



## Artificial Intelligence Guide Questions - Indonesia

### 1. What are your country's legal definitions of “artificial intelligence”?

As of the writing of these responses, there are no specific regulations governing artificial intelligence (“AI”) in Indonesia. However, Law No. 11 of 2008 on Electronic Information and Transactions, as lastly amended by Law No. 1 of 2024 (“**EIT Law**”) is specific in describing AI as an “Electronic Agent”. This identification is based on the fact that there is a congruence in an AI's conduct with the automation of information processing. Article 1 (8) of EIT Law further defines an Electronic Agent as any device in an electronic system constructed to conduct automation to provide or process certain information as instructed and designated by an individual.

Other clear definitions of AI are provided in non-binding instruments issued by sectoral authorities in Indonesia. The Ministry of Communication and Informatics (“**MoCI**”) issued Circular Letter No. 9 of 2023 on Artificial Intelligence Ethics (“**MoCI CL 9/2023**”), which defines AI as a form of programming on a computer device that carries out precise data processing and/or data analysis. The Financial Services Authority (*Otoritas Jasa Keuangan* or “**OJK**”) has also issued Guidelines on Responsible and Trustworthy of AI in the Financial Technology Industry (“**OJK AI Guidelines for P2P Company**”), which emphasizes that AI is a combination of computer science, technological machine learning, and big data to perform, solve, and provide solutions for certain problems.

### 2. Has your country developed a national strategy for artificial intelligence?

Yes, the Indonesian government through the Agency for the Assessment and Application of Technology (*Badan Pengkajian dan Penerapan Teknologi* or “**BPPT**”), together with other government institutions, universities, associations, organizations, and experts have developed the Indonesian National Strategy on Artificial Intelligence (*Strategi Nasional Kecerdasan Artifisial Indonesia* or “**Stranas KA**”), which was launched on 10 August 2020.

Generally, Stranas KA serves as a comprehensive roadmap of national policy for advancing AI technology in Indonesia for 25 years, from 2020 until 2045. The main purpose of this national strategy is to ensure that the development and utilization of AI technology is aligned with national interests and acted accordingly with ethical responsibility based on the Indonesian state values and principles. Overall, Stranas KA outlines the ethics and policies on utilizing AI, data, and infrastructure aspects, etc., with specific attention to the key focus areas and priority sectors. In addition, it also provides lists of statistical data that portray the correlation between the utilization of AI technology and Indonesia's situation, such as the state of natural and human resources. With the presence of Stranas KA, the Indonesian government and other stakeholders are strongly expected to be competent and willing to develop a legal framework regarding AI that aligns with Indonesia's National Interest.





3. Has your country implemented rules or guidelines (including voluntary standards and ethical principles) on artificial intelligence? If so, please provide a brief overview of said rules or guidelines. If no rules on artificial intelligence are in force in your jurisdiction, please (i) provide a short overview of the existing laws that potentially could be applied to artificial intelligence and the use of artificial intelligence, (ii) briefly outline the main difficulties in interpreting such existing laws to suit the peculiarities of artificial intelligence, and (iii) summarize any draft laws, or legislative initiatives, on artificial intelligence.

In addition to EIT Law as elaborated in Point 1, Indonesia has also implemented regulations, voluntary standards, and ethical principles related to the use of AI technology. For your reference, please refer to the following points in a short description of the implemented regulations in the utilization of AI:

- a) Law No. 27 of 2022 on Personal Data Protection (“PDP Law”): It is important to note that the utilization of AI will be closely related to the processing and control of personal data. An Electronic System Operator, as the party responsible for the creation and operation of AI as Electronic Agent, must comply with PDP Law, regulating the person’s rights and obligations as of the controller.

For instance, in carrying out its activities, an Electronic Agent Operator must fulfil their obligations in processing the personal data, such as obtaining the consent, protecting the vital interests, and meeting other legal obligations based on the applicable laws deemed appropriate for the purposes of the Electronic Agent Operator in processing and controlling personal data (*Article 20 (2) of PDP Law*).

- b) Government Regulation (“GR”) No. 71 of 2019 on Organization of Electronic Systems and Transactions (“GR 71/2019”): As the implementing regulation of EIT Law, GR 71/2019 stipulates procedures that Electronic Agent Operators should comply with. Article 39 of GR 71/2019 states that in carrying out activities involving an Electronic Agent or AI, an Electronic Agent Operator must comply with the general principles, such as (i) providing the precautions, (ii) securing and integrating the system of information technology, (iii) maintaining the security control over the electronic transactions, (iv) maintaining the efficient and effective cost, and (v) providing the consumer protection.
- c) MoCI CL 9/2023: This regulation outlines ethical values that must be applied by operators and users in carrying out AI-based programming activities. Generally, MoCI CL 9/2023 serves as a guideline for the implementation of AI activities in compliance with the existing laws. Under MoCI CL 9/2023, implementation of AI should consider (i) inclusivity, (ii) humanity, (iii) security, (iv) accessibility, (v) transparency, (vi) credibility and accountability, (vii) protection of personal data, (viii) sustainable development and environmental considerations, and (ix) respect towards intellectual property rights.





- d) OJK AI Guidelines for P2P Companies: This guideline is imposed on operators of P2P Companies. A P2P lending provider that utilizes AI technology must adhere to the basic principles, such as (i) aligning with the nation's interests and upholding the ethical responsibilities, (ii) optimizing the beneficial use of AI, (iii) prioritizing the fair and accountable use of AI through validity, accuracy, fairness, and non-discrimination, (iv) maintaining transparency in AI processing, and (v) having an adequate system security.

Please note that OJK AI Guideline for P2P Companies and MoCI CL 9/2023 are not legally binding. They only serve as the soft laws, meaning they are not legally binding as statutory laws and regulations, because they are not subject to the hierarchy of laws and regulations in Indonesia. The content of these instruments do not constitute legal norms but merely explanations and/or instructions on how to implement certain matters (i.e., AI) in the appropriate manner.

Having regard to the above position, we note that within the Indonesian regulatory regime, the regulations on AI primarily focus on the operators (i.e., Electronic Agent Operators), while they do not take into account the fact that AI is closely associated with programs that can be performed on their own in the operation of big databases without the operators for the inputs/commands. This poses significant challenges in determining the burden of proof and accountability in the utilization of AI in Indonesia, as technological advances have demonstrated autonomy in newer forms of AI.

**4. Which rules apply to defective artificial intelligence systems, i.e. artificial intelligence systems that do not provide the safety that the public at large is entitled to expect?**

Although no regulations specify the required steps that must be taken by an Electronic Agent Operator in the occurrence of failure or defect in the AI or Electronic Agent system, according to Article 40 (1) paragraph (g) of GR 71/2019 states that an Electronic Agent Operators are obliged to establish the necessary procedures to reduce the impact of (i) incidents, (ii) fraud, and (iii) failures or defects in the systems they own and operate.

Failure to comply with this provision will make the Electronic Agent Operator subject to administrative sanction(s) in the form of warning letters, fines, temporary suspension, access termination, and/or being delisted from the Indonesian government's company registry (*Article 100 of GR 71/2019*).

**5. Please describe any civil and criminal liability rules that may apply in case of damages caused by artificial intelligence systems.**

**Criminal Liability:**

An Electronic Agent Operator can be subject to criminal sanctions under EIT Law. For instance, if an Electronic Agent Operator intentionally commits a criminal act that results in the disclosure of confidential information and/or documents to the public, the





operator may become subject of an up to 10 years imprisonment and/or an up to IDR 5 billion fine. (*Article 48 (3) jo Article 32 (3) of EIT Law*).

As Electronic Agent Operators are also deemed as data controllers, criminal sanctions can be imposed on them for intentionally breaching PDP Law, with regard to any incidents caused by AIs as Electronic Agents. Based on Article 67 (2) of PDP Law, a controller and/or processor who intentionally or unlawfully discloses personal data shall be punished with a maximum 4 years imprisonment and/or IDR 4 billion fine.

#### **Civil Liability:**

On the other hand, Indonesian law does not specifically regulate civil liability for any damages caused by AI or Electronic Agent Operators. Generally, based on Article 1365 of the Indonesian Civil Code (“**ICC**”), any party committing acts-of-tort (causing damages to a third party) is obliged to provide compensation. The elements that determine the existence of tort are identified as follows:

- a. There is an unlawful act. According to Indonesian Law, an unlawful act refers to any act, which violates the written or unwritten law (**i.e.** norms and decency);
- b. There is fault. Fault can be on purpose or the result of negligence;
- c. There are damages. The unlawful act causes material and/or immaterial injury or damages to another party; and
- d. There is causality. The act directly correlates with the tortuous result.

#### **Administrative Sanction**

Generally, the government can impose administrative sanctions on an AI or Electronic Agent Operator for violating certain provisions of the law. Under Article 100 (2) of GR 71/2019, an AI or Electronic Agent Operator that violates the standard operating procedure, and does not comply with the principles of data security in electronic transactions can be subject to administrative sanctions, in the form of:

- (a) a written warning;
- (b) administrative fines;
- (c) temporary suspension;
- (d) termination of access; and/or
- (e) delisting from the government’s company registry.

If an Electronic Agent is held liable for failing to protect personal data during the data processing, the administrative sanctions may be in the form of:

- (a) written warnings;
- (b) temporary suspension of personal data processing activities;
- (c) erasure or destruction of personal data; and/or
- (d) administrative fines.

(*Article 57 (1) and (2) of PDP Law*)





**6. Who is responsible for any harm caused by an AI system? And how is the liability allocated among the developer, the deployer, the user, and the victim?**

Due to the limited regulations governing AI in Indonesia, the responsibility for any harm caused by an AI system shall be in the hands of the Electronic Agent Operator. This is because Article 21 (2) paragraph c of EIT Law emphasizes that all legal consequences resulting from the utilization of an Electronic Agent or AI system shall be borne by its Electronic Agent Operator.

**7. What burden of proof will have to be satisfied for the victim of the damage to obtain compensation?**

Since the prevailing regulations do not address AI-related damages, including the burden of proof required by a victim of an AI-system damage, the general principles of civil and criminal liability should apply on this matter.

Based on Article 1865 of ICC, the victim must prove his/her case by showing that the damage was caused by the operator with valid evidence and claiming that he/she is entitled to a compensation. According to Article 1866 of ICC, the recognized evidence can be two or more of the following proceedings:

- (a) Written evidence;
- (b) Witness;
- (c) Interference;
- (d) Confession; and/or
- (e) Oath.

With regard to a Criminal Claim, it is necessary to present, at least, two evidences to convince the judge that a criminal offense has, indeed, taken place. Referring to Article 184 of Law No. 8 of 1981 on Criminal Procedure Law, the legally valid evidence for Criminal Proceeding consists of:

- (a) Witness testimony;
- (b) Expert testimony;
- (c) Letter;
- (d) Indication; and
- (e) Statement of the Defendant

**8. Is the use of artificial intelligence insured and/or insurable in Indonesia?**

At the moment, the utilization of AI technology in Indonesia is still far from satisfactory. We cannot say whether it can be well-insured, and/or insurable in the first place. This is due to the lack of regulations. Many aspects need to be regulated by the Indonesian government to ensure a well-ordered implementation of AI, to avoid potential loopholes as well.





**9. Can artificial intelligence be named an inventor in a patent application filed in Indonesia?**

The short answer is No. Legally speaking, Law No. 13 of 2016 on Patent as amended by Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation (“**Patent Law**”), stipulates that only individuals or legal entities can be granted patent rights (*Article 10 (1) of Patent Law*). To simplify, Indonesia’s prevailing laws and regulations only recognize two subjects of patent. AI is not one of them nor categorized as an inventor of a patent.

**10. Do images generated by and/or with artificial intelligence benefit from copyright protection in Indonesia? If so, who is the authorship attributed to?**

Please be informed that to be considered a creator eligible for copyright protection, based on Article 1 (2) of Law No. 28 of 2014 on Copyright (“**Copyright Law**”) states that the creator of a copyright must be responsible for work/products that have distinctive and unique characteristics with personal touch. In other words, as most of the images generated by AI are a result of combining several images into one output of an image, it can be argued that such images cannot be categorized as creations that reflect the distinctive characteristics and uniqueness of the creator. As such, it will be very difficult to protect the creative outputs of an AI through copyright under Indonesia’s prevailing laws and regulations, as AI images are not recognized as a subject eligible for copyright.

**11. What are the main issues to consider when using artificial intelligence systems in the workplace?**

When utilizing AI in a workplace of any industry, particularly law firms, there are relevant risks that need to be considered. It is highly possible that the utilization of AI, especially by lawyers, may potentially lead to breaching of client confidentiality, such as dissemination of client’s confidentiality data to an AI’s database. Therefore, Law firm personnel should be explicitly instructed to not disclose any client’s information when utilizing an AI in the workplace in order to protect their clients’ interests.

**12. What privacy issues arise from the use of artificial intelligence?**

The main privacy issue arising from the use of AI in Indonesia is the lack of awareness regarding the need to protect sensitive business and client information. At the moment, the Indonesian government has not issued specific regulations to mitigate the risks associated with the use of AI, including the prohibition of disclosing any sensitive data while using an AI. This is further exasperated upon highlighting that AI systems frequently handle large amounts of personal data, raising additional concerns about data security, consent, and the ethical use of information.

**13. How is data scraping regulated in your jurisdiction from an IP, privacy, and competition point of view?**







Indonesian Competition Law is silent on data scraping matters. On the other hand, Database and Computer Programs shall be deemed work products that could be protected by Copyright Law. As such, if the data scraping is conducted without fulfilling the mandatory copyright requirements, such as obtaining permission from the creator before the transmission, it would be considered a violation of copyright under Indonesia's prevailing laws and regulations.

**14. To what extent is the prohibition of data scraping in the terms of use of a website enforceable?**

Since data scraping is a process that utilizes AI to extract content and data from a website, it is important to note that the information contained in such website may include a product that could be protected by copyright. For instance, it would be possible that one of the websites being "scraped" possibly has photographic works subject to copyright protection under Article 40 of Copyright Law. Therefore, permission from the copyright holder or creator of the photographic work should be obtained before performing such scraping. Article 9 (2) of the Copyright Law stipulates that the economic rights under copyright may only be exercised by others upon obtaining permission from the copyright holder and/or creator.

**15. Have the privacy authorities in Indonesia issued guidelines on artificial intelligence?**

As the current updates on the recent development of AI policy in Indonesia, MoCI CL 9/2023 was issued to provide ethical guidelines in creating and formulating policies, as well as providing a reference for ethical values and principles for business actors and electronic system operators who utilize AI systems.

MoCI CL 9/2023 emphasizes that both users and operators utilizing AI systems shall consider various aspects such as (i) inclusivity, (ii) humanity, (iii) security, (iv) accessibility, (v) transparency, (vi) credibility and accountability, (vii) protection of personal data, (viii) sustainable development and environmental considerations, and (ix) respect towards intellectual property rights.

Additionally, OJK has also issued OJK AI Guideline dedicated to Financial Technology services to mitigate the risks that may occur during the utilization of an AI system. This OJK AI Guideline provides responsibility and trustworthiness as behavioural guidelines for Financial Technology providers by optimizing AI that must adhere to the beneficial aspects for humans and the environment.

Under OJK AI Guideline, the utilization of AI shall be fair and accountable with regard to validity and accuracy, taking into account the principles of fairness and non-discrimination. Furthermore, the use of AI must be based on the basic principles that have further supporting factors. For example, the use of AI in Financial Technology is expected to provide data security, testing and validation policies, and collaboration with other business actors.





**16. Have the privacy authorities in Indonesia discussed cases involving artificial intelligence?**

We have not found any cases involving AI that have been handled by MoCI, as the acting authority responsible for AI. Although they have shared their concerns over the rapid development of AI in Indonesia, and their actions to anticipate the misuse of AI by irresponsible users, there has not been any discussion regarding the law enforcement's capability and experience in handling AI.

**17. Have Indonesian national courts already managed cases involving artificial intelligence?**

We have not yet come across any cases filed in the Indonesian courts involving AI, despite numerous complaints regarding AI technology.

**18. Does your country have a regulator or authority responsible for supervising the use and development of artificial intelligence?**

Currently, Indonesian law has yet to specifically regulate AI systems, and no government authorities are designated to oversee their implementation. Since AI system operators are classified as Electronic System Operators, they are supervised by the Directorate General of Informatics Application at MoCI. This Directorate has the authority to supervise, impose sanctions, and establish policies for electronic system operators in Indonesia, including AI operators.

**19. How would you define the use of artificial intelligence by businesses in your jurisdiction? Is it widespread or limited?**

The use of AI by businesses in our jurisdiction varies significantly, depending on the sector and the company's activities. We note that one sector that has already begun utilizing AI, specifically the financial technology in its day-to-day business is the finance sector. This is evidenced by the widespread adoption of AI technology by numerous companies operating in the finance sector, such as the implementation of biometric verification.

**20. Is artificial intelligence being used in the legal sector, by lawyers and/or in-house counsels? If so, how?**

Although the use of AI in the legal sector in Indonesia is not quite familiar enough to be used productively by lawyers and/or in-house counsels, we note that one of Indonesia's digital legal platforms launched a Legal Intelligent Assistant, capable of creating and providing legal analysis based on the instruction written by its users.

The government frequently issues new regulations and amendments. It is still difficult for AI to keep up with the fast regulatory changes in Indonesia, which demands







continuous updates to maintain the relevance and accuracy of the AI tools. As a civil law system where the primary basis is written regulation, potential implementation of AI systems must continuously integrate new and amended laws upon promulgation to remain effective. Therefore, the use of AI in legal activities in Indonesia may not be particularly relevant.

## 21. What are the 5 key challenges and the 5 key opportunities raised by artificial intelligence for lawyers in Indonesia?

We have gathered below the list of 4 (four) opportunities and challenges that may affect the activities of lawyers when utilizing the AI technology.

### a) 2 Key Opportunities:

- (i) Increase efficiency: For instance, AI could identify relevant information in a document, such as flag inconsistencies during the proofreading process. This particular task of automatic identification of typographical errors in the document will save any lawyer's time in terms of document review.
- (ii) Marketing and Business Development: AI may potentially support law firms in marketing their legal services through automatic preparation of presentation decks when proposing to potential clients. This would include the preparation of the firm's profile presentation, video profile, as well as any designs utilized for marketing purposes.

### b) 2 Key Challenges

- (i) Limited understanding of legal terms: AI has a limited understanding of legal terminology, which may cause their analyses to be inaccurate or irrelevant. This is especially true when attempting to analyze legal matters that involves complex terminology, an AI often struggles to understand the legal terms. It would potentially lead to misunderstanding or misidentification of the facts.
- (ii) Ethical implications: It is important to note that the utilization of AI technology may raise ethical implications, particularly regarding Attorney-Client privileges. The nature of an AI is gathering and processing data, which conflicts with the sensitive nature of a client's data being protected under the Non-Disclosure Agreement.

## 22. Where do you see the most significant legal developments in artificial intelligence in Indonesia in the next 12 months?

Due to the rapid improvement and development of AI technology, we note that the Indonesian government will likely issue specific regulations to oversee the





implementation of AI, though they would still be at the ministerial level. Although we have seen no observable plans or drafts on comprehensive regulations, we trust that the government will likely enact, one or two regulations governing the use of AI technology within the next 12 months.





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