

Constitutionality of the Use of Artificial Intelligence in Public Policy-Making in the Era of Digital Governance

Nadhifah Thifal Kurnia Wibowo

Faculty of Law, Universitas Sebelas Maret

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ABSTRACT

This study analyzes the constitutional implications of the use of Artificial Intelligence in public policy-making within the Indonesian digital governance framework, focusing on the existence of a legal vacuum in regulating its legality, accountability, and protection of citizens' rights. The increasing reliance on AI in areas such as development planning, social assistance distribution, and administrative decision-making raises fundamental questions regarding its conformity with constitutional principles, including legality, accountability, and due process of law. The central legal issue concerns the absence of explicit legal norms governing AI-based policy decisions, unclear mechanisms of administrative responsibility, and the lack of standards for algorithmic transparency and accountability. This research employs a normative juridical method using statute, conceptual, and case approaches, analyzing relevant frameworks including the 1945 Constitution, the Government Administration Law, the Public Service Law, the Personal Data Protection Law, and the Public Information Disclosure Law. The findings reveal that Indonesian positive law has not adequately accommodated the complexity of AI-based governance, resulting in potential risks of unconstitutional practices, including arbitrary decision-making and violations of fundamental rights. This study proposes a prescriptive legal framework through the recognition of AI as a decision-support system, the establishment of human oversight, the implementation of algorithmic transparency and audit mechanisms, and the integration of digital constitutionalism to ensure that AI-based governance remains within constitutional boundaries.

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Corresponding Author:

Nadhifah Thifal Kurnia Wibowo

Faculty of Law

Universitas Sebelas Maret

Jl. Ir. Sutami No.36, Jebres, Kec. Jebres, Kota Surakarta, Jawa Tengah 57126

Email: nthifal29@gmail.com

1. INTRODUCTION

The transformation of digital governance has significantly encouraged the use of Artificial Intelligence (AI) in public policy-making processes to enhance efficiency, accuracy, and state responsiveness. AI technologies are increasingly utilized in various policy sectors, including development planning, social assistance distribution, and data-driven administrative decision-making. While these developments reflect the evolution of modern governance, they simultaneously raise fundamental constitutional questions regarding the legitimacy and legality of AI-driven policies within the Indonesian legal system.¹

In Indonesia, the application of AI in public policy has developed rapidly without being accompanied by a comprehensive and specific legal framework. Existing regulations, such as the 1945 Constitution, Law Number 30 of 2014 on Government Administration, Law Number 25 of 2009 on Public Services, Law Number 27 of 2022 on Personal Data Protection, and Law Number 14 of 2008 on Public Information Disclosure, provide general principles governing administrative actions and citizens' rights. However, these regulations do not explicitly address the use of AI in public decision-making processes, thereby creating a legal vacuum concerning its constitutional legitimacy.²

The central legal issue in this study is the existence of a legal vacuum in regulating the use of AI in public policy-making by the government. This vacuum is evident in several aspects. First, there is no explicit regulation concerning the legality of AI-based decisions within administrative law. Second, the mechanism of administrative accountability for decisions generated through algorithmic processes remains unclear. Third, there is an absence of legal standards governing transparency, explainability, and accountability of algorithmic systems used in public policy. These conditions create significant uncertainty in determining whether AI-based governance practices are consistent with constitutional principles.³

The absence of clear legal norms raises serious constitutional concerns. The principle of legality requires that every governmental action be based on law, while the principle of accountability demands that public authorities be responsible for their decisions. Additionally, the protection of citizens' rights, including the right to fair treatment and legal certainty, must be ensured in all forms of governance. Without adequate regulation, the use of AI risks creating a system of discretion without accountability, where decisions are made through opaque and uncontrollable processes.⁴

Previous studies have examined the role of AI in governance; however, significant research gaps remain. Olivia (2020), in "Legal Aspects of Artificial Intelligence on Automated Decision-Making in Indonesia," discusses the general legal implications of AI but does not address the constitutional dimension of its use in public policy. Busroh et al. (2025), in "Digital Transformation with the Impact of AI in Government Decision Making," analyze the impact of AI on governance but lack a normative assessment of legal vacuum and constitutional legitimacy. Nisa (2024), in "The Prospect of AI Law in Indonesian Legal System," highlights future regulatory challenges but does not provide a prescriptive framework grounded in constitutional principles. These gaps indicate the need for a comprehensive constitutional analysis addressing the legal vacuum in AI-based public policy-making.⁵

¹ Firman Freaddy Busroh et al., "Digital Transformation With the Impact of AI in Government Decision Making," *Journal of Law and Legal Reform* (2025).

² I. Ayu Apsari G. Hadi et al., "Law and Policy on AI Utilization for Good Governance in Indonesia," *SHS Web of Conferences* (2025).

³ Denindah Olivia, "Legal Aspects of Artificial Intelligence on Automated Decision-Making in Indonesia," *Lentera Hukum* (2020).

⁴ Goutama Bachtiar, "Embedding Ethical AI in Digital Public Infrastructure," *Journal of Infrastructure Policy and Management* (2025).

⁵ Denindah Olivia, "Legal Aspects of Artificial Intelligence on Automated Decision-Making in Indonesia"; Firman Freaddy Busroh et al., "Digital Transformation With the Impact of AI in Government Decision Making"; Ardina Khoirun Nisa, "The Prospect of AI Law in Indonesian Legal System," *The Indonesian Journal of International Clinical Legal Education* (2024).

Based on these considerations, this study aims to analyze the constitutionality of AI usage in public policy-making within the Indonesian legal system and to formulate a prescriptive legal framework that ensures conformity with constitutional principles, including legality, accountability, and the protection of citizens' rights.

2. METHOD

This research employs a normative juridical method, focusing on the analysis of legal norms, principles, and doctrines governing the use of Artificial Intelligence in public policy-making. The research is prescriptive and analytical, aiming to identify the existence of a legal vacuum and to formulate legal solutions that ensure the constitutionality of AI-based governance practices. This approach is particularly relevant in addressing emerging legal issues where technological developments exceed the scope of existing regulations.⁶

The statute approach is used to examine relevant legal instruments, including the 1945 Constitution, Law Number 30 of 2014 on Government Administration, Law Number 25 of 2009 on Public Services, Law Number 27 of 2022 on Personal Data Protection, and Law Number 14 of 2008 on Public Information Disclosure. These legal frameworks are analyzed to assess their adequacy in regulating AI-based policy-making and to identify gaps within the existing legal system.⁷

The conceptual approach is applied to analyze key doctrines, including the theory of the rule of law (*rechtstaat*), principles of good governance, general principles of good administration (AUPB), and emerging concepts such as algorithmic governance and digital constitutionalism. This approach enables a critical evaluation of whether traditional constitutional and administrative principles remain sufficient in the context of AI-driven governance.⁸

The case approach is utilized to examine the implementation of AI in public policy-making across various jurisdictions and to assess its implications for the Indonesian legal system. Comparative analysis provides insights into regulatory models and potential risks associated with AI governance, thereby supporting the formulation of prescriptive legal recommendations.⁹

The legal materials used in this research consist of primary and secondary sources. Primary materials include statutory regulations governing administrative law and public governance, while secondary materials consist of scholarly articles, legal doctrines, and academic literature related to AI and constitutional law. These materials are systematically analyzed to construct coherent legal arguments and to support the conclusions of this study.

3. RESULTS AND DISCUSSION

Legal Vacuum on the Legality of AI-Based Decisions in Administrative Law

Law Number 30 of 2014 on Government Administration establishes that every administrative decision and action must be based on authority, follow proper procedures, and comply with substantive legal requirements. These elements reflect the principle of legality, which is a core component of the rule of law as guaranteed by the 1945 Constitution. However, the increasing use of Artificial Intelligence in public policy-making reveals a significant legal vacuum, as there is no explicit regulation recognizing AI as an instrument or mechanism within the administrative decision-making process.¹⁰

⁶ Peter Mahmud Marzuki, *Pengantar Ilmu Hukum* (Jakarta: Kencana, 2014).

⁷ Muhammad Febriyan Saputra, "Transformation of Indonesian Public Policy Law in the Digital Era," *Jurnal Hukum Malahayati* (2024).

⁸ Patricia Gomes Rêgo De Almeida et al., "Artificial Intelligence Regulation: A Framework for Governance," *Ethics and Information Technology* (2021).

⁹ Charlotte Langer, "Decision-Making Power and Responsibility in an Automated Administration," *Discover Artificial Intelligence* (2024).

¹⁰ Muhammad Febriyan Saputra, "Transformation of Indonesian Public Policy Law in the Digital Era," *Jurnal Hukum Malahayati* (2024).

In the context of digital governance, administrative decisions may be generated through automated systems without direct human involvement. Such systems rely on algorithmic processing and data-driven analysis to produce policy outputs. This development challenges the traditional understanding of administrative decisions, which are presumed to be the result of human deliberation and discretion exercised by public officials. The absence of legal provisions governing AI-based decisions raises a constitutional question regarding whether such outputs can be considered legally valid administrative acts.¹¹

The legal vacuum becomes evident in the lack of recognition of AI as either a subject or a legally acknowledged instrument in administrative law. Unlike conventional administrative tools, AI systems operate autonomously and may produce decisions that are not directly attributable to identifiable public officials. This creates uncertainty regarding the legal basis of such decisions, particularly in relation to the requirement that all administrative actions must be grounded in lawful authority.¹²

From a constitutional perspective, the principle of *rechtmatigheid* requires that every governmental act be based on law. The absence of explicit legal authorization for AI-based decision-making raises concerns about the validity of such decisions. If AI-generated policies are implemented without a clear legal foundation, they may be considered *ultra vires*, thereby undermining their legitimacy within the legal system. Furthermore, this situation creates risks of arbitrary governance, as decisions may be made through opaque technological processes without sufficient legal control.¹³

The implications of this legal vacuum are substantial. First, it creates uncertainty regarding the validity of AI-based administrative decisions, potentially leading to disputes and challenges in their implementation. Second, it weakens legal certainty for citizens, who may be affected by decisions that lack a clear legal basis. Third, it opens the possibility of misuse of AI technology in public policy-making, particularly in the absence of regulatory safeguards.¹⁴

To address this issue, it is necessary to reconstruct the legal framework governing administrative decisions. AI should be explicitly recognized as a decision-support system within administrative law, rather than as an independent decision-maker. This ensures that the final authority remains with public officials, thereby preserving accountability and compliance with constitutional principles. Additionally, legal provisions should be introduced to establish parameters for the use of AI in administrative decision-making, including requirements for human oversight and legal accountability.

Such reforms are essential to ensure that the integration of AI into public policy-making remains consistent with the principle of legality and the broader framework of the rule of law.

Legal Vacuum on Accountability and Responsibility in AI-Based Public Policies

Accountability constitutes a fundamental pillar of good governance, requiring that public officials be responsible for their decisions and actions. Under Law Number 30 of 2014, administrative officials are obligated to provide justification for their decisions and to bear legal responsibility for their consequences. However, the integration of Artificial Intelligence into public policy-making introduces a significant legal vacuum regarding accountability and responsibility, particularly when decisions are generated through complex algorithmic systems.¹⁵

AI-based systems often operate as black box mechanisms, where the internal logic of decision-making is not fully transparent or understandable, even to the officials who rely on them.

¹¹ Firman Freaddy Busroh et al., "Digital Transformation With the Impact of AI in Government Decision Making," *Journal of Law and Legal Reform* (2025).

¹² Ayu Purnamasari, "Kedudukan Hukum Atas Kecerdasan Buatan di Indonesia," *Majelis: Jurnal Hukum Indonesia* (2025).

¹³ Charlotte Langer, "Decision-Making Power and Responsibility in an Automated Administration," *Discover Artificial Intelligence* (2024).

¹⁴ Rendy Wadipalapa et al., "An Ambitious Artificial Intelligence Policy in a Decentralised Governance System," *Journal of Current Southeast Asian Affairs* (2024).

¹⁵ Ainyna Rachmadianty Azan Engkus et al., "Mewujudkan Good Governance melalui Pelayanan Publik," *Jurnal Dialektika* (2021).

This creates a situation in which public officials may depend on AI-generated outputs without having full knowledge of how those outputs are produced. As a result, the traditional model of accountability, which assumes that decision-makers understand and control their decisions, becomes increasingly difficult to apply.¹⁶

The legal vacuum is further reflected in the absence of clear rules regarding the allocation of responsibility among different actors involved in AI-based governance. These actors may include software developers, system operators, and public officials. Current legal frameworks do not provide guidance on how responsibility should be distributed among these parties, particularly when errors or harmful outcomes arise from algorithmic decisions. This creates an accountability gap that undermines the effectiveness of administrative law.¹⁷

In addition, the principles of transparency and accountability, as recognized in the Public Service Law and the Public Information Disclosure Law, require that citizens have access to the reasoning behind public decisions. However, in the context of AI-based policies, providing such explanations may be technically challenging due to the complexity of algorithmic systems. This results in a lack of explainability, which limits citizens' ability to understand, question, and challenge administrative decisions.¹⁸

The implications of this legal vacuum are profound. First, it weakens the accountability of public officials, as responsibility for decisions becomes diffused across human and technological actors. Second, it undermines citizens' rights to obtain clear and reasoned explanations for decisions affecting them. Third, it increases the risk of governance failures, as errors in AI systems may go undetected or unaddressed due to the lack of oversight mechanisms.¹⁹

To address these challenges, a prescriptive legal framework must be developed to ensure accountability in AI-based public policy-making. One key principle is the implementation of human in the loop, which requires that human officials retain ultimate control and responsibility over decisions made with the assistance of AI. This ensures that accountability remains clearly attributable within the administrative system.

Furthermore, legal provisions should establish clear rules for the allocation of responsibility among developers, operators, and public officials. This may involve adopting a role-based accountability framework that assigns specific responsibilities to each actor involved in the development and deployment of AI systems. Additionally, mechanisms for algorithmic auditing should be introduced to ensure that AI systems operate in accordance with legal and ethical standards.

By addressing the legal vacuum in accountability and responsibility, it is possible to strengthen the legitimacy of AI-based governance and to ensure that technological innovation does not compromise the fundamental principles of administrative law.

The analysis of legality and accountability in AI-based public policy-making reveals structural differences between conventional governance models and algorithm-driven systems, particularly in terms of authority, legal basis, and responsibility. These differences further demonstrate the existence of a legal vacuum within the current regulatory framework. As illustrated in Table 1, the integration of AI into public decision-making significantly alters the legal structure of governance and necessitates comprehensive legal reform.

Table 1. Comparative Framework of Conventional and AI-Based Public Policy Decision-Making

¹⁶ Patricia Gomes Rêgo De Almeida et al., "Artificial Intelligence Regulation: A Framework for Governance," *Ethics and Information Technology* (2021).

¹⁷ Charlotte Langer, "Decision-Making Power and Responsibility in an Automated Administration," *Discover Artificial Intelligence* (2024).

¹⁸ Goutama Bachtiar, "Embedding Ethical AI in Digital Public Infrastructure," *Journal of Infrastructure Policy and Management* (2025).

¹⁹ Feri Nugroho, "Artificial Intelligence Regulation and Political Ethics," *Journal of Political Innovation and Analysis* (2025)

Aspect	Conventional Policy-Making	AI-Based Policy-Making	Legal Vacuum	Proposed Legal Solution
Decision-maker	Public official	Algorithm/AI system	No legal recognition of AI role	AI as decision-support system
Legal basis	Clearly regulated	Not explicitly regulated	Lack of legal framework	Explicit statutory regulation
Accountability	Attributable to officials	Diffused among actors	Accountability gap	Role-based accountability
Transparency	Reasoned decisions	Black box algorithms	Lack of explainability	Mandatory explainable AI
Control mechanism	Administrative & judicial review	Uncertain applicability	Weak oversight	Algorithmic audit & oversight
Constitutional compliance	Established	Uncertain	Potential violation of legality	Legal harmonization

Legal Vacuum in the Protection of Constitutional Rights in AI-Based Public Policies

The use of Artificial Intelligence in public policy-making has direct implications for the protection of citizens' constitutional rights, particularly the right to personal data protection, the right to equal treatment before the law, and the right to fair and proper public services. Within the Indonesian constitutional framework, these rights are guaranteed under the 1945 Constitution, which emphasizes the obligation of the state to protect and fulfill fundamental rights in all aspects of governance. However, the increasing reliance on AI systems in policy-making exposes a significant legal vacuum regarding the protection of these rights in the context of digital governance.²⁰

One of the most critical issues arises from the use of personal data in AI-based systems. Law Number 27 of 2022 on Personal Data Protection provides general safeguards for the processing of personal data, yet it does not specifically regulate how such data is utilized within AI-driven policy mechanisms. The absence of clear legal limitations on data processing in algorithmic systems creates a risk of misuse, including unauthorized data collection, excessive data processing, and the potential violation of privacy rights. This legal vacuum undermines the effectiveness of existing data protection regulations in the context of AI governance.²¹

In addition to data protection, the issue of algorithmic bias presents a serious constitutional concern. AI systems rely on datasets that may contain inherent biases, which can result in discriminatory outcomes affecting certain groups within society. Without explicit legal safeguards to prevent and address such bias, AI-based policies may violate the principle of equality before the law. This risk is particularly significant in areas such as social assistance distribution and public service delivery, where biased decisions can lead to systemic discrimination against vulnerable populations.²²

²⁰ Rendy Wadipalapa et al., "An Ambitious Artificial Intelligence Policy in a Decentralised Governance System," *Journal of Current Southeast Asian Affairs* (2024).

²¹ Ardina Khoirun Nisa, "The Prospect of AI Law in Indonesian Legal System," *The Indonesian Journal of International Clinical Legal Education* (2024).

²² Hesti Armiwulan et al., "Artificial Intelligence and Its Challenges To Elections in Indonesia," *Jambura Law Review* (2024).

Furthermore, the absence of mechanisms for citizens to challenge AI-based decisions exacerbates the legal vacuum in the protection of constitutional rights. In conventional governance, citizens have access to administrative and judicial remedies to contest decisions that affect their rights. However, in AI-based policy-making, there is no clear framework for submitting objections or obtaining explanations regarding algorithmic decisions. This lack of procedural safeguards limits citizens' ability to defend their rights and undermines the principle of due process of law.²³

The implications of this legal vacuum are far-reaching. First, it creates the potential for systemic violations of constitutional rights through automated decision-making processes. Second, it contributes to the marginalization of vulnerable groups who may be disproportionately affected by biased algorithms. Third, it erodes public trust in government institutions, as citizens may perceive AI-based policies as opaque and unaccountable.²⁴

From a constitutional perspective, the state has an obligation to ensure that technological innovation does not diminish the level of protection afforded to citizens' rights. This requires the integration of the concept of digital constitutionalism into the national legal framework, emphasizing that all digital governance practices must be aligned with constitutional values and principles. AI systems used in public policy-making must therefore be subject to strict legal safeguards that ensure fairness, transparency, and accountability.

To address these challenges, it is necessary to establish explicit legal provisions governing the use of AI in relation to constitutional rights. These provisions should include clear limitations on data processing, mechanisms to detect and mitigate algorithmic bias, and procedures for citizens to challenge AI-based decisions. Additionally, the principle of human oversight must be reinforced to ensure that final decision-making authority remains with accountable public officials.

By strengthening the legal framework in this manner, it is possible to ensure that the use of AI in public policy-making enhances, rather than undermines, the protection of constitutional rights within the Indonesian legal system.

4. CONCLUSION

The use of Artificial Intelligence in public policy-making within the framework of digital governance in Indonesia reveals a significant legal vacuum in several fundamental aspects, namely the legality of administrative decisions, accountability and responsibility of public officials, and the protection of constitutional rights of citizens. This study demonstrates that existing legal frameworks, including the Constitution and relevant statutory regulations, have not adequately addressed the complexities of AI-based governance.

The absence of explicit legal provisions recognizing AI in administrative decision-making creates uncertainty regarding the validity of such decisions under the principle of legality. Additionally, the lack of clear rules on accountability results in an accountability gap, where responsibility for decisions becomes diffused among various actors. Furthermore, the insufficient protection of constitutional rights, particularly in relation to data privacy, equality, and due process, highlights the risks associated with the unregulated use of AI in public policy.

These conditions pose a serious challenge to the principle of the rule of law as enshrined in the 1945 Constitution. Without a comprehensive legal framework, the use of AI in governance may lead to practices that are not transparent, not accountable, and potentially harmful to citizens' rights. This situation underscores the urgency of legal reform to ensure that digital governance remains within constitutional boundaries.

Therefore, this study emphasizes the need for the development of a comprehensive legal framework regulating the use of AI in public policy-making. Such a framework should include the recognition of AI as a decision-support system, the establishment of clear accountability mechanisms, and the strengthening of safeguards for constitutional rights. Additionally,

²³ Denindah Olivia, "Legal Aspects of Artificial Intelligence on Automated Decision-Making in Indonesia," *Lentera Hukum* (2020).

²⁴ Goutama Bachtiar, "Embedding Ethical AI in Digital Public Infrastructure," *Journal of Infrastructure Policy and Management* (2025).

harmonization between existing laws and constitutional principles is necessary to ensure consistency and coherence in the legal system.

In conclusion, the advancement of AI in governance must be accompanied by a robust constitutional and legal framework that guarantees legality, accountability, and the protection of citizens' rights. Only through such measures can the implementation of digital governance contribute to effective and just public administration

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