

The Resilience of Religious Courts and Economic Disruption: A Constitutional Law Perspective

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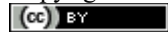
Submission Track:

Received: 25 11 2025

Final Revision: 24-12-2025

Available Online: 24-12-2025

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Abstract. This study aims to analyze how the interaction between economic disruption, internal adaptation, and constitutional legitimacy, within the framework of path dependence, shapes the resilience of the Religious Courts in Indonesian law. This study employs a qualitative-juridical research approach, incorporating historical, socio-legal, and institutional analysis methods. Data were collected from literature archives, constitutional documents, legislation, court decisions, and judicial bureaucrats. The analysis used pattern-tracking techniques and circular causal models, based on Lev (1978) and Manan (2003), to identify the relationships among external pressures, adaptation mechanisms, and institutional stability. The results show that judicial resilience does not stem solely from constitutional norms, but from the ability of institutions to transduce economic pressures into new institutional legitimacy through ambivalent adaptation—both defensive and innovative. Digital disruption expands the space for substantive legitimacy, but also produces structural noise that weakens judicial independence. The novelty of this research lies in the construction of the constitutional-resilience cycle, a nonlinear model that explains how constitutional legitimacy functions as both an amplifier and a regressive filter in absorbing economic disruption, resulting in a dynamic pattern of resilience that classical path-dependence theory cannot explain.

Keywords: Judicial Resilience; Economic Disruption; Constitutional Perspective

1 Introduction

The challenges of disruption pose significant pressure on the existence of the Religious Courts, both in the context of the digital economy and across jurisdictions, requiring these institutions to balance compliance with national and Sharia law with adaptation to global complexities¹

Normatively, the Religious Court is idealized as a constitutional institution capable of upholding substantive justice and integrating Sharia values into the national legal system.² However, empirically, this institution still operates within a traditional, procedurally oriented structural framework, so it is not yet fully capable of responding to the pressures of digitalization and the industrialization of law.³ This condition has created an institutional lag that widens the gap between the constitution's normative ideals and actual institutional practices.⁴ From a historical-institutional perspective, this phenomenon is explained through path dependence, namely colonial institutional and legal legacies that limit institutional innovation and hinder the formation of adaptive resilience.⁵

The institutional resilience of the Religious Courts reflects their ability to maintain legal relevance, constitutional legitimacy, and functional effectiveness amid disruption.⁶ This resilience is not merely administrative, but rather the result of interactions between legal structures, organizational culture, and digital transformation that shape judicial behavior have focused more on bureaucratic resistance to innovation, without directly linking it to the constitutional legal framework as a normative mechanism for

¹ T A Álvarez-Ramos, "The Mythical Eden of Fallacies: An Approach to the Argumentative Bias of the Constitutional Chamber of the Supreme Court of Justice of Venezuela," *Revista Iberoamericana De Argumentacion* 2024, no. 2 (2024): 89–109, <https://doi.org/10.15366/ria2024.m2.007>; Hasanudin, Kamsi, and Ahmad Yani Anshori, "The Contestation of Legal Foundations in the Resolution of Islamic Economic Disputes in Religious Courts," *Al-Manahij: Jurnal Kajian Hukum Islam*, September 19, 2024, 271–88, <https://doi.org/10.24090/mnh.v18i2.11934>.

² O Rozikin et al., "Contextualizing Maqāsid Al-Sharī'ah in Indigenous Legal Practices: A Comparative Study of Family Resilience in Kasepuhan Ciptagelar and Kampung Naga," *Nurani* 25, no. 2 (2025): 344–62, <https://doi.org/10.19109/nurani.v25i2.27760>; Dian Latifiani, "Human Attitude and Technology: Analyzing a Legal Culture on Electronic Court System in Indonesia (Case of Religious Court)," *Journal of Indonesian Legal Studies* 6, no. 1 (May 2021): 157–84, <https://doi.org/10.15294/jils.v6i1.44450>.

³ Reni Nur Aniroh, Khoiruddin Nasution, and Ali Sodikin, "The Bilateral Inheritance System in Islamic Family Law: Fairness, Equality, and Mutual Exchange Perspectives," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 2 (May 22, 2024): 891, <https://doi.org/10.22373/sjhk.v8i2.17630>.

⁴ Ihdi Karim Makinara et al., "Negotiating Sharia and Power: Political Dynamics behind the Drafting of the Qanun on Ahwal Al-Syakhsiyyah in Aceh," *Samarah* 9, no. 2 (2025): 1154–72, <https://doi.org/10.22373/k97hy420>.

⁵ Rozikin et al., "Contextualizing Maqāsid Al-Sharī'ah in Indigenous Legal Practices: A Comparative Study of Family Resilience in Kasepuhan Ciptagelar and Kampung Naga."

⁶ M K Rokan, "Judicial Application of the Theory of Maslahah in Islamic Economic Cases in Indonesia," *Jurnal Ilmiah Mizani* 12, no. 1 (2025): 208–26, <https://doi.org/10.29300/mzn.v12i1.7786>.

building resilience.⁷ In other words, previous research continues to view judicial change as an administrative phenomenon rather than a constitutional transformation rooted in normative legitimacy.⁸

Internal adaptation in this context includes modernizing court procedures, digitizing case administration, integrating Sharia principles into the modern economy, and enhancing judges' capacity.⁹ All of these serve to align institutional practices with the constitutional mandate while reducing the gap between ideal norms and practical implementation.¹⁰ However, the success of this adaptation depends on the constitution's normative legitimacy as an institutional moderator that guides change within the corridor of legality and constitutional values.

The amendments to the 1945 Constitution and the enactment of Law No. 3/2006 and Law No. 50/2009 provide a legal framework that affirms the position of the Religious Courts as one of the pillars of judicial power. However, the existence of these norms does not automatically close the gap between constitutional ideals and institutional practice.¹¹ This is where the gap in this research lies. There has been no study that examines the complex interactions among external pressures (digital and ideological disruption), internal adaptation (institutional modernization), and constitutional legitimacy (normative navigator) to explain the simultaneous resilience of the Religious Courts.¹²

This paper contributes to the development of institutional resilience theory based on constitutional law. Resilience is not merely procedural-administrative adaptability, but also normative adaptability, with the achievement that the constitution functions as a system of meaning that stabilizes innovation, choice, and the sustainability of judicial institutions amid the disruption of cross-jurisdictional digital economy ideologies.¹³

Disruption poses significant pressure on the existence of Religious Courts, both in the context of the digital economy and across jurisdictions, requiring these institutions to balance compliance with national and Sharia law with adaptation to global

⁷ N Hidayah, "Sharia Banking Disputes Settlement: Analysis of Religious Court Decision in Indonesia," *Al Risalah Forum Kajian Hukum Dan Sosial Kemasyarakatan* 23, no. 1 (2023): 75–92, <https://doi.org/10.30631/alrisalah.v23i1.1347>.

⁸ D E Rahayuningsih et al., "Constructing Sustainable Justice in Indonesia: Judges' Legal Considerations in Grant and Inheritance Disputes," *Architecture Image Studies* 6, no. 3 (2025): 470–77, <https://doi.org/10.62754/ais.v6i3.236>.

⁹ Arbanur Rasyid, Rayendriani Fahmei Lubis, and Idris Saleh, "Contestation of Customary Law and Islamic Law in Inheritance Distribution: A Sociology of Islamic Law Perspective," *Al-Ahkam* 34, no. 2 (October 31, 2024): 419–48, <https://doi.org/10.21580/ahkam.2024.34.2.20843>.

¹⁰ John Keane, *The Shortest History of Democracy* (Black Inc., 2022).

¹¹ Imran Ahmed and Howard Brasted, "Recognition and Dissent: Constitutional Design and Religious Conflict in Pakistan," *Journal of Contemporary Asia* 51, no. 2 (March 2021): 351–67, <https://doi.org/10.1080/00472336.2020.1719538>.

¹² Álvarez-Ramos, "The Mythical Eden of Fallacies: An Approach to the Argumentative Bias of the Constitutional Chamber of the Supreme Court of Justice of Venezuela."

¹³ T R Roux, "A Tale of Two Citadels: Constitutional Court Resilience Against Creeping Autocratisation in India and South Africa," *Global Jurist*, 2025, <https://doi.org/10.1515/gj-2024-0094>.

complexities.¹⁴ Laupente's research indicates that judicial institutions face internal resistance because the legal structure and judicial resources have not accommodated the artificial intelligence revolution, thereby hindering the strengthening of their human resources.¹⁵ This factor inherently limits innovation and the response of judicial institutions to external disruption. From a historical-institutional perspective, this phenomenon can be explained through path dependence, namely long-standing institutional choices that limit the possibility of new adaptations, thereby creating a gap between normative ideals and actual practices.¹⁶

Institutional resilience of the Religious Courts is the ability of institutions to maintain legal relevance, constitutional legitimacy, and functional effectiveness amid disruptive pressures. This resilience is not static, but arises from the dynamic interaction between legal structures, organisational culture, and industry digitalisation practices that shape the behaviour of judges and court administrators. The judiciary, as the guardian of justice, has a natural resistance to innovation due to the reinforcement of legal and deontological values rooted in legal training, which creates internal barriers to the changes needed to deal with cross-jurisdictional digital economic disruption.¹⁷

Internal adaptation includes modernising court procedures, integrating Sharia principles into the modern economic sector, and strengthening judges' capacity, all of which align the institution's practices with constitutional legal requirements and the needs of contemporary society (Salomão, 2020; Conselho Nacional de Justiça, 2020a). This mechanism allows institutions to adapt without sacrificing their constitutional legitimacy, while mitigating the risk of inconsistency between existing legal norms and practices.

The amendments to the 1945 Constitution, Law No. 3 of 2006, and Law No. 50 of 2009 provide a normative framework for the existence and functioning of the Religious Courts, while also affirming their constitutional legitimacy as one of the pillars of the judiciary. The existence of this constitutional basis serves as the main compass, balancing the demands of innovation with the principle of legality and bridging the gap between external disruptive pressures and the internal resilience of institutions.¹⁸

This article aims to develop theories and concepts of judicial resilience from a constitutional law perspective.¹⁹ Resilience is not merely a matter of administrative

¹⁴ C I Keller and D W Arguelhes, "Facing Disinformation in Democratic Backsliding: The Role of Courts in Brazil," in *Verfassung Und Recht in Uebersee*, vol. 57, 2024, 187–209, <https://doi.org/10.5771/0506-7286-2024-2-187>.

¹⁵ NICHOLAS CHARRON and VICTOR LAPUENTE, "Does Democracy Produce Quality of Government?," *European Journal of Political Research* 49, no. 4 (June 15, 2010): 443–70, <https://doi.org/10.1111/j.1475-6765.2009.01906.x>.

¹⁶ S Caserta and P Cebulak, "RESILIENCE TECHNIQUES of INTERNATIONAL COURTS in TIMES of RESISTANCE to INTERNATIONAL LAW," *International and Comparative Law Quarterly* 70, no. 3 (2021): 737–68, <https://doi.org/10.1017/S0020589321000154>.

¹⁷ CHARRON and LAPUENTE, "Does Democracy Produce Quality of Government?"

¹⁸ Amirreza Kazemikhasragh, "Corporate Bitcoin Holdings: A Cross-Sectional Analysis of Sectoral Risk, Regulatory Influence, and Decentralized Governance," *Journal of Risk and Financial Management* 18, no. 11 (November 14, 2025): 642, <https://doi.org/10.3390/jrfm18110642>.

¹⁹ A Putra and D Oktaviana, "Quo Vadis Environmental Participation Rights: A Review of Indonesian Constitutional Court's Decision," *Jurnal Konstitusi* 22, no. 2 (2025): 229–59, <https://doi.org/10.31078/jk2222>.

adaptability, but also concerns the internalisation of constitutional mechanisms that shape judicial behaviour, court procedures, and organisational structures.²⁰ This means that in order to navigate the resilience of the Religious Courts in an era of disruption from a constitutional perspective, it is necessary to investigate the complex interaction between external pressures, internal adaptation, and constitutional normative legitimacy, which historically and institutionally frame the choices, innovations, and stability of institutions.²¹

2 Literature Review

The complex interaction among external pressures, internal adaptation, and normative constitutional legitimacy shapes the dynamics of judicial resilience within an evolving historical and institutional framework. From a new institutionalism perspective,²² external pressures, in the form of political, economic, and digital disruption, act as catalysts for change in ideas and practices within constitutional judicial institutions.

According to Arendt (2016) and Bassok (2017), the power of judicial institutions is not a form of ‘brute power’, but rather an authority that mediates politics and law through decisions that are rich in normative meaning. This means that when the constitution faces ideological and technological challenges, judicial institutions are required not only to defend themselves procedurally, but also to uphold the substantive meaning of justice and political freedom as the foundations of democracy.²³

When using the concept of path-dependence,²⁴ which explains that every court decision that articulates the basic concepts of democracy or justice will limit, as well as direct, legal interpretation in the following period. When external pressures such as autocratisation or digital authoritarianism increase, past interpretations become a normative anchor for institutional stability. This shows that constitutional legitimacy does not arise from nothing, but from the accumulation of ideas and practices that are rooted in time.²⁵ The resilience of judicial institutions depends on their ability to maintain interpretative continuity while navigating new contexts that challenge the basic principles of democracy and justice.²⁶

Internal adaptation becomes a space for articulating ideas that enable judicial institutions to transform external pressures into normative opportunities. Through the

²⁰ M A Maulidi, “Constitutional Interpretation: Criteria for the Issuance of Government Regulations in Lieu of Law in Constitutional Court Decisions (2003-2023),” *Jurnal Konstitusi* 22, no. 2 (2025): 293–312, <https://doi.org/10.31078/jk2224>.

²¹ M A K Ramdani, S D Harijanti, and L Sungkar, “Rigid and Moderate Orientation on Original Intent Method and Practice in Indonesia,” *Jurnal Konstitusi* 22, no. 1 (2025): 20–38, <https://doi.org/10.31078/jk2212>.

²² JAMES G. MARCH and JOHAN P. OLSEN, “Institutional Perspectives on Political Institutions,” *Governance* 9, no. 3 (July 1996): 247–64, <https://doi.org/10.1111/j.1468-0491.1996.tb00242.x>.

²³ Or Bassok, “The Arendtian Dread: Courts with Power,” *Ratio Juris* 30, no. 4 (December 22, 2017): 417–32, <https://doi.org/10.1111/raju.12186>.

²⁴ Paul Pierson, “Increasing Returns, Path Dependence, and the Study of Politics,” *American Political Science Review* 94, no. 2 (June 1, 2000): 251–67, <https://doi.org/10.2307/2586011>.

²⁵ Bassok, “The Arendtian Dread: Courts with Power.”

²⁶ Bassok.

interpretive institutionalism approach adaptation is not only understood as procedural reform, but also as a renewal of the meaning of basic concepts such as democracy, the rule of law, and social justice.²⁷ For example, in the context of a regime shift from democracy to illiberalism, constitutional courts that continue to link democracy to the protection of fundamental rights and the separation of powers demonstrate a substantive form of adaptation to external pressures. In this way, internal adaptation does not erase constitutional roots, but rather expands the interpretive power of institutions to maintain their moral authority.²⁸

The normative legitimacy of the constitution acts as a moderator that connects these pressures and adaptations. It provides a horizon of values that limits ideological deviations and ensures that every innovation remains within the constitutional orbit. As explained by Waldron (2021), a ‘maximalist’ understanding of democracy, which encompasses social, justice and participation dimensions, provides greater resilience to external pressures, as it expands the meaning of legitimacy beyond mere legal proceduralism.²⁹ When constitutional legitimacy is supported by a living interpretation of democracy and justice, judicial institutions become not merely guardians of the text, but also guardians of the political ethos of their society.³⁰

The theory of judicial resilience can be interpreted as a synthesis of historical, institutional, and ideological dimensions. External pressures force change, internal adaptations reorganise the structure of meaning, while constitutional legitimacy maintains the moral and epistemic continuity of the institution. The combination of these three elements forms a dialectical cycle in which legal innovation is never neutral, but always the result of negotiations between political forces and living constitutional values. Within this framework, the resilience of judicial institutions is not merely the ability to survive, but the reflective capacity to continually reinterpret democracy and justice in the face of changing times, a form of ‘constitutional self-understanding’ that is at the core of long-term institutional stability.

Digital disruption has strengthened administrative oversight mechanisms that were originally intended to promote accountability, but have shifted to become instruments of power reproduction.³¹ This transformation did not occur suddenly, but through an accumulation of decisions that narrowed the space for legal autonomy and expanded executive power under the legitimacy of efficiency and crisis. The digitisation of bureaucracy, including the digitisation of litigation procedures, essentially creates an

²⁷ James G. March and Johan P. Olsen, “Elaborating the ‘New Institutionalism,’” in *The Oxford Handbook of Political Science* (Oxford University Press, 2013), 159–75, <https://doi.org/10.1093/oxfordhb/9780199604456.013.0008>.

²⁸ Anna Lührmann and Staffan I. Lindberg, “A Third Wave of Autocratization Is Here: What Is New about It?,” *Democratization* 26, no. 7 (October 3, 2019): 1095–1113, <https://doi.org/10.1080/13510347.2019.1582029>.

²⁹ Jeremy Waldron, “The Rule of Law as an Essentially Contested Concept,” in *The Cambridge Companion to the Rule of Law* (Cambridge University Press, 2021), 121–36, <https://doi.org/10.1017/9781108600569.007>.

³⁰ Keane, *The Shortest History of Democracy*; Jeremy Waldron, “The Rule of Law as an Essentially Contested Concept,” *SSRN Electronic Journal*, 2021, <https://doi.org/10.2139/ssrn.3808198>.

³¹ N.A.A. Majid et al., “Structural Equation Modelling for Validating Disruptive Factors in Livestock Supply Chain,” *International Journal of Advanced Computer Science and Applications* 13, no. 5 (2022): 467–76, <https://doi.org/10.14569/IJACSA.2022.0130555>.

institutional structure that appears modern but is regressive, namely technology being used as a medium to normalise the instrumentalisation of judicial autonomy.³²

The instrumentalisation of the economy over the law in the context of path dependence means that this disruption works not only through technological innovation, but also through the ideological recoding of the law as a tool for economic efficiency and legitimising power.³³ The latest study shows that a highly flexible constitution, due to constant changes following the interests of the government, has had more than half of its articles amended, causing the law to lose its stability as a constraint on power.³⁴ This phenomenon illustrates a form of ideological disruption, in which economic and political logic penetrates constitutional functions, weakens the principle of separation of powers, and shifts the meaning of law from guardian of justice to instrument of administrative control.³⁵

Meanwhile, literature studies on the resilience of judicial institutions describe the capacity of legal institutions to maintain their legitimacy and effectiveness amid ideological changes and economic digitalisation.³⁶ This is achieved through judicial structural reforms, judge training and the modernisation of litigation procedures. However, as in the case of developing countries, these reforms to the structure of the judiciary are often pseudo-adaptive. That is, the constitution is adjusted to strengthen political authority, not to strengthen judicial autonomy.³⁷

As a result, resilience capacity has become a formal survival mechanism rather than a substantive transformation, because the adaptation process takes place under political pressure and the logic of economic efficiency. If the constitution is not positioned as a limit on power, as seen in Fidesz's political dominance over judicial institutions and independent commissions, then adaptive mechanisms actually reinforce political co-optation rather than legal stability.³⁸

Meanwhile, the literature review finds that one (not the only) determining factor strengthening the resilience of judicial institutions is constitutional normative legitimacy, namely the extent to which the constitution remains recognized as the highest source of legal authority. If this legitimacy is strong, external disruptions can be absorbed through adaptation without losing constitutional principles. However, if this legitimacy weakens, as in a multi-party system, internal adaptation actually accelerates political co-optation of the judiciary. On the other hand, a complicating factor that

³² Shivaraj Huchhanavar, Shamim Mohammad, and Vikash Vaibhav, "Occupational Stress Among India's District Judges: An Exploratory Study?," *International Journal for Court Administration* 16, no. 1 (April 28, 2025), <https://doi.org/10.36745/ijca.569>.

³³ Pierson, "Increasing Returns, Path Dependence, and the Study of Politics."

³⁴ Fidyah Rahma Insani et al., "The Verstek Law Implementation In Religious Courts In South Sumatera," *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 23, no. 1 (June 8, 2023): 37–50, <https://doi.org/10.19109/nurani.v23i1.16030>.

³⁵ Huchhanavar, Mohammad, and Vaibhav, "Occupational Stress Among India's District Judges: An Exploratory Study?"

³⁶ Anang Sugeng Cahyono et al., "Government Power in Property Law: Control, Conflict, and Contestation in Indonesia and Nepal," *Jurnal Hukum Bisnis Bonum Commune*, February 27, 2025, 174–93, <https://doi.org/10.30996/jhbbs.v8i1.12864>.

³⁷ Miroslav Jakab, "Benefits and Limitations of a Behaviourally Informed Regulatory Framework for Digital Markets," *SSRN Electronic Journal*, 2022, <https://doi.org/10.2139/ssrn.4275031>.

³⁸ Gábor Halmai, "Populism, Authoritarianism and Constitutionalism," *German Law Journal* 20, no. 3 (April 25, 2019): 296–313, <https://doi.org/10.1017/glj.2019.23>.

emerges in the literature is the instrumentalization of law, which creates an illusion of stability. That is, the constitution appears to be active, but in empirical reality it functions as a sham.³⁹

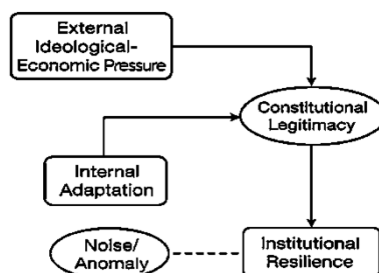


Figure.1 Path Dependence Theory

This means that the interaction between external pressure, internal adaptation and normative legitimacy actually reveals a paradox of resilience, because the more often the law adapts to the interests of those in power, the greater the gap between *das sollen* and *das sein* in constitutional practice. The resilience of judicial institutions is the result of historical configurations, namely choices of innovation and stability that are always framed by the institutional traces of the past (path-dependent constitutionality) that move between technocratic adaptation and normative degradation.⁴⁰

3 Methodology

This research employs a qualitative descriptive legal study that analyzes norms and institutions within the framework of the Indonesian rule of law. It systematically describes and interprets legal constructions to understand the normative distortions that arise within the police's institutional arrangements. Therefore, this research positions law as text, institution, and practice that develop within a historical and constitutional context.⁴¹

The approach used is a qualitative juridical approach that integrates historical and institutional perspectives. The historical approach is used to trace the genetics of the formation of the Indonesian rule of law, the socio-legal approach to understand the relationship between law and the practice of power, and the institutional approach to analyze the position and function of the Indonesian National Police (Polri) as an executive

³⁹ David S. Law and Mila Versteeg, "Sham Constitutions," *SSRN Electronic Journal*, 2012, <https://doi.org/10.2139/ssrn.1989979>.

⁴⁰ Law and Versteeg.

⁴¹ P. Ishwara Bhat, "Qualitative Legal Research," in *Idea and Methods of Legal Research* (Oxford University Press/Delhi, 2020), 359–82, <https://doi.org/10.1093/oso/9780199493098.003.0012>.

organ within a constitutional system bounded by the principles of the rule of law and human rights.⁴²

Research data were collected through library research, including academic literature archives, constitutional documents, laws and regulations, and court decisions, particularly those of the Constitutional Court. This research also draws on policy documents and classical and contemporary scholarly works to strengthen the conceptual and institutional analysis of the limitations of police authority within the Indonesian rule of law.⁴³

Data analysis was conducted qualitatively and juridically, with stages of normative interpretation and institutional construction.⁴⁴ First, legal norms were analyzed through systematic and contextual interpretation to identify consistency between the objectives of norm formation and the principles of the rule of law. Second, a historical-institutional analysis was conducted to link positive norms to the genetic origins of the Indonesian rule of law. Third, a socio-legal approach was used to assess the normative implications for the practice of power and the protection of human rights. All findings were analyzed descriptively and analytically to construct a legal critique based on limitations of authority, institutional independence, and public accountability.⁴⁵

4 Result and Discussion

This study and discussion explores how external pressures, internal adaptations, and normative legitimacy, as conceptualised by Lev (2000) and Manan (2003), create patterns of path dependence that frame the evolution of the resilience of Indonesia's judicial institutions.⁴⁶

By mapping causal relationships, mediation mechanisms, and constitutional moderation, this section shows how institutional choices, judicial innovation, and institutional stability are not merely normative products, but the result of complex, layered, and recurring historical interactions.

⁴² I Isman and Ahmad Zainul Muttaqin, "Innovative Legal Modeling for Interdisciplinary Studies on Law and Economic Behavior," *Indonesian Journal of Islamic Economic Law* 1, no. 1 (December 7, 2023): 60–71, <https://doi.org/10.23917/ijoel.v1i1.3437>.

⁴³ Miftakhul Huda and Hisam Ahyani, "Normative Justice and Implementation Related to Sharia Economic Law Disputes in Realizing Legal Certainty and Justice in Indonesia," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 24, no. 1 (June 2024): 103–19, <https://doi.org/10.30631/alrisalah.v24i1.1467>.

⁴⁴ Isman et al., "Empirical Legal Research Based on Jasser Auda's Maqashid Syariah Theory," *Al-Afkar, Journal For Islamic Studies* 6, no. 4 (August 2023): 14–29, <https://doi.org/10.31943/AFKARJOURNAL.V6I4.730>.

⁴⁵ Patrick R. Hughes, "A Critical Analysis Of Hans Kelsen's Pure Theory Of Law From The Point Of View Of Aristotelian-Scholasticism," *Engineering* (2009).

⁴⁶ Daniel Lev, *Legal Evolution and Political Conflict in Indonesia* (America: Kluwer Law International, 2000); Bagir Manan, *Teori Dan Politik Konstitusi* (Yogyakarta: FH UII PRESS, 2003).

4.1 Indonesia Court Resilience Model

According to Daniel S. Lev, disruption in various forms (political, social and economic) must historically be seen as external pressure on a form of crisis of legitimacy that forces the state to reorganise its sources of political authority and the moral basis of power. In the case of Indonesia, social and economic changes, the emergence of the middle class, the expansion of education, and the penetration of bureaucratic capitalism gave rise to a clash between the demands of legal rationalisation and the remnants of political patrimonialism (Lev, 1978: 380–382).⁴⁷

This disruption is not merely economic or administrative turbulence, but rather a manifestation of the struggle for the meaning of the rule of law amid tensions between the idea of the modern state and the legacy of economically motivated colonialism. In other words, disruption is a political stage in which the law is used as a new arena for legitimising political and economic power.

Therefore, resilience did not stem from formal legal norms, but from the ability of institutions to absorb new social demands into the form of institutional legitimacy. The stability of institutions does not stem from adherence to the text of the constitution, but from their success in becoming an arena for compromise between power and public morality⁴⁸.

Internal adaptation of judicial institutions acts as a mediating variable that channels external pressure into the operational mechanisms of the rule of law. Within Lev's framework, this process is not mechanical adaptation, but rather a political process in which judges, bureaucrats, and intellectual groups negotiate the meaning of judicial autonomy.⁴⁹

This adaptation gave rise to new laws, such as Law No. 14/1970, which served a dual function: on the one hand, it reinforced the independence of the judiciary, but on the other, it strengthened the state's ideological control over legal institutions. This mediator is thus ambivalent: it bridges the gap between reform and co-optation, between the ideal of legal rationality and the need for regime stability.

In Lev's Reading, the constitution is not a source of universal values but a historical field where power is negotiated and given moral form. A strengthening factor is the constitution's legitimacy, which helps negotiate tensions between external pressures and internal adaptations. When constitutional legitimacy is strong, it limits the politicisation of law. However, when that legitimacy is fragile, the constitution becomes an instrument for justifying executive power. In other words, the Indonesian constitution is more like a real constitution than a normative one. This political tool changes meaning according to the dominant power configuration.⁵⁰

The main confounding factor in the relationship between disruption and resilience is the middle social stratum that has grown out of economic and educational mobility. This stratum has become an agent of legal rationalisation, but also a source of new tensions because it imposes the idea of the rule of law within a patrimonial political culture (Lev, 1978: 380–381).⁵¹ In Lev's terms, this group plays a dual role, as both a driver of legal reform and a consumer of legal ideology that depends on state patronage.

⁴⁷ Lev, *Legal Evolution and Political Conflict in Indonesia*.

⁴⁸ Lev.

⁴⁹ Lev.

⁵⁰ Lev.

⁵¹ Lev.

Therefore, they create a paradox, namely demanding judicial independence, but still relying on the state they criticise for their social legitimacy.

The relationship between all of the above factors (causes, effects, reinforcers and mitigators) is reciprocal and path dependent. Disruption (cause) drives internal adaptation and demands the reconsolidation of constitutional legitimacy (reinforcer), but every attempt at adaptation is always limited by the historical structure of colonial law and patrimonial politics that restrain the autonomy of the judiciary (effect). In this context, institutional resilience is never linear, but rather circular, because external pressure generates innovation, innovation invites co-optation, and co-optation gives rise to a new cycle of legal moral reform. That is why, according to Lev, law in Indonesia always moves between two extremes: the ideal of modern rationality and the reality of patronage politics.

This means that the interaction between external pressure, internal adaptation, constitutional legitimacy, and social class dynamics illustrates that the resilience of judicial institutions is not the result of legal design, but rather of long-term political adaptation that continues to be negotiated under the shadow of power. Daniel S. Lev asserts that Indonesian law has developed not because of its success in imitating the European model, but because of its ability to survive the tension between public morality and political power. In this sense, law is not merely a system of norms, but a politics of legitimacy that moves through history, because every external disruption gives birth to new forms of adaptation and stability that are always temporary in nature.

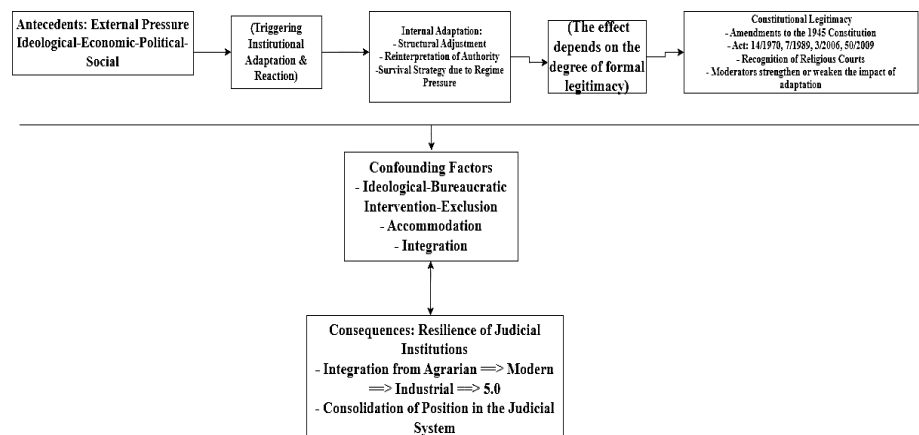


Figure.2 Resilience Indonesian Court Post Colonialism Period.⁵²

Based on the illustration in Figure 1, it appears that ideological dominance and economic power structures operate as external pressures arising from changes in political, economic and ideological power structures from the colonial era to the post-independence period. Data from Emmerson (1976) shows that the dominance of nationalists and bureaucrats in the BPUPKI–PPKI shifted Islamic representation from 15% to only 7%. Compositionally, this representation ratio reflects the reduction of Islam in the initial constitutional design. The lower the ratio of Islamic representation, the higher the

⁵² Lev.

dominance of secular-nationalist ideology in shaping the country's basic law. This means that external pressure during this period took the form of the hegemony of secular-nationalist ideology over Islamic law, which instilled exclusionary politics in Indonesia's early constitutional system.⁵³

The element that mediates between external pressure and the Religious Court's resilience is the Court's structural response. The internal adaptation of the Religious Court began to take effect during the 19th-century industrialisation of the Dutch East Indies. When the Diponegoro War (1825–1830) ended, and industrialisation began, Islamic law was reduced to only family matters, while economic and property matters were subject to Western civil law. This data shows a shift in the domain of Islamic law from the public to the private sphere, indicating a functional compression that adapted to the logic of the colonial economy. Although this adaptation was defensive in nature, preserving the existence of institutions on a micro scale, it sacrificed macro autonomy. However, this factor was successfully mediated by the principle of institutional adaptation for survival, whereby institutions adapted to external logic without losing their existence entirely.⁵⁴

Meanwhile, constitutional legitimacy serves as a moderating factor (reinforcing) the filter of interaction between external pressure and internal adaptation. This moderating relationship is evident in Soepomo's Constitutional Strategy, as reflected in Article II of the Transitional Provisions of the 1945 Constitution, which maintains the validity of colonial law. Historically, this is a regressive filter function, meaning that the constitution is not used to transform the old legal structure, but to maintain it. Soepomo, who came from a tradition of colonial customary law and was educated at Leiden, internalised the colonial model of legal pluralism, which placed Islamic law as subordinate to state law. This constitutional moderator served as a brake on the adoption of Sharia in the public law sphere, creating a gap between the formal and substantive legitimacy of Islamic law.⁵⁵

The resilience of judicial institutions emerged from dynamic interactions among external pressures, internal adaptations, and constitutional moderation. After independence, a new phase emerged in which secular ideology, nationalism, socialism, and communism became noise variables that tested the resilience of religious courts. In its historical context, each decade shows a pattern of reactive resilience: 1945–1959 (period of exclusion), 1959–1989 (period of gradual accommodation), and 1989–2009 (period of integration and modernisation). Resilience here is not merely survival, but the ability of institutions to change their basis of legitimacy from religious-agrarian to constitutional-modern. Law No. 7 of 1989 marked a turning point in this context, as resilience began to show signs of stability after a long cycle of repression and adaptation.

The confounding factor in this relationship is the ideological intervention of colonial bureaucrats and secular nationalists, which continues to influence the orientation of Islamic law. This confounding factor distorts legitimacy, that is, the interaction between external pressure and internal adaptation, so that the result does not reflect the institution's natural condition. For example, when Law No. 19 of 1964 recognised religious courts, this recognition was not the result of the internalisation of constitutional

⁵³ Aidul Fitriciada Azhari, "Dinamika Peradilan Agama Di Indonesia," in *Seminar Nasional 2025*, 2025.

⁵⁴ Azhari.

⁵⁵ Azhari.

values, but rather a political compromise following the 1959 Decree, which symbolically reaffirmed the Jakarta Charter. This means that this ideological distortion produces a legal anomaly: formal recognition does not always entail substantial acceptance of Sharia values.⁵⁶

When analysed chronologically, the relationship between these factors forms a circular pattern of causality and path dependence. External pressure results in internal adaptation, but this adaptation is always filtered by constitutional legitimacy, which contains historical colonial bias. When this bias is too strong, ideological interference intervenes, redirecting adaptation toward co-optation. As a result, the resilience of religious judicial institutions fluctuates rather than following a linear path. Only when constitutional legitimacy is substantively strengthened, as was the case after the amendment of the 1945 Constitution and the enactment of Law No. 3 of 2006, does this negative cycle transform into a stable cycle of accommodation. This pattern of adaptation leading to resilience shows that Islamic legal institutions' resilience is a function of the convergence between constitutional legitimacy and socio-economic pressures.⁵⁷

Following the amendment of the 1945 Constitution, the relationship between factors reached a phase of convergence, as external pressure no longer came solely from political powers or ideological colonialism, but also from the demands of the modern economy and the digitisation of law.⁵⁸ The internal adaptation of the Religious Courts now operates within a broader legitimacy framework, in which the constitution is a source of recognition rather than an obstacle. The constitution serves as an amplifier of resilience, not a regressive filter.⁵⁹ With the issuance of Law No. 3 of 2006 and Law No. 50 of 2009, the religious court system has shown a new form of stability that is integrative, adaptive, and constitutional, marking the end of the colonial path-dependence phase and the beginning of the constitutional resilience cycle phase in the digital economy era.⁶⁰

While Lev highlights the pattern of adaptation of the Indonesian judicial institution from the colonial era to the Old Order (only a small part of the New Order), Bagir Manan analyses the pattern of adaptation of judicial power during the New Order until after the reform era. The data have their own uniqueness, so it is necessary to use the path-dependence perspective (external pressure, adaptation, and legitimacy) to compare them with Lev's views in the previous description.⁶¹

Bagir Manan's (2003) view of path dependence can be summarised as follows: external pressure is conceptualised as New Order authoritarianism, namely government domination of the judicial administration, the concept of an *onschendbaar* government, and the abuse of administrative power to subjugate judges. In terms of path dependence,

⁵⁶ Azhari.

⁵⁷ Azhari.

⁵⁸ L Muttaqin et al., "Is the Legislator in the Constitutional Court? Examining the Tension Between Judiciary and Democracy in Indonesia," *Journal of Indonesian Legal Studies* 10, no. 1 (2025): 91–134, <https://doi.org/10.15294/jils.v10i1.13494>.

⁵⁹ P Sumantri et al., "Pioneering Modern Education in Aceh: The Historical Portrait of Native Teachers' Struggle in the Oetoesan Goeroe Newspaper (1926–1930)," *History of Education* 54, no. 4 (2025): 384–409, <https://doi.org/10.1080/0046760X.2024.2440771>.

⁶⁰ F A Ahmad Noor and P Carey, "Introduction: Why Race Mattered: Racial Difference, Racialized Colonial Capitalism and the Racialized Wars of Nineteenth-Century Colonial Southeast Asia," 2025, 9–29, https://doi.org/10.5117/9789463723725_intro.

⁶¹ Manan, *Teori Dan Politik Konstitusi*.

this power relationship proves the vertical pressure that produces structural distortions to the space of judicial independence. This is also evidenced by the executive's control of the Supreme Court administration and the judicial environment, the president's authority to interfere with the judiciary under Law No. 19 of 1964, and the use of the bureaucracy as a political instrument. Authoritarianism is a consistent external pressure that encourages deviation from the principle of independent judicial power (Manan, 2003).⁶²

Adaptation as a mediating element emerges as the judiciary's adaptive response to external pressures. According to Bagir Manan, patterns of adaptation in the form of judicial survivalism (submission to the will of the government), structural compromise (administrative dependence), and the normalisation of procedural deviations for the sake of compatibility with the regime as a whole show that mediators function as a mechanism for channelling authoritarian pressure into institutional behaviour, rather than as complete resistance. In a historical context, adaptation functions as an internal buffer that transforms pressure into adaptive configurations, either through a decline in integrity, political submission, or the elasticity of judges' decisions.

Meanwhile, the normative legitimacy provided by the 1945 Constitution (Article 24), Law No. 14 of 1970, and the national legal structure shows two sides: normatively, the constitution guarantees independence, but politically, this norm can be narrowed by the power structure. This normative legitimacy, in the early days of the New Order, weakened authoritarianism, as the People's Consultative Assembly reaffirmed the judiciary's independence. However, as political bureaucratisation strengthened, this normative legitimacy became symbolic rather than operational, thereby reinforcing the New Order's authoritarianism and weakening the judiciary's resilience.

Resilience, the outcome of the interaction between authoritarianism and resilience, declined during the New Order period, not only because of authoritarian pressure but also because judicial institutions responded negatively and normative legitimacy was insufficiently operational.⁶³ This is evidenced in Bagir Manan's (2003) view of the judiciary's inability to address corruption, collusion, and nepotism; the subjugation of judges by the bureaucracy; the use of administrative law for intervention; and the distortion of the investigation, prosecution, and execution processes. As a result, the judiciary's resilience appears independent in form but is in fact coopted.⁶⁴

⁶² Manan.

⁶³ C Kombos, "Constitutional Review and the Economic Crisis: In the Courts We Trust? - Part Two," *European Public Law* 25, no. 2 (2019): 229–48, <https://doi.org/10.54648/euro2019015>.

⁶⁴ Manan, *Teori Dan Politik Konstitusi*.

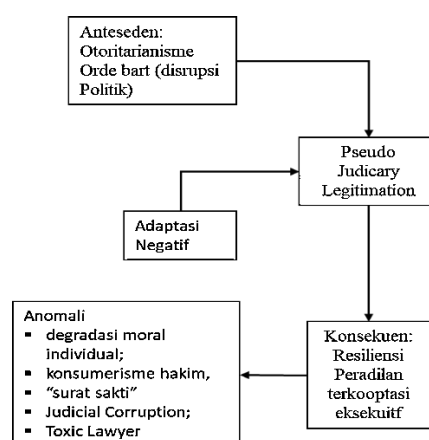


Figure.3 Resilience Indonesian Court, Post Reformation Period.⁶⁵

According to Manan (2003), external conditions that are said to create noise/anomalies appear as factors that cannot be predicted by linear structural models of individual moral degradation, judicial consumerism, ‘magic letters’ that delay execution, money games outside the formal structure, and the deviant role of lawyers. Noise here is a lateral distortion factor that muddies causal relationships, so that not all weaknesses in the resilience of judicial institutions can be explained by digital disruption pressures or other external pressures, including constitutional design. Noise produces variance errors in the institutional resilience model, resulting in uncertainty in judicial performance even though constitutional norms are in place. These findings are important to note because they have not been discussed in detail.

When mapped out, the relationship between all factors, from antecedents to consequences, is that external pressures (political or economic) are transduced, mediated and moderated by constitutional legitimacy, which in turn produces the resilience of judicial institutions that are co-opted by authoritarianism and reinforced by noise/anomalies in the judicial ecosystem itself.⁶⁶ The data shows that this interaction is path dependent, meaning that the decline in judicial independence in the early New Order era created a feedback loop that reinforced institutional dependence on the executive. As a result, authoritarian pressure gave rise to subordinative adaptation, normative legitimacy was marginalised, causing the resilience of judicial institutions to weaken, thereby contributing to anomalies that reinforced and made external pressure systemic and very long-lasting. This circular pattern reveals the structural complexity in the formation of resilience (Manan, 2003).⁶⁷

⁶⁵ Manan.

⁶⁶ Maulidi, “Constitutional Interpretation: Criteria for the Issuance of Government Regulations in Lieu of Law in Constitutional Court Decisions (2003-2023)”; Kombos, “Constitutional Review and the Economic Crisis: In the Courts We Trust? - Part Two”; Tri Sulistyowati and Abdurrachman Satrio, “Strengthening the Legitimacy of the Indonesian Constitutional Court Decision through Supermajority Requirement: Lesson from the South Korean Experience,” *Revista de Investigações Constitucionais* 10, no. 3 (December 13, 2023): 246, <https://doi.org/10.5380/rinc.v10i3.89341>.

⁶⁷ Manan, *Teori Dan Politik Konstitusi*.

Therefore, the choices, innovations and stability of judicial institutions are not merely the product of law, but the end result of complex and non-linear interactions between variables. External pressures such as digital economic disruption lead institutions to structural compromises, namely normative legitimacy forming negative internal adaptations and noise adding unexpected deviations. In the long term, historical patterns such as this create a trajectory that frames the way judicial institutions evolve, namely from post-independence independence to co-optation in the New Order era, then returning to seek post-reform legitimacy. The result is conditional resilience, namely that institutional resilience will greatly depend on how these variables are calibrated by political and social dynamics.

4.2. Discussion

According to the path dependence review, the normative legitimacy of the constitution functions as a regulatory anchor that determines how external pressures, whether ideological, economic or administrative, are translated into the authority structure of judicial institutions. In Lev's model (1978), the constitution is not merely a text, but an arena of legitimacy where the state reorganises the relationship between the new middle class, the colonial bureaucracy, and the modern state project.

Therefore, constitutional legitimacy acts as a historical filter that absorbs external disruptions into forms of institutional compromise, such as the reduction of the role of Islamic law in the BPUPKI–PPKI, the subordination of the Religious Court in the era of colonial industrialisation, and the freezing of the transformational function of Article II of the Transitional Provisions. Normative legitimacy in this phase did not strengthen independence, but framed institutional choices within the boundaries of colonial heritage and dominant political hegemony. Thus, the constitution became a real constitution that set the initial path for the adaptation pattern of the Indonesian judicial institution.

Normative legitimacy in Manan's (2003) model operates as an institutional moderator that regulates the intensity and direction of internal adaptation to the authoritarian pressures of the New Order. In the logic of path dependence, external pressures in the form of executive domination through administrative capture, consolidation of power, and bureaucratic penetration create a feedback loop that gradually weakens the effectiveness of constitutional legitimacy. The constitution does indeed normatively guarantee independence through Article 24, but this legitimacy is narrowed when the power structure engages in administrative co-optation. The internal adaptation of the judiciary, as described by Manan, has turned into the subordinative survivalism of judges, structural compromise, and the normalisation of procedural irregularities, all of which indicate that constitutional legitimacy has lost its corrective power against external pressures.⁶⁸ Causally, normative legitimacy has changed from being the guardian of judicial autonomy to an instrument of symbolic compliance, thereby reinforcing the judiciary's historical dependence on the executive.⁶⁹

The contribution of normative legitimacy as an explanatory element of complex interactions between variables lies in its ability to shape the trajectory of institutional

⁶⁸ Sulistyowati and Satrio, "Strengthening the Legitimacy of the Indonesian Constitutional Court Decision through Supermajority Requirement: Lesson from the South Korean Experience."

⁶⁹ Huda and Ahyani, "Normative Justice and Implementation Related to Sharia Economic Law Disputes in Realizing Legal Certainty and Justice in Indonesia."

resilience. In Lev and Manan's perspective, the resilience of judicial institutions is not determined by the text of the constitution, but by how constitutional legitimacy mediates disruption and adaptation in the long term.⁷⁰ When legitimacy is strong and substantive, for example after the amendments to the 1945 Constitution, Law No. 3/2006, and the repositioning of the judiciary from the executive structure to the constitutional structure, the institutional trajectory shifts from co-optation to reintegration.⁷¹

However, when legitimacy weakens or is merely symbolic, path dependence creates negative lock-in, namely a cycle of pseudo-resilience,⁷² repeated cooptation, and institutional noise in the form of corruption, executive misconduct. Thus, normative legitimacy is the determining variable that dictates whether external pressure results in innovation or cooptation, whether internal adaptation becomes transformational or subordinative, and whether institutional stability is resilient or merely survives in historical dependence. It is in this sense that constitutional legitimacy becomes the causal axis that frames the choices, innovations, and stability of judicial institutions in Indonesian history.⁷³

When viewed through the framework of path dependence according to Lev (1978), today's digital economic disruption has the same external pressure structure as the historical patterns of colonialism, authoritarianism, and socio-economic changes that shaped the Indonesian judiciary. Digital disruption is not merely technological innovation, but a new crisis of legitimacy that challenges the foundations of authority, public morality, and the sources of state legality.⁷⁴

Because the institutional path of the judiciary has been shaped by a long history of colonial patrimonialism and legal pluralism, every new external pressure, including the digital economy, binds institutions to old trajectories, so that the judiciary's response is never truly free, but always passes through the filter of inherited power that constrains the space for judicial innovation. This is where the relevance of path dependence lies, namely that new pressures can only be understood through the traces of old power that produce the current limitations of constitutional choices.

Manan's model (2003) shows that normative legitimacy in Article 24 of the 1945 Constitution, Law No. 14 of 1970, and post-reform legislation has never functioned as a pure norm, but rather as a moderating variable that strengthens or weakens the effect of external pressure on internal judicial adaptation.⁷⁵ In the digital era, constitutional legitimacy once again determines the direction of evolution through amplifiers that strengthen judicial independence through modern constitutionalization (e.g. in judicial reform and administrative digitalisation), but it can also become a regressive filter that hinders innovation through bureaucratisation, commercialisation of technology or

⁷⁰ Manan, *Teori Dan Politik Konstitusi*.

⁷¹ Lev, *Legal Evolution and Political Conflict in Indonesia*.

⁷² M Vagias, "Hybrid Court Resilience and the Selection of Cases," *Leiden Journal of International Law* 33, no. 4 (2020): 1029–46, <https://doi.org/10.1017/S0922156520000436>.

⁷³ Lev, *Legal Evolution and Political Conflict in Indonesia*.

⁷⁴ A Natalis, A F Sembiring, and E Handayani, "From Rejection to Recognition: Human Rights, Morality, and the Future of Marijuana Policy in Indonesia," *International Journal of Drug Policy* 140 (2025), <https://doi.org/10.1016/j.drugpo.2025.104817>.

⁷⁵ Manan, *Teori Dan Politik Konstitusi*.

digital cooptation.⁷⁶ Path dependence explains why normative legitimacy does not automatically create resilience, because the meaning of legitimacy itself is bound to a long history of administrative subordination and executive domination.⁷⁷

This means that, from a constitutional perspective, the contribution of normative legitimacy in an era of disruption cannot be understood as a normative function of ‘what should be’, but rather as a historical function of what is possible.⁷⁸ Lev and Manan show that the resilience of judicial institutions is the outcome of a cycle of path dependence, whereby external pressures give rise to internal adaptations, which are then moderated by normative legitimacy, creating a false sense of stability as historical feedback.⁷⁹

In the digital age, this cycle repeats itself in a new form: digital market pressures and the artificial intelligence revolution will drive procedural innovation, but innovation will only be stable if it is reinforced by effective constitutional legitimacy. If constitutional legitimacy is weak, digital adaptation turns into co-optation. Conversely, if constitutional legitimacy is strong, it creates constitutional resilience that breaks some of the chains of colonial-authoritarian dependence. In other words, path dependence explains that judicial stability in the digital age does not depend on technology, but on how constitutional legitimacy negotiates the past with present pressures.

The main weakness of path dependence theory in the era of digital economic disruption, when read through Lev’s model,⁸⁰ lies in its historical nature, which overemphasises colonial-patrimonial structural determinism, thereby failing to capture the non-linear shock brought about by digital technology.

In Lev’s model, external pressures are understood as class conflict and ideological clashes. However, digital disruption creates a legitimacy crisis no longer determined by traditional political actors but by market logic, platforms, algorithms, and economic data. Lev’s path dependence helps explain historical continuity. However, it becomes weak when external pressures do not originate in moral-political struggles but rather in a digital economy that decentralises sources of authority.⁸¹

As a result, this theory is inadequate to explain how the normative legitimacy of the constitution operates in a new power space that does not rely on patrimonial patronage but on digital infrastructure operating outside the state’s logic.

According to Manan’s model (2003),⁸² normative legitimacy serves as a moderator, strengthening or weakening the judiciary’s internal adaptation under authoritarian pressure. However, in the era of digital economic disruption, the weakness of this approach is evident because path dependence assumes that power structures are always vertical, namely the president, the bureaucracy, and the state as the centre of pressure. In digital

⁷⁶ S Butt and T Lindsey, “Economic Reform When the Constitution Matters: Indonesia’s Constitutional Court and Article33,” *Bulletin of Indonesian Economic Studies* 44, no. 2 (2008): 239–62, <https://doi.org/10.1080/00074910802169004>.

⁷⁷ Pierson, “Increasing Returns, Path Dependence, and the Study of Politics.”

⁷⁸ D E Rahayuningsih et al., “Constructing Sustainable Justice in Indonesia: Judges’ Legal Considerations in Grant and Inheritance Disputes,” *Street Art and Urban Creativity* 6, no. 3 (2025): 470–77, <https://doi.org/10.62754/ais.v6i3.236>.

⁷⁹ Butt and Lindsey, “Economic Reform When the Constitution Matters: Indonesia’s Constitutional Court and Article33.”

⁸⁰ Lev, *Legal Evolution and Political Conflict in Indonesia*.

⁸¹ Lev.

⁸² Manan, *Teori Dan Politik Konstitusi*.

governance, however, external pressure is horizontal, coming from digital market noise, platform competition, artificial scarcity, algorithmic bias, and the commercialisation of legal procedures.⁸³

Constitutional legitimacy no longer faces only executive intervention but also the fragmentation of digital authority, which produces new forms of non-state co-optation. Path dependence loses theoretical precision when applied to forms of external pressure that lack historical continuity with colonial or authoritarian models, so that the contribution of constitutional legitimacy cannot be fully mapped through the traditional mediator–moderator framework.

Both Lev’s and Manan’s models show that judicial resilience is a product of the interaction between external pressures, internal adaptation, and constitutional legitimacy.⁸⁴ However, the weakness of path dependence in the digital age is its inability to explain when normative legitimacy must operate in a post-institutional environment, namely, when authority does not originate solely from the state but also from autonomous, unaccountable technology beyond the reach of the constitution. Path dependence assumes that constitutional legitimacy can reorganise power relations, but in the digital economy, power without accountability emerges, which has no roots in colonial or authoritarian history.

This means that constitutional legitimacy loses its moderating power because external pressures no longer negotiate the moral politics of legality à la Lev, and internal adaptation can no longer be channelled through classical institutional mechanisms à la Manan. The theoretical weakness of path dependence is that it explains the past very well but is less able to account for configurations of digital power that lack historical continuity, so that the contribution of normative legitimacy is not fully mapped onto the landscape of digital economic disruption.

5. Conclusion

The complex interaction between external pressure, internal adaptation and constitutional legitimacy shapes institutional path dependence: pressure drives innovation, adaptation mediates compromise, while normative legitimacy determines institutional stability in navigating disruption, co-optation and the reconstruction of legal authority. Conceptually, the models of Lev (1978) and Manan (2003) show that the path dependence of judicial institutions in Indonesia cannot be explained by formal law alone, because normative legitimacy is political, historical, and influenced by colonial bias. Digital disruption shows that path dependence theory weakens when it fails to capture the role of legitimacy as a dynamic variable that can strengthen or weaken internal adaptation. In practice, constitutional legitimacy needs to be remapped to avoid negative adaptation and digital co-optation. The limitation of this approach lies in the assumption of linearity in cause-and-effect relationships, whereas empirical models show ideological noise and systemic anomalies. Future research needs to develop a non-linear path

⁸³ Shivani Yadao et al., “AI -Driven Cryptographic Algorithm Identification: Exploring Methodologies and Practical Applications,” in *2024 IEEE International Conference on Machine Learning and Applied Network Technologies (ICMLANT)* (IEEE, 2024), 56–61, <https://doi.org/10.1109/ICMLANT63295.2024.00015>.

⁸⁴ Lev, *Legal Evolution and Political Conflict in Indonesia*; Manan, *Teori Dan Politik Konstitusi*.

dependence model based on the constitutional legitimacy cycle that integrates the variables of digital disruption, judicial autonomy, and the moral politics of legality.

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