Legal protection against defamation through deepfake in negatively charged political content

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Abstract
The rapid development of information and communication technology has brought great changes in human life, both directly and indirectly. One of them is the emergence of deepfakes which are often misused. One of them is related to the use of deepfake in negatively charged political content. This research aims to analyse criminal law liability related to the use of deepfake in negatively charged political content. This research is a normative legal research with statutory and conceptual approaches. The result of this research is that the ITE Law does not accommodate AI-related regulations, AI-based deepfake. However, if interpreted into existing regulations, the concept of criminal defamation in the use of deepfake applications related to negatively charged political content can be categorised as a criminal act based on Article 310 (2) of the Criminal Code (Wvs), Article 433 (2) of Law number 1 of 2023 concerning the National Criminal Code and Article 27A of the ITE Law.

Keywords: Defamation, deepfake, criminal law liability

Introduction

The rapid development of information and communication technology has brought great changes in human life, both directly and indirectly. The development of information and communication technology has a lot of impact on social, economic, cultural, political values and legal norms are no exception. Information and communication technology has changed the behaviour of society and human civilisation globally. In addition, the development of information technology has caused the world to become borderless (borderless society, borderless economy, borderless technology and borderless politics) and caused significant social changes to take place so quickly.

The development of technology and information includes influencing the world of politics in Indonesia. In the world of politics in Indonesia, information technology has a huge influence because information technology in the form of the internet is a medium that can make it easier for people to convey their aspirations widely and quickly, and is a place for digital campaigns of a political figure or political party to gain support during general elections. One of the technological developments in the era of the Industrial Revolution 4.0 is Artificial Intelligence (AI). AI is a scientific discipline that develops intelligence in computer systems. AI refers to the ability of machines or computers to mimic human intelligence. AI systems are designed to be able to perform tasks that usually require human intelligence, such as language understanding, reasoning, learning, pattern recognition, and decision-making.

One form of using artificial intelligence (AI) is deepfake. Deepfake is a technology that allows one to manipulate video and audio to appear as if they are real through AI. Deepfake has many benefits including in the entertainment and creative industries, deepfake can create realistic special effects in terms of replacing a character's face or voice so that it can make the work quickly completed and production costs efficient. In the field of education and training, deepfake can be used to create videos and images related to learning materials that involve dialogue with real speakers. In Indonesia, there are no clear regulations related to deepfake regulation, so of course this creates a legal vacuum.

Deepfake is more than just a simple hoax. They can modify content, manipulate images, and distort information to create a convincing illusion. Deepfakes may use elements of truth, but their main purpose is to deceive through engineering facial expressions, gestures, and voices that are made as similar as possible to the original. In practice, there have been cases of defamation through the misuse of deepfake in negatively charged political content. It turns out that although information and communication technology Causes a wide and rapid dissemination of information, it is unfortunately very difficult to control. The wide use of information and communication technology in Indonesia does not guarantee the maturity of its users, nor does it escape the legal problems that will arise in the future.

One of the most widely abused uses of deepfakes is in politics. For example, deepfake videos of Jokowi giving a speech using Mandarin and Prabowo using Arabic are very similar in terms of pictures, gestures and voices. To check the authenticity of deepfake videos, you must use a special application and cannot be seen with the naked eye. The video of Jokowi using Mandarin appeared in October 2023, the month is the month approaching the election of the President of the Republic of Indonesia in 2024. The video appeared on social media twitter / x with usermane @jerukni01528287. It is suspected that @jerukni01528287 made the video using AI-based deepfake technology, by manipulating Jokowi's image and voice so that it is perceived as real. This can lead to the opinion that Jokowi is fluent in Mandarin and as if Jokowi is a group or stooge of the Mandarin people so that he does not have the nature of nationalism. Another example is the deepfake video of President-elect Prabowo speaking Arabic when he was Minister of Defence. The video also went viral in November 2023. The video was also propaganda that took place before the 2024 elections. In the video, Prabowo is very fluent in Arabic. Both images, gestures and voices are very similar to the Arabic language.
Prabowo. The video was first spread through Tiktok social

media, even the account that spread the video claimed "original and not AI-based deepfake manipulation". That the deepfake video has been fact-checked by the Ministry of Communication and Information and the video was declared disinformation or hoax. That with the deepfake video, Jokowi and Prabowo could be considered stooges of other countries so that people think Jokowi and Prabowo do not have nationalism. Of course, this can make the wider community deceived and can affect public opinion and behaviour towards state leaders. This can damage the reputation and degrade the dignity that leads to the defamation of Jokowi and Prabowo in the eyes of the public. Based on the description above, we will analyse the criminal law liability related to the use of deepfake in negatively charged political content.

Literature review
The world is now in the era of industrial revolution 4.0. The era of the industrial revolution 4.0 is a major transformation in the industrial world characterised by the fusion of digital technology and automation. The main feature of the Industrial Revolution 4.0 is the use of cutting-edge technologies, such as Big Data, Artificial Intelligence (AI), Cloud Computing, Additive Manufacturing (3D Printing), Internet of Things (IoT). One of the technological developments in the Industrial Revolution 4.0 era is Artificial Intelligence (AI). AI is a scientific discipline that develops intelligence in computer systems. AI refers to the ability of machines or computers to mimic human intelligence. AI systems are designed to be able to perform tasks that usually require human intelligence, such as language understanding, reasoning, learning, pattern recognition, and decision making.

Artificial intelligence (AI) was defined by Alan Turing as "If there is a machine behind a curtain and a human interacts with it (in any way, e.g. audio or through typing, etc.) and if the human feels like he is interacting with another human, then that machine is called artificial intelligence (AI)." This is quite a unique way to define AI. It does not directly lead to the idea of intelligence, but rather focuses on human-like behaviour.

Artificial Intelligence (AI), also known as artificial intelligence, is a branch of computer science that aims to develop systems and machines capable of performing tasks that would normally require human intelligence. AI involves the use of algorithms and mathematical models to enable computers and other systems to learn from data, recognise patterns, and make intelligent decisions. Artificial intelligence (AI) is the development of computer systems that can perform tasks normally performed by humans. Some terms associated with artificial intelligence (AI) include machine learning, deep learning, Artificial Neural Network (ANN), Natural Language Processing (NLP), and others. Artificial Intelligence (AI) has had a significant impact on a number of industries, including voice and facial recognition, autonomous vehicles, and healthcare. AI is even being used in private business or one could say looking for personal profit opportunities.

One of the uses of artificial intelligence is Deepfake. Deepfake is more than just a simple hoax.

Deepfakes can modify content, manipulate images, and distort information to create a convincing illusion. Deepfakes may use elements of truth, but their main purpose is to deceive through engineering facial expressions, gestures, and sounds that are made as similar to the original as possible.

In the Journal Marissa Koopman, Andrea Macarulla Rodriguez, and Zeno Geradts provide an understanding that deepfake as an algorithm, "the deepfake algorithm allows a user to switch the face of one actor in a video with the face of a different actor in a photorealistic manner". Deepfake is a deepfake algorithm that allows a user to switch the face of an actor in a video with the face of another actor in a realistic, photo-realistic manner. Deepfake algorithms are able to mimic skin textures, facial muscle movements, and even micro-expressions in great detail, so the faces shown in deepfake videos look very realistic and natural, like the real faces of the people being recorded. Deepfakes can also manipulate sounds to match the lip movements of the person featured in the video. This makes deepfake videos even more difficult to distinguish from real videos. Deepfake is also able to realistically mimic the head and body movements of actors, so the movements of people in deepfake videos look natural and not stiff.

According to Itsna Hidayatul Khusna, Sri Pangestuti, Deepfake is a human image synthetic technique based on artificial intelligence (AI). It is used to combine and superimpose existing images and videos onto source images or videos using a machine learning technique known as a generative adversarial network. GAN was invented by Ian Goodfellow in 2014 as a way to algorithmically generate new data from existing data. GANs can be used to generate new audio from existing audio, or new text from existing text, making it a multipurpose technology.

Deepfake is a relatively new type of technology where deepfake apps can be downloaded for free. Deepfake is the result of artificial intelligence (AI). Anyone can access the deepfake application and make the video or image edits as desired. The initial purpose of using Deepfake is for entertainment on TV and social media. However, over time, the technology has been used as a tool to mislead people and spread false information.

Research methodology
This research is a type of normative research. In this research, law is conceptualised as what is written in legislation (law in book) or law which is conceptualised as rules or norms which are a benchmark for society's behaviour towards what is considered appropriate. However, in fact, law can also be conceptualised as what is in action (law in action). The law in the book is a law that should work as expected, both are different, meaning that the law in the book is often different from the law in people's lives.

The approaches in this research are statute approach and conceptual approach. The legal materials used are primary and secondary legal materials.

The technique for collecting legal materials used in this thesis research is Normative Law research or literature with library studies of legal materials, both primary legal materials, secondary legal materials, tertiary legal materials and non-legal entities. Searching for legal materials can be done by reading, listening, viewing or by searching for legal materials via the internet. In fact, the law is then analysed to find answers to existing legal issues.

Discussion

Artificial intelligence (AI) was defined by Alan Turing as "If there is a machine behind a curtain and a human interacts with it (in any way, e.g. audio or through typing, etc.) and if the human feels like he is interacting with another human, then that machine is called artificial intelligence (AI)." This is quite a unique way to define AI. It does not directly lead to the idea of intelligence, but rather focuses on human-like behaviour.

One of the technological developments in the era of the Industrial Revolution 4.0 is Artificial Intelligence (AI). AI is a discipline that develops intelligence in computer systems. AI refers to the ability of machines or computers to mimic human intelligence. AI systems are designed to be able to perform tasks that usually require human intelligence, such as language understanding, reasoning, learning, pattern recognition, and decision making.

One example of this form of AI is the deepfake application. The concept of deepfake is a user interface that is the result of deep fake artificial intelligence that makes a face with an image and video combined so that it looks more real. Deepfake uses machine learning algorithms inspired by the working structure of the human brain. deepfake uses two data coming from the source data (the original recording of the person you want to manipulate) with the target data (recording of the face and voice of another person you want to imprint). Then, the algorithm learns the characteristics of the two data. the existence of this deepfake phenomenon is the research concept, deepfake has the potential to harm others such as the spread of hoax information, defamation, damage to the reputation of someone who has never done it, and loss of public trust in online media.

Deepfake is the result of artificial intelligence (AI). Anyone can access the deepfake application and make the desired video or image edits. The original purpose of using Deepfake was for entertainment on TV and social media. However, over time, the technology has been used as a tool to mislead people and spread false information.

Deepfake's ability to generate real and convincing data makes it an ideal tool for creating deepfakes. The way deepfake works is using the generative adversarial networks method, GANs consist of two JSTs: a generator and a discriminator. The generator is trained to create new videos, while the discriminator is trained to distinguish between real and fake videos. This process repeats, with the generator and discriminator improving each other. The result is a highly realistic video that is almost indistinguishable from a real video.

Defamation in the use of deepfake applications related to negatively charged political content can also be conveyed as an act of defamation through AI technology that allows the manipulation of videos, images and sounds to create fake and negatively charged content, which is deliberately to defame, attack honour and damage a person's reputation, especially political figures. Deepfake has a huge impact on Indonesia as a democratic country. In terms of elections, deepfakes can erode public trust in the democratic process and political institutions. If people no longer believe in the integrity of elections, the legitimacy of the government and its policies will be questioned. This can lead to political apathy, political instability and even social unrest.

Deepfake is an application with AI technology that is misused by someone to make changes to videos, images and sounds. Deepfakes can be used to create misleading or deceptive videos, which can have a negative impact on individuals and society. The current challenge is that it is still difficult to detect deepfakes with high accuracy. There are special applications to check deepfakes, but unfortunately there is no application that can check with 100% accuracy. This makes deepfakes still a powerful tool to spread misinformation.

Deepfake applications related to negatively charged political content are a misuse of AI technology that is used as a tool by someone to defame someone. For example, in the deepfake video Jokowi gave a speech in Mandarin and Prabowo in Arabic. The deepfake video is a form of someone's action that aims to create fake video or audio as if it were genuine, so that it can reduce reputation and can influence public opinion and behaviour so that the credibility of Jokowi and Prabowo as political figures.

That defamation in the use of deepfake applications related to negatively charged political content has not been strictly regulated in the Criminal Code. An act can be classified as a criminal offence if it meets the elements of the criminal rules governing it. In this section, the author tries to analyse the concept of defamation in the use of deepfake application related to negatively charged political content whether it meets the elements of the rules in the Criminal Code (Wvs) and the National Criminal Code.

That defamation in the use of deepfake applications related to negatively charged political content can be categorised under Article 310 (2) of the Criminal Code and cannot be categorised under Article 310 (1). Article 310 paragraph (1) has been subject to judicial review and declared conditionally unconstitutional by the Constitutional Court Decision Number 78/PUU-XXI/2023 on the Examination of Law Number 1 Year 1946 on Criminal Law Regulations, the Criminal Code, and Law Number 19 Year 2016 on Amendments to Law Number 11 Year 2008 on Electronic Information and Transactions Against the 1945 Constitution of the Republic of Indonesia dated 06 March 2024.

Conclusion

The concept of criminal defamation in the use of deepfake applications related to negatively charged politive content is the misuse of AI-based deepfake applications that are used as a tool to create negative political content to defame political figures. The ITE Law does not accommodate AI-related regulations, AI-based deepfake. However, if interpreted into existing regulations, the concept of criminal defamation in the use of deepfake applications related to negatively charged political content can be categorised as a criminal act based on Article 310 (2) of the Criminal Code (Wvs), Article 433 (2) of Law number 1 of 2023 concerning the National Criminal Code and Article 27A of the ITE Law.

Suggestions

The ITE Law needs to add clear regulations related to AI, AI-based deepfake and defamation through AI-based deepfake applications related to negatively charged political content because the ITE Law does not accommodate AI, AI-based deepfake and defamation through AI-based deepfake applications related to negatively charged political content.

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