Artificial Intelligence (AI) In Copyright Law in Indonesia

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Abstract

The purpose of this study is to find and analyze who can be categorized as the subject of rights owners in Artificial Intelligent (AI) and whether Law No. 28 of 2014 concerning Copyright has been able to accommodate the rights of creators in Artificial Intelligent (AI) as Copyright works. This research is normative juridical research. The results show that in Indonesia, Artificial Intelligence (AI) cannot be a legal subject based on considerations of legal consequences. Law No. 28 of 2014 requires changes to adapt to technological developments.

Keywords: Artificial Intelligent (AI); Copyright works; Juridical; Legal.

Introduction

The development of the current industrial revolution is known as Industry 4.0 and Industry 5.0. Industry 5.0 is a development in the industrial revolution that combines humans, technology, and data. In connection with industry 5.0, the term Artificial Intelligence (AI) is known. Artificial Intelligence (AI) is a branch of science in the computer field that emphasizes the mindset and work of humans, the development of machine intelligence, and so on. The emergence of AI is an embodiment of human creativity in technology that drives business activities. The use of AI in practice is close to Intellectual Property Rights (IPR). IPR is a human creative work born of human ability. The IPR concept gives the author the exclusive right to exercise the right. Other parties are prohibited from using these rights without permission from the Creator.

The development of Artificial Intelligence (AI) can be demonstrated by the use of Artificial Intelligence (AI) in Unicorn Startup companies in Indonesia (for example, Gojek, J & T Express, Tokopedia, Bukalapak, Traveloka, OVO.[1] Another use of Artificial Intelligence (AI) can be demonstrated by the Next Rembrandt Painting, the creation of Novels that can be done with the help of Artificial Intelligence AI)[2].

In Indonesia, in this Covid-19 Pandemic situation, the most popular use of Artificial Intelligence (AI) is the Care Application. This application is beneficial for the survival of life after the Covid-19 pandemic. The use of Artificial Intelligence (AI) in these companies is one of the determinants of the company's success. On the one hand, there is a positive impact on a company's success that will become the basis for moving economic development. On the other hand, the use of Artificial Intelligence (AI) in business

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[1] Ahmad Ramli,, 2021, Artificial Intelligence & Intellectual Property, **Seminar**Kecerdasan Artifisial dan Tantangannya terhadap Pengaturan Hak Kekayaan Intelektual di Indonesia" , CICODS, Faculty Of Law , UGM and APHKI. .

[2] https://kliklegal.com/tiga-antisipasi-masalah-pemanfaatan-artificial-intelligence-terhadap-perlindungan-hak-cipta/, accessed 21 Oktober 2021.

activities will cause behavior that causes harm to those who are entitled to it. In the perspective of Copyright Law. It happens if the implementation of Artificial Intelligence (AI) in business activities contains elements that are the creator's rights or copyright holder. In essence, Artificial Intelligence (AI) is an algorithm that can process data sets so that patterns or predictions of a problem can be obtained. Harry Surden describes Artificial Intelligence as a technology that can do things like humans.[3]

Artificial Intelligence (AI) is a creative work that, in practice, raises legal problems. The legal issue is related to providing incentives for Artificial Intelligence (AI) creators as creative objects and the use of third-party content in AI without reducing the content creator's rights. From the perspective of copyright law, empirical facts on the development of Artificial Intelligence (AI) in Indonesia can be seen from 3 concepts, namely the conception of wealth, the source of rights, and the conception of legal protection. [4].The concept of wealth refers to Artificial Intelligence (AI) as an asset. The conception of rights refers to who is the subject of Artificial Intelligence (AI). The concept of legal protection is related to how the law guarantees the economic and moral values that appear in Artificial Intelligent to the party entitled to the AI.

Previous research has been conducted by Aditya Kurniawan, et al,[5] , who found the use of artificial in contract design and its impact on the legal sector in Indonesia, other research was also carried out by Eka NAMS, and Muhammad YAS [6] who examines the possibility of the use of artificial intelligence in the formation of regional regulations. Febri J. and Wilton G. carried out research and found the juridical concept of the position of artificial intelligence or Artificial Intelligence on Positive Legal Subjects in Indonesia [7] The research focuses on the problem of Artificial Intelligence as a legal subject in the law in general. Meanwhile, this research focuses on the possibility of Artificle Intelligence as a legal subject in copyright law in Indonesia. Widodo Dwi Putro discovered the concept that Artificial Intelligence (AI) has the potential to replace the legal profession [8] .Based on the explanation above, the legal problems that arise is who can be categorized as the subject of rights owners in Artificial Intelligent (AI) in Copyright Law In Indonesia ?

Methods Of Research

This type of research is normative research. Research that uses secondary data as the main data. The main data consists of Primary Legal Materials (Burgelijk Wet boek, the Criminal Code, Law No. 28 of 2014 concerning Copyright and other IPR Laws) and secondary legal materials (books, journal articles, data from the web). The data were analyzed using qualitative analysis techniques. Conclusions are drawn using deductive techniques.

Result and Discussion

Artificial Intelligence From the Perspective of Definition and Copyright Law

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[3] Harry, S., 2019, Artificial Intelligence, and Law: An Overview, 35 Ga. St. U. L. Rev. 1305 (2019), *available at* https://scholar.law.colorado.edu/articles/1234.

[4] Edward, O, S., 2021, Perlindungan Kekayaan Intelektual dan Kecerdasn Artifisial, **Seminar**Kecerdasan Artifisial dan Tantangannya terhadap Pengaturan Hak Kekayaan Intelektual di Indonesia" , *CICODS*, Faculty Of Law , UGM and APHKI.

[5] Aditya K, Alya Y, and Ayuta P.C.Z, 2021, Pendayagunaan Artificial Dalam Perancangan Kontrak Serta Dampaknya Bagi Sektor Hukum Di Indonesia, *Khatulistiwa Law Review*, Vol 2, No 1, 2021 (Edisi April) (P-ISSN 2722-2519 and e-ISSN 2722-2489).

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[8] Widodo Dwi Putro, 2020, Disrupsi dan Masa Depan Hukum, *Mimbar Hukum*, Vol 32, No.1 Feb .

Artificial Intelligence (AI) is the center of attention for legal professionals [9]. Artificial intelligence (AI) is used to achieve legal goals, such as research conducted by Dyevre, A [10], Miron, M., Tolan, S., Gómez, E. *et al* [11], Bagherian-Marandi, N., Ravanshadnia, M. & Akbarzadeh-T, MR [12]. These research studies show the usefulness of Artificial intelligence (AI) in achieving legal goals in providing certainty, justice, and benefit to society.

Artificial Intelligence (AI) used in Copyright is part of Intellectual Property Rights. This intellectual property right is an Indonesian term from the English term Intellectual Property Right. Intellectual property rights substantively, in essence, can be defined as rights to property that are the product of the human mindset (= human academic ability).[13] Intellectual Property Rights are divided into:
1. Copyright and related rights.
2. Industrial Property Rights. Industrial Property Rights, including, Patents (patents), Industrial Designs (industrial design), Trademarks and Geographical Indications (trademark and Geographical Indication), Layout Design Of Integrated Circuits, Trade Secrets, Varieties Plants (Plant Varieties).

Each type of Intellectual Property Rights has its arrangement. Copyright is regulated in Law No. 28 of 2014 concerning Copyright. The scope of objects protected by copyright works in the fields of Arts, Literature, and Science, which includes works in computer programs.

Based on this, Artificial Intelligence (AI) could be protected by Indonesian copyright. [14] Based on the declarative principle, the rights in copyright will be owned by the creator at the time of his creation finished. The creator will hold the form of copyrighted works in science, art, and literature since the results of the copyrighted work are expressed in a tangible form. Since the copyrighted work is described in a tangible form, the rights of the creator arise. The creator has exclusive rights consisting of moral rights and economic rights. Moral rights are rights that cannot be ruled out.[15] . The subject of copyright is recognized by law who acquires the right.

Rights in Intellectual Property Rights, as well as rights in copyright, are property rights [16]. These rights consist of moral rights and economic rights. Economic rights are rights related to taking economic benefits on Copyright objects. This right is also the basis for the reason for the critical role of the State in regulating intellectual property [17] While the moral rights in its history are taken from the French term "moral droit." As stated in the United States Copy Rights Office: "Taken from the French phrase "Droit moral," the term moral right generally to certain non-economic rights that consider personal to author….".[18]. Moral right[19] Generally denotes non-economic rights for creators.

[9] Bex, F., Prakken, H., van Engers, T. *et al.* Introduction to the special issue on Artificial Intelligence for Justice (AI4J). *Artif Intell Law* **25,** 1–3 (2017). https://doi.org/10.1007/s10506-017-9198-5

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[13] Eddy Damian, 2014, *Hukum Hak Cipta* , PT Alumni, Bandung, pp 32-33

[14] Bing Bin Lu, 2021, A theory of 'authorship transfer' and its application to the context of Artificial Intelligence creations, *Queen Mary Journal of Intellectual Property*, Vol. 11 No. 1, pp. 2–24

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[18] Unites States Copy Right Office, 2019, Authors, Attribution, and Integrity: Examining Moral Right In The United States, A Report Of The Register Of Copyrights, April 2019, p. 6.

[19] Elizabeth. S, 2018, Where is the Morality? Moral Rights in International

Copyright is the creator's exclusive right that arises automatically based on declarative principles after work is realized in a tangible form without reducing restrictions following the provisions of laws and regulations. This understanding brings the understanding that although copyright is a monopoly right or a sole right, this right cannot be used freely. The meaning in the legislation provides an understanding of rights. Law also provides an obligation for the creator to pay attention to the restrictions determined. It can also be said that monopoly rights or full rights owned by the creator are not absolute. Although these rights are exclusive, they are also limited by the provisions of the law. According to article 1, number 3, creation is any work of copyright in science, art, and literature produced on inspiration, ability, thought, imagination, talent, and skill, expressed in a tangible form. It can be studied that the object of copyright is a creation that is a copyrighted work in science, art, and literature that is expressed or realized in a tangible form. 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. As stated earlier, essentially, Artificial Intelligence (AI) is an algorithm that can process data sets so that patterns or predictions of a problem can be obtained. Artificial Intelligence (AI) can be in the form of software which in Copyright Law in Indonesia is an object that is given copyright protection. Law No. 28 of 2014 in Indonesia, one of which protects computer programs. The development of Artificial Intelligence (AI) concerning Copyright is since Artificial Intelligence (AI) as a creative object can produce creative works that are better than the creator of the copyright holder. Of course, it results in blurring the legal position of Artificial Intelligence (AI) as a creative object or a creative subject. Artificial Intelligence (AI) can produce works like humans as creators of creative works.

Artificial Intelligence (AI) as Legal Subject

in Copyright Law

A computer program is the result of the creative work of a programmer. It is a computer program (software) that can drive a computer as hardware. It implies that a computer is a tool. It is the programmers who have a dominant role in producing creative works. The Programmer is the creator of the software. Law No. 28 of 2014 concerning CopyrightIn its development, Artificial Intelligent (AI) developed software with algorithms that allow computer programs to make decisions and produce creative objects or objects. Artificial Intelligent (AI) decisions are based on the input provided by the programmer. Programmers offer more information than creating something. The algorithm will learn from the data and feedback provided by the programmer in making decisions or creative objects. The new creative thing is generated by an algorithm that learns from the input provided by the programmer. The programmer manages the input data with parameters called artificial neural networks (a process that has similarities to human thinking). Based on the understanding and description of the Artificial Intelligent (AI) function, it will undoubtedly provide relevance to the provisions in Law No. 28 of 2014 concerning Copyright in Indonesia. The law is a source of direction that guides behavior in society.[20] . The law in the field of copyright, in particular, aims to provide creative subjects with economic values and moral values that are the rights of the creator.

There are differences in the concept of Artificial Intelligent (AI) as a creative object with the idea of Copyright Law contained in Law No. 28 of 2018. Law No. 28 of 2018 Copyright is an object that is granted copyright protection. Computer programs are seen as instruments or tools that will support the creator in carrying out and producing his creative work. The computer program will create innovative objects, depending on the presence or absence of the creator's creativity and depending on the Creator. The originality of creative works is the character of copyright. The creator is considered the creator if he has

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[20] Burchardt, Dana. 2019. The Functions of Law and their Challenges: The Differentiated Functionality of International Law. *German Law Journal.* 20. 409-429. 10.1017/glj.2019.29.

the originality of the work he created. The casting in a concrete and tangible form for the first time by the creator is essential in determining when to protect Copyright law. Law No. 28 of 2014 covers only copyrighted works made by humans, which are considered creative objects. This understanding is undoubtedly different from the development of Artificial Intelligence, which can produce its creative work independently. This innovative work can help humans to make decisions in providing solutions to life's problems. It is important to study because the Copyright Law No. 28 of 2014 protects computer programs to produce creative works. The development of information technology in artificial intelligence can make or make decisions in the creative process without requiring human intervention.

In its development, Artificial Intelligence (AI) also raises problems related to the many creative objects used in Artificial Intelligence (AI) to produce creative works. Of course, the problem will come from determining who is considered a creative subject. From a juridical perspective, legal subjects are parties who can bear rights and obligations. The party can be held responsible and held legally accountable. On the other hand, Artificial Intelligence (AI) is an object that moves due to input and processing from programmers as humans. In America, although the Copyright Act has not been able to provide a clear definition of Copyright, there are several cases.[21] shows that the computer or its program cannot be a legal subject or creator,

Conclusion[sep]

The development of Artificial Intelligence (AI) in society provides a function for the sustainability of humanity. On the other hand, Artificial Intelligence (AI) has a relationship with Copyright. There are different concepts in the Copyright Law No. 28 of 2014, which states that computer programs are considered tools to produce creative works. At the same time, Artificial Intelligence (AI) can function as a subject with creative work. Determining the creative legal in Artificial Intelligence (AI)

becomes legally essential in giving the issue the right to take the economic and moral value of the creative work. The determination of Artificial Intelligence (AI) as a legal subject will have consequences for the emergence of rights, obligations, and responsibilities in Artificial Intelligence (AI). This will cause difficulties related to the burden of AI, which is an inanimate object.

Acknowledgment

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