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MASLAHAH MURSALAH IN ULTRA PETITA DECISION OF THE CONSTITUTIONAL COURT

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Abstract
Ultra Petita refers to a court decision that goes beyond what was requested. Judges handling certain cases are limited to the issues raised by the parties involved. If the judge grants more than what was requested, the decision falls under Ultra Petita. In this context, the judge is only authorized to consider the claims and lawsuits based on those claims (iudex non ultra petita or ultra petita non cognoscitur). The judge only determines whether the issues at issue are true or false. Judges are prohibited from increasing or decreasing the demands and may not grant more than what is requested. This research aims to analyze two things. First, it discusses how the Constitutional Court's ultra petita decision is constructed. Second, it discusses how the principle of maslahah-mursalah is applied in the ultra petita decision of the Constitutional Court. By using descriptive analysis, the results show that the decisions of the Constitutional Court are an effort to protect the constitutional rights of citizens. Second, the ultra petita decision is in line with the principles of maslahah-mursalah. Ultra petita decisions allow constitutional judges to provide fair and valuable decisions and provide legal certainty.

Abstrak
Ultra Petita mengacu pada keputusan pengadilan yang melebihi apa yang diminta. Hakim yang menangani kasus-kasus tertentu terbatas pada masalah yang diajukan oleh pihak-pihak yang terlibat. Jika hakim mengabulkan lebih dari yang diminta, keputusan tersebut termasuk dalam Ultra Petita. Dalam konteks ini, hakim hanya berwenang untuk mempertimbangkan tuntutan dan tuntutan hukum yang didasarkan pada tuntutan tersebut (iudex non ultra petita atau ultra petita non cognoscitur). Hakim hanya menentukan apakah isu yang dipermasalahkan benar atau salah. Hakim dilarang menambah atau mengurangi tuntutan dan tidak boleh mengabulkan lebih dari yang diminta. Penelitian ini Bertujuan menganalisis dua hal. Pertama, membahas bagaimana putusan ultra petita Mahkamah Konstitusi dikonstruksikan. Kedua, membahas bagaimana prinsip maslahah-mursalah diterapkan dalam putusan ultra petita Mahkamah Konstitusi. Dengan menggunakan analisis deskriptif, Hasil penelitian menunjukkan bahwa putusan-putusan Mahkamah Konstitusi merupakan upaya untuk melindungi hak-hak konstitusional warga negara. Kedua, putusan ultra petita sejalan dengan prinsip-prinsip maslahah-mursalah. Putusan ultra petita memungkinkan hakim konstitusi untuk memberikan putusan yang adil dan bernilai serta memberikan kepastian hukum.
Keywords: Ultra Petita; Maslahah Mursalah; claims

INTRODUCTION

Ultra petita is a judge's decision in a case that goes beyond what was requested. This concept is outlined in Article 178, Paragraphs 2 and 3 of the *Herziene* Indonesisch Reglement (HIR), which is

part of civil procedural law. Additionally, it is found in Article 189, Paragraphs 2 and 3 of the *Rechtreglement* voor de *Buitengewesten* (RBg).

In civil law, ultra *petita* is considered a confirmation of the judge principle which is passive. Judges are limited to the scope of the main dispute submitted by the parties in the case. In this context, judges are only authorized to consider the demands and legal claims based on them (*iudex* non ultra *petita* or ultra *petita* non *cognoscitur*). Judges merely assess whether the demanded issue is true. They are unable to add or reduce demands as well as decide on more than what is demanded. This is the logic behind ultra *petita* in civil law.

The question is, how is the logic above if applied by the Constitutional Court because ultra *petita* is an understanding that will always be faced by the Constitutional Court[1]. The history mentioned that the Constitutional Court has decided several ultra *petita* cases, both decisions a decision that exceed from what was requested, create new norms, and relate to the institution interests. Such as Decision Number 001-021-022/PUU-I/2003[2], Decision Number 066/PUU-II/2004[3], Decision Number 072-073/PUU-II/2004[4], Decision Number 006/PUU-IV/2006[5], Decision Number 5/PUU-V/2007[6], Decision Number 102/PUU-VII/2009[7], Decision Number 133/PUU-VII/2009[8], Decision Number 138/PUU-VII/2009[9], Decision Number 01/PUU-VIII/2010[10] and Decision Number 65/PUU-VIII/2010[11].

These decisions have triggered extensive discourse and debate among legal experts. Thus, the prohibition of ultra *petita* was created and is regulated in Article 45A of Law Number 8 of 2011 of the Republic of Indonesia concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court. However, the article was ultimately revoked by the Constitutional Court[12].

The debate on the Constitutional Court's ultra *petita* decision is based on the principle that there is a relationship between the law being examined and the existence of the Constitutional

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[1] "Kewenangan Mahkamah Konstitusi diatur dalam pasal 24C ayat 1 Undang-undang dasar 1945 (hasil amandemen) jo Undang-Undang Republik Indonesia Nomor 24 Tahun 2003 tentang Mahkamah Konstitusi, Lembaran Negara Republik Indonesia Tahun 2003 Nomor 98, Tambahan Lembaran Negara Republik Indonesia Nomor 4316 jo Undang-Undang Republik Indonesia Nomor 8 Tahun 2011 tentang Perubahan Atas Undang-Undang Nomor 24 Tahun 2003 tentang Mahkamah Konstitusi, Lembaran Negara Republik Indonesia Tahun 2011 Nomor 70, Tambahan Lembaran Negara Republik Indonesia Nomor 5226." (t.t.).

[2] Putusan ini terkait tentang *judicial review* Undang-Undang Nomor 20 Tahun 2002 tentang Ketenagalistrikan. Dalam putusan tersebut ditegaskan bahwa kegiatan usaha ketenagalistrikan yang dilakukan secara kompetitif dengan memperlakukan pelaku usaha secara sama dan oleh badan usaha yang terpisah atau unbundled adalah bertantangan dengan UUD 1945

[3] Putusan ini terkait dengan *judicial review* pasal 50 Undang-Undang Nomor 24 Tahun 2003 tentang Mahkamah Konstitusi dinyatakan bertentangan dengan UUD 1945

[4] Putusan ini terkait dengan *judicial review* Undang-Undang Nomor 32 Tahun 2004 tentang Pemerintahan Daerah

[5] Putusan ini terkait dengan *judicial review* Undang-Undang Nomor 27 Tahun 2004 tentang Komisi Kebenaran dan Rekonsiliasi

[6] Putusan ini terkait dengan *judicial review* Undang-Undang Nomor 32 Tahun 2004 tentang Pemerintahan Daerah khususnya mengenai calon perserangan

[7] Putusan ini terkait tentang pelaksanaan hak pilih warga negara dalam pemilihan presiden Tahun 2009

[8] Putusan ini terkait tentang pengujian undang-undang nomor 30 tahun 2002 tentang Komisi Pemberantasan Tindak Pidana Korupsi

[9] Putusan ini terkait tentang uji materi Peraturan Pemerintah Pengganti Undang-Undang (PERPPU) Nomor 4 Tahun 2009 tentang Perubahan atas Undang-Undang Nomor 30 Tahun 2002 tentang Komisi Pemberantasan Korupsi

[10] Putusan ini terkait dengan uji materi Undang-Undang Nomor 3 Tahun 1997 tentang Pengadilan Anak dan Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi dan Transaksi Elektronik

[11] Putusan ini terkait dengan orang yang dapat memberikan keterangan dalam rangka penyidikan, penuntutan, dan peradilan suatu tindak pidana yang tidak selalu ia dengar sendiri, ia lihat sendiri dan ia alami sendiri.

[12] "Putusan Mahkamah Konstitusi Nomor 49/PUU-IX/2011." (t.t.).

Court. Conversely, the Constitutional Court is faced with the universal principal *nemo judex in causa sua*: judges cannot judge cases they are personally involved in.

This debate will continue and will always be faced by the Constitutional Court in the future. In this context, it is interesting to conduct further study towards Constitutional Court as the guardian and sole interpreter of the constitution, as well as the guardian of the process of democratization. Additionally, the Constitutional Court is an institution that protects citizens' constitutional and human rights[13].

However, implementing this noble task is not always easy. In fact, there must be debate to limit decisions characterized by *ultra petita*. This coercion and limitation will cause problems when they conflict with the constitutional rights of citizens, so it is very naive when the Constitutional Court, which should freely protect the constitutional rights of citizens, is unable to implement it. Based on the above explanation, the author is interested in studying the principle of *maslahah mursalah* in ultra *petita* decisions.

Research on ultra *petita* decisions is not new to the academic world. For example, Ikhsan Fatah Yasin writing Substantive Justice in Ultra Petita Decisions of the Constitutional Court[14]. Second is Amanda Dea Lestari's study entitled Ultra Petita Decisions of the Constitutional Court: Understanding the Holistic Phenomenon of Progressive Legal Discovery (Rechtsvinding)[15]. third is Suwarno Abadi's study entitled Ultra Petita in the Testing of Laws by the Constitutional Court[16]. Fourth is the study of Ach. Rubaie, Nyoman Nurjaya, Moh. Ridwan, Istislam entitled ultra *petita* decision of constitutional court[17]. However, these articles differ in focus. This study uses an analysis from the perspective of *maslahah mursalah*.

This applies library research approach through descriptive analysis, this study will analyze several issues arising from the initial questions described by the author above. First, it will examine how the ultra *petita* decision of the Constitutional Court was constructed. Second: How does the principle of *maslahah mursalah* apply to the ultra *petita* decision of the Constitutional Court.

ULTRA PETITA BY THE CONSTITUTIONAL COURT

Ultra petita refers to an uncharged decision or beyond what was requested[18]. According to I.P.M. Ranuhandoko, it means more than what is requested. Andi Hamzah defines it as more than what is demanded or beyond what is demanded. It is often used by judges to decide on something that is not demanded or charged[19]. This concept is found in Article 178, paragraphs (2) and (3), of the HIR, as well as in Article 189, paragraphs (2) and (3), of the RBg.

The Judge usually prohibit it in civil law, if it is done, the parties can file an appeal, cassation and judicial review. Therefore, the principle of a passive judge applies in civil law. This means that the main area of the dispute demanded has been determined by the parties in the case. The judge only measures what is being demanded and the legal request based on its claim *(iudex non ultra petita or ultra petita non cognoscitur*). The judge only decides whether something being requested can be

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13 Jimly Asshiddiqie, *Perkembangan & Konsilidasi Lembaga Negara Pasca Reformasi* (Jakarta: Sinar Grafika, 2012). 132

14 Ikhsan Fatah Yasin, "Keadilan Substantif Dalam Ultra Petita Putusan Mahkamah Konstitusi, Justicia Islamica," *Jurnal Kajian Hukum dan Sosial* 15, no. 1 (2018).

15 Amanda Dea Lestari, "Putusan Ultra Petita Mahkamah Konstitusi: Memahami Fenomena Holistik Penemuan Hukum (Rechtsvinding) yang Progresif, Limbago," *Journal of Constitutional Law* 1, no. 1 (2021).

16 Suwarno Abadi, "Ultra Petita Dalam Pengujian Undang-Undang oleh Mahkamah Konstitusi," *Jurnal Konstitusi* 12, no. 03 (September 2015).

17 Ach Rubaie dkk., "Putusan Ultra Petita Mahkamah Konstitusi," *Jurnal Konstitusi* 11, no. 1 (Maret 2014).

18 I.P.M Ranuhandoko, *Terminologi Hukum* (Jakarta: Sinar Grafika, 2000). 522.

19 Andi Hamzah, *Kamus Hukum* (Jakarta: Ghalia Indonesia, 1986). 603

proven true or not. The judge is prohibited from adding other things, and is prohibited from giving more than what is requested[20]. If the claim in the lawsuit is only one, it is called a *petitum*, if the claim is more than one or multiple, it is called a *petita,* so that an ultra *petitum* containing several *petitums* is called an ultra *petita*, and a decision that exceeds the claim is called an ultra *petita* decision[21].

In this context, the Judge violating ultra *petitum* principles is assumed as violating the principles of rules of law, because[22] the first the act isn't in line with the law, whereas based on the principles of the rule of law[23], what are done by judges should be accordance with the law; the second, the judge's action that grants more than what is requested, clearly exceeds the authority stated by Article 178 paragraph (3) HIR. Whereas in accordance with the principle of the rule of law, no one may take action beyond the powers of his authority[24].

The prohibition of ultra *petita* for the Constitutional Court is included in Article 45A of Law of the Republic of Indonesia Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court (UU MK) stating that the decision of the Constitutional Court may not contain a decision that is not requested by the applicant or exceeds the applicant's request, except for certain matters related to the subject matter of the request."

From the construction of the formulation of Article 45A, it can be seen that: first, the Constitutional Court is prohibited from making an ultra petita decision; second, the Constitutional Court may make an ultra *petita* decision if it is related to the subject matter of the request. The prohibition of ultra *petita* decisions is strengthened in the provisions of Article 57: "(2a) The Constitutional Court Decision does not contain:

a. decision other than those referred to subsection (1) and subsection (2);

b. orders to the legislators; and

c. formulation of norms as a substitute for norms from laws that are declared to be in contrasted with the 1945 Constitution of the Republic of Indonesia."

The formulation of the article explains that the Constitutional Court only takes into consideration the petition consisting of the *posita* or description of the subject matter of the petition and the *petitum* based on existing evidence. However, if examined further, Article 45A and Article 57 subsection (2a) contain internal contradiction (*contradictio in terminis*). This is because the

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20 Miftakhul Huda, "Ultra Petita," *Majalah Konstitusi BMK*, Maret 2009. 63. Lihat juga, Emy Hajar Abra dan Rofi Wahanisa, "The constitutional court ultra petita as a protection form of economic rights in pacasila justice, Journal if Indonesian Legal studies," *Journal if Indonesian Legal studies* 5, No. 1 (Mei 2023). 207

21 Ach. Rubaie, *Putusan Ultra Petita Mahkamah Konstitusi Perspektif Filosofis, Teoritis, Dan Yuridis* (Yogyakarta dan Kantor Advokat Hufron & Rubaie: Laksbang Pressindo, t.t.). 3

22 M. Yahya Harahap, *Hukum Acara Perdata tentang Gugatan, Persidangan, Penyitaan, Pembuktian dan Putusan Pengadilan*, Cet Ke-16 (Jakarta: Sinar Grafika, 2016). 802

23 The principles of rechtsstaat according to freiderich julius stahl are: first, recognizing and protecting human rights; second, to protect these human rights, the administration of the state must be based on the theory of trias politika; third, in carrying out its duties, the government is based on the law (wetmatige bestuur); fourth, if in carrying out its duties based on the law the government still violates human rights (government interference in a person's private life), then there is an administrative court that will resolve it. While the principles of the rule of law according to A.V. Dicey are first, the supremacy of the rule of law (supremacy of the law), the absence of arbitrary power, in the sense that a person can only be punished if he violates the law; second, equal position in the face of the law (equality before the law). this postulate applies both to ordinary people and to officials; third, the guarantee of human rights by law (in other countries by the constitution) as well as court decisions.. lihat, Miriam Budiardjo, *Dasar-Dasar Ilmu Politik* (Jakarta: Gramedia, 1982). 57-58

24 "Putusan MA No. 1001K/Sip/1972, putusan MA No. 882K/Sip/1974, putusan MA No. 77K/Sip/1973 dan putusan MA No. 372K/Sip/1970" (t.t.).

Constitutional Court is prohibited from making ultra *petita* decisions, but on the other hand it allows if there is a relevance to the subject matter of the petition.

In its development, the 2 (two) articles received attention from various legal experts who then cancelled the articles. The cancellation of the ultra *petita* prohibition in the Constitutional Court law is based on considerations, namely: First, the Constitutional Court carries the principle of public dispute resolution as stipulated in Article 24 subsection (1) of the 1945 Constitution, Article 28D subsection (1) of the 1945 Constitution and Article 45 subsection (1) of Law Number 24 of 2003 concerning the Constitutional Court. Second, the prohibition of ultra *petita* contradicts with the principle of active constitutional judges as regulated in Article 5 subsection (1) of Law No. 48/2009 on Judicial Power. Third, the Constitutional Court was founded to protect the constitutional rights of its citizens as stipulated in Article 24 subsection (1), Article 28D subsection (1) of the 1945 Constitution, Article 28H subsection 2 of the 1945 Constitution. Fourth, the decision of the Constitutional Court is final and binding. Article 45 subsection (1) of Law Number 24 of 2003 concerning the Constitutional Court.

Thus, based on the explanation of the Constitutional Court Law, it is explained that the duties and functions of the Constitutional Court are to resolve certain constitutional cases or in order to maintain the constitution so that it is implemented responsibly in accordance with the wishes of the citizens and the ideals of democracy. In addition, the existence of the Constitutional Court is proposed to improve the constitutional experience caused by multiple interpretations of the constitution[25].

THE PRINCIPLE OF MASLAHAH MURSALAH IN THE ULTRA PETITA DECISION OF THE CONSTITUTIONAL COURT

Maslahah mursalah is one of *mashodirul ahkam* used to solve problems arising after the death of the Prophet Muhammad SAW. Etymologically, *maslahah mursalah* comes from the word *maslahah* and the word *mursalah*. The word *maslahah* is *masdar* of the word *salaha* which means value, benefit, need and welfare[26]. While the word *mursalah* etymologically means detached or *mutlaqatan* (free). The word detached and free when associated with the word *maslahah* means detached and free from explanations that indicate may or may not be implemented[27]. *Maslahah mursalah* is considering the public interest or common good[28].

Muhammad Sa'id Ramadan al-Buti interpreted *maslahah mursalah* as any benefit included in the objectives of *syar'i* (shaper of Islamic law) with no evidence that allows or removes[29]. According to Imam Ghazali, *maslahah* is a consideration that guarantees benefit and prevents evil and is in line with the objectives of sharia. The purpose of sharia is to protect 5 (five) basic things, namely protecting religion, soul, mind, descendants and property. According to al-Ghazali, every action that guarantees these values is included in the scope of *maslahat* and everything that violates it is

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[25] A. Mukthie Fadjar, *Hukum Konstitusi Dan Mahkamah Konstitusi* (Jakarta: Sekretariat Jenderal dan Kepaniteraan MK RI, 2006). 119

[26] Adib Bisri dan Munawir, *Kamus al-Bisri* (Surabaya: Pustaka Progesif, 1999), 141.

[27] Totok Jumantoro dan Samsul Munir Amin, *Kamus Usul Fiqh* (Amzah, 2005), 203.

[28] Noor Munirah Isa, "Human Germline Gene Editing Form Malahah Perspective: The Case Of The World's First Gene Edited Babies," *Journal of Bioethical Inquiry* 18 (24 Maret 2021): 351.

[29] Ahmad Munif Suratmaputra, *Filsafat Hukum Islam Al-Ghazali Maslahah Mursalah dan Relevansinya dengan Pembaharuan Hukum Islam* (Jakarta: Pustaka Firdaus, 2018). 69

defined as *mafsadah*[30]. According to al-Dahlawi, the aim is to preserve the *maslahat* of human life from destruction[31].

In principle, *maslahah mursalah* is in line with the purpose of *shara' (maqshid al-syariah*) in determining the law there are 5 things, namely protecting religion (*hifdz ad-din),* protecting the soul (*hifdz al-nafs*), protecting the intellect (*hifdz al-'aql*), protecting descendants (*hifdz al-nasl*), and protecting property *(hifdz al-mal*)[32]. *Hifdz ad-din* is *haq attadayyun*, namely the right to worship and carry out religious teachings with the aim of maintaining the holiness of religion. *Hifdz al-nafs* is *haq al-hayat*, which is the right to live and create a better quality of life in order to maintain the sanctity and purity of the soul. *Hifdz al-'aql* is *haq al-ta'lim*, namely the right to obtain education as a respect for the intellect in the fulfilment of intellectual or scientific rights. *Hifdz al-nasl* is the right to protect and maintain offspring or family as a form of continuation or existence of human life. *Hifdz al mal* is *haq al-mal*, which is the right to keep property from other people's interference as a form of protection of rights to everything that is owned.

The principle of *Maslahah mursalah* in order to be applied, 3 (three) conditions are required: (1) there must really be a benefit for humans or prevent evil. (2) it is oriented towards the public interest, either for the whole community or the majority, not for personal or group interests. (3) the provisions based on the public good are not expressly regulated by the Qur'an, sunnah or ijma'[33]. Under any circumstances, *maqasid shari'ah* or the principles of *sharia* must be obeyed: protecting religion, soul, mind, offspring and property[34].

Judges in making decisions often include the principles of benefit (*maslahah mursalah* principle). These principles become the basis for decision making so that it brings benefits to justice seekers. This is because judges are in charge of achieving substantive justice while ensuring legal certainty. This dual responsibility requires more wisdom than just complying with the text of the law[35]. Legal philosophy, according to Spaak[36], outlines the basic values of justice, utility and certainty, which judges must balance. For example, when an ultra *petita* verdict arises, the judge must assess whether the verdict is justified by broader considerations of justice, even at the expense of procedural norms.

Court decisions that grant more than what is claimed are often criticized for undermining legal certainty. However, when such decisions are based on the principles of justice and social benefit, they can improve legal deficiencies and uphold justice. Incorporating the principles of *maslahah mursalah* (Islamic values) into the regulatory framework can enhance judicial discretion and maintain equality[37].

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[30] Suheyib Eldersevi dan Haron, "An Analysis of Maslahah Based Resolution Issued By Bank Negara Malaysia," *ISRA Internasional Journal of Islamic Finance* 12, no. 1 (2020): 91.

[31] Mohd Izhar Ariff dkk., "Ruling Determination Of Genetically Modified Foods (Gmf) In Islam," *International Journal Of Islamic Thought* 25 (2024): 92.

[32] Asnawi, "Konseptualisasi Teori Maslahah," *Jurnal Filsafat dan Budaya Hukum* 1, no. 2 (2014): 324.

[33] Putri Haryati Ibrahim, A. Ahmad Sarkawi, dan Mohammad Reza Mohammed Alfa, "Islamic Perspectives Of Integrating Muslim Cemesteries Planning With Recreational Areas In Urban Setting.," *International Journal Of Islamic Thought* 21 (2022): 123.

[34] Juan Luis De Leon dan Iziar Basterretxea, "Dealing with Death in a Secular Society: The Case of Muslim Burials in Spain," *Relegions, Basel* 14, no. 7 (2023): 9.

[35] Meilinus Adriganti Pelindung Hati Gulo dkk., "Regulatory Reconstruction of Ultra Petita in Industrial Disputes: Aligning with Justice Principles," *Learning Gate* 9, no. 1 (2025): 208.

[36] T Spaak, "Meta-Etics and Legal Theory: The Case of Gustav Radburch," *Law and Philoshopy* 28, no. 3 (1999): 261–90.

[37] J Makdisi, "Legal Logic and equity in Islamic Law," *The American Journal of Comparative Law* 33, no. 1 (t.t.): 63–92.

In this context, the Constitutional Court Judges in making decisions are based on the principles of: first, the principles in decision making which are guidelines and principles that are obeyed by the parties in the judicial process. According to Maruar Siahaan, there are 6 judicial principles of the Constitutional Court, namely[38] the principle of *ius curia novit*, trials open to the public, independent and impartial, trials carried out quickly, simply, and at low cost, the right to be heard equally (*audi et alteram partem*), active and passive judges in the trial. In addition to the above principles, there is the principle of presumption of validity (*praesumptio iustae causa*)[39].

In making a decision, The Constitutional Court has legal limitations and principles of the rule of law such as the principle of legality, legal certainty, equality before the law, the limitation of power based on the constitution, and a free and impartial judiciary. In principle, every state organizer's actions, including judicial institutions, in this case, the Constitutional Court decides more than what is requested by the applicant, must be based on the rules and procedures established by law[40]. In addition, it is also limited by an independent and impartial tribunal principles[41].

The purpose of law is to realize justice, create certainty and guarantee benefits for the community. Therefore, the Constitutional Court must be able to realize the purpose of the law. In addition, the Constitutional Court is the last custodian of the constitutional rights of citizens as mandated by the 1945 Constitution.

Second, the basis of theoretical considerations. The basis of the Constitutional Court's theoretical considerations in giving ultra *petita* decisions is the progressiveness of judges in realizing justice, expediency and legal certainty. Constitutional judges are required not only to implement the law, but more than that, they are also expected to be more progressive in interpreting a law. In the progressive law perspective, law is an institution that aims to lead humans to a just, prosperous and happy life. Progressive law is part of the process of searching for the truth which never stops[42].

Third, the juridical consideration basis. it is based on the provisions of Article 24 subsection (1) of the 1945 Constitution in *juncto* Article 45 subsection (1) of Law Number 24 of 2003 concerning the Constitutional Court, Article 24 subsection (1), Article 28D subsection (1) of the 1945 Constitution and Article 45 subsection (1) of Law Number 24 of 2003 concerning the Constitutional Court.

Fourth, the basis of sociological considerations. The basis for the sociological considerations of the Constitutional Court in giving an ultra *petita* decision is article 5 subsection (1) of Law Number 48 of 2009 concerning Judicial Power which states: "judges and constitutional judges are obliged to explore, follow and understand the legal values and justice that live in society.". Based on these provisions, it can be seen that constitutional judges must consider the values that grow and live in society.

The values that grow in society are directed towards the welfare of citizens. In this context, the Constitutional Court judges in making decisions refer to the law, namely justice. In the perspective of *maslahah mursalah*, the purpose of sharia' *(maqshid al-syariah*) in the formation of law principally consists of protecting religion *(hifdz ad-din*), protecting the soul (*hifdz al-nafs*), protecting

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[38] Maruar Siahaan, *Hukum Acara Mahkamah Konstitusi Republik Indonesia* (Jakarta: Sekretariat Jenderal dan Kepaniteraan MK RI, 2006). 61-81

[39] Tim Penyusun Hukum Acara Mahkamah Konstitusi, *Hukum Acara Mahkamah Konstitusi*, Cet Pertama (Jakarta: Sekretariat Jenderal dan Kepaniteraan MKRI, 2010). 15

[40] Ach. Rubaie dkk., "Putusan Ultra Petita Mahkamah Konstitusi," *Jurnal Konstitusi* 11, no. 1 (Maret 2014). 101

[41] *Ibid*,

[42] Martitah, *Mahkamah Konstitusi Dari Negative Legislatur Ke Positive Legislature* (Jakarta: Konpress, 2013). 37-38

the intellect (*hifdz al-'aql*), protecting offspring (*hifdz al-nasl*), and protecting property (*hifdz al-mal*)[43]. *Hifdz ad-din* is *haq attadayyun*, namely the right to worship and carry out religious teachings with the aim of maintaining the holiness of religion. *Hifdz al-nafs* is *haq alhayat*, which is the right to live and create a better quality of life in order to maintain the sanctity and purity of the soul. *Hifdz al-'aql* is *haq al-ta'lim*, namely the right to obtain education as a respect for the intellect in the fulfilment of intellectual or scientific rights. *Hifdz al-nasl* is the right to protect and maintain offspring or family as a form of continuation or existence of human life. *Hifdz al mal* is *haq al-mal*, which is the right to keep property from other people's interference as a form of protection of rights to everything that is owned.

The Constitutional Court present to protect the constitutional rights of citizens that have been regulated in the constitution such as the right to life (article 28 A) which in the context of *maslahah mursalah* is included in protecting the soul *(hifdz al-nafs*), the right to worship (article 29) which in the context of *maslahah mursalah* is included in protecting religion (*hifdz ad-din*), the right to obtain access to education (article 31) or the right to associate and gather (article 27) which is a form of protecting the mind (*hidz al-'aql*) and so on.

In making decisions, the Constitutional Court related to constitutional rights may also be able to make ultra p*etit*a decisions. However, this must be understood together because the Constitutional Court as the last frontier which maintains the constitutional rights of citizens that ultimately leads to the welfare of citizens.

Therefore, the Constitutional Court Judges must be able to explore, follow and understand the legal values and justice that live in society[44]. As a result, the Constitutional Court Judges may make an ultra p*etit*a-characterized-decision. This is understandable because the Constitutional Court is the protector of the constitution, the final interpreter of the constitution, the protector of human rights, the protector of democracy, and the protector of citizen's constitutional rights. The role of the Court in the principle of *maslahah mursalah* is in line with protecting religion (*hifdz ad-*din), protecting the soul (*hifdz al-nafs*), protecting the intellect (*hifdz al-'aql*), protecting offspring (*hifdz al-nasl*), and protecting property (*hifdz al-mal*).

CONCLUSION

Based on the arguments that have been put forward, it can be concluded that the prohibition of ultra *petita* is regulated in Article 45A of Law of the Republic of Indonesia Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court, although in the end, the article was cancelled by the Constitutional Court decision Number 49/PUU-IX/2011.

The principle of *maslahah mursalah* has been included in the ultra *petita* decision of the Constitutional Court, especially with regard to the constitutional rights of citizens. This is in line with the role and duties of the Constitutional Court as the guardian of the constitution, the final interpreter of the constitution, the protector of human rights, the protector of democracy, and the protector of citizen's constitutional rights. The principles of *maslahah mursalah* include protecting religion (*hifdz ad-din*), protecting the soul (*hifdz al-nafs*), protecting the intellect (*hifdz al-'aql*), protecting offspring (*hifdz al-nasl*), and protecting property (*hifdz al-mal*) in the study of *maslahah mursalah*.

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[43] Asnawi, "Konseptualisasi Teori Maslahah," *Jurnal Filsafat dan Budaya Hukum* 1, no. 2 (2014): 324.
[44] "Pasal 5 ayat (1) Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman" (t.t.).

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