

Digital Constitutionalism: A Pancasila Framework in the Era of Artificial Intelligence

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Abstract

The advent of artificial intelligence (AI) has fundamentally shifted the locus of power from sovereign states to opaque private algorithms, precipitating a critical need for robust digital constitutionalism. However, contemporary global AI governance is overwhelmingly dominated by Western paradigms—namely, the European rights-and-risk-based model and the US market-driven approach. While historically significant, these Eurocentric frameworks operate on hyper-individualistic epistemologies that prove structurally inadequate when transplanted to the Global South. They frequently fail to mitigate collective vulnerabilities, structural algorithmic bias, and the monopolistic extraction of data inherent in platform capitalism. Employing doctrinal legal research with conceptual and comparative constitutional methodologies, this article decolonizes the AI governance discourse by proposing *Pancasila*—Indonesia’s state philosophy—as a Communitarian-Religious Constitutional Framework. The study demonstrates that Pancasila transcends the limitations of secular-liberal models by synthesizing transcendental ethics, relational human dignity, democratic cohesion, and distributive justice. Specifically, the paper operationalizes the Indonesian Constitution to

articulate a dual-pronged legal response: enforcing the Second Principle to combat structural algorithmic discrimination through substantive equality, and the Fifth Principle to dismantle Big Tech oligarchies via a constitutional economy. Ultimately, this research conceptualizes "Algorithmic Welfare Constitutionalism." It offers not merely a localized ideological critique, but a transformative normative grammar for post-colonial and developing nations, ensuring that algorithmic power remains unequivocally subservient to human dignity, collective solidarity, and equitable digital sovereignty.

Keywords *Digital Constitutionalism, Artificial Intelligence, Pancasila, Algorithmic Bias, Big Tech Monopoly.*

A. Introduction

The evolution of human civilization is inextricably linked to the historical dialectic of how law responds to, tames, and circumscribes power.¹ Adhering to the classical adage *ubi societas ibi ius* (where there is society, there is law), the constellation of constitutional law continuously transforms in tandem with the shifting epicenters of political and economic power.² Historically, the trajectory of constitutionalism has undergone fundamental mutations: originating from classical constitutionalism, designed to restrain the arbitrariness of absolute monarchies; evolving toward welfare constitutionalism in the twentieth century to mitigate the exploitations of industrial capitalism; and culminating in the present-day urgency of digital constitutionalism.³ In the third decade of the twenty-first century, power is no longer monopolized solely by sovereign state actors but has become distributed—and paradoxically centralized—within a handful of giant

¹ Nicholas Aroney, *The Constitution of a Federal Commonwealth: The Making and Meaning of the Australian Constitution*, in *The Constitution of a Federal Commonwealth: The Making and Meaning of the Australian Constitution* (2009), <https://doi.org/10.1017/CBO9780511609671>.

² Edoardo Celeste, "Digital Constitutionalism: A New Systematic Theorisation," *International Review of Law, Computers and Technology* 33, no. 1 (2019), <https://doi.org/10.1080/13600869.2019.1562604>.

³ Victo José da Silva Neto, "Platform Capitalism," *Revista Brasileira de Inovação* 18, no. 2 (2019), <https://doi.org/10.20396/rbi.v18i2.8654960>.

technology corporations (Big Tech) in the Global North.⁴ The transition from industrial capitalism to platform capitalism, now reaching its zenith in algorithmic capitalism, has positioned Artificial Intelligence (AI) infrastructure not merely as a technical instrument, but as a new sovereign entity exercising algorithmic governance.⁵ The capacity of algorithms to profile, predict, and engineer human behavior in real-time substantiates Lawrence Lessig's thesis that "Code is Law"—asserting that computer code now dictates social order with a binding force that rivals, or even eclipses, the positive law of the state.⁶

Sociologically and empirically, contemporary reality demonstrates that the disruption of AI governance does not operate within a neutral vacuum. The global explosion of generative AI has birthed a new form of power asymmetry that functions beyond the reach of traditional checks and balances. Behind the utopian narrative of technological efficiency, the global digital landscape is marred by destructive structural pathologies. The international community is witnessing the massive proliferation of the surveillance state and the abuse of facial recognition, which reduce human dignity to mere data points. As elucidated by Shoshana Zuboff, the surveillance capitalism model aggressively extracts private human experience for the sake of limitless capital accumulation.⁷ Furthermore, algorithmic opacity (black-box AI) has triggered a crisis of systemic discrimination, such as AI recruitment bias, which historically marginalizes minorities and women.² In the political sphere, platform monopolies and the manipulation of echo chambers have amplified misinformation and election manipulation, eroding the rationality of public discourse and threatening the foundations of

⁴ Shoshana Zuboff, "The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power," *Yale Law Journal* 129, no. 5 (2020), <https://doi.org/10.26522/brooked.v29i2.849>.

⁵ Dee Southard, "Code and Other Laws of Cyberspace," in *Social Science Computer Review*, vol. 19, no. 1, preprint, 2001, <https://doi.org/10.1177/089443930101900115>.

⁶ Giovanni De Gregorio, "The Rise of Digital Constitutionalism in the European Union," *International Journal of Constitutional Law* 19, no. 1 (2021), <https://doi.org/10.1093/icon/moab001>.

⁷ Zuboff, "The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power."

deliberative democracy.⁸ For the Global South, this burden is multifaceted: extreme digital divides have fostered an absolute dependency on Northern corporate technologies, giving rise to data colonialism, where communal data sovereignty is extracted without proportional economic justice.⁹

In response to this existential crisis of global governance, the international community has begun to shift from merely formulating voluntary ethical guidelines (*soft law*)—such as the UNESCO Recommendation on the Ethics of AI and the OECD AI Principles—toward the design of legally binding regulations (*hard law*). Presently, the architecture of digital constitutionalism is dominated by two hegemonic Western models. First, the United States' market-driven model, which relies on free-market mechanisms (self-regulation) and absolute protections for freedom of expression, a framework that has factually facilitated the emergence of Big Tech oligopolies.¹⁰ Second, the European model, currently lauded as the "gold standard" of global digital legislation through the General Data Protection Regulation (GDPR) and the EU AI Act.¹¹ The European model employs a risk-based approach that strictly regulates AI systems to prevent physical harm and violations of fundamental rights.¹² Through the "Brussels Effect" phenomenon, the normative coercive power of European

⁸ Sandra Wachter, Brent Mittelstadt, and Chris Russell, "Why Fairness Cannot Be Automated: Bridging the Gap between EU Non-Discrimination Law and AI," *Computer Law and Security Review* 41 (2021), <https://doi.org/10.1016/j.clsr.2021.105567>.

⁹ Nick Couldry and Ulises A. Mejias, "Data Colonialism: Rethinking Big Data's Relation to the Contemporary Subject," *Television and New Media* 20, no. 4 (2019), <https://doi.org/10.1177/1527476418796632>.

¹⁰ Peter L. Lindseth, "The Brussels Effect: How the European Union Rules the World," *The American Journal of Comparative Law* 70, no. 3 (2022), <https://doi.org/10.1093/ajcl/avad001>.

¹¹ Margot E. Kaminski and Jennifer M. Urban, "The Right to Contest AI," *Columbia Law Review* 121, no. 7 (2021).

¹² Johanna Chamberlain, "The Risk-Based Approach of the European Union's Proposed Artificial Intelligence Regulation: Some Comments from a Tort Law Perspective," *European Journal of Risk Regulation* 14, no. 1 (2023), <https://doi.org/10.1017/err.2022.38>.

regulation dictates that countries worldwide emulate this legal framework to remain integrated within the global digital supply chain.¹³

Although the EU AI Act offers a sophisticated risk categorization system, a global literature review reveals a fatal theoretical research gap. Current mainstream AI governance discourse operates upon an epistemological framework that is overly Eurocentric, characterized by a secular-liberal bias, and fundamentally hyper-individualistic.¹⁴ The Western approach conceptualizes legal protection in the digital era purely as the safeguarding of individual autonomy—such as the right to privacy and the right to explanation—against corporations or the state. While this framework is rooted in international human rights law, such as Article 17 of the International Covenant on Civil and Political Rights (ICCPR) concerning privacy, it remains conceptually blind toward communal justice.¹⁵ When this individualistic framework is forcibly exported to the Global South, it faces the serious threat of legal transplant failure. The Western model has proven insufficient for addressing structural inequality, as Asian and African nations face challenges that transcend mere individual privacy; they confront threats of communal social disintegration, algorithmic poverty, and collective exploitation. Western digital constitutionalism fails to integrate distributive justice and religious morality into its technological architecture.¹⁶

Departing from these Western epistemological limitations, this article intends to perform a theoretical decolonization by offering an alternative foundation from the Global South. Specifically, it proposes “*Pancasila as a Communitarian-Religious Constitutional Framework for AI governance*”. Born from the historical dialectics of the Investigatory

¹³ Gavin Sullivan and Dimitri Van Den Meerssche, “An Infrastructural Brussels Effect: The Translation of EU Law into the UK’s Digital Borders,” *Computer Law and Security Review* 55 (2024), <https://doi.org/10.1016/j.clsr.2024.106057>.

¹⁴ Arun Chinmayi, “AI and the Global South: Designing for Other Worlds,” *Oxford Handbook of Ethics in AI* 2019, no. 2015 (2020).

¹⁵ Rahul Bharati, “The Right to Privacy in the Age of Artificial Intelligence: Challenges and Legal Frameworks,” *SSRN Electronic Journal*, ahead of print, 2024, <https://doi.org/10.2139/ssrn.4908340>.

¹⁶ Reut Yael Paz, “Legalizing Antisemitism? The Legacy of Savigny’s Roman(Tic) Law,” in *Christianity and International Law: AN INTRODUCTION* (2021), <https://doi.org/10.1017/9781108565646.009>.

Committee for Preparatory Work for Independence (BPUPKI) on June 1 and ratified on August 18, 1945, Pancasila was not designed merely as a political instrument, but as a *philosophische grondslag* or *weltanschauung* (philosophical basis/worldview) possessing a coherent legal ontology.¹⁷ Distinct from the liberal model, Pancasila is anchored in Soepomo's concept of the integralistic state, which envisions the state, the individual, and society as an organic unity prioritizing the principle of kinship (*kekeluargaan*) and a balance between material and spiritual well-being.¹⁷ Through Notonagoro's systematic perspective, Pancasila constitutes a hierarchical-pyramidal philosophical system, wherein the protection of human rights and democracy must inherently be imbued with transcendental ethics and culminate in structural justice.¹⁸ In this context, Pancasila transforms digital autonomy from a mere "right to be let alone" into an ethical responsibility toward communal harmony.¹⁹

Juridically and dogmatically, this paradigmatic shift is imperatively guaranteed under the *Undang-Undang Dasar Negara Republik Indonesia Tahun 1945* (UUD NRI 1945). As a democratic state based on the rule of law (*demokratische rechtsstaat*)—as conceptualized by Jimly Asshiddiqie—the Indonesian constitution (Article 1, Paragraph 3) restrains not only state apparatuses but also private entities that monopolize the public sphere.²⁰ Protection against facial recognition exploitation and digital surveillance is constructed as a manifestation of Article 28G, Paragraph (1) concerning the protection of human dignity and honor. The threat of algorithmic bias that discriminates against the working class and minorities is not merely a privacy violation but a breach of the guarantee for fair treatment in labor relations under Article 28D, Paragraph (2). Furthermore, the primary weakness of the

¹⁷ Ahmad Muhammad Mustain Nasoha et al., "Sumber Historis Pancasila Sebagai Sumber Sosiologis Pancasila," *Konsensus: Jurnal Ilmu Pertahanan, Hukum Dan Ilmu Komunikasi* 1, no. 6 (2024), <https://doi.org/10.62383/konsensus.v1i6.440>.

¹⁸ Miska M. Amien, "Causa Materialis Pancasila Menurut Notonagoro," *Jurnal Filsafat* 39, no. 1 (2006).

¹⁹ Megawati Soekarnoputri, "The Establishment Of Pancasila As The Grounding Principles Of Indonesia," *Jurnal Pertahanan: Media Informasi Ttg Kajian & Strategi Pertahanan Yang Mengedepankan Identity, Nasionalism & Integrity* 7, no. 1 (2021), <https://doi.org/10.33172/jp.v7i1.1206>.

²⁰ Mohammad Hatta, *The Co-Operative Movement in Indonesia*, in *The Co-Operative Movement in Indonesia* (2019), <https://doi.org/10.7591/9781501743450>.

EU AI Act in addressing platform monopolies is addressed by Indonesia's economic constitution through Article 33 of the UUD 1945. Rooted in Mohammad Hatta's vision of economic democracy, Article 33, Paragraphs (2) and (3) provide the foundation that "production branches important to the state" and "natural resources"—which in the modern era manifest as commercial AI infrastructure and citizens' big data—must not be surrendered to exploitative free-market mechanisms but must be controlled by the state for the *sebesar-besar kemakmuran rakyat* (the greatest prosperity of the people).²¹

The implementation of AI governance through this Pancasila framework aligns with the theory of "Progressive Law" (*Hukum Progresif*) formulated by Satjipto Rahardjo, which asserts that "law is for humans, not humans for the law".²² In the AI era, technology and algorithms must be compelled to serve the holistic well-being of humanity, rather than the reverse. Mahfud MD consistently emphasizes that the national legal policy (*politik hukum*) must be emancipatory and protective of marginalized groups (*the marginalized*).²³ Consequently, AI law must not function merely as an elitist instrument to protect industrial innovation; rather, it must serve as a tool for structural liberation.²⁴

This research possesses paramount academic urgency and offers a comprehensive multi-faceted contribution. Theoretically, it addresses global literature gaps by introducing post-secular and communitarian paradigms that dismantle the monolithic dominance of Western digital constitutionalism discourse. Doctrinally and in terms of comparative constitutional value, this article proposes a dogmatic governance structure that is not only pertinent to Indonesia but also provides a crucial precedent for nations across Asia, Africa, and Latin America

²¹ Asshiddiqie Jimly, *The Constitutional Law of Indonesia: A Comprehensive Overview*. (Selangor : Sweet & Maxwell Asia : Thomson Reuters St. Paul, Minn. : West Group, 2009).

²² Satjipto Rahardjo, "Hukum Progresif: Sebuah Sintesa Hukum Indonesia," *Yogyakarta: Genta Publishing*. 1, no. 1 (2010).

²³ Mahfud MD., *Membangun Politik Menegakkan Konstitusi*, in *Menegakkan Konstitusi*, Jakarta, *Rajawali Pers* (2010).

²⁴ Vincentius Patria Setyawan, "The Relevance of Progressive Law in Legal Reasoning in Indonesia," *Nolan-Noblesse Oblige Law Journal* 2, no. 1 (2025).

grappling with similar technological disparities.²⁵ Practically, regarding policy relevance, this article formulates a framework for policymakers and justices of the *Mahkamah Konstitusi* to design national legal instruments that avoid the pitfalls of "copy-paste" European regulations, aiming instead to create AI laws rooted in substantive justice.²⁶

To unravel the aforementioned theoretical and juridical complexities, this article is directed toward addressing two primary research questions. First, to what extent do Western digital constitutionalism models—specifically the EU AI Act and the US market model—experience philosophical limitations and structural deficits in responding to the realities of algorithmic capitalism in the Global South? Second, how can the philosophical and juridical values of Pancasila be reconceptualized as an operational constitutional framework for AI governance (Communitarian-Religious Framework) to mitigate algorithmic bias and intervene in Big Tech monopolies?²⁷ Based on a critical review and the construction of these problems, this article maintains a central thesis: that the dominance of Western digital constitutionalism models, rooted in hyper-individualism and secular liberalism, is inherently inadequate for addressing the complexities of algorithmic exploitation in the Global South.²⁸ Consequently, Pancasila offers a resilient and progressive alternative constitutional framework—through a communitarian-religious approach—that holistically balances individual autonomy with the demands of public morality, social solidarity, and distributive justice in taming the hegemony of artificial intelligence power.²⁹

²⁵ Mark C. Suchman and Elizabeth Mertz, "Toward a New Legal Empiricism: Empirical Legal Studies and New Legal Realism," *Annual Review of Law and Social Science* 6 (2010), <https://doi.org/10.1146/annurev.lawsocsci.093008.131617>.

²⁶ Terry Hutchinson and Nigel Duncan, "Defining and Describing What We Do: Doctrinal Legal Research," *Deakin Law Review* 17, no. 1 (2012), <https://doi.org/10.21153/dlr2012vol17no1art70>.

²⁷ Celeste, "Digital Constitutionalism: A New Systematic Theorisation."

²⁸ James Dawes, "The Future of Human Rights," *Journal of Human Rights* 23, no. 3 (2024), <https://doi.org/10.1080/14754835.2024.2364871>.

²⁹ Shidarta Shidarta, "Bernard Arief Sidharta: Dari Pengembangan Hukum Teoretis Ke Pembentukan Ilmu Hukum Nasional Indonesia," *Undang: Jurnal Hukum* 3, no. 2 (2020), <https://doi.org/10.22437/ujh.3.2.441-476>.

B. Crisis of Western Digital Constitutionalism in the Global South

The global governance of Artificial Intelligence (AI) currently operates within an inherently asymmetrical epistemological and jurisprudential architecture. As the concept of digital constitutionalism transforms from a mere theoretical notion into a positive regulatory regime, the international legal landscape is practically dominated by two hegemonic models from the Global North. First, the European model, which is anchored in a rights-and-risk-based approach and firmly manifested through the General Data Protection Regulation (GDPR) and the latest instrument, the EU AI Act.³⁰ Second, the United States model, propelled by a market-driven logic, relies on industry self-regulation and competition-based innovation, bolstered by absolute protections for freedom of expression. Both models—whether oriented toward state intervention (Europe) or market liberty (US)—have become the global benchmarks for AI governance.³¹ The normative coercive power of the European model, often referred to as the *Brussels Effect*, has de facto dictated digital legislative standards worldwide, compelling developing nations to harmonize their laws to remain integrated within the global digital economic ecosystem.³²

Objectively, it is undeniable that Western digital constitutionalism models have made monumental historical and dogmatic contributions to modern legal civilization. A *fair recognition* must be granted to the European legal framework, which has stood at the forefront of curbing technological exploitation. The GDPR, for instance, has become a "Magna Carta" for personal data protection, providing a robust operational foundation for the fulfillment of Article 8 of the *EU Charter of Fundamental Rights* (Right to the Protection of Personal Data).³³

³⁰ Kaminski and Urban, "The Right to Contest AI."

³¹ Edoardo Celeste, *Digital Constitutionalism: The Role of Internet Bills of Rights*, in *Digital Constitutionalism: The Role of Internet Bills of Rights* (2022), <https://doi.org/10.4324/9781003256908>.

³² Anu Bradford, "Exporting Standards: The Externalization of the EU's Regulatory Power via Markets," *International Review of Law and Economics* 42 (2012), <https://doi.org/10.1016/j.irl.2014.09.004>.

³³ Paul Voigt and Axel Von dem Bussche, *The EU General Data Protection Regulation (GDPR): A Practical Guide*, in *The EU General Data Protection Regulation (GDPR): A Practical Guide* (2017), <https://doi.org/10.1007/978-3-319-57959-7>.

Furthermore, the enactment of the *EU AI Act* serves as a milestone as the world's first comprehensive AI regulation that successfully conceptualizes a risk pyramid—ranging from prohibited AI systems (*unacceptable risk*) and *high-risk* systems to those with low risk.³⁴ On the other hand, the United States model, notwithstanding various critiques, has fostered an innovation ecosystem that facilitated the explosion of generative AI (as pioneered by OpenAI and Anthropic), propelling human technological advancement at an unprecedented rate. Western *soft law* initiatives, such as the *OECD AI Principles* and the *UNESCO Recommendation on the Ethics of AI*, have also laid a universal ethical foundation concerning transparency, accountability, and the *human-in-the-loop* principle.³⁵

However, behind these monumental contributions, the architecture of Western digital constitutionalism harbors a serious crisis of relevance and a normative deficit when projected onto the socio-cultural and economic-political realities of developing nations (Global South). The first fundamental crisis is rooted in an ontological problem: *hyper-individualism*. Western legal epistemology is constructed upon the foundations of secular-liberal philosophy, which highly exalts individual autonomy (Kantian) and private property rights (Lockean). Consequently, legal instruments such as the GDPR and Western AI governance conceptualize justice purely as a transactional relationship between the individual (as data subject/consumer) and the platform corporation (as data controller).³⁶ The primary protection mechanism is reduced to a regime of *notice and consent* and the right to individual

³⁴ Rostam J. Neuwirth, "Prohibited Artificial Intelligence Practices in the Proposed EU Artificial Intelligence Act (AIA)," *Computer Law and Security Review* 48 (2023), <https://doi.org/10.1016/j.clsr.2023.105798>.

³⁵ Cameron Stewart, Stephen K. Y. Wong, and Joseph J. Y. Sung, "Mapping Ethico-Legal Principles for the Use of Artificial Intelligence in Gastroenterology," in *Journal of Gastroenterology and Hepatology (Australia)*, vol. 36, no. 5, preprint, 2021, <https://doi.org/10.1111/jgh.15521>.

³⁶ Kieran Tranter, *Living in Technical Legality: Science Fiction and Law as Technology*, in *Living in Technical Legality: Science Fiction and Law as Technology* (2018), <https://doi.org/10.1080/1535685x.2019.1635357>.

privacy, which finds its roots in international norms such as Article 17 of the *International Covenant on Civil and Political Rights* (ICCPR).³⁷

This hyper-individualistic approach fails to decipher the anatomy of contemporary AI threats, whose damage characteristics are predominantly communal (*communal harms*) and ensnare vulnerable groups (*collective vulnerability*). AI algorithms do not operate purely at the individual level; they execute classification, ranking, and discrimination in aggregate against specific demographic clusters. Cases of algorithmic hiring bias or predictive policing frequently do not target individuals specifically, but rather systemically exclude women, racial minorities, or low-income groups collectively.³⁸ When the harms inflicted by AI are structural and communal, demanding that citizens in developing nations counter *Big Tech* dominance solely through individual privacy claim instruments constitutes a procedural illusion. Autonomous freedom loses its essence in the face of *consent fatigue*, where individuals are ultimately forced to surrender their data due to the absence of alternative platform choices.

The second crisis manifests as a *legal transplant failure*. The European model emerged from the womb of societies with established welfare state institutions, robust Data Protection Authorities, high digital literacy, and a balanced bargaining position between citizens and corporations. These conditions stand in stark contrast to the empirical realities in *Global South* nations such as Indonesia, India, or African states. In the Global South, the transplantation of *EU AI Act* standards—laden with bureaucratic burdens and technical audits—triggers a *regulatory mismatch*.³⁹ Implementing rigid Western compliance standards in developing countries often stifles local innovation ecosystems, while tech giants can effortlessly absorb the compliance costs. Furthermore, amidst weak enforcement and limited access to justice, European-style adoption laws frequently remain mere "paper

³⁷ Sylvia Lu, "Data Privacy, Human Rights, and Algorithmic Opacity," *California Law Review* 110, no. 6 (2022), <https://doi.org/10.15779/Z38804XM07>.

³⁸ Sandra Wachter, "The Theory of Artificial Immutability: Protecting Algorithmic Groups under Anti-Discrimination Law," *SSRN Electronic Journal*, ahead of print, 2022, <https://doi.org/10.2139/ssrn.4099100>.

³⁹ O. Kahn-Freund, "On Uses And Misuses Of Comparative Law," *The Modern Law Review* 37, no. 1 (1974), <https://doi.org/10.1111/j.1468-2230.1974.tb02366.x>.

tigers." Western digital constitutionalism fails to integrate solutions for digital poverty and structural inequality, which are primary concerns in developing nations.

This structural limitation, in turn, perpetuates a third crisis: data colonialism and technological dependency. Rather than democratizing power, the global AI architecture—unintervened by distributive justice—has given rise to digital extractivism. Within the current asymmetrical governance, societies in the *Global South* are reduced to being free "data mines" used to train Large Language Models (LLMs) owned by Northern corporations, while the economic value-add flows entirely to Silicon Valley or other technological powerhouses.⁴⁰ When Southern nations rely heavily on foreign cloud computing infrastructure and imported AI services, they experience a technological sovereignty crisis. The Western constitutional model, which focuses narrowly on technical risk mitigation, tends to be blind to these macro-economic injustices. It regulates how platforms must secure data but fails to provide a constitutional framework for how the wealth generated from communal data should be redistributed for the sake of social justice.⁴¹ Platform imperialism operates freely behind the shield of business freedom and innovation.

Beyond the economic dimension, the normative deficit of the Western model is clearly evident in its failure to mitigate acute socio-political risks within transitional democracies. The sociological landscape of the Global South is characterized by ethnic and religious pluralities susceptible to social friction. When *Big Tech* algorithms are designed monopolistically to trigger an *attention economy* by amplifying emotional content, the result is an *algorithmic polarization* that erodes social cohesion.⁴² The wave of misinformation and election manipulation facilitated by deepfakes and AI micro-targeting campaigns has palpably threatened democracy in developing nations. More

⁴⁰ Couldry and Mejias, "Data Colonialism: Rethinking Big Data's Relation to the Contemporary Subject."

⁴¹ Shoshana Zuboff, "Surveillance Capitalism or Democracy? The Death Match of Institutional Orders and the Politics of Knowledge in Our Information Civilization," *Organization Theory* 3, no. 3 (2022), <https://doi.org/10.1177/26317877221129290>.

⁴² Ronald J. Deibert, "The Road to Digital Unfreedom: Three Painful Truths About Social Media," *Journal of Democracy* 30, no. 1 (2019).

disturbingly, the absence of robust communitarian-ethical boundaries has fostered the practice of the *surveillance state*, where facial recognition technology—imported from abroad—is implemented by state apparatuses to stifle civil liberties, often legitimized under the pretext of national security.⁴³ Meanwhile, the issue of AI-driven labor displacement in developing nations is left without a communal social safety net, as Western legal doctrine regards labor issues merely as ordinary private contractual matters.

As a synthesis of the aforementioned analytical review, a doctrinal conclusion can be drawn that the crisis of Western digital constitutionalism in the Global South is not caused by the incompetence of the *EU AI Act* or the flaws of US innovation, but rather by the model's ontological limitations. The Western approach has proven inherently insufficient to resolve the structural pathologies of *algorithmic governance*, as it remains overly Eurocentric, secular, and blind to communal distributive justice.⁴⁴ This condition imperatively opens a theoretical discursive space for an alternative constitutional paradigm. The global order requires a new model of digital constitutionalism that does not merely focus on negative autonomy, but one that is deeply rooted in communitarian values, oriented toward collective human dignity, demands distributive responsibility, and is culturally relevant to the sociological realities of the Global South. It is precisely the need for this post-secular constitutional framework that epistemologically necessitates a re-examination and reconstruction of *Pancasila*—not merely as the foundation of the Indonesian state, but as a *Communitarian-Religious Constitutional Framework* that holds the potential to serve as an answer to the global Artificial Intelligence governance crisis.⁴⁵

C. Pancasila as a Communitarian-Religious Constitutional Framework for AI Governance

⁴³ Evan Malmgren, “Resisting ‘Big Other’: What Will It Take to Defeat Surveillance Capitalism?,” *New Labor Forum* 28, no. 3 (2019), <https://doi.org/10.1177/1095796019864097>.

⁴⁴ Guzel Aznagulova, Dmitry Pashentsev, and Yulia Kashevarova, “The Idea of Human Rights: From the Ancient World to the Digital Age,” *Wisdom* 1, no. 1 Special issue 1 (2021), <https://doi.org/10.24234/WISDOM.V1I1.663>.

⁴⁵ Asshiddiqie Jimly, *The Constitutional Law of Indonesia: A Comprehensive Overview*.

As analyzed in the preceding section, the crisis of Western digital constitutionalism stems from the illusion that massive algorithmic power can be tamed solely through individual privacy instruments, technical transparency, market efficiency, and competition law. While the Western model rests essentially upon the doctrine of *notice and consent* and secular neutrality, it fails to recognize that in the era of Artificial Intelligence (AI), power no longer merely dictates physical actions but instead engineers human cognition and existential autonomy. Such pervasive algorithmic power cannot be sufficiently circumscribed by market regulations or consumer rights claims alone. Future AI governance imperatively requires a robust *constitutional morality*—a framework that transcends negative autonomy and moves toward what may be termed *post-liberal governance*.⁴⁶ It is here that global governance necessitates a paradigmatic shift, moving from a purely private-rights-centered approach to one that integrates social obligations, public morality, and distributive justice.⁴⁷ To resolve this structural deadlock, this article proposes the theoretical thesis that *Pancasila*—the fundamental norm of the Indonesian state—is not merely a local ideological identity but can and must be reconstructed as a modern *Communitarian-Religious Constitutional Framework* to recalibrate global AI governance, particularly for pluralistic societies in the Global South.

To establish *Pancasila* as a digital constitutional ontology, theoretical understanding must be traced back to the historical dialectics of its formulation. Born from the intellectual struggles within the *Badan Penyelidik Usaha-Usaha Persiapan Kemerdekaan Indonesia* (BPUPKI), *Pancasila* was formulated not as reactionary dogma, but as a masterpiece of political philosophy. In his monumental speech on June 1, 1945, Soekarno formulated *Pancasila* as the *philosophische grondslag* (philosophical foundation) and *Weltanschauung* (worldview) that fundamentally rejected Western-style radical individualism as well as

⁴⁶ Joel Feinberg, “Autonomy , Sovereignty , and Privacy : Moral Ideals in the Constitution ?,” *Notre Dame Law Review* 58 (1983).

⁴⁷ Beau Breslin, *From Words to Worlds: Exploring Constitutional Functionality*, in *From Words to Worlds: Exploring Constitutional Functionality* (2009), <https://doi.org/10.5860/choice.47-1693>.

state totalitarianism.⁴⁸ This synthesis was reinforced by Mohammad Hatta, who instilled a vision of economic democracy based on the principle of *kekeluargaan* (kinship), and Soepomo, who conceptualized the "integralistic state"—an idea where the state, the individual, and society constitute an organic unity that does not stand in antagonistic opposition to one another.

In a dogmatic-juridical sense, upon its incorporation into the Preamble of the *UUD 1945* on August 18, 1945, *Pancasila* transformed into the *staatsfundamentálnorm* (fundamental norm of the state) or *Grundnorm* (basic norm) within the Kelsenian legal hierarchy.⁴⁹ The Indonesian legal philosopher, Notonagoro, brilliantly conceptualized *Pancasila* as a hierarchical-pyramidal philosophical system, where the five principles organically animate one another (*mutually inclusive*).⁵⁰ Jimly Asshiddiqie expanded this relevance into modern discourse by positioning *Pancasila* as the soul of the Indonesian *demokratische rechtsstaat* (democratic state based on the rule of law).⁵¹ In the context of digital constitutionalism, this integralistic and communitarian character finds its most radical relevance: it provides the philosophical foundation that cyberspace and AI architecture must not be left as a Hobbesian arena where Big Tech corporations prey upon citizens (*homo homini lupus*), but must instead be constructed as a communal space bound by ethical obligations, solidarity, and the objective of collective welfare.⁵²

Conceptually, the superiority of the *Pancasila* framework lies in its ability to unify four fundamental dimensions that have hitherto been fragmented or reduced within Western AI governance models. These

⁴⁸ Fan Fan Firgiawan, Asiyono Sidik, and Ahmad Lukman Nugraha, "Philosophy of Pancasila: A Paradigm of the Meaning and Pancasila's Concept," *International Journal of Civic and Pancasila Studies* 1, no. 1 (2023).

⁴⁹ Hans Kelsen, "On The Pure Theory of Law," *Israel Law Review* 1, no. 1 (1966), <https://doi.org/10.1017/s0021223700013595>.

⁵⁰ Cesilia Fransiska H Rajagukguk, Dian Novita Ayudea, and Encik Mutia Rama Ananda, "Eksistensi Pancasila Sebagai Dasar Negara Indonesia," *Jurnal Bintang Pendidikan Indonesia* 2, no. 3 (2024), <https://doi.org/10.55606/jubpi.v2i3.3070>.

⁵¹ Asshiddiqie Jimly, *The Constitutional Law of Indonesia: A Comprehensive Overview*.

⁵² Johanna Ahola-Launonen, "Humanity and Social Responsibility, Solidarity, and Social Rights," *Cambridge Quarterly of Healthcare Ethics* 25, no. 2 (2016), <https://doi.org/10.1017/S0963180115000481>.

four dimensions substitute the structural weaknesses of the liberal model with a comprehensive equilibrium of values:

1. The Divine Dimension (Sila Pertama-Ketuhanan Yang Maha Esa): The Ethical Limits of AI

While the Western model rests on secular neutrality—often assuming technology as a neutral mathematical instrument measured only by technical parameters or physical risks—*Pancasila* introduces *transcendental boundaries*. The value of *Ketuhanan* (universal religiosity) provides an epistemological foundation asserting that the creation and utilization of AI must be subject to supreme morality.⁵³ Technology does not operate in an ethical vacuum. Amidst the threat of *post-human absolutism*—where radical technocrats envision that AI, through Artificial General Intelligence (AGI), will transcend and replace the existential role of humans—the first *Sila* establishes a firm demarcation against dehumanization.⁵⁴ AI must be positioned solely as a tool to glorify creation, not as a "new god" dictating human eschatological fate and morality. This religious value justifies absolute "red lines" against AI development aimed at manipulating free will or degrading the spiritual essence of humanity.

2. The Humanitarian Dimension (Second Sila-Kemanusiaan yang Adil dan Beradab): Human Dignity, Anti-Bias, and Relational Rights

The principle of *Kemanusiaan yang Adil dan Beradab* (Just and Civilized Humanity) transforms data protection discourse from mere "privacy rights" into "human dignity."⁵⁵ Distinct from liberal individualism, which views data subjects as solitary atoms, the

⁵³ Arie Purnomosidi, "Transcendental Paradigm In Pancasila," *Journal of Transcendental Law* 1, no. 2 (2019), <https://doi.org/10.23917/jtl.v1i2.9414>.

⁵⁴ Stevri P. N. I. Lumintang, "A Just and Civilised Humanity: An Integrative Model between Reformed Theology and the Ideology of Pancasila," *HTS Teologiese Studies / Theological Studies* 77, no. 4 (2021), <https://doi.org/10.4102/hts.v77i4.7041>.

⁵⁵ Achmad Irwan Hamzani, Dwi Edi Wibowo, and Sami'an Sami'an, "Reconstructing Justice Through Legal Semiotics and Postcolonial Pluralism: Toward a Pancasila-Based Restorative Paradigm in Indonesia," *International Journal for the Semiotics of Law*, ahead of print, 2025, <https://doi.org/10.1007/s11196-025-10380-y>.

humanitarian values of *Pancasila* embrace the concept of *relational rights*.⁵⁶ This implies that violations caused by algorithmic bias—whether in labor recruitment, criminal justice systems (*predictive policing*), or credit scoring—are not merely technical miscalculations or contractual privacy disputes, but a direct assault on universal human dignity. This *Sila* provides the philosophical basis for the doctrine of *fairness beyond efficiency*. Within this framework, an AI system that is efficient yet perpetuates racial, gender, or social class discrimination in the Global South is constitutionally unjust and uncivilized, necessitating a prohibition or a structural algorithmic overhaul to achieve *substantive equality*.

3. The Dimensions of Unity and Democracy (Third and Fourth Sila- Persatuan Indonesia and Kerakyatan yang Dipimpin oleh Hikmat Kebijaksanaan dalam Permusyawaratan/Perwakilan): Democratic Digital Order

Western governance models, through the shield of the First Amendment (in the US) and the *safe harbor* doctrine, have failed to prevent *Big Tech* from tearing the social cohesion of society for the sake of the *attention economy*.⁵⁷ Here, the values of *Persatuan* (Unity) and *Kerakyatan* (Democracy) respond to such pathologies. Democracy, through the lens of *Pancasila*, requires a rational deliberative public sphere (aligning with Habermasian prerequisites) founded on *civic wisdom*.⁵⁸ Consequently, algorithmic manipulations that systematically produce disinformation, facilitate echo chambers, and design algorithmic polarization during elections are constitutional crimes against popular sovereignty.⁵⁹ This framework provides legitimacy for

⁵⁶ Santy Santy, “Exploring the Intersection of Pancasila and Human Rights in Indonesian Law,” *Sinergi International Journal of Education* 2, no. 2 (2024), <https://doi.org/10.61194/education.v2i2.142>.

⁵⁷ M. S. Kende, “Social Media, the First Amendment, and Democratic Dysfunction in the Trump Era,” *Drake L. Rev.* 68 (2020).

⁵⁸ Iskandarsyah Siregar, “Phenomenological Views of Pancasila Perspectives about Democracy,” *Polit Journal Scientific Journal of Politics* 3, no. 3 (2023), <https://doi.org/10.33258/polit.v3i3.975>.

⁵⁹ Cass R. Sunstein, *#republic: DIVIDED DEMOCRACY IN THE AGE OF SOCIAL MEDIA*, in *#republic: Divided Democracy in The Age of Social Media* (2018), <https://doi.org/10.1111/jcom.12344>.

the state to enforce *algorithmic moderation*, not to curtail freedom of speech, but to defend a *democratic digital order* against the threat of disintegration caused by the radicalization of cyberspace monetized by corporations.

4. The Social Justice Dimension (Fifth Sila- Keadilan Sosial Bagi Seluruh Rakyat Indonesia): Anti-Monopoly and Distributional Justice

This is the sharpest point of departure from the market technocapitalism model. The principle of *Keadilan Sosial bagi Seluruh Rakyat Indonesia* (Social Justice for All Indonesian People) targets the heart of Global South issues: structural digital economic inequality.⁶⁰ While the Western model is preoccupied with technical compliance without questioning the extraordinary *data concentration* held by a few *Big Tech* oligopolies, the *Pancasila* framework positions *distributive justice* as the ultimate goal.⁶¹ *Big Tech* monopolies are not merely a matter of competition law, but a form of *digital colonialism*.⁶² *Pancasila*-based AI governance mandates a *welfare orientation* and a *benefit-sharing AI economy*. Communal data must be treated as *public goods* or *commons*, where its utilization by commercial AI must be accompanied by obligations for economic value redistribution back to society, technology transfer, and protection for displaced labor.

To solidify the dogmatic superiority of the proposed framework, an ontological comparison between Western Digital Constitutionalism and the *Pancasila* Framework can be diametrically synthesized, as visualized in the following comparison:

⁶⁰ Yahya Abdul Habib and Jacobus Jopie Gilalo, "Social Justice Theory in Indonesia Reviewed from the Philosophy of Law," *International Journal of Business, Law, and Education* 6, no. 1 (2025), <https://doi.org/10.56442/ijble.v6i1.995>.

⁶¹ R. Ardian, "John Rawls' Concept of Justice As Fairness and Its Relevance to the Meaning of Pancasila Social Justice," *International Conference On Islamic Community ...*, 2023.

⁶² Beth Coleman, "Human–Machine Communication, Artificial Intelligence, and Issues of Data Colonialism," in *The Sage Handbook of Human–Machine Communication* (2023), <https://doi.org/10.4135/9781529782783.n44>.

Epistemologic al Dimension	Western Liberal Model (US & EU)	Pancasila Communitaria n-Religious Model	Epistemologic al Dimension
Foundation of Liberty	Individual autonomy (Atomized individual autonomy)	Relational autonomy (Autonomy embedded within social harmony)	Foundation of Liberty
Focus of Protection	Privacy- centric (Focus on data protection and privacy)	Human dignity + solidarity (Human dignity bound by communal solidarity)	Focus of Protection
Regulatory Objective	Market efficiency & technical risk mitigation	Social justice & structural equality	Regulatory Objective
Ethical Character	Secular neutrality (State/Law neutral toward morality)	Ethical responsibility (Subject to universal- religious morality)	Ethical Character
Power Mitigation	Competitio n law & consumer rights	Structural fairness & digital sovereignty	Power Mitigation
Epistemologic al Dimension	Western Liberal	Pancasila Communitaria	Epistemologic al Dimension

	Model (US & EU)	n-Religious Model	
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The comparative analysis above demonstrates that while the Western model relies on *negative liberty* to protect citizens from state or corporate overreach, the *Pancasila* framework provides a foundation for *positive* and *relational rights*.⁶³ Protection does not terminate at the point where a citizen grants "consent" for their data. Even if a citizen in a developing nation consents to their data being mined, a state founded upon a moral constitution maintains the obligation to annul such digital contracts if the data exploitation undermines distributive justice or destroys the communal public morality.⁶⁴

The philosophical grandeur of *Pancasila* is not left suspended in the clouds of abstraction; rather, it has been incorporated into the normative structure of the *UUD NRI 1945*, which can be immediately operationalized as an analytical tool for AI governance. First, Article 1, Paragraph (3), which declares Indonesia a state based on the rule of law (*rechtsstaat*), mandates a *state duty to regulate AI*. The state must not engage in deregulation in the name of innovation if it threatens the constitutional rights of citizens. Second, protection from *surveillance state* practices and *facial recognition abuse* possesses an absolute constitutional basis in Article 28G, Paragraph (1) regarding the right to self-protection, honor, and dignity. Third, the threat of discrimination or *algorithmic bias* explicitly constitutes a violation of Article 28D, Paragraph (1), which guarantees "fair legal certainty and equal treatment before the law".⁶⁵

Fourth, and perhaps most progressively, is the reinterpretation of Article 33, Paragraphs (2) and (3) of the *UUD NRI 1945*. The norm stating that "production sectors important to the state and which affect

⁶³ Michael W. Ross, Martin Y. Iguchi, and Sangeeta Panicker, "Ethical Aspects of Data Sharing and Research Participant Protections," *American Psychologist* 73, no. 2 (2018), <https://doi.org/10.1037/amp0000240>.

⁶⁴ Jennifer Nedelsky, *Law's Relations: A Relational Theory of Self, Autonomy, and Law*, in *Law's Relations: A Relational Theory of Self, Autonomy, and Law*, vol. 9780195147964 (2012), <https://doi.org/10.1093/acprof:oso/9780195147964.001.0001>.

⁶⁵ R. I. Rahmat et al., "Legal Certainty On The Legality Of Establishment Of Limited Company Based On Fairness Of Pancasila," *Russian Journal of Agricultural and Socio-Economic Sciences* 134, no. 2 (2023), <https://doi.org/10.18551/rjoas.2023-02.02>.

the lives of the many shall be controlled by the state" must be interpreted through *constitutional hermeneutics*.⁶⁶ In the era of *Society 5.0*, core AI algorithms, massive cloud computing infrastructures, and the *big data* of the populace have absolutely become vital production sectors affecting the lives of many. Therefore, this article serves as the basis for *anti-monopoly digital policy* and *algorithmic accountability*. The monopoly of foreign *Big Tech* over this infrastructure is unconstitutional if it does not submit to state control for the *sebesar-besar kemakmuran rakyat* (the greatest prosperity of the people).⁶⁷ The integration of these articles provides an *undisputable juridical basis* for the formulation of a future *Indonesian AI Act*, while simultaneously serving as a benchmark for *constitutional review* of commercial algorithmic practices within the *Mahkamah Konstitusi*.

The construction of *Communitarian-Religious Constitutionalism* is far removed from a mere euphoria of hollow nationalism. The *Pancasila*-based governance model possesses universal resonance and a profound level of comparative relevance for nations across the Global South—spanning Southeast Asia, the African continent, to Latin America—and is particularly pertinent for Muslim-majority democracies and post-colonial societies. Nations in these regions share a socio-historical vulnerability map similar to Indonesia: they inherit communal and collectivistic societal structures, face sharp digital-economic disparities, possess extremely weak bargaining power against multinational technology corporations, and are ensnared in imported technology dependence.⁶⁸

For these regions, the raw adoption of Eurocentric standards, such as the *EU AI Act*, will merely facilitate a new form of neo-colonialism, where they submit to regulation without ever possessing the underlying technological infrastructure (*regulation without representation*). Conversely,

⁶⁶ Syelia Febriani, Firga Nevi, and Masduki Asbari, "Pancasila as a Paradigm in Indonesia's People's Economic Development," *Journal of Information Systems and Management (JISMA)* 01, no. 03 (2022).

⁶⁷ B. Manan, "Teori Dan Politik Konstitusi," (*No Title*), 2003.

⁶⁸ Chinmayi, "AI and the Global South: Designing for Other Worlds"; Greg Bankoff, Georg Frerks, and Dorothea Hilhorst, *Mapping Vulnerability: Disasters, Development and People*, in *Mapping Vulnerability: Disasters, Development and People* (2013), <https://doi.org/10.4324/9781849771924>.

an epistemological framework from the Global South that synergizes communal justice and morality—as offered by the thought structure of *Pancasila*—provides a theoretical analytical tool to reclaim digital sovereignty.⁶⁹ This model validates the argument that developing nations possess a theoretical human right to reject data exploitation disguised as market freedom and are entitled to establish AI regulations that specifically target distributive justice to alleviate algorithmic poverty within their communities.

Transcending the discourse of legal localism, the preceding exposition solidifies the paradigmatic position of the proposed framework. *Pancasila* can no longer be reduced, isolated, or viewed narrowly as a static ideological foundation of the Republic of Indonesia. In responding to the 21st-century threat of algorithmic tyranny, *Pancasila* should be understood not merely as Indonesia's ideological identity, but as a normative constitutional grammar for governing artificial intelligence in unequal societies. Through the synthesis of individual rights, communal social obligations, transcendental public morality, and an absolute commitment to distributive justice, *Pancasila* offers a blueprint for digital constitutionalism that is far more humane, balanced, and emancipatory for the civilization of the Global South.⁷⁰

D. Operationalizing Pancasila: A Constitutional Response to Algorithmic Bias and Big Tech Monopoly

In the third decade of the twenty-first century, the governance architecture of Artificial Intelligence (AI) has mutated from a mere discourse on technical innovation into the most pressing discourse of public power. Today, AI systems driven by machine learning algorithms autonomously generate a series of crucial decisions that dictate citizens' access to employment opportunities, banking creditworthiness, education, healthcare, insurance, and even security guarantees and political freedoms. Yet, ironically, these decisions—which possess

⁶⁹ Bambang Yuniarto, "Pancasila in the Metaverse Era: Opportunities and Challenges in Shaping National Identity," *JOCER: Journal of Civic Education Research* 3, no. 2 (2025), <https://doi.org/10.60153/jocer.v3i2.230>.

⁷⁰ NKNN Pande, ... AGC Udayanie-Journal of Digital Law, and Undefined 2025, "Developing a Sustainable Digital Ecosystem in Indonesia: The Role of Pancasila in Guiding Technological Advancement," *Ejournal.Sidyanusa.Org* 4, no. 3 (2025).

binding force akin to public authority—are executed by private entities through opaque *black-box systems* operating beyond the jurisdiction of traditional constitutional law.⁷¹ When technological corporations possess the infrastructural capacity to determine the civil and economic fates of billions, such private power has *de facto* transformed into a quasi-state public power. Consequently, constitutional law can no longer maintain the obsolete demarcation between public and private law; algorithmic power absolutely necessitates constitutional constraints.⁷² The validity of global AI governance is no longer sufficient if measured solely by the extent to which the technology is transparent, innovative, efficient, and market-competitive; rather, it must imperatively be tested by the extent to which it is structurally just, humane, non-discriminatory, distributively oriented, democratic, and socially responsible.⁷³ It is within this exigency that the theory of *Pancasila's* communitarian-religious constitutionalism must be operationalized.

Part I — *Constitutional Response to Algorithmic Bias* (Respons Konstitusional terhadap Bias Algoritma)

To formulate a constitutional doctrine, one must first deconstruct the anatomy of the damage inflicted by this technology. Algorithmic bias is not merely a technical glitch or a programmatic anomaly; rather, it is the crystallization of historical and structural injustices mathematically reproduced. Training data supplied to AI systems frequently contains past gender, racial, and socio-economic biases. The consequences manifest in various contemporary sociological pathologies: AI hiring systems that systematically discard the resumes of female applicants; credit scoring algorithms that impose higher interest rates on low-income minority groups; and predictive policing

⁷¹ Kyle Kubler, “The Black Box Society: The Secret Algorithms That Control Money and Information,” *Information, Communication & Society* 19, no. 12 (2016), <https://doi.org/10.1080/1369118x.2016.1160142>.

⁷² Oreste Pollicino and Giovanni De Gregorio, “Constitutional Law in the Algorithmic Society,” in *Constitutional Challenges in the Algorithmic Society* (2021), <https://doi.org/10.1017/9781108914857.002>.

⁷³ Yusnadia Achda Saputri, Muhammad Nur Hidayat, and Kurniati Kurniati, “The Importance of Nurcholish Madjid’s Thoughts on the Application of Islamic Political Ethics in Indonesia,” *Jurnal Ilmu Sosial Dan Politik Reformasi* 5, no. 1 (2020).

or facial recognition systems with fatal accuracy failures regarding minorities, leading to wrongful arrests. Within Michel Foucault's theoretical framework of power, this represents the most sophisticated manifestation of *biopower*, where human bodies and destinies are disciplined and controlled through invisible statistical probability calculations.⁷⁴

In responding to these pathologies, Western constitutional models—including the *EU AI Act* and various other liberal guidelines—offer solutions that are often procedural and reductionist. The Western approach relies heavily on the concepts of *explainability*, *notice and consent* obligations, and the provision of anti-discrimination complaint mechanisms after the harm has occurred (*ex-post*). This framework has proven profoundly insufficient to mitigate *structural dignity harms* in developing nations. Demanding consent from citizens in a weak bargaining position is a legal fiction, and granting the right to lodge a complaint after one's destiny has been dismantled by AI is a delayed justice. This model fails to recognize that digital justice cannot be resolved purely through consumer protection procedural law or individual civil damages.⁷⁵

Philosophically, the *Pancasila* framework offers a fundamental correction through the Second *Sila*: "Just and Civilized Humanity" (*Kemanusiaan yang Adil dan Beradab*). This fundamental norm provides an ontological mandate that humans—in all their dimensions—possess an inherent and irreducible dignity that cannot be reified into mere data metrics or statistical probabilities exploited by machines.⁷⁶ Adopting a Kantian principle enriched by Eastern spiritualism, the Second *Sila* asserts that the human being is an end in itself, not a means to achieve machine learning efficiency. Consequently, the principle of fairness in AI must not stop at formal procedural justice; it must embody *substantive*

⁷⁴ Michel Foucault, "The History of Sexuality, Vol. 1. The Will to Knowledge," in *History of Sexuality*, preprint, 1998.

⁷⁵ Arturo Bris et al., "KNIGHTS, RAIDERS, AND TARGETS - THE IMPACT OF THE HOSTILE TAKEOVER - COFFEE,JC, LOWENSTEIN,L, ROSEACKERMAN,S," *JOURNAL OF BANKING & FINANCE* 37, no. 1 (2021).

⁷⁶ Genesisus Nurak, F. X. Marmidi, and Carolus A. Sihaloho, "KEMANUSIAAN YANG ADIL DAN BERADAB MENURUT PANCASILA Etis Atas Sila II Dari Pancasila," *Seminar Nasional Filsafat Teologi* 1 No. 1 Ma (2023).

equality that rejects all forms of historical discrimination amplified by technology. Critical decisions concerning human destiny must absolutely retain the elements of empathy and reason—attributes that are epistemologically impossible for Artificial Intelligence to possess.

The operationalization of the Second *Sila* finds an exceedingly robust jurisprudential footing within the *Undang-Undang Dasar Negara Republik Indonesia Tahun 1945* (UUD NRI 1945). Protection against algorithmic bias constitutes an absolute manifestation of the fulfillment of human rights:

- **Article 28D, Paragraph (1):** "Every person shall have the right to recognition, guarantees, protection, and fair legal certainty, as well as equal treatment before the law." In the digital era, "equal treatment" translates into absolute protection against non-transparent *automated decision-making* (ADM) discrimination.⁷⁷
- **Article 28G, Paragraph (1):** Guarantees the right to the protection of self, honor, dignity, and property. The exploitation of facial data for surveillance without communal consent is a form of dignity violation that is constitutionally intolerable.⁷⁸
- **Article 28I, Paragraph (2):** Asserts protection from discriminatory treatment on any basis whatsoever. This article imperatively prohibits the use of datasets that produce discriminatory outputs against vulnerable groups.⁷⁹

Grounded in the aforementioned doctrines, the architecture of positive law (such as the proposed Indonesian AI Bill) must not merely contain ethical guidelines but must criminalize technical abuses and mandate *ex-ante* mitigation (preemptive prevention). The policy design mandated by the *Pancasila* constitution includes:

⁷⁷ Seri Mughni Sulubara, T. Saiful Basri, and Iskandar Iskandar, "Analisis Konstitusional Terhadap Perlindungan Hak Asasi Manusia Dalam Sistem Hukum Indonesia," *Jurnal Kabar Masyarakat* 2, no. 4 (2024), <https://doi.org/10.54066/jkb.v2i4.2653>.

⁷⁸ Upik Mutiara and Romi Maulana, "Perlindungan Data Pribadi Sebagai Bagian Dari Hak Asasi Manusia Atas Perlindungan Diri Pribadi," *Indonesian Journal of Law and Policy Studies* 1, no. 1 (2020), <https://doi.org/10.31000/ijlp.v1i1.2648>.

⁷⁹ Ibnu Abdillah et al., "Pancasila Sebagai Pedoman Dasar Dalam Perlindungan Hukum Terhadap Hak Asasi Manusia," *Jurnal Moralita : Jurnal Pendidikan Pancasila Dan Kewarganegaraan* 5, no. 2 (2024), <https://doi.org/10.36985/k6v8ap16>.

1. **Mandatory AI Impact Assessment:** An obligation for AI developers and deployers to conduct Human Rights Impact Assessments before high-risk AI systems are launched into the public sphere, featuring rigorous testing against potential *structural discrimination*.
2. **Mandatory Bias Audit:** Algorithms utilized in public services, the judiciary, banking, and employment must be periodically audited by state authorities to detect mathematical deviations that discriminate based on race, gender, or marginalized status.
3. **Right to Human Review:** An absolute prohibition against AI systems making final decisions that restrict civil rights without meaningful *human-in-the-loop* involvement.
4. **Independent Public Supervisory Authority:** The establishment of a quasi-judicial state body with the authority to access source codes in cases of discrimination, ensuring the fulfillment of *explainable AI* obligations, and possessing the authority to revoke operational licenses of systems that undermine human dignity.

Part II— *Constitutional Response to Big Tech Monopoly* (Respons Konstitusional terhadap Monopoli Big Tech)

If algorithmic bias threatens the individual, then *Big Tech* monopolies threaten national sovereignty and the economic independence of a nation. The power of platform capitalism operates through extreme network effects, creating a "winner-takes-all" market.⁸⁰ Today, the global digital architecture is gripped by a few oligopolies: an extraordinary concentration of user data, the dominance of cloud computing infrastructure as the backbone of the entire digital ecosystem, and the function of corporations as platform gatekeepers dictating the rules for millions of local businesses.⁸¹ In the Global South, this reality creates massive structural dependencies. Users, local

⁸⁰ Novie Panda Citra, "Analisis Transformasi Relasi Kerja Masyarakat Industrial Dan Digital," *Journal of International Multidisciplinary Research* 2, no. 7 (2024), <https://doi.org/10.62504/jimr789>.

⁸¹ Sudibyo Agus, "Jagat Digital: Pembebasan Dan Penguasaan.," in *Kepustakaan Populer Gramedia*, preprint, 2019.

startups, and even governments in developing nations lose their autonomy and are forced to rent computing infrastructure from the North, giving rise to what is sociologically termed a *technological sovereignty crisis*.

Western constitutional law and its liberal competition law regimes—heavily influenced by the Chicago School—are myopic regarding these structural injustices. Traditional antitrust instruments only measure "monopoly" through price effects and a narrow definition of consumer welfare.⁸² Similarly, merger metrics often allow tech giants to engage in *killer acquisitions* of smaller competitors as long as consumers are not directly harmed monetarily. This paradigm fails completely because the real problem of *Big Tech* monopoly is not merely a matter of price (many digital services are indeed "free" in exchange for privacy), but rather the concentration of democratic power, data colonialism, labor precarity in the gig economy, and the destruction of the economic sovereignty of developing nations.⁸³

This global digital economic legal vacuum must be filled by the doctrine of the Fifth *Sila*: "Social Justice for All Indonesian People." In legal philosophy, this concept aligns with, yet is more communal than, John Rawls' "justice as fairness."⁸⁴ *Pancasila* Social Justice does not tolerate macro-economic growth at the expense of substantial equity. In the context of AI governance, the Fifth *Sila* demands a radical application of *distributive justice*: that the efficiency benefits of Artificial Intelligence must not merely be accumulated and enjoyed by a handful of corporate elites providing foundation models. Communal public data, mined for free to train machine learning, must be reclaimed as a common resource that provides welfare benefits to the public.

This operationalization of the Fifth *Sila* possesses an unparalleled anchor in the Indonesian economic constitution designed by Mohammad Hatta:

⁸² Masfi Sya'fiatul Ummah, "Pengantar Ilmu Hukum Dan Pengantar Tata Hukum Indonesia," *Sustainability (Switzerland)* 11, no. 1 (2019).

⁸³ Agus Wibowo, *Pengantar AI, Big Data Dan Ilmu Data*, in *Yayasan Prima Agus Teknik* (2025).

⁸⁴ Muhammad Taufik, "Filsafat John Rawls Tentang Teori Keadilan," *Mukaddimah: Jurnal Studi Islam* 19, no. 1 (2013).

- **Article 33, Paragraph (2):** "Production sectors important to the state and which affect the lives of the many shall be controlled by the state." Through evolutionary interpretation, massive cloud computing infrastructures, core algorithmic networks, and commercial Large Language Model (LLM) architectures are the *ultimate vital sectors* of the 21st century. This does not imply state nationalization of foreign corporations, but rather an absolute *regulatory mastery* by the state to ensure such infrastructure does not exploit the public.
- **Article 33, Paragraph (3):** Stating that "land, water, and the natural resources contained therein shall be controlled by the state and utilized for the greatest prosperity of the people." In the data-driven economy, the demographic *big data* of the Indonesian populace is a "digital natural resource" (*data as a strategic national resource*). Extracting citizen data for commercial purposes without economic value redistribution is a constitutional violation.
- **Article 33, Paragraph (4):** Asserting that the national economy shall be organized based on principles of togetherness, fair efficiency, and independence. This gives rise to an *anti-concentration doctrine* that strictly prohibits digital oligarchy.

To end this techno-capitalist hegemony, the constitution mandates the formation of a *constitutional economy* order through several instruments:

1. **Digital Antitrust Reform:** Transformation of competition law to criminalize the abuse of algorithmic dominant positions and prohibit *self-preferencing*.
2. **Interoperability and Data Portability Mandates:** Obliging *Big Tech* to open protocols so local systems can integrate with global ecosystems and guaranteeing users' rights to move their data to dismantle gatekeeper monopolies.
3. **Computing Sovereignty and Public AI Infrastructure:** The state's obligation to build or fund *sovereign clouds* and public AI infrastructure, ensuring national research is not dependent on foreign oligopolistic facilities.

4. **Digital Taxation for Social Redistribution:** Digital taxation oriented specifically toward financing social safety nets, labor reskilling, and subsidizing local startup innovation as compensation for *labor displacement*.

The integration of these two primary analytical axes produces a state-of-the-art dogmatic contribution to international legal literature. When the doctrine of dignity protection (Second *Sila*) is harmoniously synthesized with the doctrine of communal economic justice (Fifth *Sila*), a new constitutional order emerges, conceptualized by this article as **Algorithmic Welfare Constitutionalism** or the manifestation of the **Pancasila Digital Social State**. This progressive concept transcends Satjipto Rahardjo's progressive law paradigm by proving that constitutional law is not merely capable of "supervising" algorithms but is actively able to dictate their design, moral boundaries, and welfare orientation. In this model, technology is forced to bow before communal welfare, and coding architecture is re-engineered to submit to Habermasian *public reason*, rather than the logic of private corporate profit accumulation.

This operational design of AI governance radiates broad comparative significance. It provides a crucial precedent for other emerging economies—such as India, Brazil, South Africa, ASEAN members, and post-colonial democracies. These nations face identical structural vulnerabilities: being flooded by imported AI systems, trapped in inequality, and suffering social fragmentation due to algorithmic disinformation. For the Global South, *Algorithmic Welfare Constitutionalism* offers an academic and dogmatic weapon to reject platform dictatorship, enabling them to reweave their cognitive and digital sovereignty.

In final conclusion, one constitutional tenet must be upheld with unshakeable firmness: **The future legitimacy of artificial intelligence will depend not only on innovation, but on whether constitutional orders can subject algorithmic power to dignity and justice.** Through the holistic framework of *Pancasila*, the Global South now possesses the epistemological ground to demand digital justice not as corporate charity, but as a fundamental and absolute constitutional right.

E. Conclusion

Transformation of civilizational architecture in the third decade of the twenty-first century has empirically and theoretically demonstrated that Artificial Intelligence (AI) no longer operates merely as a technological instrument; rather, it has mutated into a new sovereign entity that shifts the *locus* of power from state institutions into opaque private algorithmic systems. This article has deconstructed the thesis that mainstream digital constitutionalism models exported by the West—both the European model, which is privacy-centric and risk-based, and the United States model, driven by market efficiency—despite their historical value, are ontologically inadequate to respond to the structural pathologies of the Global South. The Western epistemological framework, which is overly individualistic and grounded in negative autonomy, has proven incapable of curbing the threats of *Big Tech* monopolies, communal algorithmic bias, structural discrimination, and colonial data extraction that erode the sovereignty of developing nations. To break through this normative deficit, this research convincingly validates that *Pancasila*—as a *philosophische grondslag*—offers an alternative constitutional framework (*Communitarian-Religious Constitutional Framework*) that is far more comprehensive, profound, and sociologically relevant to subject the hegemony of global techno-capitalism to the authority of public morality and distributive justice.

Doctrinally and theoretically, the pinnacle contribution of this article lies in its ability to reconstruct the philosophical values of *Pancasila* into a prescriptive and operational AI governance design. The Divine dimension establishes absolute ethical limits to AI that reject post-human dehumanization; the Humanitarian dimension guarantees the protection of relational dignity from algorithmic discrimination; the Unity and Democracy dimensions serve as a shield for democratic cohesion against polarization and the manipulation of the public sphere by *Big Tech*; while the Social Justice dimension mandates structural overhaul in the form of anti-monopoly digital reform and the equitable distribution of data wealth. This theoretical construct is imperatively anchored by an indisputable jurisprudential basis in the *UUD NRI 1945*, where the protection of dignity (Article 28 series) and an economic constitution that rejects oligarchy (Article 33) must serve as the primary foundations for the formulation of the *Indonesia AI Act*. Such a policy

must institutionalize sovereign data governance obligations, independent algorithmic accountability audits, the prohibition of discriminatory automated decision-making systems, and the redistribution of digital economic justice for communal welfare.

On a global dimension, the discourse constructed in this article radically expands the spectrum of *constitutional pluralism* in the international arena while opening a crucial space for the decolonization of digital constitutional law literature (*epistemic decolonization in AI law*). The concept of *Algorithmic Welfare Constitutionalism*, unearthed from Indonesia's historical womb, transcends the boundaries of identity localism and radiates a universal resonance of urgency for nations across Asia, Africa, Latin America, and other post-colonial entities. These regions share identical structural vulnerabilities in facing platform imperialism and technological dependency, thus requiring a constitutional grammar rooted in communal solidarity rather than mere free-market competition. In closing this entire philosophical and juridical argumentation, one postulate must be upheld: the primary question of the Artificial Intelligence era no longer rests on the technical probability of whether machines can think, but rather on whether constitutional orders are capable of ensuring that such absolute technological power remains subject to human dignity, social justice, and democratic accountability. Within this historical landscape, *Pancasila* offers the most robust and relevant normative horizon for the future of global AI governance.

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The author certifies that this manuscript is an original piece of doctrinal legal research. It has not been published previously, in whole or in part, nor is it currently under consideration for publication in any other journal or academic medium. All constitutional texts, legal doctrines, comparative literature, and intellectual contributions utilized in this study have been appropriately cited and acknowledged in strict adherence to international academic standards. The author has thoroughly reviewed and approved the final manuscript, assuming full responsibility for its scholarly integrity.

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In the preparation of this manuscript, the author utilized generative Artificial Intelligence (AI) technologies strictly as an assistive tool for language refinement, grammatical correction, structural outlining, and preliminary brainstorming. The generative AI was not employed to formulate core theoretical arguments, generate substantive legal doctrines, or conduct the comparative constitutional analysis. The author independently executed all qualitative legal reasoning, constitutional interpretations, source validations, and doctrinal syntheses. The author takes full, unreserved responsibility for the accuracy, originality, and intellectual integrity of the final content presented in this paper.

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