

CORPORATE GOVERNANCE IN THE AGE OF GENERATIVE AI: A LEGAL PERSPECTIVE

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Abstract

The emergence of Artificial Intelligence (AI) technology has brought significant changes to corporate governance, presenting various opportunities and challenges. The implementation of AI in corporate governance can have a significant impact on the level of governance and create conditions that support better decision-making. However, the use of AI also has negative impacts such as data privacy violations, gender discrimination, reputational loss, and compliance issues. Additionally, there are legal challenges in the application of AI, including the legality of data utilization, accountability, fairness, transparency, security, and data privacy. Through a systematic literature review, including the analysis of articles, legal documents, and relevant regulations, this study aims to analyze the impact of Generative AI on corporate governance, identify potential legal challenges, and investigate relevant legal perspectives in addressing these challenges..

Keywords: *Generative AI, Legal Perspective Regulations, Corporate Governance*

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INTRODUCTION

The digital era demands businesses to enhance service effectiveness and be ready to adapt to various types of faster changes. In this context, several companies have utilized the latest technology to achieve performance excellence and compete in the business world. One significant advancement is Artificial Intelligence (AI), which has attracted primary attention from researchers and industries¹. The integration of artificial intelligence, the development of new business models, and competitive advantages in

¹ Fotis Kitsios and Maria Kamariotou, ‘Artificial Intelligence and Business Strategy towards Digital Transformation: A Research Agenda’, *Sustainability*, 13.4 (2021), 2025 <<https://doi.org/10.3390/su13042025>>.

business and IT strategies have tremendous potential². The ability of AI to process information on a massive scale exceeds human capacity. Therefore, AI can provide added value by reducing risks and costs in corporate innovation. Additionally, AI helps companies face fierce business competition and rapid technological developments. Therefore, AI becomes a very important tool in supporting innovation and maintaining the competitiveness of companies in dynamic markets³.

Artificial Intelligence plays an important role in corporate governance. One of its crucial roles is in improving operational efficiency through business process automation, sophisticated data analysis, and accurate predictions. Moreover, AI can also identify relevant patterns in data, facilitate better decision-making, and even help recognize risks and business opportunities that may be overlooked⁴. AI's ability to provide information to corporate stakeholders can also be utilized. Using AI to analyze big data allows for the provision of information on optimal governance practices and company performance, contributing to helping investors identify potential risks or difficulties in the companies they invest in. Additionally, AI can be used to evaluate the effectiveness of board meetings, support board assessments, and provide support in formulating corporate strategies and corporate secretary functions⁵.

Although there are opportunities to enhance efficiency and performance through the application of artificial intelligence, the increasing dependence on AI, both in government and the private sector, raises concerns about the negative implications for human dignity, democratic accountability, and the basic principles of a free society⁶. The threats that may arise include discriminatory behavior, privacy and data breaches, fraudulent activities, and even the existence of 'malevolent AI.' These potential impacts emphasize the need for serious attention to the risks and impacts that may occur in the implementation of AI in corporate governance⁷.

² Nikolaos-Alexandros Perifanis and Fotis Kitsios, 'Investigating the Influence of Artificial Intelligence on Business Value in the Digital Era of Strategy: A Literature Review', *Information*, 14.2 (2023), 85 <<https://doi.org/10.3390/info14020085>>.

³ Naomi Haefner and others, 'Artificial Intelligence and Innovation Management: A Review, Framework, and Research Agenda', *Technological Forecasting and Social Change*, 162 (2021), 120392 .

⁴ Nicholas Kluge Corrêa and others, 'Worldwide AI Ethics: A Review of 200 Guidelines and Recommendations for AI Governance', *Patterns*, 4.10 (2023), 100857 <<https://doi.org/10.1016/j.patter.2023.100857>>.

⁵ Iris H-Y Chiu and Ernest Wk Lim, *Technology vs Ideology: How Far Will Artificial Intelligence and Distributed Ledger Technology Transform Corporate Governance and Business?*, 2020 <<https://www.rewi.hu-berlin.de/de/lf/lb/bcm/team/jan-erik-schirmer/publikationen->>.

⁶ Eileen Donahoe and Megan MacDuffee Metzger, 'Artificial Intelligence and Human Rights', *Journal of Democracy*, 30.2 (2019), 115–26 <<https://doi.org/10.1353/jod.2019.0029>>.

⁷ Eleanore Hickman and Martin Petrin, 'Trustworthy AI and Corporate Governance: The EU's Ethics Guidelines for Trustworthy Artificial Intelligence from a Company Law Perspective', *European Business Organization Law Review*, 22.4 (2021), 593–625 <<https://doi.org/10.1007/s40804-021-00224-0>>.

This research is based on various relevant laws and principles, such as the GDPR for Personal Data Protection in the European Union, CCPA for Consumer Protection in California, the ITE Law of Indonesia, the Copyright Law of Indonesia, and the principles of Corporate Governance in the Limited Liability Company Law of Indonesia. Additionally, the analysis also considers Labor Law and Antitrust Law to understand the implications of AI usage in corporate decision-making and to ensure compliance with applicable regulations.

In the current corporate governance landscape, the introduction of generative artificial intelligence offers both unprecedented opportunities and challenges, especially in terms of legal aspects. Generative AI, with its capacity to generate new content and make intricate decisions, has the potential to transform corporate decision-making processes. However, this technological progress also raises significant legal issues related to responsibility, transparency, and ethical considerations. As businesses increasingly depend on AI systems for strategic decision-making, comprehending the legal ramifications becomes crucial. This cutting-edge analysis delves into the intersection of corporate governance and generative AI, aiming to offer insights into how current legal frameworks can evolve to ensure effective governance in this modern era.

In the contemporary landscape of corporate governance, the emergence of generative artificial intelligence presents both unprecedented opportunities and challenges, particularly from a legal perspective. The novelty of generative AI lies in its ability to create new content and make complex decisions that surpass human capacity, potentially revolutionizing corporate decision-making processes. However, this technological advancement also raises critical legal questions regarding accountability, transparency, and ethical considerations. As companies increasingly rely on AI systems for strategic decision-making, understanding the legal implications becomes paramount. This state-of-the-art analysis explores the intersection of corporate governance and generative AI, aiming to provide insights into how existing legal frameworks can adapt to ensure effective governance in this new era.

This literature review aims to analyze the impact of Generative AI on corporate governance, identify potential legal challenges, and investigate relevant legal perspectives in addressing these challenges. This review aims to offer a more profound understanding of how Generative AI is used, its impact, and the challenges it poses in corporate governance. Additionally, it seeks to contribute new scholarly insights by presenting relevant and current solutions. Emphasizing the significance of identifying research problems and objectives highlights the pressing relevance of this research in tackling the evolving landscape of corporate governance.

RESEARCH METHODS

This study uses the Systematic Literature Review (SLR) method to find and evaluate scientific literature related to corporate governance in the era of generative AI from a legal perspective. Literature searches are conducted through major scientific databases such as ScienceDirect, Google Scholar, SpringerLink, and IEEEExplore using keywords such as "corporate governance," "generative AI in corporate governance," and "legal perspective of generative AI on corporate governance".

Inclusion and exclusion criteria are applied to ensure the selection of papers that align with the research focus. Selected papers must be relevant to the topic, have a legal

perspective, and have been published within a specific timeframe. This approach ensures that the literature analyzed reflects the latest advancements in the implementation and regulation of corporate governance in the era of generative AI.

Qualitative research is conducted to evaluate the effects of implementing generative AI in corporate management structures and to explain the related legal aspects. Qualitative methods are chosen because they allow for a deeper interpretation of complex phenomena and enable the identification of detailed and contextual information. Case studies and document analysis are used as means to support a more in-depth analysis.

Qualitative research is a methodological approach used in social sciences and other fields to gather non-numerical data, such as opinions, attitudes, and behaviors, to understand complex phenomena. This approach aims to explore and understand the meanings, experiences, and perspectives of individuals or groups. Qualitative research is often used to generate hypotheses, explore new topics, or gain a deeper understanding of a particular issue. It typically involves methods such as interviews, observations, and content analysis, and focuses on the quality of the data rather than its quantity. This approach allows researchers to capture the richness and depth of human experiences and provides insights that quantitative methods may not uncover.

RESULT AND DISCUSSION

The Impact of Generative AI on Corporate Governance

Artificial intelligence holds great potential in supporting business operations, such as strategic planning, marketing, and customer support. This is a key consideration for business leaders looking to enhance company performance⁸. In a study conducted by⁹ it is evidenced that the implementation of artificial intelligence positively affects the level of corporate governance, while increased use of artificial intelligence has the potential to enhance the quality of corporate governance. In the context of corporate governance, artificial intelligence technology significantly enhances the balance of important information, creating conditions that support better decision-making and improved corporate governance. Thus, artificial intelligence technology has a positive and effective impact on corporate governance through the enhancement of information balance.

Examples of AI good practices in corporate governance include automated compliance monitoring, where AI is used to monitor regulatory changes and ensure compliance with relevant laws; predictive analytics for trend forecasting, where AI

⁸ Dario Gil and others, 'AI for Management: An Overview', in *The Future of Management in an AI World* (Cham: Springer International Publishing, 2020), pp. 3–19 <https://doi.org/10.1007/978-3-030-20680-2_1>.

⁹ Xiuli Cui, Bo Xu, and Amar Razzaq, 'Can Application of Artificial Intelligence in Enterprises Promote the Corporate Governance?', *Frontiers in Environmental Science*, 10 (2022) <<https://doi.org/10.3389/fenvs.2022.944467>>.

algorithms analyze data to identify trends and patterns that may impact the company's performance; board decision support, where AI provides insights to board members to support their decision-making process; risk assessment, where AI analyzes data to identify potential risks to the company, such as financial risks or cybersecurity threats; and ethical AI governance frameworks, which establish frameworks for the responsible development and use of AI within the organization, ensuring transparency, fairness, and accountability in AI decision-making processes. These practices can help improve corporate governance by enhancing efficiency, transparency, and risk management within the organization.

In addition to its benefits, the use of Artificial Intelligence (AI) in corporate governance also has negative impacts. One example is the risk of irresponsible AI use, which can harm corporate governance through violations such as data privacy and financial security¹⁰. Another example is the presence of bias in training data, which can lead to gender discrimination in recruitment applications. Other negative impacts include reputational loss, as experienced by Microsoft's Tay chatbot, which used provocative and racial language. Additional risks arise from the use of third-party AI tools that are not transparent, which can lead to bias and compliance issues. Hasty AI deployment and lack of technical understanding can also lead to unforeseen problems, such as lack of quality control and difficulties in scaling AI models to industry standards. Therefore, it is important to implement strong governance controls and ethical principles in the development and use of AI to mitigate these risks.

Three key conditions have been identified to oversee artificial intelligence (AI) systems: industry observability, public inspectability, and technical modifiability. Industry observability refers to a general understanding of the AI industry, including the interaction between the applications used by users and the supporting computational infrastructure¹¹. Public inspectability encompasses a thorough technical examination of the underlying technology of generative artificial intelligence, particularly the basic models on which it is based. Technical modifiability refers to the ability to modify these basic models. Three components of the generative AI system can be observed, as shown in Figure 1.

¹⁰ Ray Eitel-Porter, 'Beyond the Promise: Implementing Ethical AI', *AI and Ethics*, 1.1 (2021), 73–80 <<https://doi.org/10.1007/s43681-020-00011-6>>.

¹¹ Fabian Ferrari, José van Dijck, and Antal van den Bosch, 'Observe, Inspect, Modify: Three Conditions for Generative AI Governance', *New Media & Society*, 2023 <<https://doi.org/10.1177/14614448231214811>>.

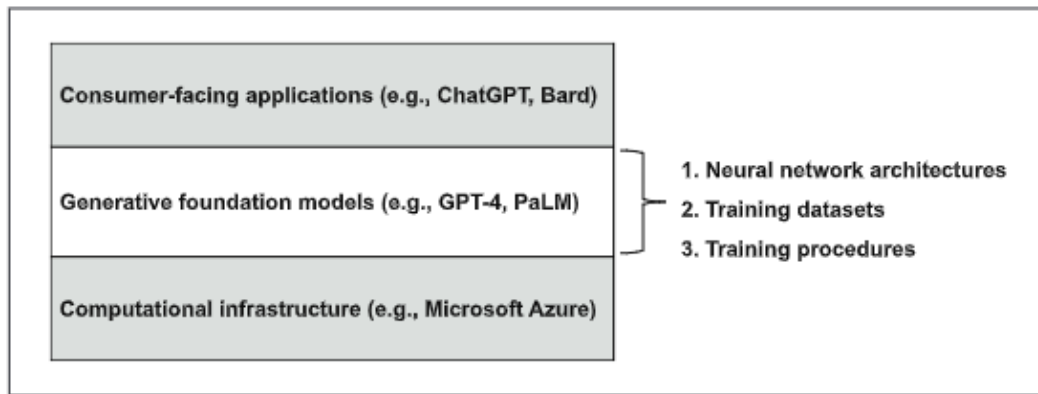


Figure 1. Observable components of generative AI system

In Figure 1, there is an artificial intelligence application that interacts directly with consumers, such as ChatGPT and Brad. This application relies on a foundational generative model underneath to carry out its daily operations. The second part depicts a highly resource-intensive computational process, requiring significant processing power. High-profile foundational models like GPT-4 serve as the primary defense in the artificial intelligence ecosystem, where service providers leverage the power of this platform to control the digital market. The third part of the figure includes computing resource providers, such as cloud computing services, data center capacity, and energy supply, needed to run these models.

The research conducted by explains that the purpose of regulating artificial intelligence governance is to ensure the sustainability of AI technology within an organization and to support the organization's strategies and goals. AI governance regulation also aims to manage risks, control interactions between humans and AI, and ensure compliance with regulations related to AI use. Additionally, AI governance aims to improve company performance and creativity, as well as maximize the value of data, technology, human skills, and other organizational elements. Thus, AI governance plays a crucial role in ensuring that the use of AI within an organization provides significant added value.

Legal Challenges in the Implementation of AI in Corporate Governance

One paradigm-shifting innovation is artificial intelligence (AI). The presence of AI-powered machines is believed to have a negative impact on various social structures within society. Therefore, the higher the level of intelligence of a system, the greater the likelihood of it engaging in actions that could have legal consequences¹². In an article written by Samuelson¹³, it is mentioned that one of the legal challenges in the use of generative AI is the availability of training data involving copyrighted works, as well as the output generated from this training data. For example, in the case of *Doe v. GitHub*,

¹² Eka Nanda Ravizki and Lintang Yudhantaka, 'Artificial Intelligence Sebagai Subjek Hukum: Tinjauan Konseptual Dan Tantangan Pengaturan Di Indonesia', *Notaire*, 5.3 (2022), 351–76 <<https://doi.org/10.20473/ntr.v5i3.39063>>.

¹³ Pamela Samuelson, 'Legal Challenges to Generative AI, Part I', *Communications of the ACM*, 66.7 (2023), 20–23 <<https://doi.org/10.1145/3597151>>.

GitHub, Microsoft, and OpenAI faced legal action from a group of software developers. They were accused of violating the law by using open-source code published on the GitHub site as training data for their generative AI system.

Other research conducted by Cath¹⁴ highlights legal challenges related to the use of artificial intelligence (AI), including the need to ensure accountability, fairness, and transparency in AI management. This indicates the necessity of a more inclusive and holistic approach to regulating AI use, which goes beyond considerations of fairness, accountability, and transparency. Additionally, it is important to integrate fundamental values, such as human rights principles, into the AI management framework.

Furthermore, an article by Wu¹⁵ also discusses the legal challenges associated with the implementation of artificial intelligence (AI). The article explains that these challenges include aspects of data security and privacy, the reliability of AI systems, transparency, accountability, and fairness in treatment of individuals. These principles have gained widespread acceptance among researchers, practitioners, and regulators globally in the realm of AI. However, their practical application faces legal barriers in crafting comprehensive technical frameworks and resolving ethical quandaries inherent in AI models, algorithms, and products. Moreover, establishing regulations and standards concerning AI ethics on corporate, group, national, and international scales poses a complex legal hurdle. This endeavor demands the infusion of ethical principles into AI systems and products within the AI industry and community, necessitating cooperation among legal professionals, sociologists, and other pertinent fields to navigate the ethical ramifications of AI across diverse social, cultural, and political landscapes.

The Role of Stakeholders in Managing the Risks of AI Utilization

Ethics plays a crucial role in ensuring that policies related to artificial intelligence can optimize potential while reducing associated risks¹⁶. In November 2021, UNESCO proposed AI Ethics recommendations that encompass several important principles. Among these, the use of AI methods should be proportional and non-discriminatory, avoid risks and security issues, promote fairness and equal access, conduct ongoing evaluations of AI impacts, protect privacy and data, oversee ethical and legal responsibilities at every stage of the AI system lifecycle, explain AI algorithms transparently, ensure ethical responsibility throughout AI use, enhance public

¹⁴ Corinne Cath, 'Governing Artificial Intelligence: Ethical, Legal and Technical Opportunities and Challenges', *Philosophical Transactions of the Royal Society A: Mathematical, Physical and Engineering Sciences*, 376.2133 (2018), 20180080 <<https://doi.org/10.1098/rsta.2018.0080>>.

¹⁵ Wenjun Wu, Tiejun Huang, and Ke Gong, 'Ethical Principles and Governance Technology Development of AI in China', *Engineering*, 6.3 (2020), 302–9 <<https://doi.org/10.1016/j.eng.2019.12.015>>.

¹⁶ Mariarosaria Taddeo and Luciano Floridi, 'How AI Can Be a Force for Good', *Science*, 361.6404 (2018), 751–52 <<https://doi.org/10.1126/science.aat5991>>.

understanding of AI technology through education, and collaborate among stakeholders to ensure that AI benefits are enjoyed fairly by all ¹⁷.

Policies proposed by the United Nations (UN), the European Union (EU), and the World Economic Forum regarding the use of Artificial Intelligence (AI) encompass various aspects. One such policy is the concept of Data Philanthropy, where the private sector shares data with the public sector for the benefit of marginalized communities. Additionally, there is an emphasis on increasing computing capacity in developing countries to facilitate AI training. To address negative environmental impacts, attention is focused on improving energy efficiency in data centers and computers, as well as developing more energy-efficient computing architectures. Collaborative efforts and responsibilities among stakeholders are prioritized to ensure sustainability and ethics in AI implementation. The formation of an appropriate governance framework aims to optimize the social, economic, and environmental benefits of AI while protecting privacy and human rights. Moreover, these policies encourage the development of AI capacity in developing countries to help alleviate poverty and inequality. Emphasis is also placed on promoting uniform regulations and standards among stakeholders to reduce risks associated with AI technology ¹⁸.

In the 2019 United States Congress, a bill related to the regulation of artificial intelligence (AI) usage was proposed, mandating companies to evaluate their automated decision-making systems regarding the risks to privacy and security of personal information, as well as the risks of decisions that may be inaccurate, unfair, or free from bias and discrimination. This bill empowers the Federal Trade Commission (FTC) to detail essential requirements in regulations. The bill applies to AI systems increasingly used by platforms to identify and counter hate speech, terrorist content, and disinformation, while demanding that platforms conduct fairness assessments of these AI systems and address imbalances found in the research ¹⁹.

Regulations in Corporate Governance and the Use of AI

In Indonesia, regulations regarding AI should focus on several key norms to ensure responsible and ethical AI development and deployment. These norms can be adopted from international AI rules and frameworks. Firstly, transparency in AI systems should be mandated, ensuring that the decision-making processes of AI are understandable and accountable. Secondly, fairness and non-discrimination should be prioritized, requiring AI systems to be free from bias and to treat all individuals equally. Thirdly, data privacy and security should be ensured, protecting individuals' personal information and

¹⁷ Natalia Díaz-Rodríguez and others, 'Connecting the Dots in Trustworthy Artificial Intelligence: From AI Principles, Ethics, and Key Requirements to Responsible AI Systems and Regulation', *Information Fusion*, 99 (2023), 101896 <<https://doi.org/10.1016/j.inffus.2023.101896>>.

¹⁸ Marie Francisco and Björn-Ola Linnér, 'AI and the Governance of Sustainable Development. An Idea Analysis of the European Union, the United Nations, and the World Economic Forum', *Environmental Science & Policy*, 150 (2023), 103590 <<https://doi.org/10.1016/j.envsci.2023.103590>>.

¹⁹ Mark MacCarthy, 'An Examination of the Algorithmic Accountability Act of 2019', *SSRN Electronic Journal*, 2019 <<https://doi.org/10.2139/ssrn.3615731>>.

preventing unauthorized access. Additionally, AI regulations should emphasize the importance of human oversight and control, ensuring that AI systems do not operate autonomously without human intervention. These norms align with international standards and frameworks, such as the EU's General Data Protection Regulation (GDPR) and the OECD's AI Principles, and can help Indonesia develop a comprehensive regulatory framework for AI.

Corporate governance, as a fundamental principle in managing a business entity, has a strong foundation in Indonesian regulations, as stipulated in Law Number 40 of 2007 concerning Limited Liability Companies. This law regulates the principle of transparency, for example, in Article 66 paragraphs (1) and (2) regarding annual reports, and Article 75 paragraph (2) which regulates the disclosure of company information in the General Meeting of Shareholders (GMS). The principle of accountability is also regulated, such as in Article 92 paragraph (1) which sets the accountability of the Board of Directors and Article 114 paragraph (1) which sets the accountability of the Board of Commissioners. The principle of responsibility is also explained in Article 74 which sets the overall responsibility of the company²⁰.

Furthermore, regulations regarding the use of Artificial Intelligence (AI) have also been a significant topic in the legal and policy realms²¹. To date, Indonesia has not yet had specific regulations governing artificial intelligence (AI). Artificial intelligence utilization across different sectors is presently governed by Law Number 11 of 2008 regarding Electronic Information and Transactions, as amended by Law Number 19 of 2016, along with Government Regulation Number 71 of 2019 regarding the Execution of Electronic Transaction Systems. However, more detailed regulations on various aspects of artificial intelligence are still in the process of legislation, including in the Draft Law on Personal Data Protection and the Draft Law on Cyber Resilience. Regulations related to the use of generative AI are governed by Law Number 28 of 2014 concerning Copyright. This law grants exclusive rights to the creator or owner of the copyright to their work. However, the law does not yet recognize artificial intelligence as a legal subject of creation entitled to copyright protection²².

Considering the limitations of the regulations mentioned regarding the use of artificial intelligence in Indonesia, adequate strategies and regulations are needed to govern this matter. As explained by Radu²³, AI policy strategies involve an ethics-centered regulatory approach, focusing on the establishment of ethical principles and

²⁰ Indah Permata Sari, *Penerapan Corporate Governance Terhadap Kinerja Perusahaan*, *Jurnal Insitusi Politeknik Ganesha Medan Juripol*, 2021, iv.

²¹ Philipp Hacker, Andreas Engel, and Marco Mauer, 'Regulating ChatGPT and Other Large Generative AI Models', in *2023 ACM Conference on Fairness, Accountability, and Transparency* (New York, NY, USA: ACM, 2023), pp. 1112–23 <<https://doi.org/10.1145/3593013.3594067>>.

²² Rayhan Syahbana Mahendra and Handar Subhandi Bachtiar, 'Analisis Hukum Lagu Ciptaan Kecerdasan Buatan Dalam Penggunaan Komersial Berdasarkan Hak Kekayaan Intelektual Di Indonesia', *Fairness and Justice: Jurnal Ilmiah Ilmu Hukum*, 21 (2023).

²³ Roxana Radu, 'Steering the Governance of Artificial Intelligence: National Strategies in Perspective', *Policy and Society*, 40.2 (2021), 178–93 <<https://doi.org/10.1080/14494035.2021.1929728>>.

normative development. Many countries are now advocating for a hybrid governance model to regulate AI, reflecting their ambition to dominate global AI development. However, some countries are still debating national priorities and future AI frameworks. In addition, AI regulation strategies include the establishment of special oversight institutions or Data Committees to oversee the adoption and implementation of AI. Typically, these supervisory bodies or AI councils are led by representatives from academia and the private sector.

An article suggests the establishment of an international AI regulatory body to develop a regulatory framework for AI technology and formulate global AI policies²⁴. The article emphasizes the urgency of establishing an international AI regulatory body because issues such as autonomous vehicles and autonomous weapons have become realities that affect international trade, politics, and conflicts. International AI regulation must meet high standards to be recognized as fair and legitimate regulators, including involving various cross-disciplinary experts in the regulatory body formation process and conducting regular consultations with various stakeholders. Thus, AI regulation requires close international cooperation and regulatory bodies capable of coordinating national regulatory efforts to prevent international tensions due to fragmented national AI policies.

CONCLUSION

The development of generative artificial intelligence technology has had a significant impact on corporate governance through improved information symmetry and decision-making. However, the use of this technology also poses risks such as privacy violations, copyright, and data security. Although generative AI offers great benefits, its use is also legally challenging. Strategic steps to address these challenges include the drafting of more specific and relevant regulations and the updating of policies in line with technological developments. The establishment of an AI regulatory body is also necessary. Further research is needed to develop more adaptive and responsive enforcement methods to address the challenges posed by the development of generative AI technology.

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²⁴ Olivia J. Erdélyi and Judy Goldsmith, 'Regulating Artificial Intelligence', in *Proceedings of the 2018 AAAI/ACM Conference on AI, Ethics, and Society* (New York, NY, USA: ACM, 2018), pp. 95–101 <<https://doi.org/10.1145/3278721.3278731>>.

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