

UPDATE



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EU Recently Enacted Artificial Intelligence Act, Will Indonesia Catch-up?

European Union (EU) Parliament enacted Artificial Intelligence Act by 21 May 2024. The Bill firstly passed the Parliament in April 2021 then undergoing a set of legislation measures prior to coming into effect. Regardless of the lengthy process, the Act alone shall only be fully into force later within 24 months since its enactment. The interval time is spared in order to give room for AI provider's awareness and to subject to a final language check so-called 'lawyer-linguist check'.

The EU Government discerns the AI rise inevitable. The utility of it is exponentially escalating worldwide. Many sectors preferably transform their business process by means of cutting the sections that previously rely on manpower into AI-operated. The state-of-the art that implements within AI exposes values, among others: rapidity, accuracy, and efficiency, that current machines do not bear.

However, behind all the advantages, AI is seen concealing harms to human rights, moreover to copyrighted items. Regulating AI is of the Government intention as the representative of the people who are users at the same time are impacted by the emergence of AI. The EU Government proceeds by clustering it into 4 (four) sorts in terms of risks: (i) unacceptable AI; (ii) high risk AI; (iii) limited risk AI; and (iv) minimal. Registration in the EU database has accordingly to be committed by AI providers notably those categorized as high risk.

As much as the broad enforceability extent of General Data Protection Regulation, the AI Act shall also be enforceable extraterritorially towards overseas AI providers whose users are in EU member state(s). Any non-compliance falling under the prohibition scope will lead into corrective actions with only very limited exemption provided for. Like GDPR, exemptions made are merely for activities in law enforcement, military, defence, national security, and public interest (sececurity).

The AI Act imposes many formal procedures that AI creators must heed if intending to target any users in EU member state(s) no matter the creator's whereabouts the Act shall be the first thing to pay attention to. The AI-generated content is therefore required to be transparent disclosing that the content is AI-generated, devising the AI with technical manners to prevent it from containing illegal contents (in terms of copyrighted contents), and being obligated to report to European Commission if incidents occur (rigorous check shall be conducted to it).

How about Indonesia?

From the viewpoint of legal positivism, Indonesia has a regulation in AI. It is in the form of Circular of the Ministry of Communication and IT (MoCIT) enacted a year ago in 2023. The Circular is so much welcomed by public considering it as a good cornerstone of further regulations.

The Circular constitutes ethical prescription to electronic system entities developing AI to underpin their services. MoCIT is vested with ends to ensure that AI is performed prudently so that not violating ethics, circumspection, safety, and positive impact. More importantly, the Circular is to mitigate negative impact and to alleviate loss that may incur caused by AI usage.

Nonetheless, the Circular is so limitative in terms of its enforceability power. It can only advise what to do ethically with AI usage expecting the AI implementators to be in good faith the time they create their AI-using products. The Circular has yet encompassed procedural measures having to be taken by AI implementators prior to generate/modify their contents with AI, nor has specified restrictions moreover sanctions.

So is this Circular and as a Circular it tends more to be a notification. MoCIT also acknowledges this situation and is committed to initiate further measures to have it into a more robust form (an act). While we await the law to be well composed, this would be a constructive suggestion to MoCIT to pay more attention to copyright in composing the future law given that the Circular missed mentioning any copyright laws in the list of laws referred therein as legal basis (Dasar Hukum).

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Takeaways

Here are some takeaways for AI implementators who aim to market their products to EU market/users:

- Considering that the AI Act prevails broadly to any AI implementators no matter where the implementators create/modify their contents so long as users to be targeted are in EU member states, they shall better comply with all procedural prerequisites prior to launch their AI-using products; and
- For the context of Indonesia, the Circular is a positive cornerstone, yet it seems too limitative in terms of its enforceability outreach. Therefore, a new-more robust law is needed not only to regulate the AI usage but also to break down further about copyright protection likely be infringed by AI.