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### Settlement of Disputes Over Ownership of Artificial Intelligence Generated Artworks in Indonesia

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#### Abstract

The utilization of Artificial Intelligence in the creative field, one of which is painting, raises debates, in line with the absence of lex specialist regulations as a legal umbrella in Indonesia and copyright ownership of works resulting from human and Artificial Intelligence collaboration. This study aims to review the copyright ownership of paintings by Artificial Intelligence by applying the Work Made for Hire principle and determine the settlement if a legal dispute arises. The method used is normative juridical with statutory

and conceptual approaches. The results showed that copyright is allocated to human entities by applying the Work Made for Hire principle on works resulting from the user's collaboration process with Artificial Intelligence based on Article 34 and Article 36 of Law Number 28 of 2014 concerning Copyright. Conflicts between service providers and users can be resolved using internal or external dispute resolution.

**Keywords:** Artificial Intelligence, Ownership, Copyright, Work Made for Hire

#### Introduction

The era of Society 5.0 marks a significant change in human civilization, one factor being the technological revolution.<sup>1</sup> The branches of this innovation can easily be found in the form of the Internet of Things (IoT), Blockchain, Big Data, and Artificial Intelligence, which are implemented through various objectives, including healthcare, bureaucratic reform, education and research, food security, and mobility and smart cities.<sup>2</sup> One of these cutting-edge technologies is Artificial Intelligence (AI). The phenomenon of Artificial Intelligence (AI) technology is currently experiencing increasing public application, for example, its use for supporting activities, complex data processing, and increasing efficiency. In general, Artificial Intelligence (AI) is understood as a branch of computer science that specifically studies the design of computer programs for specific purposes.<sup>3</sup> Therefore, Artificial Intelligence (AI) as a programming product can be directed to various development goals such as in the creative arts field. Collaboration between technology and art is a breakthrough in the development of creative processes that are not only focused on traditional technicalities as is known.<sup>4</sup> Its actualization is found in several software that moves in innovation between technology and the creative field, including *Dall.E*, *Stabble Diffusion*, and *Midjourney*. Creativity through the intermediary of the above software services as implemented in the form of paintings, for example, is found through the work by Collen Hoffenbacker entitled *Floragen 2.0.1* utilizing the public service of *Stable Diffusion* software as a reference for creating his main work in obtaining realistic image parts rather than aiming to obtain a complete

<sup>1</sup> Qur'ani Dewi Kusumawardani. 'Hukum Progresif dan Perkembangan Teknologi Kecerdasan Buatan' (2019) 5 Veritas et Justitia.[164].

<sup>2</sup> Badan Pengkajian dan Penerapan Teknologi, 'Strategi Nasional Kecerdasan Artifisial Indonesia 2020-2045' (Kementerian Riset dan Teknologi RI, 2020) <<https://ai-innovation.id/strategi>>

<sup>3</sup> Ari Gema. 'Masalah Penggunaan Ciptaan Sebagai Data Masukan Dalam Pengembangan Artificial Intelligence di Indonesia' (2022) 1 Technology and Economic Law Journal [3].

<sup>4</sup> Rizqya Putri, *et al.*, 'Copyright Issues for Artificial Intelligence Artworks in Strengthening Creative Industry 5.0: A US Comparison' (2024) 30 Wacana Hukum.[2].

image through text instructions. In this case, the final work is done by painting on canvas using oil paint independently by the artist so that it can produce a combination of Renaissance-style floral paintings involving technology and art.<sup>5</sup>

In addition, physical implementation involves collaboration between robots and humans in the process of creating paintings. This innovation was carried out by Sougwen Chung with his famous project, Drawing Operations, which involves a robot known as DOUG X acting as an arm working together with the artist to produce paintings on canvas. The robot was trained using neural networks and data sourced from Sougwen Chung's personal work that has existed for 20 (twenty) years.<sup>6</sup> Both creations resulting from collaboration with technology blur the boundaries in developing creative thoughts, allowing artists to more freely express intellectual thoughts through various media.

The creative field, as described above, demonstrates the use of Artificial Intelligence (AI) as a supporting tool to realize creative ideas owned by artists as the parties who fully contribute. The involvement of Artificial Intelligence (AI) in the realization of these creations brings legal studies that require further examination. This is because the output produced by Artificial Intelligence (AI) in the creative field is not in the form of code, schemes, or algorithms but rather in the form of images or paintings that are simply classified as copyright protection according to applicable legal norms. When viewed globally, creations produced by Artificial Intelligence (AI) cannot actually be granted copyright protection, such as the case of the rejection of copyright registration by the United States Copyright Office in September 2023 for the image entitled Théâtre D'opéra Spatial created by Jassen Allen.<sup>7</sup>

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<sup>5</sup> Atreya Mathur, 'Artificial Intelligence versus & Human Artists: AI as a Creative Collaborator in Art - Center for Art Law' <<https://itsartlaw.org/2024/04/16/artificial-intelligence-versus-human-artists-ai-as-a-creative-collaborator-in-art/>>

<sup>6</sup> Andrew R. Chow, 'TIME100 AI 2023: Sougwen Chung' <<https://time.com/collection/time100-ai/6309455/sougwen-chung/>>

<sup>7</sup> Blake Brittain, 'US Copyright Office Denies Protection for Another AI-Created Image' <<https://www.reuters.com/legal/litigation/us-copyright-office-denies-protection-another-ai-created-image-2023-09-06/>>

In Indonesia, the provisions regarding works produced by Artificial Intelligence (AI) have not been specifically regulated in Law Number 28 of 2014 concerning Copyright, hereinafter referred to as the Copyright Law. If we look back, the general concept of Artificial Intelligence (AI), as explained previously, has a similar explanation of Computer Programs which has been regulated in Article 1 number 9 of the Copyright Law. However, the work of computer programs produced has caused debate, because the creator himself according to the definition of Article 1 number 2 is addressed to the legal subject while the creation must meet the unique and personal criteria and come from the scope of art, literature, and science. Based on this, it causes confusion, as a result of the scope of the work has a correlation with copyright where the product produced from processing using Artificial Intelligence (AI).<sup>8</sup>

The legal gap created above creates a mismatch between the ideal conditions and the existing legal reality, and raises questions about who has the right to ownership of the copyrighted work. Therefore, legal efforts are urgently needed to guarantee protection for works of art utilizing Artificial Intelligence (AI), as a tool for expressing creative ideas and preventing actions that violate the law and harm the rights of others.<sup>9</sup> One alternative is to examine the primary legal principles for copyright protection, such as the Work Made for Hire principle. In this context, copyright ownership is granted to the end user of the Generative Art Models service, who acts as an "assistant" in the process of creating the artwork. This end user is a human being who can control the creative process and fulfill the protection requirements in the Copyright Act. However, its implementation requires a thorough study of applicable laws and legal doctrine.

### Research Method

The research method used is normative research. The type of research used is normative juridical, namely research focused on examining the application of rules or norms in applicable positive law. The normative juridical approach is carried out by examining various formal legal regulations such as statutes, regulations, and literature containing theoretical concepts, which are then connected to the issues to be discussed.

### Copyright Ownership of Artworks Resulting from Artificial Intelligence in Indonesia

Article 1, paragraphs 1 and 2 of the Copyright Law define copyright and creator. Copyright is the exclusive right of the creator that arises automatically based on the declarative principle after a work is manifested in a tangible form without prejudice to limitations in accordance with statutory provisions. Furthermore, a creator is a person or persons

<sup>8</sup> Nadia Rahmahafida and Whitney Sinaga, 'Analisis Problematika Lukisan Ciptaan Artificial Intelligence Menurut Undang-Undang Hak Cipta' (2022) 4 Jurnal Pendidikan dan Konseling. [9960].

<sup>9</sup> Bagus Rama, Dewa Prasada, dan Kadek Mahadewi, 'Urgensi Pengaturan Artificial Intelligence (AI) dalam Bidang Hukum Hak Cipta di Indonesia' (2023) 12 Jurnal Rechtsens. [217].

who, individually or collectively, produce a work that is unique and personal.

Article 40 paragraph (1) of the Copyright Law stipulates that one type of protected work is fine art in all forms, including paintings. However, in the current digital era, the creation of paintings does not only involve humans, as Artificial Intelligence (AI) can also be used as a medium in the creation process. This has given rise to debate about copyright for works of art created by Artificial Intelligence (AI). This question is increasingly important because Artificial Intelligence (AI) can create works of art independently without human intervention. Therefore, the issue of copyright ownership for works of art produced by Artificial Intelligence (AI) requires further attention from the perspective of applicable copyright law. The advantage of using Artificial Intelligence (AI) in creating paintings is its ability to experiment with various styles and visual elements quickly and efficiently, which allows for broader exploration in the world of art.

Although Artificial Intelligence (AI) possesses extraordinary capabilities for creating works of art, the role of human creators in its direction remains crucial. Human creators, who provide input or instructions to AI, are still considered to be the directors or controllers in the creation process, raising new questions about who should own copyright over works of art created by AI.

Currently, copyright law in Indonesia, as stipulated in the Copyright Law, still adheres to the traditional concept that considers only humans as legal subjects capable of copyright. The Copyright Law stipulates that copyright is granted to creators, defined in Article 1, number 2, as any person who creates a work through their creative abilities. These creators are considered legal subjects, who automatically have exclusive rights to their creations. This requires that the state grant copyright specifically to biological contexts and non-human entities, namely legal entities, due to the inherent personality of the work. This refers to Article 1, number 27 of the Copyright Law, which includes both individuals and legal entities.<sup>10</sup>

Artificial Intelligence (AI) relies on programming and algorithms and lacks will, creativity, or the ability to act independently within the legal framework. The process of creating works of art by Artificial Intelligence (AI) is based on provided data, algorithm training, and human input, making it more mechanical than the legal concept of creativity. Artificial Intelligence (AI) merely follows pre-programmed patterns; its role in creating works of art is more of a tool than a creator.

Artificial Intelligence (AI) does not qualify as a legal subject; therefore, it cannot be considered a creator. The creation of works is based on human creativity, which is regulated by the Copyright Law. Artificial Intelligence (AI) cannot claim ownership of the works it creates because it lacks consciousness or independent thought. The programmer, or the party providing the instructions, determines the outcome of the Artificial Intelligence (AI). Therefore, the human controlling the system remains legally responsible even if the Artificial Intelligence (AI) can

produce works.

Copyright protection for works produced by Artificial Intelligence (AI) also needs to pay attention to the provisions in Article 41 of the Copyright Law. Article 41 letter b of the Copyright Law regulates exceptions to copyright protection for ideas, procedures, systems, methods, concepts, principles, findings, or data, even though these have been expressed in a creation. This provision is relevant if a work of art is produced by Artificial Intelligence (AI) that works based on an algorithm or system that has been programmed by humans. If Artificial Intelligence (AI) only follows the specified procedures or systems without any creative contribution from humans, then the work is likely not eligible for copyright protection, because the results are more technical than expressive.

Article 41 (c) of the Copyright Law states that works created solely for technical or functional purposes cannot be protected by copyright. If a work of art produced by Artificial Intelligence (AI) aims to solve a technical problem, such as producing images according to established parameters or for functional design purposes, then the work falls within the technical realm. This applies especially to works that do not contain a deep artistic dimension but rather aim for functional results, such as commercial graphic design.

However, copyright for such a work can be granted to a human if the human is involved in providing creative direction, such as selecting the theme, style, or artistic elements to be displayed in the work. This applies even if the Artificial Intelligence (AI) performs the technical execution. Copyright will depend on human involvement in providing personal touches and creative ideas. In this case, the work of art is considered the result of human creativity that influences artistic direction and individual expression, even if the Artificial Intelligence (AI) assists in the technical process.

Overall, Artificial Intelligence (AI) can produce realistic or original works of art, but copyright for such works depends on the extent of human involvement in the creative process. If Artificial Intelligence (AI) functions solely as a tool to produce technical or functional works, then the work likely does not qualify for copyright protection under Article 41 of the Copyright Law. On the other hand, if humans are involved in artistic direction, providing creative ideas, or determining essential elements of the work, copyright remains vested in the humans who control the creative process. Human involvement in planning, developing, and refining the work is the primary basis for granting copyright. Therefore, even if Artificial Intelligence (AI) plays a role in the technical execution, the Indonesian legal framework recognizes humans as the creators with the rights to the work.

There is no specific law governing works produced using Artificial Intelligence (AI). Determining ownership of works resulting from Artificial Intelligence (AI) processing is a separate issue because relevant policies, such as the Copyright Law, do not yet exist. However, because there are many Artificial Intelligence (AI) service programs available, progress in the creative field is unstoppable. The operation of these computer programs is usually governed by an agreement between the service provider and the user, which can be found in the usage policy or User License Agreement (UELA).

<sup>10</sup> Nurjamilah dkk, *Pengaruh Kecerdasan Buatan Terhadap Hak Cipta (Analisis Karya Kreatif yang Dihasilkan dari Bing Image Creator)*, Jurnal Hukum dan HAM Wara Sains, Vol. 03, No. 01, Februari 2024, h. 18.

Therefore, one approach could be to rely on agreements to determine ownership of the resulting work. Since there is no clear law on ownership, we can begin by examining the provisions related to three Artificial Intelligence (AI) service programs: Dall-E, Midjourney, and Stable Diffusion. The usage policy for each of these programs, called the Terms of Conditions, states, "Between you (the User) and Open AI, and to the extent permitted by applicable law, you (the User) (a) retain your ownership rights to the input and (b) own the output. We (Open AI) hereby assign to you all of our rights, title, and interest, if any, in the output."<sup>11</sup>

The Artificial Intelligence (AI) system service providers above acknowledge the allocation of ownership of the work produced during the use of these programs to users. Users can be either human entities or business entities using the Artificial Intelligence (AI) services. Therefore, in addition to applicable laws and regulations, AI service providers define users as copyright holders based on their usage policies and license agreements.

The legal construction with additional written agreements is an interpretation of the implementation of Article 36 of the Copyright Law, specifically in the form of a user license agreement, with the addition of clauses that include the following provisions:

1. The Artificial Intelligence (AI) system acts as a tool controlled by the user;
2. User rights include ownership of the work produced during the full use of the Artificial Intelligence (AI) system;
3. The Artificial Intelligence (AI) service provider does not claim copyright in the work resulting from user input.

The addition of the above provisions provides clarity regarding the ownership of works produced by users with the assistance of Artificial Intelligence (AI) systems. Therefore, users can retain rights to their work. Furthermore, to obtain copyright protection, users must also consider the provisions of the Copyright Law. Not all works produced are directly protected by copyright. A work must contain at least three requirements: originality, creativity, and fixation.<sup>12</sup>

By examining the above phenomenon through the Copyright Law's requirements for work protection, it is found that human contribution or intervention occurs through the final work, not in the output directly generated by artificial intelligence. The creativity requirement represents the causal relationship between the creation and the creation of the final painting using traditional techniques, representing the changes in stages that occur between the creation and the creation of the final painting. The requirement of originality or authenticity emerges as a distinctive and personal element, namely independent creation. The AI image elements are used as a reference for the creation of the final painting, allowing for additions, subtractions, and readjustments to shape the AI work according to the creator's imaginative thinking. The requirement for creative work is a causal relationship between the creation and the creator. The final painting using traditional techniques is a staged change from the overall output that does not contain creative elements, then changed so that these elements can

give rise to creativity, feeling, and will. And finally, fixation is the requirement that is easiest to fulfill by Artificial Intelligence (AI) because the resulting output is not in the form of a collection of algorithms or codes but rather an image that meets the classification in Article 40 paragraph (1) of the Copyright Law. However, the final refinement in the form of transformation in the form of traditional painting gives rise to modifications according to a unique creative style, which is a manifestation of the human element. This review resulted in compliance with the specified requirements and the creation process was carried out by a party with sufficient capability and skills to meet the requirements for obtaining copyright protection.

The discussion on ownership above understands that the user has the right to control the work based on the interpretation of the Work Made For Hire principle which is then confirmed through an additional written agreement. Meanwhile, obtaining legal protection requires adjustments to the conditions for protecting creations that are able to show originality, creativity, and fixation as their object, even though Artificial Intelligence (AI) is involved in the process. As users with legitimate reasons to meet these criteria, Artificial Intelligence (AI) output is viewed as a work of art, with enhancements in all forms, resulting in a painting containing creativity, feeling, and will. Thus, the user's position is clearly understood through the implementation of the Work Made For Hire principle, while still prioritizing ethical considerations.

### **Resolve Disputes Over Artificial Intelligence-Derived Artworks in Indonesia.**

Legal settlement efforts that can be taken by users in the event of a dispute through 2 (two) approaches, namely internal dispute resolution and external dispute resolution. Because the dispute does not occur in the conventional realm, but involves electronic media, it is appropriate for the resolution to also use the internet to facilitate the resolution. Artificial Intelligence (AI) service users can use the complaint channel that has been outlined in the service terms policy on each Artificial Intelligence (AI) service platform prioritizing the good faith of the parties. Because the dispute does not occur in the conventional realm, but involves electronic media, it is appropriate for the resolution to also use the internet to facilitate the resolution. Artificial Intelligence (AI) service users can use the complaint channel that has been outlined in the service terms policy on each Artificial Intelligence (AI) service platform prioritizing the good faith of the parties obtained information on policies in several Artificial Intelligence (AI) service providers can be seen in the following table; The complaint policy outlined by the AI service company for the text-to-image program consists of Dall-E, Midjourney, and Stability AI. It is understood that the company first prioritizes efforts to achieve good faith in the form of complaints via electronic mail delivery media. From a legal perspective, this is part of the ESP's responsibility, as stipulated in Article 31 of the Government Regulation on the Implementation of Electronic Systems and Transactions, which states that electronic system providers are obliged to protect their users and the wider public from losses caused by the electronic systems they operate. This implementation is aimed at ensuring that losses experienced by users during the use of electronic services will not recur.

<sup>11</sup> Open AI, *Terms of use*, diakses melalui laman <https://openai.com/policies/row-terms-of-use/>

<sup>12</sup> Rahmi Janed, op.cit, h. 85.



If a settlement agreement between the service provider and user remains unresolved within the specified timeframe, further legal action can be taken through an external party, or one outside the disputing parties. The selection of a dispute resolution mechanism for digital-based Artificial Intelligence (AI) services requires compliance with the laws of the jurisdiction where the company is established, as stated in the terms and conditions.<sup>13</sup> As previously noted, such agreements include a click-wrap agreement model, where users submit themselves to the standard clauses offered by the service provider. Furthermore, the agreement covers cross-jurisdictional contact during the development and use of the Artificial Intelligence (AI) system.

Based on Article 95 Paragraph (1) which states that dispute resolution in the field of Copyright can be carried out through alternative dispute resolution, arbitration, or the courts, litigation dispute resolution is a dispute resolution method taken by the parties through the courts which acts as an ultimatum remedium or the last resort to be taken. Article 95 Paragraph (2) of the Copyright Law further explains that dispute resolution through the courts is carried out through the Commercial Court, which is then emphasized in Article 95 Paragraph (3) of the Copyright Law that other courts besides the Commercial Court do not have the authority to handle dispute resolution related to Copyright. Where then Article 96 Paragraph (1) of the Copyright Law explains that Creators, Copyright Holders, and/or owners of Related Rights or their heirs who experience losses to their economic rights have the right to obtain compensation.

Article 99 Paragraph (1) of the Copyright Law then emphasizes that Creators, Copyright Holders, or owners of Related Rights have the right to file for compensation to the Commercial Court for violations of Copyright or Related Rights products. Through the articles in the Copyright Law, it can be understood that if a Copyright violation occurs, the dispute can be resolved either non-litigation or litigation, and if the dispute is resolved through litigation, the court authorized to handle the dispute is the Commercial Court. In relation to copyright infringements that occur, if the infringement constitutes a violation of economic rights, the Creator, Copyright holder, or owner of Related Rights has the right to obtain compensation and can file a lawsuit for compensation with the Commercial Court.

## Conclusion

Copyright ownership of artworks involving Artificial Intelligence (AI) in their creation (computer-assisted works) can be assigned to users of the Artificial Intelligence (AI) program. The determination of the creator is based on an attribution agreement regarding the work's ownership and a review of the application of the Work Made for Hire principle, based on the application of Articles 34 and 36 of the Copyright Law. The allocation of copyright to human entities aligns with the concept of creator in the Copyright Law, which recognizes them as creators or copyright holders. Therefore, users are entitled to economic incentives for the work and assume legal responsibility.

Potential disputes involving developers and users of Artificial Intelligence (AI) services can arise, as the ownership agreement for the work binds both parties. If a dispute arises, users can pursue resolution through two (2) avenues: internal dispute resolution and external dispute resolution. The first is through internal dispute resolution, or a resolution between the user and the Artificial Intelligence (AI) service provider, prioritizing the principle of good faith between the parties. Artificial Intelligence (AI) developers have already stipulated in the terms of service usage that users can submit complaints in advance, accompanied by evidence, to the developer via a complaint form. Second, if the user still does not find a solution to the problem, they can continue by taking external dispute resolution efforts or using a neutral party, in this case the Artificial Intelligence (AI) developer has determined the dispute resolution by Arbitration as per the terms of use of the service as a binding agreement with the nature of a clickwrap agreement, so that the user is obliged to adjust the resolution of both choice of law and choice of forum.

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<sup>13</sup> Nanda Eviani, *Legal Challenges of AI-Induced Copyright infringement: Evaluating Liability and Disputes Resolution Mechanisms in Digital Era*, Jambura Law Review, Vol. 6, No. 02, Juli 2024, h. 411.

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