Civil Liability for Clients Who Suffer Losses in Using the Services of an Attorney Using Artificial Intelligence

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Abstract: Artificial Intelligence has become an inseparable part of everyday life. Artificial Intelligence has been designed to help humans in various ways. included in the legal profession of an advocate to serve clients. Artificial Intelligence can be a tool in serving clients by not eliminating or changing the function and position of the advocate profession by considering, examining the data or documents provided by Artificial Intelligence. Advocates can use Artificial Intelligence to automate data document processing. This includes classifying documents, highlighting important issues, and extracting relevant information from them. By using Artificial Intelligence document processing can be done quickly and efficiently, thereby saving time and costs. With various types of Artificial Intelligence, of course there are errors and losses for users that cannot be avoided. In the use of Artificial Intelligence, it is found that the injured party is the client. With the discrepancy in the data results provided by Artificial Intelligence, this causes the client to be harmed because there is a discrepancy in the data and facts which makes the client feel that there is an error that the data processing robot should have carried out the data analysis to produce result B even though the data.

Keyword: Civil Liability, Advocate, Artificial Intelligence.

INTRODUCTION

The development of information and communication technology has brought significant changes in human life, including in the legal profession. One technology that is currently widely discussed and applied is Artificial Intelligence (AI). AI has great potential in changing the way various professions work, including the advocate profession. With its ability to automate processes that previously required human labor, AI is expected to improve efficiency and accuracy in legal services. AI has been designed to assist humans in various aspects, including in the legal profession. In this context, AI can be used as a tool to help advocates serve clients. For example, AI can assist in examining and analyzing the data or documents provided, classifying the documents, flagging important issues, and extracting relevant information from the documents. By using AI, document processing can be done quickly and efficiently, saving time and money (Ashley, 2017).

A concrete example of the application of AI technology in the field of law enforcement, the United States has utilized AI technology to help work in a court called ROSS. AI can help ease the daily work of a lawyer by processing fast data with careful accuracy like ROSS. AI systems can help the work of lawyers by solving repetitive problems such as document review, legal research, and legal drafting. Thus, it can save the time, effort, and cost of a law firm that relies on researchers and paralegals in carrying out its activities. While AI offers many benefits, its use in the advocacy profession also poses challenges and risks. One of the biggest risks is the potential for errors in data processing and analysis. These errors can be caused by a variety of factors, including the inaccuracy of the AI algorithm, the quality of the data used, or human error in entering the data. When these errors occur, clients using AI-enabled advocates may suffer losses. For example, if AI provides inaccurate data analysis or produces incorrect results, it can negatively impact the legal case at hand. For example, if the AI misinterprets important evidence or documents, it may affect the legal decision and cause harm to the client. In such a situation, an important question that arises is: who is liable for the loss suffered by the client? Is it the advocate who used the AI, the AI technology provider, or another party? This question highlights the importance of clear regulation of legal liability for the use of AI in the advocacy profession (Binns, 2017).

Currently, Indonesian law does not explicitly regulate legal liability for AI-related errors in the advocacy profession. Law No. 18/2003 on Advocates, Law No. 8/1999 on Consumer Protection and Law Number 11 Of 2008 Concerning Amendments To Law Number 19 Of 2016 Concerning ITE while relevant, do not specifically regulate the use of AI and the legal relationship between the client and the advocate and artificial intelligence and who is liable if the client suffers harm due to the advocate using artificial intelligence. This creates legal uncertainty for clients who are harmed, as well as for advocates who use AI as a tool in their work (Branting, L. K., Albiston, C. R., & Urban, 2020).

The use of Artificial Intelligence (AI) technology in the legal profession is increasing along with the development of technology and the need for efficiency in the completion of legal tasks. AI in the legal field is known to have the ability to process and analyze data quickly, automate administrative tasks, and assist in making more accurate legal decisions.

In this context, AI is often used to classify documents, flag important issues, and extract relevant information from various legal documents. The use of AI in the advocacy profession is not meant to replace the role of the advocate, but to be a tool that increases productivity and accuracy. With AI, advocates can save time in processing documents and focus on the strategic aspects of their cases. This is in line with research showing that the use of AI can reduce administrative workload and improve operational efficiency.

While AI offers a wide range of benefits, its use also poses risks, mainly related to potential errors in data processing and analysis (Wirtz, B. W., Weyerer, J. C., & Geyer, 2019). These errors can be caused by a variety of factors, including the inaccuracy of the AI algorithm, the quality of the data used, or human error in entering the data. These errors can negatively impact the analysis results and legal decisions taken based on the data generated by AI (Goodman, 2018).

In some cases, AI errors may cause harm to the client. For example, if the AI provides inaccurate data analysis or produces incorrect results, it may affect legal decisions and cause financial or reputational harm to the client. In situations like this, legal liability becomes an important issue that needs to be addressed (Veale, M., & Brass, 2019). Currently, there is no clear regulation on civil liability for AI errors in the advocate profession in Indonesia, leading to legal uncertainty.

Law No. 18/2003 on Advocates, Law No. 8/1999 on Consumer Protection and Law Number 11 Of 2008 Concerning Amendments To Law Number 19 Of 2016 Concerning ITE are two laws that are relevant to the use of AI in the advocacy profession. However, these three laws

do not specifically regulate the use of AI and the legal relationship between the client and the advocate and artificial intelligence and who is responsible if the client suffers a loss due to the advocate using artificial intelligence (Hildebrandt, 2015). This creates a legal vacuum that needs to be filled through regulatory reform or the enactment of new laws that are more relevant to current technological developments.

In addressing the issue of civil liability in the use of AI, several approaches can be taken. First, there needs to be clear and firm regulations regarding the use of AI in the legal profession. This regulation should include supervisory mechanisms, operational standards, and clear sanctions for advocates or AI providers who are found to have committed negligence or errors that harm clients (Surden, 2019). In addition, the development of ethical standards governing the use of AI in the legal profession is also important. These ethical standards should include basic principles such as transparency, accountability, and fairness. For example, advocates should be transparent in informing clients about the use of AI in their cases, including the potential risks and benefits involved. Advocates should also be accountable for the results produced by AI, and ensure that the final decision remains in the hands of humans, not AI (Leenes, 2017).

Some developed countries have begun to develop regulations regarding the use of AI in the legal profession. For example, in the United States, several states have adopted regulations governing the use of AI in the legal profession, including supervision mechanisms and sanctions for advocates who are proven to have made mistakes due to the use of AI. Experiences from these countries can serve as lessons learned for Indonesia in developing regulations that suit local needs and contexts (Amiruudin & Zainal Askin, 2012).

In the United States, the use of AI in the advocacy profession has been quite developed. One example of an AI application in use is ROSS Intelligence, an AI-based platform designed to assist advocates in conducting legal research. ROSS Intelligence uses natural language processing (NLP) technology to analyze legal documents and provide relevant recommendations. While AIs such as ROSS Intelligence can improve efficiency and accuracy, there have been cases where AI-generated data analysis errors have led to client harm. In such cases, civil liability becomes a crucial issue. In some states, regulations have established that advocates remain liable for the results produced by AI, and advocates must ensure that they have sufficient understanding of the technology they are using. In addition, advocates are also required to provide transparent information to clients regarding the use of AI and the potential risks associated with it (Parker, G., & van Alstyne, 2018).

To reduce the risk of errors and ensure that advocates can use AI effectively, education and training regarding the use of AI in the legal profession is essential. Advocates must have a sufficient understanding of AI technology, including how it works, potential risks, and how to address any errors that may occur (Mamesah et al., 2020). In addition, advocates also need to understand the ethical and regulatory aspects related to the use of AI. Some legal education institutions in developed countries have included curricula on the use of AI in the legal profession. For example, several universities in the United States offer courses on legal technology and AI, covering topics such as natural language processing, data analysis, and technology regulation. This education and training can help advocates to be better prepared for the challenges and risks associated with the use of AI.

To address the legal vacuum and ensure adequate protection for clients, it is necessary to develop a comprehensive regulatory framework regarding the use of AI in the legal profession. This regulatory framework should include several important elements, including oversight mechanisms, operational standards, and sanctions for advocates or AI providers found to have committed errors or omissions (Alamanda et al., 2020).

The regulations should also include provisions on transparency and accountability. Advocates should be required to provide clear and transparent information to clients regarding the use of AI, including the potential risks and benefits involved. In addition, advocates should also be

held accountable for the results produced by AI, and ensure that they have sufficient understanding of the technology they are using.

METHOD

This research uses normative research methods or desk research, which focuses on secondary data such as laws and regulations and legal literature. Normative legal research was chosen because it provides an in-depth understanding of existing legal regulations and how they can be applied in the context of the use of AI in the advocacy profession. Thus, this research aims to examine the legal relationship between clients and advocates and AI as well as the civil liability for clients who suffer losses due to the use of advocates who use AI, and to explore possible legal solutions that can be applied.

One approach that can be taken to address this issue is to adopt new regulations that specifically address the use of AI in the legal profession. These regulations should include oversight mechanisms, operational standards, as well as clear sanctions for advocates or AI providers who are found to have committed negligence or misconduct that harms clients. In addition, there needs to be an effort to increase advocates' understanding and awareness of the risks and responsibilities associated with the use of AI. Thus, advocates can be more cautious in using this technology and ensure that clients receive fair and adequate legal protection.

In addition, another approach that could be considered is to develop ethical standards governing the use of AI in the legal profession as stipulated in Article 6 of Law No. 18/2003 on Advocates. These ethical standards should include basic principles such as transparency, accountability, and fairness. For example, advocates should be transparent in informing clients about the use of AI in their case handling, including the potential risks and benefits involved. Advocates should also be accountable for the results produced by AI, and ensure that the final decision remains in the hands of humans, not AI. In the face of the challenges and risks posed by the use of AI, collaboration between various stakeholders is essential. The government, AI technology providers, bar associations, and legal education institutions should work together to develop adequate regulations and standards, and to improve the understanding and capacity of lawyers in using AI. Thus, the use of AI in the legal profession can provide optimal benefits, without compromising the rights and interests of the client.

RESULTS AND DISCUSSION

Legal Relationship Between Client and Advocate and Artificial Intelligence

Advocates have a crucial role in the legal system by providing a variety of legal services that include consultation, representation, and defense of client interests, both inside and outside the court. In carrying out their profession, advocates must comply with the provisions stipulated in Law Number 18 Year 2003 on Advocates. Article 6 of this law underlines that advocates must fulfill certain requirements, including the obligation to optimally safeguard the interests of clients as well as comply with the professional code of ethics. This emphasizes the responsibility of advocates in performing their duties with integrity and professionalism.

With the advancement of technology, particularly through the application of artificial intelligence (AI), the advocacy profession is undergoing significant changes. AI has great potential in transforming work methods in various fields, including law. This technology enables automation of processes that previously required human labor, so it is expected to increase efficiency and accuracy in legal services. In legal practice, AI can be used to process and analyze data and legal documents in a faster and more efficient way. The main functions of AI include data processing, document classification, identification of key issues, and extraction of relevant information. This use of AI can reduce manual workload and save time and money, allowing advocates to focus on the strategic and complex aspects of the case.

However, the application of AI in legal practice must be in accordance with applicable legal provisions. Law No. 18/2003 on Advocates stipulates that advocates must act with integrity and responsibility in accordance with article 6. The use of AI in legal services must comply with these principles by ensuring that the technology does not replace the advocate's professional responsibility in safeguarding the client's interests. The use of AI must be carefully monitored and managed to ensure that the technology does not neglect the advocate's obligation to provide optimal legal services.

In addition, Article 4 of the Consumer Protection Law is highly relevant as it regulates consumer rights, including the protection of personal data. In this study, AI used to manage legal data and client personal information must comply with the data protection provisions stipulated in this law. Protection of clients' personal data is a top priority, and data management must be done carefully to avoid privacy violations or misuse of information.

Article 3 of Law Number 11 of 2008 on the Amendment to Law Number 19 of 2016 on ITE provides a legal framework for the management of electronic information and digital transactions. The law includes regulations on data protection and information security relevant to the use of AI in legal practice. The use of AI must comply with the provisions on information security to protect data from unauthorized access and security breaches, ensuring that client data is managed safely.

However, there are some risks to be aware of in the use of AI, which may affect the relationship between the advocate, the client, and the technology:

1.   Errors in Data Analysis: While AI is designed to improve efficiency, reliance on this technology carries the risk of errors in data analysis. AI relies on the quality of the algorithms and data used. If there are errors in the algorithms or data, this could result in erroneous interpretation of legal documents, potentially negatively impacting the outcome of the case. Article 6 of Law No. 18/2003 emphasizes the responsibility of advocates to ensure that the technology used does not compromise their obligation to safeguard their clients' interests.

2.   Data Privacy and Security: The use of AI involves the management of sensitive personal data Article 3 of Law Number 11 of 2008 on the Amendment to Law Number 19 of 2016 on ITE. It is important for advocates to ensure that the AI systems used comply with data protection and information security provisions to prevent leakage or misuse of client data.

3.   Dependence on Technology: Over-reliance on AI may lead to a decline in advocates' manual skills in legal analysis. While AI can speed up the process, Article 6 of Law No. 18/2003 emphasizes the importance of professional skills in the practice of law. Therefore, advocates need to maintain a balance between the utilization of technology and manual analysis skills to ensure the quality of legal services.

In the author's opinion, the use of artificial intelligence (AI) in legal practice offers great potential to improve the efficiency and accuracy of legal services, but also demands serious attention to existing legal provisions. While AI can speed up data processing and analysis, and reduce manual workload, it is important for advocates to ensure that the application of this technology does not override their professional responsibilities in safeguarding clients' interests. Compliance with Law No. 18/2003 on Advocates, as well as regulations on data protection and information security as stipulated in Law No. 8/1999 and Law Number 11 Of 2008 Concerning Amendmens To Law Number 19 Of 2016 Concerning ITE, is crucial in the use of AI. Therefore, advocates must consider risks such as errors in data analysis and privacy violations, and maintain a balance between the utilization of technology and manual analysis skills to ensure that the legal services provided remain of high quality and in accordance with applicable professional standards.

Civil Liability for Clients Who Suffer Loss Due to Advocates Who Use Artificial Intelligence

The use of artificial intelligence (AI) in legal practice has brought significant benefits, such as increased efficiency and accuracy in legal data processing. However, along with the integration of these technologies come challenges and risks that require close attention, especially in terms of legal liability and protection mechanisms for clients. To ensure clients' rights and interests are adequately protected, it is important to understand the responsibilities of each party involved as well as the role of AI within the legal framework. The responsibilities of each party include:

1.   Responsibility of the Advocate

Advocates, as legal professionals, hold the primary responsibility of providing quality legal services to their clients. This responsibility includes several key aspects:

a.   Ensuring Compliance with Regulations

Advocates must comply with applicable legal provisions, including those stipulated in Law No. 18/2003 on Advocates. Article 6 of this law stipulates that advocates must safeguard the interests of clients with professionalism and integrity. The use of AI in legal practice does not diminish the advocate's responsibility in this regard; rather, the advocate remains responsible for ensuring that the technology used does not violate the client's rights or the professional code of ethics.

b.   Managing and Ensuring Data Accuracy

Advocates are responsible for carefully managing the data and information provided by clients. While AI can speed up data processing, advocates must ensure that the information processed by AI is accurate and relevant. This includes verifying and validating the data and ensuring that the AI analysis results are in line with the client's legal needs.

c.   Protecting Client Personal Data

According to Article 4 of Law Number 8 Year 1999 and Article 3 of Law Number 11 of 2008 on the Amendment to Law Number 19 of 2016 on ITE, advocates must ensure that clients' personal data is properly protected from unauthorized access or security breaches. Advocates should implement adequate protection measures and cooperate with technology providers to ensure data security in AI systems.

d.   Provide Grievance and Dispute Resolution Mechanism

Advocates should provide a mechanism for clients to file complaints in the event of errors or violations in the use of AI. This includes effectively handling disputes and providing fair solutions for clients who have suffered losses due to AI errors.

2.   Liability of AI Technology Providers

AI technology providers also have significant responsibilities in legal matters. These responsibilities include:

a.   Provide Safe and Reliable Technology

AI technology providers are responsible for developing and providing safe and reliable AI systems. This includes ensuring that the algorithms used are error and bias free and conducting thorough testing and evaluation to ensure the accuracy and reliability of the AI system.

b.   Comply with Regulations and Security Standards

Technology providers must comply with applicable regulations related to data protection and information security. This includes compliance with Law No. 11/2008 on Electronic Information and Transactions as well as relevant security standards to protect client data from leakage or misuse.

c.   Provide Training and Support

AI technology providers should collaborate with legal education institutions and professional associations to provide adequate training for advocates. This training is important to ensure that advocates can use AI effectively and understand the potential risks and how to mitigate them.

d.   Take Responsibility for Technology Errors

If an error or malfunction in the AI system results in harm to the client, the technology provider should be responsible for correcting the error. This includes providing technical support and system fixes to prevent recurrence of errors in the future.

3.   Client Responsibilities

The client also has responsibilities in this matter, which include:

a.   Providing Accurate Information

Clients must provide accurate and complete information to advocates. Errors or omissions in the information provided may affect the results of the analysis conducted by AI and, ultimately, impact the outcome of the case.

b.   Understanding and Monitoring the Use of Technology

Clients must understand how AI technology is used in handling their cases and have the right to know the methods and tools used by advocates. This includes asking for clarification if there is any doubt regarding the use of AI in legal practice

In the current legal system, AI cannot be held directly liable because it does not have legal capacity or legal status as an entity. AI, as a technology, does not have consciousness, intention, or the ability to act independently. Therefore, responsibility for errors or violations caused by AI must be placed on the parties involved in the development, implementation, and use of the technology.

Developers of AI technology, or technology providers, hold primary responsibility for errors or malfunctions in AI systems. They must ensure that the technology they develop is free from errors and bias and meets security and data protection standards. If AI technology malfunctions or produces incorrect analysis, the responsibility to fix the problem and address the impact on the client lies with the developer or provider of the technology.

Users of AI technology, in this case lawyers, also have a responsibility to ensure that the use of AI is in accordance with applicable professional and legal standards. Lawyers must ensure that the AI systems used in legal practice do not cause harm to clients and that the technology is used effectively to support legal services. If an error occurs due to the use of AI, it is the lawyer's responsibility to address the issue and ensure that the client receives a fair solution. In cases where AI errors cause harm to clients, liability may involve a combination of the technology developer and the user. For example, if an error in data analysis is caused by a flaw in the AI algorithm, the technology developer may be responsible for correcting the error. However, if the error occurs due to improper use by the advocate, liability may also lie with the user. In this case, it is important to have an effective complaint and dispute resolution mechanism to determine liability fairly.

To protect the rights and interests of clients who may suffer losses due to AI errors, there needs to be an adequate legal protection mechanism. Some important steps in this regard are:

a.   Comprehensive Regulation Development

Comprehensive regulation should be developed to govern the use of AI in legal practice. This regulation should include provisions on the responsibilities of technology developers, users, and data protection and privacy. This regulation must be clear and firm to provide legal certainty for all parties involved. Establishment of regulations that specifically regulate the use of Artificial Intelligence.

b.   Complaint and Dispute Resolution Mechanism

Clients should have access to an effective complaint mechanism to address issues arising from AI errors. This includes internal complaint systems in legal institutions as well as external institutions that can handle disputes. Dispute resolution mechanisms such as mediation or arbitration are also important to resolve disputes fairly and efficiently. In the UK, for example, several institutions provide mediation and arbitration services for disputes related to AI technology, which can be used as an example for Indonesia.

c.   Compensation for Client Losses

Legal mechanisms should provide options for clients to obtain compensation if they suffer losses due to AI errors. This can involve establishing financial responsibility for technology developers or users and procedures for claiming compensation.

d.   Education and Training

To ensure the effective and safe use of AI, advocates must receive adequate education and training on AI technology. Collaboration between governments, technology providers, professional associations, and legal education institutions is essential to provide relevant and up-to-date training for legal practitioners.

In the author's opinion, the integration of artificial intelligence (AI) into legal practice presents great potential for increasing efficiency and accuracy, but also raises important challenges regarding client responsibility and protection. The use of AI must be balanced with the development of clear regulations and adequate protection mechanisms to protect client rights, including the regulation of responsibilities for technology developers and users of AI. It is important for lawyers to ensure compliance with existing regulations and manage data accurately, while technology providers must be responsible for the security and accuracy of the systems they develop and provide relevant training. Effective complaint and dispute resolution mechanisms must also be in place to address losses that may arise from AI errors. With a comprehensive and collaborative approach, AI technology can be optimized to provide maximum benefits without compromising client rights and interests.

CONCLUSION

The use of AI in the legal profession offers various benefits, including increased efficiency and accuracy in document processing and data analysis. However, the use of AI also poses risks, especially related to potential errors in data analysis that can cause harm to clients. To address this issue, it is necessary to develop clear and firm regulations, as well as education and training for advocates regarding the use of AI.

Regulations must include oversight mechanisms, operational standards, and sanctions for advocates or AI providers who are proven to have committed errors or negligence. In addition, advocates must be transparent in informing clients regarding the use of AI and be responsible for the results produced by AI. Collaboration between various stakeholders is essential to develop adequate regulations and standards, as well as to increase the understanding and capacity of advocates in using AI.

With the right approach, AI can be a powerful tool in the legal profession, helping to improve the efficiency and quality of legal services provided to clients. However, it is important to ensure that the use of AI does not compromise the rights and interests of clients, and that advocates remain responsible for the legal decisions taken.

REFERENCE

Alamanda, D. T., Kania, I., Setiawan, R., & Silfiani Rahayu, S. (2020). Business Strategy for Religious Tourism in Mount Haruman, Indonesia. Iapa Proceedings Conference, 369. https://doi.org/10.30589/proceedings.2020.416

Amiruudin & Zainal Askin. (2012). Pengantar Metode Penelitian Hukum. Raja Grafindo Persada.

Ashley, K. D. (2017). Artificial Intelligence and Legal Analytics: New Tools for Law Practice in the Digital Age. Cambridge University Press.

Binns, R. (2017). Algorithmic Accountability: A Human Rights Perspective. Internet Policy Review. 7(1), 1–17.

Branting, L. K., Albiston, C. R., & Urban, D. J. (2020). Using Machine Learning to Analyze Judicial Behavior in Real Time. Journal of Legal Studies, 49(2), 275.

Goodman, B. (2018). Ethical Machines: The Legal and Ethical Implications of Using Artificial Intelligence in Law. Journal of Law and Technology, 33(2), 215.

Hildebrandt, M. (2015). Smart Technologies and the End(s) of Law (Novel Enta). Edward Elgar Publishing.

Leenes, R. (2017). Regulating New Technologies in Uncertain Times. . Springer.

Mamesah, S., Tumbuan, W. J. F. A., & Tielung…, M. V. J. (2020). the Influence of Brand Identification and Brand Satisfaction of Smartphone Products on Brand Evangelism Pengaruh Brand Identification Dan Brand Satisfaction Produk Smartphone Terhadap Brand Evangelism Mahasiswa Feb Unsrat. Jurnal EMBA, 8(1), 11–20.

Parker, G., & van Alstyne, M. (2018). Platform Revolution: How Networked Markets Are Transforming the Economy. W.W. Norton & Company.

Surden, H. (2019). Artificial Intelligence and Law: An Overview. Georgia State University Law Review, 35(3), 1–2.

Veale, M., & Brass, I. (2019). Governance by Design: Big Data and the Policy-Making Process in the European Union. Big Data & Society, 6(1), 1–18.

Wirtz, B. W., Weyerer, J. C., & Geyer, C. (2019). Artificial Intelligence and the Public Sector—Applications and Challenges. International Journal of Public Administration, 42(7), 596.