THE POSITION OF *ULTRA PETITA* IN CONSTITUTIONAL COURT DECISION

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APPROVAL PAGE

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ABSTRACT

The *ultra petita* decision that issued by the Constitutional Court indeed has a uniqueness that may raise the controversy in the society. Actually, the positions of *ultra petita* in the Constitutional Court decision are not regulated specifically in Law or Constitutional Court Regulation, so it shows that the Constitutional Court has no authority to issue the *ultra petita* decision. The research aims to understand and analyze further the position of *ultra petita* in the Constitutional Court decision. By using the normative legal research, the author found that the position of *ultra petita* in the Constitutional Court decision is recognized only by Justices of the Constitutional Court, but it cannot be applied absolutely in the Law of Constitutional Court Procedure especially for the Constitutional Review cases. The existence of the *erga omnes* and *ex ae quo et bono* principles in the Constitutional Court decision are the factors that make the Constitutional Court valid to issue the *ultra petita* decision. Although the Constitutional Court can make the *ultra petita* decision in the proper way, the authority of the Constitutional Court in issuing the *ultra petita* decision has should be limited to prevent the Constitutional Court replace the authority of the House of Representative as a positive legislator. The research suggests that the Constitutional Court should provide a restriction of authority for the Constitutional Court in issuing the *ultra petita* decision in form of Constitutional Court Act to keep the Constitutional Court on its authority as the negative legislator.

Keywords: *Ultra Petita Decision, Constitutional Court, Constitutional Court Decision.*

1. INTRODUCTION

One of the most important elements in the modern legal state system is the existence of Constitutional Court.[1] In Indonesia, the Constitutional Court was established in 2003 through Law Number 24 of 2003 on the Constitutional Court.[2] It has influenced since then the development of law and Indonesian Constitutional System.[3] Article 24C paragraph 1 and 2 of 1945 Constitution mentions among the authorities of the Constitutional Court are: constitutional review of Act; determining disputes over the authorities of state institutions whose powers are given by the Constitution; deciding over the dissolution of a political party; deciding over dispute on the result of a general election; and issuing a decision over a petition from the House of Representative concerning alleged violations by the President and/or the Vice-President as provided by the Constitutions (impeachment). The constitutional authority granted to the Constitutional Court can be understood that the Constitutional Court was established to guarantee the constitutional rights of citizens who may be infringed or marginalized through a legislative product.

The role and functions of the Constitutional Court have influenced the concept and the development of Indonesian Constitution. As a new institution in the constitutional system of the Republic of Indonesia, the decisions of the Constitutional Court in conducting constitutional review have generated different responses. Several decisions of the Constitutional Court in a constitutional review are considered as controversial decisions because the decision exceeds what the petitioners have requested or otherwise known as an *ultra petita* decision.[4]

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[1] Abdul Latif, 2007, *Mahkamah Konstitusi Dalam Upaya Mewujudkan Negara Hukum Demokrasi*, Yogyakarta, CV. Kreasi Total Media, p. 21.

[2] Mahkamah Konstitusi, "Sejarah Pembentukan Mahkamah Konstitusi", taken from http://www.mahkamahkonstitusi.go.id/index.php?page=web.ProfilMK&id=1&menu=2, accessed on 16th Oct, 2017 at 4.34 pm.

[3] Hery Abduh Sasmito, "*Ultra Petita* Decision of Constitutional Court on Judicial Review The Perspective of Progressive Law", *Journal of Indonesian Legal Studies*, Volume 1, Issues 01, ISSN: 2548-1584, (November, 2016), p. 48.

[4] Djoko Imbawani Atmadjaja, "*Ultra Petita* dalam Putusan Mahkamah Konstitusi", *Jurnal Konstitusi*, Volume 1, No. 1, (November, 2012), p. 36.

Based on the news published by Republika on January 29th 2017, it is reported that the Constitutional Court has issued the *ultra petita* decision on rejection of the justices of the Constitutional Court to be supervised by the Judicial Commission.[5] The news explains that there is controversy which arises from the *ultra petita* decision issued by the Constitutional Court. In fact, the constitutional justices have been twice involved in corruption cases because the constitutional justice ethics are not properly supervised.[6] This Constitutional Court decision has more value than the original request. In fact, the constitutional review is related to the public interest in which the law must be obeyed by all people or *erga omnes*. It is in contrasts with the decision of the civil law which has intra parties' principle which means the decision only binds the parties.[7]

From the explanation above, the *ultra petita* decision contains the interest of Constitutional Court which is designed to be free from Judicial Commission or is not supervised by Judicial Commission as it runs their obligation to supervise the judge of Supreme Court and the lowest rank.[8] The definition of *ultra petita* itself is a judgment of the judges over a case which is not requested or decided exceeds the request. *Herzien Inlandsch Reglement* (HIR)[9] Artcile 178 section (2) and (3) describes that a judge is prohibited to decide the case exceeds the request.[10] Judge who decides beyond the *petitum* of the plaintiff will recognize as *ultra vires* or conducting beyond his/her authority. Therefore, *ultra petita* decision

[5] See further the Constitutional Court decision No. 005/PUU-IV/2006 on Constitutional Review on Law No. 22 of 2004 on the Judicial Commission and Law No. 4 of 2004 on the Judicial Power.
[6] Fauziah Mursid, "MK Pernah Keluarkan Putusan Ultra Petita Menolak untuk Diawasi", taken from http://nasional.republika.co.id/berita/nasional/hukum/17/01/29/oki7ol365-mk-pernah-keluarkan-putusan-ultra-petita-menolak-untuk-diawasi, accessed on 16th Oct, 2017 at 4.39 pm.
[7] Miftakhul Huda, "*Ultra Petita* dalam Pengujian Undang-Undang", taken from http://www.miftakhulhuda.com/2009/06/ultra-petita-dalam-pengujian-undang.html, accessed on 7th January, 2018 at 6.05 pm.
[8] Hery Abduh Sasmito, *Op. Cit*., p. 49.
[9] *Herzien Inlandsch Reglement* (HIR) is the procedural law in civil proceedings and criminal proceedings in Java and Madura. This regulation applies in the era of Hindia Belanda.
[10] See *Herzien Inlandsch Reglement* (HIR) Article 178 section (2) and (3). Article 178 section (2) stated the judge is required to adjudicate all parts of the claim, Article 178 section (3) stated judges are prohibited to decide cases that are not claimed, or giving more than what is requested.

must be declared as invalid decision even it is done in good faith and for the public interest.[11]

Labertus Johannes van Apeldoorn[12] stated that the judge in the civil court is unable to do anything more than the plaintiff requested.[13] His statement is in accordance with the principle of passive judges which contain in the Civil Law. The passive judge's principle means that the judges can only consider the things that demanded by the parties.[14] The basic *ultra petita* principle which applied in the scope of civil court is to protect the party who defeated in the civil court process. If the judge decides the case with the *ultra petita* principle, it may be injustice. If the *ultra petita* principle is implemented in the civil court, people worry that the judge will take sides with one party only.[15]

It is different from the Constitutional Court which issued some decision that contains *ultra petita* principle.[16] Actually, the certainty of Constitutional Court Justices may impose *ultra petita* decision or not is not regulated in Law No. 24 of 2003 on Constitutional Court.[17]

To prevent Constitutional Court from making the *ultra petita* decision, on the amendment of Law on Constitutional Court embodied to Law Number 8 of 2011 on the amendment of Law Number 24 of 2003 on Constitutional Court, it is

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[11] Agus Budi Santoso, "Tinjauan Yuridis Terhadap Larangan Mekanisme *Ultra Petita* Pada Putusan Perkara oleh Mahkamah Konstitusi", *Jurnal Pasca Sarjana Hukum UNS*, 5th edition, (January-June, 2015), p. 22.

[12] Labertus Johannes van Apeldoorn (13rd December, 1886 – 15th August 1979) was a professor of legal history and the introduction of law at the University of Amsterdam.

[13] Ibnu Sina Chandranegara, "Ultra Petita dalam Pengujian Undang-Undang dan Jalan Mencapai Keadilan Konstitusi", *Jurnal Konstitusi*, Volume 9, No. 1, (March, 2012), p. 41.

[14] *Ibid*, p. 28.

[15] *Ibid*, p. 44.

[16] See the Indonesian Constitutional Court decisions No. 001-021-022/PUU-I/2003 on Constitutional Review on Law No. 22 of 2002 on the Electrification, No. 007/PUU-III/2005 on Constitutional Review on Law No. 40 of 2004 on the Social Security System, No. 003/PUU-IV/2006 on Constitutional Review on Law No. 31 of 1999 on the Eradication of Corruption, No. 005/PUU-IV/2006 on Constitutional Review on Law No. 22 of 2004 on the Judicial Commission and Law No. 4 of 2004 on the Judicial Power, No. 006/PUU-IV/2006 on Constitutional Review on Law. 27 of 2004 on the Truth and Reconciliation Commission.

[17] Hery Abduh Sasmito, "Putusan Ultra Petita Mahkamah Konstitusi dalam Pengujian Undang-Undang (Suatu Perspektif Hukum Progresif)", *Jurnal Law Reform*, Volume 6, No. 2, (October, 2011), p. 55.

affirmed in Article 45A[18] which regulates the authority of the Constitutional Court that the Constitutional Court can't make an *ultra petita* decision or decide something beyond of the petitioners request.[19] But the provision on the prohibition of *ultra petita* has been nullified by the Constitutional Court through its decisions No. 48/PUU-IX/2011 and No. 49/PUU-IX/2011.[20] Through this decision, it seems, with a contrario interpretation, the Constitutional Court allows the constitutional justices to make *ultra petita* decision.

Referring to the theory of responsive law popularized by Philippe Nonet[21] and Philip Selznick[22], the Constitutional Court is valid to issue the *ultra petita* decision in constitutional review. Nonet-Selznick argues that the law should be prioritized on social objectives. If the constitutional review is merely a review, it will be immerse into a tendency that the objectives of constitutional review are not reached for benefit of public interest.[23] That's why it needs further study to know the proper mechanism of *ultra petita* decision made by the Constitutional Court.

2. RESEARCH METHOD

2.1. Type of Research

This research belongs to normative legal research. Normative legal research is a research based on literature. The researcher used the statute and conceptual approach. It means the research aim to know how the Indonesian laws regulate the position of *ultra petita* in Constitutional Court decision with special reference to review the Constitutional Court decisions.

[18] See Article 45A of Law Numbe 8 of 2011 on amendment of Law Number 24 of 2003 on Constitutional Court, it stated the Constitutional Court's decision cannot contain a decision that is not requested by the applicant or exceeds the applicant's request, except to the particular case relating to the main application.
[19] Agus Budi Santoso, *Loc. Cit*.
[20] See the Indonesian Constitutional Court decision No. 48/PUU-IX/2011 on Constitutional Review on Law No. 35 of 2009 on Narcotic and Law No. 8 of 2011 on amendment of Law No. 24 of 2003 on Constitutional Court, and Constitutional Court decision No. 49/PUU-IX/2011 on Constitutional Review on Law No. 8 of 2011 on amendment of Law No. 24 of 2003 on Constitutional Court.
[21] Philippe Nonet was the author of Administrative Justice and Law and Society, he was a professor of Law and Sociology, Emeritus.
[22] Philip Selznick was a professor of sociology and law at University of California, Berkeley.
[23] Ibnu Sina Chandranegara, *Op. Cit.*, p. 46.

Conceptual approach means the research referring to the views and doctrines which develop in the legal studies. The source is from secondary data that will be taken from literature: journals, books, encyclopedia, etc.

2.2. Type of Data

The data used in this research is secondary data. The secondary data consist of primary legal material, secondary legal material, and tertiary legal material.[24] The details are explained as follows:

1. Primary legal material consists of regulations as follows:
   a. The 1945 Constitution;
   b. Law No. 24 of 2003 on Constitutional Court;
   c. Law No. 20 of 2002 on Electrification;
   d. Law No. 27 of 2004 on Truth and Reconciliation Commission;
2. Secondary legal material

   Secondary legal material consists of several documents that related to the primary legal materials as follows:[25]
   a. Books;
   b. Scientific journals;
   c. Other legal documents related the issue;
   d. Trusted situs internet; and
   e. Other non-legal documents related to this research.
3. Tertiary legal material

   This legal materials provides further explanations, consists of any legal or non-legal materials which supports on understanding to the primary and secondary legal materials as follows:
   a. Black's law dictionary;
   b. English dictionary;
   c. Indonesian dictionary; and
   d. Encyclopedias.

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[24] Bahder Johan Nasution, 2008, *Metode Penelitian Ilmu Hukum*, ISBN 979-583-335-3, Bandung, CV Mandar Maju, p. 86.
[25] Johnny Ibrahim, 2006, *Teori dan Metodologi Penelitian Hukum Normatif*, Edisi ke II, Malang, Bayu Medi, p. 46.

2.3. Method of Collecting Data

The data were collected through library research by reading, analyzing, and making the conclusion from related documents such as Constitution or laws, books, legal journals and others which related to the main problem as the object of this research.[26]

2.4. Data Analysis

The data are analyzed systematically through descriptive qualitative approach. It means the research analyzed based on the Constitution, legislation, and other theories related to the issue of the position of *ultra petita* in Constitutional Court decision.[27]

3. DISCUSSION

3.1. *Ultra Petita* Principle in the Constitutional Court

The justification of the *ultra petita* decision that issued by the Constitutional Court has not happened in Indonesian Constitutional Court only. This justification has also been practiced in Constitutional Court of other countries. For example, Article 45 of the Constitutional Court Law of South Korea of 1987 stated that:

> "The Constitutional Court shall decide only whether or not the requested statute or any provision of the statute is unconstitutional: Provided, That if it is deemed that the whole provisions of the statute are unable to enforce due to a decision of unconstitutionality of the requested provision, a decision of unconstitutionality may be made on the whole statute"

It means the Constitutional Court decide whether a Law is constitutional or unconstitutional by referring to the requested of the applicant. In case all Articles that requested to be reviewed by the applicant are not applicable as a result of an unconstitutional Article, an

[26] *Ibid*, p. 71.
[27] Mukti Fajar & Yulianto Achmad, 2009, *Dualisme Penelitian Hukum*, Yogyakarta, Pensil Komunikasi, p. 123.

unconstitutional decision can be imposed on all the content of the provisions.[28]

Based on the discussion above, it implied that the *ultra petita* decision that issued by the Indonesian Constitutional Court or South Korean Constitutional Court is a common conductor to protect the constitutional rights of the society because the Constitutional Court decision does not influence the interest of the applicant only, but also influence all the society (*erga omnes*). This statement is also mentioned by Jimly Asshiddiqie which stated that if the prohibition of *ultra petita* decision is applied in the Constitutional Court, it becomes a mistake because the prohibition of *ultra petita* in the public law such as the constitutional law is considered a valid decision and to be conducted because the public law binds the society especially for the constitutional review case because it has a legal power to bind the public.[29]

3.2. The Consequences of *Ultra Petita* Principle

The Constitutional Court decision indeed has its own uniqueness. One of which is the existence of a decision that has a nature of *ultra petita* principle. *Ultra petita* in formal law is interpreted to impose a decision on a case that is not prosecuted or granted more than the requested.[30] In implementing its authority, the Constitutional Court often issues decision that has a nature of *ultra petita* principle which is in the Civil Procedure Law constitute a prohibition to the principle that the judge shall not decide a case beyond the petition which set in Article 178 paragraph (2) and (3) HIR and Article 189 paragraph (2) and (3) RBg.[31]

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[28] See the Indonesian Constitutional Court No. 006/PUU-IV/2006 on the Constitutional Review on Law No. 27 of 2004 on Truth and Reconciliation Commission, p. 126.

[29] Irwan Yulianto, "Tinjauan Yuridis Prinsip *Ultra Petita* oleh Mahkamah Konstitusi Sebagai Upaya Mewujudkan Keadilan Substantif di Indonesia", *Jurnal Ilmiah Fenomena*, Volume XV, No. 2, ISSN: 1614-1630, (November, 2017), p. 1616.

[30] Haposan Siallagan, "Masalah Putusan Ultra Petita dalam Pengujian Undang-Undang", *Mimbar Hukum*, Volume 22, No 1, (February, 2010), p. 74.

[31] Ayu Desiana, 2014, "Analisis Kewenangan Mahkamah Konstitusi dalam Mengeluarkan Putusan yang Bersifat *Ultra Petita* berdasarkan Undang-Undang Nomor 24 tahun 2003", *Majalah Hukum Forum Akademika*, Volume 25, Nomor 1, p. 45.

The *ultra petita* principle in the Constitutional Court decision has been a debatable issue. The pros side has an argument that the *ultra petita* principle in the Constitutional Court decision is a way to find the substantive justice, but the contras side believed that the *ultra petita* principle which issued by the Constitutional Court is contradict to the legal certainty principle and it can be a bad example in implementing authority and deviation perpetrated by the state institution.[32] Therefore, the *ultra petita* principle that issued in the Constitutional Court decision often creates a positive and negative impact to the society.

3.3. The Position of *Ultra Petita* in Constitutional Court Decision

The presence of the Constitutional Court in the Indonesian state administration system is to organize the life in the constitution. Through its constitutional's authority which granted directly by the 1945 Constitution, the Constitutional Court does its functions as the guardian of the Constitution.[33] Ideally, the Constitutional Court function is to ensure the consistency of all Laws is not in contrary with the 1945 Constitution.[34]

Constitutional justice with the jurisdiction of constitutional review has a function to enforce the constitution as law to the legislator. It is in line with the doctrine of judicial duty which means the judge has an authority to conduct the unconstitutional action in deciding a case based on the law because the constitution is the highest law.[35] This statement is supported by Philip Hamburger[36] which stated the duty of a judicial judge is "to decide in accordance with the law, and because the constitution is the highest part of

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[32] Rafli Fadilah Achmad, "Suatu Perdebatan Klasik: *Ultra Petita* dalam Jagat Keadilan dan Kepastian Hukum" taken from http://mahkamahmahasiswa.ui.ac.id/suatu-perdebatan-klasik-ultra-petita-dalam-jagat-keadilan-dan-kepastian-hukum/, accessed on 15th March, 2018 at 3.08 pm.

[33] Mahkamah Konstitusi, "Ketua MK: MK Hadir untuk Mengawal Demokrasi", taken from http://www.mahkamahkonstitusi.go.id/index.php?page=web.Berita&id=13325#.WpZUfaiWa00, accessed on 28th February, 2018 at 2.43 pm.

[34] Moh. Mahfud MD, 2009, *Konstitusi dan Hukum dalam Kontroversi Isu*, Jakarta, Rajawali Press, p. 262.

[35] Suwarno Abadi, "Ultra Petita dalam Pengujian Undang-Undang oleh Mahkamah Konstitusi", *Jurnal Konstitusi*, Volume 12, No. 3, (September, 2015), p. 596.

[36] Philip Hamburger is an American Legal Scholar and Professor of Law at the Columbian University School of Law.

this law, the judge in the course of doing their duty had to hold unconstitutional customs and acts unlawful and void".[37]

The uniqueness of the Constitutional Justices that can carry out unconstitutional act should be returned to the essence of the constitutional issue itself, namely the constitutional issue of the legislator's action in producing laws. The violations that commit by the legislator in producing unconstitutional Law can be considered as disadvantageous act of everyone.[38] This is the condition that can distinguish between the constitutional issue which handled by the Constitutional Court and the law issue which handled by the common court. This implied that the constitutional justice that runs by the Constitutional Court has a nature of *erga omnes*. This is an in line statement which stated by the Legal Drafting Team of Constitutional Court Procedure which stated:

> "The constitutional review authority that handled by the Constitutional Court principally has nature of public, although the request that proposed to the Constitutional Court is done by individual who has the impairment of the constitutional rights that caused by the provisions of the Law. This is in accordance with the review object namely the provision of the Law as a norm that has abstract nature and generally binding. The constitutional review case, for example, is clear that this case concerns and its legal effect binds all people or *erga omnes*".[39]

Thus, the Constitutional Court decision on the constitutional review will have a function and domiciled as constitution itself. Therefore, in accordance with the Constitutional Court character which has the *erga omnes* consequence, the public must be prepared to accept the function of interpreting of the constitution by the Constitutional Court as part of the process to state whether the Law is constitutional or not making the Constitutional Court as a partner of the legislator which has authority to run the negative legislator which means the Constitutional Court can only

[37] Philip Hamburger, 2008, *Law and Judicial Duty*, Cambridge: Harvard University Press, p. 101.
[38] Suwarno Abadi, *Op. Cit*., p. 597.
[39] Tim Penyusun Hukum Acara Mahkamah Konstitusi, 2010, *Hukum Acara Mahkamah Konstitusi*, Jakarta, Sekretariat Jendral dan Kepaniteraan Mahkamah Konstitusi, p. 53.

invalidate the Law and it cannot take over the parliament's authority in making laws and regulations.[40]

That position makes the Constitutional Court produce the *ultra petita* decision to keep the law always in the corridor the constitution in which the opinion of what is stated by the constitution is entirely in the hands of the Constitutional Court. This is the functional implication of the establishment of the Constitutional Court as a guardian of the constitution through the constitutional review regulated in the provisions of the 1945 Constitution[41] which consequently that the function of the Constitutional Court is the sole interpreter of the constitution.[42]

Nevertheless, the *ultra petita* decision issued by the Constitutional Court sometimes makes people feeling disturbed because the decision is considered as the controversial decision. The *ultra petita* decision gives the impression that the Constitutional Court is not only as the negative legislator, but also seen as the positive legislator.[43] According to Hamdan Zoelva[44] which quoted from the book entitled *Dinamika Ketatanegaraan Indonesia dalam Putusan Mahkamah Konstitusi*, the shift of the Constitutional Court which seems to be a positive legislator is due to the need to balance proportionally between legal certainty, justice and expediency. This Constitutional Court step is to avoid the legal vacuum which is feared if the Constitutional Court is only cancelled a norm of law. The position of the Constitutional Court seems to be a positive legislator through its decision is not means that the Constitutional Court acquires the authority of another state institution and violate the principle of checks and balances system, but this position cannot be separated from the role of the

[40] Pan Mohammad Paiz, "Relevansi Doktrin Negative Legislator" taken from https://panmohamadfaiz.com/2016/03/17/relevansi-doktrin-negative-legislator/, accessed on 5th March, 2018 at 2.39 pm.
[41] Jimly Asshiddiqie, 2005, *Konstitusi & Konstitusionalisme Indonesia*, Jakarta, Konstitusi Press, p. 251.
[42] Ni'matul Huda, 2011, *Dinamika Ketatanegaraan Indonesia dalam Putusan Mahkamah Konstitusi*, Yogyakarta, FH UII Press, p. 36.
[43] *Ibid*, p. 40.
[44] Hamdan Zoelva is the Former Chairman of Indonesian Constitutional Court in the Period of 2013-2015.

Constitutional Court as a part of checks and balances mechanism over the legislative power and executive power.[45]

Basically, the duty of the Constitutional Court justices is only to review a law or a part of the law which proposed by the applicant to the Court and not to issue the *ultra petita* decision. However, the understanding of the *ultra petita* decision in the constitutional review is different from the understanding of the *ultra petita* decision in the civil case. The difference is primarily due to the background interest of the request of the petition or in a civil case known as a lawsuit. The interest in the constitutional review case does not only bind the parties but it also binds the public interest or all citizens or *erga omnes*, therefore the Constitutional Court decision will affect all citizens.[46]

The concept of *ultra petita* in the implementation of the duties of the Constitutional Court can be found in Article 24C of 1945 Constitution which states that the Constitutional Court's authority is to conduct the constitutional review. As long as the Constitutional Court is in the corridor of its authority, the Constitutional Court cannot be considered deciding the *ultra petita* decision. This is because the understanding of *ultra petita* in the Constitutional Court authority is beyond the authority or *ultra vires* as regulated in 1945 Constitution. If the Constitutional Court decisions have already entered to the authority of the legislative institution such as cancel or enforce a legal norm, the Constitutional Court itself has exercised beyond its authority or the Constitutional Court has issued the *ultra petita* decision. Nevertheless, if the decision is still in the content of the law (although not requested) and the content of the decision is contrary to the Constitution, the decision is not an *ultra petita* decision because the duty of the Constitutional Court is to guarantee laws that are not contradicting to 1945 Constitution.[47]

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[45] Ni'matul Huda, *Op. Cit*., p. 43.
[46] Djoko Imbawani Atmadjaja, "*Ultra Petita* dalam Putusan Mahkamah Konstitusi", *Jurnal Konstitusi*, Volume 1, No. 1, (November, 2012), p. 46.
[47] *Ibid*, p. 47.

Review on the substance of a law which against another law needs to be done because the characteristic of the Law is general and universal. Therefore, if part of the law that requested to be reviewed has a relation to another part of law, then it is the duty of the Constitutional Court to examine it. The norm that contained in a law is a system so as a whole must be in unity and even it must be seen in relation to the same principle with other laws. This kind of *ultra petita* are not included into *ultra petita* that violate the field of the legislative power, because the Constitutional Court has done their functions as the guardian of the Constitution, so the law or a part of the law is not in contrary to the Constitution.[48]

Based on the discussion above, it can be noted that the position of *ultra petita* decision issued by the Constitutional Court does not mean to exceeded its authority and take over the legislative authority, but that action is done merely to protect the constitutional rights of citizens. It is done by considering the product that produced by the legislative institution is *erga omnes* and if the law is impairment somebody, so then the impairment will also happen to other people in the future.

3.4. The Practice of Decision Making of *Ultra Petita* in the Constitutional Court

The Constitutional Court is the judiciary institution which has duties and authorities that regulated specifically by Law No. 24 of 2003 on the Constitutional Court. The establishment of the Constitutional Court itself is an answer to the inquiry of the judicial institution to conduct the constitutional review which cannot be done before the Constitutional Court established.[49] As the institution that established to guard the constitution, the Constitutional Court is not only authorized to conduct the constitutional

[48] *Ibid*.
[49] Moh. Mahfud MD, 2011, *Perdebatan Hukum Tata Negara Pasca Amandemen Konstitusi*, Jakarta, Rajawali Pers, p. 74.

review, but the Constitutional Court has another authority as stated by Sujit Choudry:[50]

> "Basically, the Constitutional Court has others authorities including to disputes over the constitutions provisions often involved the most sensitive political issues facing a country, including review of the country electoral laws and election, the powers of the various branches of government and other questions"[51]

The quotation above assumes that the Article (1) and (2) of the 1945 Constitution is not surprising us if the Constitutional Court does not regulate the authority of the Constitutional Court on the constitutional review only, but to regulate the authority related to the political and constitutional issues such as determining disputes over the authorities of state institutions whose powers are given by the Constitution, deciding over the dissolution of a political party, deciding over disputes on the result of a general election, and issue a decision over a petition from the House of Representative concerning alleged violations by the President and/or the Vice-President as provided by the Constitutions (impeachment).[52] This condition assumes that the Constitutional Court has two important focuses in implementing their duty and authority. First, the affirmation of the Constitutional Court's authority on the guardian of constitution and second is the authority as the guardian of democracy.

In implementing their role as the guardian of constitution, the Constitutional Court has a very important authority for the development of the constitution in Indonesia, namely the authority to conduct the constitutional review. The existence of the constitutional review is intended

[50] Sujit Choudhry is an educator and expert in comparative constitutional law, the Director of the Center for Constitutional Transitions, and was appointed as the Dean of the University of California, Berkeley School of Law.
[51] Abdurrachman Satrio, "Kewenangan Mahkamah Konstitusi Memutus Perselisihan Hasil Pemilu Sebagai Bentuk *Judicialization of Politics*", *Jurnal Konstitusi*, Volume 12, No. 1, (March, 2015), p. 199.
[52] *Ibid*.

to limit the dominance of the legislative institution which in the certain level has the potential to violate the constitutional rights of the citizens.[53] In Indonesia, this idea is the main driving force in the establishment of the Constitutional Court when the amendment of the 1945 Constitution was enacted. Nevertheless, in the course of Indonesian Constitution history, the basic idea of constitutional review can be traced far when the founding fathers of Indonesia debated on the constitution in the first period of independence in the meeting of *Badan Penyelidik Usaha-usaha Persiapan Kemerdekaan Indonesia* (BPUPKI).[54]

In terms of its content, the Constitutional Court decision in the constitutional review case consists of three aspects, namely:[55]

1. Declare a request is unacceptable if the Constitutional Court stated the applicant and / or its request does not fulfill the requirement as mentioned in Article 50 and Article 51 of Law No. 24 of 2003 on the Constitutional Court;
2. Declare a request is accepted if the Constitutional Court stated the applicant has a reason to proposed request, and in its decision the Constitutional Court should be state as follows:
   a. The content of the paragraph, Article and / or part of the Law is contradictory to the 1945 Constitution and stated the content of the paragraph, Article, and / or part of the Law has no binding legal force;
   b. In term of the Law have no requirements for the establishment of the Law as regulated in 1945 Constitution, the decision should declare that the request is accepted and there is no legal binding force for the Law.
3. Declare that the request is rejected if the Law that requested is not contradictory to the 1945 Constitution.

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[53] Zendy Wulan Ayu and Haidar Adam, "Putusan Ultra Petita Mahkmah Konstitusi dalam Perkara Pengujian Konstitusionalitas Undang-Undang", *Yuridika*, Volume 29, No. 2, (May-August, 2014), p. 169.
[54] Tim Penyusun Hukum Acara Mahkamah Konstitusi, *Op. Cit*., p. 5.
[55] See Article Article 56 of Law No. 24 of 2003 on the Constitutional Court.

An independent judiciary is a main pre-requirement for the upholding law in a state. This independence means that there is no institution or other interest which can give an intervention to the judicial institution in implementing their duty. In its practice, a judge is a spear of the judicial institution. The independence of judicial power institution is reflected in the judge independent attitude in deciding a case, and there is a quotation which says "the crown of judges is located in its decision". A decision is reflected of the quality, integrity, and credibility of a judge. It also happens in the Constitutional Court, a decision that issued by the Constitutional Court justices give a reflection of quality, integrity, and credibility of its justices. The reflection on the quality of the Constitutional Court justices can be seen from the different statement or dissenting opinion from another justice's statement in a decision.[56]

As a new judicial institution which runs in the field of judiciary, the Constitutional Court often receives attention from the ordinary people, the expert, and the legal practitioners. The decision that issued by the Constitutional Court often receives the positive perspective as well as the negative perspective from the society. For example, the Constitutional Court is praised when cancelling the Article that contains the requirement of the Head of Regional must have a background of political party. Thus it gives a chance to the independent candidate of the Head of Regional. Besides, the Constitutional Court is considered to exceed its authority when it issued the *ultra petita* decision that related to the the Truth and Reconciliation Commission.[57]

Some *ultra petita* decisions that issued by the Constitutional Court are debatable and became the controversial decision among the legal expert. Not only related to the issuance of the various of decisions which has no legal basis, but also the impact of those decisions to the state organizers and the legal enforcers in Indonesia. Regardless of its controversy, it would be

[56] Zendy Wulan Ayu and Haidar Adam, *Loc. Cit.*
[57] See the Indonesian Constitutional Court Decision No. 006/PUU-IV/2006 on Constitutional Review on Law No. 27 of 2004 on Truth and Reconciliation Commission.

better if there are the reasons why the Constitutional Court justices issued the *ultra petita* decision from the legal consideration of its decision, and to know the reasons of the Constitutional Court in issuing the *ultra petita* decision, the author already analyse one of the *ultra petita* decision that issued by the Constitutional Court in the following analysis.

3.4.1. Analysis on Constitutional Court Decision No. 006/PUU-IV/2006 on Constitutional Review on Law No. 27 of 2004 on Truth and Reconciliation Commission.

The Constitutional Court has imposed the decision in the constitutional review case on Law No. 27 on 2004 on the Truth and Reconciliation Commission to the 1945 Constitution, and it proposed by:

a. *Lembaga Studi dan Advokasi Masyarakat* (ELSAM), represented by Asmara Nasaban, S.H as the Chairman of ELSAM. (Applicant I);
b. *Komisi untuk Orang Hilang dan Korban Kekerasan* (Kontras), represented by Irahim Zakir as the Chairman of *Pengurus Perkumpulan Kontras*. (Applicant II);
c. *Solidaritas Nusa Bangsa* (SNB), represented by Ester Indahyani Yusuf, S.H. as the Chairman of *Pekerja* SNB. (Applicant III);
d. *Inisiatif Masyarakat Partisipatif untuk Transisi Berkeadilan* (Imparsial), represented by Rachland Nashidik as the Executive Director of *Impartial*. (Applicant IV);
e. *Lembaga Penelitian Korban Peristiwa* 65 (LPKP 65), represented by Soenarno Tomo Hardjono as Chairman of LPKP 65. (Applicant V);
f. *Lembaga Perjuangan Rehabilitasi Korban Rezim ORBA* (LPR-KROB), represented by Sumaun Utomo as Chairman of LPR-KROB. (Applicant VI);
g. Raharja Waluya Jati. (Applicant VII);
h. Tjasman Setyo Prawiro. (Applicant VIII);

The Applicant I until Applicant VI is the legal entities, while Applicant VII until Applicant VIII is the individual.

In their request, the applicant argues that Article 1 paragraph (9), Article 27, and Article 44 of Law No. 27 of 2004 on the Truth and Reconciliation Commission are in contradictory with the 1945 Constitution as the following information below:

a. Article 1 paragraph (9) of Law No. 27 of 2004 on the Truth and Reconciliation Commission contradict with Article 28D paragraph (1) and Article 28I paragraph (5) of 1945 Constitution because the assuming of the existence of "*yang berat*" word in the content of Article 1 paragraph (9);
b. Article 27 of Truth and Reconciliation Commission Law is contradict with Article 27 paragraph (1), Article 28D paragraph (1), and Article 28I paragraph (4) of 1945 Constitution;
c. Article 44 of Truth and Reconciliation Commission Law is contradict with Article 28D paragraph (1) and Article 28I paragraph (4) of 1945 Constitution because the provision of Article 44 of Truth and Reconciliation Commission Law positioned the Truth and Reconciliation Commission an institution that performs the function of justice and it close the opportunity for every person or victim to get settlement through the judicial process;

The Constitutional Court argues that Applicant I to Applicant VI are private legal entities and Applicant VII to Applicant VIII are individual as the victims of abduction and enforced disappearance in 1997-1998, and as a former political prisoner for 14 years for alleged involvement of the movement without trial and convicted having a legal standing to filled the *a quo* request.

The Constitutional Court argues that among those three Articles, only Article 27 of Law No 27 of 2004 on the Truth and Reconciliation Commission which is contradicted to the 1945 Constitution. In addition, Article 44 of Truth and Reconciliation Commission Law have not enough reasons to be granted by the Constitutional Court, and Article 1 paragraph (9) of Truth and Reconciliation Commission is an understanding or definition which contains in the general requirements only, and it is not a norm which nature to regulate and related with another Articles, so the request of the applicants related to those two provisions are will considered more with another related Articles.

The determination of amnesty as a condition of giving compensation and rehabilitation to the victims as mentioned in Article 27 of the Truth and Reconciliation Commission Law is a matter that putting aside the protection of law and justice guaranteed by the 1945 Constitution. Since amnesty is the prerogative rights of the President and the target of the granting or rejection depends on the president too. So the reason to review Article 27 of Truth and Reconciliation Commission to the Constitutional Court is reasonable. Although the grant of the petition is only Article 27 of the Truth and Reconciliation Commission Law, but because the entire operationalization or the essence of the Truth and Reconciliation Commission Law dependents and leads to the granted Article, so the declaration of Article 27 of the Truth and Reconciliation Commission Law is contradictory to the 1945 Constitution and has no binding legal force it gives an impact to the impossibility of the Truth and Reconciliation Commission to be implemented. This condition is because of the existence of Article 27 is related to Article 1, paragraph (9), Article 6 letter c, Article 7 paragraph (1) letter g, Article 25 paragraph (1) letter b, Article 25

paragraph (4), (5), (6), Article 26, Article 28 paragraph (1), and Article 29 of Law No. 27 of 2004 on the Truth and Reconciliation Commission. So, by declaring Article 27 of the Truth and Reconciliation Commission has no legal binding force, the legal implication would result in all articles relating to amnesty having no binding legal force also.

Based on the information above, the Constitutional Court decides the following decisions:

a. Granting the *petitum* of the Applicants;
b. Declaring that the Law No. 27 of 2004 on the Truth and Reconciliation Commission is contradict to the 1945 Constitution;
c. Declaring that the Law No. 27 of 2004 on the Truth and Reconciliation Commission has no legal binding force;
d. Ordering that this decision is published in State Gazette.

However, in this decision there is a dissenting opinion on the decision of the Constitutional Court that grants the petition of the Petitioners, namely Constitutional Justice I Dewa Gede Palguna. He stated that this request should be declared as a rejection request because the three provisions in their petition for such a review shall not be read and understood individually. In addition, as a legal state, the respect, protection and fulfilment of human rights are inherent requirements that cannot be ignored by the state for all Indonesian.

From the analysis on the Constitution Court decision No. 006/PUU-IV/2006 above, it can be said that although the petition that filed by the Petitioners only concerns Article 1 Paragraph 9, Article 27, and Article 44 of the the Truth and Reconciliation Commission Law, but basically the procedural law relating to the constitutional review is related to the public interest and the legal effect is *erga omnes*, so it is not appropriate to consider this decision

to be an *ultra petita* as known in the civil law concept. The prohibition to adjudicate beyond the *petitum* itself is contained in Article 178 paragraphs (2) and (3) of HIR and Article 189 paragraphs (2) and (3) RBg, and those procedural law is applicable in the District Court and Religious Courts in Indonesia. However, the provisions of Article 178 paragraphs (2) and (3) of HIR and Article 189 paragraph (2) and (3) of the RBg do not apply absolutely due to the obligation of the Judge to be active and always have to try to give a decision that actually solves the case. In addition, in a lawsuit of civil court, the Plaintiff's request to the Judge is also to include a fairest decision or *ex aequo et bono*. Moreover the Constitutional Court justices who run the constitutional review are related to the public interest. Although those applying for the constitutional review are individuals who are deemed to have legal standing, but the Law petitioned for review is generally applicable to the public interest *erga omnes*, and it creates a wider legal effect than the applicant interests as an individual. If the public interest requires a Constitutional Court Justice to decide the *ex ae quo et bono* decision, then the Constitutional justice shall not be stuck only on the proposed petition.

3.4.2. Analysis on Constitutional Court Decision No. 001-021-022/PUU-I/2003 on Constitutional Review on Law No. 20 of 2002 on the Electrification.

The Constitutional Court has issued a decision in the case of review on Law No. 20 of 2002 on the Electrification to the 1945 Constitution. This decision consists of three cases that will be described as follows:

a. Case No. 001/PUU-I/2003:

Case No. 001/PUU-I/2003 proposed by:

a) APHI (*Asosiasi Penasehat Hukum dan Hak Asasi Manusia Indonesia*);
b) PBHI (*Perhimpunan Bantuan Hukum dan Hak Asasi Manusia Indonesia*);
c) Yayasan 234.

The petitioners are the legal entities from *Asosiasi Penasihat Hukum dan Hak Asasi Manusia Indonesia* (APHI) dan *Perhimpunan Bantuan Hukum dan Hak Asasi Manusia Indonesia* (PBHI) which domiciled in APHI office in *Jalan Raya Pasar Minggu*, *KM 17,7 No. 1B Lt. 3 Pasar Minggu*, Sourt Jakarta 12740, then it is called as the Applicant I.

In the request of the applicant, the applicant proposed their request for formal and material review of Law No. 20 of 2002 on the Electrification. The formal review is an authority to assess whether the Law that produces is in the proper way or not. While, material review is an authority to evaluate paragraph, Article, and / or part of the regulation whether the regulation is contradict to the higher regulation or not. In the material review, the content of paragraph, Article, and part of the regulation reviewed whether it is contradict with the higher regulation or not.[58]

Based on the opinion of the applicant, the existence of Law No. 20 of 2002 on the Electrification has disadvantages for the interest of nation, state, and the citizens of Indonesia, or in other words it will give disadvantages for the public interest. Therefore, the proposal of the request of this petition is to protect collectively the constitutional rights to improve the quality of the citizens, nations, and state as mentioned in Article 28C paragraph

[58] Anonymous, "Hak Menguji Peraturan Perundang-Undangan oleh Mahkamah Agung dan Mahkamah Konstitusi" taken from http://www.sumberilmuhukum.com/2017/10/hak-menguji-peraturan-perundang-undangan.html, accessed on 22th April, 2018 at 7.01 am.

(2) of 1945 Constitution which has obstructed or will violate the rights of petitioners if Law No. 20 of 2002 on the Electrification is still implemented.

a) The Reason of the Formal Review

Based on the opinion of the applicants, the approval procedure in the bill of Electrification Law is contradict to Article 20 paragraph (1) of 1945 Constitution *jo.* Article 33 paragraph (2) point a and paragraph (2) of Law No. 4 of 1999 on the Structure and Position of People's Consultative Assembly, House of Representative, and Regional People's Representatives Assembly *jo.* House of Representatives Decree No. 03a/DPR RI/I/2001-2002 on the Rules of Order of the House of Representatives.

b) The Reason of the Material Review

The applicants said that their constitutional rights that mentioned in the Article 1 paragraph (3), Article 28C paragraph (2), Article 28D paragraph (1), Article 28H paragraph (1), and Article 33 paragraph (2) and (3) of 1945 Constitution are impaired by Law No. 20 of 2002 on the Electrification. In addition, in this petition that requested, the review is not only to specific sections of Law No. 20 of 2002, but the Law No. 20 of 2002 as a whole.

c) The Petition in case No. 001/PUU-I/2003

I. Grants this petition as a whole;
II. Declare that Law No. 20 of 2002 on the Electrification is contradict to 1945 Constitution;
III. Declare that Law No. 20 of 2002 on the Electrification has no binding power;

IV. Order the revocation of Law No. 20 of 2002 on the Electrification in the State Gazette of Republic of Indonesia.

b. Case No. 021/PUU-I/2003:

Case No. 021/PUU-I/2003 proposed by:

a) Ir. Ahmad Daryoko;

b) M. Yunan Lubis, S.H.

The applicants are the Chairman and Secretary General of *Dewan Pimpinan Pusat Serikat Pekerja PT. PLN* (*Persero*), in this case the applicants represent the name of *Serikat Pekerja PT PLN* (*Persero*) addressed in the Headquarters of *PT PLN* (*Persero*), *Jalan Trunojoyo Blok M I/135*, *Kebayoran Baru*, South Jakarta, and then both are called as the Applicant II.

The applicants said that their constitutional rights which guaranteed by Article 27 paragraph (2), Article 28D paragraph (2), Article 28H paragraph (1) and (3), Article 33 paragraph (3), and Article 54 paragraph (3) of 1945 Constitution are impaired by the coming into force the Article 8 paragraph (2), Article 16, Article 17 paragraph (3), and Article 30 paragraph (1) of Law No 20 of 2002 on the Electrification.

c. Case No. 022/PUU-I/2003:

Case No. 022/PUU-I/2003 proposed by:

a) Ir. Januar Muin;

b) Ir. David Tombeng.

The applicants are the Chairman and the Secretary General of *Ikatan Keluarga Pensiunan Listrik Negara* (IKPLN) and in this case both act as an individual and the citizen of Indonesia and represent the name of *Ikatan Keluarga Pensiunan Listrik Negara* (IKPLN) addressed in Headquarters of *PT. PLN* (*Persero*)

Building I 4th Floor at *Jalan Trunojoyo Blok M I/35 Kebayoran Baru*, South Jakarta, and then both are called as Applicant III.

The applicants assume that the Law No. 20 of 2002 on the Electrification is contradict to the 1945 Constitution with the following reasons:

a) Because electrical products are regarded as a commodity that can be competed and increased the price of electricity to the poor people, and the competition will reduce the level of welfare (it is contradict to Article 28A and H of 1945 Constitution);
b) Due to the loss of cross-subsidy mechanisms between the Work Area (*Daerah Wilayah Kerja*) and consumers, it will increase the electricity price for the poor people and it will reduce the level of welfare (it is contradict with Article 28A and H of 1945 Constitution);
c) Because the branch of the electricity power supply is very important for the livelihood of the society and the branch of the electricity is no longer controlled by the State.

Actually, the above problems are mentioned in Article 8 paragraph (2) and developed in Article 16 of Law No. 20 of 2002 on the Electrification, and both Articles are contradict to the 1945 Constitution.

d. Justices Consideration

The Constitutional Court stated that the Applicant I, Applicant II, and Applicant III are qualified as the private legal entity and at least as an individual that has the legal standing to propose the request to the Constitutional Court. In the request of the Applicant I, the Applicant proposed for the formal review (*formele toetsing*) and material review (*materiele toetsing*) of Law

No. 20 of 2002 on the Electrification, while the Applicant II and Applicant III only proposed the material review on Law No. 20 of 2002 on the Electrification.

The Constitutional Court argues that the formal review request on Law No. 20 of 2002 on the Electrification which proposed by the Applicant I is unreasonable and it should be rejected, because the Applicant I cannot provide evidence which stated in the their formal review. The arguments of the Applicant I in their formal review were also rejected by the House of Representative in a written statement that submitted in the Court session which attached with the Plenary Session of the House of Representatives on 4th September, 2002. However, the material review requested by the Applicant I, Applicant II, and Applicant III is considered to be accepted by the Constitutional Court.

The request of the Applicants which have basically concerns on the business competition in the field of electricity which is conducted separately by the different business entities as mentioned in Law No. 20 of 2002 on the Electrification will be assessed whether it is true contrary to the 1945 Constitution by considering two considerations. First, whether the branch of production of electricity is an important branch of production for the state and which affect the livelihood of the people, so that it should be controlled by the State. Second, if the state control mentioned in Article 33 of the 1945 Constitution is assessed not anti to the competition and market, how to run the state control by the Constitution. Concerning on those two considerations, actually it is mentioned clearly in the letter a of preamble of Law No. 20 of 2002 on the Electrification which states “electric power is very useful to advance the general welfare, educate the life of the nation, and improve the economy in order to realize a just and prosperous of the society based on *Pancasila* and the 1945

Constitution". The preamble assumes that the electric power has proven to be an important state production branch and it affects the livelihood of the people and it is in accordance with Article 33 paragraph (2) of 1945 Constitution, and the branch of the production of electricity shall be controlled by the State.

Based on the consideration above, the Constitutional Court argues that Article 16 of Law No. 20 of 2002 on the Electrification which instruct the unbundling system on the electricity business will lead to the decline of State-Owned Enterprises (hereafter *Badan Usaha Milik Negara / BUMN*) and the electric power will not supplied to all levels of society both commercial and non-commercial supply. These matters will give impairment for the community, nation and state. So, the request of all Applicants should be partially granted by declaring that Article 16, Article 17 paragraph (3) and Article 68 of Law No. 20 of 2002 on the Electrification are contradict to the 1945 Constitution and should be declare that those Articles has no legal binding power. Although the contradict provisions are Article 16, Article 17, and Article 68 which specifically related to the unbundling and competition system, but those Articles are the essence of Law No. 20 of 2002 in the Electrification. So, this gives an impact that Law No. 20 of 2002 on the Electrification generally cannot be maintained, because it will give chaos that creates legal uncertainty in its implementation.

Based on the information above, the Constitutional Court decides the following decisions:

a) Reject the request of Applicant I on the formal review;
b) Grant the request of Applicant I, Applicant II, and Applicant III in the material review as a whole;
c) Declare that Law No. 20 of 2002 on the Electrification contradict to the 1945 Constitution;

d) Declare that the Law No. 20 of 2002 on the Electrification has no legal binding power;
e) Order that this decision is published in State Gazette no later than 30 days after the issuing of this decision.

From the analysis on the Constitutional Court decision No. 001-021-022/PUU-I/2003 above, it can be said that the Constitutional Court only focuses on the reviewing Article 16, Article 17 paragraph (3), and Article 68 of the Electrification Law which that the unbundling system of electricity business by the difference business entity, but because those Articles are the essence and basis paradigm of Electrification Law, So a whole Electrification Law declare has not legal binding power. The Constitutional Court argues that the unbundling system is contradict to Article 33 of 1945 Constitution because it is seen will further degrade the *BUMN* that will lead to the non-guaranteed supply of electric power for all levels of society in commercial or non-commercial. However, it is not appropriate to consider this decision is an *ultra petita* as known in civil law concept. Basically, the procedure law that related to the constitutional review case is also related to the public interest and the legal consequences are *erga omnes*. This creates wider legal effect than the interest of the applicant only as an individual. So the Constitutional Court cannot decide in accordance with the *petitum* of the applicants only, moreover if the applicants in the constitutional review cases requesting the justice decision or *ex aequo et bono* decision.

4. CONCLUSION AND SUGGESTION

4.1. Conclusion

Based on the discussion above, it may arrive at conclusion that the position of an *ultra petita* in the Constitutional Court decision is recognized by Justices of the Constitutional Court but it should be selectively applied. The concept of *ultra petita* cannot be implemented in the Constitutional Court Law Procedure especially for the constitutional review case because there is an existing principle, namely the principle of *erga omnes* which means the decision in the Constitutional Court binds all people and the principle of *ex aequo et bono* which means the Justices of the Constitutional Court should be decided in the fairest decision, for example in the Constitutional Court decision No. 001-021-022/PUU-I/2003 and case No. 006/PUU-IV/2006. If the prohibition of *ultra petita* is applied in the Constitutional Court decision, it will give impairment not only for the applicant interest but also to all society because the Constitutional Court decision has nature of *erga omnes* or general binding.

4.2. Suggestion

Based on the problems that found in the position of the Constitutional Court that valid to issue the *ultra petita* decision in accordance with the previous discussion, the author suggests to the Constitutional Court to provide the restriction of authority in form of Constitutional Court Act. So, the Constitutional Court does not touch the field of House of Representative as a positive legislator and the Constitutional Court remains as a negative legislator.

REFERENCES

Books

Abdul Latif, 2007, *Mahkamah Konstitusi Dalam Upaya Mewujudkan Negara Hukum Demokrasi*, Yogyakarta, CV. Kreasi Total Media.

Bahder Johan Nasution, 2008, *Metode Penelitian Ilmu Hukum*, ISBN 979-583-335-3, Bandung, CV Mandar Maju,.

Jimly Asshiddiqie, 2005, *Konstitusi & Konstitusionalisme Indonesia*, Jakarta, Konstitusi Press.

Johnny Ibrahim, 2006, *Teori dan Metodologi Penelitian Hukum Normatif*, Edisi ke II, Malang, Bayu Media.

Moh. Mahfud MD, 2009, *Konstitusi dan Hukum dalam Kontroversi Isu*, Jakarta, Rajawali Press.

Moh. Mahfud MD, 2011, *Perdebatan Hukum Tata Negara Pasca Amandemen Konstitusi*, Jakarta, Rajawali Pers.

Mukti Fajar & Yulianto Achmad, 2009, *Dualisme Penelitian Hukum*, Yogyakarta, Pensil Komunikasi.

Ni'matul Huda, 2011, *Dinamika Ketatanegaraan Indonesia dalam Putusan Mahkamah Konstitusi*, Yogyakarta, FH UII Press.

Philip Hamburger, 2008, *Law and Judicial Duty*, Cambridge: Harvard University Press.

Tim Penyusun Hukum Acara Mahkamah Konstitusi, 2010, *Hukum Acara Mahkamah Konstitusi*, Jakarta, Sekretariat Jendral dan Kepaniteraan Mahkamah Konstitusi.

Journals

Abdurrachman Satrio, "Kewenangan Mahkamah Konstitusi Memutus Perselisihan Hasil Pemilu Sebagai Bentuk *Judicialization of Politics*", *Jurnal Konstitusi*, Volume 12, No. 1, (March, 2015).

Agus Budi Santoso, "Tinjauan Yuridis Terhadap Larangan Mekanisme *Ultra Petita* Pada Putusan Perkara oleh Mahkamah Konstitusi", *Jurnal Pasca Sarjana Hukum UNS*, 5th edition, (January-June, 2015).

Ayu Desiana, 2014, "Analisis Kewenangan Mahkamah Konstitusi dalam Mengeluarkan Putusan yang Bersifat *Ultra Petita* berdasarkan Undang-Undang Nomor 24 tahun 2003", *Majalah Hukum Forum Akademika*, Volume 25, Nomor 1.

Djoko Imbawani Atmadjaja, "*Ultra Petita* dalam Putusan Mahkamah Konstitusi", *Jurnal Konstitusi*, Volume 1, No. 1, (November, 2012).

Haposan Siallagan, "Masalah Putusan Ultra Petita dalam Pengujian Undang-Undang", *Mimbar Hukum,* Volume 22, No 1, (February, 2010).

Hery Abduh Sasmito, "Putusan Ultra Petita Mahkamah Konstitusi dalam Pengujian Undang-Undang (Suatu Perspektif Hukum Progresif)", *Jurnal Law Reform*, Volume 6, No. 2, (October, 2011).

Hery Abduh Sasmito, "*Ultra Petita* Decision of Constitutional Court on Judicial Review The Perspective of Progressive Law", *Journal of Indonesian Legal Studies*, Volume 1, Issues 01, ISSN: 2548-1584, (November, 2016).

Ibnu Sina Chandranegara, "Ultra Petita dalam Pengujian Undang-Undang dan Jalan Mencapai Keadilan Konstitusi", *Jurnal Konstitusi*, Volume 9, No. 1, (March, 2012).

Irwan Yulianto, "Tinjauan Yuridis Prinsip *Ultra Petita* oleh Mahkamah Konstitusi Sebagai Upaya Mewujudkan Keadilan Substantif di Indonesia", *Jurnal Ilmiah Fenomena*, Volume XV, No. 2, ISSN: 1614-1630, (November, 2017).

Zendy Wulan Ayu and Haidar Adam, "Putusan Ultra Petita Mahkmah Konstitusi dalam Perkara Pengujian Konstitusionalitas Undang-Undang", *Yuridika*, Volume 29, No. 2, (May-August, 2014).

Legislations

Universal Declaration of Human Rights 1948.

Indonesian 1945 Constitution.

Law No. 20 of 2002 on Electrification.

Law No. 24 of 2003 on Constitutional Court.

Law No. 27 of 2004 on Truth and Reconciliation Commission.

Law No. 8 of 2011 on Amendment of Law No. 24 of 2003 on Constitutional Court.

Internet

Fauziah Mursid, "MK Pernah Keluarkan Putusan Ultra Petita Menolak untuk Diawasi", taken from http://nasional.republika.co.id/berita/nasional/hukum/17/01/29/oki7ol365-mk-pernah-keluarkan-putusan-ultra-petita-menolak-untuk-diawasi, accessed on 16th Oct, 2017 at 4.39 pm.

Mahkamah Konstitusi, "Ketua MK: MK Hadir untuk Mengawal Demokrasi", taken from http://www.mahkamahkonstitusi.go.id/index.php?page=web.Berita&id=13325#.WpZUfaiWa00, accessed on 28th February, 2018 at 2.43 pm.

Mahkamah Konstitusi, "Sejarah Pembentukan Mahkamah Konstitusi", taken from http://www.mahkamahkonstitusi.go.id/index.php?page=web.ProfilMK&id=1&menu=2, accessed on 16th Oct, 2017 at 4.34 pm.

Miftakhul Huda, "*Ultra Petita* dalam Pengujian Undang-Undang", taken from http://www.miftakhulhuda.com/2009/06/ultra-petita-dalam-pengujian-undang.html, accessed on 7th January, 2018 at 6.05 pm.

Pan Mohammad Paiz, "Relevansi Doktrin Negative Legislator" taken from https://panmohamadfaiz.com/2016/03/17/relevansi-doktrin-negative-legislator/, accessed on 5th March, 2018 at 2.39 pm.

Rafli Fadilah Achmad, "Suatu Perdebatan Klasik: *Ultra Petita* dalam Jagat Keadilan dan Kepastian Hukum" taken from http://mahkamahmahasiswa.ui.ac.id/suatu-perdebatan-klasik-ultra-petita-dalam-jagat-keadilan-dan-kepastian-hukum/, accessed on 15th March, 2018 at 3.08 pm.

Suwarno Abadi, "Ultra Petita dalam Pengujian Undang-Undang oleh Mahkamah Konstitusi", *Jurnal Konstitusi,* Volume 12, No. 3, (September, 2015).

Other Resources

Indonesian Constitutional Court Decision No. 001-021-022/PUU-I/2003.

Indonesian Constitutional Court Decision No. 006/PUU-IV/2006.