Constructing Responsible Artificial Intelligence Principles as Norms: Efforts to Strengthen Democratic Norms in Indonesia and European Union

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Abstract
Artificial Intelligence influences democratic norms and principles. It affects the quality of democracy since it triggers hoaxes, irresponsible political campaign, and data privacy violations. The study discusses the legal framework and debate in the regulation of Artificial Intelligence in the European Union legal system. The study is a doctrinal legal study with conceptual and comparative approach. It aims to criticize the current doctrine of democracy. The analysis explored the law on election and political party in Indonesia to argue that the democratic concept is outdated. On the other hand, the European Union has prepared future legal framework to harmonize Artificial Intelligence and democracy. The result of the study indicates that the absence of law on Artificial Intelligence might be the fundamental reason of the setback of democracy in Indonesia. Therefore, the Indonesian legal system must regulate a prospective Artificial Intelligence regulation and a new democratic concept by determining the new principles of responsible Artificial Intelligence into drafts of laws on Artificial Intelligence, election, and political party. Finally, the new laws shall control programmers, politicians, governments, and voters who create and use Artificial Intelligence technology. In addition, these legal principles shall be the guideline to prevent the harms and to mitigate the risks of Artificial Intelligence technology as well as the effort to strengthen democracy.

Keywords: artificial intelligence governance, democratic resilience, Indonesia.

A. Introduction

The Cambridge Analytica scandal is one of the striking cases that showcased the influence of Artificial Intelligence (AI) technology on the democratic process of a

state.[1] It also occurred in the Indonesian development of the democratic process through the spread of fake news and deepfakes generated by AI technology during the elections. These hoaxes have caused a negative impact and triggered society's democratic resilience. On the other hand, the government has deployed AI technology to combat internet hoaxes.[2] Although the use of AI technology in Indonesia is still only vaguely used by politicians involved in democratic processes (elections), it can transform political parties marketing strategy to influence voters in elections like in America following the exposure of the Cambridge Analytica scandal.[3] After the Cambridge Analytica scandal revealed, all American politicians involved in democratic processes have become increasingly prominent in their use of AI technology for campaign purposes and winning the elections.[4]

AI has entered the arena of democracy[5] and, in turn, influences the resilience of democracy in Indonesia. On the other hand, several laws related to the political and democratic process in Indonesia have not been able to resolve the legal challenges caused by the rapid development of AI technology. Into the bargain, there are no specific regulations on the use of AI. For instance, the Laws on Presidential and Vice-Presidential Election, General Election, and Political Party have not been able to tackle the legal challenges of AI development. In the meantime, politicians and society use AI technology in Indonesian political and democratic process. However, politicians are still reluctant to reveal the use of AI technology for their political purposes. They may be afraid to face the imminent dangers after Trump's victory in the USA Presidential Election.[6] The malicious use of AI technology can trigger democratic resilience and cause legal violations, such as privacy issues and hoaxes.[7] The European Union (EU) has made some efforts to

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[1]   Karl Manheim and Lyric Kaplan, "Artificial Intelligence: Risks to Privacy and Democracy," *Yale Journal of Law and Technology* 21, no. 106 (2019): 109, https://yjolt.org/sites/default/files/21_yale_j.l._tech._106_0.pdf.

[2]   Safrin La Batu, "Govt Deploys Artificial Intelligence to Combat Internet Hoaxes," *The Jakarta Post*, April 18, 2022, https://www.thejakartapost.com/news/2018/01/31/govt-deploys-artificial-intelligence-to-combat-internet-hoaxes.html.

[3]   Cambridge Analytica used illegal personal data from Facebook to classify the behavior of society by AI technology and influence them through political campaign reflecting behavior of society.

[4]   Philip N. Howard, "Algorithms, bots, and political communication in the US 2016 election: The challenge of automated political communication for election law and administration," *Journal of Information Technology & Politics* 15, no. 2 (2018): 88, https://doi.org/10.1080/19331681.2018.1448735.

[5]   There are facts in chatbot that the Indonesian government has deployed AI to combat fake news. It shows that AI influences the development of democracy in Indonesia. Birgit Schippers, "Artificial Intelligence and Democratic Politics," *Political Insight* 11, no. 1 (2020): 34, https://doi.org/10.1177%2F2041905820911746.

[6]   The effect after Trump's victory is the public distrust of Trump's leadership because they feel cheated in the previous election process and in the policies made during Trump's regime. In addition, there was a negative *coattail effect* on political parties which reduced the voters to support Republicans, as a proof, Trump was defeated in the next presidential election. Nathaniel Persily and Charles Stewart III, "The Miracle and Tragedy of the 2020 U.S. Election," *Journal of Democracy* 32, no. 2 (2021): 171, https://journalofdemocracy.org/articles/the-miracle-and-tragedy-of-the-2020-u-s-election/.

[7]   Tirşe Erbaysal Filibeli, "Big Data, Artificial Intelligence and Machine Learning Algorithms: A Descriptive Analysis of Digital Threats in the Post-truth Era," *İleti-ş-im* 31, (2019): 102-103, https://doi.org/10.16878/gsuilet.626260.

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address such issues by establishing ethical guideline on the use of AI and proposing special acts on AI regulation.

The impacts of the misuse of AI technology on democratic aspects clearly violate Article 28B paragraph (2) on the protection from violence and discrimination, Article 28G paragraph (1) on the protection from all forms of threats, and Article 28H paragraph (1) on the privacy in which the politician might collect and use voter's personal data for their political purposes. Therefore, this study examined the principles regarding the responsible use of AI technology (security and privacy, fairness, reliability and safety, transparency, etc.) to strengthen democratic resilience and to addresses the legal challenges of AI technology that influence the politics and democracy in Indonesia.

This study is a doctrinal legal study with a conceptual and comparative approaches. It aims to analyze and evaluate current doctrine and democratic resilience in Indonesia. It explored whether current democracy values are weak and outdated, and whether the existing laws might address the challenges of AI development and influence the political and democratic arena in Indonesia. The study also gives details on the prospective legal frameworks to regulate AI systems into norms, notably with deeds related to democracy (laws on election and political party). The EU has proposed the Artificial Intelligence Act. Currently, they are considering to address the legal issue of AI technology. The Act might be a landmark legislation for the regulation of AI development in the EU and impact every sector of life, including democracy. Therefore, it might be a lesson for Indonesia to propose the same regulation as the EU to handle the legal issue of AI.

B. The Need of Legal Basis on Artificial Intelligence

A regular election process is one of the pillars of democracy. It ensures the people to have political right to vote and to be elected since the basic concept of democracy means government from, by, and for the people. Therefore, to exemplify a democratic government, a general election is necessary.[8] Currently, the concept of democracy in Indonesia, especially in terms of general elections, is still a conventional democracy.[9] The evidence lies on the Indonesian Law Number 7 of 2017 on General Elections (hereinafter; Law on General Elections). However, the law only regulates the relationship between humans and powers and does not regulate the use of technology in the election process, especially the use of AI.

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[8]   Democracy is a universal idea containing some elements such as an election process to ensure the people's political right to vote and to be elected. Muntoha, "Demokrasi dan Negara Hukum," *Jurnal Hukum Ius Quia Iustum* 16, no. 3 (2009): 379–395, https://doi.org/10.20885/iustum.vol16.iss3.art4.

[9]   It is called a conventional democracy because the process of democracy in Indonesia still focuses on power and human interactions. See also the Election Law, Political Party Law, KPU Regulation, and other regulations on the process of democracy in Indonesia. The regulations only regulate power and human interactions during the election process. Technology, such as AI, is used by politicians in the process of democracy in Indonesia.

AI is a common term used for many different systems such as: expert system, machine learning, deep learning, etc.[10] It is essentially a computer system that reproduces human cognition using data that was accessed from a variety of different sources or systems to make decisions and learn from the resulting patterns.[11] There are several provisions of the Law on General Elections that might have the potential to cause legal conflicts due to the influence of AI technology onto democracy. one of them is Article 280 Paragraph 1 on prohibitions during campaigns. The prohibition regulates power and human interaction in political process, but it does not regulate the relation between human and AI technology.[12]

A similar case has occurred in the election process through AI bot accounts and chats on social media. The bot accounts caused polarization and disinformation on social media. In addition to freely spreading disinformation and sharpening polarization, the bot accounts make accountability for counterproductive votes unclear. The AI technology also affects public opinion, which is very important in a democratic society. In this case, AI technology has influenced the opinion and, in some cases, has become the main source for decision making.[13] The Internet influences democracy.[14] The democratic polarization and disinformation spread by AI bot accounts reduces the integrity of the value of democracy in Indonesia.[15] Therefore, AI technology have the potential to cause horizontal conflicts and threats to democracy. Consequently, the use of AI bot accounts in the political and campaign process must be regulated. Unfortunately, currently Indonesia has no regulation on AI use in politics and democracy. For this reason, the state has no means to achieve legal resolution for politicians who committed a wrongdoing since it will be difficult to ask accountability due to the absence of law. Certainly, Indonesia's current democratic principles have not been able to solve the problems and cannot be used as a model to resolve legal conflicts caused by AI technology. There should be legal breakthroughs to address such issues within the Law on

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[10]   Manheim and Kaplan.

[11]   Hossein Hassani, et al., "Artificial Intelligence (AI) or Intelligence Augmentation (IA): What Is the Future?", *AI* 1, no. 2 (2020): 143–155, http://dx.doi.org/10.3390/ai1020008.

[12]   Article 269, Article 270, Article 271 Election campaigns are done by: administrators of political parties, individuals, and organizations appointed by Election Candidate.

[13]   Devi Rahma Fatmala, et al., "Penggunaan Akun Bot Media Sosial Untuk Mempengaruhi Opini Publik: Sebuah Tinjauan Hukum di Indonesia," *Ajudikasi: Jurnal Ilmu Hukum* 4, no. 1 (2020): 55–68, https://doi.org/10.30656/ajudikasi.v4i1.2210.

[14]   The existence of the internet creates two arguments. The first one, the internet promotes democracy (utopia vision) because the internet gives a chance for people's voice to be heard, increases awareness in political decision making, and even helps the consolidation process of democracy. The second one, the internet hinders democracy (dystopian vision) because there is a digital divide of people who can access and who cannot access the internet, and the intervention and control of government over the internet which threaten democracy itself. Suyanto Ladiqi and Ismail Suardi Wekke, *Demokrasi di Era Digital* (Yogyakarta: Diandra Kreatif, 2018), 40-60.

[15]   Suyanto Lidiqi and Ismail Suardi. See also M Rosseno Aji, "YLBHI: Demokrasi Terancam Gara-Gara Buzzer," *Tempo*, April 10, 2022, https://nasional.tempo.co/read/1256216/ylbhi-demokrasi-terancam-gara-gara-buzzer/full&view=ok.

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General Elections since the theoretical concept of democracy is that the state must ensure the existence of political party and election.[16]

Indonesia may need to revise laws related to democratic processes such as the Law on General Elections and the Law on Political Party to accommodate the use of AI in the electoral process. The state also may need a new law that regulates AI specifically. The spirit to revise the existing laws and/or to propose a new law on AI may be based on the principle of responsible use of AI. The principle of responsible AI is basically the ethical theory reflecting the use of AI technology needs based on the benefit and goodness of people. The principle consists of a set of codes that ensure the ethical, transparent, and accountable use of AI technologies, such as human agency and oversight. It means that human can control the AI system anytime.[17] In addition, there should be technical robustness and safety that AI must safe and prevent harms. The other principle is privacy, which emphasizes the security of data and the lawful data collection. The it must consider transparency that the outcomes of the AI system must be documented that can be accessed by stakeholders.[18]

Transparency should consider that (1) the creators of AI should be open about process and reason of the use of AI and the limitations of the systems; (2) people should be able to understand or to interpret the systems' behaviors. The other principle is diverse and non-discriminatory systems. The AI system must be created and able to avoid unintended discrimination. Into the bargain, AI must benefit all of society, the principle of the AI benefit to all members of society. It should consider everyone, including minorities. Accordingly, the AI developers must create AI systems that are inclusive to all communities within the society. The last is accountability principle. There should be someone that is accountable for any errors and mistakes made by the AI systems.[19] The AI systems require human beings to be accountable for its actions to prevent any irresponsible actions.

These principles can be the spirit and guidance to regulate AI technology into norms. The AI affects democratic norms. Therefore, the law must be adjusted to control society who use AI for their political purpose in accordance with the Pound's theory of law that law is a tool of social engineering. Indonesia needs to enact special law that regulates AI technology and revises any existing laws related to democracy that are affected by AI to accommodate democratic changes. This is important since Indonesia is a state of law. The state must conduct everything based on the legal norms. Therefore, the way to resolve the AI impacts on the democratic norms is the legitimate way by enacting a law on AI considering the

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[16] Tom Gerald Daly and Brian Christopher Jones, "Parties Versus Democracy: Addressing Today's Political Party Threats to Democratic Rule," *International Journal of Constitutional Law* 18, no. 2 (2020): 512, https://doi.org/10.1093/icon/moaa025.

[17] Patrick Mikalef, et al., "Thinking Responsibly About Responsible AI and 'The Dark Side' of AI," *European Journal of Information Systems* 31, no. 3 (2022): 257-268, https://doi.org/10.1080/0960085X.2022.2026621.

[18] Patrick Mikalef, et.al.

[19] Patrick Mikalef, et.al.

absence of law and outdated current democratic principles. in addition, an AI regulation can be a "game changer" for political and democratic process in Indonesia.

C.   Benchmarking with AI Regulation in the European Union

The perspective of European on AI has the potential to establish a resilient Europe for the digitalization in many sectors. People, including businesses, can take the advantages of AI technology. The perspective of European on AI focuses on 2 points: (1) excellence in AI and (2) reliable AI. The European approach to AI will ensure that any advancements are founded on laws that protect the functioning of markets and the public sector, as well as the safety and fundamental rights of individuals. To further define its AI vision, the European Commission established an AI strategy to complement the European AI approach. The AI strategy recommended steps to streamline research and policy alternatives for AI regulation, which contributed to the AI package's development.[20]

The rapid development of AI technologies and its disruption in society has created an urgency to regulate AI. The High-Level Expert Group on AI produced Ethics Guideline for Trustworthy Artificial Intelligence in April 2019 after speaking with members of the European AI Alliance, a multi-stakeholder organization designed to provide comment on AI-related regulatory efforts.[21] By publishing a White Paper on AI in February 2020, the European Commission conducted the first in-depth review of AI policy and regulatory possibilities. In April 2021, following the adoption of three legislative resolutions in October 2020, the Commission released the so-called *AI package* containing the main proposal for the AI Regulation, a Communication on Fostering a European Approach to Artificial Intelligence and a Coordinated Plan on AI, and a proposal for a new Regulation on machinery products to replace the existing Machinery Directive and address the use of AI in machinery.[22]

The proposed EU regulations represent a step forward toward global AI regulation. The EU was the first government in the world that provides a comprehensive response in the form of proposed rules on the research and application of AI. The proposed restrictions will be applied to any AI system that is used or gave outputs within the EU jurisdiction. It will cause global consequences for businesses and democracy. However, the proposed EU rule is merely the first

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[20]   A European approach to artificial intelligence which provides certain conclusions that will be the foundation for AI regulation in EU. European Commission, "A European Approach to Artificial Intelligence," *European Commission,* June 1, 2022, https://digital-strategy.ec.europa.eu/en/policies/european-approach-artificial-intelligence.

[21]   High Level Expert Group on AI (AI HLEG). "Ethics guidelines for Trustworthy AI". European Commission. accessed June 3rd, 2022, https://digital-strategy.ec.europa.eu/en/library/ethics-guidelines-trustworthy-ai.

[22]   Eoghan Doyle and Hugo Grattirola, "EU Artificial Intelligence Regulation," *Philip Lee*, June 1, 2022. https://www.philiplee.ie/eu-artificial-intelligence-regulation/.

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step in a global effort to regulate the risks due to AI.[23] The regulation draft will now
go through a detailed legislative process during which it is likely to be amended. It
is unlikely to become binding law within 12-24 months. Even after it binds, there
will be a grace period of potentially 24 months before the main requirements will
come into force.[24]

The Ethics Guideline for Trustworthy Artificial Intelligence sets a framework for
achieving a trustworthy AI. Trustworthy AI will enable individuals to enjoy AI's
benefits with the knowledge that there are procedures to safeguard them against
potential risks. The guideline states that a trustworthy AI must consist of the
following three components.[25]

a. It should be lawful and comply with all applicable laws and regulations.
b. It should be ethical and adhere to ethical principles and values.
c. It should be robust, both from a technical and social perspective, because even
   with good intentions, AI system can cause unintentional harm.

To achieve a trustworthy AI, the guideline sets out seven requirements referred as
the principles of responsible AI. The principles must be fulfilled and implemented
throughout the AI's entire life cycle. Moreover, all stakeholders have different roles
to ensure that the seven requirements are fulfilled. The stakeholders, for instance,
are developers, deployers, and end users.[26] After publishing the guideline, the EU is
currently working on the proposal of an AI regulation. Although the regulation is
not established yet, its legal framework can be studied by states that do not have
an AI regulation yet. In addition, the proposal has a future proof approach because
it allows the regulation to adapt to technological changes. The proposal also sets
harmonized rules for the development, market placement and use of AI by
following a risk-based approach. Consequently, the development of democracy and
technology together can improve the quality of life and democracy in the EU.

The EU Artificial Intelligence Act introduces a comprehensive "product safety
framework" based on four risk categories. It mandates a CE-marking approach for
market entry and certification of High-Risk AI Systems. The pre-market
conformance framework is also applied to machine learning training, testing, and
validation data sets to assure fair outcomes. The purpose of the Act is to codify the
high requirements of the EU's trustworthy AI paradigm, which demands AI to be
legally, ethically, and technically resilient while preserving principles of democracy,
human rights, and the rule of law. The draft of the Artificial Intelligence Act blends

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23   Misha Benjamin, et.al., "What the Draft European Union AI Regulations mean for Business," *McKinsey*, April
     29, 2022, https://www.mckinsey.com/business-functions/quantumblack/our-insights/what-the-draft-
   european-union-ai-regulations-mean-for-business.

24   Minesh Tanna, "EU Draft AI Regulation: A Practical Guide," *Simmons Simmons,* June 1, 2022,
     https://www.simmons-simmons.com/en/publications/cko477kzk2jyr0918n01q2l8u/quick-guide-to-the-eu-
     draft-ai-regulation.

25   Misha Benjamin, et.al.

26   Misha Benjamin, et.al.

a risk-based strategy based on the criticality pyramid with a contemporary, tiered enforcement mechanism. It means, among others, that AI applications with a minor risk are subject to a milder regulatory system, while applications with an unacceptable danger are prohibited. As danger rises between the two extremes, restrictions become more stringent. These vary from non-binding self-regulatory soft law impact evaluations backed by codes of conduct to stringent, externally verified compliance standards throughout the application's life cycle.[27]

Figure 1. The Pyramid of Criticality for AI Systems
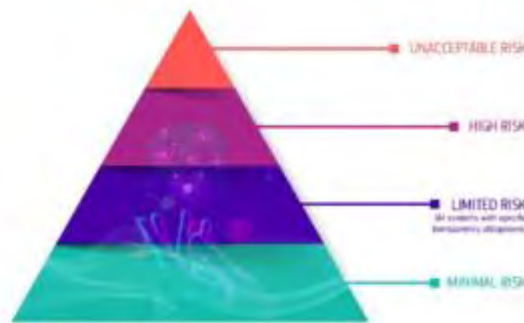
Source: Mauritz Kop, EU Artificial Intelligence Act: The European Approach to AI, Transatlantic Antitrust and IPR Developments (2021).

The proposal classifies AI systems into the following three risk categories. Some authors,[28] on the other hand, make it into four categories: (1) unacceptable, (2) high risk, (3) limited risk, and (4) minimal risk. The difference is that the latter group separate the limited risk and minimal risk categories.

1. AI Systems with Unacceptable Risk
AI systems in this category are banned from the EU. It includes the AI systems that manipulate persons through subliminal techniques or exploit the fragility of vulnerable individuals and can harm the manipulated individual or third person;[29] serve for general purposes of social scoring, if conducted by public authorities; or

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27   Mauritz Kop, "EU Artificial Intelligence Act: The European Approach to AI, Transatlantic Antitrust and IPR Developments," *Stanford Law School,* June 4, 2022, https://law.stanford.edu/publications/eu-artificial-intelligence-act-the-european-approach-to-ai/.

28   Mauritz Kop.

29   Martina Anzini, "The Artificial Intelligence Act Proposal and Its Implications for Member States," *EIPA EU*, April 30, 2022, https://www.eipa.eu/publications/briefing/the-artificial-intelligence-act-proposal-and-its-implications-for-member-states/.

are used for running real time remote biometric identification systems in publicly accessible spaces for law enforcement purposes.[30]

2. High-Risk AI system

The category includes AI systems with high risk to health, safety, and the fundamental rights of natural persons. The classifications do not only depend on the function of the AI systems but also on the specific purposes and modalities for which that system is used for. The EU permits the high-risk AI systems on the European market if the system complies certain mandatory requirements and an *ex-ante* conformity assessment. The example of high-risk AI systems is the evaluation of consumer creditworthiness and biometric identification.[31]

3. Limited and Minimal Risk AI Systems

The AI systems that fall into this category only need minimum transparency obligations. Many AI systems in the business world fall into this category, such as AI chatbots and AI powered-inventory management.[32] The rule has extraterritorial reach. It is applied to any AI system delivering output within the European Union, regardless the location of the provider or user. Individuals or organizations located in the European Union, placing an AI system on the market in the European Union, or using an AI system within the European Union are subjects to the rule.[33]

The proposed law calls for the establishment of the European Artificial Intelligence Board at the Union level (EAIB). In the GDPR's oversight framework, the EAIB will be flanked by national supervisors at the state level. Private firms can be fined up to 6 percent of their global revenue or 30 million euros for rule violations. However, data governance reaches a new level, as it must now be more thorough and subject not only to GDPR regimes but also to this new AI rule, given the risk of higher punishments.[34] Article 49 of the Artificial Intelligence Act, in accordance with the recommendations, mandates that high-risk AI and data-driven systems, products, and services conform with EU benchmarks, including safety and compliance assessments. It is essential because AI-infused products and services must adhere to the strict technical, legal, and ethical requirements that embody the key ideals of responsible AI. By fulfilling the criteria, then, they will get a CE certification allowing them to reach European markets. This pre-market conformity mechanism functions similarly to the current CE marking: as a safety certification for products traded inside the European Economic Area (EEA). The EC intends to prevent regulations from choking innovation and impeding the development of a

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[30]   Misha Benjamin, et.al.
[31]   Misha Benjamin, et.al.
[32]   Misha Benjamin, et.al.
[33]   Misha Benjamin, et.al.
[34]   Darko Stefanoski, "European Draft Regulation on Artificial Intelligence: Key Questions Answered," *EY*, April 8, 2022, https://www.ey.com/en_ch/law/european-draft-regulation-on-artificial-intelligence-key-questions-answered.

thriving AI ecosystem in Europe by providing legal sandboxes that provide AI developers breathing room.[35]

The AI Guidelines and Regulations in the EU have made a strong fundamental[36] to create a special act on AI to address democracy and legal issues due to AI development. The guidelines and regulations with the spirit of Responsible AI Principle, will be a "game changer" for the use of AI. Developers will no longer be able to make an AI that violates fundamental rights and democratic principle. Consequently, users, especially politicians, will not use AI irresponsibly in democratic process.

D. Regulation on Artificial Intelligence in Indonesia

If Indonesia makes a guideline or regulation based on responsible AI principles like the EU, it will be a solution for the contribution of AI on the disruption of democracy in Indonesia. For example, bot account case was used during the election campaigning process. The bot accounts created disinformation and polarization. Therefore, to overcome the issue, by making sure that there is someone accountable and responsible for the account bot, the Law on General Elections can be enforced. Moreover, ensuring that humans still have control over AI and can stop the systems anytime can also help reduce disinformation and manipulation as there are still humans that oversee the systems.

Another example is the use of AI to analyze the voters' psychology. The system persuades voters to vote certain candidate. By making an AI that implements privacy and transparency, voters might understand that their data is being used and give their consent of their own accord. If voters do not give their consent, the AI developers must also respect the decision. However, if voters give their consent, the AI developers must also ensure that their data is protected from being leaked, hacked, etc. In which any violation of democratic norm is deducting the quality of democracy. Deliberative democracy might enhance the liberal democracy which the product of deliberative democracy is a law which can address the legal issue, notably caused by AI.

The AI regulations that accommodate the responsible AI principles can solve problems created by AI. Article 28G paragraph 1 of the 1945 Indonesian Constitution provides a philosophical basis for the issuance of the AI regulation. If the meaning of Article 28G paragraph 1 is expanded, it also becomes a constitutional basis for personal data protection. Data is the fundamental of AI because the learned algorithm will be more accurate, smarter, and faster with

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[35]   Mauritz Kop.

[36]   Fundamental democracy is defined where a country has implemented the important pillars of democracy, such as the protection of human rights, the existence of political parties, elections, and the implementation of constitutionalism. Neil Walker, "Constitutionalism and the Incompleteness of Democracy: An Iterative Relationship," *Netherlands Journal of Legal Philosophy* 39, no. 3 (2010): 277, https://www.elevenjournals.com/tijdschrift/rechtsfilosofieentheorie/2010/3/RenR_1875-2306_2010_039_003_002.

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more data. Thus, the companies that succeed will be the ones that do not have the best algorithm but those with access to the best data.[37] Therefore, there should be an AI regulation that protects personal data from being used improperly by AI.

Based on Article 28I paragraph 1, the right to freedom of mind and conscience is a human right that cannot be limited under any circumstances. However, the existence of an irresponsible AI has the potential to nullify this right since AI can manipulate citizens' (both voters and representatives) decision making process, thereby threatening their autonomy as a necessary precondition for participating in democratic process.[38] Article 28I paragraph 2 gives the right to not be discriminated. Unintended prejudice and skewed outputs are two of the negative implications of AI.[39] Consequently, AI must be developed without removing human agency and oversight so that humans can stop AI negative effect. AI must also prioritize the idea of non-discrimination and be as inclusive throughout its entire life cycle.[40]

Indonesia needs AI regulation adopting responsible AI principles to develop the law of society and provide solutions to AI problems that arise from democracy and as the way to upgrade and strengthen the quality of democracy. Therefore, a Law on AI can be the *ius constituendum* and a "game changer" in current and future democratic process in Indonesia. eventually, it can create a new theory of democracy 5.0 to address the AI and society 5.0 challenges.

E. Conformity with the Law Related to Democracy

AI technology is increasingly embedded in human life, including in democratic life[41] as Indonesia is entering a post-truth era.[42] In practice, democracy is the choice of a political system by a country.[43] There are two important elements in a democratic country: general elections and political parties.[44] Both are affected by AI technology which triggers the resilience of democracy. The positive impact generated by AI technology is the enhancement of the quality of democracy, as it has become

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[37]   Manheim and Kaplan.

[38]   Caroline Serbanescu, "Why Does Artificial Intelligence Challenge Democracy? A Critical Analysis of the Nature of the Challenges Posed by AI-Enabled Manipulation," *Retskraft - Copenhagen Journal of Legal Studies* 5, no. 1 (2021): 106-128, http://dx.doi.org/10.1145/3306618.3314286%3E.

[39]   Prashant Chauhan and Gagandeep Kaur, "Gender Bias and Artificial Intelligence: A Challenge within the Periphery of Human Rights," *Hassanuddin Law Review* 8, no. 1 (2022): 53, http://dx.doi.org/10.20956/halrev.v8i1.3569.

[40]   High Level Expert Group on AI (AI HLEG).

[41]   Christian Djeffal, "AI, Democracy and the Law, The Democratization of Artificial Intelligence: Net Politics in the Era of Learning Algorithms," *Bielefeld: transcript Verlag*, (2019): 255, https://doi.org/10.1515/9783839447192-016.

[42]   Rofi Aulia Rahman and Shu Mei Tang, "Fake News and Internet Shutdowns: Symptoms of Failure to Uphold Democracy," *Constitutional Review* 8, no. 1 (2022): 159, https://doi.org/10.31078/consrev816.

[43]   Iwan Satriawana and Khairil Azmin Mokhtar, *Democratic Transition and Constitutional Justice: Post Reformasi Constitutional Adjudication in Indonesia* (Malaysia: International Islamic University Malaysia, 2020), 27.

[44]   A. Ubaedillah and Abdul Rozak, *Pendidikan Kewarganegaraan (Civil Education) Demokrasi, Hak Asasi Manusia, dan Masyarakat Madani* (Jakarta: ICCE UIN Syarif Hidayatullah, 2000), 82.

increasingly accessible for the people. However, the use of AI also provides negative impacts on democracy, such as online hoaxes and breaches of privacy. Techno realist argues that the technological change is part of social condition change. The people must be adaptive. However, the negative impact of technology must be minimized to avoid the destruction of social value,[45] including the development of democracy affected by the AI technology. Cohen argues that perhaps the biggest social cost of the new technological era of AI is the erosion of trust in and control over democratic institutions.[46]

The irresponsible use of AI will endanger democratic life.[47] In several cases, the irresponsible use of AI has become increasingly detrimental to society and led to an erosion of trust in democracy.[48] For instance, there can be violation of privacy rights if irresponsible AI users can open and use data for specific purposes without the users' consent. The Cambridge Analytica Scandal is an example of AI misuse in the context of general elections and political parties. The Cambridge Analytica, a political consulting firm founded by Vox.com media, worked for the Trump campaign during the 2016 United States Presidential Election. They employed This Is Your Digital Life, which harvests personal data from 87 million Facebook users and used it for Trump's campaign. The unlawfully collected personal data was used to analyze the voting community's psychology and aided the Trump campaign process.[49]

Although the application of AI has not received much attention in Indonesia, particularly in the political field, with the rapid advancement of technology, AI technology will inevitably enter and be used in Indonesian political life. The incidents of AI misuse such as the Cambridge Analytica Scandal demands Indonesia to begin preparing for potential threats from the misuse of AI technology. Indonesia has seen an increase in internet users. In 2021, Indonesia had 76.8% of the population as internet users.[50] With more than 3/4 of Indonesians using the internet, they will inevitably meet AI technology in their daily lives, both consciously and unintentionally. Therefore, due to the state's significant

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[45]   Anthony G. Wilhelm, *Democracy in the Digital Age, Challenges to Political Life in Cyberspace* (New York: Routledge, 2000): VII – X.

[46]   Julie E. Cohen, "Law for the Platform Economy," *University of California Davis Law Review* 51, (2017): 133, https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=3033&context=facpub.

[47]   Karl Manheim and Lyric Kaplan, 111.

[48]   Daniel Barredo-Ibáñez, et al., "Artificial intelligence, communication, and democracy in Latin America: a review of the cases of Colombia, Ecuador and Mexico," *Profesional de la información* 30, no. 6 (2021): 6, https://doi.org/10.3145/epi.2021.nov.16.

[49]   Alvin Chang, "The Facebook and Cambridge Analytica Scandal, Explained With a Simple Diagram," *Vox.com,* April 15, 2022, https://www.vox.com/policy-and-politics/2018/3/23/17151916/facebook-cambridge-analytica-trump-diagram.

[50]   Hari Darmawan. "Kemenkominfo Mencatat Jumlah Pengguna Internet di Indonesia Mencapai 202,35 Juta Orang," *Tribun News,* April 15, 2022, https://www.tribunnews.com/techno/2022/01/20/kemenkominfo-mencatat-jumlah-pengguna-internet-di-indonesiamencapai-20235-juta-orang.

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population, the state should provide legal protection for the Indonesian people to avoid the dangerous potential of AI.

As Indonesia is a state of law and a democratic state, all aspects of state life must be based on the law. Therefore, Indonesia needs the regulations on the responsible use of AI technology to maintain and sustain democracy. Currently, no laws that govern general elections and political parties in Indonesia address the use of AI technology. There are currently no restrictions on the use of AI technology in general election operations or by political parties in campaigning while misusing AI technology for political purposes might not align with liberal democracy theory which all people are equal to get protection when the government or politician distort the political process. The absence of law has the potential to legitimize all types of irresponsible use of AI. Conversely, in the practice of the political processes in Indonesia, there is a vast potential to utilize AI technology in a positive way. The use of AI technology by politicians and political parties in their campaigns is inevitable in this modern era. However, in the absence of rules regarding the use of AI technology, these politicians or political parties tend to not disclose or spread their use of AI technology. This is because the data obtained may be private data that should not be used for political or campaign purposes. Like the case of the Cambridge Analytica Scandal, it can cause public distrust and harm the politicians or political parties concerned.[51]

Therefore, if candidates and/or politicians use AI technology in their political activities, they must report it to the General Election Commission (KPU –*Komisi Pemilihan Umum*) so that they can be monitored. Any administrative violation can be processed by the Supervisory Election Body (Bawaslu –*Badan Pengawas Pemilu*). If there is a crime, the police can further investigate the issue. To avoid irresponsible AI use that could compromise the quality of democracy in Indonesia, the law must be altered to focus on aspects of democracy as one of the key priorities. Furthermore, AI principles such as fairness, reliability and safety, privacy and security, inclusiveness, transparency, and accountability are required as the foundation for ethical AI use.

Since Indonesia already has laws on general elections and political party, it is appropriate to changes these rules to adapt future developments in AI technology. The current Indonesian Laws on General Elections and Political Party are still oriented towards solving humans' problems. Indonesian regulation on election and political party view is still focused on human relations and has not adapted to technological developments that affect democracy. In the Law Number 7 of 2017 on General Elections, there are six concepts that underlie the application of elections in Indonesia.[52] However, from these six principles, responsible AI principle

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[51] Daniel Barredo-Ibáñez, et.al., 5.
[52] There are 6 (six) principles of election as a common ground to be implemented, namely: direct, general, free, prudential, honest, and fair.

is not part of them. In practice, AI technology has been used for political and electoral purposes. For this reason, it is vital to adjust the Law on General Elections by including the responsible AI as one of the concepts that forms the basis of the brand-new guidelines of the rules regulating the intervention of General Elections in Indonesia.

The adjustment is an essential step so that AI technology interventions can be used responsibly. The problems related to misuse of AI technology can be addressed adequately. In addition, the Law Number 2 of 2008 on Political Party states that the principle of Political Party in Indonesia should not contradict the Pancasila and the 1945 Constitution of the Republic of Indonesia. The spirit of this clause only regulates the relationship between humans and powers. There is no legislation that governs the limitations and handling of AI technology. Therefore, the foundation of political parties as an organizational form intimately associated with democracy should be amended to include the notion of the ethical use of AI technology.

The inclusion of the responsible AI principle in several Indonesian Laws on General Elections and the Political Party aims to create harmony between the development of AI technology and the legal framework that governs the AI use as well as provide solutions to resolve AI technology misuse.

1. Law on General Elections

The AI affects many aspects, including election. Cambridge Analytica scandal is the proof that the AI has influenced democracy[53] and violates fundamental rights (data privacy, hoaxes, etc). The legal framework for general elections in Indonesia is based on the Law Number 7 of 2017, which does not govern the use of AI technology in the general election process. It demonstrates that Indonesian law, particularly in relation to general elections, has not adapted to the changing times and is not prepared to confront the challenges of advancing technology. The phenomenon is a problem since Indonesia is a state of law and a democratic state.[54] due to the absence of binding laws or rules for users of AI technology, the use of technology in general elections can continue to be used haphazardly and irresponsibly. The debate come out that a loss occurs as a result of irresponsible usage of AI technology, in this case, determining who is to blame, whether the

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[53]   Cambridge Analytica violates the privacy and transparency principle because Cambridge Analytica has collected and used Facebook users' data to manipulate and persuade them in their political decision-making process, without their knowledge that their data are being used by AI to do that. Facebook users trusted their data to Facebook therefore Facebook should put protocols to prevent their user's data being collected and used by third party such as Cambridge Analytica. Elena L Boldyreva, et.al., "Cambridge Analytica: Ethics and Online Manipulation with Decision-Making Process," *The European Proceedings of Social and Behavioral Sciences*, (2018): 92-98, http://dx.doi.org/10.15405/epsbs.2018.12.02.10.

[54]   Jimly Asshiddiqie, *Konstitusi dan Konstitusionalisme Indonesia* (Jakarta: Sinar Grafika, 2011), 49.

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user, the manager, or the AI developer, will be difficult.[55] The misuse of AI in the context of general elections has the potential to violate human rights, especially regarding liberty and justice, privacy, freedom of expression, equality and non-discrimination, and social and economics right.[56] The violation of human rights will certainly affect democratic principles, which includes recognition and the protection of human rights.[57] Bradshaw and Howard states that *"Electoral participation in the AI framework tends to operate through computational propaganda"*. The influence is carried out through manipulation of public opinion using social media.[58]

Nevertheless, the use of AI can have positive impacts. The AI technology can improve government accountability, transparency, facilitate democratic action, etc.[59] Despite the convenience it brings, the use of AI that has not been regulated explicitly is always overshadowed by the misuse of AI or irresponsible AI. For example, in online elections or campaigns, the AI can be used to illegally collect people's personal data and utilize it to benefit one of the candidates. Furthermore, some bot accounts have been discovered that have the potential to steal personal information from the public or propagate hoaxes to attack other candidates.

Article 275 of Law Number 7 of 2017 on General Elections regulates General Election campaign arrangements. The article governs permissible campaign tactics. One of which is via social media and the internet. The law solely stipulates those campaigns can be conducted using social media and the internet without any restrictions or limitations. The application of AI technology targets social media and the internet. The lack of legislation enables each candidate's campaign the full use of AI technology, including the misuse of AI technology like in the Donald Trump case.[60] Consequently, it will erode public trust and render democracy obsolete in Indonesia. Certainly, a responsible AI arrangement must be realized so that the public is aware of the extent of the AI technology employed by the candidates. Therefore, democracy in Indonesia can be maintained.

In addition, Article 280 of *a quo* statute have also provided restrictions for campaigns. The regulated prohibitions also do not regulate the prohibition of the irresponsible use of AI technology, such as an illegal collection of public personal data, bot accounts, hoax news, etc. To be able to maintain a fair and good political battle, the Law on General Elections must be equipped with prohibitions on the use

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[55]   Scientific Foresight Unit (STOA), *The Ethics of Artificial Intelligence: Issues and Initiatives* (European Union: European Parliamentary Unit, 2020), 55.

[56]   David Leslie, et al., *Artificial Intelligence, Human Rights, Democracy, and The Rule of Law: A Primer* (Europe: The Alan Turing Institute, 2021), 15.

[57]   Artis, *Demokrasi dan Konstitusi di Indonesia* (Pekanbaru: UIN Suska Riau, 2014), 38.

[58]   Samantha Bradshaw and Philip N. Howard, *Troops, Trolls and Troublemakers: a Global Inventory of Organized Social Media Manipulation* (Oxford: University of Oxford, 2017), 22.

[59]   Committee on Political Affairs and Democracy, "Need for Democratic Governance of Artificial Intelligence*",* (delivered on Committee on Political Affairs and Democracy in Strasbourg on October 2, 2019).

[60]   Norman Vasu, et.al., *Fake News: National Security in The Post-Truth Era* (Singapore: Nanyang Technological University, 2018), 11.

of AI technology that can reduce the dignity of democracy in the context of a general election.

Considering the use of AI as a technological advancement is inevitable and unavoidable, Indonesia needs to change the election legislation. If there is no regulation on AI, the quality of democratic development in Indonesia can be suffer. The quality of the election process also plays an important role in determining the quality of a state.[61] Therefore, the use of AI in elections must adhere to the principles of responsible AI. Furthermore, control of AI in the field of general elections is required to maintain a democratic shift of power and quality.

2. Law on Political Party

Indonesia also still does not cover the legal statutes governing political parties related to the AI. A political party is an organized group of people who share the same orientation, values, and ideals to obtain political power and grab political positions (typically) by constitutional methods to enact their objectives.[62] The present Indonesian law on political parties, especially Law Number 2 of 2008 on Political Parties in conjunction with the Law Number 2 of 2011 on the Amendments to the Law Number 2 of 2008 on Political Parties, does not meet the necessities required for legal protection associated with the development of AI technology.

Political parties undertake various efforts such as campaigning, gaining people's votes, and winning the general election during the general election contest. Legislation has regulated various forms of initiatives or campaigns that the political parties can conduct. Thus, there are some limitations in state and regulations on the way to discipline or hold responsibility for infractions. However, the existing political party regulation does not govern the use of AI technology in political party campaigns. Several cases have demonstrated that political parties can employ AI without having to worry about limits that could have a negative impact on the quality of democracy in Indonesia.

The irresponsible use of AI technology by Political parties may impair the quality of democracy in Indonesia.[63] For example, they could employ or establish bot accounts to denounce hoaxes that degrade the dignity of other candidates during elections. Bots only may not explain the success of false news. They also contribute to it.[64] The spread of hoaxes can shift the public's focus to hoaxes than the political substance. Accordingly, the state's democracy quality will decrease. Nevertheless, the adjustment of political party settings with AI technology may aid in the resolution of political party issues. Several factors, like regulations for online

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[61]   Rofi Aulia Rahman, et.al., "Calon Tunggal Pilkada: Krisis Kepemimpinan dan Ancaman Bagi Demokrasi," *Jurnal Konstitusi* 19, no. 1 (2022): 64, https://doi.org/10.31078/jk1913.

[62]   Miriam Budiardjo, *Dasar-dasar Ilmu Politik*, (Jakarta: Gramedia, 1986), 160-161.

[63]   Chengcheng Shao, et.al., "The Spread of Low-Credibility Content by Social Bots," *Nature Communications* 9, no. 1 (2018): 1.

[64]   Soroush Vosoughi, et.al., "The Spread of True and False News Online", *Science* 359, no. 6380, (2018): 1146-1151, https://doi.org/10.1126/science.aap9559.

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political campaign, must be considered, so the AI technology have no detrimental effects.[65] The use of AI must be specifically declared in the Law on Political Parties and Election. The presence of AI technology that is still being developed appears to be capable of thinking and making decision in the same way that humans do.[66] Therefore, it is not implausible that the AI will one day take over the choices of Political Parties. If it is happened, the political parties as a platform for freedom of assembly, association, and expression of human opinions, will no longer function properly. Thus, changes to the provisions of Chapter X on Decision Making in the Law on Political Party are required to ensure that political party choices are not controlled by the AI technology. The primary principle that must underpin the Law on Political Party is the use of responsible AI. It means that the AI is not a replacement for humans but rather a form of technology that assists humans.[67]

In addition, Article 40 of the Law Number 2 of 2008 on Political Parties states some prohibitions on Political Parties. Broadly speaking, the prohibitions in the law are only related to political party symbols, finances, on establishing business entities, on ideology, and on activities contrary to the Pancasila and the 1945 Constitution of the Republic of Indonesia. These arrangements have not been able to overcome the problems[68] that arise when a political party uses AI technology carelessly or irresponsibly. If there is no prohibition related to the irresponsible use of AI, political parties could freely use AI technology to collect personal data from the public to support the success of their campaigns in general elections.[69]

Therefore, it is vital to include the use of AI technology in the processes of democracy and politics as a part of the amendments to the law on political parties. It will have consequences for both politicians and public. during the campaign and other political and democratic activities, they would need to notify the General Election Commission (KPU –*Komisi Pemilihan Umum*) and the Supervisory Election Body (Bawaslu –*Badan Pengawas Pemilu*) that they are using AI technology. It allows the KPU and the Bawaslu to monitor and to act on the case of AI technology abuse. On the other hand, the effort is to avoid the macro and micro political change of the people[70] since the transparency of the AI technology use (data

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[65]   Isaac Ben-Israel, et.al., *Towards Regulation of AI Systems Global Perspectives on The Development of a Legal Framework on Artificial Intelligence (AI) Systems Based on The Council of Europe's Standards on Human Rights, Democracy and The Rule of Law* (Europe: Council of Europe Study, 2020), 34.

[66]   Jean-Charles Pomerol, "Artificial Intelligence and Human Decision Making," *European Journal of Operational Research* 99, (1997): 3-25, http://dx.doi.org/10.1016/S0377-2217(96)00378-5.

[67]   Jean-Charles Pomerol.

[68]   Lisa Maria and Nahema Marchal, *Polarisation and The Use of Technology in Political Campaigns and Communication* (Europe: European Union, 2019), 22 – 29.

[69]   Scientific Foresight Unit (STOA), 22.

[70]   Macro political change is theory describing the condition of society which the distrust to the state and political institution is increasing, and micro political change is the theory describing the scale of distrust of society is increasing to the political actor as individual. See Irwin P. Strotzky, "Establishing Deliberative Democracy: Moving from Misery to Poverty with Dignity," *University of Arkansas Little Rock Law Review* 21, no.   1   (1998):   79-105. https://repository.law.miami.edu/cgi/viewcontent.cgi?article=1561&context=fac_articles.

collection and political campaign) is inseparable of the recognition of people's sovereignty and a part of protection of human rights.

F. Conclusion

AI technology influences the existing norms and principles of democracy. There are several issues on democracy due to AI technology, such as fake news, data privacy violations, and irresponsible use of AI technology for campaign and other political purposes. However, legal instrument cannot resolve these problems effectively because of the absence of legal basis. The absence of law on the use of AI triggers a crisis of democracy which contributes to the deterioration of democratic resilience due to the uncontrolled use of AI technology. Therefore, several regulations need some adjustments to strengthen Indonesian democracy. For instance, the principle of responsible AI is turned into norms by establishing special law on AI and adjusting the Election and Political Party Law to adapt the principles of responsible AI (human agency and oversight, transparency, benefit for all societies, etc.). The purpose is to control the use of AI technology to be more responsible and leave a positive impact for the development of democracy in Indonesia. Either the new European draft regulation will change the legislation on AI significantly or eventually and strengthen democracy in Europe and other parts of the world, there are many open questions in the draft.

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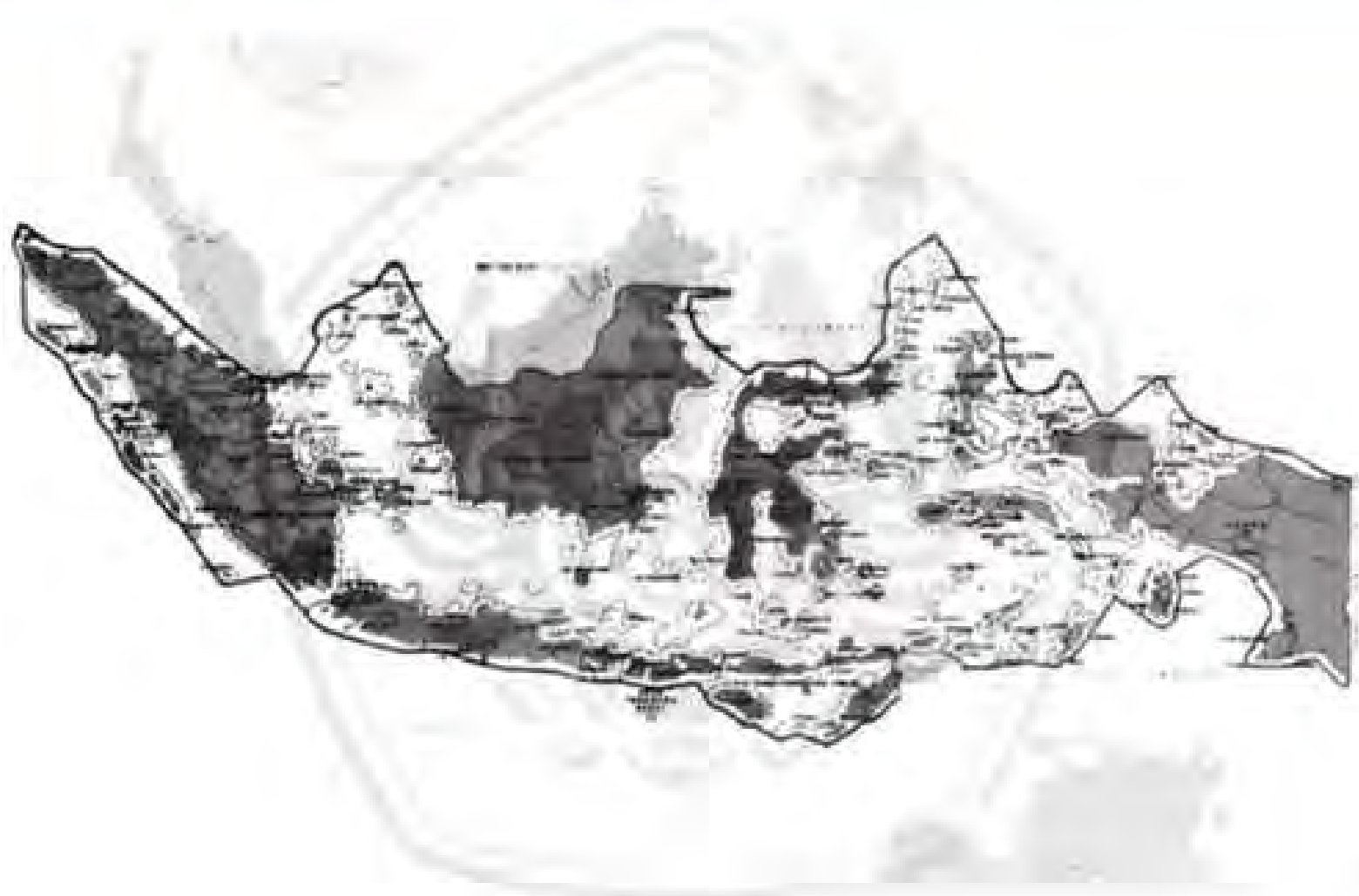
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