

**THE URGENCY ARTIFICIAL INTELLIGENCE
REGULATION IN INDONESIA IN AN EFFORT TO REALIZE
THE IDEALS OF NATIONAL LAW**

THESIS

by:

Linda Permata Sari (200203110053)



**CONSTITUTIONAL LAW DEPARTMENT
FACULTY SYARI'AH
MAULANA MALIK IBRAHIM STATE ISLAMIC UNIVERSITY
MALANG
2023**

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MALANG**

2023

THESIS AUTHENTICITY STATEMENT

Half Allah,

With awareness and a sense of responsibility toward scientific development,

The author states that the thesis with the title:

**"THE URGENCY OF *ARTIFICIAL INTELLIGENCE REGULATION IN*
INDONESIA IN AN EFFORT TO REALIZE THE IDEALS OF
NATIONAL LAW"**

It is a thesis that is prepared by yourself based on the rules of writing scientific papers that can be accounted for. If in the future this thesis research report is the result of plagiarism of other people's work either in part or in whole, then the thesis as a prerequisite for getting a bachelor's degree title is declared null and void.

Malang, November 10, 2023

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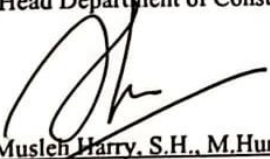
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**“THE URGENCY OF ARTIFICIAL INTELLIGENCE REGULATION IN
INDONESIA IN AN EFFORT TO REALIZE THE IDEALS OF NATIONAL LAW ”**


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2.	Thursday, 07 September 2023	Research Methodology	
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4.	Monday, 11 September 2023	Acc Sempro	
5.	Tuesday, 03 Oktober 2022	Chage the Research Problem	
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MOTTO

"Het reicht hink achter de feiten aan"

the law is always hobbled by the times

TRANSLITERATION GUIDELINES

A. Common

Transliteration in the Dictionary of Philological Terms is defined as "the conversion of text from one writing to another or can be called letter switching or transliteration, for example from Javanese letters to Latin letters, from Sundanese letters to Latin letters, and from Arabic letters to Indonesian letters (Latin). Baried argued that transliteration is the substitution of typewriting, letter by letter from one alphabet to another. The purpose of transliteration is to give the reader an idea of the initial text, which is transliterated.

B. Konsonan

A list of Arabic letters and their transliterations into Latin letters can be found on the following page:

Arabic letters	Name	Latin letters	Name
ا	Alif	id denoted	Not denoted
ب	Ba	B	Be
ت	Ta	T	Tea
ث	S a	S	Ice (with a dot on top)
ج	Jim	J	Them
ح	Huh	H{	Ha (with dot above)
خ	Kha	Kh	Ka and Ha
د	From	D	Of

ذ	Z al	Z	Zet (with dot d above)
ر	Go out	R	There
ز	Sa'd	With	Move
س	Without	S	Is
ش	Considerations	I mean, I am	It's dan ye
ص	Healthy	S{	Ice (with dots below)
ض	Dad	D.	De (with the point below)
ط	So	T.	Te (with the dot below)
ظ	Man	With.	Zet (with dots below)
ع	'Ain	'	reverse apostrophe
غ	Gain	G	Ge
ف	Ago	F	If
ق	Someone	Q	Qi
ك	Kaf	Towards	Ka
ل	Lam	L	The
م	Me	M	In
ن	Now	N	In
و	Wau	W	We
هـ	Ha	H	Ha
أ/ء	Hamzah '	Apostrof
ي	Yes	Y	Ye

C. Long Vocals and Diphthongs

Every Arabic writing in the form of fathah vowels is written with "a", kasrah with "i", dlommah with "u", while the long readings of each are written in the following way Vowel (a) length = â e.g. قال becomes qâla Vowel (i) long = î e.g. قيل becomes qîla Vowel (u) long = û e.g. دون becomes dûna.

Especially for the reading ya“ nisbat, it should not be replaced with "î", but still be written with "iy" to describe ya“ nisbat at the end. The same goes for the diphthongs, wawu and ya“ sounds after fathah written with "aw" and "ay".

Consider the following example:

Diphthong (aw) = و e.g. قول becomes qawlun

The diphthong (ay) = ي e.g. خى becomes khayrun.

D. Ta' Marbutoh

Ta' marbûthah is transliterated with a "t" if it is in the middle of a sentence, but if the ta' marbutah is at the end of a sentence, it is transliterated using an "h" e.g. ردم ل ال consisting of an arrangement of mudlaf and mudlaf ilayh, then transliterated using a "t" connected to the next sentence, e.g. رحمة هلى be fi rahmatillâh

E. Clothing and Lafadz Al-Jalalah

The clothing word in the form of "al" (ال) (written in lowercase, unless located at the beginning of the sentence, while "al" in lafadh jalalah which is in the

middle of the sentence that is rested (idhafah) is omitted. Consider the following examples: Al-Imâm al-Bukhâriy says., and Mashâ'Allah kânâ wa mâlam yashâ lam yakun

FOREWORD

Alhamdulillahirabbil'alamin, who has given grace and help in writing a thesis entitled: "The Urgency of *Artificial Intelligence Regulation* in Indonesia in an Effort to Realize National Legal Order" we can solve this well. We say prayers and greetings to His Majesty the Prophet Muhammad SAW who has given uswatun hasanah to us in living this life shari'i. By following him, may we be among the believers and have his intercession at the end of the world. Amien.

With all the teaching, guidance/direction, and service assistance that has been provided, then with all humility, the author expresses his peerless gratitude to:


1. Prof. Dr. M. Zainuddin, M.A, selaku Rector Universitas Islam Negeri Maulana Malik Ibrahim Malang.
2. Prof. Dr. Sudirman, M.A., CAHRM. as Dean of the Sharia Faculty of State Islamic University Maulana Malik Ibrahim Malang.
1. Dr. Musleh Harry, S.H., M.Hum., as Head of the Constitutional Law Study Program (*Siyasah*) Faculty of Sharia Maulana Malik Ibrahim State Islamic University Malang
2. Board of Examiners who have provided suggestions and input on the author's thesis
3. Mrs. Nur Jannani, S.HI., M.H., as the writer's supervisor has devoted time to provide direction and motivation in completing the writing of this thesis.

4. Mr. Ahmad Wahidi M.HI. who has become the author's first Guardian Lecturer and Mrs. Sheila Kusuma Wardani Amnesti, M.H., as the author's guardian lecturer while studying at the Sharia Faculty of Maulana Malik Ibrahim State Islamic University Malang.
5. All lecturers of the Sharia Faculty of Maulana Malik Ibrahim State Islamic University Malang who have provided learning to all of us. With sincere intentions, may their charity all be part of worship to gain the pleasure of Allah SWT.
6. Staff and Employees of the Sharia Faculty of Maulana Malik Ibrahim State Islamic University Malang who have participated in the completion of the author's thesis
7. The author's family who have supported, helped and prayed wholeheartedly in the process of the author's journey in completing this thesis.
8. All parties that cannot be mentioned one by one but have helped the author a lot in the process of preparing this thesis to completion.
9. Finally, thanks to myself Linda Permata Sari for struggling and having been enthusiastic in completing the final project that became a dream of parents. Thank you for persisting with so many expectations from the family.

With the completion of this thesis report, it is hoped that the knowledge we have gained during college can provide charitable benefits for life in the world and the hereafter. As a human being who never escapes error, the author really hopes

for the door of forgiveness as well as criticism and suggestions from all parties for efforts to improve in the future.

Malang, November 10, 2023

A handwritten signature in black ink, appearing to read 'Linda Permata Sari', with a date '23/11/23' written above it.

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ABSTRAK

Linda Permata Sari, NIM 200203110053. *Urgensi Regulasi Artificial Intelligence di Indonesia dalam Upaya Mewujudkan Cita Hukum Nasional*. Skripsi. Program Studi Hukum Tata Negara (Siyasah), Fakultas Syariah, Universitas Islam Negeri Maulana Malik Ibrahim Malang. Pembimbing: Nur Jannani, SHI.,M.H.

Kata Kunci: *Artificial Intelligence*; Cita Hukum; Hukum Responsif; Regulasi; *Sadd Al-Dzari'ah*.

Perkembangan *Artificial Intelligence* di Indonesia telah dirasakan oleh sebagian besar masyarakat. Akan tetapi, hingga saat ini tidak ada aturan yang mengatur terkait *Artificial Intelligence*. Oleh karena itu, diperlukan adanya regulasi yang mengatur *Artificial Intelligence* di Indonesia.

Tujuan penelitian ini adalah untuk mengetahui dan menganalisis Urgensi Regulasi *Artificial Intelligence* di Indonesia dalam Upaya Mewujudkan Cita Hukum Nasional serta telaah dalam Perspektif Teori Hukum Responsif dan *Sadd Al-Dzariah*

Penelitian ini menggunakan jenis penelitian yuridis normatif, dengan pendekatan *statue approach*, *conceptual approach*, dan *comparative approach*. Sumber bahan hukum yang digunakan yaitu bahan hukum primer, sekunder, dan tersier, yang dianalisis menggunakan metode deskriptif dan komparatif.

Hasil penelitian ini menunjukkan: 1) Urgensi regulasi *Artificial Intelligence* sebab banyaknya permasalahan *Artificial Intelligence* yang juga tidak dilindungi oleh Undang-Undang, telah sejalan dengan perwujudan Cita Hukum Nasional untuk memberikan Kepastian Hukum, Keadilan, dan Kemanfaatan yang dapat dirasakan oleh seluruh masyarakat di Indonesia 2) Urgensi regulasi *Artificial Intelligence* di Indonesia telah sejalan dengan teori Hukum Responsif sebagai bentuk respon pemerintah terhadap kepastian hukum masyarakat dalam memanfaatkan *Artificial Intelligence* kedepannya. Selaras dengan *Sadd Al-Dzariah* yang hadir sebagai jalan tengah terhadap banyaknya permasalahan *Artificial Intelligence* yang dapat ditimbulkan karena mengandung kemudharatan yang dapat merugikan masyarakat.

ABSTRACT

Linda Permata Sari, NIM 200203110053. *The Urgency of Artificial Intelligence Regulation in Indonesia in an Effort to Realize the Ideal of National Law*. Thesis. Department of Constitutional Law (Siyasah), Faculty of Sharia, Universitas Islam Negeri Maulana Malik Ibrahim Malang. Advisor: Nur Jannani, SHI., M.H.

Keywords: Artificial Intelligence; The Mind of the Law; Responsive Law; Regulation; Sadd Al-Dzari'ah.

The development of Artificial Intelligence in Indonesia has been felt by most people. However, until now there are no rules governing Artificial Intelligence. Therefore, there is a need for regulations governing Artificial Intelligence in Indonesia.

The purpose of this study is to know and analyze the Urgency of Artificial Intelligence Regulation in Indonesia in an effort to Realize the Ideal of National Law as well as a study in the Perspective of Responsive Legal Theory and Sadd Al-Dzariah

This study used a type of normative juridical research, with a statute approach, conceptual approach, and comparative approach. The sources of legal materials used are primary, secondary, and tertiary legal materials, which are analyzed using descriptive and comparative methods.

The results of this research show: 1) The urgency of Artificial Intelligence regulation due to the many problems of Artificial Intelligence that are also not protected by law, has been in line with the realization of the National Legal Ideal to provide Legal Certainty, Justice, and Benefits that can be felt by all people in Indonesia. 2) The urgency of Artificial Intelligence Regulation in Indonesia is in line with the Responsive Law as a form of government response to the legal certainty of the community in utilizing *Artificial Intelligence* in the future. In line with *Sadd Al-Dzariah* which is present as a middle way to the many problems of *Artificial Intelligence* that can be caused because it contains harm to society.

مستخلص البحث

ليندا بيرماتا ساري, ٢٠٠٢٠٣١١٠٠٥٣ الحاجة الملحة لتنظيم الذكاء الاصطناعي في إندونيسيا
وجهاً نظر النظرية القانونية المستجيبة و سد الدزارية اطروحه .قسم القانون الدستوري (سياسة)،
كلية الشريعة، جامعة الإسلام نيغري مولانا مالك إبراهيم مالانج. المستشار: نور جناني الماجستير .

الكلمات الأساسية: الذكاء الاصطناعي; عقل القانون; قانون مستجيب; تنظيم; سد الشهادة

لقد شعر معظم الناس بتطوير الذكاء الاصطناعي في إندونيسيا. ومع ذلك ، حتى الآن لا
توجد قواعد تحكم الذكاء الاصطناعي. لذلك ، هناك حاجة للوائح تحكم الذكاء الاصطناعي في
إندونيسيا

الغرض من هذه الدراسة هو معرفة وتحليل الحاجة الملحة لتنظيم الذكاء الاصطناعي في
إندونيسيا في محاولة لتحقيق المثل الأعلى للقانون الوطني وكذلك دراسة في منظور النظرية القانونية
المستجيبة وسد الدزارية.

يستخدم هذا البحث الأساليب القانونية المعيارية ، مع نهج تمثال ، ونهج مفاهيمي ، ونهج
مقارن. مصادر المواد القانونية المستخدمة هي المواد القانونية الأولية والثانوية والثالثية ، والتي يتم
تحليلها باستخدام الأساليب الوصفية والمقارنة.

تظهر نتائج هذا البحث: (1) إن الحاجة الملحة لتنظيم الذكاء الاصطناعي بسبب العديد
من مشاكل الذكاء الاصطناعي التي لا يحميها القانون أيضا ، تتماشى مع تحقيق المثل الأعلى القانوني
(الوطني لتوفير اليقين القانوني والعدالة والفوائد التي يمكن أن يشعر بها جميع الناس في إندونيسيا. 2
تتماشى الحاجة الملحة لتنظيم الذكاء الاصطناعي في إندونيسيا مع قانون الاستجابة كشكل من
أشكال استجابة الحكومة لليقين القانوني للمجتمع في استخدام الذكاء الاصطناعي في المستقبل
تماشياً مع سد الدزارية الموجود كطريق وسط للعديد من مشاكل الذكاء الاصطناعي التي يمكن أن
تحدث لأنها تحتوي على ضرر للمجتمع

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CHAPTER 1

INTRODUCTION

A. Background

Corona Virus Disease 2019 (COVID-19) which has occurred in recent years, has brought global problems from various factors. In fact, the virus, which spread in 213 countries, has infected millions of people around the world, claimed innocent lives, eroded family happiness, and brought many people before the creator. The whole country was shocked by an unusual disease. All countries in the world have also made maximum efforts to break the chain of spread of the coronavirus that is spreading widely in their countries.

In March 2020, the President of the Republic of Indonesia designated COVID-19 as a Pandemic that occurred in Indonesia.¹ The COVID-19 pandemic has had a huge social and economic impact, starting from the economic slowdown to increasing unemployment has been felt by the Indonesian people.² Various efforts from the government have been made optimally in handling the pandemic, starting from the policy rules for the Implementation of Large-Scale Social Restrictions (PSBB) contained in Government Regulation No. 21 of 2020 concerning Large-Scale Social Restrictions to the Implementation of Community

¹After the Announcement of the President of the Republic of Indonesia on March 2, 2020, the Government took action to form a Task Force for the Acceleration of Covid-19 Handling on March 13, 2020, based on Presidential Decree No. 7 of 2020 concerning the Task Force for the Acceleration of Covid-19 Handling

²Ririn Noviyanti Putri, "Indonesia in Facing the Covid-19 Pandemic," *Scientific Journal of Batanghari University Jambi* 20, no. 2 (2020): 705, <https://doi.org/10.33087/jiubj.v20i2.1010>.

Activity Restrictions (PPKM) as stipulated in the Minister of Home Affairs Instruction Number 01 of 2021.³, however, the government's Control / Handling of the COVID-19 Pandemic is not enough but also requires more awareness from the public to work together to break the chain of the COVID-19 pandemic.⁴

The great influence of the spread of COVID-19 is felt by the wider community, both adults, old and children. Likewise, the impact of the pandemic is not only about health, but far erodes education, the economy, and even the social life of the Indonesian people. Government policies from PSBB and PPKM have hampered and robbed the community of space, requiring people to be literate about technology. Workers who are required to complete work from home, education that is suddenly forced to be delivered remotely, and even 2-person gatherings are not carried out as much as possible⁵ so that daily activities are required to be able and accustomed to be done online. As the Secretary-General of the United Nations Conference on Trade and Development (UNCTAD) Mukhisa Kituyi stated that the COVID-19 pandemic has shifted the world in the Digital era.⁶ The most prominent use of digital technology in daily activities is tracing, analyzing data,

³ The government's efforts in breaking the chain of spread of COVID-19 began with the issuance of a Circular Letter from the Ministry of Health SE No. HK.0202/I/385/2020 concerning the Use of Masks and the Provision of Handwashing Facilities with Soap. Efforts were also made to minimize contact between people, so the PSBB was enacted which refers to Law No. 6 of 2019 concerning Health Quarantine. In practical terms, the policy is derived in PP No. 21 of 2020. Which is also technically regulated in PERMENKES No. 9 of 2020. In January 2021, the pandemic has not passed until the government again issued a policy in the form of PPKM which is regulated in the Minister of Home Affairs Instruction No. 01 of 2021. This PPKM is implemented gradually according to the conditions in each region, and is also carried out in stages.

⁴ Putri, "Indonesia in the Face of the Covid-19 Pandemic."

⁵ Zen Munawar et al., "Utilization of Digital Technology During the Covid-19 Pandemic," *Thematic* 8, no. 2 (2021): 160–75, <https://doi.org/10.38204/tematik.v8i2.689>.

⁶ Chrysti Evanda Sari Aprilia, "Percentage Increase in Online Market Segmentation During the COVID-19 Pandemic," *Kumparan.com*, 2021, Percentage Increase in Online Market Segmentation during the COVID-19 Pandemic %7C *kumparan.com*.

predicting/predicting/and diagnosing. Often daily activities are transferred to machines that operate, thus requiring humans to be sensitive and understand technological developments.

The development of digital technology during the COVID-19 pandemic, is one of the factors that trigger the growth of *Artificial Intelligence* in Indonesia- This can be proven from data from the Indonesian Internet Service Providers Association (APJII), in 2020 there was an increase of 73.3% or equivalent to 196.7 million internet users in Indonesia.⁷ Until 2023, Internet users continue to increase with data released by APJII, Internet penetration in Indonesia in 2023 will reach 78.19% or equivalent to 215,626,156 people from Indonesia's total population of 275,773,901. This number increased by 1.17% compared to 2022.⁸

According to Enni Soerjati Priowirjanto in a Journal titled "The urgency of regulation regarding the online business sector during the COVID-19 Pandemic in Indonesia" stated that the development of *Artificial Intelligence* in the business sector was very massive during the COVID-19 period. Evidenced from data from the Ministry of Communication and Information Technology (KOMINFO) noted that the surge in growth in the value of electronic commerce increased by 78%

⁷ APJII Bulletin, "Press Release: Indonesian Internet Users Almost Exceeded 200 Million in 2019 – Q2 2020," APJII, 2020, <https://blog.apjii.or.id/index.php/2020/11/09/siaran-pers-pengguna-internet-indonesia-hampir-tembus-200-juta-di-2019-q2-2020/>.

⁸ APJII, "APJII Survey of Internet Users in Indonesia Reaches 215 Million People," March 10, 2023, <https://apjii.or.id/berita/d/survei-apjii-pengguna-internet-di-indonesia-tembus-215-juta-orang>.

which positioned Indonesia to be the 1st rank of *e-commerce* growth in the world, followed by Mexico in second place.⁹

In addition, the Indonesian government has also paid attention to the potential development of *Artificial Intelligence* and encouraged its use in various sectors. In 2019, President Joko Widodo launched "Making Indonesia 4.0", an initiative to accelerate digital transformation and strengthen Indonesia's manufacturing sector. One of the initiative's focuses is on developing the potential of AI, the *Internet of Things*, and big data.

Moreover, the Ministry of State Apparatus Empowerment and Bureaucratic Reform (PAN-RB) agreed and even strongly supports that *Artificial Intelligence* can be used to accelerate public services by the government. The existence of *Artificial Intelligence* is a form of service transformation, both *e-service*, community supervision, and strengthening the ecosystem of innovations.¹⁰ In addition, the Coordinating Ministry for Economic Affairs of the Republic of Indonesia through its Press Release Number HM.4.6/71/SET. M.EKON.3/02/2023 strongly supports and encourages faster economic recovery by optimizing the Digital Economy based on the Results of a Google Temasek, Bain, and Company Study in 2022, showing that the increase in the Digital Economy in Indonesia

⁹ KOMINFO, "Ministry of Communication and Information: Indonesia's e-Commerce Growth Reaches 78 Percent," 2019, https://www.kominfo.go.id/content/detail/16770/kemkominfo-pertumbuhan-e-commerce-indonesiacapai-78-persen/0/sorotan_media.

¹⁰ MENPAN RB, "Public Services More Effective with Artificial Intelligence," 2020, <https://www.menpan.go.id/site/berita-terkini/pelayanan-publik-lebih-efektif-dengan-kecerdasan-buatan>.

reached USD 77 billion or an increase of 22% compared to 2021, which succeeded in becoming a Major Player in the Digital Economy at the ASEAN level.¹¹

The potential for the development of *Artificial Intelligence in Indonesia* is quite large, some obstacles need to be overcome, such as a shortage of Artificial Intelligence experts, unsupportive infrastructure, and a lack of clear regulations regarding the use of Artificial Intelligence. Therefore, efforts are needed to overcome these obstacles so that *Artificial Intelligence* can be utilized optimally to increase the productivity and quality of life of the Indonesian people.

In line with this, Ririen Kusumawati in the Journal of Ulul Albab UIN Maulana Malik Ibrahim Malang entitled "Human Artificial *Intelligence*: Future Dream Technology" has anticipated in his research, that artificial intelligence technology is indeed a very sophisticated technological discovery, but it is also a panacea for all human diseases so that humans need to anticipate the reality that will happen.¹²

The implementation of *Artificial Intelligence in various sectors of life* is very positive because Artificial Intelligence can answer various problems of conditions from the times. On the other hand, *Artificial Intelligence can also be a threat to Human Resources because many Human jobs are starting to be replaced by Artificial Intelligence. Increasingly sophisticated Artificial Intelligence* also

¹¹ Haryo Limanseto, "Press Release of the Coordinating Ministry for Economic Affairs of the Republic of Indonesia," 2023, September 04, 2023, 12:58 PM <https://ekon.go.id/publikasi/detail/4957/pemerintah-dorong-pemulihan-ekonomi-lebih-cepat-dengan-optimal-potensi-ekonomi-digital>.

¹² Ririen Kusumawati, "Artificial Intelligence; Future Dream Technology," *ULUL ALBAB Journal of Islamic Studies* 9, no. 2 (2018): 257–74, <https://doi.org/10.18860/ua.v9i2.6218>.

requires Humans to always Upgrade themselves not to be controlled by *Artificial Intelligence* which has such rapid development.¹³

Artificial Intelligence can operate autonomously without human intervention, often even in contact with the law as Tesla vehicles operate on highways autonomously.¹⁴ Shockingly, a case in Belgium claimed that her husband committed suicide after talking about climate change, with an *Artificial Intelligence chatbot*.¹⁵ Furthermore, some cases that often occur due to the use of *Artificial Intelligence* are in the form of changing one's voice which is often found on various Digital Platforms.

In line with this, research conducted by Romi Fadhlurrahman, a student of UIN Sultan Syarif Kasim Riau entitled "The Urgency of Regulating Artificial Intelligence as *Intellectual Property Rights in Indonesia*" resulted that Artificial Intelligence as an Intellectual Property Right has not been able to be accommodated from Law No. 28 on Copyright. Copyright Law in Indonesia only accommodates copyright protection produced by humans and legal entities. Copyright Law has also lagged behind existing technological developments. This study only explains that Artificial Intelligence is not *accommodated in the Copyright Law which only focuses on protecting human data and legal entities, but the researcher does not*

¹³ Roida Pakpahan, "Analysis of the Effect of Artificial Implementation," *Journal of Information System, Informatics and Computing* 5, no. 2 (2021): 506–13, <https://doi.org/10.52362/jisicom.v5i2.616>.

¹⁴ Hari Sutra is held, "The Urgency of Special Regulations and the Use of Artificial Intelligence in Realizing Personal Data Protection in Indonesia," *Journal of Juridical Insights* 5, no. 2 (2021): 177, <https://doi.org/10.25072/jwy.v5i2.460>.

¹⁵ Giovanni Dio Inscription, "AI Chatbot Accused of Male Suicide in Belgium," Coverage 6, 2023, <https://www.liputan6.com/tekno/read/5264750/chatbot-ai-dituding-terlibat-kasus-bunuh-diri-pria-di-belgia>.

explain rigidly related to the non-accommodation of Artificial Intelligence which in outline is not a legal subject mentioned in the law.

In this regard, the adage of the law also states "Het recht hinkt achter de faiten aan", the law is always hobbled by the times. That is, establishing the regulation of Artificial Intelligence *as an intellectual property right in Indonesia is very important to be a guarantee for the work produced by Artificial Intelligence. Artificial Intelligence which is regulated in laws and regulations, should be very easy to enforce law enforcement against Artificial Intelligence.*

In this regard, anticipation of errors in *Artificial Intelligence* also needs strong regulations as mandated in Article 1 paragraph (3) of the 1945 Constitution that the State of Indonesia is a State of Law. As a state of law, it is appropriate to protect society that is based on the law. The concept of the rule of law initiated by Julius Stahl is that 4 important elements must be fulfilled in the rule of law, one of which is government based on the principle of legality.¹⁶ It is a logical consequence of the rule of law to provide clear legal certainty for problems that occur even those that will occur in society.

The current *Artificial Intelligence regulations* are only based on the ITE Law and Government Regulations on the Implementation of Electronic Information and Transactions as Electronic Operators. Interestingly, Article 40 paragraph 1 of the ITE Law states that the Government Facilitates the Utilization of Information

¹⁶ Sayuti, "The Concept of Rechtsstaat in the Indonesian State of Law (A Study of M.T Azhari's Opinion)," *Al-Risalah: Forum for Legal and Social Studies* 12, no. 202 (2018): 1–24, <https://doi.org/10.30631/alrisalah.v12i02.447>.

Technology and Electronic Transactions by the provisions of the Laws and Regulations. Furthermore, Article 4 of Government Regulation No. 17 of 2019 concerning the Implementation of Electronic Information and Transactions states that as long as it is not otherwise stipulated by a separate Law, each electronic system operator must operate the electronic system by fulfilling the specified requirements.¹⁷ This means that there is an open space to issue special rules for *Artificial Intelligence regulations in Indonesia* because they are in line with the references to laws and regulations and have become the answer to the anxiety of inequality in legal products.

The existence of *Artificial Intelligence* which is not clearly and concretely mentioned in laws and regulations, really needs to be regulated in the current laws and regulations in Indonesia. Fence M. Wantu said, "Law without the value of legal certainty will lose its meaning because it is no longer used as a code of conduct for society".¹⁸ In this case, Gustav Radbruch in his opinion stated that the existence of law aims to provide legal certainty because it has the aim of creating order and

¹⁷ The conditions specified in Article 4 of the ITE Law are as follows:

- a. Can display electronic information and/or electronic documents in full in accordance with the retention period stipulated by laws and regulations;
- b. Can protect the availability, integrity, authenticity, confidentiality, and accessibility of Electronic Information in the operation of electronic systems;
- c. Can operate in accordance with procedures or instructions in the operation of the electronic system;
- d. Equipped with procedures or instructions announced with language, information, or symbols that can be understood by the party concerned with the operation of the electronic System; and
- e. Have an ongoing mechanism to maintain the novelty, clarity, and responsibility of procedures or appointments

¹⁸ Fence M. Wantu, "Antinomy in Law Enforcement by Judges," *Legal Pulpit Periodical* 19, no. 3 (2007): 395.

welfare in society. In addition to legal expediency and justice, legal certainty is also an inseparable part of the rule of law.

In line with this, the application of the Legal Certainty Theory initiated by Van Apeldron related *to the Existence of Artificial Intelligence which is not specifically mentioned and is explicit in laws and regulations, requires legal certainty that there is clarity and firmness of Artificial Intelligence regulations in society, so as not to cause many misinterpretations as is happening today.*¹⁹ In line with this, John Austin said that definite laws can be achieved when they are explained and listed in a system that has strong consequences.²⁰ Critical reflection from philosophers has provided a middle ground that law should have a point of certainty to provide clarity to society.

دَرْءُ الْمَفَاسِدِ مُقَدَّمٌ عَلَى جَلْبِ الْمَصَالِحِ

*"Rejecting harm takes precedence over taking advantage."*²¹

The rules of fiqh provide a clear understanding that rejecting evil is prioritized by the rampant problems of Artificial Intelligence *rather than taking advantage by continuing to use the benefits of Artificial Intelligence with regulations that are only explained implicitly.* The middle way to this problem needs

¹⁹ Van Apeldoorn, *Introduction to Law* (Jakarta: Pradnya Paramita, 1975). 24-25

²⁰ And Fernando M Manullang, *Legism, Legality and Legal Certainty: Second Edition*, Kedu Edition (Jakarta: Prenamedia Group, 2019), <https://books.google.co.id/books?id=1v08EAAAQBAJ>. 18.

²¹ And abraham, *Al-Qawaid Al-Fiqhiyah (Kaidah-Kaidah Fiqih)*, *Al-Qawa'id Al-Fiqhiyah* Above, 1st ed. (Palembang: CV. AMANAH, 2019). 84

to be anticipated with the existence of special regulations as an effort to prevent the glory of the presence of *Artificial Intelligence*.

Ius Constituendum or law aspired by the association or state, is also part of the development of law but has not become a norm in the form of legislation or the like that is expected to apply in the future. *Ius Constitutum* and *Ius Constituendum* intertwined a new idea, ideal, and idea to develop into law in force through a process of legal development.²² This is then the reason for forming *Artificial Intelligence* regulations as an effort to realize national legal order.

Efforts in realizing the National Legal Order aspired by the State of Indonesia are the main reference in forming *Artificial Intelligence* Regulations. The existence of *Artificial Intelligence regulations* is the government's response to realizing laws that are following the rules of laws and regulations to produce good legal products that are desired by the public. The regulations initiated in the form of laws will later accommodate the needs of the community following the procedures of laws and regulations.

The Responsive Legal Theory which is used as an analysis knife in this study will examine social symptoms with a relevant rule to answer the problem.²³ As the environment develops, laws must be reorganized to protect the regulatory authority itself and the integrity of its application in society. The existence of rules *Artificial Intelligence* which does not explicitly mention what is accompanied by

²² M. Ruhli Kusuma Dinata, *Introduction to Law*, ed. Syafrudin (City of Earth: Sai Wawai Publishing, 2019).

²³ Phillippe Nonet and Phillippe Selznick, *Responsive Law*, ed. Raisul Muttaqin, Cetakan IV (Bandung: Nusamedia, 2019), <https://books.google.co.id/books?id=ZgNUEAAAQBAJ>.

utilization *Artificial Intelligence* which is growing, the researcher will use an analysis of knife Responsive Law theory as the front line in answering legal rules that are no longer relevant and even do not regulate and answer to the development of society.

On the other hand, *Sadd Al-Dzari'ah* is a method carried out to achieve good goals by closing roads that bring harm or damage. In this case, *Sadd Al-Dzari'ah* determines whether the path is good or bad. That is, anything that is good or permissible but leads to damage, will be something bad or forbidden. That is, the existence of Artificial Intelligence that has *a positive impact and has begun to be felt by various sectors, needs regulations that explicitly regulate the use, use, and responsibility of Artificial Intelligence, so that the use of Artificial Intelligence that is applied does not bring damage and becomes prohibited.*

In this regard, research entitled "The Urgency of *Artificial Intelligence Regulation* in Indonesia in an Effort to Realize the Ideal of National Law" has found its point of urgency and is very important to be discussed and researched.

B. Problem Statement

Concerning the above background, then it can be taken the Problem Summary as follows:

1. What is the Urgency of Artificial Intelligence Regulation in Indonesia in an Effort to Realize the Ideal of National Law?

2. What is the Urgency of *Artificial Intelligence Regulation* as an Effort to Realize the Ideal of National Law Perspective of Responsive Legal Theory and *Saad Al-Dzari'ah*?

C. Research Objectives

Concerning the Problem Formulation above, the objectives of this study are as follows:

1. Analyzing and Describing the Urgency of Artificial Intelligence Regulation in Indonesia in an Effort to Realize the Ideal of National Law.
2. Analyzing and Describing the Urgency of *Artificial Intelligence Regulation* as an Effort to Realize National Legal Ideals Perspective of Responsive Legal Theory and *Saad Al-Dzari'ah*.

D. Research Benefits

1. Theoretical Benefits

Used as reference material for various parties including, readers and parties related to the science discussed to find out the development of Artificial Intelligence in Indonesia *to be able to examine the urgency of Artificial Intelligence regulations in laws and regulations in Indonesia*, which can be a means to develop and increase insight and knowledge about Artificial Intelligence in Indonesia and anticipate the negative implications that might occur along with the development of *Artificial Intelligence* in Indonesia.

2. Practical Benefits

This research is expected to provide input to the Government on the policies to be taken, especially in terms of responsibility for the development

of Artificial Intelligence in Indonesia to be able to provide solution affirmative action to protect all Indonesian people by forming regulations related to Artificial Intelligence in the laws and regulations in Indonesia because there are no specific rules governing it.

E. Research Methods

1. Types of Research

Legal research is a research activity that aims to answer the problems raised by going through a process of study and analysis of various rules, principles, and legal doctrines.²⁴ There are 2 types of legal research²⁵, namely Normative legal research and Empirical legal research.

The type of research that the author uses in this study is normative juridical, which is research conducted to identify legal problems and then provide solutions to these legal problems, both caused by problematic legal rules, legal vagueness in these norms, or legal vacuums²⁶ As Sutadnyo Wigsbroto argues quoted in the book Johnny Ibrahim and Jonaedi Efendi²⁷ that normative legal research is also called doctrinal research, which is the conception of legal research developed against the doctrines espoused by its developers. Meanwhile, Soerjono Soekanto and Sri Mamudji added that normative legal research is research conducted utilizing *literature* research or

²⁴ Peter Mahmud Marzuki, *Legal Research: Revised Edition* (Yogyakarta: Prenada Media, 2017), 35 <https://books.google.co.id/books?id=CKZADwAAQBAJ>.

²⁵ Soejono Soekanto, *Introduction to Legal Research* (Jakarta: UI Press, 1986). 46-53.

²⁶ Marzuki, *Legal Research: Revised Edition*. Legal Research. 46

²⁷ Efendi Jonaedi and Ibrahim Johnny, *Legal Research Methods: Normative and Empirical* (Prenada Media, 2018), <https://books.google.co.id/books?id=5OZeDwAAQBAJ>.

literature²⁸ research, which means that authors obtain data by collecting and studying reading sources such as books, journals, newspapers, magazines, and internet sites to obtain concrete analysis of research studies.

This research can be said to be normative legal research because it contains the object of study in the form of legal norms that will be studied through literature studies. The legal norms that are the subject of analysis in this study are rules that have correlations related to *Artificial Intelligence including Law No. 19 of 2016 concerning Electronic Information and Transactions can accommodate or not to legal problems generated by Artificial Intelligence due to not explicitly mentioned in laws and regulations.*

2. Research Approach

The approach method is one way to build a legal research framework that aims to build an object of the problem under study to achieve understanding related to the problem discussed.²⁹ The approach used in this study³⁰ is the Conceptual Approach (*conceptual approach*), *statutory approach* (statute approach), and *Comparative approach* (*comparative approach*) to answer the problems to be studied, by regulating *Artificial*

²⁸ Soejono Soekanto and Sri Mamudji, *Normative Legal Research: A Brief Review* (Issuer CV. Eagle, 1986), https://books.google.co.id/books?id=_Y1GPAAACAAJ.

²⁹ Depri Liber Sonata, "Normative and Empirical Legal Research Methods: Distinctive Characteristics of Legal Research Methods," *Fiat Justitia Journal of Legal Sciences* 8, no. 11 (2014): 15–35, <https://doi.org/10.25041/fiatjustisia.v8no1.283>.

³⁰ Peter Mahmud Marzuki classifies research approaches in Normative legal research can only be done with from 5 types of Approaches:

- a. Legal Approach (*Statute Approach*);
- b. Case Approach;
- c. Historical Approach;
- d. Comparative Approach;
- e. Conceptual Approach (*Conceptual Approach*);

Intelligence in laws and regulations even though philosophically these arrangements have been mandated by the Basic Law.

a. Legal Approach (*statute Approach*)

The legislative approach is an approach that is carried out by reviewing all laws and regulations related to the legal issues discussed.³¹

The legal approach is carried out by reviewing all laws and regulations related to the issues and problems being addressed.³² In this study, the legislative approach to be examined is the Constitution of the Republic of Indonesia Year 1945 hereinafter referred to as the 1945 Constitution, Law No. 19 of 2016 concerning Electronic Information and Transactions hereinafter referred to as the ITE Law and Government Regulation (PP) No. 71 of 2019 concerning the Implementation of Electronic Information and Transactions and Regulations adopted by the European Union comparison country, namely the AI EU ACT.

b. Conceptual approach

The conceptual approach is an approach that is usually taken in analyzing and describing problems in research built on the Void of Norms.³³ For the author, the formation of regulations related to *Artificial Intelligence* is an interesting thing to be researched because of the situation

³¹ Peter Mahmud Marzuki, *Legal Research* (Jakarta: Kencana Prenada Media, 2011), 93.

³² Zulfi Diane Zaini, "Implementation of Normative Juridical Approach and Sociological Normative Approach in Legal Research", *Legal Institutions, Volume 6* (July 2011), 129.

³³ The Diantha I Made, *Normative Legal Research Methodology in the Justification of Legal Theory* (Prenada Media, 2016), <https://books.google.co.id/books?id=-MpADwAAQBAJ>.

that requires it. In this case, the author will explore secondary legal sources that provide information related to the development of *Artificial Intelligence in Indonesia so that it can be proven the urgency of Artificial Intelligence regulation in Indonesia.*

c. Comparative Approach

The comparative approach to law is an activity to compare the laws of one country with the laws of another country or the laws of one particular time with the laws of another time.³⁴ This activity is useful for the disclosure of the background of the occurrence of certain legal provisions for the same matter from two or more countries.

The disclosure of this research can be used as a recommendation for the preparation or amendment of legislation that discusses *Artificial Intelligence by comparing European Union countries that have adopted Artificial Intelligence regulations listed in the European Union Artificial Intelligence Act. (AIEU ACT) and Australia which is also in line with the State of Indonesia which believes that Artificial Intelligence can quite be said as an "Inventor" or an "Electronic Agent" like Indonesia.*

3. Legal Materials

The legal materials used in this study include primary legal materials, secondary legal materials, and tertiary legal materials.; While

³⁴ Marzuki, *Legal Research: Revised Edition.* 65

a. Primary Legal Materials

Primary legal materials (derived from law), namely laws and regulations, legal documents, court decisions, legal reports, and legal records. The primary legal material that the author uses is all provisions of laws and regulations relating to discussions raised starting from the 1945 NRI Constitution, Law Number 19 of 2016 concerning Electronic Information and Transactions, Government Regulation No. 71 of 2019 concerning the Implementation of Electronic Information and Transactions. There is another Primary legal material contained in the comparison regulations of other countries, namely the AI EU ACT.

b. Secondary Legal Material

Secondary legal materials (derived from legal science), namely legal doctrine, legal theory, legal opinions, and legal reviews. The secondary legal materials that support the primary legal materials in this study are Research Results, Books, Scientific Journals, Opinions, and News.

c. Tertiary Law Materials

Tertiary legal materials (are complementary to primary and secondary legal materials) namely legal dictionaries, large dictionaries Indonesian. The legal materials used by the authors in this study, in addition to primary legal materials and secondary legal materials,

namely tertiary legal materials used in the form of legal dictionaries, encyclopedias, and others.

4. Legal Material Collection Methods

The method of collecting legal material is a process of describing certain symptoms or problems systematically and consistently, which aims to solve a problem under study by utilizing various sources of legal material obtained.³⁵ In normative legal research, the technique of collecting legal materials is carried out by conducting a literature study of legal materials.³⁶ The method of collecting legal material used by the author in this study is a descriptive analysis method, namely the researcher in this case presents an overview of the results of the research conducted by the author without justifying the results of the author's research, by explaining what it is about an event that occurred.³⁷ In addition, the author also uses a comparative method by comparing Indonesia with other countries that are used as a reference to obtain maximum research and become a reference and view related to *Artificial Intelligence* in other countries.

5. Legal Material Analyzing

Legal material processing methods are steps for processing legal materials that have been collected to answer legal issues and problem

³⁵ Soekanto, *Introduction to Legal Research*.137

³⁶ Christian, *Understanding Normative Legal Research* (Prenada Media, 2022), 53 <https://books.google.co.id/books?id=dVW6EAAAQBAJ>.

³⁷ Christian. *Understand Legal Research*. 55

formulations that have been formulated.³⁸ In this study, research is processed using deductive reasoning on legal materials that have been collected systematically, namely selecting the collected legal materials which are classified based on the class of legal materials that can be arranged sequentially. A descriptive method is also carried out by describing the results of research using legal materials that the author has collected to answer legal issues that have been formulated.

F. Previous Research

Research related to the urgency of *Artificial Intelligence* regulation has certainly been conducted by several researchers but with a slightly different discussion. To complete the data in the study and avoid repeating the discussion, similar research that has been studied in the past is needed. The previous research that discusses the urgency of *Artificial Intelligence* Regulation is as follows:

1. Journal by Mohamad Zachary Rusman and Elfrida Ratnawati Master of Law, Faculty of Law, Trisakti University 2023, entitled "The Urgency of *Regulating Artificial Intelligence* in Indonesia".³⁹ The research is normative research with descriptive analysis, namely by conducting a literature study of secondary legal materials both books, journals, and other research results. The results of the study conclude that the use of Artificial Intelligence that *is so heavily among the people of Indonesia has occurred a lot, both the*

³⁸ Jonaedi and Johnny, *Legal Research Methods: Normative and Empirical*. 182

³⁹ Mohamad Zachary Rusman, "The Urgency of Artificial Intelligence Regulation in Indonesia," *Angewandte Chemie International Edition*, 6(11), 951–952. 5, no. Mi (2023): 5–24.

growth of e-commerce is getting higher or daily activities that are transferred to technology, in fact also have a negative impact on Artificial Intelligence. The State of Indonesia has initiated the National Action Plan for Artificial Intelligence 2020-2045 in 2020 but there is no policy in the form of regulations that regulate Artificial Intelligence. Indonesia is a State of Law that has given a broad meaning that all government orders must adhere to the principle of legality. So, it is very important to regulate Artificial Intelligence in Indonesia.

The difference between the research journal and the research conducted by the author lies in the subject of the discussion. The author further deepens in analyzing the urgency of the Regulation of *Artificial Intelligence* in Indonesia using analytics Responsive Law theory and *Sadd Al-Dzariah*. So, the research that will be produced by the author later, is the development of the research analysis with a different discussion analysis.

2. Thesis written by Romi Fadhlurrahman UIN Sultan Syarif Kasim Riau 2023 entitled "The Urgency of *Regulating Artificial Intelligence* as Intellectual Property Rights in Indonesia".⁴⁰The type of research in the study is normative research with a conceptual approach to positive legal principles in Indonesia. The method used in the study is a descriptive deduction method, namely describing presenting and presenting data obtained by juridical review. The sources of legal materials used are primary legal

⁴⁰ Romi Fadhlurrahman, "The Urgency of Regulating Artificial Intelligence as Intellectual Property Rights in Indonesia," *Institutional Repository* (UIN Sultan Syarif Kasim Riau, 2023), <https://doi.org/10.1088/1751-8113/44/8/085201>.

sources, secondary legal sources, and tertiary legal sources. The results of the discussion of the study can be concluded that technological advances that are growing very rapidly among the community have mastered the role of humans in doing daily work. From this, some concerns arise from the public that gradually the presence of Artificial *Intelligence* will shift human work. *the implications of the presence of Artificial Intelligence are also undeniable there are positive impacts felt by humans, but people also need to be careful of the ambiguity caused by Artificial Intelligence.* Assessing the urgency of regulations related to *Artificial Intelligence based on Intellectual Property Rights in Indonesia is very important to do because Artificial Intelligence is not part of copyright and has not qualified as copyright as accommodated in Law No. 28 of 2014 concerning Copyright.*

The difference between the research and the author's thesis research is in the subject matter. The research discusses thoroughly how Intellectual Property Rights accommodate Artificial Intelligence so that a rule must be formed as a *copyright that must be protected, slightly different from the author, the research carried out will be developed as a form of further analysis of the results of Artificial Intelligence research as Intellectual Property Rights by analyzing with several theoretical studies, so that the discussion is about Urgency Artificial Intelligence regulations in Indonesia are more in-depth and comprehensive.*

3. Journal by Ennie Soerjati Priowirjanto, Lecturer at the Faculty of Law, Padjajaran University, entitled "The Urgency of Regulation Regarding

Artificial Intelligence in the Online Business Sector during the COVID-19 Pandemic in Indonesia".⁴¹ This research was conducted in an Empirical Juridical manner using the method of analyzing applicable legal provisions and implementing them in practice, especially those related to the application of *Artificial Intelligence* in the *marketplace*. The approach taken by researchers is a qualitative approach, which aims to describe and analyze events and social activities that occur. The results of the study show that regulation of *Artificial Intelligence* in the online business sector is very important in Indonesia, which is due to the significant increase in online business in the COVID-19 pandemic that hit Indonesia a few years ago. The use of *Artificial Intelligence* in online business is also increasing along with technological developments, thus bringing the potential for positive and negative impacts. The positive impact that can be felt is the existence of new business innovations so that there is still a renewal for market share also remains conducive, while the negative impact is an increase in unemployment due to the replacement of human tasks by *Artificial Intelligence*. In dealing with the negative impacts caused by Artificial Intelligence, *regulations are needed that regulate the use of Artificial Intelligence*.

The difference between this study and the author's research is in the object of research and the subject of discussion. If this previous researcher

⁴¹ Enni Soerjati Priowirjanto, "The Urgency of Regulation on Artificial Intelligence in the Online Business Sector During the Covid-19 Pandemic in Indonesia," *Journal of Bina Mulia Hukum* 6, no. 2 (2022): 254–72, <https://doi.org/10.23920/jbmh.v6i2.355>.

only focused on the Impact on online business during the COVID-19 period, the author's thesis research will describe more broadly, the implications of technological developments on the rampant abuse of *Artificial Intelligence* using analysis of the theory of the Law of Response and *Sadd Al-Dzariah* so that it must have legal force.

4. Journal by Hari Sutra Disemadi Faculty of Law, Universitas Internasional Batam 2021, entitled "The Urgency of Special Regulations and the Use of *Artificial Intelligence* in Realizing Personal Data Protection in Indonesia".⁴² This research uses Normative Juridical research by analyzing and analyzing secondary data generated from literature studies. This research results that the existence of regulations related to personal data protection that are still scattered in several regulations indicates that the government has not taken personal data protection seriously. The PDP Law that was born has been a progressive step to answering all personal data security problems. However, several things must also be maximized, including the prospect of utilizing *Artificial Intelligence*.

The difference between this research and the author's thesis research lies in the subject matter, where this research only focuses on personal data security by passing the PDP Bill into law at that time. Even though far from that, the development of Artificial Intelligence that occurs so complex following technological developments, makes the author motivated to

⁴² Disemadi, "The Urgency of Special Regulations and the Use of Artificial Intelligence in Realizing Personal Data Protection in Indonesia."

elaborate more broadly so that special rules related to Artificial Intelligence are needed to protect the Indonesian people who are not only security issues, but also Community Rights that have been guaranteed in the Constitution

5. Journal by Shabrina Fadiyah Ghazmi, Faculty of Law, Padjadjaran University 2021, entitled "The Urgency of Regulating *Artificial Intelligence* in the Online Business Sector in Indonesia"⁴³ This research uses Normative Juridical research conducted with literature studies. This research uses a statutory approach and a comparative approach with other countries. The sources of legal materials used in this study are primary legal materials, secondary legal materials, and tertiary legal materials. The conclusion of the results of the study is an analysis of the importance of legal regulations following technological developments, especially the Industrial Revolution 4.0. Ahrus law develops according to human needs because the law is present as the main driver of development and must be able to control changes that occur in society. So it needs regulations that regulate the accountability of *Artificial Intelligence* which is not only corporate responsibility following the development of online business that is growing very rapidly in the technological era. The massive use of *Artificial Intelligence in the business sector should be able to move the government*

⁴³ Shabrina Fadiyah Ghazmi, "The Urgency of Regulating Artificial Intelligence in the Online Business Sector in Indonesia," *Lex Generalis Law Journal* 2, no. 8 (2021): 782–303, <https://jhlgr.wangrencang.com/>.

to immediately regulate special regulations related to Artificial Intelligence which are at the level of the Law to have a higher legal force.

The location of the difference between the research journal and the author's research is in the object of research and the subject of discussion. If this previous researcher only focused on the development of online business in Indonesia, regulation is needed in the business sector as a solutive measure to prevent negative implications on the development of online business. However, in the author's thesis research will describe more broadly, the implications of technological developments in general on the rampant abuse of *Artificial Intelligence* by using an analysis knife Responsive Law theory and *Sadd Al-Dzariah*.

Past Research Table

Name/Institution/Year/Title	Problem Statement	Result	Difference	Newness
Mohamad Zachary Rusman and Elfrida Ratnawati/ Master of Law, Faculty of Law, Trisakti University/ 2023/ The Urgency of Regulating Artificial	What is the urgency of regulating artificial intelligence in Indonesia?	The flow of <i>Artificial Intelligence utilization</i> is increasingly rapid in all sectors, like a two-bladed knife which is also possible for negative impacts. Efforts made by the government	The difference in research journals lies in the subject of discussion review. The author further deepens in analyzing the Urgency of <i>Artificial Intelligence</i> regulation in	The author's research will be developed with various cases that occur which will be analyzed using the theory of Responsive Law and Al-Dzari'ah. The results of this

Intelligence in Indonesia		<p>from 1987, even the promulgation of the 2020-2024 National Strategic Plan have not been able to answer and issue policies in the form of regulations on the use, utilization, and accountability of <i>Artificial Intelligence</i>. Thus, the researcher said that the regulation of <i>Artificial Intelligence</i> in Indonesia is something that must be carried out as an affirmative action in protecting the Indonesian people.</p>	<p>Indonesia by using the analysis of Responsive Law theory and <i>Saad Al-Dzariah</i>. So, the research that will be produced by the author later, is the development of the research analysis with a different discussion analysis.</p>	<p>research are expected to answer the rampant problems that exist and the form of government responsibility in responding to the negative impacts of <i>Artificial Intelligence</i>.</p>
Romi Fadhlurrahman/ UIN Sultan Syarif Kasim Riau/ 2023/ The Urgency of	1. How is <i>Artificial Intelligence</i> regulated as an intellectual property right?	The regulation of <i>Artificial Intelligence</i> as an Intellectual Property Right has not been able to be	This study thoroughly discusses how Intellectual Property Rights accommodate	If the journal researcher has analyzed by relying on <i>Artificial Intelligence</i> on

<p><i>Regulating Artificial Intelligence as Intellectual Property Rights in Indonesia</i></p>	<p>2. What is the urgency of regulating <i>Artificial Intelligence</i> as an intellectual property right in Indonesia?</p>	<p>accommodated by Copyright Law No. 28 of 2014. because it has not met the criteria and meets the Copyright requirements.</p> <p>The urgency of regulating <i>Artificial Intelligence</i> as an intellectual property right in Indonesia is very important to be a guarantee for the work produced by Artificial Intelligence. Thus, it will be very easy to enforce law enforcement against <i>Artificial Intelligence</i>.</p>	<p><i>Artificial Intelligence so that whether a rule should be formed as a copyright that must be protected, slightly different from the author, the research carried out will be developed as a form of advanced analysis by analyzing with several theoretical studies so that the discussion of the Urgency of Artificial Intelligence Regulation in Indonesia more in-depth and comprehensive.</i></p>	<p>intellectual property rights, the author's research will be developed from the results of the researcher's research with analysis using the theory of Responsive Law and Al-Dzari'ah. The results of this study are expected to answer the rampant problems that exist and the form of government responsibility in responding to the negative impacts of <i>Artificial Intelligence</i> that can occur at any time.</p>
<p>Ririen Ennie Soerjati Priowirjanto/ Lecturer at the Faculty</p>	<p>1. What are the problems of using <i>Artificial Intelligence</i> in</p>	<p>The significant increase in online business during the COVID-19</p>	<p>The difference between this research with the author's</p>	<p>This research focuses on online business that increased</p>

<p>of Law, Padjajaran University/ 2022/ The Urgency of Regulating <i>Artificial Intelligence</i> in Online Business Sktor during the Covid-19 Pandemic in Indonesia"</p>	<p>online business during the Covid-19 pandemic?</p> <p>2. What is the role of existing regulations in the negative problems arising from the use of artificial intelligence during the COVID-19 pandemic?</p>	<p>pandemic that hit Indonesia also affected the development of <i>Artificial Intelligence</i> in online business. What also has a negative impact that must be considered is the increase in unemployment due to the replacement of human tasks by <i>Artificial Intelligence</i>.</p> <p>Meanwhile, Indonesia has not regulated <i>Artificial Intelligence</i> in special regulations. The applicable regulations to accommodate current technological developments are the ITE Law and PP PSTE which regulate <i>Artificial Intelligence technology</i> in general. So with so many</p>	<p>research lies in the object of research and the subject of the discussion. If this previous researcher only focused on the Impact on online business during the Covid-19 period, but in the author's thesis research will describe more broadly, the implications of technological developments on the rampant abuse of <i>Artificial Intelligence</i> using the analysis of the theory of the Law of Response and Saad Al-Dzariah so that it must have legal force.</p>	<p>during COVID-19, the urgency of <i>Artificial Intelligence regulation</i> in the author's research will be developed with various cases from various factors that not only focus on economics because the use of <i>Artificial Intelligence</i> is also felt from education, social, and others, which will be analyzed using the theory of Responsive Law and Al-Dzari'ah. The results of this research are expected to answer the rampant problems in various fields, as well as the form of</p>
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		Artificial Intelligence errors, it is necessary to regulate <i>Artificial Intelligence</i> specifically.		government response in responding to the negative impact of <i>Artificial Intelligence</i> .
Disemadi Sutra Day/ Faculty of Law, Batam International University/ 2021/ The Urgency of Special Regulations and the Use of <i>Artificial Intelligence</i> in Realizing Personal Data Protection in Indonesia	1. What is the form of using <i>Artificial Intelligence</i> as a human tool in protecting personal data? 2. What is the urgency of special regulations <i>for Artificial Intelligence</i> in Indonesia in creating legal protection for personal data?	Regulations to protect personal data are currently focused on the ITE Law which only touches on the subject of personal data protection in general, without explicitly explaining the provisions in personal data protection. With the number of problems and also the rapid development of technology towards the movement of Artificial Intelligence, <i>the government is expected to make special regulations so that the use of</i>	This research only focused on personal data security with the proposal to pass the PDP Bill into law at that time. Even though far from that, the development <i>of Artificial Intelligence that occurs is so complex, making the author motivated to describe more broadly related to Artificial Intelligence which is not only a matter of data security, but economic,</i>	Previous research focused on personal data passing the PDP Bill, the urgency of <i>Artificial Intelligence</i> regulation in the author's research will be developed with various cases and comparisons after the passage of the PDP Bill into Law which will be analyzed using the theory of Responsive Law and Al-Dzari'ah. The results of this study are expected to answer the

		Artificial Intelligence can be felt by the public by minimizing the occurrence of personal data leakage	social, and others.	problem of whether after the passage of the PDP Bill and existing regulations, it can accommodate the development of Artificial Intelligence from the rampant existing problems.
Shabrina Fadiah Ghazmi/ Faculty of Law, Padjajaran University/ 2021/ The Urgency of Regulating Artificial Intelligence in the Online Business Sector in Indonesia	1. How is the accountability of Artificial Intelligence as a legal subject in positive law in Indonesia? 2. How is the accountability of Artificial Intelligence in the regulation of other countries?	Artificial Intelligence is not recognized as a legal subject so legal acts committed cannot be accounted for. Artificial Intelligence liability is based on substitute responsibility, namely accountability by parties who do not commit actions for mistakes that occur. Although globally the	The difference between research journals and the author's research lies in the object of research and the subject matter. If this previous researcher only focused on the development of online business in Indonesia, regulations are needed in	This research is a development of previous research journals. If the previous researcher focused on online business that increased during COVID-19, the urgency of Artificial Intelligence regulation in the author's research will be developed with various

		<p>form of substitute liability as recorded in the provisions of the <i>UN Convention on the Use of Electronic Communications in International Contract</i> that everything produced by a computer is the responsibility of the party who programmed the computer. However, awareness of the rapid development of <i>Artificial Intelligence</i> has made several developed countries including the <i>European Union</i> and the <i>United States</i>, special regulations related to <i>Artificial Intelligence</i> accountability.</p>	<p>the business sector as a solutive measure to prevent negative implications on the development of online business. However, in the author's thesis research will be described more broadly, the implications of technological developments in general on the rampant abuse of <i>Artificial Intelligence</i> using the analysis knife of <i>Responsive Law</i> theory and <i>Saad Al-Dzariah</i>.</p>	<p>cases from various factors that also compare against other countries and will be analyzed using the theory of <i>Responsive Law</i> and <i>Al-Dzari'ah</i>. The results of this research are expected to answer the rampant problems in various fields and will answer the form of government responsibility actions to answer the negative impacts of <i>Artificial Intelligence</i>.</p>
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G. Systematics of Writing

In writing a study entitled "*The Urgency of Artificial Intelligence Regulation in Indonesia: Responsive Theory Perspective and Sadd Al-Dzari'ah*". The thesis to be written will be divided into 3 main parts, namely the dahulluan, content, and closing parts. Then the author will divide the discussion into 4 chapters using the following writing systematics:

CHAPTER I INTRODUCTION

This thesis begins with an introduction that contains the background of the problem that the author raises, the formulation of the problem, the purpose of the research, the benefits of research, previous research, research methods, and writing systematics that serves to provide an overview of the research to be carried out.

CHAPTER II, LITERATURE REVIEW

Contains a comprehensive presentation related to juridical thoughts and concepts as a theoretical basis for studying and analyzing problems related to this research, namely *Artificial Intelligence*, *Responsive Legal Theory*, and *Sadd Al-Dzari'ah* which will be used as an analytical knife in researching "*The Urgency of Artificial Intelligence Regulation in Indonesia Responsive Theory Perspective and Saad Al-Dzari'ah*"

CHAPTER III RESEARCH RESULTS AND DISCUSSION,

This chapter will further elaborated on the explanation of the results of research conducted by the author in answering the formulation of the problem that has been

listed to obtain comprehensive research related to the Urgency of *Artificial Intelligence Regulation* in Indonesia which is analyzed with Responsive Legal Theory and *Saad Al-Dzari'ah*, which includes:

- a. Philosophical, Juridical, and Sociological Foundations of the Urgency of *Artificial Intelligence Regulation* in Indonesia
- b. The Urgency of *Artificial Intelligence Regulation* in Indonesia's Perspective of Responsive Legal Theory and *Sadd Al-Dzari'ah*

CHAPTER IV CONCLUDING

The closing chapter will contain conclusions from the author's research results which are also equipped with suggestions for conclusions and contain a bibliography used to collect references or references from the research conducted.

CHAPTER II

LITERATURE REVIEW

A. *Artificial Intelligence*

Artificial Intelligence often called Artificial Intelligence is a science that studies how to make computers do something done by humans.⁴⁴ More clearly, here are the opinions of some experts regarding the definition of *Artificial Intelligence*:

1. Kusumadewi defines *Artificial Intelligence* as one part of computer science that makes machines (computers) can do work as and as well as humans do".⁴⁵
2. Rich and Knight define *Artificial Intelligence* as a science that discusses how computers can perform activities carried out by humans better.⁴⁶
3. Herbert Simon gave the understanding of *Artificial Intelligence* as a medium that researches computer work system programming to carry out activities like humans intelligently.

Artificial Intelligence itself is present and developed pioneered by a professor from the Massachusetts Institute of Technology named John McCarthy in 1956 at the Darmouth Conference meeting attended by other Artificial

⁴⁴ Kusrini, *Theorist system and application* (Yogyakarta: Andi Publishers, 2006), 127. <https://books.google.co.id/books?id=MocuEV7C96YC>.

⁴⁵ Luh Putu Ary Sri Tjahyanti and et al, "The Role of Artificial Intelligence (AI) to Support Learning during the Covid-19 Pandemic," *Journal of Computer and T eknology Science (KOMTEKS)* 1, no. 1 (2022): 1–7.

⁴⁶ Rayendra and Dkk, *Artificial Intelligence* (West Sumatra: CV. Media Scholar Partners, 2022), <https://books.google.co.id/books?id=PvBeEAAAQBAJ>.

Intelligence researchers.⁴⁷ At the conference, Pria who is known as the Father of *Artificial Intelligence* also defined the purpose of presenting *Artificial Intelligence* as "the science and engineering of making intelligent machines, especially intelligent computer programs".⁴⁸ That is, *Artificial Intelligence* is used to know and control human thought processes and design machines to be able to imitate what humans do or even more. In other words, computers smarter than humans.

Four concepts underlying *Artificial Intelligence* are to be included in the Laws and Regulations in Indonesia, namely: *Artificial Intelligence can behave* like humans (acting humanly), think like humans (*thinking humanly*), think rationally (*thinking rationally*), and act rationally (*acting rationally*).⁴⁹ The complexity of the very broad working concept of *Artificial Intelligence*, *Artificial Intelligence can be classified into 2 types*, namely:⁵⁰

1. *Artificial Narrow Intelligence (ANI)*

Artificial Narrow Intelligence (ANI) commonly referred to as narrow artificial intelligence is a limited artificial intelligence system that can work when it has been programmed to do work. ANI can perform one particular task autonomously using human-like intelligence focused on a task, such as speech recognition, a chess-playing computer, or an autonomous

⁴⁷ Edi Wijaya, "Analysis of the Use of Breadth First Search Algorithms In Artificial Intelligence Concepts," *TME Journal II*, no. 2 (2013): 18–26.

⁴⁸ M P A VIDYAYA, *Artificial Intelligence: A Strategic Management Perspective* (Jakarta: Gramedia Popular Literature, 2022), <https://books.google.co.id/books?id=KzFfEAAAQBAJ>. 3.

⁴⁹ Priowirjanto, "The Urgency of Regulation on Artificial Intelligence in the Online Business Sector During the Covid-19 Pandemic in Indonesia."

⁵⁰ Rayendra and Dkk, *Artificial Intelligence*. 13.

vehicle. Almost all *Artificial Intelligence* that we know can be classified as ANI, because computer scientists have not yet created machines that can sense emotions and the ability to see or feel things.⁵¹

Kurzweil defines narrow *Artificial Intelligence* as the creation of a system that carries out certain intelligence behaviors in a specific context. As the name implies, narrow means having limited capabilities.⁵² ANI can only handle tasks that are only pre-programmed. ANI is still not able to compare with human intelligence; it is able to adapt itself to environmental changes. It mimics and simulates human behavior based on specific goals, contexts, and data.

In the healthcare industry, ANI is used for image recognition to detect cancer, data mining to develop new drugs, gene research, etc.

2. *Artificial General Intelligence (AGI)*

Artificial General Intelligence (AGI), also known as strong AI or broad, is an artificial intelligence that can do or do what humans do or can exceed what humans do. AGI is used to create machines capable of performing all cognitive tasks of the human brain. Essential elements of AGI include the ability to apply knowledge from one domain to another; the ability

⁵¹ C Ng and J Alarcon, *Artificial Intelligence in Accounting: Practical Applications*, Routledge Focus on Business and Management (New York: Taylor & Francis, 2020), <https://books.google.co.id/books?id=pkYHEAAAQBAJ>.

⁵² P Thaichon and S Quach, *Artificial Intelligence for Marketing Management*, Routledge Studies in Marketing (New York: Taylor & Francis, 2022), <https://books.google.co.id/books?id=QU-IEAAAQBAJ>.

to plan for the future based on experience and knowledge; and adaptability based on changing circumstances.⁵³

AGI is conceptualized as *Artificial Intelligence* that can learn, understand, and perform intellectual tasks like humans or even more sophisticated than humans.⁵⁴ There are claims that AGI can be very dangerous and the social impact of AGI should be seriously considered. However, despite the controversy, scientists researching AGI are firmly convinced of AGI's possible future.

B. National Law Ideals

Cita Hukum is a Dutch translation of *Rechtsidee*. *Rechtsidee* is a legal mind and not a legal ideal, considering that the mind is an idea, a sense of creation, an idea, while an ideal is a desire or will that is always in the mind or heart.⁵⁵ Furthermore, Rudolf Stemler stated that the legal ideal is a legal construction that directs the law to the ideals desired by society.⁵⁶ That is, the mind of the law is a guiding star for the achievement of the ideals of society. Although the legal ideal is not always achieved, the legal mind can direct the law to provide benefits and direct the law that governs people's lives with justice.

⁵³ Ng and Alarcon, *Artificial Intelligence in Accounting: Practical Applications*.

⁵⁴ Thaichon and Quach, *Artificial Intelligence for Marketing Management*.

⁵⁵ A. Hamid S Attamimi, "The Role of the Presidential Decree of the Republic of Indonesia in the Implementation of State Government" (Jakarta: UI, 1990). 308

⁵⁶ Amrullah Ahmad, *Dimensions of Islamic Law in National Legal Systems* (Depok: Gema Insani Press, 1996), 146. <https://books.google.co.id/books?id=6wdndB8eyK0C>.

The ideal of Indonesian law means the manifestation of the real desire of the Indonesian nation and the Indonesian people as stated in the state philosophy, namely Pancasila, which guides the development of national law. As a living system in the Indonesian state, Pancasila must still be established as an ideal, both political ideals, economic ideals, educational ideals, and others. In line with this, Sadjipto Rahardjo emphasized that the legal ideal of Pancasila as a legal ideal rooted in Indonesian culture and became a characteristic of Indonesian society.⁵⁷

About the ideal of national law, there are several characteristics of national law, which are as follows:⁵⁸

1. National law is made under the nation's ideals of a just and prosperous society based on the State Philosophy
2. The National Law is designed to achieve the objectives clearly stated in the Preamble of the 1945 Constitution, namely protecting the entire Indonesian nation
3. National Law must guarantee the integration of the nation and state both theoretically and ideologically. People must feel that the state is here to help with all existing problems.

In this regard, Gustav Rabruch asserts that the ideal of national law not only serves as a measure of fair or unfair legal regulation, but also serves as a constitutive basis that law without a legal mind will lose its meaning as law. Gustav

⁵⁷ Sadjipto Rahardjo, *Other sides of Indonesian law* (Jakarta: Compass, 2003). 23.

⁵⁸ I Iskandar, "Building an Aspiring National Law," *Journal of Serambi Akademika* 7, no. 3 (2019): 342–49, <http://www.ojs.serambimekkah.ac.id/serambi-akademika/article/view/1318>.

Rabruch's view can be understood as "De rechtsidee *niet allen alseen regulatieve maatstaaf fungeert (om het positieve recht op zijn rechtvaardigheid of onrechtvaardigheid toetsen), maar tegelijk als constitutive grondslag (zonder welke het recht, dat de rechtsidee der gerechtigheit de grondslag vormt van recht, dat met de idee in strijd kan zijn (onrechtvaardigrecht).*"⁵⁹ Which means that every process of formation and change to be made in law must not contradict the legal ideals that have been agreed upon by society. Hans Kelsen refers to the legal ideal as *the Grundnorm* or *Basic norm*.

In line with his statement, Gustav Rabruch provides an overview of his theory which is said to support the legal ideal that includes legal certainty (*rechtsscherheit*), expediency (*zweckmassigkeit*), and justice (*gerechtigheit*). This legal mind will be a guide for man in law. The three values must exist in balance, but often the three values run disharmoniously with each other.⁶⁰

In this regard, the ideal of national law agreed upon by Indonesia as stated in Pancasila the law must contain elements of justice, benefit, and legal certainty for the Indonesian people. The theory of the legal mind is formed in the human mind and heartstrings based on the combination of life views, beliefs,

⁵⁹ Esmi Warassih, *Legal Institutions: A Sociological Study* (Semarang: PT. Suryandaru Utama, 2005). 43

⁶⁰ Junaidi, Muhammad Farid Wajdi, and dkk, *Introduction to Legal Science (Norms of Legal Aspects in Indonesian Legal Ideals)* (Jambi: PT. Sonpedia Publishing Indonesia, 2023), 54. <https://books.google.co.id/books?id=C9myEAAAQBAJ>.

religion, and realities that can be applied in community behavior that embodies the values of justice, expediency, and legal certainty.⁶¹

C. Responsive Legal Theory

The Responsive Legal Theory proposed by Nonet and Selznick states clearly that law must respond to social provisions and developments that exist in society.⁶² Jerome Frank also asserted, who stated that the main goal of legal realism is to make the law more responsive to social problems. Thus, the existence of the Law is like an aide who must be ready to serve his master, namely the community.

The application of responsive law in a country will affect how character is formed in coordinating the legal structure, legal substance, and legal culture of the country⁶³ because responsiveness can be interpreted as actions to serve the needs and social interests of the community. This is in harmony with Nonet and Selznick who distinguish three basic classifications of law and society: Repressive Law, Autonomous Law, and Responsive Law. According to him, of the three types of laws, only Responsive Law guarantees state institutional order and can accommodate all the needs of the social aspirations of the community.⁶⁴ Thus, in some references, it is also concluded that Responsive Law is a further study of

⁶¹ Ekberth Vallen, Noya and Ade Walakutty, "Law with the Paradigm of Indonesian Law for the Achievement of Justice," *SANISA Journal of Law Student Creativity* 2, no. 2 (2022): 69–80.

⁶² S Uthman, *Towards Responsive Law Enforcement: Philippe Nonet & Philip Selznick Concepts: Comparison of Civil Law Systems & Common Law Systems, Spirals of Violence & Law Enforcement* (Indonesia: Pustaka Siswa, 2008), <https://books.google.co.id/books?id=szOMXwAACAAJ>.

⁶³ Ahmadi, "The Controversy of Law Application: A Synthesis Study of Repressive Law, Autonomous Law, and Responsive Law," *Al-'Adl* 9, No. 1 (2016): 1–18.

⁶⁴ Nachrawi Gunawan and I.G.A.N. Agung, *Legal Theory* (C.V. Cendekia Press, 2020), https://books.google.co.id/books?id=_MkMEAAAQBAJ.

Autonomous Law that produces substantive justice. Substantive justice is a form of response from a bottom-up to a *top-down* society and not vice versa. That is, substantive justice is justice that is conscientious and comes from *living law*.⁶⁵

The concept of responsive law has 2 fundamental characteristics, namely:⁶⁶

- 1) Shifting emphasis of legal rules towards legal principles and objectives
- 2) Emphasize populism as the main goal of the law and the way to achieve that goal.

The hallmark of Nonet and Selznick's Responsive Law is consistency in seeking truth from the values implied and contained in a rule or policy.⁶⁷ Responsive legal theory emphasizes that laws are not only limited to rules so they are absolute to be enforced. However, other logic can produce more than just rules: welfare. Responsive legal order is viewed as a facilitator of response or response to social needs and aspirations with the legal products it gives birth to.⁶⁸

Responsive Legal Theory will give birth to responsive legal products, the process of making it participatory is that it presents all elements of society to participate either individually or in groups. And it is also aspirational because the legal products produced do not rely on the ruler but on the interests and needs of

⁶⁵ Saifullah, *Dynamics of Legal Theory*, 2018. 36

⁶⁶ Henry Arianto, "Responsive Law and Law Enforcement in Indonesia," *Lex Jurnalica* 7, no. April (2010): 115–23.

⁶⁷ Gunawan and Agung, *Legal Theory*. 36

⁶⁸ Saifullah, *Dynamics of Legal Theory*. 29

the community so the goal is purely to prosper the community in helping to solve the problems that occur.⁶⁹

D. *Sadd Al-Dzariah*

Islamic Sharia always provides wisdom and goodness for all human beings. The values of his teachings that contain justice, benefit, compassion, and fame have lived in the hearts of the people who practice. Therefore, Ibn Qayyim Al-Jauziyah argues that anything that excludes the sense of justice, expediency, compassion, and fame is not part of the Islamic Shari'a.

Among the many concepts of Islamic shari'a used to formulate a particular law that is not generally mentioned in the Nash, one of them is an Islamic concept, namely the concept of *Sadd Al-Dzari'ah*. This concept is present to be used as a legal basis that also relies on the Qur'an and hadith which also regulate the path of a believer's goal to do good deeds and avoid bad ones. This concept exists as a middle ground against the deeds of believers that are not explained in the Nash.

1. Understanding *Sadd Al-Dzariah*

Sadd Al-Dzariah consists of two words namely Sadd which means barrier and Al-Dzariah which means way. The linguistic meaning of Al-

⁶⁹ Kusnadi, *Legal Approaches Responsive to the Conviction of Trafficking in Persons* (Jakarta: Assofa Publishers, 2022), <https://books.google.co.id/books?id=iah-EAAAQBAJ>.

Dzari'ah is a way or way to get to a certain thing.⁷⁰ Furthermore, *Al-Dzari'ah* means lughawi means:

الْوَسِيلَةُ الَّتِي يَتَوَصَّلُ بِهَا إِلَى الشَّيْءِ سَوَاءً كَانَ حَسَبًا أَوْ مَعْنَوِيًّا

"The path that leads to something, hissi or ma'nawi. Good or bad".

In the term *ushul fiqh*, what is meant by *al-Dzari'ah* is something that is a medium and a way to get to something related to the law of shari'a', both haram and halal and which leads to obedience or obedience.⁷¹ It is then judged by the scholars that *Al-Dzariah* carries a neutral connotation without giving further judgment to the results of the deeds. In this general sense, Ibn Qayyim then formulated a definition of *Dhari'ah*. That is:

مَا كَانَ وَسِيلَةً وَطَرِيقًا إِلَى الشَّيْءِ

"Anything that mediates and the path to something".⁷²

So according to him, the limitation of the understanding of *Al-dzari'ah* is something that intercedes towards the purpose of the act being forbidden or lawful by following the provisions of the law that becomes the main law. Therefore, according to him, the general understanding of *Al-Dzariah* can contain two meanings, namely: *First*, what is forbidden, called

⁷⁰ Wahbah Zuhaili, *Kitab Ushul Al-Fiqh Al-Islami, Juz 2*. (Damascus: Dar al-Fikr, First printing, 1986). 873.

⁷¹ Abd. Rahman Dahlan, *Ushul Fiqh*, cet-2 (Jakarta: Amzah, 2011), 236.

⁷² Amir Syarifudin, *Ushul Fiqih Jilid I*, Ushul Fiqih (Logos of Knowledge Discourse, 2014), 412 <https://books.google.co.id/books?id=ro9ADwAAQBAJ>.

Sadd Al-Dzari'ah, while the Second is what is required to be carried out, which is commonly called *Fath Al-Dzari'ah*.

Wahbah Zuhaili also classified *Al-Dzariah*⁷³ into two kinds. That is:

- a. *Sadd Al-Dzari'ah* is a path used for something bad or contains bad things.
- b. *Fath Al-dzari'ah* is a path used for a good thing.

Sadd al-Dzari'ah is a combination of two words in the form of *mudhaf – mudhaf ilaih* consisting of the words *sad* and *al-dzri'ah*. The first word comes from the verb *sadda ya suddu*, which means to close/occupy. Which intends to close the way of damage. While the word *al-dzari'ah* means, *wasilah* and *Jalan* which means *media* that conveys something the way.⁷⁴

The establishment of *Sadd Al-Dzari'ah* as one of the disputed propositions for its use by the *ulama'*, means that although *sharia* 'does not stipulate the law of an act, because the act is a testament to an act that is prohibited, then this is a hint of *sharia* law that *wasilah* is as the law established by *sharia* 'on the main act.⁷⁵

⁷³ Wahbah Zuhaili also argued that *Al-Dzari'ah* is a way or means to achieve something depending on the motives of the perpetrator. If the road is used for something that is prohibited or contains harm, then the law is not allowed, and vice versa. Wahbah Zuhaili, *Kitab Ushul Al-Fiqh Al-Islami*. 874.

⁷⁴ Baroroh Nurdhin, "Metamorphosis of 'Illat Hukum' in *Sad Adz-Dzari'Ah* and *Fath Adz-Dhariah* (A Comparative Study)," *Al-Madzahib* 5 (2017): 289–304.

⁷⁵ To Hermanto, *SADD AL-DZARI'AH Interpretation of Sharia Law on Some Matters of Prohibition of Marriage* (West Sumatra: CV. Media Scholar Partners, 2022), <https://books.google.co.id/books?id=K6uCEAAAQBAJ> 13.

Ibn Qayyim Al-Jauziyah further explained that the concept of *Sadd Al-Dzariah* has the meaning that an act that is *siat mubah* at first, if done will have an impact on damage or *mafsadah*, then it is certain that the act is contrary to the Shari'a even though the person does not intend to do bad / damage.⁷⁶

The basis of this concept is a person's preventive action, where the original law of an act that was originally unfortunate, but which can cause damage or prohibited actions, then the law becomes haram. Therefore, Wahbah Az-Zuhaili is in the same mind as Ibn Qayyim Al-Jauziyah who defines *Sadd Al-Dzari'ah* as the prohibition or rejection of everything that can cause harm to prevent damage and harm.⁷⁷

From the explanation above, we can conclude that *Sadd Al-Dzari'ah* is an act done by someone who previously contained benefits but led to damage. That is, it can be understood that from the explanation above we can draw a common thread that the *method of Sadd Al-Dzari'ah* is more of a method that discusses the impact of an action. If the act has a subject matter of law that is recommended to the Shari'a, then it is recommended, but if the impact on something that is forbidden, for example, there will be a crime or damage, then the law is not permissible (haram).

⁷⁶ Jalili Ismail, *The Existence of Sadd Adz-Dzari'ah in Ushul Fiqh: A Study of the Thought of Ibn Qayyim Al-Jauziyyah (d.751 AH/1350 AD)*, Print 1 (Central Java: Lakeisha Publishers, 2020), 13 <https://books.google.co.id/books?id=-4InEAAAQBAJ>.

⁷⁷ Hifdhotul Munawwaroh, "Sadd al-Dzari'at and its application to contemporary jurisprudence," *Ijtihad : Journal of Islamic Law and Economics* 12, no. 1 (2018): 63, <https://doi.org/10.21111/ijtihad.v12i1.2584>.

2. Dasar Kehujjahan *Sadd Al-Dzariah*

Here are the verses of the Qur'an and the Hadith of the Prophet that explain *Sadd Al-Dzariah* as one of the postulates of blasphemy used in formulating fiqh problems.

- a. Allah S.W.T. said in the Qur'an Surah Al-An'am:108.

وَلَا تَسُبُّوا الَّذِينَ يَدْعُونَ مِنْ دُونِ اللَّهِ فَيَسُبُّوا اللَّهَ عَدْوًا بِغَيْرِ عِلْمٍ

"And do not curse any god they worship but Allah, for they will later curse God beyond the limits without any basis of knowledge."

In the verse, Ibn Qayyim explains that Allah forbids Muslims to berate the gods of the idolaters. Because, even if it aims to glorify Allah S.W.T., berating the god of the muysrik will have an impact on insulting back to the god of Muslims, namely Allah, so that it will cause evil (forbidden). Therefore, guarding against actions that will cause damage takes precedence over berating the god of the idolatrous. The valuable lesson of this verse warns Muslims that abandoning the keudharatan (prohibition) takes precedence over doing the mubah (permissible).

- b. Allah S.W.T. said in the Qur'an Surah

وَلَا يَضْرِبْنَ بِأَرْجُلِهِنَّ لِيُعْلَمَ مَا يُخْفِينَ مِنْ زِينَتِهِنَّ

"And let them not stamp their feet lest the jewels they hide be known."

Ibn Qayyim's explanation of the above verse is a form of Allah's prohibition S.W.T. to women stomping their feet so that the jewelry on their feet emits a sound that can invite the lust of men who hear it. So, because it can cause things that are prohibited (cause lust), the act of stomping feet that were originally changed (allowed) becomes prohibited.

c. Hadits Rasulullah

وَعَنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو بْنِ الْعَاصِ -رَضِيَ اللَّهُ عَنْهُمَا- أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: - مِنْ الْكَبَائِرِ شَتْمُ الرَّجُلِ وَالِدَيْهِ. قِيلَ: وَهَلْ يَسُبُّ الرَّجُلُ وَالِدَيْهِ؟ قَالَ: نَعَمْ. يَسُبُّ أَبَا الرَّجُلِ, فَيَسُبُّ أَبَاهُ, وَيَسُبُّ أُمَّهُ, فَيَسُبُّ أُمَّهُ - مُتَّفَقٌ عَلَيْهِ

Ibn Qayyim Al-Jauziyah gives an explanation from the above hadith that the Messenger of Allah has classified a man who reproaches and berates the parents of other men by equating it with reproaching and berating one's own parents even though he did not intend to reproach his own parents.

3. Types of *Sadd al-dzariah*

Ibn Qayyim Al-Jauziyah is divided into four levels al-dzari'ah and from all four should be done prevention (sadd) so as not to cause harm to those who commit it because it becomes forbidden or sinful. The division in question is as follows:

- a. Al-Azariah as a means or medium that causes damage.

Obviously, actions that actually and visibly lead to harm must be prevented and abandoned. However, in this first division, it does not include *Al-Dhari'ah* but more than that it has become forbidden (haram) in Islamic Shari'a. For example, drinking liquor has been prohibited from the beginning in Islamic Sharia because it can cause people who drink it to become drunk and lose their minds for a certain amount of time.

- b. Al-Dzari'ah as a means that can be used but should be followed by intentions that lead to bad deeds.

In this second division, Ibn Qayyim explains that all mubah actions (allowed) to be done depend very much on the intention carried out in doing something. That is, actions that are allowed to be done when they have a bad purpose and lead to damage, the action is no longer mubah but becomes something forbidden.

- c. Al-Dzari'ah is a sarana that can be consumed but should be followed by an intention that leads to a bad deed, when the act is done, then it causes more harm and even harm is more than the benefits it gets.

The point of discussion in this third division, the opinion of Ibn Qayyim describes *Sadd Al-Dzari'ah* as a means that if done it turns out that the damage that will be caused is more than the benefits that will be obtained. Thus, this action is more towards prohibited acts as the initial concept of *Sadd Al-Dzari'ah*.

- d. *Al-Dhari'ah* as a means that can be used and sometimes leads to damage (prohibited acts), but its benefits far outweigh the damage it will cause at any time.

In this fourth division, Ibn Qayyim looks at the conclusion or final value of an action. When the act leads to a *mudharat* result then it is certainly forbidden, but when the act leads to benefit or fame, then the act is still highly recommended.

4. Terms of *Sadd Al-Dzariah*

Ibn Qayyim Al-Jauziyah does not mention any specific conditions for carrying out the concept of *Sadd Al-Dzari'ah*. However, there are some possible conditions resulting from the division or variety of *Sadd Al-Dzari'ah* that have been outlined in his works. The following is an explanation of the Terms of *Sadd Al-Dzari'ah*:

- a. The actions done cause greater harm than the good that will be obtained.

That is, it can apply the concept of *Sadd Al-Dzari'ah* if clearly, the actions carried out are more directed to the benefits than the benefits that will be caused so that these actions become prohibited in the application of the Concept of *Sadd Al-Dzari'ah*

- b. Actions that can be done based on the concept of *Sadd Al-Dzari'ah*, cannot be done repeatedly.

The explanation of the second condition gives the understanding that actions that are greater in benefit than the harm

caused are indeed allowed to be done. However, it must pay attention to the final side of the cause that will be obtained. because what is forbidden to avoid sinful deeds is lighter than what is forbidden because of its bad purpose.

c. Kaidah *Sadd Al-Dzari'ah* cannot contradict Nash Syar'i

The concept of *Sadd al-Dzari'ah* must still refer to Nash Shar'i. So when the rules of *Sadd al-Dzari'ah* contradict Nash Shar'i, the effort made in obtaining the rules of *Sadd al-Dzari'ah* becomes void.

CHAPTER III

RESULTS OF RESEARCH AND DISCUSSION

REGULATION *OF ARTIFICIAL INTELLIGENCE* IN INDONESIA IN AN EFFORT TO REALIZE THE IDEALS OF NATIONAL LAW

A. The Urgency of Artificial Intelligence Regulation in Indonesia as an Effort to Realize the Ideal of National Law

Indonesia currently does not have special regulations related to *Artificial Intelligence* and is only based on several regulations, including Law No. 19 of 2016 concerning Electronic Information and Transactions (ITE Law) and Government Regulation No. 71 of 2019 concerning the Implementation of Electronic Information and Transactions⁷⁸ by equating the position of ⁷⁹Artificial Intelligence as an "Electronic Agent".⁸⁰ However, the regulation does not mention Artificial Intelligence *explicitly at all so it has implications for the many perceptions that cause public ambiguity in the application of regulations related to Artificial Intelligence.*

Article 1 paragraph (3) of the Constitution of the Republic of Indonesia Year 1945 states that the State of Indonesia is a state of law.⁸¹ A logical

⁷⁸ Law Number 19 of 2016 concerning Electronic Information and Transactions, State Gazette of the Republic of Indonesia Number 5952.

⁷⁹ Government Regulation No. 71 of 2019 concerning the Implementation of Electronic Information and Transactions, State Gazette of the Republic of Indonesia Number 6400.

⁸⁰ The review of the ITE Law related to the Reliance of Artificial Intelligence on electronic agents also has implications for the accountability of Artificial Intelligence which is also relied on electronic system operators who are providers, managers, or who operate electronic systems individually and together, as stated in Article 1 paragraph (6) letter a of the ITE Law.

⁸¹ Article 1 of the Constitution of the Republic of Indonesia Year 1945

consequence of the rule of law is that all aspects in the field of society, nationality, and statehood including in the field of technology must always be based on law. This is in line with the Theory of the State of Law formulated by Friedrich Julius Stahl that one element of the state of law is the government that adheres to the principle of legality.⁸²

One of the functions of law as stated in Sunaryati Hartono's book, entitled Indonesian Economic Development Law is law as a tool of order and security in society.⁸³ This is also in line with the 4th paragraph of the NRI Constitution of 1945 that the government has a goal to protect the entire Indonesian nation. In this regard, the development of *Artificial Intelligence* which is still unclear its position in Indonesia, but is starting to be used in the Industrial Revolution 4.0, of course, is needed to regulate it to avoid unlawful acts in its use.

1. The Urgency of *Artificial Intelligence Regulation* in Indonesia in an effort to Realize the Ideal of National Law

The increasingly massive development of technology in Indonesia is the main reason for the development of the use of *Artificial Intelligence* that

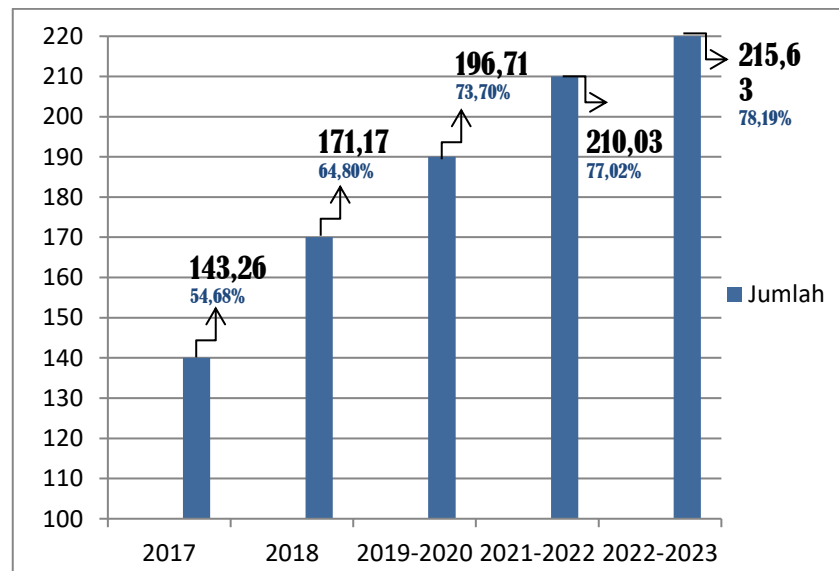
⁸² The principle of legality is one of the basic principles in law that stipulates that no action is prohibited and considered violating unless there are regulations governing it. That is, all forms of state activities must be based on law so that they are binding and can be followed by all elements of society. The principle of legality is known as the principle of criminal law, as stipulated in article 1 paragraph 1 of the Criminal Code that no act can be criminalized, except based on the strength of pre-existing statutory provisions. However, in a Civil Law state mandated in the Constitution that the State of Indonesia is a state of law, all aspects including technology must also have rules that govern, because the purpose of building the principle of legality is to legitimize the law in government power from arbitrary actions. Mahrus Ali, *Fundamentals of Criminal Law*, (Jakarta: Sinar Grafika, 2012) 59.

⁸³ Sunaryati Hartono, *Indonesia's Economic Law of Development* Cet. Ketig (Bandung: CV. Trimitra Mandiri, 1999).8.

is felt by all elements of society in Indonesia. Electronic users who do not know age, continue to increase with the development of time. One of the triggering factors is COVID-19 which hit Indonesia, thus demanding the pattern of people's daily activities to switch to electronics. This is evidenced by the data on internet use in 2023 quoted from data from the Indonesian Internet Service Providers Association (APJII), in 2020 it has increased to 73.3% or equivalent to 196.7 million internet users in Indonesia. Until 2023, Internet⁸⁴ users continue to increase with data released by APJII, Internet penetration in Indonesia in 2023 will reach 78.19% or equivalent to 215,626,156 people from Indonesia's total population of 275,773,901. This number increased by 1.17% compared to 2 022.⁸⁵

Graph 1

Number of electronic users in Indonesia



⁸⁴ APJII, "Press Release: Indonesian Internet Users Almost Exceeded 200 Million in 2019 – Q2 2020."

⁸⁵ APJII, "APJII Survey of Internet Users in Indonesia Reaches 215 Million People."

Source: Indonesian Internet Service Providers Association (APJII), Indonesia Internet Penetration Survey 2023

The data above is a major influence on the development of the use of *Artificial Intelligence* in Indonesia, both from the economic, educational and even government sectors. The use of *Artificial Intelligence* that is felt by many people is certainly very influential in daily life. The existence of *Artificial Intelligence* can provide breakthroughs in various lines of life *Artificial Intelligence* can also greatly help complete human work. But on the other hand, the implementation of *Artificial Intelligence* also harms the sustainability of human resources, *Artificial Intelligence* will slowly replace human existence as a subject of all sectors.⁸⁶ The following is a further explanation related to the development of *Artificial Intelligence* technology used in the education, economy, and government sectors.

a. Economic Sector

A very developed technological development is in the economic field. This can be proven from data from the Ministry of Communication and Information in 2019 noted that the surge in the growth of electronic commerce value increased by 78% from the previous year, which positioned Indonesia to Rank 1 (one) *e-commerce* growth in the World followed by Mexico in second place.⁸⁷ The development felt by the community turned out to be like a double-edged

⁸⁶ Pakpahan, "Analysis of the Effect of Artificial Implementation." 511

⁸⁷ KOMINFO, "Ministry of Communication and Information: Indonesia's e-Commerce Growth Reaches 78 Percent."

knife. Amid the development of *Artificial Intelligence* that helps humans run Trade easily and efficiently, it was not felt by sellers from traditional markets who had begun to be overthrown by the existence of *e-commerce*.⁸⁸ Traditional market sellers began to lose customers, especially in clothing sales, which resulted in a drastic decrease in turnover. This is the new task of the government to provide a middle ground for traditional market sellers.

b. Education

The development of *Artificial Intelligence* that also attracts public attention is in the education sector which has widened and expanded in all corners of the country. This is evidenced by data from the Central Statistics Agency noting that long before the transition to distance learning due to the COVID-19 pandemic, a survey of the use and utilization of information technology in the education sector conducted on 4,014 schools in Indonesia resulted in an elementary level of 64.55%, junior high school level of 19.22%, and high school level of 16.23%.⁸⁹ The increasing number of internet continues to increase, in line with the needs of the community, especially during the pandemic, so that it becomes a potential market for technology companies and

⁸⁸ Ismul Bathni, Deni Darmawan, and Turkamun, "Pengaruh Jual Beli Online Terhadap Pasar Tradisional Pedagang Pakaian Dan Tas Di Pasar Ciputat the Effect of Online Buying on the Traditional Market of Clothing and Bags Traders in Ciputat Market)," *Proceedings of the National Seminar 1* (2021): 2. 270-274

⁸⁹ Directorate of Communication Statistics and Information Technology, "Use and Utilization of Information and Communication Technology (P2TIK) Education Sector 2018" (Jakarta: Central Bureau of Statistics, 2018).

startups to develop *Artificial Intelligence technology*. The Ministry of Education and Culture has collaborated with Huawei in optimizing the use of *Artificial Intelligence* in the National Education system.⁹⁰ The Industrial Revolution 4.0 will soon start a new era with the presence of the digital industry revolution 5.0 which is expected to create a more advanced and effective learning model without eliminating the role of teachers in learning.⁹¹

c. Government

Data quoted from the Directorate General of Information Applications page of the Ministry of Communication and Information that the United Nations (United Nations) has released the results of the E-Government survey in 2022, where Indonesia's position rose 11 places to rank 77 which was previously in position 88 in 2020. Even Kominfo intends to continue to increase the use of electronic systems in government settings by targeting the use of electronic-based government systems to be fully operational in 2023. The Kominfo policy is a repressive step against the President's policy as stated in

⁹⁰ Doddy, "Kemendikbudristek and Huawei Optimize the Use of AI and Cloud to Improve the Quality of Education in the 5.0 Era," Directorate General of Higher Education, Research, and Technology, 2023, <https://dikti.kemdikbud.go.id/kabar-dikti/kabar/kemendikbudristek-dan-huawei-optimalkan-pemanfaatan-ai-dan-cloud-untuk-tingkatkan-mutu-pendidikan-di-era-5-0/>.

⁹¹ Raihani Alvinna Fitriyani, Lintang Tirta Putri, and Robiatul Adawiyah, "Trends in Artificial Intelligence Technology to Replace Future Advertising Models," *Journal of Socio-Politics* 2, no. 2 (2021): 118–29, <https://doi.org/10.54144/jsp.v2i2.39>.

Presidential Regulation Number 95 of 2018 concerning the Electronic-Based Government System (SPBE).⁹²

In this regard, the government must be ready to deal with the government system that will affect more than 216 million Indonesians, some of whose population is in the electronic-based government system.

Concerning the data above, it has been proven that the many uses of *Artificial Intelligence* are included in various sectors including the education, economy, and government sectors. However, there is also a misalignment of the use of *Artificial Intelligence* which is expected to have a good impact because it helps human work, there are also parties who are harmed due to the creation of the use of *Artificial Intelligence*.

This can be proven by a problem that has recently become viral on social media, namely *Voice Changer* (voice changer). One of those affected by the development of *this voice-changer* Artificial Intelligence is President Joko Widodo with a singing voice video circulating on social media. University of Indonesia digital communication expert Firman Kurniawan stated that the sophistication of *Artificial Intelligence* not only resembles a person's voice but also facial expressions and facial expressions.⁹³

⁹² KOMINFO, "Digital-Based Government System Ready to Operate in 2023," 2023, 07 October 2023 09:43 https://www.kominfo.go.id/content/detail/28252/sistem-pemerintahan-berbasis-digital-siap-beroperasi-pada-2023/0/sorotan_media.

⁹³ Alinda Hardiantoro, "Many About Jokowi's Voice Video Singing Asmalibrasi Song, Expert Warns of the Dangers of AI in the Political Year," Kompas.com, 2023,

Voice changers have become commonplace and considered normal because there has been no firm action from law enforcement. A housewife named Jenifer DeStefano received a phone call that exactly matched her daughter's voice. The scene of the kidnapping was carried out by the perpetrator by giving his daughter a voice accompanied by sobs, asking to send Rp. 14.7M. Even though the voice is not the voice that came from his daughter.⁹⁴ Not only that, there are many cases caused by the misuse of *Artificial Intelligence*. One of them is the Nightmare felt by a Tiktokers Safira Hunar from East Java who became a victim of Vulgar Photo edits to become Twitter Trending.⁹⁵

The implications of the use of *Artificial Intelligence* do not stop there, the big influence can also be felt in the absence of rules governing Artificial Intelligence. For example, in education, the increase in internet users as discussed earlier turns out to be 88.99% of children 5 years and over who have accessed the internet for social media.⁹⁶ The Indonesian Child Protection Commission (KPAI) recorded that as many as 22 percent of children watched pornography during the pandemic, even in 2018, a KPAI

<https://www.kompas.com/tren/read/2023/05/08/091500765/ramai-soal-video-suara-jokowi-nyanyi-lagu-asmalibrasi-pakar-ingatkan-bahaya>.

⁹⁴ Anthony Cuthbertson, "AI Clones Child's Voice in Fake Kidnapping Scam," Independent, 2023, <https://www.independent.co.uk/tech/ai-voice-clone-scam-kidnapping-b2319083.html>.

⁹⁵ Trias Firdausi Aulia, "Why is Safira Hunar viral on Twitter? TikTok Celebs: Some Even Edit Photos So It's Weird," Jatim Network, 2023,

<https://www.jatimnetwork.com/hiburan/439573508/kenapa-safira-hunar-viral-di-twitter-seleb-tiktok-malah-ada-yang-edit-foto-jadi-aneh-aneh>.

⁹⁶ Cindy Mutia Annur, "BPS: 88.99% of Children 5 Years and Over Access the Internet for Social Media," Databoks, 2021. accessed 8 November 2023

survey conducted on 4,500 junior and senior high school students in 12 cities, the number who accessed pornography reached 97%.⁹⁷

Many of these problems were not able to be resolved properly because the State of Indonesia has no special regulations governing *Artificial Intelligence* so it becomes a fundamental question how to realize the concept of the rule of law in Indonesia. The reason is, that existing regulations such as Law No. 19 of 2016 concerning Electronic Information and Transactions (ITE Law) and Government Regulation No. 71 of 2019 concerning the Implementation of Electronic Information and Transactions do not accommodate clearly and do not even explicitly mention *Artificial Intelligence* both its use, utilization, and responsibility.

Some experts argue that *Artificial Intelligence* also includes "Electronic Agents" which are based on Article 1 of the ITE Law which states "*Electronic Agents are devices of an Electronic System made to perform an action on a certain Electronic Information automatically held by a Person*". More clearly, the electronic agent is the operator of the electronic system and every electronic system operator must ensure that the system used is safe so that it can be accounted for.

The opinions of experts who state *Artificial Intelligence is also part of electronic agents as Article 1 of the ITE Law, one of which is Joanna*

⁹⁷ Davit Setyawan, "KPAI: Protect the Future of Young Children Who Watch Immoral Videos," KPAI, 2018. accessed 8 November 2023

*Bryson, a professor at the Hertie School who has researched Artificial Intelligence, Ethics, and Collaborative Cognition proposed that Artificial Intelligence must have the status of an "Agent" in law that is treated like any other legal subject, such as a company or other legal entity. So the current Artificial Intelligence regulation has been accommodated by the ITE Law as an Electronic Agent. According to Saldi Isra, one of the legal experts in Indonesia who is also a Constitutional Court Judge, Artificial Intelligence must be considered as a legal subject that has the same responsibilities and rights as humans. So it is not part of the electronic organizer whose existence is also a subject of law.*⁹⁸

The long debate related to *Artificial Intelligence* which has similarities with electronic organizers, needs to be analyzed in depth. In fact, with various types of *Artificial Intelligence*, *we can analyze that Artificial Intelligence* has 2 types, namely *Artificial Narrow Intelligence (ANI) and Artificial General Intelligence (AGI)*.⁹⁹

ANI which is commonly referred to as narrow artificial intelligence is a limited artificial intelligence system that can work when it has been programmed to do work while AGI which is also known as strong or broad *Artificial Intelligence* is artificial intelligence that can do or do what humans do or can exceed what humans do. Thus, electronic agents can only

⁹⁸ Hanif Abdul Halim, "The Legal Position of Artificial Intelligence: Its Challenges and Debates," *Kliklegal.com*, 2023, <https://kliklegal.com/kedudukan-hukum-artificial-intelligence-tantangan-dan-perdebatannya/#:~:text=Beberapa the law that can, technology and intellectual property rights.>

⁹⁹ Rayendra and Dkk, *Artificial Intelligence*. 68

accommodate the type of ANI but not AGI which can work outside of human instructions. There are claims that AGI can be very dangerous and the social impact of AGI should be seriously considered.

In further understanding, Article 40 paragraph 1 of the ITE Law states that the government facilitates the use of information technology and electronic transactions under the provisions of laws and regulations. Furthermore, Article 4 of Government Regulation No. 17 of 2019 concerning the Implementation of Electronic Information and Transactions states that as long as it is not otherwise stipulated by a separate Law, each electronic system operator must operate the electronic system by fulfilling the specified requirements.¹⁰⁰ This means that there is an open space to issue special rules for *Artificial Intelligence regulations in Indonesia* because they are in line with the references to laws and regulations and have become the answer to the anxiety of inequality in legal products.

About the description related to the urgency of *Artificial Intelligence regulation in Indonesia* above, efforts to realize the ideal of national law become very rational in line with the many problems caused by Artificial

¹⁰⁰ The conditions specified in Article 4 of the ITE Law are as follows:

- a. Can display electronic information and/or electronic documents in full in accordance with the retention period stipulated by laws and regulations;
- b. Can protect the availability, integrity, authenticity, confidentiality, and accessibility of Electronic Information in the operation of electronic systems;
- c. Can operate in accordance with procedures or instructions in the operation of the electronic system;
- d. Equipped with procedures or instructions announced with language, information, or symbols that can be understood by the party concerned with the operation of the electronic System; and
- e. Have an ongoing mechanism to maintain the novelty, clarity, and responsibility of procedures or appointments

Intelligence and the absence of rules governing Artificial Intelligence. The ideal of national law based on the state philosophy, namely Pancasila, actually provides space for ideas, feelings, creation, and thoughts regarding law consisting of three elements: justice, use, and legal certainty. This is then understood to be in line with the theory of the legal mind by Gustav Radbruch which is also used as a guideline for national legal ideals in Indonesia stating that the law must contain 3 basic values, namely: Justice, Expediency, and Legal Certainty¹⁰¹.

Examined in the development of the use of *Artificial Intelligence that has been felt by the community, the urgency* of Artificial Intelligence regulation has been in line with the concept of Gustav Radbruch because Artificial Intelligence regulations will provide benefits to the entire community, justice to all elements of society, and of course, provide legal certainty that must be regulated in the Law. Here is a further analysis of the 3 basic values of the legal mind:

a. Justice

One of the purposes of the creation of law is to provide a sense of justice.¹⁰² Justice is a feeling of fellow human relations. In harmony John Rawls argues that justice is closely related to freedom, that is,

¹⁰¹ Mario Julyano and Aditya Yuli Sulistyawan, "Understanding the Ass of Legal Certainty through the Construction of Legal Positivism Reasoning," *Crepido Journal* liahona, no. 2019): 13–22, <https://ejournal2.undip.ac.id/index.php/crepido/>.

¹⁰² Shidarta Dardji Darmohardjo, *Fundamentals of Legal Philosophy: What and How of Indonesian Legal Philosophy*. (Jakarta: Gramedia Pustaka Utama, 2006). 72.

equality or equality for every human being.¹⁰³ That is, everyone has an equal position before the law.

The existence of *Artificial Intelligence* regulations will later provide justice to the community. This is evidenced, by *the use of Artificial Intelligence* that develops in the community but the government still has not issued rules containing limits, accountability, and how to use *Artificial Intelligence*.

The incomprehension of some people related to Artificial Intelligence *who have begun to live in Indonesia, of course, needs justice related to the regulation of Artificial Intelligence, referring to the analysis of Jeremy Bentham's theory with the famous term¹⁰⁴ the greatest happiness of the greatest number that can be determined by as many people as¹⁰⁵ possible, because an ethical and moral action can be felt by everyone through happiness that should be impartial and can be felt by anyone, including people who have begun to be eliminated with the development of Artificial Intelligence. The government must also*

¹⁰³ John Rawls, *Theory of Justice: Foundations of Political Philosophy to Realize Social Welfare in the State*, in *A Theory of Justice*, ed. Uzair Fauzan and Heru Prasetyo (Yogyakarta: Pustaka Siswa, 2006). 502.

¹⁰⁴ Jeremy Bentham is one of the British philosophers who founded utilitarianism with his best ideas. He was born in London, and educated at Oxford University and later obtained qualifications as an Advocate in London. Jeremy Bentham's ideas were more about the teachings of the philosopher of empiricism in the moral and political fields.

¹⁰⁵ Endang Pratiwi, Theo Negoro, and Hassanain Haykal, "Jeremy Bentham's Theory of Utilitarianism: Legal Objectives or Legal Product Testing Methods?," *Journal of the Constitution* 19, no. 2 (2022): 268, <https://doi.org/10.31078/jk1922>.

encourage the form of definite knowledge of the development and use of *Artificial Intelligence* itself.

Fairness in *Artificial Intelligence* regulation can also be seen from violations of the law, as a form of justice for victims of *Artificial Intelligence* abuse. The existence of *Artificial Intelligence* regulation will be a form of government response to the many abuses of *Artificial Intelligence*, especially as a form of protection for victims. This legal ideal must be realized through *Artificial Intelligence* regulations that are used as a guide for the community in seeking justice before the law.

b. Benefits

The existence of *Artificial Intelligence* regulations in *Indonesia* is very influential on the development of *Artificial Intelligence* in society. There are many problems related to *Artificial Intelligence*, becoming a problem that must be immediately addressed by the government. Sudikno Mertokusumo explained that legal expediency is a principle that after considering the validity of the action, the benefits are also considered.¹⁰⁶ That is, the application of *Artificial Intelligence* whose application is supported by the government, needs regulation as a form of protection for the community.

¹⁰⁶ Sudikno Mertokusumo, *Legal Theory* (Yogyakarta: Atma Jaya University, 2011). 54

The phenomena that occur due to the development of Artificial Intelligence *are the reason for the need for special regulations related to Artificial Intelligence to protect all Indonesian people as mandated by the Constitution.* The theory of Jeremy Bentham, also known as the initiator of the theory of Utilitarianism¹⁰⁷ provides a deep philosophical message that all actions and circumstances must be determined in the direction of motion and their consequences into the future, including the provision of clear legal certainty to the subject of law. Moreover, philosophically the 4th paragraph of the preamble to the 1945 NRI Constitution states explicitly that the State of Indonesia has the aim to educate the life of the nation, protect the entire nation, and promote general welfare. It is appropriate for the state to think about the future of society due to the increasingly *rampant and widespread use of Artificial Intelligence by providing legal protection to provide benefits and welfare for all Indonesian people utilizing Artificial Intelligence.*

c. Legal certainty

Legal certainty is the probability of providing clear, consistent, obtainable, published, and recognized rules.¹⁰⁸ On the other hand, legal certainty is also understood as a rule whose initial general meaning

¹⁰⁷ Frederikus Fios, "The Legal Justice of Jeremy Bentham and Its Relevance to Contemporary Legal Practice," *Humaniora* 3, no. 1 (2012): 229–309.

¹⁰⁸ Soeroso, *Introduction to Law* (Jakarta: Sinar Grafika, 2011). 63

becomes a direction for individuals when behaving in society.¹⁰⁹ That is, the clarity and firmness of a form of rule indicates that there is legal certainty and cannot be multi-interpreted.

The legal ideal of these 3 basic elements is centered on legal certainty which is considered as a concrete strength for the person concerned. When there is no legal certainty, the law cannot be implemented based on justice and expediency because it does not have a center of protection, namely the rules themselves.

In line with this, Van Apeldoorn also gave the idea that legal certainty has 2 main objectives, namely the determination of law in concrete terms and legal security.¹¹⁰ This is in fact in line with the urgency of *Artificial Intelligence regulation in Indonesia which aims to provide concrete legal certainty to those who seek justice with the rampant development of Artificial Intelligence in society and provide legal security to protect the community due to misuse of Artificial Intelligence*. Therefore, critical reflection of the concept of certainty above has given a clear meaning that the State of Indonesia as a state of law, should make rules governing *Artificial Intelligence* as a form of legal certainty for the community.

¹⁰⁹ Peter Mahmud Marzuki, *Introduction to Law* (Jakarta: Kencana, 2008). 108

¹¹⁰ Apeldoorn, *Introduction to Law*. 76

Gustav Rabruch proposed that the rule of law must have a clear value of certainty, then Van Apeldorn floated that legal certainty has the main purpose of providing evidence that the law is concrete and also as a form of security or protection to the community.

Concerning the analysis above, the absence of regulations that accommodate Artificial Intelligence, *in fact, has proven that Indonesia needs Artificial Intelligence regulations as an effort to realize the ideals of national law to protect the Indonesian people.*

2. Aspects of Constraints in Forming *Artificial Intelligence Regulations* in Indonesia

Long debate on the need for regulations that answer the problem of the use of Artificial Intelligence *that is misused, there are also aspects of obstacles in forming* special regulations for Artificial Intelligence in Indonesia. The following is a brief description of Indonesia's obstacles in forming Artificial Intelligence *regulations.*

As mentioned in the previous discussion, philosophical, juridical, and sociological studies of the regulatory needs of Artificial Intelligence in Indonesia have found a point of urgency. However, the government also does not stand still and take for granted the development of *Artificial Intelligence technology* that is increasingly widespread.

The rapid use of information technology online or e-commerce is usually accompanied by an increase in the potential for crime and disputes. Such as the potential for data leakage of application users which will certainly

cause losses to the community. Certainly, the government can also understand the importance of handling and recognizing the risks of *Artificial Intelligence* that may be potentially threatening in the future if its existence is misused.

Discussions related to the need for *Artificial Intelligence* regulation are still being touched upon by many circles. It also needs to be emphasized that *Artificial Intelligence* requires a balance between development and the regulations that govern it. Thus, *Artificial Intelligence* can provide broad benefits, while reducing the negative risks. Therefore, the role of the government in responding to this phenomenon is to prepare policies and regulations of *Artificial Intelligence that will become part of people's lives to be able to utilize* Artificial Intelligence. However, until now Indonesia does not have regulations related to artificial intelligence or *Artificial Intelligence*. This is because Indonesia also has obstacles that can be a challenge for Indonesia. Therefore, the author lists 2 aspects of obstacles that are considered to be Indonesia's challenges in forming regulations related to *Artificial Intelligence* in Indonesia.

First, Artificial Intelligence or Artificial Intelligence not only concerns privacy issues and personal data security but also has the potential to affect other sectors such as cybersecurity to intellectual property issues so that when discussing it there is a high and deep complexity.¹¹¹ Concerns about data privacy and security are certainly a challenge that must be considered.

¹¹¹ M R Ibad and M Hariadi, "Player Knowledge Based Artificial Intelligence for Real Time Tactic Game Using Knowledge Based Artificial Neural Networks," *Science and Mathematics* 1, no. 1 (2012): 33–39, <https://journal.unesa.ac.id/index.php/sainsmatematika/article/view/26>.

Sophisticated and complex *Artificial Intelligence* algorithms are capable of collecting, analyzing, and interpreting personal data on a fairly large scale and in detail. However, this situation reveals the potential for sensitive information about a person to be revealed at any time without the permission or knowledge of the individual concerned. In this case, data protection and privacy policies become something urgent to prevent misuse and unwanted privacy violations.

Second, lately, Kominfo has also examining regulatory needs related to *Artificial Intelligence*.¹¹² The absence of regulations related to *Artificial Intelligence* through communication and information regulations is also caused by the absence of laws and regulations that regulate it. Article 8 paragraph (2) of Law No. 12 of 2011 concerning the Establishment of Laws and Regulations provides space for the Minister to give binding legal force, but when ordered by Laws and Regulations referring to Article 7 paragraph (1) of the Law on the Establishment of Laws and Regulations¹¹³. Thus, this is also an obstacle to the establishment of binding legal rules by the Ministry of Communication and Information as a body that is quite influential on *Artificial Intelligence*.

¹¹² Hanifah Triari Husna, "Reducing Risk, Government Assesses AI Regulatory Needs," Kominfo, 2023. Retrieved 8 November 2023

¹¹³ The hierarchy of laws and regulations as stated in Article 7 paragraph (1) of Law No. 12 of 2011 concerning the Establishment of Laws and Regulations is as follows:

- a. Constitution of the Republic of Indonesia Year 1945;
- b. Decrees of the People's Consultative Assembly;
- c. Government Laws/Regulations in Lieu of Law;
- d. Government Regulations;
- e. Presidential Regulation;
- f. Provincial Local Regulations; and
- g. District / City Regulations.

B. The Urgency of *Artificial Intelligence Regulation* in Indonesia in an effort to Realize National Legal Ideals Perspectives on Responsive Legal Theory and *Sadd Al-Dzariah*

Artificial Intelligence has been one of the most revolutionary technological innovations in recent decades. *Artificial Intelligence* has the potential to fundamentally change the way we work, communicate, and live our daily lives. In Indonesia, as in the rest of the world, the use of *Artificial Intelligence* has penetrated various sectors, ranging from industry, and education, to health services. While *Artificial Intelligence* provides tremendous benefits, its deepening involvement in our lives also raises several issues and challenges that need to be addressed urgently through proper regulation.

The urgency of *Artificial Intelligence regulation* in Indonesia is becoming increasingly important along with the rapid growth of this technology. Indonesia should protect the entire Indonesian nation following the mandate of the 4th paragraph of the Preamble to the 1945 Constitution. Therefore, after knowing the basis for the urgency of *Artificial Intelligence regulation in Indonesia as an effort to realize the ideals of national law, it is appropriate to provide a middle ground to the needs of the community in the application of Artificial Intelligence in everyday life.*

Analysis of this discussion, Responsive Law theory provides the view that good law should provide more than just legal procedures. The law must synergize in responding to the needs of the community and have the main objective

of providing substantive justice¹¹⁴. *Sadd Al-Dzariah* as an Islamic concept that also affects the development of national development, one of which is the applicable rules, also provides a common thread that a good path but also possible to have a bad result, it will be prohibited when there is no middle way with the concept *Sadd Al-Dzaria'ah* (cutting the road).¹¹⁵

In this regard, *the author's analysis related to the increasingly rapid development of Artificial Intelligence which not only provides benefits to society but also causes enormous losses when misused, Islamic Law with the concept of Sadd Al-Dzari'ah provides an understanding that the development of Artificial Intelligence which is very likely to occur will occur, making Artificial Intelligence as a thing that is prohibited because it causes damage.*

In the perspective of positive law, the theory of Responsive Law provides a synergistic middle ground to serve the needs of the community with substantive justice, by forming regulations as a form of government response to protect the Indonesian people. Thus, responsive law has a correlation with *Sadd Al-Dzariah* to provide a middle way to anticipate the damage that will occur in society so that the use of *Artificial Intelligence* can develop and live without neglecting the welfare of the community.

¹¹⁴ Nonet and Selznick, *Responsive Law*. 136

¹¹⁵ Kawakib, Yusuf, and Hafdz Shuhud, "Sadd al-Dzariah as a postulate of Islamic law (a comparative study of Ibn al-Qayyim al-Jauziyah and Ibn Hazm)," *Al-Bayan: Journal of Qur'anic Science and Hadith* 4, no. 1 (2021): 78–104.

1. The Urgency of *Artificial Intelligence Regulation* in Indonesia in an Effort to Realize the Ideal of National Law Responsive Legal Theory Perspective

The growth of Artificial Intelligence technology has changed the global landscape in various aspects of human life, including economic, social, and cultural. In Indonesia, *Artificial Intelligence* has also become one of the main drivers of digital transformation and innovation. However, rapid advances in *Artificial Intelligence* also present several legal and ethical challenges that need to be addressed urgently.

According to the author, from the development of Artificial Intelligence which is increasingly felt and utilized by the community, regulations related to Artificial Intelligence are the main concern in dealing with problems that can harm the community. Analysis of the theory of Responsive Law becomes relevant to be studied more deeply because it emphasizes the importance of regulation that is responsive to technological developments to maintain justice, security, and public welfare. Responsive legal theory also provides an approach to law that recognizes the need for regulation that can adapt to changes in the social and technological environment. This is particularly relevant in the context of *Artificial Intelligence in Indonesia*, given that the development of Artificial Intelligence technology is proceeding so fast that unresponsive regulations can easily become outdated and irrelevant.

The demand to present the type of law by forming regulations as responsive actions has been in line with the spirit of democracy, the soul of the nation, and the community. In this order, democracy becomes synonymous with the capacity of society as the main goal to formulate and decide for itself the needs of the problems it faces.¹¹⁶

The existence of Responsive Law is a breakthrough from Nonet and Selznick as a critique of the *Analytical Jurisprudence* model which only dwells on positive law. Therefore, Responsive Law has 2 (two) Main Doctrines: *First*, the Law must be Pragmatic, purposeful, and Rational. *Second*, have the competence to be used as a reference or benchmark in law implementation.

From this idea, Responsive Law does not discard the sense of justice but extends it to obtain substantive justice. Responsive legal competence serves as a critique of the policies in the regulations, which emphasize 9 main variables:

- a. In Responsive law emphasizes substantive justice as legal legitimacy
- b. Regulations are subordinate to government principles and policies.

¹¹⁶ Asma Karim and Dayanto, *Responsive Regional Regulations: : Theoretical Foundations and Guidelines for Their Formation* (Yogyakarta: Deepublish, 2015), 136. <https://books.google.co.id/books?id=4oKYDwAAQBAJ>.

- c. Legal considerations must always be goal-oriented for the benefit of society
- d. The application of Discretion is highly recommended in legal decision-making.
- e. The system of liability in law instead of the system of coercion.
- f. The moral principle in carrying out the law is by establishing cooperation
- g. The power possessed must be used to support the vitality of the law and the interests of society.
- h. Rejection of the law should be seen as a form of legal legitimacy to shape responsive legal development.
- i. Public participation is wide open in forming integrated legal products.¹¹⁷

So when the variables of Responsive law are applied in the urgency of Artificial Intelligence regulation in *Indonesia by forming special regulations related to Artificial Intelligence in protecting the Indonesian people, two prominent characteristics in characteristics of responsive law can be examined, especially in realizing the ideals of national law.*¹¹⁸

- d. Shifting the emphasis of rules to principles and goals.

The existing regulations do not explicitly accommodate *Artificial Intelligence* regulations in Indonesia. Thus, there needs to be

¹¹⁷ Nonet and Selznick, *Responsive Law*. 87

¹¹⁸ Mukhtie Fadjar, *Contemporary Legal Theories* (Malang: Setara Pers, 2013). 51.

regulatory dynamics to provide more certainty to the community. The State of Indonesia as a state of law, has legal principles and objectives to prosper the people of Indonesia.

According to Julius Stahl, as a state of law must be in accordance with the principles of the state, one of which is government based on law.¹¹⁹ In this regard, the absence of regulations related to *Artificial Intelligence*, in fact, has contradicted by demanding the government to immediately respond to all the needs of the community under the ideals of the law adopted by Indonesia. The government is expected to be responsive in facing the development of *Artificial Intelligence*, both benefits and negative things though.

The objectives of the State of Indonesia have also been clearly stated in the 4th paragraph of the Preamble of the 1945 NRI Constitution, namely; protect the entire nation, the country and all Indonesian bloodshed, promote general welfare, educate the nation's life, and participate in implementing world order based on independence, lasting peace, and social justice. Therefore, the provisions of rules related to *Artificial Intelligence* must be realized in a legal state that is in line with the principles and objectives of the law.

Responsive Legal Theory demands that laws conform and develop in accordance with legal principles. Responsive legal theory

¹¹⁹ Mahfud MD, *Law and the Pillars of Democracy* (Yogyakarta: Gama Media, 1999), 23rd <https://books.google.co.id/books?id=sc6yAAAACAAJ>.

also gives a critical view that law is a means to an end.¹²⁰ When the law is no longer relevant to existing developments, it is necessary to shift the law to suit the goals desired by the community.

The application of Responsive Legal theory in the Development of *Artificial Intelligence* that is not accommodated by laws and regulations has been in line with the principles and objectives of the State of Law, namely to protect the entire nation and state. The rules are currently only based on electronic agents there needs to be a legal shift to accommodate specifically and explicitly *Artificial Intelligence*, namely by forming special regulations that will describe the responsibilities and limits of the use of *Artificial Intelligence*.

The dynamics of the development of *Artificial Intelligence* which has touched on social problems, should be shaded by legal regulations. The existence of the rule of law serves as a facilitator for the fulfillment of the needs and aspirations of the community. It must manifest the public's will and commitment to the cause of substantive justice.¹²¹ Appropriately, the government's response is also needed by all elements of society to be guaranteed from legal problems related to the use of *Artificial Intelligence*.

- e. The importance of popular character both as a legal goal and a means to achieve it.

¹²⁰ Henry Arianto, "Responsive Law and Law Enforcement in Indonesia." 119.

¹²¹ Yoan Nursari Simanjuntak, "Responsive Law: Legal Interpretation and the Social World," *Journal Justiosis* Volume 8 Number 1 (2005): 282.

Responsive legal products are legal products that are born to meet community expectations and reflect a sense of justice for society. In the process of its formation, community participation became the main role in shaping legal products. Therefore, responsive legal products are also participatory by involving as many elements of the community concerned.

Judging from its function, the character of the theory of Responsive Law is always aspirational. That is, the resulting legal product can contain materials that are generally in accordance with the needs of the community so that the legal product can be viewed as an answer based on the will of the community.

Responsiveness can be interpreted as a form of service to the needs of interests and urgency experienced, felt, and discovered, not by government officials neglected by the people. Thus, the law will live and support the community in order to achieve the goal of welfare. If Indonesia has a goal to prosper all Indonesian people as mandated by the Constitution, then responsive law always looks for ways to achieve this goal.

The urgency of *Artificial Intelligence* regulation in Indonesia makes the people the main goal to be guaranteed their survival, which is the goal to achieve their form of security so that the people become the main object of responsive legal goals. The substantive justice of the

people becomes the benchmark of the implementation of responsive laws.

With regard to the characteristics of responsive law, in order for more comprehensive research, the author also provides a comparative study of several countries that have made special regulations related to *Artificial Intelligence*, namely the European Union and Australia. The European Union¹²² has adopted *Artificial Intelligence* regulations in response to the rapid development of technology. The regulation, called the *EU Artificial Intelligence Act* (AI EU ACT), has gone through a long study and is a commitment of President Von Der Leyen to the commission in 2019-2024. The EU Technology Commission published a White Paper on *Artificial Intelligence* outlining policy options on how to achieve the dual goal of encouraging the use of *Artificial Intelligence* and addressing the risks associated with the use of such technology.¹²³

Article 1 of the EU AI ACT¹²⁴ has clearly illustrated how this regulation on *Artificial Intelligence* was formed. In this regard, the European

¹²² The European Union is an organization of economic, scientific and political unity founded in 1992 and consists of 27 countries, including: Austria, the Netherlands, Belgium, Bulgaria, Czech Republic, Denmark, Estonia, Finland, Germany, France, Hungary, Ireland, Italy, Croatia, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Romania, Cyprus, Slovakia, Slovenia, Spain, Sweden, and Greece

¹²³ European Commission, "Regulation Of The European Parliament And Of The Council. Laying Down Harmonised Rules On Artificial Intelligence (Artificial Intelligence Act) And Amending Certain Union Legislative Acts," *Brussels* 21, no. 4 (2021). 2.

¹²⁴ The purpose of the Regulation is to promote the uptake of human-centered and trustworthy artificial intelligence and to ensure a high level of protection of health, safety, fundamental rights, democracy and rule of law and the environment from the harmful effects of artificial intelligence systems in the Union while supporting innovation and improving the functioning of the internal market. The regulation establishes a uniform legal framework in particular for the development,

Parliament wants the use of *Artificial Intelligence* but is also ready to face and answer the challenges of *Artificial Intelligence*. This can be proven by Article 4 Letter A of the EU AI ACT. which explicitly states that:

“Given the major impact that artificial intelligence can have on society and the need to build trust, it is vital for artificial intelligence and its regulatory framework to be developed according to Union values enshrined in Article 2 TEU, the fundamental rights and freedoms enshrined in the Treaties, the Charter, and international human rights law. As a pre-requisite, artificial intelligence should be a human-centric technology. It should not substitute human autonomy or assume the loss of individual freedom and should primarily serve the needs of society and the common good. Safeguards should be provided to ensure the development and use of ethically embedded artificial intelligence that respects Union values and the Charter.”

The article above has provided an overview of the major impacts generated by *Artificial Intelligence* for the EU community so it is very important to create a regulatory framework that provides certainty and value for the EU community to ensure the development and use of *Artificial Intelligence*. It still runs ethically and human-centered, not replacing humans. In fact, if understood further, members of the European Union also partly adhere to the same system as Indonesia, namely *civil law*¹²⁵. Even surprisingly, some members of the European Union also adhere to the

placement in the market, use and use of artificial intelligence in accordance with the values of the Union and ensuring the free movement of AI-based goods and services

¹²⁵ European Union countries that adopt the *civil law* system are Austria, the Netherlands, Belgium, Bulgaria, Denmark, Estonia, Finland, Germany, Croatia, Latvia, Greece, Portugal, Poland.

common law system. This is concrete evidence that Indonesia, which adheres to the *civil law system*,¹²⁶ must immediately move to respond to make regulations related to *Artificial Intelligence* because besides being needed by the community, it is also a concrete form of the Indonesian State as a legal state

The European regulation has also described the form of government response in seeking protection for the public against the impacts that are very likely to occur due to *Artificial Intelligence* itself. Like Indonesia, the European Union also has a personal data protection regulation that can be called the *General Data Protection Regulation* (GDPR) which also partially regulates the *Artificial Intelligence* system. GDPR is more often used in the world of health. Therefore the proposed *Artificial Intelligence* Act introduces a risk-based approach to *Artificial Intelligence* systems *based on ethical Artificial Intelligence principles*.¹²⁷ The EU AI ACT could complement GDPR working in healthcare and medical research. This is evidenced by the design of new technology that can support community activities in the use of *Artificial Intelligence*, namely *the European Travel Information and Authorisation System* (ETIAS).¹²⁸ That is, the European Union sees the serious impact caused by *Artificial Intelligence* so it is necessary to regulate

¹²⁶ Article 1 of the Law of the Republic of Indonesia Year 1945

¹²⁷ Janos Meszaros, Jusaku Minari, and Isabelle Huys, "The Future Regulation of Artificial Intelligence Systems in Healthcare Services and Medical Research in the European Union," *Front Genet* 13, no. 927721 (2022). 23

¹²⁸ Charly Derave, Nathan Genicot, and Nina Hetmanska, "The Risks of Trustworthy Artificial Intelligence: The Case of the European Travel Information and Authorisation System," *European Journal of Risk Regulation* 13, no. 3 (2022): 389–420.

Artificial Intelligence specifically to provide clear legal certainty to the community.

Another country that also makes *Artificial Intelligence* regulations is Australia. A position that can be said to be the same as Indonesia, because at first, Australia believed that regulation related to *Artificial Intelligence* was only enough to rely on patent inventors as stated in the *Patent Regulations (section 15 of the Patents Act)* as Electronic Agents in Article 1 of the ITE Law. However, the patent commission revealed that the inventor did not accommodate the needs of *Artificial Intelligence*.¹²⁹ So, seeing such rapid development and sophisticated operations, Australia again discussed designing special regulations related to *Artificial Intelligence* to protect and guarantee the security of its people.

In this regard, Indonesia as a state of law should live the principles of the rule of law concerning responsiveness to existing developments. Other countries that have authorized and even designed, may be a reference for Indonesia to make special regulations related to *Artificial Intelligence that will have a positive impact on all citizens, and can answer public concerns about the misuse of Artificial Intelligence.*

The above description provides a common thread that can be concluded from the idea of responsive law according to Phillipe Nonet and

¹²⁹ Rebecca Currey and Jane Owen, "In the Courts: Australian Court Finds AI Systems Can Be 'Inventors,'" Wipo Magazine, 2021, 14
https://www.wipo.int/wipo_magazine/en/2021/03/article_0006.html.

Phillipe Selznick that the government and even all of us should dare to take steps that are more responsive to the needs and interests of the community.¹³⁰

The use of *Artificial Intelligence* is also considered to have a loophole for the government to immediately find a way out of the rampant problems and not accommodate *Artificial Intelligence* in laws and regulations in Indonesia.

The concept of Responsive Law theory seems to be a promising thing for improving the legal order in Indonesia, namely by popular means. The link in the problem being studied is the absence of regulations governing Artificial Intelligence, *responsive law is a real picture of how important Artificial Intelligence regulation is in Indonesia. Regulation as a way of benefit and peoplehood as a reference in achieving goals has found a point of understanding that the urgency of Artificial Intelligence regulation in Indonesia is in line and in accordance with the Responsive Legal Concept as an act of government response to the need for Artificial Intelligence regulation in Indonesia in realizing the ideals of national law.*

2. The Urgency of *Artificial Intelligence Regulation* in Indonesia in an Effort to Realize the Ideal of National Law Sadd *Al-Dzari'ah's Perspective*

Islamic law has contributed greatly to the development of national law in the country of Indonesia. This is evidenced by the birth of several

¹³⁰ Ali Majid, "Studies on Responsive Legal Discourse in National Legal Politics in the Reformation Era," *Legal Dynamics* 12, no. 1 (2021): 35–56.

regulations imposed in Indonesia, alive and carried out until now.¹³¹ History and Dynamics have answered how Islamic Law entered and developed by becoming the majority religion of Indonesian society. The position of Islamic Law is a legal entity that lives, develops, is recognized, and implemented by society with dynamic, adaptive, and responsive characteristics.¹³²

During the rapid development of artificial intelligence technology, Indonesia, like other countries, is faced with great challenges in regulating and supervising the use of this technology. The perspective of "*Sadd al-Dzariah*" or "Preventing Damage" in Islamic law plays an important role in understanding the urgency of *Artificial Intelligence regulation in Indonesia* in an effort to realize the ideal of national law.

Sadd al-Dzariah is a concept of Islamic law that implies that if any action or deed can lead to adverse effects, then the action must be prevented or limited before the damage is done. When applied to *Artificial Intelligence technology*, this concept becomes very important to prevent potential damage and negative impacts before they occur and becomes especially relevant in the context of the rapid development of *Artificial Intelligence*. In fact, the 4th paragraph of the preamble to the 1945 Constitution states that one of the objectives of the state is to protect the entire nation and the State. The rise of problems related to *Artificial Intelligence* which has been mentioned above,

¹³¹ Ali Imron, "The Contribution of Islamic Law to the Development of National Law," *MMH* Volume 4 No (2012). 65

¹³² Nabilah Apriani, "Display of Actualization of the Position of Islamic Law in the Perspective of Indonesian National Law," *Lex Generalis Law Journal* Vol.3. No., no. Islamic Law (2022): 133.

becomes the duty and responsibility of the government to protect its citizens in line with the ideals of national law.

In the context of this problem, the use of *Artificial Intelligence* which is so rapidly developing in society is the main benchmark in the analysis of the application of *Sadd Al-Dzari'ah*. *Artificial Intelligence*, which is expected to help all human work, has a negative side that must be avoided. The practice of *misusing Artificial Intelligence* has also begun to be heard and seen in various kinds of complaints from the public. Some people do feel helped by the presence of *Artificial Intelligence*, but the absence of *Artificial Intelligence regulations* make some people doubt the misused use. Thus, the use of *Artificial Intelligence* is still seen as something that contains wealth. When related to the perspective of *Sadd Al-Dzariah*, *if the method or way contains harm, even though it has a good purpose, then it is also categorized as Sadd Al-Dzariah*. When viewed in responsive law as previously discussed, it also becomes an obstacle to achieving the ideal legal goals for the path of public welfare and public happiness.

If in practice the use of *Artificial Intelligence* indicates the occurrence of prohibited things that cause harm to many people, it is not in line with the objectives of the state contained in the constitution. This is also contrary to Article 28D paragraph 1 of the 1945 NRI Constitution which states "Everyone has the right to recognition of guarantees, protection, and fair legal certainty and equal recognition before the law", this is because there

is no regulation that guarantees clear legal certainty related to *Artificial Intelligence* which is also the goal of national legal ideals.

In line with Article 28G paragraph 1 of the NRI Constitution "everyone has the right to protection of himself, family, honor, dignity, and property under his control, and has the right to a sense of security and protection from threats of fear to do or not do something that is a human right" means, in the absence of *Artificial Intelligence* regulation, also has implications for the right to security for the community. In fact, people are aware of the use of *Artificial Intelligence* which is widely used and can help their work. Because it also has implications for evil, society finally has an ambiguous position to continue using the use of *Artificial Intelligence* or not, and that is a violation of human rights that have been protected by the Constitution.

The above problem is in line with the example explained by Ibn Qayyim al-Jauziyah towards the Dalil of Allah SWT in Surah Al-An'am:108.

وَلَا تَسُبُّوا الَّذِينَ يَدْعُونَ مِنْ دُونِ اللَّهِ فَيَسُبُّوا اللَّهَ عَدْوًا بِغَيْرِ عِلْمٍ

"And do not curse any god they worship but Allah, for they will later curse God beyond the limits without any basis of knowledge."

Berating and insulting gods other than Allah, is fine. But because the act of berating and insulting gods other than Allah can also cause other people to insult and berate God, then these actions become prohibited acts.

Another problem that is in line with the concept of *Sadd Al-Dzariah* is found in Sura An-Nuur (24):31:

وَلَا يَضْرِبْنَ بِأَرْجُلِهِنَّ لِيُعْلَمَ مَا يُخْفِينَ مِنْ زِينَتِهِنَّ¹³³

"And let them not stamp their feet lest the jewels they hide be known."

The act is legal to do. However, because the act of stomping feet can cause stimulation for those who hear, stomping feet is prohibited.

The above two examples have answered that every action is under the objectives of the Shari'ah because every goal will not be achieved without going through causes and media that mediate. Media that serves as an introduction is a must that should not be ignored.¹³³ Therefore, the intermediary must have the same legal status as the goal to be achieved, and to determine the legal status of Al-Dhari'ah, must look at the goal to be achieved.

That is, the regulation initiated by the author is a medium or intermediary to obtain results by the goals to be achieved. The abandonment of legal intermediaries is something that has been anticipated in the concept of *Sadd Al-Dzari'ah*. The use of *Artificial Intelligence* when there are media or community intermediaries will be more guaranteed and no longer prohibited because of the mediation of community needs in achieving good goals.

In addition, the number of cases that have been described in the previous explanation indicates that the condition of society is very threatened by the development of *Artificial Intelligence* which is increasingly

¹³³ Kawakib, Yusuf, and Shuhud, "Sadd al-Dzariah as a postulate of Islamic law (a comparative study of Ibn al-Qayyim al-Jauziyah and Ibn Hazm)."

widespread. Whereas the rules of fiqh which are also in line with the concept of *Sadd Al-Dzariah* state:

إِذَا اجْتَمَعَ الْحَلَالُ وَالْحَرَامُ غُلِبَ الْحَرَامُ

"When the halal and the haram are mixed, then the one won is the haram."

This rule is in harmony with the concept of legal dualism between something that is allowed and something that is forbidden, it will be won by the bad because the bad can affect something good. The rise of errors in the utilization of *Artificial Intelligence* In the form of behavior without legal limits is a logical consequence of poor public welfare. Goodness gained in the development of *Artificial Intelligence* must also be inferior to the evil caused by wrong actions in the utilization of *Artificial Intelligence*.

If the discussion is viewed from the level of damage caused according to Ibn Qayyim Al-Jauziyah,¹³⁴ then the problem is included in the fourth level of *Sadd Al-Dzariah*, where the benefits obtained are greater than the damage experienced. The development of *Artificial Intelligence* which is increasingly widespread has brought a good impact on human activities in fact has been felt by most Indonesian people. But there is still the potential for a side of wealth where *Artificial Intelligence* is also prone to be misused and even act more than expected. That is, *Artificial Intelligence has*

¹³⁴ Jalili Ismail, *The Existence of Sadd Adz-Dzari'ah in Ushul Fiqh: A Study of the Thought of Ibn Qayyim Al-Jauziyyah (d.751 AH/1350 AD)*, Print 1 (Central Java: Lakeisha Publishers, 2020), 76. <https://books.google.co.id/books?id=-4InEAAAQBAJ>.

penetrated human activities to be utilized by the community, but the government also needs to make special regulations on Artificial Intelligence as a form of prevention against something that can cause damage.

The possibility of bad occurrence is very possible, considering that several cases have been described earlier, due to the misuse of *Artificial Intelligence*. Referring to the precautionary aspect by scholars by adhering to the rules of *fiqhiyah* which reads:

دَرْءُ الْمَفَاسِدِ مُقَدَّمٌ عَلَى جَلْبِ الْمَصَالِحِ

*"Rejecting harm takes precedence over taking advantage."*¹³⁵

Regarding the matter, the concept of *Sadd Al-Dzariah* presents as a closing path to actions that can lead to *mafsadat* (damage). *Sadd Al-Dzariah* is also established as a postulate in taking preventive action against the ugliness that will occur.¹³⁶ The concept has been in line with the establishment of regulations on *Artificial Intelligence* as a middle ground from the damage that can be caused by *Artificial Intelligence* itself. That is the application of regulations *Artificial Intelligence* which is in line with the concept *Sadd Al-Dzari'ah* To obtain *maslahah* and not become prohibited because the consequences caused are the practice of Responsive Law theory

¹³⁵ Ibrahim Al-Qawaid Al-Fiqhiyah (*Kaidah-Kaidah Fiqih*). 84

¹³⁶ Kawakib, Yusuf, and Shuhud, "Sadd al-Dzariah as a postulate of Islamic law (a comparative study of Ibn al-Qayyim al-Jauziyah and Ibn Hazm)." *Sadd Al-Dzariah*. 79.

As a means of responding to symptoms and social conditions that exist in society in realizing regulations that are following the ideals of national law.

CHAPTER IV

CLOSING

A. Conclusion

Based on the explanation that the author has discussed above, it can be concluded that:

1. The development of technology that is increasingly widespread is a major role in the development of *Artificial Intelligence*. However, Indonesia currently does not have special regulations related to *Artificial Intelligence*. Sociologically there are many problems produced by *Artificial Intelligence due to the misuse of Artificial Intelligence*. This is the basis for the urgency of *Artificial Intelligence regulation in Indonesia in the form of efforts to realize the ideals of national law that are realized in justice for the community in the use of Artificial Intelligence, benefits as a form of protection and welfare for the community, and legal certainty related to Artificial Intelligence that has begun to develop in Indonesia*.
2. *Sadd Al-Dzariah Analysis* and Responsive Legal Theory are the answer to the urgency of *Artificial Intelligence regulation* in Indonesia. When related to the perspective of *Sadd Al-Dzariah*, if the method or way contains harm, even though it has a good purpose, then it becomes forbidden. From the perspective of *Sadd Al-Dzariah*, the development of *Artificial Intelligence is very likely to occur on the way to achieving the goal of prospering the Indonesian people by misusing the use of Artificial Intelligence*. Therefore, *Sadd Al-Dzariah* comes

as a concept to close the road to Mudharatan by forming regulations related to *Artificial Intelligence*.

When viewed in responsive law, it is also an obstacle to achieving the ideal legal goals for the path of public welfare and public happiness. So appropriately, the government must respond to the needs of the community, namely by establishing *Artificial Intelligence* regulations in Indonesia to protect the Indonesian people as mandated by the Constitution.

B. Suggestion

With this research, it is hoped that it can be used as input to the government about the development of *Artificial Intelligence in Indonesia which is increasingly widespread so the government needs to respond with regulations related to Artificial Intelligence*. Given the rapid development of technology in Indonesia, it is appropriate for the public to be given clear legal certainty as a form of protection for people in Indonesia.

Artificial Intelligence regulations are expected to be able to accommodate accountability, work systems, limitations, and implementation in the Indonesian state, which is formed in special regulations in the form of the Artificial Intelligence Law.

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