

THE MEANING OF ULTRA QUI JUDICAT PRINCIPLE AND THE VALIDITY OF THE VERDICT IN CRIMINAL CASES

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Volume: 3

Number: 3

Page: 654 - 657

Article History:

Received: 2022-07-13

Revised: 2022-08-10

Accepted: 2022-11-11

Abstract:

The prohibition for judges to not sentence the defendant if the act is not described carefully, clearly and completely in the indictment of the public prosecutor, it turns out that in practice in court, there are judges who deviate from the article charged by the public prosecutor. The judge's action is called the ultra qui judicat principle, that is deviating from what was charged. The main problem in this paper is about the meaning of the Ultra Qui Judicat Principle and the Validity of Decisions in Criminal Cases. The main problems will be analyzed using normative legal research methods using a case approach and data sources from laws and regulations. The results show that the Ultra Qui Judicat Principle is an act of a judge deciding a case by placing justice as the goal of being able to deviate from the indictment of the public prosecutor based on the facts of the trial. This principle then has a specificity in the form of this principle being devoted to judges in deciding criminal cases, the use of this principle emphasizes the justice of judges in deciding criminal cases, and the scope of this principle is found in the facts of the trial. Furthermore, in exploring the meaning or value of the Ultra Qui Judicat principle, it is done by analyzing a judge's verdict, approach to legal expert opinion, and reviewing the legislation.

Keywords: Ultra Qui Judicat Principle, Verdict, Judge, Criminal Cases.

Cite this as: IMRAN, S.Y., SUDARSONO., NURJAYA, I.N., APRILIANDA, N. (2022) "The Meaning Of Ultra Qui Judicat Principle And The Validity Of The Verdict In Criminal Cases." International Journal of Environmental, Sustainability, and Social Sciences, 3 (3), 654 - 657.



INTRODUCTION

The judge is responsible for filling in the blank parts of the law. Law is an abstract institution and can only be applied fairly by using certain methods of interpretation. The judge is the mouth of justice, not the mouth of the law. This means that judges can deviate from positive legal provisions if they are faced with the obligation to provide a sense of justice in the form of their verdict. In the criminal justice process, the judge is one element of law enforcement. Legal regulations carried out by law enforcers start from investigations carried out by police agencies, the prosecution which is the authority of the prosecutor's office and adjudicates by a court institution solely to carry out the legal regulations in force in a country, so that the sentence to the defendant must be stated precisely which criminal law has been violated. In particular, the judge's verdict is based on evidence, facts in the trial as well as the judge's belief as to the reason or basis for the decision, the judge is required to include an article that regulates the act from the laws and regulations that have to do with the case being tried.

In practice, there is a provision that prohibits judges from deciding to deviate from the article charged by the public prosecutor as regulated in Article 6 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power which states that no act can be punished, but through trial and gets punishment in accordance with an act that is proven in court based on evidence that convinces the judge that someone is guilty, the judge believes in the facts in the trial to give punishment for his actions as violating the articles in the applicable laws and regulations. The judge believed that there

was an element of guilt that was proven in court, but not the one charged, then the judge must decide onslag van alle rechtsvervolgving or escape from all lawsuits. This means that the freedom of judges to decide cases is limited as a control so that judges do not arbitrarily make their decisions.

Even though there are provisions prohibiting judges from punishing the defendant if the act is not described carefully, clear and complete in the indictment of the public prosecutor, it turns out that in practice in the court, there are judges who deviate from the articles charged by the Public Prosecutor for example in Verdict number 106/Pid.Sus/2019/PN Mar. The judge's action when deciding cases using other articles is called the *ultra qui judicat* principle, that is deviating from what was charged.

Law Number 48 of 2009 concerning Judicial Power does not yet regulate legal norms that strengthen the choice of Judges to investigate, follow and know the legal values, living justice, grow and develop in society. The *Ultra Qui 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, the facts of the trial and the judge's belief that he violated the articles that were not charged by the public prosecutor, however this has not been widely explained in various studies until it has not been explicitly regulated in Law Number 48 of 2009 concerning Judicial Powers so that in this case there is a legal vacuum.

As the meaning of the *Ultra qui judicat* principle, which is to deviate from what was indicted, 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 Judicial Power Act.

The problem in this research is to see in full about the *Ultra Qui Judicat* Principle. In addition, this paper will focus on the subject matter of the meaning of the *Ultra Qui Judicat* Principle and the Validity of Verdicts in Criminal Cases.

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 regulations and judges' verdicts. The legal material was analyzed by descriptive qualitative analysis so that it could describe the urgency of applying the *ultra qui judicat* principle for judges in criminal case decisions.

RESULT AND DISCUSSION

The principle of *Ultra Qui Judicat* means that for the sake of justice, the judge can take actions to deviate from the indictment prepared by the public prosecutor. The process from the birth of the judge's action to deviate from the prosecutor's indictment begins when the judge assesses each piece of evidence submitted by the parties in the trial, so if the judge finds there are empty spaces in each trial, especially regarding the examination of evidence, then at that time also increase the judge's confidence to take actions that deviate from the prosecutor's indictment to fulfill the demands of justice the judge decides the case. To explore the meaning or value of the *Ultra Qui Judicat* principle, is done in the following way:

1. Analyzing a judge's verdict. Verdicts that deviate from the prosecutor's indictment are progressive verdicts, the value of justice becomes the main benchmark when judges use the *Ultra Qui Judicat* principle as the basis for making verdicts. From the course of the trial, it is not always possible for a prosecutor's accusation to be proven as a legal fact, the discrepancy between the

prosecutor's indictment and the evidence at trial was the reason the judge used the Ultra Qui Judicat principle because justice was the judge's robe when making a verdict.

2. Legal expert opinion approach. Verdicts that deviate from the prosecutor's indictment have the same power as decisions in general, this is because of the judge's view in deciding cases where justice is the judge's robe. In addition, decisions that deviate from the prosecutor's indictment are strengthened by the principle of Res Judicata Pro Veritate Habetur, which means that every judge's verdict, whether at the first level court to the Supreme Court's cassation decision, must be accepted by the litigants and must be respected.
3. Reviewing the laws and regulations. From the provisions of Law Number 48 of 2009 concerning Judicial Power, there is no legal norm that regulates the prohibition of judges from making decisions if it is found that in the trial, there is a discrepancy between the prosecutor's indictment and the facts of the trial. From the provisions of Article 6 paragraph (2) it is stated that no one can be sentenced to a crime, except if the court because of the valid evidence according to the law, get the belief that someone who is considered to be responsible, has been guilty of the act that was charged against him. The meaning contained in this article is that the judge as an official in making a decision is prohibited from imposing a sentence not based on valid evidence, the facts of the trial and the judge's conviction.

The application of the Ultra Qui Judicat principle in court proceedings as a legal principle views justice more as a language of good faith and is felt by the community with a clean heart. The issue of justice, judges decide cases using the Ultra Qui Judicat principle, which is a new legal breakthrough in today's modern society. This is supported by the changes and the increasingly progressive perspective of judges who have different benchmarks in finding the formulation of justice in legal norms. But justice cannot be separated from legal issues and humanitarian issues so that humans have an awareness in their hearts that they will be fair or unfair. To find the meaning of the Ultra Qui Judicat principle in judges' decisions in the criminal justice system, the author uses a semantic approach, namely as a branch of linguistics that studies the meaning, origin, development and causes of changes in meaning. In the Kamus Besar Bahasa Indonesia, meaning is the meaning and intent of the speaker or writer.

In formulating the meaning of ultra qui judicat as a legal principle, the author uses the ultra petita concept approach, which is known in civil courts. As it is known that ultra petita is a judge's decision that exceeds what is requested or requested. In a civil lawsuit, the petitum is the basis for the judge's verdict. Meanwhile, in criminal cases, the indictment becomes the basis for the judge's verdicts. Between the petitum and the indictment, both are the basis for the verdict. So the author is of the opinion that what is meant by ultra in civil cases is to exceed and ultra in criminal cases to deviate or deviate. While Judicat means the decision, in this case the judge's decision.

Ultra Qui Judicat means to deviate from the charges. The formulation of ultra qui judicat as a legal principle in the criminal justice system is based on a value born of the judge's conscience against a fact that requires justice to be upheld. Legal awareness or a judge's conviction directly and clearly stands out from the prosecutor's inaccuracy in preparing the indictment. Judges are forced or obliged to participate in determining what law is and what is not law. In the examination in court, the judge does not only determine which acts of the defendant are legal facts and which acts of the defendants are facts of the trial whose actions have violated the applicable legal provisions. If the laws and regulations do not mention a case, the judge must act on his own initiative. Justice in a court decision is not only seen as the realization of legal goals but also seen as hope, feelings that live in everyone. This means that in practice judges decide criminal cases not based on the contents of the indictment or based on the Ultra Qui Judicat principle, the judge has been able to show his fair attitude in handling the case.

The deviation of the article indicated by the author is called the *ultra qui judicat* principle, namely an action by a judge deciding a case by placing justice as the aim of being able to deviate from the indictment of the public prosecutor based on elements of trial facts. The element of truth revealed in the facts of the trial will significantly affect the formation of the element of the judge's belief in making his decision, so with the facts of the trial, *mutatis mutandis* the judge's conviction was formed.

CONCLUSION

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 freedom of judges as a form of independence of judges has been guaranteed in principle in the 1945 Constitution and the Law on judicial power. Besides that, this is also a universal principle. Specifically in the criminal justice process known as the *Ultra Qui Judicat* Principle. This principle is put into practice by the judge's decision that deviates from the prosecutor's indictment. The *Ultra Qui Judicat* principle is an act of a judge deciding a case by placing justice as the goal of being able to deviate from the indictment of the public prosecutor based on the facts of the trial. This principle then has a specificity in the form of this principle being devoted to judges in deciding criminal cases, the use of this principle is emphasized on the justice of judges in deciding criminal cases, and the scope of this principle is found in the facts of the trial. Furthermore, exploring the meaning or value of the *Ultra Qui Judicat* principle is carried out by analyzing a judge's decision, approaching legal experts' opinions, and reviewing legislation.

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