



# Pendekatan & Dampak Putusan Dalam Konteks Hukum Nasional dan Internasional

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# Theories on the Adoption of Constitutional Review

- The federalism theory
- The right protection theory
- Political insurance
- International constitutional practice



# Theories on Models of Judicial Review

- Centralized vs. decentralized JR
- Abstract vs. concrete JR
- Strong form vs. weak form JR (Mark Tushnet)

# Theories on Judicial Decision-Making Process

- Legal formalism v. legal realism
- Legal v. extralegal
- Legal, attitudinal, and strategic (Judicial behavior)
- Textual, historical, structural, doctrinal, ethical and prudential



# Theories on Court rulings and its interaction with other branches

- Deferential
- Conversational
- Experimental
- Managerial
- Peremptory



## Judicial decision-making process

- Legal vs. extralegal.
- Legal, attitudinal, and strategic.
- Textual, historical, structural, doctrinal, ethical, and prudential.

## Court rulings and its interaction with other branches

- Deferential;  
Conversational;  
Experimental;  
Managerial; and  
Peremptory stance.



# Beberapa pendekatan dalam penafsiran

1. Ada yang menekankan text dan ada yang menekankan sampai hal di luar teks
2. Ada yang menekankan pada arti pada saat hukum tersebut dibentuk dan ada yang memahami hukum kontekstual berubah dan berkembang.
3. Ada yang memahami konstitusi yaitu dokumen yg memuat sejumlah aturan namun ada juga konstitusi yang bersifat aspirational dan nilai



# The Court's strategies regarding the implementation of its rulings and other branches' response

Katharine G. Young's typology: deferential, conversational, experimental, managerial, and preemptory stances

No.	The Court Techniques	Young's Typology
1.	Null and void, Invalidation of the law in its entirety	preemptory
2.	Declaration of incompatibility	conversational/experimental
3.	Judicial order directed to the lawmakers	managerial
4	Conditional decisions	conversational/managerial





### Why was not consistent?

- When the text of the constitution is clear the Court tends to adopt strong form of JR
- But, it was not consistent because the Court:
- took into account the possible reaction of the lawmakers
- took into account the legal, financial, and administrative consequences

### When did the Court Adopt Strong form of JR

- When the provisions of the Constitution were clear and unambiguous
- When the Court concluded that a statute was clearly inconsistent/ consistent with the Constitution

### When did the Court Adopt Weak Form of Judicial Review?

- When Lawmakers need some time to satisfy the Court rulings
- When implementing Court decision resulted in significant cost or consequences
- When provisions submitted for review were unclear



# Factors Influencing the Implementation of the Court Rulings

## Factors that may influence:

1. The implementing agencies (lawmakers)
2. The way the Court wrote the rulings

## Challenges in Implementation of Court Decisions

1. No legislation on how to implement the Court rulings
2. Court rulings has an immediate effect
3. Court does not have resource to enforce its rulings
4. Depends on other branches of government
5. Lawmaking process takes time
6. Possible legal vacuum



# Judicial behavior

- Longitudinal --- depending majority of fellow judges
- Legal --- Text
- Strategic --- Prudential



# Court approach

- Supremacist. --Superior
- Engaged --conversational
- Detached --deferral
- Catalyst



# Faktor yang mempengaruhi tindak lanjut putusan pengadilan

- Bunyi putusan : jelas/tidak
- Tafsir oleh institusi yang akan menindaklanjuti putusan pengadilan
- Kapasitas : kemampuan relevant agencies
- Willingness; kemauan relevant agencies
- Sesuai atau tidak dgn visi & misi institusi yg akan menindaklanjuti putusan



Terima kasih atas perhatiannya