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The Implication Of Ultra Petita Law In Constitutional Court Decision

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Abstract

Ultra Petita is a decision that contains things that are not requested by the applicant. The Constitutional Court in handling cases of Judicial Review and Regional Election Disputes still carries out Ultra Petita Decisions, the prohibition on imposing ultra petita decisions by the Constitutional Court was once regulated but later annulled by the Court, even though Indonesia as a country adheres to the Civil Law legal system where judges are bound by laws and regulations. the invitation in deciding every case, so that the ultra petita decision is considered a controversial decision. This research is a type of normative juridical research by examining and analyzing legal events that occur in the examination of laws and dispute resolution of the results of the Regional Head Elections at the Constitutional Court, with the aim of obtaining an overview of the condition of deviations from the non-ultra petita principle and the concept of substantive justice as the basis for the Constitutional Court in carrying out its activities. Ultra petita is erga omnes which is different from private law, there is a disqualification due to several violations or fraud or does not meet the requirements, then the incident is casuistic in nature, so the ultra petita provisions are not absolute. not requested.

Keywords: Constitutional Court, ultra petita prohibition

I. INTRODUCTION

Indonesia is a legal country that adheres to the civil law system, in the Continental European legal system always try to compile its laws in written form, so that the Indonesian legal system in terms of legal material many regulations that are products of the Dutch era which until now still exist a lot, in terms of the legal apparatus is as seen today. The idea of a legal state is built by developing the legal apparatus itself as a functional and just system, developed by arranging the superstructure and infrastructure of political, economic and social institutions that are orderly and orderly, and fostered by building a rational and impersonal legal culture and awareness in the life of society, nation and state. For that, the legal system needs to be built *(law making)* and enforced *(law enforcement)* As it should be, starting with the constitution as the law with the highest standing.[1] The establishment of the Constitutional Court was preceded by a renewal of thinking in the constitutional field in the 20th century, after the Third amendment of the 1945 Constitution in 2001 as a state institution derived from the Continental European legal system. Indonesia as a country of law (Rechstaat) which is heavily influenced by constitutional thinking in Europe, especially countries with a Continental European legal system that adheres to the supremacy of the constitution. The birth of the Constitutional Court is a response to demands

[1] Jimly Asshiddiqqie, Mahkamah Konstitusi dan Cita Negara Hukum Indonesia, Refleksi Pelaksanaan Kekuasaan Kehakiman Pasca Amandemen UUD 1945, Masyarakat Pemantau Peradilan Indonesia – FH UI, p. 1.

to strengthen the mechanism of checks and balances in the state administration system,[2] which has brought a lot of influence in the system of government in the Indonesian state.[3] Based on the general explanation of Law Number 24 of 2003 concerning the Constitutional Court, it is stated that the duty and function of the Constitutional Court is to handle certain cases in the constitutional field or certain constitutional cases in order to maintain the constitution to be carried out responsibly in accordance with the will of the people and democratic ideals. The authority of the Constitutional Court granted by the 1945 Constitution is such a great authority and determines the continuity of the establishment of the Unitary State of the Republic of Indonesia, because the Constitutional Court is considered to be the guardian of contitution based on its authority to test the law against the Basic Law.[4]

Nevertheless, the implementation of the duties of the Constitutional Court as the guardian and guardian of the constitution did not always go smoothly. As a new state institution, the role and duties of the Constitutional Court in handling cases of Law Testing and Election Disputes still issue many Decisions that are Ultra Petita in nature, so they are considered controversial decisions, because in procedural law, especially in civil procedural law there is one principle of procedural law, namely that judges are prohibited from deciding beyond what is requested (ultra petita). These provisions are based on Article 178 paragraph (2) and paragraph (3) of the HIR (Het Herziene Indinesisch Reglement) as well as Article 189 paragraph (2) and paragraph (3) of the RBg (Rechtreglement Voor de Buitengewesten). The prohibition against passing ultra petita judgments by the Constitutional Court was once regulated in Article 45A of Law No. 8 of 2011 concerning Amendments to Law No. 24 of 2003 concerning the Constitutional Court, but was later overturned by the Constitutional Court itself with Decisions No. 48/PUU-IX/2011 and 49/PUU-IX/2011 in consideration of which there would be restrictions on providing substantive and constitutional justice, even though Indonesia as a country that adheres to the Civil Law legal system where judges are bound by laws and regulations in deciding every case they handle, so it has caused a lot of responses that the Constitutional Court has violated the principle of ultra petita ban.[5]

II. LITERATURE REVIEW

Indonesia is the 78th country to establish the Constitutional Court as one of the judicial institutions that exercise judicial power, in addition to the Supreme Court, which was formed through the Third Amendment to the 1945 Constitution as a phenomenon or one of the developments of modern legal and state thought

[2] Wongbanyumas, "Ultra Petita Mahkamah Konstitusi Republik Indonesia", retrieved 3 September 2015 from the page: http://fatahilla.blogspot.com/2008/06/ultra-petita-mahlramah-konstitusihtml.

[3] Robert A. Carp – Ronald Stidham, The Federal Courts, (Congressional Quarterly Inc.). 1985 hal 199. Machfud MDformulate the term legal politics as a legal policy that will or has been implemented nationally by the Government; It also includes an understanding of how politics influences the law by looking at the configuration of the power that is behind the creation and enforcement of the law. Here the law cannot simply be viewed as imperative articles or imperative imperatives of a das sollen nature, but rather must be viewed as a sub-system which in reality (das sein) is not impossible to be largely determined by politics, both in the formulation of its material and articles and in its implementation and enforcement. (Politik Hukum di Indonesia, LP3ES, 2006, pp. 1 – 2).

[4] Mahkamah Konstitusi: *The Guardian And The Interpreter Of The Constitution*, Journal of Law: Pan Mohamad Faiz Kusumawijaya, September 11, 2006.

[5] Tim Penyusun, Hukum Acara Mahkamah Konstitusi, cet. Ke-1, (Jakarta, Sekretariat Jendral dan Kepaniteraan MNKRI, 2010), p. 54.

that emerged in the 20th century. There are 2 (two) sides in the establishment of the Constitutional Court, namely from the political and legal sides, with the following meanings:

First, from the side of constitutional politics, the existence of the Constitutional Court is needed in order to balance the power of law formation owned by the House of Representatives (DPR) and the President to conform to the principle of checks and balances, of course this is necessary so that the law does not become legitimacy for the tyranny of the minority of people's representatives in the DPR and the President who is directly elected by the majority of the people. In addition, the concern is the constitutional changes that no longer make the People's Consultative Assembly (MPR) the highest state institution placing state institutions in an equal position. This allows disputes between state institutions that require a legal forum to resolve them, and the institution that is deemed most appropriate is the Constitutional Court.

Second, from the legal side, the existence of the Constitutional Court is a consequence of changing from the supremacy of the MPR to the supremacy of the Constitution. The principle of supremacy of the Constitution has been accepted as part of the principle of the state of law. As stipulated in Article 1 paragraph (3) of the 1945 Constitution, which states that the State of Indonesia is a state of law. Law is a hierarchical unity of the system and culminates in the Constitution. Therefore the rule of law by itself weighs also the supremacy of the Constitution. This principle of constitutional supremacy can also be seen in Article 1 paragraph (2) which states that sovereignty is in the hands of the people and is implemented according to the Constitution. Thus, the Constitution determines how and who exercises the sovereignty of the people in the administration of the state with limits in accordance with the authority granted by the Constitution itself. The existence of the Indonesian Constitutional Court as the guardian of the constitution and protector of the rule of law, the final interpreter of constitutional law, the protector of human rights, and the protector of constitutional rights. That role is under the principles of democracy, law, justice and democracy. The authority of the Constitutional Court regulates in Article 24C paragraph (1) of the 1945 Constitution and Article 10 paragraph (1) of the Constitutional Court Law which determines the authority of the Constitutional Court to adjudicate in the first and last instances in cases of statutory testing of the Constitution, adjudicating disputes over the authority of Indonesian state institutions whose authority is granted by the Constitution, deciding on the dissolution of political parties in Indonesia and adjudicating disputes over election results.

Constitutionally, the four powers possessed by the Constitutional Court are concrete manifestations of the function of the Constitutional Court as the guardian of the constitution. With the hope that the provisions in the constitution can be practiced in legally binding state life, so that the Constitutional Court has the function of interpreting the constitution (the sole judicial interpreter of the constitution). And because the constitution is the highest law that regulates the administration of the state based on democratic principles and one of its functions is to protect human rights guaranteed in the constitution so that it becomes a constitutional right of citizens, the Constitutional Court also has a function as the guardian of democracy, the protector of citizens' constitutional rights and the protector of human rights.

The establishment of the Constitutional Court is aware that there is a fact that laws or regulations produced by political institutions, even though they are formed through democratic procedures, have the potential to store the content of interests of certain political institutions that are not in line with the principles of the constitution. As with the judiciary in general, in the judiciary of the Constitutional Court there are principles both general to all courts and special ones in accordance with the judicial characteristics of the Constitutional Court. The judicial principles of the Constitutional Court are (1) ius curia novit; (2) The trial

is open to the public; (3) Independent and impartial; (4) The judiciary shall be conducted expeditiously, simply, and at a low cost; (5) The right to be heard in a balanced manner (audi et alteram partem); and (6) Judges are active as well as passive in the trial. In addition, it is necessary to add one more principle, namely the principle (7) Presumption of Validity (praesumptio iustae causa).

The performance of the duties of the Constitutional Court as the guardian and guardian of the constitution has not always been smooth sailing. As a new state institution, the role and duties of the Constitutional Court in testing the law against the Constitution and resolving disputes over regional elections have received many different responses, especially when the Constitutional Court conducted ultra petita in some of its rulings. In general, there are some decisions of the Constitutional Court that are ultra petita, namely to decide above or beyond what is requested, for example in the test of the Constitution expecting the Constitution, if the core or heart of a law has been overturned, then it is better if the law is completely overturned and does not have binding legal force.

Meanwhile, in the dispute over the regional head election, since adjudicating the dispute over the regional head election of East Java Province in 2008, the Constitutional Court began to be faced with problems that questioned the violation of the process of holding regional head elections that caused the results of the disputed vote counting. Whereas violations during the Regional Head Election process, be it administrative or criminal, become the authority of other supervisory and judicial institutions to resolve them, but the Constitutional Court ultimately examines violations of structured, systematic and massive violations. (TSM), Because of the various violations referred to, they are not completely resolved by the institution that has the authority to do so. The reason for this could be due to weak laws and regulations in providing strengthening to regional election supervisory institutions, so that supervision is ineffective.

III. METHODOLOGY

To obtain data or information in writing this study, the author chooses normative legal research methods and empirical legal research. With a qualitative research approach, that is, research that can be interpreted as research that does not carry out calculations. The purpose of this qualitative research is to gain understanding, develop theories and describe complexly. Directly at the last stage of this research is data analysis. Researchers have organized the data in order to interpret the data qualitatively. In this case, the researcher uses descriptive-qualitative data analysis, that is, presents the data and information and then analyzes it using several conclusions as the findings of the research.

IV. RESULTS AND DISCUSSION

Indonesia is a modern legal country that implements constitutional testing institutions by forming the Constitutional Court of the Republic of Indonesia. The Constitutional Court has the authority to interpret the constitution (the intepreter of constitution), because the constitution is the highest law that regulates the administration of the state based on democratic principles, there are several functions of the Constitutional Court including protecting human rights guaranteed in the constitution so that it becomes a constitutional right of citizens, *the guardian of constitution*, *the guardian of democracy*, *the protector of citizen's constitutional rights)*

and the protector of human rights.[6] As the guardian of democracy, in its journey it has provided many changes in the Indonesian constitution. As an example in terms of statutory testing, the Constitutional Court sometimes renders judgments on such tests by containing Ultra Petita. This means that in testing the constitutionality of an Act, the decision of the Constitutional Court exceeds what the litigants have demanded. This has caused debate by academics and legal practitioners in Indonesia. As a country that adheres to the Civil Law legal system, the parties who do not accept the Ultra Petita ruling of the Constitutional Court consider the institution to have no legal certainty because it is not in accordance with what has been requested.

The limited authority of the Constitutional Court to conduct ultra petita or decide more than requested has given rise to academic debate.[7] On the one hand, there is an opinion that closes the space of the Constitutional Court to seek substantive justice, as the Constitutional Court has done.[8] On the other hand, some argue that it provides legal certainty because the Constitutional Court can be more careful in deciding cases.[9] The provisions of Article 178 (2) and (3) of the HIR and Sections 189 (2) and (3) R.Bg. expressly formulate a ban on ultra petita for judges,[10] that judges are prohibited from making decisions beyond those requested. In practice, Judgment No. 001-021-022/PUU-I/2003 and Judgment No. 006/PUU-IV/2006 justify ultra-petita judgments, especially if the article under test is at the core of the implementation of the provisions. The cancellation of certain articles will only cause legal uncertainty, so it does not conflict with the constitution, especially after Decisions Number 48/PUU-IX/2011 and 49/PUU-IX/2011 which stated that Article 45A and Article 57 paragraph (2a) of Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court. Law Number 8 of 2011 is declared invalid, that the ultra petita decision in the framework of the Constitutional Court deciding a case of constitutionality trial is constitutional, with several considerations, namely:

First, Article 57 paragraph (2a) of Law Number 8 of 2011 is contrary to the purpose of establishing a Constitutional Court to uphold law and justice, especially in order to uphold the constitutionality of legal norms under the Constitution. The purpose of establishing the Constitutional Court is to improve the law through a material test. Therefore, constitutional judges are required to explore, follow, and understand the law of values and the sense of justice that lives in society forming new laws through the decisions of the Constitutional Court.

Second, the provisions of Article 57 paragraph (2a) of Law Number 8 of 2011 result in obstruction of the Constitutional Court[11]is to (i) test the constitutionality of the norm; (ii) fill the legal void resulting from a Court decision that declares a norm contrary to the Constitution and non-binding. Meanwhile, the process of forming laws takes a long time, so it cannot necessarily fill the legal vacuum; (iii) carry out the duty of

[6] A. Desiana, *Loc.cit*.

[7] Benny Kabur Harman, Mempertimbangkan Mahkamah Konstitusi: Sejarah Pemikiran dan Pengujian UU terhadap UUD (Jakarta: Kepustakaan Popular Gramedia, 2013), p. 95-96.

[8] R. Ajie, "Batasan Pilihan Kebijakan Pembentuk Undang-Undang (Open Legal Policy) dalam Pembentukan Peraturan Perundang-Undangan berdasarkan Tafsir Putusan Mahkamah Konstitusi", Jurnal Legislasi Indonesia 13, No. 2 (2016), pp. 115- 116.

[9] H. Alrasid, "Hak Menguji dalam Teori dan Praktek" Jurnal Konstitusi 1, No. 1 (2004), p. 96.

[10] Tim Penyusun Buku Hukum Acara Mahkamah Konstitusi, *Loc.cit.*

[11] Kepaniteraan dan Sekretariat Jenderal Mahkamah Konstitusi Republik Indonesia, "Putusan Ultra Petita Konstitusional", Majalah Konstitusi, Edisi Oktober, No. 57 (2011), p. 10.

constitutional judges to explore, follow, and understand the values of the law and the sense of justice that lives in society.[12]

Third, the character of procedural law in the Constitutional Court, particularly in terms of judicial review is to defend constitutional rights and interests protected by the constitution, as a result of the enactment of generally accepted law *(erga omnes)*. Therefore, if the public interest desires, constitutional judges should not be fixated solely on the pleadings.

Based on these considerations, the Constitutional Court has consistently maintained the principle of ultra petita if in the test of the Law against the Constitution and the settlement of disputes over regional elections in order to realize substantive justice. Some of the rulings that are classified as ultra petita verdicts include the following:

- Judicial Review Decision
  1. Decision Number 001-021-022/PUU-I/2003, review of Law No. 20 of 2002 concerning Electricity
  2. Decision Number 007/PUU-III/2005, review of Law No. 40 of 2004 concerning the National Social Security System.
  3. Decision Number 003/PUU-IV/2006, review of Law Number 31 of 1999 concerning Eradication of Corruption
  4. Decision Number 005/PUU-IV/2006, review of Law Number 22 of 2004 concerning the Judicial Commission and Law Number 4 of 2004 concerning the Judicial Powers of the Republic of Indonesia
  5. Decision Number 006/PUU-IV/2006, reviewing Law Number 27 of 2004 concerning the Truth and Reconciliation Commission
  6. Decision Number 012-016-019/PUU-IV/2006, review of Law Number 30 of 2002 concerning the Corruption Eradication Commission and Decision Number 91/PUU-XVIII/2020 concerning Law No. 11 of 2020 concerning Job Creation
  7. Decision Number 5/PUU-V/2007, review of Law Number 32 of 2004 concerning Regional Government
  8. Decision Number 102/PUU-VII/2009, review of Law Number 42 of 2008 concerning the General Election of the President and Vice President
  9. Decision Number 138/PUU-VII/2009, review of Government Regulation in Lieu of Law Number 4 of 2009 concerning Amendments to Law Number 30 of 2002 concerning the Corruption Eradication Commission
  10. Decision Number 01/PUU-VIII/2010, review of Law Number 3 of 1997 concerning Juvenile Court
  11. Decision Number 28/PUU-XI/2013, review of Law Number 17 of 2012 concerning Cooperatives
  12. Decision Number 85/PUU-XI/2013, review of Law Number 7 of 2004 concerning Water Resources
- Regional Head Election Dispute Resolution

  The Constitutional Court originally only had the authority to decide disputes over the results of regional head elections. This authority was obtained by the Constitutional Court based on the results of a memorandum of understanding between the Supreme Court and the Constitutional Court in 2006 regarding the implementation of Article 106 of Law no. 32 of 2004 concerning Regional Government which mentions the transfer of authority for post-conflict local election disputes from the Supreme

[12] S. Abadi, "Ultra Petita dalam Pengujian Undang-Undang Mahkamah Konstitusi", Jurnal Konstitusi 12, No. 3 (2015), pp. 586-588.

Court to the Constitutional Court. The shift in the settlement of post-conflict local election disputes from the Supreme Court to the Constitutional Court based on the change in the regional head election regime to the general election regime in the hope that the dispute resolution carried out by the Constitutional Court relatively does not cause significant conflict, but a shift in the regional head election system reappears from the general election regime to the Regional Government regime. This shift has an impact on the transfer of dispute resolution authority from the Constitutional Court to the Supreme Court as a consequence of the Constitutional Court Decision Number 97/PUU–XI/2013.

Apart from the settlement of disputes over the results of which so far has been tug-of-war, the author will describe several disputed decisions on Regional Head Elections conducted by the Constitutional Court, where there are still controversial decisions, because the Constitutional Court in its decisions seemed to have expanded its authority which was originally only related to disputes over results (mathematical count), but can also examine processes during post-conflict local election implementation, such as the East Java Regional Head Election dispute with Decision Number 41/PHPU.DVI/2008 as Petitioner Khofifah Indar Prawansa, Constitutional Court Decision which is ultra petita in the decision on the dispute over the results of the general election for the Regional Head of East Java Province, it was a landmark decision, apparently a proof of the use of a basis for consideration of a sense of justice (substantive justice) against the community as the applicant. This consideration is based on the legal fact that the 2008 East Java Provincial Regional Head election process was legally and convincingly proven before the court that there had been a structured, systematic and massive violation, which affected the votes obtained for the Governor and Deputy Governor candidates.

The dispute over the election of the regional head of Bengkulu Regency with Decision Number 57/PHPU.D-VI/2008 as the Petitioner is H. Reskan Efendi, if the legal considerations are taken into account the Constitutional Court's decision to arrive at a decision ordering the General Election Commission of South Bengkulu Regency in 2008 to hold a re-voting, although not requested by the applicant, because based on legal facts it has been proven legally and convincingly that the South Bengkulu Regency General Election Commission and the South Bengkulu Regency Panwaslu have neglected their duties, namely never seriously processing the reports received about the background and the requirements of the Related Party, namely H. Dirwan Mahmud, were not fulfilled, so that the Pilkada ran legally from the start. Such negligence causes the Related Parties to be ineligible to participate, and therefore their participation from the start is null and void (void ab initio).

Ultra vires actions by the Constitutional Court also occurred again in the 2010 West Kotawaringin Regency Election dispute in Decision Number 45/PHPU.D-VIII/2010, which disqualified the elected candidate pair, even though the Petitioners never asked for it. In other words, the actions of the Constitutional Court to decide post-conflict local election disputes have left the Law and procedural law on post-conflict local election results disputes. Departing from the post-conflict local election dispute decision which was handed down ultra vires, the Constitutional Court was faced with many objection requests on the basis of qualitative process violations. Ultra petita provisions themselves are not regulated in the 1945 Constitution or in the Constitutional Court. There are several opinions pro and con against the ultra petita Constitutional Court decision. According to Moh. Mahfud MD,[13] the prohibition of making ultra petita does not only exist in civil law, but also applies to the review of laws against the Constitution by the Constitutional Court, if ultra petita is allowed then it can be interpreted that the Constitutional Court can question any content of the Law that is not important and necessary for the good without interfering in legislative work. In relation to the review of laws against the Constitution, the Constitutional Court may only determine whether the contents

[13] Moh. Mahfud MD, *Perdebatan Hukum Tata Negara Pasca Amandemen Konstitusi* (Jakarta: 2010, PT.Raja Grafindo Persada), p. 76.

of the law contradict the Constitution and whether the procedure for making the law is in accordance with the applicable provisions, and may not make regulatory decisions.

The same opinion was also expressed by the late Adnan Buyung Nasution who stated that regarding various decisions of the Constitutional Court that were ultra petita and extra controversial, the question was who had the right to make corrections to decisions of the Constitutional Court that were so arrogant and ambitious, violating legal doctrine and traditions that courts anywhere in a democratic rule of law system is taboo to make decisions that exceed what is requested or demanded, unless there are legal, moral and ethical foundations.[14] Meanwhile, former Chief Justice of the Constitutional Court, Jimly Asshiddiqie, responding to various criticisms, emphasized that Constitutional Court decisions may contain ultra petita and the prohibition on decisions containing ultra petita only applies in civil courts. Meanwhile, the Chief Justice of the Supreme Court, Bagir Manan, justified ultra petita at the Constitutional Court, as long as it was in his request for justice *(ex aequo et bono)*.[15] In addition to these two opinions, the author would like to add that the ultra petita nomenclature should be interpreted clearly and included in the Constitutional Court law so that its meaning does not become multi-interpreted. Ultra petita is a good thing when constitutional judges use it in the name of justice, if indeed there has not been a revision of the Constitutional Court Law regarding the permissibility of ultra petita, it is better if the advice and input of the Panel of Judges at the start of the trial becomes a means of improvement to avoid ultra petita.

V. CONCLUSION

Based on the results of a juridical analysis of several Constitutional Court Decisions containing ultra petita with various considerations both on the Decision on the Judicial Review of the Law and on the Decision on the Dispute on the Election of Regional Heads, the conclusions are obtained as follows:

The Constitutional Court has on various occasions emphasized its position as the guardian and interpreter of the constitution to uphold substantive justice, which is justice that is not regulated in statutory regulations. The Constitutional Court will not be fixated on the law if the a quo law is deemed to have departed from the purpose of the law itself, when referring to responsive legal theory, ultra petita in constitutional review is something valid that can be carried out by the Constitutional Court. Nonet-Selznick stated that the law must be sovereign to social goals. So that the arguments of the Constitutional Court in several considerations of its decision, including: 1) The Constitutional Court as an institution that oversees and interprets the constitution will not be fixated on the law if the a quo law is judged outside of its own legal objectives; 2) the law requested for review is the "heart" of the law so that all articles cannot be implemented 3) ultra petita practices by the Constitutional Court are common in other countries; 4) the development of ultra petita civil court jurisprudence is permitted; 5) review of laws concerning public interest as a result of which the law is erga omnes, different from civil law (private); 6) societal needs demand that ultra petita not apply absolutely; 7) if the public interest requires that the judge should not be fixated on the petition (petitum); 8) requests for justice (ex aequo et bono) are considered legally submitted anyway and grant things that are not requested.

The Constitutional Court's decision has issued an Ultra Petita decision in reviewing a law against the 1945 Constitution as well as in a dispute over the results of the Regional Head Election which invited reactions

[14] Adnan Buyung Nasution, *"Quo Vadis Hukum dan Peradilan di Indonesia"*, Kompas, 22 Desember 2006.
[15] Hakim boleh Memutus di luar Permohonan", Suara Karya, 12 Januari 2007.

from many parties, because the ultra petita decision in the Constitutional Court has no clear legal basis. Moreover, Indonesia adheres to the Civil Law legal system which has three characteristics of the legal system, namely that law is codified, judges are not bound by a precedent system (the stare decicis doctrine) and judges have a major influence in directing and deciding cases (inquisitorial). In this system, judges are bound by law in deciding the cases they handle. If ultra petita were permitted and regulated clearly in law, then the mechanism would be clear, which is feared by the Constitutional Court to take actions that are not regulated in law. So that it seems that the Constitutional Court is a superior institution and the application of Ultra Petita raises controversy.

Basically, the Constitutional Court's decision on the review of laws and regional election disputes adheres to legal principles that are final and binding. This legal principle contains 2 (two) meanings, namely First, the Constitutional Court's decision which is final and binding contains several legal meanings, namely: a.) To create legal certainty as soon as possible for the parties to the dispute. b.) The Constitutional Court as a constitutional court, is different from the conventional court which applies space to take legal action. c.) means as a legal engineer. In a sense, the Constitutional Court, through its decisions, is expected to be able to manipulate the law according to what has been outlined by the 1945 Constitution as a constitution (gronwet). d.) The Constitutional Court as the sole guardian and interpreter of the constitution. Thus, the presence of the Constitutional Court in the Indonesian constitutional system is expected to be able to maintain the stability of all elements of the state to remain in line with the constitutional mandate. Second, the decisions of the Constitutional Court which are final and binding, give rise to a number of legal consequences in their application. In this case, the author then categorizes it into 2 (two) outlines by using the approach of 4 (four) legal theories namely Constitutional theory, Progressive Law theory (Grand theory), Responsive Law theory (Middle Theory) and Law formation theory, then there will be found 2 (two) legal consequences which have a positive meaning and legal consequences which have a negative meaning. As for the legal consequences that have a positive meaning, namely: Ending a legal dispute; Maintaining the principle of checks and balances; and Encouraging the political process. Meanwhile, the legal consequences arising from the decisions of the Constitutional Court are final and binding in a negative sense, namely: Access to legal remedies is closed and there is a legal vacuum.

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