defendant was sentenced to 5 (five) years of imprisonment and a fine of Rp300,000,000.00 (three hundred million rupiah). In the event of non-payment of the fine, a subsidiary penalty of 3 (three) months of confinement shall be imposed.

From the two examples of the application of special criminal offense in cases involving the dissemination of pornographic content (*revenge porn*), it is evident that, in cases involving the same criminal offense, identical acts, and the same elements and addressees under special criminal provisions, different legal provisions may be applied.

According to Simons, an individual may be held criminally liable if the following elements are fulfilled (Ishaq, 2019):

- a. The act constitutes a human action (*menselijk handelingen*);
- b. Such an act is prohibited and punishable under the applicable statutory provisions;
- c. The act must be committed by an individual who can be held legally accountable, meaning that the person may be deemed culpable for their conduct.

Upon closer examination, *First*, in the case of the criminal offense of disseminating pornographic content, as adjudicated in Decision No. 71/Pid.Sus/2023/PN Pdl, the defendant was prosecuted under the Electronic Information and Transactions Law (UU ITE). The core act committed by the defendant involved the distribution of a video that qualifies as electronic information containing indecent material. This was carried out by disseminating obscene content—featuring both the perpetrator and the victim—to the victim's friend via an electronic platform, namely Instagram. As a result, the defendant's actions were deemed to have satisfied the elements of the primary charge brought by the Public Prosecutor, specifically the prohibition against distributing indecent content or disseminating pornographic material. The prohibition on distributing or broadcasting pornographic content, as stipulated in both the Pornography Law (UU Pornografi) and the Law on the Crime of Sexual Violence (UU TPKS), contains elements that are substantially similar to those outlined in Article 4(1) of the Pornography Law, which expressly prohibits the distribution and transmission of adult and child pornography. The Law on the Crime of Sexual Violence (UU TPKS) also establishes a prohibition against recording, capturing images, or taking screenshots containing sexual elements without the consent of the individual depicted in such recordings or images. Additionally, it expressly prohibits the dissemination of electronic information or electronic documents containing sexual content to third parties without the recipient's consent. Furthermore, it criminalizes the use of sexual intent as a basis for stalking or tracking a victim through electronic systems for sexual purposes.

A closer analysis reveals that the defendant's actions could also have been prosecuted under the Pornography Law (UU Pornografi) and the UU TPKS, as the elements of the defendant's conduct satisfy the prohibitions set forth in both statutes. However, the discretion of investigators and public prosecutors, as the holders of *dominus litis*, allows them to determine which legal provisions should be applied, as this decision directly impacts the sentencing framework applicable to the defendant.

In this case, the author identifies several specific legal considerations (*adresat kekhususan*) that investigators or public prosecutors may have taken into account when deciding to apply the Electronic Information and

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Transactions Law (UU ITE) as the governing legal framework for the prosecution of this matter. First, the investigators and public prosecutors specifically determined that the obscene video disseminated by the defendant constituted electronic information. Second, the element of indecency was a key consideration, as the defendant's act of distributing an indecent video formed the basis for concluding that the defendant had violated the relevant provisions of the Electronic Information and Transactions Law (UU ITE). Accordingly, it can be concluded that the primary consideration of the investigators and public prosecutors was the dissemination of indecent content in the form of electronic information. This served as the legal basis for selecting the UU ITE as the applicable special criminal statute in this case.

Second, in the case of the Dissemination of Pornographic Content (Revenge Porn), as decided in Judgment No. 555/Pid.B/2022/PN Jkt. Brt, the defendant was convicted for disseminating obscene content in the form of a video call recording containing indecent material, specifically depicting acts of masturbation between the defendant and the child victim. This content was distributed to the victim's parents and friends via the WhatsApp application. The defendant was found guilty of violating the prohibition against disseminating pornography, as the content in question contained scenes of masturbation involving a child as the object. Consequently, the defendant was legally deemed to have violated Article 11 in conjunction with Article 4(1)(c) in conjunction with Article 37 of Law No. 44 of 2008 on Pornography Act. Based on the author's analysis, as previously outlined concerning special criminal laws prohibiting the dissemination of pornographic content, both the Electronic Information and Transactions Law (UU ITE) and the Law on the Crime of Sexual Violence (UU TPKS) also encompass the elements of the defendant's actions. The act in question involves the dissemination of electronic information through electronic media, which is explicitly prohibited under the UU ITE, as well as the distribution of indecent content, which is likewise prohibited under the UU TPKS.

The author is of the opinion that the investigators and public prosecutors had specific considerations in applying the Pornography Law (UU Pornografi) in this case.

First, with regard to the subject of the offense, the victim in this case is a minor. Second, there is a specific *adresat* within the relevant provisions, as the disseminated content consists of indecent material in the form of a specific act, namely "masturbation or self-stimulation," which was recorded in the content. Considering the elements of the provisions previously outlined, the Pornography Law is the statute that explicitly and specifically regulates the prohibition against disseminating pornographic content involving a minor as the victim, particularly when the content contains indecent material such as masturbation.

Although the defendant's actions explicitly satisfy the elements of the prohibition against disseminating pornographic content under the Electronic Information and Transactions Law (UU ITE) and the Law on the Crime of Sexual Violence (UU TPKS), the specific provisions concerning minors and the dissemination of indecent content in the form of masturbation are explicitly and exclusively regulated under the Pornography Law.

CONCLUSION

Implementation of the *lex specialis systematis* principle in addressing the challenges posed by social change and the complexity of legal issues in special criminal law—particularly when a single act falls under multiple special criminal statutes—requires consideration of several key standards or parameters.

First, the substantive criminal provisions within the special criminal statute must not be encompassed by existing general criminal provisions. Second, the procedural rules in the special criminal statute must deviate from the general procedural framework of criminal law. Third, the subjects regulated under the statute must possess distinct legal characteristics.

These special considerations in determining the applicable legal framework are evident in the two cases analyzed in this paper. The specificity is demonstrated through three key aspects:

1. The specific legal subject – in this case, the victim is a child.
2. The specific legal object – the nature of the content distributed or disseminated by the defendant, which involves sexual activity.
3. The nature of the disseminated information – specifically, electronic information.

These elements illustrate the distinct factors that must be taken into account when determining the applicable legal provisions in special criminal law.

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