

Laundering of Proceeds Forest Destruction and Narcotics Crimes: A Resolution of The Conflict Norms

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ABSTRACT

This paper will explain about the conflict of norms that arise because there are 2 (two) similar provisions (offenses) in different laws, related to laundering of proceeds of the forest destruction crime and laundering of proceeds of narcotics crime. Furthermore, it is also discussed which principles must be applied to resolve the conflict of norms, and which provisions (offenses) must be applied in that case. This paper uses normative research with a conceptual approach, statutory approach, and case approach. Through this paper it is also concluded that in case of a conflict of norms between special norms and other special norms, the most relevant principle to be applied is the juridische/systematische specialiteit principle, and in the context of the conflict of norms that occurred in case of laundering of proceeds of the forest destruction crime and laundering of proceeds of narcotics crime, the more relevant provision (offense) applied is the Money Laundering Offense as regulated in the Money Laundering Law.

Keywords: Conflict of Norms, Legal Principle, Ratio Legis, and Ratio Decidendi

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INTRODUCTION

As an empirical-analytical science, legal science provides an explanation and analysis of the content and structure of the applicable law. In order to understand the various meanings in the linkage between one another (between legal content and legal structure), an analysis is needed by making legal principles as the basic idea.¹ This thought illustrates the vital role of legal principles in the legal substance and legal structure analysis. Related to the interpretation of a legal norm, in reality (*ius operatum*), problems often arise, including those concerning the ambiguity of norms (*vage normen*), as well as conflicts between legal norms (*juridische antinomie*) or overlapping regulations.² Everyone is entitled to the recognition, guarantee,

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

² Ahmad Rifai, (2011), *Penemuan Hukum Oleh Hakim Dalam Perspektif Hukum Progresif*, Jakarta: Sinar Grafika, h. 90.

protection, and certainty of fair law and equal treatment before the law.³ The overlap between the regulations themselves arises because there is an arrangement or provision that is regulated in two different regulations.⁴ Therefore, it takes the existence of a legal principle to solve it. The legal principle commonly used for these legal issues is the principle of preference or often also called the principle of conflict of norms. Principle of Preference itself is a legal principle that is used to indicate which law is applied first, if in an event the law is related to or violated some regulations.⁵ A part of the Principle of Preference is *Lex Specialis derogate legi generali* (a special law/provision derogates from the general law/provision).⁶

In the context of criminal provisions which contain elements of the offense of laundering of proceeds of forest destruction crime or laundering of proceeds of narcotics crime, currently, there has been a conflict/overlapping of norms. Which, based on Article 3 of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crime (hereinafter referred to as the Money Laundering Law), has been criminalized for the act of laundering of proceeds of crime (including the proceeds of forests destruction and narcotics crimes).⁷ However, in Article 95 paragraph (1) letter c of Law Number 18 of 2013 concerning Prevention and Eradication of Forest Destruction (hereinafter referred to as the Forest Destruction Law) also criminalizes for the act of laundering of proceeds of illegal logging (Forest Destruction) crime.⁸ Likewise in Article 137 letter a of Law Number 35 of 2009 concerning Narcotics (hereinafter referred to as the Narcotics Law), which also

³ Orin Gusta Andini, Nilasari Nilasari, and Andreas Avelino Eurian, "Restorative Justice in Indonesia Corruption Crime : A Utopia," *Legality Jurnal Ilmiah Hukum* 31, no. 1 (2023): 72–90, <https://ejournal.umm.ac.id/index.php/legality/article/view/24247/12233>.

⁴ I. C. van der Vlies, (2005), *Handboek Wetgeving*, translated by Linus Doludjawa, Jakarta: Direktorat Jenderal Peraturan Perundang-undangan Departemen Hukum dan HAM RI, p. 225.

⁵ Shinta Agustina, (2015), "Implementasi Asas Lex Specialis Derogat Legi Generali Dalam Sistem Peradilan Pidana," *Jurnal Masalah-Masalah Hukum* 44(4), p. 504.

⁶ 'The 'principle of preference' or 'principle of conflict of norms' consists of the *lex superior derogat legi inferiori* principle, *lex specialis derogat legi generali* principle, and *lex posterior derogat legi priori* principle.

See: Nurfaqih Irfani, (2020), "Asas Lex Superior, Lex Specialis, dan Lex Posterior: Pemaknaan, Problematika, Dan Penggunaannya dalam Penalaran dan Argumentasi Hukum", *Jurnal Legislasi Indonesia* 6(3), p. 319.

See: Pery Rehendra Sucipta, et.al., (2020) "Lex Specialis Derogat Legi Generali Sebagai Asas Preferensi Dalam Kecelakaan Angkutan Laut Pelayaran Rakyat," *Jurnal IUS Kajian Hukum dan Keadilan* 8(1), p. 147.

See also: Teguh Prasetyo, (2021), *Pengantar Hukum Indonesia*, Jakarta: Rajagrafindo Persada, p. 114

⁷ Article 3 of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crime states: *Anyone, who places, transfers, forwards, spends, pays, grants, deposits, takes to the abroad, changes the form, changes to the currency or securities or other deeds towards the Assets of which are knowingly or of which are reasonably alleged as the proceeds of crime, as set forth in Article 2 section (1) with the purpose to hide or to disguise the origin of Assets.*

See: Hasanul Mulkan, (2022), *Hukum Tindak Pidana Khusus*, Jakarta: Prenadamedia, p. 39.

⁸ Article 95 paragraph (1) letter c of Law Number 18 of 2013 concerning Prevention and Eradication of Forest Destruction, states: *"Any person who intentionally hides or disguises the origin of assets which are knowingly or reasonably alleged to be proceeds of illegal logging and/or the proceeds of illegal use of forest areas so that it appears to be legal assets".*

criminalizes for the act of laundering of proceeds of narcotics crimes.⁹ So, whether for the act of laundering of proceeds of forest destruction crime or laundering of proceeds of narcotics crime, each has 2 (two) regulations that regulate it, that is, the Forest Destruction Law and the Money Laundering Law, for the act of laundering of proceeds of forest destruction crime, as well as the Narcotics Law and the Money Laundering Law for the act of laundering of proceeds of narcotics crime. With regard to the conflict of norms, of course, it is hoped that the principle of preference can function as *it should be*, as a legal principle, as Kraan argues, that is as “*sweeping statements*”, or as a solution that is formulated absolutely for solving a legal problem.¹⁰ In addition, in Van der Veldens opinion, legal principles should be used as benchmarks to assess situations or be used as guidelines for behavior.¹¹

It is understood that both the offenses criminalized in the Money Laundering Law and those criminalized in the Forest Destruction Law and the Narcotics Law are each a special crime, as Article 103 of the Criminal Code allows it. In the event that there is a conflict of norms between the Criminal Code and the Money Laundering Law, or between the Criminal Code and the Forest Destruction Law, or between the Criminal Code and the Narcotics Law, it is very clear, based on the principle of *lex specialis derogate legi generali* (a special law/provision derogates from the general law/provision), then the Criminal Code, as a general provision, will derogate for the enforcement of special laws. However, because in the context of the conflict the norms described above are between special provisions and special provisions, so that that principle becomes irrelevant to be applied. The passage of law number 1 of 2023, Indonesia currently has a new criminal law code book, which is a material criminal law in Indonesian law.¹²

Regarding this issue, even though the principle of *lex specialis derogate legi generali* is not able to solve it. However, there are some ideas that are expected to be able to solve these problems, that is, *inter alia*: First, the idea of *Ch. J. Enschede*, who introduced the *juridische/systematische specialiteit* doctrine. Enschede states that “*juridische/systematische specialiteit is a idea that considers that a criminal provision, even though it does not contain all the elements of a general provision, it can still be considered a special criminal provision, if it is clearly known, that legislators indeed objective to make that criminal provisions as a special criminal provision*”¹³; and

⁹ Article 137 letter a of Law Number 35 of 2009 concerning Narcotics, states: “*Anyone who, places, pays or grants, deposits, changes, hides or disguises, invests, stores, donates, inherites, and/or transfers, a money, property, and objects or assets in the form of movable or immovable objects, tangible or intangible, originating from Narcotics crime and/or Narcotics Precursor crime*”.

¹⁰ Sudikno Mertokusumo, (2014), *Teori Hukum* (Edisi Revisi), Yogyakarta: Cahaya Atma Pustaka, 2014, p. 46.

¹¹ Supeno, et, al., (2019), “*Kedudukan Asas Hukum dalam Penyelesaian Sengketa Melalui Arbitrase Berdasarkan Undang-Undang Nomor 30 Tahun 1999*,” *Wajah Hukum*, 3(1), 53.

¹² Orin Gusta et al., “*The Impact of Covid-19 Pandemic on Effective Electronic Criminal Trials : A Comparative Study*,” *Journal of Human Rights and Legal System* 3, no. 2 (2023): 185–209, <http://www.jhcls.org/index.php/JHCLS/article/view/57>.

¹³ P. A. F. Lamintang, (2011), *Dasar-Dasar Hukum Pidana Indonesia*, Bandung: PT Citra Aditya Bakti, 2011, p. 713-714.

Second, The idea of *Edward O.S. Hiariej* who introduced the *lex consumen derogate legi consumte* doctrine. *Edward O.S. Hiariej* said "if two or more special criminal provisions/laws regulate the same thing and cannot be resolved, or in other words cause a problem in law enforcement, then the *lex consumen derogate legi consumte* principle is born, which means that one special criminal law aborts (derogate) the other special criminal law. As for the basis for the implementation of this *lex consumen derogate legi consumte* principle, is the fact that is dominant in a case".¹⁴

These thoughts will be used as an analytical tool instrument by the author to substitute the existence of the *lex specialis derogate legi generali* principle, in resolving the conflict of norms, which is caused by the criminalization of laundering of proceeds of forest destruction crime in the Forest Destruction Law and the Money Laundering Law, as well as criminalizing the laundering of proceeds of narcotics crime in the Narcotics Law and the Money Laundering Law. In view of, the *lex specialis derogate legi generali* principle, in fact, is not able to solve that legal problem. Based on this, the issues that will be discussed in this paper are, which principles should be applied in resolving conflicts of norms in the context of criminalizing the laundering of proceeds in the forest destruction and narcotics crime and provisions should be applied in the context of criminalizing the laundering of proceeds in forest destruction and narcotics crimes.

METHOD

In this study, the author uses a normative research method. Peter Mahmud Marzuki stated that all research related to law (legal research) is normative research. However, the approach and legal materials used, must be stated.¹⁵ The approaches used by the author in this study are the statute approach, the conceptual approach, and the comparative approach. *The statute approach* is an approach to legal research, which is carried out by reviewing all laws and regulations related to the legal issues being discussed.¹⁶ In this paper, the author uses the Money Laundering Law, the Forest Destruction Law, and the Narcotics Law, as the main objects analyzed. This approach is also taken to find the *ratio legis* and ontological basis for the birth of the law.¹⁷ *The conceptual approach* is an approach in legal research that departs from the views and

See also: Erika Novita Suhandy, et, al., (2022), "Penerapan Asas Lex Systematische Specialiteit dalam Putusan Kasus Kejahatan Pornografi di Media Sosial (Studi Terhadap Undang-Undang Nomor 44 Tahun 2008 Pornografi dan Undang-Undang Nomor 19 Tahun 2016 Tentang Perubahan Nomor 11 Tahun 2008 Informasi dan Transaksi Elektronik)," *Student Online Journal Universitas Maritim Raja Ali Haji* 3(1), p. 787.

¹⁴ Edward Omar Sharif Hiariej, (2021), "Asas Lex Specialis Systematis Dan Hukum Pidana Pajak," *Jurnal Penelitian Hukum De Jure* 21(1), p. 5.

See also: Mulyo Basuki, (2020), "Implications of Government Legal Subject Status as One of The Causes of Tax Disputes on Production Sharing Contracts for the Oil and Gas Industry in Indonesia," *Yustisia* 9(3), p. 401.

¹⁵ Peter Mahmud Marzuki, (2014), *Penelitian Hukum*, Jakarta: Prenadamedia Group, p. 55-56.

¹⁶ *Ibid.*, p. 133.

¹⁷ Salahuddin Gaffar, et.al, (2021), "The concept of procedural law regarding the implementation of collective agreements with legal certainty in termination of employment in Indonesia," *Heliyon* 7, p. 2.

doctrines that develop in legal science.¹⁸ In the context of this paper, the author uses the concept/theory of the principle of preference and its derivatives as the main analytical tool. *The case approach* is an approach in legal research by examining/reviewing cases related to the issues being discussed, which have become court decisions that have permanent legal force.¹⁹ In the context of this paper, the author also analyzes relevant court decisions to strengthen the premises built by the author.

DISCUSSION

Principles Applied in Resolving Conflicts of Norms in The Context of Criminalizing the Laundering of Proceeds in the Forest Destruction and Narcotics Crimes

In a popular idea, it is understood that the money laundering crime (laundering of proceeds) is a *follow up crime*.²⁰ *Follow-up crime itself is interpreted as a paradigm of money laundering, which requires that money laundering can occur after the predicate crime.*²¹ This perspective describes that in case of a money laundering crime, there must be a proceed of crime, which originates from the predicate crime. The proceeds of crime are carried out actions that cause the proceeds of crime to be hidden or disguised.²² Based on this explanation, it can be understood that for the laundering of proceeds crime, it is necessary to have an intertwined relationship between the predicate crime and the laundering of proceeds crime. For example, in the context of laundering of proceeds of forest destruction crime, there must be a criminal act of forest destruction that produces the assets, and the origin of assets is hidden or disguised. This also applies in the context of laundering of proceeds of Narcotics crime.

Unfortunately, in the context of its implementation, for the act of laundering of proceeds of forest destruction crime and laundering of proceeds of narcotics crime, there are 2 (two) related provisions, respectively, and each applies, and does not revoke the validity of each other. In addition, each of these provisions is also a special provision (*bijzondere strafrecht*).²³ Therefore, a legal principle is needed to resolve the conflict of norms, and unfortunately the *lex specialis derogate legi generali* principle is not able to resolve this problem.

¹⁸ Peter Mahmud Marzuki, *Op.Cit.*, p. 135.

¹⁹ *Ibid.*, p. 134.

²⁰ Arianna Trozze, et.al, (2023), "Of Degens and Defrauders: Using Open-Source Investigative Tools to Investigate Decentralized Finance Frauds and Money Laundering," *Forensic Science International: Digital Investigation* 46, p. 7

²¹ Muh Afdal Yanuar, (2020), "Diskursus Antara Kedudukan Tindak Pidana Pencucian Uang sebagai Independent Crime dengan sebagai Follow Up Crime Pasca Putusan Mahkamah konstitusi Nomor 90/PUU-XIII/2015," *Jurnal Konstitusi* 16(4), p. 729.

²² Muh Afdal Yanuar, (2021), "Posibilitas Eksistensi Jenis Tindak Pidana Pencucian Uang Stand Alone Money Laundering di Indonesia," *Nagari Law Review* 5(1), p. 29-30.

²³ *Bijzonder strafrecht* or special criminal law is a criminal law that deviates from the general provisions of criminal law both in Material and Formal Laws. This means that these provisions deviate from the general provisions contained in the Criminal Code or deviate from the general provisions contained in the Criminal Procedure Code.

Furthermore, see: Edward Omar Sharif Hiariej, *Op.Cit.*, p. 4.

In the development of criminal law thinking, there has been a dynamic, especially since the increasing number of special criminal provisions (*bijzonder strafrecht*) have been promulgated. Under these circumstances, the principle of *lex specialis derogat legi generali* is considered not to be used as a single instrument in the context of resolving the conflicts of norm that arise when a criminal act is regulated by more than one *bijzonder strafrecht* (special criminal law).²⁴ Furthermore, because the *lex specialis* principle itself is dynamic and limitative, especially to determine: (a) which special laws must apply and (b) which provisions apply in a special laws,²⁵ then by Edward O.S. Hiariej considers the need for a *lex specialist systematic* principle, which is a derivation of the *lex specialis derogat legi generalis* principle.²⁶ In the *lex specialis systematis* principle itself, it introduces a special paradigm that, in case of a conflict of norms between special provisions and other special provisions, then the special criminal provisions that apply are the provision contained in laws that more complete and detailed regarding general definition of the object contained in the framework of special criminal provisions.²⁷

In addition to the above, as far as the authors identify, there are at least 2 (two) other legal principles that can be used as instruments in the context of resolving conflicts of norms, each of which is a special provision, namely: (a) the *juridische/systematische specialiteit* principle; and (b) the *lex consumen derogate legi consumte* principle.

This *juridische/systematische specialiteit* principle was introduced by Ch. J. Enschede in his paper entitled *lex specialis derogate lege generali* in the *Tijdschrift van het Strafrecht*.²⁸ This principle considers that a criminal provision, although it does not contain all the elements of a general provision, can still be considered as a special criminal provision *if it is clearly known, that legislators indeed objective to make that criminal provisions as a special criminal provision*.²⁹ In addition, the existence of the *juridische/systematische specialiteit* principle can be positioned as an important effort in harmonization and synchronization between (special) laws that contain a criminal sanctions in it.³⁰ Based on this explanation, the author concludes that the principle can also be interpreted as an interpretation method of several special provisions, in

²⁴ *Ibid.*, p. 5.

²⁵ Indrianto Seno Adji, (2009), *Korupsi dan Penegakan Hukum*, Cetakan Pertama, Jakarta: Diadit Media, h. 170-171, sebagaimana dikutip dalam Syahril, Mohd. Din, dan Mujibussalim, (2017), "Penerapan Undang-Undang Pemberantasan Tindak Pidana Korupsi Terhadap Kejahatan Di Bidang Perbankan," *Syiah Kuala Law Journal* 1(3), h. 20-21.

²⁶ Edward Omar Sharif Hiariej, *Loc.Cit.*

²⁷ Eddy O. S. Hiariej, (2014), *Prinsip-Prinsip Hukum Pidana (Edisi Revisi)*, Yogyakarta: Cahaya Atma Pustaka, p. 417.

This view, by Ch.J. Enschede is called '*logische specialiteit*'.

Furthermore, see: P.A.F. Lamintang, *Op.Cit.*, p. 713.

²⁸ P.A.F. Lamintang, *Op.Cit.*, p. 714.

²⁹ J. M. Van Bemmelen, (1971), *Ons Strafrecht I: Algemeen Deel Het Materiele Strafrecht*, Groningen: H.D. Tjeenk willink, p. 340.

See also: Yonathan Aryadi Wicaksana, (2021), "Dualisme Pemaknaan Asas Lex Specialis Derogat Legi Generali," *Jurnal Verstek* 9(3), p. 684.

³⁰ Marchelino Christian Nathaniel Mewengkang, (2018), "Penerapan Asas Kekhususan Sistematis Sebagai Limitasi Antara Hukum Pidana Dan Hukum Pidana Administrasi," *Jurnal Hukum Unsrat* 23(10), p. 53.

determining which choice of law will be applied by refer to the legislative intents (*ratio legis*). However, it should not only be limited to the legislative intents, but it is also necessary to consider the legal considerations of the Court (*ratio decidendi*), in the event that the constitutionality of the provisions has been reviewed in the Constitutional Court, whether the provision is a systematic specific provision. So that it can be determined which choice will be applied, among the legal choices of special provisions. Based on the explanation above, a conclusion can be drawn that the *juridische/systematische specialiteit* principle is based on 2 (two) things, namely: (a) the *ratio legis* of the establishment of the relevant law, and (b) the *ratio decidendi* of the Constitutional Courts decision on the legal provisions, in the event that the constitutionality of the provisions has been reviewed in the Constitutional Court.

Meanwhile, based on the *lex consumen derogate legi consumte* (specific provisions derogate other special provisions) principle, the thought that is raised is that in case of a conflict of norms between a special norm and another special norm, the provisions that apply are provisions containing elements of whose legal facts are more dominant.³¹

Based on these explanations, it can be understood that if the *juridische/sistematische specialiteit* principle is constructed in the comparison of each *special crime* (between the Money Laundering Law and the Narcotics Law, or between the Money Laundering Law and the Forest Destruction Law), with referred to each *ratio legis* of the establishment of the law containing it, and also the *ratio decidendi* of the Constitutional Courts Decisions which have reviewed its constitutionality, then, a conclusion will be found regarding which offense/special provision should be applied, *definitely and absolutely*. Meanwhile, based on the principle of *lex consumen derogate legi consumte*, the idea regarding which offense to apply will be *relatively*, depending on the more dominant legal facts in a criminal case.

Analysis of *lex consumen derogate legi consumte* Principle

If a legal event laundering of proceeds of Narcotics crime or laundering of proceeds of Forest Destruction crime is analyzed from the context of type of proof, using the *lex consumen derogate legi consumte* principle,³² the following conditions can be found are: First, In the event that the crime of laundering of proceeds is proven after the predicate crime is in kracht, or in the event that the crime of laundering of proceeds is proven without proving the predicate crime firstly, then the special provisions/offenses whose legal facts are more dominant are money laundering crime

³¹ Eddy O. S. Hiariej, *Loc. Cit.*

See also: Huisman Brant Toripalu, (2019), "Appointment of Provincial Secretaries of The House Of Representatives Through The Approval Of The Provincial Council Representatives," *Tadulako Master Law Journal* 3(3), p. 252.

³² Proving of the money laundering crime ('laundering of proceeds') is possible in the 3 (three) type of proof, namely:

- a. The 'Laundering of proceeds' crime, is proven after the predicate crime is proven or *in-kracht*;
- b. The 'Laundering of proceeds' crime, is proven together and combined with the predicate crime; and
- c. The 'Laundering of proceeds' crime, is proven without proving the predicate crime firstly.

Lebih lanjut lihat: Muh. Afdal Yanuar, *Op.Cit.*, p. 726.

which is regulated in the Money Laundering Law. That is, in the context of this type of proof, for the laundering of proceeds of the forest destruction crime or laundering the proceeds of narcotics crime, then the provisions chosen to be applied are the provisions of Money Laundering crime as stipulated in the Money Laundering Law; or Second, In the event that laundering of proceeds is proven together and combined with the predicate crimes, then the special provisions/offenses whose legal facts are more dominant are predicate offenses, which include the offense of laundering of proceeds from such predicate offenses, as stipulated in the Laws of the predicate offense. That is, in the context of this type of proof, for laundering of proceeds of forest destruction crime or laundering of proceeds of narcotics crime, the provisions chosen to apply are the provisions on laundering of proceeds of the forest destruction crime as stipulated in the Forest Destruction Law and laundering of proceeds of narcotics crime as stipulated in the Narcotics Law.

Analysis of *Juridische/Systematische Specialiteit* Principle

In the interpretation of a legal norm, there is a principle known as *das fundamentalnormen des rechtstaat*, which consists of *the proportionality principle* and *the subsidiarity principle*. *Proportionality* is defined as a balance between means and ends. As for *Subsidiarity*, it means that if a problem is difficult to bring up several alternative solutions, then the solution with the fewest losses must be chosen.³³ From the interpretation instrument, it can be explained that, because the purpose of law, *inter alia* is to create legal certainty, the provisions that can provide more legal certainty must take precedence and serve as primacy in choosing which legal principles or legal provisions are applied in a legal event. In addition, with the existence of legal certainty in a legal interpretation, the losses incurred in determining, which legal principles or legal provisions will be applied, will be minimized.

In addition, in the interpretation of an offense, there is a terminology which known as *bedoeling des wetgever* (the legislative intent). As the opinion of Pompe which states that: “*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*” (“for criminal law, if there is a space for different interpretations, then it is better if people search for what the legislators actually objectives (*bedoeling des wetgever*) with those elements of the offenses, rather than simply being linked to what is written in the elements of the offenses in the law”).³⁴ Therefore, it can be understood that in essence, the interpretation of a criminal norm (offense) must always be based on what appears in the legislative intent (*ratio legis* for the establishment of the criminal law). In addition, Vos considers that an offense is *wesenschau*, which means that an act is said to have fulfilled the elements of

³³ Jan Remmelink, (2003) *Hukum Pidana (Komentar atas Pasal-pasal Terpenting dari Kitab Undang-Undang Hukum Pidana Belanda dan Padanannya dalam Kitab Undang-undang Hukum Pidana Indonesia)*, [diterjemahkan oleh Tristam Pascal Moeliono, et.al.], Jakarta: PT Gramedia Pustaka Utama, p. 46.

³⁴ W. P. J., Pompe, (1959), *Handboek van het Nederlandse Strafrecht*, Zwolle: N.V. Uitgeversmaatschappij W.E.J. Tjeenk Willink, p. 54-55.

the offense, not only because the act was in accordance with the elements of the offense, but the act was also intended by the legislators.³⁵

Based on the things described above, it can be understood that through the application of the principle of *juridische/systematische specialiteit*, it is possible to determine which norms will definitely apply in the event of a conflict between special provisions. This is due to the *juridische/systematische specialiteit* principle, which demands an in-depth analysis of each *ratio legis* from those special provisions, as well as the *ratio decidendi* of the Constitutional Court Decision which is related and relevant to theose provisions. Meanwhile, based on the principle of *lex consumen derogate legi consumte*, in determining the norms that must be applied it is still relative (uncertain), between the process of proof that combines (between predicate crimes and money laundering), and the process of proof that does not combine (between predicate crimes and money laundering, whether in the form of: proving money laundering carried out after proving the predicate crime, as well as proving money laundering without proving the predicate crime, first). This is because of the *lex consumen derogat legi consumte* principle is very dependent on legal facts which are more dominant in proving cases being proven.³⁶

Refer to the explanation above, it can be concluded that with respect to the conflict of norms caused by the criminalization of laundering of proceeds of forest destruction crime, each of which is regulated in the Forest Destruction Law and the Money Laundering Law, and also the laundering of proceeds of Narcotics crime which are respectively regulated in the Narcotics Law and the Money Laundering Law, the more relevant principle to be applied is the *juridische/systematische specialiteit* principle, which basically bases its interpretation method of determining the special provisions/offenses applied based on the *ratio legis* of the establishment of the law that criminalizes it crime, and the *ratio decidendi* of the Constitutional Courts decision, in the event that its constitutionality has been reviewed.

Provisions Applied in the Context of Criminalizing the Laundering of Proceeds in Forest Destruction and Narcotics Crimes

Legal principle is a way out that is formulated to solve a legal problem.³⁷ Every legal problem must be referred to or resolved by legal principles. The legal principle itself is an important and fundamental element in law. Through the principle of law, one or a number of legal norms will arise, and then legal norms will give rise to a concrete legal rule.³⁸ In the *element of law* itself, the legal principle is the *genus* of a legal rule.³⁹

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

³⁶ Rayhan Sheperd Dwicahyo Pramudito dan Azmi Syahputra, (2022), "Pemidanaan Terhadap Tindak Pidana Mendistribusikan Foto Pornografi Menggunakan Akun Facebook," *Reformasi Hukum Trisakti* 4(5), p. 1317.

³⁷ Sudikno Mertokusumo, *Op.Cit.*, p. 46.

³⁸ Achmad Ali, (2009), *Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (Jurisprudence): Termasuk Interpretasi Undang-Undang (Legisprudence)*, Jakarta: Kencana, p. 176 – 177.

Thus, every regulation must rely on legal principles.⁴⁰ However, because legal principles are basic norms that are described from positive law and are not ascribed to more general rules by legal science,⁴¹ then not all legal principles are regulated in positive law. In addition, the legal principle will not lose its binding power after bringing up a legal regulation but will continue to exist and will bring up further regulations. It can even be said that the legal principle is the *ratio legis* of a legal regulation.⁴²

In the context of the criminalization of laundering of proceeds of narcotics crime and laundering of proceeds of forest destruction crime, *status quo*, is each possible to be placed on 2 (two) offenses. Generally, the elements of laundering of proceeds offenses regulated in the Money Laundering Law, will be explained in the following paragraphs.

In Article 3, consists of elements of offense, as follows: (i) Anyone, who places, transfers, forwards, spends, pays, grants, deposits, takes to the abroad, changes the form, changes to the currency or securities or other deeds towards the Assets; (ii) which are knowingly or of which are reasonably alleged as the proceeds of crime, as set forth in Article 2 section (1); and (iii) with the purpose to hide or to disguise the origin of Assets. Furthermore, Article 4, consists of elements of offense, as follows: (i) hide or to disguise the origin, source, location, designation, transfer of rights, or actual ownership of the Assets; and (ii) which are knowingly or of which are reasonably alleged as the proceeds of crime, as set forth in Article 2 section (1). Meanwhile, in Article 5 paragraph (1), consists of elements of offense, as follows: (i) receive or control the placement, transfer, payment, grant, donation, deposit, exchange, or use of Assets; and (b) which are knowingly or of which are reasonably alleged as the proceeds of crime, as set forth in Article 2 section (1).⁴³

As for the context of laundering the proceeds of Narcotics crime, in addition to the Money Laundering Law as mentioned above, it is also regulated in Article 137 of the Narcotics Law, whose elements will be explained in the following paragraphs.

In Article 137 letter a, consists of elements of offense, as follows: (i) places, pays, or grants, deposits, changes, hides, or disguises, invests, stores, donates, inherites, and/or transfers, a money, property, and objects or assets in the form of movable or immovable objects, tangible or intangible, originating from Narcotics crime and/or Narcotics Precursor crime. Meanwhile, Article 137 letter b, consists of elements of offense, as follows: (i) receive placement, payment or expenditure, safekeeping,

³⁹ For example, the *legal principle* is the recognition of individual property rights, derives, *inter alia*, the *legal norm*, that is the prohibition of disturbing other people's property rights, then *inter alia*, *legal regulation*, that is an article 362 of the Criminal Code.

Ibid., p. 177.

⁴⁰ The *legal principle* as the ratio-legis of legal regulations.

Furthermore, see: Abdullah Marleng, Irwansyah, dan Kaisaruddin Kamaruddin, (2009), *Pengantar Hukum Indonesia*, Makassar: Yayasan Aminuddin Salle (A.S. Center), p. 35.

⁴¹ Sudikno Mertokusumo, (2009), *Penemuan Hukum: Sebuah Pengantar*, Yogyakarta: Liberty, p. 5.

⁴² T T. H. Ranidajita, (1994) "Eksistensi Sanksi Pidana Dalam Hukum Administrasi Negara

Khususnya Hukum Pajak di Indonesia," *Jurnal Masalah-Masalah Hukum* 4, p. 21.

⁴³ M. Arif Amrullah, (2020), *Tindak Pidana Pencucian Uang dalam Perspektif Kejahatan Terorganisasi*, Jakarta: Kencana.

exchange, concealment or disguise of investment, deposit or transfer, grant, inheritance, property or money, objects or assets in the form of movable or immovable objects, tangible or intangible; and (ii) knowingly sourced from Narcotics crime and/or Narcotics Precursor crime.⁴⁴

Furthermore, in the context of laundering of proceeds of forest destruction crime, in addition to those regulated in the Money Laundering Law, there are also similar arrangements as in Article 95 paragraph (1) letter b and c, as well as Article 87 paragraph (1) of the Forest Destruction Law, whose elements will be explained in the following paragraphs.

In Article 95 paragraph (1) letter b and c, consists of elements of offense, as follows: (i) places, transfers, pays, expends, donates, grants, deposits, carries abroad and/or exchanging money or other securities and other assets; or hide or disguise the origin of assets; and (ii) which are knowingly or of which are reasonably alleged as the proceeds of illegal logging and/or illegal use of forest areas. Meanwhile, in Article 87 paragraph (1) letter a, consists of elements of offense, as follows: (i) intentionally; and (ii) receive, buy, sell, accept exchange, accept deposit, and/or own forest products.

Based on the description of each element of the offense above, it can be understood that among the elements of the offense contained in Article 3 of the Money Laundering Law, there is an element of offense that is equivalent to Article 137 letter *a* of the Narcotics Law,⁴⁵ and Article 95 paragraph (1) letter *b* and *c* of the Forest Destruction Law.⁴⁶ However, the criminal threats in each of these provisions are different. In Article 137 letter *a* of the Narcotics Law, the minimum criminal threats are 5 (five) years, and the maximum is 15 (fifteen) years. Furthermore, in Article 95 paragraph (1) of the Forest Destruction Law, the minimum criminal threats are 8 (eight) years, and the maximum is 15 (fifteen) years. Meanwhile, in Article 3 of the Money Laundering Law, the minimum criminal threats are not specified, but the maximum is 20 (twenty) years. Furthermore, the offense element as stated in Article 5 paragraph (1) of the Money Laundering Law has an element of offense which is equivalent to Article 137 letter *b* of the Narcotics Law and Article 87 paragraph (1) letter *a* of the Forest Destruction Law. However, the criminal threats in each of these provisions are also different. In Article 137 letter *b* of the Narcotics Law, the minimum criminal threats are 3 (three) years, and the maximum is 10 (ten) years. Furthermore, in Article 87 paragraph (1) letter *a* of the Forest Destruction Law, the minimum criminal threats are 1 (one) year, and the maximum is 5 (five) years. Meanwhile, in Article 5 paragraph (1) of the Money Laundering Law, the minimum criminal threats are not specified, but the maximum is 5 (five) years. The differences in criminal threats

⁴⁴ Kusnedi, (2020), "Penerapan Unsur Tindak Pidana Pencucian Uang Yang Berasal Dari Hasil Tindak Pidana Narkotika Pada Tingkat Penyidikan (Studi Pada BNNP dan Ditresnarkoba Polda Sumbar)," *Unes Law Review* 2(4), p. 414.

See also: Ruslan Renggong, (2021), *Hukum Pidana Khusus: Memahami Delik-delik di Luar KUHP, Edisi Revisi, Cetakan ke-4*, Jakarta: Kencana, p. 146.

⁴⁵ Musrial, (September 2022), "Penerapan Unsur Tindak Pidana Pencucian Uang Terhadap Pelaku Tindak Pidana Narkotika," *Unnes Law Review* 5(1), p. 204.

⁴⁶ Mahrus Ali, (2018), "Proporsionalitas dalam Kebijakan Formulasi Sanksi Pidana," *Jurnal Hukum Ius Quia Iustum* 25(1), p. 153.

also have the potential to create opportunities for transactional law enforcement. Therefore, the choice of law that should be enforced needs to be emphasized.

The existence of 2 (two) offenses regulated in 2 (two) different laws, can lead to legal bias in determining which provisions (offenses) must be applied in one legal event. For example, in this context, in case of laundering the proceeds of Narcotics crime, which provisions should be applied, whether Article 3 of the Money Laundering Law or Article 137 letter *a* of the Narcotics Law. Likewise, in the context of laundering the proceeds of the crime of forest destruction, whether Article 3 of the Money Laundering Law or Article 95 paragraph (1) letters *b* and *c* of the Forest Destruction Law, which should be applied.

Because there is a legal problem in that circumstances, an instrument is needed that can be a way out to resolve or solve the legal problem. Regarding this issue, Kraan argues that the thing is used as a "*sweeping statement*", or as a solution that is formulated absolutely for solving a legal problem, is a *legal principle*.⁴⁷

In the principle of preference, one of the principles is known, namely *lex specialis derogat legi generali*.⁴⁸ However, this principle in the *a quo* context cannot be applied, considering that each of the laws regulating the offenses described above is a *special law* (regulated outside the Criminal Code).⁴⁹ Thus, another legal principle is needed, which can be used as a guideline, to resolve the conflict of norms, so that it can be determined which special provisions/delicts will be applied when there is laundering of proceeds of Narcotics crime or laundering of proceeds of Forest Destruction crime.

In the previous sub-discussion, the author has explained that there are at least 2 (two) principles that can be used, in order to resolve the conflict of norms, as in a *quo* discussion, that is the *lex consumen derogate legi consumte* principle, and the *juridische/systematische specialiteit* principle. In the previous sub-discussion it was also explained that among the 2 (two) principles above, which according to the author is more appropriate to be applied, is the *juridische/systematische specialiteit* principle, which literally means a special crime, which is applied, based on the *ratio legis* of the existence of the offense⁵⁰ (*and the author adds it with, it is also necessary to refer to the ratio decidendi of the Constitutional Court Decision if it has ever been reviewed for its constitutionality*), whether the provision is a special provision systematically, so that it becomes a choice between legal choices from other special provisions. In order to answer this question, it will be described using the two approaches.

⁴⁷ Sudikno Mertokusumo, *Op.Cit.*, p. 46.

⁴⁸ Mochamad Cahyo Pamungkas, (2021), "Tinjauan Yuridis Tentang Pengaturan Pihak Yang Berwenang Dalam Mengajukan Permohonan Pailit Terhadap Perusahaan Umum," *Novum: Jurnal Hukum* 8(1), p. 6.

⁴⁹ Article 103 of the Criminal Code states that "*the provisions in Chapters I to Chapter VIII of this Part also apply to acts which are punishable by other statutory provisions, unless the law provides otherwise*".

This means that all provisions regulated outside the Criminal Code are categorized as a ***special crime***.

⁵⁰ P.A.F. Lamintang, *Op.Cit.*, p. 713 – 714.

The Legislative intents (*Ratio Legis*) Approach

Understanding legislative intents to analyze a provision (elements of the offense) is very important and have a positive effect in the law enforcement.⁵¹ This is because by understanding the legislative intent, law enforcement will be in line with the expectations of legislators when formulating that provision.

It needs to be an initial understanding that interpreting a statutory provision must not deviate from the legislative intents and their constitutional basis.⁵² Regarding how to interpret a criminal provision in a criminal law, *Hoge Raad* in its *arrests*, that is November 12, 1900, W.7525 and January 21, 1929, N.J. 1929 page 709, W. 11963, has decided *inter alia* “*bij uitlegging van een op zich duidelijke bepaling mag eendarvan afwijkende bedoeling van den watgever niet in aanmerking komen* (when interpreting a provision that is already clear enough, we must not deviate from the meaning intended by the legislators).⁵³

Pompe also said that: “*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*” (“for criminal law, if there is a space for different interpretations, then it is better if people search for what the legislators actually objectives (*bedoeling des wetgever*) with those elements of the offenses, rather than simply being linked to what is written in the elements of the offenses in the law”).⁵⁴

Meanwhile, in the context of the establishment of the Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering, the legislative intents to establish that Law (*ratio legis*), including the criminalization of money laundering offenses is as follows: (a) to maintain the stability and integrity of the national financial system from money laundering; (b) to prevent and eradicate crimes involving significant amounts of property, while at the same time preventing the repetition and expansion of these crimes; (c) to improve coordination between law enforcement agencies in the prevention and eradication of money laundering crimes; (d) to increase state revenue through seizure and confiscation of proceeds of crime; and (e) *to comply with and follow changing international standards as reflected in the 40 FATF Recommendations and the provisions of the anti-money laundering regime that apply in international best practices*.⁵⁵

Based on that description, it is clear that one of the legislative intents in establishing the Money Laundering Law (including the issue of criminalizing money laundering offenses) is to comply and follow the international standards in the context of preventing and eradicating money laundering offenses (40 FATF Recommendations).

⁵¹ Kerry Inger, and James Stekelberg, (2022), "Valuation implications of socially responsible tax avoidance: Evidence from the electricity industry," *Journal of Accounting and Public Policy* 41(4), p. 6

⁵² Muh. Afdal Yanuar, *Op. Cit.*, p. 730.

⁵³ Andi Muhammad Sofyan, et. al, (2020). *Hukum Acara Pidana, Edisi Ketiga*, Jakarta: Prenadamedia, p. 24.

⁵⁴ W. J. P. Pompe, *Op.Cit.*, p. 54, as citated in P.A.F. Lamintang, *Op.Cit.*, p. 45.

⁵⁵ Direktorat Hukum PPATK, (2015), *Modul Workshop Terpadu Penanganan Tindak Pidana Pencucian Uang*, Jakarta: PPATK, p. 65-66.

This is also because, the provisions of the anti-money laundering regime in countries around the world, including Indonesia, are determined based on the provisions in 40 FATF Recommendations.⁵⁶

Regarding the criminalization of Money Laundering itself as stated in the Money Laundering Law *a quo*, it is a manifestation of the Recommendation mandated in the FATF Recommendation, regarding the criminalization of money laundering offenses. In the *Rekomendation 3 of FATF Recommendation*, it is stated that "Countries should criminalise money laundering on the basis of the Vienna Convention (*United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988*) and the Palermo Convention (*United Nations Convention Against Transnational-organized Crime, 2000*)".⁵⁷

As for the provisions of Article 6 paragraph (1) of the Palermo Convention, it is stated as follows: *Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offenses, when committed intentionally: a.(i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offense to evade the legal consequences of his or her action; (ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime; b.(i) Subject to the basic concepts of its legal system: (i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime.*⁵⁸

Furthermore, as mandated by Recommendation 3 of the FATF Recommendations, which is one of the pillars in the *ratio legis* of the establishment of the Money Laundering Law *a quo*, the provisions in Article 6 paragraph (1) have been derived into the criminalization of Money Laundering Offense as in Article 3, Article 4, and Article 5 paragraph (1) of the Money Laundering Law. The elements of Article 3, and Article 5 paragraph (1) of the Money Laundering Law itself, have similarities with the elements of Article 95 paragraph (1) letters *b* and *c* and Article 87 paragraph (1) letter *a* of the Forest Destruction Law in the context of laundering of proceeds of forest destruction crime, and Article 137 letter *a* and letter *b* in the Narcotics Law in the context of laundering of proceeds of narcotics crime.

From this explanation, at least it can be understood, the following things: (a) the objective of the establishment of the Money Laundering Law *a quo* (which among other things regulates the criminalization of laundering of proceeds), among other things, is in order to fulfill and revive the content of the international standard in the

⁵⁶ Henry Ogeide et.al, (2023), "The anti-money laundering risk assessment: A probabilistic approach," *Journal of Business Research* 162, p. 2.

See also: D. Bartolozzi, (2022), "Designing the anti-money laundering supervisor: The governance of the financial intelligence units," *International Review of Economics and Finance* 80, 1094.

⁵⁷ July Esther, (2022), "Conflict of Law Culture Consequence Law Transplantation in Indonesia Money Laundry Regulation," *Legal Brief* 11(5), p. 2848.

⁵⁸ See Article 6 paragraph (1) *United Nations Convention Against Trans-Organized Crimes*

FATF Recommendation in the content of the Money Laundering Law a quo; and (b) the criminalization of laundering of proceeds contained in the Anti-Money Laundering Law, is based on the Vienna Conventions, 1988, and the Palermo Conventions, 2000, as mandated by the FATF Recommendations (Recommendation 3), which is the grand design in the Implementation of prevention and eradication of the Crime of Money Laundering.⁵⁹

From this explanation, it can be understood that juridically and systematically, the criminalization of *laundering of proceeds*, became the substance of the criminalization of the Money Laundering crime as stated in the Money Laundering Law *was the objective of legislators at that time* (establishment of Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering).

Furthermore, if it is seen from the objective of the establishment of the Forest Destruction Law and the Narcotics Law, there is no one consideration in the Forest Destruction Law and the Narcotics Law which contains the urgency to regulate forest destruction crime and narcotics crime in accordance with the international AML-CFT (Anti-Money Laundering and Countering Financing of Terrorism) standards (in this case the FATF Recommendations or the Vienna Conventions, 1988, and the Palermo Conventions, 2000, which mandate and regulate the content of laundering of proceeds) as part of its legal substances.

Based on the explanations mentioned above, it can be concluded that refer to the *ratio-legis* of the establishment of the Money Laundering Law and also the Forest Destruction Law and the Narcotics Law, the choice of law that has stronger legal reasons to be applied in the criminal event of laundering of proceeds (*inter alia*, proceeds of forest destruction crime and proceeds of narcotics crime) is the criminalization of *Money Laundering Offense* as regulated in the Money Laundering Law. Thus, if there are provisions that are similar to the provisions of Money Laundering Offenses in other criminal laws, then the legal choice to be applied to the legal event of laundering of proceeds is the provisions of the Money Laundering Offense as regulated in Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Offenses.

Legal Considerations of Judges (*Ratio Decidendi*) of the Constitutional Court in Judicial Review of the Money Laundering Law Approach

Referring to the Decision of the Constitutional Court Number 77/PUU-XII/2014 and the Decision of the Constitutional Court Number 90/PUU-XIII/2015, it is stated that Money Laundering is a follow up crime,⁶⁰ which requires that there is a criminal act that proceeds assets, as a condition for money laundering occur. This describes that the Crime of Money Laundering is a follow up of the proceeds of crime obtained from the

⁵⁹ Muh Afdal Yanuar, (2021), "Anotasi Putusan Perkara Tindak Pidana Pencucian Uang a.n. Terdakwa Baasta Siahaan" dalam *Himpunan Anotasi Putusan Perkara Tindak Pidana Pencucian Uang Edisi Tahun 2021*, Jakarta: PPATK, p. 20.

⁶⁰ See Point [3.18] of *Ratio decidendi* of Constitutional Court Decision Number 77/PUU-XII/2014, dan Point [3.12] of *Ratio decidendi* of Constitutional Court Decision Number 90/PUU-XIII/2015.

predicate crime.⁶¹ This explanation describes that, logically-systematically, money laundering is the *finis operantis* (the ultimate goal to be achieved by the perpetrator) of the predicate crime committed by the perpetrator. Predicate crime itself includes certain crimes committed by perpetrators that produce criminal proceeds, and money laundering itself includes concealment or disguise of the proceeds of crime. This explanation gives a conclusion, that if there are other provisions that are similar to the provisions of money laundering crime in other criminal laws, then the choice of law to be applied in case of the laundering of proceeds, are the provisions of the money laundering crime, as regulated in Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering.

After getting an overview of the concept of the *juridische/systematische specialiteit* principle, which makes systematic interpretation, as the basis for legal interpretation between special provisions, by refer to the *ratio legis* of the establishment of the law that criminalizes the offense, *and added by the author*, it also consists of the *ratio decidendi* of the Decision of the Constitutional Court, if its constitutionality has been reviewed in Constitutional Court. Based on that principle (*juridische/systematische specialiteit*), the *money laundering crime* as stipulated in the Money Laundering Law is the main choice that must be applied in case of *laundering of proceeds of Narcotics crime* or *laundering of proceeds of Forest Destruction crime*. Furthermore, the author will describe several court decisions that have strengthened the results of the construction of thoughts that have been described above.

First, in the Stabat District Court Decision Number 438/Pid.Sus/2014/PN Stb., on behalf of the defendant, Mohd. Azwar. Prior to this case, the defendant Mohd. Azwar has been found guilty of committing narcotics crime, through the Stabat District Court Decision Number 154/Pid.sus/2013/PN. Stb. Furthermore, in this decision, the defendant was indicted with, between Article 137 letter a of the Narcotics Law and Article 3 of the Money Laundering Law, with alternative indictments. In this case, the Panel of Judges stated that the defendant was proven to have committed the money laundering as stated in the Second Indictment, that is Article 3 of the Money Laundering Law.⁶²

Second, in the North Jakarta District Court Decision Number 1492/Pis.Sus/2015/PN Jkt Utr., on behalf of the defendant Nurlaila / Sri Hartati, with narcotics as a predicate crime. In this case, the perpetrator of the predicate crime and as an active launderer is a Nigerian citizen named Roger / John / Emeka / Ekperuka, who is the fugitive. So that, the type of proof in this case, is proof of laundering of proceeds of narcotics crime, without proving the predicate crime firstly. The defendant was indicted with alternative indictment, between Article 137 letter b of the Narcotics Law OR Article 5 paragraph (1) of the Money Laundering Law. In the Courts Decision on this case, it was

⁶¹ Muh Afdal Yanuar, (2021), *Tindak Pidana Pencucian Uang dan Perampasan Aset*, Malang: Setara Press, p. 91-92.

⁶² Stabat District Court Decision Number 438/Pid.Sus/2014/PN Stb.

stated that the defendant was found guilty of committing a crime as stated in the Second Indictment, that is, Article 5 paragraph (1) of the Money Laundering Law.⁶³

Third, The decision of the Palembang District Court Number 1010/Pid.B/Lh/2019/PN Plg, on behalf of the Defendant Ir. Basta Siahaan. In this case, the defendant is indicted with the forest destruction crime as regulated in Article 92 paragraph (1) letter *a* *jo* Article 17 paragraph (2) letters *a* and *b* of the Forest Destruction Law, as predicate crimes. In addition, for the act of laundering the proceeds of the Forest Destruction crime, the defendant was indicted with Article 95 paragraph (1) letter *b* of the Forest Destruction Law OR Article 3 of the Money Laundering Law. Furthermore, in the court's decision in this case, regarding the act of laundering the proceeds of the forest destruction crime, which was charged to the defendant, the panel of judges, chose to impose Article 3 of the Money Laundering Law on the defendant.⁶⁴

Based on the three Court Decisions above, each of which has permanent legal force (in kracht van gewijsde), it can be concluded that the Panel of Judges in case of the criminal act of laundering of proceeds of Narcotics crime and also laundering the proceeds of the forest destruction crime, choose to apply/impose the Money Laundering Crime as regulated in the Money Laundering Law, to the defendant. That is a concretization of the application of the *juridische/systematische specialiteit* principle, in case of *laundering of proceeds of narcotics crime* and *laundering the proceeds of the forest destruction crime*.

CONCLUSION

The more relevant principle to be applied on the conflict of norms is the *juridische/systematische specialiteit* principle, which bases the interpretation method of determining the provisions/offenses applied based on the *ratio legis* of the establishment of the law which criminalizes it, and the *ratio decidendi* of the Constitutional Courts decision, in the event that its constitutionality has been reviewed. The provision that should be applied is the money laundering crime as regulated and subject to criminal penalties in the Money Laundering Law. It is necessary to review the existence of the laundering of proceeds from narcotics crime norm in the Narcotics Law or laundering of proceeds from forest destruction crime in the Forest Destruction Law. Supposedly, provisions related to laundering of the proceeds of crime are only regulated in the anti-money laundering Law.

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⁶³ North Jakarta District Court Decision Number 1492/Pis.Sus/2015/PN Jkt Utr.

⁶⁴ Palembang District Court Decision Number 1010/Pid.B/Lh/2019/PN Plg.

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