



Artificial Intelligence and Constitutional Law: Challenges to the Protection of Fundamental Rights in Indonesia

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ABSTRACT

Artificial intelligence has rapidly transformed the exercise of public and private power by enabling automated decision-making, predictive analysis, profiling, content generation, biometric processing, algorithmic recommendations, and large-scale data analysis. These developments provide significant opportunities for public administration, judicial services, economic development, and digital innovation, but they simultaneously create constitutional risks concerning privacy, equality, non-discrimination, freedom of expression, legal certainty, due process, human dignity, and access to effective remedies. This article examines the constitutional implications of artificial intelligence in Indonesia and evaluates whether the existing legal framework adequately protects fundamental rights against AI-related risks. The study employs normative legal research using statutory, conceptual, comparative, and human-rights approaches. The analysis shows that Indonesia possesses several relevant constitutional and statutory safeguards, particularly Articles 28D, 28F, 28G, and 28I of the 1945 Constitution, Law Number 27 of 2022 on Personal Data Protection, the Electronic Information and Transactions Law, and Ministerial Circular Letter Number 9 of 2023 on Artificial Intelligence Ethics. Nevertheless, these instruments remain fragmented and were not specifically designed to regulate high-risk AI systems. Major regulatory gaps concern algorithmic discrimination, mandatory transparency, explainability, fundamental-rights impact assessment, independent algorithmic auditing, human oversight, public-sector automated decision-making, generative AI, synthetic content, and effective remedies. The article proposes a constitutional rights-based and risk-based AI governance model requiring stricter obligations for AI systems capable of significantly affecting citizens' rights. Indonesia should transform existing ethical principles into binding rules while preserving innovation through differentiated regulation. Constitutional law must ultimately ensure that algorithmic power remains subordinate to human dignity, democratic accountability, legal certainty, and

the protection of fundamental rights (Indraswara, 2026; Satya et al., 2026).

Keywords: *artificial intelligence; constitutional law; fundamental rights; digital constitutionalism; algorithmic governance.*

1. INTRODUCTION

Artificial intelligence (AI) has developed from a specialized computational technology into an increasingly influential infrastructure of contemporary society. AI systems are now capable of analyzing large datasets, recognizing patterns, generating text and images, predicting behaviour, ranking individuals, recommending content, supporting decision-making, and automating processes previously undertaken exclusively by humans. Their influence increasingly extends into employment, finance, education, healthcare, law enforcement, commerce, public administration, and judicial systems. Consequently, AI is no longer merely a technological issue but has become an important subject of constitutional governance because algorithmic systems can affect the manner in which individuals exercise and enjoy fundamental rights (UNESCO, 2021; Satya et al., 2026).

The constitutional significance of AI originates from its ability to redistribute power. Traditional constitutional law primarily concerns the limitation of state authority, separation of powers, protection of individual liberty, and accountability of public institutions. Digital transformation, however, has created new centres of power in which private technology corporations and algorithmic infrastructures can determine what information citizens see, how individuals are profiled, which opportunities they receive, and how they interact with public and private institutions. Digital constitutionalism therefore expands traditional constitutional concerns by examining how constitutional values should constrain both public authority and technologically mediated private power (Indraswara, 2026; Council of Europe, 2024).

The problem is particularly significant because AI systems can exercise influence without possessing legal personality or democratic legitimacy. Decisions may be shaped through algorithmic classifications that are difficult for affected individuals to understand, while responsibility may be dispersed among developers, providers, deployers, data suppliers, users, and institutions. Zakiyah et al. (2026) demonstrate that Indonesia's existing liability framework does not adequately capture the complexity of autonomous and opaque AI systems, particularly because fault-based models face significant difficulties when harmful outcomes emerge from black-box technologies whose internal reasoning is difficult to reconstruct (Zakiyah et al., 2026).

The Indonesian Constitution provides a strong normative foundation for addressing these challenges. Article 28D paragraph (1) of the 1945 Constitution guarantees recognition, guarantees, protection, and fair legal certainty as well as equal treatment

before the law. Article 28F protects communication and access to information, while Article 28G protects personal security and individual integrity. Article 28I paragraph (2) expressly protects every person from discriminatory treatment. These constitutional guarantees are technologically neutral and therefore remain applicable where rights are affected by automated or algorithmic systems rather than conventional human decision-makers (Republic of Indonesia, 1945; Indraswara, 2026).

AI also has a positive constitutional dimension. Article 28C paragraph (1) of the Constitution recognizes the right of every person to develop themselves and benefit from science and technology, while Article 31 paragraph (5) obliges the state to advance science and technology while upholding religious values and national unity for the advancement of civilization and human welfare. Constitutional regulation of AI therefore cannot be based solely on restriction. The constitutional challenge is to construct a framework in which technological development is encouraged while the risks generated by automated systems remain subject to fundamental-rights safeguards (Republic of Indonesia, 1945; Basir et al., 2026).

This creates a fundamental constitutional tension between innovation and rights protection. Excessively restrictive regulation may inhibit innovation, investment, scientific development, and social benefits, while insufficient regulation may expose individuals to discrimination, surveillance, manipulation, misinformation, privacy violations, and decisions that cannot be meaningfully challenged. Basir et al. (2026) describe Indonesia's AI regulatory challenge as a dilemma between legal certainty and utility, emphasizing that the absence of comprehensive rules allows technological experimentation but simultaneously produces uncertainty regarding responsibility and public protection (Basir et al., 2026).

Indonesia has already taken several steps toward AI governance. Minister of Communication and Informatics Circular Letter Number 9 of 2023 on Artificial Intelligence Ethics establishes principles including inclusiveness, humanity, security, accessibility, transparency, credibility and accountability, personal data protection, sustainability, and intellectual property protection. It also emphasizes that AI should not function as the sole determinant of policies or decisions involving humanity and requires attention to risk management, privacy, and protection against harmful discriminatory conduct (Ministry of Communication and Informatics, 2023).

The principles contained in the Circular Letter are broadly compatible with constitutional values. Inclusiveness corresponds with constitutional equality; humanity reflects protection of human dignity; transparency supports legal certainty and accountability; personal data protection reinforces privacy; and accessibility is consistent with non-discrimination. Nevertheless, a circular letter primarily functions as administrative guidance and ethical direction rather than a comprehensive statutory regime capable of imposing detailed, enforceable obligations on every high-risk AI application. The distinction between ethical guidance and legally enforceable rights is

therefore central to understanding Indonesia's current regulatory gap (Satya et al., 2026; Zakiyah et al., 2026).

The fragmentation of Indonesia's legal framework is evident in the fact that binding AI-related rules are distributed across several legislative sectors. Law Number 27 of 2022 concerning Personal Data Protection provides particularly important safeguards for algorithmic processing. Article 10 gives data subjects the right to object to decisions based solely on automated processing, including profiling, where such decisions produce legal consequences or significant effects. Article 34 further requires a personal-data protection impact assessment for high-risk processing, including automated decision-making, systematic scoring, large-scale processing, and the use of new technology (Republic of Indonesia, 2022).

These provisions provide a significant legal foundation for constitutional protection in the AI era. The recognition of a right to object to automated decision-making means that Indonesian law already acknowledges the risk that automated systems may significantly affect individual rights. However, the provision is framed primarily through personal-data protection rather than a broader constitutional framework governing automated governmental or private decisions. Issues such as explanation, meaningful human review, discriminatory outcomes, algorithmic audits, evidentiary access, and remedies remain insufficiently elaborated (Republic of Indonesia, 2022; Satya et al., 2026).

The Electronic Information and Transactions framework also contributes to digital regulation. Law Number 1 of 2024, constituting the second amendment to the Electronic Information and Transactions Law, governs electronic information, electronic systems, and electronic transactions. Nevertheless, the ITE framework was not specifically designed for contemporary machine-learning systems capable of autonomous recommendations, generative production, predictive decision-making, or adaptive behaviour. Indonesian scholarship consequently identifies a mismatch between rapidly developing AI capabilities and laws originally designed for conventional electronic systems (Satya et al., 2026; Setiawan et al., 2025).

Sector-specific regulation has begun to emerge. Minister of Trade Regulation Number 19 of 2026 concerning Trading Businesses Through Electronic Systems expressly regulates the utilization of artificial intelligence in electronic commerce, including responsibility, transparency, consumer protection, complaint and correction mechanisms, and AI-related information. The emergence of sector-specific rules demonstrates that Indonesia is gradually moving from general ethical guidance toward legally binding AI obligations, but it simultaneously highlights the fragmented nature of AI governance when different sectors develop different regulatory standards (Ministry of Trade, 2026; Basir et al., 2026).

Government policy indicates awareness of this regulatory problem. Throughout 2026, the Ministry of Communication and Digital Affairs coordinated drafts of a Presidential Regulation concerning AI Ethics and another concerning the National Artificial

Intelligence Roadmap 2026–2029. Government communications in July 2026 continued to describe a Presidential Regulation as an initial stage toward a future comprehensive AI Act. This indicates that Indonesia's AI legal architecture remains transitional and that the government itself recognizes the eventual need for stronger statutory regulation (Ministry of Communication and Digital Affairs, 2026a; Ministry of Communication and Digital Affairs, 2026b).

The need for stronger regulation becomes more urgent as AI systems enter public functions. Automated systems can potentially be used for public-benefit allocation, taxation, policing, identity verification, immigration, public-sector recruitment, education, healthcare, licensing, and other governmental services. Such uses create constitutional consequences because errors or biases do not merely affect commercial preferences but can determine citizens' access to rights, government services, or legal status. In constitutional terms, the more significant the impact of AI on fundamental rights, the stronger the justification for procedural safeguards and public accountability (Council of Europe, 2024; European Union, 2024).

The judicial sector represents an especially sensitive area. AI may improve legal research, case administration, consistency, document analysis, and the processing of electronic evidence. Indonesian judicial institutions have begun exploring technological systems capable of supporting case management and reducing disparities. However, the use of AI in judicial reasoning raises questions concerning judicial independence, the right to a fair trial, procedural transparency, evidentiary reliability, algorithmic bias, and the fundamental constitutional requirement that judicial responsibility remain vested in human judges (Andriati et al., 2024; Jamil & Saifuddin, 2026).

Jamil and Saifuddin (2026) conclude that AI should function as an instrument assisting rather than replacing judges because judicial reasoning requires interpretation, moral judgment, contextual analysis, and responsibility that cannot simply be transferred to computational systems. Similarly, Andriati et al. (2024) argue that mathematical and algorithmic models cannot fully reproduce empathy, justice, and qualitative legal reasoning. These findings demonstrate that human oversight in high-risk AI applications is not merely an ethical preference but may constitute a constitutional requirement for legitimate public decision-making (Andriati et al., 2024; Jamil & Saifuddin, 2026).

Employment provides another illustration of algorithmic power. AI can be used to screen applicants, rank candidates, assess performance, determine promotion opportunities, and recommend termination. If training data reflect historical inequality, automated systems may reproduce discrimination while appearing technologically neutral. Rahman (2024) identifies significant regulatory gaps concerning AI in Indonesia's labour market and argues that risk-based regulatory principles similar to those developed internationally should inform Indonesian law (Rahman, 2024).

Algorithmic discrimination challenges traditional equality doctrine because discriminatory outcomes may occur without an identifiable discriminatory intention. A

system may use apparently neutral variables that function as proxies for gender, disability, socioeconomic status, geographical location, ethnicity, or other protected characteristics. Barocas and Selbst (2016) demonstrate that data-driven systems can reproduce unequal outcomes through dataset composition, target-variable selection, feature construction, and statistical correlations. Constitutional protection therefore requires attention to both intentional discrimination and structurally discriminatory algorithmic effects (Barocas & Selbst, 2016; Indraswara, 2026).

AI also creates new challenges for freedom of expression and access to information. Generative AI can produce realistic synthetic content, automated propaganda, deepfakes, and large volumes of misleading information. At the same time, automated content-moderation systems can restrict lawful expression through erroneous classification or opaque platform rules. Constitutional protection must therefore avoid the false choice between controlling AI-generated misinformation and protecting free expression; both information integrity and freedom of communication are constitutional concerns (AlOmran & Rebhi, 2025; OECD, 2024).

This issue is particularly relevant for democracy because AI-generated content can affect elections, political discourse, trust in institutions, and the ability of citizens to distinguish authentic speech from synthetic manipulation. Algorithmic recommendation systems can also determine visibility and amplify particular narratives without users understanding why certain information is promoted. Constitutional law must therefore address not only state censorship but also infrastructural power exercised by private digital platforms over democratic communication (Indraswara, 2026; Council of Europe, 2024).

Against this background, AI creates a broader constitutional question concerning who governs algorithmic power and through what mechanisms that power can be challenged. Existing constitutional rights remain conceptually applicable, but effective protection requires procedural institutions capable of translating abstract constitutional guarantees into concrete rules for developers, providers, government agencies, platforms, employers, courts, and other AI deployers (Satya et al., 2026; Indraswara, 2026).

Previous Indonesian scholarship has examined AI from perspectives including personal-data protection, legal-profession ethics, judicial decision-making, labour regulation, cyber law, liability, and digital constitutionalism. However, these studies often address particular regulatory sectors. This article develops an integrated constitutional perspective by examining privacy, equality, freedom of expression, due process, human oversight, judicial independence, accountability, and democratic governance as interconnected dimensions of fundamental-rights protection (Rahman, 2024; Setiawan et al., 2025; Satya et al., 2026).

The study therefore addresses two principal questions. First, to what extent does Indonesia's existing constitutional and statutory framework protect fundamental rights against risks arising from artificial intelligence? Second, what model of constitutional AI governance should Indonesia develop to ensure that innovation remains compatible with

human dignity, equality, privacy, due process, democratic accountability, and effective remedies? The article argues that Indonesia requires a rights-based, risk-based, and institutionally accountable AI regulatory framework capable of converting constitutional guarantees into operational obligations throughout the AI lifecycle (Indraswara, 2026; Satya et al., 2026).

RESEARCH METHODE

This research employs normative or doctrinal legal research because its principal object consists of constitutional norms, statutory provisions, regulatory principles, legal doctrines, and institutional mechanisms governing artificial intelligence and fundamental-rights protection. Normative legal research is appropriate for evaluating whether existing legal rules adequately respond to new technological risks and for constructing prescriptive regulatory recommendations based on constitutional principles and comparative legal developments (Marzuki, 2021; Satya et al., 2026).

The statutory approach examines the 1945 Constitution of the Republic of Indonesia, Law Number 27 of 2022 concerning Personal Data Protection, Law Number 1 of 2024 concerning the Second Amendment to the Electronic Information and Transactions Law, Minister of Communication and Informatics Circular Letter Number 9 of 2023 concerning Artificial Intelligence Ethics, and relevant sectoral regulations including Minister of Trade Regulation Number 19 of 2026. These legal instruments are analyzed to identify rights, obligations, accountability mechanisms, and regulatory gaps relevant to AI systems (Republic of Indonesia, 1945; Republic of Indonesia, 2022; Ministry of Communication and Informatics, 2023).

The conceptual approach is used to examine artificial intelligence, digital constitutionalism, human dignity, privacy, equality, non-discrimination, due process, algorithmic transparency, explainability, human oversight, and accountability. Digital constitutionalism is particularly relevant because AI shifts constitutional concerns beyond conventional relationships between state institutions and citizens toward technologically mediated relationships involving private platforms and algorithmic infrastructures capable of exercising substantial social power (Indraswara, 2026; Council of Europe, 2024).

A comparative approach is employed to examine international AI governance frameworks, particularly the European Union Artificial Intelligence Act, the UNESCO Recommendation on the Ethics of Artificial Intelligence, the OECD AI Principles, and the Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law. These frameworks are not treated as instruments automatically transplantable into Indonesia but as comparative sources from which constitutional safeguards may be adapted to Indonesia's legal system and Pancasila-based constitutional values (UNESCO, 2021; European Union, 2024; OECD, 2024).

The legal materials are analyzed qualitatively using constitutional interpretation, systematic interpretation, conceptual analysis, and prescriptive reasoning. The analysis

first identifies rights potentially affected by AI, then evaluates existing Indonesian protection, compares regulatory safeguards used internationally, and finally proposes an Indonesian constitutional model based on differentiated risk, meaningful human control, transparency, accountability, and access to remedies (Marzuki, 2021; Satya et al., 2026).

RESULT AND ANALYSIS

AI as a Constitutional Governance Problem

Artificial intelligence transforms constitutional governance because it changes the mechanisms through which power is exercised. Public authority has traditionally operated through identifiable officials, written decisions, administrative procedures, and institutions whose actions can be challenged through legal mechanisms. Algorithmic systems complicate this structure because decisions may emerge from interactions among datasets, models, software providers, institutional policies, and human operators, making it difficult to identify who actually determined the outcome or why a particular result occurred (Citron, 2008; Noval et al., 2026).

This problem may be described as the constitutionalization of algorithmic power. Constitutional law must ask whether automated decisions remain traceable to legally responsible actors, whether individuals can understand and challenge decisions affecting them, and whether technology transforms citizens into passive objects of computational classification. Human dignity requires individuals to remain legal subjects entitled to reasons, participation, and remedies rather than merely data points processed within administrative or commercial systems (Indraswara, 2026; UNESCO, 2021).

The constitutional issue becomes more serious when public bodies use AI. Government cannot escape constitutional obligations merely by outsourcing technological functions to private providers. If a public authority relies on an algorithm to determine eligibility, risk, priority, enforcement, or access to services, the resulting decision remains an exercise of public power and must therefore satisfy legality, equality, proportionality, accountability, and procedural fairness (Citron, 2008; Council of Europe, 2024).

Consequently, the principle of legality requires a sufficient legal basis for high-risk governmental AI. Administrative convenience alone should not justify automated systems that significantly affect rights. The more serious the potential impact on liberty, livelihood, welfare, legal status, or access to public services, the stronger the need for clear statutory authorization, defined purposes, limitations on data use, independent supervision, and an effective mechanism for human review (Satya et al., 2026; European Union, 2024).

The Fragmented Character of Indonesia's Current AI Regulation

Indonesia's current AI governance remains distributed across constitutional rights, general digital legislation, personal-data protection, ethical guidance, sector-specific regulations, and emerging policy instruments. This fragmentation provides some

protection but creates uncertainty because different AI uses may be subject to different standards while important high-risk applications remain without detailed rules concerning transparency, auditing, human oversight, and remedies (Basir et al., 2026; Satya et al., 2026).

Ministerial Circular Letter Number 9 of 2023 is important because it establishes an explicitly human-centred ethical foundation for AI. The principles of inclusiveness, humanity, security, accessibility, transparency, credibility, accountability, and personal-data protection substantially reflect constitutional concerns. The Circular also states that AI should not operate as the determining decision-maker for matters involving humanity and emphasizes prevention of racism and other forms of harmful treatment (Ministry of Communication and Informatics, 2023).

Nevertheless, ethical principles do not automatically provide enforceable remedies. A citizen harmed by a biased algorithm requires more than a declaration that AI should be fair. The legal system must identify responsible actors, establish standards of proof, determine when audits are required, provide access to relevant information, authorize supervisory bodies, and specify legal consequences when duties are breached. Zakiyah et al. (2026) accordingly recommend transforming ethical principles into binding norms while developing risk-based liability and transparency mechanisms (Zakiyah et al., 2026).

Recent regulation demonstrates movement toward harder law. Minister of Trade Regulation Number 19 of 2026 incorporates binding AI obligations within electronic commerce, demonstrating that AI accountability can be regulated sectorally. However, sector-by-sector development risks producing inconsistent rights if individuals receive stronger AI protection as consumers than as workers, students, public-benefit recipients, criminal suspects, or users of public services (Ministry of Trade, 2026; Basir et al., 2026).

A comprehensive AI statute is therefore increasingly necessary, but comprehensiveness should not mean regulatory uniformity. Different risks require different obligations. AI used to recommend music cannot reasonably be regulated in the same manner as systems used for employment screening, biometric identification, judicial decision support, policing, credit scoring, or allocation of essential public benefits. Regulation should consequently combine a horizontal rights framework with sector-specific rules for particularly sensitive applications (Satya et al., 2026; European Union, 2024).

Privacy and Personal Data Protection

Privacy constitutes one of the clearest constitutional rights affected by AI. AI systems frequently depend on extensive datasets involving identity, behaviour, location, preferences, financial information, biometrics, communications, and other personal characteristics. Large-scale data processing can enable detailed profiling capable of revealing information that individuals never explicitly disclosed, thereby expanding the

capacity of both governments and corporations to monitor and predict personal behaviour (Republic of Indonesia, 2022; UNESCO, 2021).

Article 28G paragraph (1) of the Constitution provides an important constitutional basis for privacy and personal protection. The explanatory framework of Law Number 27 of 2022 expressly connects personal-data protection with constitutional and human-rights guarantees. The PDP Law consequently represents one of Indonesia's strongest existing legal instruments for controlling AI because it regulates collection, processing, security, data-subject rights, and accountability (Republic of Indonesia, 1945; Republic of Indonesia, 2022).

Article 10 of the PDP Law is especially important because it gives data subjects the right to object to decision-making based solely on automated processing, including profiling, where the decision has legal consequences or a significant impact. This provision recognizes that automated decision-making creates a distinct category of risk and provides a legal foundation for challenging algorithmically generated outcomes (Republic of Indonesia, 2022).

Article 34 further requires a data-protection impact assessment where processing presents high risks, including automated decisions with significant consequences, systematic scoring or monitoring, large-scale processing, processing of specific personal data, combination of datasets, and use of new technology. This mechanism resembles risk-assessment approaches increasingly used internationally and could become an important foundation for broader AI impact assessments (Republic of Indonesia, 2022; Satya et al., 2026).

However, data protection alone cannot provide complete constitutional protection. An algorithm may process personal data lawfully while still producing discriminatory, irrational, or procedurally unfair outcomes. Moreover, some AI systems operate on non-personal or anonymized datasets while producing collective harms. AI governance therefore requires a broader fundamental-rights analysis rather than reducing all algorithmic questions to privacy compliance (Satya et al., 2026; Indraswara, 2026).

Indonesia should consequently connect Article 34 data-protection impact assessments with wider fundamental-rights impact assessments for high-risk AI. Such assessments should examine not merely data security but also equality, discrimination, freedom of expression, access to public services, labour rights, vulnerable groups, children, disabilities, and procedural fairness. The European AI Act provides a useful comparative example by requiring fundamental-rights impact assessments for certain high-risk systems deployed by public bodies or providers of public services (European Union, 2024; Satya et al., 2026).

Equality, Non-Discrimination, and Algorithmic Bias

Article 28D paragraph (1) guarantees equal treatment before the law, while Article 28I paragraph (2) protects every person from discriminatory treatment. These provisions provide a constitutional foundation for challenging algorithmic discrimination even where Indonesia does not yet possess a comprehensive AI-specific equality regime. AI systems affecting employment, credit, education, insurance, public services, or policing should therefore be evaluated according to constitutional equality principles (Republic of Indonesia, 1945; Indraswara, 2026).

Algorithmic discrimination differs from traditional discrimination because unequal effects may emerge from historical datasets or statistical correlations without explicit discriminatory instructions. Data may reflect existing social inequality, while proxies such as postal codes, education history, language, purchasing behaviour, or employment patterns may indirectly reproduce protected characteristics. Consequently, technical neutrality does not guarantee substantive equality (Barocas & Selbst, 2016; Rahman, 2024).

Employment demonstrates the practical risk. Automated recruitment systems may rank candidates according to patterns derived from previous successful employees. If historical employment structures disadvantaged women, persons with disabilities, particular socioeconomic groups, or people from certain regions, the algorithm may replicate those inequalities while presenting its decisions as objective predictions. Rahman (2024) therefore emphasizes the need for risk management, transparency, and stronger AI regulation in Indonesia's labour sector (Rahman, 2024).

Constitutional equality should consequently require developers and deployers of high-risk AI to test for disparate impacts before and during deployment. Audits should assess whether error rates differ significantly across demographic groups and whether apparently neutral variables create unjustifiable exclusion. Where significant disparities occur, the institution should bear an obligation to investigate, mitigate, and justify the system rather than forcing affected individuals to prove intentional discrimination hidden inside an opaque model (Barocas & Selbst, 2016; European Union, 2024).

Indraswara (2026) proposes that Indonesia's approach to digital constitutionalism should incorporate Pancasila's principles of humanity and social justice rather than relying exclusively on individualistic models of digital rights. This approach is particularly relevant to algorithmic discrimination because AI can create collective and structural inequality affecting communities rather than only individual claimants. Substantive equality therefore requires consideration of broader distributive consequences of technological systems (Indraswara, 2026).

Freedom of Expression, Information, and Synthetic Media

Article 28F of the Constitution protects the right to communicate, obtain information, and convey information through available channels. AI creates a dual challenge to this right. It can significantly expand expressive capacity by assisting translation, writing,

education, creativity, and accessibility, yet generative AI can simultaneously produce disinformation, deepfakes, impersonation, automated harassment, and synthetic propaganda at unprecedented scale (Republic of Indonesia, 1945; OECD, 2024).

The constitutional response should avoid treating AI-generated misinformation as a justification for unrestricted governmental control of digital expression. Restrictions on speech remain subject to constitutional and human-rights principles of legality, legitimate purpose, necessity, and proportionality. AI governance should target identifiable harms such as deceptive synthetic impersonation, fraudulent manipulation, or undisclosed automated political communication rather than establishing broad censorship mechanisms capable of suppressing legitimate criticism or satire (AlOmran & Rebhi, 2025; Council of Europe, 2024).

Transparency provides a more proportionate regulatory mechanism. Synthetic content capable of misleading reasonable viewers should be labelled where technically feasible, particularly when generated for political advertising, commercial representation, or impersonation. Satya et al. (2026) identify the absence of specific synthetic-content labelling obligations as one of Indonesia's current regulatory gaps and point to comparative developments in other jurisdictions as useful guidance (Satya et al., 2026).

Algorithmic content moderation also requires constitutional attention. Platforms increasingly use automated systems to detect prohibited speech, rank content, and remove posts. False positives can restrict lawful speech, while false negatives may permit harmful content to spread. Because large platforms increasingly function as infrastructures of public communication, meaningful appeal mechanisms and explanations for significant automated moderation decisions become important components of digital constitutionalism (Indraswara, 2026; AlOmran & Rebhi, 2025).

Automated Decision-Making and Constitutional Due Process

Fair legal certainty under Article 28D paragraph (1) requires individuals to understand the legal basis of decisions affecting them and to have access to procedures through which errors can be corrected. Automated decision-making can undermine this principle when individuals receive adverse outcomes without knowing whether a human or algorithm made the decision, what information was considered, or how an error can be challenged (Republic of Indonesia, 1945; Citron, 2008).

Citron's concept of technological due process remains highly relevant because digital administrative systems can gradually replace individualized procedures with automated rules that lack notice, hearing, explanation, and meaningful review. AI intensifies this concern because machine-learning systems may generate predictions whose internal logic is less readily explainable than conventional rule-based software (Citron, 2008; Noval et al., 2026).

Article 10 of Indonesia's PDP Law provides an initial procedural safeguard by allowing objections to decisions based solely on automated processing with significant consequences. Nevertheless, a right to object is meaningful only if the affected person can identify that automation occurred, obtain sufficient information regarding the basis of the decision, and receive genuine human reconsideration rather than a nominal review that merely confirms the algorithmic output (Republic of Indonesia, 2022; OECD, 2024).

Indonesia should therefore recognize several minimum procedural guarantees for high-impact automated decisions: notification that AI materially contributed to the decision; understandable information regarding relevant factors; access to correction of inaccurate data; an opportunity to contest the result; review by a competent human decision-maker; and access to administrative or judicial remedies. Such guarantees would operationalize constitutional legal certainty in technologically mediated government (Citron, 2008; Satya et al., 2026).

Human review must also be meaningful rather than ceremonial. Officials should possess authority and competence to depart from AI recommendations and should receive sufficient information to evaluate the system critically. Human oversight becomes ineffective where officials routinely defer to algorithmic recommendations because of automation bias or lack of technical understanding. Training and institutional procedures therefore form part of the constitutional infrastructure of accountable AI (OECD, 2024; European Union, 2024).

Artificial Intelligence in the Judiciary

The administration of justice represents one of the highest-risk contexts for AI because judicial decisions affect liberty, property, family relations, rights, obligations, and legal status. AI can contribute positively by assisting legal research, identifying relevant precedent, organizing case documents, analyzing electronic evidence, and improving administrative efficiency. Indonesian scholarship has consequently recognized substantial opportunities for technological support within courts (Andriati et al., 2024; Jamil & Saifuddin, 2026).

Nevertheless, the constitutional identity of judicial power requires decisions to remain attributable to independent judges. Article 24 of the Constitution guarantees independent judicial power for the administration of justice. If AI systems become determinative rather than supportive, judicial responsibility may be displaced toward software developers, data models, or institutional administrators who are neither constitutionally appointed judges nor subject to equivalent judicial ethics (Republic of Indonesia, 1945; Jamil & Saifuddin, 2026).

Andriati et al. (2024) therefore argue that AI should provide recommendations rather than replace judicial judgment. Judicial reasoning involves interpretation, proportionality, empathy, moral evaluation, credibility assessment, and contextual understanding that cannot be reduced entirely to historical statistical patterns. Past judicial data may also

reproduce prior inconsistency or bias instead of necessarily generating fairer outcomes (Andriati et al., 2024).

The European AI Act similarly classifies AI systems used to assist judicial authorities in researching, interpreting, or applying law to specific facts as high-risk because errors, bias, and opacity may affect the right to an effective remedy and fair trial. It emphasizes that AI may support judicial decision-making but final decision-making should remain human-driven. This principle provides valuable comparative guidance for Indonesia (European Union, 2024).

Any judicial AI system used in Indonesia should therefore satisfy particularly stringent requirements concerning data quality, documentation, security, auditability, explainability, human control, and judicial responsibility. Litigants should also be informed when AI materially contributes to adjudicative processes, particularly where algorithmic output influences evaluation of evidence, risk, sentencing, or the application of legal standards (Jamil & Saifuddin, 2026; European Union, 2024).

AI, Law Enforcement, and the Presumption of Innocence

Law enforcement represents another constitutionally sensitive field. Predictive policing, facial recognition, behavioural analysis, risk scoring, and automated assessment of evidence may improve investigative capacity but can also threaten privacy, equality, presumption of innocence, and freedom from arbitrary state action. Errors in biometric or predictive systems may impose particularly severe consequences when they contribute to arrest, investigation, or criminal suspicion (UNESCO, 2021; European Union, 2024).

Algorithmic predictions should never be treated as equivalent to individualized proof of wrongdoing. Predictive systems operate through statistical inference and may identify correlations rather than legal responsibility. Using such systems as determinative evidence risks transforming criminal justice from assessment of individual conduct toward probabilistic classification of persons or communities (European Union, 2024; Council of Europe, 2024).

Indonesia therefore requires strict legal authorization for AI systems used in policing and criminal justice. Regulation should identify permissible purposes, prohibited uses, retention limits, evidentiary standards, audit requirements, and judicial oversight. Particularly intrusive applications, including real-time biometric surveillance in public spaces, should be subjected to heightened necessity and proportionality analysis because of their capacity to enable mass surveillance (UNESCO, 2021; Satya et al., 2026).

CONCLUSION

Artificial intelligence presents both constitutional opportunities and constitutional risks for Indonesia. AI can improve public services, judicial administration, economic productivity, research, education, and accessibility, thereby contributing to the

constitutional objective of advancing science and technology for human welfare. Nevertheless, the same technological capabilities can undermine privacy, equality, freedom of expression, due process, human dignity, judicial independence, and democratic accountability when deployed without adequate safeguards (Republic of Indonesia, 1945; UNESCO, 2021).

Indonesia already possesses significant constitutional and statutory foundations for addressing these risks. Articles 28D, 28F, 28G, and 28I of the 1945 Constitution protect legal certainty, equality, information, privacy, and non-discrimination, while Law Number 27 of 2022 provides important rights concerning automated decision-making, profiling, high-risk data processing, and impact assessment. Ministerial Circular Letter Number 9 of 2023 further establishes ethical principles of humanity, inclusiveness, transparency, accountability, security, and personal-data protection (Republic of Indonesia, 1945; Republic of Indonesia, 2022; Ministry of Communication and Informatics, 2023).

However, the analysis demonstrates that Indonesia's legal framework remains fragmented and incomplete. Existing digital legislation was not specifically designed for the distinctive risks of machine learning, generative AI, autonomous systems, or large-scale algorithmic decision-making. There is no comprehensive horizontal framework governing risk classification, algorithmic discrimination, mandatory auditing, fundamental-rights impact assessment, synthetic-content transparency, human oversight, and remedies across multiple sectors (Satya et al., 2026; Basir et al., 2026).

Privacy protection constitutes an important starting point but cannot become the entirety of AI governance. Algorithms may comply with data-processing requirements while nevertheless producing discriminatory or procedurally unfair outcomes. Constitutional AI regulation must therefore integrate privacy with substantive equality, due process, freedom of expression, human dignity, and democratic accountability (Barocas & Selbst, 2016; Indraswara, 2026).

The use of AI by public authorities requires particularly strict constitutional control. Decisions concerning public benefits, policing, employment, education, migration, judicial processes, or other legal entitlements should remain attributable to legally accountable human institutions. Citizens must receive notice when AI materially influences significant decisions, obtain meaningful explanations, and possess access to genuine human review and effective remedies (Citron, 2008; Council of Europe, 2024).

AI use in courts and criminal justice should be treated as high risk. Technology may assist research, evidence management, administrative processes, and consistency, but final judicial responsibility must remain human. Judicial independence, fair trial, presumption of innocence, and individualized justice cannot constitutionally be delegated to an opaque technological system lacking moral and legal responsibility (Andriati et al., 2024; Jamil & Saifuddin, 2026).

The article therefore recommends that Indonesia adopt a rights-based and risk-based AI regulatory framework. High-risk applications should be subject to mandatory fundamental-rights impact assessments, algorithmic audits, data-quality obligations, cybersecurity standards, documentation, human oversight, and effective complaint mechanisms. Certain AI practices fundamentally incompatible with human dignity, equality, or democratic governance should be prohibited or subject to a strong presumption against use (European Union, 2024; Satya et al., 2026).

Indonesia should additionally transform the ethical principles of Circular Letter Number 9 of 2023 into binding and enforceable legal standards. Ethical governance remains valuable, but constitutional protection requires clear duties, responsible actors, supervisory institutions, evidentiary rules, and sanctions. A future AI Act should operate as the horizontal legal foundation, while sectoral rules address additional risks in employment, healthcare, education, finance, law enforcement, courts, commerce, and other fields (Zakiah et al., 2026; Basir et al., 2026).

Pancasila-based digital constitutionalism can provide the normative identity for this framework. AI should remain subordinate to Just and Civilized Humanity, democratic participation, and Social Justice for All Indonesians. This means evaluating technological systems not only according to efficiency or economic value but also according to whether they preserve dignity, reduce inequality, distribute technological benefits fairly, and remain accountable to democratic institutions and society (Indraswara, 2026).

Ultimately, artificial intelligence should not be understood as an autonomous source of constitutional authority. Algorithms may assist, predict, recommend, and automate, but legal responsibility must remain with identifiable human and institutional actors. The central objective of constitutional law in the AI era is therefore to ensure that technological innovation expands human capabilities without transforming individuals into objects of opaque computational power. A constitutional order capable of maintaining this distinction can embrace artificial intelligence while preserving the supremacy of human dignity, fundamental rights, democracy, and the rule of law (Council of Europe, 2024; Indraswara, 2026).

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