Legal Brief, Volume 12, No 5, (2022), pp. 2985-2992
ISSN 1979-522X (Print)| 2722-4643 (Online)
Published by IHSA Institute (Institut Hukum Sumberdaya Alam)
DOI: 10.35335/legal

The Implementation of Ultra Petita Principle in Decisions on Corruption Cases in Indonesia (A Study of Legal Sociology)

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A R T I C L E I N F O

Article history:

Received Nov 02, 2022
Revised Nov 09, 2022
Accepted Nov 30, 2022

Keywords:

Corruption Crime;
Ultra Petita;
Legal Purpose Theory.

ABSTRACT

This study aims to analyze the implementation of the ultra petita principle in criminal procedural law in Indonesia and to analyze the implementation of the ultra petita principle in decisions on corruption cases from the perspective of the theory of legal purposes. This research is a Sociology of Law research with Statue Approach, Conceptual Approach and Legal Sociology Approach. The material obtained is in the form of primary legal material and secondary legal material which is analyzed systematically and qualitatively in this case it will examine all data collected based on primary legal material and secondary legal material, which will then be connected with principles, legal theories, as well as the formulation of existing legislation so that a conclusion can be drawn in order to answer the problem studied. decision in corruption cases, especially related to the Juliari P. Batubara case, is justifiable because basically the judge decides according to the prosecutor's indictment, not the indictment. The judge has the authority to decide on a case based on the prosecutor's demands if it is in accordance with the legal facts at trial but must remain within the minimum maximum limit of the article suspected. In the decision on the criminal act of corruption, Juliari P. Batubara focused more on the aspect of legal certainty in the theory of legal purposes.

ABSTRAK

Penelitian ini bertujuan untuk menganalisis implementasi asas ultra petita dalam hukum acara pidana di Indonesia dan untuk menganalisis implementasi asas ultra petita dalam putusan perkara tindak pidana korupsi ditinjau dari perspektif teori tujuan hukum. Penelitian ini adalah penelitian Sosiologi Hukum dengan Pendekatan Undang-Undang (Statue Approach), Pendekatan Konseptual (Conseptual Approach) serta Pendekatan Sosiologi Hukum. Bahan yang diperoleh barupa bahan hukum primer dan bahan hukum sekunder yang dianalisis secara sistematis dan kualitatif dalam hal ini akan menelaah seluruh data yang dikumpulkan berdasarkan bahan hukum primer dan bahan hukum sekunder, yang kemudian nantinya akan dihubungkan dengan asas-asas, teori-teori hukum, serta rumusan perundang-undangan yang ada sehingga dapat ditarik sebuah kesimpulan demi menjawab permasalahan yang diteliti. Hasil penelitian menunjukkan bahwa kedudukan hukum putusan ultra petita pada perkara korupsi khususnya terkait perkara Juliari P. Batubara adalah dapat dibenarkan karena pada dasarnya hakim memutus sesuai dengan surat dakwaan Jaksa bukan pada surat tuntutan. Hakim memiliki kewenangan untuk memutus perkara diatas tuntutan Jaksa jika memang sesuai dengan fakta hukum di persidangan tapi harus tetap pada batas minimum maksimum pasal yang disangkakan. Dalam putusan perkara tindak pidana korupsi Juliari P. Batubara lebih menitikberatkan pada aspek kepastian hukum dalam teori tujuan hukum.

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I. INTRODUCTION

An important subject in realizing the legal objectives of justice, benefit and legal certainty in criminal law is the judge. The judge as the holder of a central position in the trial certainly determines the fate of justice seekers through the trial process he presides over. In the world of justice, the task of a judge is to maintain the rule of law, to determine what has been determined by law in a case. Thus the duties of a judge in essence are to receive, examine and adjudicate and settle cases submitted to him, as clearly regulated in the main points of judicial power as stated in Article 1 of Law Number 48 of 2009 (Luis, 2021). Because of the authority of the judge, for this reason the principle of Ius Curia Novit is known, namely the judge is considered to know all the laws so that the Court may not refuse to examine and adjudicate the case (Hasanah, 2017).

As important as it is to pay attention to the three elements of legal objectives in judges' decisions, as a rule of law one of the important principles that must be owned for the realization of the three theories of legal objectives is to guarantee the implementation of an independent judicial power, free from the influence of other powers to administer justice in order to uphold the law and justice (Sofyan & Asis, 2014). This, in accordance with what is mandated in Article 24 paragraph (1) of the 1945 Constitution of the Republic of Indonesia confirms that the judicial power is an independent power to administer justice in order to uphold law and justice. In addition, Article 1 of Law Number 48 of 2009 concerning Judicial Power also states that judicial power is the power of an independent state to administer justice to uphold law and justice based on Pancasila, for the sake of the implementation of the Indonesian legal state.

The aim of justice in law, especially in the judge's decision, is reflected in every judge's decision which always begins with the sentence "For the sake of Justice Based on Belief in One Almighty God". Where the word is the opening of every decision so that the contents in the decision are expected to continue to prioritize justice in law. In addition to prioritizing the value of justice, the value of legal certainty in decisions must also be considered. The nature of legal certainty is attached to the principle of legality as stated in Article 1 paragraph (1) of the Criminal Code. The nature of legal certainty attached to the principle of legality makes criminal law one of the areas of law that is certain from a legal perspective because it is attached to clear and firm legal frames, which make it a guiding instrument, guide and limiter in the application of concrete cases. In Article 1 paragraph (1) of the Criminal Code it is stated "No act may be punished, except for the strength of the criminal provisions in the existing law than the act" (Sofyan & Azisa, Hukum Pidana, 2016).

In resolving a case, the judge's decision is expected not only to look at the provisions of the law, but also to consider the sense of justice and its benefits. Consideration of justice, benefit and legal certainty must be realized for the sake of good law enforcement. In making a decision, the judge must really pay attention to the considerations used so that the parties can understand why the judge came to the conclusion of such a decision. This is because the judge's decision must be accountable to all parties, not only to the litigants, but also must be acceptable to the wider community. Judges in deciding criminal cases must be based on the public prosecutor's indictment and everything that can be proven or proven in the trial, this is as stipulated in Article 182 Paragraph (4) of Law Number 8 of 1981 concerning Criminal Procedure Code. However, in reality, judges often pass decisions other than those charged by the public prosecutor and not infrequently also pass decisions that exceed those charged or demanded by the public prosecutor. Decisions that fall outside or exceed the indictments of the public prosecutor are called Ultra Petita Decisions.

Ultra Petita is the imposition of a decision by a panel of judges on a case that exceeds the demands or charges filed by the public prosecutor or makes a decision on a case that is not requested (Irwan, 2020). The Ultra Petita verdict was originally known in the Civil Procedure Code, but in its development the Criminal Procedure Code has also begun to recognize the term Ultra Petita. In the Civil Procedure Code, Ultra Petita is interpreted as a decision that grants more than what is requested in the petitum of the lawsuit and this is prohibited as regulated in article 178

paragraph (3) HIR and article 189 paragraph (3) RBg which prohibits a judge from deciding more than what is demanded (petitum). Meanwhile, in the Criminal Procedure Code, Ultra Petita does not only decide beyond what is required but also decides beyond the indictment of the Public Prosecutor. In the Criminal Procedure Code, Ultra Petita can occur in ordinary cases and can also occur in special criminal cases including acts of corruption. In essence, corruption is very influential for the economy and state finances. This has a great impact on interests related to human rights, endangers the stability of society, hinders socio-economic development, and undermines democratic values and morality that are inherent in national identity. Acts of corruption not only harm state finances or the country's economy, but also constitute a violation of the social and economic rights of the community, hindering the growth and continuity of national development to create a just and prosperous society. So that corruption can no longer be classified as an ordinary crime, but has become an extraordinary crime which is better known as Extra Ordinary Crime (Yahya, Suhariyanto, & Hakim, 2017).

For example, in the Judge's Decision for the Corruption Case No. No.29/Pid.Sus.TPK/2021/ PN.Jkt.Pst with the defendant An. Juliari Peter Batubara, where the Public Prosecutor demanded the Defendant with Article 12 letter b Jo. Article 18 Law no. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended into Law no. 20 of 2001 concerning Amendments to Law no. 31 of 1999 concerning the Eradication of Corruption Jo. Article 55 paragraph (1) of the Criminal Code Jo. Article 64 paragraph (1) of the Criminal Code with the threat of imprisonment for 11 (eleven) years, and a fine of Rp. 500,000,000.00 (five hundred million rupiah), subsidiary 6 (six) months in prison. In addition, the Defendant was required to pay compensation to the state in the amount of Rp. 14,597,450,000.00 (fourteen billion five hundred ninety seven million four hundred and fifty thousand rupiah), as well as additional punishment in the form of revocation of the right to be elected to public office for 4 (four) years after the Defendant has finished serving the main sentence.

Whereas in the Judge's Decision for the Case, the Defendant was legally and convincingly declared guilty in accordance with the Public Prosecutor's First Indictment but with a higher prison sentence, namely imprisonment for 12 (twelve) years and a fine of Rp. 500,000,000.00 (five hundred million rupiah). This shows that the judge decided beyond the Prosecutor's Demands and was included in the Ultra petita decision category. This decision had raised pros and cons among the public and some legal experts, apart from the fact that the decision was an ultra petita decision, the highlight was that the decision was deemed unable to realize the value of justice in society because the decision was considered not optimal. So that it is necessary to have clarity about how the actual position of ultra petita is where the decision exceeds the prosecutor's demands in setting it up in the Criminal Procedure Code, the basis for the judge's consideration so that the judge decides the case exceeds the prosecutor's demands, and whether the decision reflects the values of justice, legal certainty, and benefits in in his verdict.

II. RESEARCH METHODS

The type of research that will be used by the author is the type of Sociology of Law research. Which in this study, in addition to normatively referring to legal theory, legal principles, the doctrines of jurists and scientific journals, also analyzes social phenomena that can influence judges' considerations in deciding cases empirically (Irwansyah & Yunus, 2015). The author will link the applicable rules with judicial power in passing ultra petita decisions. In this study, the authors used two approaches to the problem, namely the Statute Approach, the Conceptual Approach and the Sociological Approach to Law. Data analysis in this research will use qualitative analysis in this case it will examine all data collected based on primary legal materials and secondary legal materials, which will then be linked to principles, legal theories, and existing statutory formulations so that a conclusion can be drawn in order to answer the problem under study.

III. DISCUSSION RESULT

The Urgency of Applying the Ultra Petita Principle in Criminal Procedure Law In Indonesia
Position of Ultra Petita in Indonesian Positive Law

In general, the legal considerations of a judge in making ultra petita decisions are those that concern the public interest and are the needs of the community. Where the judge has the power or freedom to pass a decision beyond what is requested. In carrying out their authority, judges have the freedom to administer trials in order to uphold law and justice as the basis for deciding ultra petita. Thus, judges must understand legal values and a sense of justice that lives in society. The position of ultra petita, both in the perspective of the Indonesian justice system in general and in reviewing laws in particular, is limited to a comparison between the justice systems according to Indonesian positive law. In this case, it will only be presented based on the perspective of Civil Procedure Law, Criminal Procedure Law, and Administrative Court Procedural Law on decisions containing ultra petita.

The Ultra Petita verdict was originally known in the Civil Procedure Code. This decision is prohibited in the provisions of HIR (Herzien 84 Indlandsch Reglement) and RBg (Rechtreglement voor de Buitengewesten), where the judge decides the case only based on what is requested by the plaintiff and may not exceed or be outside of the plaintiff's claim. Ultra petita provisions in civil law are strictly regulated in Article 178 paragraph (3) HIR and Article 189 paragraph (3) Rbg which prohibits a Judge from deciding beyond what is required (dkk, 2014). The provisions of Article 178 paragraph (3) HIR state that he is not permitted to pass a decision on a case that is not being sued or to give instead of being sued. Then Article 189 paragraph (3) RBg states that he is prohibited from making decisions on matters that are not requested or giving more than what is requested (Bastary, 2014).

Based on these provisions, it can be seen that the criteria for a judge to be considered ultra petita can be determined with two limitations, namely: first, in the case of a judge making a decision on a case that is not prosecuted; and secondly, in the event that the judge approves or grants more than what is required. Several jurisprudence of the Supreme Court of the Republic of Indonesia, namely the decision No. 339K/Sip/1969 dated 21 February 1970 and Decision No. 1001K/Sip/1972 and Decision No. 77K/Sip/1973 which in essence explains that the purpose of the ultra petita prohibition is so that judges do not act arbitrarily by adjudicating according to the wishes of the judges themselves, even though the limitation in civil cases is lawsuits and as criminal cases are limited by indictments.

With the provisions mentioned above, it is emphasized that judges are prohibited from granting things that are not requested by the plaintiff or granting more than what is requested by the plaintiff. Regarding the prohibition of ultra petita, it is not absolute. This is evidenced by the existence of several decisions of the Supreme Court of the Republic of Indonesia which have shown that judges are allowed to apply ultra petita. Several decisions of the Supreme Court of the Republic of Indonesia that have dared to open the ultra petita prohibition frame are as follows:

a. RI Supreme Court Decision No. 140K/Sip/1971, which basically states that it justifies judges making decisions that are ultra petita in nature with the condition that "must be within the framework compatible with the essence of the lawsuit".
b. RI Supreme Court Decision No. 556K/Sip/1971, which basically states that the judge may decide to grant a lawsuit that exceeds the request with the condition "must still be in accordance with material events".
c. RI Supreme Court Decision No. 1097K/pdt/2009, which basically states that it allows decisions that are ultra petita in nature even though they are not clearly stated in the petitum in the a quo case but the lawsuit contains a petitum subsidiary and is necessary for the effectiveness of the decision.

d. RI Supreme Court Decision No. 425K/Sip/1975, which basically states that judges may exercise ultra petita in determining the appropriate amount of compensation to be paid, even though the plaintiff has the right to demand a certain amount of compensation.

In the State Administrative Court Procedure Law, the Administrative Court Law does not strictly regulate the prohibition of making decisions containing ultra petita. There is not a single article that explicitly prohibits it. On the other hand, there is no single provision that explicitly permits ultra petita. Even so, the understanding of the prohibition of ultra petita in the TUN court is also widely adopted by some PTUN judges. In the PTUN procedural law, even though normatively ultra petita content is prohibited because according to the Supreme Court Law it can be used as a reason for filing a review, in its development amar reformatio in peius is allowed. Reformatio in peius is a dictum of a decision that actually does not benefit the plaintiff. An example of the application of reformatio in peius, for example, is in the case of personnel (Sasmito, 2011). Through the MARI decision Number 5 K/TUN/1992, decided on February 6, 1993, the cassation judge made a new rule of law regarding the prohibition of ultra petita, as follows: As long as the plaintiff does not submit a petitum, the Supreme Court can consider and adjudicate all decisions or stipulations that are contradictory with the existing order. It is inappropriate if the right to examine the Judge is only on the object of the dispute submitted by the parties because often the object of the dispute must be assessed and considered in relation to the parts of the stipulations or decisions of the TUN Agency or Officials that are not in dispute between the two parties.

Thus, TUN judges are allowed to do "ultra petita", as a consequence of the principle of the activism of judges (dominus litis) which is a principle adhered to by the TUN justice system. Normatively, the prohibition of ultra petita in the TUN Judiciary does not apply absolutely. Jurisprudence as part of the formal source of law in the Administrative Court Procedural Law is the legal basis for TUN Judges to issue ultra petita decisions, in addition to the existence of judicial technical guidelines which are compiled as a guideline for judges which also allow it to the extent of reformatio in peius (Martitah, 2014).

Each procedural law has different characteristics from one another, bearing in mind the need for legal developments in judicial practice so that the prohibition of ultra petita is not an absolute and binding provision. Although ultra petita decisions are not strictly regulated, however, in practice there have been several decisions of the Constitutional Court which contain ultra petita content and therefore can be used as MK jurisprudence. Jurisprudence itself is a source of formal law in procedural law for testing laws. If this understanding of jurisprudence is linked to whether constitutional judges may or may not perform ultra petita, then there must be provisions and rules as to what and to what extent are constitutional judges allowed to make decisions containing ultra petita.

Legal Certainty of Ultra Petita in Criminal Procedure Law in Indonesia

The ultra petita ruling does not only apply in civil cases and state administrative procedural law. But it also applies to criminal cases. Decisions of this type are also often handed down in cases of criminal acts of corruption. Considering that the perpetrators of corruption are not only carried out by ordinary people but are mostly carried out by politicians, law enforcers, and holders of state power. In the regulation of criminal procedural law, there are actually no clear rules prohibiting or allowing ultra petita decisions. However, based on Article 182 Paragraph (4) of the Criminal Procedure Code, it states that the deliberations of judges must be based on the indictment and everything that is proven during the examination at trial. In this article it is implied that the judge's decision must be based on the prosecutor's indictment, so that if the judge decides beyond or beyond the prosecutor's indictment, it can be said that the decision is ultra petita. Decisions other than the prosecutor's indictment are prohibited in the Criminal Procedure Code.

In criminal procedural law, the ultra petita prohibition is only related to indictments which are litis contestatio for trial examination, and vice versa does not apply in relation to criminal charges. Prior to the entry into force of the Criminal Procedure Code, based on 91 jurisprudence of the

Supreme Court in Decision Number: 47 K/Kr/1956 dated 23 March 1957, a legal rule was obtained that the basis for examination by the court was a letter of accusation (indictment), not accusations made by the police. So, the two articles emphasize that the Judge's decision may only concern facts within the limits of the public prosecutor's indictment. The judge is not justified in imposing a sentence beyond the limits contained in the indictment, therefore the suspect can only be sentenced based on what is proven regarding the crime he committed according to the formulation of the indictment. Article 193 paragraph (1) of the Criminal Procedure Code provides a strict limitation, namely "if the court is of the opinion that the suspect is guilty of committing the crime for which he was charged, then the court imposes a sentence." Vice versa, according to article 191 paragraph 1 of the Criminal Procedure Code, "if the court is of the opinion that from the results of the examination at trial, the suspect's guilt for the actions charged against him has not been legally and convincingly proven, then the suspect is acquitted".

Meanwhile, if you look at Article 182 paragraph (4) and Article 191 paragraph (1) of the Criminal Procedure Code, the criminal procedure law in Indonesia states that the decision handed down by the Judge must be based on the indictment made by the Public Prosecutor. Meanwhile, in the practice of handling criminal cases, each law enforcer has an important role to resolve a case properly and fairly. If the articles charged by the public prosecutor in his indictment are not proven at trial, then the suspect is acquitted. This certainly creates uncertainty in understanding criminal procedural law in Indonesia (Putra, 2017). In making a decision outside the article charged by the Public Prosecutor, the Judge used Supreme Court jurisprudence No. 675 K/Pid/1987, dated 21-03-1989 as the basis for the decision. This jurisprudence is also often applied by the Panel of Judges in examining and deciding Corruption Crime cases. Which is where jurisprudence is a provision that is specific in nature, that is, it only regulates certain matters, namely in the case of the article being blamed is still similar and lighter than the article charged by the Public Prosecutor in his indictment. Meanwhile, general provisions are as specified in Article 191 paragraph (1) of the Criminal Procedure Code.

As for the contents of MA Jurisprudence No. 675 K/Pid/1987, dated 21-03-1989. are as follows: "If what is proven is a similar delict which is lighter in nature than a similar delict being charged with a more serious nature, then even though the lighter delict is not charged, the defendant can be blamed for being sentenced on the basis of committing the lighter delict". The presence of this jurisprudence provides an opportunity for ultra petita decisions to be implemented in criminal decisions. In the court subsystem, judicial practice is marked by a trend of increasing disparities in criminal decisions, such as the Panel of Judges adjudicating a case not required to implement the provisions contained in Article 191 paragraph (1) of the Criminal Procedure Code, but based on the jurisprudence of Supreme Court decisions No. 675 K/pid/1987, as a legal basis, has passed a decision in the form of declaring guilt and convicting the suspect with a decision other than the indictment of the public prosecutor.

On the other hand, there is also jurisprudence that allows the imposition of articles that were not charged, including decisions of the Supreme Court Number 321 K/Pid/1983, Number 47 K/Kr/1956, and Number 68 K/Kr/1973 which confirms that the court's decision must be based on the indictment. This can lead to disparities in criminal cases that are actually almost the same but are decided by different courts because they are decided by two different models of jurisprudence. Normatively, there is not a single article in the Criminal Procedure Code that requires a judge to decide on a sentence in accordance with the demands of the public prosecutor/prosecutor. Judges have the freedom to determine punishment in accordance with legal considerations and conscience. The law gives freedom to judges to impose sentences between the minimum and maximum sentences stipulated in the relevant criminal article.

A study conducted by the Research and Development Center for Law and Judiciary at the Research and Development Agency for Kumdil of the Supreme Court (2015) also concluded that the Criminal Procedure Code does not stipulate that sentencing decisions must comply with or fall

short of the demands of the Public Prosecutor/Prosecutor. In certain cases where the facts were found in the trial there were aggravating matters so that the judge had the confidence to impose a higher sentence than the prosecutor demanded, then the sentence did not violate the criminal procedure law (Yasin, 2017). The conclusion in this study is "It is the authority of the judge to decide according to the facts of the trial and his conviction to give a sentence exceeding the demands of the Public Prosecutor if it is deemed fair and rational. Moreover, it is a reality that the demands of the Public Prosecutor are not always the same or in accordance with the maximum limits of criminal penalties contained explicitly in laws and regulations. Judges can decide higher than the demands of the Public Prosecutor, but may not exceed the maximum penalty limit determined by law.

Although there is freedom and independence of judges in making decisions, it does not mean there are no limitations. These limitations include:

a. Must not exceed the maximum threat of the indicted article. For example, Article 156a of the Criminal Code contains a maximum threat of five years. So the judge may not impose a prison sentence of more than five years on the defendant. However, the judge may impose a sentence equal to or less than five years;
b. It is not permissible to issue sentencing decisions for which the type of crime (strafsoort) has no reference in the Criminal Code, or criminal regulations outside the Criminal Code;
c. The sentencing decision must provide sufficient consideration based on evidence. In many decisions, including the Supreme Court decision No. 202 K/Pid/1990 dated January 30, 1993, the Supreme Court stated that decisions that lack consideration (onvoldoende gemotiveerd) can be annulled. For example, the high court adds that the defendant's sentence is higher than that decided by the first instance judge but does not consider and explain the reasons for increasing the sentence. Such decisions can be rescinded.

IV. CONCLUSION

Ultra petita was originally known in the Civil Procedure Code. Ultra petita provisions in civil law are strictly regulated in Article 178 paragraph (3) HIR and Article 189 paragraph (3) Rbg which prohibits a Judge from deciding beyond what is required (petitum). Apart from being prohibited in the Civil Procedure Code, ultra petita is also prohibited for judges in the PTUN Procedural Law and the Criminal Procedure Code. In the criminal procedural law itself, what is prohibited is ultra petita decisions that are outside of the indictment of the public prosecutor, while ultra petita whose decisions exceed the demands of the public prosecutor are still allowed in the criminal procedural law because the basis for referring to the judge's decision is an indictment not a warrant. The judge is given the authority to decide on the conviction of the judge and the facts at trial, so the judge may decide the case exceeds the prosecutor's demands but still may not exceed the minimum maximum criminal limit of the article alleged to the Defendant.

Regarding the Application of the Ultra Petita Principle in Corruption Crime Case Decisions Viewed from the Perspective of Legal Purpose Theory, the verdict that the authors found contains elements of 151 Ultra Petita principles, namely in the Corruption Crime Case Decision No. 29/Pid.Sus-TPK/2021/PN Jkt.Pst. with An. The defendant Juliari P. Batubara. Where the judge's decision in that case was ultra petita in terms of the decision exceeding the prosecutor's demands. If examined in terms of the theory of legal purposes, the decision has not fulfilled the aspects of justice and legal expediency but only fulfilled the aspect of legal certainty because the decision has not been considered optimal, especially since the crime was committed in a state where the country was in the phase of a non-natural national disaster, namely Covid-19. It is hoped that the Panel of Judges in deciding cases, especially in the Criminal Procedure Code in applying the principle of ultra petita, must be careful so that they remain in accordance with the Prosecutor's indictment and if deciding exceeds the Prosecutor's demands, they must adhere to the maximum minimum limit of the crime charged to the Defendant. It is also hoped that in the future every decision issued

by the court must try to accommodate the three theories of legal purposes, namely justice, legal certainty and legal benefits.

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