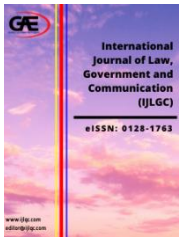
International Journal of Law, Government and Communication
EISSN : 0128-1763
Volume 9 Issue 36 (June 2024) PP. 443-454
DOI 10.35631/IJLGC.936034



INTERNATIONAL JOURNAL OF LAW, GOVERNMENT AND COMMUNICATION (IJLGC)
www.ijlgc.com

E – CONSTITUTION: THE MEANING OF CONSTITUTION IN DIGITAL DEMOCRACY IN INDONESIA

Faizal Adi Surya[1*], Alhamd Valo Baskoro[2]

[1] Department of Law, Universitas Muria Kudus, Indonesia
Email: Faizal.adi@umk.ac.id
[2] Department of Law, Universitas Muria Kudus, Indonesia
Email : 202020077@std.umk.ac.id
[*] Corresponding Author

Article Info:

Article history:
Received date: 18.04.2024
Revised date: 13.05.2024
Accepted date: 15.06.2024
Published date: 30.06.2024

To cite this document:

Surya, F. A., & Baskoro, A. V. (2024). E – Constitution: The Meaning of Constitution in Digital Democracy in Indonesia. *International Journal of Law, Government and Communication, 9* (36), 443-454.

DOI: 10.35631/IJLGC.936034

Abstract:

This paper aims to analyze the Indonesian Constitution in digital development. The constitution is the backbone of the implementation of democracy. The implementation of democracy in recent times has also been affected by digital developments. Freedom of speech as the core of democracy is not only implemented in old media such as mass media, but also through digital tools such as social media. With various problems, freedom of speech in social media and other digital media is also threatened, although it is protected by the Constitution. The Indonesian Constitution was written and drafted at a time far from the birth of digital technology. This anachronism requires that the constitution be adapted to digital developments. The adaptation of the constitution to the digital world can be called e-constitution. This e-Constitution must be distinguished from the digitization of legal instruments such as e-KTP or e-Government services. E-Constitution is constitutional sovereignty in the digital world. The writing of this article uses normative research with a reflective approach. The results of the discussion in this paper led to three conclusions. First, the 1945 Constitution was formed long before the development of digitalization. Second, digitalization together with democracy is developing very dynamically, so the constitution needs to be relevant to various changes. Third, the Constitutional Court is a living constitution, which has the role of guardian and interpreter of the constitution. The Constitutional Court must make decisions that remain in favor of constitutional values and remain adaptable to the development of democracy and digitalization.

Keywords:

E-Constitution, Democracy, Digitalization, Constitutional Court

International Journal of Law, Government and Communication
EISSN : 0128-1763
Volume 9 Issue 36 (June 2024) PP. 443-454
DOI 10.35631/IJLGC.936034

Introduction

The Arab Spring phenomenon in the Middle East not only explains why powerful regimes can fall. Not by a military junta as in Latin America or sub-Saharan Africa, but by the power of social media. Ndadari has seen the resistance of pro-democracy activists to authoritarian regimes spread to other countries through the media. The revolution that began in Tunisia in 2011 spread to other countries in the Middle East (Ndadari et al., 2014).

Trump's victory over Clinton in 2018 cannot be separated from the massive use of social media. Trump was able to raise anti-racist and anti-immigrant sentiments through social media. In fact, the populist theme that Trump raised has become very attractive to the majority of the public. Kristianto's study saw that Trump's use of Twitter with the CNN effect concept helped to amplify Trump's campaign promises to his supporters (Kristianto & Nurhaqiqi, 2021).

We can see the populist strategy through social media in Bolsonaro's campaign in Brazil. Apart from the use of Twitter, Bolsonaro used Whatsapp as a disseminator of campaign materials with militaristic and misogynistic content (Evangelista & Bruno, 2019). At the same time, Bongbong Marcos, the son of Philippine dictator Ferdinand Marcos, won the presidential election by garnering votes through social media. Bongbong teamed up with Sara Duterte, the daughter of the president before Bongbong, Rodrigo Duterte. The “Bongbong” campaign more popular than Leni Robredo campaign which is offering improvements in the government system and seems like elitist while -Bongbong populist- was attracted the attention of masses with the theme of social inequality (Sabalboro Ampon & Salathong, 2023)

The phenomenon of new media, namely social media as a political channel, actually shows the position of social media's switching functions, previously social media was a medium for interacting, cooperating, sharing and communicating with other users to form virtual social ties (Siregar, 2022). Social media has become an important element of democracy.

Freedom of speech itself is an important element of democracy. However, the meaning of freedom of speech has become increasingly broad. Freedom of speech used to be synonymous with speeches to the masses, a free press or clear opinions from intellectuals. Now freedom of speech includes short notes in the digital world, with or without the requirement of pith.

According to Vasak's theory of generations of rights, freedom of speech is the first generation of human rights to be fought for. After civil and political rights, Vasak includes economic rights as the second generation of rights and the right to a healthy environment as the third category. However, Vasak's categories are not broad enough to take account of the many new types of rights that have emerged as a result of struggles with politics, technology and climate change. Vasak's categories are too universal to categorise certain rights, such as those of indigenous peoples, or even the collective rights of citizens in a digital world (Domaradzki et al., 2019). Domaradzaki's findings are certainly a good reflection of the state of freedom of expression in Indonesia through the digital world. Freedom of expression itself is enshrined in the constitution and is a constitutional right of citizens. Article 28 of the Constitution states that freedom of association and assembly, freedom of speech and expression, etc. shall be regulated by law.

International Journal of Law, Government and Communication
EISSN : 0128-1763
Volume 9 Issue 36 (June 2024) PP. 443-454
DOI 10.35631/IJLGC.936034

The regulation of human rights in the constitution has historically not been easy, as there has been much resistance. Soepomo saw the Bill of Rights as a Western concept of individualism that did not fit with the Indonesian spirit of collectivism. This view was later challenged by Hatta, who argued that the rights being fought for were not to bring individualism, but to protect citizens from the arbitrariness of the state against its citizens.

The constitutional provision on provision on freedom of expression is further regulated by law. Article 23 of Law No. 39/1999 on Human Rights states that everyone is free to hold, express and disseminate opinions according to his or her conscience, orally and/or in writing, through print and electronic media, with due regard for religious values, decency, order, public interest and the integrity of the nation. Article 25 then states that everyone has the right to express his or her opinion in public, including the right to strike in accordance with the provisions of the law.

Indonesia has also ratified the International Covenant on Civil and Political Rights with Law No. 12 of 2005 Ratifying the International Covenant on Civil and Political Rights. Article 19 of Law No. 12 of 2005 essentially mandates that the right to freedom of expression is to receive opinions, express opinions / thoughts in various forms, but based on Article 19 paragraph (3) of Law No. 12 of 2005, there are limitations that restrict freedom of expression, namely with due regard to the rights of others and to protect national security or public order.

The development of digitalisation, freedom of expression has found new channels to express itself. The rules of freedom of expression (and its limitations) in the digital world were basically unregulated until the Government and the House of Representatives passed Law No. 11/2008 on Electronic Information and Transactions (ITE Law). This law was initially introduced to protect users of the digital world from various types of cybercrime.

Although ultimately ineffective in eradicating electronic crime (R. Setiawan & Arista, 2013), this law has become a boomerang for democratic life. Article 27(3) states that any person who intentionally and without right distributes and/or transmits and/or makes accessible electronic information and/or electronic documents that contain insults and/or defamation is liable (Article 45) to a maximum jail term of 6 (six) years and/or a maximum fine of Rp1,000,000,000.00 (one billion rupiah).

This wording amounts to an extension of the offence of defamation in the Penal Code, but is not included as a criminal offence. The first victim in this case was Prita Mulyasari. Prita first told her friend about OMNI's unprofessional hospital services. Her email became known to many people and OMNI reported the case to the police and was prosecuted. Although it was at the judicial review level, the Supreme Court verdict declared Prita innocent. But the number of victims of the law is growing.

The government then revised the law through Law No. 19/2016 on the Amendment to Law No. 11/2008 on Electronic Information and Transactions. In the amendment, the threat of Article 27 Paragraph (3) becomes 4 years, so it is not mandatory to be detained, while the offense of action becomes a complaint offense. Initially, through Constitutional Court Decision No. 50/PUU-VI/2008, this offense cannot be separated from the main offense, namely Articles 310 and 311 of the Criminal Code which are complaint offenses. However, in practice, it still does not require a complaint.

International Journal of Law, Government and Communication
EISSN : 0128-1763
Volume 9 Issue 36 (June 2024) PP. 443-454
DOI 10.35631/IJLGC.936034

The government then issued a Joint Decree of the Communications and Informatics of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, and the Chief of Police of the Republic of Indonesia Number 229 of 2021, Number 154 of 2021, and Number KB/2/VI/2021 concerning Guidelines for the Implementation of Certain Articles in the Electronic Information and Transactions Law, but the implementation remains unchanged.

The changes did not make the law more secure, but instead became a frightening scourge on freedom of speech. Safenet data in 2023, there were 14 cases of criminalization through the law. The majority of these victims are consumers, activists, advocates, religious leaders and news sources (SAFENet, 2023).

Alhakim argues that journalists are one of the professions affected by the implementation of the law (Alhakim, 2022). Apart from journalists, pro-democracy activists are also vulnerable to criminalization under the law. Haris Azhar and Fatia Maulidiyanti had to undergo a long and complicated trial, after allegedly slandering the Coordinating Minister for Maritime Affairs and Investment, Luhut Binsar Panjaitan. Although Haris and Fatia were eventually acquitted, the law poses a serious threat to democracy.

The phenomenon shows *Janus Face* condition that happened by inadaptive of the constitution to technological changes (Celeste, 2023). This situation requires contextualization since the Indonesian Constitution was formed before the digitalization era even when it supports freedom of speech. Celeste concluded that digitalization comes with threats to freedom of speech, and one of the contextualization is through the role of the Constitutional Court. This contextualization can create a sovereign constitution in the digital world or henceforth called by the E-Constitution.

Literature Review

There are several studies in line with the study that contains of Constitutions, Democracy, and Constitutional Court. *First*, the constitution is an agreement between the people and the state to run the government or it concisely contains at least guarantees of human rights, a fundamental constitutional structure, and a division of powers. It was drafted with the understanding of constitutionalism, namely the understanding of state restrictions to prevent abuse of authority. However, the current constitutional challenge is not just authoritarian power but the development of digitalization. The same was found in other studies such like Suzor who views social media as tool that made communication becomes easier than before but it has created any autonomous regulation, free, and uncontrol at the same time. (Suzor, 2018). He suggests platform rules must be in line with -constitution- the source of the rule of law. The relationship between the constitution and digital development was also written by Monique Mann who views the fragile protection of Australian citizen's privacy since the existing regulations more profitable into the platform than its citizen's privacy (Licence, 2018). Other study and correspondingly is regarding to digital constitutions. Eduardo Celeste with *Digital Constitutionalism; The Role of Internet Bills of Right* concerns about the influence of digital platform on the constitution. So that, mobilizing people's opinions through Artificial Intelligence potentially change the constitution (Celeste, 2023).

Second, Democracy is a political system that able the people to have an equally powerful role as the state in determining government while digitalization makes people positions become powerful. The phenomenon of "No viral no justice" is a phenomenon that situates forces law

International Journal of Law, Government and Communication
EISSN : 0128-1763
Volume 9 Issue 36 (June 2024) PP. 443-454
DOI 10.35631/IJLGC.936034

enforcers to act immediately under pressure of public via social media. The role of social media as part of the development of digitalization has a great influence on democracy despite there are pro and con. For example, Jungherr who believes that Artificial Intelligence able to improve the quality of Democracy (Jungherr, 2023). This view is different form Tope Shola who assumes that digitalization threats the worse security in Africa. The powerful liberty of opinion and expression disrupts power, so that many authoritarian regimes in Africa implement repressive policies against criticism on social media (Tope Shola & Chukwugekwu Victor, 2023).

Third, Constitutional Court is a new state institution was formed after the constitutional amendments. One of its functions is acting to be the final interpreter of the constitution. The authority of the Constitutional Court as an examiner of laws against the constitution means that the Constitutional Court has the task of interpreting whether law is contrary to the constitution or not. This duty is not shared by parliament which has the authority to form laws (Ali Safaat & Eko Widiarto dan Fajar Laksono Suroso, 2017).

Interpretation of the Constitution by the Constitutional Court is necessary, because technology is developing rapidly, but the Constitution is limited by space and time and needs to be contextualized. Support for digitalization not only take the form of using digital technology in the judiciary (H. Setiawan et al., 2024), but also makes the Constitution have sovereignty in the digital space. For example, this sovereignty was implemented by the Turkiye Constitutional Court *(Türkiye Cumhuriyeti Anayasa Mahkemesi)* by removing two amendments to Law No. 5651 concerning Regulation of Publications on the Internet and Combating Crime on 11 October 2023. This amendment was removed because it violated freedom of expression. Indonesia has ever banned internet access in Papua in 2019. Then the Jakarta State Administrative Court stated that this policy was contrary to statutory provisions. The Constitutional Court should have an understanding of the relationship between the constitution and digitalization, as do the Turkish Constitutional Court and the State Administrative Court.

Analysis And Discussion

The advent of television decades ago changed people's perception of the world. Moving images present a world of images that is different from reality. The world that Baudrillard calls is often displayed as simulacra, showing a more genuine fabrication and a more perfect imitation. This image will later be utilized as a screen for unlimited human consumption (Saumantri & Zikrillah, 2020).

Later developments, the world of simulacra displayed by television was limited, more precisely limited by regulations (sometimes political interests) and strict editorial. The emergence of new media called social media allows this not to happen. Through the space of digitalization, everyone on social media becomes egalitarian and free to say anything. When television limits someone from becoming an important figure, digitalization allows everyone to have the opportunity to become an important figure.

The digital world is noisy. It is in stark contrast to the quiet, calculating world of academia. The death of the expert called Nichols was criticized (Nichols, 2017), because speech and opinion are the rights of all people and are guaranteed by the Constitution. This criticism seems right, isn't the constitution formed to make everyone equal in giving opinions.

International Journal of Law, Government and Communication
EISSN : 0128-1763
Volume 9 Issue 36 (June 2024) PP. 443-454
DOI 10.35631/IJLGC.936034

Indonesia's Constitution, as a recent study shows, follows the global trend of giving much attention to human rights (Aper et al., 2013). Post-amendment, human rights in the Constitution have been strengthened by adding Articles 28A to 28 J, in addition to maintaining Article 28 which guarantees freedom of speech and assembly.

As explained earlier, the guarantee of freedom of speech through cyber media has not been resolved. Although the Constitution has guaranteed freedom of speech, in fact some cases of freedom of speech have been hampered due to the implementation of the ITE Law.

This obstacle can be seen in the case of pro-democracy activists Haris Azhar and Fatia. Haris and Fatia were accused of using social media to spread slander against Luhut Binsar Panjaitan. Luhut is believed to be involved in the ownership of businesses in Papua. Daniel Frits also faced obstacles to his freedom of expression when he criticised the shrimp pond waste that polluted the waters of Karimunjawa. As a reminder, Law No. 32 of 2009 on Environmental Protection and Management regulates the provision of ANTI SLAPP, which is the protection of environmental activists from criminal prosecution and civil lawsuits.

In addition to pro-democracy activists, freedom of expression was also restricted for a lecturer at Syiah Kuala University (Unsyiah), Saiful Mahdi, who criticised the head of the Faculty of Engineering at Syiah Kuala University (Unsyiah). Saiful criticised the process of recruiting civil servant candidates (CPNS) to be lecturers at the Faculty of Engineering, Unsyiah. For this criticism, Saiful Mahdi was charged under Article 27(3) of the ITE Act and sentenced to 3 (three) months imprisonment and a fine of Rp 10,000,000.00 (ten million rupiah).

In addition to law enforcement's misunderstanding, this phenomenon shows that our constitution does not yet provide protection for freedom of speech in the digital world. This is due to an anachronism of time. The drafting of Indonesia's constitution was done on August 18, 1945 or the day after the proclamation of independence. The declaration of independence, which was later followed by the drafting of the constitution, was closely related to the circumstances that accompanied it, namely colonialism. Having been colonized by the Dutch and then the Japanese, Indonesians felt that decolonization was the main theme of the drafting of the Constitution.

Aidul said the Constitution needed to have the meaning of Revolutiegrondwet, which has a revolutionary character and functions as an instrument for social change in Indonesia. This meaning can be a reflection of the understanding of the historical role of the 1945 Constitution. The meaning of decolonialization can be seen in the preamble of the Constitution in the sentence therefore colonialism over the world must be abolished because it is not in accordance with the principles of humanity and justice (Azhari, 2011).

Another article can be read in Johner, who sees the Constitution as not only a set of norms containing state rules. In the 1945 Constitution there is an inherent Constitutional Identity, namely the identity as a postcolonial country. According to Johner, this postcolonial status is due to the historical process of colonization. According to Johner, the postcolonial values found in the constitution are the idea of nationality and the idea of equal rights before the law and government, the right to work and a decent livelihood and freedom of religion (Jhoner et al., 2018).

International Journal of Law, Government and Communication
EISSN : 0128-1763
Volume 9 Issue 36 (June 2024) PP. 443-454
DOI 10.35631/IJLGC.936034

This postcolonial spirit, of course, cannot forget the regulation of human rights in the Constitution. Article 28 states that civil and political rights, namely freedom of association and assembly, expressing opinions orally and so on, shall be regulated by law. The existence of civil and political rights for the Constitution is special because it went through a long debate. Soepomo, with his integralist ideas, rejected the existence of human rights as part of western individualism that contradicts eastern values (Jimly Asshiddiqie, 2023).

Soepomo used the term totalitarian state as a concept that he saw as ideal. This concept was used as the basic idea (statsidee) of the Indonesian national state, which was based on kinship, not individualism. Soepomo's own opinion was eventually refuted by Hatta. As a humanist, Hatta saw human rights not as the face of individualism, but as protection against an arbitrary state.

Aidul and Johner's approach certainly provides a lot of help in looking at the historical and ideological aspects of the Constitution, but this model needs to be sharpened to see the growing development of digitalization.

Technological change is inevitable. The question is, can the Constitution respond to digitalization. This question needs to be explained first, whether digitalization has an effect on the constitution. Celeste calls this a constitutional moment. This moment is not about political upheaval that affects the principles and ideology of the state. Rather, it is the effect of digital technology on the balance of the constitutional ecosystem (Celeste, 2019).

First. Digital technologies affect the balance of power and the constitutional ecosystem. The process of forming public opinion through algorithms determines the course of power. In the end, the balance of power is not determined by the constitution and applicable rules, but the balance of power is determined by algorithm calculations. Even in some conditions, Tech Corporations influence state policy.

Second. Celeste sees that digitalization increases the risk of threats to fundamental rights. The transfer of information between one user and another allows for defamation, hate speech, cyberbullying, or child pornography. This influence on fundamental rights is not accompanied by the protection of fundamental rights both in terms of regulation and enforcement.

Celeste in another article even explained that the struggle through social media helped shape the new constitution. Celeste gave the example of Tunisia, which experienced a revolution in 2010. The revolution that overthrew the authoritarian government not only spread to various Arab regions, but at the same time changed the Tunisian constitution to be more democratic in 2014 (Celeste, 2023).

However, according to Celeste, these two different circumstances show the phenomenon of janus face. On the one hand, digitalization can foster human rights, but at the same time it can threaten human rights such as freedom of assembly and opinion, freedom of religion, and freedom to develop their business.

Responding to changes in society and the need for constitutional protection of citizens, Celeste realized one thing. The Constitution was designed at a certain time (although in some cases it is futuristic), but on the one hand the Constitution cannot provide a way out of the chaos with

International Journal of Law, Government and Communication
EISSN : 0128-1763
Volume 9 Issue 36 (June 2024) PP. 443-454
DOI 10.35631/IJLGC.936034

digitalization. Celeste was worried that the constitution would become irrelevant and its value in society would be abandoned.

Celeste then offers the concept of digital constitutionalism by first reviewing similar terms. Starting from Fitzgerald's idea of the concept of Constitution and Private Law (Fitzgerald, 2017), moving on to Suzor's Constitution and private regulation (Suzor, 2018), Karavas' Stateless Constitutionalism (Karavas, 2010), Celeste offers digital constitutionalism in the form of ideology.

According to Celeste, the Digital Constitution is a continuation of the contemporary constitution. Instead, Celeste calls digital constitutionalism an 'ism'. According to Celeste, the mention of digital constitutionalism as an 'ism' aims to build and ensure a normative framework for the protection of fundamental rights and balance of power in the digital environment.

Celeste's assertion that the digital constitution is an ideology seems to need a second look. The use of 'ism' in digital constitutionalism raises a question, whether Constitutionalism means the limitation of power, as it is defined. Or is constitutionalism a form of ideology. This definition would be problematic because the concept of ideology is a rigid value, while digital development is flexible, so Celeste sort of contradicts her own statement.

The use of ideology to explain the digital constitution seems inappropriate to analyze the relationship between digital and constitution in Indonesia. Although Celeste managed to unravel the complicated relationship between the constitution and digital development, the context of each country needs more in-depth writing.

The correct meaning is E - Constitution. E is a symbol of digitalization. The definition of E-Constitution must be differentiated from E-Government, E-KTP or E-Court which use technology as a form of service to the community. E Constitution is a form of constitutional sovereignty over digital developments.

This form of sovereignty is not carried out through an amendment process, so it is more protective of human rights. The amendment process is not an easy procedure, especially since it only changes the protection of free speech that is actually regulated by the Constitution. The right step is contextualization which is carried out through two ways, namely Legislative Review and Judicial Review.

Legislative Review is the role of the DPR as a legislative institution. Regulations governing digitalization, especially the Information and Electronic Transactions Law, must contain more clearly regulated protections for freedom of speech. In the cases of Haris and Fatia, law enforcers do not seem to understand criticism and slander. This meaning should be completed in the form of a formulation in the law, not handed over to the public. These restrictions will ensure that criticism, freedom of speech and personal honor remain protected.

The step that cannot be forgotten is the Judicial Review. This approach involves reviewing the law with the Constitutional Court. Review of laws is one of the powers of the Constitutional Court granted by the Constitution. Apart from that, the Constitutional Court also has the function of interpreting the constitution and protecting human rights.

International Journal of Law, Government and Communication
EISSN : 0128-1763
Volume 9 Issue 36 (June 2024) PP. 443-454
DOI 10.35631/IJLGC.936034

Interpretation is one way to elaborate on the meanings contained in the constitution and the process of finding meanings from the constitutional text. Through this excavation process, Constitutional Judges can determine the constitutionality of a law. Constitutional judges have the freedom to use interpretive models to explore the meaning of the Constitution. According to Tanto, Constitutional Justices are obliged to be accountable for their constitutional interpretation to the public (Lailam, 2014).

What needs to be expected from the application of the E Constitution by the Constitutional Court is to provide an interpretation with a digital dimension. This interpretation must be able to provide a middle way between conflicting human rights, namely between freedom of speech and the right to personal honor. And none other than that, we continue to recognize the development of digitalization as a form of the relevance of the constitution to current developments.

The Constitutional Court itself has received 15 requests for review of the Information and Electronic Transactions Law with the result that 7 requests were rejected, 3 requests were withdrawn, and 3 requests were not accepted, and 2 requests were partially granted. 2 The applications that were granted were decision Number 5/PUU-VIII/2010 and Decision Number 20/PUU-XIV/2016.

But both rulings do not speak about freedom of speech. Decision Number 5/PUU-VIII/2010 requested by Anggara, S.H., Supriyadi Widodo Eddyono, S.H. , and Wahyudi, S.H requested regarding wiretapping provisions. Setyo Novanto requested Decision Number 20/PUU-XIV/2016 regarding electronic information as evidence. The majority of the provisions regarding Article 27 Paragraph (3), which limit freedom of speech in the digital world, were not accepted or rejected by the Constitutional Court.

A request was submitted by civil society through application number 36/PUU-XX/2022 on the grounds that the law has multiple interpretations, and has the potential to pose a threat to press freedom and academic freedom. However, the Constitutional Court ultimately rejected the request, on the grounds that implementing the Law was not the domain of the Constitutional Court, but of law enforcers. This reason is the main reason why all requests are not granted.

Then the Court considered that the petition to declare the Information and Electronic Transactions Law unconstitutional was the result of protecting the honor and good name which is part of constitutional rights. The Court's reasoning appears correct. However, what needs to be paid attention to in other considerations, the Court wrote that the development of information technology such as the internet and the like, is only a tool to facilitate the lives of humans who live and influence each other in the real world in order to achieve human welfare, so that the final focus of legal regulations and restrictions is The purpose of the a quo law is to maintain legal order in the traffic of human interaction on cyber media which directly or indirectly has consequences in the real world.

These considerations show that the Constitutional Court only considers that technology is only a tool for certain purposes. Digital technology for the Constitutional Court is only a natural development in human life, which does not need to be discussed seriously. The Court does not realize that technology also has an influence on citizens' constitutional rights which should be protected by the constitution.

International Journal of Law, Government and Communication
EISSN : 0128-1763
IJLGC
Volume 9 Issue 36 (June 2024) PP. 443-454
DOI 10.35631/IJLGC.936034

In this case, the Court needs to consider Celeste's opinion that the digital space actually has an influence on constitutional life. In Indonesia's case, this is a threat to freedom of speech, which is the first fundamental right regulated in the formation of the constitution, ahead of other rights guaranteed later. The Court's unawareness of developments in the digital world could be dangerous, because according to Celeste, digitalization also has the potential to affect the balance of relations between state institutions.

Constitutional sovereignty over digital developments should be realized by the Constitutional Court through its various decisions, especially judicial reviews. The Court needs to provide a middle way, that humans can become friendly with technology without reducing their respective constitutional rights. The formulation is not easy, but you can actually start by understanding that digitalization has an effect on what Celeste calls the Constitutional Ecosystem.

The requirement to become a Constitutional Judge is to be a statesman who understands the constitution. The term statesman certainly has qualities far beyond any state official, this characteristic is needed in the face of digitalization which increasingly knows no boundaries. In the latest developments, Artificial Intelligence has emerged, which of course must be responded to by the Constitution.

Conclusion

This paper concludes that first, the Indonesian Constitution was formed in the pre-digital era so it has no powerful idea regarding to digitalization. Second, digitalization evolves with a dynamic democracy and constitution requires a continuous contextualization. Third, The Constitutional Court through its decisions acts as the guardian and interpreter of the constitution. This role can enable the Constitutional Court to contextualize digital improvements, so that the process towards e-Constitution can be realized.

Acknowledegment

The author thanks to Faculty of Law, Muria Kudus University.

References

Alhakim, A. (2022). Urgensi Perlindungan Hukum terhadap Jurnalis dari Risiko Kriminalisasi UU Informasi dan Transaksi Elektronik di Indonesia. *Jurnal Pembangunan Hukum Indonesia, 4*(1), 89–106. https://doi.org/10.14710/jphi.v4i1.89-106

Ali Safaat, M., & Eko Widiarto dan Fajar Laksono Suroso, A. (2017). Pola Penafsiran Konstitusi dalam Putusan Mahkamah Konstitusi The Pattern of Constitutional Interpretation on The Constitutional Court Decisions in the period. *Jurnal Konstitusi, 14*(2), 234–261.

Aper, P. N. O., Sale, H. A., & Sale, H. A. (2013). *L EGAL S TUDIES R ESEARCH P APER S ERIES by Public Governance. May*.

Azhari, A. F. (2011). *UUD 1945 Sebagai Revolutiegrondwet : Tafsir Postkolonial Atas Gagasan-Gagasan Revolusioner Dalam Wacana Konstitusi Indonesia / Aidul Fitriciada Azhari*. Jalasutra.

Celeste, E. (2019). Digital constitutionalism: a new systematic theorisation. *International Review of Law, Computers and Technology*, *33*(1), 76–99. https://doi.org/10.1080/13600869.2019.1562604

Celeste, E. (2023). *Digital Constitutionalism ; The Role of Internet Bills of Right*. Routledge.

International Journal of Law, Government and Communication
EISSN : 0128-1763
IJLGC
Volume 9 Issue 36 (June 2024) PP. 443-454
DOI 10.35631/IJLGC.936034
Domaradzki, S., Khvostova, M., & Pupovac, D. (2019). *Karel Vasak ' s Generations of Rights and the Contemporary Human Rights Discourse Content courtesy of Springer Nature , terms of use apply . Rights reserved . Content courtesy of Springer Nature , terms of use apply . Rights reserved* . 423–443.

Evangelista, R., & Bruno, F. (2019). Whatsapp and political instability in brazil: Targeted messages and political radicalisation. *Internet Policy Review*, *8*(4), 1–23. https://doi.org/10.14763/2019.4.1434

Fitzgerald, B. F. (2017). Software as discourse: The power of intellectual property in digital architecture. *Copyright Law: Volume III: Copyright in the 21st Century*, *18*, 119–168. https://doi.org/10.4324/9781315095400-5

Jhoner, F., Perwira, I., & Dwi Harijanti, S. (2018). Negara Bangsa Pos-Kolonial Sebagai Basis Dalam Menentukan Identitas Konstitusi Indonesia: Studi Terhadap Undang-Undang Dasar 1945. *Jurnal Bina Mulia Hukum*, *2*(2), 1–13. https://doi.org/10.23920/jbmh.v2n2.11

Jimly Asshiddiqie. (2023). *Oligarki Dan Totalitarianisme Baru*. LP3ES.

Jungherr, A. (2023). Artificial Intelligence and Democracy: A Conceptual Framework. *Social Media and Society*, *9*(3). https://doi.org/10.1177/20563051231186353

Karavas, V. (2010). Governance of Virtual Worlds and the Quest for a Digital Constitution. In *Governance of Digital Game Environments and Cultural Diversity: Transdisciplinary Enquiries*. Edward Elgar Publishing.

Kristianto, Y. I. A., & Nurhaqiqi, H. (2021). Aplikasi Media Sosial sebagai Alat Politik Donald Trump (Netnografi Cuitan Trump di Twitter). *JCommsci - Journal Of Media and Communication Science*, *4*(1), 1–13. https://doi.org/10.29303/jcommsci.v4i1.124

Lailam, T. (2014). Penafsiran Konstitusi Dalam Pengujian Konstitusionalitas Undang- Undang Terhadap Undang- Undang Dasar 1945. *Jurnal Media Hukum*, *21*(1), 1–19.

Licence, C. C. (2018). *The limits of (digital) constitutionalism : Exploring the privacy-security (im) balance in Australia 1 . Dr Monique Mann School of Justice , Faculty of Law Queensland University of Technology 2 George St , Brisbane , 4000 , QLD Email : m6.mann@qut.edu.au 2 . Dr Angela Daly School of Law , Faculty of Law Queensland University of Technology 3 . Mr Michael Wilson School of Justice , Faculty of Law Queensland University of Technology 4 . Associate Professor Nicholas Suzor School of Law , Faculty of Law Queensland University of Technology*.

Ndadari, G., Sufa, F., Darmawan, A., & Umar, A. (2014). Media Sosial dan Revolusi Politik: Memahami Kembali Fenomena Arab Spring dalam Perspektif Ruang Publik Transnasional. *Jurnal Ilmu Sosial Dan Ilmu Politik*, *18*(2), 114–129.

Nichols, T. (2017). *Matinya Kepakaran : Perlawanan terhadap pengetahuan yang telah mapan dan mudaratnya*. Gramedia Pustaka Utama.

Sabalboro Ampon, R. K., & Salathong, J. (2023). 'Battleground of Philippine Elections': Political Message Strategies of Bongbong Marcos and Leni Robredo on Social Media. *International Journal of Social Science and Human Research*, *06*(07), 4121–4125. https://doi.org/10.47191/ijsshr/v6-i7-32

SAFENet. (2023). *Laporan Triwulan Pemantauan Hak-Hak Digital di Indonesia*. 1–20.

Saumantri, T., & Zikrillah, A. (2020). Teori Simulacra Jean Baudrillard Dalam Dunia Komunikasi Media Massa. *ORASI: Jurnal Dakwah Dan Komunikasi*, *11*(2), 247. https://doi.org/10.24235/orasi.v11i2.7177

Setiawan, H., Handayani, I. G. A. K. R., Guntur Hamzah, M., & Tegnan, H. (2024). Digitalization of Legal Transformation on Judicial Review in the Constitutional Court.

International Journal of Law, Government and Communication
EISSN : 0128-1763
IJLGC
Volume 9 Issue 36 (June 2024) PP. 443-454
DOI 10.35631/IJLGC.936034

In *Journal of Human Rights, Culture and Legal System* (Vol. 4, Issue 2). https://doi.org/10.53955/jhcls.v4i2.263

Setiawan, R., & Arista, M. O. (2013). Efektivitas undang-undang informasi dan transaksi elektronik di indonesia dalam aspek hukum pidana. *Recidive*, *2*(2), 139–146. https://jurnal.uns.ac.id/recidive/article/viewFile/32324/21500#:~:text=Di dalam Undang-Undang Nomor,pengguna dan penyelenggara Teknologi Informasi.

Siregar, H. (2022). Analisis Pemanfaatan Media Sosial Sebagai Sarana Sosialisasi Pancasila. *Pancasila: Jurnal Keindonesiaan*, *1*, 71–82. https://doi.org/10.52738/pjk.v2i1.102

Suzor, N. (2018). Digital Constitutionalism: Using the Rule of Law to Evaluate the Legitimacy of Governance by Platforms. *Social Media and Society*, *4*(3). https://doi.org/10.1177/2056305118787812

Tope Shola, A., & Chukwugekwu Victor, E. (2023). Digital Democracy and Democratic Decline: Unpacking the Role of Digitalization in Undermining Democracy in Africa. *African Journal of Democracy and Election Research*, *3*(1), 159–189. https://doi.org/10.31920/2752-602x/2023/v3n1a8