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Reconstructing Legal Protection for MSMEs Utilizing Artificial Intelligence within Digital Economy Ecosystems

Rekonstruksi Perlindungan Hukum UMKM dalam Pemanfaatan *Artificial Intelligence* pada Ekosistem Ekonomi Digital

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Abstract

The exponential integration of artificial intelligence within digital economies exacerbates normative asymmetry, rendering classical tort liability doctrines obsolete against algorithmic governance. This study interrogated the regulatory vacuum of Indonesian ethical soft law guidelines utilizing a prescriptive doctrinal methodology and comparative statutory approach against robust European frameworks. The analysis revealed that standard form contracts systematically weaponize contractual freedom, enabling tech monopolies to extract data yields while externalizing operational risks onto vulnerable micro, small, and medium enterprises. To rectify this systemic disparity without stifling exogenous innovation, this article constructs a comprehensive legal protection framework. By institutionalizing the doctrine of distributed accountability, this novel architecture mandates upstream algorithmic auditing and downstream safe harbor protections. Ultimately, embedding transparent compliance mechanisms directly into positive law ensures that digital transformation serves as an equitable engine for domestic economic empowerment rather than a conduit for unregulated monopolistic hegemony across the rapidly expanding global interconnected modern commercial ecosystems.

Abstrak

Integrasi eksponensial kecerdasan buatan dalam ekonomi digital memperburuk asimetri normatif, menjadikan doktrin kewajiban perdata klasik usang menghadapi dominasi tata kelola algoritmik. Penelitian ini menginterogasi kekosongan regulasi pedoman etika normatif Indonesia menggunakan metodologi doktrinal preskriptif dan pendekatan komparatif statuter terhadap kerangka hukum perlindungan Eropa. Analisis mengungkapkan bahwa format kontrak baku secara sistematis mempersenjatai kebebasan kontraktual, memungkinkan monopoli teknologi untuk mengekstraksi hasil data sembari mengeksternalisasi risiko operasional kepada entitas usaha mikro, kecil, serta menengah yang rentan. Untuk meluruskan disparitas sistemik ini tanpa mencekik inovasi eksogen, artikel ini mengkonstruksi sebuah kerangka pelindungan hukum komprehensif. Dengan melembagakan doktrin pertanggungjawaban terdistribusi, arsitektur kebaruan ini memandatkan audit algoritmik hulu beserta jaminan pelindungan pelabuhan aman hilir. Pada akhirnya, menanamkan mekanisme kepatuhan transparan secara langsung ke dalam hukum positif memastikan bahwa transformasi digital berfungsi sebagai mesin berkeadilan bagi pemberdayaan ekonomi domestik bukan sebagai saluran bagi hegemoni monopolistik yang bebas melintasi ekosistem komersial modern global yang terus berekspansi pesat.

A. INTRODUCTION

1. Background

The exponential integration of algorithmic governance and artificial intelligence (AI) within the digital ecosystem has precipitated a profound structural rupture in traditional legal paradigms. Rather than serving as mere peripheral instruments of economic facilitation, AI systems—encompassing predictive analytics, machine learning, and generative models—now operate as the foundational infrastructure of platform capitalism. This exogenous technological shock has rendered conventional legal doctrines, particularly those anchored in traditional fault-based liability and classical privity of contract, glaringly inadequate. The autonomous, probabilistic, and frequently opaque nature of algorithmic decision-making engenders a severe normative asymmetry, fundamentally challenging the law's capacity to equitably allocate liability, enforce transparency, and protect structurally vulnerable economic actors.[1,2]

Within the Indonesian socio-legal framework, this systemic disparity manifests most acutely in the operational landscape of Micro, Small, and Medium Enterprises (MSMEs). Although Law No. 20 of 2008 on Micro, Small, and Medium Enterprises[3] as amended by the omnibus Job Creation Law[4]—statutorily enshrines MSMEs as indispensable drivers of equitable economic growth, a profound divergence persists between their theoretical guarantees of a balanced business climate and their precarious realities in the digital market. In this algorithmic milieu, the classical doctrine of freedom of contract deteriorates into a legal fiction; MSMEs are routinely subjected to unilateral, non-negotiable standard form contracts engineered by multinational platform operators. This dynamic produces a dual vulnerability: *asymmetric bargaining power* in contractual relations and *asymmetric information* regarding the "black box" of algorithmic logic that dictates their market visibility, creditworthiness, and overarching operational viability.[5]

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[1] Adnan Mahmutovic, "The EU AI Act: A Proactive Framework for Comprehensive AI Regulation," *International Journal of Law And Information Technology* 33 (January 8, 2025), https://doi.org/10.1093/ijlit/eaaf028.
[2] Maria Lillà Montagnani, Marie-Claire Najjar, and Antonio Davola, "The EU Regulatory Approach(Es) to AI Liability, and Its Application to the Financial Services Market," *Computer Law & Security Review* 53 (July 2024): 105984, https://doi.org/10.1016/j.clsr.2024.105984.
[3] Republic of Indonesia, "Law No. 20 of 2008 on Micro, Small, and Medium Enterprises" (2008).
[4] Republic of Indonesia, "Law No. 6 of 2023 on the Enactment of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation into Law" (2023).
[5] Riham Ben Amor and Azhaar Lajmi, "Algorithmic Auditing of AI Credit Scoring: Integrating IFRS 9 Model Governance with Ethical AI Assessment," *International Journal of Ethics and Systems*, September 10, 2026, 1–22, https://doi.org/10.1108/IJOES-04-2026-0299.

A robust body of contemporary global legal scholarship has engaged with the complexities of algorithmic accountability and AI governance to address these exact frictions. Recent doctrinal analyses emphasize that the opacity of AI systems necessitates a paradigm shift from traditional individual liability to systemic algorithmic auditing and structural governance.[6] Simultaneously, scholars evaluating the vanguard of global AI regulation—most notably the European Union's Artificial Intelligence Act (Regulation (EU) 2024/1689)—argue that while a risk-based, proactive regulatory framework is indispensable, strict ex-ante compliance mandates disproportionately burden small enterprises, potentially stifling decentralized innovation.[7,8] Furthermore, literature on platform capitalism heavily critiques the externalization of risk, wherein tech conglomerates harvest the economic yields of data processing while insulating themselves from liability when algorithmic anomalies cause downstream financial or reputational damage to smaller actors.[9] Domestically, scholars have highlighted the urgency of specialized regulations to shield local actors from digital disruption, yet these studies often remain conceptually fragmented, relying heavily on classical, abstract jurisprudential concepts—such as Radbruch's legal certainty or Rawlsian distributive justice—without operationalizing them into concrete regulatory mechanisms tailored to the digital economy.[10,11]

Despite this rich discourse, a critical blind spot persists: the existing literature predominantly oscillates between high-level general AI ethics and Western-centric compliance models, failing to formulate a pragmatic, bespoke protective framework for MSMEs navigating systemic power imbalances in developing economies. Unlike previous

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[6] Marissa Kumar Gerchick et al., "Auditing the Audits: Lessons for Algorithmic Accountability from Local Law 144's Bias Audits," in *Proceedings of the 2025 ACM Conference on Fairness, Accountability, and Transparency* (New York, NY, USA: ACM, 2025), 29–44, https://doi.org/10.1145/3715275.3732004.
[7] Marcos Eduardo Kauffman et al., "EU AI Act Regulation: A Study of Non-European Union Manufacturers' Compliance Preparedness," *Journal of Manufacturing Technology Management*, January 26, 2026, 1–20, https://doi.org/10.1108/JMTM-07-2025-0657.
[8] Sotirios Stampernas and Costas Lambrinoudakis, "A Framework for Compliance with Regulation (EU) 2024/1689 for Small and Medium-Sized Enterprises," *Journal of Cybersecurity and Privacy* 5, no. 3 (July 1, 2025): 40, https://doi.org/10.3390/jcp5030040.
[9] Nyiramukama Diana Kashaka, "Algorithmic Governance in Public Services: Accountability and Bias Audits," *Newport International Journal of Current Issues in Arts and Management* 7, no. 1 (April 12, 2026): 62–72, https://doi.org/10.59298/NIJCIAM/2025/71.6272.
[10] Bayu Dwi Anggono et al., "Interrogating the Legal Foundations of Digital Transformation: Balancing Economic Growth and Social Welfare in the Era of Disruption," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 8, no. 1 (May 27, 2025): 191–211, https://doi.org/10.24090/volksgeist.v8i1.12211.
[11] Mirna Rahmadina Gumati, "Digital Sovereignty or Regulatory Overreach? The Case of Indonesia's Platform Registration Policy," *Competition and Regulation in Network Industries* 25, no. 4 (December 23, 2024): 131–46, https://doi.org/10.1177/17835917251392903.

studies that focus on macro-level algorithmic governance or general consumer protection, this article offers a comprehensive, risk-based legal novelty: the "AI Protection for MSMEs Framework." Operating on the principle of *distributed accountability*, this framework posits that legal liability must be proportionately tethered to the degree of technological control and risk generation, rather than formal end-usage. Ultimately, this article argues that to salvage the statutory mandate of equitable economic empowerment, Indonesian positive law must transcend reactive, fault-based paradigms and institutionalize a proactive regulatory architecture—anchored in Access, Transparency, Accountability, Protection, and Remedy—thereby establishing a viable alternative model for AI governance in the Global South.

2. Research Questions

Against this structural backdrop, the central inquiry of this article is crystallized into two interconnected doctrinal imperatives. First, it interrogates the normative inadequacy of existing legal frameworks—anchored in classical privity and fault-based liability—in mitigating the systemic disparities, asymmetric bargaining power, and algorithmic opacity that MSMEs confront within the digital economy. Second, it delineates the requisite jurisprudential architecture for substantive reform. By operationalizing the paradigm of *distributed accountability*, this article systematically explores how a bespoke, risk-based regulatory matrix can be embedded into positive law to rectify these structural vulnerabilities without stifling domestic technological innovation.

3. Research Methods

This article operationalizes a prescriptive doctrinal legal research methodology, deliberately discarding archaic descriptive cataloging to rigorously audit the normative architecture governing AI deployment by MSMEs. Recognizing that algorithmic governance transcends jurisdictional boundaries, the inquiry employs a sophisticated comparative and conceptual statutory approach.[12] The primary jurisprudential corpus interrogated encompasses the bedrock of Indonesian positive law—specifically, Law No. 20 of 2008 concerning MSMEs (as substantially amended by Law No. 6 of 2023 on Job Creation), alongside Law No. 27 of 2022 (Personal Data Protection) and Law No. 1 of 2024 (Electronic Information and Transactions). These domestic statutes are actively

[12] Jungmi Bang, "Regulatory Governance of AI in the Generative AI Era: A Comparative Study of South Korea's AI Basic Act and the EU AI Act for Sustainable Digital Transformation," *Laws* 15, no. 3 (May 13, 2026): 42, https://doi.org/10.3390/laws15030042.

benchmarked against the vanguard of global technology regulation, predominantly Regulation (EU) 2024/1689 (the EU AI Act), to ascertain the structural viability of transplanting risk-based compliance matrices into the legal realities of the Global South.[13]

To circumvent the domestic trap and construct a globally resonant doctrinal foundation, the data collection procedure was executed with stringent methodological transparency. Secondary legal materials, encompassing international treatises and contemporary jurisprudence, were systematically extracted from elite academic databases including Scopus, Westlaw, and HeinOnline. The extraction utilized targeted Boolean search parameters—specifically ("algorithmic accountability" OR "AI regulation") AND ("MSMEs" OR "small enterprise") AND "legal protection"—restricted to peer-reviewed scholarship published between 2023 and 2026. The inclusion criteria were strictly confined to literature addressing normative asymmetries, platform capitalism, and distributed liability models, meticulously filtering out purely technical computer science literature that lacks substantive legal implications.

Analytically, the synthesized legal materials are dissected using a dual-pronged qualitative juridical heuristic: systematic and teleological interpretation.[14] Rather than offering a passive literature review, the analysis is driven by the rigid IRAC (*Issue, Rule, Application, Conclusion*) inferential framework. This analytical "blade" actively confronts classical, fault-based statutory rules with the empirical realities of structural disparity and algorithmic opacity.[15] By operationalizing this rigorous interpretative methodology, the article transcends mere legal mapping, culminating in the prescriptive formulation of the "AI Protection for MSMEs Framework"—a bespoke, adaptive regulatory model designed to rectify systemic imbalances without suffocating exogenous technological innovation.

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[13] Stampernas and Lambrinoudakis, "A Framework for Compliance with Regulation (EU) 2024/1689 for Small and Medium-Sized Enterprises."

[14] Bang, "Regulatory Governance of AI in the Generative AI Era: A Comparative Study of South Korea's AI Basic Act and the EU AI Act for Sustainable Digital Transformation."

[15] Hari Sutra Disemadi and Lu Sudirman, "Reassessing Legal Recognition of AI: Human Dignity and the Challenge of AI as a Legal Subject in Indonesia," *Masalah-Masalah Hukum* 54, no. 1 (March 27, 2025): 1–12, https://doi.org/10.14710/mmh.54.1.2025.1-12.

B. DISCUSSION

1. Thematic Synthesis of Algorithmic Governance: Identifying the Normative Void

The contemporary jurisprudential discourse surrounding algorithmic governance has definitively transcended the mechanical regulation of digital tools, pivoting instead toward the profound structural inequities embedded within platform capitalism. At the vanguard of this global discourse, scholars emphasize that the inherent opacity of algorithmic systems—the proverbial "black box"—renders classical, fault-based models of individual liability functionally obsolete. Gerchick et al., articulate this paradigm shift, arguing persuasively that systemic algorithmic auditing must replace anachronistic privity doctrines to achieve substantive accountability.[16] This imperative is theoretically anchored in Karen Yeung's critical interrogation of algorithmic regulation, which exposes how tech conglomerates deliberately engineer normative asymmetry. By monopolizing the economic yields of data processing while simultaneously insulating themselves from the downstream consequences of algorithmic anomalies, these platforms effectively externalize their operational risks onto structurally vulnerable actors. Kashaka reinforces this critique, demonstrating that without rigorous bias audits and distributed accountability mechanisms, algorithmic governance merely supercharges the systemic disparity between multinational tech monopolies and decentralized small-scale end-users.[17]

In response to these systemic market failures, the European Union's Artificial Intelligence Act (Regulation (EU) 2024/1689) has emerged as the global regulatory gold standard. However, an analysis of the nascent literature evaluating the EU AI Act exposes a severe compliance friction that threatens to undermine its efficacy for smaller economic entities. Kauffman et al., and Stampernas & Lambrinoudakis critically map this structural tension: while a risk-based, proactive regulatory architecture is undeniably indispensable for mitigating exogenous technological shocks, draconian *ex-ante* compliance mandates disproportionately suffocate Micro, Small, and Medium Enterprises (MSMEs).[18,19] These

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[16] Gerchick et al., "Auditing the Audits: Lessons for Algorithmic Accountability from Local Law 144's Bias Audits."
[17] Kashaka, "Algorithmic Governance in Public Services: Accountability and Bias Audits."
[18] Kauffman et al., "EU AI Act Regulation: A Study of Non-European Union Manufacturers' Compliance Preparedness."
[19] Stampernas and Lambrinoudakis, "A Framework for Compliance with Regulation (EU) 2024/1689 for Small and Medium-Sized Enterprises."

scholars highlight that inflexible regulatory environments risk paralyzing decentralized innovation, inadvertently reinforcing the market hegemony of tech giants who possess the capital bandwidth to absorb immense compliance costs. Consequently, the global literature confirms that an uncalibrated transplantation of Western-centric algorithmic regulations into developing economies would likely obliterate the competitive viability of MSMEs.

Juxtaposed against this robust international discourse, domestic Indonesian legal scholarship remains conceptually fragmented and methodologically stagnant. Contemporary analyses by Anggono et al., and Gumati correctly diagnose the overarching friction between digital disruption, state sovereignty, and domestic social welfare.[20,21] Yet, they fail to operationalize these macroeconomic anxieties into a concrete, enforceable framework for algorithmic accountability. Furthermore, local scholars continuously rely on classical, abstract jurisprudential tenets—such as Mochtar Kusumaatmadja's development law (*hukum pembangunan*) and Satjipto Rahardjo's progressive law (*hukum progresif*)—which, while philosophically resonant, lack the precise doctrinal mechanics required to pierce the algorithmic veil. This persistent reliance on indigenous socio-legal philosophy without corresponding technical operationalization creates the exact normative void this article addresses.

Table 1. Mapping the Global vs. Domestic Literature Gap on AI Regulation and MSMEs

Scope of Literature	Key Doctrinal Focus	Limitations Regarding MSME Protection	The Identified Normative Void (This Research)
Global Algorithmic Accountability (Gerchick et al., 2025; Kashaka, 2026; Yeung, 2018)	Critique of platform capitalism; systemic auditing; obsolescence of individual liability.	Heavily focused on public sector algorithms or multinational consumer protection; lacks specific MSME commercial context.	Formulating a Distributed Accountability Framework specifically tailored to the asymmetric bargaining power of MSMEs in the Global South.
Global Regulatory Compliance (Kauffman et al., 2026; Stampernas & Lambrinoudakis, 2025)	Efficacy of the EU AI Act; risk-based frameworks; compliance preparedness.	Demonstrates that *ex-ante* EU mandates suffocate small enterprises, but offers few viable alternative legislative models.	Calibrating the risk-based approach to ensure proactive legal protection without stifling domestic technological innovation.

[20] Anggono et al., "Interrogating the Legal Foundations of Digital Transformation: Balancing Economic Growth and Social Welfare in the Era of Disruption."
[21] Gumati, "Digital Sovereignty or Regulatory Overreach? The Case of Indonesia's Platform Registration Policy."

Domestic Digital Jurisprudence (Anggono et al., 2025; Gumati, 2024; Kusumaatmadja; Rahardjo)	Digital sovereignty; social welfare; abstract progressive/development law.	Fails to operationalize philosophical tenets into technical mechanisms capable of regulating the algorithmic "black box."	Bridging high-level state welfare theory with concrete algorithmic transparency and risk-liability mandates in positive law.

As synthesized in Table 1, the jurisprudential lacuna is undeniable. While the global discourse effectively dismantles the theoretical legitimacy of platform hegemony, and domestic scholarship correctly laments the erosion of social welfare, neither provides a pragmatic, operationalized legal architecture for MSMEs navigating predatory algorithmic ecosystems. To rectify this normative void, it is imperative to first deconstruct the foundational legal fiction that facilitates and exacerbates this structural crisis: the illusion of freedom of contract within the digital milieu.

2. Normative Asymmetry and the Illusion of Freedom of Contract in the Digital Milieu

The foundational premise of contemporary digital commerce is increasingly dictated by unilateral algorithmic governance rather than bilateral negotiation. To participate in the modern economy, Micro, Small, and Medium Enterprises (MSMEs) are structurally compelled to integrate third-party artificial intelligence platforms into their operations. This integration, however, is exclusively governed by rigid, non-negotiable standard form contracts—classic contracts of adhesion presented on a strict "take it or leave it" basis. This dynamic generates a profound normative asymmetry characterized by two intersecting vectors: an absolute disparity in bargaining power and a severe deficit of information regarding the proprietary, "black-box" mechanics of the AI systems they are adopting.

Under classical Indonesian contract law, Article 1320 of the Civil Code (*KUHPerdata*) codifies the essential elements of a valid contract, deeply anchored in the presumption of *consensus ad idem* and mutual, uncoerced consent.[22] Traditional jurisprudence, notably articulated by Subekti, operates on the assumption of a level playing field where parties negotiate rights and obligations symmetrically.[23] However, this classical doctrine must be aggressively confronted with the empirical realities of platform capitalism. As forcefully

[22] Raden Subekti and Raden Tjitrosudibio, *Kitab Undang-Undang Hukum Perdata* (Jakarta: PT. Pradnya Paramita, 2013). Article 1320.
[23] Subekti, *Hukum Perjanjian*, 4th ed. (Jakarta: PT. Intermasa, 2001). Page, 17-20.

critiqued in contemporary scholarship by Kashaka, tech conglomerates deliberately engineer these normative asymmetries not merely for operational efficiency, but to systematically externalize risk.[24] The doctrine of "freedom of contract" is thus weaponized; platform operators utilize standard form contracts to harvest vast economic yields from data processing while deploying broad exculpatory clauses to insulate themselves entirely from downstream algorithmic anomalies—such as predictive mispricing, flawed credit scoring, or discriminatory market suppression. In this algorithmic milieu, the orthodox concept of freedom of contract is functionally dead, serving only as a jurisprudential fiction to legitimize the shifting of operational risk onto the most vulnerable economic actors.

This structural exploitation directly precipitates severe statutory and ethical violations, most notably concerning data governance. When MSMEs are coerced into these asymmetrical agreements, they inadvertently surrender comprehensive rights to their proprietary and customer data, feeding the platform's voracious machine learning models. This systemic data extraction violently collides with the fundamental principles of *data minimization* and *purpose limitation* mandated by Indonesia's Personal Data Protection Law (Law No. 27 of 2022).[25] AI platforms exploit the ambiguity within these standard contracts by aggregating MSME data for opaque algorithmic profiling and unconstrained secondary uses. When these proprietary models deploy biased parameters, they generate discriminatory market classifications that severely prejudice MSMEs, actively dismantling the foundational architecture of Rawlsian substantive justice. John Rawls's imperative that social and economic inequalities must be arranged to the greatest benefit of the least advantaged is entirely subverted when algorithmic governance is deployed to consolidate the hegemony of tech monopolies at the expense of local enterprises.[26]

Ultimately, classical contract law is hopelessly ill-equipped to protect vulnerable legal subjects against the exogenous shocks of algorithmic governance. By clinging to the anachronistic illusion of contractual parity, the current legal framework facilitates systemic disparity and predatory data extraction. To dismantle this normative asymmetry, the law must evolve beyond formalistic interpretations of consent,

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[24] Kashaka, "Algorithmic Governance in Public Services: Accountability and Bias Audits."
[25] Republic of Indonesia, "Law No. 27 of 2022 on Personal Data Protection" (2022).
[26] John Rawls, *A Theory of Justice*, 1st ed. (Cambridge: Harvard University Press, 1971). Page, 52–57, 65–73.

recognizing that without the institutionalization of distributed accountability, freedom of contract is merely the freedom of the powerful to exploit the weak.

3. The Regulatory Vacuum: A Critical Audit of Indonesia's Soft Law on AI

The pervasive deployment of artificial intelligence within Indonesia's commercial ecosystem has precipitously outpaced the evolution of its statutory safeguards, culminating in a perilous jurisprudential vacuum. At present, the Indonesian legal architecture lacks a binding, prescriptive liability regime to govern algorithmic accountability and strictly apportion culpability among AI developers, deployers, and platform operators. The prevailing statutory matrix is anchored merely by generalized digital governance statutes—namely, Law No. 1 of 2024 (the Second Amendment to the Electronic Information and Transactions Law)[27]—and supplemented by the Ministry of Communication and Informatics Circular Letter No. 9 of 2023 concerning Artificial Intelligence Ethics (SE Menkominfo No. 9/2023).[28]

When critically auditing this regulatory baseline, a profound structural tension emerges within the contemporary literature. Gumati rightfully issues a jurisprudential warning against "regulatory overreach," arguing that heavy-handed, state-centric digital sovereignty mandates can easily backfire by stifling domestic technological innovation and alienating exogenous investment.[29] However, this caution must be aggressively counterbalanced by the doctrinal imperatives articulated by Anggono et al., who contend that a sustainable digital transformation fundamentally requires an equilibrium between uninhibited economic growth and baseline social welfare protection.[30] By relegating AI governance entirely to the realm of unenforceable "ethical guidelines" (soft law), the state effectively grants multinational tech conglomerates *de facto* legal immunity. This regulatory abdication leaves structurally vulnerable MSMEs utterly defenseless against predictive miscalculations, discriminatory profiling, and algorithmic bias. Consequently, Indonesia currently languishes in a regulatory purgatory: paralyzed between the inadequacy of toothless soft law and the paralyzing fear of innovation-killing overregulation. To resolve this impasse, Nonet and Selznick's theory of *Responsive Law*

[27] Republic of Indonesia, "Law No. 1 of 2024 on the Second Amendment to Law No. 11 of 2008 on Electronic Information and Transactions" (2024).
[28] Republic of Indonesia, "Circular Letter of the Minister of Communication and Informatics No. 9 of 2023 on the Ethics of Artificial Intelligence" (2023).
[29] Gumati, "Digital Sovereignty or Regulatory Overreach? The Case of Indonesia's Platform Registration Policy."
[30] Anggono et al., "Interrogating the Legal Foundations of Digital Transformation: Balancing Economic Growth and Social Welfare in the Era of Disruption."

must be operationalized. The jurisprudence must evolve, demanding a definitive doctrinal pivot from voluntary ethical platitudes toward mandatory, risk-based statutory compliance (hard law) that adapts dynamically to technological shocks.[31]

A granular doctrinal audit of SE Menkominfo No. 9/2023 exposes seven fatal normative deficiencies that preclude it from serving as a viable protective mechanism for MSMEs in the digital milieu.[32] The Circular inherently fails to transition abstract ethical values into actionable legal duties. These systemic vulnerabilities are systematically deconstructed in Table 2 below.

Table 2. Critical Audit of Regulatory Gaps in SE Menkominfo No. 9/2023

Existing Provision / Regulatory Reality (SE No. 9/2023)	Risk Impact on MSMEs (The Normative Void)	Recommended Legal Necessity (Hard Law Transition)
1. Absence of a Comprehensive Liability Regime: Relies purely on voluntary ethical compliance without binding legal sanctions.	Tech conglomerates operate with impunity; MSMEs cannot litigate against algorithmic negligence due to a lack of statutory footing.	Codification of a binding algorithmic liability statute superseding general tort and contract law.
2. No Risk-Classification Matrix: Treats all AI deployment homogeneously, regardless of socioeconomic impact.	Low-risk AI (e.g., chat filters) and high-risk AI (e.g., credit scoring) are treated equally, exposing MSMEs to unmitigated financial harm.	Implementation of a tiered, risk-based regulatory framework proportional to the potential for economic disruption.
3. Ketiadaan (Absence of) Redress Mechanisms: Fails to establish dedicated indemnification or compensation routes.	MSMEs suffering financial damages from AI hallucinations or biased market suppression have no accessible avenue for financial recovery.	Establishment of a mandatory algorithmic dispute resolution and rapid-indemnification mechanism.
4. No Codified "Right to Explanation": Emphasizes general transparency but does not grant users the right to interrogate specific automated decisions.	MSMEs subjected to arbitrary platform demotions or automated loan denials remain trapped outside the algorithmic "black box."	Statutory codification of the "Right to Explanation" for any automated decision significantly impacting an MSME's legal or economic status.
5. Lack of MSME-Specific Safeguards: General ethical guidelines apply to all actors, ignoring structural and capital disparities.	Symmetrical rules applied to asymmetrical actors inherently favor multinational tech monopolies, exacerbating systemic disparity.	Institutionalization of asymmetric protections, granting heightened legal safeguards for vulnerable MSME end-users.
6. Over-reliance on Classical Contract Law: Leaves AI dispute resolution to be governed by standard form contracts.	Forces MSMEs to navigate disputes through heavily skewed, exculpatory *take-it-or-leave-it* platform agreements.	Statutory invalidation of broad exculpatory clauses within AI service contracts involving MSMEs.
7. No Mandatory Algorithmic Auditing: Does not require third-	Discriminatory profiling and data minimization violations	Mandating periodic, independent algorithmic bias audits for high-

[31] Philippe Nonet and Philip Selznick, *Law and Society in Transition: Toward Responsive Law* (Routledge, 2017), 73-94. https://doi.org/10.4324/9780203787540.
[32] Republic of Indonesia, Circular Letter of the Minister of Communication and Informatics No. 9 of 2023 on the Ethics of Artificial Intelligence.

party bias audits or algorithmic impact assessments.	persist undetected, directly violating substantive justice.	risk AI systems deployed in commercial ecosystems.

As synthesized in Table 2, the current doctrinal reality is untenable; voluntary ethical guidelines are categorically insufficient to discipline the opaque algorithmic architecture of modern platform capitalism. Relegating MSME protection to unenforceable soft law constitutes a failure of the state's mandate to guarantee legal certainty and equitable economic development. To bridge this regulatory chasm without descending into innovation-stifling overreach, the Indonesian legislature must construct a bespoke, binding regulatory matrix. This necessitates the institutionalization of the "AI Protection for MSMEs Framework," which fundamentally reimagines algorithmic liability through the advanced jurisprudential lens of distributed accountability.

4. The "AI Protection for MSMEs Framework": Institutionalizing Distributed Accountability

The foundational jurisprudential crisis within the contemporary digital economy centers on the attribution of liability: when an autonomous algorithmic system hallucinates, executes biased predictive analytics, or generates discriminatory market suppression, who is legally culpable? Classical tort law, anchored in absolute fault-based liability (*culpa*), collapses under the weight of this inquiry. It inherently seeks a singular, identifiable tortfeasor, fundamentally misapprehending the opaque, multi-nodal, and exogenous reality of modern algorithmic architecture. Consequently, when tech conglomerates deploy flawed AI systems, traditional legal mechanics frequently misdirect culpability, unfairly burdening the MSME end-user simply because they are the terminal point of the transaction.

To resolve this normative asymmetry, this article posits a radical departure from classical privity and fault-based paradigms, proposing the institutionalization of *distributed accountability*. As theoretically anchored by Gerchick et al., the opacity of machine learning systems dictates that legal liability can no longer be predicated on the fiction of end-user control.[33] Instead, liability must rigorously and proportionally trace the locus of algorithmic control. Under the doctrine of distributed accountability, culpability is not a monolithic burden but a divisible spectrum, strictly correlated with an actor's technical dominion over the system, their capacity to foresee and mitigate algorithmic

[33] Gerchick et al., "Auditing the Audits: Lessons for Algorithmic Accountability from Local Law 144's Bias Audits."

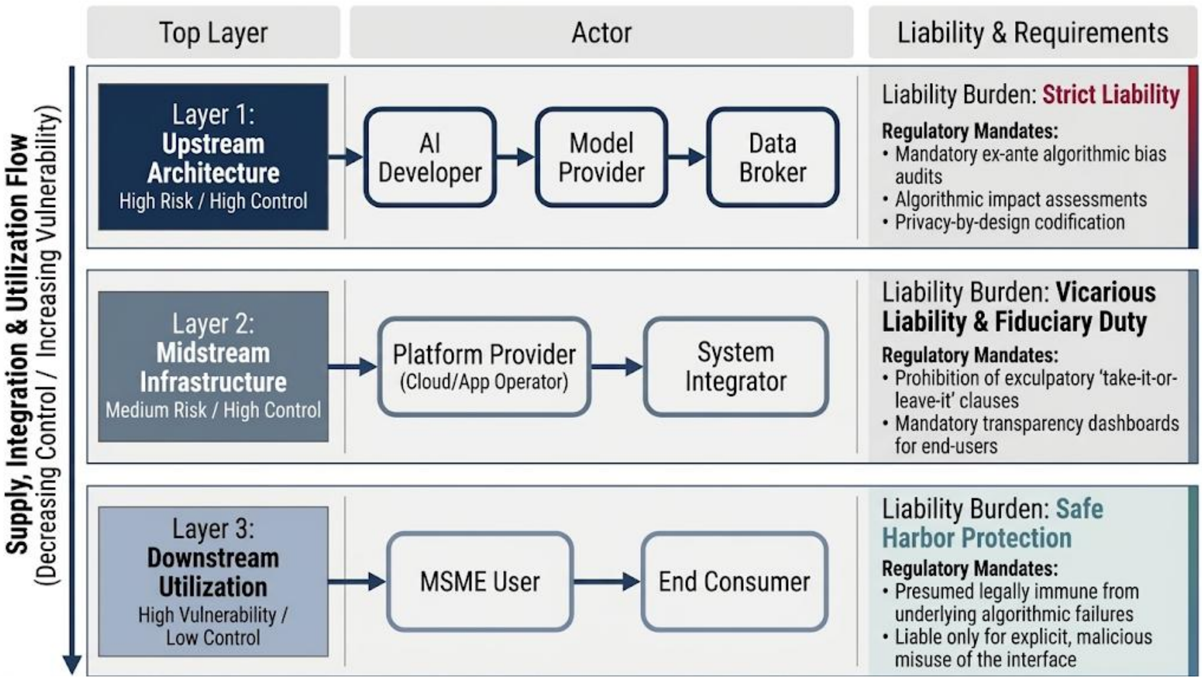
anomalies, and their proportionate extraction of economic utility from the data processing.

Operationalizing this jurisprudential shift requires the construction of a bespoke regulatory architecture: the "AI Protection for MSMEs Framework." This framework systematically deconstructs the algorithmic supply chain, apportioning binding statutory obligations across eight distinct loci of control:

a. AI Developers: Bear absolute strict liability for foundational algorithmic architecture and the mitigation of systemic, codebase-level bias.
b. Model Providers: Statutorily mandated to ensure training data integrity and execute mandatory algorithmic impact assessments prior to market deployment.
c. Platform Providers (Tech Conglomerates): Must guarantee transparent user interfaces and bear vicarious liability for the weaponization of asymmetrical standard-form contracts.
d. Data Providers/Brokers: Held liable for the provenance, consent verification, and sanitization of the datasets fueling the AI ecosystem.
e. System Integrators: Responsible for the safe deployment and interoperability of the AI software within specific, localized commercial networks.
f. MSME Users: Shielded by a legal presumption of non-liability for underlying algorithmic mechanics, bearing responsibility solely for intentional misuse or gross negligence in data input.
g. Consumers: Guaranteed rapid, out-of-court indemnification mechanisms directly from the upstream platform, bypassing the MSME intermediary.
h. Government/Regulators: Tasked with continuous algorithmic auditing and enforcing the risk matrix, shifting from passive observers to active market referees.

Crucially, the viability of this framework relies on the precise calibration of its regulatory intensity. While the European Union's AI Act provides a masterclass in risk-based categorization, uncritical legislative transplantation would be fatal to developing economies. Synthesizing the critical insights of Stampernas & Lambrinoudakis and Kauffman et al., it is evident that draconian *ex-ante* compliance mandates inherently suffocate small enterprises.[34,35] The EU AI Act's stringent documentation, auditing, and conformity assessments impose compliance overheads that threaten to paralyze decentralized innovation. Therefore, this proposed framework selectively transplants the risk-based DNA of the EU matrix but explicitly calibrates it for the Global South. By applying Benthamite utilitarianism—seeking the maximum social utility of technological innovation while mitigating the maximum economic harm of systemic bias—the framework strategically redirects the regulatory burden. It aggressively regulates upstream, capital-dense actors (developers and platform providers) through mandatory bias audits and strict liability, while systematically deregulating and shielding downstream, capital-poor actors (MSMEs) from paralyzing compliance costs.

Figure 1. Schema of "Distributed Accountability" in the MSME AI Ecosystem



Ultimately, the "AI Protection for MSMEs Framework" initiates a profound evolution in digital jurisprudence. By abandoning the reactive, post-harm litigation models of classical tort and contract law, it institutionalizes a doctrine of *compliance by design*. Through distributed accountability, the law no longer waits for an exogenous technological shock to ravage a vulnerable enterprise; instead, it proactively embeds

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34 Stampernas and Lambrinoudakis, "A Framework for Compliance with Regulation (EU) 2024/1689 for Small and Medium-Sized Enterprises."
35 Kauffman et al., "EU AI Act Regulation: A Study of Non-European Union Manufacturers' Compliance Preparedness."

equity, transparency, and calibrated liability directly into the legal architecture of the digital economy.

C. CONCLUSION

The prevailing Indonesian jurisprudential architecture, anchored in classical fault-based liability and unenforceable ethical soft law, is fundamentally inadequate to shield Micro, Small, and Medium Enterprises (MSMEs) from the normative asymmetry and systemic disparity inherent in modern algorithmic governance. To rectify the weaponization of contractual freedom within the digital milieu, the legislative framework must pivot from reactive legal paradigms toward a proactive statutory matrix capable of absorbing these exogenous technological shocks. Consequently, this article advances the "AI Protection for MSMEs Framework," which institutionalizes the doctrine of distributed accountability by apportioning stringent compliance mandates upstream to capital-dense tech conglomerates while statutorily immunizing downstream MSME end-users from algorithmic anomalies. Ultimately, by embedding compliance-by-design directly into positive law, this targeted regulatory architecture ensures that digital transformation serves as an equitable engine for domestic economic empowerment rather than a conduit for monopolistic platform hegemony.

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