



The Constitution as a Living Constitution: Dynamic S of Interpretation in The Indonesia Legal System

Ridwan Syaidi

Fakultas Hukum Universitas Pertiba, Kepulauan Bangka Belitung, Indonesia

Abstract: The problem of interpretation of the Indonesian constitution faces a dilemma between normative stability and adaptation to contemporary socio-political dynamics. This study aims to examine the operationalization of the living constitution in the practice of the constitutional judiciary, analyze the hermeneutic methodology of the Constitutional Court, and evaluate the impact of evolutionary interpretation on the constitutional system. Through a qualitative approach based on literature research with doctrinal analysis, the study revealed that the Constitutional Court has implemented the living constitution paradigm through a synthesis of multidimensional interpretations that integrate literal, contextual, and purposive dimensions. The metamorphosis of the role from negative legislator to positive legislator shows the adaptive elasticity of institutions in the face of today's legal complexity. The doctrine of universality of rights becomes an epistemological foundation that allows for the expansion of fundamental protections beyond the explicit enumeration of the constitution. Pancasila-based constitutional identity actualizes the synthetic harmony between tradition and modern constitutionalism. Despite the threat of democratic decline, the living constitution shows strategic potential as an instrument of constitutional consolidation whose effectiveness depends on the preservation of judicial independence and the commitment to the rule of law.

Keywords: Living Constitution, Constitutional Hermeneutics, Constitutional Justice, Evolutionary Interpretation

1. Introduction

The construction of the constitution as supreme law in the normative hierarchy of the legal system cannot be perceived as a rigid and immutable normative entity in the face of temporal transformation. The living constitution paradigm has crystallized as a fundamental epistemological framework in contemporary constitutional law discourse that facilitates the interpretation of constitutional norms in an evolutionary manner in line with the metamorphosis of society and the imperative of the zeitgeist. In the spectrum of the Indonesian legal system, this phenomenology gained significant relevance after the implementation of four amendments to the 1945 Constitution of the Republic of Indonesia in the period 1999-2002 which introduced a revolutionary paradigm in constitutional hermeneutics. The complexity of constitutional interpretation in the Indonesian legal system is increasingly manifest when faced with extraordinarily dynamic social, economic, and political transformations. The evolution and revitalization of law in Indonesia is expected to be more optimal, efficient, and substantial, so that the Indonesian legal system must be constructed and revitalized in accordance with the normative stratification of laws and regulations (Addi Fauzani et al., 2020). This challenge requires an interpretive approach that is not solely focused

Correspondence:

Name: Ridwan Syaidi

Email: syaidi.ridwan@gmail.com

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on the textual dimension of the constitution, but is also able to accommodate the axiological values and imperatives of a society that continues to develop.

Although the practice of constitutional review by the Indonesian Constitutional Court has demonstrated the trajectory of the implementation of the living constitution in its plurality of rulings, significant research gaps are still identified in the academic literature. Previous studies have tended to focus on the normative and procedural aspects of judicial review without comprehensively exploring the hermeneutic and methodological dimensions behind constitutional interpretive transformation. When the Constitutional Court rules that a law is unconstitutional, the product of the legislation is declared invalid, and in this context the Constitutional Court has the final authority to determine the validity of the law (Febri et al., 2025). Research gaps are also identified in a systematic analysis of the evolution of interpretation methodology from negative legislators to positive legislators, as well as its implications for the balance of separation of powers in the Indonesian constitutional system.

Constitutional hermeneutic dynamics are also manifested in the Constitutional Court's handling of contemporary issues that were not explicitly articulated in the original constitutional text. The conceptualization of the living constitution contains the understanding that the constitution is organic and evolutionary following the transformations that occur in society in an adaptive and responsive manner. However, previous research has not explored in depth how the principle of universality of Indonesian constitutional rights and identity based on Pancasila operates as a foundational framework in the practice of the living constitution. This shows that Indonesia's constitutional practice has led to a more adaptive understanding of contemporary challenges, especially in the context of constitutional reviews conducted by the Constitutional Court on cases related to socio-economic rights (Hapsoro & Ismail, 2020).

Based on the identification of research gaps, the formulation of the problem in this study is how the dynamics of the operationalization of the living constitution in the Indonesian legal system, especially through the transformative role of the Constitutional Court as a constitutional interpreter, as well as how this evolutionary hermeneutic approach affects the development of Indonesian constitutional law in responding to contemporary socio-political transformations. This study aims to comprehensively analyze the practice of implementing the living constitution in the Indonesian legal system, identify the interpretation patterns operationalized by the Constitutional Court, and evaluate the implications of the evolutionary interpretation approach to the stability and adaptive capacity of the Indonesian constitutional system. Through this holistic analysis, it is hoped that it can contribute to the development of theories and practices of Indonesian constitutional law that are more responsive to the dynamics of temporal transformation.

2. Materials and Methods

This study implements a qualitative approach with a library research strategy as a fundamental methodology in examining the dynamics of the hermeneutic living constitution in the Indonesian legal system. The qualitative approach was selected because it facilitates researchers to conduct intensive exploration of complex phenomena of constitu-

tional interpretation that cannot be quantified numerically. The library research method in the context of constitutional law studies focuses on doctrinal analysis of the diversity of primary and secondary legal sources relevant to the topic of living constitution. Doctrinal or normative research in the legal discipline is the predominant and influential approach in legal studies, which aims to analyze legal norms systematically and comprehensively (Harvelian et al., 2020).

The data material in this study consists of primary legal sources including the 1945 Constitution of the Republic of Indonesia and its amendments, significant Constitutional Court decisions on constitutional interpretation, and regulatory frameworks that correlate with Indonesia's constitutional governance. For the selection of the Constitutional Court's decision, this study uses purposive sampling criteria with a focus on landmark decisions that demonstrate the characteristics of the living constitution, especially decisions that show the hermeneutic evolution from textual to contextual-teleological. The database of Constitutional Court decisions used is a comprehensive collection of the official website of the Constitutional Court (mkri.id) and Legal Database Indonesia which is up-to-date until 2025, with priority on breakthrough decisions that reflect the transformation of the interpretation of constitutional principles. Secondary legal material encompasses academic textbooks constitutional law, scholarly articles from national and international journals, dissertations, theses, and other scientific works that discuss the conceptualization of the living constitution in various legal systems. Tertiary data sources include legal dictionaries, encyclopedias, and online databases that provide supportive information to understand the theoretical concepts used in research.

The data collection technique is carried out through a systematic documentation study of all legal materials that have been identified. The data collection process began with a comprehensive inventory of all constitutional court decisions related to constitutional interpretation from 2003 to the present time. Furthermore, academic literature is studied through multiple databases of national and international journals to obtain theoretical and comparative perspectives on the living constitution. Documentation is also carried out on the development of Indonesia's constitutional legal thinking through the analysis of the works of prominent constitutional law experts.

The data analysis in this study uses a qualitative content analysis method integrated with a legal hermeneutic approach. Content analysis is implemented to identify interpretive patterns that emerge in constitutional court decisions, while hermeneutic approach is operationalized to understand the meanings and contexts behind each constitutional interpretation. The analysis process begins with categorization data based on the main themes related to the living constitution, then coding to identify more specific sub-themes. Source triangulation is carried out by comparing diverse perspectives from academic literature, court decisions, and constitutional practices to ensure analysis validity.

Data validity is guaranteed through the implementation of credibility, transferability, dependability, and confirmability criteria in qualitative research. Credibility is achieved through the utilization of multiple sources and peer review of legal document interpretations carried out, considering that primary data in the form of court decisions and legal documents are not human respondents, so that member checking is modified into expert validation through consultation with constitutional law scholars. Transferability is ensured by providing rich and in-depth descriptions of the research context so as to allow findings to be applied in similar contexts. Dependability is maintained through systematic documentation of each research stage and utilization clear audit trails. Confirmability is achieved through critical reflection on researcher bias and the use of triangulation methods in data analysis.

Research limitations lie in the limited focus on the Indonesian legal system so that generalization findings about the constitutional systems of other countries require circumspection. Additionally, the dynamics of constitutional interpretation that are continuously evolving allow for practical changes that were not captured in this research

period. However, this research is expected to make a significant contribution to understanding the implementation of the living constitution in the context of the distinctive Indonesian legal system (Kennedy, 2025).

3. Results and Discussion

3.1 *Dynamics of Constitutional Interpretation in the Practice of the Indonesian Constitutional Court*

The implementation of the conception of the constitution that lives in the Indonesian legal order shows substantial progress through the interpretation practice carried out by the Constitutional Court. In contrast to previous studies that tend to emphasize the formalistic aspect of constitutional interpretation as stated in previous studies on textual interpretation (Jimly Asshiddiqie, 2005), this study reveals a paradigmatic transformation from a rigid literalist understanding to a more adaptive hermeneutical approach to contemporary social and political dynamics. The Constitutional Court as a constitutional interpreting institution has demonstrated a fundamental role in actualizing the conception of a living constitution through various judicial decisions that show the elasticity of constitutional normative interpretations (Kurnia & Melatyugra, 2024).

These findings expand on previous analyses conducted by previous researchers that focused more on the procedural aspects of judicial review. The practice of constitutional interpretation implemented by constitutional judges shows methodological autonomy in selecting the interpretation approach that is most relevant to the context of the case at hand, but remains within the corridor of Pancasila values and the 1945 Constitution. The contribution of this research lies in the identification of patterns of interpretation that not only rely on the literal meaning of the constitutional text, but also integrate the teleological and contextual aspects of constitutional norms.

In executing the judicial review function, the Constitutional Court of the Republic of Indonesia has constructed an interpretation pattern that goes beyond dependence on the literal meaning of the constitutional text, by incorporating the teleological and contextual dimensions of constitutional norms. The interpretation methodology applied reflects efforts to harmonize legal stability with the urgency of adaptation to the transformation of the times. The Constitutional Court in its various decisions has demonstrated its capacity to explore the implicit meaning of constitutional provisions in order to provide more comprehensive protection of citizens' constitutional rights (Marpaung et al., 2021).

The complexity of constitutional interpretation is increasingly manifest in the context of legal constitutionality tests that involve contemporary issues that were not explicitly articulated in the original constitutional text. The Constitutional Court has developed an interpretive methodology that facilitates the exploration of constitutional principles that are not explicitly manifested in the text, but can be found through a systematic analysis of the structure and spirit of the constitution in a holistic manner. This approach illustrates that the interpretation of the constitution in the context of a living constitution is not limited to the textual dimension, but also comprehensively the contextual, historical, and purposive dimensions that allow the constitution to remain

relevant in the face of novel challenges that emerge in the development of society and the state (Muhammad, 2025).

3.2 The Role of the Constitutional Court as a Negative and Positive Legislature in the Context of a Living Constitution

The duality of the role of the Constitutional Court as a negative legislature and a positive legislature reflects the complexity of the implementation of the constitution that lives in the Indonesian constitutional system. In contrast to previous research that dichotomously categorized the Constitutional Court as an institution that only functions destructively, the findings of this study reveal that conventionally, the Constitutional Court plays a role as a negative legislature that functions to annul legal norms that are incompatible with the constitution without creating novel norms. However, in practice, the Constitutional Court often has to act as a positive legislature to fill the legal vacuum arising from the repeal of certain norms or to provide interpretations that create new standards in the application of constitutional principles (Nggilu et al., 2024).

This research contributes to the literature by identifying that the phenomenon shows that the concept of a living constitution requires an interpretation mechanism that is not only destructive but also constructive in maintaining the continuity and coherence of the legal system (Pujayanti et al., 2024). These findings extend the analysis of previous research that tends to look at the role of the Constitutional Court in a one-dimensional way.

The transformation of the role of the Constitutional Court from a negative legislature to a positive legislature has significant implications for the principle of separation of powers in the Indonesian constitutional system. When the Constitutional Court creates new norms through its rulings, the Constitutional Court has the potential to obfuscate the boundaries of authority between branches of power and create institutional tensions. However, from the perspective of a living constitution, this positive legislative role can be legitimized in response to the need to ensure that constitutional principles can be implemented effectively in the face of situations that the original constitution makers did not anticipate. The Constitutional Court's authority to test Government Regulations in Lieu of Law shows a positive expansion of legislative functions that allow for more effective checks and balances on executive power (Home, 1945).

The legitimacy of the positive legislative role of the Constitutional Court in the context of a living constitution must be understood within the framework of the protection of constitutional rights and the preservation of constitutional supremacy. When the political system is dysfunctional or when other branches of power fail to fulfill their constitutional responsibilities, the Constitutional Court through its positive legislative role can serve as a safety valve that ensures that constitutional principles are still implemented. However, this role should be limited by the principles of judicial restraint and proportionality to prevent excessive judicial activism.

3.3 Universality of Rights as a Principle of Interpretation in the Constitution of Life

The implementation of the principle of universality of rights in the interpretation of the constitution demonstrates one of the most important dimensions of the concept of a living constitution in the Indonesian legal system. The main contribution of this study lies in the identification that the Constitutional Court in its various decisions has adopted an interpretive approach that recognizes that human rights have a universal character that is not limited to explicit enumerations in the text of the constitution. Previous research has tended to limit the analysis to explicitly enumerated rights, but this study reveals that the principle of universality of rights allows for the recognition of unenumerated rights that emerge as a consequence of the development of human civilization and the need to protect human dignity in an ever-evolving context (Suganda & Siregar, 2020).

The implementation of the principle of universality of rights in constitutional interpretation requires a sophisticated methodology in identifying and operationalizing rights that are not explicitly mentioned in the constitutional text. The Constitutional Court has developed a comparative jurisprudence approach that allows learning from the practice of human rights interpretation in other jurisdictions as well as from the decisions of regional and international judicial bodies. This methodology facilitates the Constitutional Court to develop standards of human rights protection that are not only consistent with Indonesia's constitutional values but also aligned with the development of universal human rights norms.

The principle of universality of rights also implies minimizing the use of restrictive norms of human rights and prioritizing the protection of minority groups. In the context of a living constitution, this means that constitutional interpretation must be oriented to expand the space of freedom and protection rather than narrowing or restricting fundamental rights. The Constitutional Court in its various decisions has demonstrated sensitivity to the urgency of protecting vulnerable and marginalized groups. This approach reflects an understanding that a living constitution is not only about the capacity of the constitution to adapt to majority change, but also about the capacity of the constitution to protect fundamental rights that may be unpopular or that minority groups in society have.

3.4 Indonesia's Constitutional Identity in the Perspective of a Living Constitution

Indonesia's constitutional identity based on the values of Pancasila demonstrates the unique characteristics of the implementation of the constitution that lives in the context of a plural and multicultural society. The contribution of this research lies in the identification that Indonesia's model of constitutionalism presents a typical synthesis of religious values, pluralism, and the principles of modern democracy that distinguish it studies that tend to look at the tension between traditional and modern values, this study reveals that Pancasila as a basic philosophy has provided a framework that facilitates the constitution of life to develop in a direction that accommodates social and religious diversity without sacrificing national cohesion (Suryana, 2025).

The uniqueness of Indonesia's model of constitution lies in its capacity to integrate traditional values with the principles of modern constitutionalism through the

mediation of Pancasila as staatsfundamentalnorm. This integration process is not syncretic that mixes various elements without coherence, but is synthetic that creates new harmony between various traditions and values that exist in Indonesian society. The Constitutional Court in its various decisions has demonstrated the capacity to operationalize the values of Pancasila as a parameter of constitutional interpretation that facilitates a constructive dialogue between tradition and modernity, between cultural particularity and the universality of human rights.

The dynamics of Indonesia's constitutional identity in the context of a living constitution are also reflected in efforts to maintain a balance between unity and diversity, between national integration and accommodation to plurality. Indonesia's model of constitutionalism demonstrates that a living constitution does not necessarily lead to homogenization or westernization, but can be an instrument for preserving and developing cultural wealth within a democratic and inclusive political framework. Indonesia's constitutional identity thus becomes an exemplar of how a living constitution can function as a bridge between tradition and modernity, between particularity and universality.

3.5 Challenges and Prospects of the Constitution Living in the Era of Democratic

Decline

The implementation of the constitution lives in the context of the democratic decline experienced by Indonesia faces complex challenges related to the legitimacy, independence, and effectiveness of constitutional institutions. This study identifies that the phenomenon of democratic decline characterized by the intensification of political corruption, constraints on press freedom, and the weakening of independent institutions have created conditions that are not conducive to the operationalization of living constitutional principles. In contrast to previous research that tended to be optimistic about Indonesia's democratic prospects, the findings of this study reveal that in this context, the Constitutional Court as the interpreter and guardian of the constitution faces pressure to maintain its autonomy while remaining responsive to the ever-evolving political dynamics (Joseph & Bakry, 2025).

Democracy regression also presents the risk of instrumentalizing the concept of a living constitution to legitimize actions that are actually antithetical to the spirit of constitutionalism. In situations where checks and balances between state institutions are weakened, constitutional interpretation can be a tool to justify the concentration of power or the restriction of fundamental rights under the pretext of adaptation to the needs of the times. This phenomenon illustrates that a constitution that lives as a concept of interpretation requires robust institutional and cultural protection to prevent its abuse. Comprehensive constitutional law reform is needed to ensure that living constitutional principles can be implemented within a framework that strengthens rather than weakens constitutional democracy (Tarigan, 2025).

Despite facing various challenges, the prospects for constitutional development in the Indonesian legal system remain wide open with the requisite commitment to the principles of constitutionalism and the rule of law. Indonesia's experience in undergoing democratic transition and constitutional reform demonstrates that the Indonesian

people have the capacity to adapt and develop democratic institutions in accordance with local needs and characteristics. A constitution that lives in this context can be an instrument to continue the process of democratization and constitutional consolidation that has been initiated since the reform era. The key to success lies in the capacity to maintain a balance between adaptability and stability, between responsiveness to change and consistency to fundamental principles (Tarigan, 2024).

4. Conclusions

A comprehensive analysis of the dynamics of constitutional interpretation in the Indonesian legal system reveals a significant paradigmatic transformation in the practice of post-reform constitutionalism, while making a substantial theoretical and practical contribution to the development of Indonesian constitutional law. The Constitutional Court has successfully implemented a living conception of the constitution through a sophisticated interpretation methodology, combining textual, contextual, and teleological approaches in understanding constitutional norms. The main theoretical contribution of this research lies in the formulation of Indonesia's distinctive constitutional hermeneutic model, which integrates the universality of the principles of modern constitutionalism with the particularity of Pancasila values as *staatsfundamentalnorm*. The evolution of the Constitutional Court's role from a negative legislature to a positive legislature demonstrates the capacity for institutional adaptation necessary to fill the legal vacuum and maintain constitutional supremacy in the face of the complexity of contemporary challenges. The principle of universality of rights has become an interpretive foundation that allows for the expansion of the protection of fundamental rights beyond explicit enumeration, reflecting the constitution's responsiveness to the evolution of universal human rights standards. Indonesia's unique constitutional identity has facilitated a harmonious synthesis between traditional values and the principles of modern constitutionalism. Despite the challenges of democratic decline, the living concept of the constitution still has the potential to be an instrument for strengthening democratization and constitutional consolidation, with its successful implementation dependent on the preservation of judicial independence, revitalization of checks and balances mechanisms, and a sustained commitment to the rule of law as a fundamental pillar of Indonesia's constitutional system.

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