

LEGAL POSITION AND REGULATION OF ARTIFICIAL INTELLIGENCE TECHNOLOGY IN INDONESIA

Raul Julito Safarrel Gamawanto, Wiwik Afifah.

Universitas 17 Agustus 1945 Surabaya, Indonesia

raulsaffarel@gmail.com, wiwikafifah@untag-sby.ac.id

Abstract

Technology always leaping more forward than before this can happen because there's a many inovations and work of mankind, as example we can take it from the development of Artificial Intelligence with this kind of development is a subject of a Research and Development from Technologies itself that can make work more easier than before and of course Artificial Intelligence always related to Big data and computing power that can think and make conclusions like human being, on the side of Law this development is a pretty game changer such as on Indonesia itself there was a website called a HukumOnline who has already launching an platform LIA (Legal Intelligence Assistant) that using an A.I based for the public, for next example we can take it from America that using an A.I too called "Do Not Pay" in short this Apps is a lawyer based on A.I, but on February 2023 this Apps only used for ticketing Case only In the case example above, of course, questions will arise about how AI is positioned in the criminal justice process in Indonesia, therefore this journal will explain the subject matter.

Keywords : Artificial Intelligence, Legal Standing, criminal justice.

INTRODUCTION

The rapid development of the times has made significant changes, especially in technology. This happens because of the latest innovations from humans, which are the basis for technological development. The spread of computing occurred in the mid-1960s when there were changes in the service industry, and Daniel Bell, as a sociologist, explained that there would be changes in society that created a more participatory, decentralized, and democratic life (Munti, Yona and Asril Syafuddin, 2020).

If we look back at the past, the discovery of the use of this computer is only limited to entering or inputting data which will later be processed again manually by the humans themselves using Software that has been provided and supported by the computer device itself and the data that has been inputted and processed will later become mature and final data following the expectations and desires of the computer user.

As we know, computers in ancient times had a large shape, and if we look at it in terms of its shape, it will take a very long time to learn and use computer devices. Past computers were more complicated to use than today, which are easier to use and can be carried anywhere.

However, it is different at this time of age. The development of technology will always coexist with social life. The presence of technology certainly has its purpose, such as the existence of a search engine created to sort and present various large data based online. In developing technology, there will always be innovation for presenting something more optimal than the previous version. One form of technological advancement in the current era is the creation of Artificial Intelligence technology. Artificial Intelligence technology is a machine that can perform various tasks that are generally performed and require the thinking power of the human brain (Lawi and Megawati, 2021).

Artificial Intelligence technology is still relatively early in its development, but it has great potential in the future to help all human activities. Artificial Intelligence technology has begun to be applied to various fields, for example, in an American car vehicle, Tesla. Most cars created by Tesla have used Artificial Intelligence technology as an automatic driver. This latest technology requires machine intelligence to analyze images, videos, and sounds around the car. This technology will continue to develop along with the Internet of Things (IoT) era. In the era of the COVID-19 pandemic, Artificial Intelligence technology was used for radar to check the human temperature and detect the use of masks.

In this stage of AI development, it has undergone 3 phases of change or evolution, namely *Artificial Narrow Intelligence* or can be abbreviated as (ANI), which is a stage/phase of AI development that can be said to be still weak, then continued with the existence of *Artificial General Intelligence* (AGI) which is a stage/phase of AI that is strong and has capabilities that are comparable to humans and for the last *Artificial Super Intelligence* (ASI) which was created to exceed human capabilities over time. Artificial Intelligence systems can develop more rapidly and with capabilities that are certainly continuously improved. Artificial Intelligence systems can develop without human intervention. This AI is able to learn by itself and can process data and conclude, and even determine what actions the machine takes.

The presence of Artificial Intelligence technology has received a positive impression from the public, especially in Indonesia, and therefore the development of Artificial Intelligence technology is quite massive. Artificial Intelligence technology, especially in Indonesia, can be found using search engines such as Google and Bing. This Artificial Intelligence engine can provide the information we need. Besides that, the machine can use Google Maps to provide travel estimates, recommendations for the closest route, and even the density of vehicles on the intended route. In addition, Artificial Intelligence technology can also be a virtual assistant machine that can communicate in two directions with its users, for example, are as follows (Pakpahan, 2021) :

1. Siri
2. Google Assistant
3. Alexa
4. Cortana

The technology above is embedded in smartphones to detect the faces of their users. Artificial Intelligence technology works here to detect the face of a smartphone user to unlock the screen so that others cannot unlock the smartphone and only the user can unlock it.

The development of Artificial Intelligence can provide many benefits for humans in everyday life because this technology provides various breakthroughs, so the presence of Artificial Intelligence technology has a very positive impact on human life. Artificial Intelligence, for example, virtual assistants Alexa or Google Assistant, in turn on home appliances such as air conditioners, televisions, radios, computers, lights, and others, can complete various human jobs. Then in the medical field in the United States (US), there is the da Vinci system which uses robots to carry out operations that, according to the results, are more accurate, precise and minimize trauma to surgical patients. With these examples, the advantage of Artificial Intelligence technology is that it can facilitate work and replace human work with results that are even more accurate than humans.

In short, Artificial Intelligence is a technology with a machine-like form with human-like behavior created by humans. AI has behaviors like thinking and processing data to provide conclusions like humans. This technology was created to simplify and ease human work but also presents skepticism because it can perform legal actions and actions like humans.

In the application for the legal field, the development of Artificial Intelligence has reached the law enforcement stage, namely the existence of Judges and lawyers who have used AI, which was implemented in China in 2017. However, what AI handles is still very limited because, at that time, AI only handles legal disputes or digital cases such as E-commerce, online buying, and selling.

Indonesia is one of the countries that has entered the era of the Industrial Revolution 4.0, which makes it easier to get unlimited access and network to connect. The meaning of the Industrial Revolution is divided into 2 words, Revolution, and Industry. Revolution means rapid development or change, while industry includes implementing a production business. If the two words are combined, they will become a definition that means a rapid change in the implementation of a production business which later can replace the role of humans in carrying out their work.

Why can it be said so, it is because of all the convenience and sophistication as well as the existence of an automation or autonomous that can make work faster to complete. This era will provide various conveniences for humans in carrying out their various activities.

The presence of Artificial Intelligence technology that can perform actions and deeds like humans underlies a legal arrangement in a country to have special arrangements related to this issue. Based on the source of applicable law in Indonesia relating to the regulation of technology, namely UU No. 19 of 2016 concerning Amendments to UU No. 11 of 2008 concerning Electronic Information and Transactions, commonly referred to as the "ITE Law." This regulation is a form of state response to Indonesia's rapid development of technology. The ITE Law hopes it can solve all technology and information system problems in Indonesia to realize legal certainty and provide benefits in solving technical problems. However, the ITE Law does not clearly define Artificial Intelligence in its regulation, which raises several opinions from many who try to interpret Artificial Intelligence and relate Artificial Intelligence to the existing arrangements in the ITE Law (Haris and Tantimin, 2022).

In order to explain in more detail the Legal Position of Artificial Intelligence, of course, the role of the government is very necessary to prepare rules, policies, and regulations regarding Artificial Intelligence, which of course, in the development of AI Technology will soon coexist with humans and will also be useful for the future in society, especially in the rules of Positive Law in Indonesia in order to provide welfare for the community and prosperity in the development of the country.

From what the researcher said in the paragraph above, AI is not only considered a legal subject, is this because Artificial Intelligence can also carry out legal actions, but for the application of Artificial Intelligence in Indonesia at this time, AI can only be placed as an object of positive law. Of course, it would be very unfortunate if it only became an object of law, even though in the application and examples circulating worldwide, Artificial Intelligence has shown very rapid development in supporting aspects of human life.

RESEARCH METHOD

This research applies a normative legal research method (doctrinal research) which in this study uses laws and regulations that contain legal principles, legal norms, and legal decisions, while the approach used is a method based on laws and regulations and a conceptual approach method (Conceptual Approach). The conceptual approach will focus on understanding and explaining the principles, doctrines, and theories that are currently in force, for the legal material used in this research is primary legal material which contains positive law which will provide a researcher's view in answering an issue to be discussed and secondary legal material in the form of literature books or previous academic scientific papers on the law which are used to support ideas in research and also as a support for primary legal material in this study, There are also secondary legal materials used by researchers in this study, namely literature related to the discussion of research in the form of reading books, journals, the internet, and other literature that will complement the problems to be discussed later. As for the technique of collecting legal materials, researchers trace legal materials that are relevant to the legal issues discussed. Following what has been explained above, researchers use a statutory approach (Statue Approach) to search for positive legal norms that refer to legislation in general or specific rules and the like.

In order to get maximum results, researchers also use secondary sources of material, namely legal literature or various legal books and academic works such as theses and previous scientific articles related to the discussion. The existence of secondary legal sources will make drawing conclusions easier for the author. In research focusing on this legal vacuum, researchers use prescriptive qualitative analysis techniques to find the truth of coherence where the legal issues studied will later be concluded in accordance with applicable legal rules and norms.

DISCUSSION

What is the Position of Artificial Intelligence Technology in Indonesia?

As we know, Artificial Intelligence or AI is a machine with artificial intelligence like humans to ease the burden on humans. For short, the application of artificial intelligence / AI starts from entering a code/script or algorithm, which will be processed into data, and in processing the data, a system will arise, which will become a decision to act by the AI.

From this explanation, of course, there is a resemblance to humans' daily actions and activities, from analyzing a problem to making conclusions and actions that will be taken later. With this similarity, of course, there is a legal basis by a country related to AI technology, in UU No. 19 of 2016 concerning Amendments to UU No. 11 of 2008 concerning Electronic Information and Transactions. Of course, this AI can be classified as a machine or electronic device if you look at the nature of AI explained previously, namely being able to collect data, analyze, make decisions, and inform. Therefore, Article 1 number 5 of the ITE Law states the classification above.

Artificial intelligence or AI in the Indonesian state, of course, from the legal perspective, is only limited to legal

objects because the creation of AI is an innovation from humans and is operated by humans/organizers according to Government Regulation No. 71 of 2019 concerning the Implementation of Electronic Systems and Transactions.

Talking about Legal Standing / the position of legal subjects related to AI will certainly cause problems that have different opinions and views in seeing Legal Standing / the position of AI on legal actions made. According to Otto Von Gierke, through the organ theory, a legal entity is an original thing both in the form of reality and facts and things that are certainly owned by humans both in terms of nature and personality as well as in terms of legal relations, It is certain that a legal entity will have rights and obligations and can act independently and according to its ability to make every decision issued as one of the subjects of law As for other experts, they argue that to be able to carry out legal action, the legal subjects themselves, in this case, can be able to hold and be responsible for the rights given (L. J. Van Apeldoorn)

Artificial Intelligence has no place in determining Legal Standing or position as a legal subject as well as with the development of Artificial Intelligence that researchers have described above, it can be said that Artificial Intelligence or AI has compensated for and exceeded the capabilities that exist in humans, even this AI is no longer a machine that will work by waiting for orders from humans as operators, but this AI can work and analyze and move on its own without human orders, or what we usually call automatic, if we look back, AI almost resembles humans and has its consciousness.

At this point, Artificial Intelligence can perform legal acts that cannot be categorized as an object alone but can be grouped or categorized with other legal subjects with the same or equal level. There is a basic rule of law or regulation that discusses technology specifically, the basis of the rule is Law No. 19 of 2016, which is applied or issued based on considerations as there are and listed in the Consideration section of Law No. 19 of 2016, but in these rules regarding the definition and meaning of Artificial Intelligence and when concluded based on Law No. 19 of 2016, AI is only limited to Electronic Information.

Whereas in Article 1 Paragraph 1 of Law No. 19 of 2016, the regulation explains that the meaning of Artificial Intelligence or AI is only a legal object and does not categorize AI as a legal subject. In this regulation, what can be referred to as a legal subject is (Jaya *et al.*, 2021) (Jaya *et al.*, 2021):

- a. Sender;
- b. Recipient;
- c. People;
- d. Business Institution;
- e. Government.

In letter C, the point above is one of the opportunities for the regulation to be changed or there is an adjustment for Legal Standing for Artificial Intelligence and can be a breakthrough in legal changes, considering that in theory, this legal subject consists of humans as (*natuurlijke Persoon*) and legal entities (*Recht Persoon*) who can perform legal actions (Machmuddin, 2000).

However, quoting the words "Salmond So far as legal theory is concerned, a person is being whom the law regards as capable of rights and duties. Any being that is so capable is a person, even though he be a man" which when concluded this legal subject has 2 capacities namely human and non-human which have been determined by the law itself, from this explanation it can be stated as a legal subject or not it is determined by the applicable rules of law as well as Artificial Intelligence itself which has rights and obligations as with humans

and legal entities themselves.

Of course, having its rights and obligations requires a legal norm or rule to be regulated in such a way, and of course, we cannot equate directly with humans as a whole because of the very thin differences as well as humans who are not free from all mistakes. Therefore, the two things cannot be directly equated.

Speaking of AI in the ITE Law, Artificial Intelligence or AI is only a machine or electronic system or can also be called an electronic agent where all actions and actions carried out by AI are one of the human command programs. The ITE Law also states that the developer or organizer of AI gives the command program. Therefore, AI cannot be equated and categorized as an independent legal subject because there is an element and concept of criminal liability, one of which has an independent nature owned by the legal subject.

Of course, with liability in the use of AI, we can see from the rules and views (perspectives) of the applicable criminal law that if Artificial Intelligence or AI commits an act and or unlawful act, it can return to the concept of liability in the applicable criminal law, which is responsible for the developer or developer and or organizer of the Artificial Intelligence (AI) system itself because according to Simons, the perpetrator of a criminal act must be aware and know to determine the will of what he does, which if we compare back to humans, AI does not have full awareness in its actions but is based on a program code that contains commands that have been made by developers, developers and electronic organizers who are very limited to determining the will following the intent and purpose of the maker.

Then why do researchers touch on the realm of criminal perspectives, there is still a lack of clarity on whether Artificial Intelligence can be said to be a legal subject or not due to the limitations between definitions and groupings of experts regarding whether an AI can be said to be a legal subject or not.

CONCLUSION(S)

From what the researchers explained above, the position (Legal Standing) of Artificial Intelligence or AI is still unclear due to the complexity of determining both the definition and classification of the legal subject group. So for the future, is there any potential regarding the position of Artificial Intelligence technology, the answer is "yes" because in the process of processing large and complicated data, of course, AI can work faster when compared to humans in general, and it is hoped that in the future it can immediately determine the classification or classification of Artificial Intelligence or AI both in the definition and the legal subject group.

As well as for the position of Artificial Intelligence is still being debated by various experts because it can almost match humans from all aspects and also the need for the role of the Indonesian government to immediately determine whether this AI can be said to be a legal subject or not because we do not know what will happen in the future how will the development of AI technology.

Why this can be said is because there is a difference between humans and Artificial Intelligence in various aspects, but it does not rule out the possibility that humans are also perfect creatures because humans also sometimes have shortcomings in various aspects as well as AI, which with a high level of sophistication also has several shortcomings.

REFERENCES

Haris, M. and Tantimin (2022) 'ANALISIS PERTANGGUNGJAWABAN HUKUM PIDANA TERHADAP PEMANFAATAN ARTIFICIAL INTELLIGENCE DI INDONESIA', 8(1).

Jaya, F. *et al.* (2021) *ANALISIS YURIDIS TERHADAP KEDUDUKAN KECERDASAN BUATAN ATAU ARTIFICIAL INTELLIGENCE SEBAGAI SUBJEK HUKUM PADA HUKUM POSITIF INDONESIA*. Available at: <https://aptika.kominfo.go.id/2020/02/perlu-pemahaman->.

Lawi, A. and Megawati, S. (2021) 'Pengembangan Sistem Teknologi Internet of Things Yang Perlu Dikembangkan Negara Indonesia', 05(01).

Machmuddin, D.D. (2000) *Pengantar Ilmu Hukum (Sebuah Sketsa)*. Bandung: PT. Refika Aditama.

Munti, S., Yona, N. and Asril Syafuddin, D. (2020) 'Analisa Dampak Perkembangan Teknologi Informasi Dan Komunikasi Dalam Bidang Pendidikan', 4, pp. 1799–1805.

Pakpahan, R. (2021) 'ANALISA PENGARUH IMPLEMENTASI ARTIFICIAL INTELLIGENCE DALAM KEHIDUPAN MANUSIA', 5(2), pp. 506–513.