

**LEGAL REVIEW OF THE LEGALITY OF ARTIFICIAL INTELLIGENCE  
CREATIONS IN THE FRAME OF INTELLECTUAL PROPERTY RIGHTS IN  
INDONESIA**

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**ABSTRAK**

*Di era yang modern ini, banyak teknologi yang muncul dan membantu kehidupan manusia, salah satunya adalah Artificial Intelligence (AI), namun dibalik banyaknya manfaat yang dibawanya, ternyata AI juga membawa keresahan, khususnya dalam bidang Hak Atas Kekayaan Intelektual (HAKI), yang mana banyak ciptaan AI dianggap berpotensi untuk*

*melakukan pelanggaran-pelanggaran khususnya dalam bidang hak cipta seperti pemalsuan karya seni maupun pencurian karya seni. Selain itu ciptaan AI sendiri mengundang permasalahan lain perihal bisa di HAKI-kan atau tidak, sebab Salah satu permasalahan yang ada dalam pemanfaatan AI yakni data yang digunakan dalam pengembangannya menggunakan ciptaan yang sudah ada, kecuali ciptaan tersebut telah habis masa perlindungan hak ciptanya maka ciptaan tersebut masih merupakan subjek perlindungan hak cipta. Oleh karena itu dengan menggunakan metode normatif dengan mengumpulkan data-data terkait aturan yang relevan dan pendapat para ahli, para peneliti mencoba menganalisis dengan menggunakan cara deskriptif analitis yang menghubungkan antara objek yang diteliti dengan ketentuan peraturan yang ada serta dengan studi kepustakaan diharapkan artikel ini dapat menjawab permasalahan legalitas ciptaan AI khususnya dalam bingkai Hak Atas Kekayaan Intelektual di Indonesia. Menurut UU Hak Cipta, hasil karya ciptaan Artificial Intelligence tidak dapat dikatakan sebagai hasil karya ciptaan yang dapat dilindungi. Namun pelanggaran hukum yang terjadi akibat penggunaan AI ini dapat dipertanggung jawabkan oleh sang penyedia jasa AI tersebut. Untuk menghindari banyaknya pelanggaran yang akan terjadi dimasa datang karena terus berkembangnya teknologi ini, maka pemerintah Indonesia harus membuat aturan yang lebih jelas dan tegas dalam mengatur perkembangan teknologi yang sedang terjadi secara cepat dan luas di Indonesia*

**Kata Kunci:** AI, Legalitas, Ciptaan

### ABSTRACT

In this modern era, many technologies have emerged and help human life, one of which is Artificial Intelligence (AI), but despite the many benefits it brings, it turns out that AI also brings anxiety, especially in the field of Intellectual Property Rights (IPR), which Many AI creations are considered to have the potential to commit violations, especially in the field of copyright, such as forgery of works of art or theft of works of art. Apart from that, AI creation itself invites other problems regarding whether it can be legally protected or not, because one of the problems that exists in the use of AI is that the data used in its development uses existing creations, unless the copyright protection period has expired, then the creation is still subject to copyright protection. So that the legality of the AI creation itself is still questionable. Therefore, by using the normative method by collecting data related to relevant rules and opinions of experts, from these data, researchers try to analyze using descriptive analytical methods that connect the object under study with existing regulatory provisions and with literature studies, it is hoped that this article can answer the problem of the legality of AI creations, especially in the frame of Intellectual Property Rights in Indonesia. According to the Indonesian Copyright Law (UUHC), works created by Artificial Intelligence cannot be said to be works of creation that can be protected. However, legal violations that occur due to the use of AI can be held accountable by the AI service provider. To avoid the many violations that will occur in the future due to the continued development of this technology, the Indonesian government must make clearer and firmer regulations in regulating technological developments that are occurring rapidly and widely in Indonesia.

**Keywords:** AI, Legality, Creation

## INTRODUCTION

Nowadays, the development of technology is growing rapidly without any restrictions and in this digital era, everything related to technology can facilitate human life. Technology that is increasingly sophisticated as a tool for human life is now increasingly diverse. One proof of the development of technology that is widely discussed is artificial intelligence or more commonly called AI (Artificial Intelligence). (1) Poole and Mackworth define AI as a system that analyzes an intelligently executed computational agent,(2) In addition, Andreas Kaplan gives a definition of AI as the ability of a system to process external data which is then used as learning for the system to achieve certain goals with flexible adaptation patterns.(3) Furthermore, John Mc Carthy, who is dubbed the father of AI, provides a definition that AI is a science that studies engineering by a system that has intelligence.(4) So based on these definitions, it can be understood that AI is a system made by humans to carry out a command with a specific purpose like a human. The invention of AI (Artificial Intelligence) technology, of course, has an impact on changing the pattern and lifestyle of society which results in the way humans work from manual to automatic.(5) There are many results of AI utilization in human life, both creation such as the creation of photos and videos, data processing such as numerical data processing and data searches such as search engines.

And when talking about intellectual property rights (HAKI), there is a relationship between AI and copyright, considering the rapid development of AI has led to many copyright violations that have led to anxiety from the owners of copyrighted works. Intellectual property rights themselves are a collection of rights used to protect the economic and moral rights of creative endeavors.(6) In addition, there is also an understanding of copyright, which is the right of ownership that gives exclusive rights to supervise the utilization of a copyrighted work.(7) Related to creations made by AI, now there are many that we can meet and maybe even use, such as the existence of applications that can make photos using AI and produce various styles both conventional<sup>1</sup> to controversial<sup>1</sup>, not only that but there are also works in the form of musical instruments, paintings, and brand logos made by AI and debated about copyright. which raises concerns from artists, where artists argue that the existence of AI has the potential for counterfeiting and theft of artwork.(8)

This concern makes sense considering that intellectual property rights basically protect the rights of creators for inventions and creations in the fields of art, literature,

science, technology, and trademarks. (9) As stated in Law No.28 of 2014 concerning Copyright and Law No.13 of 2016 concerning Patents, the exclusivity of the owner of intellectual property rights is protected and realized through the existence of moral and economic rights belonging to the subject of intellectual work. Moral rights are rights that cannot be transferred, where a creator must be recognized as the author of an IPR work, while the creator has economic rights based on which the rights can be transferred through an agreement. By protecting IPR indirectly also enforces these rights.(10) Therefore, the use of AI must take into account legally protected rights.

Indonesia itself adheres to the principle of automatic protection, ie legal protection of copyright immediately appears when an idea is realized in the form of a real work. Until now, Indonesian legislation does not explicitly state that artificial intelligence can be recognized as the creator of a work that can obtain legal protection for its creation. The current copyright law also does not recognize AI as a legal subject because only a human being or several people can be recognized and given protection. Regulations related to intellectual property rights in Indonesia are arguably lagging behind in responding to AI issues, so indirectly the government is still not serious in dealing with threats in the creative economy sector, especially related to AI issues in the field of copyright.

The question that often arises in addressing AI is whether AI can be categorized as a legal subject? If we look at the positive law of Indonesia, AI is only categorized as an object of law and not a subject of law, this then raises another question, namely whether AI creations can be IPRed? Therefore, in this research article, the researchers using the normative method try to find out whether AI can be recognized as a subject of intellectual property rights, and examine how the legality of AI creations from the perspective of intellectual property rights in Indonesia.

## **METHOD**

In the formulation of this article, the researchers used a normative research method, namely a research method that focuses on analysing legislation (The Satute Approach) related to the object under study and secondary data in the form of literature studies such as books, journals and scientific articles. From these data, the researchers tried to analyse by using descriptive analytical methods that connect the object under study with existing regulatory

provisions and with literature studies. In addition, the researchers try to find how the object under study is related to the legality of the creation of Artificial Intelligence from the point of view of Indonesian law.

## **RESULT AND DISCUSSION**

### **Intellectual Property Rights Issues in the Era of AI Development**

The more years technology will be increasingly rapid in its development, especially in the industrial revolution 5.0 as it is today, this is what makes all humanity spoiled by the development of technology, one of which is artificial intelligence. Artificial Intelligence at this time has almost reached a perfect level. There are a number of applications where AI has been able to communicate imaginatively and emotionally.<sup>(11)</sup> This will certainly bring a conflict one day, given that currently AI technology is very massive development, so that behind the conveniences provided, there are copyright violations that often occur so that it is not uncommon to cause anxiety and concern. In fact, there are several factors that cause IPR violations, especially digital works, to increase, namely:

First, digital copyrighted works are very easy to copy, in traditional copyrighted works for copying will require a lot of equipment and effort is not easy, in contrast to digital works that are very easy to duplicate which even the results are almost indistinguishable from the original. Second, the ease and speed of dissemination of digital copyrighted works, digital copyrighted works can be disseminated virtually through cyberspace, in contrast to traditional copyrighted works that must be disseminated traditionally either orally or in physical form which requires a short time. Third, the ease of manipulation of digital copyrighted works data, digital works themselves can be easily modified, even with the help of software this manipulation can be done without reducing the quality of the original copyrighted work, besides this manipulation also has the potential to change or eliminate watermarks or distinctive signs of the creator.

Because of the violations caused by the presence of AI in technological developments, of course it will not be separated from a legal arrangement that applies in a country where this rule is formed to anticipate an unwanted conflict. The regulation of intellectual property rights in Indonesia itself is currently in Law No.28 of 2014, better known as the Copyright Law. In article 1 numbers 1 - 4 of the Copyright Act has been

determined that copyright is the exclusive right of the creator that arises automatically after a creation is realized without reducing restrictions in accordance with the provisions of the Act. However, the rules relating to the use of technology in the Copyright Act, there are no rules in the copyright law governing the use of AI, especially in the context of creation, so it can be said that in the copyright law AI is not expressly regulated, but it can still be traced by means of legal interpretation.

One of the problems that occurs in the use of AI is that the data used in the development of an AI uses data from a pre-existing creation, if the creation has not expired its copyright protection period, then the creation is still the subject of copyright protection. Copyright law protects creators for their exclusive rights consisting of moral rights and economic rights. Therefore, there is legal protection for the creators whose work is plagiarized by anyone including AI, as in article II of the copyright law which in essence anyone who violates article 7 paragraph (3) and or article 52, can be sentenced to imprisonment for a maximum of 2 years and or a maximum fine of 300 million rupiah. Then in Article 380 paragraph (1) of the Criminal Code, it is written that anyone who falsely inscribes his name on a work of art so that people think the work belongs to him will be punished with a maximum imprisonment of two years and eight months or a maximum fine of five thousand rupiah. The content of the article classifies that the criminal offense, even though the act is forgery, is still classified as buying and selling other people's works. And all losses and claims related to the issue of plagiarism can be submitted to the Commercial Court.

However, copyright law also provides copyright restrictions for things that are not included as copyright infringement, including use as research or educational materials, or things that are non-commercial. Basically, the use of copyrighted works as data for the development of AI without permission can only be used for education, research, or similar fields, but if the creator objects to the use and dissemination of his/her work, it is still an infringement of copyright, so it is important to obtain permission from the creator to avoid legal consequences for copyright infringement. (12)

### **The Position of Artificial Intelligence as a Subject of Intellectual Property Rights**

When based on existing technology-related regulations in Indonesian positive law, Law No.19 of 2016 concerning amendments to Law No.11 of 2008 concerning Electronic

Information and Transactions, is a regulation intended as a government response to the advancement of technology that is increasingly developing in Indonesia which is useful for providing legal clarity and providing utility in the process of solving problems in the field of technology, which is expected to solve all problems related to technology and information in Indonesia. But in reality, the Electronic Information and Transaction Law is still considered ineffective, as it does not provide an explanation of AI in its regulation. And that's why many people interpret AI by linking their arguments to the regulations in the Electronic Information and Transaction Law.(13)

When viewed from a legal perspective in Indonesia, Artificial Intelligence cannot be categorized as a legal subject, but AI can be classified as a legal object in positive law in Indonesia, this statement is stated in the research conducted by Febri laya and Wilton in 2021. (14) Then Muhamad Ta Abdull Haris and Tantimmin in their research in 2022 stated that if it is related to the concept of criminal responsibility in Indonesia, AI also cannot be grouped as a legal subject, because based on the concept of responsibility, it has awareness and can will its actions, while AI as a program cannot will a criminal act that it might commit. (15) Furthermore, based on research by Muhamad Fayasay Filaq found that using ethical and sovereignty considerations, only animals can be called legal subjects, while AI cannot be said to be a legal subject, because AI is bound to its users as legal subjects, both individuals and legal entities.

This is also supported by the understanding of “Article 1 Point 1 of Law No. 19 of 2016” which can be interpreted to mean that AI is only limited to a legal object and does not view AI as a legal subject. In Law No.19 of 2016, it is only referred to as a legal subject. When discussing the current state of AI, it is possible to rely on Law No.19 of 2016 on Electronic Information and Transactions which regulates electronic agents. When assessed from the point of view of “Article 1”, it can be understood that AI is only limited to the object of law, and does not consider AI as a legal subject, because the subjects of law include:

- a. Sender
- b. Recipient
- c. Person
- d. Business Entity
- e. Government.

Furthermore, it is important to look at Indonesian law regarding the protection of AI creations, based on Law No.13 of 2016 concerning patents, that the creator is a person who gives ideas into activities that result in an invention, the person referred to here under Indonesian law is a natural person (*natuurlijke persoon*), besides that the invention itself is a right that arises from human intellectual abilities, so if the content in this Law is applied to the issue of AI as an inventor, the Indonesian Patent Law does not recognize AI creations and does not recognize AI as an inventor because as mentioned that the inventor is a natural person or *natuurlijke persoon*. Just like in the patent law, the legal position of artificial intelligence as a subject in Law No. 28 Year 2014 is also not considered as a creator/inventor. This can be seen from the explanation of Article 1 number 2 of the Copyright Law, from the word 'Person' either alone or jointly making a creation. Then the meaning of 'person' in Article 1 number 27 of the Copyright Law is an individual or legal entity. That is why the Creator and/or Copyright Holder basically only refers to humans in the biological sense and not to non-human species such as artificial intelligence AI.

#### CONCLUSION

Artificial Intelligence (AI) as one of the technologies that greatly helps human life has a negative impact on the use of AI technology, namely related to plagiarism. As we already know, the way AI works in the field of art is by collecting existing data and then processing it into a new work. This action certainly violates the Copyright Act because it is clearly written in article 9 paragraph (3) that it is strictly prohibited to use other people's creations without the permission of the copyright holder for commercial actions. In Indonesia itself, there are no clear and specific legal rules governing AI, especially in the field of IPR, experts only link AI with several relevant regulations such as the Electronic Information and Transaction Law and the Copyright Law. And when viewed from existing positive laws and affirmations from several relevant studies, it can be concluded that AI is only a legal object and does not view AI as a legal subject. When it comes to legality, AI creations cannot be IPRed considering AI cannot be a creator or inventor like humans because AI only collects information from previous data which of course has been made by previous inventors, and when viewed from the aspect of liability for AI creations that are proven to be produced from other people's copyrighted works or ideas, then it can expressly be given criminal sanctions if the creator

whose work was stolen objected. So even though it has not been legally regulated against AI copyrighted works, it does not rule out the possibility that it can be held accountable for its authenticity before the law with regard to the person who provides the AI service who is responsible with all the sanctions that will be given. Article 1 of the Electronic Information and Transaction Law basically states that an electronic system service provider is a legal subject that is bound by the applicable law. However, we cannot say that all offenses committed by AI can be resolved with the current law, because until now there is no law that specifically regulates how Artificial Intelligence technology works.

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