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Comparative Analysis of AI Legal Status in Indonesian and EU Contract Law

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Abstract

The integration of artificial intelligence (AI) into legal technology, particularly in contract drafting, presents both innovative potential and significant legal challenges. This research focuses on the legal validity of AI-generated contracts under Indonesian law. While AI can efficiently generate comprehensive and standardized agreements, its lack of legal subjectivity raises questions about its capacity to enter into binding contracts. By analyzing the Indonesian Civil Code, specifically Articles 1313, 1320, 1367, and 1368, this study examines whether AI-generated contracts can be considered legally valid and ho w AI is recognized as a legal subject in the contract. Theoretical frameworks such as legal subject theory, agency theory, and the objective theory of contracts are used to examine the issue. Comparative insights from the European Union's AI Act also highlight possible directions for Indonesia to develop a clear regulatory approach. The research concludes that while AI cannot currently be recognized as an independent legal subject, responsibility for its actions may be assigned to its users or developers.

Keywords: *Legal Subject; Artificial Intelligence; Generated Contract; Legal Tech; Legal Capacity*

I. Introduction

It's hard to define AI when entering the definition.[1] AI is a machine that imitates human intelligence[2] and it can perceive, reason, and act.[3] Before diving into AI and law, AI itself has been developed since the 1950s by British mathematician Alan Turing[4] at his published paper regarding computing machinery and intelligence, and he proposed a Turing Test, where the computer will have a conversation with human and trick them into thinking that the computer was a human[5] and In 2025, AI has passed the Turing Test.[6] This shows that AI has developed into near-human ability, and further questions their capacity as an entity.

The utilization of artificial intelligence to assist in contract design, review, and analysis represents one of the key applications of Legal Tech currently being developed in many countries around the world.

[1] Russell, Stuart, and Peter Norvig. Artificial Intelligence: A Modern Approach. 4th ed. Pearson, 2020.
[2] Sheikh, H., C. Prins, and E. Schrijvers. "Artificial Intelligence: Definition and Background." In Mission AI: Research for Policy, 15. Cham: Springer, 2023.
[3] OECD. Artificial Intelligence in Society. Paris: OECD Publishing, 2019.
[4] Weinberger, David. "Optimization over Explanation: Maximizing the Benefits of Machine Learning without Sacrificing Its Intelligence." 2018.
[5] OECD, Supra note (3), p. 20.
[6] Jones, Cameron R., and Benjamin K. Bergen. "Large Language Models Pass the Turing Test." arXiv preprint arXiv:2503.23674 (2025)

Legal Tech aims to simplify the work of contract drafters by supporting the drafting, reviewing, and analyzing of contracts, including through the use of smart contracts.[7] AI systems automate contract drafting utilising Natural Language Processing (NLP) to generate contract clauses. These smart contract features function as contract generator systems capable of producing comprehensive contract drafts, complete with legal analysis. They offer accurate and standardized contract formats, proper legal diction, and appropriate language, ensuring that justice and balance between the parties are addressed in detail within the substance of the agreement.[8]

A contract made by AI points out a problem because in discussing AI's legal status and capacity in Indonesia, we will need to refer back to the Civil Law Book or KUHPerdata. Article 1313 of KUHPer stated that "An agreement is an act by which one or more persons bind themselves to one or more other persons," and Subekti[9] explained agreement as "An occurrence in which one party promises another, or in which two parties mutually commit to performing an obligation.". Article 1320 of KUHPerdata elements of agreement or contract stated that 4 elements need to be fulfilled: consent, legal capacity, a certain object, and a legal matter. Those further underline AI's capacity to conduct a contract.

Europe has regulated AI clearly through the European Union Artificial Intelligence Act of 2024 such as on Article 14, which stated that AI system should developed in such way that natural persons can actively oversee them during the period of the AI system in use and in Article 57(12) which stated that the AI operator or developer would be the responsible party of the AI actions.[10] Even though Indonesia hasn't developed any special AI regulation like Europe, Article 57 (12) can be reflected by Article 1367 (1) and 1367 (3) of KUHPerdata, which states: "(1) A person is not only responsible for damages caused by their own actions, but also for damages caused by individuals under their responsibility or by objects under their supervision." "(3) Employers and those who appoint others to represent their affairs are liable for damages caused by their servants or subordinates in the performance of the work for which they were employed." and through that statement, "individuals" in Article 1367 (1) can be analogized as AI in reflection of the European AI Act.[11]

The use of AI in generating a contract raises a question of whether a contract made by an AI has the same legal standing in comparison with a human-made contract and whether, in this case, AI gains legal personality to conduct a contract. This research will be focused on conducting legal analysis on the legal subject of AI-generated contracts.

II. Legal Materials and Research Method

This research used the normative-qualitative method, using data from the literature study and legal theory. The research data were obtained from laws and regulations, statistics, and related studies. The

[7] Zou, W., et al. "Smart Contract Development: Challenges and Opportunities." IEEE Transactions on Software Engineering 47, no. 10: 2084–2106.
[8] Kurniawijaya, A., A. Yudityastri, and A. P. Zuama. "Pendayagunaan Artificial Intelligence dalam Perancangan Kontrak serta Dampaknya bagi Sektor Hukum di Indonesia." Khatulistiwa Law Review 2, no. 1 (2021): 260–279.
[9] Subekti. Hukum Perjanjian. 16th ed. Bandung: PT Intermasa, 1996. p. 1.
[10] European Union. Artificial Intelligence Act. 2024, Art. 14(1); 57(12).
[11] Ravizki, E. N., and Lintang Yudhantaka. "Artificial Intelligence sebagai Subjek Hukum: Tinjauan Konseptual dan Tantangan Pengaturan di Indonesia." Notaire 5, no. 3 (2022): 359.

study examines Indonesian civil law (KUHPer), particularly Articles 1313, 1320, 1367, and 1368, alongside theoretical frameworks like legal subject theory, agency theory, and the objective theory of contracts. This study also implies comparative analysis by referencing the European Union's AI Act to draw regulatory insights.

III. Results and Discussion

There are several definitions of a legal subject. Mochtar Kuusumaatmadja and B. Arief Sidharta define legal subject as the holder or bearer of rights and obligations.[12] L. J. van Apeldoorn argues that any entity possessing legal capacity is regarded as a legal subject.[13] On the other hand, Hans Kelsen states that each individual can act both as a legal organ (one who makes and applies the law) and as a legal subject (one who is bound by the law, either obeying or breaking it).[14] Based on Hans Kelsen's view, a "person" legal subject is a fiction constructed by jurisprudence, this means that even if it is a living human being, it is only considered to "exist" in the legal sense because it is constructed into existence. Thus, this construction, if not called "fictitious," is described by Kelsen as an artificial construct.15 Kelsen further clarifies who can construct a legal subject: namely, the legal organ (law-making authority). This understanding aligns with the traditional theory, which holds that the legal community (society under law) is what constructs legal subjects.

Another vital theory will be used is Agency theory, or principal-agent theory, refers to a contractual relationship between key actors within a firm. Specifically, between the principal (owner/shareholder) and the agent (manager/executive) tasked with decision-making authority. The principal delegates authority to the agent to act on their behalf, while the agent is obligated to manage the company in accordance with the principal's interests.[15]

Mutual assent to a contract is determined by reference to external acts and manifestations, not by evidence of subjective, internal intention.[16] In simpler terms, a contract is based on what the parties express, not on their private thoughts or unspoken intentions.[17] In Lucy v. Zehmer, two parties negotiated the sale of farmland. Lucy made a serious offer to buy, and Zehmer outwardly appeared to agree, signing a written agreement and joking that Lucy wouldn't be able to afford it. At trial, Zehmer claimed he never intended to sell and was merely "needling" Lucy. The court enforced the contract, ruling that Lucy reasonably believed Zehmer's actions indicated genuine assent. The decision reinforced the objective theory of contracts: binding agreements depend on outward expressions of intent, not hidden subjective thoughts.[18]

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[12] Mochtar Kusumaatmadja dan B. Arief Sidharta, Pengantar Ilmu Hukum, p. 80.
[13] L. J. van Apeldoorn, Inleiding tot de Studie van het Nederlandse Recht, atau Pengantar Ilmu Hukum, terj. Oetarid Sadino (Jakarta: Pradnya Paramita, 1986), p. 203.
[14] Hans Kelsen, Pure Theoy of Law, p. 169.
[15] Ibid, p. 171 - 172.
[16] Jensen, M. C., & Meckling, W. H. (1976). Theory of the firm: Managerial behavior, agency costs, and ownership structure. Journal of Financial Economics, 3(4), 305–360.
[17] Wayne Barnes, The Objective Theory of Contracts, 76 U. Cin. L. Rev. 1119 (2008), p. 1120.
[18] *Ibid*

In recent years, legal technology has emerged, utilizing artificial intelligence to deliver efficient legal solutions. The outcomes have been highly satisfactory, even exceeding the performance of human advocates in certain aspects.[19] The integration of artificial intelligence into the legal sector has extended to contract drafting.[20] There are a few principles of contract under the Indonesian Civil Code or Kitab Undang-Undang Hukum Perdata.[21] First, Article 1338 (1) states that "all agreements which are legally concluded shall bind the parties as law upon those who make them".[22] Second, the principle of consensualism under Article 1320 (1) stipulates that the validity of a contract requires mutual consent between the parties as an essential condition. Third, the principle of certainty or Pacta Sunt Servanda, which underlined that all parties should respect the agreement made. Fourth, the principle of good faith under Article 1338 (1) states that all agreements must be made in good faith. Lastly, the principle of privity (personality) under Articles 135 and 1340 establishes that a contract is strictly personal in nature, binding only the parties who enter into it and serving solely their individual interests.[23]

The rapid development of AI usage in legal tech has exceeded human practitioners' ability, including contract drafting. Legal technology is advancing the use of AI to streamline contract drafting, review, and analysis. A Smart Contract system represents a Contract Generator Systems platform that incorporates comprehensive legal analysis into the drafting process.[24] The use of AI-generated contracts raises legal uncertainties under Indonesian Positive Law, as the legal status of artificial intelligence remains unresolved.

Indonesia hasn't established comprehensive AI regulation, unlike Europe under its European AI Act. The definition of AI under Electronics Law or UU ITE is an Electronic Agent is a device within an Electronic System designed to automatically perform specific actions on Electronic Information on behalf of a Person.[25] The European Union AI Act defines AI as a machine-based system that is designed to operate with varying levels of autonomy and that may exhibit adaptiveness after deployment, and that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments.[26]

Based on the Agency Theory, in a contractual setting, AI often performs tasks delegated by a human (the principal). Since AI were lacking judgment and moral ethics, the responsibility typically falls back to the human or corporate principal. The concept falls into the human as the principal delegate authority to the artificial intelligence as an agent to generate a contract, and the agent would need to draft it based

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[19] *Ibid*, p. 1126.
[20] Salmerón-Manzano, Esther.2021. Legaltech and Lawtech: GlobalPerspectives, Challenges, andOpportunities. Laws 10: 24, p. 2.
[21] Kurniawijaya, A., Yudityastri, A., & Zuama, A. P. (2021). Pendayagunaan artificial intelligence dalam perancangan kontrak serta dampaknya bagi sektor hukum Di Indonesia. Khatulistiwa Law Review, 2(1), p. 265.
[22] M. Muhtarom, "Asas-Asas Hukum Perjanjian : Suatu Landasan Dalam Pembuatan Kontrak," Suhuf 26, no. 1 (2014), p. 48–56.
[23] Kitab Undang - Undang Hukum Perdata, Art. 1338 (1).
[24] Salim H.S., Perancangan Kontrak & Memorandum of Understanding (MoU) (Jakarta: Sinar Grafika, 2007)
[25] Kurniawijaya, *Supra* note (21), p. 271.
[26] Undang - Undang Nomor 19 Tahun 2016 tentang perubahan atas Undang - Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik, Art. 1(8).

on the principal's interests. This concept is similar to the European Union AI Act, Article 57(12), which states that the AI operator or developer would be the responsible party for the AI actions. There is also another concept of the In Loco Parentis doctrine, which views AI as a partial legal subject; This doctrine underlines the legal liability of multiple individuals in fulfilling parental functions or responsibilities, in this context, referring to the obligations of AI owners or users.[27]

Under the Indonesian Law, the best approach to this theory is Article 1368 and 1367 (1) and (3) of the KUHPerdata.[28] Article 1368 states that:

"An animal owner is liable for damages caused by the animal, whether the animal was under their supervision at the time or had strayed/escaped from their control."

and Article 1367(1) and (3) states that:

"(1) A person is not only responsible for damages caused by their own actions, but also for damages caused by individuals under their responsibility or by objects under their supervision."

"(3) Employers and those who appoint others to represent their affairs are liable for damages caused by their servants or subordinates in the performance of the work for which they were employed."

The article builds a framework of liability relationship between AI systems and their owners/users that follows analogous legal logic to the principle holding persons accountable not only for damages they directly cause, but also for those caused by individuals under their responsibility or objects under their supervision.[29] AI's legal liability depends on its classification. As a mere tool, its owner/user bears civil responsibility for its unlawful acts, but if granted legal personhood, AI could independently incur obligations, yet ultimate accountability typically rests with its designer or owner under existing civil law frameworks.[30]

In comparison with the European Union, the European government regulated AI as a legal subject to ensure legal certainty for AI. The Europeans seek to create legal status for AI as an "Electronic Person".[31] Machines can't be equal to humans and need to be distinguished. Machines are things, products, and artefacts of human intellect.[32] AI need not be equated with human legal status unless it demonstrates a level of autonomy that enables independent decision-making in both its objectives and methods of achieving them.[33] The machines can't fear sanctions and thus solely place the responsibility on the users themselves.

In other alternatives, Europeans saw machines as an electronic personhood reserved as only identical to legal personhood, in response as a functional purpose similar to how corporations are treated

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[27] European Union Artificial Intelligence Act, Art 3(1).
[28] Khusuf Komarhana FL. Yudhi Priyo Amboro, "PROSPEK KECERDASAN BUATAN SEBAGAI SUBJEK HUKUM PERDATA DI INDONESIA" XX, no. 2 (2021): 145–72.
[29] Abdul Atsar and Budi Sutrisno, "Tanggungjawab Kecerdasan Buatan Sebagai Subjek Hukum Paten Di Indonesia," Proceeding Justicia Conference 1 (2022): 24–25.
[30] *Ibid*
[31] Visa A.J. Kurki, "The Legal Personhood of Artificial Intelligences," A Theory of Legal Personhood 2103 (2019): pp. 175–90.
[32] European Parliament, "A-8-2017-0005_En," 2019.
[33] Bertolini, A. (2013). "Robots as Products: The Case for a Realistic Analysis of Robotic Applications and Liability Rules." Law Innovation and Technology 5(2), p. 214.

as "persons" in law.[34] Legal systems may recognize AI as a distinct entity only when necessary to resolve liability gaps, such as determining compensation for damages caused by autonomous systems like self-driving cars. This concept was similar to Hans Kelsen's view of legal subject, which legal subject as a fiction made by society. It exists only because it's constructed by the law-making authorities or society for a practical purpose.[35]

The Indonesian Government may leverage these legal references to establish a comprehensive regulatory framework for artificial intelligence. Such regulations should emphasize AI's implications for privacy, morality, and ethics, particularly from a legal standpoint concerning contract drafting technologies integrated into legal tech platforms. The government should not hinder AI development but rather actively support its advancement while establishing a forward-looking regulatory framework. This framework must clarify AI's legal status, whether as an autonomous legal subject or as a tool controlled by human actors, to ensure accountability and ethical governance.

IV. Conclusion and Recommendations

In conclusion, the trend of artificial intelligence in legal technology, especially in generating contracts, brings both opportunities and legal questions, particularly in the context of Indonesian law. While AI can help make contract drafting faster and more accurate, its use challenges traditional ideas about who can legally make agreements. As it stands, AI is not recognized as a legal subject under Indonesian civil law, which means it can't independently enter into contracts. However, using legal theories like agency and drawing from existing laws such as Articles 1367 and 1368 of the Civil Code, there's room to interpret that contracts created by AI might still hold legal weight, as long as a human or organization stands behind the AI's actions. Looking at how the European Union has approached this issue shows that Indonesia could benefit from a clearer legal structure that keeps up with technological changes. Whether AI is treated as a tool or given limited legal recognition like a company, Indonesia must develop regulations that provide certainty, promote accountability, and ensure AI is used responsibly in the legal field.

References

Atsar, Abdul, and Budi Sutrisno. "Tanggungjawab Kecerdasan Buatan sebagai Subjek Hukum Paten di Indonesia." Proceeding Justicia Conference 1 (2022): 24–25.

Barnes, Wayne. "The Objective Theory of Contracts." University of Cincinnati Law Review 76 (2008): 1119–1155.

Bertolini, Andrea. "Robots as Products: The Case for a Realistic Analysis of Robotic Applications and Liability Rules." Law, Innovation and Technology 5, no. 2 (2013): 214–247.

Bertolini, Andrea. Artificial Intelligence and Civil Liability. Study requested by the European Parliament's Committee on Legal Affairs. 2020.

European Parliament. "A-8-2017-0005_En." 2019.

[34] Andrea BERTOLINI, Ph.D., LL.M. (2020). Artificial Intelligence and Civil Liability. European Parliament's Committee on Legal Affairs, p. 38.
[35] Hans Kelsen, Pure Theoy of Law, p. 171 - 172.

European Union. Artificial Intelligence Act. 2024.

Jensen, Michael C., and William H. Meckling. “Theory of the Firm: Managerial Behavior, Agency Costs, and Ownership Structure.” Journal of Financial Economics 3, no. 4 (1976): 305–360.

Jones, Cameron R., and Benjamin K. Bergen. “Large Language Models Pass the Turing Test.” arXiv preprint arXiv:2503.23674 (2025).

Kelsen, Hans. Pure Theory of Law.

Komarhana, Khusuf, and Yudhi Priyo Amboro. “Prospek Kecerdasan Buatan sebagai Subjek Hukum Perdata di Indonesia.” 20, no. 2 (2021): 145–172.

Kurniawijaya, A., A. Yudityastri, and A. P. Zuama. “Pendayagunaan Artificial Intelligence dalam Perancangan Kontrak serta Dampaknya bagi Sektor Hukum di Indonesia.” Khatulistiwa Law Review 2, no. 1 (2021): 260–279.

Kusumaatmadja, Mochtar, and B. Arief Sidharta. Pengantar Ilmu Hukum.

Kurki, Visa A. J. “The Legal Personhood of Artificial Intelligences.” In A Theory of Legal Personhood, 175–190. 2019.

Muhtarom, M. “Asas-Asas Hukum Perjanjian: Suatu Landasan dalam Pembuatan Kontrak.” Suhuf 26, no. 1 (2014): 48–56.

OECD. Artificial Intelligence in Society. Paris: OECD Publishing, 2019.

Ravizki, E. N., and Lintang Yudhantaka. “Artificial Intelligence sebagai Subjek Hukum: Tinjauan Konseptual dan Tantangan Pengaturan di Indonesia.” Notaire 5, no. 3 (2022): 359–.

Russell, Stuart, and Peter Norvig. Artificial Intelligence: A Modern Approach. 4th ed. Pearson, 2020.

Salim H.S. Perancangan Kontrak & Memorandum of Understanding (MoU). Jakarta: Sinar Grafika, 2007.

Salmerón-Manzano, Esther. “Legaltech and Lawtech: Global Perspectives, Challenges, and Opportunities.” Laws 10 (2021): 24.

Sheikh, H., C. Prins, and E. Schrijvers. “Artificial Intelligence: Definition and Background.” In Mission AI: Research for Policy, 15. Cham: Springer, 2023.

Subekti. Hukum Perjanjian. 16th ed. Bandung: PT Intermasa, 1996.

Undang-Undang Nomor 19 Tahun 2016 tentang Perubahan atas Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik.

Van Apeldoorn, L. J. Inleiding tot de Studie van het Nederlandse Recht. Translated by Oetarid Sadino as Pengantar Ilmu Hukum. Jakarta: Pradnya Paramita, 1986.

Weinberger, David. “Optimization over Explanation: Maximizing the Benefits of Machine Learning without Sacrificing Its Intelligence.” 2018.

Zou, W., et al. “Smart Contract Development: Challenges and Opportunities.” IEEE Transactions on Software Engineering 47, no. 10 (2021): 2084–2106.