# THE CONCEPT OF LEGAL NORMS OF PERSONAL DATA PROTECTION RELATED TO DATA PROCESSING IN THE FORM OF ARTIFICIAL INTELLIGENCE

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| Informasi | Abstract |
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| Volume   : 2<br>Nomor   : 1<br>Bulan    : Januari<br>Tahun    : 2025<br>E-ISSN  : 3062-9624 | *Issues examined in this study: first, How is the protection of personal data related to data processing in the form of artificial intelligence in Indonesia. Second, what is the concept of the existing legal norms of personal data protection related to data processing in the form of artificial intelligence. The method of research is carried out in literature with the type of normative legal research, according to dogmatic issues related to the emptiness of norms. Findings in this study found the protection of personal data related to data processing in the form of artificial intelligence in Indonesia there are two views. In this regard, the protection of personal data in data processing through artificial intelligence in Indonesia has no legal certainty to be protected. Because legal certainty refers to the application of clear, fixed, consistent and consequent laws whose implementation cannot be influenced by subjective circumstances. The concept of existing legal norms for personal data protection related to data processing in the form of artificial intelligence special arrangements stipulated in Law Number 27 of 2022 can be said to have accommodated personal rights. However, the existing condition of artificial intelligence norm is only legally domiciled as a legal object, because it is needed by the party responsible for the actions of artificial intelligence. Legal liability for the actions of artificial intelligence can be charged or imposed on the organizers of artificial intelligence.*<br><br>***Keywords :*** *Personal Data Protection, Data processing, Artificial Intelligence (AI), Data Privacy Regulations* |

## A.    INTRODUCTION

The development of information technology and the potential of the digital economy is currently growing rapidly. Although the right to privacy is not an absolute human right, legal protection of the right to privacy remains very important in today's digital economy. However, the rapid growth of information technology and the opportunities of today's digital

economy are accompanied by several negative consequences, including threats to the right to privacy and personal data of citizens.[1]

Privacy is not explicitly stated in the 1945 Constitution of the Republic of Indonesia (hereinafter abbreviated as the NKRI Constitution). However, implicitly the right to privacy is contained in Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia as follows:  Every person shall have the right to the protection of his or her person, family, honour, dignity and property under his or her control, and shall have the right to security and protection from threats of fear to do or not to do something which is a fundamental right.

The concept of privacy was first developed by Warren and Brandheis, who wrote an article entitled The Right to Privacy,' for the Harvard Law School Research Journal. According to Warren and Brandheis, 'with the development and advancement of technology, there is a general recognition that humans have the right to enjoy life.[2] According to Warren and Brandeis, 'Privacy is the right to enjoy life and the right to be left alone and this development of the law was inevitable and demanded of legal recognition.[3]  Privacy is a right of every person to enjoy life and demands his privacy to be protected. [4]  Reasons why privacy rights should be protected according to Dewi S:

1. Building relationships with others, a person must cover part of their personal life to maintain their status at a certain level.

2. A person needs time to be alone in his life, so privacy is very necessary for a person.

3. Privacy is an independent right that does not depend on other rights, but this right is lost when a person reveals private matters to the public.

4. Privacy also includes a person's right to enter into a domestic relationship, including how a person marries, family and others should not know about the private relationship.

5. Another reason why privacy deserves legal protection is because the harm caused is difficult to assess. The harm felt is more than just physical harm because it interferes with their private life, so if an injury occurs, the victim is obliged to provide compensation. of.[5]

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[1]Ananthia Ayu D, et.al, *Perlindungan Hak Privasi atas Data Diri di Era Ekonomi Digital*, Laporan Hasil Penelitian Pusat Penelitian dan Pengkajian Perkara, dan Pengelolaan Perpustakaan Kepaniteraan dan Sekretariat Jenderal Mahkamah Konstitusi, Jakarta, 2019, 6.

[2]Latumahina, RE, "Aspek Hukum Perlindungan Data Pribadi di Dunia Maya", *Jurnal Gema Aktualita*, 3, No.  2, 2014: 14-25.

[3]Rosadi, SD,  *Cyber Law Aspek Data Privasi Menurut Hukum Internasional, Regional dan Nasional,* (Jakarta: Refika Aditama, 2015), 23.

[4]*Ibid.*

[5]Dewi, S, "Prinsip-Prinsip Perlindungan Data Pribadi Nasabah Kartu Kredit Menurut Ketentuan Nasional dan Implementasinya", *Jurnal Sosiohumaniora*, 19, No. 3, 2017: 206-212.

The guarantee of the right to privacy is also enshrined in other laws, namely Article 29 paragraph (1) and Article 30 of Law Number 39 Year 1999 on Human Rights. Personal data is a term that describes the process or effort of combining privacy and personal data that are separated in different laws and regulations into one separate act. Therefore, protecting privacy and personal data has its place.

As mentioned, the development of information technology and the potential of the digital economy, coupled with the widespread use of Internet technology in the world, have become important factors in the growth of data processing. There is no doubt that the Internet facilitates and accumulates communication between individuals. Recent examples of artificial intelligence (AI) technology, such as 'ChatGPT, developed by OpenAI, has recently become very popular'. During 'Industrial Revolution 4.0, automation and interconnectivity are increasing, the development of this artificial intelligence technology began'. Artificial intelligence is a branch of computer science that studies how to create intelligent machines that can perform tasks equal to or even better than those performed by humans.[6]

ChatGPT, although still in the development stage, can write essays, create business plans, diagnose problems, provide responses and solutions faster than humans, and even replace human roles in programming.[7] Although artificial intelligence can help protect user data, the ChatGPT app recognises its weaknesses. Therefore, it is important to consider the security and data privacy aspects when using artificial intelligence and ensure that best practices are followed to protect user privacy.

While artificial intelligence has all the necessary capabilities to handle billions of parameters and data from various sources, some of them may contain personal data previously included from public sources. It is natural that concerns for privacy and data protection will become increasingly important in the future, especially since artificial intelligence technologies can analyse and process data automatically, en masse, without discrimination and with the possibility of requesting the relevant data in advance.

There is a high risk to individual rights and freedoms in the processing of personal data by artificial intelligence, something very different from the risk posed by data breaches, but also with less 'repercussions' for responsible companies.      Automated collection and

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[6]Nils John Nilsson, *The Quest for Artificial Intelligence: A History of Ideas and Achievements*, (London: Cambridge University Press, 2010).

[7]Tim Publikasi Hukumonline, "Seberapa Siap Kita Melindungi Data Pribadi di Era AI?, diakses tanggal 30 Februari 2024, https://www.hukumonline.com/berita/a/seberapa-siap-kita-melindungi-data-pribadi-di-era-ai-lt642e8aa14441b/.

processing of personal data (personal data, including health and financial data) may lead to data protection issues.[8]  In addition, public awareness is still relatively low in the digital age. Many people are still unaware of how companies access and use their personal data, which can further increase the risk of data misuse.[9]

One of the things to be aware of when using the internet is that all activities performed and websites once visited will be digitally recorded. Therefore, data protection against third-party abuse is a complicated and sensitive issue.  As mentioned earlier, artificial intelligence is based on the processing capabilities of billions of data. Therefore, it is irrational to expect artificial intelligence to sort out data that can be processed to the exclusion of other data, especially in a situation where data can be accessed in real-time via the borderless internet. The development of artificial intelligence raises several questions, including its legal status. Will artificial intelligence have the same legal status as humans as technology continues to develop and advance? And what is meant by legal liability, such as misuse of personal data? Currently, experts on the legal status of artificial intelligence are diverse and vary according to the development of the technology. Most experts agree that artificial intelligence should be treated as a legal entity with the same responsibilities and rights as humans.[10]

However, there are also experts who argue that artificial intelligence should not have the same legal status as humans. Instead, they suggest that artificial intelligence should be treated as a legal entity for which the creator or user of artificial intelligence is responsible. This statement finds that the legal entity that develops or uses artificial intelligence technology is responsible for the artificial intelligence.[11]

Despite the differences of opinion, most experts agree that it is important to consider ethical and social implications when determining the legal status of artificial intelligence. However, the opinions of Indonesian legal experts on the legal status of artificial intelligence are still at a formative stage and require further development.[12]  At least some legal experts have provided preliminary views on this issue.

Several Indonesian legal experts emphasise privacy and information security in the development and use of artificial intelligence. They emphasised the need for proper rules and

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[8]*Ibid.*

[9]*Ibid.*

[10]Hanif Abdul Salim, *Kedudukan Hukum Artificial Intelligence: Tantangan dan Perdebatannya,* diakses tanggal 30 Februari 2024, https://kliklegal.com/kedudukan-hukum-artificial-intelligence-tantangan-dan-perdebatannya/

[11]*Ibid.*

[12]*Ibid.*

mechanisms to protect personal data and maintain individual privacy by using artificial intelligence technology.[13]  The author notes that until now there have been no further studies and research, but the views of legal experts in the world and in Indonesia have begun to pay attention to the issue of the legal position of artificial intelligence and realise the importance of ensuring that artificial intelligence technology is used correctly and responsibly in accordance with positive legal corridors in order to protect personal data.

Although Indonesia has enacted Law No. 27 of 2022 on Personal Data Protection, it has included automated decision-making and data processing using new technologies as high-risk data processing activities. However, it is still unclear whether the norms in Law No. 27 of 2022 on Personal Data Protection and its implementing regulations can address this issue. Therefore, questions remain as to whether Law No. 27 of 2022 on Personal Data Protection is sufficiently prepared for the challenges of artificial intelligence. Is the current data protection regulation sufficient to meet the increasing challenges of artificial intelligence? But so far there is no specific regulation on artificial intelligence.

Therefore, people in Indonesia, including the government, are still focusing on usage. However, the fact is that technology and law are interdependent. Perhaps at first, technology may suggest that there is no need for laws. Although the law was too restrictive, eventually many problems arose that required legal action, both current laws and policies. In connection with the background of the problem that has been stated above, it illustrates the emptiness of the norms of personal data protection related to data processing in the form of artificial intelligence so that the author is interested in researching it, so that it is relevant to the formulation of the problem under study, this research is set with the title Urgency of Personal Data Protection Related to Data Processing in the Form of Artificial Intelligence.

Based on the results of the search for previous research results (literature review) there are several studies related to artificial intelligence, such as Shabrina Fadiah Ghazmi. Her research is entitled 'The Urgency of Artificial Intelligence Regulation in the Online Business Sector in Indonesia'. The results of the research found 'the responsibility for the actions of artificial intelligence can be the responsibility of the person or legal entity above it based on the doctrine of vicarious liability'.[14]

Albert Lodewyk Sentosa Siahaan has researched with the title 'Urgency of Personal Data Protection on Marketplace Platforms Against Technological Advances'. The results of his

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[13]*Ibid.*

[14]Shabrina Fadiah Ghazmi, "Urgensi Pengaturan Artificial Intelligence pada Sektor Bisnis Daring di Indonesia", *Rewang Rencang : Jurnal Hukum Lex Generalis*, 2,  No.  8, (Agustus 2021): 782.

research found 'there is no certainty regarding personal data protection laws in Indonesia, especially in the marketplace sector. 'The government has not taken a policy to immediately implement the Personal Protection Law, which has led to the widespread hacking and violation of citizens' personal data on marketplace platforms.'[15]

Febri Jaya and Wilton Goh's research is entitled 'Juridical Analysis of the Position of Artificial Intelligence as a Subject of Indonesian Positive Law'. The results of his research explain that 'the legal status of artificial intelligence can be applied to special laws regarding artificial intelligence as a legal subject, ie. the same as legal entities, to provide legal certainty. to the person in charge of the legal acts of artificial intelligence and the identity of artificial intelligence can be changed to an authentic act'.[16]

Bagus Gede Ari Rama et al research titled 'Urgency of Artificial Intelligence (AI) Arrangement in the Field of Copyright Law in Indonesia'. In his research found in 'The Indonesian Copyright Law does not recognise artificial intelligence as a legal entity, so artificial intelligence under Indonesian copyright law cannot be classified as a creator, and the possibility of artificial intelligence can be recognised as a new entity refers to legal entities other than humans and legal entities. entities that were previously recognised as subjects of Indonesian law are very open because artificial intelligence can be equated with legal entities according to the theory of legal entities and the concept of Work Made For Employment in the US Copyright Law which can be adopted by Indonesia. as a new related entity whose legal entity is recognised in Indonesia.[17]

Anshori's research is entitled 'The Idea of Artificial Intelligence in the Application of Law in the Era 4.0 Perspective of Case Settlement Model of Restoration Justice and Progressive Law'. The results of his research found 'the principles of restorative justice and progressive justice as a way of resolving cases are the operation of artificial intelligence as an analytical tool in case resolution. or consistent with the principles of restorative justice or progressive justice'.[18]

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[15]Albert Lodewyk Sentosa Siahaan, "Urgensi Perlindungan Data Pribadi di Platform Marketplace Terhadap Kemajuan Teknologi", *Majalah Hukum Nasional,* 52, No. 2 Tahun 2022: 209.

[16]Febri Jaya dan Wilton Goh, "Analisis Yuridis Terhadap Kedudukan Kecerdasan Buatan atau Artificial Intelligence Sebagai Subjek Hukum Pada Hukum Positif Indonesia", *Supremasi Hukum*, 17, No. 2, Juli 2021: 1.

[17]Bagus Gede Ari Rama et.al, "Urgensi Pengaturan Artificial Intelligence (AI) Dalam Bidang Hukum Hak Cipta di Indonesia", *Jurnal Rechtens,* 12, No. 2, Desember 2023: 209.

[18]Anshori, "Gagasan Artificial Intelligence Dalam Penerapan Hukum di Era 4.0 Perspektif Penyelesaian Perkara Model Restorasi Justice dan Hukum Progresif", *Legal Studies Journal,* 2, No. 2, 2022: 1.

Paulus Wisnu Yudoprakoso's research is entitled 'Artificial Intelligence as a Tool to Assist the Law Drafting Process in an Effort to Face the Industrial Revolution 4.0 in Indonesia'. The results of his research explain 'in this case, the purpose of artificial intelligence is to help predict (predict) and sort out what things might require legislation in the future'.[19]

Rizka Amelia Azis et al's research is entitled 'Regulation and Liability for the Utilisation of Artificial Intelligence (AI) in Indonesia from a Legal Perspective'. The results of his research explain 'artificial intelligence may be regulated by existing laws and have legal liability in a number of issues.' 'The nature of artificial intelligence in automating data processing makes it comparable to an 'electronic agent' in Indonesian law regulated under the ITE Law.' 'Existing legal doctrine makes it clear that the actions of artificial intelligence can always be considered.' 'In cases like this, the doctrine of vicarious liability can be applied.'.[20]

Muhammad Irfan Fatahillah's research is entitled 'The Idea of Artificial Intelligence Arrangement towards Criminal Liability in Indonesia'. The results of his research explain that artificial intelligence has tremendous potential to do good, it can also do bad, especially in things that cannot be predicted. Legal actions taken by artificial intelligence must be responsible. The non-recognition of artificial intelligence as a legal subject in Indonesian positive law raises new problems that must be anticipated from now on'.[21]

Unlike previous research (literature review), in this research the author examines the protection of personal data related to data processing in the form of artificial intelligence in Indonesia, so that 'the study in this research shows the difference (state of the art) of research that has been done by other authors'. In line with this study, the legal issues in this research are: First, 'how is the protection of personal data related to data processing in the form of artificial intelligence in Indonesia? Second, how is the concept of existing legal norms on the protection of personal data related to data processing in the form of artificial intelligence? The issue uses library research method by using relevant legal materials and is analysed thoroughly and is a unity (holisctic), starting from inventorying laws and regulations related to the issue under study, then systematised and systematic and extensive interpretation.

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[19]Paulus Wisnu Yudoprakoso, "Kecerdasan Buatan (Artificial Intelligence) Sebagai Alat Bantu Proses Penyusunan Undang-Undang Dalam Upaya Menghadapi Revolusi Industri 4.0 di Indonesia", *Simposium Hukum Indonesia,* 1, No. 1 Tahun 2019: 450.

[20]Rizka Amelia Azis, et.al, "Pengaturan dan Pertanggungjawaban Pemanfaatan Artificial Intelligence (AI) di Indonesia Dalam Perspektif Hukum", *Forum Ilmiah*, 20, No. 4, Desember 2023: 243.

[21]Muhammad Irfan Fatahillah, "Gagasan Pengaturan Artificial Intelligence Terhadap Pertanggungjawaban Pidana di Indonesia", *Suara Keadilan,* 24 No. 1, April 2023: 37.

## B. RESEARCH METHODS

1. Types of research

This type of research is normative legal research. The selection of this type of research considering that legal research is a process to find the rule of law, legal principles, and legal doctrines in order to answer the legal issues faced. Therefore, the choice of this type of research is related to the emptiness of personal data protection norms related to the processing of new data in the form of artificial intelligence.

2. Data sources

The collection of legal materials in this study using a file system through a computer (filing computerize sytem) in the form of legal materials obtained from libraries both manually and online and so forth. The type of legal material used in this study consists of:

a. Primary legal materials

Primary legal materials, namely legal materials derived from legislation within the scope of positive law. This primary legal material is legal material that is authoritative, meaning it has authority. Primary legal material consists and statutory regulations are sorted by hierarchy and court decisions relevant to the study.

b. Secondary legal materials

Secondary materials, namely legal materials that provide explanations to primary legal materials that are not official documents, such as: textbooks, research results, opinions of scholars, jurisprudence, articles, magazines, scientific journals, the results of national and international seminars or other scientific meetings relevant to this research.

c. Tertiary law materials

Tertiary legal materials, which are legal materials that provide instructions or explanations to primary and secondary legal materials, including encyclopedias, newspapers, magazines, dictionaries and others that are relevant and can be used to complete the data needed in this study. In other words, tertiary legal materials include materials that provide instructions and explanations to primary legal materials and secondary legal materials that are relevant to this study.

3. Data collection techniques

Data collection in the study was carried out by the method of literature review or Documentary Studies both manual and online whose substance is relevant to the object under study.

4.      Data analysis

The analysis of legal materials is carried out thoroughly and is a single unit (holisctic), starting from taking an inventory of legislation related to the problem under study, then systematized and interpreted. There are several types of interpretations of legal norms that have been systematized in order to fully appeal to these legal norms. In this study the authors used a systematic and extensive interpretation. Systematic means a method of interpreting legislation by linking it with other legal regulations, or with the entire legal system, while extensive interpretation is a method of interpretation that makes an interpretation beyond the usual limits carried out through grammatical interpretation. The final result of this study was concluded by using the method of deductive thinking, which draws conclusions from things that are general, to things that are special.

## C.      DISCUSSION

**Protection of Personal Data Related to Data Processing in the Form of Artificial Intelligence in Indonesia**

As mentioned, the development of information technology and the possibility of the digital economy to further spread the use of Internet technology in the world are important factors that increase data processing. There is no doubt that the Internet facilitates and accumulates communication between individuals.The current context 'artificial intelligence technology is an intelligent machine that can work as well as and better than humans'.[22]

All these functions are obtained by processing billions of parameters and data from various sources, some of which may contain portions of personal data taken from public sources. It is impractical to expect artificial intelligence to sort through the data it processes and exclude others, especially when such data is accessed in real-time on the borderless Internet.

Artificial intelligence as 'intelligent machines can be better than humans do, for example, in the field of law, through this technology, judges can be made "artificial intelligence advocates, such as in China in 2017, using limited artificial intelligence judges to resolve legal disputes related to digital use, such as copyright disputes, e-commerce product liability, and electronic disputes".[23]

Then from the results of the 'contract understanding competition analysed by law professors at Stanford University, Duke University School of Law, and the University of

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[22] Nils John Nilsson, *The Quest...Loc.Cit.*

[23]Eka N.A.M Sihombing dan Muhammad Yusrizal Adi Syaputra, "Implementasi Penggunaan Kecerdasan Buatan dalam Pembentukan Peraturan Daerah", *Jurnal Ilmiah Kebijakan Hukum*, 14, No. 3, November 2020: 420.

Southern California first reported that artificial intelligence lawyers beat 20 US-trained human lawyers in identifying five contracts (blocking contracts) while analysing data that did not differ in identifying 30 legal disputes consisting of arbitration, confidentiality, relationship, and compensation. LawGeex AI artificial intelligence advocates achieved 94% accuracy. In contrast, human lawyers only achieved 85% accuracy 'LawGeex AI took only 26 minutes to complete its task, 66 minutes faster than the average human time'.[24]

Further in the 'contract understanding competition analysed by law professors at Stanford University, Duke University School of Law, and the University of Southern California first reported that an artificial intelligence advocate beat 20 US-trained human advocates in identifying five contracts (blocking contracts) while analysing data that did not differ in identifying 30 legal disputes consisting of arbitration, confidentiality, relationship, and compensation.' The artificial intelligence advocate achieved 94% accuracy. LawGeex AI artificial intelligence advocates achieved 94% accuracy. In contrast, 'human advocates only achieved 85% accuracy.' LawGeex AI took only 26 minutes to complete its task, 66 minutes faster than the average human time.[25]

Online legal use in Indonesia, the UK has a legal aid artificial intelligence, DoNotPay chat which has provided more than 1,000 legal aid services. This shows that artificial intelligence has helped more than 160,000 people solve their legal problems.[26] Technological developments in the field of law are clearly visible, such as the emergence of electronic courtrooms, Supreme Court applications, such as e-court for civil and state administrative cases and e-berpadu for criminal cases are a series of trials that take place online. The existence of these systems is believed to have direct and indirect impacts on the legal profession.

Another specific example of 'application of artificial intelligence technology in the field of law enforcement in the field of transport, is the use of electronic tickets (E-Tilang). Electronic ticketing is an electronic system to monitor and enforce traffic regulations'. Using CCTV support tools to replace the manual ticketing system with ticket blanks / letters.

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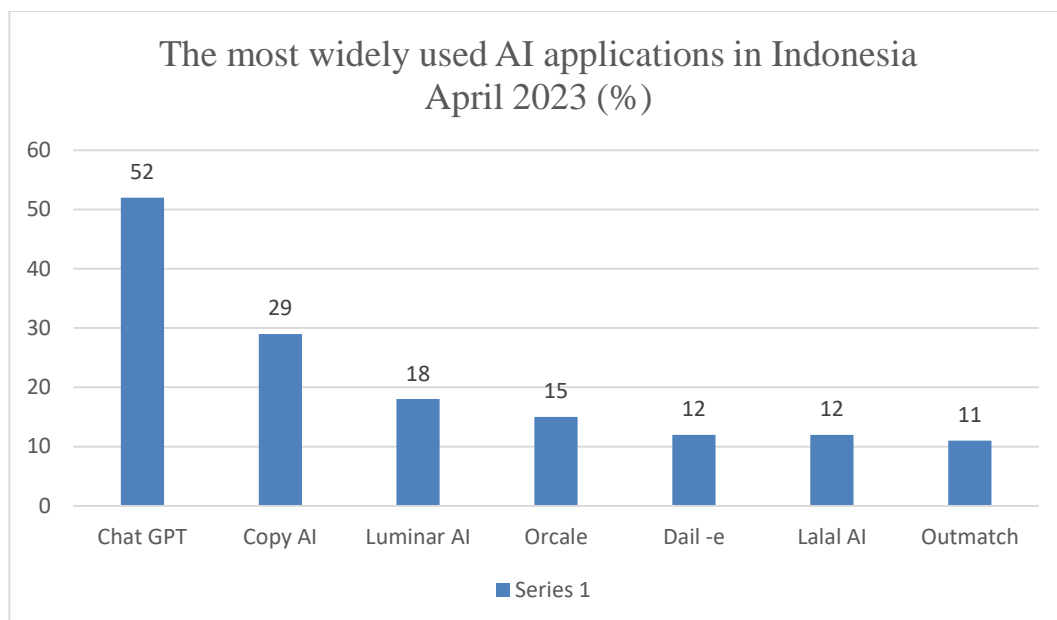
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[24]*Ibid.*

[25]*Ibid.*

[26]Nabila Fitri Amelia et.al, "Implementasi Artificial Intelligence (AI) Dalam Pembentukan Peraturan Perundang-Undangan di Indonesia", *Jurnal Eksekusi Ilmu Hukum dan Administrasi Negara*, 2, No 1, Februari 2024: 58.

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Source: secondary data processed for 2024.[28]

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[27]Denico Doly, "Pemanfaatan Artificial Intelligence Dalam Penegakan Hukum di Indonesia, *Info Singkat Bidang Politik, Hukum dan Keamanan Kajian Singkat terhadap Isu Aktual dan Strategis",* XV, No. 19, Oktober 2023: 2.

[28]Perkembangan AI yang Mengejutkan: Peluang Besar atau Bumerang yang Mengintai?, online tanggal 30 Februari 2024, http://forkas.stis.ac.id/2023/07/perkembangan-ai-yang-mengejutkan.html.

Furthermore, in education, students' easy access to artificial intelligence technology can help them complete their school or college assignments. Some features of artificial intelligence that are useful in education include the ability to answer questions, write essays, write diaries, create resumes, convert text into videos, and more.
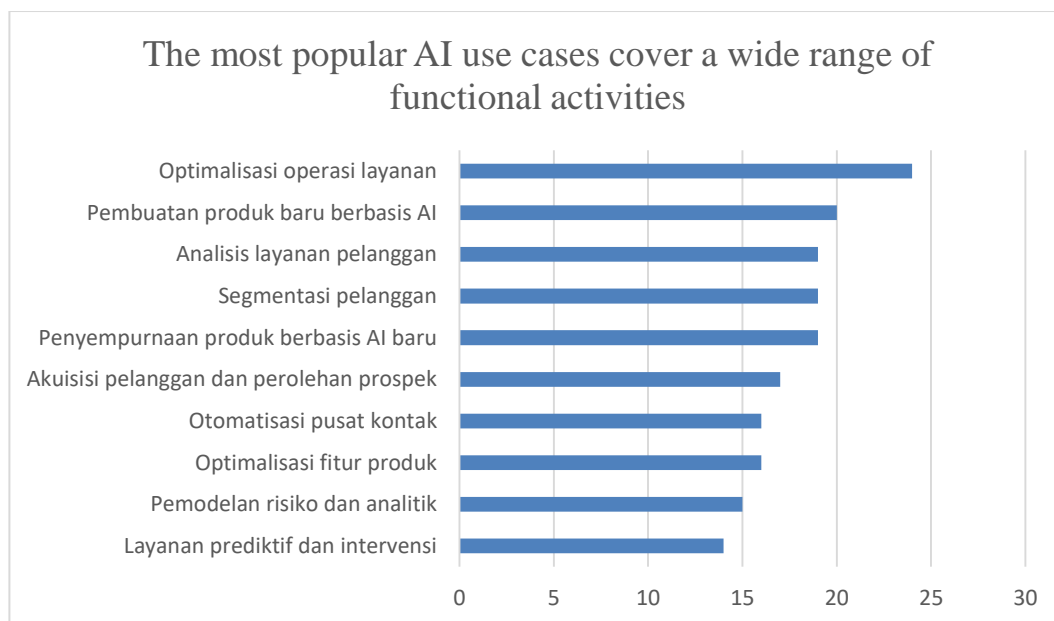
Indonesia is expected to become a leader in the adoption of artificial intelligence 'in the ASEAN region by 2030 and a developed country by 2045.[29] The government has also created a roadmap to expand the adoption of artificial intelligence. The development of artificial intelligence in Indonesia is closely related to internet users, and by 2023, 213 million people or more than 77% of Indonesia's population will be internet users'.[30] The magnitude of Indonesia's digital economy opportunity is supported by a number of factors'. Indonesia is the fourth most populous country in the world, with more than 191 million people representing 70.7% of the working-age population, most of whom are digital-savvy generations (Gen Z and Millennials). 'Regarding digital users, the number of mobile phone users in Indonesia currently reaches 370 million, the internet penetration rate reaches 73.7%, and internet traffic increases by 2% by 2022.[31]

McKinsey calls Indonesia a 'digital archipelago. 'This is because Indonesia has one of the highest adoption rates of artificial intelligence in the region.' Indonesia ranks fifth in the global startup rankings with more than 2,100 startups, behind the United States, India, the United Kingdom, and Canada. As of June 2021, there are 99 startup companies engaged in artificial intelligence'. One of them, Prosa.ai, is an Indonesian startup that provides artificial intelligence solutions specialising in natural language processing. Since its establishment in 2018, Prosa.ai has been used by state-owned enterprises, the private sector, and the government to optimise operations, big data analysis, and improve public and customer services. The chart below shows the most popular artificial intelligence use cases covering various fields in Indonesia:

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[29]Indonesia Digital Outlook & Pentingnya Adopsi AI 2023, online tanggal 11 Maret 2024 ,https://blog.prosa.ai/id/indonesia-digital-outlook-pentingnya-adopsi-ai-2023/.

[30]Sekjen Kominfo: Penggunaan AI Harus Sesuai dengan Nilai Etika di Indonesia, online tanggal 11 Maret 2024, https://aptika.kominfo.go.id/2023/11/sekjen-kominfo-penggunaan-ai-harus-sesuai-dengan-nilai-etika-di-indonesia.

[31]*Indonesia Digital Outlook…Loc.Cit.*

## The most popular AI use cases cover a wide range of functional activities

| Use Case | Value |
|---|---|
| Optimalisasi operasi layanan | 24 |
| Pembuatan produk baru berbasis AI | 20 |
| Analisis layanan pelanggan | 19 |
| Segmentasi pelanggan | 19 |
| Penyempurnaan produk berbasis AI baru | 19 |
| Akuisisi pelanggan dan perolehan prospek | 17 |
| Otomatisasi pusat kontak | 16 |
| Optimalisasi fitur produk | 16 |
| Pemodelan risiko dan analitik | 15 |
| Layanan prediktif dan intervensi | 14 |

Source: secondary data processed for 2024.[32]

Based on the data above, Indonesia artificial intelligence has been popularly used for education, helping several companies and so on, so Indonesia is a significant country in the application of artificial intelligence.

As mentioned in some of the 'developments of artificial intelligence, it is clear that its sophistication surpasses human capabilities. In fact, artificial intelligence is no longer limited to an object that acts on human commands, but AI can perform all functions automatically as if it were a human.

In relation to its sophistication and intelligence, as the author mentions in the background of this research problem that it is natural that concerns about privacy and data protection are becoming increasingly important, especially since the complexity and intelligence of artificial intelligence technology can analyse and process data automatically, en masse, without discrimination and without the possibility of asking permission in advance to the relevant parties.

Repeating the argument in the background of this study that the advancement of artificial intelligence raises several questions, including its legal status. Will artificial intelligence have the same legal status as humans as technology continues to evolve and advance? So what is the legal liability, such as misusing personal data? Of course, this is not an easy thing because the issue of artificial intelligence is a new thing and has not been the focus of regulation or legislation in Indonesia. Determining the status of the legal subject of artificial

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[32]*Ibid.*

intelligence is important to be determined or agreed in advance, because there is a connection with the protection of personal data related to the processing of new data in the form of artificial intelligence in Indonesia. Currently, expert opinions on the status of the legal subject of artificial intelligence still vary and differ along with the development of this technology. The author traces several opinions related to the legal issue of artificial intelligence in question. The opinion once said by Saldi Isra an Indonesian jurist and Judge of the Constitutional Court, artificial intelligence should be treated as a legal entity that has the same duties and rights as humans. This position is based on the principle that artificial intelligence can act independently and have a great impact on society and the environment.[33]

In contrast to the opinion of Anshori who argued that Article 1 Number 8 of Law Number 19 of 2016 concerning amendments to Law Number 11 of 2008 concerning electronic information and transactions (hereinafter abbreviated as the ITE Law) is the definition of an electronic agent. Therefore, according to Anshori artificial intelligence is interpreted as an electronic agent, because basically artificial intelligence is a tool/application that functions or acts to help someone's work, to be faster, accurate, and efficient, or called an electronic agent, it is no different from a device in an electronic system, whose job is to automatically perform actions related to electronic systems based on human commands. Without the presence of humans, the application will not take conclusions by itself.[34]

In contrast to the opinion of Anshori who argued that Article 1 Number 8 of Law Number 19 of 2016 concerning amendments to Law Number 11 of 2008 concerning electronic information and transactions (hereinafter abbreviated as the ITE Law) is the definition of an electronic agent. Therefore, according to Anshori artificial intelligence is interpreted as an electronic agent, because basically artificial intelligence is a tool/application that functions or acts to help someone's work, to be faster, accurate, and efficient, or called an electronic agent, it is no different from a device in an electronic system, whose job is to automatically perform actions related to electronic systems based on human commands. Without the presence of humans, the application will not take conclusions by itself.[35] Different opinions from Febri Jaya and Wilton Goh argued "the legal position of artificial intelligence can be made a subject of law.[36]

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[33]Hanif Abdul Salim, *Kedudukan Hukum...Loc.Cit.*
[34]Anshori, *Gagasan Artificial...Op.Cit.,: 6.*
[35]Anshori, *Gagasan Artificial Intelligence Loc.Cit.*
[36]Febri Jaya dan Wilton Goh, *Analisis Yuridis...Op.Cit.: 9*.

He used progressive legal theory initiated by Satjipto Raharjo". According to the theory of progressive law provides freedom of thought and legal action so that the law can flow to fulfill its mission of serving society and humanity.[37] Furthermore, Febri Jaya and Wilton Goh argue that the development of artificial intelligence is an example of a new breakthrough that moves from illogical to logical, from impossible to possible. Artificial intelligence, which can function without the humanistic consciousness inherent in artificial intelligence, has shown its ability to outperform humans in performing tasks. This allows placing artificial intelligence as a legal entity in the development of positive law in Indonesia.[38]

Taking into account the above opinions, each has a basic way of thinking to determine the status of the subject of artificial intelligence law. The author prefers that artificial intelligence cannot be made a subject of law. Artificial intelligence is now more appropriate as an object of law. The reason, the work of artificial intelligence because it is directed by its creator. Artificial intelligence is formed by a computer program that is deliberately designed by its developer. So the thing that is done by artificial intelligence is purely from the developer of artificial intelligence so that later it must be held accountable as the subject of law is the developer of artificial intelligence. Because for now artificial intelligence does not have independence in performing an action so it still takes a human role for artificial intelligence to perform a certain activity or work. Because a digital computer running a program cannot have a "mind", "understanding", or "consciousness", regardless of how smart or human-like the computer behaves. Artificial intelligence technology with all its capabilities can process billions of parameters and data from various sources, some of which may contain some personal data entered from public sources. It is natural that the concern for privacy and data protection is becoming increasingly important, especially since artificial intelligence technologies can analyze and process data automatically, en masse, without discrimination and without the possibility of requesting prior consent from the relevant data. Moreover, when a person uses the internet, every action performed or website visited is recorded, and all this information becomes a stored digital trace. Therefore, protecting data from misuse by third parties is a sensitive issue and not easily resolved. Of course, it is very impractical to expect artificial intelligence to sort out the data it processes and exclude the rest, especially if the data can be used in real time on the internet indefinitely.

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[37]Reza Rahmat Yamani, *Pemikiran Prof Satjipto Rahardjo Tentang Hukum Progresif dan Relevansinya dengan Hukum Islam di Indonesia*, Skripsi, Program Sarjana Hukum UIN Alauddin Makassar, Makassar, 2016.11.
[38]Febri Jaya dan Wilton Goh, *Analisis Yuridis...Loc.Cit.*

So here lies the dilemma of personal data protection related to data processing in the form of artificial intelligence, because until now it has not been reached by law in Indonesia. To answer it, of course, it must be agreed on the status of the subject of the law on artificial intelligence, so that it can be drawn in which direction the protection of personal data is aimed at. Meanwhile, there are currently two views on the status of the subject of artificial intelligence law. If " the choice of artificial intelligence as a legal subject then the protection of personal data can be charged to artificial intelligence as an independent legal entity, such as other legal entities, such as limited liability companies, cooperatives and others". If this is " agreed upon artificial intelligence as a legal subject, then there must be a mechanism for legalizing artificial intelligence as a legal entity in Indonesia". While, "the internet is a World Without Borders, certainly will not reach out to artificial intelligence developed from abroad". Conversely, if artificial intelligence is not a legal subject, the responsibility as a legal subject is certainly imposed on the creator or developer of artificial intelligence. At the same time, artificial intelligence is constantly moving to analyze and process data automatically, en masse, without discrimination and without the possibility of seeking prior consent to the data. Based on this analysis, the protection of personal data in data processing through artificial intelligence in Indonesia has no legal certainty to be protected. "Because legal certainty refers to the implementation of clear, fixed, consistent and consequent laws whose implementation cannot be influenced by subjective circumstances".[39]

Concept of existing legal norms of Personal Data Protection Relateddata processing in the form of Artificial Intelligence The right to personal data is a constitutional right of Indonesian citizens that has been established in the Constitution of the Republic of Indonesia in 1945, especially in Article 28 letter G paragraph (1), namely "everyone has the right to the protection of personal self, family, honor, dignity, and property of the dependents etc...". Based on the constitutional mandate, there are currently special personal data protection regulations through Law Number 27 of 2022 concerning Personal Data Protection. In addition, there are also several regulations that regulate personal data protection norms, including:

1.    Law No. 10 of 1998 on Banking.
2.    Law No. 36 of 1999 on telecommunications.
3.    Law No. 8 of 1999 on Consumer Protection.
4.    Law No. 39 of 1999 on Human Rights.

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[39]CST Kansil, Christine dkk, *Kamus Istilah Hukum*, Jakarta, 2009. 385.

5.     Law No. 14 of 2008 on Public Information Disclosure.

6.     Law No. 36 of 2009 on health.

7.     Law No. 24 of 2013 on amendments to Law No. 23 of 2006 on Guarantee administration.

8.     Law No. 19 of 2016 on amendments to Law No. 11 of 2008 on information and Electronic Transactions. As a specific guideline on the protection of personal data, Law Number 27 of 2022 in this development will be considered as a legal norm applicable to the protection of personal data against data processors in the form of artificial intelligence.

As for personal data, it is "data about an individual who is identified or can be identified separately or combined with other information either directly or indirectly through electronic or nonelectronic systems", this can be understood by paying attention to the definition mentioned in Article 1 Number 1 of Law Number 27 of 2022. Furthermore, classified personal data can guide the provisions of Article 4 paragraph (1), (2) and (3) of Law Number 27 of 2022 including:

1.     Certain personal Data, including health data and information, biometric data, genetic data, criminal data, child data, personal financial data; and/or other information in accordance with laws and regulations.

2.     General personal Data, including full name, gender, nationality, religion, marital status and/or personal data are combined to identify a person. In relation to personal data, what is meant by personal data protection under Article 1 Number 2 of Law Number 27 of 2022 is "the overall effort to protect personal data in the series of personal data processing in order to guarantee the constitutional rights of personal data subjects". Based on this understanding, it is clear that the processing of personal data is included in the protected sense.

There are three stages in which personal data is used by creation intelligence. First, "personal data is used by artificial intelligence in the development stage to improve the intelligence of artificial intelligence". Then, personal data can be used to generate decisions. "At the time of this writing the user will enter his personal data. "Furthermore, there is the potential for the utilization of personal data through artificial intelligence, such as chatbots".[40]

As already discussed artificial intelligence used to be a system for executing data commands. Artificial intelligence is nothing new in the digital world. But recently, the

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[40]*Kominfo dan Ahli Hukum UGM Berikan Pandangan Terhadap Isu Perlindungan Data Pribadi dalam Penggunaan AI,* online tanggal 11 Maret 2024, https://ugm.ac.id/id/berita/kominfo-dan-ahli-hukum-ugm-berikan-pandangan-terhadap-isu-perlindungan-data-pribadi-dalam-penggunaan-ai/.

development of artificial intelligence is considered more massive and causes various disorders. The concept of data protection according to the Human rights Committee General Comment implies that individuals have the right to decide whether they share or exchange their personal data. In addition, individuals have the right to decide on the conditions for the transfer of personal data. In addition, data protection is also related to the concept of privacy protection. "The right to privacy has developed to such an extent that it can be used to form the right to protection of personal data".[41]

Further, the concept of existing legal norms for the protection of personal data related to data processing in the form of artificial intelligence will be examined. Previously, it has been touched upon what is meant by personal data that is a protected object, while what is meant by personal data processing consists of "acquisition and collection, processing and analysis, storage, correction and updating, display, reporting, transmission, transmission or publication and/or deletion or destruction" as mentioned in Article 16 Paragraph (1) of Law Number 27 of 2022. Then the processing of personal data according to Article 16 Paragraph (2) of Law Number 27 of 2022 must be carried out in accordance with the principles of personal data protection detailed in that article. Further provisions regarding the implementation of such personal data processing will be provided for in government regulations, but until the implementation of this study, such regulations have not been promulgated. As artificial intelligence develops, it is expected to become larger in scale in the future, giving rise to various confusions such as the issue of protecting personal information.

When it comes to the subject of law, artificial intelligence is not known as a subject of law and it is clear that it exists. Law Number 27 of 2022 only regulates the legal basis of four bodies, namely individuals, companies, public bodies, and international organizations. These four subjects have a duty to protect personal data. International organizations are included in the scope of Law Number 27 of 2022. This is because the scope of Law Number 27 of 2022 is very wide both in Indonesian territory and outside Indonesian territory as long as it has or has legal implications for state interests. Therefore, the scope of Law Number 27 of 2022 is very wide and applies not only in Indonesia but also outside Indonesia, as long as data regarding Indonesian citizens is processed outside Indonesia. However, not all personal data processing activities are covered by Law Number 27 of 2022. As an exception, Law No. 27 of

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[41]Human Rights Committee General Comment No. 16 (1988) on the right to respect of privacy, family, home and correspondence, and protection of honour and reputation (art. 17) seperti yang dikutip dalam Privacy International Report, 2013. 1-2.

2022 does not apply if the processing of personal data is carried out by an individual for personal or domestic purposes.

Related to the development of artificial intelligence, it is considered increasingly massive and causes various disruptions, such as the issue of personal data protection, if it is associated with a legal subject, artificial intelligence is not known as a legal subject that explicitly exists. Law Number 27 of 2022 has only regulated the legal basis for the four subjects, namely individuals, corporations, public bodies and international organizations. All four subjects have a duty to protect personal data. International organizations are included in the scope of Law Number 27 of 2022 because the area of Law Number 27 of 2022 is very wide, within the territory of the state of Indonesia and outside the territory of the state of Indonesia as long as it has legal consequences or affects the interests of the state.

So, the scope of Law Number 27 of 2022 is very wide, not only within the Indonesian state, but also outside the Indonesian state as long as there are Indonesian citizen data processed outside the territory of the Indonesian state. However, not all of these personal data processing activities are included in Law Number 27 of 2022. There is an exception if the processing of personal data is carried out by an individual/individual whose purpose is for his own personal or household activities, then it does not fall within the scope of Law Number 27 of 2022. Personal Data, both special and general, will apply provisions related to the processing of personal data as stipulated in Article 16 Paragraph (1) of Law Number 27 of 2022. In the processing of personal data, based on Article 20 paragraph (2) letter A of Law Number 27 of 2022, it is stipulated that in "the processing of personal data requires an explicit and valid consent that consents to the processing of data for certain purposes or purposes". Based on these rules, in the case of} collection of personal data, legal and explicit consent to the collection of related data is required". When associated with the theory of personal rights as called Edmon Makarim, IE.

1.    The right not to be disturbed by others his private life;
2.    The right to keep sensitive information concerning him confidential"; and 3. "The right to control the use of personal data by other parties.[42]

The regulation of personal data processing regulated in Law Number 27 of 2022 concerning personal Data protection, can be said to have accommodated personal rights. Consent to the processing of personal data itself under the provisions in Indonesia is attached

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[42]Edmon Makarim, *Tanggung Jawab Hukum Penyelenggara Sistem Elektronik*, (Jakarta: Rajawali Pers, 2010). 298-299*.*

only to the owner of the data. This is in accordance with the provisions of Law Number 11 of 2008 on Electronic Information and transactions as amended by Law Number 19 of 2016 on amendments to Law Number 11 of 2008 on Electronic Information and transactions (hereinafter referred to as the ITE Law), which stipulates that in "processing personal data, the relevant processing consent must be given from the owner of the relevant data" as stipulated in Article 26 paragraph (1) of the ITE Law. The relationship between the data owner and the consent to data processing is also strengthened in Article 23 of Law Number 27 of 2022, where the provisions of the article explain that "explicit consent is required from the data owner or the consent is considered null and void". Because the consent to the processing of personal data is only attached to the owner of the data, when there is an action of artificial intelligence collecting personal data without the consent of the owner of the data, the artificial intelligence has taken actions that violate the provisions of applicable law. "The action of artificial intelligence gives rise to the right for the owner of the data to file a lawsuit against the losses caused by related processing actions carried out without the consent he gave", as such approval must first be carried out as stipulated in Article 26 paragraph (1) of the ITE Law.

Artificial intelligence thinks the same way as humans, the more they learn, the smarter they become. "Artificial intelligence has to read, understand, look at a lot of data. The more quality the data, the sharper the artificial intelligence, the better the analysis and the smarter as a technology or a tool". If you do use personal data, the acquisition of personal data must of course be in accordance with the provisions of the law, in accordance with the concept or principle of legitimate interest or in accordance with the consensus or contract. So it must be seen how operators (humans who run artificial intelligence) get these data whether by legal means based on Law Number 27 of 2022, because in the law there are seven legal bases, which allow a data controller or operator to use personal data based on the provisions of Article 21 paragraph (1) of Law Number 27 of 2022, such as the validity of personal data and so on.

In addition, in the context of the collection of personal data by artificial intelligence, without the consent of the owner of the data, then "artificial intelligence can meet the elements of criminal action in accordance with Article 65 paragraph (1) jo. Article 67 paragraph (1) of Law Number 27 of 2022", namely parties who "collect or obtain data through means contrary to the law that are not their own for their own benefit or other parties that have the potential to cause harm to the owner of the data". Taking into account the previous

discussion, it has been explained that at the moment the Indonesian legal system does not have norms that expressly regulate artificial intelligence as a subject of law. The existing condition of artificial intelligence norm is only legally domiciled as a legal object, because it is needed by the party responsible for the actions of artificial intelligence that are contrary to the relevant legislation. Referring to the previous discussion in Indonesia at this time artificial intelligence can be defined as "electronic agents as taking into account the official definition of the provisions of Article 1 Number 8 of the ITE Law". In connection with the definition, provisions related to legal liability for the actions of electronic agents are further regulated so that they are relevant to the actions of artificial intelligence.

Based on the provisions of Article 21 paragraph (4) and (5) of the ITE Law, "liability for the actions of electronic agents may be charged to be the responsibility of the party facilitating the electronic agent or the organizer of the electronic agent, unless it can be proven that the agent's actions occurred as a result of coercive circumstances or actions of the party receiving the benefits of electronic agents". The provision is also in accordance with the provisions of Government Regulation Number 71 of 2019 concerning the implementation of electronic systems and transactions which explains that because "electronic agents are one form of electronic systems, the electronic agent operator is responsible for the operation and implementation of the electronic agent that he facilitates as stipulated in Article 3 paragraphs (1) and (2) of Government Regulation Number 71 of 2019". Based on this analysis, in accordance with applicable laws and regulations, legal liability for artificial intelligence actions can be charged or imposed on artificial intelligence organizers based on the provisions of Article 21 of the ite jo law. Article 3 paragraphs (1) and (2) of Government Regulation Number 71 of 2019. Analysis of the existing artificial intelligence settings above can be briefly seen in the matrix below:

**Matrix Status, legal ownership and legal responsibilities of Artificial Intelligence**

|  | **Information and Technology Law** | **Personal Data Protection Act** |
| --- | --- | --- |
| Status | Artificial intelligence is not recognized as a legal subject that expressly exists only as an electronic agent. | Artificial intelligence is not recognized as a legal subject that is expressly its existence. Ad only four subjects, namely individuals, corporations, public bodies, and |

|  |  | international organizations |
| --- | --- | --- |
| The law of artificial intelligence | Artificial intelligence can be defined as an electronic agent | Legal status as an object of law, because it takes the party responsible for the actions of artificial intelligence |
| Legal status as an object of law, because it takes the party responsible for the actions of artificial intelligence | Can be charged or dropped to the organizers of artificial intelligence | Can be charged or imposed on the subject of law that organizes artificial intelligence |
| Personal data protection settings | Has not reached out to artificial intelligence independently as a legal subject | Has not reached out to artificial intelligence independently as a legal subject |

The results of the study and analysis above on the existing legal norms of personal data protection related to the processing of personal data in the form of artificial intelligence can be protected, when associated with the theory of legal protection as said by Rikha Y. Siagian a form of protection can be said to be legal protection if it meets the following elements:

1. Protection of the public;
2. Provision of legal certainty from the government;
3. Relating to the rights of citizens;
4. There is a sanction or punishment for those who violate it.[43]

It's just that the current personal data protection regulation has not reached artificial intelligence independently as a legal subject. Artificial intelligence is not a legal subject, but an object that is then used by humans in order to assist their activities.

## D.    CONCLUSION

1. Protection of personal data related to the processing of data in the form of artificial intelligence in Indonesia there are two views on the status of the subject of artificial intelligence law. If the choice of artificial intelligence is made a legal subject, then the protection of personal data can be charged to artificial intelligence as an independent legal entity. While the internet is a World Without Borders, it certainly will not reach out

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[43]*Perlindungan Hukum: Pengertian, Unsur, dan Contohnya*, online tanggal 11 Maret 2024, https://www.hukumonline.com/berita/a/perlindungan-hukum-lt61a8a59ce8062?page=3.

to artificial intelligence developed from abroad. Conversely, if artificial intelligence is not a legal subject, the responsibility as a legal subject is certainly imposed on the creator or developer of artificial intelligence. In this regard, the protection of personal data in data processing through artificial intelligence in Indonesia has no legal certainty to be protected. Because legal certainty refers to the application of clear, fixed, consistent and consequent laws whose implementation cannot be influenced by subjective circumstances.

2. The concept of existing legal norms for personal data protection related to data processing in the form of artificial intelligence special arrangements stipulated in Law Number 27 of 2022 can be said to have accommodated personal rights. However, the existing condition of artificial intelligence norm is only legally domiciled as a legal object, because it is needed by the party responsible for the actions of artificial intelligence. Legal liability for the actions of artificial intelligence can be charged or imposed on the organizers of artificial intelligence.

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