

Juridical Analysis of the Validity of Electronic Contracts Made by Artificial Intelligence in Indonesian Law

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ABSTRACT

The validity of electronic contracts drafted by Artificial Intelligence (AI) in the perspective of Indonesian law is becoming an increasingly relevant issue amid the rapid development of digital technology. Law Number 11 Year 2008 on Electronic Information and Transactions (ITE) which regulates electronic contracts does not yet cover in detail the use of AI in contract drafting. This creates uncertainty regarding who is responsible for AI-generated contracts and how consumer rights are protected. While electronic contracts can provide efficiency in transactions, it is important to ensure that contracts drafted by AI meet the applicable law standards in Indonesia. This study aims to explore the validity of AI-generated electronic contracts and their impact on consumer rights in the Indonesian law system. The lack of clarity regarding the law status of AI in digital transactions is a major challenge. There is a need for regulatory updates to provide clear law certainty regarding AI-generated contracts, which will strengthen the protection of consumer rights and create a safer digital ecosystem.

INTRODUCTION

In recent years, technological advances, especially in the field of AI, have had a significant impact on various aspects of human life, including in the field of law. One of the most striking developments is the use of AI in the creation of electronic contracts. Contracts that were previously created manually by the party involved can now be drafted by AI-based software with various algorithms designed to optimize and speed up the process. This facilitates business transactions in the digital world, but also raises questions regarding the law validity of AI-generated contracts. While some countries have begun to explore the acceptance of electronic contracts in their law frameworks, Indonesia does not yet have regulations that explicitly govern contracts drafted by AI systems.

While Indonesia already has regulations related to electronic transactions through Law Number 11 Year 2008 on ITE Law, and later updated with Law Number 19 Year 2016. This law regulates the validity of electronic transactions, including electronic contracts, as long as they meet certain conditions, such as the consent of both parties. Its implementation to contracts generated by AI still requires more specific law certainty (Sulistiyowati et al., 2020).

Problems arise when the electronic contracts are made by AI, not by an individual or law entity that can be directly accounted for. The lack of clarity regarding who is responsible for contracts made by AI systems is a central issue that needs to be studied further, because a valid contract must involve a lawfully identifiable party. The validity of an electronic contracts depends on the fulfillment of the requirements of a valid contract, namely the existence of an agreement, capacity, a particular matter, and a legitimate cause. Sunaryo and Nuraini (2020) stated that when AI autonomously executes contracts, legal responsibility becomes ambiguous.

In the perspective of Indonesian law, some provisions in the ITE law and conventional contract law do not seem to fully address the issue of the validity of AI-generated contracts. Traditional contracts law requires the existence of a law subject that has the capacity to act lawfully and give valid consent. In this case, AI does not have the status of a recognized law subject, and neither does its existence as a party to an agreement. This raises the question of the extent to which contracts made by AI systems can be considered valid and lawfully binding, especially in terms of the protection of consumer rights and law obligations arising from such contracts.

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There are also issues related to the protection of personal data that may be involved in electronic transactions conducted by AI. AI systems used in electronic contract generation often access and process personal data of the party involved in the transaction. The use of personal data in contracting by systems that are not fully transparent raises concerns about privacy violations and uncertainty about who is liable in the event of data misuse. The latest regulation on personal data protection in Indonesia, Law Number 27 Year 2022 on Personal Data Protection, contains quite strict provisions related to the processing of personal data. Is there any guarantee that AI-generated contracts comply with these provisions, and how can that be guaranteed? AI often operates with algorithms that are not fully auditable or understandable by ordinary users, making it difficult to ascertain whether the system actually complies with applicable legal requirements, especially when AI is designed or operated by foreign parties or through global platforms.

The main problem faced is the unclear law status of electronic contracts drafted by AI. The absence of regulations that specifically address the law subject of contracts made by AI systems leads to law uncertainty for the party involved in such transactions. This lack of clarity raises further questions as to who should be liable in the event of a breach of contract or loss in a transaction involving AI. Can AI be considered as a law entity in making binding agreements or will the party that develops and operates the AI be responsible for the obligations arising? It is important to understand the law validity of electronic contracts drafted by AI in Indonesia and the implications for business actors and consumers.

This problem is exacerbated by the lack of adequate understanding from many parties, including the government, business actors, and consumers, regarding what constitutes a valid contract related to the use of advanced technology such as AI. Governments, business actors, and consumers often do not fully understand how AI can play a role in drafting or executing contracts, and the legal consequences of such actions. This ignorance can have serious implications, such as the inability of relevant parties to identify potential violations, legal liabilities, or relevant consumer protection provisions in digital transactions. While Indonesia has regulations related to electronic transactions, there are no provisions that specifically regulate and clarify the role of AI in the creation of electronic contracts. The existence of more specific and clear rules will be needed to provide law certainty and protect all party involved in the electronic transactions.

Given the importance of this issue, the research on the legal validity of contracts made by AI is very important to be carried out, especially in the face of the rapid development of technology that is inevitable. The use of AI in the creation of electronic contracts is no longer speculative, but has begun to be implemented by business actors to improve transaction efficiency. If not properly regulated, this law uncertainty has the potential to cause harm to consumers, as well as harm the industry in terms of trust and transaction certainty. This discussion needs to be conducted so that law arrangements in Indonesia can keep pace with technological developments and provide a clear law basis for electronic contracts involving AI.

The purpose of this study is to analyze the validity of electronic contracts generated by AI in the Indonesian law system, as well as to identify potential law issues that may arise from the use of AI in contract creation. This study is expected to provide insight into how Indonesian law accommodates technological developments in the field of electronic transactions, as well as provide recommendations to improve the existing law framework in order to provide better law protection for all party involved.

RESEARCH METHOD

The research method used in this study is a library research approach with a focus on law research. This approach is conducted by analyzing various relevant literature, including laws, regulations, scientific journals, books, and articles that discuss electronic contracts, AI, and the perspective of Indonesian law. This literature study aims to obtain a comprehensive understanding of the validity of electronic contracts drafted by AI under Indonesian law. The main data sources come from applicable laws and regulations, such as Law Number 11 Year 2008 on ITE which was updated with Law No. 19/2016, and Law Number 27 Year 2022 on Personal Data Protection. The literature used also includes opinions from law experts and previous studies on electronic contracts and AI from a law perspective, to dig deeper into the law issues (Suteki, 2015).

In this study, the analysis was conducted using the normative method, which emphasizes the research on law norms applicable in the Indonesian law system (Ibrahim, 2006). This study focuses on analyzing the compatibility between existing law provisions and technological developments, especially in terms of the acceptance of electronic contracts made by AI. Other data sources used include academic works that discuss cyber law and electronic contracts, such as the book "Introduction to Law and Legal Method" by O'Sullivan and Healy (2017), as well as articles in relevant law journals.

This study also reviews literature on AI regulation and its implications for contract law. This analysis is expected to provide a clear picture of the validity of AI contracts and contribute to the development of Indonesian law in the face of rapidly evolving technological challenges.

RESULT AND DISCUSSION

The rapid development of information technology has changed various aspects of life, including the way we interact in the business world. One innovation that is now increasingly being applied is the use of AI in the process of creating electronic contracts. AI can replace most manual processes in contract drafting, such as legal document analysis, clause customization, and contractual risk management. AI has the ability to process data very quickly and efficiently, enabling automatic contract creation without human intervention. The AI system can automatically draft contracts based on pre-set templates, take into account applicable regulations, and adjust the contents of the contract to the transaction data received. This opens up great opportunities to improve the efficiency of business transactions.

AI is a field of science that combines various disciplines, such as information, logic, cognition, thinking, systems, and biology. It is applied to knowledge processing, pattern recognition, machine learning, and Natural Language Processing (NLP). AI has been used in various sectors, including in automated programming, expert systems, knowledge systems, and intelligent robotics. Besides requiring logical and artificial thinking skills, AI also integrates emotions as an integral part. Further innovations in AI not only have the potential to strengthen computers' logical reasoning capabilities, but also give them the ability to feel and respond to emotions. AI is a technology developed to enable computers to mimic human intelligence in aspects of information capture, modeling, storage, and decision-making in a human-like manner. The existence of AI brings great changes in the computer world, as its intelligence is getting closer to the human brain's ability to process data and solve problems (Giuffrida et al., 2017).

The premise of AI focuses on trying to teach computers to perform tasks commonly performed by humans, with even more optimized results. The implementation of AI in contract drafting has shown significant progress, allowing AI systems to draft, examine, and analyze contracts efficiently. This development also presents law issues regarding the validity of AI-generated contracts. In Indonesia,

positive law regulates the provisions on the validity of contracts, including in article 1320 of the Civil Code of Indonesia, while the law basis of AI in Indonesia involves several elements, including the ITE Law that regulates the utilization of information technology, the Copyright Law that deals with copyright in AI code, and regulations on the protection of personal data. There are also regulations that are specific to certain sectors, such as in health and finance. In order for a contract drafted by an AI to be recognized as valid, it must meet the requirements set out in the regulations (Nguyễn, 2019).

The issue of the validity of electronic contracts made by AI under Indonesian law is increasingly important and relevant along with the progress of the current digital era. Friedman (2001) states that a contract is a set of rules that only regulates certain aspects of the market and certain types of agreements. Friedman argues that contracts only regulate certain parts, so they are more about certain agreements between related party. In Indonesian positive law, the regulation of contracts is contained in Book III, Second Chapter of the Civil Code, which is regulated in Article 1313 of the Civil Code, which states, "An agreement is an act in which one or more people bind themselves to one or more people." A contract can only be valid if it is declared valid by law, and the validity of the contract is regulated in article 1320 of the Civil Code of Indonesia which includes: 1) The existence of an agreement; 2) The law capacity; 3) The existence of an agreed object; and 4) The existence of a legitimate cause or not contrary to the law. Erman Rajaguguk states that there are ten principles or principles that need to be considered, namely the use of terms, freedom of contract, principles regarding offer and acceptance, good faith, risk transfer, compensation, emergencies, reasons for termination, choice of law, and dispute resolution.

The rapid development of information and communication technology, especially in the field of AI, has opened up new opportunities in the world of business transactions, especially in making electronic contracts. Electronic contracts themselves are regulated in Law Number 11 Year 2008 on ITE, which was updated with Law Number 19 Year 2016. This law provides a law basis for the enforceability of electronic transactions, but does not explicitly regulate the creation of contracts by AI. Indonesia's contract law, which currently still refers to provisions inherited from the Dutch colonial era, needs to be updated to cover modern aspects, such as electronic contracts and the involvement of AI. The principles of good faith and adaptation in public and private contracts need to be applied to ensure the validity of AI-generated contracts.

It is important to explore how the Indonesian law system views AI-generated contracts and their law implications for the party involved.

Traditional contract law essentially requires two main elements for a valid contract: an agreement between the party and the party ability to act lawfully. This agreement contains elements of free will that meet each other, while legal capacity ensures that the parties to the agreement are legally authorized to assume rights and obligations. In traditional contracts, these two elements are usually very clear, as they are made between individuals or legal entities that are legitimate in the eyes of the law. In electronic contracts, this agreement is generally reflected in the consent digitally given by the party through the platform that facilitates the transaction. In contracts drafted by AI, the party involved in the agreement are not necessarily humans or entities recognized as law subjects. For example, AI does not have the law capacity to perform law acts, which raises a big question as to who can be considered as a lawful party in contracts generated by such systems.

The ITE Law provides regulations regarding the ratification of electronic contracts, but does not provide a clear definition of the role or law status of AI in such transactions. Article 5 paragraph 1 of the ITE Law states that electronic information and/or electronic documents generated through electronic transactions are considered valid and have the same law force as conventional documents if they fulfill the applicable provisions of law. It does not further stipulate who is responsible if there is a violation or discrepancy in the implementation of the contract made by AI. In this case, there is a blank space that needs to be filled to provide law clarity regarding who is responsible for contracts made by this artificial system.

One important aspect that needs to be considered in this regard is the protection of consumer rights. If an electronic contract drafted by AI involves consumer personal data or other sensitive information, then the protection of such personal data must be guaranteed in accordance with applicable regulations. Law Number 27 Year 2022 on Personal Data Protection is the basis of the law that regulates the protection of personal data in Indonesia. AI-generated contracts must comply with provisions regarding the processing of personal data, including the obligation to obtain explicit consent from consumers regarding the use and collection of their data. Failure to comply with these provisions may pose law risks to party utilizing AI systems for contract generation.

In terms of the responsibility of the law, there is still no regulation governing who will be responsible if the contract produced by AI causes harm or violates the law. In traditional contract law, the party who violates the agreement can be sued by the other party who is harmed. In the case of AI-generated contracts, it is difficult to determine who can be held liable. AI's lack of legal capacity means it cannot be made a party to a lawsuit or subject to legal sanctions. The question arises as to who should bear the responsibility when contracts made by AIs cause problems. Is it the AI developer, the platform provider, or the party operating the system? This lack of clarity creates a law vulnerability that can be detrimental to the party involved in the transaction, especially consumers who may be harmed due to non-conformity in contract execution. It is imperative for the government and policymakers to immediately draft clear and firm regulations regarding legal liability in contracts involving AI.

Oversight of transactions involving AI in contract generation is also an important issue. The Indonesian government needs to introduce regulations that can monitor and verify electronic transactions using AI to ensure that the resulting contracts comply with existing law principles. Without adequate oversight, the possibility of misuse of technology and exploitation of the ignorance of consumers or other party increases. Rules that place responsibility on the party "controlling" the AI will help provide law clarity, especially in the case of electronic contract disputes (Wardani & Afriansyah, 2020). It is important for regulators to formulate policies that can accommodate the development of AI technology within the existing law framework, as well as provide adequate protection for consumers and other party involved in electronic transactions.

Based on the ITE Law, a valid electronic transaction must meet the same basic principles as a conventional transaction, namely the existence of an agreement between the party, which is realized in the form of a valid electronic signature and meets certain conditions. Contract generation by AI, the electronic signature generated by the AI system needs to be further analyzed to ascertain whether it can meet the standards of valid law consent. Is the consent generated by AI equivalent to the consent personally given by a human individual or are there other elements that need to be considered in ensuring its validity? The need for special rules to protect consumers and users in electronic contracts involving AI, especially in the e-commerce sector, which is prone to risks such as fraud and contract non-compliance (Agustin & Kurniawan, 2017).

Another issue that must be considered is the potential losses or disputes that can arise from AI-generated contracts. While the AI system is designed to make decisions automatically based on existing data, it can still experience errors or discrepancies in generating contracts. In the event of a dispute related to an AI-generated contract, what is the settlement procedure? This may lead to law uncertainty regarding dispute resolution involving AI, as there are no clear provisions governing such dispute resolution mechanisms in the Indonesian law system. The role of AI in electronic contract dispute resolution can be further considered by law authorities in Indonesia, while maintaining the principles of fairness and transparency at every stage of the law process (Salsabil et al., 2022). With proper regulation, disputes arising from AI-based contracts can be resolved fairly and efficiently without compromising the rights of the parties involved.

Meanwhile, in some international regulations, there have been attempts to regulate the existence and validity of contracts drafted by automated systems or AI. For example, in EU law, there are provisions governing contracts made by automated systems in the General Personal Data Protection Regulation (GDPR) and in other law instruments. These efforts show that the legal aspects of automatically drafted contracts are already an important concern at the international level. Indonesia, as a country that is also committed to rapidly developing digital technology, needs to formulate clear and comprehensive rules regarding the use of AI in contract drafting to keep up with these global developments. This is a challenge because technology continues to develop while the rule of law lags behind. Without appropriate regulations, legal uncertainty will arise, especially in terms of contract validity, liability in the event of a breach, and protection of consumer rights.

The rapid development of technology, especially artificial intelligence (AI), has created various innovations in the business world, including in the process of creating electronic contracts. These advancements have also raised new legal challenges that have not been fully anticipated by the Indonesian legal system. With the rapid development of technology, Indonesian law needs to immediately respond to new challenges that arise, one of which is related to the use of AI in making electronic contracts. The development of regulations that are able to provide clarity on who is liable in contracts made by AI, as well as how to protect consumer rights, is very important. Without adequate regulation, the potential for misuse of technology and losses suffered by consumers will increase.

With the development of AI technology, the potential for AI-generated electronic contracts to improve efficiency and optimize business transaction processes is increasingly apparent. AI is capable of drafting and processing contracts in a short period of time based on certain data and parameters without direct human involvement. This certainly provides added value in terms of speed and effectiveness of business transactions. To realize this, the law must be able to keep pace with the development of this technology so that there is no uncertainty in its implementation. The validity of AI-generated electronic contracts in the current Indonesian law system still requires more attention, especially in relation to the application of the basic principles of applicable contracts, such as agreement, capacity of the party, and authority to act.

In the fast-paced digital age, the use of AI in electronic contract generation has become an attractive option due to its efficiency. AI can draft and execute contracts in seconds, reducing the cost and time involved in business administration processes. It is important to note that while technology can speed up the process of contract generation, it should not neglect the protection of consumer rights and ensure that the principle of fairness is maintained. In the absence of clear regulations, AI-generated contracts may not provide adequate protection for the party, especially consumers, who are vulnerable to potential abuse and information discrepancies. The existence of detailed regulations will provide a strong foundation to ensure that electronic transactions using AI are conducted with transparency, accountability, and responsibility. With such regulations in place, the electronic transaction process will take place within a fair and trustworthy legal framework. This is important so that technological innovation not only drives economic progress, but is also in line with legal protection and social justice principles.

The future of AI-generated electronic contracts in Indonesia depends heavily on efforts to adapt existing regulations to the ever-advancing technological developments. The development of comprehensive and technology-adaptive laws will provide law certainty for any transactions involving AI. It is important for policymakers to design regulations that not only regulate the validity of AI-based electronic contracts, but also regulate aspects of legal responsibility, transparency of the contract-making process, and protection of consumer rights. With clear regulations in place, the society and business actors can feel more secure in transacting electronically, thus creating a healthier and more accountable business climate.

CONCLUSION

In conclusion, although electronic contracts drafted by AI have great potential in accelerating and facilitating business processes, their validity in the perspective of Indonesian law still faces a number of challenges. Existing regulations, especially those contained in Law Number 11 Year 2008 on Electronic Information and Transactions, have not explicitly accommodated the existence of AI in contract drafting. This creates law uncertainty regarding who is responsible for AI-generated contracts and how consumer rights can be adequately protected in transactions involving this technology. Without clearer regulations, the potential for misuse of technology and harm to consumers will continue to exist.

Without adequate regulation in the law world, the technology industry and digital businesses in Indonesia will potentially be at risk of facing law uncertainty that can reduce consumer and business confidence. Uncertainty regarding the legal status of electronic contracts made by AI, legal liability, and consumer protection can lead to hesitation in digital transactions. Conversely, with proper regulation of AI-generated electronic contracts, Indonesia can develop a more stable and trustworthy digital ecosystem, which in turn will encourage healthier growth of the digital economy and information technology sector. Proper regulation will help create a conducive business climate, attract investment, and strengthen the competitiveness of the national digital industry in the global arena.

A suggestion to face this challenge is that the government needs to immediately formulate more specific regulations regarding electronic contracts prepared by AI. Clear rules on the validity of the contracts, as well as who is responsible for them, will provide law certainty for the party involved. This legal certainty is very important so that business actors and consumers can conduct electronic transactions with security and confidence. The regulations should also ensure adequate protection for consumers, especially in relation to their personal data and rights in electronic transactions. Comprehensive regulations guarantee legal certainty and create a fair, transparent and responsible digital environment for all business actors and the wider society.

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