Vol. 20 No. 4 March 2025 **YURISDIKSI**
Jurnal Wacana Hukum dan Sains
Universitas Merdeka Surabaya

ISSN print 2086-6852 and ISSN Online 2598-5892

Legal Review of Decisions Exceeding The Demands (Ultra Petita)

Erin Irgo Septyalona[1*], Bastianto Nugroho[1], Mohammad Roesli[1]
Faculty of Law, Merdeka University Surabaya, Indonesia
[*]Corresponding Author E-mail: erinirgo9997@gmail.com
Article History: Received: December 25, 2024; Accepted: Febuary 15, 2025

ABSTRACT
The aim of this research is to determine the provisions for proceedings at the General Court and specifically the provisions for proceedings at the Constitutional Court in carrying out the judicial review of laws against the 1945 Constitution according to Law Number 24 of 2003 concerning the Constitutional Court. Method Normative research, with a conceptual approach, namely legal research that looks for principles, doctrines and sources of law in a juridical philosophical sense.Results of the Constitutional Court (MK). The establishment of the Constitutional Court was based on the third amendment to the 1945 Constitution which was carried out by the MPR in 2001. The Constitutional Court is an independent judicial authority to administer justice to uphold law and justice alongside the Supreme Court and subordinate courts (Article 24 paragraphs (1) and (2) Amendment Third). The Constitutional Court was formed to guarantee that the constitution as the highest law can be enforced, so that the Constitutional Court is known as the guardian of the constitution.

Keywords: Judge, MK, Session, Constitution

1. INTRODUCTION

The evolution of legal philosophy, which is inherent in the evolution of philosophy as a whole, revolves around certain problems that arise again and again (Amada, 2023). Among these problems, the one that is most frequently discussed is the issue of justice in relation to the law. This is because laws or regulations should be fair, but in fact they are often not. Justice can only be understood if it is positioned as a condition that is intended to be realized by law. Efforts to realize justice in the law are a dynamic process that takes a lot of time (Syarifuddin, 2017).

This effort is often dominated by forces fighting within the general framework of the political order to actualize it. One can regard justice as an absolute idea or reality and assume that knowledge and understanding of it can only be gained partially and through very difficult philosophical efforts. Or one may think of justice as the result of a general religious or philosophical view of the world in general. If so, one could define justice in one sense or another of this view. Justice in legal philosophy is the main basis that must be realized through existing laws (Subagyono et al., 2014).
Aristotle emphasized that justice was the core of his legal philosophy. For him, justice is understood in terms of equality, between numerical equality and proportional equality. Numerical equality equates each human being as one unit. Proportional equality gives each person what is their

ISSN print 2086-6852 and ISSN Online 2598-5892

right according to their abilities, achievements, and so on. He also differentiates justice into types of distributive justice and corrective justice. First, it applies in public law, second, in civil and criminal law. John Rawls with his theory of social justice emphasized that a justice enforcement program with a people's dimension must pay attention to two principles of justice, namely providing equal rights and opportunities for the broadest basic freedoms, as broad as equal freedom for everyone and being able to reorganize existing socio-economic disparities. so that it can provide reciprocal benefits for everyone, both those from fortunate and disadvantaged groups (Sugiyono et al., 2020).

In relation to the theory of justice mentioned above, in a country law enforcement is the center of all legal "life activities" starting from legal planning, law formation, law enforcement and legal evaluation. Law enforcement is essentially an interaction between various human behaviors that represent different interests within the framework of mutually agreed rules. Therefore, law enforcement cannot simply be considered as a process of applying the law as legalists argue. However, the law enforcement process has a broader dimension than this opinion, because law enforcement will involve the dimension of human behavior. With this understanding, we can know that the legal problems that will always stand out are problems of law in action, not law in the books. Currently it can be seen and felt that law enforcement is in an unencouraging position. The public questions the performance of law enforcement officials in eradicating corruption, the rise of judicial mafias and violations of the law (Sasmito, 2016).

Several developments that have occurred in the last few years, starting with the rolling out of the reform agenda, have resulted in various major changes in the country, especially in terms of democratization and the constitutional system. Where the most basic agenda in the transition process to democracy is constitutional reform as the main requirement for a constitutional democratic country. Because the transformation process towards the formation of a democratic system is only possible if it is preceded by fundamental changes in constitutional rules which provide the basis for various other democratic agendas. Comprehensive political and economic reform is impossible without being accompanied by legal reform. However, according to (Asshiddiqie, 2006) comprehensive legal reform is also impossible without being based on a fundamental constitutional reform agenda, and that means a constitutional reform that is not half-hearted is needed.

In a country, there is no constitution that includes all the rules related to the administration of the country and government. Therefore, the constitution is a document that only contains the fundamental principles of government. It means that it only contains things that are basic, basic, or basic. Therefore, the nature and characteristics of such a constitution are intended so that it is not always changed due to developments in time and society. According to (Budiardjo, 2003), the

ISSN print 2086-6852 and ISSN Online 2598-5892

constitution is a charter that states the ideals of the nation and is the basis of the state organization of a nation. Where in the constitution there are various basic rules relating to sovereignty, division of power, state institutions, state ideals and ideology, economic issues and so on.

In line with the principles of constitutionalism, the idea of a constitution as a tool for limiting power cannot be separated from the ideas of human rights, democracy and the rule of law. Where the constitution is a normative crystallization of the State's duties in providing protection for human rights and implementing government based on popular sovereignty accompanied by legal limits of power directed at the interests of society as a whole. At the beginning of the reform movement, the determination to eradicate all abuse of power and abuses such as corruption, collusion and nepotism, apparently had not been followed by concrete steps and seriousness from the government, including law enforcement officials, in their law enforcement efforts in Indonesia. As a reaction to the demands for reform, it ultimately brought about fundamental changes in the aspects of national and state life, including the legal and political fields, which seemed to have brought the Republic of Indonesia in a democratic and constitutional direction (Budiardjo et al., 2014).

Every change to the constitution must be based on a paradigm or view regarding change that must be adhered to by the change agent, which is directed and in accordance with the developing needs of society. This paradigm was extracted from the weaknesses of the old constitutional building system, with the argument that it was created as a basis for producing a system that guarantees government stability and advances people's welfare. An idea to make this change emerged from the People's Consultative Assembly as a result of the 1999 election, which sparked an idea, namely to implement the principle of strict separation of powers between the legislative, executive and judicial branches of power, which was realized in the institutionalization of equal State organs and carry out check and balance functions. Each State organ is no longer structured hierarchically, but is structured according to its function. Amendments to the 1945 Constitution of the Republic of Indonesia are one of the main pillars that mark efforts to perfect and develop democracy in aspects of national and state life. This will only have a very big meaning and be beneficial for the life of the nation and state if all elements of society have one thing in common in a comprehensive understanding of the constitution. Where changes to the 1945 Constitution at the implementation level brought about changes in both the elimination and creation of State institutions, the position of each State Institution depends on the duties and authority granted by the 1945 Constitution.

With the changes to the 1945 Constitution, various advances have been implemented, especially related to the spirit of strengthening the foundations of democracy, including guaranteeing civil liberties. And to create a democratic and constitutional government. Where in carrying out the

ISSN print 2086-6852 and ISSN Online 2598-5892

check and balances function, an institution is needed that has the authority to carry out judicial supervision (judicial control) over the administration of the State.

In Indonesia itself, there are efforts to improve law enforcement in Indonesia through constitutional changes and constitutional reform. Especially in judicial institutions and judicial power.According to (M. Mahfud, 2009), there are three things related to the discourse to improve law enforcement in Indonesia through reform. First, the rise of the judicial mafia (judicial corruption) involving judges and other law enforcers (chess wangsa law enforcers). Judicial corruption stings but cannot be seen or proven formally because of the perpetrators consist of people.

Which clever at manipulating the law to protect each other. Second, there are many laws and regulations, including legal products, which are substantively considered to be in conflict with higher laws and regulations, including the 1945 Constitution, but there is no effective institution or review mechanism through judicial institutions. review). At that time there was only testing by the legislature (legislative review) and testing by the executive agency (executive review) which depended on the President's decision, in accordance with the underlying heavy executive political system. So after the amendment to the Constitution, one of the important achievements of the Third Amendment was the presence of a new institution in the judicial power system called the Constitutional Court, which was enthroned as the Guardian and the Protector of the Constitution. The existence of the Constitutional Court in the Indonesian constitutional system can be said to be a new institution, which cannot be denied being inspired by Constitutional Courts in other countries (M. D. Mahfud, 2009).

However, the concept of a Constitutional Court is not adopted in its entirety, because each country has different constitutional system characteristics. And currently, there are 78 countries that have a Constitutional Court, and this is a trend in countries that have recently experienced changes from authoritarian regimes towards democratic regimes. The presence of the Constitutional Court in the Indonesian constitutional system is a demand or theoretical consequence of changes to the 1945 Constitution. The main idea underlying these changes is the desire to realize Indonesia as a rule of law (rechtsstaat) and a democratic country based on a constitution (constitutional democracy).).

Together with the Supreme Court, the Constitutional Court is the holder of judicial power in Indonesia. As the holder of judicial power, the constitutional court is expected to be the spearhead in upholding justice. Many hope that the establishment of the Constitutional Court can guarantee the constitutional rights of citizens. Because during the New Order era, the basic rights of citizens were always ignored by the authorities at that time. People at that time often became victims of government policies that always ignored people's rights. The existence of a constitutional court can be a forum

ISSN print 2086-6852 and ISSN Online 2598-5892

for the public to obtain protection for their rights which have been regulated in the constitution, in this case the 1945 constitution.

The Constitutional Court as the executor of judicial power is regulated in the 1945 Constitution article 24, and regarding its authority is regulated in article 24C. Also, in accordance with the provisions in article 24C paragraph (6) of the 1945 Constitution, a regulation was also formed to implement the 1945 Constitution, namely Law Number 24 of 2003 concerning the Constitutional Court, and this regulation does not limit the implementation of the provisions contained in the 1945 Constitution (Ahmad & Nggilu, 2019).

One of the authorities of the Constitutional Court is to review laws against the 1945 Constitution, which is a reflection of the implementation of the checks and balances mechanism in Indonesia, where the law-making power that has previously been vested in the legislative body cannot be tested by the judicial institution. With the authority of the judiciary, through the Constitutional Court reviewing laws, all courts and state institutions, and other institutions including regional governments must be bound by the decisions of the Constitutional Court (Kurnia, 2014). However, in this review, there are procedural provisions as stated in the provisions of article 28 of Law Number 24 of 2003. Legal review of the 1945 Constitution is a task that dominates the authority of the Constitutional Court as seen in the submitted and registered applications. at the clerkship of the Constitutional Court. As data, it can be stated that since its formation in 2003 until June 2008, the Constitutional Court has examined and decided on legal review of the 1945 Constitution (judicial review) 137 times and 11 cases are currently in the process of being examined.

In carrying out its duties, the Constitutional Court refers to Constitutional Court Regulation Number 06 of 2005 concerning procedural guidelines in judicial review cases. And according to many experts, the legal vacuum in the procedural law of the Constitutional Court makes it difficult for judges to carry out procedural practices at the Constitutional Court. In exercising its authority to review the constitutionality of a law, the Constitutional Court has received a lot of criticism regarding the substance of the case and how the formal law applies, especially the issue of ultra petita or decisions that exceed the applicant's demands. This can be seen in one of the Case Decisions Number 006/PUU-IV/2006 which reviews Law Number 27 of the Constitutional Court in carrying out its duties and authority, because in the Constitutional Court Regulation Number 06 of 2005, it does not regulate the limits on whether the Constitutional Court may do ultra petita. For this reason, the Constitutional Court adopts various rules in procedural law, especially state administrative court procedural law. Apart from that, the Constitutional Court also adopts regulations originating from other countries that have Constitutional Courts (Marzuki, 2018).

ISSN print 2086-6852 and ISSN Online 2598-5892

2. RESEARCH METHODS

Normative research, with a conceptual approach, namely legal research that looks for principles, doctrines and sources of law in a juridical philosophical sense. This research also examines generally accepted principles or is called philosophical research on norms, rules and legislation, which is used descriptive analytically. Analytical descriptive is a method that functions to describe or provide an image of the object under study through data that has been collected regarding criminal acts of defamation by carrying out analysis and making conclusions.

3. RESULTS AND DISCUSSION

Juridical Review of The Ultra Petita Ruling By The Constitutional Court Republic of Indonesia

Procedural Law or Formal Law is a legal rule that regulates how to submit a case before a judicial body and how the judge makes a decision. The procedural law in Indonesia, especially in the General Courts, consists of:

a. Criminal Procedure Law
b. Civil Procedure Law
c. State Administrative Court Procedure Law

Criminal Procedure Law is the totality of legal rules that regulate how to maintain or implement Material Criminal Law, so as to obtain a judge's decision and regarding how that decision is implemented. According to Mustafa Abdulah and Ruben Achmad, criminal procedural law as a realization of criminal law is a law that concerns the manner in which authorities take action against citizens who are accused of being responsible for an offense (criminal incident). The legal basis for this criminal procedure is, among other things, Law Number 14 of 1970 concerning Basic Provisions of Judicial Power, and Law Number 8 of 1981 concerning the Criminal Procedure Code. The function of criminal procedural law is to seek and discover the truth, giving decisions by judges, and implementing decisions by judges.

The second procedural law system is the Civil Procedure Law System. Civil Procedure Law is a legal regulation that regulates how to ensure compliance with material civil law through the mediation of a judge. In other words, civil procedural law is the legal regulations that determine how to bring civil cases before the court (including commercial law) and how to implement judge's decisions in order to maintain and defend material civil law. Civil Procedure Law is a series of regulations that contain how people must act towards and before the court as well as how courts must act with each other to implement civil law regulations. The basis of Civil Procedure Law (a legacy

ISSN print 2086-6852 and ISSN Online 2598-5892

from the Netherlands) in Indonesia is the Reglement op de Burgerlijke Rechtsvordering (Rv), which applies to the European Group. Het Herziene Indonesisch Reglement or in Indonesian the Revised Indonesian Regulations (RIB), for the bumiputera group on the islands of Java and Madura. Meanwhile, for the bumiputera group outside Java and Madura, Rechtsreglement Buitengewesten (RBg) applies.

The third procedural law system is the State Administrative Court Procedure Law, or often equated with the State Administrative Court Law. What is meant by State Administrative Procedure Law is a court that resolves disputes or disagreements that occur between parties, where one party is a government official and members of the public on the other party. Or between fellow government officials regarding actions or actions in the context of carrying out their duties where the parties (to whom the actions are directed) do not accept them on the grounds that the action is illegal or for other reasons. These disputes arise due to issues of competence or jurisdiction and differences in interpretation in implementing statutory provisions. Disputes or disputes that occur between government officials are called Internal Disputes. Meanwhile, disputes or disputes that occur between government officials and community members are called external disputes.

In general, the provisions for proceedings in Indonesian general courts are as follows:

1. Provisions of Criminal Procedure Law

Implementation of the role of criminal procedural law in criminal cases, namely, if a criminal incident is suspected or known to have occurred, an investigation is carried out by the police or certain civil servant officials or PPNS who are given special authority by law. This investigation is carried out to search for and collect evidence that is useful for finding out who is the suspect who committed the crime. After the suspect and evidence are found, the case is handed over to the prosecutor (public prosecutor) who will carry out the prosecution at the District Court so that it will be examined and decided by the judge in a trial at court. And examinations in court trials are carried out by judges who are authorized by law to adjudicate (receive, examine and decide cases) based on the principles of freedom, honesty and impartiality. Based on the results of the examination, the judge makes a decision. And the decision is a judge's statement made in an open court session which can be in the form of conviction (sentence) or acquittal if the person charged in court is legally proven, or a decision to release all legal charges, where the action is proven, but the action does not constitute an offense. After the judge hands down a decision that has permanent legal force, the prosecutor carries out the contents of the decision.

2. Provisions of Civil Procedure Law

ISSN print 2086-6852 and ISSN Online 2598-5892

In civil procedural law, cases that can be submitted to court can be in the form of lawsuits (jurisdictio contentiosa) and applications (jurisdiction voluntaria). In a lawsuit there are objections, which in this case relate to the dispute. The type of decision issued by the judge is a verdict. Meanwhile, in a petition, the judge does not carry out justice. In this provision, the judge does not make a verdict, but rather a decree (beschikking), to officially determine what already exists. For example, determining heirs.

Lawsuit submitted to the District Court in accordance with relative competency. If the lawsuit letter is not in accordance with relative competence, it will result in formal defects which ultimately make the lawsuit unacceptable. The lawsuit must also clearly state the identity of the parties, and if the identity of the parties is not clear, it could result in the lawsuit being invalid. A lawsuit must also include a lawsuit posita, which conveys the legal relationship between the plaintiff and the defendant which contains the legal basis. This legal relationship can result in legal events in the form of unlawful acts (PMH) or legal events due to default. Apart from that, a Petitum (Claim) is also included in a lawsuit, which contains a request to the court through the judge to declare or determine the rights of the plaintiff or a punishment for the defendant. The petitum must contain a clear description stating one by one the plaintiff's claims that must be stated and imposed on the defendant, and the contents of the petitum must be supported by a posita of the claim.

In the case examination process, civil procedural law recognizes that there are 7 (seven) processes in general, namely (1) the reading of the lawsuit by the plaintiff, (2) the response from the defendant, (3) the plaintiff's reply or rebuttal to the answer that has been submitted by the defendant. (4) Duplicate or the defendant's response to the plaintiff's response in the replica. (5) evidence, which aims to provide certainty to the judge regarding what has been argued by the parties, then both parties present evidence and witnesses. (6) Conclusion, is a resume and is read simultaneously by both parties. And the final stage, (7) the judge's decision, which can be in the form of granting the plaintiff's claim, or the plaintiff's claim not being accepted (rejected). In this situation, the plaintiff can file an appeal. The judge's decision can also grant the plaintiff's claim for compensation, so the judge must decide on the amount change losses, determining entitled groups, and mechanisms for distributing compensation.

3. Provisions of State Administrative Court Procedural Law

In state administrative court procedural law or what is also often called state administrative court, there are several ways of resolving disputes. Namely, firstly, resolving administrative disputes by means of complaints (administratieve beroep), namely dispute resolution carried out within the administration's own environment. This complaint is addressed to superiors or higher government

ISSN print 2086-6852 and ISSN Online 2598-5892

agencies. Second, resolving administrative disputes through the Quasi Court Agency. It is said to be pseudo because the body (council) is still included in its own administrative environment but the procedures are the same as a judicial body. Judicial activities through this body are carried out by boards, commissions or committees. The way it works is almost the same as the general court, but the decision can still be overturned by the minister concerned. For example, Regional Labor Dispute Settlement Committee (P4D) - Department of Manpower. Third, resolving administrative disputes through actual administrative justice bodies.

This means that this judicial body meets the requirements as found in ordinary courts, namely that the members of this judicial body actually have the status of judges. This judicial body's decision cannot be overturned or influenced by the minister or anyone else.

4. Decisions and Legal Remedies Against Court Decisions

If the judge's decision has been handed down, and the parties (prosecutor/defendant in the Criminal Procedure Law, or Plaintiff/Defendant in the Civil Procedure and State Administrative Law) are not satisfied, then they are given legal remedies in the form of:

a. Ordinary legal remedies, namely through examination at the appeal level submitted to the High Court by the defendant / his attorney / by the prosecutor through examination for cassation submitted to the Supreme Court.

b. Extraordinary legal measures, namely in the interests of the law, for all decisions that have obtained permanent legal force, can be submitted once for a cassation examination by the Attorney General to the Supreme Court. This cassation aims to achieve unified legal interpretation by the court.

Provisions for Ultra Petita Decisions in General Courts in Indonesia

Ultra Petita in formal law contains the meaning of passing a decision on a case that is not prosecuted or passing more than requested or in other words ultra petita is the passing of a decision by a judge on a case that is not prosecuted or deciding more than requested. And ultra petita itself has been widely studied in the field of civil law with the existence of an older civil court established since the establishment of judicial power in Indonesia. The provisions for ultra petita are regulated in Article 178 paragraphs (2) and (3) Het Herziene Indonesisch Reglement (HIR) and their equivalents in Article 189 paragraphs (2) and (3) RBg which prohibits a judge from deciding more than what is required (petitum). HIR provisions are procedural law that applies in civil courts in Indonesia. Ultra petita is prohibited, so judex facti which violates it on the grounds of "misapplying or violating applicable law" can seek cassation (Article 30 of the Supreme Court Law), and the basis for judicial review (Article 67 and Article 74 paragraph (1) of the Supreme Court Law). In civil law, the principle that judges are passive or that judges "do nothing" applies, meaning that the scope or extent of the

ISSN print 2086-6852 and ISSN Online 2598-5892

subject matter of the dispute submitted to the judge for examination is basically determined by the parties to the case. The judge only considers the matters submitted by the parties and the legal claims based on them (iudex non ultra petita or ultra petita non cognoscitur). The judge only determines whether any of the things presented and proven by the parties can justify their legal claims. He must not add anything else himself, and must not give more than is asked for.

Procedural Law in the Constitutional Court

Procedural Law for Reviewing Laws in the Constitutional Court

In article 24C of the 1945 Constitution, one of the powers of the Constitutional Court is to carry out judicial review of the 1945 Constitution. Where in carrying out the review, the Constitutional Court refers to the Constitutional Court Regulations (PMK) concerning Procedure Guidelines in Judicial Review Cases. Invite.

The procedural law at the Constitutional Court has different styles and procedures compared to the procedural law at other courts. Because in essence, the case for judicial review is not contentious in nature, relating to parties whose interests clash with each other, but concerns the collective interests of all people in living together as a nation. Likewise, with the evidentiary system and various types of evidence, the legal review process at the Constitutional Court has its own regulations and application which are different from criminal and civil procedural law.

In practice, it is known that there are three forms of legal norms that can be tested or what are usually referred to as norm control mechanisms. All three are forms of legal norms as a result of the legal decision-making process, namely:

a. Normative decisions that contain and are regulatory in nature (regeling)

b. Normative decisions that contain and have the character of administrative decisions (beschikking)

c. A normative decision that contains and has the character of a judgment is usually called a verdict.

The truth of these three forms of legal norms can be tested through judicial mechanisms or non-judicial mechanisms. If the testing is carried out by a judicial institution, then the testing process is called a judicial review or testing by a judicial institution or court. However, if the test is not carried out by a judicial institution, then it cannot be called a judicial review.

The process of judicial review of the Constitution begins with the submission of a petition for judicial review which has been declared to meet the requirements of the petition and has been registered in the registration book of the Constitutional Court. After that, the Constitutional Court determines the first hearing date no later than 14 (fourteen) working days after the petition is recorded

ISSN print 2086-6852 and ISSN Online 2598-5892

in the Constitutional Court registration book. The determination of the trial date is notified to the applicant and announced to the public. Notification to the applicant is also a summons to the hearing which the applicant must receive no later than 3 (three) days before the hearing day. Then it continues with the examination process at trial.

1. Constitutionality of Laws

Testing the constitutionality of a law is a test of the value of the law's constitutionality, both from a formal and material perspective. Therefore, at the first level, constitutionality testing must be distinguished from legality testing. The Constitutional Court carries out constitutionality testing, while the Supreme Court carries out legality testing. In the framework of reviewing legal regulations under the law, the measuring tool for assessing or carrying out testing activities is the law, not the basic law as in the Constitutional Court. Therefore, it can be said that the test carried out by the Supreme Court is a test of legality based on law, not a test of constitutionality according to the 1945 Constitution.

2. Petitioner's Legal Standing

Legal Standing can be interpreted as the right of a person or group of people or an organization to appear in court as a plaintiff in a civil lawsuit (Civil Proceeding) which is simply called the right to sue. Basically, the right to sue only originates from the principle "no lawsuit without legal interest" (point d'interet point d'action). This principle implies that the legal interests of a person or group are interests related to ownership or material interests in the form of losses experienced directly (injury in fact). This principle applies in civil law, where it is found in civil lawsuits. Legal Standing in the process of filing civil lawsuits has experienced development. Where a person or group of people or organizations can act as plaintiffs even though they do not have direct legal interests, but are based on a need to fight for the interests of the wider community or violations of public rights such as the environment, consumer protection, civil and political rights. .

For example, we can see that in Law Number 23 of 1997 concerning the Environment, the right to sue environmental organizations has been included in Article 38 and Article 39. Article 38 states, "In the context of implementing environmental management responsibilities in accordance with the partnership pattern "Environmental organizations have the right to file a lawsuit in the interests of preserving environmental functions." And the right to respond to a lawsuit as intended in paragraph (1) is limited to claims for the right to compensation, except for real costs or expenses. This organization can file a lawsuit as explained in paragraph (1) if it meets the requirements, namely being a legal entity or foundation, in the organization's articles of association that environment

stated emphatically that The purpose of establishing this organization is for the benefit of

ISSN print 2086-6852 and ISSN Online 2598-5892

environmental functions and has carried out activities in accordance with its articles of association. Based on the provisions above, we can see that the distinctive characteristics of legal standing are based more on an understanding of public losses and claims for compensation cannot be in the form of monetary compensation, except for compensation that is has been issued organization for dealing with the object in question and the demand is only in the form of a request for recovery (remedy) or a demand in the form of a court order to do or not do something (injunction) which is declarative in nature.

The legal standing system is also known in Law Number 24 of 2003 concerning the Constitutional Court, which formulates several conditions for applicants to be said to have legal standing in the provisions of proceedings at the Constitutional Court. In contrast to the term legal standing which is used in civil law and state administrative courts, the Constitutional Court refers to the term legal standing as legal standing or more precisely the legal position of the applicant. In the procedural law of the Constitutional Court, applicants who can submit a request for proceedings at the Constitutional Court are determined in article 51 paragraph (1) of Law Number 24 of 2003, which states:

"The applicant is a party who considers that his or her constitutional rights and/or authority have been impaired by the enactment of the law, namely:

a. Individual Indonesian Citizens;

b. The unity of the customary law community, as long as it is still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia as regulated in the Law;

c. Public or private legal entity;

d. State Institution"

According to Laica Marzuki, legal standing cannot be translated directly as legal position. Because, the meaning of legal standing is a basis for a person or group of people to submit a request for judicial review. According to him, the formulation of article 51 contains several elements, the first is constitutional rights and authority, namely the rights and authority granted by the constitution. The second element is the element of loss where because of the loss, the legal subject feels interested. So if an applicant is not disadvantaged by the existence of this law then he can be seen as not having legal standing. He also added that this is in accordance with the principle that applies universally in a lawsuit in court, namely point d'interet point d'action, where without an interest, there is no action.

Another Constitutional Justice who also gave his opinion regarding this legal standing was Maruarar Siahaan, who stated that in a request for judicial review, the mere presence of legal interests, such as

ISSN print 2086-6852 and ISSN Online 2598-5892

those contained in civil law and state administrative law, cannot be used as a basis for the applicant's legal standing, because To submit a petition to the Constitutional Court, there are two things that must be explained clearly, namely:

1. Qualification the applicant, whether as an individual Indonesian citizen, (including groups of people who have the same interests), a unitary customary law community as long as it is still alive and in accordance with the development of society and the Principles of the Unitary State of the Republic of Indonesia as regulated in law, public or private legal entities , and State institutions.
2. The assumption that the applicant's constitutional rights and/or authority are impaired by the enactment of the law.

The Constitutional Court in its decision said that specifically there are constitutional requirements for an applicant to be said to have legal standing, namely:

1. The existence of the applicant's constitutional rights granted by the 1945 Constitution;
2. Whereas the applicant's constitutional rights are considered by the applicant to have been impaired by the law being reviewed;
3. That the loss in question is specific (special) and actual or at least potential in nature which according to reasonable reasoning can be guaranteed to occur;
4. There is a causal relationship (causal verband) between the loss and the occurrence of the law that is requested to be tested;
5. There is a possibility that with the granting of the petition the constitutional impairment argued for will not or will no longer occur.

However, in practice, these criteria are still abstract. Where the judge's assessment really depends on the concrete case in the field. To be declared to have legal standing to submit an application, the five criteria above are sometimes applied rigidly or are absolute cumulative. This is because the assessment regarding legal standing only leads the applicant to his validity as an applicant, and does not take into account the main points of his application. The applicant's application may be rejected in substance, but its legal standing may be accepted.

Ultra Petita Decision by the Constitutional Court of the Republic of Indonesia

1. Final and Binding Nature of the Decision of the Constitutional Court of the Republic of Indonesia

In conducting legal review of the 1945 Constitution, the Constitutional Court issued a decision. And the decision is final and binding. This can be seen in Article 10 paragraph (1) of Law Number 24 of 2003 concerning the Constitutional Court, which states "The Constitutional Court has the authority to judge at the first and last level whose decisions are final. . ."

ISSN print 2086-6852 and ISSN Online 2598-5892

The final nature of the Constitutional Court's decision means that there are no other legal remedies, therefore the decision has general binding force where all parties must submit and obey to implement the decision, even though there are some parties who feel that justice has been disturbed. In other words, the final and binding nature of the Constitutional Court's decision means that all possibilities for taking legal action have been closed. Since the decision was pronounced in the plenary session, at that time a binding force (verbindende kracht) was born. In the explanation of Article 10 of Law Number 24 of 2003, it is stated that the decision of the Constitutional Court is final, that is, the decision of the Constitutional Court immediately acquires permanent legal force from the moment it is pronounced and no legal action can be taken. This concept refers to the principle of administering judicial power, namely simply and quickly, as outlined in the explanation of this law, which explains in full that the Constitutional Court, in administering justice to examine, try and decide cases, still refers to the principle of administering judicial power, namely that simply and quickly.

Apart from that, Article 47 of the Constitutional Court Law states: "The decision of the Constitutional Court obtains permanent legal force from the time it is pronounced in a plenary session open to the public" and Article 58 of the Constitutional Court Law, states "Laws reviewed by the Constitutional Court remains in effect, until there is a decision stating that the law is contrary to the 1945 Constitution of the Republic of Indonesia," so as long as it has not been pronounced in the plenary session, the law still has the force of effect. The nature of public law procedural law testing the Law carried out by the Constitutional Court, the legal consequences of the Constitutional Court's decision are different from civil procedural law or other procedural law. The principle difference resulting from judicial review is that the legal consequences of judicial review are erga omnes, because the legal basis for judicial review of a law is that it concerns the public interest.

The decision of the Constitutional Court which is final and binding cannot be released in accordance with the principle of erga omnes which is generally binding and also binding on the object of the dispute. If a judge declares a statutory regulation to be invalid, because it conflicts with higher statutory regulations, this means that the statutory regulation has the effect of being null and void and is not valid to bind anyone. The decision of the Constitutional Court has legally binding force on all components of the nation, including the object in dispute. In accordance with the authority of the Constitutional Court which carries out judicial functions and legal political functions, of course its decisions have legally and politically binding power, but are not coercive (imperative), but rather are facultative or complementary, which means that deviations in the form of exceptions are possible.

ISSN print 2086-6852 and ISSN Online 2598-5892

Everyone is bound to the decision of the Constitutional Court as per the provisions of civil procedural law which has both positive and negative meanings. Containing a positive meaning means that everyone must consider the decision to be correct (res judicata pro veritate habetur). The negative meaning of binding power is that a judge may not decide on a case that has previously been decided on the same case. Repetition of the action will have no legal force; Nebis in idem (Article 134 Rv). This principle also applies as Article 60 of the Constitutional Court Law which states: "Regarding the content of paragraphs, articles and/or sections in laws that have been reviewed, no re-examination can be requested."

If we examine the basic provisions and organic laws that regulate the Constitutional Court, it turns out that there is not a single article that regulates the system for implementing Constitutional Court decisions which are final and binding if the decision is not implemented. This indicates a weakness in the system.

2. Legal Consequences of Constitutional Court Decisions

A Constitutional Court decision is a legal event where a trial process occurs because of a dispute that is requested to be decided. When these decisions were pronounced in a plenary session which was open to the public and from that moment on no further legal action could be taken and at that moment the legal consequences began. According to Malik, S.H., M.H. (lecturer at the College of Law, Sunan Giri, Malang), the legal consequences of final and binding Constitutional Court decisions have positive and negative meanings. According to Malik, the consequences of positive law are first, encouraging the political process. In this case, we can see in the legal review of the 1945 Constitution that the decision can encourage a political process involving amendments or changing the law or creating a new law, as a legal consequence of the decision stating the law This is contrary to the Constitution. Second, ending a legal dispute. In Article 10 paragraph (1) of Law Number 24 of 2003 concerning the Constitutional Court adjudicating at the first and last level whose decision is final, to decide disputes over the authority of state institutions whose authority is granted by the 1945 Constitution, decide on the dissolution of political parties and decide dispute over the results of the general election. This explains that with the provision that the Constitutional Court adjudicates at the first and last level and is final, then a legal dispute can immediately end with the issuance of the Court's decision, and there will be no other legal remedies against that decision.

The negative meaning of the legal consequences of the Constitutional Court's decision which is final and binding is:

1 Cancel a political decision and/or a law that is a political product. In this provision, the decision of the Constitutional Court can cancel a legal product discussed by the legislators which

ISSN print 2086-6852 and ISSN Online 2598-5892

involves two major powers, namely legislative power (DPR) and executive power (government) through a fairly long process that requires a fairly large state budget. . This is seen as a negative meaning to the decision of the Constitutional Court.

2 The sense of justice of parties who are dissatisfied with the final and binding decisions of the Constitutional Court has been shaken. This does not provide an opportunity for parties who feel the decision contains unfair values and are dissatisfied with the decision to take other legal routes. Therefore, if seen from a legal psychology perspective, parties who are dissatisfied with the decision will be shaken by the legal consequences of the decision. What we need to know is that justice is one of the goals of law, and the goal of law is not only justice but also legal certainty and benefit. In this case, the law must accommodate all three. And the Constitutional Court's decision is as far as possible the resultant of these three. The value of justice has an empirical aspect, namely that what is considered fair in a legal context must be actualized concretely according to the size of its benefits. With this measure of the benefits of justice, ultimately justice can be viewed in an empirical context as well. This is where the value of justice functions to determine in reality what a person deserves to receive as a further consequence of the legal norms that regulate it. This is the negative meaning of the final and binding decision of the Constitutional Court.

3 Weak law enforcement if a decision is not implemented because it does not have coercive (executorial) power so the decision is just a decision on paper. Weaknesses in law enforcement regarding Constitutional Court decisions can actually reduce the legal authority of the institution and can make society become chaotic and society's perception of the law even worse. And without legal certainty, people don't know what to do and ultimately anxiety arises.

4. CONCLUSION

Ultra Petita in formal law contains the meaning of passing a decision on a case that is not prosecuted or passing more than requested or in other words ultra petita is the passing of a decision by a judge on a case that is not prosecuted or deciding more than requested. In the judicial review of the Constitutional Court's decision, there are ultra petita provisions which are prohibited in the HIR/RBg. Regarding this provision, the practice of reviewing one article cannot be separated from other articles as a unified legal system. Moreover, the requested article is a paradigm, principle and basis for the enactment of other articles in the law as a whole. So that judges are unavoidably active and do not depend on the parties. If constitutional judges test to the extent requested, then the function of the Constitutional Court as an interpreter of the constitution will not work and there will actually be a lot of legal chaos in society. Judging one article cannot be understood by turning a blind eye to other

ISSN print 2086-6852 and ISSN Online 2598-5892

articles in one unit. By reviewing the law, judges cannot use the principle of not doing anything or passive judges in civil procedural law. Testing the law is about the conflict of legal norms between the law and the 1945 Constitution, so testing it as a whole to find the concept is something that must be done.

REFERENCES

Ahmad, A., & Nggilu, N. M. (2019). The Pulse of the Fifth Amendment to the 1945 Constitution through the Involvement of the Constitutional Court as the Principle of the Guardian of the Constitution. *Constitutional Journal*, *16*(4), 785–808.

Amada, R. (2023). Legal Philosophy as an Understanding of the Evolution of Justice. *Nusantara: Journal of Education, Arts, Sciences and Social Humanities*, *1*(02).

Asshiddiqie, J. (2006). *Post-reform development and consolidation of State Institutions/Prof. Dr. Jimly Asshiddiqie, SH*.

Budiardjo, M. (2003). *Basics of political science*. Main library Gramedia.

Budiardjo, M., Suseno, N., & Evaquarta, R. (2014). Political Science: Scope and Concepts. *Jakarta: Open University*.

Kurnia, T. S. (2014). *Human Rights Constitution: The 1945 Constitution of the Republic of Indonesia and the Constitutional Court of the Republic of Indonesia*. Student Library.

Mahfud, M. (2009). *Constitution and law in controversial issues/Prof. Dr, Moh. Mahfud MD*.

Mahfud, M. D. (2009). Achievements and projections of Indonesia's legal conditions. *Jurnal Hukum Right Because Right*, *16*(3), 291–310.

Marzuki, L. (2018). Judicial Review at the Constitutional Court. *Indonesian Legislation Journal*, *1*(3), 1–6.

Sasmitom, H. A. (2016). Ultra Petita decision of Constitutional Court on judicial review (the perspective of progressive law). *JILS*, *1*, 47.

Subagyono, B. S. A., Wahyudi, J., & Akbar, R. (2014). Study of the Application of Ultra Petita Principles in Petitum Ex Aequo Et Bono. *Jurisprudence*, *29*(1), 100–112.

Sugiyono, H., Suyanto, H., & Suherman, S. (2020). The Implementation of Ultra Petita Decisions In Civil Dispute. *International Journal of Multicultural and Multireligious Understanding*, *7*(3), 132–142.

Syarifuddin, A. (2017). Positivism Philosophy and Positive Law School. *Legality: A Law Journal*, *7*(1), 1–22.