

Istinbath Method in Strengthening Ultra Qui Judicial Principles in Judicial Decisions

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Abstract

the method of Istinbath is necessary to support the principle of Ultra Qui Judicat, enabling judges to possess moral characteristics in considering not only knowledge and reason but also Islamic law when making legal decisions. Overall, the significance of the Istinbath method in supporting the principle of Ultra Qui Judicat is paramount, especially in addressing contemporary and empirical issues not governed by legislative regulations. The aim of this research are : explain the concept of Istinbath and Ultra Qui Judicat influence the judge's decisions and the application of the Istinbath method used to reinforce the principle of Ultra Qui Judicat to judicial decisions. The result shows that The method of Istinbath is closely related to the principle of Ultra Qui Judicat since both share the same objective of achieving justice. In practice, judges can use the method of Istinbath to interpret the law and apply the principle of Ultra Qui Judicat in criminal cases. The principle of Ultra Qui Judicat and the method of Istinbath are essential instruments for judges in the criminal justice system to achieve justice in decision-making.

I. Introduction

The world would be a paradise if there were no crimes. There would be no murders, thefts, harassment, or rapes. However, unfortunately, the world experiences many crimes, and it is the responsibility of human beings to address them. Dealing with crime and bringing perpetrators to justice is the criminal justice system's role. Through the criminal justice system, the world is somewhat organized, involving criminal institutions, including

the executive and judiciary branches responsible for minimizing crime within their jurisdictions.¹ Since the American Bar Foundation's (ABF) study on criminal justice over forty years ago, scholars have often depicted criminal justice as a system (literally, institutions and criminal justice agencies, including the police, courts, and correctional facilities) that is interconnected and working towards a common goal.² Most scholars referring to criminal justice as a system do not intend this implication and instead use the term merely as a convenient way to collectively refer to these institutions.

Currently, the Judiciary faces the issue of how society can accept its decisions. Therefore, the courts must undergo necessary improvements, ranging from the conduct of judges to their analytical capabilities in qualifying, ascertaining, and constituting each consideration into their judgments. A fair and reputable judiciary is perceived through the quality of its decisions, which are accountable to the public. Law enforcement is carried out by a body known as the judiciary, whose authority is derived from Article 24 of the 1945 Constitution of the Republic of Indonesia, which states that the Judiciary is an independent authority responsible for administering justice to uphold the law and justice. The Judiciary is exercised by a Supreme Court and subordinate judicial bodies within the realms of general jurisdiction, religious jurisdiction, military jurisdiction, administrative jurisdiction, and a Constitutional Court.³ The judiciary system in Indonesia, in exercising its judicial power, is required to uphold justice based on divine values, one of which is a fundamental value in the application of formal criminal law by judges. To achieve this, a comprehensive understanding of substantive law, formal law, and non-legal factors significantly influences a judge's decision-making process. Moreover, determining the applicable legal concepts and using them as a solid foundation is equally crucial. Proficiency in these concepts leads to fair, accountable, and justifiable judgments.

¹ Acale Sánchez, María. 2019. Penal and Custodial Control of Female Criminality in Spain from a Gender Perspective. *Social Sciences* 8: , p. 52

² Thomas J. Bernar, daEugene A, PaolineII, Paul Philippe, *General systems theory and criminal justice* ,Journal of Criminal Justice, Volume 33, Issue 3, May–June 2005, p. 205

³ Lilik Mulyadi, *Hukum Acara Pidana (Suatu Tinjauan Khusus terhadap Surat Dakwaan, Eksepsi dan Putusan Peradilan)*, Citra Aditya Bakti, Bandung, 1996, Hlm39

In Islamic tradition, Islamic law is not merely the creation of humans but rather a divine ordinance known as *Syari'*. Islamic law draws its sources from revelation (the Quran and Sunnah) and human intellect. The intellect is employed to comprehend divine revelations, enabling the discovery of God's prescribed laws. Consequently, the role of *Mujtahids* is not to create laws but to deduce laws through the process of the *Istinbath*. On the other hand, in the Western tradition, laws are derived solely from human intellect, and it is humans who create laws that manifest in customs, legislation, jurisprudence, agreements, and doctrines.⁴

The judicial process, based on the principle "*Demi Keadilan Berdasarkan Ketuhanan Yang Maha Esa*" (In the pursuit of justice based on the belief in the One Almighty God), deems justice a subjective concept. The public expects that the scope of the judiciary will realize the values of justice. Law enforcement serves as a means to ensure a fair and just process in the judge's verdict, which embodies the actualization of the principles of *Tauhid* as the fundamental tenets in Islamic teachings and serves as the starting point of Islamic law (Sharia). The judges, in examining and deciding cases, play a central role in upholding the law and justice independently, freely, and impartially. This means that the judge's ruling is the culmination and synchronization of all legal values from the aforementioned sources and the concrete facts of the case to achieve tangible legal protection and justice.

The importance of formulating justice in the criminal justice system is emphasized in QS al-Nisa/4:58

إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ إِنَّ اللَّهَ نِعِمَّا يَعِظُكُمْ بِهِ إِنَّ اللَّهَ هُوَ السَّمِيعُ الْبَصِيرُ ﴿٥٨﴾

(Indeed, Allah commands you to render trusts to whom they are due, and when you judge between people, judge with justice). Excellent is that which Allah instructs you to do. Indeed, Allah is always hearing and seeing)
Furthermore, QS al-Nisa/4:59 mentioned:

⁴ Fadel, M. H. (2020). *The Challenges of Islamic Law Adjudication in Public Reason*. In S. A. Langvatn, M. Kumm, & W. Sadurski (Eds.), *Public Reason and Courts*, pp. 118

بَيَّاتِهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ إِلَى الْأَمْرِ مِنْكُمْ فَإِنْ
تَنَزَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ
الْآخِرِ ذَلِكَ خَيْرٌ وَأَحْسَنُ تَأْوِيلًا ﴿٥٩﴾

"O you who believe, obey Allah and obey the Messenger and those in authority among you. If you disagree about something, then refer it to Allah and the Messenger, if you believe in Allah and the Last Day. That is more suitable for final determination."

Regarding the position of judges in the legal system, criminal justice is required to uphold legal justice. This aspect is vividly depicted by Harahap, who states:⁵

"As a result of the judges' attitudes and behaviours, who equate fiqh with Sharia or Islamic law, various products of court decisions in religious matters emerge, following the adhered and favoured school of thought (Mazhab). There are court decisions in religious matters that significantly differ from one another, even in similar cases. If the presiding judge happens to favour and have a background in the Hanbali Mazhab, the fundamental legal considerations applied are heavily influenced by the Hanbali doctrine. Conversely, if the judge who presides over a case has a background in the Shafi'i Mazhab, the decisions made are inclined towards the Shafi'i doctrine. They are unwilling to deviate even slightly from the opinions of the esteemed imams of the Mazhab. On the other hand, if the judge handling the case has a background in Muhammadiyah or is not affiliated with any Mazhab, they always refer to the Qur'an and Sunnah. Their approach is more flexible, accommodating Islamic legal values based on *ra'yi* on the one hand and using the teachings of the imams of the Mazhab as a guiding principle."

The method used in Islam for extracting laws from their sources is known as *Istinbath*, which translates to "the effort to derive laws from their origins." The essence of this term is nearly synonymous with *ijtihad*. The focus of *Istinbath* lies in the sacred texts of the Quran and the traditions of the Prophet (hadith). Consequently, the understanding, excavation, and formulation of laws from these two sources are referred to as *Istinbath*.

⁵ Asmani, Jamal Ma'mur, *Ushul Fiqh*, Yogyakarta, Pustaka Pelajar, 2019, hlm. 44

Istinbath⁶ will not yield satisfactory results without employing the appropriate approach, and this approach is inevitably related to the source of the law. According to Ali Hasaballah, as cited by Nasrun Rusli, there are two approaches developed by experts to perform Istinbath: first, through the principles of dialectics, and second, through understanding the purpose of the Sharia.⁷ The Islamic legal term Istinbath is closely related to the principle of *Ultra Qui Judicat*, which means deviating from what is claimed. This is solely a manifestation of legal discovery and the establishment of justice when a certain rule is not addressed remains unclear, or is subject to the moral considerations of the judge.

The judge's action is based on the fact that during the court, it was proven that the accused did not violate the charged article. Instead, based on the examination of evidence and the facts presented during the trial, along with the judge's conviction, the violation of other articles regulated within the Criminal Code or other legislation is evident.⁸ The judge, who holds the pinnacle role in law enforcement and justice, plays a strategic role in addressing contemporary and empirical issues. This is so because the judge wields the authority to alter the legal status of an individual or entity, either under the legality of legislative regulations or by deviating from them.⁹

Legislation Number 48 of 2009 concerning Judicial Authority does not yet establish a legal norm that reinforces the obligation of judges to explore, follow, and comprehend the living, evolving values of law and justice within society. The principle of *Ultra Qui Judicat* is a legal option that judges can employ in a case brought before them if convincingly and legitimately supported by evidence, trial facts, and the judge's

⁶ Imam Syafi'I Dalam mengistinbathkan suatu hukum, beliau terlebih dahulu melihat kepada Kitabullah, dan bila tidak beliau temukan, dilihat pada Sunah Rasulullah, bila tidak temukan dalam Sunah Rasulullah, beliau melihat perkataan (pendapat) para sahabat, lalu beliau ambil pendapat yang sesuai dengan jalan pikiran beliau dan tinggalkan mana yang tidak sesuai, dan beliau tidak akan mengambil pendapat selain dari sahabat itu. Apabila para sahabat semuanya sependapat dalam menetapkan suatu hukum, beliau pun akan mengikuti pendapat itu sepenuhnya. Lihat, Muliadi Nur dan Abdul Jamil, *Factors Affecting The Predominance Of Verstek Judgments In Divorce Cases Before The Religious Court*, Prophetic Law, Volume 3, Issue1, June 2021, hlm. 84-85

⁷ Nasrun Rusli, *Konsep Ijtihad Asy-Syaukani Relevansinya bagi Pembaruan Hukum Islam di Indonesia* (Jakarta: Logos Wacana Ilmu, 1997), hlm. 110-118

⁸ Suwitno Yutye Imran, *The Urgency of Regulation of the Ultra Qui Judicat Principle in Criminal Judgments*, Jalrev Volume 3 Issue 02, 2021, hlm. 398

⁹ Azim Izzul Islami, *Implementasi Hukum Islam Progresif Dalam Putusan Pengadilan Agama*, Artikel Mahkamah Agung Republik Indonesia tahunj 2022, hlm. 1

conviction of an offence not charged by the public prosecutor. However, this principle is not explicitly regulated in Legislation Number 48 of 2009 concerning Judicial Authority, resulting in a legal vacuum.

Furthermore, Article 50, paragraph (1), of Legislation Number 48 of 2009 concerning Judicial Authority stipulates that court decisions must include not only the reasoning and basis of the verdict but also specific provisions from relevant legislative regulations on the case at hand, as well as other legal sources used as a basis for adjudication.¹⁰ This implies that this article is interpreted as a requirement that judicial decisions incorporate certain provisions from legislative regulations. Several court rulings deviating from the prosecutor's indictment demonstrate that judges possess the freedom to determine their verdicts based on legitimate evidence, trial facts, and the judge's conviction.

From the aforementioned arrangements, there is a lack of legal norms both in the provisions of the Criminal Procedure Code, especially those governing the types of verdicts, and in the laws on judicial power that regulate the authority of judges in carrying out their functions. This dissertation recommends, in the form of novelty, the establishment of new legal norms in the Criminal Procedure Code Bill, specifically in Article 191, which regulates the types of punishment, and in the laws on judicial power, especially as complementary to Article 5 of Law Number 48 of 2009 concerning Judicial Power.

Adjudication is conducted in the pursuit of justice based on divine supremacy, to achieve justice that is not solely based on the prosecutor's indictment. Instead, the judge's decision may deviate from the prosecutor's charges. The application of the principle of *Ultra Qui Judicat*, as an embodiment of a progressive judge, implies that a verdict should be based on considerations that reflect justice within society. The principle of *Ultra Qui Judicat* becomes ineffective if not constructed with clear principles of justice. Referring to the phrase "in pursuit of justice based on the divine supremacy," it can be said that the characteristics of the criminal justice system in Indonesia are influenced by religious values. Therefore, the method of *Istinbath* (derivation of legal

¹⁰ Pasal 50 ayat (1) Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman

rulings from Islamic sources) is essential to support the principle of *Ultra Qui Judicat*, providing judges with moral attributes to consider not only knowledge and reason but also Islamic principles in rendering just decisions.

In this context, the characteristics of Indonesia's criminal justice system refer to the values of divinity. Therefore, the method of *Istinbath* is necessary to support the principle of *Ultra Qui Judicat*, enabling judges to possess moral characteristics in considering not only knowledge and reason but also Islamic law when making legal decisions. Overall, the significance of the *Istinbath* method in supporting the principle of *Ultra Qui Judicat* is paramount, especially in addressing contemporary and empirical issues not governed by legislative regulations. Furthermore, there exists a legal norm vacuum that requires filling. The recommended dissertation can aid in addressing this vacuum. Finally, the text underscores the importance of divine values and Islamic texts in contemplating justice in the judge's decision-making process.

2. Methods

This research is categorized as a normative legal study based on the issues and themes addressed as the research topics. The research approach employed is philosophical and analytical, focusing on rational, critical, and philosophical perspectives, culminating in conclusions aimed at generating new findings in response to the designated core issues.¹¹ The analysis will utilize a descriptive-analytical method, involving the depiction of applicable legislative regulations concerning legal theory and the practice of positive law enforcement in connection with the said matter.¹²

3. Result and Discussion

3.1. The Concept of *Istinbath* and the Principle of *Ultra Qui Judicat* Can Influence Judges' Decisions

¹¹ Bandingkan, Ishaq, *Metode Penelitian Hukum dan Penulisan Skripsi, Tesis, serta Disertasi*, Bandung: ALFABETA, 2017, hlm. 45

¹² Peter Mahmud Marzuki, *Penelitian Hukum*, Kencana Prenada Media Group, Jakarta, 2011, hlm. 22

The term *Istinbath* originally meant extracting water from its source and was later used as a *fiqh* term, which refers to deducing legal rulings from their sources, that is, deriving legal content from the scriptural texts with sharp reasoning and optimal intellectual capabilities. The ability to excavate and establish laws based on the content of the Quran and Sunnah, as well as apply them to legal events, should be carried out by individuals who possess competence and proficiency in this field.

The process of *Istinbath* in Islamic law involves deducing legal conclusions from the sources of Islamic teachings. This concept involves methods employed by jurists (*fuqaha*) to establish Islamic laws. The process encompasses various methods and approaches that have been developed since the early existence of Islam. In this literature review, we will examine the theories related to the concept of *Istinbath* in Islamic law, along with experts' perspectives on this matter. The Islamic legal deduction, known as *Istinbath*, is founded upon four primary sources: the Quran, Hadith, *Ijma'*, and *Qiyas*. The Quran, being the foremost source of Islamic law, comprises the divine revelations bestowed upon Prophet Muhammad (peace be upon him). The Hadith, as the second source, refers to the sayings, actions, and approvals of Prophet Muhammad (peace be upon him) that serve as guiding principles in establishing Islamic laws.¹³ *Ijma'* pertains to the consensus reached by scholars on a legal matter, while *Qiyas* involves drawing analogies based on existing legal sources.¹⁴

Scholars hold diverse perspectives on the process of *Istinbath* in Islamic law. For instance, Al-Shafi'i (w. 820 CE), one of the founders of a legal school, expounded that *Istinbath* should firmly adhere to the Quran, Hadith, *Ijma'*, and *Qiyas*, collectively known as *Usul al-Fiqh*.¹⁵ Furthermore, Al-Ghazali (w. 1111 CE) asserted that *Istinbath* should consider the welfare and interests of the community.¹⁶ Several contemporary jurists have proposed more flexible methods for *Istinbath*. Fazlur Rahman (w. 1988 CE),

¹³ Kamali, M. H. (2003). *Principles of Islamic Jurisprudence*. Cambridge: The Islamic Texts Society, hlm. 46-47.

¹⁴ Al-Tahir al-Haddad, M. (2011). *Maqasid al-Shariah wa Tatbiqatiha al-Mu'asirah*. Tunisia: Al-Dar al-Tunisiyyah lil-Nashr, hlm. 12-15

¹⁵ Raden Mas Said. "The Issues And Relevance Of *Istinbath* In The Reconstruction Methodology Of Islamic Contextual Laws." *The Seybold Report*, vol. 17, no. 6, 2022, hlm. 1041

¹⁶ Anshori, Abdul Ghafur, (2008). *Hukum Islam Dinamika dan Perkembangannya di Indonesia*, Yogyakarta: Kreasi Total Media, Cet. Pertama., hlm. 43

for example, introduced the concept of double movement, which combines textual analysis with contextual understanding. Likewise, Tariq Ramadan suggested the method of contextualization in the process of Istimbath in Islamic law.¹⁷ Their ideas emphasize the importance of considering social, cultural, and historical contexts in determining Islamic laws.

In the context of upholding justice, judges must also comprehend and apply the concept of Istimbath in Islamic law wisely. Consistent with diverse expert views on the Istimbath process, judges need to consider various appropriate methods and approaches in their context and ensure that their decisions are based on the principles of justice within Islam. The utilization of Istimbath greatly supports the ways judges establish justice for both victims and perpetrators, as well as justice in the judge's rulings. This method of Istimbath forms the foundation for the principle of judicial administration, stating that courts are prohibited from refusing to examine and adjudicate cases presented to them on the grounds of the absence or ambiguity of the law; rather, they are obligated to examine and adjudicate them.

This prohibition implies that judges, with their abilities to interpret the law in all its facets, are highly suitable to employ Istimbath, especially in the pursuit of justice. This reasoning aligns with the opinion of Bismar Siregar, who asserts that all forms of regulation are futile if they fail to deliver justice for society. One of the methods employed by judges to uphold justice for victims and perpetrators and in deciding cases is by considering the public interest (*maslahat*), as expounded by Al-Ghazali. In this regard, judges must ensure that their decisions reflect fairness and well-being for all parties involved in the case.

Moreover, judges need to contemplate contemporary approaches in the Istimbath (derivation) of Islamic law, which Fazlur Rahman proposed as the double movement concept and Tariq Ramadan advocated as the contextualization method. In applying these approaches, judges must harmonize textual sources (legal references) with the context (social, cultural, and historical situations and conditions) to find just and relevant solutions for society. When judges employ flexible and contextual Istimbath methods, they can be more effective in upholding justice and ensuring that Islamic laws are

¹⁷ Romli. "Konsep Zhahir-Khafy Dan Implikasinya Dalam Istimbath Hukum Islam." Nurani: Jurnal Kajian Syari'ah dan Masyarakat, vol. 18, no. 1, 2018.,hlm. 223

applied following religious principles and the realities of human life. Therefore, judges must possess extensive knowledge of Islamic legal derivation (Istinbath), as well as the skills and sensitivity to apply various methods and approaches to resolve cases and uphold justice for victims, perpetrators, and society at large.

Muhammad bin 'Ali al-Fayyuni, cited in Satria Efendi, defines Istinbath as the effort to extract legal rulings from the Quran and Sunnah through the process of *ijtihad*.¹⁸ The term Istinbath is found in the Quran, Surah An-Nisa (4): 83, in the form of fi'il mudari as follows:

وَإِذَا جَاءَهُمْ أَمْرٌ مِّنَ الْأَمْنِ أَوْ الْخَوْفِ أَذَاعُوا بِهِ ۖ وَلَوْ رَدُّوهُ إِلَى الرَّسُولِ وَإِلَى أُولَى الْأَمْرِ
مِنْهُمْ لَعَلِمَهُ الَّذِينَ يَسْتَنبِطُونَهُ مِنْهُمْ ۚ وَلَوْلَا فَضْلُ اللَّهِ عَلَيْكُمْ وَرَحْمَتُهُ لَاتَّبَعْتُمُ الشَّيْطَانَ إِلَّا
قَلِيلًا ﴿٨٣﴾

"(When news of security or fear reaches them, they spread it around. If they had referred it to the Messenger and those in authority among them, those who could draw correct conclusions from it would have known about it. Were it not for Allah's bounty and mercy upon you, all but a few of you would have followed Satan)."

The above explanation serves as a reference to the fact that Istinbath is an attempt to excavate the Islamic law from authentic sources through the application of logical reasoning. This understanding aligns with the concept of *ijtihad*, known to the scholars of *usul al-fiqh* (principles of Islamic jurisprudence). Nevertheless, al-Syaukani considers Istinbath to be the operationalization of *ijtihad*, since *ijtihad* is carried out by utilizing the principles of Istinbath.¹⁹ The judge is one whose duty is to uphold law and justice. Judges are one of the basic elements of the justice system besides prosecutors and investigators. As an entity responsible for rendering judgments in court cases, a judge is obligated to exercise their duties with precision and fairness. A judge, being the embodiment of the law, must ensure a sense of justice for anyone seeking legal redress, and to achieve this,

¹⁸ Satria Efendi, *Ushul Fiqhi*, (Cet ke-1; Jakarta: Kencana, 2005), h.177

¹⁹ Firdaus, Various Methods of Establishing Contemporary Islamic Law, *Ulumuddin: Jurnal Ilmu-ilmu Keislaman*, Volume 10 Nomor 1, Juni 2020, hlm. 42

they must abide by certain principles such as accountability, moral and ethical integrity, transparency, and oversight.

In the context of their roles as judges, they must accompany judicial independence with impartiality and professionalism in the field of law. In fulfilling their duties, a judge should be shielded from external influences originating from (a) institutions beyond the judiciary, both executive and legislative; (b) internal bodies within the Judiciary itself; (c) parties involved in the cases; and (d) societal pressures, be they domestic or international. The judge's verdict is based on evidence, legal facts, courtroom facts, and the judge's conviction. The objective is that the judgment delivered to the defendant can provide legal certainty, justice, and benefits to the parties involved and society as a whole. It is essential to note that a judge's ruling may not always align with the expectations of the public prosecutor, as the judge, vested with the authority to explore legal principles and the sense of justice prevailing in society, may deviate from the charges brought against the defendant in pursuit of legal fairness, in what is known as the principle of *Ultra Qui Judicat*.

The concept of a verdict deviating from the accusation is based on the judge's responsibility to uphold justice, and this principle is specifically applicable to judges within the criminal justice system. A verdict that deviates from the prosecutor's indictment begins with the examination of the evidence presented during the trial. If the evidence submitted by the prosecutor is relevant and acknowledged by all parties, it establishes the legal facts. Conversely, if the evidence presented by the prosecutor is irrelevant and not acknowledged by the defendant, it creates different facts in court. From the aforementioned explanation, the *Ultra Qui Judicat* principle is based on factual reasoning in the trial, where, based on factual evidence, the defendant's actions are proven to be criminal acts. However, these actions were not charged by the public prosecutor. As judges are prohibited from rejecting cases brought before them, they may utilize this principle to render a verdict and convict the defendant, even if it does not align with the prosecutor's indictment. This type of verdict is referred to by the author as a verdict deviating from the accusation (the *Ultra Qui Judicat* principle).

3.2. The Implementation of Istimbath in Strengthening the Principle of Ultra Qui Judicat Towards Judicial Decisions

Istinbath is a method of deriving law from its sources, which means that the provisions established in the Qur'an and Sunnah must be interpreted properly to ensure that the decisions made are just. The Istinbath approach to judicial decisions provides clarity and guarantees justice for every case adjudicated by the court.

From the perspective of legal positivism, the Istinbath method can be understood as an approach in which the provisions referred to as legal norms must be applied based on the ratio legis of the formation of such legal norms to ensure justice. The formation of legal norms is based on legal principles, and by understanding these principles, judges can determine which provisions of the legal norms are relevant to the case being adjudicated.

The author emphasizes that the Istinbath method in a judge's decision relies heavily on the judge's profound comprehension of legal principles relevant to the specific legal norms at hand. Each field of law encompasses distinct and specific legal principles that have evolved with the development of that particular legal domain. For instance, civil law entails the principle of freedom of contract, constitutional law encompasses the principle of division or separation of powers, and the field of criminal law, especially in judicial practice, involves legal principles concretized within specific legal norms. It is important to note that these principles cannot be universally applied across different legal fields due to their specific nature, despite being employed by individuals with similar positions within the realm of justice.²⁰

In a legal study, a legal principle serves as an overview, lacking normative form and serving only to regulate and explain its purpose, as it does not constitute positive law. Consequently, when resolving disputes, these principles cannot be directly applied but require interpretation by judges. However, when a legal principle takes the form of a legal norm within positive law and is subsequently utilized by judges in their case decisions, it holds considerable weight, as the judge's ruling becomes binding upon the involved parties.²¹

²⁰ Michal Peno, *The Character of the Principles of Criminal Law and Criminal Responsibility: Between the Philosophy of Law and Semiotic*, Liverpool Law Review (2019) 40:79

²¹ Ristroph, Alice. 2016. *Two Conditions of Legitimate Punishment*. In *The New Philosophy of Criminal Law*, ed. Chad Flanders and Zachary Hoskins, hlm. 79

The presence of legal principles in the form of legal norms proves to be of great assistance to judges in addressing legal voids, conflicting norms, or ambiguous norms about a crime. In Indonesia, where Pancasila serves as the foundational source of all legal references, the discourse on legal principles is unequivocal. With its five precepts as the fundamental tenets, Pancasila occupies a central position as the ideology underpinning Indonesian law.

The notion of justice, as posited by the author, does not hinge on the severity of the sentence pronounced by the judge or on whether the parties involved in the case accept the judge's decision. Instead, the focus lies on the impartiality of the judge's deliberation in reaching a verdict. The principle of *Ultra Qui Judicat* embodies the pursuit of justice by judges when handling cases. This means that throughout the trial, from its inception until the reading of the verdict, the judge meticulously assesses the proceedings. The principle of *Ultra Qui Judicat* comes into play when the judge encounters disparities between the charges presented by the public prosecutor and the trial's facts. As this situation is not explicitly governed by laws on judicial power, the judge, exercising the freedom to explore legal values and justice, may diverge from the indictment based on the trial's factual evidence.

The universal principles of general law are highly valuable in interpreting the principle of *Ultra Qui Judicat* in judges' decisions within the criminal justice system. Based on these five fundamental values, the significance of the *Ultra Qui Judicat* principle should be acknowledged and implemented as the foundation for judges to render criminal verdicts.

The principle of *Ultra Qui Judicat* allows judges to decide cases without strictly adhering to the legal norms stipulating that judgments must be based on the charges presented by the Public Prosecutor. The relationship between the *Ultra Qui Judicat* principle and the method of *Istinbath* lies in the fundamental understanding that *Istinbath* is limited to a method or approach undertaken by the subject of law. Employing the method of *Istinbath* reinforces the position of the *Ultra Qui Judicat* principle in the context of judges' decision-making.

By detaching law from its source, the author argues that both the method of *Istinbath* and the *Ultra Qui Judicat* principle share the same objective, which is to ensure justice in a case. Judges, as subjects of law, are granted the freedom to interpret the law concerning a criminal case based on the established legal facts presented during the trial. If the charged article is not proven but the defendant's actions are proven to fall under a certain category or type of criminal act, then through the method of *Istinbath* and employing the *Ultra Qui Judicat* principle, the defendant will still be convicted with a criminal judgment.

4. Conclusion

In the criminal justice system, judges play a crucial role in upholding the law and justice. The principle of *Ultra Qui Judicat* is one of the principles that allow judges to deviate from the prosecutor's indictment to achieve justice in a case. This is based on the judge's responsibility to explore legal and just values and protect the rights of the accused. The method of *Istinbath* is closely related to the principle of *Ultra Qui Judicat* since both share the same objective of achieving justice. In practice, judges can use the method of *Istinbath* to interpret the law and apply the principle of *Ultra Qui Judicat* in criminal cases. Although the accused may not be convicted based on the charges brought by the prosecutor, the judge can still impose a fair sentence based on the trial's facts and the relevant criminal group or type. The principle of *Ultra Qui Judicat* and the method of *Istinbath* are essential instruments for judges in the criminal justice system to achieve justice in decision-making. By upholding integrity, accountability, transparency, and oversight, judges can ensure that the decisions rendered truly reflect justice for the involved parties and the wider society.

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