

**KONSTITUSI NOMOR 76/PUU-XII/2014 YANG BERSIFAT ULTRA PETITA
TERHADAP PROSES PENYIDIKAN ANGGOTA DEWAN PERWAKILAN
RAKYAT REPUBLIK INDONESIA**

INTISARI

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Salah satu kewenangan Mahkamah Konstitusi Republik Indonesia berdasarkan Pasal 24C ayat (1) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 adalah megadili perkara pengujian Undang-Undang terhadap Undang-Undang Dasar. Kewenangan Mahkamah Konstitusi tersebut termasuk dalam kerangka konseptual adjudikasi konstitusional berupa pengendalian norma konkret (*konkretes normenkontrolverfahren*). Mahkamah Konstitusi dalam melakukan pengujian konstitusional suatu undang-undang tidak jarang mengeluarkan putusan melebihi amar permohonan para pemohon. Salah satu putusan yang menunjukkan aktivisme peradilan berupa penyimpangan terhadap prinsip *Judex Non Ultra Petita* adalah Putusan Mahkamah Konstitusi Nomor 76/PUU-XII/2014 perihal Pengujian Undang-Undang Nomor 17 Tahun 2014 tentang Majelis Permusyawaratan Rakyat, Dewan Perwakilan Rakyat, Dewan Perwakilan Daerah, dan Dewan Perwakilan Rakyat Daerah. Putusan tersebut termasuk dalam kategori putusan inkonstitusional bersyarat (*conditionally unconstitutional*). Mahkamah Konstitusi dalam perkara *a quo* dengan menggunakan penafsiran struktural (*structural argument*) menyatakan bahwa mekanisme persetujuan tertulis pihak ketiga pada proses penyidikan terhadap anggota Dewan Perwakilan Rakyat Republik Indonesia adalah konstitusional sepanjang diberikan oleh Presiden. Putusan tersebut sangat kontras dengan keinginan para pemohon sebagaimana tertulis dalam pokok permohonan (*petitum*). Mahkamah Konstitusi pada perkara tersebut telah melakukan *Counter Majoritarian Principle*, *Jurisdictional Activism*, dan *Judicial Creativity* dalam kerangka konseptual mengenai *The Seventh Sins of Judicial Activism*. Putusan Mahkamah Konstitusi pada perkara tersebut berimplikasi pada perubahan mekanisme persetujuan tertulis terkait proses penyidikan terhadap anggota Dewan Perwakilan Rakyat Republik Indonesia. Jenis penelitian hukum normatif digunakan untuk menganalisis terkait permasalahan penerapan aturan mengenai proses penyidikan terhadap anggota Dewan Perwakilan Rakyat berdasarkan peraturan perundang-undangan yang berlaku secara positif di Indonesia. Permasalahan tersebut tidak hanya memiliki keterkaitan dengan proses adjudikasi konstitusional di Mahkamah Konstitusi tetapi juga kedudukan Presiden dalam proses penyidikan terhadap anggot Dewan Perwakilan Rakyat ditinjau dari perspektif distribusi kekuasaan (*distribution of powers*), pemisahan kekuasaan (*separation of powers*), teori diskresi kebijakan, dan teori mengenai kekuasaan berdasarkan peraturan perundang-undangan (*statutory powers*).

Kata Kunci: *Ultra Petita*, Diskresi, Pengendalian Norma Konkret, Penafsiran Struktural

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**THE IMPLICATION OF CONDITIONALLY UNCONSTITUTIONAL DECISION
NUMBER 76/PUU-XII/2014 THAT ARE ULTRA PETITA IN THE INVESTIGATION
PROCESS TOWARD THE HOUSE OF REPRESENTATIVE MEMBERS**

ABSTRACT

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One of the authorities of the Constitutional Court of the Republic of Indonesia according to Article 24C paragraph (1) of the Constitution of the Republic of Indonesia Year 1945 is to convict Judicial Review towards the Constitution. The authority of the Constitutional Court is included in the conceptual framework of constitutional adjudication in the form of concrete norm control (Konkretes normenkontrolverfahren). The Constitutional Court in convicting Judicial Review not infrequently issued a ruling beyond the applicant's request for the injunction. One decision that shows the judicial activism in the form of deviation from the principle of Judex Non Ultra Petita is the Constitutional Court Decision Number 76/PUU-IX/2014 regarding Judicial Review of Law Number 17 Year 2014 on the People's Consultative Assembly (MPR), House of Representatives (DPR), Regional Representatives Board (DPD), and Regional House of Representatives (DPRD). The decision included as a conditionally unconstitutional decision. The Constitutional Court in the a quo case with the structural interpretation (structural argument) states that the third party written consent mechanism on the interrogation towards the members of the House of Representatives of the Republic of Indonesia is constitutional for it is granted by the President. The verdict is in stark contrast with the requests of the applicant, as prescribed in the petition. The Constitutional Court in the matter has committed Counter Majoritarian Principle, Jurisdictional Activism, and Judicial Creativity in the conceptual framework of The Seventh Sins of Judicial Activism. Constitutional Court's decision on the matter implicates the changes of written consent mechanism regarding the interrogation towards the members of the House of Representatives of the Republic of Indonesia. Normative legal issues type of research is used to analyze the application of the rules regarding the interrogation towards the members of the House of Representatives based on the positive laws and regulations that apply in Indonesia. The problem is not only related to the constitutional adjudication process in the Constitutional Court but also the position of President on the interrogation process towards the members of Parliament viewed from the perspective of the distribution of powers, separation of powers, the theory of discretionary policy, and theory on power by legislation (statutory powers).

Keywords: *Ultra Petita, Discretion, Concrete Norm Control, Structural Interpretation*

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