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The Interpretation of Legal Principles by the Government in the Special Autonomous Region of Aceh

Muhammad Reza Maulana [1*], Zainal Abidin [2], Mazwar [3]
[1-3] Fakultas Hukum, Universitas Syiah Kuala, Indonesia
Email: mrmlawfirm@gmail.com [1], zainalabidin@usk.ac.id [2], mazwar@usk.ac.id [3]
** Corresponding Author : mrmlawfirm@gmail.com*

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Abstract. *Law Number 11 of 2006 on the Governance of Aceh embodies the principle of lex specialis due to its territorial scope, while Law Number 4 of 2009 on Mineral and Coal Mining also contains a lex specialis character as it specifically regulates the mining sector. This situation raises a legal question regarding how the principles of lex specialis derogat legi generali, lex superior derogat legi inferiori, and lex posterior derogat legi priori should be interpreted and applied by the Government within the framework of Aceh as a Special Autonomous Region. This study aims to conduct an in-depth legal analysis using a progressive law approach to examine whether the principles of lex posterior or lex superior may override the principle of lex specialis as applied in Aceh's special autonomy regime. The research employs normative legal methods with qualitative analysis. The findings indicate that the principle of lex specialis derogat legi generali as stipulated in the Law on the Governance of Aceh must take precedence due to its specific territorial applicability and special autonomous status. In resolving such normative conflicts, a clear legal framework is required, accompanied by the renewal of legal theories and principles to ensure legal certainty, prevent regulatory overlap, and promote harony among statutory regulations.*

1. INTRODUCTION

The legal basis or legal foundation refers to a legal basis or legal ground, namely a legal norm that underlies a specific act or legal action, thereby rendering such act or action legally valid or justifiable. In contrast, the term source of law refers more to the origin or source from which a particular legal value or norm is derived.

Within the framework of constitutional law, legal norms constitute the foundational basis for the exercise of state authority and the performance of legal acts. Nevertheless, such norms are not always interpreted uniformly by relevant stakeholders, as their meaning is often contingent upon differing legal perspectives and institutional interests. Consequently, the application of law is not neutral or monolithic, but rather shaped by the interests, functions, and authority of the state organs entrusted with its implementation.

Law, as a normative system, inherently aspires to order and legal certainty. This aspiration is affirmed by contemporary perspectives on the evolving existence of law across time and

space. Law consists of a systematic body of norms comprising diverse rules, principles, concepts, and doctrines, as well as various branches of procedural and substantive law. These elements are interconnected in such a manner that they form a coherent, logical, and rational system of normative reasoning, upon which, in principle, all practical legal problems may be resolved through law.

Legal principles (*general principles of law*), as foundational normative guidelines, function to ensure coherence and consistency in the application of statutory regulations and to resolve conflicts among norms within a legal system. Nevertheless, legal principles do not always operate as conclusive mechanisms for harmonizing divergent legal interpretations, particularly where competing institutional interests influence the application of a norm in the exercise of state power. In such circumstances, the indeterminacy of principles and their open-textured nature may limit their capacity to fully reconcile interpretive conflicts among state organs.

The administration of government in regions granted special autonomy is invariably regulated by a statutory legal basis in the form of an Act. However, in practice, the exercise of regional governance often accompanied by the overlapping involvement of central government authority frequently gives rise to contradictions or divergent interpretations, each of which relies on legal principles as justificatory arguments. In the case of Aceh Province, based on Law Number 11 of 2006 on the Governance of Aceh, legal scholars consistently characterize the Law on the Governance of Aceh as a special statute that applies exclusively within the territorial jurisdiction of Aceh. This Law regulates a wide range of matters that fall within the domain and authority of the Government of Aceh. For instance, Article 156 of Law Number 11 of 2006 on the Governance of Aceh provides that "the Government of Aceh and the regency/municipal governments shall manage natural resources in Aceh, both on land and in the marine areas of Aceh, in accordance with their respective authorities." This provision, as one of the normative foundations contained in the Law on the Governance of Aceh, confers a special legal character on the exercise of authority in the management of natural resources within Aceh Province, including, inter alia, the mining sector as one of the forms of natural resource management in Aceh.

The management of natural resources has been specifically regulated through the enactment of Law Number 4 of 2009 on Mineral and Coal Mining, as amended by Law Number 3 of 2020 concerning the Amendment to Law Number 4 of 2009 on Mineral and Coal Mining. Explicitly, these two statutory frameworks regulate identical or substantially similar matters. While the Law on the Governance of Aceh governs the management of natural

resources, including the mining sector, the Mining Law likewise regulates the management of mineral and coal mining activities. Law Number 11 of 2006 concerning the Governance of Aceh possesses characteristics that embody the meaning of *lex specialis*, namely a statute that specifically regulates the governance of Aceh in various aspects of its authority. However, Law Number 4 of 2009 may likewise be construed as a special statute, as it governs specific and concrete matters in the field of mining, including matters relating to governmental powers and authorities as contained in Law Number 4 of 2009 concerning Mineral and Coal Mining. A legal issue arises when the question concerns the coexistence of Law Number 11 of 2006 on the Governance of Aceh, which embodies special principles and characteristics (*lex specialis*), and Law Number 4 of 2009, which also embodies special principles and characteristics (*lex specialis*), thereby raising the question of how these two statutory provisions should be classified in determining which constitutes the general law (*lex generalis*) and which constitutes the special law (*lex specialis*).

In other words, from each analytical aspect as referred to above, each of which carries its own interpretative significance in construing statutory provisions, if only these two statutes are taken as examples among the multitude of existing laws and regulations, it is possible that Law Number 11 of 2006 concerning the Governance of Aceh when interpreted, for instance, through a so called "mathematical" or formalistic approach may be regarded as being overridden or having its normative application set aside in the sphere of authority over natural resource management, particularly in the mining sector. This is because Law Number 4 of 2009 concerning Mining embodies the operation of two legal principles: first, it constitutes a newer law (*lex posterior*), as it was enacted in 2009, subsequent to the enactment of Law Number 11 of 2006 in 2006; and second, it is also regarded as a special law (*lex specialis*), given that both statutes are special in nature. In this regard, Law Number 11 of 2006 concerning the Governance of Aceh is considered special due to its territorial scope, whereas Law Number 4 of 2009 concerning Mining is considered special due to the specificity of its regulatory subject matter.

The matters referred to above constitute legal issues for which an appropriate formula must be identified in order to resolve the core problems concerned. This is because, in principle, the entirety of legislative products should form a harmonious legal system namely, one that is vertically and horizontally synchronized and consistent. Such harmony must be reflected in the substantive aspects, which include compliance with legal principles, the principles of good law- making, the principles governing legislative content, as well as conformity with the legal principles that constitute the background, rationale (*ratio legis*), and

purpose of the enactment of legislation, including its meaning both express and implied—and the use of legal terminology. In addition, harmony must also be ensured in the formal aspects, whereby the legislative drafting process must comply with the applicable procedural requirements.

2. LITERATURE REVIEW

The theoretical framework constitutes one of the initial sections that plays a fundamental role in the formulation of a research study, as it provides the conceptual foundation upon which the researcher conducts the analysis of all issues under examination, including research in the field of legal studies. The importance of elaborating a theoretical framework in legal research may be understood by first examining the concept of theory itself, both from an etymological and a terminological perspective, as well as by understanding the function of theory in guiding the process and direction of research analysis. Accordingly, the theoretical framework of this study is as follows:

The Theory of the Rule of Law

The Theory of the Rule of Law constitutes the principal grand theory of this study. This theory examines various perspectives on the notion that the exercise of state authority must be grounded in law, including an analysis from the standpoint of legal history, the types and models of the rule-of-law state, as well as the etymological and embryonic development of the concept of nomocracy. These perspectives are subsequently linked to the concept of the Rule of Law within the context of the Unitary State of the Republic of Indonesia, as established under the 1945 Constitution of the Republic of Indonesia, along with other relevant statutory regulations.

The Theory of Regional Autonomy and Special Autonomy

This study also employs the Theory of Regional Autonomy and Special Autonomy as a middle-range theory or supporting theoretical framework. This theory is used to explain the application of regional autonomy and special autonomy concepts in analyzing legal principles and their operation within regions granted the status of regional autonomy and special autonomy. Through this theoretical lens, the study examines how legal principles are interpreted and applied in the governance of autonomous regions, particularly in areas characterized by distinctive constitutional and statutory arrangements.

The Theory of Legislation

The Theory of Legislation in this study is categorized as an applied theory. It is employed as a practical analytical tool to support and address the principal legal issues examined in this

research. Legislation, as a system of legal rules and norms, provides the primary framework through which this study focuses on formulating responses to the research questions set out in the statement of problems, particularly in relation to the interpretation and application of legal principles within the statutory framework under review.

3. RESEARCH METHOD

This study adopts a normative legal research methodology. Normative legal research is primarily conducted as a document-based inquiry, focusing on the analysis of authoritative legal materials, including statutory provisions, judicial decisions, contracts or agreements, legal doctrines, and scholarly opinions. This method also referred to as doctrinal legal research is commonly characterized as library-based research or document study, as it emphasizes systematic examination, interpretation, and conceptual analysis of legal norms and principles rather than empirical data.

The research method employed in this thesis is library research, which involves a data collection technique conducted through the examination of books, scholarly literature, and other documents relevant to the research problem.

The method of analysis employed in this normative legal research is qualitative analysis. The data analyzed were obtained from various sources through the application of diverse data collection techniques, thereby enabling data triangulation to enhance the validity and depth of the analysis.

4. RESULTS AND DISCUSSION

In order to provide a comprehensive explanation, the author presents the full range of arguments relevant to this study, aimed at identifying the findings and discussion as well as the key aspects that warrant further examination and analysis. Through this approach, the author's hypothesis, as set out in the background of the research problem, is systematically elaborated and clarified, thereby ensuring coherence between the objectives of the study and its resulting conclusions.

Legal Principles in the Context of the Rule of Law, Regional Autonomy and Special Autonomy, and Legislative Theory

The concept of the rule of law is grounded in the fundamental premise that the life of the state must be based upon law. Among the essential elements of the rule of law are government conducted in accordance with law, the protection of fundamental rights, and the separation or distribution of powers. Government according to law requires state authorities

and public officials to uphold and enforce the law, to base all governmental actions within the framework of legal norms, and to ensure that the application and enforcement of law are not arbitrary but are carried out fairly and justly.

In the development of Indonesia's constitutional system, the autonomy granted to regional governments has undergone significant dynamics, characterized by periods of expansion and contraction. Such autonomy has been formulated in various legal frameworks, including the concept of "real and responsible autonomy" under Law Number 5 of 1974, "broad, real, and responsible autonomy" under Law Number 22 of 1999, and "the broadest possible autonomy" as stipulated in Article 18 paragraph (5) of the 1945 Constitution of the Republic of Indonesia in conjunction with Law Number 32 of 2004. Prior to the constitutional amendments, Article 18 of the 1945 Constitution, together with its elucidation, expressly affirmed state recognition and respect for the rights of origin of regions possessing special characteristics. Following the constitutional amendments, Article 18B paragraph (1) of the 1945 Constitution explicitly provides that "the State recognizes and respects regional government units that possess special or distinctive characteristics, as regulated by law".

An examination of the method of allocating powers/authorities or governmental functions (in which authority is inherently embedded) as adopted by Law Number 32 of 2004 mirroring the approach previously employed under Law Number 22 of 1999, which it replaced demonstrates that such a method reflects, or at least follows, a federal-style pattern. Under this model, the powers, authorities, or functions of the central government are determined in a limited and definitive manner, while the extensive residual powers are vested in regional governments. Accordingly, it may be argued that, although the Republic of Indonesia is formally constituted as a unitary state (the Unitary State of the Republic of Indonesia), the adoption of the broadest possible autonomy and the method of distributing powers, authorities, and governmental functions as provided under Law Number 32 of 2004 have, in substance, imbued the system with federal characteristics. This federal nuance becomes even more pronounced where regional special status and special privileges are implemented in earnest, as the various statutes governing regional special and privileged arrangements operate as *lex specialis* to the regime of broad autonomy applicable to regional governments generally in Indonesia, which functions as *lex generalis*.

At least three legal principles are directly related to the perspective of Regional Autonomy Theory and Special Autonomy Theory, namely the principles of Decentralization, Deconcentration, and Co-administration (*Tugas Pembantuan*). Each of these principles serves distinct functions and carries different legal meanings. For instance, the principle of

Decentralization, as defined in Article 1 point 8 of Law Number 23 of 2014 on Regional Government, provides that "Decentralization is the transfer of governmental affairs by the central government to autonomous regions based on the principle of regional autonomy." Furthermore, the principle of Deconcentration, as stipulated in Article 1 point 9 of Law Number 23 of 2014 on Regional Government, is defined as "the delegation of a portion of governmental affairs that fall within the authority of the central government to the Governor as the representative of the central government, to vertical agencies within certain regions, and/or to governors and regents/mayors as persons responsible for general governmental affairs." In addition, Co-administration (*Tugas Pembantuan*), as regulated in Article 1 point 11 of Law Number 23 of 2014 on Regional Government, is defined as "the assignment by the central government to autonomous regions to carry out a portion of governmental affairs that fall within the authority of the central government, or by provincial governments to regency/municipal governments to carry out a portion of governmental affairs that fall within the authority of the provincial government".

Legal principles constitute fundamental rules and abstract normative guidelines that generally underlie concrete regulations and the implementation of law. In English legal terminology, the term *asas* is rendered as *principle*. Concrete legal instruments, such as statutes, must not conflict with legal principles; likewise, judicial decisions, law enforcement practices, constitutional norms, and the legal system as a whole must be grounded in such principles, which serve as the foundational basis for legal reasoning and argumentation. In this regard, Dragan Milovanovic emphasizes that the systematization of law is a continuous process through which legal norms are organized into coherent bodies of law, coordinated by a set of principles of justification.

Authority, Interpretation, and Application of Legal Principles by the Central Government and the Government of Aceh under Legal Theory and Statutory Regulations

The implementation of regional autonomy for the Province of Aceh was initially regulated under Law Number 18 of 2001 on Special Autonomy for the Province of the Special Region of Aceh as the Province of Nanggroe Aceh Darussalam, which was subsequently repealed and replaced by Law Number 11 of 2006 concerning the Governance of Aceh. Through this statute, the Government of Aceh is granted special autonomous authority to manage and administer its own regional affairs.

The discussion on the application of legal principles by the Central Government within the Special Autonomous Region of Aceh is inseparable from an examination of which

statutory regulations are applicable in Aceh, given its status as a region bearing two distinct legal designations simultaneously: as a Special Autonomous Region pursuant to Law Number 11 of 2006 concerning the Governance of Aceh, and as a Special Region pursuant to Law Number 44 of 1999 concerning the Administration of the Special Status of the Province of the Special Region of Aceh.

The use of legal theories and principles in interpreting a legislative instrument within the framework of the hierarchy of statutory regulations may be construed in accordance with the specific legal purposes and interests to be exercised by a governmental organ, whether of the central government or the Government of Aceh. In this context, the application of legal principles may vary depending on the authority and objectives underlying their use. For instance, Article 35 of Law Number 3 of 2020 concerning the Amendment to Law Number 4 of 2009 on Mineral and Coal Mining contains several provisions that regulate the following matters, which essentially provides that mining activities must be carried out on the basis of business licensing issued by the Central Government.

With reference to the authority of the Government of Aceh as stipulated in Article 156 paragraphs (1) and (2) and Article 165 of Law Number 11 of 2006 concerning the Governance of Aceh, these provisions essentially confer upon the Government of Aceh the authority to manage natural resources within Aceh, both on land and at sea. Consequently, the granting of mining permits constitutes a special autonomous authority vested in the Government of Aceh within the framework of Aceh's special autonomy.

Conflicts between two legal norms should, in principle, be resolvable through legal principles governing their formation, application, and validity. However, as outlined in the background of this study, those principles have proven insufficient to adequately interpret and resolve the normative conflict in question. When examined through the lens of Legislative Theory, particularly the principle of *lex specialis derogat legi generali* understood as the rule that a more specific statutory regulation prevails over a more general one neither of the two norms can be said to override the other. This is because Law Number 3 of 2020 concerning the Amendment to Law Number 4 of 2009 on Mineral and Coal Mining constitutes a *lex specialis* insofar as it specifically regulates the mineral and coal mining sector. Likewise, Law Number 11 of 2006 concerning the Governance of Aceh also constitutes a *lex specialis*, as it applies exclusively within the territorial jurisdiction of the Province of Aceh as a Special Autonomous Region.

The foregoing legal perspective is insufficient to provide adequate legal recognition and respect for the application of a statute that is, in an embryonic manner, expressly mandated by the 1945 Constitution of the Unitary State of the Republic of Indonesia to recognize and respect regional governmental units possessing special or distinctive characteristics. If the interpretation and application of legal principles, as discussed above, are not approached in a rational and coherent manner, Law Number 11 of 2006 concerning the Governance of Aceh risks being progressively eroded by subsequently enacted legislation. Accordingly, it is necessary to formulate an appropriate framework for the interpretation and application of legal principles by both the Central Government and the Government of Aceh in defining and exercising the authorities attributively vested in the Government of Aceh, so that the application of legal principles particularly in regions with special autonomy status does not remain merely normative or symbolic, but is effectively realized in practice.

Based on the foregoing interpretation and application of legal principles, any regulations that are embryonically derived from Law Number 11 of 2006 concerning the Governance of Aceh may effectively be set aside, insofar as matters that are regulated in a general manner under Law Number 11 of 2006 are subsequently delegated to be further regulated by *Qanun*. A *Qanun* constitutes a form of legislation equivalent in hierarchical status to a Regional Regulation. By contrast, the further implementation of statutes that apply nationally is generally regulated through Government Regulations, which constitute a category of legislation that is hierarchically superior to *Qanun* or Regional Regulations.

This means that, if legal principles are not interpreted through an appropriate and coherent framework, the statutory arrangements governing the Government of Aceh as a Special Autonomous Region risk remaining merely "law on the books." In such circumstances, other legal principles may be invoked in a manner that overrides or sets aside the laws and norms applicable in Aceh, notwithstanding the authorities vested in the Government of Aceh as a regional governmental unit possessing special and distinctive status.

There exists a compelling legal opinion that is both relevant and persuasive as a point of reference in situations where normative conflicts such as those described above arise, namely the principle of *lex superior legi inferiori*. Under this principle, a higher-ranking statutory regulation prevails over a lower-ranking one, except where the substance of the higher-ranking regulation governs matters that, by statute, are expressly delegated to fall within the authority of lower-ranking legislation.

The foregoing opinion is considered more relevant because it recognizes an exception based on the substantive content of legislation, namely where a statute expressly mandates the

regulation of certain matters through lower-ranking legislative instruments. In such circumstances, those lower-ranking regulations being embryonic or derivative in nature from the statute cannot be set aside by higher-ranking legislative instruments.

In principle, if the interpretation or application of the principle of *lex superior derogat legi inferiori* within the context of special and/or privileged autonomy is not undertaken through a specific and carefully calibrated framework, all derivative regulations originating from Law Number 11 of 2006 concerning the Governance of Aceh may be rendered inapplicable. This is because, where the Government perceives itself to be constrained by provisions that constitute direct derivatives of Law Number 11 of 2006, it may enact higher-ranking legal instruments than those derived from such special legislation (*lex specialis*). As a result, the regulations emanating from the special statute may be effectively invalidated on the basis of their lower hierarchical status with respect to legal instruments promulgated by the Government, whether in the form of Government Regulations, Presidential Regulations, or even Ministerial Regulations or regulations issued by governmental bodies.

The principle of special interpretation provides a means of addressing the issue of legal instruments of the same hierarchical level but differing in nature and territorial applicability. Fundamentally, the concept of *lex specialis*, as developed in the various theories discussed above, may be interpreted broadly, encompassing specificity in terms of territorial scope, regulatory subject matter, and the allocation of authority.

First, specificity in terms of territorial scope refers to the special status conferred by higher-ranking legislation whether the 1945 Constitution or statutes granting particular rights, obligations, duties, and authorities to a specific region recognized as possessing special or privileged status, with the normative jurisdiction of such legislation limited exclusively to the administrative territory of that region. Second, specificity in terms of regulatory substance signifies that a legislative instrument governs particular and specific subject matters, such as mining, plantations, land affairs, and other sectoral fields. Accordingly, substantive specificity may be understood to mean that a statute regulating a distinct and narrowly defined subject matter constitutes special regulation. Third, specificity (specialis) in terms of authority may be construed as a legislative instrument conferring special powers upon a State Administrative Body or Official to issue regulatory legal instruments (regeling). Consequently, within legal theory and principles, lex specialis does not possess a fixed or self-evident meaning capable of providing absolute legal certainty. Therefore, in order to interpret the principles of lex specialis derogat legi generali, lex superior derogat legi inferiori, and lex posterior derogat legi priori, a theory or principle of special interpretation is required, which signifies that:

1. The principle of *lex specialis derogat legi generali* is understood to mean that a more specific statutory regulation prevails over a more general one, insofar as such specificity is construed in terms of territorial scope and the applicability or jurisdiction of the law.
2. The principle of *lex superior derogat legi inferiori* is understood to mean that lower-ranking statutory regulations must not conflict with higher-ranking ones, insofar as the lower-ranking regulations constitute a direct mandate derived from higher-ranking legislation. In such circumstances, the lower-ranking regulations share the same regulatory character and, therefore, neither may override nor set aside the other.
3. The principle of *lex posterior derogat legi priori* is understood to mean that a statutory regulation enacted subsequently prevails over an earlier one, insofar as the later regulation is of the same nature or operates within a linear and corresponding regulatory framework as the earlier legislation.

In principle, the theory or principle of special interpretation is intended to interpret the three principal legal doctrines in a manner that promotes legal order and ensures legal certainty, particularly in regions possessing special autonomy status.

5. CONCLUSIONS

The application of the principle of *lex superior derogat legi inferiori* cannot automatically override the principle of *lex specialis derogat legi generali*, even where the former regulation is hierarchically superior in form. This is because a lower-ranking regulation that is derived from a special statute (*lex specialis*) likewise retains a special character. Accordingly, the philosophical framework that must be constructed in its application is that a legal rule applicable within the territorial jurisdiction of the Special Autonomous Region of Aceh should be applied in the first instance, insofar as it originates from a special normative source, even if it is hierarchically lower in form. Such regulation constitutes a further elaboration of the implementation of special autonomy, which the 1945 Constitution of the Republic of Indonesia expressly recognizes and accords special respect to regions possessing special or privileged status. As Aceh Province is a region with special autonomy status, for which special legislation has been enacted pursuant to the 1945 Constitution as the *grundnorm*, the principle of *lex specialis derogat legi generali* must therefore apply as a primary rule. Consequently, even where statutory provisions of equal hierarchical status also regulate specific matters as *lex specialis*, the special regulation applicable to the Special Autonomous Region must take precedence, and its application may set aside other special regulations by virtue of the territorial application of the legal principle concerned.

The principle of *lex posterior derogat legi priori* may likewise be displaced by the principle of *lex specialis derogat legi generali*, as the regulatory character of the legislation concerned must be interpreted in a linear and coherent manner. For example, where two statutes governing the same subject matter such as mining are enacted at different points in time, a mining statute enacted in 2009 may be overridden by a mining statute enacted in 2020. However, with respect to normative regulation concerning mining within the territorial jurisdiction of a Special Autonomous Region, the fact that such legislation was enacted earlier does not render it subordinate, overridden, or inapplicable. This is because displacement would only be justified where, for instance, Law Number 11 of 2006 concerning the Governance of Aceh is amended or repealed by a subsequent statute specifically governing the Governance of Aceh within a later temporal framework. Only under such circumstances would the principle of *lex posterior derogat legi priori* properly apply.

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