

# Constitutional Challenges Amidst the Development of Digital Technology in Indonesia

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Received 17 February 2024, Revised 2 March 2024, Accepted 16 March 2024, Available online 18 March 2024

To link to this article: <https://doi.org/10.53797/ujssh.v3i1.9.2024>

**Abstract:** Constitution holds a very fundamental part in nation and in state. Every change in the society cannot be legally implied without looking back to it. The change includes the development of digital technology. Digital technology can be a potential but also can be at threat. It gets more serious as human creations namely artificial intelligence, blockchain technology, e-commerce, e-court and e-government do support digitalization but also challenging for constitutional matters because it really affects nation and state. So, it is needed to be addressed very carefully. This research uses a normative juridical approach and described analytically. The results of this research show that artificial intelligence can put democracy in danger, constitution must be able to ensure that democracy can use the potential applications of blockchain technology, regulations regarding e-commerce must use UUD 1945 Articles 25A, 32, and 33 as the main rule, Constitutional Court creates an innovation with technology and continues to maintain public trust with its e-court system and there is still no regulations and policy for e-government to control problems such as mitigation and environment.

**Keywords:** Constitutional challenges, digital technology, Indonesia

## 1. Introduction

Indonesia has experienced a long constitutional journey. From independences day until now, four amendments have been made to the constitution that named Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 (UUD 1945). Constitution is the source of all legal sources and the philosophy of life of the nation and state. Constitution holds principle and law of a state that determines powers and duties, also guarantees rights for the citizens. Constitution is a fundamental norm that contains doctrines and practices to form organized principles that describes the systems and regulations of a state. Fundamental means that the constitution cannot be changed easily and quickly for certain interests. Changing the constitution means changing the entire outlook on life of the nation and state. And that means it will also change the entire hierarchical legal order.

Discussing the development of digital technology affecting Indonesia, there are two main points namely law (constitution and regulations) and standard operational procedures (Sari et al., 2015). The constitution, which cannot be changed carelessly, is faced with a contemporary problem, namely the development of digital technology. The development of digital technology offers society entirely new ways of doing things. History shows that human innovations always bring significant changes. Each new option introduced by technological evolution allowing new forms affects the substance, eventually changing the way humans think and relate to each other. Marshall McLuhan indicates this as the media is the message. The development of digital technology not only allow people to find information at a vast speed but also transforms decision-making processes (Simoncini & Longo, 2021).

Transformation society actually is a common thing that occurs in every society everywhere at all times. The concept and thought of *ubi societas ibi ius* which means where there is society there is also a relationship with transformation of law. Society changes, so regulations change. This is called law as a tool of social engineering where regulations can change society to adapt but again, constitution cannot be easily changed (Sinaga & Atmoko, 2023). Indonesia has seen a rapid increase in the number of people connected to the digital technology over the last decade, making it home to many of the largest digital platforms in the region. In 2023 alone, there were 212.9 million internet users, 167.0 million social

media users and a total of 353.8 million cellular mobile connections were active. Based on UUD 1945, carried out strategies that includes legislation, human resources, institutions and legal culture so that the development of digital technology can build the nation and state on a national, regional and global scale. The legal system must be able to keep up with the development of digital technology so that the ideal interpretation of constitution will not evade.

The development of digital technology taken as samples in this research includes artificial intelligence, blockchain technology, e-commerce, e-court and e-government. The relationship between constitutional challenges and the development of digital technology lies in the way of thinking and discovering it. This connection lies in the human perspective to manifest in the form law and digital technology itself. This is called ideology because it comes from a system of ideas accepted by the human thought process. Digital technology can initiate the birth of law because law examines many phenomena of society (Santoso & Habib, 2023).

The previous research stated that the development of digital technology urges constitutional regime to ensure a systematic, cost-effective, transparent, and accountable approach with by not neglecting the constitution as the source of all sources of law (Slobogin & Brayne, 2023). And in the concept of the Constitution, three specific elements prevail (institutions, rights and supremacy), since the lack of any of these three factors constitutes a limitation and impossibility in the joint development of the application of rights and obligations in a specific State and would not be faced with the very concept of a constitution. Technology involves human reasoning and, therefore, in a first phase it is an integral part of the political organization, and in a second phase it becomes part of the exercise of rights and/or institutions (Adame, 2022). Thus, technology has accompanied social processes from the first human groups to the present day. New technologies have represented an advance in the political, social and economic development of the vast majority of States that integrate the current global system by potentiating human relations from the point of view of rights and political institutions, generating consequences at the global level. particular and general that affect the legal relationships that derive from the Constitution. Technology as the elaboration of human processes implies a political development that affects the relationship between the rights of people and the powers exercised by authorities to achieve their goals. Therefore, technology enhances the relationship between rights and powers for the benefit of society organized in a specific jurisdiction that is part of a global village.

Digital technology that makes everything easier has two conflicting sides on one hand it is a friend but on the other hand it is a destroyer. It gets more serious as the development of digital technology is the result of human creations and innovations. The use of technology to support digitalization is considered challenging for constitutional matters because it really affects the lives of citizens and the state, thus it is needed to be addressed very carefully.

## **2. Methodology**

This research uses a normative juridical approach and described analytically. The legal materials used in this research are primary legal materials that includes constitution (UUD 1945), laws and regulations and also secondary legal materials, namely various scientific papers (Benuf & Azhar, 2020).

## **3. Results and Discussion**

### **3.1 Artificial Intelligence**

The use of artificial intelligence may warrant additional layers of constitutional challenges as the technology's increasing effectiveness has gained public attention (Valcke et al., 2021). An Artificial Intelligence named ChatGPT is the same as someone is having a text conversation with a legal expert/consultant. The language used is quite neat. ChatGPT can even replace the role of law graduates in terms of legal consultations. It is said that artificial intelligence is more precise and stable than a legal consultant which is sometimes emotional. For this reason, consulting with a robot is the best way to get certainty and stability. The only threats to ChatGPT are error and cyber attack. With a model like this, society in Indonesia can be broken with artificial intelligence machines that are more precise, tireless, can work with large numbers, stable and systematic (Marwan, 2023). Thus, it is quite difficult to bind the development of digital technology to the basic constitutional principles because artificial intelligence led to a widespread culture of disregard of the law and put democracy in danger. The future relationship between the development of digital technology and democracy cannot be understood without an understanding of the extraordinary power concentration in the hands of constitution. And also another constitutional challenge is that there is no rule of law and human rights can be designed by artificial intelligence (Nemitz, 2018).

### **3.2 Blockchain Technology**

Blockchain technology will revolutionize or disrupt commerce. More specifically, it aims to clarify that blockchains as such cannot serve as a technology or ideology for the decentralization of online marketplaces. It is necessary to understand what those terms actually mean and how they affect actual, commercial practices (Mik, 2019). Blockchain technology exists as a functional layer to run on the existing stack of Internet protocols, adding a whole new level to the Internet to enable financial transactions, both instant digital payments (in a universally usable cryptocurrency) and longer-term, more complex financial contracts.

Blockchain is quite literally like a giant spreadsheet to record all assets, and an accounting system to do so on a global scale that would contain all types of assets held by all parties around the world. Thus, blockchain can be used for any kind of asset registration, inventory, and exchange, including every area of finance, currency, and finance; hard assets (physical property); and intangible assets (votes, opinions, reputation, interest, health information, etc.) The blockchain technology in Indonesia enabled economy is not just about moving money, though; that is, the transmission of information and the efficient allocation of resources enabled by money in the human and corporate economy (Herian, 2019).

In the event that blockchain technology will affect society as it promises, it is important to determine not only how these technologies challenge traditional categories. Constitution must show that democracy can use the potential applications of blockchain. These technologies can increase society's trust in public services. It is no coincidence that various proposals include the implementation of blockchain technology in the field of authentication services, land registration, and even electronic voting. Also, blockchain can promote freedom of expression. In authoritarian regimes, these applications can limit the ability of public actors to censor speech while allowing traditional media outlets to share information and news. The implementation of cryptography can also improve the right to privacy, therefore, promotes independence and autonomy. However, blockchain technology can also replace public actors in areas of public interest such as health markets or financial markets and in relation to the implementation of legal regulations regarding legal behavior. These technologies can lead to a change in governance from legal principles adopted by public actors to a mix of private and technical principles established by informal organizations. Blockchain does not raise modern tests for modern governance that has already exposed global influence (Pollicino & De Gregorio, 2021).

### 3.3 E-Commerce

The exploitation of technology has encouraged the rapid development of the business sector, because various data can be provided via long distance connections and those who want to conduct business do not have to meet face to face, but only via PC and telecommunications equipment. Advances in data technology have also created new world citizens who are no longer hampered by regional boundaries and have turned everything that was far away into something close to the imagination. Internet and data technology are the latest innovations in the last decade that are influencing people's lives. Some people's activities change in important ways by taking advantage of ability, effectiveness and movement.

In today's global trading world, electronic business is something that cannot be avoided. Electronic commerce (e-commerce) is an illustration of the development of data technology, where business is no longer carried out in conventional ways, which requires consumers to deal directly with traders or requires the use of cash. However, traders are represented by a system that serves consumers online via a PC network device. In carrying out business, a consumer interacts with and talks to a system that replaces the trader. Therefore, E-commerce requires system infrastructure that can guarantee the security of the business. The exploitation of advances in data technology in the economic aspect, has introduced many changes in this age-old trading activity. Trade that was previously conventional in nature, requiring face-to-face interactions between traders and consumers, has changed to electronic commerce, where traders and consumers do not need to meet in the buying and selling process, but only through the e-commerce system. Electronic platform trading currently and in the future has the potential for a large market share, and could become an important area and one of the backbones of the national economy. From statistical information, the progress of e-commerce shows an increase every year, which has also spread to small and medium businesses (Anugrah et al., 2023).

The implementation of electronic commercial transactions makes the conclusion of cross-border commercial or consumer contracts relatively easier and faster without the need for the parties to travel. However, it questions the scope and sufficiency of traditional laws. New concepts resulting from technology reform cannot always be found in existing laws. Therefore, it is necessary to seek interpretations or explanations of traditional norms in judicial instruments. It is difficult to achieve consistency in interpretation or explanation due to the difference in conflict of laws rules and legal culture in different countries. Private international law, therefore, is one of the fundamental fields that affects the basic order, certainty and fair play of judicial litigation and dispute resolution. It is sensible that the legislative strategy for the future reform of private international law be adapted to the needs of the information society. In the author's opinion, the trends of legislative tasks, approaches and improvements in the future will be as follows. First of all, the future trend of legislative tasks in matters of private international law by international organizations and regional and national legislative councils will be twofold: (1) continue working on the modernization and harmonization of existing legislation; and (2) continue to write new specific laws only when necessary (Wang, 2010).

Thus, constitutional challenges of e-commerce include 1) Form of Legal Entity in the e-commerce business sector; 2) Licensing and other legal documents for establishing an e-commerce business; 3) Description and application of the view of legality from origin to threshold in accordance with legal provisions; 4) Global description of the form of legal protection for parties in the e-commerce business community. Regulations regarding e-commerce must be in line with Intellectual Property Rights as stated in UUD 45 Articles 25A, 32, and 33 because e-commerce is closely related to Manufacturing Rights, Patents and Brands. Apart from that, the government's contribution is really needed to encourage the acceleration and development of electronic-based business. Regulations regarding e-commerce must not deny taxation, customer protection, human resources, communications network infrastructure, equipment and cyber security.

### 3.4 E-Court

This part focus on e-court in Constitutional Court of Indonesia. Advances in technology including the growing use of cloud computing by individuals, agencies, and organizations to conduct operations and store and process records are allowing collection and use of personal data by state and federal governments for various purposes (Cate & Cate, 2012). Legal consequences, including in the context of what rights you are entitled to personal data. Moreover, personal data from the perspective of the Indonesian constitution can be identified by looking at the legal-historical aspect in the discussion amendments to UUD 1945, in particular in Article 28G. In the legal and historical understanding, combined with the interpretation of personal data in statutory law, it is possible to obtain a legal structure qualifying personal data as part of personal protection. *Mutatis mutandis*, personal data must be interpreted as part of a human being (Rahman & Wicaksono, 2021).

In its development, the Constitutional Court, which was born from the womb of reform, attempted to convince the public that this court was different from the court that had previously existed, namely the Supreme Court. This can be seen from the Constitutional Court's efforts in building a new court culture and management with an emphasis on quality decisions supported by the development of digital technology. The Constitutional Court, which was established in 2003, has finally been able to transform into a court that can not only be trusted because of its substantive and phenomenal decisions, but furthermore presents an e-court in society so that Indonesian people from Sabang to Merauke can easily access the Constitutional Court without having to come to Jakarta. This ultimately became the main trigger for the presence of collective constitutional awareness in society so that it could build a culture of constitutional awareness.

The e-court can be accessed by all 260 million Indonesians. just by using the smartphone they have and without spending money on litigation. The serious efforts made by the Constitutional Court to create a digital court system have really provided easy access for the public in carrying out various constitutional lawsuits by utilizing digital technology. This is an extraordinary innovation which should also be imitated by other state institutions in Indonesia because in the era of digital technology it should be implemented as a whole, including being an inseparable part of the court institution in an effort to create a court that is not only friendly to the community but it is also fair, transparent and accountable so that this will automatically increase public trust in judicial institutions (Adhani, 2021).

The era of digital technology, which is currently part of world progress, is something that all of us as a global society must always anticipate. Nowadays, through digital technology, everyone can access anything just via their smartphone and it is as if the world is in the palm of our hands. The current rapid digital world means that all parties must be willing to change, get involved, adapt and innovate with technology. The court as a public servant must of course also be able to adapt to technological developments because the people served by the court also use technology. The use of technology in the world of justice is a necessity so that people as justice seekers experience ease in accessing the courts.

Hopefully the Constitutional Court as the only court institution that protects the constitution, protects the constitutional rights of citizens and protects democracy can continue to consistently be an institution that continues to innovate with technology and continues to maintain public trust with fair, high-quality and substantive decisions. The progressing technological development definitely has an impact on the conduct of criminal proceedings, in particular on the scope and type of evidence invoked in individual cases. In the era of changes in procedural measures used by law enforcement agencies, it seems that the role of constitutional courts will continue to grow (Marcia, 2022).

### 3.5 E-Government

Public service reform and innovation aims to make public services transparent, accountable and deliver quality services so that people can enjoy access and ease of access to services in their daily lives. Service innovation is a specific tool by which public service officials think differently and deliberately implement ideas to take advantage of opportunities to improve public services, efficiency and transparency for many people. . It also involves continuous learning, testing and retesting, and the ability to act. It requires a broad perspective from generating ideas to building strategies for successful implementation, understanding the context, stakeholders and assessing risks during the reform process. In other words, it requires thorough thinking and understanding of the nature of service innovation and reform. The basis of new works and reforms are; understand the context, understand the stakeholders, identify the real barriers (system or operation) (Khanal & Pokharel, 2022).

Legislation, human resources, institutions and legal culture must be able to support the goals of the nation and state in transformation on a global, regional and national scale by producing legal products that are in accordance with the ideals of an independent, sovereign nation, both in the political, economic and social fields in the global arena (Sinaga & Atmoko, 2023). Digital transformation as a form of technological and information advancement should be an opportunity to realize good governance that leads to the development of digital democracy. Digital democracy can be interpreted that the government must be able to provide various platforms for the community to engage in dialogue by facilitating openness of opinion and community involvement in the democratic process.

The constitutional challenges in e-government are presented with the government having to try to change the operational standards of public services. Indonesian e-government policies are still not yet centralized and partial according to the laws that apply in their respective regions. To date, there is no clear Indonesian government policy mandating e-government to control problems such as mitigation and environment. There is a need for policies that can manage and respond to various problems in order to create benefits for society. Therefore, effective implementation of

policies and guarantee of public support can be achieved, while accountability and transparency must be adhered to for good governance and public services (Firmandayu & Elfaki, 2023).

#### 4. Conclusion

The result of human creations and innovations amidst the development of digital technology in Indonesia can be seen through some samples that each of them carries constitutional challenges. Artificial intelligence can put democracy in danger democracy must be understood along the extraordinary power concentration in the hands of constitution. And rule of law and human rights can only be designed by the constitution. Constitution must be able to ensure that democracy can use the potential applications of blockchain technology to gain public trust and ensure freedom of expression. Regulations regarding e-commerce must use UUD 1945 Articles 25A, 32, and 33 as the main rule because e-commerce is closely related to Manufacturing Rights, Patents and Brands. Constitutional Court creates an innovation with technology and continues to maintain public trust with its e-court system. And there is still no regulations and policy for e-government to control problems such as mitigation and environment.

#### Acknowledgement

The authors would like to express their gratitude to the Universitas Muria Kudus for their support in providing both facilities and financial assistance for this research.

#### Conflict of Interest

The authors declare no conflicts of interest.

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