International Journal of Social Science And Human Research

ISSN(print): 2644-0679, ISSN(online): 2644-0695

Volume 05 Issue 11 November 2022

DOI: 10.47191/ijsshr/v5-i11-45, Impact factor- 5.871

Page No: 5149-5159

Ultra Petita Decision of the Constitutional Court in Test Constitution (Something Perspective Law Progressive)

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ABSTRACT: Study this leave from discourse the *ultra petita* decision has not yet found a point meeting between various parties. Related to the problem that, it is necessary to see whether it is the Constitutional Court Law prohibits *ultra petita*, *including whether the ultra petita* doctrine is generally applicable to all judges in various judicial settings. This legal research uses a normative juridical approach with research specifications analytical description. The type of data used is secondary data, consists of primary legal materials, secondary legal materials and tertiary legal materials. Technique data collection using library research (library *research)* and from the data which collected and then analyzed by qualitative-normative. Based on results study which conducted get it conclusion, that doctrine ban *ultra petita* for judge no apply absolute and general. Withuse approach normative and interpretation systemic could said that provision in Constitution MK nor Regulation MK no give possibility for judge constitution for make decision *ultra petita.* In issue decisions containing *ultra petita,* generally the Constitutional Court is based on there is an inseparable relationship between the article being tested and other articles which is not tested, so that the article or the entire law must be stated no powerful law, inside because reason for avoid lawlessness and upholding substantive justice. MK's breakthrough in making in principle, *ultra petita* decisions are a form of progressive law enforcement, However, any creativity carried out by law enforcement can be ineffective means progressive when not to realize substantive justice, placing justice, benefits and human happiness as a goal finally.

KEYWORDS: birthday Petita, Testing Constitution, Law Progressive.

I. INTRODUCTION

Court Constitution have position which important in systemstate administration Indonesia. Formation Court Constitution meant for complete things which tightly relation with constitutionality state administration and state administration issues in Indonesia. In Article 2 Law Number 24 of 2003 concerning the Constitutional Court states that "the Court" The constitution is one of the state institutions that exercise judicial power independent to administer justice in order to uphold law and justice. Court Constitution have position which equal with institutions country other even his colleagues namely the Supreme Court.[1]

Based on Article 24C of the 1945 Constitution *in conjunction with* Article 10 of Law Number 24 Year 2003 about Court Constitution (UU MK), Court Constitution as state institutions holding judicial power are given 4 (four) powers and 1 (one) (one) obligation, among others; Examining the law against the Constitution of the Republic of Indonesia Year 1945; Decide on disputes over the authority of state institutions whose powers are given by Constitution NRI 1945; Disconnect dissolution party political; and Disconnect dispute about results election general; as well as The obligation to give a decision on the opinion of the DPR that the President and/or Deputy The President is suspected of having violated the law in the form of treason against country, corruption, bribery, act criminal heavy other, or deed despicable, and/or no again Fulfill condition as President and/or Representative President as meant in Constitution Base Country Republic Indonesia Year 1945.[2]

Presence MK has many give donation for health systemour constitution and laws. The Constitutional Court which only has 9 (nine) Constitutional Justices are seen as having high productivity. In a relative age still very young (step on 7 year) the, Court Constitution has manyproduce[3] decisions which has coloring thinking and life

[1] Elizabeth Pollman, 'The Supreme Court and the Pro-Business Paradox', *Harvard Law Review*, 135.220 (2021), 220–66.
[2] Kevin T. McGuire, 'Birth Order, Preferences, and Norms on the U.S. Supreme Court', *Law & Society Review*, 49.4 (2015), 945–72 <https://doi.org/https://doi.org/10.1111/lasr.12169>.
[3] Soehartono Soehartono Seno Wibowo Gumbira, Adi Sulistiyono, 'Arbitration and Alternative Dispute Resolution Outside the Court According to Law Number 14 of 2001 on Patent', *Hang Tuah Law Journal*, 4.2 (2020), 101–17.

state administration Indonesia. Discourse and thinking about law state administration Becomes dynamic and eye-catching audience large.

Even so, many controversies have arisen related to the decisions decision Court Constitution in testing Constitution. Not a little practitionerlaw nor academics law which criticize action MK the. A number of According to Adnan Buyung Nasution, the complicated problems raised by the Constitutional Court were one of them related problem implementation decision Court Constitution which cancel nature against material law in corruption crimes and matters of violation of doctrine *ultra petita* ban . In the case of testing the Judicial Commission Law, for example, in the verdict has abolish all authority KY for supervise andexamining the behavior and performance of Supreme Court judges down to the lowest ranks (judges first). In fact, the authority of the KY to examine MK judges was also abolished. even though the matter was never asked by the petitioners to be canceled. With Thus, the Constitutional Court has tried and decided on its own cases that contain *conflict of interest* because regarding their interests alone.[4]

Mahfud MD stated that there is some internal problems MK decision. There are several MK decisions that are ultra *Petita* (unsolicited) which lead to intervention into the field of legislation, there are also decisions that can be considered as violating the *principle nemo judex in causa sua* (prohibition of deciding matters that concern himself), as well as decisions that tend to regulate or decisions that are based on conflict between one law and another law even though it is *a judicial review* for test material that can carried out by the Constitutional Court is vertical, namely the constitutionality of the law against the Constitution, no crash problem Among UU with UU which other.[5]

superbody institution is also symptomatic. The provisions of the Constitution which state that the decision of the Constitutional Court is final and tie as if Becomes weapon powerful which strengthen assumption the. The accusations that the judges of the Constitutional Court were acting were not neutral, there were special orders from certain parties, group interests and money are two things that most often assumed by people as things which can influence the decision of the Constitutional Court.[6] Reasonable just, because of course sometimes institution this make decisions which precisel could rated beyond authority its constitutional.[7] In short, many whichsneered institution new this, but not a little also which wait his work for enforce law and justice.

Debate then conical on opinion, is of course Court The constitution may make decisions containing *ultra petita* . What is the verdict? which nature *ultra petita* in testing act allowed by Constitution Constitutional Court. Many legal experts allow it, but not a few too which says no. The former Chief Justice of the Constitutional Court, Jimly Asshiddiqie, said, yes It's just that the Constitutional Court's decision contains an ultra petita if the main issue requested for review is related other articles and become the heart of the law that must be tested. While Mahfud MD and former Supreme Court Justice Benjamin Mangkoedilaga, argued that the Constitutional Court should not make ultra verdict petita without inclusion in the Act.[8]

Discourse and discourse which develop, there is part expert law which want the *ultra petita decision to* be banned by including it in amendment Constitution Court Constitution [8] . Part consider needed amendment UU MK with include allowed decision containing ultra petita with strict restrictions. Some that others are of the view that no amendment is needed, and consider the practice of the Constitutional Court the as part of *judicial activism.*

It is interesting to examine Mahfud MD's statement in the *focus group event discussion* (FGD) organized by the National Legal Development Agency (BPHN), Tuesday 2 November 2010, with the theme "The Dynamics of the Constitutional Court in Guarding the Constitution". according he, in doing authority, Court Constitution (MK), There are signs that must be obeyed. For example: the Constitutional Court's decision may not contain norms (regulatory in nature), the Constitutional Court may not decide more than a request (*ultra petita*), or in terms of General Election Result Disputes (PHPU), the Constitutional Court only has the authority to decide disputes or vote counting recapitulation errors. However, in practice, the sign the difficult always obeyed. MK, sometimes, need make breakthroughs law for realize justice.[9] Breakthrough MK in case Seed-Chandra for example can made as gauge measuring for evaluate progressiveness enforcement lawin Constitutional Court.

If of course thereby, so there is trend thinking law progressive among judge constitution. The question next is is thinking-thinking which progressive the also appear in decisions Court Constitution which contain *ultra petita* . is breakthroughs MK in making decisions containing *ultra petita* can be categorized as progressive action that dares to go against the flow in order to realize

[4] Ira Alia Maerani Junaidi, Sri Endah Wahyuningsih, 'Responsibilities Of The Corporate Director Against The Dark Criminal Action In The Position Based On The Decision Of The Court Sumber Of Cirebon Regency (Studies on Decision No.202 / Pid.B / 2019 / PN.Sbr)', *Jurnal Daulat Hukum*, 3.1 (2020), 41–48.

[5] Patrick C. Wohlfarth Ryan C. Black,Ryan J. Owens,Justin Wedeking, 'The Influence of Public Sentiment on Supreme Court Opinion Clarity', *Law & Society Review*, 50.3 (2016), 703–32 <https://doi.org/https://doi.org/10.1111/lasr.12219>.

[6] David Marrani, 'Human Rights and Environmental Protection: The Pressure of the Charter for the Environment on the French Administrative Courts', *Sustainable Development Law & Policy*, 88.4 (2009), 52–57.

[7] Lochlan F. Shelfer, 'Special Juries in the Supreme Court', *The Yale Law Journal*, 123.1 (2014), 1–265.

[8] Urip Santoso, 'Penyelesaian Sengketa Dalam Pengadaan Tanah Untuk Kepentingan Umum', *Perspektif*, 21.3 (2016), 188 <https://doi.org/10.30742/perspektif.v21i3.588>.

[9] Nyoman Satyayudhadananjaya, 'Sistem Peradilan Pidana Terpadu (Integreted Criminal Justice System) Di Kaji Dari Perspektif Sub Sistem Kepolisian', *Vyavahara Duta: Jurnal Ilmiah Ilmu Agama Dan Ilmu Hukum*, IX.1 (2014), 87–94.

substantive justice and by humanize humans. Leave from background thinking in on, so writer feel interested for conducted a research entitled "Ultra Petita Decision of the Constitutional Court in Indonesia" Testing Constitution (A Perspective Progressive Law)".

From background behind problem mentioned in on, so there is a number of tree problem which will researched in this research that is: How position decision ultra petita in testing Constitutionbased on normative provisions? is which Becomes consideration he made decision Court Constitution whichcontain ultra petita in testing Constitution? How perspective law progressive to decision *ultra* court *petition*Constitution in judicial review?

II. METHOD STUDY

Study law this use method approach juridical normative withspecification study description analytical. Type data which used is type data secondary, consisting of primary legal materials, secondary legal materials and tertiary legal materials. The data collection technique used is literature study. From data which collected then analyzed by qualitative-normative with Street interpret and construct statement which there is in document and legislation.[10]

III. DISCUSSION

History Institutionalization *Judicial Reviews* in Indonesia

Learn institutionalization judicial review in Indonesia no will free from search how journey idea this first time appear and develop until moment this. Until moment this has hundreds country which institutionalize practice *constitutional review (judicial review)* in the constitutional system. Indonesia itself is country 78th which form institution Court Constitution as the state administrative court which has the authority to conduct *a constitutional review* and is a country first in world on century 21st which shape it.

If traced from its historical background, then from various test models there is time this could classified in 2 kinds of models main testing, that is: *decentralize model* ala America which more before develop and *centralize model* as conducted in Austria which more lately present . Model which firstrepresent the ideas held by countries with a *common law tradition* and model which second followed by part big countries Europe which make tradition *civil law.* On model America Union, testing constitutional conducted by spread and decentralized in Among court in countries part and Court great europe, whereas on model Austria or model Europe testing its constitutional only carried out centrally in one institution only. In addition, according to Jimmy there is still one more model that is unique and cannot be categorized follow model America Union or Austria. Model the is as practiced in French which conducted by a Board Constitution (*Conseil de constitutional*). as his name, institution this indeed no a institution Justice.[11]

Zainal Arifin Hoesein divides three time periods related to development *judicial review* system in Indonesia. *First* , the initial period of drafting the 1945 Constitution to 1970. At this time, *judicial review* was limited ideas and discourse which never materialized; *Second* , the period when Law Number 14 of 1970 was formulated regarding the Main Provisions of Judicial Power up to 1999. This is the time first *judicial review* discussed by deep and debated by open, at a time Becomes milestone beginning applied mechanism the; and *third* , timechanges to the 1945 Constitution up to 2003. During this period a process occurred change system political and power country, including formation Court Constitution which is given the authority to review the law against the Law Invite Base 1945.[12]

During the discussion of the amendments to the 1945 Constitution, the idea of the importance of a Justice system country appear return, especially after MPR no again domiciledas the highest state institution. The principle of parliamentary supremacy that has been held so far has shifted from the supremacy of the MPR to the supremacy of the constitution.[13] Due to change which fundamental this so need provided a mechanism institutional and constitutional law and the presence of state institutions that address the possibility of disputes between state institutions that have now become equal and balance each other and mutually control (*checks and balances*).[14] Model testing constitutional as instituted in Austria which centralized Becomes choice MPR as form institutional Court Constitution in Indonesia.

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[10] A Strauss, J Corbin, and Busir, *Qualitative Research; Grounded Theory Procedure and Techniques*, (London, United Kingdom: Sage Publication, 1990).

[11] Norman K. Denzin and LincolnY. Vonna S., *Introduction: Entering The Field of Qualitative Research*, (California: Sage Publication, 1994).

[12] Retno Saraswati, 'Arah Politik Hukum Pengaturan Desa Ke Depan (Ius Constituendum)', *Masalah-Masalah Hukum*, 43.3 (2014), 313–21.

[13] Rosanna Farbol, 'Urban Civil Defence Imagining, Constructing and Performing Nuclear War in Aarhus', *Urban History*, 48.4 (2021), 701–23 <https://doi.org/10.1017/S0963926820000590>.

[14] Tulus Sartono Valensia, 'Product Standardization through SNI as A Form of Consumer Protection in Indonesia', *Legality Jurnal Ilmu Hukum*, 28.1 (2020), 1–10.

The Position of *Ultra Petita's Decision* in Judicial Review of Laws Based on Provisions normative

Various parties have conflicting views regarding the decision *ultra petita* which made by Court Constitution. Party which pro to allowed decision *ultra petita* in testing Constitution view as follows: a. if part of the requested review is related to the articles other and become the heart of the law that must be reviewed, then the cancellation of related articles unavoidable; b. if the applicant includes an *ex aequo et bono application* (deciding for the sake of justice), then the judge has the freedom to determine the verdict[15]; c.The ultra petita doctrine is only used in civil procedural law; d. deep lytic object civil cases are civil rights, while in the judicial review are rights constitutional, therefore characteristic *erga omnes* . Rights civil no could equated with constitutional rights; e. The authority of the Constitutional Court is to examine laws against the Constitution, so not the articles and verses; f. *Ultra petita* rulings are common in countries other countries, even the idea of *a judicial review* first came from the decision of Jhon Adam who very *ultra petita,* and g. The Law on the Constitutional Court does not expressly prohibit prohibitions To do *ultra petita.*[16]

On the other hand, those who oppose the ruling that contains *ultra petita* The Constitutional Court is of the view that the *ultra petita decision is* under review The law violates the generally accepted/universal doctrine in procedural law (*ultra prohibition). petita)* , the principle of *non ultra petita* is international jurisprudence. *Ultra petita* verdict also considered to be insulting the principle of popular sovereignty (parliamentary supremacy), even impressed interfere with other realms of power, thereby violating the doctrine of separation of powers and *check and balances system.* Decision *ultra petita* is violation on realm legislature by agency judicial because interfere authority arrange (*regeling*) which no questioned.[17] terlabi again, did *ultra petita* considered has violate UU MK , because UU the no arrange allowed make decision which contain *ultra petita.* In perspective positivistic-legalistic, formatthe ruling as regulated in the Constitutional Court Law does not allow for *ultra petita.* Based on on difference perspective regarding *ultra petita* in on, so according to economical writer there is two problem which nature operational which deserve elaboratedmore carry on To use answer how position verdict *ultra petita* in perspectivenormative. Two Thing the that is, first related with is doctrine *ultra petita*of course apply general so that Becomes norm which tie for all judge invarious case, and second, remember UU MK no arrange by assertive, so willseen by more comprehensive regarding how about indeed perspective UU MKagainst *vonnis ultra petita.*[18]

To analyze the two sub-problems above, 2 (two) analyzes will be used approaches, namely normative analysis and comparative analysis. The normative analysis here will used to examine the articles in the Constitutional Court Law and the Constitutional Court Regulations which regulates the Judicial Review. While the comparative analysis in This discussion is limited to comparisons between judicial systems according to law positive Indonesia, in this case only the perspectives of the Procedural Law will be presented Civil, Law Program Criminal, Law Program PTUN to decisions which contain *ultra petita.* With so, so will clear position *verdict ultrapetita,* both in the perspective of the Indonesian justice system in general and testing Constitution specifically.[19]

The provisions on the prohibition of *ultra petita* are expressly regulated in article 178 paragraph (3) *Het Herziene Indonesisch Reglement,* which in this case can be interpreted in two aspects, first, judge prohibited for grant on things which no requested by plaintiff, and secondly, the judge is prohibited from granting more than what is requested by the plaintiff. However, in the development of judicial practice, the provisions on the prohibition of *ultra petita* this no considered apply absolute again based on jurisprudence LET Number556K/Sip/1971 which provides a legal rule that grants more than whatsued is allowed as long as that matter still suitable with material state.

In criminal procedural law, the prohibition of *ultra petita* is only related to the indictment which is *contestatio litis* in nature for trial examination, and vice versa does not apply in relation with demands criminal. Before validity Criminal Procedure Code, based on jurisprudence Decision Court great RI Number: 47 K/Cr/1956 date 23 March 1957, found the rule of law, that the basis for examination by the court is an indictment (indictment), not an accusation made by the police. So, the two articlesemphasizes

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[15] Cortes, *Pablo Online Dispute Resolution for Consumer in the European Union* (New York: Routledge, 2011).

[16] Dwi Edi Wibowo, 'How Consumers in Indonesia Are Protected Fairly?Analysis of Law No. 8 of 1999 Concerning Consumer Protection', *Indonesian Journal of Advocacy and Legal Services*, 2.1 (2020), 57–70.

[17] Dwi Edi Wibowo.

[18] Mariel Marcano-Olivier and others, 'A Low-Cost Behavioural Nudge and Choice Architecture Intervention Targeting School Lunches Increases Children's Consumption of Fruit: A Cluster Randomised Trial', *International Journal of Behavioral Nutrition and Physical Activity*, 16.1 (2019), 1–9 <https://doi.org/10.1186/s12966-019-0773-x LK - http://bc-primo.hosted.exlibrisgroup.com/openurl/BCL/services_page?&sid=EMBASE&issn=14795868&id=doi:10.1186%2Fs12966-019-0773-x&atitle=A+low-cost+Behavioural+Nudge+and+choice+architecture+intervention+targeting+school+lunches+increases+children%27s+consumption+of+fruit%3A+A+cluster+randomised+trial&stitle=Int.+J.+Behav.+Nutr.+Phys.+Act.&title=International+Journal+of+Behavioral+Nutrition+and+Physical+Activity&volume=16&issue=1&spage=&epage=&aulast=Marcano-Olivier&>.

[19] Ingrid Marie Hovdenak and others, 'Tracking of Fruit, Vegetables and Unhealthy Snacks Consumption from Childhood to Adulthood (15 Year Period): Does Exposure to a Free School Fruit Programme Modify the Observed Tracking?', *The International Journal of Behavioral Nutrition and Physical Activity*, 16.1 (2019), 22 <https://doi.org/10.1186/s12966-019-0783-8>.

that the judge's decision may only concern the facts within the limits letter indictment prosecutor prosecutor general. Judge no allowed drop punishmentoutside the limits contained in the indictment, therefore the defendant can onlysentenced based on what is proven regarding the crime he committed according to draft indictment. Article 193 paragraph (1) of the Criminal Procedure Code provides strict limits, "If the court is of the opinion that the defendant is guilty of committing a crime charged against him, then the court imposes a sentence". Vice versa, according to Chapter 191 paragraph (1) Criminal Procedure Code, "if court think that from results examination at trial, the guilt of the accused for the actions he was charged with no proved legitimate and convincing, then defendant disconnected free".[20]

In the PTUN procedural law, although normatively *ultra petita content is* prohibited by because according to UU MA could made as reason submit reviewreturned, but in its development the *reformatio in peius decision was* permitted. *Reformatio in peius* is dictum decision which precisely no profitable plaintiff. Example application *reformatio in peius* for example in case staffing.

Through the MARI decision Number 5 K/TUN/1992, decided on February 6, 1993, judge cassation make rule law new about ban *ultra petita* , as following:[21]

"that although the original Plaintiff did not file in the petitum, the Supreme Court may consider and adjudicate all decisions or decisions against the existing order. It is inappropriate if the right to test The judge is only on the object of the dispute submitted by the parties because it is often the object of the dispute dispute the must rated and consider in relation with part- part determinations or decision Body or office TUN which no disputed Among second split parties (*ultra petita).*"

Thus, the *ultra petita prohibition provision* is not a valid doctrine absolute and general, and binding on all judges in various trials. it happens because each procedural law has different characteristics from one another, Beside because exists needs development law in practical Justice. This conclusion would also apply in the procedural law of judicial review in Indonesia Court Constitution.

Decision Court Constitution taken after consider application consisting of a *posita section* or a description of the subject on which the application is based and *petition* based on tool proof which exists.[22] If the application in material testing reasoned and therefore granted, then based on the provisions of Article 56 and Article 57 of the Constitutional Court Law, the Constitutional Court states that the content of paragraphs, articles, and/or part conflicting laws with Constitution. Not there is form amar other than amar based on the provisions of Article 56 and Article 57 of the Constitutional Court Law juntoArticle 36 letter c of the Regulation of the Constitutional Court Number 6/PMK/2005. In other words, in the perspective of positivism, there is no room for constitutional judges to make a containing *ultra petita* , especially those containing *positive legislation* . Though no arranged by assertive, in meaning no forbid by assertive, will but witha systemic interpretation approach it can be concluded that the provisions in the UU Number 24 Year 2003 about Court Constitution and Regulation MK Number006/PMK/2005 no possible he made decision which contain *ultra petita.* In short, formatively, the procedural law of statutory testing does not allow he made *ultra* verdict *petita* .[23]

However, in practice there have been several decisions of the Constitutional Court which contain: payload *ultra petita* and by therefore could used as jurisprudence MK. Jurisprudence itself is one of the sources of formal law in procedural law statutory testing. If this understanding of jurisprudence is associated with whether or not to do ultra petita for constitutional judges, then of course there must be provision and rule permanent, what and until so far where boundaries allowed judge constitution for make the verdict contain *ultra petita.*

Consideration (Ratio *Decidendi)* in making the Constitutional Court Decision Containing *UltraPetita* in Testing Constitution

Some of the Constitutional Court's decisions containing *ultra petita content* have been debated and controversy among legal experts, not only related to the act of issuing variation decision which no there is base law, but also impact decision the for maintenance country and enforcement law in Indonesia. Regardless from the controversy, it would be better if it was examined, what exactly was driving and background para judge constitution for Secrete decision ultra petita. Through legal considerations judgment we will find legal reasoning judge, including the paradigm that underlies the verdict handed down. That way it will it becomes clear to understand what the judges really want to achieve/aim forthrough the verdict.[24] In context discussion about *ultra petita* this, our can obtain the rule of law in the jurisprudence made by the Constitutional Court, so that by therefore could determined boundaries to what extent ultra petita could conducted by the Constitutional Court in judicial review. Below will served a number

[20] ConstitutionNet, 'Constitution of the Republic of Ecuador', *ConstitutionNet*, 2010 <http://www.constitutionnet.org/files/ecuador_ constitution_english_0.pdf>.

[21] Nurul Shaeera Sulaiman, Kobun Rovina, and Vonnie Merillyn Joseph, 'Classification, Extraction and Current Analytical Approaches for Detection of Pesticides in Various Food Products', *Journal of Consumer Protection and Food Safety*, 1.1 (2019), 1–13.

[22] Tolib Effendi, *Sistem Peradilan Pidana: Perbandingan Komponen Dan Proses Sistem Peradilan Pidana Di Beberapa Negara* (Yogyakarta: Penerbit Medpress Digital, 2018).

[23] S. F. Marbun, *Peradilan Administrasi Negara Dan Upaya Administratif Di Indonesia* (Yogyakarta: Liberty, 1997).

[24] Satyayudhadananjaya.

of case the:

- **Case Number 001-021-022/PUU-I/2003**

In case Number 001-021-022/PUU-I/2003, Court Constitution hascancel Law Number 20 of 2002 concerning Electricity whole. Court Constitution in consideration the law actually more focus the test on Chapter 16, Chapter 17 paragraph (3), as well as Chapter 68 UU Electricity which instruct system segregation/splitting effort electricity (*unbundling system*) with perpetrator effort which different, will butbecause these articles are the heart of the article and the paradigm that underlies the law Electricity, then the entire Electricity Law is declared powerless law tie. Court think that system the contrary with Article 33 of the 1945 Constitution, because it is seen that it will further bring down the state-owned enterpriseswill lead to an insecure supply of electricity to all levels of society,good which commercial or non-commercial.[25]

- **Case Number 007/PUU-III/2005**

In testing Law no. 40 of 2004 concerning the National Social Security System, Applicant ask so that so that Chapter 5 paragraph (1), paragraph (3) and paragraph (4) and Chapter 52 stated contrary with Chapter 34 paragraph (2) Constitution 45 and stated no strength law tie. The focus main in application this is, ismeaning country in phrase "Country develop system guarantee social" is at
in hand Government Center, Government Area or both. In amar
in its decision, the Constitutional Court rejected the application for review of Article 5 paragraph (1) and Article 52 of the SJSN Law, however, stipulates that Article 5 paragraph (2) of the SJSN Law contradicts the 1945 Constitution and stated that the article had no binding legal force, even though the Applicant no ask for it in application. In considerations law related with the *ultra petita* Article 5 paragraph (2) [27] , the Constitutional Court stated that although it is not requested in the petition petition, but this verse is one a unity that cannot be separated by paragraph (3), therefore if it is maintained rather will lead to multiple interpretations and legal uncertainty.

- **Case Number 003/PUU-IV/2006**

Decision Number 003/PUU-IV/2006 is a decision on the judicial review of Invite Number 31 Year 1999 about Eradication Follow Criminal Corruption (UU Corruption). The main issue that appears in this decision is the annulment of the expansion provisionsthe element of "violating material law" as formulated in the Elucidation of Article 2 paragraph (1) of the PTKP Law. In this decision, the Constitutional Court clearly stated:that the petition for judicial review of the words "can" and "trial" is the subject of petitum [28] stated "rejected", because said no contrary with chapter 28D paragraph (1)UUD 45. However, on the other hand, the Constitutional Court stipulates that the explanation Article 2 paragraph (1) of the Anti-Corruption Law is considered to have expanded the category of elements "against the law" in meaning law written (*formele wederrechtelijk* /nature oppose law formal), but also in the sense of *materiele wederrechtelijkheid* (the nature against material law), and therefore contradicts 28D paragraph (1) of the 45 Constitution. According to the Constitutional Court, the explanation of a the law may not contain new norms, because the explanation only contains a description or further elaboration of the norms regulated in the torso. Admitted the teachings of nature against the material law in Article 2 paragraph (1) will also cause problems law, because what is appropriate and that meets the requirements of morality and a sense of justice acknowledged in Public, which different from one area to area other, will lead to legal uncertainty[26]. This decision does not provide a clear explanation related direct with why MK To do *ultra petita*. Case Number 005/PUU-IV/2006

Decision Number 005/PUU-IV/2006 is a decision to review the law Number 22 of 2004 concerning the Judicial Commission (UU KY) and the Act Republic Indonesia Number 4 Year 2004 about Power Justice (UU KK) to Constitution 1945. Issue main which echoed in decision this is obscurity mechanism supervision judge in UU KY so that therefore raises uncertainty law. According to gay Lumbun , Decision MK relatedauthority supervision judge as listed on chapter 1 letter (5) UU Number
22 Year 2004 characteristic *ultra petita* and discriminatory, 31 judge great submit request that they not enter the object of KY supervision. But MK actually placing oneself outside the object of KY's supervision. This ruling has also castrated the entire KY's authority in supervising judges (including supreme judges and constitutional judges), when in fact the petitioners' petition is more related to the desire that the judge Agung is not included as a party supervised by KY. In this case the Court in consideration the law state:[27]

"This exception (MK Judge) is based on systematic understanding and interpretation based on the " *original intent* " formulation of provisions regarding KY in Article 24B of the Constitution 1945 is indeed not related to the provisions regarding the Constitutional

[25] Mohammad Sahlan, 'Kewenangan Peradilan Tipikor Pasca Berlakunya Undang-Undang No. 30 Tahun 2014 Tentang Administrasi Pemerintahan', *Jurnal Arena Hukum*, 9.2 (2016), 166–89.
[26] Hasuri Hasuri, 'Sistem Peradilan Pidana Berkeadilan Melalui Pendekatan Kontrol Dalam Proses Penegakan Hukum', *Ajudikasi : Jurnal Ilmu Hukum*, 3.2 (2019), 167 <https://doi.org/10.30656/ajudikasi.v3i2.1879>.
[27] Layla Maysaroh, 'Upaya Keberatan Notaris Terhadap Majelis Kehormatan Notaris Wilayah Atas Disetujuinya Permintaan Penyidik, Penuntut Umum Dan Hakim Dalam Proses Peradilan' (Universitas Sumatera Utara, 2018).

Court which are regulated in Article 24C UUD 1945."

Related with cancellation whole authority supervision, MK assume "that implementation of the supervisory function born of legal uncertainty (*rechtsonzekerheid*) as a result of the absence of clear norms about the scope of understanding behavior judge and supervision technical justicial related with boundaries accountability from perspective behavior judge with independence judge in doing Duty justicially, by invisible eye is intervention to power justice form of *stress* or stress which direct or indirectly".

- **Case Number 006/PUU-IV/2006**

Decision in case 006/PUU-IV/2006 which cancel Constitution Number 27 of 2004 concerning the Truth and Reconciliation Commission (UU TRC). whole very startling many party. Applicant in his request postulate that existence Chapter 1 number 9, Chapter 27 and Chapter 44 contrary to the 1945 Constitution, especially Article 27 paragraph (1), 28D paragraph (1), 28I paragraph (2). According to the Petitioners, the norm in Article 27 of the TRC Law has negated the guarantee for anti-discrimination, equality before the law and respect for human dignity guaranteed by the 1945 Constitution.[28] In addition, the existence of Article 44 of the TRC Law is deemed to eliminating the state's obligation to prosecute and punish perpetrators. In the verdict What is declared contrary to the 1945 Constitution is actually Article 27 UU TRC, however because MK consider provision chapter 27 determine operationalization of the entire TRC Law, then the entire TRC Law is declared not to have strength law tie. According to MK, determination exists amnesty as condition fulfilled compensation and rehabilitation is Thing which rule out legal protection and justice guaranteed by the 1945 Constitution. Nonetheless, The annulment of the entire TRC Law has destroyed the mandate of this Law to carry out disclosure truth and solution violation HAM time then, withreconciliation approach, which becomes impossible when used *normally rules.*

- **Case Number 012-016-019/PUU-IV/2006**

Decision MK in case Number 012-016-019/PUU-IV/2006 mandated a message that, there is a dualism of courts that try corruption crimes (as formulated in Chapter 53 Law Number 30 years 2002 concerning the Corruption Eradication Commission) is contrary to the Constitution 1945, therefore it is necessary to improve the regulation of criminal courts corruption in system Justice Indonesia. Become seen unique because in the warningThe Constitutional Court postponed the binding of the decision and gave a time limit of 3 (three) years for the legislators to enact the Corruption Court Law. Amar the actual delay was not requested by the applicants. Court The Constitution postulates, that although Article 47 of the Constitutional Court Law states that the "Decision" The Constitutional Court has permanent legal force since it has been pronounced in the plenary session is open to the public"; However, so that the examination of criminal acts of corruption by KPK and Court Corruption which currently walk no disturbed and no experience chaos so that could raises uncertainty law which no desired by Constitution 1945, so Court Constitution consider the need provide time for process transition which smooth *(smooth transitions)* for the formation of new rules. This is where the attitude of statesmanship and wisdom of the judges, very visible. Breakthroughs like this contain benefits and values justice at the same time aims to create legal certainty.

From some of the *ultra petita cases* presented above, if grouping is made considerations used by constitutional judges, related data will be obtained with why judge constitution make decision which *ultra petita,* as following :

- The part of the law (paragraph, article, explanation, etc.) that is requested to be reviewed is "heart" of the law, so that the entire article can not be implemented and must stated no strength law tie entirely. Including in this category, for example: Cancellation of the Electricity Law (Case Number: 001-021- 022/PUU-I/2003) and the Cancellation of the Truth and Reconciliation Commission Law (Case Number 006/PUU-IV/2006).
- The part of the law (paragraph, article, explanation, etc.) that is requested to be examined is related with other articles that cannot be separated, so that the articles are related was finally declared not legally enforceable either. Included in the category consideration this is : Testing UU System System Guarantee Social National (Case Number 007/PUU-III/2005). In examining the Judicial Commission Act (Case Number 005/PUU-IV/2006) it seems also lead on consideration this, though MK not decipher it by assertive.
- Demi avoid chaos law, so taken delay enforceability binding the decision while waiting for the formation of a new amendment rule. In In this case, the reason for expediency trumps legal certainty, even though it really is the ultimate goal is also to create legal certainty. Included in the category This reason is the decision to cancel the legal basis of the Corruption Court (Case No 012-016-019/PUU-IV/2006). The Constitutional Court's decision examining Law Number 16 of 2008 concerning Amendments to Law Number 45 of 2007 concerning APBN for Fiscal Year 2008 (Case Number 04/PUU-VI/2008) is also included in the category this reason.
- Consideration law MK in problem *ultra petita* only linked with consideration law tree plea, even not seldom impressed making it up and

[28] Hariman Satria, 'Restorative Justice: Paradigma Baru Peradilan Pidana', *Jurnal Media Hukum*, 3.2 (2018), 34–45 <https://doi.org/10.18196/jmh.2018.0107.111-123>.

appeared suddenly. It is in this category that Harjono 's statement becomes relevant, that according to the Constitution it is very clear, the authority of the Constitutional Court is to review laws to constitution, so no articles and the verse. throughout which tested is related laws, then there is no ultra petita dictionary. Included in this category is in the case of cancellation of material unlawful nature in the Corruption Law (Case Number 003/PUU-IV/2006) and case Number 005/PUU-IV/2006 which reduce the Authority of the Judicial Commission, insofar as it relates to its issuance judge Constitutional Court from party which supervised by the Commission judicial.[29]

***Ultra Petita* In Testing Constitution: Perspective Law Progressive**

The ambiguity of the text that regulates the type and content that must be in the decision Court Constitution make debate which until moment this not yet ends. As one of the impacts, the Constitutional Court's *ultra petita decision is currently under review* Constitution also Becomes controversy in here and there. Party which pro consider that the procedural law of the Constitutional Court (MK) does not regulate *ultra petita*, because it is permissible for the Court to make *ultra petita decisions* . *Ultra petita* law logic only there is in law program civil, because *objectum lytic* in MK different withJustice the civil protect individual, whereas in MK more characteristicpublic law, not only protecting the interests of the litigants, will but is *erga omnes* . In connection with the unregulated procedural law provisions detailed including *ultra petita* , the Constitutional Court has the right to regulate the elaboration in PMK and in journey find the law in power judge.

Concerning *unbundling* and competition, but because these articles are the heart of Law Number 20 of 2002, then the Electricity Law must be canceled by whole.

Although the regulations are still multi-interpretive, the change process does not have to be always centered on existing regulations, but on the creativity of legal actors in the context. In the context of this case, the Constitutional Court judges have dared to be creative and legal breakthroughs in making rules more meaningful and functional for creation of justice. The Constitutional Court has carried out *rule breaking* in order to break blur (*obscure)* terms in UU MK and PMK for give birth to embryos type decision new which can used for realize justice substantive in future testing periods. This is what Satjipto Rahardjo it is said that the nature of law is always in the process of becoming (*law as a process in thelaw making*).

With thereby could said, precedent on he made decision which containing *ultra petita* in the procedural law, the examination of the law can be we categorize it as a progressive law enforcement action. However, it is necessary underlined, that any creativity carried out by law enforcement can becomes meaningless progressive if it does not realize substantive justice, placing justice, benefit and human happiness as the ultimate goal. With say other, can just decisions containing *ultra petita* that rather hurt justice and benefit.

In the context of decisions containing *ultra petita* as stated above, described in the previous sub-chapter, it can be said that not all decisions the decision shows the side of substantive justice, and therefore also cannot be called as form enforcement law which progressive. In decision *ultra petita*the cancellation of the KKR Law (Case Number 006/PUU-IV/2006), for example, the Constitutional Court is considered only drip weight on aspect juridical only. Decision KKR also has bring unrest among the victims, who have seen the existence of the TRC Law as one hope for bring about justice on what which they experienced in time then.

The case of trimming the authority of KY (Case Number 005/PUU-IV/2006) which cut Authority Commission judicial, related with issued judge The Constitutional Court from the party supervised by the Judicial Commission also shows an attitude discriminatory and tends to be legalistic, because it only pays attention to *intense original aspects* Constitution 45 just as consideration the law. That's justice procedural, becauseit is true that during the discussion in the PAH I MPR, no names appeared at all constitutional judges as parties supervised by KY. Historically, this legal fact indeed it cannot be denied, but does the nuances of the Constitutional Court's decision above reflect the values? justice and expediency, especially if linked with cancellation whole authority KY in supervise judge in the middle thread tangled mafia Justice.

It is different in the context of the cancellation of the legal basis of the Corruption Court (Case Number 012-016-019/PUU-IV/2006). According to economical writer decision this showprogressive side of law enforcement. MK in this case trying to bring together three values of legal objectives, namely: justice, certainty and expediency. From the aspect of fairness, The Constitutional Court considers that the existence of the Tipikor Court makes dualism and double standards for defendants in corruption cases. On the aspect of legal certainty, MK see that by formal there is error in base establishment The Corruption Court should be made in a separate law. From aspect benefit seen from effort MK for avoid chaos law which can caused by because canceled base law Court Corruption withgive limitation time 3 (three) year for party legislature for form UUCourt Corruption.

Thus, a conclusion can be drawn that not all decisionsThe Constitutional Court in testing laws containing *ultra petita* contains the following characteristics: enforcement law which progressive. Courage MK for be creative in the verdict indeed good, as long as the action is used in context and in the context of realize substantive justice.

Of course there are always parties who are dissatisfied with the actions of the Constitutional Court make a decision by applying *the principle of rule breaking* as stated in the decision which is *ultra petita* and *positive legislature* . This is inseparable

[29] Achmad Budi Waskito, 'Implementasi Sistem Peradilan Pidana Dalam Perspektif Integrasi', *Jurnal Daulat Hukum*, 1.1 (2018), 287–304.

from the sect and paradigm thinking positivity law which of course dominate part big practitioner and academics law Indonesia. Worries like this no only occurred in Indonesia, but also in several countries that have a testing system constitutional. In this case, the Constitutional Court of the Republic of Indonesia has also entered an area that is in the *common law* tradition it is known as *judicial activism*, a judge's thought in decision which sometimes seen liberal-progressive in consideration lawthe verdict.

However, the practice of *judicial activism* which tends to be judicative *heavy* could Becomes negative and destructive if used for maintain conservatismjudicial institutions or smooth out the subjective preferences of elites and judges alone. If that occur, with authority which big, institution judicial could metamorphose Becomes institution which authoritarian (*judicial authoritarian*) which instead deny principle base *separation of power* and *check and balances* asheld strong so far. Power always shows its true face for always tend to oppress and corrupt. as Lord Acton hum, " *powertend to corrupt, and absolute power absolutely corrupt.*

Use *judicial activism* by excessive precisely could cause climatewhich no healthy for growth democracy that alone. For take care of it, so activism judicial need always escorted with criticism academic which constructive, so that court no will lost its legitimacy. Look in the mirror on reality enforcement of the law above, the idea of limiting power can also be offered The Constitutional Court through progressive changes to the Constitutional Court Law as an alternative improvement administrative justice system country in Indonesia.

IV. CLOSING

The provisions on the prohibition of *ultra petita* are in principle regulated in article 178 paragraph (3) *Het Herziene Indonesisch Reglement*, which in this case can be interpreted in two ways : aspects, first, judges are prohibited from granting unsolicited matters by the plaintiff, and secondly, the judge is prohibited from granting more than requested by the plaintiff. Although the Constitutional Court Law does not regulate assertive regarding ban *ultra petita* this, will but with approach interpretation systemic, it can be concluded that the provisions in Law Number 24Year 2003 about Court Constitution and Regulation MK Number 006/PMK/2005 (in format) does not allow constitutional judges to make an amar ruling containing *ultra petita*. However deep In practice, there have been several Constitutional Court decisions containing amar *ultra petita* and by therefore could used as source law jurisprudence MK.Jurisprudence itself is a source of formal law in law law review event. Nor is the *ultra petita* prohibition provision a doctrinewhich apply general and bind all judge, with reason as following ; In development, ban ultra petita in law program civil no apply absolute based on jurisprudence LET Number 556K/Sip/1971 which give rule law that grant more than claimed is permissible as long as it is still in compliance circumstances material. In the criminal procedural law, this *ultra petita prohibition* is only related to letters indictment which nature *lytic contestatio* for inspection the judge, and otherwise not apply in relation with demands criminal ; In law program Administrative Court, though by normative payload *ultra petita*prohibited because according to the Supreme Court Law it can be used as a reason for filing review return, will but in progress amar decision*reformatio in peius it is* possible to be dropped.

In a number of the verdict, MK has decide exceed from which requested (*super petita*). Between judgments the is: Case Number 001-021-022/PUU-I/2003, Case Number 007/PUU-III/2005, Case Number 003/PUU-IV/2006, Case Number 005/PUU-IV/2006, Case read Number 006/PUU-IV/2006, Case Number 012-016-019/PUU-IV/2006, Case Number 101/PUU-VII/2009, Case Number 11-14-21-126-136/PUU-VII/2009, and so on. From the several decisions discussed above, it can be concluded that there are 4 groups of judges' considerations that underlie their decisions amar *ultra petita* verdict , di in between is: Part of the law (paragraph, article, explanation, etc.) requested to be tested is "heart" from Constitution, so that whole chapter no can to held and must stated no powerful law tieentirely. The part of the law (paragraph, article, explanation, etc.) that is requested to be tested related to other articles that cannot be separated, so that The related article was finally declared null and void also. In order to avoid legal chaos, it is necessary to postpone the implementation binding the decision while waiting for the formation of the amended rules that new. The Constitutional Court's legal considerations in the *ultra petita issue* are only related to the main legal considerations of the application, it is not even uncommon to appearby suddenly. Although the regulation regarding the *ultra petita prohibition* is still multi-interpretive, In the perspective of progressive law, the process of change does not always have to be centered on regulation which there is, will but on creativity perpetrator law in the context. In the context of the *ultra petita decision in the judicial* review of the law Number 20 Year 2002 about Electricity (Case Number 001-021- 022/PUU-I/2003), the judges of the Constitutional Court have dared to make creativity and breakthroughs. breakthrough law in making rules more meaning and functional forcreation justice. Will but, need striped underside, that creativitywhatever which conducted by enforcer law could Becomes no meaning progressive when no for realize justice substantive, put justice, benefit and happiness man as destination finally. Therefore, progressive changes to the Constitutional Court Law are an alternative for realization enforcement law which progressive. Based on on discussion in on, recommended so that conducted amendments to the Constitutional Court Law. The changes are as efforts to reconstruct the Law on the Constitutional Court which contains: provisions on the permissibility of making decisions containing *ultra petita,* with provision: in terms of article tested, there is an inseparable relationship with articles other which no requested in law which same; In Thing chapter which tested is chapter heart or his spirit Constitution, therefore with stated no tie it up chapter the Constitution which concerned Becomes no could held or experience paralysis; With base for realize benefit for people and by avoid from legal chaos in Public; With the basis for realizing substantive justice and upholding the constitution,as well as Court Constitution restricted

no can make amar *ultra petita* outside the requested law to be tested or only limited to the law tested just.

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