Criminal Liability for Unlawful Actions in The Utilization of Artificial Intelligence

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Abstract. The use of Artificial intelligence (AI) can improve quality and time efficiency in terms of completing various types of work. Indirectly AI can take over human actions and deeds. However, it is often misused and creates victims such as fraud and counterfeiting. This is a legal problem because it causes acts against the law in its use. Indonesia currently does not have specific legal arrangements related to AI, so there are no clear arrangements regarding legal settlement, including determining criminal responsibility. The aim of this paper is to analyze criminal responsibility for unlawful acts in the use of AI. The research method used is juridical-normative. AI regulations in Indonesia are currently based on the ITE Law that classified AI as an electronic system and agent. AI does not have the awareness to determine will in every action and deed, so AI cannot be categorized as a legal subject. Therefore, criminal responsibility in the use of AI in the event of an unlawful act is borne by the electronic system operators who are people, state administrators, business entities, or communities that provide, manage, and/or operate electronic systems, either individually or jointly for his own needs and/or the needs of other parties.

Keywords: Artificial Intelligence, Criminal Liability, Unlawful Acts.

1   Introduction

Rapid technological developments can be felt in Indonesia. Technology has had a significant impact on various aspects of development in Indonesia. Building a nation is a joint task of both the government and society and is a shared responsibility for the interests of the nation and state. The government has an obligation to provide access to technology utilization facilities, while the community has the right to advance and develop their potential in the context of building the nation.

The role of technology provides many opportunities and challenges in building a nation quickly and efficiently, especially with the emergence of various programs such as Blockchain, Internet of Things, Big Data and Artificial Intelligence (AI) which can help human activities in terms of work. With the existence of technology, a job that is complex for humans can be done easily and quickly. (Disemadi, 2021)

Artificial Intelligence is a system resulting from technological developments that can mimic human activities in carrying out a job, and has a frame of mind like hu-

mans (Fahrudin, 2018). The existence of Artificial Intelligence (AI) is a topic that has received widespread attention in various countries, including China which has started using AI technology as a judge in digital cases on a limited basis since 2017 (Sihombing & Syaputra, 2020) and the Netherlands which has provided access to be able to open regulations and agreements that apply in the country through AI technology (Verheij, 2020). Not only overseas, Indonesia has also utilized the use of AI in the legal field through the LIA (Legal Intelligence Assistant) platform launched by Hukumonline with the aim of being able to assist users in obtaining legal information.

Obtaining extraordinary benefits through Artificial Intelligence (AI) can actually lead to changes in human behavior patterns, both in positive and negative directions. This is of course caused by the utilization of AI which is not only used for positive uses but also the misuse of AI which one day can lead to illegal acts because it is contrary to the positive legal provisions in force in Indonesia. In simple terms, an act is considered against the law if the act has violated the applicable legal provisions and caused harm to other people (Sapardjaja, 2012). Legal issues arising from the current misuse of Artificial Intelligence (AI) include the crime of falsifying personal data using AI deepfakes, criminal acts of fraud using AI-made voice imitations, to criminal acts of pornography using AI deepfakes.

Along with the development of the use of AI with all the consequences of the emergence of legal issues that will be increasingly complex and growing, indicating that there is a need for legal regulation as a form of legal protection for the community. Currently, the European Union through the EU Lawmakers Committee has created a model law on AI that will be ratified and become the first law in the world that regulates AI proportionally and directly involves multilateral (Ramli, 2023). The absence of special regulations related to AI in Indonesia can cause a problem, especially if in the future there are cases related to Artificial Intelligence in Indonesia. A legal arrangement is needed, one of which is to determine criminal responsibility for acts against the law in the use of Artificial Intelligence (AI) in Indonesia.

The purpose of this study is to analyze how criminal responsibility for acts against the law is in the use of Artificial Intelligence (AI), with the hope of realizing legal certainty, expediency, and justice. So that it can make a solution in answering the challenges of changing human behavior and habits in the technological era.

2   Methods

This article uses a normative juridical research type, with a statutory approach and a conceptual approach. The research source is in the form of secondary data obtained through literature studies by studying, analyzing and analyzing laws and regulations, theories and concepts. Then analyzed using qualitative analysis methods. Of course this is adjusted to the main problem under study so that an answer can be obtained.

Normative juridical research is a type of legal research, which places law as a building system of norms (Fajar & Achmad, 2010). Specifically, in this legal research, a study was carried out related to legal issues arising from Artificial Intelligence (AI) technology which resulted in acts against the law based on Law no. 19 of

2016 concerning Amendments to Law no. 11 of 2008 concerning Information and Electronic Transactions (ITE Law).

3   Results and Discussion

3.1   Legal Regulations Against Artificial Intelligence (AI) in Indonesia

The development of Artificial Intelligence (AI) technology is very fast, this can be seen through various fields of work that have utilized the use of AI, so it is not surprising that the human lifestyle in this technological era cannot be separated from the electronic world and humans will be left behind in information and become backward if late and unable to keep up with technological developments.

Etymologically, Artificial means not real and Intelligence means intelligence, so Artificial Intelligence can be interpreted as artificial intelligence (Putri, 2017). By definition, Artificial Intelligence (AI) is a software that has the intelligence to think like a human, and the purpose of this technological tool is to help human activity needs to be faster and more efficient.

The benefits of AI can be seen from the aspect of speed and accuracy in its work. AI is considered to have the advantage that it can exceed the speed and accuracy of human thinking. With extraordinary benefits, some use AI positively and some are negative, in which negative actions by abusing the use of AI can cause harm to other people.

With the development of AI technology made by humans with the aim of being able to do something like humans. On this basis, each country needs to make special regulations related to AI, especially in order to anticipate unlawful behaviors or actions that may occur in the future. Actions that harm other people are included in unlawful acts, because there are parties who are harmed in the sense that these actions have entered the realm of criminal law because they are contrary to legal provisions.

Indonesia does not yet have regulations that specifically and clearly regulate Artificial Intelligence (AI), so the legal source that can be used and applies at this time is Law no. 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE Law). This law is a form of state responsibility in responding to technological developments and besides that it is an effort to provide protection for disadvantaged parties caused by technology-based criminals. In other words, the ITE Law is the legal basis for resolving cases related to electronic crimes.

Since the ITE Law does not clearly define AI, various opinions emerge with various interpretations of AI related to the provisions contained in the ITE Law. AI arrangements based on the ITE Law provide a classification of AI as an electronic system and electronic agent, because AI has similarities and characteristics matching with the definition of an electronic system in the ITE Law, this can be seen in one of the ways in which AI is able to collect data, then process, and even to analyze. Besides that, AI is able to display and send electronic information, this can be seen in Article 1 number 5 of the ITE Law. While the basis for classifying AI as an electronic agent is not much different from the basis for classifying AI as an electronic system,

that is, they both have the ability to perform actions or actions against electronic systems automatically on the basis of human/person orders, thus of course they have similarities with the characteristics possessed by AI, and in the ITE Law this understanding can be seen in Article 1 number 8.

However, Ahmad M. Ramli (2023) who is a Professor of Cyber Law, Digital Policy-Regulation & Intellectual Property at the Faculty of Law, University of Padjadjaran in his article states that an important element of using AI as artificial intelligence is trust, as a necessity. Therefore Indonesia needs to have arrangements regarding AI which have the following principles and content material:

a. Focus on strengthening rules around data quality, transparency, human oversight, and accountability.

b. Aiming in the future to strengthen Indonesia's position as a global center of excellence in the field of Digital Transformation and the digital economy. Therefore the law that is formed must be able to ensure that the development and use of AI in Indonesia will respect the values and rules of Indonesian law, and continue to maintain the ecosystem of Indonesia's digital society to maintain the sovereignty and territorial integrity of the Unitary State of the Republic of Indonesia.

c. Encouraging the utilization of the potential of AI as a tool that helps humans for industrial growth, digital economy, education, health etc., which remains centered on existence, central role and human civilization (Cyber physicaly - Human Centered).

d. With comparison to the European Union, law needs to classify and determine the level of risk that AI technology can pose to the health and safety or basic rights of a person which includes four levels of risk: unacceptable, high, limited and minimal. Laws can also regulate standardization for certain risk level AI platforms. Standardization and operational acceptance testing can be carried out based on cooperation with various AI producing countries. Given its extraterritorial nature, the process of standardization or strict risk assessment of high-risk AI platforms that have been carried out in the country of origin of the platform or other countries that have equivalent or higher regulations, so long as it does not conflict with Indonesia's decency and public order law, can be categorized as as the fulfillment of the requirements referred to in Indonesia.

e. There is protection for children in its use. Align with other laws such as the ITE Law (Information and Electronic Technology), the PDP Law (Personal Data Protection), and laws related to child protection in the digital sphere which are very important for the future of children.

f. Must be devoted to the national interest. Supporting ethics, morals, identity, character, and not disrupting state ideology and sovereignty.

With the principles and content material that will be contained in the law that regulates AI, it is hoped that this regulation can become an instrument and infrastructure for Indonesia's development and transformation in facing domestic and global challenges.

In essence, the regulation of AI in particular is very important, considering that AI is considered to have a high risk, especially when used in critical infrastructure such as law enforcement or education.

3.2 Criminal Liability for Unlawful Acts in the Utilization of Artificial Intelligence

In criminal law, norms and sanctions are dual functional in nature because the two are related if they do not complement each other then they mean nothing (Febriani & Mintarsih, 2023; Zaidan, 2014). When viewed in terms of its nature, sanctions are a legal consequence of violating a rule, a penalty is imposed in connection with a person's violation of a norm. Meanwhile, criminal responsibility is what determines whether a defendant or suspect is held accountable for a criminal act that occurred or not (Atmasasmita, 1989).

Criminal responsibility (toerekenbaarheid) is a term in criminal law which in English is known as criminal responsibility or criminal liability. There are several definitions of criminal responsibility put forward by legal experts, including:

1. Pound stated that criminal responsibility is an obligation for perpetrators of unlawful acts, to receive retaliation, and besides that Pound is of the opinion that responsibility is not merely a matter of law but accountability is carried out bearing in mind issues related to norms or values that exist in society.
2. Pompe stated that criminal responsibility is the ability of the perpetrator to think about the meaning and consequences of his actions.
3. Simons stated that the ability to be responsible can be interpreted as the ability of the psychological state of the perpetrator of the crime, so that it can be justified in an effort to apply punishment. And also said to be able to understand or realize that his actions are against the law and able to determine the will in accordance with his awareness.
4. Van Hamel, that the notion of criminal responsibility is a normal psychological state and has the ability to:
   a. Able to understand the meaning and consequences of his actions;
   b.   Being able to realize that his actions are contrary to order in society;
   c. Able to determine the will to do.

Based on the opinions of the legal experts mentioned above, that criminal responsibility means someone who has committed a criminal act and from his actions whether or not a criminal conviction can be carried out. For this reason, criminal responsibility places more emphasis on the psychological state of the offender in the sense that his psychological state is normal; has the ability to understand the meaning and consequences of his actions, and understands that his actions are against the law. However, when the perpetrator of the crime does not have this ability, it means that the ability to be responsible for the perpetrator of the crime is not fulfilled, so that the perpetrator of the crime is considered irresponsible. The elements of criminal responsibility are:

a. There is a criminal act committed by the manufacturer. The actions taken by the maker fulfill the elements contained in one of the articles or several articles in

the Criminal Code. How to get knowledge about an act can be punished or not, the answer is offense. According to Van Hamel, offenses are human actions that are spelled out in laws, violate the law, deserve punishment, and are committed by mistake (Ali & Farhana, 2023).

b. Able to be responsible. Criminal liability leads to the punishment of the maker, if he has committed a crime and fulfills the elements specified in the law.

c. An error is deemed to have occurred, if intentionally or through negligence an act has been committed which has caused a condition or consequence prohibited by criminal law and has been carried out responsibly.

d. No excuses. The relation of the follower to his actions is determined by the responsible ability of the follower. He is aware of the nature of the action he will take, can know the reprehensibility of the action and can determine whether to take the action or not. There is no "reason for forgiveness", namely the ability to be responsible, a form of will that is intentional or negligent, mistakes are not erased or there is no reason for forgiveness, which is included in the definition of error. (Atmasasmita, 1989)

Based on the description above, a person can be held criminally responsible if that person has previously been proven to have committed a prohibited act. It is impossible if there is someone who is held criminally responsible while he has not committed an act that is prohibited by law. If this happens, then there has been a violation of human rights (Bawole, 2018).

A legal subject is someone who can be held accountable as a perpetrator of a crime. Legal subjects are everything that can have rights and obligations according to the rule of law as well as all supporters of rights and obligations according to law (Rahardjo, 2014). Legal subjects are divided into 2 classifications, namely humans as individuals or individuals (natuurlijk person) and legal entities or so-called people in the form of legal entities (rechts person) or people created by law in fiction (persona ficta) (Nurhayati, 2020).

According to L.J. vans Apeldoorn, it is necessary for a legal subject to possess the capacity to exercise the rights that have been conferred in order to initiate a valid legal proceeding. It is imperative to establish a clear distinction regarding the capacity to exercise aforementioned rights, such as in the case of minors engaging in lawful activities and individuals granted amnesty. In a broad sense, individuals can be endowed with rights and entrusted with the capacity to engage in lawful activities, despite lacking the inherent legal capacity to do so. This is the juncture at which the determination of a legal subject might be made. (Marzuki, 2008)

Indonesia has not specifically regulated AI regarding this matter, therefore there needs to be an interpretation to determine whether AI is a legal subject or not. Through the positive law in force in Indonesia, it can be interpreted that AI is essentially not a legal subject but a legal object, because AI itself is a technology made by humans and in operating it by humans, without human orders AI cannot work, meaning it can work if governed by electronic system operators, this can be seen in Government Regulation (PP) Number 71 of 2019 concerning Implementation of Electronic Systems and Transactions. Based on these regulations, that the operator of the elec-

tronic system is responsible as a legal subject for the operation of the electronic system.

Not a few debates have arisen related to the position of the legal subject of AI, because AI cannot be equated with a legal entity (Corporation). Legal entities become legal subjects because they have clear and firm aims and objectives and there is a human scope in their establishment. Whereas AI is not the case, because AI is programmed by humans so that AI in carrying out actions or actions makes mistakes, this is caused by the system, unless it is moved by someone's orders, in this case the organizer.

Thus, AI based on existing regulations, namely the ITE Law, can be classified as an electronic system and electronic agent. AI can do something or act on human orders, in this case, the person administering the system.

Artificial Intelligence (AI) refers to an electronic system and agent that executes actions based on human instructions. As per the provisions of the Information and Electronic Transactions Law (ITE Law), the directive is issued by the entity responsible for managing the electronic system, which comprises multiple legal entities. According to Article 1 number 10 of the ITE Law, electronic system operators refer to individuals, state administrations, corporate entities, and the general public who are engaged in the provision, management, and/or operation of electronic systems. These operators cater to the demands of electronic system users, whether individually or collectively. and/or the requirements of additional stakeholders. Therefore, AI cannot be said to be an independent legal subject or other legal subject, because AI is an automatic condition created by humans, and if it refers to criminal responsibility, one of them must have independent skills possessed by the legal subject.

Based on Van Hamel's opinion regarding the limitation of liability which in this case is associated with AI, that AI does not understand the meaning of the consequences it does and AI cannot determine its will for itself to carry out an action, and AI does not have awareness in carrying out a legal action, because Artificial Intelligence itself is a set of tools created by humans. Whereas humans as absolute legal subjects in criminal law are not always free from negligence of the actions they commit. Therefore, AI cannot be held accountable under criminal law, because it does not have the ability to become a legal subject. This interpretation is also supported by Simons' opinion that the perpetrator of a crime must have awareness of the will with the intent and purpose of the maker and have awareness of his actions.

When in the use of AI and AI itself commits an unlawful act, then in the perspective of criminal law those who can be held criminally responsible are electronic system operators who are people, state administrators, business entities, or communities that provide, manage, and/or operate electronic systems, either individually or jointly for his own needs and/or the needs of other parties.

4   Conclusion

As criminal responsibility for unlawful acts in the use of AI, those who can be held criminally responsible are the organizers of the electronic system. AI can work or

carry out actions or actions on the orders of insiders, this is the administrator of the electronic system. Based on the positive law adopted by Indonesia, AI is not included as a legal subject, but in Article 1 number 5 and number 8 of the ITE Law, AI can be classified as an electronic system and electronic agent. Thus, it is the organizers of the electronic system who can be held accountable.

Recommendations

The rapid development of the use of AI needs to be balanced with the existence of legal regulations that specifically and clearly regulate it, so that the government and legislative institutions must be responsive and respond by making special laws and regulations regarding Artificial Intelligence. This is an effort to anticipate and deal with complex and growing legal issues in the future caused by the use of AI in Indonesia.

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