

Legal Analysis on The Digital Works Generated by Artificial Intelligence Under the Indonesian Copyright Law

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Abstract

Protection on creation and inventions are important as it protects a person's ideas and intellectual creation in their work. Therefore, the Indonesian Government has enacted legislation which ensures the protection, regulation, and registration of intellectual property rights under the Copyright Law No. 28 of 2014. The presence of this law would mean that the various types of Intellectual Property such as copyright and patent rights would be protected. Especially so during this time of globalization and the increasing number of Artificial Intelligence (AI) that is commonly used by the public. Most recently, AI has developed very rapidly into being able to create academic work such as research papers and utilized to create original work that can be passed off as one's own. Thus, the question comes to mind in the matter of whether an original work that is created or generated by AI would be able to be registered as an individual or as a corporation's Intellectual Property in the form of copyrights. On the other hand, would it be instead considered as the Intellectual Property of the AI. Or could it possibly be considered as the Intellectual Property of the sources of which the AI utilized to create such work as AI itself utilizes a large database of information of various authors and creators to generate or create the results that have been demanded. From the result, the generated or the created work of AI such as ChatGPT cannot be registered as Intellectual Property such as Copyright, this is due to the fact that in the concept of Intellectual Property itself requires the work to be originated and created by a human.

Keywords: Artificial Intelligence; Copyright Law No. 28 Year 2014; Copyright Protection

A. Introduction

The profoundly famous technological pioneer Bill Gates, who is also known for co-founding the software giant Microsoft, once said that "Intellectual Property has

the shelf life of a banana". This implies that the value or relevance of intellectual property is a perishable commodity. This means that it can easily be disregarded or disappear especially if it is not protected by any government body or any set of rules and legislation. Hence, that is the main reason that one's intellectual property must be protected by a governing body and must be accompanied by the relevant rules and regulations to ensure that it can be protected and can be enforced.

First and foremost, Indonesia itself is a sovereign and lawful state in accordance with the 1945 Constitution Article 1 verse 3 which states "The State of Indonesia shall be a state based on the rule of law".¹ Therefore, all the actions and activities of the state must abide by and must be based on the law. In addition, the activities and the interests of its inhabitants and citizens of the law must also be protected by the law in accordance with the 1945 Constitution Article 26 Subsection 3 which states "Matters regarding citizens and inhabitants shall be regulated by laws"² as well as in the 4th paragraph of the 1945 Constitution which states "to form a Government of the State of Indonesia which shall protect the whole Indonesian nation and the entire native land of Indonesia and to advance the public welfare, to educate the life of the nation, and to participate in the execution of world order which is by virtue of freedom, perpetual peace and social justice, therefore the National Independence of Indonesia shall be composed in a Constitution of the State of Indonesia, which is structured in a form of the State of the Republic of Indonesia, with people's sovereignty based on the belief in One and Only God, just and civilized Humanity, the Unity of Indonesia and a Democratic Life guided by wisdom in Deliberation/Representation, and by realizing social Justice for all the people of Indonesia".³ Thus, it is the obligation of the Indonesian Government to conceive a set of laws to ensure the protection and the regulations of the interests and activities of Indonesian citizens and inhabitants which can be found in the form of *UU*

¹ Article 1 verse 3 of the Indonesian 1945 Constitution

² Article 26 verse 3 of the Indonesian 1945 Constitution

³ Preamble of the 1945 Constitution

or *Undang-Undang*.

In this case, the rules and regulations and legislation that has been conceived by the government to protect the interests and activities of the Indonesian people are through the ratification of laws and legislation which specifically protect and regulate Intellectual Property Rights.

Nevertheless, intellectual property is defined as a work or invention that is the result of creativity, such as a manuscript or a design, to which one has rights and for which one may apply for a patent, copyright, trademark, etc as defined by Oxford Languages.⁴ On the other hand, intellectual property rights are defined as 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 as defined by the World Trade Organization.⁵

Intellectual property rights encompass a diverse range of creations and innovations, providing legal protection to encourage and reward the human intellect's ingenuity. These rights typically fall into four main categories: copyrights, patents, trademarks, and trade secrets. Each category serves to safeguard different forms of intellectual property, fostering a balance between the interests of the creators and the public. Firstly, copyright(s) is defined as the exclusive legal right that is given to a creator to an original work to be published, printed, distributed, filmed or recorded and various other forms of usage and also authorize other people to do so. An example of copyright would be in the form of theater such as the Sound of Music which is a copyrighted play. When a work is copyrighted, the copyright user must ask permission to use the copyrighted work to the copyright owner. If the copyright user does not ask permission, he/she may face legal action from the copyright owner. However, such

⁴ Intellectual property, n. In OED Online, Oxford University Press. <https://www.oed.com/search/dictionary/?scope=Entries&q=Intellectual+property>. Accessed on 21 December 2023.

⁵ World Trade Organisation. 2023. "WTO | Intellectual Property (TRIPS) - What Are Intellectual Property Rights?" https://www.wto.org/english/tratop_e/trips_e/intell_e.htm#:~:text=Intellectual%20property%20rights%20are%20the

legal action from the copyright owner would usually occur if the work is utilized in a commercial manner where the copyright user earns revenue from the use of the copyrighted work.

Secondly, another form of intellectual property rights would be patents. Patents offer creators of original works the exclusive rights to produce, utilize and sell their works for a limited period. Patents are very popular with technological discoveries and advancements in the pharmaceutical field as it would allow the creator and founders of these advancements to exclusively produce and sell their patented products and allow them to earn high amounts of revenue as they would be the only supplier of such products and ensure a temporary monopoly. Nonetheless, this would seem reasonable as often times it takes up a large amount of resources as well as time for Research and Development to be able to perfectly produce a new technologically advanced product as well as allow the increase in revenue to be utilized in more Research and Development which could lead to further technological advancements which then can be used by the general public. An example of this would be a motor vehicle company such as Toyota or Mercedes-Benz might patent a certain part of their automobile, or a technological giant such as Samsung may patent their processing chip of their newest phone model. Moreover, when a patent expires, it would then be available to the public. Similar to copyrights, if a person violates the patent they would most certainly be approached with legal action.

The third type of Intellectual property rights are known as trademarks. This type of intellectual property right protects symbols, logos, names that allow differentiation from other brands and services. Examples of a trademark would be the Golden Arches of McDonald which give the differentiating or distinguishing look it has from its logo and brand image compared to other brands. This gives the owner the only right to use the mark in association with certain products or services. This exclusivity is not only advantageous for businesses, but it is also critical for consumers, since it reduces market confusion and allows them to make educated decisions based on their knowledge with

certain brands. Hence, it is vital for these distinguishing works of origin to be protected by the law as if a similar logo was used by another individual or corporation, it could cause confusion and create significant losses for the owner of the original work.

The last type of intellectual property rights that will be discussed are trade secrets. Trade secrets are usually in the form of process, formulas and information that allow for the company to have a competitive advantage over its competitors. Trade secrets have no fixed duration and would stay protected unless they are leaked out. Hence, this leads to companies investing large amounts of money to ensure that their trade secret does not fall into the wrong hands such as fellow competitors. Some companies such as Coca-Cola even go to great lengths to ensure that the trade secret is not leaked to the public as only a few people in Coca-Cola's entire company know. The formula. On the other hand, KFC also is rumored to keep their secret recipe hidden away in an underground bunker to ensure that the secret formula is not compromised.

Provided that there are various types of Intellectual Property that must be protected, the Indonesian Government has enacted legislation which ensures the protection and regulation and registration of intellectual property rights. This can be found within the Indonesian legislation of Law No 28 of 2014 regarding which specializes in the protection, regulation and registration of the various types of intellectual property rights as stated beforehand.⁶ Moreover, the presence of this law would mean that the various types of Intellectual Property such as copyright and patent rights would be protected. Especially so during this time of globalization and the increasing number of Artificial Intelligence (AI) that is commonly used by the public. Accordingly, In this research the author wants to discuss the legal protection of work produced by AI, specifically on the issue of copyrights as well as the patent rights under the Indonesian Intellectual Property Rights Law.

To provide further context into the topic that the authorial team will be discussing

⁶ Law No. 28 year 2014 on Copyright

and elaborating, we must also define Artificial Intelligence also known as AI. Artificial Intelligence itself is defined as the theory and development of computer systems able to perform tasks that normally require human intelligence, such as visual perception, speech recognition, decision-making, and translation between languages as defined by Oxford Languages.⁷ There are various examples of Artificial Intelligence that are being used all over the world such as the Self-Driving Cars being tested by Google, Google Home or Alexa which utilizes AI to understand and learn their user's voice, even being used in the medical field to conduct surgical operations. Most recently, AI has developed very rapidly into being able to create academic work such as research papers and utilized to create original work that can be passed off as one's own.

Thus, the question comes to mind in the matter of whether an original work that is created or generated by AI would be able to be registered as an individual or as a corporation's Intellectual Property in the form of copyrights. On the other hand, would it be instead considered as the Intellectual Property of the AI. Or could it possibly be considered as the Intellectual Property of the sources of which the AI utilized to create such work as AI itself utilizes a large database of information of various authors and creators to generate or create the results that have been demanded. Last but not least, has Indonesian Legislation regulated the presence of Artificial Intelligence into its laws and regulations, specifically the Law No 28 of 2014 regarding Intellectual Property.⁸

In this regard, this research analyzes the following formulation of issues:

1. How is Artificial Intelligence regulated as a subject under the Copyright Law?
2. Whether the digital works generated by Artificial Intelligence are protected under the Indonesian Copyright Law?

⁷ *Ibid*, pg. 2.

⁸ *Ibid*, pg. 4.

B. Research Methods

The type of this research is Normative Legal Research. Normative legal Research is research which uses the law as foundation of norm. This means that this research is based on the library research focusing on reading and analyzing the primary and secondary materials.⁹ This method is also commonly referred to as doctrinal legal research. It is called doctrinal law research, because this research is only aimed at written regulations so that this research is very closely related to libraries because this normative law will require secondary data in the library. Written law is studied from various perspectives in normative legal research, including aspects of theory, philosophy, comparison, structure or composition, consistency, general explanations and explanations for each article, formality and strength to bind a law, and the language used is the legal language.

C. Analysis and Discussion

C.1. Artificial Intelligence as Creator

Artificial Intelligence, or AI, is the ability of a digital computer or computer-controlled robot to perform tasks commonly associated with intelligent beings.¹⁰ In general, AI systems work by ingesting large amounts of labeled training data, analyzing the data for correlations and patterns, and using these patterns to make predictions about future states.¹¹ There are some applications that are used by people these days which use AI technology namely ChatGPT, Google Assistant, Amazon Alexa, Face App, and many others.

⁹ Johnny Ibrahim, 2006, *Teori dan Metodologi Penelitian Hukum Normatif, Second Edition*, Malang: Bayu Media, pg. 46.

¹⁰ Copeland, B.J. 2022. "Artificial Intelligence." In *Encyclopedia Britannica*. <https://www.britannica.com/technology/artificial-intelligence>.

¹¹ Laskowski, Nicole. 2022. "What Is Artificial Intelligence (AI)?" TechTarget. July 1, 2022. <https://www.techtarget.com/searchenterpriseai/definition/AI-Artificial-Intelligence>, accessed on December 20, 2023.

For instance, ChatGPT is an AI chatbot that uses natural language processing to create humanlike conversational dialogue. This kind of AI is one of the most popular chatbots that are commonly used by students to do their assignments. ChatGPT can write the students an essay with the information gathered from every available source on the internet and produce a 3-5 paragraph essay corresponding to what is requested by the users. As AI keeps developing and becoming more advanced, now AI can also produce their own digital works without any humans involved.

To understand the legal protection of AI's work under the Copyright law which is part of the Intellectual Property Rights (IPR), we must first look into IPR definitions. According to Black's Law Dictionary, intellectual property is "A category of intangible rights protecting commercially valuable products of the human intellect". On the other hand, the World Intellectual Property Organization (WIPO) defined intellectual property as the "creations of the mind".¹² Accordingly, the essence of intellectual property itself is a product that resulted from the human mind, not animals, machines, or anything else. In Indonesia, the Directorate General of Intellectual Property (DJKI) defined intellectual property as "rights that arise from the results of thoughts that produce a product that is useful for humans. In essence, intellectual property is the right to economically enjoy the result of intellectual creativity". Therefore, from the various definitions of intellectual property we can infer that one of the requirements to consider a creation categorized as intellectual property is that the creation must come from the result of a human's thought process, not Artificial Intelligence.

Furthermore, in the United States the requirement for human involvement in a creation can be examined through the case of *Naruto v. Slater*. This case began in 2011, when Slater visited the Tangkoko Nature Reserve, North Sulawesi, Indonesia. A macaque monkey named "Naruto" then took Slater's camera and

¹² What Is Intellectual Property (IP)?" WIPO. <https://www.wipo.int/about-ip/en/>. accessed on December 21, 2023.

took a photo of himself laughing. Naruto's selfie photo was then published by Slater in a book entitled *Wildlife Personalities* which then later was sued by the Ethical Treatment of Animals (PETA) saying that the copyright belongs to Naruto the monkey. The US court decided that the copyright to Naruto's selfie photo cannot be given to Slater because he was not the one who took the photo. Accordingly, Naruto's selfie photo was finally categorized in the public domain and could not obtain copyright protection.¹³ Moreover, in February, the United States Copyright Office just revoked the copyright on an image in the graphic novel "Zarya of The Dawn" created by Kris Kashtanova using an AI application called Midjourney. The decision by the US Copyright Office is one of the first in terms of the scope of copyright protection for AI works. Although there have been no similar cases in Indonesia, with the increasing number of creativity involving AI, the possibility of copyright disputes related to AI artworks arising in the future cannot be ignored.¹⁴

Until now, Indonesia's courts and the Directorate General of Intellectual Property have not issued any landmark judgment or guidance on whether AI-generated digital works are protected as copyright in Indonesia. Copyright appears automatically based on the declarative principle, meaning that rights that arise on copyrighted works will automatically be attached to the creator after the copyrighted work is written in a concrete form. Copyright in Indonesia is regulated under Law No. 28 Year 2014 on Copyright. According to Article 1 verse 1 of the Copyright law, Copyright means an exclusive right of the author vested automatically on the basis of declaratory principle after works are embodied in a tangible form without reducing by virtue of restrictions in accordance with the

¹³ Media, Kompas Cyber. 2018. "Akhir Cerita Naruto, Sang Monyet Indonesia Pengambil Selfie." KOMPAS.com. April 24, 2018. https://tekno.kompas.com/read/2018/04/24/19250047/akhir-cerita-naruto-sang-monyet-indonesia-pengambil-selfie#google_vignette, accessed on 20 December 2023.

¹⁴ SS. 2023. "Aspek Hukum Dan Legalitas Konten Buatan AI." KlikLegal. June 19, 2023. <https://kliklegal.com/aspek-hukum-dan-legalitas-konten-buatan-ai/>.

provisions of laws and regulations. Author means a person or several persons who individually or jointly produce works that are unique and personal.¹⁵ That clearly shows that the concept of copyright is in alignment with the definitions in IPR where the creator must be a person or in other words a human. Accordingly, Artificial Intelligence could not be subject to Copyright because the process of thoughts doesn't come from humans itself but from the result of algorithms.

C.2. Legal Protection of Copyright on AI-Generated Works

In the Copyright theory, two conditions are required for a work to be categorized as a creation, namely originality and fixation. Civil law countries like Indonesia, emphasize aspects of the creator's personality in the work in question.¹⁶ Originality is of the same as novelty, in fact two creators can take inspiration from the same thing and both can be protected by copyright provided that the two creators do not copy each other. This is rooted in the rational understanding that two people cannot create something that is completely the same and each must have a personality that is reflected in their own work. The requirement of originality is reflected in the definition of "Creator" in Article 1 point 2 of the Copyright Law, which states a person or several people who individually or jointly produce a work that is unique and personal. This personality refers to the fact that in order to be recognized as a creation, the creator must be able to have a personality, which only humans can have. Based on this definition, works generated by AI do not meet the concept of originality because apart from not being created by humans, AI works are a combination of previous works that are modified by machines so that the work does not reflect the characteristics and personality of its creator.¹⁷

¹⁵ Article 1 verse 2 of Law No. 28 Year 2014 on Copyright

¹⁶ Paul Goldstein, *International Copyright: Principles, Law, and Practice*, New York: Oxford University Press, 2001.

¹⁷ Michael Hans and Cynthia Prastika Limantara. "Menyoal Aspek Hak Cipta Atas Karya Hasil Artificial Intelligence." <https://www.hukumonline.com/berita/a/menyoal-aspek-hak-cipta-atas-karya-hasil->

The second requirement is fixation or embodiment. Works protected by copyright must be fixed in a medium. Copyright does not protect ideas but rather the expression of those ideas that are manifest in a stable medium.¹⁸ AI's works indeed meet this requirement because works such as pictures, songs, etc are a stable medium and included as expressions of certain ideas. However, it should be remembered that these two conditions are cumulative. Therefore, because works produced by AI do not meet the originality requirements, AI works cannot be categorized as works that can be protected by copyright. Copyright is basically the exclusive rights owned by the creator which under Indonesian Copyright Law is divided into moral rights and economic rights. Accordingly, if a work is not classified as a creation, then the work does not have special rights so that it can be used by everyone and is in the public domain. Even though it is classified as public domain, users must still pay attention to the terms and conditions that apply to the platform where we obtain the digital works generated by AI because the user is bound by a contractual relationship with the developer of that AI.

In addition, there is still the possibility of AI being protected by copyright if the AI is considered a tool that is created by humans. The developers of the AI can take advantage of those economic rights, such as selling, renting, or licensing other parties to use products involving the AI. However, if the Indonesian Directorate General of Intellectual Property or other related authority issued a decision that the design generated by that AI can't be an object of copyright, then that AI developer couldn't enjoy the economic rights of that specific product. Even though AI couldn't be the direct subject of copyright according to the law, there is still possibility for the developer or programmer to protect its creation in this context Artificial Intelligence to gain its economic rights.

[artificial-intelligence-lt641d06ea6_00d9/?page=3](https://ojs.uph.edu/index.php/Anthology/artificial-intelligence-lt641d06ea6_00d9/?page=3), accessed on 21 December 2023.

¹⁸ Stephen M. McJohn, *Intellectual Property (Sixth Edition)*, New York: Wolters Kluwer, 2019

D. Conclusion

In conclusion, the generated or the created work of AI such as ChatGPT cannot be registered as Intellectual Property such as Copyright, this is due to the fact that in the concept of Intellectual Property itself requires the work to be originated and created by a human. This is further regulated by the understanding of Intellectual Property Rights in Indonesia which states that in order to claim work as one's own and to be protected by Intellectual Property Rights and the Law No 28 of 2014 regarding Intellectual Property, the original work must be created by a human especially considering that the individual that has created the work has put in time, effort and resources to be able to discover and develop the work which in then deserves to be protected by Intellectual Property Rights. In addition, WIPO or the World Intellectual Property Organization has also reinforced the fact that the generated work or created work of AI cannot be provided the the benefits of copyrighted works as the receiver of such benefits are only humans as these individuals have allocated their efforts towards their original product. Furthermore, the Indonesian Government has not necessarily taken into consideration the presence of AI and its outcomes to be able to receive the benefits of being protected by Intellectual Property Rights as it also does not contain the concept of originality. This is another element that must be considered as a product must be an original work of a creator to be able to be protected by Intellectual Property Rights. However, in the case of AI generated and/or created work it would be and is currently very confusing on whether who would be deemed the original creator of the work whether it would be the individual that ordered the AI to generate the work nor the AI itself nor the people whose work was used by the AI in its database of information to be able to generate the work.

Ultimately, the authorial team believes that AI generated work such as products of ChatGPT should not be able to be protected under Intellectual Property Rights such as copyrights or patent rights. As we have to consider that if it was that simple and easy to produce work utilizing AI and also allow it to be protected by Intellectual Property

Rights and enforced by the law to be one's own product of originality, it would disincentivize people from trying to discover and develop new advancements and original works. As they would feel that they could do the same by using AI to generate work for them and would lead to no further developments and advancements. In addition, there would be no incentive to develop and advance new ideas as there would be no means to protect them especially if AI were able to reproduce such information. Alternatively, the authorial team believes that the Indonesian Government alongside the WIPO and its member states should ensure that AI generated work should not be able to be copyrighted or patented until it comes to the point in technological advancement that humans would be able to identify whether or not such original work created by the individual would not be able to be replicated and generated by AI.

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