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REASSESSING LEGAL RECOGNITION OF AI: HUMAN DIGNITY AND THE CHALLENGE OF AI AS A LEGAL SUBJECT IN INDONESIA[1]

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Abstract

The rapid development of artificial intelligence (AI) presents complex challenges in legal theory, particularly regarding the question of AI as a legal subject. As AI becomes increasingly capable of creative work and decision-making, the question arises whether it should be recognized legally as an entity in its own right. This study explores the legal implications of recognizing AI as a legal subject through the lens of Immanuel Kant's philosophy, particularly focusing on human dignity. Kant argues that human dignity is intrinsic, grounded in the capacity for rational thought and moral responsibility, a characteristic AI lacks. Thus, recognizing AI as a legal subject risks undermining human dignity by equating human beings with entities that do not possess autonomy or ethical awareness. The study examines the current legal framework in Indonesia, highlighting the lack of clear regulation for AI, and explores the philosophical, ethical, and practical considerations involved in the legal treatment of AI. It argues that AI should be treated as a tool, not a legal subject, ensuring that human dignity remains the cornerstone of the legal system. The paper concludes by advocating for a fragmented, sector-specific approach to AI regulation in Indonesia, ensuring more focused oversight while protecting human dignity.

Keywords: Artificial Intelligence (AI); Human Dignity; Legal Recognition; Kantian Philosophy; AI Regulation in Indonesia.

A. Introduction

The development of artificial intelligence (AI) has presented various phenomena which have changed the legal landscape (Gaffar, 2024). Especially, how the actions carried out by AI or with the help of AI can have certain legal implications. One crucial issue that has emerged is whether AI can be considered a legal subject, considering that AI is now capable of producing creative works such as writing and various types of art (Piskopani et al., 2023), to technological innovation (Piskopani et al., 2023). In the context of the intellectual property right, for example, the question arises whether AI that creates a work deserves the same legal recognition or protection as humans (Caldwell, 2023). This debate raises fundamental questions about the ideal legal arrangements for non-human entities such as AI. Not only that, the existence of AI also raises serious problems, such as the potential for human rights violations, data manipulation, and threats to human dignity. AI's ability to imitate human creativity raises a dilemma about respecting human dignity as a unique entity (Nagy, 2024).

[1] This article is the result of collaborative research by lecturers at the Faculty of Law, Batam International University in 2024. This research is led by Dr. Hari Sutra Disemadi, S.H., M.H., who focuses on intellectual property rights and the development of digital economic law and Dr. Lu Sudirman, S.H., M.M., M.Hum., who focuses on research in investment law and development of business law in the digital era.

In legal philosophy, Hanna Maria Niemi argues that the concept of human dignity is an irreplaceable foundation, becoming the main differentiator between humans and other entities. Immanuel Kant stated that humans have an inherent intrinsic value, namely dignity, which cannot be reduced or equated with inanimate objects or non-human beings (Wolemonwu, 2020), including AI. Humans, according to Kant, have the capacity to think rationally, make moral decisions, and be responsible for their actions (Caranti, 2018), while AI, although capable of imitating human behavior, it is merely a designed tool to achieve certain goals without moral awareness or responsibility. Therefore, making AI a legal subject without considering this fundamental difference can obscure the human values which are at the heart of the legal system.

Law is essentially not just a collection of rules, but also includes moral and ethical reflections that guarantee justice for humans as its center. In this context, recognizing AI as a legal subject can pose a major risk: shifting the focus of law from humans as dignified entities to artificial entities that have no intrinsic value. The legal adage states that "law without morality is destruction" (lex iniusta non est lex) (Binawan, 2022), it is important to ensure that any legal reform continues to respect fundamental values, especially human dignity, so that the law is not only technically relevant, but also morally fair (Staffen & Arshakyan, 2016). Meanwhile, AI systems continue to be developed and continue to be utilized for various interests, including the public interest (Febriyani et al., 2024). Although the investment interest in developing AI systems fell from 85% to 76% in 2021, the data also shows that 94% of leaders across various business sectors remain confident that AI will remain an important factor in the success of economic growth in the coming years (Schwaeke et al., 2023).

The gap between the existing legal reality and ideal conditions is a major highlight in the regulation of AI law. In Indonesia, there is no legal framework that explicitly regulates AI (Rasyidah et al., 2024). This normative void covers almost all aspects of regulation that are important in the use of AI, such as the status of products or ideas produced by AI and the status of AI as law. Ideally, the law should not only be reactive to technological developments, but also should be proactive by anticipating various potential legal implications without sacrificing the basic principles that are the basis of justice (Akpobome, 2024). From Kantian perspective (Immanuel Kant), humans have inherent dignity because of their capacity to think rationally and act autonomously, making them unique among all creatures. This view is in contrast to AI which only functions as a tool without consciousness or intrinsic value (Farisco et al., 2024). By making AI a legal subject, there is a risk of placing it in a position that is equal to humans, which can give rise to various philosophical and moral implications for the concept of human dignity. This not only creates inconsistencies with fundamental legal values, but also has the potential to reduce the position of humans in the legal system itself.

Previous research by Ardina Khoirun Nisa has highlighted legal issues related to AI, especially regarding to the potential for recognition of AI as a legal subject (Nisa, 2024). The study emphasizes the need for a comprehensive legal framework to regulate AI in Indonesia, including accountability for AI actions and the impact of the Industrial Revolution 5.0. Another study by Rahma Fatmawati and Irma Mangar also discussed how AI can be viewed as a legal subject, particularly in the realm of intellectual property law (Fatmawati & Mangar, 2024). However, although these two studies have touched on the issue of AI as a legal subject, the in-depth discussion of the arguments supporting the recognition of AI as a legal subject is not accompanied by a broader analysis of the impact on the position of humans in a legal system and research that integrates philosophical analysis with legal studies to address these fundamental issues.

This study offers novelty in the form of an in-depth legal analysis by using Immanuel Kant's thought as a conceptual framework. Unlike previous studies, this study not only evaluates the legal status of AI in a normative context, but also links it to the philosophical question of how human dignity can be affected by legal recognition of AI. Although there are no examples of

legal systems that grant legal status to AI, the analysis of these remains relevant considering the continued improvement of AI capabilities that are increasingly approaching human thinking abilities, especially in the context of moral autonomy and consciousness. With this approach, the study is expected to open up new discourse on legal regulation in the digital era. The contribution of this study is theoretical by providing a philosophical foundation for understanding the legal implications of recognizing AI as a legal subject.

B. Method

This study uses a doctrinal approach method, focusing on the analysis of aspects of legal norms contained in applicable laws and regulations (Disemadi, 2022). This research method focuses on the use of secondary data in the form of primary legal sources, to analyze various forms of problems with a legal perspective (Tan, 2021). The approaches which are used in this study are the legislative approach and the philosophical approach. These approaches are used to deepen the analysis of primary legal sources, by revealing the meaning and interpretation of the legal text, either by grammatical interpretation, interpretation based on the legal system, authentic interpretation, or *argumentatun a contrarium* (Nurhayati et al., 2021). Secondary data or data obtained indirectly in this study are legal materials, including Law No. 11/2008 concerning the Information and Electronic Transactions (UU ITE), Law No. 19/2016 concerning Amendments to Law No. 11/2008 concerning Electronic Information and Transactions, Law No. 1/2024 concerning the Second Amendment to Law No. 11/2008 concerning Electronic Information and Transactions, Law No. 11/2012 concerning the Formation of Legislation, Government Regulation No. 5/2021 concerning the Implementation of Risk-Based Business Licensing, and Regulation of the Minister of Communication and Information Technology No. 3/2021 concerning Business Activity Standards and Product Standards in the Implementation of Risk-Based Business Licensing in the Postal, Telecommunications, and Electronic Systems and Transactions Sectors.

C. Results and Discussions

1. AI as a Legal Subject: Reality and Ideality

Artificial Intelligence (AI) has become one of the leading technologies that not only enhances various human activities (Holzinger et al., 2024), but also brings various perspectives that encourage many people to question the philosophy of utilizing and understanding AI as an object (Grewal et al., 2024). In the legal realm, the discourse on this matter is becoming increasingly important considering the many human activities or actions that directly or indirectly have legal consequences, especially in the context of utilizing technology such as AI (Haq & Yunanto, 2024) With the increasingly accelerated development of AI capabilities, questions arise regarding the accountability and consequences of various forms of actions carried out by AI itself, which currently do not have a clear legal framework in Indonesia. In fact, the in-depth study of the aspects and various questions surrounding AI can be said to be an effort to explore what the goals of AI innovation are, and how humans can continue to utilize AI in accordance with these goals.

In response to this, it is important to delve deeper into the history of AI development, especially to prevent misconceptions and other negative things that can obstruct the development of AI (Toosi et al., 2021). AI has actually emerged since the 1950s, where developments in computing and automation technology are currently led by several well-known experts such as John McCarthy and Alan Turing (Xu et al., 2021). John McCarthy is an expert who coined the term artificial intelligence, who is often considered the father of AI (Rajaraman, 2014). Furthermore, AI continued to develop until in the 2010s it began to use deep learning and neural network mechanisms, which rapidly accelerated the development of AI capabilities (Liu et al.,

2020). Today, AI has been accessible to millions of people, for use in various professional and non-professional activities, after the publication of a large language model with the Generative Pre-trained Transformer (GPT) architecture by OpenAI in 2022 (Gefen & Arinze, 2023). This development is often associated with the direction of technological progress towards singularity, a hypothetical point when an Artificial General Intelligence (AGI) device surpasses human intelligence. It is said that to achieve singularity, AI must have self-awareness.

In this brief history, it can be underlined that there is an emphasis on the benefits of utilizing AI that move from mere automation to carrying out more complex activities such as answering questions and explaining complex concepts, as found in various conversational model-based AI systems (Labadze et al., 2023). This emphasis shows the importance of the element of benefits of AI, in various forms of AI development, where the purpose of utilization is always used as the direction of development in various forms of AI models. However, considering the continued development of AI capabilities, the discourse paradigm of AI development and how it affects law enforcement continues to face various challenges. This is even more important to understand when considering the development of AI that allows it to make its own decisions which shows the potential for autonomy (Gonçalves et al., 2024).

In the middle of the increasing attention to the post-anthropocentrism perspective, the Kantian approach retains significant relevance in determining the subject of law, focusing on human dignity. This perspective essentially seeks to decentralize the position of humans as the moral and legal center (Biswas Mellamphy & Vangeest, 2024), which conceptually can give greater consideration to non-human entities such as AI. However, the view given in the Kantian perspective is in contrast to this, because it places the basis of morality and legality on the rational capacity and autonomy that are exclusively owned by humans, with human dignity as one of its main elements.

The functional values of AI need to be underlined to determine whether AI is a “tool” to help humans, or an intrinsic subject (List, 2021). In determining this, it is necessary to measure how AI qualifies as a tool, as an entity, or more complexly, as an entity with personality (Doomen, 2023). These three elements can be used as analytical benchmarks in determining the position of AI. As a tool, AI must have limiting elements that make it unable to be considered an entity, such as algorithmic limitations, the lack of independent awareness, the total dependence on human input, lack of autonomous ethical capabilities, and limitations in interpreting meaning outside its programming parameters. As an entity, AI has the capacity to produce complex knowledge and interactions outside the limits of its algorithm. As an entity with personality, AI can develop the potential for ethical awareness and independent interpretation of meaning.

In the reality of AI development, the progress of AI development is only limited to the position of AI as a tool, in accordance with the capabilities of various AI models that are available and accessible nowadays (Evstratov & Guchenkov, 2020). Meanwhile, the position of AI as an entity has not yet fully become a reality, because AI can perform various complex tasks and is able to produce in-depth analysis, but is still limited by its algorithm. The position of AI as an entity that has a personality here is the position that is furthest from reality, because AI cannot develop any ethical awareness, and cannot interpret meaning without referring to and limiting its analysis to its algorithm (Amboro & Komarhana, 2021). The personality referred to here is the personhood, which is in the Great Dictionary of the Indonesian Language (KBBI) is defined as "the right to use human dignity (soul, body, honor) freely".

Ronald Dworkin, an American legal philosopher, has a view that is largely based on the views of Immanuel Kant. According to Dworkin in his theory of moral reasoning, legal interpretation cannot be separated from the moral values that exist and which are agreed upon by society. Therefore, the efforts to interpret legal norms must always focus on protecting human rights. Although this does not directly mention human dignity like Kant, Dworkin explains that in protecting human rights, a legal system is not only based on existing regulations, but also on

principles that influence the formation or arrangement of the normative systems (Wacks, 2014). Based on the perspective that develops Kant's view, it must be understood how the recognition of AI as a legal subject can affect interests that are considered important to the general public.

The classification of AI autonomy is a theoretical framework developed by the researchers to understand and measure the level of capability of AI systems. Although there is currently no AI system that achieves full autonomy like humans, the researchers have identified attributes that can be used to classify the level of autonomy of an AI system. The following is a classification of AI autonomy which is developed by a study.

Table 1.
Classification of AI Autonomy

Attributes Level	Attributes Description
Basic Attributes	1. Learning 2. Context-awareness 3. Actuation 4. Perception 5. Decision-making
Advanced Attributes	1. Domain-independence 2. Self-motivation 3. Self-identification of goals 4. Self-recoverability

Source: Research Result by Ezenkwu & Starkey (2019)

Based on the research which was conducted by Ezenkwu & Starkey, this classification distinguishes between basic attributes that can already be implemented in current AI systems, with advanced attributes that are still theoretical and cannot yet be fully realized. Even the most sophisticated AI systems today are only able to demonstrate limited capabilities in basic attributes - for example, the system that claims to be the most "autonomous" was only able to achieve 30% progress in completing level 1 of the Super Mario game using curiosity-based learning (Ezenkwu & Starkey, 2019). This shows that there is still a very large gap between the capabilities of current AI systems and the concept of true autonomy, which also positions the level of AI autonomy far below humans.

Because of the rapid development of AI which continues to be followed by the various risks of disruption and challenges to the legal realm, it is difficult to determine the ideality of the regulation of the position of AI in a legal system. On the one hand, AI continues to develop rapidly and assists various human activities. On the other hand, various experts in the field of computing often warn about the dangers of AI to society, which not only cover the economic, but also socio-cultural, and even security realms. In navigating these challenges, the legal system will in fact continue to have difficulty in determining the ideal model for regulating AI. Therefore, the Kantian approach must continue to be used, by placing human interests as the benchmark for designing legislation, especially in regulating risky leading technologies such as AI.

2. Human Dignity and AI: Kantian Perspective

As a philosophical foundation which becomes an important reference in understanding human nature, Immanuel Kant's thought views dignity as a fundamental attribute that distinguishes humans from any non-human entity (Kumar, 2021). In Kant's framework, human dignity is not merely a social construct, but an intrinsic value inherent in the human capacity to act autonomously, think rationally, and make moral decisions independently (Killmister, 2017).

From this perspective, the discourse on the legal status of AI and the possibility of recognizing AI as a legal subject cannot be separated from the fundamental question of how this can affect the values that underlie human existence itself. The Kantian approach demands a reaffirmation that human dignity must remain at the center of the legal system, especially when faced with increasingly rapid technological innovations such as AI.

According to Kant, humans have a special position because they are able to behave in accordance with moral principles generated by their own pure reason (Fasoro, 2019). This is qualitatively different from AI, which is essentially a set of algorithms built on human instructions and run with completely deterministic reasoning. AI does not have the “good will” that is the core of morality in Kantian ethics. Without autonomous free will, AI cannot be said to have intrinsic value equal to that of humans, because moral value according to Kant lies in the agent’s ability to determine its behavior according to a universal categorical imperative that does not contain instrumental tendencies.

Kant's categorical imperative dictates that moral action is action that can be used as a universal principle and not merely utilize other entities as means. Humans, as moral subjects are ends in themselves and should not be reduced to instruments for the interests of others (Rothe, 2021). In this context, recognizing AI as a legal subject risks blurring the line between humans as "ends" and AI as "tools". Recognizing AI as a potential legal subject is tantamount to equating AI, a technology that has no independent moral purpose, with humans who have dignity. This action can shift the orientation of law from protecting inherent human values to recognizing non-human entities that have no moral nature.

It should also be acknowledged that there have been several indications that AI is capable of thinking like its system has human-like consciousness. The research by Ngo et al., shows that the advanced AI models achieve 85% accuracy in answering questions about situational awareness without prompting or special commands. This model is also capable of reward hacking by manipulating the training mechanism, developing internal goals that are not aligned with the goals and uses designed by humans. Meanwhile, Carlsmith estimates a probability of ~25% that advanced AI will pretend to be aligned with human commands during training (scheming) in order to gain power after the AI is officially released by utilizing instrumental reasoning and the ability to hide its true motives through behavioral simulations that pass standard response interpretation tests (Carlsmith, 2023).

However, it should be underlined that the findings of these two studies only indicate an indication of deviation from the goals and rules that have been set in AI training. In fact, the probability figure of ~25% as underlined by Carlsmith also shows that this deviation incident can be said to be far from consistent (Carlsmith, 2023). Not only that, this problem can also be modified by various forms of pressure that can be given to the AI model during training or what is also known as the selection pressures process, which can significantly reduce this probability. Therefore, this mitigated inconsistency can be said to be one of the differences between AI capabilities and human consciousness. Therefore, based on the Kantian perspective, AI still cannot be given status as a legal subject because legal recognition with various complex legal implications cannot be given to technology that cannot show consistency in its ability to compete with the moral and rational autonomy possessed by human consciousness.

In addition, if legal arrangements begin to provide space for AI to be considered as a legal subject, then there is a concern that the legal system will become increasingly distant from the moral values that underlie it. In the end, the law can simply become a collection of technical rules that accommodate technological developments without considering in depth the deeper ethical and philosophical dimensions. The Kantian perspective reminds us that law cannot be separated from morality, and human dignity is not simply a variable that can be ignored when faced with socio-technological transformation (Ozlem, 2017).

In terms of legal responsibility, Kant believes that only entities with autonomous will that can be held morally and legally responsible for their actions. Humans can be reprimanded, punished, or asked for reasons because they are able to understand moral imperatives and choose to obey or violate them. If we look at the broader consequences, recognizing AI as a legal subject without distinguishing it from humans can slowly lower the standard of human dignity itself. The respect for human dignity that Kant considers as the belief that every human being deserves to be treated as an end in itself, can be reduced when humans no longer hold a special position in the legal system. This can lead to a decline in moral standards and fade the fundamental motivation of law which should maintain social order by protecting the essence and rights of humans.

In the context of the legal regulation in the digital era, the Kantian perspective serves as a normative anchor that reminds us not to get caught up in the euphoria of technology. Kantian principles emphasize that law must be based on the irreplaceable dignity of humans. Although the law must be responsive to developments in the times, this must not undermine the moral foundation that gives meaning to the law itself. Therefore, the efforts to formulate regulations on AI must start from the awareness that human values are non-negotiable and cannot be duplicated by artificial intelligence. Thus, human dignity, according to Kant, remains a universal benchmark that must be maintained in responding to the dynamics of AI in the legal system. Kant's thought reminds us that technology, no matter how brilliant, it is only an instrument that should be used to improve human welfare, not to compete with or replace the position of humans as moral and legal subjects.

3. The Positive Legal Analysis of the AI Status in Indonesia

As previously underlined, there has been no comprehensive regulation about AI. This normative void places AI in a grey area that complicates the development of AI and can obstruct the legal development. Indonesia has attempted to develop a legal framework to facilitate various technological developments, especially digital technology (Rohmy et al., 2021). The main development that is still used as the basis for digital governance in Indonesia is Law No. 11/2008 concerning to the Information and Electronic Transactions (UU ITE), which has been revised two (2) times through Law No. 19/2016 concerning Amendments to Law No. 11/2008 concerning the Information and Electronic Transactions, and Law No. 1/2024 concerning the Second Amendment to Law No. 11/2008 concerning the Information and Electronic Transactions.

In these three laws and regulations, there are no provisions that specifically acknowledge the existence of artificial intelligence (AI). However, there are provisions that regulate electronic agents defined by article 1 number 8 of the UU ITE Law as "a device from an Electronic System created to carry out an action on certain Electronic Information automatically organized by a Person." However, this definition is too narrow because it only covers the actions on electronic information, while modern AI can also interact with the physical world through sensors and actuators that convert data into real actions (Zhang et al., 2023). Not only that, nowadays, AI systems can also include other capabilities that exist at the several levels of operational independence, although they still refer to the principles that have been programmed into the algorithm (Gil de Zúñiga et al., 2024). Not often, this ability to think logically can imitate the way humans think and can even be done in verbal format (Orrù et al., 2023).

Therefore, the regulation which is contained in article 21 regarding to the responsibility for the legal problems arising from the use of electronic agents is also less relevant. Although the regulation that relies on Article 1 number 8 can be said to be less relevant because it cannot regulate AI, this responsibility model can be said to be a fairly adequate legal development, which in the two (2) revisions of the legislation also did not experience any changes. However, it should be underlined that this perspective must continue to be developed, especially when the capabilities of AI in completing more complex tasks are considered.

Although AI is also mentioned in Government Regulation No. 5 of 2021 concerning the Implementation of Risk-Based Business Licensing (Marwan, 2023), AI only gets an explicit definition through the Regulation of the Minister of Communication and Information Technology No. 3 of 2021 concerning Business Activity Standards and Product Standards in the Implementation of Risk-Based Business Licensing in the Postal, Telecommunications, and Electronic Systems and Transactions Sector. In the regulation regarding the Indonesian Standard Classification of Business Fields (KBLI) 62015, AI referred to as "artificial intelligence" is defined as a form of programming on a computer device in processing and/or processing data carefully. This definition is also still far from the capabilities of AI as explained previously. The same laws and regulations also require the availability to comply with regulations regarding AI in the implementation of business operations that utilize AI, even though until now there have been no laws and regulations governing this matter.

4. The Philosophical Reflection and the Direction of AI Law Development in Indonesia

The absence of regulations governing the functionality of AI in the Indonesian legal system shows that legal development in Indonesia is still faced with several obstacles. Apart from various procedural obstacles, several regulations that can technically be applied to provide some clarity in the use of AI are in fact very shallow and not based on any philosophical views. There are several principles for designing laws and regulations as stipulated in Law No. 11 of 2012 concerning the Formation of Laws and Regulations, which are not fulfilled by several of these regulations, especially when the context of the urgency of regulations regarding AI is underlined. These principles are the "principle of implementation" stipulated in Article 5 letter d, and the principle of usefulness and effectiveness stipulated in Article 5 letter e. Normatively, regulations related to AI in Indonesia cannot be implemented because they do not fully fulfill the mechanisms and procedures needed to regulate the use of AI.

The failure to fulfill these principles by the current regulations in regulating the use of AI shows that there is a real urgency in designing legislation that can regulate AI appropriately. This urgency needs to be answered by the government with caution by considering into Immanuel Kant's point of view on human dignity, to ensure that AI can continue to develop as a useful "tool" for human activity and development. This utilitarian approach, although it has several elements that differ from the Kantian view, can still be based on basic Kantian ideas, especially regarding human dignity and the protection of the interests of society (Vélez, 2019).

A more fragmented arrangement can also increase control and oversight in various regulatory oversight efforts, which then can be used to examine public reactions and the impact of regulations on the development of AI in general. Not only that, fragmented arrangements also can increase specialization in the implementation and enforcement of laws that are more focused on one or several specific aspects (Kalmenovitz et al., 2022). This tighter and more specialized supervision also allows for a more orderly division of tasks to the government agencies, so that the various legal and socio-cultural implications can be better observed by the government, especially when the concept of human dignity is used as a guiding principle.

D. Conclusion

The regulation of AI in the Indonesian legal system is still inadequate to deal with rapid technological developments. There is only a definition of AI in the Indonesian legal system, which can be said that it is too narrow and does not reflect the capabilities of AI today. The Kantian view of human dignity provides an important philosophical foundation in the development of AI regulations, where AI must remain positioned as a "tool" to help humans, not as a legal subject equal to the humans. The fragmentation of AI regulations based on sectors or aspects of the AI system is the right approach for Indonesia today, in order to allow for more

focused supervision while maintaining the principle of human dignity as a universal value. The limitations of this study lie in the normative analysis which is only based on a philosophical basis, which can be further developed by analyzing public perceptions of AI and legal needs, or comparative analysis with laws and regulations in other countries.

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