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Submission date: 21-Apr-2022 09:38AM (UTC+0700)

Submission ID: 1815976761

File name: JPSP-2022-608.pdf (166.46K)

Word count: 2298

Character count: 13265

Critical Analysis about Legal Evidence in Court in the Justice System in Indonesia

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Abstract

The development on the utilization of information and communication technology in the world society is growing rapidly along with the industrial revolution 4.0. The purpose of this study is to examine readiness of Indonesia in utilizing Artificial intelligence as a form of information and communication technology as legal evidence in court. This legal research uses a conceptual approach and legislation. The results of the study showed that although Indonesia has already a law on electronic technology information and electronic evidence as a deed which is one of the strongest evidence in civil procedural law, but in the trial practice it still cannot be used optimally due to the readiness of the legal or justice system) in Indonesia which has not fully supported the utilization of Artificial intelligence. The recommendation given are that the government needs to prepare regulatory substances related to the utilization of Artificial intelligence in information and communication technology in judicial practice. Secondly, they have to reform the structure of institutions and bureaucratic systems to be more open. Lastly, they have to construct a means of realizing a good legal culture to face the industrial revolution 4.0.

Keywords: Artificial intelligence, evidence, revolution 4.0., justice system.

INTRODUCTION

Artificial intelligence is the science and engineering of making intelligent machines involving mechanisms to carry out a task using a computer (Hedblom et al., 2016). Artificial intelligence is a technology that allows computer systems, software, programs and robots to "think" intelligently like humans (Zhou et al., 2016). It is a machine created by humans through complex programming algorithms.

One of the positive impacts of artificial intelligence is increasing the effectiveness of work (Meijer & Bolívar, 2016). Systems with artificial intelligence tend to work faster, more accurately, and have fewer errors caused by fatigue and carelessness. Although it has a positive impact, it also has a negative impact, namely the major changes to the work system of mankind (Mustapha, 2018). When a number of work done by machines using artificial

intelligence, it is feared that it will shift the human workforce and cause unemployment (Wijayanti & Surabaya, 2021). The existence of machines with artificial intelligence may enlarge social inequality (Siti & Wijayanti, 2021). The investors as well as artificial intelligent companies will reap a lot of profits, while people who are replaced by machines will experience poverty (Shalihah et al., 2021).

The development of the utilization of information and communication technology in the world society is growing rapidly along with the industrial revolution 4.0 (Schmitt, 2019), (Autor, 2019). This situation was accelerated by the situation of the Covid-19 pandemic (Rothan & Byrareddy, 2020) (Zhang et al., 2020) which forced social restrictions in the form of reducing meetings to minimize and stop the spreading of Covid-19 by working from home (Sun et al., 2020). The use of artificial intelligence has been

used in the world in all fields, including the judiciary (Shereen et al., 2020). This paper is based on the need to provide guarantees of legal protection for users of legal services, especially in the judiciary for the utilization of artificial intelligence as evidence in court. The development of the use of information and communication technology in the world community is growing rapidly along with the industrial revolution 4.0.

Methods

This study aims to examine Indonesia's readiness to use Artificial intelligence as a form of information and communication technology as evidence in court. To meet with the research problem, this legal research uses a conceptual approach and legislation (Himma & Bix, 2017).

Result and Discussion

The results of this study indicated that there has been legal protection from the government concerned in using artificial intelligence as a form of information and communication technology, it cannot be used as evidence in trials in the electronic information technology law (Idemobi, 2017) (Harmon & Silberman, 2018). Although Indonesia already has an electronic information technology law and electronic evidence as a deed which is one of the strongest evidence in civil procedural law, but in practice the trial still cannot be used optimally. This is related to the readiness of the legal system (judicial system) in Indonesia which has not fully supports the use of Artificial intelligence.

Since the promulgation of Law Number 11 of 2008 concerning Information and Electronic Transactions there have been additional types of evidence in court, namely electronic information and/or electronic documents. In the general provisions of the Information and Electronic Transactions Act, can be seen that types of electronic data such as writing, photos, sounds, images are electronic information while types of electronic information such as writing, photos, sounds, images stored on flash that can be opened via computer devices are electronic documents.

The transfer of written data into the form of electronic data has actually been regulated starting in 1997 in Law Number 8 of 1997 concerning Company Documents. Technological advances have made it possible for notes and documents made on paper to be transferred into electronic media or created directly in electronic media. Company documents can be transferred onto microfilm or other media and are legal evidence. This means that company documents which are in the form of electronic documents are legal evidence.

The legal requirement for an electronic document is that it uses an electronic system in accordance with the provisions stipulated in the Information and Electronic Transactions Act, particularly in Article 6 of the Information and Electronic Transactions Act, namely "Electronic information and/or Electronic Documents are considered valid as long as the information contained in them can be accessed, displayed, guaranteed for its integrity, and can be accounted for." thus explaining a situation. In addition, there are also specificities in the implementation of electronic certification and electronic systems as well as electronic transactions.

Unfortunately, in current practice, it is still limited to electronic documents in the form of decisions and indictments that are included on compact discs, flash or sent via email as a complete application for cassation and review. Artificial intelligence is changing every aspect of our lives. Artificial intelligence affects the way we work and socialize as well as legal services. Artificial intelligence promises to help solving global challenges such as access to quality justice (Doshi-Velez et al., 2017). But artificial intelligence also brings real challenges to governments and citizens. As artificial intelligence permeates economies and societies, what kind of policy and institutional framework should guide the design and use of artificial intelligence, and how can we ensure that it benefits society as a whole, particularly in the judiciary.

The definition of artificial intelligence continues to grow, here are parameters based on the Organization Economic Co-Operation Development / OECD on the utilization of artificial intelligence. A world organization consisting of 35 developed countries that aims to establish cooperation with developing countries

to improve the economy (Servais, 2014). OECD parameters are artificial intelligence OECD principles, namely values-based principles, human-centred values and fairness, transparency and explainability, robustness, security and safety, accountability (Kawaguchi & Murao, 2014). The OECD also makes recommendations to policy makers that Governments should facilitate public and private investment in research & development to spur innovation in credible artificial intelligence (Pula & Berisha, 2015). Government should promote an artificial intelligence ecosystem that is accessible with digital infrastructure and technology, as well as mechanisms for sharing data and knowledge (Bonoli, 2010). They must create a policy environment that will pave the way for the adoption of trusted artificial intelligence systems. They must equip people with artificial intelligence skills and support workers to ensure a fair transition. They must work together across borders and sectors to share information, develop standards, and work towards responsible artificial intelligence management.

Based on the principles and recommendations of the OECD, the judicial system in Indonesia should be based on the framework of the principles and recommendations of the OECD. Indonesia has implemented e-court although it has not yet been fully implemented. E-court services include e-Filing (Online Court Registration); e-Payment (Online Case Fee Payment); e-Summons (online summons of parties) and e-Litigation (online courts). The problem of an unstable internet connection is one of the most important obstacles that the use of e-court is not maximized.

In addition to basing the artificial intelligence framework from the OECD in the use of artificial intelligence as evidence in court, it is appropriate for us to apply the theory of the legal system from Fiedman (Wijayanti et al., 2017), namely a legal system will be perfect if the substance and structure have been made on the basis of Values-based principles, Human-centred values and fairness, Transparency and explainability, Robustness, security and safety, and Accountability. If the substance/rules and policies and structures of using artificial intelligence as evidence in court are good, it will be easy to create a legal culture using artificial

intelligence in the implementation of a good judicial process.

Conclusion

The conclusion of our research is that the utilization of artificial intelligence as evidence in trials in the justice system in Indonesia is still limited to electronic documents in the form of decisions and indictments that are on compact discs, flash / sent via email as a complete application for cassation and review.

Recommendation

The government needs to prepare regulatory substances related to the utilization of Artificial intelligence in information and communication technology in judicial practice. The second, they have to improve the structure consisting of institutions and bureaucratic systems to be more open. The last, they must create a means of realizing a good legal culture in the face of the industrial revolution 4.0.

Acknowledgement

This research received no specific grants from any funding agency.

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