# Application of Artificial Intelligence as Evidence in Indonesian Courts

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**ARTICLE INFO**

**ABSTRACT**

Artificial Intelligence is one of the technologies that exist in the world and can resemble humans while Artificial Intelligence can do what humans actually do such as Learning, Planning, Critical Thinking, Problem Solving, and many more. Because of this, some states use it in court. Artificial Intelligence uses it as evidence to prove multiple cases and makes it easier for prosecutors, judges and lawyers to work. This study aims to examine the application of Artificial Intelligence as evidence in courts in Indonesia. This research is literature review research. Data collection is carried out by reviewing the literature related to the application of Artificial Intelligence as evidence in courts in Indonesia. Various information was collected from various sources such as books, papyrus, articles, research reports, and so on. Various information that has been collected is then reviewed, formulated, analyzed, and outlined in writing. Data collection is done by using documentation techniques, namely by reading, reviewing, studying, and noting the essence of the literature. The results show that in Indonesia there is no law on Artificial Intelligence so it will be difficult to use it in court as evidence because according to several sources in the procedural law there are some legal evidence that can only be used in court. However, crimes that occur in Indonesia are usually related to technology, so all governments must form a law on Artificial Intelligence.

## 1. INTRODUCTION

Industry 4.0 is more than just the invention of new technology however it's about the major improvisation in manufacturing efficiency (Bhattacharyya, 2018; Hang et al., 2018). Therefore, every great people have said that this Era will be the biggest change of the Technology and Internet era (Butow & Hoque, 2020; Rodrigues, 2020). The one that already exist is Artificial Intelligence (AI). Artificial Intelligence has the highest existence in this century, each country is competing to create one of the machines that will be able to replace the position of humans in certain sectors. The AI system will demonstrate at least some of the following behaviors associated with human intelligence, for example: Learning, Planning, Problem Solving, Perception, motion, manipulation, creativity and social intelligence and many more (Atiyah & Izzah, 2019; Badri & Salehi, 2017). One of the Example about Artificial Intelligence is SIRI, the application in Apple while we use our voice it will answer what we said.

There are two broad types for Artificial Intelligences where there are Narrow AI and General AI. Narrow AI is where we have been that means Narrow AI is "specific type of Artificial Intelligence in which a technology can defeat the humans in some very narrowly defined tasks but not at all. If Narrow AI can only what can human do, however the General AI or as known as Strong AI allows a machines to apply not only the skills but also the knowledge in different contexts, it seems like copying what human do into some machines and it could be dangerous and nowadays this Strong AI will use by all of the countries around the world. However, it would be better if AI used in some suitable place for example in Trial (Alarie et al., 2018; Bennett Moses, 2017).

When we look about the function of AI it would be helpful if AI can be used in the trial. Not as prosecutor or judges but as evidence. It would be helpful because according to several issues, if the evidence doesn't have a strong proof the trial can't be continued or the suspect got the lenient punishment or vice versa. For example, on 3 March 2021 in Indonesia there was a man called John Kei, a murdered. He was arrested while did some murdered to a man however in the trial, the lawyer thought that the evidence was not strong enough to prove that John Kei was fault therefore the John Kei's lawyer request that John Kei should be free. There was another example in some place in Bali where the headmaster of

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elementary school did some pervert things to his student however the evidence still not found therefore the trial can't be continued. When we look those case, it would be easier if AI can be used it as evidence in the trial because it would be easier for the officer to find the evidence and continue the trial or give the punishment.

## 2. METHODS

This research is a library research, namely research conducted by searching for reading materials that are relevant to the application of Artificial Intelligence as evidence in Indonesian Courts. Literature study is all the efforts made by the author to collect information relevant to the topic or problem that will be or is being written (Lichtman, 2013). This information can be obtained from scientific books, research reports, scientific essays, theses and dissertations, regulations, regulations, yearbooks, encyclopedias, and other written sources both printed and electronic (Hamzah, 2019). Various information was collected from various sources such as books, papyrus, articles, research reports, and so on. Various information that has been collected is then reviewed, formulated, analyzed, and outlined in writing. Data collection is done by using documentation techniques, namely by reading, reviewing, studying, and noting the essence of the literature (Sugiyono, 2015). This writing is descriptive in nature, namely the author describes systematically, factually and actually about the application of Artificial Intelligence as evidence in Indonesian Courts.

## 3. RESULTS AND DISCUSSIONS

When discuss about Artificial Intelligence it was intersect with technology, explosive development of technology made all of people around the world rely on technology. Therefore, it's no wonder we see a lot of people who are too focused on their own gadgets. On that case, the one that every people too focused on their own gadgets because some technology it's called Internet. Internet have relationship with Artificial Intelligence because some of the application in the internet using some framework of AI therefore the application can go smoothly. Furthermore, to regulate the Internet users it needs some regulations and it called as Cyber.

The regulation about Cyber in Indonesia regulated in ITE Law. ITE Law regulated about the Criminal or can be called as Cyber Crime or the using of Cyber in Civil. Therefore, the ITE Law can use in this trial as Civil or Criminal. The ITE Law was first passed in 2008 and underwent a change in 2016. There are four cases which has been revised there are: decrease in punishment & no containment; right to be forgotten; deletion of Information that Violates the Law; and wiretapping must be with the permission of the police or the persecutor's office. However, in ITE Law there wasn't the regulations that mentioned about the Artificial Intelligence including the other regulations that governing about the Artificial Intelligence. That was commonplace because AI in Indonesia was relatively new and not every people know how to operate that, it's very different with the South Korea or Japan that use AI as their tools. Although, there are some pertaining to the use of Artificial Intelligence, it was explaining on Article 44 point (b) on ITE Law mentioned: "Other evidence in the form Electronic Information and/or Electronic Documents"

Electronic Information can be from AI therefore indirectly it was focused on AI. However, the function on Artificial Intelligence in the courts not only that, there are several functions Artificial Intelligence can do if the government allow to use it, while they are: (a) Respect for Fundamental Rights, it was ensure that the design and implementation of AI services and tools are compatible with fundamental rights such as privacy, equal treatment and fair trial; (b) Equal Treatment, AI can avoid the discrimination between individuals and groups of individuals; (c) Data Security, this is the important things, sometimes data can be leaking and made the court not legitimate; (d) Transparency, AI can allow data processing methods more transparent and comprehensible because some algorithm or the framework were design to do that. This functions were helpful if AI can be used in the court, therefore some countries has allowed AI to use in the court.

Artificial Intelligence in some countries have develop strongly, especially in Asia. India and China become two countries that being biggest country of the Artificial Intelligence development and made the robotization. Those robots replace the work of human; therefore, it looks simple. United States also have the biggest Artificial Intelligence and with India and China, US also made those robots. Plus, the United States already made the Regulations about Artificial Intelligence in detail.

European countries that are members of the European Union have developed the Artificial Intelligence in their area. The European Union can be considered as front runner with regard to establishing a framework on ethical rules for AI. Because without Legal Certainty, the rule of law will collapse into ethics and come to depend on the ethical inclinations of the power and authority, therefore The European Parliament have request to European Commission to make the recommendation about the

civil law rules on robotics on January 2017. Therefore, the Parliament have made the code of ethics for robotics and engineer to make the Plan go as well as they already planned. On 2019, the European Commission that endorsed by the Council of European Union published a coordinated plan to know about the National Strategy in each EU Members. The Guidelines about the Artificial Intelligence that have been made by the European Union is purposed to AI Stakeholders that developing, deploying, implementing, using or being affected by Artificial Intelligence in European Union itself, and those stakeholders have use this Guidelines while they using, developing the system of AI in European Union (Hildebrandt, 2020; Relling, 2020).

Evidence was needed in every trial even in Civil or Criminal trial. It needed because to prove the suspect in Trial was fault or not. In Civil Procedural Law there are some of Source of Civil Procedural Law while they are: (a) HIR (*Het Herzine Indonesisch Reglement*); (b) Rv. or BRV (*Reglemant op de Burgerlijk Rechtsvordering*); (c) R.O. (*Reglement op de Rechtsteelijk Organisasi in het beleid der justitie in Indonesie;* (d) Law Number 48 of 2009 about Judicial Power; (e) Code of Civil Law or Bugerlijk Wetboek voor Indonesie (B.W); (f) Law Number 1 of 1974 about Marriage; (g) Law Number 8 of 2014 about General Court; (h) Law Number 3 of 2009 about Supreme Court; (i) Yurisprudence; (j) Customary Law; (k)Treaty; (l) A Growing Legal Doctrine; (m) Supreme Court Regulations and Supreme Court Circular Letters. Those source of Civil Procedural Law was used it as guidelines in the court with judge, prosecutor or lawyer including to find the evidence (Hildebrandt, 2020; Relling, 2020; Rusyadi, 2016).

However, they are also the sources of Criminal Procedural Law, while the Sources are: (a) Article 24 The Constitution of the Republic Indonesia Year 1945; (b) Article 24 (1) A The Constitution of the Republic Indonesia Year 1945; (c) Law Number 8 of 1981 about Criminal Procedure Code; (d) Law Number 14 of 1970 about the main provisions of the judicial authority; (e) Law Number 3 of 2009 about Supreme Court; (f) Law Number 8 of 2014 about General Court; (g) Law Number 2 of 2002 about Indonesian Republic Police; (h) Law Number 16 of 2004 about Prosecutors of the Republic Indonesia; (i) Law Number 18 of 2003 about Advocate (j) etc. When we look the sources of Civil Procedural Law and Criminal Procedural Law it was quite similar however they must to be different in some sectors and those sectors including the evidence in the court.

Criminal Procedure Law using KUHAP as their guidelines to run the trial, therefore every step from Investigation until Adjudication it was according to KUHAP, including to find the Evidence. The Valid Evidence according to Article 184 (1) KUHAP are: Witness Statement; Expert Statement; Letter; Instructions; Statement of the Defendant. According to Article 185 KUHAP, Witness Statement is the evidence that witness declare in the court or in the other hand according to Article 1 point 27 KUHAP declare that: Witness statement is one of the evidence in the criminal case in the form of witness statements regarding an event that he heard, saw and experienced himself by mentioning the reason for his knowledge (Munir & Nudirman, 2017; Putra, 2018; Rahmad & Riadi, 2019).

The Witness statement was the most important evidence in Criminal Case, therefore there is no criminal case that escapes the proving tools evidence of witness testimony. Nevertheless, the witness must to be more than one therefore it needs at least two witness to prove the truth. The Expert Statement was the expert in some subject or sector that declare in the court or in the other hand according to Article 1 point 28 KUHAP, the Expert Statement is the statement from someone that have special skills about the things that necessary to make the criminal case solved, for example if the case about narcotics therefore the expert is the doctor who more know about the narcotics. Evidence was very helpful for the investigator to investigate the case that happening on that moment. However, there are other Evidence that called Evidence Instructions. According to Article 188 (1) KUHAP that Evidence Instructions is "Actions, events or circumstances which, because of their compatibility, either between one another, or with the criminal act itself, indicate that a criminal act has occurred and who the perpetrator is". This Evidence Instructions was one of the valid evidence that mentioned in KUHAP, therefore it was necessary to use it in some trial.

According on Article 284 RBg/164 HIR, in Civil Procedure Law there are 5 that can be called as Evidence there are: Written Evidence, Witness Evidence; Proof of Prejudice; Evidence of Acknowledgment; and Proof of Oath. However, in especially in Article 1866 KUHPerdata while they are: Proof of writing; Evidence with witnesses; Prejudices; Recognition; and Oath. If we look the explanation about the evidence in RBg or in KUHPerdata have similar things however the different only about the explanation on evidence itself. However, beside the explanation from the KUHPerdata and RBg about the Evidence, there are other evidence that can be used in Civil Procedural Law while it is Judge's knowledge Evidence tool. Judge's Knowledge in this site is something or situation that known by the judge itself in the court, for example the judge seeing by himself when did some local inspection and it regulated on Article 180 RBg/Article 153 IHR. Local inspection that have been mentioned before is the case examination by the judge because of his position that doing outside the court or the seat of the court and the function is to

made the judge seeing by himself and obtain an overview or information about the event that become the dispute.

Artificial Intelligence is something new in Indonesia and unfortunately there wasn't any Law or regulations that regulate or explain about Artificial Intelligence. It is unfortunate because we already facing the Revolution Industry 4.0 and some of the countries already made the regulation about using the Artificial Intelligence in the court. From the explanation of KUHAP or KUHPerdata, the author thought that Artificial Intelligence can't use it as evidence because there are valid evidences both in Civil Procedural Law and in Criminal Procedural Law. However, according to Article 5 (1) of ITE Law stated that "Electronic Information and/or Electronic Document and/or the printout is valid legal evidence" (Hildebrandt, 2020; Relling, 2020; Ward, 2009).

The stated from the ITE Law concern that Artificial Intelligence can be used as Legal evidence because AI can be said as one of Electronic Information. That was supported with the statement on Article 6 that stated: "In the event that are provisions other than those regulated in Article 5 Paragraph (4) which are requires that an information must be in written form or original, Electronic information and/or Electronic Documents are deemed valid as long the information contained in them can be accessed, displayed, guaranteed its integrity, and can be accounted for so describes a situation". It made the opinion that Artificial Intelligence can be used in the court because it would be helpful to explain the description of the case clearly however it still difficult to find the people who are experts in Artificial Intelligence. Therefore, to supported those, it needs also support from the government, plus the most cases in Indonesia is about technology such as: hacking, defamation, retrieval of personal data it further shows that the development technology was very massive therefore the Artificial Intelligence were needed to solve the problem (Munir & Nudirman, 2017; Putra, 2018; Rahmad & Riadi, 2019).

Even though, Artificial Intelligence wasn't mentioned in ITE Law. however Artificial Intelligence can be input in ITE Law or made the law itself to regulate the AI like United States and South Korea did. Nevertheless, the government have to understand about the Artificial Intelligence and know how to work with that therefore they can use AI as tool to solve the problem and use it in the court.

## 4. CONCLUSION

Artificial Intelligence (AI) is some machines that resembles a human and can do what human do. Facing the Revolution Industry 4.0, all around the world have development the technology that can used in some sectors including in the court. Some of countries like United States, South Korea and European Union have already made the Law about the Artificial Intelligence and use it in the court. However, in Indonesia there wasn't the law that regulate the AI explicitly even in Civil Procedure Law or Criminal Procedure Law. Those Sources both Civil and Criminal Procedure Law explain the valid evidence according to the KUHP and KUHAP. There wasn't the explanation about the technological evidence therefore it was needed and changed it by the government with the purpose made AI can be use it as evidence in the court.

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