THE LEGAL STATUS OF ARTISTIC WORKS CREATED BY GENERATIVE ARTIFICIAL INTELLIGENCE FROM THE PERSPECTIVE OF INDONESIAN COPYRIGHT LAW

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Abstract

The development of Generative Artificial Intelligence (AI) has produced new forms of artistic works that generate uncertainty within Indonesia's copyright law regime. Law Number 28 of 2014 on Copyright continues to position humans as the sole legal subjects eligible to be recognized as authors, thereby rendering works created entirely by AI unable to satisfy the requirements of originality and human authorship. The disparity between technological advancements and existing legal norms has resulted in regulatory gaps, particularly concerning the legal status of copyright holders and the scope of legal protection for generative AI based artistic works. Through normative juridical research, this study examines the necessity of legal reconstruction to accommodate this phenomenon without disregarding the foundational principles of copyright protection. The findings indicate that human intellectual contribution remains the essential basis for recognizing artistic works assisted by generative AI, while current regulations have yet to provide adequate legal certainty. Therefore, regulatory reforms that are adaptive and humanistic are required to ensure that legal protection remains relevant and equitable in the era of generative AI development.

Keywords: Generative AI, Artistic Works, Copyright, Legal Protection

INTRODUCTION

Based on Article 1 paragraph (1) of Law Number 28 of 2014 concerning Copyright hereinafter referred to as the copyright law copyright is defined as an exclusive right vested in the creator, acquired automatically based on the declarative principle as soon as a work is manifested in a tangible form, insofar as it does not contradict the limitations prescribed by statutory regulations. The exclusive rights of the creator include the rights to publish or reproduce their works in the fields of science, art, and literature, as well as rights related to copyright (Andini Setiani Umar, 2024). In addition to securing creative outputs, copyright protection also grants creators the right to utilize and transfer their rights in accordance with their preferences and economic interests. From a juridical perspective, the copyright law classifies copyright as intangible movable property. The position of copyright as a proprietary right or what is known in Dutch terminology as *Zaakelijk Recht* reflects its fundamental legal characteristics (OK Saidin, 2015).

Within the scope of copyright, various types of works are recognized, including written works, artistic works, audiovisual creations, dramatic works and choreography, photographic works, musical compositions, and recordings. However, alongside the advancement of information technology, new forms of creative works have emerged that were previously unknown. This development is particularly evident in the expanding variety of artistic works such as visual works, videos, and music created through digital technology. One notable technological advancement is the emergence of Artificial Intelligence, hereinafter referred to as "AI," namely the capability of machines designed to simulate human cognition. AI refers to the ability of a digital computer or computer-controlled robot to perform tasks commonly associated with intelligent beings (Andy Ramos, 2022). AI and intellectual property are inherently interconnected, as the intellectual property system functions as an incentive mechanism for fostering human driven innovation and creativity in the field of AI.

Copyright essentially serves to protect creative content (such as generated images and visuals, choreography, slogans, and phrases) from unauthorized use. AI is developed by modeling human cognitive processes into programmed systems capable of performing analysis and decision making akin to human reasoning. The advancement of AI technology has had significant impacts across various sectors, particularly the creative industries. With the rapid progress of information technology, generative AI has now emerged. The primary distinction between AI and generative AI lies in their capabilities and applications. Conventional AI systems are primarily used for analyzing data and making predictions, whereas generative AI goes further by creating new data resembling the data on which it was trained. One of the most rapidly developing applications of AI today is generative AI, which possesses the capability to autonomously generate artistic works in visual, musical, and textual forms. Generative AI relies on machine learning models particularly deep learning to produce new information such as text, images, audio, and recordings that closely resemble the data used in its training. Various generative AI platforms have been developed, including ChatGPT, Google Imagen 2, CapCut, Midjourney, Adobe Firefly, Microsoft Designer, and Canva.

In Indonesia, one phenomenon that captured significant public attention was the "Tung Tung Tung Sahur" meme created by a content creator known by the username @noxaasht on TikTok in early 2025. This meme combined absurd AI Generated visual characters with sound effects resembling the traditional sahur drum, resulting in a distinctive humor style that quickly went viral on social media. It soon gained widespread popularity, particularly in Indonesia and Malaysia, and spread across multiple social media platforms. Controversy arose when PT Garena Indonesia (Garena), the developer of the game Free Fire, released an in-game bundle themed "Tung Tung Tung Sahur." Officially launched on June 12, 2025, the bundle was made available for free to players upon completing certain in game missions. The issue emerged because elements of the meme were used without obtaining permission from the original creator. This prompted objections from @noxaasht as the content creator, as well as public criticism accusing Garena of disregarding copyright and ethical standards in the use of digital creative works.

This study examines the issue of regulatory insufficiency concerning the legal status of creative works generated by generative AI in Indonesia from an intellectual property law perspective. Given the normative gaps in Article 40 of the copyright law, a specific regulatory framework governing generative AI-based artistic works in Indonesia is necessary to ensure effective copyright protection. Accordingly, this research is driven by the incomplete regulation of AI generated artistic works within the copyright law. As the primary legal instrument governing copyright in Indonesia, the copyright law should ideally regulate the legal status of artwork created through generative AI to provide certainty for creators. The existing legal framework is not yet fully equipped to address the challenges posed by the use of generative AI in artistic creation.

LITERATURE REVIEW

Intellectual Property Rights (IPR) are closely related to intangible objects and serve to protect intellectual works derived from human creativity, expression, and initiative. According to W.R. Cornish, IPR is defined as "Intellectual Property Rights protect applicants of ideas and information that are of commercial value" (Cornis, D. Lewlyn et al., 2013). Meanwhile, the World Trade Organization (WTO) defines IPR as "Intellectual property rights are the rights given to persons over the creations of their minds. They usually give the creator an exclusive right over the use of his/her creation for a certain period of time." In general, the scope of intellectual property is divided into two categories: copyright and industrial property rights.

Copyright is the exclusive right of the creator that arises automatically based on the declarative principle once a work is manifested in a tangible form, without prejudice to the limitations stipulated under statutory regulations. Copyright provisions in Indonesia are governed by the copyright law. Essentially, a creator is a legal subject who independently or collectively produces a work that possesses distinctive characteristics and personal attributes. A creator holds exclusive rights over their creation, which fundamentally consist of Moral Rights and Economic Rights. A "work" is defined as any intellectual creation in the fields of science, art, and literature that is produced through inspiration, capability, thought, imagination, skill, or expertise and is expressed in a tangible form.

Protected works are enumerated in Article 40 paragraph (1) of the copyright law, covering fields of science, art, and literature. A fundamental principle in copyright law affirms that legal protection does not extend to mere ideas or concepts, but to the tangible expression of such ideas. Accordingly, a work must possess a unique form, reflect personal character, and demonstrate originality derived from the creator's creativity or intellectual capability (Charl Lewis Jogi Tambunan, 2024). Copyright protection applies only to the expression of an idea that has been fixed in a tangible form; consequently, every individual retains the legal freedom to use the information or ideas contained within a published work. Jakob Sumardjo, in philosophy of art, explains that art is a form of communication containing symbolic meaning between the creator and the audience, and therefore functions as an expression of the human soul (Jakob Sumardjo, 2000). Technological developments have given rise to new media art

forms such as digital art, video art, and AI-based works which expand the conventional boundaries of artistic definition. Various websites and applications now enable the creation of artistic works, such as Canva, IbisPaint X, and Procreate (Rony Siswo Setiaji, 2023). Russell and Norvig further state that, in everyday life, the term AI is commonly used to describe machines (or computers) that imitate human cognitive functions associated with the human mind, such as learning and problem-solving. Contemporary AI has evolved into Generative Artificial Intelligence, a branch of AI that focuses on the ability of systems to create new content resembling human-made works, including text, images, music, and even programming code. The use of Generative AI requires prompts or initial instructions that serve as the foundation for generating outputs aligned with the desired context and objectives.

Philipus M. Hadjon emphasizes the importance of protecting citizens' rights and preventing arbitrary actions by those in power, particularly within the framework of a state governed by law. According to him, legal protection constitutes efforts to provide recognition and guarantees of human rights safeguarded by law, both through preventive mechanisms and concrete actions. Philipus M. Hadjon further asserts that an ideal rule-of-law state requires the exercise of power to be controlled through law, accompanied by mechanisms ensuring government accountability (Maria Farida Indrati, 2007). Meanwhile, Satjipto Raharjo defines legal protection as the provision of safeguards for human rights harmed by others, ensuring that the community can enjoy all rights granted by law (Satjipto Raharjo, 2000).

METHOD

This research uses normative juridical research methods. In other words, this research is based on library legal materials or secondary legal materials as the basis for research. This research also searches for literature and regulations relevant to the problem under study. Statute Approach is a method chosen by using legislation and regulations as well as a conceptual approach. The conceptual approach is an approach based on theories and perspectives developed in legal science. Theory or doctrine will provide an understanding of the relevant laws, concepts, and principles to explain the concept. The type of data collection technique uses secondary data, the type of data collection that comes from official documents, books related to the research subject, reports, theses, theses, dissertations, and laws and regulations.

RESULTS AND DISCUSSION

The emergence of artworks generated entirely by Artificial Intelligence (AI) demonstrates a widening gap between technological advancements and existing legal norms. The Dutch legal adage *"Het Recht Hinkt Achter de Feiten Aan,"* meaning that the law perpetually struggles to keep pace with societal developments, aptly reflects the current situation. Law, as a governing instrument, appears rigid and unresponsive in the face of rapidly evolving technological progress. Existing regulations have not yet anticipated, in explicit terms, the possibility of artworks being created by non-human entities. This regulatory vacuum creates legal uncertainty regarding the status of AI generated works. On the one hand, such works possess real economic and aesthetic value; on the other, they fail to meet the requirement of human authorship as mandated by the Indonesian copyright law. Consequently, legal reform (legal reconstruction) is required to address these normative deficiencies, ensuring that the principles of copyright protection remain relevant amid technological advances.

The concept of "creator" within the Indonesian copyright law refers to an individual or several individuals who independently or collectively produce a work that bears distinctive and personal characteristics. Meanwhile, a "work" is defined as any intellectual creation in the fields of science, art, and literature produced through inspiration, capability, thought, imagination, skill, or expertise expressed in a tangible form. These definitions clearly emphasize the necessity of human involvement as a fundamental prerequisite for a work to be legally recognized. Accordingly, Generative AI cannot be categorized as a creator under Indonesian positive law, as it lacks volition, moral consciousness, and legal responsibility. Generative AI is merely a tool or system operated by humans or legal entities. This concept aligns with the general doctrine of intellectual property law, which limits legal subjecthood to natural persons and legal entities. A legal subject (*rechtsubject*) plays an essential role within the legal system particularly in civil law because it possesses legal capacity and is generally understood as the holder of rights and obligations, namely humans and legal persons (Triwulan Tutik Titik, 2008).

With respect to works created within an employment relationship or under commission, the doctrine of *Work Made for Hire* recognized in jurisdictions such as the United Kingdom and the United States (Rahmadi Indra Tektona et al., 2021) is applicable. In Indonesia, this doctrine is reflected in Articles 34 and 36 of the copyright law. Article 34 provides that when a work is designed by one person but materialized and executed by another under the direction and supervision of the designer, the designer is deemed the creator. Meanwhile, Article 36 states that unless otherwise agreed, the creator and copyright holder of a work produced in an employment relationship or on commission is the party who produces the work. The primary distinction between these provisions lies in the legal

basis of the relationship and the determination of the creator as the legal subject. Article 34 emphasizes intellectual leadership and creative supervision, recognizing the designer as the creator even if the technical execution is performed by another. In contrast, Article 36 focuses on contractual or employment relationships, through which copyright may transfer based on valid agreements or employment arrangements. Although both provisions reflect the *Work Made for Hire* doctrine, Indonesian law continues to require human involvement and written agreements as the key basis for determining authorship and copyright ownership. These concepts, however, apply only where the "creator" is a human being, and thus cannot be extended to works generated entirely by AI. There exists no legal relationship or volition between AI and any party, as AI does not have legal standing as a legal subject. This illustrates the limitations of the copyright law in addressing non-human entities as creators, particularly in the context of artistic works.

On the other hand, there is ongoing discourse regarding the classification of AI generated artworks as public domain materials. The public domain refers to all creative and intellectual works that have become common property because they are not protected or no longer protected by exclusive copyright. Works in the public domain are considered part of society's cultural heritage and may be used freely and legally by anyone for any purpose without prior permission (Muh. Aldhyansah Dodhy Putra, 2020). If AI generated works are treated as public domain, users must still adhere to the terms and conditions of the platforms from which the AI generated outputs are obtained, as use of such platforms generally requires the acceptance of contractual obligations with the developers or operators of the AI system (Michael Hans et al., 2023). Nevertheless, excessive reliance on the public domain concept risks obscuring the fundamental purpose of copyright protection namely, granting exclusive rights to creators as recognition of their creativity and originality.

Article 40 paragraph (1) of the copyright law stipulates that protected works encompass creations in the fields of science, art, and literature. For a creation to be eligible for copyright protection, it must meet three criteria known as the *Standard of Copyrightability*: originality, creativity, and fixation. This means that a work must satisfy the requirement of originality, representing the authentic expression of ideas arising from the creator's mind (Raihani Latifatunnisa et al., 2024). Two essential criteria must therefore be fulfilled: the work must result from the creator's intellectual creativity, and it must be expressed in a tangible form such that it can be seen, heard, or perceived by human senses for instance, artworks themselves. Artistic works generated by Generative AI often lack the intellectual creativity of a human creator. AI operates by processing training data and algorithms to generate new outputs based on statistical patterns. As such, granting copyright protection to works fully generated by AI is difficult. However, if a human still plays a significant role for example, in conceptual design, algorithmic parameter settings, or curating the final output the work may be considered an AI-assisted creation. In such cases, the human contributor may be recognized as the creator and entitled to copyright protection due to their intellectual and creative contributions.

In the context of AI generated artworks, determining the copyright holder becomes a crucial issue. Since Generative AI cannot be recognized as a creator under Indonesian copyright law (Ni Made Laksmita Surya Gayatri et al., 2025), the exclusive rights necessarily attach to the party who creates, operates, or utilizes the AI system. Developers or users may thus hold exclusive rights over the resulting work, provided such arrangements are governed by valid contractual agreements or licenses under applicable law. The principle of legal protection, as described by Philipus M. Hadjon, is relevant to the legal status of AI generated artworks in Indonesia. Preventive legal protection may be achieved through the establishment of legislation that clarifies the legal status and rights over AI generated works, thereby preventing uncertainty and potential disputes. Copyright holders may also protect their works through registration, collective management organizations, and platform policies (such as those adopted by e-commerce and social media platforms that provide copyright safeguards). Meanwhile, repressive legal protection plays a crucial role when violations occur, such as disputes over copyright ownership between developers, users, or third parties. Extrajudicial remedies including takedown requests for unauthorized uploads on digital platforms serve as relevant enforcement mechanisms. Dispute resolution concerning copyright is regulated under the copyright law and may be pursued through alternative dispute resolution, arbitration, or litigation. Further provisions are found in Chapter V of the copyright law concerning dispute settlement.

According to Satjipto Raharjo, legal protection constitutes the provision of safeguards for human rights harmed by others, ensuring that society can enjoy all rights granted by law (Satjipto Raharjo, 2000). The state plays a vital role in protecting its citizens, and legal protection is essential for maintaining societal stability (Daffa Arya Prayoga, 2023). When applied to the legal status of AI generated artworks, Satjipto Raharjo's theory provides a philosophical foundation for assessing how law should respond to technological developments. Legal protection must aim to safeguard human rights and ensure that individuals can enjoy their rights fairly. In the context of AI generated artworks, legal protection must serve to protect the rights and interests of humans whether creators, developers, or users of Generative AI so that they do not lose rights over their creative contributions. Since AI is not

a legal subject and does not possess rights or obligations, recognition of AI generated works must remain attributed to humans who play causal roles in designing algorithms, providing instructions, or operating the system. This reflects Satjipto Raharjo's view that law must serve humanity, not vice versa (Suteki, 2015). Therefore, in responding to the phenomenon of Generative AI, Indonesian copyright law must adopt a human-centered and adaptive approach to legal protection, preventing normative gaps that may undermine the rights of human creators involved in AI-based creative processes.

CONCLUSION

Thus, the development of Generative AI in the field of art necessitates the renewal of copyright law that is adaptive to technological advancements without disregarding the human contribution within it. Indonesia's copyright law, which continues to position humans as the primary legal subjects, must clearly reaffirm the boundary between works created by humans and works produced by non-human systems in order to provide a definite legal status. Although AI is capable of mimicking creative processes, the elements of originality and moral responsibility remain inherent characteristics of human-created works that cannot be replaced by artificial intelligence. Therefore, legal protection for works generated using Generative AI must be directed toward the party who provides a genuine intellectual contribution in the creative process. In line with Satjipto Raharjo's view that the law exists for humans, the formulation of responsive and humanistic regulations becomes an urgent necessity to ensure that copyright law remains relevant and just in the era of artificial intelligence.

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