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The Urgency of Regulation of the *Ultra Qui Judicat* Principle in Criminal Judgments

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Abstract

There is a provision for the judge not to impose a sentence on the defendant if the act is not described carefully, clearly, and ultimately in the public prosecutor's indictment. However, in practice in the court, some judges deviate from the articles charged by the Public Prosecutor. Therefore, this article will analyze the urgency of regulating the ultra qui judicat principle in criminal case decisions. The analysis will be carried out using a normative legal research method using a case approach and data sources from laws and regulations, judges' decisions. The analysis results show that the concrete regulation of the ultra qui judicat principle in the form of legal norms in the Judicial Power Act will benefit judges in deciding cases. The Public Prosecutor's inaccuracy in preparing the indictment, especially the placement of the articles indicted, will be very detrimental to law enforcement and injure the judge's justice in deciding the case. On the other hand, if this principle is not regulated concretely in legal norms, it will open up space for many dissenting opinions on the judge's decision.

1. Introduction

The independence of judicial power can be measured by the judge making decisions based on justice. Substantially, judges are prohibited from deciding cases outside of the indictment of the Public Prosecutor, but then on the agenda of the hearing to examine the evidence, and the judge is faced with trial facts that are not following the indictment the public prosecutor. Thus, affecting his decision, the judge decided the case based on two pieces of evidence, the facts in the trial and his belief.

Article 6 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power states that no act can be punished. However, through a trial and receiving punishment following the actions proven in court based on evidence that convinces the judge that a person is guilty, the judge believes with facts in the trial to give punishment for his actions as violating the articles in the applicable laws and regulations.[1] The act as referred to in Article 6 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power, if it is proven that there is a match between the prosecutor's indictment and the evidence at trial, then it is a legal fact. However, if there is no match between the indictment and the results of the examination of evidence at trial, then this is a trial fact.

Although there is a prohibition for judges not to sentence the defendant if the act is not described carefully, clearly and ultimately in the public prosecutor's indictment, in practice in court, there are judges who deviate from the article charged by the public prosecutor. When deciding cases using other articles, the judge's action is called the *ultra qui judicat* principle, which is to deviate from what was charged.

2. Problem Statement

This article focuses on the urgency of regulating the *ultra qui judicat* principle in criminal case decisions.

3. Methods

The problems that have been determined above will be analyzed using normative legal research methods using a case approach and data sources from laws and

[1] Article 6 Paragraph (2) of Law Number 48 of 2009 concerning Judicial Power is defined as a provision that prohibits judges from imposing criminal penalties not based on valid evidence, trial facts and the judge's conviction.

regulations, judges' decisions. The legal material was analyzed by descriptive qualitative analysis to describe the urgency of applying the *ultra qui judicat* principle for judges in criminal case decisions.

4. Discussion

4.1. The Principle of *Ultra Qui Judicat* And The Freedom Of Judges

A body carries out law enforcement called the judicial power. In carrying out law enforcement, judicial power is based on Article 24 of the 1945 Constitution of the Republic of Indonesia, which states that the Judicial Power is an independent power to administer justice to uphold law and justice. Judicial power is exercised by a Supreme Court and judicial bodies in the general court environment, the religious court environment, the military court environment, the state administrative court environment, and a Constitutional Court.[2]

Law Number 48 of 2009 concerning Judicial Power as the basis for implementing the justice system in Indonesia provides limitations in the form of legal principles in running the judiciary to realize justice based on religious values. The position of the judge has a vital role both in the application of positive law and the discovery of an empty law (*rechtvinding*).

The judge's freedom in interpreting positive law is always based on the achievement of justice. The judge's decision which constantly challenges the articles only to fulfil a sense of justice, the judge can be said to have acted *contra legem*. With the standard that judges must explore, follow and understand legal values and a sense of justice in society. In addition, the judge's decision must be obeyed and respected by the parties (*Res Judicata Pro Veritate Habetur*).

In a rational context, judges have the duty and function of enforcing law and justice based on evidence, facts at trial and the judge's conviction. In qualifying, constating up to constituting the judges, they look for the basis, the legal principles that serve as the basis. The judge's decision must not deviate from Pancasila or contradict legal

[2] Muliyadi, L. (1996). *Hukum Acara Pidana (Suatu Tinjauan Khusus terhadap Surat Dakwaan, Eksepsi dan Putusan Peradilan).* Citra Aditya Bakti. Bandung. p. 39.

principles.[3]

In making decisions, judges must be autonomous, meaning they cannot be influenced by anyone and in any way and dare to construct the law so that they are not seen as implementing the law. Judges can be legalistic but not legalistic. That is, decisions made must be based on the law, but should not be rigid, just a mouthpiece of the law, but rather give meaning to the contents of Article 5 Paragraph (1) of Law Number 48 of 2009 concerning Judicial Power which requires judges to be obliged to trace, follow and know the value of - legal values, a living sense of justice that grows and develops in society.[4]

The framework of thinking questions one of the most fundamental philosophical questions: whether the obligation to decide cases according to or based on law is an obligation to decide or based on justice. In essence, according to Edlin's view, it is closely related to philosophical beliefs as pre-understanding that underlies a priori. Implicitly, Edlin's view is based on a conception that the law must be based on justice because justice is a public value. This thought is not foreign in the realm of more general legal philosophy thinkers.[5]

Edlin's view is that the judicial body has a responsibility to overcome or get rid of injustice where the breakdown or description is representative of the criteria formulated by Stone as a form of appreciation for the Warren Court. As a principle or principle resulting from the conclusion to the above thought, it has a firm legitimacy basis when the practice is carried out within the framework of ideas based on the ideals of the law of justice.[6]

Justice serves as guidelines to distinguish between just and unjust acts. Elements of the aspect of justice may be contained in the substance. However, it is not a law, only a regulatory rule that determines how many elements of substance are contained in it qualitatively and quantitatively.

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[3] Moertokusumo, S. (1985). *Mengenal Hukum suatu Pengantar.* Liberty. Yogyakarta. p. 135-136.
[4] Article 5 of Law Number 48 of 2009 concerning Judicial Power.
[5] Edlin, D. E., in Suwarno, Abadi. (2015). "Ultra Petita dalam Pengujian Undang-Undang oleh Mahkamah Konstitusi", *Jurnal Konstitusi*, Vol 12 (3), p. 3.
[6] *Ibid.*

One of the main tasks of judges is to uphold justice (*gerech'tigdheid*), not legal certainty (*rechtsze'kerheid*). Alternatively, in the language of K. Wantjik Saleh, the work of judges is based on justice. However, what is meant by justice is not justice according to the words of the law alone (*let'terknechten der wet*), according to the entrepreneur's version or based on the tastes of the powerful, but justice based on the One Godhead. This is following the mandate of Article 2 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power as ratified in the State Gazette of the Republic of Indonesia Number 157 of 2009 that:

"The trial was carried out "FOR JUSTICE BASED ON THE ONE ALMIGHTY GOD".

This means that the judge manifests justice in his decision. Reading a judge's decision always begins with words for justice based on the one and only God. This means that the justice fought for by the judge is justice based on the One Godhead. Every judge's decision is based on religious values. It must not only be based on the law alone but must be following his sincere conscience. In other words, in every decision, the judge must not ignore the voice of his conscience in order to seek material benefits for himself, make decisions for the authorities, benefit the powerful (politically and economically), or for the sake of maintaining legal certainty.

Law is a tool, not an end. Moreover, those who have goals are humans. However, because humans as members of society cannot be separated from the law, what is meant by the purpose of the law is humans with the law as a tool to achieve the law's goals.

The benefit of the law is to create an orderly and balanced society. To achieve balance in the legal community as far as possible, divide the rights and obligations between individuals so that in terms of interacting with fellow individuals in society, they are not contradictory but are expected to complement each other. In addition, the benefits of the law in society can be through the authorities regulated in writing in the applicable laws and regulations. These powers provide limitations to the implementers of the law so that every time they solve a problem, the law becomes the commander in chief to realize the objectives of the law.

Bismar Siregar said, to achieve justice in a decision, I will ignore legal certainty; the

law is only a matter of exposure, while the goal is justice.[7] Justice in the ideals of law which is the struggle of humanity, evolves according to the rhythm of time and space, from the past until now without stopping and will continue until humans are no longer active. Humans, as God's creatures consisting of spirit and body, have the power of taste and thinking power, both of which are spiritual powers, where sense can function to control the decisions of the reason so that they run on moral values such as good and evil because what can be determining good or bad is taste.[8]

To realize the values of justice to the community, judges are not only guided by written laws, or judges do not only adhere to legal positivism, which requires that every judge's decision must be based on the provisions contained in the legislation. In this view, the judge must not decide cases outside as formulated in the law. In addition, this understanding has placed judges as the trumpet of the law, which cannot decide beyond what has been stipulated in the law.

Adhering to the notion of positivism will not achieve the values of justice desired by society. Because judges who receive, examine, and adjudicate cases in court deal directly with the community and know for sure about concrete events based on examinations at trial. Meanwhile, the law is still abstract, so that if it is applied directly to cases as required by the law, it will be impossible to obtain public justice. Therefore, in legal theories, in addition to the positivism theory, which requires judges to decide as stipulated in the law, there is also a legal realism theory requiring every decision to be based on empirical (objective) reality because the law is dynamic, which will follow changes in law and society.

The theory of legal realism has never escaped the figures who developed it, namely judges Oliver Wendel Holmes (1841-1935) and Jerome Frank (1889-1959). Oliver Wendel Holmes as a judge put forward a theory called the theory of "law is the behaviour of judges". In his theory, Holmes explains that the rule of law is not the axis of a weighty decision. Rules cannot be relied upon to answer the complex world of life. After all, the absolute truth lies not in the law but the reality of life. This is the

[7] Siregar, B. (1996). *Rasa Keadilan*. Surabaya: PT Bina Ilmu. p. 7.
[8] Erwin, M. (2011). *Filsafat Hukum Refleksi Kritis Terhadap Hukum dan Hukum di Indonesia (Dalam Dimensi Ide dan Aplikasi)*. Jakarta: Rajawali Pres. p. 197.

starting point for the theory of the freedom of judges promoted by Oliver Holmes and Jerome Franks. The law contained in the rules is only a generalization about the ideal world. However, according to Holmes, an enforcer of law (judge) faces life symptoms realistically.[9]

American legal realism or pragmatic legal realism places empiricism in a touch of pragmatism, namely an attitude of life that emphasizes aspects of benefits and uses based on experience that cannot be faced through speculative schemes.[10] Oliver Wendell Holmes said that "life law has not been logic, it is *experience*d". Legal realists emphasize the importance of experience as an input to develop legal reasoning so that juridical thoughts can be more realistic. All of this is done to make the law more sociological and can bring benefits as a bit wit of social engineering, which is more futuristic for realizing a life that brings more benefits to the future. In handling and resolving cases, it is highly expected that people will stop at decisions about the legal consequences and think about the social consequences.

The judge is called the lawmaker more than he found it. The judge must always choose which one will take precedence and which side will win. Realist flow always emphasizes the human nature of the action. Holmes said that legal obligation is only an assumption that if a person does or does not act, he will suffer according to the decision of a court. In addition to the rule of law, Holmes argues that moral factors, benefits, and the primacy of social interests are supporting factors in making ideal decisions so that judges as law enforcers face realistic symptoms of life.[11]

Talking about the judge's decision is constantly faced with the freedom of the judge to decide cases. Order of freedom, people often associate it with the behavior of someone immoral, anarchic, dangerous, and other similarities that tend to have negative connotations. Freedom can mean physical freedom, namely the freedom to move from one place to another. Freedom also means psychological freedom, which is an open expression of the spontaneous nature of human nature. Freedom can also be

[9] Tanya, Bernard L. (Et.al). (2013). *Teori Hukum (Strategi Tertib Manusia Lintas Ruang dan Generasi)*. Yogyakarta: Genta Publishing. p. 149-150
[10] Aburaera, S. (Et.al). (2013). *Filsafat Hukum Teori dan Praktek.* Jakarta: Kencana Pranada Media Group. p. 133.
[11] Mertokusumo, S. (2003). *Mengenal Hukum Suatu Pengantar.* Yogyakarta: Liberty. p. 77.

understood as civil liberties and the right to act within the framework of state regulations or, as Montesquieu puts it: "*to act what the rules allow*".[12]

According to philosophers, freedom does not only mean political, economic or physical freedom but, more fundamentally is the ability to choose freely. There are various assumptions, opinions, and views about human freedom. In studying freedom, one is immediately confronted with the fact that between one opinion and another, there is not only a considerable difference but often also contradictory. Disputes of opinion can be understood if it is realized that human freedom is not absolute freedom (relative freedom) because it is limited by conditions such as human facticity.

As relative freedom or freedom of situation, human freedom is always mixed with non-freedom. The human situation and condition are not the only factors that limit and hinder freedom. Moreover, human freedom contains various aspects or components that influence and are intertwined with each other. In thinking about the problem of intellectual freedom, one can emphasize aspects or components A and B, while components C and D are less emphasized or even ignored at all. Thus, disagreements on the issue of freedom can occur. Genetic factors or heredity with environmental factors cause awareness about the diversity of meanings of freedom.

To be free means to be completely free (unobstructed, disturbed, so that one can move, speak, and act freely). Freeing means releasing from bondage, guidance, pressure, punishment, power. At the same time, freedom is independence or being free. According to Lorens Bagus, freedom is understood as the state of not being forced or determined by something outside, so far as freedom is united with the outstanding internal ability of self-determination. It can also be defined as the ability of an actor to act or not act according to his abilities and choices. Able to act according to what he likes or be the cause of his actions.

The term freedom is often mentioned as a form of human expression that signifies a free being. It is inherent as well as tangible in the scale of human behaviour. Freedom is nature as well as a complete need that underlies the journey of life, self-direction.

[12] Kamil, A. (2012). *Filsafat Kebebasan Hakim.* Jakarta: Prenada Media Group. p. 17.

No human does not know what freedom is because freedom is a fact that is familiar to humans. In everyone's life, freedom is an essential element inherent in human nature. Freedom to find clarity if it sticks to certain realities; different realities can make freedom diverse, which sometimes gives rise to ambiguous speculation.[13]

The judge's freedom in making his decision in a case cannot be separated from the professionalism of the judge himself in carrying out his duties and authorities. The emergence of various reactions to the controversial judge's decisions so far is caused by the attitude of judges who prioritize legal justice rather than moral justice in basing their decisions. On the other hand, judges in principle only carry out their duties limited to processing cases that go to court. As for the previous processes, especially in criminal cases, judges were wholly ignorant and incompetent in asking for transparency of the flow of cases at the investigation and investigation carried out by the police and prosecutors' institutions. In other words, the judge is limited by law to investigate a case even though he knows the shortcomings and even who should be responsible for a case.

In this context, the dilemma of a judge's duties often creates a controversial perception in society. Independence of judicial power is an essential requirement for judges in carrying out their judicial activities, namely receiving, examining, adjudicating and deciding cases in court. In carrying out their duties in the judicial field. Furthermore, this condition is expected to create quality judge decisions that contain justice, legal certainty, and expediency elements.

Nevertheless, the independence of judicial power must be strengthened with moral integrity, nobility and respect for the dignity of judges because otherwise judicial manipulation and mafia may be protected under judicial independence so that judges who abuse their positions will be difficult to touch with the law. The practice of judicial mafia, especially judicial corruption, becomes increasingly difficult to eradicate if the actions of the judges always protect it through the principle of independence or the independence of judicial power is put in place.[14]

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[13] *Ibid*.
[14] Sutiyos, B. (2010). *Reformasi Keadilan dan Penegakan Hukum di Indonesia.* Yogyakarta: UII Press. p. 36-37.

The independence of judicial power or the freedom of judges is a universal principle, which exists anywhere and anytime. This principle means that judges are free in carrying out the judiciary; this freedom means that judges in examining and adjudicating cases cannot be influenced either directly or indirectly. The judge's decision is based on the legal material understood, and the judge determines the examination methods. However, they are based on laws and regulations, especially those that regulate granting authority to judges. Thus, the freedom granted by the law must be obeyed and obeyed by the judiciary. Worries about the influence of extra-judicial parties will be a problem for judges during the trial; the independence of judges is very much tested.[15]

The fact is that judges' task in law enforcement, especially in enforcing laws and regulations that have been violated, can run well and smoothly if the soul of the laws and regulations that are violated reflects a sense of justice in society. Alternatively, in other words, judges' task in enforcing the law will not encounter significant obstacles if the existing laws and regulations are following legal feelings and the values of justice that live and develop in society. On the other hand, if the laws and regulations that are violated are not relevant to the reality in society, the judge will find it difficult to enforce them again. If judges force themselves to apply these regulations to concrete events, injustice will likely be created. In this context, an adage states: *summon us summa iniura* (laws that are strictly applied will cause injustice).[16]

The provision that prohibits judges from deciding to deviate from the article charged by the public prosecutor is regulated in Article 6 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power which states that no one can be sentenced to a crime, except if the court because the evidence is valid according to the law. The law believes that a person who is considered to be responsible has been guilty of the act he is accused of.

No act can be punished but through a trial and get a punishment following the actions proven in court based on evidence that convinces the judge that someone is guilty,

[15] *Ibid*., p. 37.
[16] Sudirman, A. (2007). *Hati Nurani Hakim dan Putusannya, Suatu Pendekatan Dari Perspektif Ilmu Hukum Prilaku (Behavioral Jurisprudence) Kasus Hakim Bismar Siregar.* Bandung: Citra Aditya Bakti. p. 54.

the judge believes in the facts in the trial to give punishment for his actions as violating the articles in the legislation that apply.[17]

Although there are provisions prohibiting judges from punishing the defendant if the act is not described carefully, clearly and ultimately in the public prosecutor's indictment, it turns out that in practice in court, there are judges who deviate from the article charged by the public prosecutor. When deciding cases using other articles, the judge's action is called the *ultra qui judicat* principle, which is to deviate from what was charged.

The judge's action was based on the fact that it was proven that it was not the article that was indicted in the trial. However, based on the examination of the evidence, the facts in the trial were accompanied by the judge's belief that the judge violated the provisions of other articles, which were also regulated in the Criminal Code or other laws and regulations.

Article 6 Paragraph (2) can be interpreted as prohibiting judges from examining case files not based on the prosecutor's indictment. In the trial of evidence, the judge assesses the suitability between the defendant's actions and the evidence submitted by the public prosecutor. If the act occurs but the evidence submitted is weak or not proven, the judge decides based on the provisions of the criminal procedure law.

4.2. The Practice of Applying the *Ultra Qui Judicat* Principle in Criminal Court Decisions

Law Number 48 of 2009 concerning Judicial Power has not regulated legal norms that strengthen the choice of Judges who are obliged to explore, follow and know legal values, justice that lives, grows and develops in society. *The ultra quiet judicat* principle is a legal choice that can be used by a judge in a case before him if it is proven legally and convincingly based on evidence, trial facts and the judge's belief in violating an article that the public prosecutor does not charge. The *ultra qui judicat* principle is explicitly stated in Law Number 48 of 2009 concerning Judicial Powers that has not been regulated to create a legal vacuum.

[17] Article 6 Paragraph (2) of Law Number 48 of 2009 concerning Judicial Power is defined as a provision that prohibits judges from imposing criminal penalties not based on valid evidence, trial facts and the judge's conviction.

As the meaning of the *ultra qui judicat* principle, which is to deviate from what is being charged, the judge's decisions that have deviated from the article accused must comply with the principle of *Res Judicata Pro Veritate Habetur*, which means that the judge's decision is considered correct and must be respected. The phenomenon of normative law in the form of judge's decisions like this must be accommodated in the form of legal norms in the law on judicial power. *Ultra qui judicat*, i.e. deviating from what is charged.

The principle *of ultra qui judicat* in the Indonesian criminal justice system, although it is not regulated in the form of legal norms, in the law on judicial power, it turns out that in judicial practice, there are judges who break through these provisions. The following are some of the judges' decisions using articles other than the articles charged by the public prosecutor:

Table 1

Judge's decision outside the article indicted by the Public Prosecutor

No	Decision description	Public Prosecutor's Indictment	Judge's decision
1	Supreme Court Decision Number 1625 K/Pid.Sus/2012.	Article 112 paragraph (1) in conjunction with Article 132 paragraph (1) in the Law Number 35 of 2009 concerning Narcotics	The judge's decision uses Article 111 paragraph (1) of the Republic of Indonesia Law No. 35 of 2009 concerning Narcotics
2	decision with case number 17/Pid.Sus/TPK/2014/PN.JKT.PST.	Article 12 letter c of the Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of	The judge's decision uses Article 6 paragraph (1) letter a and Article 13 of the Law of the Republic of

		Criminal Acts of Corruption as amended by the Law of the Republic of Indonesia Number 20 of 2001 concerning Amendments to the Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption	Indonesia Number 20 of 2001 concerning Amendments to the Law of the Republic of Indonesia Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption.
3	Court Decision number 09/Pis/SUS/2011/PN. MGL	Article 44 paragraph (1) of the legislation Number 23 of 2004, concerning the Elimination of Domestic Violence	Article 44 paragraph (4) of the Law Number 23 of 2004 concerning the Elimination of Domestic Violence

The decisions above show that the judge's authority to examine, hear, and decide cases has undoubtedly been carried out, with the arrival of the case at the reading of the verdict indicating that the judge's task has been completed. The basis for the judge's consideration in the decision includes three things: (1) the suitability of the evidence, (2) the facts of the trial and (3) the judge's belief—the decision of the Supreme Court Number 1625 K/Pid.Sus/2012 in the indictment of the Public Prosecutor, the defendant violated Article 112 paragraph (1) in conjunction with Article 132 paragraph (1) of Law Number 35 of 2009 concerning Narcotics but based on the facts of the trial, the article regarding the evidence tested is not appropriate with a criminal threat as stated in Article 112 paragraph (1) in conjunction with

Article 132 paragraph (1) of Law Number 35 of 2009 concerning Narcotics. The judges thought that the defendant was proven legally and convincingly guilty of committing a criminal act of abusing narcotics class 1 for himself as regulated in Article 111 paragraph (1) of the Republic of Indonesia Law No. 35 of 2009 concerning Narcotics.

In the decision with case number 17/Pid.Sus/TPK/2014/PN.JKT.PST. Namely cases of corruption, the panel of judges believe that in the framework of the criminal justice system, apart from the independence of judges, the professionalism of other law enforcement officers, namely investigators and public prosecutors, is needed. Suppose the panel of judges makes a decision on a mistake that the Public Prosecutor has not indicted. In that case, it is the same as tolerating or giving concessions to the carelessness of the Public Prosecutor. So, it is possible that in the future, the Public Prosecutor will make an original design letter in the hope that in the process of examining the case in court, the panel of judges will correct it following the facts at trial.

Besides paying attention to the facts of the trial, the achievement of justice by the judge deciding the case as a form of judge's freedom is a noble act. The regulation of the *ultra qui judicat* principle should be concreted into legal norms to perfect other principles in the judicial power law, besides that as a form of protection for judicial decisions that deviate from the Public Prosecutor's indictment based on the achievement of justice the judge decides cases based on trial facts. . The legal vacuum of regulating the *ultra qui judicat* principle will add to the inconsistency of judges' decisions in the future, there will be a lot of dissenting opinions on the judge's decision.

Judges' decisions in similar cases are based on the jurisprudence of the Supreme Court of the Republic of Indonesia Number 675.K/Pid/1987 in conjunction with the decision of the Supreme Court of the Republic of Indonesia 1671.K/Pid/1996 dated March 18, 1997, where the main point is that if the offence proven at trial is a similar offence which is lighter than the offence charged with a more serious nature, then even though this light offence is not charged, the defendant can be blamed for the offence and sentenced based on a lighter offence. The author has a different view

regarding the use of jurisprudence in the case above; it is said that what is meant by jurisprudence is the broadest authority to interpret laws and regulations and create new legal principles as a reference for subsequent judges in similar cases.

According to the author, the above decisions are not at the level of interpretation of the articles indicated by the Public Prosecutor; on the contrary, the authors assess the articles indicted very clearly, starting from the elements of the article to the threat of punishment. There is no judge's consideration that leads to the article accused of having a vagueness of norms, conflict of norms and void of norms in narcotics crimes.

The author believes that the law does not regulate the authority of the judge in the event of a case which is at the evidentiary stage, the judge is faced with challenging conditions were based on the facts of the trial, the article charged by the public prosecutor is not proven, and instead, the article whose criminal element is fulfilled is revealed in the trial but by the prosecutor was not included in the indictment. With considerations of justice and the principle of prohibiting judges from rejecting cases because there is no law, the judges decide cases that deviate from the prosecution's indictment which the author calls the *ultra qui judicat* principle. According to the author, this principle can only be used by judges who receive, examine, and try criminal cases.

5. Conclusion

The regulation of the *ultra qui judicat* principle in a concrete manner in the form of legal norms in the Judicial Power Act will benefit judges in deciding cases. The Public Prosecutor's inaccuracy in preparing the indictment, especially the placement of the articles indicted, will be very detrimental to law enforcement and injure the judge's justice in deciding the case. On the other hand, if this principle is not regulated concretely in legal norms, it will open up space for many dissenting opinions on the judge's decision.

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