Journal Widya Gama Intellectual Property Right
Vol. 1 Issue 1 (2026) 24–33

Online since: 06-03-2026

https://jurnal.widyagama.ac.id/index.php/WGIPR/

LEGAL ANALYSIS OF COPYRIGHT REGULATIONS IN DEALING WITH GENERATIVE ARTIFICIAL INTELLIGENCE

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Abstract
This study aims to analyze legal regulations related to the use of generative artificial intelligence (AI) in intellectual property rights (IPR), as well as the legal implications that arise, and government efforts to regulate them. The type of research used is normative legal research, which examines law as written norms in legislation as well as the principles and doctrines that develop in the legal community. The results of the study indicate that regulations related to the use of generative AI in IPR remain unclear, especially regarding copyright ownership, patents, and data protection. This lack of norms creates legal uncertainty that hinders justice for injured parties. The Indonesian government, despite issuing Circular Letter of the Minister of Communication and Information Technology Number 9 of 2023 concerning the ethics of AI use, has not fully addressed the lack of norms regarding the legal standing and accountability of AI in criminal law. Based on these findings, the following recommendations are proposed: 1) The government needs to formulate clear regulations regarding the use of AI to provide legal certainty, protection, and justice for victims, and 2) The need for the establishment of a supervisory agency to ensure that the use of AI is not misused in criminal acts.

Keywords
Regulation, Copyright, Generative AI

Introduction

The development of artificial intelligence technology, particularly generative artificial intelligence (GAI), has had a significant impact on various sectors of human life. This technology enables the creation of new content that closely resembles human-generated content, including text, images, audio, and video.[1] Through the use of machine learning algorithms and large amounts of data, generative AI has the ability to automatically intellectualize these works, with results often indistinguishable from human-generated products. While this development brings positive potential in terms of efficiency and creativity, it also poses a number of serious challenges, particularly related to intellectual property rights (IPR).[2]

One of the key issues that has emerged with the adoption of this technology is the question of intellectual property rights over AI-generated works. For example, if AI produces an image that resembles a human work of art or text that closely resembles the work of a famous author, who should be considered the owner of that work? [3]Does the intellectual property right belong to the developer of the algorithm that created the AI intellectual property, the owner of the data used to train the AI model, or the user who leveraged the technology to produce the work? This issue has sparked a long-running legal debate, given that AI is not an entity capable of legal rights like humans.[4]

In the context of intellectual property rights, there are concerns that generative artificial intelligence technology could be used to "mimic" or "appropriate" works protected by intellectual property rights without the owner's permission. For example, AI could be trained on data that includes artwork, writings, or audio recordings that are subject to intellectual property rights, and then generate new works that are very similar or even identical to the original works. In this case, the AI-generated work would not only infringe intellectual property rights but could also harm the original intellectual property, as their work would be used without permission and without proper compensation. The New York Times' lawsuit is the first among major news publishers against OpenAI and Microsoft. Many authors, journalists, and other creative types who upload their work online fear that AI will learn from

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[1]Sehan Rifky *et.al.*, *ARTIFICIAL INTELLIGENCE (Theory and Application of AI in Various Fields),* (Jambi, 2024), p. 3

[2]T. Abadi, "Axiology: Between Ethics, Morals, and Aesthetics", Journal of Communication Studies, Vol. 4, No. 2/2016, p. 187

[3]Hartati, *Knowledge-Based Artificial Intelligence*, Yogyakarta, Gajah Mada University Press, 2021, p. 3

[4] *Ibid,* p. 188

their work and material and then use it in its models without proper compensation.[5]

One major challenge in this regard is how the legal system can address the issue of intellectual property infringement involving generative AI. In traditional intellectual property law, a work is considered protected if it demonstrates creativity and originality. However, in the case of generative AI, that creativity comes not from humans, but from an algorithm that uses big data as the basis for its intellectual property. As in the ongoing case in the United States, Kadrey v. Meta, authors including Richard Kadrey, Sarah Silverman, and Ta-Nehisi Coates accused Meta of infringing their intellectual property rights by using their e-books to train AI models and removing intellectual property information from the e-books to conceal the infringement. Meta, on the other hand, denied the allegations and claimed that the training of their AI models fell under the category of fair use. Furthermore, Meta argued that the lawsuit should be dismissed because the authors lacked legal standing to sue. U.S. District Judge Vince Chhabria ruled that the case could proceed, although some of the claims were dismissed. In his ruling, Chhabria wrote that the alleged intellectual property infringement constitutes "a clear and sufficient tangible harm to meet the requirement of standing." [6]Therefore, to address this challenge, existing regulations need to be updated to include specific provisions regarding the use of AI technology in the intellectual property rights of protected works.

This issue is further complicated by the fact that generative AI does not create intellectual property works independently, but relies on the data provided to it. If the data used to train the AI includes works protected by intellectual property rights, then using that data to generate new works could constitute intellectual property infringement. [7]Therefore, it is crucial to establish clear regulations regarding the use of licensed data and how data owners can protect their works from unauthorized use by third parties using AI.

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[5]Ferindra Fachri, "The New York Times Sues OpenAI and Microsoft Over Alleged Intellectual Property Rights Violations," in https://www.hukumonline.com/berita/a/the-new-york-times-gugat-openai-dan-microsoft-terkait-dugaan-pelanggaran-hak-kekayaan psikologi-lt65981e7d77fc1/?page=2 , accessed July 3, 2025

[6]Billy Patoppoi, "A Group of Law Professors Sues Meta in an AI Intellectual Property Rights Case," in https://www.suarasurabaya.net/kelanakota/2025/sekumpul-profesor-hukum-gugat-meta-dalam-kasus-hak-kekayaan psikologi-ai/ , accessed July 3, 2025

[7]Silvia Fibrianti, "Protection of Intellectual Property Rights in the Use of AI: A Case Study of Ghibli Animation," in https://jdih.komdigi.go.id/artikel hukum/artikel-hukum/unduh/94 , accessed July 3, 2025

This issue also raises questions about who is responsible when intellectual property rights violations involving generative AI occur. Does the responsibility lie with the algorithm creator, AI user, or other party involved in the intellectual property process and distribution of the work? In this regard, the legal system needs to develop a clear and detailed approach regarding who holds responsibility in the event of intellectual property rights violations involving this technology. Crafting appropriate regulations will require collaboration between legal experts, technology developers, and other stakeholders, to provide fair and effective mechanisms for addressing these issues.

At the same time, the use of generative AI in the creative industries could change how we perceive the value of a work. AI-generated works, while perhaps as good as human creations, may be seen as less valuable from an intellectual property perspective, as they do not involve the human creative process. However, these works can also provide significant economic benefits, as they can be produced at a lower cost and faster. This is where the importance of intellectual property rights lies, balancing intellectual property protection with the use of AI technology to support the creative industries.

Several countries, including the European Union, have begun to review and formulate policies that could regulate the use of artificial intelligence in the context of intellectual property rights (IPR). [8]The EU, for example, has proposed regulations covering the use of AI in content creation, including how IPR can be applied to works generated by this technology. Furthermore, these regulations emphasize the importance of transparency in data use and attempt to clarify how AI-generated works can be protected. However, despite these initiatives, the international community still needs clear and uniform standards to address IPR issues in the broader context of generative artificial intelligence, particularly in countries with less mature regulations, such as Indonesia.

Indonesia, despite its significant potential in the digital sector, must take a firm stance in formulating regulations governing generative artificial intelligence, particularly regarding intellectual property rights (IPR). Law No. 28 of 2014 concerning Intellectual Property Rights does not specifically accommodate AI as an entity capable of producing works, thus creating legal uncertainty regarding who owns the intellectual property rights of works produced by AI. [9]Without clear

[8]Ferinda Fachri, *Op.Cit.*

[9]Zaldy Salim. *et.al* , "Reforming the Intellectual Property Rights Law: Challenges and Opportunities in the Artificial Intelligence Era ," in

regulations, it is highly likely that IPR violations will arise that are difficult to account for, especially if the work produced by AI imitates or copies works protected by IPR without permission. Therefore, Indonesia needs to immediately formulate comprehensive and specific regulations related to intellectual property rights in the era of artificial intelligence, to provide legal certainty for creators and industry players and maintain a balance between technological progress and the protection of individual rights.

Method

The research method used in this study is normative legal research. This research is only aimed at concepts, legal principles, legal principles, and written regulations, so this research is closely related to the literature because it will require secondary data from legal literature. The type of approach used in this legal research is a normative legal approach. The normative legal approach is an approach to solving problems by using legislation and regulations, also known as *the statue approach*.[10]This approach means a research approach carried out by reviewing all laws and regulations related to the legal issue being handled by the researcher. With this approach, the author will seek the ratio legis and the ontological basis for the birth of the law, so that the researcher is able to understand the philosophical content of the law and is able to conclude whether there is a philosophical conflict between the law and the issue at hand. Furthermore, the researcher will be able to determine whether the new legislation has contained the provisions needed for the current situation or vice versa.

Results And Discussion

1. Regulation of the Use of Generative Artificial Intelligence in Intellectual Property Rights

Generative Artificial Intelligence (GAI) has brought about a major transformation in the process of creating intellectual works. This technology is capable of producing content such as text, images, music, and videos with quality similar to human creations. However, this progress raises complex legal questions, particularly regarding the ownership of intellectual property rights (IPR) for works produced by AI. Under Indonesian positive law, copyright is granted only to human creators, as stipulated in Law Number 28 of 2014 concerning Copyright. AI, as a non-human entity, does not have

https://lk2fhui.law.ui.ac.id/portfolio/reformasi-undang-undang-hak-kekayaan psikologi-tantangan-dan-peluang-era-kecerdasan-buatan/ , accessed July 3, 2025

[10]Peter Mahmud Marzuki, *Legal Research*, Jakarta: Kencana, 2010, p. 97

legal standing as a subject of intellectual property rights, so its creations are not legally recognized as objects of copyright protection.[11]

A legal vacuum itself refers to a phenomenon in which there are no legal regulations governing certain conditions or situations in society. [12]When associated with positive law, a legal vacuum is defined as the absence of legislation that addresses a condition that occurs in society. [13]The absence of law can result in legal uncertainty and a lack of legal protection for the community. Therefore, the legal vacuum related to AI entities should be immediately addressed considering that currently, AI seems to "live" side by side with humanity and is involved in all aspects of society. Based on data released by the International Data Corporation or IDC Asia-Pacific Enterprise Cognitive/AI Survey in 2018, it was stated that Indonesia had the highest level of AI technology use in Southeast Asia at 24.6%, followed by Thailand at 17.1%, Singapore at 9.9%, and Malaysia at 8.1%.[14]

The Circular stipulates that the implementation of AI must be supervised by the government, providers, and users. However, there are no binding norms for systematic and transparent oversight of the development and use of AI. This creates uncertainty in law enforcement mechanisms for AI-related issues, particularly in assessing the social and humanitarian impacts arising from AI use. For example, there are no clear standards to ensure that AI systems are not biased or discriminatory, posing a significant challenge to the implementation of this technology. This lack of norms makes AI regulations less effective in ensuring legal protection for individuals.

2. Government Efforts to Regulate the Use of Artificial Intelligence in Intellectual Property Rights

In an era of rapid development of AI, critical issues have emerged surrounding the legal standing and legal accountability of non-human entities such as AI. In discussing the complexities of AI-related regulations, it is important to explore how this technology's presence is giving rise to new scenarios, particularly in the realm of criminal law. The status of AI, which is still not explicitly stated

[11]Law Number 28 of 2014 concerning Copyright, Article 1 Paragraph (1).

[12]Daniel Mulia Djati, *et al*., "Interpretation of the Principle of Legal Certainty and Legal Vacancy in the Constitutional Court's Decision on Law Number 11 concerning Job Creation," *IKAMAKUM Journal,* Vol. 1, No. 1 (2021), p. 591

[13] Ibid.

[14]Elina Noor, Mark Bryan Manantan, "Raising Standards: Data and Artificial Intelligence in Southeast Asia," paper presented by Asia Society Australia and The Australian National University College of Asia and the Pacific, Crawford School of Public Policy, 2022, p. 89

within the scope of Indonesian criminal law, has the potential to have serious consequences in the event of a crime involving AI. The ambiguity surrounding AI's status will make it difficult to identify the party responsible for the actions "committed" by AI. From the perspective of the Criminal Code, the only parties that have legal standing as legal subjects and are subject to elements of criminal responsibility are humans and corporations. [15]However, the view that AI should be categorized as a legal subject cannot be dismissed, given that existing technological advances have produced several AI products that have the potential to carry out actions based on their own authority without any foresight, planning, or direction from the individual involved. [16]However, considering that AI is an entity that lacks the will and legal awareness of humans, the legal subject model that should be implemented for AI is a partial legal subject. Partial legal subjects are a model for granting rights and obligations to an entity with certain limits and without the concept of criminal responsibility.[17]

If the legal subject commits an act deemed unlawful, the responsibility will be transferred to the legal subject deemed to be its guardian or representative. In the partial legal subject model, the doctrine used is *"in loco parentis,"* meaning that AI is analogous to a child, while its developer or user, as the legal subject, has authority over the partial legal subject. The " [18]*in loco parentis"* doctrine has also been used by the Indian government as the basis for establishing the Ganges River as a legal subject in India.[19]

There is still confusion in regulating the existence of AI. As a result, AI regulations are still missing or in a state of normative vacuum. Nevertheless, the Indonesian Government, through the Minister of Communication and Informatics of the Republic of Indonesia, issued "Circular Letter of the Minister of Communication and Informatics of the Republic of Indonesia Number 9 of 2023 concerning the Ethics of Artificial Intelligence." This has regulated the ethics of using AI. However, from the existence of this Circular Letter, it cannot be interpreted that this regulation on AI has legal certainty, legal justice, and legal protection for victims of AI use. Therefore, the author can conclude that the efforts made by the

[15] Law on the Criminal Code, Law Number 1 of 2023, LN of 2023 No. 1 TLN No. 6842

[16]Francesca Lagioia, Giovanni Sartor, "AI Systems Under Criminal Law: a Legal Analysis and a Regulatory Perspective," Philosophy and Technology, Vol. 33, no. 3 / 2020), p. 434

[17]FL Yudhi Priyo Amboro, Khusuf Komarhana, "The Prospects of Artificial Intelligence as a Subject of Civil Law in Indonesia," Law Review, Vol. 21, No. 2 / 2021, p. 163

[18] *Ibid*

[19] *Ibid*

Government are not final because they still show a normative vacuum.

Therefore, the author emphasizes the need for the Indonesian government to provide specific regulations to govern the existence of AI as a form of legal certainty, legal justice, and legal protection from the impacts of AI use. These regulations specifically address victim protection and law enforcement for AI users who create content without the permission of the photo/video owner, with the content of the video/photo altered to defame, slander, or provoke others.

Furthermore, AI regulations must include sanctions for AI users if it is used for crimes or criminal acts. These include:

1. Administrative Sanctions

Perpetrators of misuse may be subject to administrative sanctions for violations of AI abuse, particularly those related to violations of personal data protection or ethical use of AI. Sanctions can include fines or written warnings. For example, if a company is found to have misused AI by misusing and manipulating its users' personal data, they should be fined for the losses incurred.

2. Criminal Sanctions

Individual misuse of AI that causes harm or discrimination against the rights of individuals or groups can result in criminal penalties. Examples include fraud using deepfakes or discrimination in violation of the Human Rights Charter. Penalties can include imprisonment and substantial fines, depending on the severity of the crime.

Conclusion

Legal regulations regarding the use of generative artificial intelligence in intellectual property rights do not yet provide specific provisions. There remains a gap in regulations regarding the use of AI. The use of generative AI in intellectual property rights (IPR) creates legal uncertainty regarding copyright ownership, patents, and data protection. This is due to a legal gap that creates inequality and procedural injustice and hinders efforts to obtain justice or compensation for parties harmed by this technology.

The Indonesian government's efforts to regulate the use of artificial intelligence (AI) are still in their infancy and have yet to provide adequate legal certainty. Although the Minister of Communication and Informatics of the Republic of Indonesia issued Circular Letter No. 9 of 2023 concerning the ethical use of AI, this regulation is insufficient

to address the gap in norms regarding the legal standing and accountability for the use of AI in the criminal law realm.

Conclusion contains a description that should answer the objectives of research. Provide a clear and concise conclusion. Do not repeat the Abstract or simply describe the results of the research. Give a clear explanation regarding the possible application and/or suggestions related to the research findings.

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