

Review of Ratio Decidendi, the Public Prosecutor's Demands in Ultra Petita Against Criminal Law Enforcement in Indonesia

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Abstract

Ratio Decidendi Hakim in deciding cases that are Ultra Petita in criminal law enforcement in Indonesia. Ultra Petita is a judge's decision that decides outside of the Public Prosecutor's indictment, while the background for writing this thesis is Ultra Petita's decision which is contrary to Article 182 Paragraph (4) of the Criminal Procedure Code which states that the Judge's deliberations in his decision must be based on the indictment and everything that has been proven in the trial and in the rules of Article 183 of the Criminal Procedure Code states that the Judge in deciding the case is based on the above at least 2 (two) pieces of evidence and conviction, The problem used in this study is what is the ratio of decidendi to the judge's ultra petita verdict in criminal cases in Indonesia? And what are the implications of the existence of the judge's ultra petita verdict in criminal law enforcement in Indonesia?

The method used in this thesis is normative-empirical. Normative-Empirical Law Research (applied law research), which is a research that uses normative-empirical legal case studies in the form of legal behavior products, namely a combination of research on legal principles. Research on legal systematics. Research on the level of legal synchronization. Legal history research. Comparative legal research. Meanwhile, Sociological or Empirical Law Research, which consists of: Research on legal identification. Research on legal effectiveness

The results of the research The ultra petita verdict is a decision issued by a panel of judges in a case outside the indictment of the Public Prosecutor, because it is known that the indictment was prepared incarefully so that it could not be proven in court. There are several examples of ultra petita decisions within the framework of criminal law enforcement in Indonesia. Among them are: Decision Number: 17/Pid.Sus/TPK/2014/PN. JKT. PST related to corruption cases, Decision Number:

55/Pid.Sus/2019/Sit related to narcotics possession cases, Decision Number: 240/Pid.Sus/2021/PN. TNG related to the Narcotics case, Decision Number: 537/Pid/B/2007/PN. Jkt The team is related to the murder case, Decision Number: 314/Pid.Sus/2015/PN. Rap is related to the Narcotics case, and Decision Number: 407/Pid.Sus/2015/PN. SBY is related to a narcotics case. The six decisions are *ultra petita* because of the inaccuracy of the Public Prosecutor in compiling the indictment, so that in order to give a verdict to the defendant who has actually committed a criminal act, in this case the panel of judges uses other similar articles so as not to do the same. Therefore, in the perspective of the *ratio decidendi* theory, judges' decisions must be able to present alternatives that can be an option in efforts to enforce justice.

1. Introduction

The idea of an Indonesian legal state is explicitly stated in Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia. One of the logical consequences of the implementation of the state of law is consistency in implementing important elements in the state of law. One of them is compliance with laws and regulations which is used as the legal basis for every action. To ensure this compliance, there is a power with the task of supervising and enforcing the implementation of laws and regulations. The power in question is judicial power or known as judicial power. Judicial power is the third pillar in the power system practiced in modern countries. The term judicial power is often equated with the term judicial power which comes from the Dutch *judicatief* or in English is known by several terms such as: judicial, judiciary, and judicature. The branch of judicial power is a branch of power that is organized separately. Therefore, John Alder mentioned that, the principle of separation of powers is particularly important for judiciary. John Alder and Peter English, 1989) In the context of Indonesian law, judicial power is interpreted as the power of an independent state to hold the judiciary to uphold law and justice based on Pancasila for the implementation of the state of law of the Republic of Indonesia. Constitutionally, the regulation regarding judicial power is placed in Article 24 of the 1945 Constitution of the Republic of Indonesia. Judicial power is exercised by a Supreme Court and the judiciary under it in the general judicial environment, the religious judicial environment, the military judicial environment, the state administrative judicial environment, and by a Constitutional Court. Furthermore, in the implementation of judicial power, there is one important subject that is undoubtedly in the context of law

enforcement and justice. The subject in question is a judge who must be able to work independently and impartially in law enforcement duties.

Judges have a special position in the triadic relationship between the state, the market, and society. Judges must be in a balanced position by siding with the truth without bias. Especially in the context of law enforcement and justice in the domain of criminal cases. Judges must be free from prejudice caused by the social and political background that is the background of a case, considering that in the context of criminal cases, the judge's decision will have an impact on the reduction of the human rights of the parties involved in the case. In the trial process, the judge is authorized to examine, adjudicate, and decide the case in accordance with the provisions of the applicable laws and regulations. When a judge decides a case, the law becomes a means and justice is the goal to be achieved. (Luis, 2021) Although in practice the judge has independence and freedom in deciding cases, he must still uphold the laws and regulations as the basis for dropping cases as well as an instrument to measure the value of the truth of a case.

In criminal cases, not only laws and regulations must be considered, but also indictments by the public prosecutor must also be used as a benchmark in deciding cases. Article 182 Paragraph (4) of the Criminal Procedure Code states that the judge's deliberations must be based on the indictment and everything that is proven in the trial. Furthermore, in Article 191 Paragraph (1) it is stated that, if the court has another opinion that from the results of the examination at the hearing, the defendant's fault for the acts charged against him is not legally and convincingly proven, then the defendant is acquitted. These two articles are formatted to ensure that judges carry out their obligations to achieve justice and legal certainty. Therefore, it can be indirectly concluded that the judge is not allowed to sentence the defendant if the act is not prosecuted by the Public Prosecutor in his indictment (Lilik Mulyadi, 2007 p. 39)

In fact, there are several decisions issued by the judge, where the verdict is outside what is charged. Such a decision is known as the *ultra petita* decision. I.P.M Ranuhandoko defined the *ultra petita* verdict as a verdict handed down by a judge that exceeded what was requested. In formal law, *ultra petita* is the imposition of a verdict on a case that is not demanded or grants more than what is requested. Yahya Harahap concluded that the *ultra petita* verdict is a verdict in which the judge who grants the claim exceeds or exceeds what is demanded by I.P.M. Ranuhandoko, 2000, p. 522)

Here are some examples of *ultra petita* decisions issued by judges in criminal cases: First, Decision Number: 17/Pid.Sus/TPK/2014/PN. JKT PST. The verdict was handed down on a corruption case that was heard at the Central Jakarta Corruption Criminal Court. In the decision, the panel of judges has considered that the acts committed by the defendant have fulfilled all the elements of the criminal act in Article 6 Paragraph (1) letter a of Law

Number 31 of 1999 concerning the Eradication of Corruption in conjunction with Article 64 Paragraph (1) of the Criminal Code. During the trial, no justifying or excuse was found that could be used as the basis for the elimination of the defendant's guilt. Thus, the panel of judges obtained confidence that a criminal act had indeed occurred and the defendant was the one who committed it. The verdict handed down by the panel of judges is not the basis for the indictment used by the public prosecutor, in this case it is Article 12 letter c of the Law on the Eradication of Corruption Crimes Second, Decision Number: 55/Pid.Sus/2019/PN. Sit. The verdict relates to the case of purchasing class 1 narcotics of the type of methamphetamine purchased by the defendant. In this case, the public prosecutor imposed an indictment based on Article 112 Paragraph (1) of Law Number 35 of 2009 concerning Narcotics. However, in imposing the verdict, the panel of judges actually based its verdict outside the indictment given by the public prosecutor, in this case Article 127 Paragraph (1) of Law Number 35 of 2009 concerning Narcotics.

In its legal considerations, the panel of judges stated that the defendant was guilty of committing a criminal act as charged by the public prosecutor, but the panel of judges questioned the minimum criminal provisions contained in Article 112 Paragraph (1) of the a quo law. Therefore, in imposing a criminal sentence, the panel of judges adheres to the criminal provisions listed in Article 127 Paragraph (1) of the a quo law. Third, Decision Number: 537/PD/B/2007/PN. Jkt Tim. The verdict was issued by the East Jakarta District Court regarding the murder case of Alda Risma with the defendant Fery Surya Prakarsa. In the trial, the public prosecutor dropped the indictment based on Article 338 of the Criminal Code. However, in the decision issued by the district court, the panel of judges was based on Article 340 of the Criminal Code. On the basis of the verdict, the defendant Fery Surya Prakarsa was sentenced to 15 years in prison based on the article decided by the judge outside the indictment of the public prosecutor., Fourth, Decision Number: 314/Pid.Sus/2015/PN. Rap. The verdict was handed down for a class 1 narcotics crime of marijuana. In this case, the public prosecutor used Article 114 Paragraph (1) of Law Number 35 of 2009 concerning Narcotics and Article 111 Paragraph (1) of Law Number 35 of 2009 concerning Narcotics. However, in its decision, the panel of judges decided on the sentence imposed on the defendant based on Article 127 Paragraph (1) letter a of Law Number 35 of 2009 concerning Narcotics. This means that in this case the judge imposed a sentence outside of the indictment filed by the Fifth Public Prosecutor, Decision Number: 240/Pd.Sus/2021/PN. TNG. This verdict was handed down by the panel of judges of the Tangerang District Court on the case of class 1 narcotics not plants. In this case, the public prosecutor used alternative articles consisting of Article 114 Paragraph (2) of Law Number 35 of 2009 concerning Narcotics, Article 113 Paragraph (2) of Law Number 35 of 2009 concerning Narcotics, and Article 112 Paragraph (2) of Law Number 35 of 2009 concerning Narcotics. The panel of judges in making a verdict used Article 112 Paragraph (2) as a benchmark in criminal punishment. (Benny Fremmy, 2022)

Sixth, Decision Number: 407/Pid.Sus/2015/PN. SBY. The verdict was handed down in relation to narcotics crimes by the Jakarta District Court. Initially, the public prosecutor charged the defendant with subsidiary charges, namely violating Article 114 Paragraph (1) jo Article 132 Paragraph (1) of Law Number 35 of 2009 concerning Narcotics or Article 112 Paragraph (1) of Law Number 35 of 2009 concerning Narcotics. In this case, the panel of judges made a decision based on Article 112 Paragraph (1) of Law Number 35 of 2009 concerning Narcotics. (Sabbi Aulia Ayu Pratiwi, 2017)

The existence of ultra-petita verdicts in criminal cases is considered a form of the pandora's box phenomenon in law enforcement. This is considering that the existence of the ultra petita verdict is a counter form of the implementation of the principle of legality which is the main principle in criminal law enforcement. Based on the description above, considering the number of ultra petita decisions issued by judges in criminal cases, the researcher is interested in conducting a study by placing ultra petita decisions as the main object in this study. A comprehensive study of the ultra petita verdict will be described in the form of a thesis entitled Review of the Decidendi Ratio of the Judge's Ultra Petita Verdict in Criminal Law Enforcement in Indonesia.

The identification and limitation of the problems described above, then leads to the formulation of the problems in this study which are researchable as follows:

1. What is the ratio of the judge's ultra petita verdict in criminal cases in Indonesia?
2. What are the implications of the existence of the judge's ultra petita verdict in law enforcement.

2. Research Method

Research is known as research in English which means an activity of searching back to the whole truth. Juridically, the definition of research is contained in Law Number 12 of 2012 concerning Higher Education, which states that research is an activity carried out according to scientific rules and methods systematically to obtain information, data, and information related to the understanding and/or testing of a branch of science and technology. Research is a scientific activity related to analysis and construction, which is carried out methodologically, systematically, and consistently. Systematic means that it is carried out based on clear planning and stages. Methodological means using a certain and consistent way, that is, there is no contradiction in a certain framework. Furthermore, the scientific measure of a research can be measured through the following things It is a knowledge

1. Organized systematically
2. Using logic

3. Can be tested or controlled and critically proven by others

Legal research has a very important role in the framework of legal science, as well as being an important factor in solving legal problems that occur both theoretically and practically in society. Research is interpreted as an analytical process that includes certain methods, systematics and thoughts that aim to study certain legal symptoms, then try to solve the problems that arise. So that an appropriate research method is needed that can help the research process in accordance with the formulation of the problem being studied and the research objectives to be achieved. Legal research is interpreted in various ways by several experts, one of which is Jacobstein and Roy Merisky who provide a definition of legal research as efforts to find various kinds of rules that are primary and main of a law in this case which are then applied in a legal event. In America, legal research is known as legal research with the definition, seeking to find those authorities in the primary sources of the law that are applicable to a particular legal situation. In simple terms, legal research contains the intention of a scientific activity that is based on certain methods, systematics and thinking, which aims to study one or several specific legal phenomena by analyzing them. Therefore, an in-depth examination of the legal facts is carried out to then try to find a solution to the problems that arise in the symptoms in question

Abdulkadir Muhammad in his book *Legal Research and Research* explains the four functions of legal research as follows

1. Means of legal development, legal science and legal information technology which are now very weak
2. Efforts to bring legal theory closer and adjust to legal practice which is now felt as a gap in law enforcement in Indonesia
3. As a profession that is a source of income that should be appreciated and developed.

Referring to the above functions, it can be concluded that legal research has the purpose of developing law and legal science in accordance with the development of global science and information technology. This goal will have an impact on the presence of legal subdisciplines that are professionally studied on the basis of ability and expertise, as a productive profession.

The term legal research method can be interpreted by first providing an interpretation of the variables that make up the term. First, the word method is interpreted as a way to do something in an orderly manner. Second, legal research as stated at the beginning is a scientific activity based on certain methods, systematics and thinking, which aims to study one or several specific legal phenomena by analyzing them. Thus, the legal research method is simply defined as the ways or steps that must be taken in a legal research that must be carried out systematically and regularly.

Type of Research

Broadly based on its nature, type, and purpose, legal research is divided into normative legal research, empirical legal research, and normative-empirical legal research, both of

which have different patterns.

1. Normative legal research

The term normative legal research is known in English as normative legal research, or in Dutch as normative juridisch onderzoek. This type of legal research is an internal research within the discipline of law. (Ronny Hanitijo Soemitro, 1999 p. 15) Another name for normative law research is doctrinal law research. It is called so, because this research is carried out or aimed only at written regulations or legal materials. Furthermore, normative legal research is defined as a research process to research and examine law as norms, rules, legal principles, legal principles, legal doctrines, legal theories and other literature to answer the legal problems being researched. Normative legal research is usually only a document study, namely using legal sources in the form of laws and regulations, court decisions/rulings, contracts/agreements, contracts, legal principles and principles, legal theories, and doctrines or opinions of legal experts

Empirical legal research

Empirical legal research in English is known as empirical legal research or in Dutch it is called empirical juridisch onderzoek. Empirical legal research is included in the category of legal research that analyzes and examines the work of law in society. In the field of legal research, empirical legal research is interpreted as a legal research method that functions to see the law in a real sense and examine how the law works in the community, including analyzing the application of law in reality to individuals, groups, communities, and legal institutions in society by focusing on the behavior of individuals or communities, organizations or legal institutions in relation to application or enactment of law Normative-empirical law research This research is also known as normative-applied law research. Applied normative research is legal research that examines the implementation or implementation of positive legal provisions (legislation) and contracts factually in each specific legal event that occurs in society in order to achieve predetermined goals (Salim HS and Erlies Septiana Nurbani, 2013)

The research entitled Review of the Decidendi Ratio of the Ultra Petita Judge's Decision in Criminal Law Enforcement in Indonesia is a type of normative legal research. This is said to be because this study focuses on discussions related to the principles of ultra petita law in criminal law enforcement in Indonesia. In addition, the analysis of this research will be carried out based on legal materials in the form of laws and regulations, theories, doctrines, and court decisions that are normative. This is in line with the definition of the normative legal research method, which is interpreted as a research method on legal rules, both from the perspective of the legislative hierarchy and the relationship of legislative harmony.

Approach is defined as an effort to establish relationships with people or methods to reach an understanding of the research problem. Approach is also defined as a means to understand and direct the issues being researched. In the context of legal research, several types of approaches are known that are based on the type of research used. Basically, the

approach in legal research aims to obtain information from various aspects regarding the issue being researched and to solve problems that are the subject of legal research.

In normative law research, five approaches are known that can be used to analyze the research topic being studied. The five approaches are: 1) the legislative approach; 2) case approach; 3) historical approach; 4) comparative approach; and 5) conceptual approach (Peter Mahmud Marzuki, 2005 p. 20)

1. Legislative Approach

This approach is carried out by examining all laws and regulations related to the legal issue being discussed.

2. Case Approach

The case approach is carried out by conducting an analysis of cases related to the issues faced that have become court decisions and have permanent legal force.

3. Comparative Approach

A comparative approach is carried out by comparing the legal system, laws of a country and court decisions from one country to another. Comparisons can be made both in general and

Criminal Procedure Law.

Case approach

Conducting research in the context of discussion about ultra petita decisions certainly cannot be separated from the existence of court decisions in which they are considered to be ultra petita. In this research, the researcher tries to present and examine several court decisions that have obtained permanent legal force, including: Decision Number: 240/Pd.Sus/2021/PN. TNG

Legal Materials

Several terms have emerged that are used to refer to legal materials. Soerjono Soekanto called it the term secondary data or literature data, where this term also contains the definition of legal materials. Meanwhile, Peter Mahmud Marzuki uses the term legal material because according to him, the use of the term material is proposed to be in accordance with the normative documentary. Meanwhile, the term data is intended for something informative, empirical, that must be sought through observation or observation into the real world. In the context of this study, researchers are more likely to use the term legal material to confirm that this type of research is included in the category of normative legal research. There are two types of legal materials used in this study, namely: primary legal materials and secondary legal materials.

1. Primary legal materials

Primary legal materials are legal materials consisting of laws and regulations, official minutes, court decisions, and other official state documents. In general, primary legal material is defined as authoritative legal material. This research uses two types of primary legal materials, namely laws and regulations and court decisions that already have permanent legal force. The following are the primary legal materials used by the author:

Criminal Code Criminal Procedure Code Decision Number: 17/ Decision Number: 240/Pd.Sus/2021/PN. TNG

Secondary legal materials are legal materials consisting of books, legal journals, expert views, legal research results, legal dictionaries, encyclopedias, and other sources that are documentary. Secondary legal materials are used to be able to provide explanations for primary legal materials, so that harmony and harmonization of the two are needed. Here are some examples of secondary legal materials used in this study:

- a. Criminal Procedure Law Book written by Lilik Mulyadi (Bandung: PT Citra Aditya Bhakti, 2007)
 - b. The book Bunga Potpai Criminal Law Policy Development of the New Criminal Code Concept written by Barda Nawawi Arief (Jakarta: Kencana Prenada Media Grub: 2008)
 - c. Book Unveiling the Legal Veil (A Philosophical and Sociological Study) (Jakarta: Chandra Pratama, 1993)
 - d. Scientific Journal with the title Ultra Petita in the Murder Case at the East Jakarta District Court written by Denty Suci Mareta Femylia and Muchammad Chasani (Indonesian Journal of Criminal Law Studies, Volume 2, Number 1 of 2017)
 - e. Scientific Journal with the title Ultra Petita Principle in Criminal Procedural Law Viewed from the Aspect of Legal Considerations of Criminal Case Decisions This research was written by Yagie Sagita Putra (UBELAJ, Volume 1, Number 1, Year 2017)
 - f. The Scientific Journal of Ultra Petita Legality in Criminal Procedure Law on Court Decisions was written by Luis (Aggama Law Journal, Volume 4, Number 2, Year 2021)
- Data Analysis Processing Techniques.

The processing of legal materials is carried out through several stages that are cumulative as follows:

1. Inventory

Inventory is a basic preliminary activity and is carried out by distinguishing between primary, secondary and tertiary legal materials. This stage is based on the relevance of the legal issues raised in the research.

2. Identification

Identification is a process in organizing legal materials through a selection procedure based on 3 main conceptions, namely:

- a. Legal materials must have relevance or relevance to legal issues
- b. Legal materials must be able to be interpreted or constructed and have values or standards in both legal theory and concepts

3. Classification

The classification stage of legal materials must be carried out logically and systematically based on their essence, type, and source.

4. Systematization

Systematization is the last step carried out by making a sequence and order of legal

materials that have been classified for further description of funds, analysis of the content and structure of legal materials.

3. Results and Discussion

Results

Inventory and Decidendi Ratio of the Judge's Ultra Petita Decision in Criminal Cases

In the judicial system, ultra petita verdicts are known in the sense of "exceeding what is requested". Many experts interpret the ultra petita verdict as a verdict on a case that exceeds what the Public Prosecutor demands or requests in another sense, the ultrapetita verdict is the imposition of a verdict on a case that is not prosecuted or grants more than what is requested. At the empirical level, several types of ultra petita decisions are known, namely: 1. Court decisions that impose a penalty in excess of the number of criminal charges filed by the public prosecutor 2. Court decisions that declare guilty and impose a criminal sentence against the defendant, but not based on the article charged by the public prosecutor, 3. Court decisions that state that the defendant is guilty of committing a criminal act or what is charged by the public prosecutor and then impose a criminal offense The criminal offense exceeds the maximum threat or below the minimum threat of the article charged.

Broadly speaking, the ultra petita decision deviates from the provisions contained in Article 182 Paragraph (4) of the Criminal Procedure Code, which states that the deliberations of the panel of judges must be based on the indictment of the public prosecutor and the facts found in the trial. In addition to contradicting the provisions of the article, the ultra petita verdict also violates the principles of justice and protection of the defendant's rights, where in this case a verdict issued outside the indictment of the public prosecutor will place the defendant in the guilty position for a criminal act that he did not commit. Moreover, the ultra petita verdict in question provides a law that exceeds the maximum threat or is less than the minimum threat regulated in the law, then this will harm the criminal justice system. Judges have a free and independent nature, but in the implementation of the trial the free and independent nature is limited by the provisions of the law and the indictment submitted by the Public Prosecutor. However, sometimes the public prosecutor lacks scrutiny in determining and making articles of indictment so that the indictment cannot be proven in court, even though on the other hand the defendant has clearly committed a criminal act. In this regard, if the panel of judges decides the defendant with a free verdict, of course this will harm the principles of justice in society and tarnish the law enforcement process in the criminal domain. In such a phenomenon, the ultra petita decision issued by the panel of judges is a solution that can fill the existing legal vacuum, so that justice can still be enforced. This provision is in line with the sound of Article 193 Paragraph (1) of the Criminal Procedure Code which states

that, if the court is of the opinion that the defendant is proven guilty and committed a criminal act against him, then the court has the right to impose a criminal sentence on him. On this basis, the court has the right to impose penalties for perpetrators who commit criminal acts.

Article 24 Paragraph (1) of the 1945 Constitution of the Republic of Indonesia emphasizes that the judicial power is an independent power. This principle requires judicial power that is free from interference by any party in the form of *appaun*, so that in carrying out its duties and obligations there will be no partiality. However, the independence in question remains within the limits of laws and regulations. New problems then arise when people's lives are much more dynamic than laws and regulations, so that existing regulations are not able to overcome various concrete problems in society. Mak, in such a position, judges are positioned not only as a mouthpiece of laws and regulations, but must also be able to explore and find existing laws and society while still based on existing values of justice. In this context, the independence of judges as bound by laws and regulations should not be pinpointed as a sacred rule that limits the role of judges in the creation of progressive laws, because if so, the law will only be closed and static without being able to keep pace with the development of dynamic people's lives.

The existence of Article 182 Paragraph (4) and Article 191 of the Criminal Procedure Code which states that the deliberations of the panel of judges must be based on the indictment and facts proven at the trial. If the act charged to the defendant is not proven, then in this case the judge must impose a free verdict against the defendant, so far it is used as the basis for prohibiting the *ultra petita* verdict. Reading and understanding laws and regulations must be done systematically and comprehensively. These two articles technically regulate the trial process where in this case the court must be associated and discussed holistically with other articles. For example, in the provisions of Article 182 Paragraph (4) of the Criminal Procedure Code which states that the indictment is the basis that must be guided in the deliberations of the panel of judges. In the *passal*, the indictment is not the only thing that must be considered, where there are other elements that also demand attention, namely in this h, the facts revealed in the trial, both are cumulative with the conjunction "and". So, in this case, it is not only the indictment that must be considered but also the facts that exist in the trial. This provision is in line with the *sas* of the verdict, where the panel of judges, in addition to having to pay attention to the evidentiary process at the trial, must also be based on the judge's confidence in concluding the facts in the trial. For Article 191 Paragraph (1), in fact the article must be read cumulatively with Article 193 Paragraph (1) of the Criminal Procedure Code, in which case the article provides flexibility to the judge in imposing a criminal sentence if the defendant legally and actually commits a criminal act regulated in the law.

the investigative team and the Public Prosecutor will not really pay attention to the case that occurred and instead charge the defendant with inappropriate articles. Such an act

will tarnish the dignity of the judiciary. The decision of the panel of judges as previously described is considered an *ultra petita* decision because the verdict was handed down outside the indictment filed by the Public Prosecutor. This is considered contrary to the provisions of laws and regulations. Nevertheless, a judge has an impartial and independent nature in deciding a case. This is expressly regulated in Article 1 point 1 of Law Number 48 of 2009 which states that the judicial power is the power of an independent state to hold the judiciary to uphold law and justice based on Pancasila and the Constitution of the Republic of Indonesia. In its implementation, the independence must be carried out by paying attention to the following matters: a. it must not exceed the criminal threat of the article that has been charged, b. it is not allowed to give a criminal verdict of the same type of crime that has no reference in the Criminal Code or regulations outside the KHP, c. the criminal verdict must give a compelling consideration based on the existing evidence.

In this regard, the public prosecutor charged and sentenced the defendant based on the provisions of Article 112 Paragraph (1) of Law Number 35 of 2009 concerning Narcotics which states that, every person who without rights or unlawfully possesses, stores, controls, or provides Class I Narcotics other than plants, shall be sentenced to a minimum of 4 years in prison and a maximum of 12 years and a fine of at least 800 million rupiah and a maximum of 8 billion rupiah. The indictment carried out by the public prosecutor was based on the results of the defendant's examination which revealed the presence of amphetamines in the defendant's urine. Where in this case amphetamine is one type of narcotics that is included in group I.

Through its decision, the panel of judges actually used a different legal basis than what was used by the public prosecutor. In this case, the panel of judges based its decision on Article 127 Paragraph (1) of Law Number 35 of 2009 concerning Narcotics. Although there are differences in the articles used as the basis for criminal imposition, the formulation of the two articles both contain provisions on the use of class I narcotics, where Article 127 Paragraph (1) of the Law on Narcotics states that, every person who abuses class I narcotics for himself is punished with a maximum prison sentence of 4 years. Regarding the criminal imposition of class I narcotics users as stipulated in Article 112 Paragraph (1) and Article 127 Paragraph (1) of the Law on Narcotics, both contain different criminal provisions. The penalty imposed in Article 127 Paragraph (1) tends to be lighter than the penalty regulated in Article 112 Paragraph (1), which is a maximum of 4 years in prison, while in Article 112 Paragraph (1) positions a prison sentence of 4 years as the minimum limit of imprisonment, and a prison sentence of 12 years as the maximum limit of criminal imposition. The verdict issued by the judge with an indictment different from what was submitted by the public prosecutor is based on jurisprudence in Decision Number: 675/K/Pid/1987 which states that, if it is proven at the trial that the same offense is lighter, then the defendant will be sentenced based on the lesser offense. *Ultra Petita*. The

judge is not allowed to impose a sentence outside the limits contained in the indictment. The defendant can only be sentenced based on what is proven about the crime he committed according to the formulation of the indictment. Each court decision must contain the basis and reasons for the award. In addition, articles of laws and regulations contained in the indictment or unwritten legal source must be included, which are imposed on the defendant. However, based on the facts revealed in the trial, it can be said that the single indictment filed by the Public Prosecutor, namely Article 11 Paragraph (1) of the Law on Narcotics, is inappropriate. This is considering that in the trial it was known that the defendant possessed class I narcotics only for personal consumption without any intention to be involved in the illicit circulation of narcotics. (Bambang Waluyo 2008 , p. 66)

The steps taken by the panel of judges in punishing the defendant in accordance with Article 127 Paragraph (1) of the Law on Narcotics are the right actions based on the facts found in the trial. The provisions of Article 127 Paragraph (1) state that every person who abuses class I narcotics for himself is sentenced to a maximum of 4 years in prison. If an analysis is carried out on the sound of the article, it will be known that the elements of the criminal act contained in the article are as follows: a. Every group I narcotics abuser: that what is meant by the element of each abuser in this article is aimed at a person or human being as a subject of criminal law, namely as a perpetrator to whom he can be burdened with criminal liability as a class I narcotics abuser. It was fulfilled that the perpetrator was known to be Boiy Sairy. For oneself: that the meaning of the formulation of the element is the use or abuse of narcotics used for oneself without the presence of other people's elements involved in the act. The defendant in this case has fulfilled the elements of possessing, storing, possessing, or providing class I narcotics other than plants used for himself in this case have been fulfilled.

Based on the Decision issued by the panel of judges, it received a lot of reaction and spotlight because it punished the defendant outside the indictment filed by the Public Prosecutor. This is because the duty and function of judges in the administration of justice is to enforce the law, in which it is concluded that judges in deciding cases must be based on the law, meaning that they must not contradict the law. Because the judge is in charge of maintaining legal order, determining what is determined by the law in a case submitted to him. Therefore, the freedom possessed by judges in deciding cases is limited. Nevertheless, judges have the obligation to explore, follow, and understand the legal values that apply in society. Thus, in deciding a case, the judge must not only be subject to the applicable law, but must also be in accordance with the instinct and justice in society.

a. As an effort to protect the community from the threat of a crime committed by the perpetrator b. As a repressive effort so that the criminal imposition deters the perpetrator and will not commit a criminal act in the future, c. As a preventive effort so that the

community does not commit a criminal act as committed by the perpetrator, d. Prepare the community's mentality in responding to a crime and the perpetrator of the crime, So that in time the perpetrators of criminal acts can be accepted in community associations.

Based on the matters that deserve attention above, for the sake of upholding law and justice, the judge's decision to impose a sentence outside the Public Prosecutor's indictment in this case is a wise thing. Although in principle, the judge must pay attention to the juridical provisions where the existing rules affirm that the judge is not allowed to impose a sentence outside the indictment of the Public Prosecutor, However, at a practical level, this cannot be applied, the defendant has been clearly based on the facts at the trial of committing a criminal act regulated in laws and regulations. This should be done so that in the future no community will commit similar criminal acts, considering the deterrent effect caused by existing law enforcement efforts. In the Decision issued by the Tangerang District Court Number: 240/Pid.Sus/2021/PN. TNG is a legal product related to the case of narcotics abuse committed by the Defendant on behalf of Alma Fadila. In this case, the Public Prosecutor used three articles that were alternative in his indictment. The three articles in question are Article 114 Paragraph (2) of Law Number 35 of 2009 concerning Narcotics, Article 113 Paragraph (2) of Law Number 35 of 2009 concerning Narcotics, and Article 112 Paragraph (2) of Law Number 35 of 2009 concerning Narcotics. However, in the trial, the Public Prosecutor only outlined the second indictment, namely Article 113 Paragraph (2) of Law Number 35 of 2009 concerning Narcotics, while the Defendant's Legal Counsel only outlined the first and second charges without describing the third indictment filed by the Public Prosecutor. This decision is considered as one of the types of *ultra petita* verdict because the panel of judges actually used the third prosecutor's indictment, namely Article 112 Paragraph (2) of Law Number 35 of 2009 concerning Narcotics.

The Lab examination from the Puslabfor Bareskrim of the National Police No. Lab: 5091/NNF/2020 dated November 3, 2020 stated that, the evidence obtained from the defendant in the form of a package of plastic clips containing a package of plastic clips containing white powder with a net weight of 9.7642 grams number: 2221/2020/PF is true to contain MDMA-4 PINACA type narcotics which are registered as Class I Narcotics. The defendant did not possess, store, or possess and provide the narcotics because he never saw the contents of the package and never held the goods perfectly. All witnesses said that the package containing narcotics was not the defendant's possession, but belonged to Nafal Yoran and Zaenal Abidin. The defendant also did not commit conspiracy to buy or order the drugs. So that without the defendant, the crime will still take place. The panel of judges in the trial stated that they did not agree with the memorandum of defense submitted by the Legal Counsel with the consideration that, based on Zaenal Abidin's testimony and witness testimony Nafal Royan as well as the information submitted by the defendant himself at the trial that Zainal Abidin had been informed in advance of

what the contents of the package would be received by the defendant. Including the defendant has transferred money to his account in the amount of five hundred thousand rupiah and has been received by the defendant. On the basis of these findings, the panel of judges stated that the defendant had juridically and clearly violated the provisions contained in Article 112 Paragraph (2) of Law Number 35 of 2009 concerning Narcotics. The article states that, in the event of possessing, storing, possessing, or providing class I narcotics other than plants as referred to in Paragraph (1) weighing more than 5 grams, the perpetrator is sentenced to life imprisonment or imprisonment for a minimum of five years and a maximum of 20 years and a maximum fine as intended in Paragraph (1) plus 1/3. The sentence imposed on the defendant is five years in prison minus the confinement that has been carried out. The sentence imposed by the panel of judges was much lower than the demand requested by the prosecutor, namely a prison sentence of seven years minus the period of arrest and the temporary detention period that the defendant had served with an order that the defendant remain detained and pay a fine of one billion rupiah, a subsidy of 3 months and a case payment of two thousand rupiah.

The decision issued by the panel of judges as previously described, has been in line with the principle of freedom and independence of judges in deciding cases. This is in line with the existence of Article 5 Paragraph (1) of Law Number 48 of 2009 concerning Judicial Power which reads, judges and constitutional judges are obliged to explore, follow and understand the values of law and the sense of justice that live in society. The testimony made by a judge is still declared correct and in a fixed corridor, while still paying attention to the following: (Denty Suci Mareta Femylia 2017)

Mistakes made by the perpetrator of the crime

- a. Motives and objectives of committing a criminal act The mental attitude of the criminal act maker Whether the criminal act was committed with planning
- b. How to commit a criminal act Attitude and actions of the perpetrator after committing the crime Curriculum history and social and economic circumstances of the perpetrator of the crime Criminal influence on the future of the perpetrator of the crime The influence of the criminal act on the victim and the victim's family Forgiveness of the victim The public's view of the criminal act committed

In the Narcotics case, the panel of judges revealed that the criminal act committed by the defendant would be more appropriate if charged with Article 127 Paragraph (1), this is because the defendant's control of the class I narcotics is only for a moment and for his own consumption. However, because the panel is aware that the article was not charged by the public prosecutor, in this case the panel of judges took steps by imposing a criminal sentence on the defendant based on the facts revealed at the trial, namely in this case based on the provisions of Article 127 Paragraph (1), thus the length of the prison sentence imposed on the defendant refers to the provisions of the article. This means, the panel of

judges will impose a lighter sentence than what is mentioned in Article 112 Paragraph (1).

The penalty imposed by the panel of judges regarding the narcotics crime committed by the defendant is imprisonment for two years with a fine of 800 million rupiah with the provision that if the fine is not paid, it will be replaced with a prison sentence for one month.

Theoretical Basis and Qualifications of Ultra Petita's Justified Verdict in Criminal Law Enforcement

The existence of ultra petita verdicts in the form of the criminal justice system in Indonesia is still problematic. Apart from the fact that the term is not known in Indonesian legal instruments, ultra petita is often considered a form of injustice for the defendant because the sentencing is based on an article outside the indictment of the Public Prosecutor. However, the ultra petita verdict has colored judicial practice in Indonesia, considering that the Public Prosecutor is often unscrupulous in compiling the indictment so that the criminal act clearly committed by the defendant cannot be proven in the trial.

Here are some ratios of justification for the existence of ultra petita verdicts in criminal law enforcement in Indonesia:

1. Theory of Justice

In the context of justice, not all of the ultra petita verdicts are in the opposite position. This is considering the theory of justice, Aristotle stated that justice is an action that lies in giving to each person according to what is his right. If this concept is interpreted in contrario, it can be interpreted that justice is the act of giving back to everyone according to what has been done. (Sudirman A 2013)

2. Criminal Theory

In the context of criminal theory, a criminal sentence is imposed on a person for violating the regulations imposed in a country. In addition, the existence of criminalization is also directed to improve and provide opportunities for people who commit criminal acts to correct their mistakes so that they can return to life in society properly. Therefore, criminalization reflects two spirits in its implementation, namely as a signal that someone has committed a crime and as a warning to the public not to repeat the same offense. The prohibition of ultra petita verdicts in the framework of criminal law will actually leave a gaping cavity in criminal law enforcement. How could it not, if the verdict handed down by the judge is only based on the indictment prepared by the Public Prosecutor, while in its implementation often a prosecutor or investigative team is not careful in revealing an event, then in this case it will present weaknesses in criminal law. Not digging into existing laws to reveal the legal facts in the trial and releasing all its attachments to be able to produce a verdict based on the values of justice for the defendant and the public in general. This view will be in line with the purpose of punishment stated by Roeslan Saleh

who stated that the purpose of punishment is to maintain order in society.

3. Decidendi Ratio Theory

In the formulation of legal opinions in the deliberations of the panel of judges, it is known that there are several things that should be considered, namely: a) the identification of facts to produce a case structure that the judge truly believes as a real case; b) link the structure of the case with relevant legal sources so that it can establish legal acts into juridical terms; c) select relevant legal sources and legal rules to then find out the policies contained in the legal rules; d) linking the structure of the rules with the structure of the case in a deductive syllogism; e) find the right and correct alternative solutions; and f) determine the choice of one of the alternatives to then be applied as a legal opinion in accordance with the dictum of the decision. Based on the description above, it can be seen that basically theoretically the panel of judges is given space to explore alternative rules that exist in the enforcement of the law in a case. This is indirectly the basis for justifying the existence of the ultra petita decision.

4. Conclusion

The ultra petita verdict is a decision issued by a panel of judges in a case outside the Public Prosecutor's indictment, because it is known that the indictment was prepared incarefully so that it could not be proven in court. There are several examples of ultra petita decisions within the framework of criminal law enforcement in Indonesia. Among them are: Decision on narcotics possession case, Decision Number: 240/Pid.Sus/2021/PN. TNG is related to the Narcotics case, and the Narcotics case, and Decision Number: 407/Pid.Sus/2015/PN. SBY is related to a narcotics case. The verdict is ultra petita because of the inaccuracy of the Public Prosecutor in compiling the indictment, so that to give a verdict to the defendant who has actually committed a criminal act, in this case the panel of judges uses other similar articles. The following are some of the ratio decidendi submitted by the panel of judges in these decisions:

As for the framework of Indonesian criminal law, there is basically no rule that explicitly regulates the existence of ultra petita verdicts, but nevertheless the existence of ultra petita verdicts can be justified on a theoretical basis, in the perspective of justice theory, where every person who commits a criminal act regulated in the law must be sentenced. Second, from the perspective of criminalization and its purpose, it can be seen that the judiciary is intended to declare a criminal act committed by a person and as a warning for the public not to do the same. Therefore, in the perspective of the ratio decidendi theory, judges' decisions must be able to present alternatives that can be an option in efforts to enforce justice.

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