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Constitutional Protection of Citizens' Rights in Indonesia's Digital Ecosystem

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ABSTRACT

Purpose: This study examines the constitutional protection of citizens' rights in Indonesia's digital ecosystem by focusing on the 1945 Constitution, national digital regulations, and the role of the Constitutional Court in strengthening digital rights protection.

Research Design and Methodology: This research uses a normative legal method with statute, conceptual, case, and limited comparative approaches. The legal materials consist of the 1945 Constitution, digital governance regulations, Constitutional Court decisions, and scholarly literature, collected through library research and analysed qualitatively.

Findings and Discussion: The findings show that the 1945 Constitution provides a normative basis for protecting freedom of expression, access to information, privacy, human dignity, and non-discrimination in the digital space. However, Indonesian digital regulations remain fragmented and tend to emphasize security and state control rather than rights protection.

Implications: The study confirms that digital rights should be understood as an extension of constitutional rights. It recommends harmonizing digital regulations with constitutional guarantees, strengthening constitutional review and oversight, promoting platform accountability, and adopting a rights-oriented model of digital governance in Indonesia.

Introduction

The advent of digital technology has ushered in profound transformations in the structural framework of state life and the interrelationship between the state and its citizens. Digitalization transcends its confines to communication tools, evolving into a comprehensive digital ecosystem that encompasses technological infrastructure, legal frameworks, public policy, state entities, non-state entities, and society as users. From a constitutional law perspective, the digital ecosystem must be understood as a new arena in which state authority, private platform power, and citizens' rights interact directly. It affects the exercise of freedom of expression, access to information, privacy, security, and legal protection.[1] Therefore, constitutional principles should function not only as formal norms, but also as substantive standards for assessing whether digital regulations and policies protect or restrict citizens' rights.

This ecosystem exerts a significant influence on nearly all facets of citizens' rights, encompassing freedom of expression, the right to access information, the right to privacy, the right

[1] András Lapsánszky, Gábor Hulkó, and Péter Bálint Király, "From Private Regulation To Public Impact: Rethinking Platform Governance Through Digital Constitutionalism," *STUDIA IURIDICA Cassoviensia* 13, no. 3 (December 19, 2025), https://doi.org/10.33542/SIC2025-S-06.

to security, and legal protection.[2] From a constitutional law standpoint, this phenomenon presents substantial implications for constitutionality, as digital activities directly intersect with the fundamental norms enshrined within the constitution.[3] The constitution, as the supreme law of the land, not only delineates the structure of power, but also serves as the primary instrument for safeguarding human rights and curtailing state power.[4] Consequently, the evolution of the digital ecosystem necessitates adaptive interpretation and implementation of the constitution to ensure the continued protection of citizens' rights within the digital domain.

Constitutional rights previously tested in physical spaces are now experiencing an expansion of their meaning in digital spaces.[5] For instance, freedom of expression and opinion no longer exclusively pertain to print media or conventional public forums; they also encompass social media, digital platforms, and cyberspace managed by global corporations.[6] Similarly, the right to privacy now confronts significant challenges due to the extensive collection, processing,[7] and distribution of personal data by both the state and digital businesses.[8]

In the Indonesian context, constitutional guarantees for these rights are normatively regulated in the 1945 Constitution. The main legal problem arises because these constitutional guarantees are not always reflected consistently in Indonesia's digital regulatory framework. The EIT Law, content blocking policies, digital surveillance practices, and weak accountability mechanisms show a continuing tension between citizens' constitutional rights and the state's regulatory approach in the digital space.[9] This condition confirms the need to examine digital governance through a constitutionalism framework, rather than merely through administrative, criminal, or security-based regulation.

However, the application of these norms in the digital ecosystem still faces various problems.[10] A number of regulations formulated in response to technological developments have actually given rise to constitutional problems, either because they have the potential to excessively restrict the rights of citizens or because of weak accountability and oversight mechanisms.[11] The Electronic Information and Transactions Law (EIT Law), for example, has often been criticised for containing provisions that are open to multiple interpretations and have the potential to curtail citizens' freedom of expression in the digital space.[12] The criminalisation of digital expression reveals a tension between positive legal policy and the constitutional principle of human rights protection. This indicates that the formulation of digital regulations has not yet fully departed from the constitutionalism paradigm.

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[2] Dr. Sanjay P. Dhok, "The Evolving Relationship Between Technology, Law, and Human Rights," *Research Hub* 07, no. 01 (January 1, 2026): 212–19, https://doi.org/10.63665/rh.v7i1.32.

[3] Edoardo Celeste, "The Constitutionalisation of the Digital Ecosystem: Lessons from International Law," 2021, https://doi.org/10.2139/ssrn.3872818.

[4] Umar Farooq, "Supremacy of the Constitution Cornerstone of Democratic Governance," *International Journal of Law and Policy* 4, no. 2 (February 28, 2026): 38–57, https://doi.org/10.59022/ijlp.513.

[5] Edoardo Celeste, "Digital Constitutionalism: A New Systematic Theorisation," *International Review of Law, Computers & Technology* 33, no. 1 (January 2, 2019): 76–99, https://doi.org/10.1080/13600869.2019.1562604.

[6] Olli I. Heimo and Kai K. Kimppa, "Public Fora and Freedom of Expression," 2020, 340–50, https://doi.org/10.1007/978-3-030-62803-1_27.

[7] Benedicta Ehimuan et al., "Global Data Privacy Laws: A Critical Review of Technology's Impact on User Rights," *World Journal of Advanced Research and Reviews* 21, no. 2 (February 28, 2024): 1058–70, https://doi.org/10.30574/wjarr.2024.21.2.0369.

[8] Itay P. Fainmesser, Andrea Galeotti, and Ruslan Momot, "Digital Privacy," *Management Science* 69, no. 6 (June 2023): 3157–73, https://doi.org/10.1287/mnsc.2022.4513.

[9] Nina Purwanti, Megawati Barthos, and Tri Eka Saputra, "The Role of Artificial Intelligence in the Implementation of Personal Data Protection Law in Indonesia," *Interdiciplinary Journal and Hummanity (INJURITY)* 4, no. 6 (June 20, 2025): 325–36, https://doi.org/10.58631/injurity.v4i6.1448.

[10] Nicolas Suzor, "Digital Constitutionalism: Using the Rule of Law to Evaluate the Legitimacy of Governance by Platforms," *Social Media + Society* 4, no. 3 (July 17, 2018), https://doi.org/10.1177/2056305118787812.

[11] Hans-W. Micklitz et al., eds., *Constitutional Challenges in the Algorithmic Society* (Cambridge University Press, 2021), https://doi.org/10.1017/9781108914857.

[12] Devi Tri Indriasari and Karman Karman, "Freedom of Expression in Regulatory Pressure: Case Study on the Electronic Information and Transaction Law," *Jurnal The Messenger* 15, no. 1 (December 16, 2024): 34–51, https://doi.org/10.26623/themessenger.v15i1.5787.

Furthermore, the strengthening of the state's role in digital surveillance, including through internet access cuts, content blocking,[13] and the use of surveillance technology, raises serious questions about the limits of state authority in a democratic state governed by the rule of law.[14] Without a clear constitutional framework, such policies have the potential to violate the principles of proportionality, necessity, and due process of law, which are at the heart of modern constitutionalism.[15] Globally, this issue has given rise to a discourse on digital constitutionalism, an approach that emphasizes that constitutional principles and human rights must be the primary foundation for regulating digital space.[16] Digital constitutionalism rejects the notion that cyberspace is a lawless territory and instead asserts that digital power, whether by the state or corporations, must be subject to the principle of the rule of law and the protection of fundamental rights.[17] Within this framework, global technology corporations are viewed as new constitutional actors wielding significant power over citizens' rights,[18] particularly in the regulation of content, algorithms, and personal data.[19] This situation challenges the concept of classical constitutionalism, which has focused on limiting state power. Therefore, a new approach is needed that can address the power relations between the state, the market, and citizens in the digital space.[20]

Although previous studies have discussed digital rights, cyber policy, and technology regulation, limited attention has been given to the constitutional assessment of Indonesia's digital ecosystem as a whole. Existing studies tend to examine digital issues sectorally, for example through information technology law, criminal law, data protection, or platform governance. This article fills that gap by analysing the relationship between the 1945 Constitution, national digital regulations, the role of the Constitutional Court, and the protection of citizens' rights within the framework of digital constitutionalism.[21] Most research is sectoral, partially normative, or focuses on technical aspects of cyber law. This study aims to fill this gap by integrating constitutionalism theory, the concept of digital constitutionalism, and analysis of regulatory and institutional practices in Indonesia. Thus, this research is novel in terms of both its theoretical approach and its normative contribution to the development of constitutional law in the digital age. Based on this reality, this research argues that the digital ecosystem must be firmly placed within a constitutional framework. The constitution not only functions as a source of formal legitimacy, but also as a normative standard for assessing the validity, fairness, and proportionality of digital policies.[22] Thus, every regulation and practice in the digital ecosystem must be tested for its conformity with constitutional principles and human rights.[23]

The novelty of this study lies in its effort to place digital governance within the framework of Indonesian constitutional law. Rather than treating digital regulation as a purely technical or sectoral

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[13] Christina J. Herden et al., "'Corporate Digital Responsibility,'" *Sustainability Management Forum | NachhaltigkeitsManagementForum* 29, no. 1 (March 1, 2021): 13–29, https://doi.org/10.1007/s00550-020-00509-x.

[14] Marcus Smith and Seumas Miller, "The Ethical Application of Biometric Facial Recognition Technology," *AI & SOCIETY* 37, no. 1 (March 13, 2022): 167–75, https://doi.org/10.1007/s00146-021-01199-9.

[15] Tengfei Liu and Zhongwu Ma, "A Study of Chinese Law on Restricting Personal Liberty for Public Health Protection: Taking The COVID-19 Epidemic as The Entry Point," *Frontiers in Public Health* 13 (October 21, 2025), https://doi.org/10.3389/fpubh.2025.1670119.

[16] Dr Lekshmi Viswanath, "Digital Constitutionalism: Navigating Governance in The Technological Era," *Journal of Law and Legal Research Development*, January 31, 2025, https://doi.org/10.69662/jllrd.v2i1.33.

[17] G De Gregorio, *Digital Constitutionalism in Europe: Reframing Rights and Powers in the Algorithmic Society*, Cambridge Studies in European Law and Policy (Cambridge University Press, 2022).

[18] Andrea Simoncini and Erik Longo, "Digital Constitutionalism and Fundamental Rights: Reconfiguring Liberty and Power," in *The Oxford Handbook of Digital Constitutionalism* (Oxford University Press, 2026), https://doi.org/10.1093/oxfordhb/9780198877820.013.3.

[19] Anastasia Kozyreva et al., "Public Attitudes Towards Algorithmic Personalization and Use of Personal Data Online: Evidence from Germany, Great Britain, and the United States," *Humanities and Social Sciences Communications* 8, no. 1 (May 14, 2021): 117, https://doi.org/10.1057/s41599-021-00787-w.

[20] Giovanni De Gregorio, "The Rise of Digital Constitutionalism in The European Union," *International Journal of Constitutional Law* 19, no. 1 (June 7, 2021): 41–70, https://doi.org/10.1093/icon/moab001.

[21] Aprilia Dwi Rahmawati and Dodi Jaya Wardana, "Constitutional Guarantees of the Right to Privacy of Personal Data of Citizens in the Era of Government Digitalization," *Journal of Law, Politic and Humanities* 6, no. 2 (December 17, 2025): 1052–63, https://doi.org/10.38035/jlph.v6i2.2664.

[22] Sya'baniatie Ninda Septia, "The Transition from Conventional Constitutions to Digital Law: Constitutional Law Challenges in the Age of Artificial Intelligence," *Journal of International Multidisciplinary Research* 4, no. 1 (January 11, 2026): 58–66, https://doi.org/10.62504/jimr1430.

[23] N. Nfissi, "Protecting Human Rights in the Digital Age: Legal Frameworks and Media Literacy as a Complementary Safeguard," *Digital Law Journal* 6, no. 3 (February 28, 2026): 8–33, https://doi.org/10.38044/2686-9136-2025-6-10.

matter, this study argues that digital policies must be tested against constitutional guarantees, including freedom of expression, the right to information, privacy, human dignity, non-discrimination, due process of law, and checks and balances. This study aims to comprehensively analyse aspects of constitutionality in the digital ecosystem and their implications for the protection of citizens' rights. Although previous studies have discussed digital rights, cyber policy, and technology regulation, limited attention has been given to the constitutional assessment of Indonesia's digital ecosystem as a whole. Existing studies tend to examine digital issues sectorally, particularly through information technology law, criminal law, data protection, or platform governance. This article fills that gap by analysing the relationship between the 1945 Constitution, national digital regulations, the role of the Constitutional Court, and the protection of citizens' rights within the framework of digital constitutionalism.

In particular, this study seeks to identify constitutional principles relevant in the digital context, evaluate the compatibility of digital regulations with the 1945 Constitution, and analyse the role of state institutions, especially the Constitutional Court, in maintaining the constitutionality of digital policies and regulations.[24,25] To achieve these objectives, this study seeks to answer a number of key research questions, namely: how does the Indonesian constitution guarantee and protect the rights of citizens in the digital ecosystem; to what extent do digital regulations and policies reflect constitutional principles; what are the constitutional challenges that arise in the management of digital space; and what are the strategies for strengthening digital constitutionalism in the context of a democratic state based on the rule of law. By formulating the issue in this way, the article contributes to constitutional law scholarship by offering a rights-based framework for evaluating Indonesia's digital regulations and strengthening the role of constitutional review in digital governance.

From a theoretical perspective, this study is expected to enrich constitutional law studies by incorporating the digital dimension as an integral part of constitutional analysis. This study contributes to the development of digital constitutionalism theory from the perspective of developing countries, particularly Indonesia, which has social, political,[26] and legal characteristics that differ from those of Western countries.[27] In addition, this study also contributes to broadening the understanding of the relationship between the constitution, technology, and power. In practical terms, this research is expected to serve as a normative reference for legislators and policymakers in designing digital regulations that are more constitutional and oriented towards protecting citizens' rights.[28] The recommendations produced can be used to strengthen constitutional review mechanisms, improve the accountability of digital policies, and encourage progressive interpretation by constitutional courts.[29] In addition, this research can also be utilised by civil society and academics in advocating for digital rights. Thus, studies on the constitutionality of the digital ecosystem in protecting citizens' rights are highly relevant and urgent. Amidst the acceleration of digital transformation, the constitution must remain the main foundation in ensuring that technological progress goes hand in hand with respect for human dignity, freedom and justice. Without a strong constitutional approach, the digital ecosystem has the potential to become an arena of power domination that harms citizens, rather than a means of empowerment and democratisation.

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[24] and Mya Fajar Ramadhani. Christia, Adissya Mega, Yudhistira Rizqi Mahardhika, "Constitutional Challenges Amidst the Development of Digital Technology in Indonesia," *Uniglobal Journal of Social Sciences and Humanities*, no. 3 (March 18, 2024): 53–63, https://doi.org/10.53797/ujssh.v3i1.9.2024.

[25] Anastasya and Eny Kusdarini, "Konstitusionalisasi Hak Atas Kebebasan Berekspresi Di Era Digital Pasca-Amandemen UUD 1945," *JURNAL USM LAW REVIEW* 8, no. 3 (December 16, 2025): 2387–2402, https://doi.org/10.26623/julr.v8i3.13025.

[26] Zico Junius Fernando, Ahmad Wali, and Desi Hafizah, "Konstitusionalisme Digital Di Indonesia: Pembatasan Kekuasaan Negara Dan Platform Dalam Perlindungan Hak Konstitusional Warga Di Ruang Siber," *Konferensi Nasional Asosiasi Pengajar Hukum Tata Negara Dan Hukum Administrasi Negara* 3, no. 1 (March 10, 2026): 429–50, https://doi.org/10.55292/qbgn3p56.

[27] Maysarah and Sudiiman Laoli, "Characteristics of the World Legal System," *Jurnal Multidisiplin Madani* 5, no. 10 (November 5, 2025): 1160–67, https://doi.org/10.55927/mudima.v5i10.661.

[28] Margarita Boenig-Liptsin, "Public Trust in Computing: Analyzing Trust and Digital Technologies with the Constitutionalism Framework," *Philosophy of Law and General Theory of Law*, no. 1 (April 23, 2023): 95–110, https://doi.org/10.21564/2707-7039.1.275642.

[29] Heru Setiawan et al., "Digitalization of Legal Transformation on Judicial Review in the Constitutional Court," *Journal of Human Rights, Culture and Legal System* 4, no. 2 (May 26, 2024): 263–98, https://doi.org/10.53955/jhcls.v4i2.263.

Literature Review

Digital Constitutionalism as a Theoretical Framework

Digital constitutionalism has emerged as an important theoretical framework for understanding the relationship between constitutional law, digital technology, and the protection of fundamental rights.[30] It is based on the idea that constitutional principles should not be confined to the physical public sphere, but must also operate in digital spaces where public communication, data processing, and social interaction increasingly occur.[31] This framework places the constitution as a normative instrument for limiting public and private power in the digital ecosystem. Therefore, digital constitutionalism is relevant for analysing how citizens' rights are protected in an algorithmic and platform-based society.

Edoardo Celeste explains digital constitutionalism as a systematic attempt to translate constitutional values into the governance of digital society. Giovanni De Gregorio further develops this idea by showing that digital constitutionalism reframes the relationship between rights and powers in the algorithmic society.[32] These studies are important because they demonstrate that digital space is not legally neutral. Instead, it is a constitutional space shaped by legal norms, institutional authority, and private platform governance.

In the Indonesian context, digital constitutionalism is particularly relevant because digital governance is closely connected to state authority, public order, freedom of expression, privacy, and access to information.[33] The 1945 Constitution provides the normative basis for protecting human dignity, equality, communication, information, and personal security. However, the digital transformation of public life requires these constitutional guarantees to be interpreted progressively.[34] Without such interpretation, constitutional rights may remain formal guarantees that are not fully effective in digital governance.

Previous studies on digital constitutionalism mostly focus on European, global, or comparative frameworks. This article differs from those studies by placing digital constitutionalism within the Indonesian constitutional system. It connects the 1945 Constitution, national digital regulations, the role of the Constitutional Court, and the protection of citizens' rights in the digital ecosystem. This position gives the article a more specific contribution to Indonesian constitutional law.

This subsection is directly relevant to the research gap because it shows that digital constitutionalism has not been sufficiently examined within the specific framework of Indonesian constitutional law. It also supports the novelty of this article by positioning the Indonesian Constitution, national digital regulation, and the Constitutional Court as integrated elements in the protection of citizens' rights in the digital ecosystem.

Constitutional Rights in the Digital Space

Constitutional rights in the digital space should be understood as an extension of rights already guaranteed by the constitution. The right to freedom of expression, the right to obtain information, the right to privacy, the protection of dignity, and the principle of non-discrimination remain applicable even when citizens exercise them through digital platforms.[35] Digital space does not remove the constitutional character of these rights. It only changes the medium through which rights are exercised and potentially restricted.

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[30] Celeste, "The Constitutionalisation of the Digital Ecosystem: Lessons from International Law."

[31] Suzor, "Digital Constitutionalism: Using the Rule of Law to Evaluate the Legitimacy of Governance by Platforms."

[32] De Gregorio, *Digital Constitutionalism in Europe: Reframing Rights and Powers in the Algorithmic Society*.

[33] Nanang Subekti, I Gusti Ayu Ketut Rahmi Handayani, and Arief Hidayat, "Konstitusionalisme Digital Di Indonesia," *Peradaban Journal of Law and Society* 2, no. 1 (June 16, 2023): 1–22, https://doi.org/10.59001/pjls.v2i1.74.

[34] Rahmawati and Wardana, "Constitutional Guarantees of the Right to Privacy of Personal Data of Citizens in the Era of Government Digitalization."

[35] Faisal Oklah Khattar Shatnawi et al., "Digital Human Rights and the International Protection Mechanisms Established in International Instruments," *Indian Journal of Information Sources and Services* 16, no. 2 (June 5, 2026): 525–34, https://doi.org/10.51983/ijiss-2026.16.2.53.

Article 28E paragraph (3) of the 1945 Constitution guarantees freedom of association, assembly, and expression, while Article 28F guarantees the right to communicate and obtain information.[36] These provisions are directly relevant to online expression, social media activities, access to digital information, and public participation through digital platforms. In this context, digital platforms function as modern spaces for democratic communication. Therefore, restrictions on online expression must be assessed through constitutional standards.

Article 28G paragraph (1) of the 1945 Constitution is also relevant because it guarantees protection of personal security, dignity, honour, and property. In the digital ecosystem, this provision can be interpreted as a constitutional basis for privacy and personal data protection.[37] Article 28I paragraph (2), which prohibits discrimination, also provides a foundation for assessing algorithmic bias, discriminatory moderation, and unequal digital access. These constitutional provisions show that digital rights are not separate from constitutional rights.

Several previous studies discuss digital rights from the perspective of cyber law, information technology law, or data protection law. However, those studies often treat digital rights as sectoral legal issues rather than as constitutional rights. This article differs by arguing that digital rights should be placed within the constitutional rights regime. This approach strengthens the legal basis for evaluating digital regulations and policies through the 1945 Constitution.

This subsection supports the research gap by showing that digital rights are often discussed as sectoral legal issues rather than as constitutional rights. Its relevance to the novelty of this article lies in the argument that digital rights should be understood as an extension of the constitutional rights guaranteed by the 1945 Constitution.

Privacy and Freedom of Expression in the Digital Ecosystem

Privacy and freedom of expression are two central rights in digital constitutionalism because both are directly affected by digital governance. Freedom of expression is challenged by content moderation, criminalisation of online speech, content blocking, and platform control.[38] Privacy is challenged by personal data collection, digital surveillance, profiling, and algorithmic processing. These two rights are therefore essential indicators for assessing whether digital governance is compatible with constitutional principles.

The literature on freedom of expression shows that digital communication has changed the structure of public discourse. Jack Balkin argues that freedom of expression in the digital era is influenced not only by the state, but also by private digital platforms that control visibility, access, and moderation. This view is important because platform power may shape citizens' ability to participate in democratic discourse.[39] Therefore, constitutional analysis must consider both state restriction and private governance.

The literature on privacy also shows that digital technology has expanded the meaning of privacy beyond protection from physical intrusion. Alan Westin and Daniel Solove emphasise that privacy includes control over personal information and protection against arbitrary data processing. In the digital ecosystem, privacy protection must address collection, storage, use, sharing, and surveillance of personal data.[40] This understanding supports the argument that privacy is a constitutional issue, not merely an administrative or technical matter.

Previous studies on privacy and freedom of expression have provided important foundations for analysing digital rights. However, many of them focus on general human rights discourse or comparative digital governance. This article differs by linking privacy and freedom of expression

[36] Latipah Nasution, "Hak Kebebasan Berpendapat Dan Berekspresi Dalam Ruang Publik Di Era Digital," *'ADALAH* 4, no. 3 (June 25, 2020), https://doi.org/10.15408/adalah.v4i3.16200.

[37] Moh. Indra Bangsawan et al., "Personal Data Protection Policy during Covid-19 Pandemic Era," *Law and Justice* 8, no. 1 (June 7, 2023): 21–31, https://doi.org/10.23917/laj.v8i1.1558.

[38] De Gregorio G, "Digital Constitutionalism and Freedom of Expression," in *Digital Constitutionalism in Europe* (Cambridge University Press, 2022), 157–215, https://doi.org/10.1017/9781009071215.006.

[39] Ibo van de Poel et al., eds., *Ethics of Socially Disruptive Technologies* (Cambridge, UK: Open Book Publishers, 2023), https://doi.org/10.11647/OBP.0366.

[40] Adekemi Omotubora et al., "Women Experience Privacy Differently: Towards a Gender and Inclusion by Design (GEIBD) Approach in Africa," *AI & SOCIETY* 41, no. 5 (May 7, 2026): 5269–84, https://doi.org/10.1007/s00146-026-02870-9.

directly to Indonesian constitutional norms and national digital regulation. In this way, the article develops a constitutional framework for assessing the protection and restriction of citizens' rights in Indonesia's digital ecosystem.

This subsection is relevant to the research gap because privacy and freedom of expression are frequently examined separately in digital law studies. The novelty of this article is strengthened by connecting both rights to Indonesian constitutional norms and by using them as indicators for assessing the constitutionality of digital governance.

Indonesian Regulatory Framework on Digital Governance

Indonesia's digital governance framework has developed through several laws and policies related to electronic information, personal data protection, cyber security, content moderation, and digital public administration.[41] The Electronic Information and Transactions Law is one of the central regulations because it governs electronic information, electronic transactions, and several forms of prohibited online conduct. The Personal Data Protection Law marks another important development because it introduces a more specific legal framework for personal data protection.[42] These regulations show that Indonesia has begun to respond to digital transformation through positive law.

However, the existence of digital regulation does not automatically ensure constitutional protection. Several provisions in digital regulation may create tension with freedom of expression, legal certainty, proportionality, and due process of law. The EIT Law, especially provisions related to defamation and online expression, has often been criticised because it may be interpreted broadly. From a constitutional perspective, such provisions must be assessed through the principles of lex certa, lex stricta, necessity, and proportionality.

Content blocking, internet access restrictions, and digital surveillance also raise constitutional questions. These policies may be justified for public order, security, or protection of other rights, but they must be based on law and accompanied by adequate oversight. Without transparent procedures, objection mechanisms, and judicial control, administrative restrictions in the digital space may weaken checks and balances.[43] Therefore, digital governance must be assessed not only from regulatory existence, but also from constitutional quality.

Previous studies on Indonesian digital regulation often focus on the EIT Law, cybercrime, personal data protection, or sectoral policy issues. This article differs by examining those regulatory developments through a broader constitutional framework. It analyses whether digital regulations reflect the constitutional guarantees contained in the 1945 Constitution. This approach allows the article to identify the gap between normative constitutional protection and regulatory practice in Indonesia.

This subsection directly explains the research gap by showing the distance between constitutional guarantees and the fragmented character of Indonesian digital regulation. It also supports the novelty of this article by assessing digital governance through constitutional quality, not merely through the existence of statutory regulation.

The Role of Constitutional Courts and the Position of This Article

Constitutional courts have an important role in protecting citizens' rights against laws and policies that may conflict with the constitution. In a democratic state based on the rule of law, constitutional review functions as a mechanism to ensure that legislative and executive actions

[41] Safriansyah Yanwar Rosyadi and Rineke Sara, "The Urgency of Establishing a National Digital Commission to Ensure Responsive and Sustainable Cyber Governance in Indonesia," *Deposisi: Jurnal Publikasi Ilmu Hukum* 3, no. 3 (August 8, 2025): 62–71, https://doi.org/10.59581/deposisi.v3i3.5441.

[42] Purwanti, Barthos, and Saputra, "The Role of Artificial Intelligence in the Implementation of Personal Data Protection Law in Indonesia."

[43] V. M. KONDRATENKO and A. A. MANZHULA, "Administrative and Legal Mechanisms for Ensuring The Balance Between Access to Public Information and The Protection of National Security in The Context of The Development of The Information Space," *Law and Society* 1, no. 3 (2025): 187–92, https://doi.org/10.32842/2078-3736/2025.3.1.27.

remain consistent with constitutional guarantees.[44] This function becomes more important in the digital era because digital policies may affect expression, privacy, information, equality, and access to justice. Therefore, the Constitutional Court should be placed as a key institution in digital constitutionalism.

In Indonesia, the Constitutional Court has authority to review laws against the 1945 Constitution. This authority can be used to test whether digital regulations comply with constitutional rights and rule of law principles. The Court may also develop constitutional doctrine on digital rights through its interpretation of freedom of expression, privacy, access to information, non-discrimination, proportionality, and due process of law.[45] Such doctrine is necessary to provide clearer standards for future digital governance.

The literature on constitutional adjudication shows that courts may become important actors in shaping constitutional meaning. Alec Stone Sweet and Ran Hirschl explain that judicial institutions can influence constitutional politics through rights-based review and constitutional interpretation.[46] In the digital context, this role becomes more complex because courts must respond to new forms of power created by the state and digital platforms. This means that judicial doctrine must adapt to technological transformation while remaining grounded in constitutional principles.

This article contributes to previous literature by combining three elements that are often discussed separately, namely digital constitutionalism, Indonesian digital regulation, and the role of the Constitutional Court. It does not merely describe digital rights or digital policy, but assesses them through the constitutional structure of Indonesia. The article's distinction lies in its argument that protection of citizens' rights in the digital ecosystem requires constitutionalisation of digital rights, harmonisation of digital regulation, stronger constitutional review, platform accountability, and a rights-based approach to digital policy.

This subsection confirms the novelty of the article by showing that the role of the Constitutional Court is essential in developing constitutional doctrine for digital rights protection. It also closes the research gap by linking judicial review, digital regulation, platform accountability, and citizens' constitutional rights within one analytical framework.

Research Design and Methodology

This research employs normative legal research, specifically doctrinal legal research, with a qualitative approach. This method is used to examine constitutional norms, statutory regulations, legal doctrines, and judicial reasoning[47] related to the protection of citizens' rights in Indonesia's digital ecosystem. The analysis focuses on whether digital regulations and policies are consistent with constitutionalism, human rights protection, limitation of power, legal certainty, due process of law, and checks and balances.

The normative design is directed toward examining the relationship between the 1945 Constitution and Indonesia's digital governance framework. It assesses the constitutional basis for digital rights protection, the conformity of digital regulations with constitutional principles, and the role of constitutional review and institutional oversight in strengthening citizens' rights.

The statute approach is used to examine Articles 28E, 28F, 28G, and 28I of the 1945 Constitution, as well as the Electronic Information and Transactions Law and the Personal Data Protection Law. This approach assesses whether digital regulations are consistent with freedom of expression, access to information, privacy, dignity, non-discrimination, legal certainty, proportionality, due process of law, and constitutional accountability.

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[44] Mastafa Nadhim Hameed Al-Jassam and Faris Hussein Abbar, "Constitutional Review of Laws and Its Role in Protecting Public Rights and Freedoms," *International Academic Journal of Law* 06, no. 02 (October 10, 2025): 1–7, https://doi.org/10.47310/iajl.2025.v06i02.008.

[45] Setiawan et al., "Digitalization of Legal Transformation on Judicial Review in the Constitutional Court."

[46] WAYNE SANDHOLTZ, "Human Rights Courts and Global Constitutionalism: Coordination Through Judicial Dialogue," *Global Constitutionalism* 10, no. 3 (November 20, 2021): 439–64, https://doi.org/10.1017/S2045381720000064.

[47] Brata Yoga Lumbanraja et al., "Transforming Legal Proceedings in Indonesia's Administrative Court: The Role of Legal Culture in The Society 5.0 Era," *Masalah-Masalah Hukum* 54, no. 1 (March 27, 2025): 69–79, https://doi.org/10.14710/mmh.54.1.2025.69-79.

The conceptual approach is used to explain constitutionalism, digital rights, digital constitutionalism, platform power, privacy, freedom of expression, and rights-based digital governance. The case approach is used to analyse Constitutional Court decisions relevant to freedom of expression, access to information, privacy, and digital regulation in order to assess the development of judicial doctrine on digital rights protection.

The limited comparative approach is used to obtain supporting perspectives from other legal systems concerning digital rights protection, independent oversight, platform accountability, and proportionality in restricting digital rights. This approach supports the formulation of recommendations that remain consistent with the 1945 Constitution and Indonesia's constitutional system.

The legal materials consist of the 1945 Constitution, digital governance regulations, Constitutional Court decisions, books, journal articles, institutional reports, legal dictionaries, and other supporting legal sources. These materials are collected through library research, classified according to the research questions, and analysed to assess the constitutional basis of citizens' rights, the consistency of digital regulations, the development of judicial doctrine, and the strengthening of digital constitutionalism in Indonesia.

The analysis is conducted qualitatively through normative, deductive, and interpretative legal reasoning. Legal interpretation uses grammatical, systematic, historical, and teleological methods to understand constitutional norms in the digital context. The validity of the analysis is maintained through logical consistency between the research questions, theoretical framework, legal materials, and conclusions, supported by source triangulation among constitutional provisions, legislation, judicial decisions, and scholarly literature.

Findings and Discussion

Constitutional Protection of Citizens' Rights in the Digital Ecosystem

The findings of this study confirm that the 1945 Constitution of the Republic of Indonesia provides a normative basis for protecting citizens' rights in the digital ecosystem. Although the Constitution does not expressly mention the terms "digital rights" or "digital space", its human rights provisions have an open and adaptive character.[48] This character allows constitutional rights to be interpreted in accordance with technological development and changes in social interaction. Therefore, the digital ecosystem should not be viewed as a space outside constitutional control, but as a new arena in which constitutional rights must continue to be protected.

The constitutional protection of citizens' rights in the digital ecosystem can be traced primarily through Articles 28E, 28F, 28G, and 28I of the 1945 Constitution. Article 28E paragraph (3) guarantees freedom of association, assembly, and expression, while Article 28F guarantees the right to communicate and obtain information through all available channels.[49] In the digital context, these provisions provide the constitutional basis for protecting freedom of expression and access to information through social media, digital platforms, online communication services, and other forms of digital interaction. Thus, any restriction on digital expression and access to information must be assessed based on constitutional principles, particularly legality, necessity, proportionality, and respect for democratic participation.

Article 28G paragraph (1) of the 1945 Constitution is also relevant because it guarantees the protection of personal security, dignity, honour, and property. In the digital ecosystem, this provision can be interpreted as a constitutional basis for privacy and personal data protection.[50] Privacy in the digital context is not limited to protection against physical interference, but also includes protection against arbitrary collection, processing, storage, distribution, and surveillance of personal data.

[48] Setiyo Utomo, "The Digital Age and Human Rights Protection in Indonesia: Legal Framework, Challenges, and Reform Directions," *Yustisia Jurnal Hukum* 14, no. 2 (September 21, 2025): 225, https://doi.org/10.20961/yustisia.v14i2.85404.

[49] Ainun Najib et al., "Regulation on Freedom of Expression on Social Media in Indonesia and Malaysia," *Journal of Indonesian Constitutional Law* 1, no. 1 (August 19, 2024): 46–60, https://doi.org/10.71239/jicl.v1i1.20.

[50] Nandani Bayu Prasanti and Ariawan Gunadi, "Implementation of the Principles of Necessity and Proportionality in the Sharing of Customer Data by Banks with Vendors," *Law Development Journal* 7, no. 3 (October 23, 2025): 450, https://doi.org/10.30659/ldj.7.3.450-459.

Therefore, the management of personal data by state institutions and private digital actors must be subject to the principles of limitation of power, accountability, and respect for human dignity.

The principle of non discrimination is also part of constitutional protection in the digital ecosystem. Article 28I paragraph (2) of the 1945 Constitution prohibits discriminatory treatment and provides a constitutional basis for assessing digital practices that may create unequal treatment.[51] Algorithmic bias, non transparent content moderation, discriminatory profiling, and unequal access to digital services may affect the equal enjoyment of constitutional rights. For this reason, digital governance must ensure that technological systems operate consistently with equality, transparency, accountability, and human dignity.

Based on these constitutional guarantees, this study finds that citizens' rights in the digital ecosystem are not a new category of rights that stand apart from the Constitution. Digital rights are an extension of constitutional rights that have already been guaranteed in the 1945 Constitution. The main constitutional issue is not the absence of basic rights, but the need to interpret and implement those rights in accordance with the characteristics of digital power.[52] This includes the power of the state in regulating digital space and the power of private platforms in controlling expression, information, data, and access to public discourse.

The findings also show that constitutional protection in the digital ecosystem requires a broader understanding of the relationship between citizens, the state, and digital platforms. In the traditional constitutional framework, the limitation of state power becomes the main focus of rights protection. However, in the digital ecosystem, citizens' rights may also be affected by private actors that manage platforms, algorithms, data flows, and content moderation systems. Therefore, the protection of citizens' rights in digital space must address both state authority and private digital power.

In this regard, the 1945 Constitution should function not only as a formal source of legal validity, but also as a substantive standard for assessing digital regulations and policies. Digital policies concerning online expression, access to information, personal data, surveillance, content restriction, and platform governance must be tested against constitutional principles.[53] This approach is necessary to ensure that digital transformation strengthens the protection of citizens' rights rather than weakening democratic constitutionalism. Therefore, the findings of this study confirm that the Indonesian Constitution contains sufficient normative foundations for protecting citizens' rights in the digital ecosystem, but those foundations require stronger implementation through regulation, institutions, and constitutional interpretation. This constitutional foundation shows that the protection of citizens' rights in the digital ecosystem cannot stop at normative recognition under the 1945 Constitution. It must be followed by a stronger digital constitutionalism framework that ensures digital regulations, institutional oversight, judicial interpretation, and platform governance operate consistently with constitutional principles.

Strengthening Digital Constitutionalism in Indonesian Digital Governance

Although the 1945 Constitution provides a strong normative basis for protecting citizens' rights, this study finds that Indonesian digital governance has not fully reflected constitutional principles in a consistent manner. Digital regulations and policies remain fragmented and are often influenced by security, public order, and administrative control.[54] This condition creates a gap between constitutional guarantees and the practical regulation of digital space. Therefore, strengthening

[51] Yana Priyana and Sopian Sopian, "Analysis of Article 28I Paragraph (4) of the 1945 Constitution on the Protection of Minority Rights and the Principle of Non-Discrimination in the Indonesian Legal System," *West Science Law and Human Rights* 3, no. 03 (July 31, 2025): 297–304, https://doi.org/10.58812/wslhr.v3i03.2061.

[52] Defril Hidayat, Hengki Firmanda, and Mahmud Hibatul Wafi, "Analysis of Hate Speech in the Perspective of Changes to the Electronic Information and Transaction Law," *Fiat Justisia: Jurnal Ilmu Hukum* 18, no. 1 (April 30, 2024): 31–48, https://doi.org/10.25041/fiatjustisia.v18no1.3146.

[53] Róisín Á Costello, "Faux Ami? Interrogating the Normative Coherence of 'Digital Constitutionalism,'" *Global Constitutionalism* 12, no. 2 (July 17, 2023): 326–49, https://doi.org/10.1017/S2045381722000272.

[54] Kiki Firmantoro, "Constitutionalization of Digital Governance: Implementation of the Personal Data Protection Law from an Information Technology Law Perspective," *KANGMAS: Karya Ilmiah Pengabdian Masyarakat* 6, no. 3 (November 25, 2025): 26–36, https://doi.org/10.37010/kangmas.v6i3.2226.

digital constitutionalism is necessary to ensure that digital governance is oriented toward the protection of rights, not merely toward control and enforcement.

The Electronic Information and Transactions Law is one of the main examples of the tension between digital regulation and constitutional guarantees. Several provisions related to online expression, defamation, and the dissemination of electronic information have been criticised because they may be interpreted broadly and may restrict freedom of expression. From a constitutional perspective, digital regulation must comply with the principles of legal certainty, lex certa, lex stricta, necessity, and proportionality.[55] Without these standards, digital regulation may create legal uncertainty and may be used in a way that limits citizens' constitutional rights.

The enactment of the Personal Data Protection Law shows progress in the protection of privacy and personal data. However, the protection of privacy rights cannot depend only on statutory recognition. It also requires effective supervision, independent oversight, enforcement mechanisms, and institutional accountability. The absence or weakness of independent supervisory mechanisms may reduce the effectiveness of personal data protection. Therefore, privacy protection must be developed as a constitutional obligation that binds both state institutions and private actors that process citizens' personal data.

Content blocking, internet access restrictions, and digital surveillance also raise constitutional concerns. Such policies may be justified in certain situations, but they must be based on law, pursue a legitimate aim, and be carried out through transparent and accountable procedures. Restrictions on digital rights should not be imposed solely through unilateral administrative decisions.[56] They must be accompanied by objection mechanisms, judicial oversight, and remedies for citizens whose rights are affected.

This study identifies four main challenges in Indonesian digital governance. The first is the normative challenge, namely the absence of explicit recognition of digital rights as part of citizens' constitutional rights. The second is the institutional challenge, namely weak oversight over state authority in the digital space. The third is the structural challenge, namely the dominance of global digital platforms that exercise significant power over expression, information, and data. The fourth is the interpretative challenge, namely the limited development of judicial doctrine concerning digital rights and digital constitutionalism.

These challenges show that the protection of citizens' rights in the digital ecosystem cannot rely only on sectoral regulations. Digital governance requires a constitutional orientation that clarifies the status of digital rights, strengthens institutional oversight, addresses the power of digital platforms, and develops judicial doctrine on digital constitutionalism. The Constitutional Court has an important role in this regard because it functions as the guardian of the Constitution and has authority to review laws against the 1945 Constitution.[57] Through constitutional review, the Court can develop standards for assessing digital regulations that affect freedom of expression, privacy, access to information, equality, and due process of law.

Accordingly, strengthening digital constitutionalism in Indonesia should focus on three connected measures. First, digital regulations must be harmonised with constitutional guarantees, particularly freedom of expression, access to information, privacy, non discrimination, and due process of law. Second, institutional oversight must be strengthened through independent and accountable mechanisms, especially in relation to personal data protection, content restriction, and digital surveillance. Third, the Constitutional Court should develop a more consistent rights oriented doctrine when reviewing laws and policies that affect citizens' rights in the digital ecosystem. Digital platform accountability must also become part of Indonesian digital constitutionalism. Platforms

[55] Hanafi Hanafi, "The Dialectics of Freedom of Expression and Legal Restrictions on Digital Platforms: An Analysis of Human Rights Principles, the Electronic Information and Transactions Law, and Constitutional Court Decision Number 105/PUU-XXII/2024," *International Journal of Law, Environment, and Natural Resources* 5, no. 1 (August 13, 2025): 57–75, https://doi.org/10.51749/injurlens.v5i1.132.

[56] Eka Nurhikmah, Nelvina Djaja, and Laurenzia Luna, "Proporsionalitas Dan Akuntabilitas Dalam Tata Kelola Digital Atas Pembatasan Akses Internet Bagi Anak Di Indonesia," *JURNAL USM LAW REVIEW* 8, no. 3 (December 12, 2025): 2014–37, https://doi.org/10.26623/julr.v8i3.12924.

[57] Bustanul Arifien, Hedwig A. Maulana, and Mardi Candra, "Kedudukan Mahkamah Konstitusi Dalam Mekanisme Hubungan Antar Lembaga Negara," *CENDEKIA : Jurnal Penelitian Dan Pengkajian Ilmiah* 2, no. 7 (July 23, 2025): 1340–52, https://doi.org/10.62335/cendekia.v2i7.1563.

influence public communication, access to information, personal data governance, content moderation, and democratic participation. Therefore, platform governance should be subject to transparency, non discrimination, accountability, and respect for human rights.[58]

A rights based digital policy paradigm is necessary to ensure that the state acts as a duty bearer in the digital space. Policies on content restriction, surveillance, data processing, and internet access must be assessed through legality, necessity, proportionality, and human rights impact.[59] This approach prevents digital governance from being dominated by security and control without adequate constitutional safeguards.

Public participation and digital constitutional literacy should support this rights based framework. Citizens need access to information, consultation mechanisms, and effective complaint procedures in digital policy making.[60] These elements strengthen democratic legitimacy and ensure that digital governance remains accountable to constitutional principles.

Overall, strengthening digital constitutionalism requires harmonised regulation, effective oversight, progressive constitutional review, accountable platform governance, rights based policy, and meaningful public participation. These measures are necessary to ensure that Indonesia's digital transformation remains consistent with human dignity, freedom, equality, and democratic rule of law. It requires harmonisation of digital regulations with constitutional guarantees, stronger institutional oversight, progressive constitutional review, platform accountability, a rights based policy paradigm, and public participation. In this sense, digital constitutionalism becomes a necessary framework for ensuring that digital transformation in Indonesia remains consistent with human dignity, freedom, equality, and democratic rule of law.

Conclusion

This study concludes that the 1945 Constitution of the Republic of Indonesia provides a normative basis for protecting citizens' rights in the digital ecosystem. The guarantees of freedom of expression, access to information, privacy, human dignity, and nondiscrimination can be interpreted progressively as constitutional foundations for digital rights protection. However, Indonesian digital regulations have not fully reflected these constitutional guarantees because they remain fragmented and tend to emphasize security, control, and administrative authority rather than rights protection.

The main finding of this study is that the constitutional protection of citizens' rights in the digital ecosystem requires a stronger connection between constitutional norms and digital governance practices. This gap appears in the regulation of online expression, content blocking, internet access restrictions, digital surveillance, personal data protection, and platform governance. These issues show that digital policies must be assessed through constitutional principles, particularly legal certainty, proportionality, due process of law, checks and balances, and accountability.

This study also identifies several constitutional challenges in Indonesian digital governance. Normatively, digital rights have not been expressly recognised as part of citizens' constitutional rights. Institutionally, oversight over state authority in the digital space remains limited. Structurally, global digital platforms exercise significant power over expression, information, and data without sufficient constitutional accountability. Interpretatively, judicial doctrine on digital rights has not yet been developed consistently by the Constitutional Court.

The legal contribution of this study lies in placing digital rights within the framework of Indonesian constitutional law. This article argues that digital rights should not be treated merely as sectoral issues of information technology law, but as an extension of constitutional rights guaranteed by the 1945 Constitution. This approach strengthens the theoretical development of digital constitutionalism in Indonesia and provides a normative basis for evaluating digital regulations, public policies, and institutional practices in the digital ecosystem.

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[58] Tarleton Gillespie et al., "Expanding The Debate About Content Moderation: Scholarly Research Agendas for The Coming Policy Debates," *Internet Policy Review* 9, no. 4 (October 21, 2020), https://doi.org/10.14763/2020.4.1512.

[59] Roxana Radu et al., "Normfare: Norm Entrepreneurship in Internet Governance," *Telecommunications Policy* 45, no. 6 (July 2021): 102148, https://doi.org/10.1016/j.telpol.2021.102148.

[60] Dennis Redeker, Lex Gill, and Urs Gasser, "Towards Digital Constitutionalism? Mapping Attempts to Craft an Internet Bill of Rights," *International Communication Gazette* 80, no. 4 (June 16, 2018): 302–19, https://doi.org/10.1177/1748048518757121.

Practically, this study recommends the harmonisation of digital regulations with constitutional guarantees, the strengthening of constitutional review by the Constitutional Court, the establishment and reinforcement of independent oversight institutions, and the adoption of a rights based policy paradigm in digital governance. The state must also ensure that digital platforms are subject to transparency, non discrimination, accountability, and respect for human rights. These recommendations are necessary to ensure that digital transformation supports democratic rule of law and does not weaken citizens' constitutional rights.

This study is limited to normative legal analysis and does not include empirical data on citizens' experiences in the digital space. It also focuses on the Indonesian context and uses comparative perspectives only in a limited manner. Future research should combine normative and empirical approaches, expand comparative analysis, and examine Constitutional Court decisions more deeply to assess the development of digital constitutionalism in Indonesia.

Strengthening digital constitutionalism is essential to ensure that Indonesia's digital governance remains consistent with constitutional principles. By harmonising regulation, strengthening institutions, developing judicial interpretation, ensuring platform accountability, and promoting public participation, the protection of citizens' rights in the digital ecosystem can be directed toward human dignity, freedom, equality, and democratic rule of law.

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