

Constitutionalizing the Right to Truth as an Unwritten Constitutional Right in Indonesia

Albertus Drepane Soge¹, Bimo Aryanto², Antonius Maria Laot Kian³

¹ Faculty of Law, Universitas Proklamasi 45, Yogyakarta, Indonesia

^{2,3} Sekolah Pascasarjana, Universitas Proklamasi 45, Yogyakarta, Indonesia
albertus.soge@up45.ac.id

Abstract

This study aims to construct a constitutional legal framework for recognizing the Right to Truth as an unwritten fundamental constitutional right within the Indonesian legal system. Although the 1945 Constitution does not explicitly enshrine the Right to Truth, this research argues that such a right can be derived from core constitutional principles, particularly the Rule of Law and Popular Sovereignty, through a progressive interpretation grounded in the Living Constitution doctrine. Employing a normative juridical method combined with conceptual, comparative, and case law approaches, this study demonstrates that constitutional rights are not limited to textual enumeration but may evolve in response to contemporary democratic needs. The findings reveal that the Right to Truth functions as a foundational prerequisite for ensuring transparency, accountability, and the effective exercise of popular sovereignty, particularly in historical, legislative, and administrative contexts. The novelty of this research lies in repositioning the Right to Truth from an international human rights norm into a constitutional doctrine capable of serving as a direct source of law within domestic governance. This study contributes both theoretically, by developing a framework for recognizing unenumerated constitutional rights in Indonesia, and practically, by providing a doctrinal basis for the Constitutional Court and policymakers to institutionalize the Right to Truth as a justiciable constitutional guarantee, thereby strengthening democratic integrity and constitutional protection for citizens.

Keywords: Constitution; Law; Rights; State; Truth.

1. INTRODUCTION

A constitution, as the fundamental law of a nation, should function as a living instrument capable of adapting to the evolving era and the necessities of society. However, in practice, the 1945 Constitution of the Republic of Indonesia is frequently treated as a static document, confined merely to its textual formulation. This is because Indonesia has been influenced by the Continental European concept (*Rechtsstaat*), which places greater emphasis on written sources of law. This phenomenon creates a gap between the safeguarding of constitutional rights explicitly enshrined in Articles 28A–28J and the contemporary reality that necessitates the recognition of new rights—unwritten yet fundamental to the sustainability of the democratic system. One of the most urgent rights to be constitutionalized is the Right to Truth, which currently lacks explicit recognition within the Indonesian constitutional text. The ambiguity surrounding the legal status of the Right to Truth creates systemic vulnerabilities across several crucial aspects of national life, ranging from efforts to uncover historical truths regarding past human rights violations, to the transparency of legislative procedures susceptible to manipulation, and the citizens' right to access accurate and undistorted government information. Widespread disinformation, problematic legislative practices such as the case of “ghost drafts” in the Job Creation Law, and the obfuscation of collective history demonstrate that the need for constitutional protection of the Right to Truth is not merely an academic

question, but a practical issue threatening popular sovereignty and the integrity of Indonesian democracy.

Studies on the Right to Truth in the international context have developed rapidly since the late 20th century. Research by Jørgensen (2025) indicates that the right to identification of missing migrants is exercisable by next of kin via the right to truth.¹ Furthermore, Latino (2022) identified that the right to truth is a specific guarantee of the human right, especially in the context of transitional justice.² Research by Jones (2023) found that the families of the forcibly disappeared are left in a state of ambiguous loss as they search for the disappeared to satisfy their right to truth and achieve healing and closure.³ However, the majority of these studies focus on the context of massive and gross human rights violations within post-conflict transitional situations. Previous research has paid insufficient attention to the dimension of the Right to Truth within the broader framework of Constitutional Law, particularly how this right can serve as a pillar for maintaining democratic health in normal contexts, not solely in situations of severe human rights abuses.

The strength of prior studies lies in the empirical documentation of the benefits of recognizing the Right to Truth in transition and reconciliation processes. However, a significant methodological weakness is that these studies operationalize the Right to Truth as a retroactive instrument of International Human Rights Law, rather than as a constitutional principle functioning in daily governance practices. Consequently, the recognition of the Right to Truth within the national legal framework, especially through the constitution, has not been explored in depth, particularly within the specific context of the Indonesian legal system. Moreover, previous research has not provided a response to the fundamental question: how can a right not explicitly contained in the constitutional text be constitutionalized? Answering this question requires a theoretical approach combining the concept of the *Living Constitution* with fundamental principles of Constitutional Law, specifically the doctrine of the Rule of Law (*Rechtsstaat*) and Popular Sovereignty. This research aims to fill this void by offering a legal framework that enables the recognition of the Right to Truth as an unenumerated constitutional right that is legally justiciable.

The central research questions of this discussion are: (1) Can the Right to Truth be constructed as a fundamental constitutional right despite not being explicitly included in the UUD 1945? (2) Through which legal principles (Rule of Law, Popular Sovereignty, or other doctrines) can the Right to Truth be “derived” from the existing constitutional text? (3) How can the concept of the *Living Constitution* be applied in the Indonesian legal system to allow for the evolution of constitutional rights responsive to contemporary needs? (4) In what practical contexts (historical, legislative, administrative) can the Right to Truth function as an instrument for safeguarding democratic integrity and popular sovereignty? This research employs a normative

¹ Nina H. B. Jørgensen, “Missing Migrants and the Right to Identification,” *Nordic Journal of Human Rights* 43, no. 1 (January 2, 2025): 40–58, <https://doi.org/10.1080/18918131.2024.2426408>.

² Agostina Latino, “Genealogy, Variations and Specificity of the Right to Truth,” *Athens Journal of Law* 8, no. 4 (September 30, 2022): 425–48, <https://doi.org/10.30958/ajl.8-4-5>.

³ Briony Jones et al., “Hiding in Plain Sight: Victim Participation in the Search for Disappeared Persons, a Contribution to (Procedural) Justice,” *International Journal of Transitional Justice* 17, no. 2 (August 23, 2023): 233–51, <https://doi.org/10.1093/ijtj/ijad018>.

juridical approach focusing on doctrinal analysis of Indonesian constitutional law, constitutional comparison with comparator legal systems such as the United States (the Ninth Amendment) and Germany, as well as an examination of relevant decisions by the Indonesian Constitutional Court. This method enables the construction of robust legal arguments to support the proposition that the Right to Truth is not merely a moral aspiration, but a right enforceable through existing legal mechanisms within the Indonesian constitutional system.

Although Articles 28A–J of the UUD 1945 do not explicitly mention the phrase “Right to Truth,” this right can be derived from Article 1 Paragraph (3) concerning the Rule of Law,⁴ the idea of Popular Sovereignty, and the principles of constitutional democracy inherent in the fundamental framework of the constitution. By dismantling the limitations of textualist approaches to constitutional reading and adopting the *Living Constitution* paradigm, this research aims to provide a theoretical and practical foundation for the Constitutional Court, legal scholars, and policymakers to begin formally recognizing the Right to Truth in their decisions. The objective of this research is to construct and constitutionalize the Right to Truth as an unwritten fundamental constitutional right within the Indonesian legal system by employing a doctrinal constitutional law approach, examining its constitutional foundation in the principles of the rule of law and popular sovereignty, analyzing the application of the Living Constitution doctrine as a mechanism for the evolution of constitutional rights, and assessing its relevance and practical implementation in historical, legislative, and administrative contexts to strengthen democratic integrity and the protection of citizens’ constitutional rights.

2. METHOD

This research employs a normative juridical approach focusing on the doctrinal analysis of Indonesian constitutional law. The normative juridical approach was selected because this study aims to constitutionalize the Right to Truth through the construction of robust legal arguments based on positive legal norms, constitutional law doctrines, and fundamental principles of the rule of law.⁵ This method enables the researcher to perform a systematic interpretation of constitutional provisions and explore how rights not explicitly enumerated in the constitutional text can be recognized through progressive constitutional interpretation mechanisms. The normative juridical approach also facilitates comparative constitutionalism with other legal systems, particularly regarding the recognition of unenumerated rights, thereby allowing for the identification of best practices adaptable to the Indonesian context.⁶

The specification of this research is a conceptual constitutional law study focusing on the development of legal theory and doctrine without utilizing empirical data in the form of

⁴ Liana Nasir, Syamsul Rijal, and Muhamad Aksan Akbar, “Kedudukan Putusan Mahkamah Konstitusi Dalam Pembentukan Undang-Undang Di Indonesia,” *Jurnal USM Law Review* 8, no. 2 (May 12, 2025): 622–38, <https://doi.org/10.26623/julr.v8i2.11333>.

⁵ Sidi Ahyar Wiraguna, “Metode Normatif Dan Empiris Dalam Penelitian Hukum: Studi Eksploratif Di Indonesia,” *Public Sphere: Jurnal Sosial Politik, Pemerintahan Dan Hukum* 3, no. 3 (November 30, 2024): 57–65, <https://doi.org/10.59818/jps.v3i3.1390>.

⁶ Syaiful Anwar, Kamandani, and Silm Oktapani, “Perbandingan Perkembangan Konstitusi Berdasarkan Sistem Pemerintahan Serta Bentuk Dan Sifat Konstitusi,” *Jurnal Ilmu Hukum, Humaniora Dan Politik* 5, no. 1 (November 20, 2024): 599–603, <https://doi.org/10.38035/jihhp.v5i1.3091>.

surveys, interviews, or field studies.⁷ This research analyzes primary and secondary legal sources to build consistent and tested constitutional arguments. The conceptual nature of this research aligns with producing academic contributions at a theoretical level that can inform the development of Constitutional Court jurisprudence and academic thought in the field of constitutional law.⁸ The research is designed to generate a legal framework applicable to legal decision-makers, both constitutional judges and legislators, in recognizing and protecting the Right to Truth as a justiciable constitutional right.

The type of data used in this research is secondary data sourced from various legal documents and academic literature. Primary legal materials include the 1945 Constitution of the Republic of Indonesia (*Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*) along with its elucidations, Amendments I through IV of the 1945 Constitution, Law Number 24 of 2003 on the Constitutional Court, Law Number 11 of 2020 on Job Creation, and other regulations relevant to the protection of constitutional rights. Secondary legal materials consist of relevant decisions of the Constitutional Court of the Republic of Indonesia concerning the recognition of constitutional rights, particularly decisions utilizing progressive constitutional interpretation reasoning and those involving the recognition of unwritten rights. Additionally, the research utilizes academic journal literature published within the last five years (2019–2024) discussing related topics such as the *Living Constitution*, human rights, transitional justice, and constitutionalism in Indonesia and comparator nations.

Data collection techniques are conducted through a comprehensive document study and literature review. The document study is performed by collecting and analyzing primary legal documents such as constitutional texts, court decisions, and related legislation through critical reading to identify norms relevant to the Right to Truth, both explicitly and implicitly.⁹ The literature review is conducted by tracing academic literature using online journal databases such as JSTOR, Google Scholar, and university repositories, as well as library catalogs and other open sources. The literature search focuses on keywords such as “Right to Truth,” “unenumerated rights,” “Living Constitution,” “Hukum Tata Negara Indonesia,” “Hak atas Kebenaran,” “constitutional rights Indonesia,” and other combinations. The selected literature is theoretically and empirically relevant to the research topic, with priority given to publications from the last five years and authoritative sources from reputable publishers and accredited journals.

This research also conducts a comparative analysis of constitutional legal systems in countries that have explicitly recognized unwritten constitutional rights. The comparator countries are the United States, specifically through the doctrine of the Ninth Amendment, which states that the enumeration of certain rights in the Constitution shall not be construed to deny or disparage others retained by the people, and Germany, which through the *Bundesverfassungsgericht*

⁷ Yusriyadi Yusriyadi, Ana Silvia, and Zico Junius Fernando, “Autonomous Vehicles and Legal Challenges: Navigating between Technology and Criminal Liability,” *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan* 15, no. 1 (August 14, 2024): 37–57, <https://doi.org/10.22212/jnh.v15i1.4359>.

⁸ Warih Anjari, *Metode Penelitian Hukum Buku Ajar* (Jakarta: Universitas 17 Agustus 1945 Jakarta, 2023), <https://lib.uta45jakarta.ac.id/index.php?p=fstream-pdf&fid=56&bid=11588>.

⁹ Wiwik Sri Widiarty, *Buku Ajar Metode Penelitian Hukum* (Yogyakarta: Publika Global Media, 2024), <http://repository.uki.ac.id/14688/1/BukuAjarMetodePenelitianHukum.pdf>.

(Federal Constitutional Court) has developed the doctrine of unwritten constitutional rights as part of the protection of fundamental values (*protection of fundamental values*) in a constitutional democratic system. This comparative analysis identifies legal mechanisms and constitutional reasoning proven effective in recognizing and protecting unenumerated rights, allowing for the extraction of relevant lessons to be applied within the context of the Indonesian legal system.¹⁰

The data analysis method employed is qualitative content analysis guided by an analytical framework based on constitutional law theories. The analysis is conducted through the identification and categorization of positive legal norms relevant to the Right to Truth from constitutional texts, legislation, and court decisions.¹¹ Furthermore, an interpretive analysis is performed using various methods of constitutional interpretation, including grammatical interpretation, systematic interpretation, historical interpretation, and teleological interpretation.¹² Subsequently, legal arguments are constructed through deductive and inductive reasoning to build the proposition that the Right to Truth can and must be recognized as a fundamental constitutional right. A critical evaluation of the arguments is conducted by considering various perspectives and potential objections, thereby producing reasoning that is robust and tested against logical scrutiny.¹³

The data analysis also involves the construction of legal doctrines combining the concept of the *Living Constitution* with the fundamental principles of Indonesian Constitutional Law, particularly the doctrines of the Rule of Law (*Rechtsstaat*) and Popular Sovereignty.¹⁴ The researcher examines how the constitution can be understood as a living instrument evolving in accordance with contemporary societal needs, without abandoning its fundamental principles.¹⁵ The researcher also analyzes how the Rule of Law, as a constitutional principle embedded in Article 1 Paragraph (3) of the 1945 Constitution, requires the guarantee of people's access to truth to function effectively.¹⁶ Similarly, the researcher examines how

¹⁰ Rosa Ristawati, "Perbandingan Hukum: Perkembangan, Tantangan Dan Prospek Di Indonesia" (Proceedings of Airlangga Faculty of Law Colloquium, 2024), 1–19.

¹¹ Ni'matul Huda et al., "Naskah Kajian 'Gagasan Kewenangan Pengaduan Konstitusional Dan Desain Kelembagaannya Di Mahkamah Konstitusi'" (Yogyakarta, 2025), https://s.mkri.id/jdih/kajian_hukum/kajian_hukum_1767854582_dfe9ec962d4f04f06e72.pdf.

¹² Sikkop Parluhutan Hotmatua Sianturi et al., "Penemuan Hukum Dilakukan Oleh Hakim Dalam Perspektif Hukum Progresif," *Jurnal Analisis Hukum Dan Kebijakan* 6, no. 4 (2025): 499–519, <https://ejournals.com/ojs/index.php/jahk/article/view/4174>.

¹³ Arina Hasna Nur El-Hadi, "Penalaran Penggunaan Bahasa Hukum Dalam Undang-Undang Indonesia: Pasal 338 KUHP," *Multiple: Journal of Global and Multidisciplinary* 2, no. 8 (2024): 797–2809, <https://journal.institercom-edu.org/index.php/multiple/article/view/546>.

¹⁴ Mohamad Hidayat Muhtar et al., *Dasar-Dasar Teori Hukum Tata Negara Perspektif Dan Praktik* (Serang-Banten: PT Sada Kurnia Pustaka, 2024), [https://jdih.kemendes.go.id/public/documents/a65bc816-b8af-430f-bd4d-a449d4f2e973Ebook_Dasar-](https://jdih.kemendes.go.id/public/documents/a65bc816-b8af-430f-bd4d-a449d4f2e973Ebook_Dasar-Dasar+Teori+Hukum+Tata+Negara+(Perspektif+dan+Praktik)_organized.pdf)

¹⁵ Hedwig Adiarto Mau and Tinton Ditisrama, *Teori Dan Hukum Konstitusi* (Banyumas: Penerbit Amerta Media, 2025), <https://ejournal.amertamedia.co.id/index.php/press/article/download/417/237>; Sya'baniatie Ninda Septia, "The Transition from Conventional Constitutions to Digital Law: Constitutional Law Challenges in the Age of Artificial Intelligence," *Journal of International Multidisciplinary Research* 4, no. 1 (January 11, 2026): 58–66, <https://doi.org/10.62504/jimr1430>.

¹⁶ Brianta Petra Ginting, Atma Suganda, and Sineerat Suasungnern, "The Concept Of The Rule Of Law In The Indonesian Constitution," *Sibatik Journal: Jurnal Ilmiah Bidang Sosial, Ekonomi, Budaya, Teknologi, Dan Pendidikan* 3, no. 12 (2024): 1291–1300, <https://doi.org/10.54443/sibatik.v3i12.2543>.

Popular Sovereignty, as a fundamental principle of constitutional democracy, requires accessory rights, including the Right to Truth, so that the people as the holders of sovereignty can exercise their political functions based on accurate and undistorted information.¹⁷

The validity of this research is ensured through several mechanisms. First, data source triangulation is performed by examining the Right to Truth from various legal perspectives (constitutional law, human rights, transitional criminal law) and from various jurisdictions (Indonesia, the United States, Germany, Australia, and South Africa, which have experience in recognizing the Right to Truth).¹⁸ Second, a review of the constructed arguments is conducted by considering potential logical criticisms and objections, ensuring that the proposed propositions can withstand critical scrutiny. Third, references are made to authoritative sources such as constitutional court decisions, standard textbooks in constitutional law, and peer-reviewed journal literature to ensure the academic credibility and relevance of the analysis performed. Through these validity mechanisms, the research is expected to produce a solid and trustworthy scientific contribution to the development of Indonesian constitutional law doctrine.

3. RESULTS AND DISCUSSION

3.1 The Constitutional Foundation of the Right to Truth in Article 1 Paragraph (3) of the 1945 Constitution

Following the third amendment to the 1945 Constitution in 2001, the term “state governed by law” (*rechtsstaat*) in the explanatory notes of the 1945 Constitution was moved to Article 1, paragraph (3), which reads: “The State of Indonesia is a state based on law.” It is clear that the term “*rechtsstaat*” is no longer used in this sentence because, in fact, the State of Indonesia does not adhere solely to the “*rechtsstaat*” model, which relies on written law as the sole source of law. However, the State of Indonesia also adheres to the principle of the Rule of Law, which utilizes unwritten law derived from legal principles and human rights, as well as other legal systems, each with its own core philosophy, which are then integrated into the concept of the Pancasila-based rule of law. This paradigm is referred to as a prismatic legal system,¹⁹ namely a legal system that weaves together the best values from all existing legal systems, which are then applied within the Indonesian legal system.²⁰

The principle of the rule of law (*Rechtsstaat*) in the Indonesian context implies more than merely the state being subject to the law or government decisions being based on prevailing legal norms.²¹ Conversely, the Indonesian rule of law contains a more substantive and complex

¹⁷ Hedwig Adianto Mau and Tinton Ditisrama, *Hukum Tata Negara Indonesia Teori Dan Penerapan* (Banyumas: Amerta Media, 2024), https://sultra.bpk.go.id/wp-content/uploads/2025/04/Hukum-Tata-Negara-Indonesia-Teori-dan-Penerapannya_250422_155713.pdf.

¹⁸ Muh Ikhhsan, Kurniati, and Musyifikah Ilyas, “Implementasi Qisas Dan Diyat Dalam Sistem Hukum Pidana Indonesia: Analisis Normatif Terhadap Kompatibilitas Syariat Islam Dengan Hukum Positif,” *Media Hukum Indonesia (MHI)* 4, no. 1 (2026): 1112–24, <https://doi.org/10.5281/zenodo.18160625>.

¹⁹ Ilham Yuli Isdiyanto and Anom Wahyu Asmorajati, “Reflection and Implementation of Prismatic Concept In The National Legal System,” *Varia Justicia* 19, no. 2 (2023): 134–52, <https://doi.org/10.31603/variajusticia.v19i2.9100>.

²⁰ Moh. Mahfud MD, *Konstitusi Dan Hukum Dalam Kontroversi Isu* (Jakarta: Rajagrafindo Persada, 2012).

²¹ I Made Sugita, “Tinjauan Yuridis Konsep Negara Hukum Dalam Pembentukan Peraturan Perundang-Undangan Di Indonesia,” *Jurnal Hukum Agama Hindu Widya Kerta* 7, no. 2 (November 30, 2024): 105–27,

meaning: the state must exercise its functions based on principles of justice, equality, and the protection of human rights, as well as in a manner that is transparent and accountable to the people.²² This substantive understanding presupposes that the government cannot exercise its power by concealing the truth, manipulating information, or allowing for factual ambiguity that is detrimental to the rights of the people.

Comparisons with the experiences of other nations demonstrate that the principle of the rule of law in the Continental European legal system, particularly within the German tradition, contains substantive elements crucial for the Indonesian context. In the German rule of law doctrine (*Rechtsstaatsprinzip*), the principle requires not only compliance with formal rules but also necessitates that the law itself be fair, rational, and aligned with fundamental humanitarian values.²³ With this understanding, a state based on law cannot stand on a foundation of lies or information manipulation, as this would alienate the law from the values of justice and diminish the legitimacy of the law itself. Similarly, in the United States legal system, although its tradition differs from Continental European countries, the principle of *due process of law* embedded in the US Constitution requires transparency and access to accurate factual information as a prerequisite for ensuring procedural justice.²⁴ In the Indonesian context, although the “state based on law” formula differs from formulas used in other countries, the substance of the principle shares the same commonality: the state must exercise its power in a manner that is fair, transparent, and accountable.

To concretize the understanding of the rule of law as a foundation for the Right to Truth, it is necessary to identify the prerequisites or components that must be met for a state to truly function as a state based on law. First, a state based on law requires the existence of clear, stable, and accessible laws so that the people know what is expected of them and what they can expect from the state. If the state allows for “ghost drafts” in the legislative process or alters statutory provisions without adequate transparency, this prerequisite is not met.²⁵ Second, a state based on law requires effective accountability mechanisms; thus, if the government commits actions contrary to the law, oversight and correction can be implemented. This accountability cannot function effectively if the people lack access to information regarding actions taken by the government. Third, a state based on law requires public trust in government institutions, and this trust cannot be built if the government conceals information that should

<https://doi.org/10.53977/wk.v7i2.2185>; Zulfahmi Nur, “Rekonstruksi Negara Hukum Dalam Paradigma Hukum Islam Dan Ketatanegaraan Di Indonesia,” *Misykat Al-Anwar Jurnal Kajian Islam Dan Masyarakat* 6, no. 1 (February 3, 2023): 119–42, <https://doi.org/10.24853/ma.6.1.119-142>.

²² Angel Nikhio, Cindy Sekarwati Amalia, and Zain Irawan, “Penegakan Hukum Di Indonesia : Peran Pemerintah Dalam Mewujudkannya,” *Indigenous Knowledge* 2, no. 6 (2023): 414–23, <https://jurnal.uns.ac.id/indigenous/article/view/79929/0>.

²³ Karl-Peter Sommermann, “Constitutional State and Public Administration,” 2021, 17–33, https://doi.org/10.1007/978-3-030-53697-8_2.

²⁴ Zainal Arifin Mochtar and Eddy O.S Hiariej, *Dasar-Dasar Ilmu Hukum Memahami Kaidah, Teori, Asas Dan Filsafat Hukum* (Yogyakarta: Rajawali Pers, 2023).

²⁵ Tanti Kirana Utami et al., “Pengaruh Teori Perundang-Undangan Terhadap Dinamika Norma Hukum Dalam Sistem Hukum Indonesia,” *Jurnal Hukum Ius Publicum* 5, no. 2 (2024): 264–93, <https://doi.org/10.55551/jip.v5i2.199>.

be known to the public or if there are discrepancies between official information provided by the government and the actual factual reality.

From this perspective, the Right to Truth is not merely an additional right to be considered for inclusion in the long list of existing constitutional rights in Articles 28A–J of the 1945 Constitution. On the contrary, the Right to Truth is a fundamental prerequisite for maintaining and preserving the substance of the rule of law principle itself. The Right to Truth functions as a safeguard ensuring that when the state exercises its functions—whether in making legislative, administrative, or judicial decisions—those decisions are based on accurate facts and not on lies or information manipulation.²⁶ Thus, the recognition of the Right to Truth directly strengthens and concretizes the meaning of the “state based on law” claimed by Indonesia in Article 1 Paragraph (3) of the 1945 Constitution.

The jurisprudence of the Indonesian Constitutional Court has demonstrated, albeit not always explicitly, that the constitutional court recognizes the necessity of access to information and factual truth in the context of protecting constitutional rights. In several decisions, the Constitutional Court has emphasized the importance of government transparency and public information access as an integral part of broader constitutional rights protection. This can be seen in Constitutional Court Decision No. 028/PUU-XI/2013 regarding the review of No. 8 of 1997 on Corporate Documents, and Constitutional Court Decision No. 038/PUU-IV/2006 regarding the review of the Law on Public Information Disclosure, which implicitly recognize the importance of access to information.

In the context of judicial review of discriminatory regulations or those violating fundamental rights, the Constitutional Court often considers whether the people have adequate access to information regarding the regulation-making process and its concrete impacts. Similarly, in cases related to social, economic, and cultural rights, the Constitutional Court has recognized that the people have the right to know how the government fulfills its obligations in realizing those rights. In Constitutional Court Decision No. 065/PUU-II/2004 regarding the review of the Regional Government Law, the Court considered transparency in local government decision-making as part of the protection of the constitutional rights of local communities.

Although the Constitutional Court has not formally recognized the Right to Truth as an independent and justiciable constitutional right, the reasoning used in its decisions indicates that access to factual truth is considered an essential element in the protection of constitutional rights. By exploring the substantive meaning of Article 1 Paragraph (3) of the 1945 Constitution and linking it to Constitutional Court jurisprudence, it can be concluded that the constitutional foundation for recognizing the Right to Truth is already available within the Indonesian legal system, even if not yet practiced optimally.²⁷ The next step is for legal

²⁶ Elika Manullang, Budiman N.P.D Sinaga, and Kasman Siburian, “Protection Of Human Rights In The Context Of Indonesian Constitutional Law Against The Functions Of State Institutions,” *Indonesian Journal of Law and Justice* 2, no. 3 (January 30, 2025): 1–11, <https://doi.org/10.47134/ijlj.v2i3.3652>; Bahrain Bahrain, Deny Susanto, and Tubagus Achmad Darodjat, “The Position Of Human Rights in Indonesia Constitutional Law,” *Journal Evidence Of Law* 3, no. 3 (November 13, 2024): 516–24, <https://doi.org/10.59066/jel.v3i3.943>.

²⁷ Mawar Sapanah et al., “Perlindungan Hak Konstitusional Pemohon Dalam Proses Pengujian Undang-Undang Oleh Mahkamah Konstitusi Republik Indonesia,” *Media Hukum Indonesia (MHI)* 3, no. 3 (2025): 507–12, <https://doi.org/10.5281/zenodo.15656086>.

scholars, human rights activists, and civil society to continue emphasizing to the Constitutional Court and other government institutions that formal recognition of the Right to Truth is not only a desirable legal development but a logical consequence and necessary for Indonesia's commitment to becoming a true state based on law.

3.2 The Living Constitution Concept as a Mechanism for Constitutional Right Evolution

The *Living Constitution* doctrine emerged as a response to the limitations of the textualist approach, which views the constitution as a static document whose meaning is limited to what is literally written in its text.²⁸ Although the textualist approach has value in providing legal certainty and preventing arbitrary interpretation, it possesses fundamental weaknesses when faced with contemporary challenges unpredictable to the constitution's drafters.²⁹ Conversely, the *Living Constitution* doctrine views the constitution as a living instrument that evolves and adapts to the times, changing societal needs, and new challenges arising with civilizational progress.³⁰ However, it is important to emphasize that the *Living Constitution* is not a fully flexible approach or one that allows for limitless constitutional change. Instead, the *Living Constitution* is an approach seeking a balance between constitutional stability and responsiveness to social change by maintaining fundamental principles and core values of the constitution while allowing for progressive interpretation of constitutional provisions.³¹

To understand the difference between the rigid textualist approach and the flexible *Living Constitution* approach, one can observe how both treat the Right to Truth in the context of Articles 28A–J of the 1945 Constitution. A textualist approach would argue that because the Right to Truth is not explicitly mentioned in Articles 28A–J, it is not a legally justiciable constitutional right, and the people must wait until a formal change to the constitutional text is made through a strict amendment process before the right can be recognized. This approach has significant practical consequences: as long as formal changes are not made, the people are deemed to lack a constitutional legal basis to demand access to factual truth from the state.³² In contrast, the *Living Constitution* approach would analyze whether the Right to Truth can be derived or inferred from existing constitutional provisions, particularly from fundamental principles such as the Rule of Law (Article 1 Paragraph 3), Popular Sovereignty (Article 1

²⁸ Ramlani Lina Sinaulan, Rahmat Saputra, and Sugeng Sugeng, "The Constitutional Court as a Positive Legislative through the Living Constitution Approach," *International Journal of Law and Society* 2, no. 4 (October 13, 2025): 70–84, <https://doi.org/10.62951/ijls.v2i4.780>.

²⁹ Efendie Efendie, Agus Sugiarto, and Marsudi Dedi Putra, "The Convergence Between Textual Law And Progressive Law In Addressing Contemporary Legal Challenges," *Jurnal Hukum Sehasen* 10, no. 2 (October 11, 2024): 475–80, <https://doi.org/10.37676/jhs.v10i2.6780>.

³⁰ Fiveable Content Team, "Living Constitution," 2025, <https://fiveable.me/key-terms/fundamentals-american-government/living-constitution>.

³¹ Arizona Adi Pradana and Yohanes Suwanto, "The Implementation of The Living Constitution in Indonesia," *Sovereignty: Jurnal Demokrasi Dan Ketahanan Nasional* 1, no. 4 (2022): 635–39, <https://doi.org/10.13057/sovereignty.v1i4.93>; Ridwan Syaidi, "The Constitution as a Living Constitution: Dynamic S of Interpretation in The Indonesia Legal System," *Law and Economics* 19, no. 3 (2025): 249–57, <https://doi.org/10.35335/laweco.v19i3.230>; Budiarti and Silvana Oktanisa, *Konstitusi Indonesia Dan HAM Pendekatan Syari'ah* (Medan: PT Media Penerbit Indonesia, 2025), [http://repository.mediapenerbitindonesia.com/661/1/Konstitusi Indonesia dan HAM Pendekatan Syari'ah.pdf](http://repository.mediapenerbitindonesia.com/661/1/Konstitusi%20Indonesia%20dan%20HAM%20Pendekatan%20Syari'ah.pdf).

³² Constitution Annotated, "Intro.8.2 Textualism and Constitutional Interpretation," n.d., [https://constitution.congress.gov/browse/essay/intro-8-2/ALDE_00001303/%5B'Constitutional', 'Amendments'%5D#:~:text=Textualism is a mode of,refine or revise constitutional texts](https://constitution.congress.gov/browse/essay/intro-8-2/ALDE_00001303/%5B'Constitutional', 'Amendments'%5D#:~:text=Textualism%20is%20a%20mode%20of,refine%20or%20revise%20constitutional%20texts).

Paragraph 2), or other broader fundamental rights in Articles 28A–J. With this approach, the constitution is understood as a unified and cohesive normative system, where one provision can illuminate and enrich the interpretation of others, thereby enabling the recognition of new rights implicitly embedded in the constitutional structure.

Indonesia's experience post-amendment of the 1945 Constitution shows how the constitution evolves through interpretation and jurisprudence without the need for continuous formal changes to the constitutional text. When the First to Fourth Amendments were conducted between 1999 and 2002, a significant expansion in the recognition of constitutional rights occurred through the addition of Articles 28A–J in the Chapter on Human Rights. However, after the amendment period ended, the development of constitutional rights did not cease. The Constitutional Court, through its jurisprudence, has recognized and developed new rights not explicitly mentioned in Articles 28A–J, such as the right to a healthy environment (developed from Article 28H Paragraph 1 regarding the right to a good and healthy environment), the right to quality education (from Article 31 on the right to education), and even the right to public information access (developed from the right to communicate and obtain information in Article 28F). The Constitutional Court, in Decision No. 026-027/PUU-I/2003 regarding the review of the Mining Law, expanded the right to a healthy environment; Decision No. 028/PUU-XI/2013 regarding the review of the Corporate Documents Act, which relates to access to information; and various other decisions have progressively expanded constitutional rights.

These developments demonstrate that the Indonesian constitution actively evolves through interpretation mechanisms without the need for new formal amendments. The mechanism by which the *Living Constitution* enables the recognition of new rights can be outlined as follows. First, the constitution is understood as a document containing fundamental values, principles, and norms that apply universally, not merely specific provisions enumerated in the text.³³ Second, progressive constitutional reasoning allows for “reading” these values and principles within the context of contemporary challenges and new societal needs. Third, when significant changes occur in the social, economic, or technological context, the constitution can be interpreted in a manner responsive to such changes, remaining relevant and meaningful in the daily lives of the people.³⁴ Through this mechanism, the Right to Truth can be recognized as a new constitutional right needed to maintain the integrity of the democratic system and human rights protection in a contemporary era marked by massive disinformation, government information manipulation, and the obfuscation of historical truth.

However, to ensure that the *Living Constitution* approach is not misused as a tool to alter the constitution arbitrarily, a clear distinction must be made between legitimate constitutional

³³ Arie Elcaputera, “Desain Perubahan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 Berdasarkan Sistem Ketatanegaraan Indonesia” (Universitas Jambi, 2024), [https://repository.unja.ac.id/62369/8/FULL DISERTASI ARIE.pdf](https://repository.unja.ac.id/62369/8/FULL%20DISERTASI%20ARIE.pdf).

³⁴ Mardona Siregar, “Teori Hukum Progresif Dalam Konsep Negara Hukum Indonesia,” *Muhammadiyah Law Review* 8, no. 2 (August 3, 2024): 1–15, <https://doi.org/10.24127/mlr.v8i2.3567>; Muhammad Rofiq Salim, “Kebijakan Perlindungan Hukum Terhadap Korban Judi Online Dalam Hukum Positif Yang Akan Datang” (Universitas Islam Sultan Agung Semarang, 2025), [https://repository.unissula.ac.id/42209/1/Ilmu Hukum_30302200337_fullpdf.pdf](https://repository.unissula.ac.id/42209/1/Ilmu%20Hukum_30302200337_fullpdf.pdf).

evolution and constitutional change that alters fundamental principles.³⁵ Legitimate constitutional evolution is a development in the interpretation and application of the constitution that remains faithful to the core values and fundamental principles serving as the constitution's foundation. For example, recognizing the Right to Truth through a progressive interpretation of Article 1, Paragraph (3) on the Rule of Law and the principle of Popular Sovereignty constitutes a legitimate constitutional evolution because such recognition strengthens and concretizes those fundamental principles rather than altering them.³⁶ Conversely, if one attempts to interpret the constitution in a way that directly contradicts its core values—for instance, interpreting Article 1 Paragraph (1) on Popular Sovereignty to mean that the people's decisions can be abused to abolish minority rights protection—this would not be a legitimate constitutional evolution, but an illegitimate constitutional change altering fundamental principles.

To protect the integrity of the *Living Constitution* approach from misuse, several criteria can be used to determine whether an interpretation is a legitimate constitutional evolution or an illegitimate constitutional change. First, the interpretation must remain coherent with the overall constitutional structure and the core values embedded therein.³⁷ Second, the interpretation must be justifiable through solid constitutional reasoning, for example, through systematic, historical, or teleological interpretation showing how the new right logically relates to already recognized rights and principles. Third, the interpretation must be responsive to real social context changes and new societal needs, not merely a reflection of fleeting ideological or political preferences.³⁸ By applying these criteria, the *Living Constitution* approach can function as a responsible and predictable mechanism to recognize new constitutional rights like the Right to Truth, without opening the door to arbitrary interpretations or those altering fundamental constitutional principles.

In the Indonesian context, recognizing the Right to Truth through the *Living Constitution* approach can be achieved through Constitutional Court decisions developing jurisprudence on

³⁵ Chien-Chih Lin and Wen-Chen Chang, "The Canon of 'Constitutional Unamendability' and 'Basic Structure Doctrine' in Global Constitutional Studies," in *Global Canons in an Age of Contestation* (Oxford University Press/Oxford, 2024), 196–221, <https://doi.org/10.1093/9780191956942.003.0011>.

³⁶ Jaroslaw Szymanek, "Evolutionary Interpretation in Constitutional Law: Between Accommodation and Instrumentalization," in *Constitutional Law - Emerging Trends and Perennial Debates [Working Title]* (IntechOpen, 2025), <https://doi.org/10.5772/intechopen.1012648>; Alon Harel and Adam Shinar, "Two Concepts of Constitutional Legitimacy," *Global Constitutionalism* 12, no. 1 (March 12, 2023): 80–105, <https://doi.org/10.1017/S2045381722000156>; Serlika Aprita and Rio Adhitya, *Filsafat Hukum* (Depok: Raja Grafindo Persada, 2020), [https://repository.um-palembang.ac.id/id/eprint/10854/1/Filsafat Hukum.pdf](https://repository.um-palembang.ac.id/id/eprint/10854/1/Filsafat%20Hukum.pdf).

³⁷ Thomas Risse, "The Evolution and Impact of State Constitutions," *International Journal of Law and Legal Studies* 11, no. 3 (2023): 1–2, <https://www.internationalscholarsjournals.com/articles/the-evolution-and-impact-of-national-constitutions.pdf>; Claudia Samantha Rico and I Dewa Gede Palguna, "Penafsiran Original Intent Dalam Putusan Mahkamah Konstitusi Nomor 14/PUU-XI/2013 Tentang Rencana Penyelenggaraan Pemilu Dan Pilkada Secara Serentak," *Kertha Semaya: Journal Ilmu Hukum* 11, no. 7 (2023): 1611–23, <https://doi.org/10.24843/KS.2023.v11.i07.p11>.

³⁸ Ayu Risma Wulandari et al., "Implementasi Penafsiran Hukum Dalam Sistem Peradilan Di Indonesia Berdasarkan Undang-Undang Nomor 48 Tahun 2009," *Jurnal Penelitian Ilmiah Multidisiplin* 8, no. 12 (2024): 377–84, <https://oaj.jurnalhst.com/index.php/jpim/article/view/7532>; Saldi Isra, "Penafsiran Konstitusi (PowerPoint Presentation, Bimbingan Teknis Hukum Acara Pengujian Undang-Undang Bagi Asosiasi Pengajar Hukum Acara Mahkamah Konstitusi/APHAMK," 2025, [https://pusdik.mkri.id/materi/materi_365_3.Penafsiran Konstitusi - Prof Saldi Isra.pdf](https://pusdik.mkri.id/materi/materi_365_3.Penafsiran%20Konstitusi%20-%20Prof%20Saldi%20Isra.pdf).

the progressive interpretation of Article 1 Paragraph (3) and the principle of Popular Sovereignty. This step would enrich Indonesian constitutional law doctrine and demonstrate that the Indonesian legal system is flexible enough to adapt to evolving human rights protection needs while maintaining constitutional stability and commitment to the fundamental values underpinning the Indonesian state.

3.3 Popular Sovereignty and the Right to Truth: Conceptual and Practical Relations

Article 1, Paragraph (2) of the 1945 Constitution of the Republic of Indonesia states that “Sovereignty is in the hands of the people and is implemented according to the Constitution.” This phrase places the people at the highest position in the state power hierarchy, surpassing the executive, legislative, and judiciary. However, the concept of Popular Sovereignty in practice faces fundamental challenges when linked to the issue of access to information and factual truth. The people, as sovereignty holders, cannot exercise their sovereignty effectively—let alone intelligently and informedly—if they lack access to accurate and trustworthy information regarding the actions taken by their mandatories.³⁹ Thus, the Right to Truth is not merely an additional right to be added to the catalogue of constitutional rights, but a right intrinsically linked to the substance of Popular Sovereignty itself.

To understand the relationship between Popular Sovereignty and the Right to Truth, one must first understand how the people exercise their sovereignty in Indonesia’s constitutional democratic system. In contemporary democratic theory, popular sovereignty is understood not only in a formal sense—that the right to make the highest decisions nominally rests with the people—but in a substantive sense, where the people actively participate in decision-making processes affecting their lives.⁴⁰ The people exercise their sovereignty through various mechanisms: first, through general elections, where the people choose representatives to sit in representative bodies and lead the government. Second, through participation in public consultation processes and public policy decision-making, such as in regional regulation drafts, development project determinations, or government decisions directly affecting the community. Third, through access to control and oversight mechanisms, such as the right to petition the government, the right to file lawsuits in court, or the right to demonstrate and protest against government policies deemed unjust.

However, all mechanisms through which the people exercise their sovereignty share one fundamental requirement: the people require access to accurate, complete, and trustworthy information regarding the issues subject to their decisions. In general elections, the people cannot make informed and rational choices about the candidates they elect if they lack true information about each candidate’s track record, platform, and vision.⁴¹ In participating in

³⁹ Sekar Ar-Ruum Samaragrahira, “Partisipasi Politik Dalam Konsep Kedaulatan Rakyat,” *Sovereignty: Jurnal Demokrasi Dan Ketahanan Nasional* 2, no. 3 (2023): 312–17, <https://journal.uns.ac.id/index.php/sovereignty/article/view/225>.

⁴⁰ Muhammad Faiz Hilmi, “Kajian Sistem Presidential Threshold Dalam Implementasi Nilai-Nilai Demokrasi Berdasarkan Undang-Undang Dasar 1945” (Universitas Islam Sultan Agung, 2022), https://repository.unissula.ac.id/25940/1/30301800253_fullpdf.pdf.

⁴¹ Rinanda Gema Pangestika and Rendra Widyatama, “Analisis Sikap Publik Terhadap Artis Dan Komedian Yang Memasuki Ranah Politik Indonesia,” *Journal Publicuho* 8, no. 2 (June 10, 2025): 629–44, <https://doi.org/10.35817/publicuho.v8i2.659>.

public policy decision-making processes, the people cannot provide meaningful input and suggestions if they do not clearly understand the problems being faced, the alternative solutions available, and the potential impacts of each solution considered.⁴² In utilizing control and oversight mechanisms, the people cannot effectively monitor and evaluate government performance if they lack access to information regarding what actions the government has taken, the costs incurred, and the results achieved.

When the people's mandatories—the government, legislators, and bureaucrats—conceal factual information or actively disseminate disinformation to cover up the truth, they not only violate the trust granted by the people but also alienate the people from their ability to exercise sovereignty. People who lack access to factual truth will make decisions not based on actual reality but on narratives constructed and manipulated by those in power. In this way, popular sovereignty turns into an illusion—the people formally possess the right to make decisions, but those decisions are made based on false foundations, resulting in decisions that do not genuinely reflect the will of an informed and rational people. Therefore, the recognition of the Right to Truth is a necessary prerequisite to concretize the substance of Popular Sovereignty in practice.

Indonesia's experience clearly shows how the denial of the Right to Truth directly harms popular sovereignty in various contexts. The first case study is the manipulation of legislative procedures in Law Number 11 of 2020 on Job Creation, known as the “ghost draft” phenomenon. In this case, significant discrepancies occurred between the draft Bill discussed in the House of Representatives sessions and the text finally enacted and published in the State Gazette. The people invited to provide input in public forums before the law's ratification did not have clear information on which text would actually be ratified, rendering their participation as *simulated* or *pseudo-participation*, rather than genuine and meaningful participation. Furthermore, in the context of controlling the law's impact through judicial review at the Constitutional Court, the people and civil society organizations could not file effective judicial review applications if they lacked access to the authentic and verifiable text. The “ghost draft” phenomenon is concrete evidence of how the denial of the Right to Truth directly alienates the people from their sovereignty.

The second case study is the obfuscation of history regarding the events of 1965–1966 and 1997–1998 in Indonesia, where the people—especially the younger generation—lack access to complete and accurate information about what actually happened, who was responsible, and the actual number of victims.⁴³ The government, through various formal and informal mechanisms, has obscured historical truth by banning publications, restricting archive access, and criminalizing those attempting to uncover the truth. Consequently, the people cannot make informed assessments on how the Indonesian legal and security systems should be reformed to prevent the recurrence of similar atrocities. The people also cannot effectively demand

⁴² Fanila Kasmita Kusuma, “Peran Partisipasi Masyarakat Dalam Proses Perumusan Kebijakan Publik Di Era Desentralisasi,” *Media Bina Ilmiah* 18, no. 9 (2024): 2505–14, <https://binapatria.id/index.php/MBI/article/view/1244>.

⁴³ Human Rights Watch, *Indonesia: Transition to Accountability: How Indonesia Can Pursue Transitional Justice* (New York: HRW, 2020).

accountability from state institutions or individuals responsible for such human rights violations. In this way, the obfuscation of historical truth harms not only individual victims of human rights violations but also the collective sovereignty of the people to control and shape the nation's future based on lessons from past mistakes.

Constitutional Court jurisprudence has demonstrated awareness of the importance of access to information and factual truth in the context of Popular Sovereignty, although not explicitly linking it to the Right to Truth as an independent constitutional right. In various decisions, the Court has emphasized that the people, as sovereignty holders, have the right to know about government decision-making processes, particularly regarding public interest. For example, in Constitutional Court Decision Number 005/PUU-I/2003 regarding the review of the Law on the Formation of Legislation, the Court emphasized that transparency in the legislative process is an essential element of protecting Popular Sovereignty. Similarly, in Decision Number 038/PUU-IV/2006 regarding the review of the Public Information Openness Law, the Court recognized that access to public information is a fundamental component of constitutional democracy and the implementation of popular sovereignty. The next step to be taken is for the Constitutional Court to explicitly recognize that the Right to Truth is a justiciable constitutional right intrinsically linked to Article 1, Paragraph (2) on Popular Sovereignty, such that its violation can be considered a violation of the most fundamental constitutional principle.

By understanding the intimate relationship between Popular Sovereignty and the Right to Truth, it can be concluded that formal recognition of the Right to Truth as a constitutional right is not merely a matter of individual protection regarding information or access to public data, but a matter of protecting the fundamental institutions of constitutional democracy itself. Without the Right to Truth being recognized and constitutionally protected, Popular Sovereignty will remain an empty slogan without practical substance, and Indonesian democracy will continue to run on a fragile foundation of disinformation and truth manipulation.⁴⁴

3.4 Constitutional Comparison: Unwritten Rights in Comparator Legal Systems

The experience of other nations in recognizing and protecting unwritten constitutional rights provides valuable lessons on how legal systems can develop to respond to evolving human rights protection needs. The author begins the comparison with the United States and Germany because the United States employs the Anglo-Saxon "Rule of Law" legal system, while Germany employs the Continental European "Rechtsstaat" legal system; these two legal concepts have been incorporated into the prismatic legal system of Pancasila.

The United States, through the doctrine of the Ninth Amendment to the US Constitution, has developed a legal framework enabling the recognition of rights not explicitly mentioned in the Constitution.⁴⁵ The Ninth Amendment states: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." This phrase

⁴⁴ Ahmad et al., *Hukum Pemilu & Hukum Partai Politik Di Indonesia Regulasi, Dinamika, Dan Tantangan* (Jakarta: PT Adikara Cipta Aksa, 2025), [https://repository.unja.ac.id/91728/1/Buku 5 - MERI 2025 . Oktober hukum pemilu dan parpol.pdf](https://repository.unja.ac.id/91728/1/Buku%205%20-%20MERI%202025%20-%20Oktober%20hukum%20pemilu%20dan%20parpol.pdf).

⁴⁵ David J. Bodenhamer, "7. Rights," in *The U.S. Constitution: A Very Short Introduction* (Oxford University Press, 2018), 92–107, <https://doi.org/10.1093/actrade/9780195378320.003.0007>.

presupposes that the US Constitution does not include a complete list of all rights held by the people, but only includes certain rights deemed most important for explicit mention. With this understanding, the US Supreme Court has used the Ninth Amendment as a basis to recognize various new rights not explicitly contained in the Constitution, including the *right to privacy*, which later became the foundation for various significant decisions regarding the protection of individual intimate decisions such as contraception, abortion, and sexual relations between consenting adults.⁴⁶

The recognition of unwritten rights in the United States has followed a systematic and accountable pattern of reasoning. The US Supreme Court, in landmark cases such as *Griswold v. Connecticut* (1965), did not merely use the Ninth Amendment as a basis to recognize privacy rights but conducted deep constitutional reasoning to show how privacy rights could be derived from broader constitutional provisions, including the Due Process Clause of the Fourteenth Amendment. With this approach, the Supreme Court not only points to the absence of a prohibition on privacy rights in the Constitution but demonstrated how privacy rights are logically related to fundamental values embedded in the US constitutional structure. The identical methodology was employed in acknowledging additional rights, including *the freedom of association*, developed from the First Amendment, and other rights not explicitly mentioned in the US Constitution text. Through these mechanisms, the US Supreme Court has shown that recognizing unwritten rights does not require formal changes to the constitutional text but can be done through progressive and responsible constitutional interpretation.

Germany's experience in developing the doctrine of unwritten constitutional rights through the jurisprudence of the Federal Constitutional Court (*Bundesverfassungsgericht*) shows a different approach but one that aligns in principle. The German Federal Constitutional Court has consistently recognized that the *Grundgesetz* (German Constitution) established in 1949 cannot cover all rights needing protection to ensure the sustainability of a constitutional democratic state.⁴⁷ Instead, the Court has developed doctrines on *Menschenwürde* (human dignity) and *Werteordnung* (fundamental value system) embedded in the German Constitution, serving as the basis to recognize and protect various unwritten rights logically related to those fundamental values. The right to personal honor, the right to a good name, the right to reputation, and various other rights not explicitly mentioned in the German Constitution have been recognized and protected through reasoning linking them to the *Menschenwürde* principle and broader constitutional democratic principles.⁴⁸

The mechanism used by the German Federal Constitutional Court in recognizing unwritten rights involves what is known as the *radiant effect* or *Ausstrahlungswirkung*, which is the

⁴⁶ Layne Huff, "The Ninth Amendment: An Underutilized Protection for Reproductive Choice," *Journal of Law and Health* 37, no. 2 (2024): 105–26, <https://engagedscholarship.csuohio.edu/jlh/vol37/iss2/6>.

⁴⁷ Paula Rhein-Fischer and Anna Wójcik, "The Politicisation of Constitutional Review of Memory Laws," *European Constitutional Law Review* 19, no. 4 (December 8, 2023): 664–89, <https://doi.org/10.1017/S1574019623000287>; Iwona Wróblewska, "Do We Need the Concept of *Drittwirkung* to Protect Fundamental Rights in Private Relations? A Lesson from Germany," *German Law Journal*, November 28, 2025, 1–22, <https://doi.org/10.1017/glj.2025.10167>.

⁴⁸ Ralf Poscher, "Human Dignity as a Value and a Right: The German Case," 2024, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4746895.

influence radiating from fundamental values and explicitly recognized rights in the constitution into various fields of law and new rights not yet formally recognized.⁴⁹ With this approach, the German constitutional court has been able to recognize various new rights that are concrete manifestations or practical applications of fundamental values embedded in the German Constitution. This approach has proven effective in ensuring that constitutional protection remains responsive to the times and new societal needs while maintaining cohesion with the existing constitutional structure and its underlying fundamental values.

Beyond the experiences of the United States and Germany, other countries such as South Africa and Australia have explicitly recognized the Right to Truth as a constitutional right in the context of transitional justice and human rights protection. South Africa, through its constitution adopted in 1996, explicitly recognizes the right to access information and the right to historical education as an integral part of human rights protection and recovery from the impacts of apartheid.⁵⁰ Similarly, the South African Constitutional Court has recognized in various decisions that the Right to Truth is a crucial constitutional right to ensure that victims of past human rights violations can obtain the recognition, rehabilitation, and reparations they need. Australia, although through a different mechanism, has also recognized the importance of access to historical truth and factual information in various contexts, including the protection of Indigenous Australians' rights and government transparency.⁵¹

The legal mechanisms used by these comparator nations can be identified and adapted for the Indonesian context. First, the use of progressive constitutional interpretation, as performed by the US Supreme Court and the German Federal Constitutional Court, shows that constitutional courts play a vital role in developing legal doctrines to respond to new needs. The Indonesian Constitutional Court can use similar mechanisms to recognize the Right to Truth through a progressive interpretation of Article 1 Paragraph (3) on the Rule of Law, Article 1 Paragraph (2) on Popular Sovereignty, and other constitutional provisions reflecting fundamental constitutional democratic values. Second, the use of the *fundamental rights doctrine*, as developed by the German Federal Constitutional Court, shows that rights can be recognized as fundamental not only when explicitly mentioned in the constitution but also when logically related to fundamental values embedded therein. The Indonesian Constitutional Court can use this approach to demonstrate that the Right to Truth is fundamental because it is intrinsically linked to fundamental values like the Rule of Law and Popular Sovereignty.

Third, the use of *constitutional values* principles or the *radiating effect*, as performed by the German Federal Constitutional Court, shows that constitutional courts can identify fundamental values embedded in the constitution and then use them as a basis to recognize and

⁴⁹ Wróblewska, "Do We Need the Concept of *Drittwirkung* to Protect Fundamental Rights in Private Relations? A Lesson from Germany."

⁵⁰ Tapiwa V. Warikandwa et al., "Global Citizenship and Southern Africa Liberation History Education in Southern Africa: A 21 St Century Socio-Legal Perspective," *Cogent Social Sciences* 9, no. 1 (December 31, 2023): 1–36, <https://doi.org/10.1080/23311886.2023.2207884>.

⁵¹ Rosemary Hill, "Anticipatory Co-Governance for Human Rights to Sciences across Knowledge Systems," *The International Journal of Human Rights* 28, no. 3 (March 15, 2024): 335–53, <https://doi.org/10.1080/13642987.2023.2273290>.

protect new rights that are practical manifestations or concrete applications of those values.⁵² In the Indonesian context, the Constitutional Court can identify fundamental values such as the Rule of Law, Popular Sovereignty, Constitutional Democracy, and Human Rights Protection, and then use these values as a basis to recognize the Right to Truth as a justiciable constitutional right.

The experience of these comparator nations demonstrates that recognizing unwritten constitutional rights is not an anomalous or problematic phenomenon in modern legal systems, but a normal and accepted practice in various sophisticated and advanced constitutional legal systems.⁵³ Thus, the recognition of the Right to Truth as an unwritten constitutional right in Indonesia is not only normatively justified based on constitutionalism and democratic principles but also comparatively justified based on practices proven effective in other nations possessing strong constitutionalism traditions and commitments to human rights protection.⁵⁴

3.5 Practical Application of the Right to Truth in Three Critical Contexts

The Right to Truth is not merely an abstract normative and theoretical concept but holds concrete practical implications in the daily lives of Indonesian society. Formal recognition of the Right to Truth as a constitutional right would have significant impacts in three critical contexts of state life: historical, legislative, and administrative contexts. In these three contexts, the Right to Truth functions as an instrument protecting the people from various forms of abuse of power by the state and strengthening the integrity of Indonesia's constitutional democratic system.

In the historical context, the Right to Truth has profound relevance regarding the disclosure and acknowledgment of human rights violations that occurred during specific periods in Indonesian history. Events such as the enforced disappearances in 1965–1966 with estimated victims reaching hundreds of thousands or even millions, mass killings in Timor Leste in 1975–1999, the May 1998 events resulting in hundreds of deaths and thousands of destroyed buildings, as well as various other human rights violations occurring across different times and places, still leave factual ambiguity and deep trauma for the victims' families.⁵⁵ Although several initiatives have been undertaken to uncover the truth about these human rights violations, including through the National Commission on Human Rights (Komnas HAM) and Ad Hoc Courts, these efforts are far from optimal due to limited access to archival documents, limited willingness of state institutions to collaborate in the truth-seeking process, and in some

⁵² Tanto Lailam, "Peran Mahkamah Konstitusi Federal Jerman Dalam Perlindungan Hak Fundamental Warga Negara Berdasarkan Kewenangan Pengaduan Konstitusional," *Jurnal HAM* 13, no. 1 (April 27, 2022): 65–80, <https://doi.org/10.30641/ham.2022.13.65-80>.

⁵³ Aileen Kavanagh, "The Ubiquity of Unwritten Constitutionalism," *International Journal of Constitutional Law* 21, no. 4 (December 30, 2023): 968–75, <https://doi.org/10.1093/icon/moae005>.

⁵⁴ M. Fakhrian Nadrianto et al., "Peran Mahkamah Konstitusi Dalam Menjaga Konstitusionalitas Produk Legislasi Di Indonesia," *Ibtikar: Jurnal Studi Islam Dan Sosial* 2, no. 2 (2025): 101–14, <https://ejournal.iaialmuslimaceh.ac.id/IBTIKAR/article/view/297/362>.

⁵⁵ Bonaventura Pradana Suhendarto, "Pemenuhan Hak-Hak Korban Pelanggaran Berat Hak Asasi Manusia Di Indonesia," *Jurnal Hukum, Politik Dan Kekuasaan* 1, no. 2 (February 24, 2021): 112–33, <https://doi.org/10.24167/jhpk.v1i2.3041>.

cases, persistent government efforts to cover up the truth on grounds of national security or state stability.⁵⁶

The Right to Truth in the historical context means that victims of human rights violations and their families possess a justiciable constitutional right to know what actually happened, who was responsible for the violations, and where the remains of their lost loved ones are located. This right is not merely about emotional or psychological satisfaction, although both are important for the trauma healing process. Instead, the Right to Truth in the historical context is about recognizing the dignity and status of victims as citizens who have a constitutional right to know the factual truth about what happened to them or their loved ones. With formal recognition of the Right to Truth as a constitutional right, victims and their families would have a strong legal basis to demand the state open relevant archives, conduct transparent and independent investigations into the violations, and disseminate the investigation results to the public openly. This recognition would also strengthen the legitimacy of state institutions by showing that the state is committed to facing its past honestly and transparently, not by covering up or obscuring the truth.

Formal recognition of the Right to Truth would also imply how Indonesia executes its commitment to human rights protection and the doctrine of *never again*, which is the spirit of transitional justice in various post-conflict nations.⁵⁷ By recognizing the Right to Truth as a constitutional right, Indonesia would demonstrate that the state's commitment to human rights protection is not merely an empty slogan applicable only to specific cases or periods, but a fundamental and sustainable commitment applicable at all times. This recognition would also strengthen Indonesia's position in the international community, showing that the state is fully committed to universal values of human rights protection and transitional justice principles that have become an integral part of international human rights norms.

In the legislative context, the Right to Truth possesses very practical and urgent relevance regarding transparency and integrity in the law-making process. The "ghost draft" phenomenon appearing in the case of Law Number 11 of 2020 on Job Creation clearly shows how the Indonesian legislative system can be manipulated in a way detrimental to the people as sovereignty holders. In this case, the Bill text discussed in House of Representatives sessions at various times showed substantial differences from the text finally enacted and published in the State Gazette.⁵⁸ These changes included the addition of new articles, deletion of articles, and significant modifications to provisions already agreed upon in House sessions, yet these

⁵⁶ Rahmat Hidayat, Siti Fatimah, and Muhammad Adib Alfarisi, "Penyelesaian Komnas HAM Dalam Penyelesaian Kasus-Kasus Pelanggaran HAM Di Indonesia," *Indonesian Journal of Legality of Law* 7, no. 1 (December 30, 2024): 115–22, <https://doi.org/10.35965/ijlf.v7i1.5427>; Suparman Marzuki and Mahrus Ali, "The Settlement of Past Human Rights Violations in Indonesia," *Cogent Social Sciences* 9, no. 1 (December 31, 2023): 1–12, <https://doi.org/10.1080/23311886.2023.2240643>.

⁵⁷ Muhammad Rifai Yusuf, Naufal Rizqiyanto, and Sulastrri Sangadji, "Redesigning the Institutional Framework of Indonesia's Truth and Reconciliation Commission," *Lex Renaissance* 10, no. 2 (December 30, 2025): 308–39, <https://doi.org/10.20885/JLR.vol10.iss2.art2>.

⁵⁸ Milwan Milwan and Roman Hadi Saputro, "Analysis of Rejection of The Implementation of The Job Creation Law," *Ganaya: Jurnal Ilmu Sosial Dan Humaniora* 8, no. 1 (January 9, 2025): 175–88, <https://doi.org/10.37329/ganaya.v8i1.3738>.

changes were made without transparent explanation or through procedures truly accountable to the people.

With formal recognition of the Right to Truth as a constitutional right, the people would have a strong legal basis to demand full transparency at every stage of the law-making process, from the drafting stage, committee discussions, plenary sessions, to ratification and publication. The people would have a constitutional right to know the text actually ratified by the House, the procedures followed during legislation, the reasons for specific changes, and who was responsible for those changes. With this right, the people would be able to conduct more effective oversight of the legislative process and detect manipulation or procedural abuse early on, allowing them to file objections or demand that truly legitimate legislative procedures be followed.

Recognizing the Right to Truth in the legislative context would also strengthen democratic control mechanisms over the legislative body. In a representative democracy like Indonesia, the people cannot directly participate in every legislative decision, but they can control their representatives' performance through various mechanisms, including evaluating how those representatives carry out their duties. To perform an informed evaluation, people require access to complete information regarding the legislative processes that have occurred. With the recognition of the Right to Truth, transparency in the legislative process would be enhanced, enabling the people to make more accurate assessments of how legislative institutions have served the people's interests. This recognition would also have a *deterrent effect* on manipulative practices in legislation, as legislative decision-makers would know their actions would be monitored transparently, and they could be held accountable to the people.⁵⁹

In the administrative context, the Right to Truth has fundamental relevance regarding the government's obligation to provide accurate, honest, and accessible information to the public, particularly in critical situations directly affecting public welfare. Indonesia's experience in handling public health crises, natural disasters, and other emergencies has shown that there are often significant discrepancies between official data announced by the government and factual data occurring on the ground. For example, in handling the Covid-19 pandemic, various media and independent organizations documented that case and death data announced by the government were consistently lower than real estimates on the ground. Similarly, in various natural disasters, data on victim numbers, damage levels, and aid needs announced by the government are often inaccurate, resulting in suboptimal disaster response and inefficient resource allocation.

The Right to Truth in the administrative context means that the people have a constitutional right to obtain accurate, complete, and verifiable information from the government regarding critical situations affecting public welfare. With this right, the government would have a constitutional obligation to collect, verify, and disseminate accurate and non-misleading data to the public. The government could no longer justify concealing or falsifying data with reasons

⁵⁹ Tanti Kirana Utami et al., "Analysis of the Implementation of Good Governance Principles in the Formation of Laws and Regulations in Indonesia," *Indonesian Journal of Law and Justice* 2, no. 2 (December 17, 2024): 1–11, <https://doi.org/10.47134/ijlj.v2i2.3421>.

such as “to maintain public trust” or “to prevent panic,” because recognizing the Right to Truth would demonstrate that public trust is built through transparency and honesty, not information manipulation.⁶⁰ With access to accurate information, the people would be able to make better decisions on how to respond to such critical situations, evaluate government response more accurately, and demand accountability if the response is suboptimal or if announced data proves inaccurate.

Recognizing the Right to Truth in the administrative context would also strengthen principles of government transparency and public accountability already recognized in various Indonesian laws, including Law Number 14 of 2008 on Public Information Openness and Law Number 25 of 2009 on Public Service. Although these two laws provide protection for the people’s right to obtain public information, formal recognition of the Right to Truth as a constitutional right would provide a higher and more fundamental level of protection. As a constitutional right, the Right to Truth would be protected through stronger constitutional mechanisms, such as judicial review of regulations restricting information access, or filing constitutional complaints to the Constitutional Court if the government violates the Right to Truth.

Overall, formal recognition of the Right to Truth in these three contexts—historical, legislative, and administrative—would provide comprehensive protection for the people as sovereignty holders to access accurate and trustworthy information. With this protection, Indonesia’s constitutional democracy would function better, as the people would have a solid factual basis to make informed decisions and conduct effective control over state institutions. Recognizing the Right to Truth would also strengthen the legitimacy of the Indonesian rule of law, showing that the state is fully committed to exercising power transparently, accountably, and based on factual truth, not on manipulation or information obfuscation.

3.6 Constitutional Implications and Prospects for Legal Development

Formal recognition of the Right to Truth as an unwritten constitutional right would bring significant and profound implications for the structure, function, and dynamics of the Indonesian legal system as a whole. These implications are not merely normative and theoretical but would have tangible practical impacts on how state institutions exercise their functions and how the Indonesian people can protect their constitutional rights in daily life.

First, recognizing the Right to Truth would have significant implications for the role and function of the Indonesian Constitutional Court. The Constitutional Court would be encouraged to take a more active role in recognizing and protecting constitutional rights not explicitly contained in the text of Articles 28A–J of the 1945 Constitution. With this recognition, the Constitutional Court would have a stronger basis to use progressive constitutional reasoning and develop jurisprudence responsive to evolving human rights protection needs. The Constitutional Court would be able to recognize that Article 1 Paragraph (3) on the Rule of Law and Article 1 Paragraph (2) on Popular Sovereignty, as well as other constitutional

⁶⁰ Natasya Klarisa Paruntu and Wilma Silalahi, “Realisasi Keterbukaan Informasi Publik Pada Lingkup Kementerian Dalam Menunjang Pembaharuan Sistem Hukum Nasional (PSHN),” *Jurnal USM Law Review* 8, no. 2 (August 14, 2025): 1088–1106, <https://doi.org/10.26623/julr.v8i2.12264>.

provisions reflecting fundamental values, can serve as a basis for recognizing new rights not yet explicitly mentioned in the constitution. With this development, the Constitutional Court would increasingly become an institution tasked not only with protecting the constitution in a formal and textual sense but also protecting the fundamental values and principles embedded within the constitution itself. This role shift would make the Constitutional Court more relevant and responsive to contemporary societal needs and strengthen its position as the guardian of Indonesian constitutional democracy.

Second, recognizing the Right to Truth would bring implications for the legislative obligation to form regulations providing concrete protection for this right across various life sectors. Following formal recognition of the Right to Truth as a constitutional right, the legislative body would have a constitutional obligation to enact laws explicitly recognizing and protecting that right. This obligation would encourage the formation or revision of various laws, such as the Law on Public Information Openness, the Law on the Formation of Legislation, the Law on the National Commission on Human Rights, and other relevant sectoral laws. With this recognition, protection of the Right to Truth would be elevated from the administrative or statutory level to the constitutional level, providing a higher degree of protection and stronger protection mechanisms. The legislative body would also have stronger incentives to ignore pressures from interest groups that might desire restrictions on public information access, as the denial of the Right to Truth could be challenged through judicial review mechanisms at the Constitutional Court.

Third, recognizing the Right to Truth would have profound implications for changing legal and political culture at both institutional and societal levels. Indonesia's legal and political culture would slowly shift from one tending to conceal information and obscure truth to a culture valuing transparency, accountability, and honesty in governance.⁶¹ With the recognition of the Right to Truth, it would become widely accepted that information openness and government transparency are not threats to state stability but rather prerequisites for building public trust and strengthening state institution legitimacy. Government institutions would begin to view transparency as a constitutional necessity, not merely as an administrative policy to be applied or ignored at the government leader's whim. This cultural change would occur gradually through a combination of Constitutional Court decisions reinforcing the Right to Truth, better legal and constitutional education in schools and universities, and civil society mobilization to demand accountability from state institutions.

Fourth, recognizing the Right to Truth would open prospects for developing a more comprehensive doctrine of *unenumerated rights* in the Indonesian legal system. By recognizing the Right to Truth as an unwritten constitutional right, possibilities would open to recognize other constitutional rights also not explicitly contained in the constitutional text but logically related to fundamental values embedded in the constitution. Other rights that could potentially be recognized through the *unenumerated rights* doctrine include the right to a healthy and sustainable environment (broader than recognized in Article 28H Paragraph 1), the right to

⁶¹ Maftuh Rahmah Hanifa et al., "Beyond Compliance: A Systematic Review of Ethics, Accountability, And Transparency in Indonesian Governance," *Policy & Governance Review* 10, no. 1 (January 8, 2026): 85–102, <https://doi.org/10.30589/pgr.v10i1.1361>.

decent and dignified work, the right to quality education accessible to all, the right to comprehensive health, and other rights constituting prerequisites for a dignified life for all citizens.⁶² With the development of a broader *unenumerated rights* doctrine, the Indonesian legal system would become more responsive to human rights protection needs that evolve with the times, without waiting for formal amendments to the constitutional text every time a need arises to recognize new rights.

However, recognizing the Right to Truth would also bring practical challenges needing careful and wise management. One of the most significant challenges is the potential tension between the Right to Truth and other constitutional rights, particularly the right to privacy, the right to personal reputation, and rights related to national security. For example, in the context of protecting victims of sexual violence or child abuse, disclosing victim identities could violate privacy rights and the right to protection from stigmatization. Similarly, in the context of past human rights violations, disclosing the identities of suspected perpetrators might increase the risk of retaliatory violence, or identity disclosure in certain situations might be disproportionate to the benefits gained. Regarding national security, disclosing documents related to defense strategies or national intelligence could pose risks to state security.

To manage these tensions, a sophisticated *balancing* mechanism or *proportionality analysis* must be developed and consistently applied in various contexts. This balancing mechanism must consider various factors, including: first, the weight of the Right to Truth in the specific case context; second, the weight of other rights potentially conflicting with the Right to Truth; third, whether alternative ways exist to protect the truth without violating other rights; and fourth, how the benefits of truth disclosure compare to the potential harm. With a clear and transparent balancing mechanism, the Constitutional Court and other institutions would be able to recognize and protect the Right to Truth while respecting other constitutional rights and considering legitimate interests in national security and the protection of vulnerable individuals.

Overall, formal recognition of the Right to Truth as an unwritten constitutional right would bring broad and profound implications for the Indonesian legal system, but these implications would generally be positive and contribute to strengthening constitutional democracy, human rights protection, and the quality of the rule of law in Indonesia. With this recognition, Indonesia will move closer to fully realizing the constitutional promises contained in the Preamble and Articles of the 1945 Constitution of the Republic of Indonesia as stated in paragraph 4, namely to form a state government that protects the entire Indonesian nation and all of Indonesia's territory, improves public welfare, educates the nation, and participates in realizing a world order based on freedom, eternal peace, and social justice.⁶³

⁶² Asri Agung Putra Agung and Ludfie Jatmiko Setyo Poerwoko Jatmiko, "Jaminan Kesehatan Dalam Hak Konstitusional Bagi Pekerja Migran Indonesia Dalam Konstruksi Negara Kesejahteraan," *The Prosecutor Law Review* 1, no. 3 (December 27, 2023): 1–24, <https://doi.org/10.64843/prolev.v1i3.19>.

⁶³ Agustina Ni Made Ayu Darma Pratiwi and Anak Agung Adi Lestari, "Pembangunan Hukum Berdasarkan Keadilan Sosial Bagi Seluruh Rakyat Indonesia," *Jurnal Panah Keadilan* 4, no. 2 (August 30, 2025): 25–36, <https://doi.org/10.57094/jpk.v4i2.943>; Husni Kurniawati and Yunanto Yunanto, "Perlindungan Hukum Terhadap Penyalahgunaan Data Pribadi Debitur Dalam Aktivitas Pinjaman Online," *Jurnal Ius Constituendum* 7, no. 1 (April 17, 2022): 102–14, <https://doi.org/10.26623/jic.v7i1.4290>.

4. CONCLUSION

This study concludes that the Right to Truth can be constitutionally constructed as an unwritten fundamental constitutional right within the Indonesian legal system through a progressive interpretation of Article 1 paragraph (3) on the Rule of Law and Article 1 paragraph (2) on Popular Sovereignty, reinforced by the Living Constitution doctrine. The findings demonstrate that the absence of explicit textual recognition in Articles 28A–J of the 1945 Constitution does not preclude the justiciability of such rights, as constitutional principles and values provide a sufficient normative basis for their recognition and enforcement. The novelty of this research lies in repositioning the Right to Truth from a merely international human rights instrument into a constitutional doctrine that operates as a foundational norm guiding state actions across historical, legislative, and administrative domains. This study contributes theoretically by developing a new constitutional framework for recognizing unenumerated rights in Indonesia, and practically by offering a doctrinal basis for the Constitutional Court, legislators, and policymakers to institutionalize the Right to Truth as an enforceable constitutional guarantee. Ultimately, this research strengthens the discourse on dynamic constitutionalism and provides a pathway for enhancing democratic integrity, transparency, and accountability within the Indonesian constitutional system.

REFERENCES

- Agung, Asri Agung Putra, and Ludfie Jatmiko Setyo Poerwoko Jatmiko. “Jaminan Kesehatan Dalam Hak Konstitusional Bagi Pekerja Migran Indonesia Dalam Konstruksi Negara Kesejahteraan.” *The Prosecutor Law Review* 1, no. 3 (December 27, 2023): 1–24. <https://doi.org/10.64843/prolev.v1i3.19>.
- Ahmad, Muhamad Iqbal Ansori Firdaus, Bagus Hermanto, Meri Yarni, Susanto, S. Roy Hendrayanto, Akhmad Zaki Yamani, et al. *Hukum Pemilu & Hukum Partai Politik Di Indonesia Regulasi, Dinamika, Dan Tantangan*. Jakarta: PT Adikara Cipta Aksa, 2025. [https://repository.unja.ac.id/91728/1/Buku 5 - MERI 2025 . Oktober hukum pemilu dan parpol.pdf](https://repository.unja.ac.id/91728/1/Buku%205%20-%20MERI%202025%20-%20Oktober%20hukum%20pemilu%20dan%20parpol.pdf).
- Anjari, Warih. *Metode Penelitian Hukum Buku Ajar*. Jakarta: Universitas 17 Agustus 1945 Jakarta, 2023. <https://lib.uta45jakarta.ac.id/index.php?p=fstream-pdf&fid=56&bid=11588>.
- Anwar, Syaiful, Kamandani, and Silm Oktapani. “Perbandingan Perkembangan Konstitusi Berdasarkan Sistem Pemerintahan Serta Bentuk Dan Sifat Konstitusi.” *Jurnal Ilmu Hukum, Humaniora Dan Politik* 5, no. 1 (November 20, 2024): 599–603. <https://doi.org/10.38035/jihhp.v5i1.3091>.
- Aprita, Serlika, and Rio Adhitya. *Filsafat Hukum*. Depok: Raja Grafindo Persada, 2020. [https://repository.um-palembang.ac.id/id/eprint/10854/1/Filsafat Hukum.pdf](https://repository.um-palembang.ac.id/id/eprint/10854/1/Filsafat%20Hukum.pdf).
- Bahrain, Bahrain, Deny Susanto, and Tubagus Achmad Darodjat. “The Position Of Human Rights in Indonesia Constitutional Law.” *Journal Evidence Of Law* 3, no. 3 (November 13, 2024): 516–24. <https://doi.org/10.59066/jel.v3i3.943>.
- Bodenhamer, David J. “7. Rights.” In *The U.S. Constitution: A Very Short Introduction*, 92–107. Oxford University Press, 2018. <https://doi.org/10.1093/actrade/9780195378320.003.0007>.
- Budiarti, and Silvana Oktanisa. *Konstitusi Indonesia Dan HAM Pendekatan Syari’ah*. Medan: PT Media Penerbit Indonesia, 2025. [http://repository.mediapenerbitindonesia.com/661/1/Konstitusi Indonesia dan HAM Pendekatan Syari%27ah.pdf](http://repository.mediapenerbitindonesia.com/661/1/Konstitusi%20Indonesia%20dan%20HAM%20Pendekatan%20Syari%27ah.pdf).

- Constitution Annotated. "Intro.8.2 Textualism and Constitutional Interpretation," n.d. https://constitution.congress.gov/browse/essay/intro-8-2/ALDE_00001303/%5B'Constitutional', 'Amendments'%5D#:~:text=Textualism is a mode of,refine or revise constitutional texts.
- Darma Pratiwi, Agustina Ni Made Ayu, and Anak Agung Adi Lestari. "Pembangunan Hukum Berdasarkan Keadilan Sosial Bagi Seluruh Rakyat Indonesia." *Jurnal Panah Keadilan* 4, no. 2 (August 30, 2025): 25–36. <https://doi.org/10.57094/jpk.v4i2.943>.
- Efendie, Efendie, Agus Sugiarto, and Marsudi Dedi Putra. "The Convergence Between Textual Law And Progressive Law In Addressing Contemporary Legal Challenges." *Jurnal Hukum Sehasen* 10, no. 2 (October 11, 2024): 475–80. <https://doi.org/10.37676/jhs.v10i2.6780>.
- El-Hadi, Arina Hasna Nur. "Penalaran Penggunaan Bahasa Hukum Dalam Undang-Undang Indonesia: Pasal 338 KUHP." *Multiple: Journal of Global and Multidisciplinary* 2, no. 8 (2024): 797–2809. <https://journal.institercom-edu.org/index.php/multiple/article/view/546>.
- Elcaputera, Arie. "Desain Perubahan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 Berdasarkan Sistem Ketatanegaraan Indonesia." Universitas Jambi, 2024. [https://repository.unja.ac.id/62369/8/FULL DISERTASI ARIE.pdf](https://repository.unja.ac.id/62369/8/FULL%20DISERTASI%20ARIE.pdf).
- Fiveable Content Team. "Living Constitution," 2025. <https://fiveable.me/key-terms/fundamentals-american-government/living-constitution>.
- Gema Pangestika, Rinanda, and Rendra Widyatama. "Analisis Sikap Publik Terhadap Artis Dan Komedian Yang Memasuki Ranah Politik Indonesia." *Journal Publicuho* 8, no. 2 (June 10, 2025): 629–44. <https://doi.org/10.35817/publicuho.v8i2.659>.
- Ginting, Brianta Petra, Atma Suganda, and Sineerat Suasungern. "The Concept Of The Rule Of Law In The Indonesian Constitution." *Sibatik Journal: Jurnal Ilmiah Bidang Sosial, Ekonomi, Budaya, Teknologi, Dan Pendidikan* 3, no. 12 (2024): 1291–1300. <https://doi.org/10.54443/sibatik.v3i12.2543>.
- Harel, Alon, and Adam Shinar. "Two Concepts of Constitutional Legitimacy." *Global Constitutionalism* 12, no. 1 (March 12, 2023): 80–105. <https://doi.org/10.1017/S2045381722000156>.
- Hidayat, Rahmat, Siti Fatimah, and Muhammad Adib Alfarisi. "Penyelesaian Komnas HAM Dalam Penyelesaian Kasus-Kasus Pelanggaran HAM Di Indonesia." *Indonesian Journal of Legality of Law* 7, no. 1 (December 30, 2024): 115–22. <https://doi.org/10.35965/ijlf.v7i1.5427>.
- Hill, Rosemary. "Anticipatory Co-Governance for Human Rights to Sciences across Knowledge Systems." *The International Journal of Human Rights* 28, no. 3 (March 15, 2024): 335–53. <https://doi.org/10.1080/13642987.2023.2273290>.
- Hilmi, Muhammad Faiz. "Kajian Sistem Presidential Threshold Dalam Implementasi Nilai-Nilai Demokrasi Berdasarkan Undang-Undang Dasar 1945." Universitas Islam Sultan Agung, 2022. https://repository.unissula.ac.id/25940/1/30301800253_fullpdf.pdf.
- Huda, Ni'matul, Dian Kus Pratiwi, Muhammad Addi Fauzani, Retno Widiastuti, Yuniar Riza Hakiki, Mazdan Maftukha Assyayuti, and Rahmadina Bella Mahmuda. "Naskah Kajian 'Gagasan Kewenangan Pengaduan Konstitusional Dan Desain Kelembagaannya Di Mahkamah Konstitusi.'" Yogyakarta, 2025. https://s.mkri.id/jdih/kajian_hukum/kajian_hukum_1767854582_dfe9ec962d4f04f06e72.pdf.
- Huff, Layne. "The Ninth Amendment: An Underutilized Protection for Reproductive Choice." *Journal of Law and Health* 37, no. 2 (2024): 105–26. <https://engagedscholarship.csuohio.edu/jlh/vol37/iss2/6>.
- Human Rights Watch. *Indonesia: Transition to Accountability: How Indonesia Can Pursue*

- Transitional Justice*. New York: HRW, 2020.
- Ikhhsan, Muh, Kurniati, and Musyfikah Ilyas. "Implementasi Qisas Dan Diyat Dalam Sistem Hukum Pidana Indonesia: Analisis Normatif Terhadap Kompatibilitas Syariat Islam Dengan Hukum Positif." *Media Hukum Indonesia (MHI)* 4, no. 1 (2026): 1112–24. <https://doi.org/10.5281/zenodo.18160625>.
- Isdiyanto, Ilham Yuli, and Anom Wahyu Asmorojati. "Reflection and Implementation of Prismatic Concept In The National Legal System." *Varia Justicia* 19, no. 2 (2023): 134–52. <https://doi.org/10.31603/variajusticia.v19i2.9100>.
- Isra, Saldi. "Penafsiran Konstitusi (PowerPoint Presentation, Bimbingan Teknis Hukum Acara Pengujian Undang-Undang Bagi Asosiasi Pengajar Hukum Acara Mahkamah Konstitusi/APHAMK," 2025. https://pusdik.mkri.id/materi/materi_365_3. Penafsiran Konstitusi - Prof Saldi Isra.pdf.
- Jones, Briony, Lisa Ott, Mina Rauschenbach, and Camilo Sanchez. "Hiding in Plain Sight: Victim Participation in the Search for Disappeared Persons, a Contribution to (Procedural) Justice." *International Journal of Transitional Justice* 17, no. 2 (August 23, 2023): 233–51. <https://doi.org/10.1093/ijtj/ijad018>.
- Jørgensen, Nina H. B. "Missing Migrants and the Right to Identification." *Nordic Journal of Human Rights* 43, no. 1 (January 2, 2025): 40–58. <https://doi.org/10.1080/18918131.2024.2426408>.
- Kavanagh, Aileen. "The Ubiquity of Unwritten Constitutionalism." *International Journal of Constitutional Law* 21, no. 4 (December 30, 2023): 968–75. <https://doi.org/10.1093/icon/moae005>.
- Kirana Utami, Tanti, Nazwa St May, Siti Nurajjiah, Helmi Al Zaidan, Farrel Meika Putra Hendrawan, and M. Algi Fahril. "Analysis of the Implementation of Good Governance Principles in the Formation of Laws and Regulations in Indonesia." *Indonesian Journal of Law and Justice* 2, no. 2 (December 17, 2024): 1–11. <https://doi.org/10.47134/ijlj.v2i2.3421>.
- Kurniawati, Husni, and Yunanto Yunanto. "Perlindungan Hukum Terhadap Penyalahgunaan Data Pribadi Debitur Dalam Aktivitas Pinjaman Online." *Jurnal Ius Constituendum* 7, no. 1 (April 17, 2022): 102–14. <https://doi.org/10.26623/jic.v7i1.4290>.
- Kusuma, Fanila Kasmita. "Peran Partisipasi Masyarakat Dalam Proses Perumusan Kebijakan Publik Di Era Desentralisasi." *Media Bina Ilmiah* 18, no. 9 (2024): 2505–14. <https://binapatria.id/index.php/MBI/article/view/1244>.
- Lailam, Tanto. "Peran Mahkamah Konstitusi Federal Jerman Dalam Perlindungan Hak Fundamental Warga Negara Berdasarkan Kewenangan Pengaduan Konstitusional." *Jurnal HAM* 13, no. 1 (April 27, 2022): 65–80. <https://doi.org/10.30641/ham.2022.13.65-80>.
- Latino, Agostina. "Genealogy, Variations and Specificity of the Right to Truth." *Athens Journal of Law* 8, no. 4 (September 30, 2022): 425–48. <https://doi.org/10.30958/ajl.8-4-5>.
- Liana Nasir, Syamsul Rijal, and Muhamad Aksan Akbar. "Kedudukan Putusan Mahkamah Konstitusi Dalam Pembentukan Undang-Undang Di Indonesia." *Jurnal USM Law Review* 8, no. 2 (May 12, 2025): 622–38. <https://doi.org/10.26623/julr.v8i2.11333>.
- Lin, Chien-Chih, and Wen-Chen Chang. "The Canon of 'Constitutional Unamendability' and 'Basic Structure Doctrine' in Global Constitutional Studies." In *Global Canons in an Age of Contestation*, 196–221. Oxford University Press Oxford, 2024. <https://doi.org/10.1093/9780191956942.003.0011>.
- Lina Sinaulan, Ramlani, Rahmat Saputra, and Sugeng Sugeng. "The Constitutional Court as a Positive Legislative through the Living Constitution Approach." *International Journal of Law and Society* 2, no. 4 (October 13, 2025): 70–84.

- <https://doi.org/10.62951/ijls.v2i4.780>.
- Manullang, Elika, Budiman N.P.D Sinaga, and Kasman Siburian. "Protection Of Human Rights In The Context Of Indonesian Constitutional Law Against The Functions Of State Institutions." *Indonesian Journal of Law and Justice* 2, no. 3 (January 30, 2025): 1–11. <https://doi.org/10.47134/ijlj.v2i3.3652>.
- Marzuki, Suparman, and Mahrus Ali. "The Settlement of Past Human Rights Violations in Indonesia." *Cogent Social Sciences* 9, no. 1 (December 31, 2023): 1–12. <https://doi.org/10.1080/23311886.2023.2240643>.
- Mau, Hedwig Adianto, and Tinton Ditisrama. *Hukum Tata Negara Indonesia Teori Dan Penerapan*. Banyumas: Amerta Media, 2024. https://sultra.bpk.go.id/wp-content/uploads/2025/04/Hukum-Tata-Negara-Indonesia-Teori-dan-Penerapannya_250422_155713.pdf.
- . *Teori Dan Hukum Konstitusi*. Banyumas: Penerbit Amerta Media, 2025. <https://ejournal.amertamedia.co.id/index.php/press/article/download/417/237>.
- MD, Moh. Mahfud. *Konstitusi Dan Hukum Dalam Kontroversi Isu*. Jakarta: Rajagrafindo Persada, 2012.
- Milwan, Milwan, and Roman Hadi Saputro. "Analysis of Rejection of The Implementation of The Job Creation Law." *Ganaya : Jurnal Ilmu Sosial Dan Humaniora* 8, no. 1 (January 9, 2025): 175–88. <https://doi.org/10.37329/ganaya.v8i1.3738>.
- Mochtar, Zainal Arifin, and Eddy O.S Hiariej. *Dasar-Dasar Ilmu Hukum Memahami Kaidah, Teori, Asas Dan Filsafat Hukum*. Yogyakarta: Rajawali Pers, 2023.
- Muhtar, Mohamad Hidayat, Erifendi Churniawan, Muhammad Ardhi Razaq Abqa, Chairul Amri, Suwandoko, Dian Dewi Khasanah, Siti Mastroah, et al. *Dasar-Dasar Teori Hukum Tata Negara Perspektif Dan Praktik*. Serang-Banten: PT Sada Kurnia Pustaka, 2024. [https://jdih.kemendesa.go.id/public/documents//a65bc816-b8af-430f-bd4d-a449d4f2e973Ebook_Dasar-Dasar+Teori+Hukum+Tata+Negara+\(Perspektif+dan+Praktik\)_organized.pdf](https://jdih.kemendesa.go.id/public/documents//a65bc816-b8af-430f-bd4d-a449d4f2e973Ebook_Dasar-Dasar+Teori+Hukum+Tata+Negara+(Perspektif+dan+Praktik)_organized.pdf).
- Nadrianto, M. Fakhrian, Ramdan Hariri, Riski Irmawan, Fadhil Desembri, and Asrizal Saiin. "Peran Mahkamah Konstitusi Dalam Menjaga Konstitusionalitas Produk Legislasi Di Indonesia." *Ibtikar: Jurnal Studi Islam Dan Sosial* 2, no. 2 (2025): 101–14. <https://ejournal.iai-almuslimaceh.ac.id/IBTIKAR/article/view/297/362>.
- Natasya Klarisa Paruntu, and Wilma Silalahi. "Realisasi Keterbukaan Informasi Publik Pada Lingkup Kementerian Dalam Menunjang Pembaharuan Sistem Hukum Nasional (PSHN)." *Jurnal USM Law Review* 8, no. 2 (August 14, 2025): 1088–1106. <https://doi.org/10.26623/julr.v8i2.12264>.
- Nikhio, Angel, Cindy Sekarwati Amalia, and Zain Irawan. "Penegakan Hukum Di Indonesia : Peran Pemerintah Dalam Mewujudkannya." *Indigenous Knowledge* 2, no. 6 (2023): 414–23. <https://jurnal.uns.ac.id/indigenous/article/view/79929/0>.
- Nur, Zulfahmi. "Rekonstruksi Negara Hukum Dalam Paradigma Hukum Islam Dan Ketatanegaraan Di Indonesia." *Misykat Al-Anwar Jurnal Kajian Islam Dan Masyarakat* 6, no. 1 (February 3, 2023): 119–42. <https://doi.org/10.24853/ma.6.1.119-142>.
- Poscher, Ralf. "Human Dignity as a Value and a Right: The German Case," 2024. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4746895.
- Pradana, Arizona Adi, and Yohanes Suwanto. "The Implementation of The Living Constitution in Indonesia." *Sovereignty: Jurnal Demokrasi Dan Ketahanan Nasional* 1, no. 4 (2022): 635–39. <https://doi.org/10.13057/sovereignty.v1i4.93>.
- Rahmah Hanifa, Maftuh, Rutiana Dwi Wahyunengseh, Didik Gunawan Suharto, and Didik Gunawan Suharto. "Beyond Compliance: A Systematic Review of Ethics, Accountability, And Transparency in Indonesian Governance." *Policy & Governance Review* 10, no. 1 (January 8, 2026): 85–102. <https://doi.org/10.30589/pgr.v10i1.1361>.

- Rhein-Fischer, Paula, and Anna Wójcik. "The Politicisation of Constitutional Review of Memory Laws." *European Constitutional Law Review* 19, no. 4 (December 8, 2023): 664–89. <https://doi.org/10.1017/S1574019623000287>.
- Rico, Claudia Samantha, and I Dewa Gede Palguna. "Penafsiran Original Intent Dalam Putusan Mahkamah Konstitusi Nomor 14/PUU-XI/2013 Tentang Rencana Penyelenggaraan Pemilu Dan Pilkada Secara Serentak." *Kertha Semaya : Journal Ilmu Hukum* 11, no. 7 (2023): 1611–23. <https://doi.org/10.24843/KS.2023.v11.i07.p11>.
- Risse, Thomas. "The Evolution and Impact of State Constitutions." *International Journal of Law and Legal Studies* 11, no. 3 (2023): 1–2. <https://www.internationalscholarsjournals.com/articles/the-evolution-and-impact-of-national-constitutions.pdf>.
- Ristawati, Rosa. "Perbandingan Hukum: Perkembangan, Tantangan Dan Prospek Di Indonesia," 1–19. Proceedings of Airlangga Faculty of Law Colloquium, 2024.
- Salim, Muhammad Rofiq. "Kebijakan Perlindungan Hukum Terhadap Korban Judi Online Dalam Hukum Positif Yang Akan Datang." Universitas Islam Sultan Agung Semarang, 2025. https://repository.unissula.ac.id/42209/1/Ilmu_Hukum_30302200337_fullpdf.pdf.
- Samaragrahira, Sekar Ar-Ruum. "Partisipasi Politik Dalam Konsep Kedaulatan Rakyat." *Sovereignty: Jurnal Demokrasi Dan Ketahanan Nasional* 2, no. 3 (2023): 312–17. <https://journal.uns.ac.id/index.php/sovereignty/article/view/225>.
- Sapanah, Mawar, Putri Mufidah, Shafa Fauziyyah Nur Faridah, and Rania Syifa Busroni. "Perlindungan Hak Konstitusional Pemohon Dalam Proses Pengujian Undang-Undang Oleh Mahkamah Konstitusi Republik Indonesia." *Media Hukum Indonesia (MHI)* 3, no. 3 (2025): 507–12. <https://doi.org/10.5281/zenodo.15656086>.
- Septia, Sya'baniatie Ninda. "The Transition from Conventional Constitutions to Digital Law: Constitutional Law Challenges in the Age of Artificial Intelligence." *Journal of International Multidisciplinary Research* 4, no. 1 (January 11, 2026): 58–66. <https://doi.org/10.62504/jimr1430>.
- Sianturi, Sikkop Parluhutan Hotmatua, Muhamad Charis Marzuqi, Irwan Triadi, and Faisal Yogi Setyawan. "Penemuan Hukum Dilakukan Oleh Hakim Dalam Perspektif Hukum Progresif." *Jurnal Analisis Hukum Dan Kebijakan* 6, no. 4 (2025): 499–519. <https://ejournals.com/ojs/index.php/jahk/article/view/4174>.
- Siregar, Mardona. "Teori Hukum Progresif Dalam Konsep Negara Hukum Indonesia." *Muhammadiyah Law Review* 8, no. 2 (August 3, 2024): 1–15. <https://doi.org/10.24127/mlr.v8i2.3567>.
- Sommermann, Karl-Peter. "Constitutional State and Public Administration," 17–33, 2021. https://doi.org/10.1007/978-3-030-53697-8_2.
- Sugita, I Made. "Tinjauan Yuridis Konsep Negara Hukum Dalam Pembentukan Peraturan Perundang-Undangan Di Indonesia." *Jurnal Hukum Agama Hindu Widya Kerta* 7, no. 2 (November 30, 2024): 105–27. <https://doi.org/10.53977/wk.v7i2.2185>.
- Suhendarto, Bonaventura Pradana. "Pemenuhan Hak-Hak Korban Pelanggaran Berat Hak Asasi Manusia Di Indonesia." *Jurnal Hukum, Politik Dan Kekuasaan* 1, no. 2 (February 24, 2021): 112–33. <https://doi.org/10.24167/jhpk.v1i2.3041>.
- Syaidi, Ridwan. "The Constitution as a Living Constitution: Dynamic S of Interpretation in The Indonesia Legal System." *Law and Economics* 19, no. 3 (2025): 249–57. <https://doi.org/10.35335/laweco.v19i3.230>.
- Szymanek, Jarosław. "Evolutionary Interpretation in Constitutional Law: Between Accommodation and Instrumentalization." In *Constitutional Law - Emerging Trends and Perennial Debates [Working Title]*. IntechOpen, 2025. <https://doi.org/10.5772/intechopen.1012648>.
- Utami, Tanti Kirana, Ardelia Lananda, Cindy Claudia Simbolon, Mila Arastasya Rahmah,

- Nayla Ratu Baidhowi, and Pusfa Januwati. "Pengaruh Teori Perundang-Undangan Terhadap Dinamika Norma Hukum Dalam Sistem Hukum Indonesia." *Jurnal Hukum Ius Publicum* 5, no. 2 (2024): 264–93. <https://doi.org/10.55551/jip.v5i2.199>.
- Warikandwa, Tapiwa V., Chiku Mnubi-Mchombu, Aimate Jorge, Eugene Libebe, Christian Harris, and Pius Ikwambi. "Global Citizenship and Southern Africa Liberation History Education in Southern Africa: A 21 St Century Socio-Legal Perspective." *Cogent Social Sciences* 9, no. 1 (December 31, 2023): 1–36. <https://doi.org/10.1080/23311886.2023.2207884>.
- Widiarty, Wiwik Sri. *Buku Ajar Metode Penelitian Hukum*. Yogyakarta: Publika Global Media, 2024. <http://repository.uki.ac.id/14688/1/BukuAjarMetodePenelitianHukum.pdf>.
- Wiraguna, Sidi Ahyar. "Metode Normatif Dan Empiris Dalam Penelitian Hukum: Studi Eksploratif Di Indonesia." *Public Sphere: Jurnal Sosial Politik, Pemerintahan Dan Hukum* 3, no. 3 (November 30, 2024): 57–65. <https://doi.org/10.59818/jps.v3i3.1390>.
- Wróblewska, Iwona. "Do We Need the Concept of Drittwirkung to Protect Fundamental Rights in Private Relations? A Lesson from Germany." *German Law Journal*, November 28, 2025, 1–22. <https://doi.org/10.1017/glj.2025.10167>.
- Wulandari, Ayu Risma, Crystya Zuliana, Dinda Adelia Pratiwi, Diyah Dwi Ayu Laksana, Ivan Bintang Ilmiawan, and Aziz Rohmatullah. "Implementasi Penafsiran Hukum Dalam Sistem Peradilan Di Indonesia Berdasarkan Undang-Undang Nomor 48 Tahun 2009." *Jurnal Penelitian Ilmiah Multidisiplin* 8, no. 12 (2024): 377–84. <https://oaj.jurnalhst.com/index.php/jpim/article/view/7532>.
- Yusriyadi, Yusriyadi, Ana Silvia, and Zico Junius Fernando. "Autonomous Vehicles and Legal Challenges: Navigating between Technology and Criminal Liability." *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan* 15, no. 1 (August 14, 2024): 37–57. <https://doi.org/10.22212/jnh.v15i1.4359>.
- Yusuf, Muhammad Rifai, Naufal Rizqiyanto, and Sulastri Sangadji. "Redesigning the Institutional Framework of Indonesia's Truth and Reconciliation Commission." *Lex Renaissance* 10, no. 2 (December 30, 2025): 308–39. <https://doi.org/10.20885/JLR.vol10.iss2.art2>.