International Journal of Multicultural and Multireligious Understanding

http://ijmmu.com
editor@ijmmu.com
ISSN 2364-5369
Volume 7, Issue 3
April, 2020
Pages: 132-142

The Implementation of Ultra Petita Decisionsin Civil Dispute

Heru Sugiyono; Heru Suyanto; Suherman

Faculty of Law, Universitas Pembangunan Nasional Veteran Jakarta, Indonesia

http://dx.doi.org/10.18415/ijmmu.v7i3.1560

Abstract

The implementation of ultra petita in the decision of civil disputes becomes a very interesting study to be discussed, many parties who agree to the application of ultra petita on the pretext as a path to substantive justice, but those who think the application of ultra petita is considered contrary to the principle of legal certainty. The research method used was normative juridical research that is research conducted by examining library materials which include primary legal materials sourced from various laws and regulations and secondary legal materials in the form of explanations used to analyze primary legal materials in the form of expert views, academics, searching documents, books and scientific papers. Then, the legal material was identified and analyzed to achieve the objectives of this research. The results showed that the application of the ultra petita ruling in civil disputes was not in accordance with the principle of rule of law which could result in the ruling being legally flawed or invalid. To minimize the application of decisions that contain ultra petita, in civil disputes can adopt the procedural law in force in the State Administrative Court related to the preparatory inspection stage, it was the existence of the judge's authority to advise the Plaintiff to improve if the lawsuit is unclear/complete by giving a grace period that is proper before examining the subject matter of the dispute begins.

Keywords: *Implementation; Decision; Ultra Petita*

Introduction

In civil relations, it is regulated regarding the rights and obligations of one individual to another in social life, and how to resolve them in the event of a dispute that results in a lawsuit in court. Civil relations between legal subjects that were previously well established could turn into disputes if not based on good faith by each party. Disputes between legal subjects will certainly result in losses for each party, both time, energy, thoughts and finances.

To resolve legal issues that occur among legal subjects, especially in civil disputes, a dispute resolution mechanism is needed as an effort to restore civil relations through an institution that has the authority to enforce the law and is binding for each subject of law in dispute. Dispute resolution mechanism is needed to prevent the occurrence of vigilantism (eigenrichting) as one form of arbitrariness which of course is contrary to the principle of the rule of law. As an example, for example, if there is a dispute over the sale and purchase of land objects between the land owner as the seller and the buyer who

is bound in the purchase agreement, then the buyer is unable to repay the promised land object due to economic difficulties. So that without a dispute resolution mechanism, it is certain that the buyer will cancel the sale and purchase agreement that has been agreed unilaterally and demand a refund for the advance that has been paid without an appropriate mechanism.

The law has provided a dispute resolution mechanism in the form of filing a lawsuit through the justice system. The mechanism of dispute resolution is carried out by a state power that is the power of the judiciary within the judicial bodies. So that these judges will later have the authority to examine, hear and decide on any dispute brought before him, and the judge must try as fairly as possible according to applicable law.

Judges as judicial officials are given the authority to make decisions before a court of law with the aim of ending or resolving a case or dispute between the parties. Consideration or often also called considerans is the basis for the issuance of a decision. This consideration consists of two, they are consideration of the seat of the case and consideration of the law. What is included in the consideration part of the decision is none other than the reasons of the judge as a form of accountability to the community related to the value of objectivity in passing a decision.

To be able to give a court decision that truly creates legal certainty and reflects justice, the judge as a state apparatus and as God's representative who conducts justice must really know the actual case sit and the legal regulations that will be applied to either unwritten legal rules or the law custom.[1]

The most important legal basis in deciding a case is the fact or event. From this fact or event, the judge concludes the law, obtains the legal rules, or the judge finds the law. The value of the verdict is good or not lies in legal considerations. A decision is whether or not the close relationship between the existence of the accuracy of events with legal facts.[2]

Amar or dictum is the answer to the petitum (demand) of the lawsuit filed by the Plaintiff. This means that dictum is a response to petitum. This is related to the existence of a principle that the Judge is obliged to hear all parts of the claim (vide Article 178 paragraph (2) HIR and Article 189 paragraph (2) Rbg) and the Judge is prohibited from making decisions on cases that are not prosecuted or granted more than those demanded (vide Article 178 (3) HIR and Article 189 (3) Rbg). This principle is often referred to as the ultra petita principle in the judge's decision.

Simply put, the ultra petita is an act of a judge who renders a decision on a case beyond what the Plaintiff demands or requests. Discussing ultra petita, as regulated in Article 178 paragraph (2) and (3) HIR and Article 189 paragraph (2) and (3) RBg, it is stated that it clearly prohibits a judge from making decisions beyond what the Plaintiff demands. The ban is actually a consequence of the principle of judges being passive in civil procedural law. As is known the meaning of the principle is that the panel of judges may not add themselves to other matters, and must not give more than requested by the parties (ultra petita non cognoscitur). Therefore, for decisions that are deemed to have exceeded the limits of authority, the Supreme Court in the cassation level has the right to cancel the decisions or the determination of the courts of all judicial environments because it is not authorized or exceeds the authority limit.[3]

Basically, in the trial of civil cases, the judge's decision is based on the demands of the parties who litigate. Therefore, judges are prohibited from taking the initiative to make changes or additions to

[1]Moh. TaufikMakarao, 2004, Pokok-PokokHukum Acara Perdata, RinekaCipta, Jakarta, p. 124
[2]DjamanatSamosir, 2012, Hukum Acara Perdata, Tahap-TahapPenyelesaianPerkaraPerdata, NuansaAulia. Bandung, p. 269-270
[3]Undang-Undang Nomor 5 Tahun 2004 Tentang Perubahan Atas Undang-Undang Nomor 14 Tahun 1985 TentangMahkamah Agung, Pasal 30 ayat (1) huruf a.

the demands. Even though the addition of demands by the panel of judges in the rationale was justified for the sake of a sense of justice, based on good faith and in accordance with the public interest, the ruling was still not justified in the corridor of civil procedural law. However, in practice, a judge still found a verdict beyond what was demanded by the Plaintiff, as civil disputes were tried at the Depok District Court in case register Number: 234/Pdt.G/2017/PN.DPK.

As stated in the decision of the Depok District Court No: 234/Pdt.G/2017/PN.DPK, the Plaintiff filed a lawsuit against Defendant I, Defendant II and Defendant III, with petitum:

1. To grant the Plaintiff's Lawsuit to all;
2. To declare legally that Defendant I, Defendant II and Defendant III have committed acts against the law;
3. Sentencing Defendant I and Defendant II to pay material damages (Meterille Schade) to the Plaintiff in the amount of Rp.9,400,000,000 (nine billion four hundred million rupiah);
4. Sentencing Defendant I, Defendant II and Defendant III to pay Immaterriil (Immateriele Schade) compensation to the Plaintiff in the amount of Rp. 20,000,000,000 (twenty billion rupiah);
5. Sentencing Defendant I and Defendant II to surrender their property as compensation for material losses of approximately 4600 m2 (four thousand six hundred square meters) located on Jalan Krukut Raya RT. 001 RW 05 LimoSub-districtCinere Depok area as compensation for the Plaintiff's payment of Rp.9,400,000,000 (nine billion four hundred million rupiah) received by Defendant I.
6. Declare that the Purchase Binding Agreement No. 13, April 19 2016, Deed of Addendum of Sale and Purchase Agreement No. 16 dated May 23, 2017 and the Joint Agreement Letter Number 17 dated July 23, 2017 as a Deed Under the Hand.
7. Stating the legal and valuable Sita Guarantee (ConservatoirBeslag) of the two plots of land located on Jl. Krukut Raya RT. 001 RW 05 Sub-district Limo Cinere Depok area namely:
    a. A piece of land certificate of ownership number 32/Krukut covering an area of 3845 m2 in the name of X.
    b. A plot of land that used to be customary land, Girik number C 259 Persil Number 632 Block SII which has now been upgraded to Certificate of Ownership Number 02102 covering an area of 2904 m2 in the name of X.
8. Declares that the case verdict can be carried out first even though there is Verzet, Resistance, Appeals, Cassation or other legal remedies from Defendant I, Defendant II and Defendant III or other third parties (Uitvoerbaarbijvorrad).
9. Punish Defendant III for his mistakes as stated in article 41 of Law No. 2 of 2014 concerning Amendment to Law Number 30 of 2014 concerning the Position of a Notary Public who is obliged to pay fines for damages suffered by the Appellant (Plaintiff) above Rp.9,400,000,000 (nine billion four hundred million rupiah).
10. Order Defendant III to Make a Purchase Deed of 4600 m2 (Four thousand six hundred square meters) from a piece of land Certificate of Ownership number 32/Krukut covering an area of 3845 m2 in the name of X and a plot of land that used to be traditionally owned land, Girik number C 259 Plot Number 632 Block SII which has now been upgraded to Certificate of Ownership Number 02102 covering an area of 2904 m2 in the name X on behalf of the Plaintiff.
11. Sentencing Defendant I, Defendant II and Defendant III to pay for all costs incurred in this case.
12. Or if the panel of judges examining and adjudicating this case has a different opinion, the Plaintiff asks for the fairest decision (ex aequo et bono).[4]

[4]Putusan No. 234/Pdt.G/2017/PN.DPK, p. 16-18

On the Plaintiff's petitum as described in its lawsuit, the Panel of Judges has handed down the following verdict:

Judge:

IN EXCEPTION:

- Reject the entire defendant of Defendant I and Defendant II;
IN MAIN CASE:

IN CONPENSION:

1. To grant the Plaintiff's claim in part;
2. To declare Defendant I, Defendant II and Defendant III to undertake acts against the law;
3. Punish Defendant I and Defendant II for paying material damages (Meterille Schade) to the Plaintiff in the amount of Rp.7,000,000,000 (seven billion rupiah);
4. Stating that the Purchase Binding Agreement No. 13 April 19 2016, Deed of Addendum of Sale and Purchase Agreement No. 16 dated 23 May 2017 and the Deed of Agreement No. 17 dated 23 July 2017 is invalid and null and void.
5. Stating the legal and valuable ConservatoirBeslag to 1 (one) plot of land located on Jl. Krukut Raya RT. 001 RW 05 Limo Sub District, Cinere Subdistrict, Depok City as stated in the Certificate of Ownership number 32 / Krukut covering an area of 3845 m2 in the name of X.
6. Refuse the Plaintiff's claim for other than the rest;

IN RECONCENTION:

Refuse the Plaintiff's claim in the Reconstruction for all;

IN CONPENSION AND IN RECONCENTION:

> - Punishing Defendant I of the Conference/Plaintiff of the Resonance and Defendant II/the Plaintiff of the Reconstruction to pay the cost of the case jointly in the amount of Rp. 1,786,000 (one million seven hundred eighty-six thousand rupiah).[5]

As stipulated in Article 178 (3) of HIR and Article 189 (3) the RBg violated the ultra petita principle, it is in petitum number 6 of the lawsuit, the Plaintiff only filed a claim pleading that the Purchase Binding Act No. 13 April 19 2016, Deed of Addendum of Sale and Purchase Agreement No. 16 May 23, 2017 and the Joint Agreement Deed No. 17 May 23, 2017 as a Deed of Underhand. However, the Panel of Judges at the Depok District Court issued a decision that exceeded the Plaintiff's demands, stating that the Binding Agreement No. 13 April 19 2016, Deed of Addendum of the Buy and Sell Agreement. 16 May 23, 2017 and the Joint Agreement Deed No. 17 May 23, 2017 is invalid and null and void. In this case the phrase of the verdict stating "invalid and null and void by law" certainly has a different meaning and legal consequence from the claim to be declared "as a Deed of Arms".

Based on the brief description above, the writer is interested to discuss it further, especially related to the prohibition of judges from giving a decision on a civil case beyond what is demanded or requested (ultra petita). With the existence of the Ultra Petita Decision, it will cause problems related to the validity of the judge's decision containing UtraPetita and the actions that need to be done to minimize the issuance of the Ultra Petita Decision in civil disputes.

[5] Ibid, p. 76-78

Research Methods

This study uses normative juridical research methods, namely research conducted by examining library materials consisting of primary legal materials and secondary legal materials. Primary legal materials are sourced from various laws and regulations relating to research problems. Secondary legal materials in the form of explanations used to analyze primary legal materials in the form of the views of experts, academics, practitioners or judges through the search of documents, books and scientific work.

Legal research is conducted to solve the legal issues at hand, which require the ability to identify, legal problems, conduct legal reasoning, analyze problems encountered and then provide solutions to those problems. Legal materials obtained through document studies and interviews will be identified and analyzed, then presented descriptively by describing, explaining and describing the process of implementing the settlement of cases through the e-Court along with the constraints and the fulfillment of the principle of public disclosure in electronic trials through e-Litigation.

Discussion

a. The Validity of the Discussion of Civil Disputes Containing Ultra Petita

Discussing the authority of the judiciary as stipulated in the provisions of Article 25 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power (hereinafter referred to as Law No. 48 of 2009), it is emphasized that "the general court has the authority to accept, examine, hear and decide upon cases criminal and civil law in accordance with statutory provisions. " The duty and authority of the general court in the civil field is to receive, examine and try and resolve disputes between parties who are litigants. One of the principles that must be followed by the Supreme Court and the judiciary below it in carrying out the powers of the Judiciary is the principle of "justice carried out quickly and with low costs" as stipulated in the provisions of Article 2 paragraph (4) of Law no. 48 of 2009. The definition of simple, fast and low cost as stated in the Elucidation section of Article 2 paragraph (4) of Law No. 48 of 2009 is that the examination and settlement of cases is carried out efficiently and effectively as well as the cost of cases that can be reached by the public, but not may sacrifice aspects of accuracy in seeking truth and justice.

Justice is an easy word to say, but it is not easy to realize, because justice concerns the feelings and perceptions that each person has different parameters. What is felt by a fair person may not necessarily be felt by others. It is fair for the Plaintiff for the verdict he received, but it may be felt unfair to the Defendant, and vice versa is fair to the Defendant, but is felt unfair to the Plaintiff.[6]

Justice is a human right, a basic value that must be maintained, is the need of society for all time, and the needs of the human soul. Justice is the will and demands of Allah towards humans. All the rules of law carried out have the aim of achieving justice. However, this does not mean that justice will be achieved because the rule of law is limited and does not escape the weaknesses of human beings who make it. In the process of enforcing and applying law there are many possibilities of distortion.[7]

Judges in resolving conflicts that are confronted with them must be able to resolve objectively based on applicable law, therefore in the decision making process, judges must be independent and free from the influence of any party, including from the executive. In making decisions, judges are only bound by relevant facts and evidence and the legal norms that become or are the legal basis for their decisions.

[6]Adies Kadir, 2018. Menyelamatkan Wakil Tuhan Memperkuat Peran Dan Kedudukan Hakim, PT. Semesta Merdeka Utama, Jakarta, p. 8.
[7]Abdul Hamid, 2016, TeoriHukum Modern, Pustaka Setia, Bandung, p. 126

Thus, it is clear that the judge has a great deal of power and responsibility towards the parties to the dispute regarding the problem or conflict faced by the judge, because the judge's ruling can have far-reaching effects on the lives of other people affected by the range of the ruling. Judges' decisions that are unjust can even leave an imprint on the minds of justice seekers throughout his life journey.[8]

A judge's decision consists of four parts, they are the Head of the Decision; Identity of the Parties; Consideration; and Amar or Diktum. As for what is meant by Amar or Dictum is the answer to petitum (demands) rather than a lawsuit. This means that dictum is a response to petitum. This is related to the existence of a principle, that: "Judges are obliged to hear all parts of the suit and are prohibited from making decisions on cases that are not prosecuted or granted more than those demanded." (Article 178 paragraphs (2) and (3), article 189 paragraphs (2) and (3) RBg).[9]

Individual rights in civil law are very protected, to the extent that court decisions that have permanent legal force (inkracht van gewijsde) which contain ultra petita can be canceled by the Supreme Court. Judges who carry out ultra petita are decisions that are not prosecuted or exceed what is requested are considered to have exceeded their authority or ultra vires. A decision is considered ultra vires if it exceeds jurisdiction, contradicts procedural requirements, or ignores rules and fairness. The decision must be declared defective even if the decision is based on good faith and has been in accordance with public interest.

Although the principle of freedom of judges is part of judicial authority. However, in applying the principle of the freedom of judges to try and decide on a lawsuit accompanied by petitumsubsider (ex aequo et bono), the judge must also pay attention to the provisions in Article 178 (2) HIR and Article 67c of Law No. 14 of 1985, which determines that judges are obliged to hear all parts of the suit. Judges are prohibited from overriding claims, so that if they violate the provisions can be canceled in the appeal, cassation or reconsideration.

In paragraph 3 of article 178 HIR Judges are prohibited from passing verdicts on matters that are not requested/sued or granted more than what is requested/sued (see also the decision of the Supreme Court dated May 24, 1951 No. 29 K/Sip/1950, contained in Law, PAHI Magazine, 1951 No. 1, page 25).[10]

If the Plaintiff forgets to mention that the defendant is sentenced to pay the court fee in the petitum, and in fact the plaintiff wins, the judge is not permitted to punish the defendant for paying the court fee. The foregoing has not been requested by the Plaintiff and is therefore prohibited from being granted. If the claim is only in the form of payment of principal debt, it is not permissible to add interest. In the case of an interest according to the law, 6% a year, then the interest that cannot be agreed upon be granted in the amount of 5% a month. Because of this provision, the Plaintiff must try to compile a complete petitum.[11]

Judges who violate the ultra petitum principle can be likened to a violation of the rule of law principle:

- because the action is not in accordance with the law, even though in accordance with the principle of the rule of law, all the actions of the judge must be in accordance with the law (in accordance with the law),

[8]Suhrawardi K. Lubis, 2002, EtikaProfesi Hakim, SinarGrafika, Jakarta, p. 29.
[9] Bambang Sugeng, dkk., 2012, PengantarHukum Acara Perdata, Prenadamedia Group, Jakarta, p.86
[10]RetnowulanSutantio, dkk., 2005, Hukum Acara PerdatadalamTeori dan Praktek, Mandar Maju, Bandung, p. 112
[11] Ibid

- the act of the judge who grants more than the demanded, clearly exceeds the authority given article 178 paragraph (3) of the HIR to him, even though in accordance with the principle of rule of law, anyone may not take actions that exceed the limits of his authority (beyond the powers of his authority).[12]

If the ultra petita action is carried out by the judge based on good faith reasons, it still cannot be justified or illegal, because it violates the rule of law principle, so that the judge's actions cannot be justified. This is in accordance with the decision of MARI No. 1001K/Sip/1972,[13]which prohibits judges from granting things that are not requested or exceeds those requested.

Because the application of the ultra petita decision in a civil dispute violates the provisions as required by article 178 paragraph (3) of the HIR and article 189 paragraph (3) of the RBg and is not in accordance with the principle of rule of law, according to the opinion of the author the decision becomes legally flawed or invalid, so that cancellation can be requested through further legal efforts, they are by submitting an appeal, appealing and even requesting a review.

b. Action to Minimize the Implementation of Ultra Petita Decisions in Civil Dispute

In the trial process of civil disputes in the Court, it was noted that several times the Panel of Judges decided based on ex aequo et bono. This phrase is part of the petitum in a lawsuit or petition which is usually combined with the sentence "if the Chief Justice cq. The Panel of Judges who examined and decided on the Aquo case had a different opinion, begging for a fair decision (ex aequo et bono).

In this case if the phrase "if the Chairman of the Court cq. The Panel of Judges examining and deciding the Aquo case is of the other opinion, requesting that a fair decision be given (ex aequo et bono)"submitted as an anticipatory demand, if the judge does not grant the principal or primary claim. Therefore, there are those who think that the phrase should be interpreted as part of the plaintiff's request or claim and that it should be legally considered to have been submitted as well. So, it can be interpreted that in the claim, the Plaintiff also requested a decision based on the opinion of the panel of judges. Therefore, it is possible for the judge to take the initiative to amend or add a decision exceeding the demands and grant that which is not requested is to exceed the demand with consideration for the sake of justice (ex aequo et bono) in the opinion of the judges.

In a number of Jurisprudence of the Supreme Court of the Republic of Indonesia (MARI) the prohibition of judges to give verdicts in excess of what is requested to experience a shift leads to being allowed while still using accountable considerations. As for several decisions of the Supreme Court that allow the application of ultra petita in civil disputes, among others are contained in the decision of MARI No. 556K/Sip/1971, which in essence states that judges may decide to grant a lawsuit that exceeds the request on condition that "it must still be in accordance with material events" and the decision of MARI No. 1097K/Pdt/2009, which basically states allowing ultra petita decisions even though it is not clearly stated in the aquo case petitum but in the lawsuit contains petitumsubsider and is needed for the effectiveness of the decision.

When speaking in the context of the law, decisions that contain ultra petita are indeed endless legal discussions, many parties who do not agree with the application of ultra petita on the pretext as a path to substantive justice, but not infrequently also the counter to the application of ultra petita because it

[12] M. Yahya Harahap, 2008, Hukum Acara Perdata, SinarGrafika, Jakarta, p. 802

[13] HimpunanKaidahHukum Keputusan MA RI, 1962-1991, h.232 yang dikutip dari Buku M. Yahya Harahap, 2008, Hukum Acara Perdata, Sinar Grafika, Jakarta, p. 802

is contrary to the principle of legal certainty and can be a bad precedent to justify an arbitrariness and irregularities committed by judges as one of law enforcement officers.

Related to the application of ultra petita in civil disputes, at least there are a number of arguments that have been gathered and one theoretical footing to strengthen the existence of ultra petita in a civil case Decision is not in line with the legal tradition that Indonesia adheres to, namely civil law. In a state of law with a civil law tradition the most ideal meaning of justice is born from written law (the important thing is certain), different from common law which relies on the principle of judge made law (following the dynamics of justice that lives in society). With the existence of ultra petita, it reflects the inconsistency of the legal system that Indonesia has adopted so far.

As the application of ultra petita in the decision of the Depok District Court that the writer reviewed, the Judge gave a decision that exceeded the Plaintiff's claim, they are stating that the Purchase Binding Agreement No. 13 April 19 2016, Deed of Addendum of Sale and Purchase Agreement No. 16 May 23, 2017 and the Joint Agreement Deed No. 17 May 23, 2017 is invalid and null and void. Although in this case the phrase of the verdict stating "invalid and null and void by law" is related to the demand to be declared "as a Deed of Arms", between the two phrases, of course, they have different legal meanings and consequences.

With the recognition of the signature under the Deed of Hand, the contents of the Deed will remain valid as an agreement of the parties, because the Deed of Hand Underhand the truth lies in the signatures of the parties. With the recognition of the signatures by the parties is enough to be perfect proof. Meanwhile, if it is decided to be invalid and null and void, then the Agreement Deed that has been agreed by the parties is deemed invalid from the beginning or is deemed that there has never been an agreement or engagement. Of the ultra petita's decision of course is very detrimental to the Defendant who is also entitled to get justice properly.

Related to the existence of petitumsubsidair in a lawsuit/petition, a common sentence is often found, the sentence ex aequo et bono and is usually combined with the sentence "if the panel of judges is of the other opinion, ask for the fairest decision". In fact, making a decision as fair as possible is indeed an obligation as a judge, even though there is no petitum ex aequo et bono request.

In the principle of universal law enforcement, the duty of a judge is to apply the law. Therefore, a judge must obey the existing legal provisions. With its decision, a judge must not create a new law that is contrary to existing legal provisions. According to Yahya Harahap, the request for justice ex aequo et bono as petitumsubsidair, and subsidair demands were submitted in anticipation if the primair's demands were not granted by the judge, therefore this sentence character is not absolute, alternative, and highly dependent on the judge's freedom. Therefore, the award based on ex aequo et bono, on the one hand the ex aequo et bono decision must not exceed the principal petitumprimair material, so that the decision handed down does not violate the ultra petitumpartium outlined in Article 178 paragraph (3) HIR, while on the side in addition, the decision must not result in a loss for the Defendant in defending his interests.

Likewise, when a lawsuit is filed by ordinary people who do not understand the law and cannot make a lawsuit systematically and do not have enough funds to use the services of an advocate. Where in the letter of claim, the Plaintiff must formulate the petitum clearly and decisively. Because demands that are unclear or imperfect can result in the receipt of these demands. Likewise, a lawsuit containing statements that contradict each other, will be perceived as "obscuur libel" resulting in the non-acceptance of the lawsuit. The lack of knowledge of making a lawsuit will certainly result in the basis of the lawsuit not in accordance with the petitum. What is demanded in the lawsuit will certainly not be clearly drawn. If so the existence of ultra petita is possible to be done by the panel of judges in deciding a case. As regulated in Article 119 of the HIR and Article 143 of the RBg, for the interests of justice seekers who are

unfamiliar or do not understand the law and cannot make a lawsuit, the Chair of the District Court is given the authority to advise and assist the plaintiffs in filing their claims.

In ruling, the judge adheres to 3 (three) principles, they are: 1) The principle of legal certainty; 2) The principle of justice; 3) Principle of expediency. Sometimes in a case, the principle of justice with the principle of legal certainty clashes, so if such a thing happens, the principle of justice is used. However, sometimes in a case, the principle of legal certainty is contrary to the principle of expediency, so if such a thing happens, the principle of legal certainty remains abandoned, the principle used is expediency. Likewise, the principle of ultra petita, based on the provisions of article 178 paragraph (3) of HIR, it is determined that ultra petita can be implemented, but if the principle is implemented, there is a possibility that it is contrary to the principle of justice, so that the principle of justice must be prioritized.

In the opinion of the writer to minimize the application of ultra petita in the decision of civil disputes, judges based on Article 119 HIR and Article 143 Rbg, can adopt procedural law in force in the State Administrative Court. Which matters as regulated in Law No. 5 of 1986 concerning State Administrative Court specifically Article 63 paragraph (1) stated: Before the examination of the subject matter of the dispute begins, the Judge is obliged to conduct a preparatory examination to complete the unclear lawsuit; hereinafter referred to in paragraph (2) it is stated: In the preparatory examination as referred to in paragraph (1) Judge: a. must provide advice to the plaintiff to improve the lawsuit and complete it with the necessary data within thirty days.[14]

With the preparatory inspection stage carried out by the judge and the authority of the judge to advise the Plaintiff to improve if the lawsuit is unclear/complete by giving a reasonable grace period before the examination of the subject matter of the dispute begins, it is expected to minimize the application of the decision containing the ultra petita.

Conclusion

- The application of the ultra petita decision in a civil dispute violates the provisions as required by article 178 paragraph (3) of the HIR and article 189 paragraph (3) of the RBg and is not in accordance with the principle of rule of law. cancellation can be requested through further legal efforts, namely by submitting an appeal, appeal and even a review request.

- As regulated in Article 119 of the HIR and Article 143 RBg, to the Chair of the District Court in this case a judge is given the authority to provide advice and assistance to the plaintiff in filing his claim. In handling civil disputes, the Court based on Article 119 HIR and Article 143 Rbg, can adopt the procedural law in force in the State Administrative Court related to the Preparatory Examination Stage. With the preparatory inspection stage carried out by the judge and the authority of the judge to advise the Plaintiff to improve if the lawsuit is unclear/complete by giving a reasonable grace period before the examination of the subject matter of the dispute begins, it is expected to minimize the application of the decision containing the ultra petita.

[14]Undang – Undang No. 5 Tahun 1986 tentang Peradilan Tata Usaha Negara, Pasal 63 ayat (1) dan ayat (2) huruf a.

References

Books:
Abdul Hamid, 2016, Teori Hukum Modern, Pustaka Setia, Bandung.

Adies Kadir, 2018, Menyelamatkan Wakil Tuhan Memperkuat Peran Dan Kedudukan Hakim.PT. Semesta Merdeka Utama, Jakarta.

Bambang Sugeng, 2012, Pengantar Hukum Acara Perdata, Prenadamedia Group, Jakarta.

Djamanat Samosir, 2012, Hukum Acara Perdata, Tahap-Tahap Penyelesaian Perkara Perdata, Nuansa Aulia. Bandung.

EkoSugitario, 2012, Hukum Acara Peradilan Tata Usaha Negara, Brilian Internasional, Surabaya.

Harahap, Yahya 2005, Hukum Acara Perdata, SinarGrafika, Jakarta.

Lubis, Suhrawardi K. 2002, Etika Profesi Hakim, SinarGrafika, Jakarta.

Moh. Taufik Makarao, 2004, Pokok – Pokok Hukum Acara Perdata, Rineka Cipta, Jakarta.

Retnowulan, 2005, Hukum Acara PerdatadalamTeori dan Praktek, CV. Mandar Maju, Bandung.

Law :
Undang-UndangNomor 14 Tahun 1985 TentangMahkamah Agung.

Undang – Undang No. 5 Tahun 1986 TentangPeradilan Tata Usaha Negara.

Undang-UndangNomor 5 Tahun 2004 TentangPerubahanAtasUndang-UndangNomor14 Tahun 1985 TentangMahkamah Agung.

Undang-UndangNomor 48 Tahun 2009 tentangKekuasaanKehakiman.

Undang – Undang No. 51 Tahun 2009 TentangPerubahanKeduaatasUndang – Undang No. 5 Tahun 1986 TentangPeradilan Tata Usaha Negara.

Het HerzienneIndonesischReglement (HIR)

RechtsreglementBuitengewesten (RBg)

Court Ruling:
PutusanPengadilan Negeri Depok No. 234/Pdt.G/2017/PN.DPK

PutusanMahkamah Agung RepublikIndonesia No. 556K/ Sip/1971

PutusanMahkamah Agung Republik Indonesia No. 1097K/Pdt/2009

PutusanMahkamah Agung Republik Indonesia No. 29 K/Sip/1950

PutusanMahkamah Agung Republik Indonesia No. 1001K/Sip/1972