

BUKTI KORESPONDENSI
ARTIKEL JURNAL INTERNASIONAL

Judul Artikel : Constitutional Dialogue in Judicial Review at the Indonesian Constitutional Court: The Future Prospects
Nama Jurnal : Journal of Legal, Ethical and Regulatory Issues
Penulis : Ahmad, Fence M. Wantu and Dian Ekawaty Ismail

NO	Perihal	Tanggal
1	Bukti Submit artikel	6 Agustus 2021
2	Acceptance Artikel	18 September 2021
3	Penyampaian Bukti Pembayaran Publikasi Artikel	16 Oktober 2021
4	Pemberitahuan Revisi	21 Oktober 2021
5	Upload Revisi Artikel	23 Oktober 2021
6	Publikasi artikel jurnal	3 Februari 2022

**1. BUKTI SUBMIT ARTIKEL
(6 Agustus 2021)**

Thank you for submitting Manuscript [Eksternal] [Kotak Masuk x]



Allied Business Academies <legalissues@abacademies.org>
kepada saya ▾

Jum, 6 Agu 2021, 15.43 ☆ ↶ ⋮

Inggris ▾ > Indonesia ▾ [Terjemahkan pesan](#)

[Nonaktifkan untuk: Inggris x](#)

Allied Business Academies

Dear Dr. Ahmad

Your submission entitled **CONSTITUTIONAL DIALOGUE IN JUDICIAL REVIEW AT THE INDONESIAN CONSTITUTIONAL COURT: THE FUTURE PROSPECTS** has been received by Journal of Legal, Ethical and Regulatory Issues

You will be able to check on the progress of your paper by logging on to Editorial Tracking as an author.

The URL is <https://www.abacademies.org/editorial-tracking/>

Username : **ahmad**
Password : **70yu7xxd**

Your manuscript will be given a reference number once an Editor has been assigned.
Thank you for submitting your work.

Kind regards,
Editorial Office
[Journal of Legal, Ethical and Regulatory Issues](#)

CONSTITUTIONAL DIALOGUE IN JUDICIAL REVIEW AT THE INDONESIAN CONSTITUTIONAL COURT: THE FUTURE PROSPECTS

Ahmad, State University of Gorontalo, Indonesia

Fence M. Wantu, State University of Gorontalo, Indonesia

Dian Ekawaty Ismail, State University of Gorontalo, Indonesia

ABSTRACT

The purpose of this paper is to formulate a model of constitutional dialogue implementation in judicial review of the 1945 Constitution at the Indonesian Constitutional Court. The writing approach employed the Statute Approach, Conceptual Approach, and Comparative Approach. The novelty of this paper is a model of constitutional dialogue implementation in the judicial review of the 1945 Constitution of the Republic of Indonesia at the Constitutional Court that put emphasis on on decision making through interpretation, which can be done using 2 (two) schemes. The first scheme is an active interpretation that the Constitutional Court and the People's Consultative Assembly jointly carry out on judicial review related to the Constitutional Court in which the decisions are made by converting votes, 60% votes of the Constitutional Court and 40% votes of the People's Consultative Assembly (MPR). The second scheme is passive interpretation, in which the Constitutional Court can inquire the People's Consultative Assembly to provide an interpretation of constitutionality on account that the interpretation is limited to the approach of original intent interpretation.

Keywords: *Constitutional Dialogue; Interpretation; Judicial Review.*

INTRODUCTION

Through the constitutional construction contained in the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution), the Constitutional Court (hereinafter referred to as the Constitutional Court) transforms into a super body state institution. It is applicable that the Constitutional Court with only 9 judges can annul the power of the legislative parliamentary institution, totaling 575 people without being questioned as their decisions are final and binding (Mahfud, 2010). One example is the decision No. 005/PUU-IV/2006 on judicial review of Law No. 22 of 2004 on the Judicial Commission that is related to the Constitutional Court, in which the Constitutional Court excludes that the term "Judge" is not interpreted as a judge of the Constitutional Court (Maladi, 2010). Furthermore, judicial review of Law no. 7 of 2020 on the Third Amendment of Law no. 24 of 2003 on the Constitutional Court was conducted, a number of NGOs carried out a judicial review of the Law,

considering that the Constitutional Court Law what was being reviewed, it raises some questions by NGOs related to the independence of the Constitutional Court in giving decisions, for example, the Constitutional and Democracy NGO (KoDe) (Hidayat, 2020). The subjects highlighted by a number of NGOs are related to the tenure of the judges of the Constitutional Court, and the maximum age of the judges of the Constitutional Court (Detik News, 2020). Thus, from several judicial review related to the Constitutional Court, there was a debate as the Constitutional Court was considered to have violated the principle of “*nemo iudex in propria causa*,” which means that none can be a good judge for himself.

Key notes that have also been highlighted, which have influenced the Constitutional Court (MK) journey were the corruption cases that ensnared a number of MK judges, including former Constitutional Court Justices, Akil Mochtar who was involved in the bribery case for the election of Regional Heads (Movanita, 2014), and Patrialis Akbar (Corruption Eradication Commission, 2017). It also confirms that the Constitutional Court is the non-faultless state institution, although later the Constitutional Court is a state institution considered to be the custodian of constitutional rights in which the public put high expectation for upholding justice against this institution (Novendri Mohamad Nggilu, 2021).

The problems in the Constitutional Court are inseparable from the institutional deficiencies in the Constitutional Court (Aritonang, 2013). According to the author, in the future the Constitutional Court must build a monitoring system as well as check and balance system in terms of implementing the authority of the Constitutional Court. Specifically dealing with checks and balances system in the process of judicial review for the 1945 Constitution in which it will bring forth a constitutional interpretation by the Constitutional Court, at some point it will be necessary to involve other institutions, particularly in the judicial review related to the Constitutional Court. It should be done in order to maintain professionalism, accountability, and independence of the judges of the Constitutional Court in carrying out their duties.

The author attempts to offer a mechanism for constitutional review in the Constitutional Court with the model of the Constitutional Dialogue in the judicial review to the 1945 Constitution. Conceptually, the Constitutional Dialogue System is a mechanism that can be used as a breakthrough in conflicts of interest that can occur in the Constitutional Court in the judicial review related to itself.

The form of implementation of the check and balance system in terms of judicial review to the 1945 Constitution with the concept of Constitutional Dialogue by involving the participation of other institutions in testing norms, the Constitutional Dialogue is a concept of decision making through

generalizing perceptions. According to **Bourdieu**, for example, as quoted by **Xavier Groussot** postulated that “*Dialogue not just a means of communication; it is also a medium of power*” (Xavier Groussot, 2012). He stated that constitutional dialogue is illustrated as a perfect platform for defending a conflict of interest over a power. (Xavier Groussot, 2012).

Therefore, strengthening the importance of dialogue process in interpreting the constitution was emphasized by **Gadamer** that “interpretation is not just a method, but actual human knowledge based on observations and human experiences that have existed before and were generated from a dialectical process (Wulandari, 2019). The dialectical space in interpreting the statute constitutionality will further enrich knowledge and provide legitimacy more than just personal institutional recognition.

In a previous article entitled “*Indonesian Constitutional Interpretation: Constitutional Court Versus the People’s Consultative Assembly*”, the interpretation in conducting a Judicial review in the Indonesian Constitutional Court has not been fully clarified until the technical implementation in the judicial review to the 1945 Constitution by involving the MPR in inherently conducting a judicial review also resulted in interpretation. Therefore, in this paper, we will describe the ideal aspect of Judicial review in the Indonesian Constitutional Court in the future with the mechanism of constitutional dialogue.

PROBLEM STATEMENT

Based on the background description as conveyed above, the question is what is the ideal future model of judicial review with constitutional dialogue approach at the Indonesian Constitutional Court?

METHOD

The approach in this paper is the Statue Approach, Conceptual Approach, and Comparative Approach, with primary legal materials, which is authoritative legal materials such as the Constitution, and other laws and regulations, as well as secondary legal materials that are good writings of relevant books and articles. All legal materials are then analyzed prescriptively.

DISCUSSION

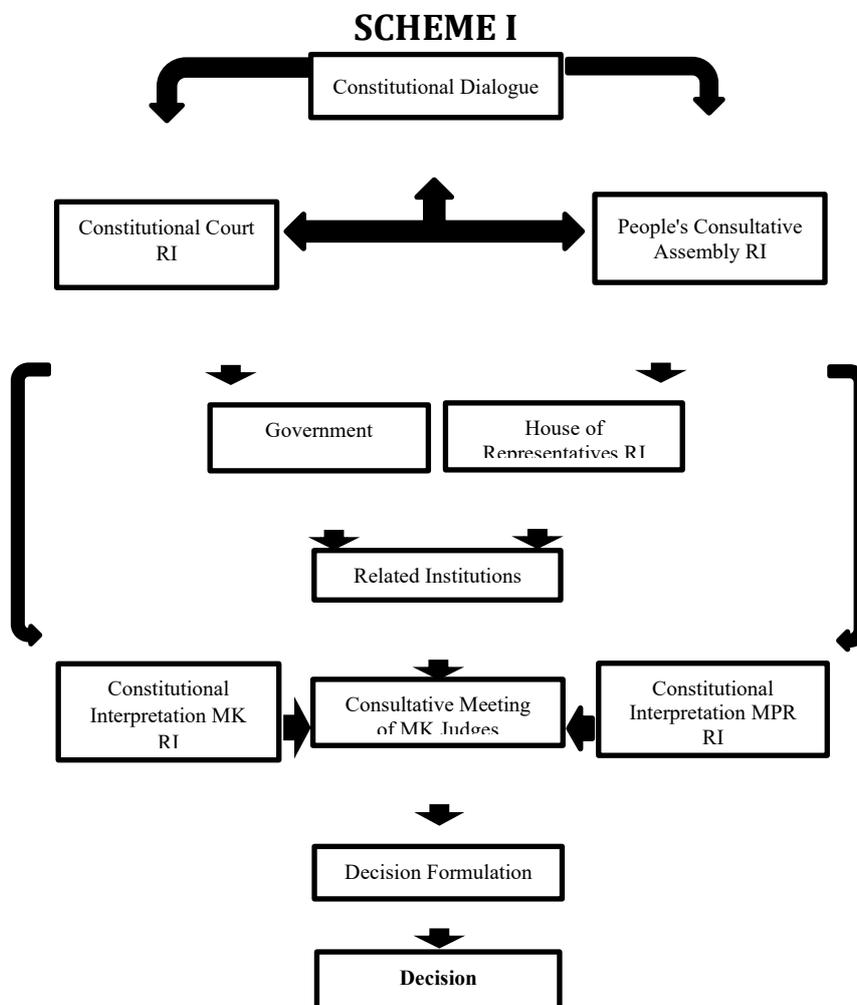
Model for Implementation of Constitutional Dialogue in the Judicial Review of the 1945 Constitution at the Constitutional Court

Implementation of constitutional dialogue in the system of judicial review to the 1945 Constitution at the Constitutional Court, it is necessary to formulate its design as a conceptual line from this writing. It is intended to establish a mechanism for testing norms that is not only resilient in terms of

the integrity of its decisions, but also as an effort to strengthen the legal basis (*ius constituendum*).

Construction of the Constitutional Dialogue in the judicial review to the 1945 Constitution at the Constitutional Court must pay attention to institutional respect for the People's Consultative Assembly (hereinafter referred to as MPR). Therefore, with the Constitutional Dialogue mechanism, the right to interpret with legally binding is no longer a monopoly of the Constitutional Court, but is distributed to other institutions, which is the MPR.

Through this paper, the author formulates a model for judicial review in the Indonesian Constitutional Court by adopting the concept of Constitutional Dialogue into the norms testing in the Constitutional Court that emphasizes decision making through interpretation (Hapsoro, 2020). The following are recommendations for diversification scheme of the constitutional dialogue system into the system for reviewing the 1945 Constitution at the Constitutional Court:



The scheme above is a mechanism for actualizing the concept of constitutional dialogue into the reviewing system at the Constitutional

Court. The first scheme that the author offers is to occupy the same position between the MPR and the Constitutional Court in the reviewing room for the constitutional legal products. It is based on consideration of implementation of the authority of each institution (MPR and MK) formulated in a limitative manner in the 1945 Constitution, in which the Constitutional Court conducted the judicial review on the 1945 Constitution, while the MPR limited its authority to amend and make establishment on the results of the amendments to the 1945 Constitution (Ahmad Ahmad, 2019).

Furthermore, in the first scheme, the presence of the MPR in the reviewing room is mandatory to provide an interpretation of the statute constitutionality related to the Constitutional Court institutionally, which means, if there is a constitutional product reviewed to the Constitutional Court, there is the inherent authority or interest of the Constitutional Court, then the Constitutional Court cannot conceptually interpret the meaning and intent of the norms that are used as a touchstone by the petitioners, so that the interpretation submitted by the MPR must be used by the Constitutional Court in making decision. It is intended so that the resulting decision hold harmless from the shackles and elements of interest from the judges of the Constitutional Court as a judicial institution in which justice seekers put their expectation.

The mechanism as described in the chart above begins with a series of hearings from the parties, which in this case is the petitioners and the appellee and other relevant parties related to the subject matter of the judicial review. In such mechanism, the Constitutional Court and the MPR appear on the same line of interpretation, but the petitioners and the appellee and related parties represent as the parties of which statements will be heard if requested by the Constitutional Court.

The petitioners as referred to above, are parties who can become petitioners in the case of judicial review at the Constitutional Court. It emphasizes that the issue of constitutionality cannot be conducted haphazardly based on subjectivity as the constitution is the basic law of the state, so that the determination of legal standing regulated in the Constitutional Court Law is a substantial issue.

Therefore, with this first scheme, it will present a testing mechanism in term of *check and balance* or conjointly supervise and offset in the implementation of the review authority by the Constitutional Court, especially in terms of decisions in which contain various kinds of interpretation. Therefore, by presenting the MPR RI in the procedural law of judicial review of to the 1945 Constitution in the Constitutional Court, where the interpretation by the People's Consultative Assembly on the judicial review in the first scheme is mandatory in the judicial review, in which the Constitutional Court is institutionally linked.

The referred interpretation will then be set forth in the Constitutional Court decision before being read in the presence of the trial with the agenda of hearing to the reading of verdict. However, prior to that process, in the consultative meeting of judges, the judges of Constitutional Court must include the MPR interpretation as a consideration material without adding to the interpretation. Therefore, it will become a kind of vote conversion in reading the Constitutional Court's decision, although then the Judge of Constitutional Court has the right to give other interpretation outside the MPR. Hence, in order to strengthen the interpretation, it is considered that the MPR votes will be converted into 4 (four) votes.

Determination of 4 (four) votes from the MPR by this author is based on proportionality consideration in which the MPR votes are divided based on a 40:60 scheme, where 60% of the votes of the Constitutional Court and 40% of the votes of the MPR. The MPR vote cannot exceed 40%, as it is done to maintain the independence of the Constitutional Court judges in giving objective decisions. Thus with this scheme, the total votes that will be included in the Constitutional Court's decision to read out are 13 (thirteen) votes.

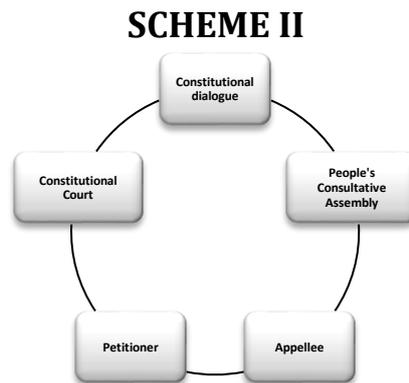
The conversion model as described by the author above is very helpful in resolving the conflict of interest of the Constitutional Court institutionally. An important note that needs to be underlined in the first scheme is that it will only be applied if there is a review of certain laws, which there is an interest in the Constitutional Court, both institutionally and in terms of function and authority.

Thus, the problem as described by the author in some previous descriptions regarding violations committed by the Constitutional Court institutionally through its decisions that there are a lot of overlapping as it violates several principles in procedural law, one of which is the principle of *nemo iudex in causa sua* as it is a very important principle. The principles in the procedural law system contained in the judicial system do not solely apply in Indonesia, but also generally throughout the world.

The first scheme as described above is one form of building a more democratic norm testing system by prioritizing the dialogue process in producing constitutional decisions. It is also one of the answers to implement the fourth principle of Pancasila, which mandates a deliberation process to consensus in decision making, especially those are the decisions that have an impact on the general public or the community so that the dialogue process will certainly produce decisions to be accounted for by the community as the holder of the highest sovereignty in this country. It is emphasized in article 1 paragraph (1) the 1945 Constitution (Siagian, 2021). Therefore, with the dialogue process between the Constitutional Court and the MPR in the process of testing norms in the first scheme is one form of

actualizing the conceptual understanding of constitutional dialogue theory in which the process sets down the MPR and the Constitutional Court in the same position to interpret the constitution or the 1945 Constitution.

The second scheme offered by the author is that the MPR interpretation mechanism is passive one. In this case the court is able to inquire the MPR to provide space for interpretation of a constitutional product that the Constitutional Court. The referred interpretation is an interpretation based on the constitution or the 1945 Constitution, in the event of the applicant argues that the application is based on the 1945 Constitution, then the MPR is able to provide an interpretation of the meaning, intent, and purpose of the onset of the formulation of the article argued by the petitioners to the Constitutional Court. The following is an illustration of the second scheme:



In this second mechanism, the MPR will use the interpretive approach that is limited to the interpretation approach of original intent or interpretation based on the original intent of the *ratio legis* and *ratio decindendi* process of the onset of the formulation of articles and paragraph in the 1945 Constitution. This mechanism will also facilitate the Constitutional Court in formulating the decision as it will be assisted by the presence of the MPR in providing explanation of the norms postulated by the applicants in the examination room at the Constitutional Court.

Constitutional dialogue in this scheme occupies a good position in providing space for democratic decision-making process through dialogue approach as a way of solving problems in terms of resolving constitutional rights issues, which all stakeholders in this country are obligatory to fulfill, especially to the Constitutional Court as the leading sector for the resolution of constitutional aspects that will be debated before the trial of the panel of constitutional judges. Meanwhile, the position of the MPR is significant to open a space for sacralization of interpretation, which the Constitutional Court has carried out as the only legally binding state institution that has the right to interpret the constitution.

An important emphasis that must be paid attention in this scheme is that the MPR position is inactive, meaning that it is the interpretation of the norms of the 1945 Constitution, which is postulated by the petitioners that the MPR will then provide information in the form of interpretation, especially the original intent interpretation approach. Therefore in the trial, there will be a special agenda of which the judges of the Constitutional Court make schedule to hear information from the MPR regarding the norms postulated by the petitioners, so that the existence of this special court room will bring forth a constitutional dialogue between the Constitutional Court and the MPR to explore the goals and objectives to achieve in the Constitutional Court in formulation of articles and paragraphs in the 1945 Constitution. In its theoretical conception, the constitutional dialogue then bring forth to a constitutional dialogue mechanism, which is a dialogue between the judiciary and representative institutions, in this case is a dialogue between the Constitutional Court and the People's Consultative Assembly to produce constitutional decisions, which risked many interests of the Indonesian people.

Thus in this second scheme, the correlation between the Constitutional Court (MK) and the People's Consultative Assembly (MPR) in the reviewing room will bring forth interpretations, which will eventually be set forth in the Constitutional Court's decision that will have binding power to all parties, especially to state institutions that will carry out the decision due to the nature of the Constitutional Court decision is final and binding.

Therefore, from the 2 (two) schemes as described above by the author, the author offers to use both schemes in the judicial review of the 1945 Constitution at the Indonesian Constitutional Court, in the event that the laws being reviewed is those related to the Constitutional Court, then the First Scheme is used. Meanwhile, if the laws being tested are not related to the Constitutional Court, then the second scheme is used.

CONCLUSION

The model of Constitutional Dialogue Implementation in Judicial Review of the 1945 Constitution in the Constitutional Court must position the MPR and the Constitutional Court in the same degree to provide an interpretation of the 1945 Constitution. In order to extend across such similarity of positions, the author offers 2 (two) mechanisms, which are the Active mechanism and the Passive mechanism in conducting constitutionality review. The active mechanism will be used if there is a judicial review related to the Constitutional Court in which 40% of the votes will be converted from the MPR and 60% from the Constitutional Court, while the passive mechanism is the mechanism used when judicial review

that is not related to the Constitutional Court. Therefore, the author recommends using those two schemes or in other words, based on what statute the Constitutional Court proposes for judicial review.

REFERENCES

- Ahmad Ahmad, N. M. (2019). Denyut Nadi Amandemen Kelima UUD 1945 melalui Pelibatan Mahkamah Konstitusi sebagai Prinsip the Guardian of the Constitution. *Jurnal Konstitusi*, 16(4), 786-808. doi: <https://doi.org/10.31078/jk1646>
- Aritonang, D. M. (2013). Peranan dan problematika Mahkamah Konstitusi (MK) dalam Menjalankan Fungsi dan Kewenangannya. *Jurnal Ilmu Administrasi*, 10(3), 375-392. doi: <https://doi.org/10.31113/jia.v10i3.16>
- Departemen Pendidikan. (2008). *Kamus Besar bahasa Indonesia*. Jakarta: PT. Gramedia Pustaka Utama.
- Detik News. (2020, Juli). *Ada Barter Dibalik Pengesahan UU Mahkamah Konstitusi ?* Retrieved from www.dw.com: <https://www.dw.com/id/ada-barter-di-balik-pengesahan-uu-mahkamah-konstitusi/a-54789353>
- Hapsoro, F. L. (2020). "Interpretasi Konstitusi dalam Pengujian Konstitusionalitas untuk Mewujudkan The Living Constitution. *Jambura Law Review*, 2(2), 139-160. doi: <https://doi.org/10.33756/jlr.v2i2.5644>
- Hidayat, R. (2020, November). *Pengujian UU MK terbaru Bakal Jadi Ujian Bagi Hakim Konstitusi*. Retrieved from <https://www.hukumonline.com>: <https://www.hukumonline.com/berita/baca/lt5f59e28e237d0/pengujian-uu-mk-terbaru-bakal-jadi-ujian-bagi-hakim-konstitusi/>
- Komisi Pemberantasan Korupsi. (2017). *Kisah Korupsi Kita: Anatomi Kasus-Kasus Besar dalam Kajian Interdisipliner*. Jakarta: Komisi Pemberantasan Korupsi (KPK).
- Mahfud, M. (2010). *Perdebatan Hukum Tata Negara Pasca Amandemen Konstitusi*. Jakarta: Raja Grafindo Persada.
- Mahkamah Konstitusi Republik Indonesia. (2004). *Cetak Biru Membagunan Mahkamah Konstitusi*. Jakarta: Kerjasama MKRI, KHRN, dan Yayasan Tifa.
- Maladi, Y. (2010). Benturan Asas Nemo Judex Idoneus In Propria Causa Dan Asas Ius Curia Novit. *Jurnal Konstitusi*, 001-018. doi:<https://doi.org/10.31078/jk%25x>

- Movanita, A. N. (2014, Desember). *Kasus Suap Penanganan Sengketa Pilkada Akil Mochtar yang Menggurita*. Retrieved from KOMPAS.com: <https://nasional.kompas.com/read/2014/12/27/15533261/Kasus.Suap.Penanganan.Sengketa.Pilkada.Akil.Mochtar.yang.Menggurita?page=all>
- Muda, I. (2017). Constitutional Dialog Sebagai Solusi Ketatanegaraan: Suatu Solusi Pasca Putusan MK Terkait Pencantuman Penganut Kepercayaan Pada Kolom Agama Di KTP. *Percepatan pembangunan Bidang Agama Dalam Naskah GBHN Sebagai Pedoman Haluan Pembangunan* (p. 7). Bandar Lampung: Majelis Permusyawaratan Rakyat dan UIN Lampung.
- Novendri Mohamad Nggilu, L. W. (2021). Legal Protection Bonda And Bulango Languange: In Reality And Prospect. *Jambura Law Review*, 3(1), 19-36. doi: <https://doi.org/10.33756/jlr.v3i1.6947>
- Sekretariat Jenderal dan Kepanitraan Mahkamah Konstitusi. (2008). *Naskah Komprehensif Perubahan Undang Undang Dasar Negara Republik Indonesia Tahun 1945 (Buku VI, Kekuasaan Kehakiman)*. Jakarta: Mahkamah Konstitusi Republik Indonesia .
- Siagian, A. H. (2021). Omnibus Law in the Perspective of Constitutionality and Legal Politics. *Jambura Law Review*, 3(1), 93-111. doi: <https://doi.org/10.33756/jlr.v3i1.7222>
- Wulandari, W. (2019). *Kewenangan Mahkamah Konstitusi Dalam Melakukan Judicial Review terhadap Undang Undang Pidana Yang Mengakibatkan Perubahan Norma Dalam Hukum Pidana Materill Ditinjau Dari Asas Legalitas*. Jakarta: Pusat Penelitian dan Pengkajian Perkara, dan Pengelolaan Perpustakaan Kepanitraan dan Sekretaris Jenderalol Mahkamah Konstitusi.
- Xavier Groussot, (. M. (2012). *Constitutional Dialogues, Pluralism and Conflicting Identities". Constitutional Pluralism in the European Union and Beyond*. London: Hart Publishing.

**II. ACCEPTANCE ARTIKEL
(18 September 2021)**

Article Accepted for Publication_jleri-21-6650 Eksternal ➔ Kotak Masuk ✕

Legal, Ethical and Regulatory Issues <legalissues@abacademies.org>
kepada saya ▾

18 Sep 2021, 15.55 ☆ ↶ ⋮

🌐 Inggris ▾ > Indonesia ▾ [Terjemahkan pesan](#)

[Nonaktifkan untuk: Inggris](#) ✕

Dear Ahmad,

Greetings!!

Congratulations on the acceptance of your manuscript.

This is to inform you that the manuscript "CONSTITUTIONAL DIALOGUE IN JUDICIAL REVIEW AT THE INDONESIAN CONSTITUTIONAL COURT: THE FUTURE PROSPECTS" is accepted for publication. You will receive the Final galley proof soon from our end.

Meanwhile we request you to make the payment of 1419 Euro using the following Online Payment link: <https://www.abacademies.org/onlinepayment/>.

Please give the invoice Number as: 1544-0044-24-11-1034

Note: Please send us the receipt once the payment is done, to trace out the transaction easily.

Regards,

Eliza Jane

**III. PENYAMPAIAN BUKTI PEMBAYARAN PUBLIKASI
ARTIKEL
(16 OKTOBER 2021)**



AHMAD WIJAYA <ahmad_wijaya@ung.ac.id>
kepada Ethical ▾

16 Okt 2021, 19:28 ☆ ↶ ⋮

Dear editor,

I would like to inform you that i just completed the publication payment of our article with the invoice number: **1544-0044-24-11-1034**

Here i attached the bank transfer receipt as a proof.

May i ask when will our article be published in regular issue in JLERI?

Thank you

Best regards



Satu lampiran • Dipindai dengan Gmail ⓘ



**IV. PEMBERITAHUAN REVISI
(21 OKTOBER 2021)**

Notify Author: Author Revision Notification [Eksternal] [Kotak Masuk x] [Close] [Print] [Share]

Allied Business Academies <legalissues@abacademies.org> kepada saya [Kam, 21 Okt 2021, 18.41] [Star] [Back] [More]

Inggris > Indonesia [Terjemahkan pesan] Nonaktifkan untuk: Inggris x

Allied Business Academies

Ref.: Ms. No. **jleri-21-6650**

Article Title: **CONSTITUTIONAL DIALOGUE IN JUDICIAL REVIEW AT THE INDONESIAN CONSTITUTIONAL COURT: THE FUTURE PROSPECTS**

Journal Title: **Journal of Legal, Ethical and Regulatory Issues**

Dear Dr. **Ahmad**

This is to inform you that Reviewers have now commented on your Ms. No. **jleri-21-6650**. You can see that they are advising that you should revise your manuscript. For your guidance, reviewers' comments are appended below.

Your revision is due by **Thu , 04-Nov-2021**

To submit a revision, go to <https://www.abacademies.org/editorial-tracking/> and log in as an Author. You will see a menu item call Submission Needing Revision. You will find your submission record there.

Username : **ahmad**
Password : **70yu7xxd**

Yours sincerely,
Manging Editor,
[Journal of Legal, Ethical and Regulatory Issues](#)

Reviewers comments:

To Author: Dear authors, Thank you for giving me the opportunity to read your paper. This topic is "CONSTITUTIONAL DIALOGUE IN JUDICIAL REVIEW AT THE INDONESIAN CONSTITUTIONAL COURT: THE FUTURE PROSPECTS". I have a few suggestions that you may consider as you develop the paper further:
Reviewer's comments • Introduction mainly talks about the importance of the study while we expect to see the research gap, problem statement, contextualization of the research idea and finally the main research questions here. • Theoretical literature has not been considered and reviewed. It's better to observe the connection between the contents. Try to explain everything except the topics in order to establish the necessary coherence. • Some paragraphs and sentences are without reference. This reflects the statements of the authors without scientific evidence. • The authors need to draw substantive conclusions from their results, and suggest, develop recommendations for further research. • The discussion section should be separate from the results section. The discussion challenges your findings and determines the degree of compatibility with previous research. • In the discussion section, for each dimension of grounded theory that you have identified separately, the results should be written, what effects it has on the main phenomenon, and how it causes the main phenomenon to grow or stagnate. • In conclusion, try to add clear practical and theoretical implications for your research. Best of luck with the further development of the paper. • The references used in the theoretical literature are old and authors should use references (2019-2020-2021). Best of luck with the further development of the paper.
Result this paper: Major

**V. Upload Revisi Artikel
(23 OKTOBER 2021)**

CONSTITUTIONAL DIALOGUE IN JUDICIAL REVIEW AT THE INDONESIAN CONSTITUTIONAL COURT: THE FUTURE PROSPECTS

Ahmad, State University of Gorontalo, Indonesia

Fence M. Wantu, State University of Gorontalo, Indonesia

Dian Ekawaty Ismail, State University of Gorontalo, Indonesia

ABSTRACT

The purpose of this paper is to formulate a model of constitutional dialogue implementation in judicial review of the 1945 Constitution at the Indonesian Constitutional Court. The writing approach employed the Statute Approach, Conceptual Approach, and Comparative Approach. The novelty of this paper is a model of constitutional dialogue implementation in the judicial review of the 1945 Constitution of the Republic of Indonesia at the Constitutional Court that put emphasis on decision making through interpretation, which can be done using 2 (two) schemes. The first scheme is an active interpretation that the Constitutional Court and the People's Consultative Assembly jointly carry out on judicial review related to the Constitutional Court in which the decisions are made by converting votes, 60% votes of the Constitutional Court and 40% votes of the People's Consultative Assembly (MPR). The second scheme is passive interpretation, in which the Constitutional Court can inquire the People's Consultative Assembly to provide an interpretation of constitutionality on account that the interpretation is limited to the approach of original intent interpretation.

Keywords: *Constitutional Dialogue; Interpretation; Judicial Review.*

INTRODUCTION

Through the constitutional construction contained in the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution), the Constitutional Court (hereinafter referred to as the Constitutional Court) transforms into a super body state institution. It is applicable that the Constitutional Court with only 9 judges can annul the power of the legislative parliamentary institution, totaling 575 people without being questioned as their decisions are final and binding (Mahfud, 2010). One example is the decision No. 005/PUU-IV/2006 on judicial review of Law No. 22 of 2004 on the Judicial Commission that is related to the Constitutional Court, in which the Constitutional Court excludes that the term "Judge" is not interpreted as a judge of the Constitutional Court (Maladi, 2010). Furthermore, judicial review of Law no. 7 of 2020 on the Third Amendment of Law no. 24 of 2003 on the Constitutional Court was

conducted, a number of NGOs carried out a judicial review of the Law, considering that the Constitutional Court Law what was being reviewed, it raises some questions by NGOs related to the independence of the Constitutional Court in giving decisions, for example, the Constitutional and Democracy NGO (KoDe) (Hidayat, 2020). The subjects highlighted by a number of NGOs are related to the tenure of the judges of the Constitutional Court, and the maximum age of the judges of the Constitutional Court (Detik News, 2020). Thus, from several judicial review related to the Constitutional Court, there was a debate as the Constitutional Court was considered to have violated the principle of "*nemo iudex in propria causa*," which means that none can be a good judge for himself.

Key notes that have also been highlighted, which have influenced the Constitutional Court (MK) journey were the corruption cases that ensnared a number of MK judges, including former Constitutional Court Justices, Akil Mochtar who was involved in the bribery case for the election of Regional Heads (Movanita, 2014), and Patrialis Akbar (Corruption Eradication Commission, 2017). It also confirms that the Constitutional Court is the non-faultless state institution, although later the Constitutional Court is a state institution considered to be the custodian of constitutional rights in which the public put high expectation for upholding justice against this institution (Novendri Mohamad Nggilu, 2021).

The problems in the Constitutional Court are inseparable from the institutional deficiencies in the Constitutional Court (Aritonang, 2013). According to the author, in the future the Constitutional Court must build a monitoring system as well as check and balance system in terms of implementing the authority of the Constitutional Court. Specifically dealing with checks and balances system in the process of judicial review for the 1945 Constitution in which it will bring forth a constitutional interpretation by the Constitutional Court, at some point it will be necessary to involve other institutions, particularly in the judicial review related to the Constitutional Court. It should be done in order to maintain professionalism, accountability, and independence of the judges of the Constitutional Court in carrying out their duties.

The author attempts to offer a mechanism for constitutional review in the Constitutional Court with the model of the Constitutional Dialogue in the judicial review to the 1945 Constitution. Conceptually, the Constitutional Dialogue System is a mechanism that can be used as a breakthrough in conflicts of interest that can occur in the Constitutional Court in the judicial review related to itself.

The form of implementation of the check and balance system in terms of judicial review to the 1945 Constitution with the concept of Constitutional Dialogue by involving the participation of other institutions in testing norms,

the Constitutional Dialogue is a concept of decision making through generalizing perceptions. According to **Bourdieu**, for example, as quoted by **Xavier Groussot** postulated that “*Dialogue not just a means of communication; it is also a medium of power*” (Xavier Groussot, 2012). He stated that constitutional dialogue is illustrated as a perfect platform for defending a conflict of interest over a power. (Xavier Groussot, 2012).

Therefore, strengthening the importance of dialogue process in interpreting the constitution was emphasized by **Gadamer** that “interpretation is not just a method, but actual human knowledge based on observations and human experiences that have existed before and were generated from a dialectical process (Wulandari, 2019). The dialectical space in interpreting the statute constitutionality will further enrich knowledge and provide legitimacy more than just personal institutional recognition.

In a previous article entitled “*Indonesian Constitutional Interpretation: Constitutional Court Versus the People's Consultative Assembly*”, the interpretation in conducting a Judicial review in the Indonesian Constitutional Court has not been fully clarified until the technical implementation in the judicial review to the 1945 Constitution by involving the MPR in inherently conducting a judicial review also resulted in interpretation. Therefore, in this paper, we will describe the ideal aspect of Judicial review in the Indonesian Constitutional Court in the future with the mechanism of constitutional dialogue.

PROBLEM STATEMENT

Based on the background description as conveyed above, the question is what is the ideal future model of judicial review with constitutional dialogue approach at the Indonesian Constitutional Court?

METHOD

The approach in this paper is the Statue Approach, Conceptual Approach, and Comparative Approach, with primary legal materials, which is authoritative legal materials such as the Constitution, and other laws and regulations, as well as secondary legal materials that are good writings of relevant books and articles. All legal materials are then analyzed prescriptively.

DISCUSSION

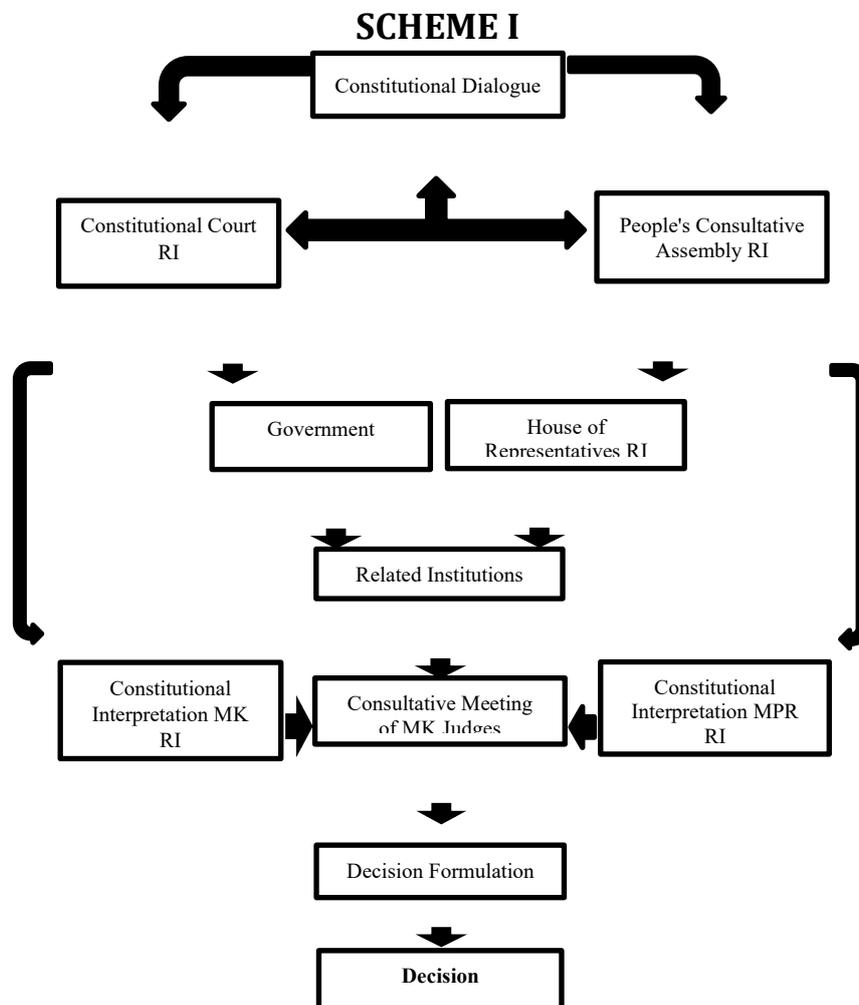
Model for Implementation of Constitutional Dialogue in the Judicial Review of the 1945 Constitution at the Constitutional Court

Implementation of constitutional dialogue in the system of judicial review to the 1945 Constitution at the Constitutional Court, it is necessary to formulate its design as a conceptual line from this writing. It is intended to

establish a mechanism for testing norms that is not only resilient in terms of the integrity of its decisions, but also as an effort to strengthen the legal basis (*ius constituendum*).

Construction of the Constitutional Dialogue in the judicial review to the 1945 Constitution at the Constitutional Court must pay attention to institutional respect for the People's Consultative Assembly (hereinafter referred to as MPR). Therefore, with the Constitutional Dialogue mechanism, the right to interpret with legally binding is no longer a monopoly of the Constitutional Court, but is distributed to other institutions, which is the MPR.

Through this paper, the author formulates a model for judicial review in the Indonesian Constitutional Court by adopting the concept of Constitutional Dialogue into the norms testing in the Constitutional Court that emphasizes decision making through interpretation (Hapsoro, 2020). The following are recommendations for diversification scheme of the constitutional dialogue system into the system for reviewing the 1945 Constitution at the Constitutional Court:



The scheme above is a mechanism for actualizing the concept of constitutional dialogue into the reviewing system at the Constitutional Court. The first scheme that the author offers is to occupy the same position between the MPR and the Constitutional Court in the reviewing room for the constitutional legal products. It is based on consideration of implementation of the authority of each institution (MPR and MK) formulated in a limitative manner in the 1945 Constitution, in which the Constitutional Court conducted the judicial review on the 1945 Constitution, while the MPR limited its authority to amend and make establishment on the results of the amendments to the 1945 Constitution (Ahmad Ahmad, 2019).

Furthermore, in the first scheme, the presence of the MPR in the reviewing room is mandatory to provide an interpretation of the statute constitutionality related to the Constitutional Court institutionally, which means, if there is a constitutional product reviewed to the Constitutional Court, there is the inherent authority or interest of the Constitutional Court, then the Constitutional Court cannot conceptually interpret the meaning and intent of the norms that are used as a touchstone by the petitioners, so that the interpretation submitted by the MPR must be used by the Constitutional Court in making decision. It is intended so that the resulting decision hold harmless from the shackles and elements of interest from the judges of the Constitutional Court as a judicial institution in which justice seekers put their expectation.

The mechanism as described in the chart above begins with a series of hearings from the parties, which in this case is the petitioners and the appellee and other relevant parties related to the subject matter of the judicial review. In such mechanism, the Constitutional Court and the MPR appear on the same line of interpretation, but the petitioners and the appellee and related parties represent as the parties of which statements will be heard if requested by the Constitutional Court.

The petitioners as referred to above, are parties who can become petitioners in the case of judicial review at the Constitutional Court. It emphasizes that the issue of constitutionality cannot be conducted haphazardly based on subjectivity as the constitution is the basic law of the state, so that the determination of legal standing regulated in the Constitutional Court Law is a substantial issue.

Therefore, with this first scheme, it will present a testing mechanism in term of *check and balance* or conjointly supervise and offset in the implementation of the review authority by the Constitutional Court, especially in terms of decisions in which contain various kinds of interpretation. Therefore, by presenting the MPR RI in the procedural law of judicial review of to the 1945 Constitution in the Constitutional Court, where the interpretation by the People's Consultative Assembly on the judicial

review in the first scheme is mandatory in the judicial review, in which the Constitutional Court is institutionally linked.

The referred interpretation will then be set forth in the Constitutional Court decision before being read in the presence of the trial with the agenda of hearing to the reading of verdict. However, prior to that process, in the consultative meeting of judges, the judges of Constitutional Court must include the MPR interpretation as a consideration material without adding to the interpretation. Therefore, it will become a kind of vote conversion in reading the Constitutional Court's decision, although then the Judge of Constitutional Court has the right to give other interpretation outside the MPR. Hence, in order to strengthen the interpretation, it is considered that the MPR votes will be converted into 4 (four) votes.

Determination of 4 (four) votes from the MPR by this author is based on proportionality consideration in which the MPR votes are divided based on a 40:60 scheme, where 60% of the votes of the Constitutional Court and 40% of the votes of the MPR. The MPR vote cannot exceed 40%, as it is done to maintain the independence of the Constitutional Court judges in giving objective decisions. Thus with this scheme, the total votes that will be included in the Constitutional Court's decision to read out are 13 (thirteen) votes.

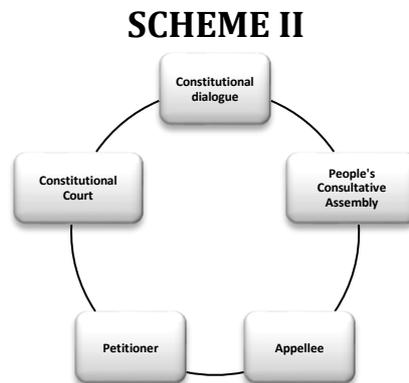
The conversion model as described by the author above is very helpful in resolving the conflict of interest of the Constitutional Court institutionally. An important note that needs to be underlined in the first scheme is that it will only be applied if there is a review of certain laws, which there is an interest in the Constitutional Court, both institutionally and in terms of function and authority.

Thus, the problem as described by the author in some previous descriptions regarding violations committed by the Constitutional Court institutionally through its decisions that there are a lot of overlapping as it violates several principles in procedural law, one of which is the principle of *nemo iudex in causa sua* as it is a very important principle. The principles in the procedural law system contained in the judicial system do not solely apply in Indonesia, but also generally throughout the world.

The first scheme as described above is one form of building a more democratic norm testing system by prioritizing the dialogue process in producing constitutional decisions. It is also one of the answers to implement the fourth principle of Pancasila, which mandates a deliberation process to consensus in decision making, especially those are the decisions that have an impact on the general public or the community so that the dialogue process will certainly produce decisions to be accounted for by the community as the holder of the highest sovereignty in this country. It is emphasized in article 1 paragraph (1) the 1945 Constitution (Siagian, 2021).

Therefore, with the dialogue process between the Constitutional Court and the MPR in the process of testing norms in the first scheme is one form of actualizing the conceptual understanding of constitutional dialogue theory in which the process sets down the MPR and the Constitutional Court in the same position to interpret the constitution or the 1945 Constitution.

The second scheme offered by the author is that the MPR interpretation mechanism is passive one. In this case the court is able to inquire the MPR to provide space for interpretation of a constitutional product that the Constitutional Court. The referred interpretation is an interpretation based on the constitution or the 1945 Constitution, in the event of the applicant argues that the application is based on the 1945 Constitution, then the MPR is able to provide an interpretation of the meaning, intent, and purpose of the onset of the formulation of the article argued by the petitioners to the Constitutional Court. The following is an illustration of the second scheme:



In this second mechanism, the MPR will use the interpretive approach that is limited to the interpretation approach of original intent or interpretation based on the original intent of the *ratio legis* and *ratio decidendi* process of the onset of the formulation of articles and paragraph in the 1945 Constitution. This mechanism will also facilitate the Constitutional Court in formulating the decision as it will be assisted by the presence of the MPR in providing explanation of the norms postulated by the applicants in the examination room at the Constitutional Court.

Constitutional dialogue in this scheme occupies a good position in providing space for democratic decision-making process through dialogue approach as a way of solving problems in terms of resolving constitutional rights issues, which all stakeholders in this country are obligatory to fulfill, especially to the Constitutional Court as the leading sector for the resolution of constitutional aspects that will be debated before the trial of the panel of constitutional judges. Meanwhile, the position of the MPR is significant to open a space for sacralization of interpretation, which the Constitutional

Court has carried out as the only legally binding state institution that has the right to interpret the constitution.

An important emphasis that must be paid attention in this scheme is that the MPR position is inactive, meaning that it is the interpretation of the norms of the 1945 Constitution, which is postulated by the petitioners that the MPR will then provide information in the form of interpretation, especially the original intent interpretation approach. Therefore in the trial, there will be a special agenda of which the judges of the Constitutional Court make schedule to hear information from the MPR regarding the norms postulated by the petitioners, so that the existence of this special court room will bring forth a constitutional dialogue between the Constitutional Court and the MPR to explore the goals and objectives to achieve in the Constitutional Court in formulation of articles and paragraphs in the 1945 Constitution. In its theoretical conception, the constitutional dialogue then bring forth to a constitutional dialogue mechanism, which is a dialogue between the judiciary and representative institutions, in this case is a dialogue between the Constitutional Court and the People's Consultative Assembly to produce constitutional decisions, which risked many interests of the Indonesian people.

Thus in this second scheme, the correlation between the Constitutional Court (MK) and the People's Consultative Assembly (MPR) in the reviewing room will bring forth interpretations, which will eventually be set forth in the Constitutional Court's decision that will have binding power to all parties, especially to state institutions that will carry out the decision due to the nature of the Constitutional Court decision is final and binding.

Therefore, from the 2 (two) schemes as described above by the author, the author offers to use both schemes in the judicial review of the 1945 Constitution at the Indonesian Constitutional Court, in the event that the laws being reviewed is those related to the Constitutional Court, then the First Scheme is used. Meanwhile, if the laws being tested are not related to the Constitutional Court, then the second scheme is used.

CONCLUSION

The model of Constitutional Dialogue Implementation in Judicial Review of the 1945 Constitution in the Constitutional Court must position the MPR and the Constitutional Court in the same degree to provide an interpretation of the 1945 Constitution. In order to extend across such similarity of positions, the author offers 2 (two) mechanisms, which are the Active mechanism and the Passive mechanism in conducting constitutionality review. The active mechanism will be used if there is a judicial review related to the Constitutional Court in which 40% of the votes

will be converted from the MPR and 60% from the Constitutional Court, while the passive mechanism is the mechanism used when judicial review that is not related to the Constitutional Court. Therefore, the author recommends using those two schemes or in other words, based on what statute the Constitutional Court proposes for judicial review.

REFERENCES

- Ahmad Ahmad, N. M. (2019). Denyut Nadi Amandemen Kelima UUD 1945 melalui Pelibatan Mahkamah Konstitusi sebagai Prinsip the Guardian of the Constitution. *Jurnal Konstitusi*, 16(4), 786-808. doi: <https://doi.org/10.31078/jk1646>
- Aritonang, D. M. (2013). Peranan dan problematika Mahkamah Konstitusi (MK) dalam Menjalankan Fungsi dan Kewenangannya. *Jurnal Ilmu Administrasi*, 10(3), 375-392. doi: <https://doi.org/10.31113/jia.v10i3.16>
- Departemen Pendidikan. (2008). *Kamus Besar bahasa Indonesia*. Jakarta: PT. Gramedia Pustaka Utama.
- Detik News. (2020, Juli). *Ada Barter Dibalik Pengesahan UU Mahkamah Konstitusi ?* Retrieved from www.dw.com: <https://www.dw.com/id/ada-barter-di-balik-pengesahan-uu-mahkamah-konstitusi/a-54789353>
- Hapsoro, F. L. (2020). "Interpretasi Konstitusi dalam Pengujian Konstitusionalitas untuk Mewujudkan The Living Constitution. *Jambura Law Review*, 2(2), 139-160. doi: <https://doi.org/10.33756/jlr.v2i2.5644>
- Hidayat, R. (2020, November). *Pengujian UU MK terbaru Bakal Jadi Ujian Bagi Hakim Konstitusi*. Retrieved from <http://www.hukumonline.com>: <https://www.hukumonline.com/berita/baca/lt5f59e28e237d0/pengujian-uu-mk-terbaru-bakal-jadi-ujian-bagi-hakim-konstitusi/>
- Komisi Pemberantasan Korupsi. (2017). *Kisah Korupsi Kita: Anatomi Kasus-Kasus Besar dalam Kajian Interdisipliner*. Jakarta: Komisi Pemberantasan Korupsi (KPK).
- Mahfud, M. (2010). *Perdebatan Hukum Tata Negara Pasca Amandemen Konstitusi*. Jakarta: Raja Grafindo Persada.
- Mahkamah Konstitusi Republik Indonesia. (2004). *Cetak Biru Membagunan Mahkamah Konstitusi*. Jakarta: Kerjasama MKRI, KHRN, dan Yayasan Tifa.

- Maladi, Y. (2010). Benturan Asas Nemo Judex Idoneus In Propria Causa Dan Asas Ius Curia Novit. *Jurnal Konstitusi*, 001-018. doi:<https://doi.org/10.31078/jk%25x>
- Movanita, A. N. (2014, Desember). *Kasus Suap Penanganan Sengketa Pilkada Akil Mochtar yang Menggurita*. Retrieved from KOMPAS.com: <https://nasional.kompas.com/read/2014/12/27/15533261/Kasus.Suap.Penanganan.Sengketa.Pilkada.Akil.Mochtar.yang.Menggurita?page=all>
- Muda, I. (2017). Constitutional Dialog Sebagai Solusi Ketatanegaraan: Suatu Solusi Pasca Putusan MK Terkait Pencantuman Penganut Kepercayaan Pada Kolom Agama Di KTP. *Percepatan pembangunan Bidang Agama Dalam Naskah GBHN Sebagai Pedoman Haluan Pembagunan* (p. 7). Bandar Lampung: Majelis Permusawaratan Rakyat dan UIN Lampung.
- Novendri Mohamad Nggilu, L. W. (2021). Legal Protection Bonda And Bulango Languange: In Reality And Prospect. *Jambura Law Review*, 3(1), 19-36. doi: <https://doi.org/10.33756/jlr.v3i1.6947>
- Sekretariat Jenderal dan Kepanitraan Mahkamah Konstitusi. (2008). *Naskah Komprehensif Perubahan Undang Undang Dasar Negara Republik Indonesia Tahun 1945 (Buku VI, Kekuasaan Kehakiman)*. Jakarta: Mahkamah Konstitusi Republik Indonesia .
- Siagian, A. H. (2021). Omnibus Law in the Perspective of Constitutionality and Legal Politics. *Jambura Law Review*, 3(1), 93-111. doi: <https://doi.org/10.33756/jlr.v3i1.7222>
- Wulandari, W. (2019). *Kewenangan Mahkamah Konstitusi Dalam Melakukan Judicial Review terhadap Undang Undang Pidana Yang Mengakibatkan Perubahan Norma Dalam Hukum Pidana Materill Ditinjau Dari Asas Legalitas*. Jakarta: Pusat Penelitian dan Pengkajian Perkara, dan Pengelolaan Perpustakaan Kepanitraan dan Sekretaris Jenderalol Mahkamah Konstitusi.
- Xavier Groussot, (. M. (2012). *Constitutional Dialogues, Pluralism and Conflicting Identities*". *Constitutional Pluralism in the European Union and Beyond*. London: Hart Publishing.

**VI. PUBLIKASI ARTIKEL JURNAL
(3 FEBRUARI 2022)**

CONSTITUTIONAL DIALOGUE IN JUDICIAL REVIEW AT THE INDONESIAN CONSTITUTIONAL COURT: THE FUTURE PROSPECTS

Ahmad, State University of Gorontalo
Fence M. Wantu, State University of Gorontalo
Dian Ekawaty Ismail, State University of Gorontalo

ABSTRACT

The purpose of this paper is to formulate a model of constitutional dialogue implementation in judicial review of the 1945 Constitution at the Indonesian Constitutional Court. The writing approach employed the Statute Approach, Conceptual Approach, and Comparative Approach. The novelty of this paper is a model of constitutional dialogue implementation in the judicial review of the 1945 Constitution of the Republic of Indonesia at the Constitutional Court that put emphasis on on decision making through interpretation, which can be done using 2 (two) schemes. The first scheme is an active interpretation that the Constitutional Court and the People's Consultative Assembly jointly carry out on judicial review related to the Constitutional Court in which the decisions are made by converting votes, 60% votes of the Constitutional Court and 40% votes of the People's Consultative Assembly (MPR). The second scheme is passive interpretation, in which the Constitutional Court can inquire the People's Consultative Assembly to provide an interpretation of constitutionality on account that the interpretation is limited to the approach of original intent interpretation.

Keywords: Constitutional Dialogue, Interpretation, Judicial Review.

INTRODUCTION

Through the constitutional construction contained in the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution), the Constitutional Court (hereinafter referred to as the Constitutional Court) transforms into a super body state institution. It is applicable that the Constitutional Court with only 9 judges can annul the power of the legislative parliamentary institution, totaling 575 people without being questioned as their decisions are final and binding (Mahfud, 2010). One example is the decision No. 005/PUU-IV/2006 on judicial review of Law No. 22 of 2004 on the Judicial Commission that is related to the Constitutional Court, in which the Constitutional Court excludes that the term "Judge" is not interpreted as a judge of the Constitutional Court (Maladi, 2010). Furthermore, judicial review of Law no. 7 of 2020 on the Third Amendment of Law no. 24 of 2003 on the Constitutional Court was conducted, a number of NGOs carried out a judicial review of the Law, considering that the Constitutional Court Law what was being reviewed, it raises some questions by NGOs related to

the independence of the Constitutional Court in giving decisions, for example, the Constitutional and Democracy NGO (KoDe) (Hidayat, 2020). The subjects highlighted by a number of NGOs are related to the tenure of the judges of the Constitutional Court, and the maximum age of the judges of the Constitutional Court (Detik News, 2020). Thus, from several judicial review related to the Constitutional Court, there was a debate as the Constitutional Court was considered to have violated the principle of which means that none can be a good judge for himself.

Key notes that have also been highlighted, which have influenced the Constitutional Court (MK) journey were the corruption cases that ensnared a number of MK judges, including former Constitutional Court Justices, Akil Mochtar who was involved in the bribery case for the election of Regional Heads (Movanita, 2014), and Patrialis Akbar. It also confirms that the Constitutional Court is the non-faultless state institution, although later the Constitutional Court is a state institution considered to be the custodian of constitutional rights in which the public put high expectation for upholding justice against this institution (Nggilu, 2021).

The problems in the Constitutional Court are inseparable from the institutional deficiencies in the Constitutional Court (Aritonang, 2013). According to the author, in the future the Constitutional Court must build a monitoring system as well as check and balance system in terms of implementing the authority of the Constitutional Court. Specifically dealing with checks and balances system in the process of judicial review for the 1945 Constitution in which it will bring forth a constitutional interpretation by the Constitutional Court, at some point it will be necessary to involve other institutions, particularly in the judicial review related to the Constitutional Court. It should be done in order to maintain professionalism, accountability, and independence of the judges of the Constitutional Court in carrying out their duties.

The author attempts to offer a mechanism for constitutional review in the Constitutional Court with the model of the Constitutional Dialogue in the judicial review to the 1945 Constitution. Conceptually, the Constitutional Dialogue System is a mechanism that can be used as a breakthrough in conflicts of interest that can occur in the Constitutional Court in the judicial review related to it.

The form of implementation of the check and balance system in terms of judicial review to the 1945 Constitution with the concept of Constitutional Dialogue by involving the participation of other institutions in testing norms, the Constitutional Dialogue is a concept of decision making through generalizing perceptions. According to Xavier Groussot postulated that "*Dialogue not just a means of communication; it is also a medium of power*" (Groussot, 2012). He stated that constitutional dialogue is illustrated as a perfect platform for defending a conflict of interest over a power.

Therefore, strengthening the importance of dialogue process in interpreting the constitution was emphasized by Wulandari that interpretation is not just a method, but actual human knowledge based on observations and human experiences that have existed before and were generated from a dialectical process (Wulandari, 2019). The dialectical space in interpreting the statute constitutionality will further enrich knowledge and provide legitimacy more than just personal institutional recognition.

In a previous article entitled "*Indonesian Constitutional Interpretation: Constitutional Court Versus the People's Consultative Assembly*", the interpretation in conducting a Judicial review in the Indonesian Constitutional Court has not been fully clarified until the technical

implementation in the judicial review to the 1945 Constitution by involving the MPR in inherently conducting a judicial review also resulted in interpretation. Therefore, in this paper, we will describe the ideal aspect of judicial review in the Indonesian Constitutional Court in the future with the mechanism of constitutional dialogue.

Problem Statement

Based on the background description as conveyed above, the question is what is the ideal future model of judicial review with constitutional dialogue approach at the Indonesian Constitutional Court?

METHOD

The approach in this paper is the Statue Approach, Conceptual Approach, and Comparative Approach, with primary legal materials, which is authoritative legal materials such as the Constitution, and other laws and regulations, as well as secondary legal materials that are good writings of relevant books and articles. All legal materials are then analyzed prescriptively.

DISCUSSION

Model for Implementation of Constitutional Dialogue in the Judicial Review of the 1945 Constitution at the Constitutional Court

Implementation of constitutional dialogue in the system of judicial review to the 1945 Constitution at the Constitutional Court, it is necessary to formulate its design as a conceptual line from this writing. It is intended to establish a mechanism for testing norms that is not only resilient in terms of the integrity of its decisions, but also as an effort to strengthen the legal basis.

Construction of the Constitutional Dialogue in the judicial review to the 1945 Constitution at the Constitutional Court must pay attention to institutional respect for the People's Consultative Assembly (hereinafter referred to as MPR). Therefore, with the Constitutional Dialogue mechanism, the right to interpret with legally binding is no longer a monopoly of the Constitutional Court, but is distributed to other institutions, which is the MPR.

Through this paper, the author formulates a model for judicial review in the Indonesian Constitutional Court by adopting the concept of Constitutional Dialogue into the norms testing in the Constitutional Court that emphasizes decision making through interpretation (Hapsoro, 2020). The following are recommendations for diversification scheme of the constitutional dialogue system into the system for reviewing the 1945 Constitution at the Constitutional Court (Figure 1):

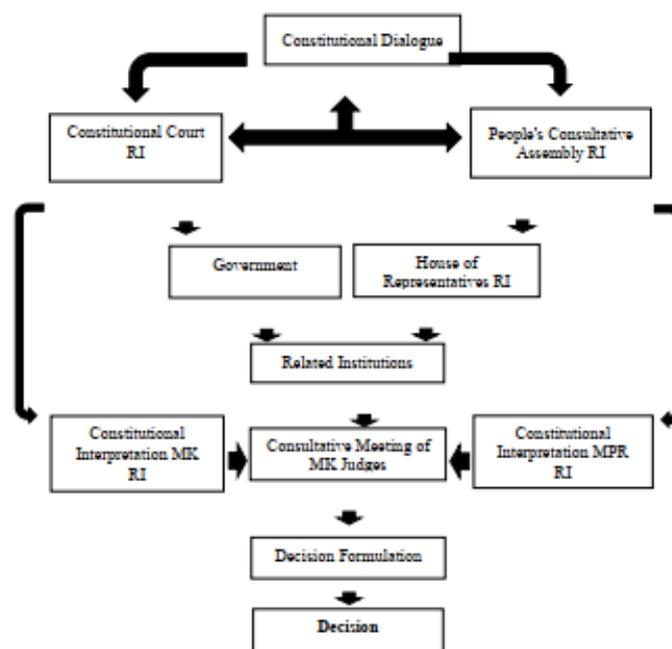


FIGURE 1
DIVERSIFICATION SCHEME I OF THE CONSTITUTIONAL DIALOGUE

The scheme above is a mechanism for actualizing the concept of constitutional dialogue into the reviewing system at the Constitutional Court. The first scheme that the author offers is to occupy the same position between the MPR and the Constitutional Court in the reviewing room for the constitutional legal products. It is based on consideration of implementation of the authority of each institution (MPR and MK) formulated in a limitative manner in the 1945 Constitution, in which the Constitutional Court conducted the judicial review on the 1945 Constitution, while the MPR limited its authority to amend and make establishment on the results of the amendments to the 1945 Constitution (Ahmad, 2019).

Furthermore, in the first scheme, the presence of the MPR in the reviewing room is mandatory to provide an interpretation of the statute constitutionality related to the Constitutional Court institutionally, which means, if there is a constitutional product reviewed to the Constitutional Court, there is the inherent authority or interest of the Constitutional Court, then the Constitutional Court cannot conceptually interpret the meaning and intent of the norms that are used as a touchstone by the petitioners, so that the interpretation submitted by the MPR must be used by the Constitutional Court in making decision. It is intended so that the resulting decision hold harmless from the shackles and elements of interest from the judges of the Constitutional Court as a judicial institution in which justice seekers put their expectation.

The mechanism as described in the chart above begins with a series of hearings from the parties, which in this case is the petitioners and the appeal and other relevant parties related to the subject matter of the judicial review. In such mechanism, the Constitutional Court and the MPR appear on the same line of interpretation, but the petitioners and the appeal and related parties represent as the parties of which statements will be heard if requested by the Constitutional Court.

The petitioners as referred to above are parties who can become petitioners in the case of judicial review at the Constitutional Court. It emphasizes that the issue of constitutionality cannot be conducted haphazardly based on subjectivity as the constitution is the basic law of the state, so that the determination of legal standing regulated in the Constitutional Court Law is a substantial issue.

Therefore, with this first scheme, it will present a testing mechanism in term of check and balance or conjointly supervise and offset in the implementation of the review authority by the Constitutional Court, especially in terms of decisions in which contain various kinds of interpretation. Therefore, by presenting the MPR RI in the procedural law of judicial review of to the 1945 Constitution in the Constitutional Court, where the interpretation by the People's Consultative Assembly on the judicial review in the first scheme is mandatory in the judicial review, in which the Constitutional Court is institutionally linked.

The referred interpretation will then be set forth in the Constitutional Court decision before being read in the presence of the trial with the agenda of hearing to the reading of verdict. However, prior to that process, in the consultative meeting of judges, the judges of Constitutional Court must include the MPR interpretation as a consideration material without adding to the interpretation. Therefore, it will become a kind of vote conversion in reading the Constitutional Court's decision, although then the Judge of Constitutional Court has the right to give other interpretation outside the MPR. Hence, in order to strengthen the interpretation, it is considered that the MPR votes will be converted into 4 (four) votes.

Determination of 4 (four) votes from the MPR by this author is based on proportionality consideration in which the MPR votes are divided based on a 40:60 scheme, where 60% of the votes of the Constitutional Court and 40% of the votes of the MPR. The MPR vote cannot exceed 40%, as it is done to maintain the independence of the Constitutional Court judges in giving objective decisions. Thus with this scheme, the total votes that will be included in the Constitutional Court's decision to read out are 13 (thirteen) votes.

The conversion model as described by the author above is very helpful in resolving the conflict of interest of the Constitutional Court institutionally. An important note that needs to be underlined in the first scheme is that it will only be applied if there is a review of certain laws, which there is an interest in the Constitutional Court, both institutionally and in terms of function and authority.

Thus, the problem as described by the author in some previous descriptions regarding violations committed by the Constitutional Court institutionally through its decisions that there are a lot of overlapping as it violates several principles in procedural law, one of which is the principle of *nemo iudex in causa sua* as it is a very important principle. The principles in the procedural law system contained in the judicial system do not solely apply in Indonesia, but also generally throughout the world.

The first scheme as described above is one form of building a more democratic norm testing system by prioritizing the dialogue process in producing constitutional decisions. It is also one of the answers to implement the fourth principle of Pancasila, which mandates a deliberation process to consensus in decision making, especially those are the decisions that have an impact on the general public or the community so that the dialogue process will certainly produce decisions to be accounted for by the community as the holder of the highest sovereignty in this country. It is emphasized in article 1 paragraph (1) the 1945 Constitution (Siagian, 2021). Therefore, with the dialogue process between the Constitutional Court and the MPR in the process of testing norms in the first scheme is one form of actualizing the conceptual understanding of constitutional dialogue theory in which the process sets down the MPR and the Constitutional Court in the same position to interpret the constitution or the 1945 Constitution.

The second scheme offered by the author is that the MPR interpretation mechanism is passive one. In this case the court is able to inquire the MPR to provide space for interpretation of a constitutional product that the Constitutional Court. The referred interpretation is an interpretation based on the constitution or the 1945 Constitution, in the event of the applicant argues that the application is based on the 1945 Constitution, then the MPR is able to provide an interpretation of the meaning, intent, and purpose of the onset of the formulation of the article argued by the petitioners to the Constitutional Court. The following is an illustration of the second scheme (Figure 2):



FIGURE 2
ILLUSTRATION OF THE SECOND SCHEME II

In this second mechanism, the MPR will use the interpretive approach that is limited to the interpretation approach of original intent or interpretation based on the original intent of the ratio legis and ratio decidendi process of the onset of the formulation of articles and paragraph in the 1945 Constitution. This mechanism will also facilitate the Constitutional Court in formulating the decision as it will be assisted by the presence of the MPR in providing explanation of the norms postulated by the applicants in the examination room at the Constitutional Court.

Constitutional dialogue in this scheme occupies a good position in providing space for democratic decision-making process through dialogue approach as a way of solving problems in

terms of resolving constitutional rights issues, which all stakeholders in this country are obligatory to fulfill, especially to the Constitutional Court as the leading sector for the resolution of constitutional aspects that will be debated before the trial of the panel of constitutional judges. Meanwhile, the position of the MPR is significant to open a space for sacralization of interpretation, which the Constitutional Court has carried out as the only legally binding state institution that has the right to interpret the constitution.

An important emphasis that must be paid attention in this scheme is that the MPR position is inactive, meaning that it is the interpretation of the norms of the 1945 Constitution, which is postulated by the petitioners that the MPR will then provide information in the form of interpretation, especially the original intent interpretation approach. Therefore in the trial, there will be a special agenda of which the judges of the Constitutional Court make schedule to hear information from the MPR regarding the norms postulated by the petitioners, so that the existence of this special court room will bring forth a constitutional dialogue between the Constitutional Court and the MPR to explore the goals and objectives to achieve in the Constitutional Court in formulation of articles and paragraphs in the 1945 Constitution. In its theoretical conception, the constitutional dialogue then bring forth to a constitutional dialogue mechanism, which is a dialogue between the judiciary and representative institutions, in this case is a dialogue between the Constitutional Court and the People's Consultative Assembly to produce constitutional decisions, which risked many interests of the Indonesian people.

Thus in this second scheme, the correlation between the Constitutional Court (MK) and the People's Consultative Assembly (MPR) in the reviewing room will bring forth interpretations, which will eventually be set forth in the Constitutional Court's decision that will have binding power to all parties, especially to state institutions that will carry out the decision due to the nature of the Constitutional Court decision is final and binding.

Therefore, from the 2 (two) schemes as described above by the author, the author offers to use both schemes in the judicial review of the 1945 Constitution at the Indonesian Constitutional Court, in the event that the laws being reviewed is those related to the Constitutional Court, then the First Scheme is used. Meanwhile, if the laws being tested are not related to the Constitutional Court, then the second scheme is used.

CONCLUSION

The model of Constitutional Dialogue Implementation in Judicial Review of the 1945 Constitution in the Constitutional Court must position the MPR and the Constitutional Court in the same degree to provide an interpretation of the 1945 Constitution. In order to extend across such similarity of positions, the author offers 2 (two) mechanisms, which are the Active mechanism and the Passive mechanism in conducting constitutionality review. The active mechanism will be used if there is a judicial review related to the Constitutional Court in which 40% of the votes will be converted from the MPR and 60% from the Constitutional Court, while the passive mechanism is the mechanism used when judicial review that is not related to the Constitutional Court. Therefore, the author recommends using those two schemes or in other words, based on what statute the Constitutional Court proposes for judicial review.

REFERENCES

- Ahmad, N.M. (2019). The pulse of the fifth amendment of the 1945 constitution through the involvement of the constitutional court as the guardian principle of the constitution. *Constitutional Journal*, 16(4), 786-808.
- Aritonang, D.M. (2013). The role and problems of the constitutional court in carrying out its functions and authorities. *Journal of Administrative Sciences*, 10(3), 375-392.
- [Denik News. \(2020\). *There is a barter behind the ratification of the constitutional court law?*](#)
- [Grousot, X. \(2012\). *Constitutional dialogues, pluralism and conflicting identities. Constitutional Pluralism in the European Union and Beyond*. London: Hart Publishing.](#)
- Hapsoro, F.L. (2020). Interpretation of the constitution in the examination of constitutionalities to realize the living constitution. *Jambura Law Review*, 2(2), 139-160.
- [Hidayat, R. \(2020\). *The review of the latest constitutional court law will be a test for constitutional justices.*](#)
- Mahfud, M. (2010). *Post-constitutional constitutional law debate*. Jakarta: Raja Grafindo Persada.
- Maladi, Y. (2010). Benturan asas no suitable judge in proper cause dan asas knows the court's right. *Journal Konstitusi*, 11(3), 001-018.
- [Moyanita, A.N. \(2014\). *Bribery case for handling akil mochtar pilkada dispute.*](#)
- [Ngehu, N.M. \(2021\). *Legal protection bonda and bulango language: In reality and prospect.* *Jambura Law Review*, 3\(1\), 19-36.](#)
- [Siagian, A.H. \(2021\). *Omnibus law in the perspective of constitutionality and legal politics.* *Jambura Law Review*, 3\(1\), 93-111.](#)
- Wulandari, W. (2019). *The authority of the constitutional court in conducting judicial reviews of criminal laws that result in changes in norms in material criminal law judging from the principle of legality*. Jakarta: Center for research and case studies, and library management for the registrar and secretary general of the constitutional court.