

Constitutional Rights Protection in Digital Transformation: A Normative Legal Analysis

Alfid Diaz Fernanda¹✉, Fatin Amiroszati¹, Muhammad Lukmanul Hakim¹, and Mas'udi¹

Universitas Amikom Yogyakarta, Yogyakarta, Indonesia¹

ABSTRACT

Digital transformation has fundamentally reshaped the interaction between the state, society, and digital platforms, while simultaneously creating new challenges for the protection of citizens' constitutional rights. This study aims to analyze the effectiveness of the existing legal framework and the urgency of strengthening regulations in safeguarding constitutional rights in the digital era. The research employs a normative juridical method using statutory and conceptual approaches, supported by a literature review of scholarly sources indexed in Google Scholar from the last five years. The findings indicate that Indonesia has established a relatively comprehensive legal foundation through the 1945 Constitution of the Republic of Indonesia, Law No. 27 of 2022 on Personal Data Protection, and Law No. 11 of 2008 on Electronic Information and Transactions as amended by Law No. 1 of 2024. However, the effectiveness of these regulations remains constrained by enforcement gaps, institutional limitations, and the rapid evolution of digital technologies. Moreover, emerging risks such as personal data breaches, digital surveillance, and technological inequality highlight the urgency of strengthening regulatory frameworks that are more adaptive and human rights-based. The study concludes that a digital constitutionalism approach is essential to ensure that constitutional rights protection remains effective amid ongoing digital transformation.

Keywords: *Constitutional Rights, Data Protection, Digital Constitutionalism, Digital Transformation, Legal Regulation.*

CORRESPONDING AUTHOR:

Alfid Diaz Fernanda
Universitas Amikom Yogyakarta, Yogyakarta, Indonesia
contact: diaz123@gmail.com

ARTICLE HISTORY

Received : July 15, 2024
Final Revised : November 4, 2024
Accepted : November 18, 2024
Published : December 30, 2024

1. | INTRODUCTION

Digital transformation has become one of the most significant phenomena in the development of modern law that has not only changed the pattern of social interaction, but also reshaped the relationship between the state, citizens, and technology. This change has direct implications for the concept of constitutional rights, which was previously rooted in physical space, now has to adapt in a digital space that is cross-border, fast, and data-driven. In this context, the protection of constitutional rights is no longer only concerned with the vertical relationship between the state and citizens, but also involves non-state actors such as digital platforms and technology service providers that have a great influence on individual data and behavior. Several studies confirm that digital transformation has created new challenges in the protection of human rights, particularly related to privacy and freedom of expression in cyberspace (Tikhomirov et al., 2021).

The development of information and communication technology has expanded the concept of constitutional rights, especially the right to privacy and protection of personal data. In the digital environment, personal data is a very valuable asset that is vulnerable to misuse, both by the private sector and by state entities. This condition encourages the birth of the need for regulations that are able to provide comprehensive protection for citizens' personal data. In Indonesia, the ratification of Law Number 27 of 2022 concerning Personal Data Protection (PDP Law) is an important milestone in this effort. This law affirms that every individual has the right to control his or her personal data, including the right to access, correction, and deletion of data. Studies show that the existence of this regulation is a response to the increasing risk of privacy violations in the digital era (Yuniarti, 2019).

Nevertheless, although the legal framework has begun to be built, the implementation of constitutional rights protection in the digital space still faces various challenges. One of them is the imbalance between the interests of technological innovation and the protection of individual rights. Digital platforms often collect and process user data at scale without the full understanding of the data owner, potentially violating the consent-based principle. In this context, the literature shows that the main challenge lies not only in the availability of regulations, but also in the effectiveness of law enforcement and supervision of digital actors (Safiranita et al., 2021).

On the other hand, Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE) as amended by Law Number 1 of 2024, also plays an important role in regulating activities in the digital space, including freedom of expression and legal limits in the use of information technology. However, this regulation often raises debates regarding the potential restriction of the right to freedom of expression guaranteed by the constitution. This shows the tension between the protection of constitutional rights and the need for the state to maintain order in the digital space (Turner et al., 2022).

Furthermore, the concept of digital constitutionalism is beginning to develop as a new approach in understanding the relationship between constitutional law and digital technology. Digital constitutionalism emphasizes that constitutional principles such as the rule of law, human rights protection, and power restrictions must remain valid in the digital space. Thus, the state has an obligation to ensure that digital transformation does not reduce the quality of protection of citizens' rights, but rather strengthens them through adaptive legal mechanisms (Aditya & Al-Fatih, 2021).

In addition, comparisons with international standards such as the General Data Protection Regulation (GDPR) show that many countries have already developed more comprehensive data protection frameworks. This puts normative pressure on developing countries to strengthen their domestic regulations to align with global standards. In the Indonesian context, this is reflected in efforts to harmonize the PDP Law and international data protection practices (Sinaga & Putri, 2020).

Thus, it can be understood that the protection of constitutional rights in the era of digital transformation is a multidimensional issue that includes legal, technological, and public policy aspects. This complexity demands a legal approach that is not only normative, but also adaptive to very rapid technological developments. Therefore, it is important to examine the extent to which existing regulations have been effective in providing protection of citizens' constitutional rights in the digital space, and why strengthening these regulations is becoming increasingly urgent in the context of ever-changing technological developments.

Based on this description, the formulation of the problem in this study is: RQ1: How effective are existing legal regulations in protecting the constitutional rights of citizens in the era of digital transformation? RQ2: Why is strengthening the regulation of constitutional rights protection in the era of digital transformation an urgent issue to be studied and further developed?

2. | RESEARCH METHOD

This research uses a normative juridical approach, which is a legal research method that focuses on the study of applicable positive legal norms, including laws and regulations, legal doctrines, and scientific literature that are relevant to the issue of protecting citizens' constitutional rights in the era of digital transformation. This approach was chosen because the problems studied are not only related to empirical implementation, but rather focus on the analysis of the structure of legal norms that govern the relationship between the state, citizens, and the digital space. In this context, law is understood as a system of norms that must be able to provide protection for constitutional rights, especially in the face of the dynamics of digital technology that continues to develop. As stated in the literature, the study of law in the digital era requires a normative approach that is able to bridge the gap between technological developments and the principles of constitutionalism.

The source of legal materials in this study consists of primary, secondary, and tertiary legal materials. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, especially the provisions regarding human rights in Articles 28A to 28J, Law Number 27 of 2022 concerning Personal Data Protection, and Law Number 11 of 2008 concerning Information and Electronic Transactions as amended by Law Number 1 of 2024. These three regulations are the main basis for analyzing the protection of constitutional rights in the digital space. Meanwhile, secondary legal materials include scientific journals, academic articles, and research results indexed by Google Scholar with a span of the last five years that discuss issues of digital constitutionalism, personal data protection, and cyber law.

The analytical approaches used in this study are the statute approach and the conceptual approach. The legislative approach is used to examine the conformity and harmonization between legal norms that govern the protection of constitutional rights in the digital space, while the conceptual approach is used to examine legal concepts such as constitutional rights, digital privacy, and digital constitutionalism. Thus, this study not only describes existing legal norms, but also evaluates their relevance and effectiveness in responding to the challenges of digital transformation.

The technique of collecting legal materials is carried out through library research, which is by examining various legal literature, scientific journals, and relevant laws and regulations. The data obtained was then analyzed qualitatively using a descriptive-analytical method, namely by describing and interpreting legal materials to find patterns, relationships, and normative gaps in the protection of constitutional rights in the digital era. This approach allows researchers to identify the extent to which existing regulations have been able to provide effective legal protection for citizens' rights in the digital space.

In the perspective of legal theory, this study also uses the framework of digital constitutionalism which emphasizes the importance of adapting constitutional principles in the digital space. This concept emphasizes that the state still has an obligation to protect the basic rights of citizens even though the space for interaction has shifted to the digital realm, so harmonization between technological developments and the principle of the rule of law is needed.

3. | RESULTS AND DISCUSSION

The Effectiveness of Constitutional Rights Protection Regulations in the Digital Era

The effectiveness of regulations in protecting the constitutional rights of citizens in the era of digital transformation can be analyzed through the extent to which existing legal instruments are able to answer the dynamics of the increasingly complex digital space. In the Indonesian context, the main legal framework used includes the 1945 Constitution of the Republic of Indonesia, especially Articles 28A to 28J which guarantees human rights, Law Number 27 of 2022 concerning the Protection of

Personal Data (PDP Law), and Law Number 11 of 2008 concerning Information and Electronic Transactions as amended by Law Number 1 of 2024. These three instruments normatively form the foundation for the protection of constitutional rights in the digital space, but their effectiveness is highly dependent on the implementation and harmonization of these legal norms. The literature shows that although legal frameworks have evolved, there is still a gap between legal norms and the reality of rights protection in the digital space (Tikhomirov et al., 2021).

From a constitutional perspective, the 1945 Constitution provides a solid basis for the protection of the right to privacy, freedom of expression, and the right to obtain information. However, its general and abstract nature makes its implementation require more technical and operational derivative regulation. In this case, the PDP Law 2022 is present as a specific instrument that regulates the protection of personal data as part of the constitutional right to privacy. This law gives data subjects the right to control the use of their personal data, including the right to access, correction, and deletion of data. However, its effectiveness still depends on institutional readiness and adequate supervision infrastructure (Yuniarti, 2019). Meanwhile, the ITE Law jo. Law No. 1 of 2024 functions as the main regulation that regulates behavior in the digital space, including electronic transactions and freedom of expression. Although this regulation aims to create order in cyberspace, in practice there is still criticism related to the potential restriction of constitutional rights, especially in the context of freedom of expression. Provisions that are multi-interpreted in several articles often create legal uncertainty, which can ultimately affect the effectiveness of protecting citizens' rights (Safiranita et al., 2021).

Furthermore, the effectiveness of regulations is also influenced by the state's capacity to enforce law in the digital space. The main challenge that arises is the cross-border, dynamic nature of the digital space that involves non-state actors such as global digital platforms. This causes the state not always to have full control over the data and digital activities of its citizens. In this context, research shows that one of the main weaknesses of digital regulation is the lack of enforcement mechanisms that are adaptive to technological developments (Turner et al., 2022). In addition, another important aspect in assessing the effectiveness of regulations is the protection of the principle of consent in the processing of personal data. In practice, many users of digital services do not fully understand how their data is collected and used. This shows that there is a gap between the legal norms that guarantee data protection and the reality of implementation in the field. Studies show that personal data protection in the digital age still faces serious challenges in terms of transparency and accountability of data managers (Haganta, 2020).

In a comparative perspective, international standards such as the General Data Protection Regulation (GDPR) show that the effectiveness of regulations is largely determined by strong oversight mechanisms and strict sanctions. Compared to the GDPR, Indonesia's PDP Law is still in the early stages of implementation so its

effectiveness cannot be fully measured optimally. The comparative literature shows that the main difference lies in the level of regulatory maturity and readiness of law enforcement institutions (Sinaga & Putri, 2020). In addition, digital transformation also strengthens people's dependence on digital platforms which ultimately creates new power relations between users and service providers. In this condition, legal regulations often lag behind compared to the very rapid development of technology. Therefore, several studies emphasize the importance of a digital constitutionalism approach to ensure that human rights principles remain protected in the digital space (Aditya & Al-Fatih, 2021).

Based on this analysis, it can be concluded that the effectiveness of constitutional rights protection regulations in the digital era is still partial and emerging effectiveness. Although normatively Indonesia already has a fairly complete legal framework through the 1945 Constitution, the 2022 PDP Law, and the 2024 ITE Law, the challenges of implementation, law enforcement, and the digital literacy gap of the community are still the main obstacles in achieving optimal effectiveness.

The Urgency of Strengthening Regulations for the Protection of Constitutional Rights in the Era of Digital Transformation

The urgency of strengthening regulations for the protection of constitutional rights in the era of digital transformation arises from the increasing complexity of interactions between technology, data, and human rights that can no longer be fully accommodated by traditional legal frameworks. Digital transformation has created a new space that is fluid, without geographical boundaries, and dominated by large-scale data management by state and non-state actors. This condition poses a serious risk to citizens' constitutional rights, especially the right to privacy, freedom of expression, and the protection of personal data. Several studies have shown that the development of digital technology has exceeded the ability of legal regulation to provide effective protection of these fundamental rights (Tikhomirov et al., 2021).

One of the main reasons for the urgency of strengthening regulations is the increasing potential for systemic personal data breaches. Personal data is now a very valuable economic commodity in the digital ecosystem, so it is prone to misuse by parties with economic and political interests. Although Law Number 27 of 2022 concerning Personal Data Protection has provided a strong legal basis, its implementation still faces challenges in terms of enforcement, supervision, and public awareness. The literature shows that without a strong enforcement mechanism, data protection regulations risk becoming normative without a substantive impact on the protection of citizens' rights (Yuniarti, 2019).

In addition, the urgency of strengthening regulations is also related to the increasing practice of surveillance or digital surveillance which has the potential to disrupt the balance between state security and individual rights. In the context of the rule of law, digital surveillance must remain within the bounds of the principles of proportionality and legality. However, technological developments allow for large-scale data collection

that can blur the line between security interests and privacy breaches. This shows the need to strengthen the principle of constitutional safeguards in digital regulations so that there is no abuse of power in cyberspace (Safiranita et al., 2021).

On the other hand, freedom of expression in the digital space also faces serious challenges due to regulations that have the potential to be multi-interpreted. The Electronic Information and Transaction Law (ITE Law) as amended by Law No. 1 of 2024 does aim to create order in the digital space, but in practice it often raises concerns related to the criminalization of expression. This shows the need to strengthen legal certainty so that there is no excessive restriction of constitutional rights. Studies show that the tension between freedom of expression and digital regulation is a classic issue in cyber law that requires a human rights-based approach (Turner et al., 2022).

Furthermore, the urgency of strengthening regulations is also driven by digital inequality (digital divide) which causes not all citizens to have equal access and understanding to digital technology. This inequality has implications for inequality in enjoying constitutional rights in the digital space, such as access to information and public participation. In this condition, the state has a constitutional obligation to ensure that digital transformation does not widen social gaps, but rather strengthens digital inclusion as part of human rights protection (Aditya & Al-Fatih, 2021).

In addition, technological developments such as artificial intelligence (AI), big data, and automated decision-making algorithms also pose new challenges in the protection of constitutional rights. The use of algorithms in public services and the private sector has the potential to create bias and discrimination if not strictly regulated. This shows that the current regulations are not fully able to accommodate increasingly complex technological developments. Therefore, more adaptive and risk-based regulatory updates are needed to ensure that the protection of citizens' rights is maintained (Nemitz, 2018).

In a comparative perspective, countries with more advanced data protection regulations such as those implementing GDPR show that strengthening regulations is not only related to the formation of laws, but also includes strengthening regulatory agencies, algorithmic transparency, and broader individual control rights over their personal data. This shows that Indonesia needs to strengthen not only the normative aspect, but also the institutional aspect in the protection of constitutional rights in the digital space (Sinaga & Putri, 2020).

Thus, it can be concluded that the urgency of strengthening regulations for the protection of constitutional rights in the era of digital transformation is not only normative, but also structural and functional. Digital transformation has created new forms of rights violations that cannot be fully addressed with conventional legal frameworks. Therefore, it is necessary to strengthen regulations that are not only responsive to technological developments, but also proactive in protecting the constitutional rights of citizens in the ever-evolving digital space.

4. | CONCLUSION

Based on the results of the analysis that has been carried out, it can be concluded that the protection of citizens' constitutional rights in the era of digital transformation is an increasingly complex and multidimensional legal issue. The development of digital technology has shifted the space for rights protection from the physical realm to the virtual realm which is characterized by the increasing use of personal data, digital platform-based interactions, and the dominance of algorithms in various aspects of social life. In this context, Indonesia's legal framework, which consists of the 1945 Constitution of the Republic of Indonesia, Law Number 27 of 2022 concerning the Protection of Personal Data, and Law Number 11 of 2008 concerning Information and Electronic Transactions as amended by Law Number 1 of 2024, has normatively provided a fairly comprehensive basis in protecting citizens' constitutional rights in the digital space. However, the effectiveness of its implementation still faces various challenges related to law enforcement, regulatory harmonization, and institutional readiness.

In terms of regulatory effectiveness, it can be understood that although existing legal instruments have accommodated the protection of basic rights such as privacy, freedom of expression, and personal data protection, there is still a gap between legal norms and the reality of practice on the ground. This shows that the protection of constitutional rights in the digital era is still at a stage of development that is not yet fully optimal. Meanwhile, in terms of the urgency of strengthening regulations, digital transformation has created various new risks such as data misuse, excessive digital supervision, inequality of access to technology, and potential rights violations through algorithm-based automated systems. This condition confirms that strengthening regulations is not only a legal necessity, but also a constitutional need to ensure that citizens' rights remain effectively protected in the ever-evolving digital space.

Therefore, a more adaptive, progressive, and based on the principles of digital constitutionalism is needed, where the state plays a role not only as a regulator, but also as an active protector of citizens' rights in the digital ecosystem. Strengthening institutional aspects, improving digital literacy in public law, and harmonizing regulations are important steps to ensure that digital transformation does not weaken the protection of constitutional rights, but rather strengthens them within the framework of the modern legal state.

Acknowledgment

We gratefully acknowledge the contributions of individuals who supported the completion of this article.

Funding Information

This research did not receive any funding.

Conflict of Interest Statement

The authors declare that there is no conflict of interest.

Ethical Approval and Originality Statement

Ethical approval was obtained for this study. The manuscript represents original work and has not been previously published, nor is it under consideration by another journal.

Data Disclosure Statement

The data that support the findings of this study are available from the corresponding author upon reasonable request.

REFERENCES

- Aditya, Z. F., & Al-Fatih, S. (2021). Indonesian constitutional rights: expressing and purposing opinions on the internet. *The International Journal of Human Rights*, 25(9), 1395-1419.
- Haganta, R. (2020). Legal Protection of Personal Data as Privacy Rights of E-Commerce Consumers Amid the Covid-19 Pandemic. *Lex Scientia Law Review*, 4(2), 77-90.
- Nemitz, P. (2018). Constitutional democracy and technology in the age of artificial intelligence. *Philosophical transactions of the Royal Society A: Mathematical, physical and engineering sciences*, 376(2133), 20180089.
- Republic of Indonesia. (1945). *Constitution of the Republic of Indonesia Year 1945* (Articles 28A–28J).
- Republic of Indonesia. (2008). *Law Number 11 of 2008 concerning Information and Electronic Transactions* as amended by *Law Number 1 of 2024*.
- Republic of Indonesia. (2022). *Law Number 27 of 2022 concerning Personal Data Protection*.
- Safiranita, T., Waluyo, T. T. P., Calista, E., Ratu, D. P., & Ramli, A. M. (2021). The Indonesian Electronic Information and Transactions Within Indonesia's Broader Legal Regime: Urgency for Amendment?. *Journal of Human Rights*, 12(3), 533-552.
- Sinaga, E. M. C., & Putri, M. C. (2020). Formulation of Personal Data Protection Legislation in the Industrial Revolution 4.0. *Journal of Rechts Vinding: National Legal Development Media*, 9(2), 237.
- Tikhomirov, Y., Kichigin, N., Tsomartova, F., & Balkhayeva, S. (2021). Law and digital transformation. *Legal Issues in the Digital Age*, 2(2), 3-20.
- Turner, M., Prasajo, E., & Sumarwono, R. (2022). The challenge of reforming big bureaucracy in Indonesia. *Policy Studies*, 43(2), 333-351.
- Yuniarti, S. (2019). Legal protection of personal data in Indonesia. *Business Economic, Communication, and Social Sciences (BECOSS) Journal*, 1(1), 147-154.