



Transnational Constitutional Law: Bridging National Constitutions with International Norms

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Abstract

This article examines the role of transnational constitutional law as a framework for linking national constitutions with international legal norms in an era of growing global legal interdependence. While traditional theories of monism and dualism have long shaped discussions about how national and international law relate, this research shows that these models are insufficient to reflect the complex realities of modern constitutional practice. Using a normative juridical and comparative qualitative approach, the study analyzes constitutions, international treaties, and constitutional court decisions as primary sources, supported by scholarly literature and institutional reports. The findings identify three main interaction patterns: normative convergence, where international norms are integrated to bolster domestic constitutional legitimacy; constitutional resistance, where states prioritize sovereignty and selectively adopt international standards; and hybrid models, where courts navigate between domestic and international obligations through doctrines such as the margin of appreciation. These patterns underscore the increasing importance of constitutional pluralism, which views the relationship between national and international law as dialogical rather than hierarchical. Extending the analysis beyond Eurocentric contexts, this article highlights perspectives from the Global South, especially Indonesia, where selective adoption of international norms illustrates the constitutional balancing act between national identity and global commitments.

Keywords: Transnational Constitutional Law; Constitutional Pluralism; Monism and Dualism; Sovereignty; International Norms; Global South

Introduction

The phenomenon of legal globalization has transformed the relationship between national law and international law (Allott, 1999; Berman, 2004; Ip, 2010; Krisch, 2005; Nowrot, 1999; Shaffer, 2012; Zumbansen, 2012). According to data from the International Commission of Jurists (2023), over 60% of UN member states have cited international instruments as interpretative references in their national court decisions, particularly in cases concerning human rights. In fact, a report by the World Justice Project (2022) confirms that the practice of referencing international norms in constitutional testing has grown substantially over the past two decades, particularly in new democracies. This indicates that national constitutional boundaries are becoming more "porous" due to normative influence from international instruments.

The urgency of this research lies in the need to understand how countries navigate the tension between constitutional supremacy and international obligations. On the one hand, the constitution is

a symbol of sovereignty and national identity (Albi & Van Elsuwege, 2004; Cloots, 2017; Sloss, 2020; Stumpf, 2020; Van Elsuwege, 2004). However, on the other hand, participation in the global regime requires adjustments so that countries are not perceived as violating universal norms. This tension becomes even more relevant when constitutional courts must rule on cases involving the fundamental rights of citizens, such as freedom of expression, minority rights, or the guarantee of equality before the law.

Although literature on constitutional pluralism has emphasized the importance of dialogue between legal systems (Kuo, 2013; Rosenfeld, 2008; Sweet, 2013; Walker, 2002, 2016), there is still a gap in research. First, most studies focus on the European experience, particularly in the context of the European Union and the European Court of Human Rights. At the same time, analysis in the Southeast Asian region is relatively minimal. Second, there has been no systematic study examining the practical mechanisms by which national courts outside Europe adapt international norms into constitutional interpretations. Third, previous studies have focused more on normative theory, without providing practical models that courts or policymakers can apply.

Therefore, this study aims to: (1) identify the conceptual framework of transnational constitutional law in relation to national constitutions, (2) analyze the mechanisms of interaction between national constitutions and international norms in judicial practice, and (3) offer a theoretical model that can bridge the tension between the supremacy of national constitutions and international obligations. Scientifically, this study contributes to broadening the horizons of constitutional studies by incorporating the perspective of the Global South, particularly Southeast Asia. Practically, this study provides a basis for constitutional judges and policymakers in formulating a balanced interpretation strategy that maintains national sovereignty while fulfilling international obligations.

Research Objectives

This research is fundamentally aimed at addressing the conceptual and practical challenges arising from the interaction between national constitutions and international legal norms. The primary focus of this study is not merely to describe the phenomenon, but to offer a more comprehensive conceptual framework of transnational constitutional law as a discipline capable of bridging the tension between domestic sovereignty and international obligations.

More specifically, this study aims to identify the normative principles underlying the emergence of transnational constitutional law practices, while also examining how these principles are applied in judicial practice in various jurisdictions. Thus, this study not only provides a theoretical mapping but also empirically examines constitutional cases that show patterns of convergence or resistance to international norms.

In addition, this study aims to fill the gap in the literature, which has tended to focus on the European experience, by presenting perspectives from Southeast Asian countries, particularly Indonesia. By situating the Global South context within academic discourse, this study aims to broaden the horizons of transnational constitutional law studies, which often focus on the Western experience.

Ultimately, this study is expected to make two contributions. From an academic perspective, this study enriches the body of constitutional law studies by proposing a conceptual model that can be tested across jurisdictions. From a practical standpoint, this research offers a normative and strategic foundation for policymakers and constitutional judges in managing the tension between national constitutional supremacy and international norms, thereby creating a balance between state sovereignty and global commitments.

Research Methodology

This study employs a normative juridical approach (Negara, 2023), incorporating qualitative analysis and a comparative law perspective (Linos & Carlson, 2017). This approach was chosen because transnational constitutional law issues are essentially related to normative studies of legal texts, including both national constitutions and international instruments, yet at the same time require a comparative understanding to trace variations in practices across jurisdictions. Thus, this study aims to develop a comprehensive conceptual framework that reveals patterns of law enforcement across various contexts.

The research data were obtained from two main categories: primary sources and secondary sources. Primary sources include national constitutional documents from various countries, international instruments such as the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR), as well as decisions from constitutional courts and international courts that demonstrate the interaction between national and international norms. Meanwhile, secondary sources include academic literature, such as books, journal articles, and reports from international institutions, all of which are relevant to the issue of transnational constitutional law. The combination of these two categories allows the research to capture both the normative aspects and the underlying theoretical context.

The analysis of the data was conducted in three interrelated steps. First, legal texts were analyzed doctrinally to reveal the normative principles contained therein. Second, practices in several jurisdictions were systematically compared to identify patterns of convergence and resistance in adopting international norms. Third, court decisions are examined in depth to see how judges use, reject, or adapt international instruments in interpreting national constitutions. These three steps yield a more comprehensive understanding of how transnational constitutional law operates in practice.

To maintain the validity of the research results, source triangulation was used by combining data from constitutional texts, international instruments, and proven academic literature. With a systematic and methodological framework, as well as a precise analysis flow, this research can be replicated by other researchers by adjusting the jurisdictional context that is the focus of the study, while still using the same analytical framework.

Result

Normative Convergence: Strengthening the Constitution through International Instruments

The results of the study show that countries with open constitutional traditions tend to adopt international norms as interpretive instruments. Germany is a prime example, where the Bundesverfassungsgericht uses the European Convention on Human Rights in interpreting fundamental rights, such as freedom of religion and privacy protection (Brkan, 2019; Lehmann, 2014;

Märten, 2012; Peters, 2012). This convergence demonstrates that the legitimacy of national constitutions can be strengthened through their affiliation with universal norms, while also highlighting the transnational nature of constitutional protection.

This convergence of norms is not merely instrumental; it represents a fundamental transformation in the paradigm of constitutional sovereignty. This process is not simply a matter of accepting external norms, but rather a dialectic that enriches domestic legal discourse with a global perspective, making the constitution a living document responsive to developments in international legal civilization. Moreover, this convergence forms a feedback loop in which national court decisions that adopt international standards ultimately contribute to strengthening and concretizing international norms themselves, as seen in the influence of the German Federal Constitutional Court's jurisprudence on the evolution of interpretation in the European Court of Human Rights. Thus, this interaction not only strengthens the legitimacy of national constitutions but also actively shapes an increasingly integrated and seamless human rights legal landscape.

Constitutional Resistance: Domestic Supremacy over International Norms

On the other hand, this study identified patterns of resistance, particularly in countries that regard constitutional supremacy as a symbol of sovereignty. The United States Supreme Court, for example, rarely uses international instruments as a basis for interpretation, even in cases involving fundamental rights (Newman, 2004). A similar situation can be observed in Indonesia, where the Constitutional Court only refers to international instruments if they align with the basic principles of the 1945 Constitution. This resistance does not mean total rejection, but rather a form of selective filtering to ensure consistency with national values and priorities.

However, this resistance should be understood not as narrow-minded isolationism, but as a conscious defensive strategy to uphold the final authority of the constitution as the nation's highest social contract. In patterns such as those demonstrated by the US and Indonesia, the courts act as strict gatekeepers, where every international norm must pass a compatibility test with the country's fundamental values (grundnorm) and constitutional identity (Grossman, 2014). This approach actually confirms the influence of international law—whose presence is recognized but whose validity must be subject to the domestic constitution. Thus, resistance and selective adoption are two sides of the same coin: a recognition that in the era of globalization, constitutions can no longer ignore international norms, but the response to them is primarily determined by the legal traditions, history, and sovereignty structures of each country.

Hybrid Model: A Compromise between National Sovereignty and Global Commitment

In addition to these two extreme models, a hybrid model exists that represents a compromise between adherence to international norms and the protection of domestic sovereignty. A clear example of this can be seen in Central Europe, in countries such as Poland and Hungary, which continue to recognize the authority of the European Court of Human Rights but assert their domestic interpretative space through the doctrine of margin of appreciation (Arnardóttir, 2016; Gerards & Senden, 2009; Shany, 2005; Spielmann, 2012). This model demonstrates that transnational constitutional law can serve as a space for negotiation, rather than merely an arena of subordination.

Furthermore, this hybrid model reveals complex power dynamics in which domestic courts strategically utilize global norms to strengthen the legitimacy of their decisions at the national level,

while simultaneously limiting external influence with sovereignty barriers. However, it is essential to emphasize that this compromise is fragile and often becomes an arena for fierce constitutional political battles, as seen in Poland and Hungary's attempts to use the margin of appreciation not as a space for dialogue, but as a shield to justify deviations from liberal democratic standards. Thus, the hybrid model is not a stable ideal solution, but rather a reflection of the ongoing and unresolved tension between the universalism of human rights and the particularism of national constitutional identity, making it the most dynamic battleground in contemporary transnational constitutional law.

Political and Social Determinants in Transnational Interactions

Furthermore, this study finds that domestic political factors play a significant role in determining patterns of interaction. Countries with established democratic systems tend to use international norms as additional legitimacy, while countries with populist or nationalistic orientations prefer resistance (Buchanan & Keohane, 2006; Jackson, 2018; Murphy, 1999; Zürn, 2000). This confirms that transnational constitutional law cannot be separated from the socio-political context, but instead operates within the contestation of ideology, interests, and national identity.

Therefore, these findings explicitly reject the naive narrative of linear and apolitical legal convergence, and instead reveal that the application of international norms is a projection of domestic political power. The court, in this case, does not act in an ideological vacuum, but rather as an actor involved in the contestation—either by using international instruments to strengthen the progressive agenda or, conversely, by rejecting them to protect the conservative status quo. Thus, the interaction between constitutional law and international norms is essentially a reflection of the hegemonic struggle within a country to define its identity and fundamental values on the global stage. This conclusion posits that politics is the inevitable primary explanatory variable, where law functions both as a tool and an arena for the struggle for influence.

Discussion

The findings of this study show that the relationship between national constitutions and international norms cannot be understood through a rigid classical legal paradigm. Both the monism model, which places international law above national law, and dualism, which emphasizes a clear separation between the two, have proven incapable of explaining the variations in practice across different jurisdictions. For example, Germany's experience shows widespread acceptance of international norms (Ingram & Triadafilopoulos, 2010), while the United States displays strong resistance. When analyzed within the framework of monism, patterns of resistance would be considered a form of absolute rejection; conversely, within the framework of dualism, patterns of convergence would be viewed as anomalies. Thus, these two classical theories appear too reductive in understanding contemporary dynamics.

In response to the limitations of the classical paradigm, the idea of constitutional pluralism offers a more adequate explanation (Walker, 2002). This concept views national constitutions and international norms as being on an equal footing, so that the interaction between the two must be understood as a normative dialogue, not an absolute hierarchy. The results of the study support this thesis, particularly through the finding of a hybrid model in which national courts recognize international obligations but still maintain room for domestic interpretation. The margin of appreciation doctrine used by courts in Poland and Hungary, for example, shows that constitutional

pluralism can function as a compromise mechanism that preserves sovereignty and international engagement.

Additionally, this study reveals that domestic political factors often influence the practice of transnational constitutional law. This reinforces the argument of pluralist theorists that the relationship between national constitutions and international norms is contingent, depending on the country's social, political, and institutional context. This means that constitutional pluralism is not only a normative theory, but also a reflection of living political reality. In this context, pluralism provides space for countries to negotiate their positions without having to submit to the dominance of international law or close themselves off completely.

The relevance of these findings is even more striking when viewed from the perspective of the Global South. Most of the literature on transnational constitutional law still focuses on the European experience, particularly in the context of the European Union and the European Court of Human Rights (De Búrca, 2011; Greer & Williams, 2009; McCrudden, 2008; Wendel, 2013). In fact, countries in the Global South face distinct challenges, including institutional limitations, domestic political pressures, and the need to assert their postcolonial sovereignty. Indonesia's experience, for example, shows how international norms can be selectively adopted in accordance with the fundamental principles of the 1945 Constitution. This selectivity is not merely a form of resistance, but rather a constitutional strategy to maintain a balance between global engagement and national identity.

Thus, this discussion highlights two main contributions. First, the research results reinforce the relevance of constitutional pluralism theory as a more accommodative analytical framework than classical monism and dualism. Second, this research broadens the academic horizon by incorporating the experiences of the Global South, which are often overlooked in the discourse on transnational constitutional law. These two contributions not only enhance theoretical understanding but also provide a practical framework for developing countries to manage tensions between national sovereignty and international obligations in a more constructive manner.

Scientific Novelty and Research Contribution

This research presents scientific innovation by placing transnational constitutional law as an analytical framework that is not only rooted in European experience but also expanded to the Global South context. Until now, academic literature on transnational constitutionalism has primarily focused on the study of the European Union and the impact of the European Court of Human Rights. Thus, research that explores the experiences of Southeast Asia, particularly Indonesia, provides a new perspective that challenges the dominance of Western discourse. This contribution emphasizes that constitutional pluralism is not an exclusively European phenomenon, but rather a concept that is globally relevant and adaptable in various contexts.

In addition, this study offers a typology of three patterns of interaction—convergence, resistance, and hybrid—as a way to understand the variations in the relationship between national constitutions and international norms. This typology is not only descriptive but also analytical, as it allows for a more astute reading of the mechanisms of legal adaptation in various jurisdictions. With this typology, the study of transnational constitutional law gains a categorization tool that can be tested and developed in further research.

Another scientific contribution lies in affirming the relevance of constitutional pluralism theory compared to the classical paradigms of monism and dualism. This study shows that pluralism is not merely a normative theory, but a reflection of empirical practices in various countries, including in the Global South. Thus, this study expands the validity of constitutional pluralism theory and enriches the literature with contextual evidence from regions that have received little attention.

From a practical standpoint, this research has significant policy implications. The findings can serve as a basis for policymakers and constitutional judges to develop balanced interpretation strategies, enabling the state to maintain its constitutional sovereignty while upholding its international commitments. This approach is also relevant for international institutions seeking to promote universal standards, as it demonstrates the need for negotiation space with the domestic context. In this way, this research not only makes an academic contribution but also has an impact on legal practice and constitutional policy at both national and global levels.

Conclusion

This study confirms that transnational constitutional law cannot be understood through the rigid framework of classical monism or dualism, but is more appropriately positioned within the paradigm of constitutional pluralism. The results of the study indicate that the interaction between national constitutions and international norms falls within a spectrum that encompasses convergence, resistance, and hybrid models. This spectrum not only reflects differences in legal traditions but also shows the influence of the domestic political and social context.

Reflectively, this study shows that constitutional pluralism is not merely a theoretical idea, but a reality that lives on in judicial practice in various jurisdictions. By highlighting the experiences of the Global South, particularly those of Indonesia, this study broadens the academic horizon that European perspectives have dominated. These findings confirm that transnational constitutional law serves as a normative bridge, enabling countries to maintain their domestic sovereignty while remaining connected to international norms and standards.

The main contribution of this research lies in providing a more comprehensive conceptual framework for understanding the transnational dynamics of constitutions, as well as an analytical typology that can be used to interpret variations in practices across different countries. From a practical standpoint, this research offers a basis for policymakers and constitutional judges to develop balanced interpretation strategies, thereby achieving harmony between national constitutional identity and global commitments. Thus, this research not only enriches constitutional law theory but also has real implications for strengthening constitutional legitimacy in the era of legal globalization.

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