

Application of the Lex Specialis Derogat Legi Generali Principle to Information Law and Electronic Transactions in the Use of Social Media in Candipuro

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Abstract

The legal principle Lex Specialis Derogat Legi Generali dictates that specific rules take precedence over general ones. It guides legal practitioners in determining which law prevails when multiple regulations are violated. Primarily applied in criminal law enforcement for legal certainty, this principle plays a significant role in resolving conflicts within the legal framework. In the context of insult and defamation crimes, various factors contribute to their occurrence. Motivations may stem from unintentional actions, jealousy towards others' success, or fear of career hindrance due to competition. Perpetrators attempt to tarnish others' images through verbal attacks, causing harm to their honor and reputation. The essence of these criminal acts lies in accusing individuals of certain deeds, intending for the accusations to spread publicly. Insult and defamation involve the dissemination of false and embarrassing information about an individual, resulting in public shame and potential losses. Typically, these acts include specific accusations presented as facts. The gravity of the offense intensifies when false accusations, detrimental to one's reputation, are knowingly spread to a wider audience. In legal terms, such actions constitute the criminal offense of "defamation." The application of the Lex Specialis Derogat Legi Generali principle ensures a structured approach to resolving legal conflicts, especially in the realm of criminal law related to insult and defamation.

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INTRODUCTION

Legal rules that contain a principle called lex specialis derogat legi generalist are included in the rule of recognition category. The principle of lex specialis derogat legi generalis regulates legal rules that can be recognized as valid as enforceable rules, and the principle of lex specialis derogat legi generalis is a secondary rule, which is not only to regulate behavior which is said to be primary rules, but also involves limitations on the usefulness of the authority of the authorities concerned. is in creating repression, a violation of the rules regarding behavior emerges. The principle of lex specialis derogat legi generalis is a legal principle whose task is to provide in the application of policy the task of regulating

its authority, which means it is not related to the formulation of a policy regarding its law (formulation policy), but are involved by game rules in applying the law. The principle of *lex specialis derogat legi generalis* is important for law enforcement officials who are very important in choosing which rules to apply to an event that is regulated by more than one rule, where the regulation exists. lies between those rules which are general in nature and those which have other rules which state a specific nature.

In Article 45 paragraph 2 of the ITE Law, the criminal threat is lighter than in Article 303 of the Criminal Code, even though Article 45 paragraph 2 of the ITE Law is contained in a special provision in the Law. Regarding the minutes of the DPR's discussion specifically regarding the ITE Law, there are the results of the DPR RI Commission I Meeting with the government (Menkominfo and Menkumham) on 20 October 2016 regarding the decision making process for the Draft Law regarding amendments to Law no. 11 of 2008 concerning information and transactions, electronics(ITE). Implementation of what has been agreed upon and agreed to by all parties in the working meeting so that the contents of article 45 paragraph 2 do not become a problem that must be discussed and changed even though the threat is lighter than the general provisions in article 303 of the Criminal Code and there is no regulation stating the provisions. Specifically, the criminal threat must be heavier than the general provisions.

One of the legal principles that must be applied is the *LexSpecialis Derogat Legi Generalist* Principle, which contains the content of criminal law in the provisions of Article 63 paragraph 2 of the Criminal Code, the rule of which is that if an act has entered into a general criminal regulation, it must be regulated. Also in the regulations the criminal nature is special, therefore the special nature is enforced. Article 63 paragraph 2 of the Criminal Code expressly applies its special criminal rules as soon as an act is included in both the general criminal rules and the special criminal rules. The provisions contained in Article 63 paragraph 2 of the Criminal Code contain the principle of *Lex specialis derogatlegi generalis* which is interpreted as a legal principle which means that rules which are specific in nature override rules which are general in nature. Based on the principle of *Lexspecialis derogat legi generalist*, these general rules not only have "validity" as laws that already have specific rules, the rules with special properties are valid laws, which have binding force to apply to certain events. concrete events.

Legal rules that contain a principle called *lex specialis derogat legi generalist* are included in the rule of recognition category. The principle of *lex specialis derogat legi generalis* regulates legal rules that can be recognized as valid rules that are enforced, and the principle of *lex specialis derogat legi generalis* constitutes secondary rules, which are not only intended to regulate behavior, which are said to be primary rules, but also involve limitations on the usefulness of the authorities' authority. which is in creating a repression of a violation of which rules regarding behavior emerge. The principle of *lex specialis derogat legi generalis* is a legal principle whose task is to provide in the application of policy the task of regulating its authority, which means it is not related to the formulation of a policy regarding its law (formulation). policy), but are involved by the game rules in implementing the law. The principle of *lex specialis derogat legi generalis* is important for law enforcement officials who are very important in choosing which rules to apply to an event that is regulated by more than one rule, which regulation is There are some rules which are general in nature and there are other rules which are specific in nature.

One of the legal rules contained in the principle of *lex specialis derogat legi generali* applies not in responding to acts that are known to comply with criminal regulations contained in the Criminal Code, but in giving priority to criminal regulations existing in other laws outside the Criminal Code. As long as it is not reversed, this principle is also applied to other laws outside the Criminal Code. This is based on all the provisions contained in Article 103 of the Criminal Code, which states that this provision applies to all acts that are punishable by other statutory provisions, except if the law stipulates otherwise. The provisions in Article 63 paragraph 2 do not only come into force immediately when the concrete event occurs, subject to all the regulations regarding criminal acts, responsibility for crimes and punishments that are in the Criminal Code, but also to matters that are the same in the laws and regulations issued by the Criminal Code that are shown in the Criminal Code. itself, or seen more broadly in the presence of two or more laws outside the Criminal Code. As long as a statutory regulation contains all criminal regulations of a specific nature, then in general matters regulated in the Criminal Code or laws outside the Criminal Code which have a general nature, they will be invalid in the sense that they no longer have validity.

METHODS

The method for carrying out research to the community is in the form of training which consists of 3 stages, namely preparation, implementation and evaluation. Each stage is explained as follows:

- a. Preparation Stage: The preparation stage starts with a more in-depth analysis regarding partners' understanding of the benefits and ways of using social media. The results of this analysis will look for solutions together with partners and determine a schedule for implementing activities to resolve the problem.
- b. Implementation Stage. The implementation stage consists of two activities, namely starting to analyze in terms of the problems being experienced related to disputes in uploading or commenting on social media, or the process flow for resolving cases that occur.
- c. Evaluation Stage. The evaluation stage is carried out by providing test cases to analyze business problems if problems arise such as disputes and even defamation.

RESULTS AND DISCUSSION

Legal rules that contain a principle called *lex specialis derogat legi generali* are included in the rule of recognition category. The principle of *lex specialis derogat legi generali* regulates legal rules that can be recognized as valid as enforceable rules, and the principle of *lex specialis derogat legi generali* is a secondary rule, which is not only to regulate behavior which is said to be primary rules, but also involves limitations on the usefulness of the authority of the authorities concerned. is in creating repression, a violation of the rules regarding behavior emerges. The principle of *lex specialis derogat legi generali* is a legal principle whose task is to provide in the application of policy the task of regulating its authority, which means it is not related to the formulation of a policy regarding its law (formulation policy), but are involved by game rules in applying the law. The principle of *lex specialis derogat legi generali* is important for law enforcement officials who are very important in choosing which rules to apply to an event that is regulated by more than one rule, where the regulation exists. lies between those rules which are general in nature and those which have other rules which state a specific nature.

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The Draft Law on Amendments to the Electronic Information and Technology Law has been ratified as Law Number 19 of 2016 concerning Amendments to the Electronic Information and Technology Law. The text of the Law is recorded in the State Gazette of the Republic of Indonesia of 2016 Number 251 and Supplement to the State Gazette Number 5952 and has officially come into effect after passing 30 days since it was passed into law on October 27 2016 and came into force Monday November 2 2016. Law It contains seven important points that revise the Information and Electronic Technology Law, especially through this new Law. The government also has the authority to cut off access and/or order electronic system operators to cut off access to electronic information that contains unlawful content. This new law is expected to provide legal certainty for the public, so that they can be smarter and more ethical in using the Internet. Initially the Information and Electronic Technology Law was drafted to support economic growth in Indonesia through the digital economy and trade in cyberspace (e-commerce) in Indonesia. Then along the way there were many polemics and cases that gave rise to pros

and cons regarding the articles in the Law. -Electronic Information and Technology Law, especially related to the use of social media. Responding to developments in the modus operandi of criminal acts committed through 34 electronic media, since 2008 it has been regulated through Law Number 11 of 2008 concerning Electronic Information and Transactions (hereinafter referred to as the ITE Law) as amended by Law NO. 19 of 2016 concerning Information and Electronic Transactions aims to ensure that technology is used more in accordance with statutory provisions. The ITE Law regulates various types of criminal acts that are carried out using modern modes, namely by using electronic media as a means to commit criminal acts. One of them is the criminal act of defamation in electronic media. However, due to changes in mode with the use of electronic media as a means of dissemination, the ITE Law itself was formed. Prevention and eradication of the spread of pornography via computers and the internet as mentioned above in Law Number 19 of 2016 concerning amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, especially in Article 27 Paragraph (3) which reads: "Every A person intentionally and without authority distributes and/or transmits 35 and/or makes accessible Electronic Information and/or Electronic Documents which contain defamatory content." Then Article 45 of the ITE Law states that: "Every person who meets the elements as intended in Article 27 paragraph (1), paragraph (2), paragraph (3), or paragraph (4) shall be punished with imprisonment for a maximum of 6 (six) years and/or a fine of a maximum of Rp. 750,000,000.00.- (Seven Hundred and Fifty Million Rupiah)". Article 27 paragraph (3) of the ITE Law aims to provide protection for the people of Candipuro from criminal acts related to defamation. The crime of defamation is a crime that occurs quite often.

Its distribution through electronic media is the current mode of distribution. This creates greater losses for victims because it is spread very easily and quickly to be accessed by the public. Human rights are rights inherent in humans that they have had since birth. This human right must be owned by every human being throughout the world. In accordance with the definition of human rights, it is necessary to know that there is not a single human being in the world who does not have human rights, that human being must have them. However, not all of the rights we have can be fulfilled properly. There are several irregularities that have occurred with various causes and impacts. With these human rights, it is hoped that all humans will experience the same 36 rights, receive the same treatment, without distinction in any aspect. The right to life, the right to self-determination, the right to express opinions, the right to be free and independent are part of the basic rights possessed by every human being which are gifts from the Creator as creatures created by God Almighty or often referred to as rights. human rights. So it can be said that human freedom is something basic that cannot be taken away by anyone, be it a group, a group or even a state. Freedom of opinion is stated in UUD 45 Article 28E paragraph 3, namely "Everyone has the right to freedom of association, assembly and expression of opinion". Whereas in Law No.39 of 1999 concerning Human Rights Article 3 paragraph 2 reads "Everyone has the right to have , express and disseminate opinions according to one's conscience, orally and/or in writing through print and electronic media by paying attention to religious values, morality, order, public interests and the integrity of the nation.

CONCLUSION

Based on the explanation in the previous chapters, several conclusions can be drawn as follows:

1. The impact if the prosecutor does not apply the principle of Lex Specialis Derogat Legi Generalis will certainly have a negative impact on the justice received by the

defendant in the trial. The answer to this problem is that if you do not accept the results of the lawsuit which does not apply the principle of Lex Specialis Derogat Legi Generalis to produce a decision, you can file a legal effort at the first level, then an appeal can be carried out at the next level, you can make a cassation up to the last level, namely a judicial review for the party involved. feel aggrieved by the results of the decision.

2. With the development of the technology and information sector in Indonesia, regulations have been created to regulate activities in the technology and information sector. Law Number 11 of 2008 concerning Electronic Information and Transactions is used as a guideline in carrying out law enforcement. There is no definite definition regarding cyberbullying in Indonesia, but in general cyberbullying in Indonesia is defined in the provisions of Law no. 11 of 2008 concerning ITE articles 27 and article 29. There are no restrictions regarding cyberbullying, therefore cyberbullying in Indonesia is aimed at all groups. Things are different in other countries, for example the United States. In the United States, cyberbullying is aimed specifically at children and teenagers. The articles that regulate cyberbullying in Indonesia limit the public from being able to exercise their right to expression because these two articles are rubber articles so the meaning of these articles is still biased.

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