

Questioning the Existence of Artificial Intelligence as a Legal Subject in Indonesian National Law

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Abstract

Discussions related to legal subjects are usually directed at legal subjects of people and legal entities. The development of law in Indonesia has apparently not only presented corporations as new legal subjects, but has now recognized increasingly sophisticated artificial intelligence which will prospectively become new legal subjects. This is a challenge for the government to create qualified regulations related to the use and accountability of legal actions carried out by artificial intelligence. This article was written using a normative legal research method with a conceptual approach, and analyzed deductively. The results of the research contained in this article indicate that regulations related to artificial intelligence should be regulated in separate laws. The existence of artificial intelligence as a legal subject is equated with the position of a legal entity, in the responsibility for artificial intelligence, the identity of artificial intelligence needs to be stated in an authentic deed.

Keywords: Artificial Intelligence, Legal Subject, National Law.



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INTRODUCTION

Artificial Intelligence is one of the technological developments that is of concern to several countries.¹ In addition, the development of Artificial Intelligence is a new challenge that must be faced from its various impacts, as stated by the President of Indonesia, Joko Widodo, on 1-4 November 2018 at the opening of the Indonesia Science Expo (ISE). During the event, President Joko Widodo expressed his concern about the threats from new technological developments.² Beside it to the concerns expressed by President Joko Widodo, state regulation in dealing with the development of Artificial Intelligence is also a very complex challenge that must be prepared carefully. Samuel A. Pangerapan who serves as Director General of Informatics Applications of the Ministry of Communication and Informatics of the Republic of Indonesia at the workshop "Artificial Intelligence for Economic Growth and Social Good in the Digital Era" said "the application of Artificial Intelligence can be emulated in several developed countries as a special basic consideration in regulatory and policy developments".

Indonesia needs policies and regulations that can adapt to current technological developments, namely Artificial Intelligence. Even "Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 Concerning Information and Electronic Transactions" ("Law 19/2016") which is one of the legal domains regulating various new legal actions in the

¹ Yusuf, Perlu Pemahaman Bersama Terkait Pengembangan AI Di Indonesia - Ditjen Aptika, <https://aptika.kominfo.go.id/2020/02/perlu-pemahaman-bersama-tentang-pengembangan-ai-di-indonesia/>, diakses pada 14 Januari 2023.

² Yohanes Enggar Harususilo, Presiden Jokowi: Penggunaan Teknologi Perlu Dibarengi Moral Tinggi, <https://edukasi.kompas.com/read/2018/11/02/20214561/presiden-jokowi-penggunaan-teknologi-perlu-dibarengi-moral-tinggi>, diakses pada 14 Januari 2023.

field of technology, must be carried out renewal to regulate Artificial Intelligence which is already present in social life.

Artificial Intelligence or Artificial Intelligence is "technology in the form of a machine that can imitate human behavior and is developed with knowledge of human thinking and can carry out human thinking procedures".³ Artificial Intelligence technology that was created to be able to carry out activities in such a way as humans have become a concern for people's lives as Artificial Intelligence can carry out legal actions or the same legal actions as humans can do.

In fact, in 2016, Microsoft developed an Artificial Intelligence chatter bot (AI chatter bot) called "Tay". Tay is depicted in the voice of a teenage girl. Tay was developed to improve service to customers with millennial slang skills. Tay through learning is developed to interact with humans with self-adjustment abilities, but Tay's ability to put all data into data storage and not being able to separate data also causes problems such as when Tay uploads writing via social media Twitter which is bad and offensive.⁴

Intelligence already includes Artificial Intelligence Judges and Artificial Intelligence Lawyers. In 2017, China has used limited Artificial Intelligence Judges in handling digital-related legal disputes such as copyright disputes, disputes over e-commerce product liability claims, and online buying and selling disputes.⁵ Based on the results of a contract understanding competition analyzed by Stanford University law professors, Duke University School of Law and the University of Southern California stated that it was the first time an Artificial Intelligence Lawyer had beaten 20 American trained human lawyers in identifying 5 agreements (Non-Disclosure Agreements) in analyzing information that no different. In identifying 30 legal disputes consisting of arbitration, confidentiality, relations and damages. An Artificial Intelligence lawyer named Law Geex AI achieved 94 percent accuracy. On the other hand, human lawyers only achieve 85 percent accuracy. Law Geex AI only takes 26 minutes to complete its task, which is 66 minutes faster than the average time needed by humans.⁶

In England, there is an Artificial Intelligence that provides legal assistance, namely the presence of Do Not Pay chat, which has served more than 1,000 legal aids. This shows that more than 160,000 people have been assisted by Artificial Intelligence in solving their legal problems.⁷ Mexico has also started using Artificial Intelligence technology for simple administrative decision making.⁸ From some of the developments in Artificial Intelligence mentioned above, the sophistication of Artificial Intelligence has been able to surpass the abilities possessed by humans. Even Artificial Intelligence is no longer limited to an object that will work if ordered by humans, but Artificial Intelligence which is capable of carrying out all actions automatically as if like a human being.

Artificial Intelligence is not placed in the position of a legal subject as Artificial Intelligence can also take legal actions or legal actions. If traced Artificial Intelligence can only be placed as a legal object in Indonesian positive law. However, judging from the ability of Artificial Intelligence which is increasingly sophisticated and will continue to experience development

³ Naiman Fahrudin, Penerapan Metode Finite State Machine Pada Game Adventure, Franco, Jurnal Mahasiswa Teknik Informatika, Vol. 2, No. 1, March 2018, p. 447.

⁴ Qur'ani Dewi Kusumawardani, Hukum Progresif dan Perkembangan Teknologi Kecerdasan Buatan, Jurnal Veritas et Justitia, Vol. 5, No. 1, Juni 2019, p. 170.

⁵ Eka N.A.M Sihombing dan Muhammad Yusrizal Adi Syaputra, Implementasi Penggunaan Kecerdasan Buatan dalam Pembentukan Peraturan Daerah, Jurnal Ilmiah Kebijakan Hukum, Vol. 14, No. 3, November 2020, hlm. 420.

⁶ Moh Khory Alfarizi, Studi AI Lebih Akurat Temukan Masalah Hukum Dibanding Pengacara -Tekno Tempo.Co, <https://tekno.tempo.co/read/1064871/studi-ai-lebih-akurat-temukan-masalah-hukum-dibanding-pengacara/full&view=ok>, diakses pada tanggal 17 Januari 2023.

⁷ Qur'ani Dewi Kusumawardani, *Ibid*.

⁸ *Ibid*.

over time, it can be said that Artificial Intelligence cannot be placed as a legal object but Artificial Intelligence which can carry out legal actions or legal actions can be placed as a legal subject that has a position appropriate to humans and legal entities.

To be able to explain the position of Artificial Intelligence, the big challenge for the government is to prepare policies and regulations for Artificial Intelligence which will become a part of social life in Indonesia's positive law in order to achieve people's welfare and prosperity in the country's development from input, thoughts and knowledge that is conveyed to law enforcers, especially in Artificial Intelligence. This research hopes to open minds for researchers or academics to enrich and increase knowledge in research, especially about Artificial Intelligence. In this study, we will discuss the problem of law, namely the legal development of Artificial Intelligence as a legal subject in Indonesian positive law and legal certainty regarding accountability for legal actions carried out by Artificial Intelligence as a legal subject.

RESEARCH METHOD

This article is written using a normative legal research method with a conceptual approach. The legal materials used in writing this article are primary legal materials and secondary legal materials. The technique of gathering legal materials used in writing this law is by means of a literature study by studying, analyzing and responding to the legal problems/issues studied. The analytical technique used in this legal research is a deductive analysis technique.

RESULT RESEARCH AND DISCUSSION

Artificial intelligence or in the English designation "Artificial Intelligence" or abbreviated AI, namely artificial means artificial, while intelligence is an adjective which means intelligent.⁹ Artificial Intelligence was created to be smart and intelligent in order to be able to do tasks exactly and better as done by humans while imitating the functions of the human brain, in terms of reasoning, thinking, knowledge, understanding language, decision making, and problem solving.¹⁰

With human input, it is possible for Artificial Intelligence to receive knowledge and by simulating the reasoning process Artificial Intelligence can use its knowledge and think like humans to solve existing problems. Although it cannot accept researchers, experiences, and knowledge like humans, but through the efforts given by humans, Artificial Intelligence can obtain the knowledge it needs.¹¹ It can be concluded that Artificial Intelligence was created in such a way with the aim of being the same as humans and can even exceed humans in helping or as a substitute for humans to carry out an action. Thus Artificial Intelligence that can carry out legal actions cannot be classified as a legal object but can be classified as a legal subject that is equal to other legal subjects.

Legally, one of the basic legal sources that regulates technology in particular is Law 19/2016. development and technological progress. Law 19/2016 is entrusted with overcoming all problems related to technology. However, UU 19/2016 does not explain significantly about or the meaning of Artificial Intelligence. If Artificial Intelligence is connected with Law

⁹ Anggia Dasa Putri dan Dapit Pratama, Sistem Pakar Mendeteksi Tindak Pidana Cybercrime Menggunakan Metode Forward Chaining Berbasis Web di Kota Batam, Jurnal Edik Informatika, Vol. 3, No. 2, Maret 2017, p. 199

¹⁰ Ririen Kusumawati, Kecerdasan Buatan Manusia (Artificial Intelligence): Teknologi Impian Masa Depan, Jurnal Ulul Albab: Jurnal Studi Islam, Vol. 9, No. 2, 2008, p. 265.

¹¹ *Ibid*, p. 266.

19/2016 then Artificial Intelligence is only classified as Electronic Information, this is explained in "Article 1 Number 1 Law 19/2016".

If seen from the understanding of "Article 1 Number 1 of Law 19/2016" it can be interpreted that Artificial Intelligence is only limited to a legal object and does not view Artificial Intelligence as a legal subject. In Law 19/2016 what is only referred to as legal subjects are: a) "Sender"; b) "Recipient"; c) "Person"; d) "Business Entity"; e) "Government". In point c, the consideration section of Law 19/2016 also opens space for Law 19/2016 to make changes or adapt and follow technological developments to new forms of legal action. Then the position of Artificial Intelligence as a legal subject is not a dream or fantasy, but the position of Artificial Intelligence as a legal subject is a change, development, breakthrough and makes it possible for the law itself.

Theoretically, legal subjects who can make legal actions or legal actions and legal subjects contained in Indonesian positive law are "humans (natuurlijke persoon)" and "legal entities (rechtspersoon)".¹² However, according to 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 is a man."¹³ Based on Salmond's statement, it has been explained that legal subjects have human or non-human capacities that have been determined by law. According to him, in the era of slavery, humans were not seen as legal subjects or persons by the law itself. Meanwhile, non-humans but determined by law can be seen as legal subjects or persons who have obligations and rights equal to humans themselves.¹⁴

According to L. J. van Apeldoorn that "to be able to carry out legal actions certain conditions are required, namely legal subjects who have the ability to hold rights". According to L. J. van Apeldoorn "the ability to hold the rights referred to must be distinguished by its capacity in legal actions as underage people and people under guardianship are called legal subjects because these people have rights. However, from a legal point of view, these people are stated to be incompetent in legal actions. In this case, what determines whether a legal subject is competent or not is the law."¹⁵

Based on this explanation, it can be understood that something that can be declared as a legal subject or not is determined by the applicable law. Likewise with Artificial Intelligence, Artificial Intelligence like other legal subjects has rights and obligations as obligations and rights are actions that must be regulated by legal norms. Artificial Intelligence cannot be equated exactly with humans as a whole because Artificial Intelligence does not have humanist characteristics like humans, however Artificial Intelligence can be equated with the position of a legal entity which is also stated as a legal subject legally.

Legal entities are supporters of rights and obligations based on non-human law. As legal subjects, legal entities have the ability to take legal actions or legal actions.¹⁶ That Artificial Intelligence is more precisely equated with the legal subject of the legal entity compared to the subject of human law as such Artificial Intelligence can be called a supporter rights and obligations that can perform legal action or legal action like examples of Artificial Intelligence that have displayed in the background.

Artificial Intelligence is widely used in the field of law, especially in practitioners law. Artificial Intelligence is used for perform due diligence and research on certain things that are

¹² Dudu Duswara Machmudin, 2000, Pengantar Ilmu Hukum (Sebuah Sketsa), PT. Refika Aditama, Bandung, p. 32

¹³ Peter Mahmud Marzuki, 2008, Pengantar Ilmu Hukum, Edisi Revisi, Kencana Prenada Media Group, Jakarta, p. 205-206.

¹⁴ *Ibid.*

¹⁵ Peter Mahmud Marzuki, *Ibid.*, p. 211-212.

¹⁶ Otje Salman Soemadinigrat, 2000, Pengantar Ilmu Hukum Sebuah Sketsa, PT Refika Aditama, Bandung, p. 33

often done regularly conventional by lawyers. Artificial Intelligence is even able to analyze legal documents and can identify them deficiencies or weaknesses of the document legal as a contract.¹⁷ In Indonesian positive law, agency law is specifically enforced in statutory regulations such as "Law No. 40 of 2007 concerning the Company Limited", "Law No. 16 years 2001 concerning Foundations", "Law No 17 of 2012 concerning Cooperatives", and so on. Artificial Intelligence too can be equated in this way with the application of a separate special Artificial Intelligence Law.

Stephen Hawking stated "the rise of powerful Artificial Intelligence will be either the best or the worst thing ever to happen to humanity. We do not yet know which".¹⁸ From the statement is that development This Artificial Intelligence will create an era something that has a huge impact on life man. Then the law becomes one the most important instrument in life will come. According to Satjipto Raharjo in theory progressive law that "progressive law is a law that does liberation, either in the way of thinking and acting law, so as to be able to let the law it flows to complete its duty to serve humans and humanity".¹⁹ This statement is in line with the development of Artificial Intelligence as Artificial Intelligence has been wrong an example of a recent breakthrough from not logic to be logic, which from not might become possible. Artificial Intelligence that can act without awareness humanists inherent in Artificial self Intelligence has proven itself capable beyond humans in doing something action. This has also allowed Artificial Intelligence to be placed as a legal subject in development Indonesian positive law.

In Russia has started designing Grishin Act in 2015 to indicate legal liability to the robot developer, operator, or manufacturer as well as the legitimacy of the robot representative at court. Russia also drafted the convention model-related laws robotics and artificial intelligence that lay down the rules for how to use and design robots.²⁰ Legal responsibility for deeds Artificial Intelligence, it needs to be studied with good. Although Artificial Intelligence has the position of the same legal subject as Legal Entity, but liability response to legal actions taken by Artificial Intelligence must be clear and have legal certainty. Such responsibility shall be borne by Artificial Intelligence Users the same is the case with legal entities as the person in charge is the director company or foundation head.

However, the Person in Charge of Artificial Intelligence is not only limited to Users Artificial Intelligence, there are still parties important that cannot be ruled out Artificial Intelligence Creator. It is this Artificial Intelligence Creator who creates Artificial Intelligence that will be used by Artificial Intelligence Users from scratch, algorithm system, database, design and others that shape Artificial Intelligence to the final.

Artificial Intelligence creators should too included to be responsible for legal actions carried out by Artificial Intelligence he created. If there is an error in the manufacture or there is intention in terms of creating Artificial Intelligence which can harm other people without Artificial Intelligence User awareness who are ignorant of science Artificial Intelligence then Artificial Users Intelligence will be at a disadvantage. In this case for more clarity certainty law on liability for legal actions carried out by Artificial Intelligence, from the institutional side of the Indonesian government can issue regulations. Artificial specific legislation Intelligence in determining the rights and obligations of the parties, namely Artificial Users Intelligence and

¹⁷ Paulus Wisnu Yudoprakoso, *Ibid.*, p. 454.

¹⁸ Qur'ani Dewi Kusumawardani, *Ibid.*, p. 182.

¹⁹ Reza Rahmat Yamani, 2016, *Pemikiran Prof Satjipto Rahardjo Tentang Hukum Progresif dan Relevansinya dengan Hukum Islam di Indonesia*, Skripsi, Program Sarjana Hukum UIN Alauddin Makassar, Makassar, p. 11

²⁰ Qur'ani Dewi Kusumawardani, *Ibid.*, p. 178.

Artificial Intelligence Creator which as explained the limitations of each of the parties to the responsibility of Artificial Intelligence.

As befits a legal entity, User Artificial Intelligence and Artificial Creator Intelligence can make authentic deeds before a notary and get approval from government agencies such as ministries Law and Student Rights or the Ministry of Communication and Informatics. With the authentic deed, then Artificial Intelligence's identity is clear and obtain legal certainty for the User Artificial Intelligence and Artificial Creator Intelligence. In addition, with the application of the deed authentic, can facilitate supervisors from the relevant government agency towards Artificial Intelligence and can minimize crimes that use Artificial Intelligence by other parties and can reduce the manufacture or illegal use of Artificial Intelligence or Artificial Intelligence from imitators or forgery. Government agencies can too set up a special Artificial Intelligence department to handle disputes Artificial Intelligence is happening. With the existence of a special department of Artificial Intelligence will make it easier to identify Artificial Intelligence Users or Artificial Intelligence Creator who should responsible for Artificial disputes Intelligence that happened.

CONCLUSION

Development of Artificial Intelligence has created a new era in life man. State regulations must be experienced renewal in order to provide legal certainty for the development of Artificial Intelligence. Artificial Intelligence that can take legal action or action law must be given legal standing clear. The legal standing of Artificial Intelligence can be applied to special laws Artificial Intelligence as a legal subject namely the same as regulated legal entities specifically in "Law No. 40 of 2007 concerning Limited Liability Companies", "Law No. 16 of 2001 concerning Foundation", "Law No. 17 of 2012 concerning Cooperatives, and so on.

In progressive law, development Artificial Intelligence as Artificial Intelligence has been one example a new breakthrough that is not logical into logic, that of impossible be possible. Artificial Intelligence that can act without a humanist awareness that inherent in itself Artificial Intelligence has proved himself capable of transcending human in an action. Thing it has also made Artificial Intelligence can be placed as a subject law in the development of positive law Indonesia. Same with legal entities, Artificial Intelligence also has a guarantor answer that is Creator of Artificial Intelligence and Artificial Intelligence users who have their own rights and obligations. To be clearer in legal certainty regarding accountability for actions laws made by Artificial Intelligence, Artificial Intelligence Users and Artificial Intelligence creators can create authentic deed as an Artificial identity Intelligence. In addition, government agencies can also establish a special department of Artificial Intelligence in order to handle disputes over Artificial Intelligence happen.

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