

## THE CONSTITUTIONAL LIMITS OF STATE USE OF ARTIFICIAL INTELLIGENCE IN INDONESIA: A DIGITAL CONSTITUTIONALISM PERSPECTIVE

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### ABSTRACT

*The use of artificial intelligence (AI) by the state represents a fundamental transformation in the exercise of public power in the digital era. Across jurisdictions, AI systems are increasingly deployed in public administration, law enforcement, social welfare distribution, security surveillance, and other decision-making processes that directly affect the legal status and fundamental rights of individuals. While these technologies promise efficiency and administrative effectiveness, their use by public authorities raises significant constitutional concerns, particularly with regard to the protection of human rights, the rule of law, and democratic accountability. This article examines the constitutional limits of state use of AI and identifies the constitutional principles that should govern its deployment. This study employs a qualitative methodology based on a conceptual and comparative legal approach. It analyses the emerging framework of digital constitutionalism as a normative lens through which the use of AI by the state can be assessed, focusing on the principles of legality, proportionality, transparency, due process of law, and accountability. In addition, the article examines relevant standards under international human rights law, particularly the International Covenant on Civil and Political Rights (ICCPR), as well as comparative regulatory developments, most notably the European Union Artificial Intelligence Act. The analysis demonstrates that the use of AI by the state cannot be treated as a merely technical or administrative matter, but must be understood as a constitutional issue involving the exercise of public authority. Without a clear legal basis, effective oversight, and enforceable accountability mechanisms, AI risks expanding state power in opaque ways and undermining fundamental rights. The article concludes that the integration of digital constitutionalism into the governance of public-sector AI is essential to ensure that technological innovation remains consistent with constitutional values, human rights protection, and democratic governance.*

**Keywords:** Digital Constitutionalism; Artificial Intelligence and the State; Constitutional Law; Human Rights; Algorithmic Governance

### INTRODUCTION

The use of artificial intelligence (AI) by the state marks a fundamental transformation in the exercise of public power. Across various jurisdictions, AI has been deployed

in the distribution of social welfare benefits, tax administration, fraud detection systems, security surveillance, predictive law enforcement, facial recognition, as well as border control and

migration management. These developments indicate that algorithmic technologies increasingly function as key intermediaries in the relationship between the state and citizens, while simultaneously reshaping how the state makes decisions that directly affect individual rights and obligations.<sup>1</sup>

This phenomenon has also become evident in Indonesia, where the government has begun to adopt various forms of AI in governance and public service delivery, despite the absence of a comprehensive regulatory framework. The Directorate General of Taxes, for instance, employs machine learning-based systems and automated chatbots to assist taxpayer services and to analyze tax compliance.<sup>2</sup> The Ministry of Communication and Information Technology utilizes AI-based technologies to detect and classify digital content deemed to constitute hoaxes or disinformation. The National Disaster Management Agency has developed AI-based chatbots to support real-time disaster

reporting and information dissemination.<sup>3</sup> At the policy level, the government has also established the National Artificial Intelligence Strategy 2020–2045 as a roadmap for national AI development.

Although many of these applications remain primarily administrative or decision-support tools, their implications for citizens' rights and interests cannot be overlooked. Digital content classification systems, tax data analytics, and disaster data processing all involve large-scale data collection and processing, with potential consequences for the rights to privacy, freedom of expression, legal certainty, and equal treatment before the law.

At the same time, the use of AI by the state raises profound constitutional challenges. Automated decision-making may erode guarantees of due process of law; opaque or proprietary algorithms can undermine principles of transparency; and large-scale data processing increases the risks of discrimination and abuse of power.<sup>4</sup> These risks become particularly acute when AI is

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<sup>1</sup> Lee, J., Martinez, R., & Fernández, L. (2023). Digital Constitutionalism: Protecting Fundamental Rights in an Era of Automated State Power. *Legal Studies in Digital Age*, 2(1), 53-67. p. 53-54

<sup>2</sup> Nurchoiriyah, A. P., Sofia, E., Djasuli, M., Fitriyah, F., & Amala, K. (2025). PERAN ARTIFICIAL INTELLIGENCE DALAM OPTIMALISASI PEMUNGUTAN PAJAK BARANG DAN JASA TERTENTU. *Jurnal Maneksi (Management Ekonomi Dan Akuntansi)*, 14(2), 365-372. p. 367

<sup>3</sup> Sintawati, L., Rusmeilantikasari, W., Hotimah, S., Maulana, R. H., & Setiawan, E. (2025). PEMANFAATAN ARTIFICIAL INTELLIGENCE (AI) UNTUK MENINGKATKAN MITIGASI BENCANA BANJIR DI INDONESIA. *Triwikrama: Jurnal Ilmu Sosial*, 10(7), 151-160. p. 159

<sup>4</sup> Garrett, Brandon L. (2025). *Artificial Intelligence and Procedural Due Process. Journal of Constitutional Law*. p. 29

deployed by the state, which possesses coercive authority and legal legitimacy. Accordingly, the use of AI by the state, including in Indonesia, cannot be regarded merely as a technical or administrative matter. It constitutes a constitutional issue that demands scrutiny and limitation based on the principles of the rule of law. This article examines the extent to which, and on the basis of which constitutional principles, the state may lawfully employ AI in the exercise of public power, situating Indonesian practices within the broader framework of digital constitutionalism.

## METHOD

This study adopts a normative legal<sup>5</sup> research design aimed at examining and analyzing the use of artificial intelligence by the state from constitutional and human rights perspectives. Normative legal research is employed because the focus of the analysis lies on legal norms, constitutional principles, and legal doctrines that govern and constrain the exercise of state power in the deployment of AI technologies. The research utilizes a statutory approach, a conceptual approach, and a comparative approach.

The statutory approach is used to examine constitutional provisions, particularly the 1945 Constitution of the Republic of Indonesia, as well as relevant international human rights instruments, such as the International Covenant on Civil and Political Rights (ICCPR). The conceptual approach is applied to analyze key legal concepts, including digital constitutionalism, due process of law, proportionality, and accountability in the context of state use of AI. Meanwhile, the comparative approach is conducted by analyzing regulatory developments and practices in selected jurisdictions, with particular attention to the European Union through the EU Artificial Intelligence Act. The legal materials employed in this study consist of primary legal materials, including statutes, constitutional provisions, and international human rights instruments; secondary legal materials, such as scholarly books, peer-reviewed journal articles, and relevant research reports; as well as non-legal materials that support a technical understanding of AI systems. All materials are analyzed qualitatively using systematic and teleological methods of legal interpretation to draw normative conclusions regarding

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<sup>5</sup> Rifa'i, I. J. (2023). Ruang Lingkup Metode Penelitian Hukum. *Metodologi Penelitian Hukum*, 6.

the constitutional limits on the state's use of artificial intelligence.

## RESULTS AND ANALYSIS

### Principles as Limits on the State's Use of Artificial Intelligence

Digital constitutionalism refers to a set of ideas, norms, and practices aimed at extending constitutional values such as the protection of human rights, democracy, and the rule of law into the digital sphere.<sup>6</sup> As digital technologies increasingly shape systems of governance, digital constitutionalism functions as a normative instrument to prevent the erosion of constitutional protections caused by the growing dominance of technological power.

In the context of artificial intelligence, digital constitutionalism requires that algorithmic governance remain subject to constitutional principles. Unlike the use of AI in the private sector, the deployment of AI by the state is directly connected to constitutional law, as it involves the exercise of public authority. Decisions generated or assisted by AI may have direct consequences for individuals' legal status,

access to public services, personal freedoms, and other constitutional rights.

The constitutional relevance of AI is twofold. First, AI operates as a new instrument of state power that may expand practices of surveillance, social control, and discrimination. Second, AI challenges traditional mechanisms of constitutional accountability, as decision-making processes become opaque, complex, and difficult to trace.<sup>7</sup> These conditions necessitate a reaffirmation of constitutional limits on the exercise of state power in the era of artificial intelligence.

Before examining specific constitutional principles, it must be emphasized that constitutions do not, in principle, reject the use of technology by the state. Constitutionalism, however, demands that all technological innovation be implemented within legal boundaries and aligned with the protection of human rights and principles of democratic accountability. In the context of AI, constitutional principles function as limiting instruments to ensure that algorithmic exercises of power do not

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<sup>6</sup> Viswanath, L. (2025). Digital Constitutionalism: Navigating Governance in The Technological Era. *Journal of Law and Legal Research Development*, 15-20. p. 16-17

<sup>7</sup> Subekti, N., Handayani, I. G. A. K. R., & Hidayat, A. (2023). Konstitusionalisme digital di Indonesia: Mengartikulasikan hak dan kekuasaan dalam masyarakat digital. *Peradaban Journal of Law and Society*, 2(1), 1-22. p.4

result in arbitrariness or violations of citizens' rights.<sup>8</sup>

### **The Principle of Legality**

The principle of legality requires that all state actions be based on clear, accessible, and foreseeable law.<sup>9</sup> The use of AI by the state must therefore rest on an explicit legal basis established through legislation that regulates its purposes, scope, and limitations, in accordance with the principle of the rule of law as affirmed in Article 1(3) of the 1945 Constitution of the Republic of Indonesia.

In practice, many AI systems are introduced through administrative policies without adequate statutory authorization, raising concerns regarding democratic legitimacy. From a constitutional perspective, AI systems that have significant impacts on citizens' rights should not operate in a legal vacuum, as this undermines judicial oversight and the principle of state accountability.

In Indonesia, the use of AI by public authorities largely relies on administrative policies, national strategies, or sectoral regulations that do not explicitly regulate AI systems. The National Artificial Intelligence Strategy 2020–2045, for

example, functions as a policy framework rather than a legally binding normative instrument. As a result, various AI systems employed by state institutions such as tax data analytics or digital content detection systems operate without statutory provisions that specifically regulate their objectives, limitations, and oversight mechanisms.

From the perspective of the legality principle, this situation raises constitutional concerns, as state actions affecting citizens' rights should be grounded in law that is clear, predictable, and democratically legitimate. The use of AI without an adequate legal basis risks weakening the rule of law and creating space for arbitrary exercises of power.

### **The Principles of Proportionality and Necessity**

The principle of proportionality constitutes a central pillar in the review of limitations on constitutional rights, as reflected in the jurisprudence of the Constitutional Court and in Article 28J(2) of the 1945 Constitution. The use of AI by the state must pursue a legitimate aim, be suitable to achieve that aim, be necessary in the absence of less restrictive alternatives, and

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<sup>8</sup> *Ibid.*

<sup>9</sup> Utami, T., Solihah, S., Maulana, M., Adawiah, I., & Firdaus, M. (2025). Analisis Yuridis Terhadap

Penerap Prinsip Legalitas Dalam Peraturan Perundang Undangan di Indonesia. *Journal Customary Law*, 2(3), 1-10. p. 7

strike a fair balance between public interests and individual rights.

Many AI systems involve large-scale data collection and analysis, which may disproportionately restrict the rights to privacy, equality before the law, and freedom of expression.<sup>10</sup> The deployment of facial recognition technologies for public surveillance, for instance, raises serious concerns when implemented broadly without strict limitations and adequate safeguards.<sup>11</sup>

The use of AI by the Indonesian government must likewise be assessed under the principle of proportionality. The application of AI for monitoring and classifying digital content, for example, aims to protect public order and prevent the spread of disinformation. However, such technologies must be evaluated in terms of their necessity, the availability of less restrictive alternatives, and whether their impact on freedom of expression and the right to information is proportionate to the objectives pursued. Without rigorous proportionality testing, the use of AI risks producing excessive digital surveillance

and disproportionate rights restrictions,<sup>12</sup> contrary to Article 28J(2) of the Constitution.

### **Transparency and Explainability**

Transparency is a fundamental prerequisite for constitutional accountability. Citizens affected by AI-based decisions have the right to know the basis and process through which those decisions are made. However, many AI systems operate as black boxes, making it difficult to trace the logic underlying their outputs.<sup>13</sup>

From a constitutional perspective, opacity in state decision-making cannot be justified. The right to due process of law and effective remedies requires adequate explanations for decisions that adversely affect citizens' rights, in line with the guarantee of fair legal certainty under Article 28D(1) of the Constitution and the right to an effective remedy under Article 2(3) of the ICCPR. In this context, the notion of a "right to explanation" in algorithmic decision-making has increasingly gained prominence.

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<sup>10</sup> Custers, B. (2022). New digital rights: Imagining additional fundamental rights for the digital era. *Computer Law & Security Review*, 44, 105636. p. 4

<sup>11</sup> *Ibid.* p. 10

<sup>12</sup> Wibowo, I. A., & Kom, M. (2025). *Kerangka kebijakan Global pemakaian AI (Artificial*

*Intelligence)*. Yayasan Prima Agus Teknik Bekerjasama. p. 107

<sup>13</sup> Iwannudin, I., & Heriani, I. (2025). Legal Challenges in Regulating Artificial Intelligence Use in Criminal Justice Systems. p. 1605

Most AI systems used by Indonesian public institutions are not accompanied by adequate mechanisms of algorithmic transparency. Citizens generally lack information regarding how their data are processed, which criteria are applied in AI-based analyses, and the extent to which system outputs influence administrative decisions.

From a constitutional standpoint, this condition is problematic, as the right to fair legal certainty requires openness in state decision-making processes. The opacity of AI systems may hinder citizens' ability to challenge decisions or pursue effective legal remedies.<sup>14</sup>

### **Due Process of Law and Fair Trial**

The use of AI in administrative and judicial processes must ensure the protection of due process of law. Fully automated decisions without meaningful human oversight risk undermining procedural fairness and disregarding individual circumstances.

From a constitutional perspective, decisions affecting citizens' rights should, in principle, involve human judgment, be supported by reviewable reasoning, and provide mechanisms for objection or

appeal.<sup>15</sup> Accordingly, the human-in-the-loop approach is increasingly regarded as a minimum constitutional standard in the deployment of high-risk AI systems by the state.

The use of AI in public administration such as in tax compliance risk analysis or preliminary screening of service recipients may significantly affect individuals' legal positions. Therefore, AI-based decisions should not be fully automated and must remain subject to human oversight.<sup>16</sup> The human-in-the-loop model is essential to ensure that citizens have the opportunity to be heard, to receive reasons for decisions, and to challenge outcomes that affect their rights.

### **Accountability and Responsibility**

One of the central challenges posed by AI in constitutional governance is the blurring of responsibility. When decisions are produced by algorithms, questions arise as to who should be held accountable for errors, bias, or rights violations whether system developers, user institutions, or specific public officials.<sup>17</sup>

Constitutional law requires that all state actions be attributable to clearly

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<sup>14</sup> Rizana, R., & Utama, A. S. (2025). Tinjauan Yuridis terhadap Penggunaan Artificial Intelligence dalam Proses Penegakan Hukum. *Sanskara Hukum dan HAM*, 4(02), 134-145. p. 136

<sup>15</sup> Garrett, Brandon L. (2025).p. 6-7

<sup>16</sup> *Ibid.* p. 32

<sup>17</sup> Busuioc, M. (2021). Accountable artificial intelligence: Holding algorithms to account. *Public administration review*, 81(5), 825-836.p.832

identifiable officials or institutions. Accordingly, the use of AI must be accompanied by clear accountability mechanisms to ensure that the state remains responsible for all algorithmic decisions.

In Indonesian practice, accountability for AI-based decisions is often not explicitly formulated. When system errors, algorithmic bias, or rights violations occur, mechanisms for attributing responsibility among developers, user institutions, and public officials remain unclear.<sup>18</sup> From a constitutional law perspective, such ambiguity is unacceptable, as all state actions must be legally and constitutionally accountable.

### **International Human Rights Law as a Constraint on the State's Use of Artificial Intelligence**

International human rights law provides a strong normative foundation for assessing the legality of the state's use of artificial intelligence, particularly when such technology is deployed in the exercise of public authority. The primary relevant instrument is the *International Covenant on Civil and Political Rights* (ICCPR),

which has been ratified by Indonesia and is therefore legally binding.

Article 17 of the ICCPR guarantees the right of every individual to be protected against arbitrary or unlawful interference with their privacy, family, home, or correspondence. In the context of AI deployment, this provision is particularly significant, as most state-operated AI systems rely on large-scale collection and processing of personal data. Practices such as algorithmic surveillance, automated profiling, and facial recognition carry a substantial risk of violating the right to privacy if they are not grounded in clear law, pursued for legitimate aims, and subject to proportionate limitations. Accordingly, the use of AI by the state involving personal data processing must comply with the principles of legality, necessity, and proportionality as developed in international human rights law.

In addition to the right to privacy, Article 19 of the ICCPR which guarantees freedom of expression and the right to seek, receive, and impart information is directly relevant. The use of AI by the state for content moderation, digital surveillance, or monitoring of public communications may result in opaque and unjustified restrictions

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<sup>18</sup> Syahril, M. A. F., TL, A. D., Murdiono, M., & Asriyani, A. (2024). Artificial Intelligence Dan Hak Asasi Manusia: Kajian Hukum Tentang Potensi

Bahaya Di Indonesia. *Jurnal Litigasi Amsir*, 11(3), 359-364. p. 361

on freedom of expression.<sup>19</sup> Automated and closed algorithmic systems can suppress expression without clear reasoning or effective avenues for challenge, thereby failing to meet the strict standards governing permissible limitations on rights under international human rights law.

Furthermore, the principles of equality before the law and non-discrimination, as enshrined in Articles 2(1) and 26 of the ICCPR, constitute essential benchmarks.

Numerous studies demonstrate that AI systems are not neutral, but may reproduce and amplify biases embedded in data sets or algorithmic design. When AI is used by the state in law enforcement, social welfare distribution, or other public services, the risk of discrimination becomes particularly acute, as algorithmic decisions have tangible legal consequences for individuals.<sup>20</sup> Within the framework of international human rights law, states bear a positive obligation to prevent discrimination, including discrimination generated through technological systems.

The right to an effective remedy, guaranteed under Article 2(3) of the

ICCPR, further affirms that individuals adversely affected by AI-based decisions must have access to effective complaint and redress mechanisms. Decisions made or assisted by AI must not be final or immune from challenge. International human rights law therefore requires that state use of AI remain subject to judicial and administrative review, including an obligation on the state to provide adequate explanations for decisions taken.

### **The EU Artificial Intelligence Act as a Model of Constitutional Constraint**

The most advanced regulatory approach to governing the state's use of AI can currently be found in Regulation (EU) 2024/1689 on Artificial Intelligence, commonly known as the *EU Artificial Intelligence Act* (EU AI Act). This regulation reflects the European Union's systematic effort to subject AI deployment to constitutional values and fundamental rights as guaranteed under the *Charter of Fundamental Rights of the European Union*.

The EU AI Act adopts a risk-based approach, classifying AI systems into

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<sup>19</sup> Khan, I. (2021). Disinformation and Freedom of Opinion and Expression: Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression. p. 8

<sup>20</sup> Zuwanda, Z. S., Lubis, A. F., Solapari, N., Sakmaf, M. S., & Triyantoro, A. (2024). Ethical and

Legal Analysis of Artificial Intelligence Systems in Law Enforcement with a Study of Potential Human Rights Violations in Indonesia. *The Easta Journal Law and Human Rights*, 2(03), 176-185. p. 179

several categories: unacceptable risk, high risk, limited risk, and minimal risk.<sup>21</sup> In the context of state use, many AI systems deployed in public administration, law enforcement, surveillance, and administrative decision-making are categorized as high-risk systems. This classification constitutes an explicit acknowledgment that AI use by public authorities poses significant risks to human rights and the rule of law.

For high-risk AI systems, the EU AI Act imposes stringent obligations, including risk management requirements, guarantees regarding data quality and representativeness, comprehensive technical documentation, system transparency, and the implementation of human oversight.<sup>22</sup> The requirement of human oversight reflects the constitutional principle that decisions with significant implications for individual rights must not be delegated entirely to machines. Accordingly, the EU AI Act affirms that administrative efficiency cannot justify the erosion of due process of law and public accountability.

Moreover, the EU AI Act explicitly prohibits certain AI practices deemed incompatible with fundamental values, such as AI systems designed for behavioral manipulation or real-time mass biometric surveillance in public spaces, except under narrowly defined circumstances and subject to strict legal safeguards<sup>23</sup>. These prohibitions demonstrate that, from a constitutional perspective, absolute limits exist on the state's use of AI, even when justified on grounds of security or public interest.

The EU AI Act may thus be understood as a concrete manifestation of digital constitutionalism, in which technology is not placed above the law but is instead subordinated to the principles of legality, proportionality, and human rights protection. For states outside the European Union, including Indonesia, this regulation provides an important reference point for developing comprehensive frameworks governing the state's use of AI without compromising constitutional values.

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<sup>21</sup> Palmiotto, F. (2025). The AI Act Roller Coaster: The Evolution of Fundamental Rights Protection in the Legislative Process and the Future of the Regulation. *European Journal of Risk Regulation*, 16(2), 770–793. doi:10.1017/err.2024.97 p. 771

<sup>22</sup> Veale, M., & Borgesius, F. Z. (2021). Demystifying the Draft EU Artificial Intelligence Act (July 31, 2021). Available at SSRN: <https://ssrn.com/abstract=3896852>. h.110

<sup>23</sup> Palmiotto, F. (2025). *Op. Cit.* p.793

## CONCLUSION

The use of artificial intelligence by the state represents a new mode of exercising public power with direct implications for human rights and the rule of law. Consequently, AI deployment cannot be regarded as a purely technical matter, but must be treated as a constitutional issue subject to limitation and scrutiny based on constitutional principles.

Through the framework of digital constitutionalism, this article argues that the state's use of AI must be grounded in the principles of legality, proportionality, transparency, due process of law, and accountability. These principles function as safeguards to ensure that technological innovation does not erode the constitutional protection of citizens' rights. From the perspective of international human rights law and comparative practice particularly the EU Artificial Intelligence Act a global trend is evident toward placing the use of AI by public authorities under strict legal control. For Indonesia, the 1945 Constitution of the Republic of Indonesia already provides a sufficient normative foundation to constrain the state's use of AI. The primary challenge ahead lies in developing a regulatory framework that explicitly integrates the principles of

digital constitutionalism into the governance of governmental AI systems.

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