

The Transition from Conventional Constitutions to Digital Law: Constitutional Law Challenges in the Age of Artificial Intelligence

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Informasi Artikel	Abstract
E-ISSN : 3026-6874 Vol: 4 No: 1 January 2026 Page : 58-66	The rapid advancement of digital technology and artificial intelligence (AI) in the twenty-first century has fundamentally transformed the structure of modern constitutional governance. Digitalization has reshaped the interactions between governments and citizens, altered the patterns of political participation, and presented major challenges to constitutional principles. This study aims to analyze the implications of technological development for constitutional law and propose the concept of a digital constitution as an adaptive framework in the AI era. This study employs a normative legal method, using both conceptual and statutory approaches. Legal materials consist of primary, secondary, and tertiary sources, which are analyzed qualitatively and descriptively. The findings reveal that, while digital transformation enhances governmental efficiency and public transparency, it also generates serious risks, including data misuse, digital surveillance, and political disinformation. These dynamics demand a reinterpretation of constitutional norms to protect citizens' digital rights in cyberspace. The concept of a digital constitution is proposed as a normative response that integrates digital rights into constitutional rights and reaffirms the principle of the rule of law within technological governance. To achieve a democratic and just constitutional order, it is crucial to strengthen regulatory frameworks, ensure algorithmic accountability, and foster collaboration among state institutions, civil society, and the private sector. Ultimately, constitutional law must evolve into an adaptive, transparent, and fair system that can address the profound challenges of the digital and AI-driven era.
Keywords: Digital constitution; constitutional law; artificial intelligence; rule of law; digital democracy.	

Abstract

Perkembangan teknologi digital dan kecerdasan buatan (Artificial Intelligence/AI) pada abad ke-21 telah menimbulkan perubahan mendasar terhadap sistem ketatanegaraan modern. Digitalisasi memengaruhi pola interaksi antara pemerintah dan warga negara, mengubah mekanisme partisipasi politik, serta menimbulkan tantangan baru bagi prinsip-prinsip konstitusionalisme. Penelitian ini bertujuan untuk menganalisis implikasi perkembangan teknologi terhadap hukum tata negara dan menawarkan konsep konstitusi digital sebagai bentuk adaptasi konstitusi di era kecerdasan buatan. Metode penelitian yang digunakan adalah penelitian hukum normatif dengan pendekatan konseptual dan pendekatan perundang-undangan. Bahan hukum yang digunakan terdiri dari bahan hukum primer, sekunder, dan tersier, yang dianalisis secara kualitatif deskriptif. Hasil penelitian menunjukkan bahwa kemajuan teknologi informasi membawa dampak positif terhadap efisiensi pemerintahan dan transparansi publik, namun juga menimbulkan risiko serius berupa penyalahgunaan data, pengawasan digital, dan disinformasi politik. Kondisi ini menuntut penyesuaian terhadap norma konstitusional agar tetap mampu menjamin perlindungan hak-hak warga negara di ruang digital. Gagasan konstitusi digital diajukan sebagai solusi konseptual yang menempatkan hak-hak digital sebagai bagian dari hak konstitusional dan menegaskan kembali prinsip rule of law dalam tata kelola teknologi. Dengan penguatan regulasi, akuntabilitas digital, dan kolaborasi antara negara serta masyarakat sipil, hukum tata negara diharapkan mampu bertransformasi menjadi sistem yang adaptif, demokratis, dan berkeadilan di era kecerdasan buatan.

Keywords: Konstitusi digital, hukum tata negara, kecerdasan buatan, negara hukum, demokrasi digital.

INTRODUCTION

The development of digital technology and artificial intelligence (AI) in the 21st century has brought about major changes in almost all aspects of human life.(Hariyono dkk., 2024) The digital

revolution marks a fundamental shift in civilization, not only in terms of how humans interact, but also in how countries govern and serve their citizens. Digitalization is no longer just a technological phenomenon, but has shaped a new social, economic, and political ecosystem. Amidst these rapid changes, the field of law, particularly constitutional law, faces unprecedented challenges. The law, which has long served as the guardian of order and justice, is now required to adapt to the dynamic, cross-border, and fast-paced reality of the digital world.(Marwiyah dkk., 2023)

Advances in information and communication technology have influenced the patterns of interaction between the government and the public, the way government is administered, and even the mechanisms of political participation. A 2023 survey by the Asosiasi Penyelenggara Jasa Internet Indonesia (APJII) noted that internet penetration reached 78.19%, or the equivalent of 215 million users, indicating increasingly intense public interaction in the digital space.(Sari & Jannani, 2023) This figure reflects a major transformation in the social and political behavior of society. The internet is now not only a means of communication, but has become a new public space where citizens express their political views, criticize policies, and demand government accountability. Digitalization has reshaped the relationship between the state and its people, and redefined the meaning of political participation in the context of modern constitutional law.(Mardiyati, 2024)

Artificial intelligence (AI) is a major catalyst for this change. AI algorithms have the ability to process massive amounts of data, recognize behavior patterns, and make automatic decisions based on predictive analysis. This technology offers high efficiency in various fields, including governance. AI can be used to improve public services, accelerate administrative processes, and assist in evidence-based policy-making.(Sedana dkk., 2025) Artificial intelligence also poses serious risks, including misuse of personal data, massive surveillance by the state, and the potential for manipulation of political information that could disrupt the democratic process. The widespread phenomenon of misinformation and disinformation through social media shows how digital technology can be used to influence public opinion and the direction of political policy.

The massive phenomenon of misinformation and disinformation on social media is a concrete example of how digital technology can be used to influence public perception and the direction of political policy. The Cambridge Analytica case in the United States shows how user data can be exploited unethically for political purposes.(Zaelany & Putranti, 2023) The spread of hoaxes and hate speech in Indonesia ahead of elections often creates extreme political polarization, disrupts social harmony, and erodes trust in democratic institutions.(Maryono, 2023) All of this confirms that digital transformation is not merely a matter of technology, but also a fundamental matter of law and state administration. The constitution must be able to provide normative direction so that technological developments do not distance the state from the principles of justice and democracy.

This condition reveals a discrepancy between technological developments and the applicable legal framework. The 1945 Constitution and existing laws and regulations have not been fully designed to address the challenges of the digital age.(Saraya dkk., 2025) Legal norms that were created in the past were mostly intended to address classic constitutional issues, such as relations between state institutions, the implementation of elections, or mechanisms for overseeing power. New issues such as digital privacy protection, cyber security, or regulations on the use of artificial intelligence in public spaces have not been adequately accommodated. There are legal loopholes that have the potential to cause uncertainty in constitutional practice.

Academic studies on the relationship between constitutional law and digitalization and artificial intelligence in Indonesia are still very limited. Most legal research still focuses on classic issues such as inter-institutional relations, electoral mechanisms, and the division of power. Discourse on how constitutional principles can be applied in the digital world is still rarely developed systematically. This lack of literature indicates an epistemological gap between technological developments and developments in legal science itself. Developed countries have begun to develop the concept of digital constitutionalism, a legal framework that places digital rights as an integral part of the constitutional rights of citizens. Countries in Europe, through the General Data Protection Regulation (GDPR), have affirmed that the protection of personal data is a fundamental right that must be guaranteed by the state.(Laili Kusumadewi & Cahyono, 2023)

The constitution is essentially a basic instrument designed to protect the rights of citizens, limit power, and ensure the implementation of legitimate and accountable government.(Tarigan, 2024a) The constitution should not be understood as a static text, but rather as a living constitution that is capable of adapting to the times. In the digital age, constitutional adaptation is a necessity. This does not mean that the text of the constitution must be completely replaced, but rather that the basic principles of constitutionalism need to be reinterpreted to be relevant to the social reality that is constantly changing due to technology. There is an urgent need to discuss the idea of a “digital constitution,” which is a conception of a constitution that is adaptive to technological developments, upholds democracy, and protects the rights of citizens in the digital space.(Asshiddiqie, 2021)

Analyzing this issue requires an adequate theoretical framework. This study uses three main complementary theories. The theory of constitutionalism as developed by John Locke.(Asshiddiqie, 2021) This theory emphasizes the importance of limiting government power and protecting the fundamental rights of citizens. In the digital age, constitutionalism serves as a normative basis for assessing the extent to which the state can regulate the use of technology without violating the principles of freedom and justice.

This study uses the theory of digital democracy introduced by Benjamin R. Barber.(Baihaqi, 2023) This theory explains that digital technology has changed the patterns of political participation in society, opened up new spaces for deliberation, and expanded access to information. Digital democracy offers great potential for strengthening citizen engagement. This theory also highlights the risks, such as political polarization, the digital divide, and the possibility of domination by groups that control technology. The constitution needs to provide guidance so that the development of digital technology can truly strengthen democracy, not the other way around.

This study uses the theory of the rule of law from A.V. Dicey.(Siregar, 2024) The rule of law emphasizes that every action of the government must be subject to the law, that there must be equality before the law, and that the basic rights of citizens must be protected. The rule of law underscores the importance of clear and fair regulations on the use of technology. The rule of law must be able to ensure that the use of AI and digital technology is not arbitrary, and that citizens' rights to privacy, freedom of expression, and political rights are guaranteed.(Nainggolan dkk., 2024)

The urgency of this research can be seen from several aspects. From an academic perspective, this research contributes to the development of constitutional law studies that are more contextual and relevant to the challenges of the 21st century. This research broadens the horizon of legal studies by including digital issues that have been discussed more in the context of cyber law or international law. From a practical perspective, this research has strategic value for the formulation of public policy. Without a clear legal framework, the use of digital technology in government administration can lead to potential abuse of power, human rights violations, and a crisis of democratic legitimacy. From a socio-political perspective, this research is important for maintaining the quality of democracy in Indonesia, given the real threats of disinformation, political polarization, and the possibility of digital technology being misused to reinforce authoritarian practices.

The objective of this study is to analyze constitutional law challenges in the digital era, focusing on the protection of citizens' rights, checks and balances mechanisms, and changing patterns of political participation, and to provide recommendations for strengthening constitutional law to make it more adaptive to technological developments. These recommendations are expected to provide input for policymakers in formulating consistent regulations.

METHOD

The research method used in this study is the normative legal research method.(Rizkia & Fardiansyah, 2023) This study focuses on examining the legal norms that govern the relationship between the development of digital technology, particularly artificial intelligence, and constitutional-based state systems.(Tahir dkk., 2023) The approaches used are the conceptual and statutory approaches. The conceptual approach is used to understand basic concepts such as the digital constitution, data sovereignty, and principles of constitutional law in the context of technological transformation, while the statutory approach is used to examine relevant national and international legislation relating to digital governance and the use of artificial intelligence.

The data sources for this study consist of primary and secondary legal materials. Primary legal materials include laws and regulations such as the 1945 Constitution of the Republic of Indonesia, Law No 27 of 2022 concerning Personal Data Protection, and various legal instruments related to digital governance. Secondary legal materials include academic literature, scientific journals, previous research results, and the views of constitutional law experts who discuss the implications of digitalization on the constitutional system. Data collection was carried out through a literature study by examining various legal references and relevant scientific sources. The data obtained was analyzed qualitatively and descriptively, by interpreting the content of the norms, relating them to theory, and drawing logical conclusions regarding the need for constitutional law reform towards a digital constitution.

RESULTS AND DISCUSSION

1. The Constitution and the Challenges of Digitalization

The constitution is the main pillar of the state system, which forms the basis of legitimacy for all forms of state power. The constitution serves as the highest source of law, a guideline for state administrators, and a protector of citizens' rights. (Tarigan, 2024b) With the development of technology, particularly digitalization and artificial intelligence (AI), the constitution faces new challenges that are both structural and substantive. As John Locke argued, the legitimacy of power can only be accepted to the extent that the state respects the basic rights of individuals. (Asshiddiqie, 2021) Digital transformation brings changes to the way the state carries out its functions, whether in public service, oversight, or law enforcement. The constitution cannot be viewed as a static text, but rather as a living constitution that must be able to adapt to the changing times without losing its basic values and normative legitimacy.

Digitalization has brought the state into a new situation where government functions no longer depend on physical interaction, but rather on electronic systems that work automatically and are integrated. This transformation creates efficiency and speed, but also gives rise to new complexities in the application of constitutionalism principles. Principles that have long relied on physical boundaries and territorial sovereignty now face the challenges of a digital space that transcends borders and knows no single authority. Constitutional law faces the enormous challenge of reinterpreting the meaning of sovereignty, legal authority, and the protection of citizens' rights in the virtual world. (Santoso, 2025)

The phenomenon of digitization requires that the constitution be viewed not only as a static legal text, but as a living constitution a document that is alive, evolving, and capable of adapting to social and technological changes. The constitution must provide normative direction for digital governance, ensure the protection of citizens' digital rights, and uphold the rule of law in cyberspace. Without adjustment, the constitution risks losing its functional power as a regulator of power in a digital society. (Muzaimah & Abimanyu, 2025)

The challenges of digitalization also raise new constitutional issues that have not been fully anticipated by the classical legal framework. For example, issues of data privacy, digital surveillance by the state, the misuse of algorithms for political purposes, and violations of digital rights such as the right to be forgotten. Constitutional protection of human rights needs to be expanded to include the digital dimension. The principles of freedom of expression and the right to privacy now concern not only physical actions, but also online activities recorded in algorithmic systems. (Tarigan, 2024b)

Countries such as Estonia and South Korea are examples of success in adapting their constitutional frameworks to digital challenges. Estonia, for example, has implemented an e-governance system based on the principles of transparency and constitutional accountability. (Rachmad dkk., 2024) Citizens can access public services digitally with guaranteed data protection through the X-Road System, a national platform that ensures information security between agencies. South Korea has also developed a Digital New Deal policy based on the principles of fairness and public participation. These practices show that the application of digital technology can go hand in hand with constitutional values, as long as there are regulations that guarantee openness and accountability. (Ilhami, 2024)

The 1945 Constitution as a written constitution does not explicitly regulate digital rights. Articles on freedom of expression, privacy, and the right to information are still general in nature and do not specifically cover the digital realm. Therefore, a reinterpretation of these articles is needed through a

progressive constitutional approach, so that basic principles such as justice, freedom, and equality remain guaranteed in the digital ecosystem.

2. Digital Democracy and Political Participation

Democracy as a modern political system is based on the principles of public participation, freedom of expression, and control over state power. In the digital age, democratic practices no longer take place only in physical public spaces, but have shifted to the digital realm. Digitalization has changed patterns of public participation, expanded access to information, and strengthened public accountability mechanisms through data openness and social media. This phenomenon is known as digital democracy, a concept that describes the integration of information technology in the democratic process.(Baihaqi, 2023)

Benjamin R. Barber, through his theory of strong democracy, explains that meaningful political participation is not only measured by citizens' participation in elections, but also by their active involvement in the public deliberation process.(Baihaqi, 2023) Digital technology provides new means for such involvement, such as e-voting, e-petitions, e-participation, and online deliberative forums. Through this technology, citizens can directly express their aspirations, participate in the formulation of public policy, and monitor the running of government.

Digital democracy also brings new paradoxes. On the one hand, it strengthens participation; on the other hand, it opens the door to political manipulation and social polarization. The emergence of the echo chamber and filter bubble phenomena causes people to only receive information that aligns with their views, thereby reducing the quality of public deliberation. In addition, the spread of disinformation and hate speech on social media poses a serious threat to the integrity of democracy.(Fatimah, 2025)

Artificial intelligence complicates this situation. The use of big data and algorithms in political campaigns allows for detailed analysis of voter behavior. Data-driven campaigning practices, such as those seen in the Cambridge Analytica case, demonstrate how personal data can be used to influence people's political preferences without their knowledge. The emergence of deepfake visual engineering that resembles reality can create a crisis of confidence in public information.(Setyarahajoe, 2025)

Constitutional law requires the establishment of a strict legal framework to protect the integrity of digital democracy. The constitution must guarantee that the use of technology in politics does not violate the principles of freedom of expression, public accountability, and political justice. The state must also set clear limits on the use of personal data for political purposes, while ensuring the transparency of algorithms used by digital platforms.(Tarigan, 2024b)

The European Union's experience with the General Data Protection Regulation (GDPR) can serve as a model for Indonesia. The GDPR strictly regulates the collection, storage, and use of personal data, and gives individuals the right to know how their data is being used. In the context of digital democracy, this kind of regulation is important so that citizens' privacy rights remain protected and are not compromised for political or economic interests.

3. The Rule of Law and Technology Regulation

The principle of the rule of law, as stated by A.V. Dicey, is the foundation of the modern constitutional legal system. Dicey emphasizes three main elements: the supremacy of law, equality before the law, and the protection of fundamental rights.(Siregar, 2024) This principle faces new challenges in the digital age due to the emergence of non-state entities such as global technology companies that wield enormous power over public data and information. The algorithmic power possessed by technology corporations often exceeds the traditional legal control of the state.

The rule of law in the digital age must be reinterpreted to encompass the realm of technology. The supremacy of law does not only mean that all citizens are subject to the law, but also that digital systems, both software and algorithms, must be subject to legal principles that guarantee justice and accountability. Constitutional law has a responsibility to ensure that technology-based government activities operate within the law and do not violate the rights of citizens.(Bakry dkk., 2025)

The need for new regulations is inevitable. These regulations should not be merely technical in nature, but must also embody constitutional values such as justice, transparency, and privacy protection.(Mulyana dkk., 2024) For example, Law No. 27 of 2022 on Personal Data Protection (PDP) is a first step for Indonesia in developing data governance that is oriented towards individual rights. This law still needs to be strengthened in terms of supervision, sanctions, and inter-agency coordination.

A mechanism of checks and balances needs to be established in the use of technology by state institutions. This principle ensures that digital power is not misused for political interests or excessive surveillance of citizens. For example, AI-based surveillance by the government must be subject to the principles of proportionality and transparency, so as not to violate privacy rights.(Tarigan, 2024d)

The issue of data sovereignty is also an important part of the discourse on the digital rule of law. Dependence on global digital infrastructure raises issues of jurisdiction and national security. International cooperation is important. Indonesia can learn from the European Union's data governance model, which emphasizes interoperability between countries and cross-border data protection.

4. Towards a Digital Constitution

The concept of a digital constitution emerged as a response to the challenges presented by the information technology era. A digital constitution does not mean replacing the existing constitution, but rather expanding the scope and interpretation of the constitution to suit the digital reality. The digital constitution can be understood as an adaptive effort to adjust the basic principles of state administration to modern technological developments.(Tarigan, 2024b) It functions as a normative framework that regulates interactions between the state, citizens, and technology. The idea of a digital constitution includes the protection of citizens' digital rights, such as the right to data privacy, the right to access information, and the right not to be discriminated against by algorithms.(Huda dkk., 2024)

Moving towards the formation of a digital constitution requires a conceptual approach based on fundamental constitutional values such as sovereignty, justice, and democracy.(Tarigan, 2024c) Strengthening constitutional law in the technological era can be done through three main steps. First, reconstructing constitutional norms that recognize the importance of digital rights as part of the constitutional rights of citizens. Second, the establishment of organic regulations governing the use of AI and data management in government to be in line with constitutional principles. Third, strengthening state institutions so that they are able to carry out their supervisory function over the application of technology that has an impact on civil liberties. Constitutional law not only functions as the guardian of the constitution, but also as the architect in building technology-based governance that is oriented towards the public interest.(Tarigan, 2024b)

The formation of a digital constitution must involve cross-sector dialogue between the state, civil society, academics, and the private sector. Public participation is essential so that legal principles are not dictated by market logic or the interests of large technology corporations. The state must ensure that digital transformation is directed towards strengthening democracy, not creating a new form of digital authoritarianism.(Marwiyah dkk., 2023)

Philosophically, the digital constitution affirms that technology is a means to achieve humanitarian and social justice goals, not an end in itself. Fundamental values such as sovereignty, justice, and humanity must remain the main guidelines in every technology policy. A paradigm shift in constitutional law is inevitable to ensure that the constitution continues to function as a normative compass in the face of the digital revolution.(Tarigan, 2024b)

Countries that successfully implement the principles of a digital constitution will be able to maintain a balance between innovation and the protection of human rights. In the long term, this concept can become the foundation for a democratic, accountable, and public-interest-oriented digital governance system. Indonesia, with its large number of internet users and complex socio-political dynamics, has a great opportunity to become a pioneer in this field as long as it is able to build an adaptive and inclusive legal system.

CONCLUSION

The development of digital technology and artificial intelligence has brought fundamental changes to the structure and function of modern state administration. This transformation has not only created efficiency in governance and political participation, but also poses serious challenges to the basic principles of constitutionalism. Constitutions that were originally designed to address conventional socio-political realities are now faced with new issues such as digital privacy, algorithmic surveillance, political disinformation, and inequality of access to technology. These conditions require a reinterpretation of constitutional norms to ensure they remain relevant and capable of guaranteeing the protection of citizens' digital rights. The principle of the rule of law in the context of constitutional law

must be expanded to ensure that the supremacy of law also applies in cyberspace and to increasingly dominant technological powers.

The transition to a digital constitution is an inevitable necessity. A digital constitution is not a replacement for the existing constitution, but rather a reinforcement of the fundamental values of the rule of law and democracy to be adaptive to technological developments. The state needs to develop a responsive legal framework, recognize digital rights as part of constitutional rights, and strengthen checks and balances mechanisms on the use of technology by public and private institutions. In addition, synergy between the government, civil society, academics, and the private sector is important to ensure that technological innovation is directed towards social welfare and justice. With a strong constitutional foundation, Indonesia can utilize the potential of artificial intelligence to strengthen democracy and the protection of human rights, rather than weakening them.

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