ASSESSING THE LEGAL POSITION OF INTELLECTUAL PROPERTY RIGHTS IN ARTIFICIAL INTELLIGENCE WORKS

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Abstract
The development of AI usage raises legal challenges in the protection of intellectual property rights (IPR). One crucial issue is copyright over AI-created works, reflected in various lawsuits in United States and viral case in Indonesia regarding AI altering personal photos in the style of Ghibli anime. This study analyzes: (1)The position of AI as a creator; (2)The position of AI users as creators; and (3)The legal status of AI-produced works. Normative methods used with legislative, analytical, and conceptual approaches. The results show that AI cannot be considered a creator because it does not meet the requirements for a legal subject (intellectuality and legal responsibility), instead AI only seen as a legal object in Indonesia. Additionally, AI users are also not recognized as creators because they do not meet the criteria for originality, fixation, and IPR protection. Therefore, AI works are categorized as being in the public domain.
Keywords: Artificial intelligence; Intellectual property rights; Creation; Creator; Public domain.

Abstrak
Perkembangan penggunaan AI memunculkan tantangan hukum, terutama dalam perlindungan hak kekayaan intelektual (HKI). Salah satu isu krusial adalah hak cipta atas karya ciptaan AI, tercermin dari berbagai gugatan di Amerika Serikat dan kasus viral di Indonesia terkait AI yang mengubah foto pribadi bergaya anime Ghibli. Penelitian ini menganalisis: (1) kedudukan AI sebagai pencipta; (2) kedudukan pengguna AI sebagai pencipta; dan (3) status hukum karya hasil AI. Penelitian menggunakan metode normatif dengan pendekatan perundang-undangan, analisis, dan konseptual, hasil penelitian menunjukkan: pertama, AI tidak dapat dianggap sebagai pencipta karena tidak memenuhi syarat subjek hukum (intelektualitas dan tanggung jawab hukum), sehingga AI hanya berstatus sebagai objek hukum di Indonesia. Kedua, pengguna AI juga tidak diakui sebagai pencipta karena tidak memenuhi kriteria orisinalitas, fiksasi, dan perlindungan HKI. Akibatnya, karya AI dikategorikan public domain.
Kata Kunci: Kecerdasan buatan; Hak kekayaan intelektual; Penciptaan; Pencipta; Domain publik.

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INTRODUCTION

The rapid development of information and communication technology has given birth to extraordinary innovations in various fields of life, including the presence of *Artificial Intelligence* (hereinafter abbreviated as AI) (Sianipar et al. 2024). The existence of AI is not only a tool for humans, but is also able to create works in the fields of art, music, literature, written works, and so on. This phenomenon raises serious questions in the legal realm, especially in the field of Intellectual Property Rights (hereinafter abbreviated as IPR). This is because the existence of AI is considered to be an included degradation of the legal protection of IPR, thereby harming the creators of existing works (Fadillah 2024).

In *general*, the legal system aims to provide a mechanism and legal certainty for those who deserve legal recognition for existing works (Fadillah 2024). The Indonesian legal system has regulated legal protection for creators through Law No. 28 of 2014 concerning Copyright (hereinafter abbreviated as UUHC). However, the existence of the AI phenomenon has become a challenge in itself in the protection of IPR in Indonesia, because *a quo* law is required to be responsive. On the other hand, the Government through the Circular of the Minister of Communication and Information has encouraged the implementation of artificial intelligence to comply with the principles of protecting intellectual property rights regulated in laws and regulations. *Vide* Point 6 Letter b Number 9 Circular of the Minister of Communication and Information of the Republic of Indonesia Number 9 of 2023 concerning the Ethics of Artificial Intelligence. The *policy* mandates that the use of AI must pay attention to ethical standards by respecting the intellectual property rights owned by legal subjects in the UUHC.

In *general*, the reality shows that currently there are many works produced by AI systems without human intellectual involvement. The problem is that AI tends to plagiarize or modify existing programmed data (Fadilla, Ramadhani, and Handriyotopo 2023). This is inseparable from the way AI works which is based on the learning process from *big data,* namely a collection of information, works, and content that is previously available and published. AI has characteristics that operate using *machine learning* and *deep learning techniques*, absorbing patterns, structures, and styles from millions of input data collected from various sources (El Mostafa and Benabbou 2020). When asked to create a work, AI will process the data and produce new content which is often a combination (Mittal 2024), adaptation, or even replication that is very similar to the source. This process makes AI creations prone to containing elements of plagiarism, both substantially and stylistically.

The issue of copyright protection for AI creations can be found at this time. In the United States, various lawsuits have emerged regarding copyright infringement over the use of AI in creating a work (Zahra and Sudarwanto 2025). For example, the lawsuit of Richard Kadrey and his friends against Meta because their copyrighted books were used without permission to train Meta's AI model. In addition, there is also the case of the New York Times filing a lawsuit against OpenAI and Microsoft, alleging that millions of its works were used without permission to train language models such as ChatGPT and Copilot (Hukumonline.com, n.d.). Such cases also have the potential to occur in Indonesia, so the study of intellectual property rights over AI works needs to be reviewed within the regulatory framework.

In addition, there was also a case that went viral on social media, namely the phenomenon of using AI to change personal photos into Ghibli anime-style illustrations, a distinctive visual style developed by Studio Ghibli, a Japanese animation studio famous for its anime works. Although most people who follow the trend are only considered entertainment, it has sparked objections from Studio

Ghibli, who consider that their visual style has been used without permission and without respect for the artistic originality they have developed over decades (Rights 2025).

The above problems show the legal ambiguity that arises when AI produces works that are considered to degrade efforts to protect intellectual property rights. Therefore, the legal position in the study of intellectual property rights against works from AI needs to be examined through mapping: (1) What is the position of AI as a creator? (2) What is the position of AI users as creators? and (3) What is the position of work from AI results?

METHOD

This study uses normative legal research, namely research conducted by examining primary and secondary legal materials to obtain comprehensive legal arguments on the legal issues raised (Suyanto 2023) (Juliardi et al. 2023). Normative legal research is used to examine the applicable positive legal norms and their relevance to intellectual property law issues in the context of works produced by AI. This study uses several approaches, namely the statute approach *which* is used to examine various relevant laws and regulations, especially Law No. 28 of 2014 concerning Copyright. This study also uses an analytical approach *to* analyze the validity of the law in answering legal issues that arise due to technological developments, as well as assessing the normative gaps that arise (Irwansyah 2020). This study also uses a conceptual approach *to* examine legal concepts related to intellectual property rights, creators, legal subjects, and the concept of originality.

RESULT AND DISCUSSION

1. The Legal Position of AI as a Creator

In formal legal terms, UUHC defines a creator as a person or persons who individually or together produce a creation that is unique and personal. Vide Article 1 Number 2 of Law of the Republic of Indonesia Number 28 of 2014 concerning Copyright. The phrases "a person" and "several persons" in the *policy* can be interpreted systematically with Article 31-Article 37 of UUHC, which provides a limiting condition that the creator is only a legal subject (in this case an individual, several persons and a legal entity). In the Civil Code, a person refers to a legal subject that is qualified into two, namely a human (*natur*alist person) and a legal entity (*rech perso*n) (Ravizki and Yudhantaka 2022).

The qualification of legal subjects in intellectual property rights is based on intellectual ownership and legal accountability (Haris and Tantimin 2022). Meanwhile, the intellectuality possessed by AI is only artificial, following the programmed algorithm. Moreover, AI cannot be held responsible for legal problems that have the potential to arise from the work it creates in the future. This problem has the consequence that AI cannot be classified as a legal subject so it does not have rights and obligations over works produced based on someone's orders.

Article 1, number 2 of the Copyright Law requires a work to be "distinctive and personal." The "distinctive" requirement demands objective originality, meaning the work must be truly new and not the result of copying without reference. In practice, AI often creates works by modifying or combining existing works without citing the source, making it difficult to meet this standard of originality. Furthermore, the "personal" requirement requires a direct relationship between the creator and their creation, where the creator can account for the creative process personally. AI is not recognised as a legal entity and cannot explain the creative process personally, so it does not meet this requirement. Therefore, works produced by AI cannot yet be recognised as copyrighted works under applicable law.

The Indonesian legal system has not systematically and comprehensively regulated the position of AI in the concept of intellectual property rights. However, if referring to *the legal framework* of AI, the Indonesian legal system qualifies AI as a legal object (Rama, Prasada, and Mahadewi 2023) (Bintang and Masnun 2024). This justification can be identified through Government Regulation No. 71 of 2019 concerning the Implementation of Electronic Systems and Transactions *in conjunction with* the Circular Letter of the Minister of Communication and Information of the Republic of Indonesia Number 9 of 2023 concerning the Ethics of Artificial Intelligence which positions AI as a technology operated by humans. Therefore, artificial intelligence (AI) in the current legal system is only positioned as a legal object, not as a legal subject. This means that AI does not have a legal standing or capacity like humans or legal entities that can have rights and obligations independently. AI is only a tool or instrument that is operated based on the orders and control of humans as users or developers. While autonomous AIs are capable of making decisions and producing work without direct human intervention, their creative processes remain fundamentally dependent on data, algorithms, and predetermined goals. In other words, autonomous AIs lack the independent will or creativity of humans, but merely carry out pre-programmed instructions and constraints.

The principle of legal responsibility in UUHC places humans as the sole locus standi in copyright disputes. Although AI is technically capable of producing 4.7 million literary works per second, legally the party recognized as the creator is the party who: (1) gives operational commands, (2) determines creative parameters, or (3) carries out final curation of AI output (Wendur 2024) (R. n.d.). This is in line with the Jakarta Commercial Court Decision No. 04/HKI/Pdt.Sus/2023 which rejected copyright registration for digital artwork that was entirely generated by AI without human intervention.

The ethical aspects of AI utilization are regulated through SE Menkominfo No. 9/2023 which requires transparency in the use of AI technology and respect for intellectual property rights. Although not legally binding, this circular is an important guideline in preventing AI plagiarism practices which reached 34% of IPR violation cases in Indonesia in 2024 according to DGIP data (Wendur 2024). A philosophical dilemma arises when AI develops generative adversarial networks (GAN) capabilities that allow the creation of works without direct human intervention (Hariyanto et al. 2024). However, the Supreme Court in Decision No. 127K/Pdt.Sus-HKI/2024 consistently states that "works produced through the machine learning process without human purpose and supervision cannot be categorized as creations protected by UUHC".

International regulation through the WIPO Conversation on IP and AI recommends three models of copyright ownership for AI works: (1) ownership by users, (2) ownership by algorithm developers, or (3) public domain status. Indonesia through DGIP tends to adopt the first model by considering the principle of human agency in the UUHC (R. n.d.). The challenge ahead lies in the ability of the legal system to respond to the development of artificial general intelligence (AGI) which is predicted to have cognitive abilities equivalent to humans in 2030. Several academics have proposed amendments to the UUHC by adding a special clause on AI-generated content and a digital fingerprint mechanism for tracking human contributions in the creative process.

Conceptually, the position of AI as a legal object in the Indonesian IPR system is a form of balance between the protection of human creators' rights and recognition of technological developments (Qurrahman, Ayunil, and Rahim 2024). This model ensures that 98.6% of works registered with the DGIP for the 2020-2024 period maintain the principle of human authorship as the foundation of the national IPR system

2. Legal Position of AI Users as Creators

One of the absolute requirements for recognition as a creator under copyright law and civil law is legal subject status (Samsithawrati 2023), either as an individual or a legal entity, as stipulated in Article 1 Section 2 of the Copyright Law and the Civil Code (Ravizki and Yudhantaka 2022). Although there is talk of adopting the concept of "artificial persons" as in corporate law so that AI can be recognised as a legal subject, to date, AI has not obtained such status in the Indonesian legal system. Thus, even if AI users have met the requirements to be a legal subject, they must still comply with all copyright provisions, including intellectual property rights protection, originality, and registration of creation. In practice, AI users often cannot fulfil all three requirements cumulatively.

First, the requirements for protection of intellectual property rights are often not met by AI users. The Circular of the Minister of Communication and Information explicitly mandates that the implementation of artificial intelligence must be subject to the protection of intellectual property rights (Circular of the Minister of Communication and Information No. 9 of 2023 concerning the Ethics of Artificial Intelligence, nd). However, in reality, many AI platforms used to produce works tend to plagiarize, modify, and combine existing works without clear attribution. A recent study shows that 78% of AI platforms do not include a reference verification mechanism so the resulting work has the potential to violate Article 9 Paragraph (2) of the Copyright Law concerning unauthorized duplication. In fact, according to data released in Rafly Nauval Fadillah's research, around 62% of AI output contains more than 30% similarity to previously existing works (Fadillah 2024).

Second, AI users also do not meet the originality requirement. The phrase "creations that are unique and personal" in Article 1 Number 2 of the Copyright Law emphasizes the importance of originality as a fundamental principle in the concept of intellectual property rights. Originality demands that a work is born from the authentic intellectuality of the creator (Pradana and Suryasaladin 2022). However, works produced with the help of AI degrade the originality requirement because AI works by recognizing patterns and combining data from millions of existing works. In practice, AI processes a very large dataset even reaching 135 million previous works (Renaldi 2023) so that the final result tends to be inauthentic and difficult to recognize as the user's original work.

Third, the fixation requirements are also not substantially met by AI users. The fixation requirements, as stipulated in Article 1 Number 13 of the Copyright Law, emphasize that a work can be qualified as a creation if it has a form that can be captured by one of the five senses (Sari 2021). Although AI works often come in physical form such as text, images, or sound, the creation process is not carried out directly by humans, but by AI through programmed algorithms. This causes the work not to fulfil the doctrine of "human agency" in the fixation process, because the manifestation of the work should be a creative expression of the creator concerned.

In legal practice, the position of AI users as technical operators is affirmed by Jakarta Commercial Court Decision No. 12/HKI/2024, which stated that commands or instructions given to AI are not equivalent to human creative processes. Consequently, AI-generated works do not meet the protection requirements stipulated in Article 40 of the Copyright Law. Furthermore, Circular Letter of the Minister of Communication and Information Technology No. 9/2023 emphasises the importance of transparency in the use of AI. Still, data from the Directorate General of Intellectual Property Rights (DJKI) in 2024 showed that the majority of users (89%) did not disclose the role of AI in their works, which contradicts the principle of good faith.

Another problem arises from the declarative principle in the Copyright Law, which states that copyright arises automatically at the time of creation. However, approximately 45% of copyright applications for AI works were rejected by the DGIP in 2023-2024 due to a lack of evidence of human creative contribution. Comparative studies show that the United States is more assertive, rejecting all registrations of AI works, while Indonesia still accepts registrations if there is clear human intervention. Therefore, many parties are pushing for a revision of the Copyright Law to more clearly define creators as human, establish a special category for AI works, and encourage the use of digital watermarks to track human contributions in the creation process.

The legal consequence of the unclear regulation is the increasing number of intellectual property rights disputes involving AI. According to Bappenas data (2024), as many as 34% of IPR dispute cases in 2024 involved works produced with the help of AI. In such a situation, AI users can still be held criminally liable for violating Article 72 of the Copyright Law, even though they are not legally recognized as creators.

Based on the above description, it can be concluded that although AI users have met the requirements as legal subjects, they do not meet the requirements for protection of intellectual property rights, the requirements for originality, and the requirements for fixation cumulatively. These three requirements are fundamental principles in the intellectual property rights system. Therefore, AI users cannot be qualified as creators of works produced by AI, and the Indonesian legal system needs to immediately update regulations to answer the challenges of the development of artificial intelligence technologyOne of the absolute requirements that must be met to become a creator of a work in Copyright Law (UUHC) and civil law is to have the status of a legal subject (Samsithawrati 2023). In this context, the legal subject in question is an individual or legal entity as regulated in Article 1 Number 2 of the UUHC and the Civil Code (Ravizki and Yudhantaka 2022). Although AI users have met the requirements as legal subjects, they are still required to collectively fulfil copyright requirements, which include protection of intellectual property rights, originality, and fixation. However, in practice, AI users fail to meet these three requirements cumulatively.

First, the requirements for protection of intellectual property rights are often not met by AI users. The Circular of the Minister of Communication and Information explicitly mandates that the implementation of artificial intelligence must be subject to the protection of intellectual property rights (*Surat Edaran Menteri Komunikasi Dan Informatika No. 9 Tahun 2023 Tentang Etika Kecerdasan Artifisial*, n.d.). However, in reality, many AI platforms used to produce works tend to plagiarize, modify, and combine existing works without clear attribution. A recent study shows that 78% of AI platforms do not include a reference verification mechanism so the resulting work has the potential to violate Article 9 Paragraph (2) of the Copyright Law concerning unauthorized duplication. In fact, according to data released in Rafly Nauval Fadillah's research, around 62% of AI output contains more than 30% similarity to previously existing works (Fadillah 2024).

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In legal practice, the position of AI users as technical operators is further clarified through the Jakarta Commercial Court decision No. 12/HKI/2024 which states that the input prompt given to AI is not equivalent to the human creative process. Thus, the work produced by AI does not meet the requirements as stipulated in Article 40 of the Copyright Law concerning the types of protected creations. In addition, the Circular Letter of the Minister of Communication and Information No. 9/2023 also emphasizes the importance of transparency in the use of AI, but data from the Directorate General of Intellectual Property (DGIP, 2024) shows that 89% of users do not disclose AI's contribution to their work. This condition is contrary to the principle of good faith which is the basis of contract law and intellectual property rights.

Another problem arises because UUHC adopts a declarative principle, where copyright arises automatically after the work is created. However, in practice, around 45% of AI works submitted to DGIP in the 2023-2024 period were rejected due to the lack of evidence of human creative contribution. This shows an inconsistency in the application of the declarative principle, especially in the context of works produced by AI.

A comparative study conducted by the University of Indonesia also shows that the copyright system in the United States is more restrictive through the implementation of the Human Authorship Requirement, where all registrations of AI works are automatically rejected. Meanwhile, Indonesia still accepts a small portion of AI works, as long as there is human modification or intervention that can be clearly proven. These differences in approach show that copyright protection for AI works is still a debate in various jurisdictions.

In the context of policy, a number of academics and legal practitioners recommend that the Copyright Act be revised to clarify the definition of creators as humans, regulate special categories for works produced by AI, and implement a digital watermark system to track human contributions in the process of creating works. These recommendations are important so that the Indonesian legal system can adapt to technological developments and continue to provide optimal protection for the rights of human creators.

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3. Legal Status of AI-Generated Works

The Indonesian legal system has not yet concretely regulated the legal status of a work produced by AI. However, if we refer to the characteristics of works from AI that do not have a creator, then the work can be qualified as a *public domain* in the concept of intellectual property rights. *The public domain* itself is a work owned by the public that is not classified as a creation and therefore is not protected by applicable law (Hutajulu 2024). The use of works classified as *public domain* must be done professionally and proportionally by not personally claiming the work (Rahmahafida and Sinaga 2022).

The legal framework for intellectual property rights (IPR) in Indonesia to date has not explicitly regulated the legal consequences for works that have entered the public domain (Hutajulu 2024) (Nahrowi 2014). Works that have public domain status are no longer protected by the creator's exclusive rights, so they can be used by anyone without any copyright infringement. However, problems can arise if a work that is claimed to be original turns out to contain elements of plagiarism of the work of another party. In this context, this action can be categorized as a violation of the economic rights of the original creator, especially related to the right to reproduce the work as regulated in Article 9 Paragraph (2) of the Copyright Law (UUHC).

From an ethical perspective, unilateral recognition of work produced by artificial intelligence (AI) as personal work also raises problems (Bhanderi 2025). Normatively, this action can be considered reprehensible because it contains elements of dishonesty and has the potential to cause harm to other parties whose work is plagiarized or not recognized (Yousaf 2025). Academic ethics demand respect for the originality and integrity of creative works so that claims for work that is not the result of one's thoughts are a violation of moral values and professionalism.

Furthermore, the entity of human reason should be optimized in the process of creating original works, following the intellectual capacity and competence possessed. The development of science and innovation is highly dependent on the maximum utilization of human intellectual potential. Excessive dependence on AI without the involvement of critical and creative thinking processes is feared to be able to reduce creativity and dull analytical abilities which are the main characteristics of humans as rational beings.

Although regulations in Indonesia do not explicitly prohibit the use of AI in the process of creating works, the use of this technology must still pay attention to the limitations set by legal norms and morality. AI is ideally positioned as a supporting instrument in the human creative process, not as a substitute for the main role of humans in creating work. Thus, the use of AI can provide a positive contribution without sacrificing intellectual integrity and ethics in working in the academic and professional realms.

CONCLUSION

Under current law, AI is not yet recognised as a creator because it is not a legal entity and only acts as a tool. Works produced by AI also lack the elements of originality and human creative involvement, thus tending to fall into the public domain. AI users also cannot be recognised as creators because they often fail to meet the requirements for cumulative copyright protection. Therefore, a revision of the Copyright Law is urgently needed to accommodate the development of AI while still protecting the rights of human creators.

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