



Legal Liability of Artificial Intelligence in Perspective of Civil Law in Indonesia

Amelia Puspita Sari¹; Dara Manista Harwika²

Faculty of Law, Universitas 17 Agustus 1945 Surabaya, Indonesian

Email: amelia180999@gmail.com¹; daramanistaharwika@gmail.com²

<http://dx.doi.org/10.47814/ijssrr.v5i2.191>

Abstract

The purpose of this research is to define what is the accountability of Artificial intelligence in Indonesia. The method that we use is library research with statute approach and conceptual approach. Results of this research is in this context AI is a legal subject in the supervision and ownership of AI owners or AI users which are then used for certain interests and purposes for others. As an artificial legal subject that has an autonomous nature if AI performs actions that cause harm to other people or acts beyond expectations, the AI owner can be held civilly responsible. Consider it as a physical object. The legal implication is that everything you do is a violation of the law. The owner of artificial intelligence is responsible for any damage created by artificial intelligence. In there is also a middle ground, which is viewing.

Keywords: *Artificial Intelligence; Civil Law; Accountability*

Introduction

Indonesia is one of the countries with high industrial potential where along with the times, technology continues to develop rapidly. In its development, not only modifications are increasingly varied, but also the pattern of artificial intelligence is growing rapidly. So far, people often use technology indirectly, they use tools developed using artificial intelligence, one of which is cellphones, computers and other machines. (Jufri & Putra, 2021) We all know that artificial intelligence makes it easier for humans to carry out their activities. But that doesn't mean that artificial intelligence can't make mistakes that give rise to legal actions, in its existence artificial intelligence is very interested because in addition to facilitating activities it is also very helpful in the economic world where artificial intelligence can replace human resources and provide low cost for companies which no longer need to hire many employees. But not infrequently artificial intelligence also often makes mistakes that give rise to legal actions, as we know that the subjects of positive law in Indonesia are objects, bodies and people, artificial intelligence is one of the legal subjects of objects. (Mufidah & Habibi, 2019)

This increase is due to the need for a transformation in legal services, and the availability of legal data. The impact of artificial intelligence (AI) technology is also seen in courses in law schools, where there is a new emphasis on learning using computerized tools, and a growing number of legaltech startups, legaltech associations, and legaltech conferences are being held. In addition, several law universities in America and Europe have established research and training centers related to "law and

artificial intelligence technology", and robot lawyers and robots are capable of producing legal decisions (robots judge).(Kusumawardani, 2019)

Utilizing the power of AI technology is arguably one of the important agenda items accompanied by the development of the Industrial revolution 4.0 where the key to the revolution lies in Big Data and AI.(Disemadi, 2021) AI-enabled malware can be trained to wait for a specific action to trigger a hostile payload. This may be driven by voice or facial recognition, or even by geo-location properties. It can be said that AI malware can be trained to listen to certain words or the voice of the targeted person. In 2017(Fauzan, 2020), Harapan Kita Hospital and Dharmais Hospital in Jakarta became victims of the WannaCry Ransomware type attack which also hit the world. The attack is carried out by locking the computer or encrypting all the victim's data so that it cannot be accessed again. This caused the services of the two hospitals to stop. In Indonesia, deepfake attacks or other AI malware modes haven't happened yet, but malware attacks are rife and AI technology is now starting to develop, making us aware of cyber security.(Rachmadie, 2016) Thus, the formulation of the problem of artificial intelligence is one of the subjects of the law of matter. Regarding this matter, the researcher formulates the following whether artificial intelligence can be made the subject of a violation of the law in the perspective of positive law in Indonesia?

Finding and Results

In discussing the responsibility for artificial intelligence (AI) in Indonesian positive law, it is necessary to first examine the definition of AI. Simon defines AI as artificial intelligence that falls within the area of research, application, and instruction related to computer programming to do something that in the view of humans is intelligent. Furthermore, Rich and Knight define that artificial intelligence is a study of how to make computers do things that humans can do better today. Based on the two expert opinions above, it can be concluded that AI is a computer program that can perform intelligent actions like humans in general. The intelligent action referred to here is like making decisions and making choices. In AI human thinking patterns are developed in computer programs so that AI can achieve its goal of duplicating human behavior patterns. So, if AI has intelligence like humans and can think logically like humans, questions arise such as whether AI can be held accountable for its actions in the eyes of the law.(Michael, 2020)

Thus, to answer this question, according to R. Soeroso, there are several criteria for legal subjects, namely (Soeroso, 2001):

1. something that according to law has the right or authority to carry out legal actions or who has the right and is capable of acting under the law;
2. something that supports rights which according to law has the authority/power to act as a supporter of rights (rechtbevoegdheid)
3. Everything that according to law has rights and obligations.

So based on the criteria of legal subjects mentioned by Soeroso above, essentially there are two things that are fundamental in nature attached to legal subjects, namely legal actions, authority to act and rights and obligations. To identify legal subjects, one of them begins with legal actions (work patterns). AI work patterns refer to the simulation of human intelligence which is then duplicated into machines programmed to think like humans and imitate human actions. The discussion on the consequences of legal actions subject to AI refers to the theory of legal actions from Soeroso (Soeroso, 2001), namely legal actions are actions of legal subjects (humans or legal entities) whose consequences are regulated by law because the consequences can be considered as the will of those who carry out the law. A new legal act occurs when there is a statement of will so that the will of the person carrying out the act becomes the main element of a legal act. Legal acts consist of unilateral legal actions and two-party legal actions. One-

sided legal actions are legal actions that are carried out by one party only and give rise to the rights and obligations of one party as well. (Jaya & Goh, 2021) Legal actions of two parties, are legal actions carried out by two parties and give rise to rights and obligations for both parties (reciprocity).

The rights and obligations inherent in a legal act have the consequence of being responsible for legal actions committed by the legal subject. One of these legal responsibilities is civil liability arising from an unlawful act in the field of civil law. In civil law, liability for unlawful acts is regulated in articles 1365 to 1380 of the Civil Code. (SUTANTO, 2021) The responsibility for unlawful acts is present aimed at protecting the rights of a person who outlines the rights and obligations when someone commits an act of negligence or error or injures another person and the act causes harm to others. An unlawful act is a form of engagement that is born from a law based on human actions that violate legal provisions. Based on this in the context of civil law by using an analogical interpretation when examined regarding the liability of AI legal subjects, the closest norm construction is as regulated in article 1368 and article 1367 paragraph (1) and paragraph (3) of the Civil Code. (Supangat et al., 2021)

Based on the formulation of the normative framework as regulated in Article 1367 paragraph (1) the relationship between AI and AI owners has an analogous relationship pattern that is almost the same in the context of being responsible for someone not only being responsible for losses caused by his own actions, but also for losses caused by actions. people who are his dependents or caused by goods that are under his control. Simply put, a person is civilly responsible for losses due to violations committed by other people who are his dependents or caused by goods that are under his control while in Article 1367 paragraph (3) between workers and employers. In civil terms, the concept of liability in article 1367 paragraph (1) is to share the burden of responsibility for losses caused by violations committed by other people who are their dependents. In this case, AI as an artificial legal subject if it commits an act that violates the law, the AI owner can also be held civilly responsible. Meanwhile, the concept of accountability in Article 1367 paragraph (3) is a form of accountability for the employer and the person who represents his/her affairs to the person he/she employs. In this case, AI as an artificial legal subject is a worker who receives a job from the AI owner (employer). if AI commits an act that violates the law, the owner of the AI as the employer can be held accountable. Based on 1368 of the Civil Code tells, AI's relationship with the owner is analogous to the relationship between a pet and its owner.

Based on the formulation of the normative framework as regulated in Article 1368 of the Civil Code, the relationship between AI and its owner is analogous to a pattern of almost the same relationship between pet owners and their owners or users. In civil terms, if a pet causes a loss either when it is under the supervision of the owner or user, or if the animal gets lost and escapes supervision, then the responsibility for the loss is attached to the animal owner or user. In this context, AI is a legal subject in the supervision and ownership of AI owners or AI users which are then used for certain interests and purposes for others. As an artificial legal subject that has an autonomous nature if AI performs actions that cause harm to other people or acts beyond expectations, the AI owner can be held civilly responsible.

Conclusion and Suggestion

Artificial intelligence is real and evolving, and the world still has a variety of settings. Legal entity theory and artificial intelligence have a long history together. One approach to get there is to think in terms of legal entities theory. Artificial intelligence settings are measured using this method. Artificial intelligence is also a factor has the capacity to be personified as a civil law issue. It is founded on the progression that takes place, as well as the history of the concept of legal subjects and their existence as subjects Fiction theory and organ theory can be used to create civil law. The best option is to examine it via the lens of Indonesian positive law, namely:

Consider it as a physical object. The legal implication is that everything you do is a violation of the law. The owner of artificial intelligence is responsible for any damage created by artificial intelligence. In there is also a middle ground, which is viewing.

Acknowledgment

This researcher would like to thank the University of 17 August 1945 Surabaya and LPPM of the 17 August 1945 University of Surabaya who have supported this research activity.

Reference

- Disemadi, H. S. (2021). Urgensi Regulasi Khusus dan Pemanfaatan Artificial Intelligence dalam Mewujudkan Perlindungan Data Pribadi di Indonesia. *Wawasan Yuridika*, 5(Artificial Intelligence; Personal Data; Protection; Urgency.), 177–199. <https://doi.org/10.25072/jwy.v5i2.460>
- Fauzan, I. (2020). Artificial Intelligence (AI) Pada Proses Pengawasan dan Pengendalian Kepegawaian - Sebuah Eksplorasi Konsep Setelah Masa Pandemi Berakhir. *Jurnal Civil Service*, 14(1), 31–42.
- Jaya, F., & Goh, W. (2021). Analisis Yuridis Terhadap Kedudukan Kecerdasan Buatan Atau Artificial Intelligence Sebagai Subjek Hukum Pada Hukum Positif Indonesia. *Supremasi Hukum*, 17(2), 1–11.
- Jufri, M. A. A., & Putra, A. K. (2021). Aspek Hukum Internasional Dalam Pemanfaatan Deepfake Technology Terhadap Perlindungan Data Pribadi. *Uti Possidetis: Journal of International Law*, 2(1), 31–57. <https://doi.org/10.22437/up.v2i1.11093>
- Kusumawardani, Q. D. (2019). Hukum Progresif Dan Perkembangan Teknologi Kecerdasan Buatan. *Veritas et Justitia*, 5(1), 166–190. <https://doi.org/10.25123/vej.3270>
- Michael, T. (2020). HUKUM TATA NEGARA DARURAT CORONA DI INDONESIA. *Mimbar Keadilan*. <https://doi.org/10.30996/mk.v13i2.3468>
- Mufidah, N. Z., & Habibi, M. R. (2019). Simposium Hukum Indonesia. *Simposium Hukum Indonesia*, 1(1), 574–586.
- Rachmadie, D. T. (2016). Regulasi Penyimpangan Artificial Intelligence Pada Tindak Pidana Malware Berdasarkan Undang-Undang Republik Indo[1] D. T. Rachmadie, “Regulasi Penyimpangan Artificial Intelligence Pada Tindak Pidana Malware Berdasarkan Undang-Undang Republik Indonesia Nomor. *Jurnal Hukum Pidana Dan Penanggulangan Kejahatan*, 9(2), 128–136.
- Soeroso, R. (2001). *Pengantar Ilmu Hukum*. Sinar Grafika.
- Supangat, S., Saringat, M. Z. B., & ... (2021). Pemanfaatan Artificial Intelligence (AI) sebagai Respon Learning Style Mahasiswa. ... *Konferensi Nasional Ilmu ...*, 270–279.
- SUTANTO, M. (2021). *Perlindungan Hukum Atas Ciptaan Yang Dihasilkan Oleh Kecerdasan Buatan*.

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).