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LEX JOURNAL: KAJIAN HUKUM & KEADILAN

**The Legal Position of Artificial Intelligence (Ai) in the Perspective of Copyright
Law in Indonesia**

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ABSTRACT

This research aims to analyze the legal position of AI in the perspective of copyright law in Indonesia and explore the form of legal protection for works produced by AI. The approach used in this research is a normative approach using Lawrence M. Friedman's legal system theory, L. J. van Apeldoorn's legal certainty theory, and Satjipto Rahardjo's legal protection theory. The results show that in positive law, AI has not been recognized as a legal subject that can own copyrights, resulting in ambiguity in the protection of their creations. Some countries such as the United States, China, and Japan have developed different policies in response to this legal challenge, focusing on the role of humans in the creative process. Indonesia needs to urgently adopt clear regulations, both through updating legal definitions and creating new copyright categories for AI works, in order to maintain fairness, encourage innovation, and provide legal certainty for all parties concerned.

Keywords: Law, Copyright, Artificial Intelligence

1. INTRODUCTION

Indonesia is known to have high biodiversity, but without realizing it, many local assets and intellectual property have been registered abroad as foreign property. Violation of intellectual property rights in the form of piracy, counterfeiting, in the

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LEX JOURNAL: KAJIAN HUKUM & KEADILAN

context of copyright, trademark and patent infringement is clearly detrimental to the legal owner of the intellectual property rights (Anggun Lestari Suryamizon, 2017).

Artificial intelligence is modeled after human sensory organs. However, it should be noted that AI can also have the potential to surpass human capabilities if the processing power of AI technology exceeds human capabilities. *Artificial intelligence* before it can create something must first have a lot of data as its "fuel" to work. The data it has will be used as the basis for creating something. For example, in creating a piece of music, before the AI can create a song or music, the AI must first have input data related to what instruments are in a music, digital effects from an , *chord* progressions in music, and so on until later in the end the AI can produce a piece of music in accordance with the *prompt* entered by the *user user*) of AI.

The introduction of Artificial Intelligence (AI) has revolutionized various industries and elements of daily life, presenting new opportunities and demanding situations. This study dives into the problematic relationship between AI and Intellectual Property Rights (IPR), exploring the transformative effect that AI has had on the legal, healthcare, financial, entertainment and other sectors. The technology not only improves efficiency and productivity but also sparks innovation in areas such as data analytics, predictive modeling, and personalized services.

The development of science and technology can make humans more creative and innovative. This creativity covers all fields, so with this ability, there are many awards for these achievements. The development of AI technology has increased rapidly, driven by advances in machine learning, neural networks, and data analysis (Upadhyay & Rathee, 2020). This rapid rise is driven by the exponential increase in computing power and the provision of datasets. As AI structures become more sophisticated, they increasingly contribute to creative and imaginative techniques, challenging the conventional boundaries of human ingenuity. The intersection between AI and intellectual property rights is a complex and evolving area of regulation, characterized

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P-ISSN: 2581-2033

LEX JOURNAL: KAJIAN HUKUM & KEADILAN

by significant legal and philosophical questions. Intellectual property law, designed to protect human creativity and innovation, is now confronted with creations and inventions generated by artificial intelligence. This raises fundamental questions about the nature of authorship and invention in the age of AI, copyrights, patents and trademarks (Alexandru, 2020).

The integration of AI into IPR law raises several ethical considerations, one of which is Bias and Fairness. AI systems may maintain or even exacerbate existing biases in its training data, raising concerns about fairness in decisions. The second is Transparency and Accountability. The often non-transparent nature of AI algorithms poses challenges for accountability and transparency in intellectual property processes, such as patent granting or copyright enforcement. Third, Impact on Creativity: There is an ongoing debate on whether AI enhances or diminishes human creativity, with significant implications for IPR policy. Striking a balance between encouraging innovation and protecting intellectual property rights in the AI era is crucial. One of them is Encouraging AI Development. Intellectual property law should encourage the development of AI technologies while ensuring fair competition and preventing monopolies. Another is Protecting Human Creators.

In the IPR perspective, legal tradition recognizes that the creation of intellectual works is the result of human creativity. However, with the advancement of AI that is capable of independently generating music, art, writing, and even technical inventions, this paradigm has begun to be questioned. Some countries have begun to explore the possibility of recognizing AI as an entity that can own intellectual property rights, while others stick to the principle that only humans can be considered creators. This creates legal uncertainty that could hinder further innovation and technological development.

The development of Artificial Intelligence (AI) technology has brought significant changes in various fields, including the creation of works of art, music, literature, and design. However, these advancements also pose legal challenges especially regarding the

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P-ISSN: 2581-2033

LEX JOURNAL: KAJIAN HUKUM & KEADILAN

legal status of copyrighted works produced by AI. Indonesian law, Law No. 28/2014 on Copyright, only recognizes humans as creators or copyright holders, while works produced entirely by AI are not explicitly regulated. This creates a legal vacuum that raises fundamental questions about the legal position of *Artificial Intelligence* (AI) in the perspective of Copyright law. This legal vacuum not only creates uncertainty for stakeholders, such as AI developers, users, and copyright owners, but also has the potential to stifle innovation and investment in AI.

Policies should ensure that the rights of human creators are not overlooked by works generated by AI, maintaining a fair and equitable IPR ecosystem. Several policies can help regulate AI in the context of IPR especially Copyright. One, Updating Legal Definitions. Amend legal definitions to include or specifically address the role of AI in the process of creation and invention. Two, Creating new Copyright Categories. Consider the creation of a new category or Copyright specifically tailored for AI-generated creations. Third, International Collaboration. Encourage international cooperation to develop harmonized standards and approaches to AI and Copyright law.

2. RESEARCH METHODS

This type of research is normative legal research or doctrinal research, namely research that uses library materials or secondary data consisting of primary legal material data, secondary legal materials and tertiary legal materials as the main material. This type of normative or doctrinal research is also a research that comes from applicable laws or legal regulations and doctrines (Muhaimin, 2020). The material is systematically arranged, studied and associated with legislation, then conclusions are made in relation to the problem under study.

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E-ISSN: 2580-9113

P-ISSN: 2581-2033

LEX JOURNAL: KAJIAN HUKUM & KEADILAN

3. DISCUSSION

The Legal Position of Artificial Intelligence (Ai) in the Perspective of Copyright Law: An Analysis Based on Lawrence M. Friedman's Legal System Theory

a. Conceptual Legal System

Lawrence M. Friedman, a prominent American legal theorist, developed a comprehensive theory of legal systems in his works "*The Legal System: A Social Science Perspective*" (1975) and "*Law and Society: An Introduction*" (1977). Friedman views law not merely as a collection of norms and doctrines, but rather as a complex social system that interacts with various components of society. According to Friedman, "the legal system includes all the structure, substance, and culture of law and the three interact to determine how law works in society (Friedman, 1986).

This approach emphasizes the importance of understanding law as a dynamic social phenomenon, in contrast to the conventional legal positivism perspective that tends to reduce law to its normative aspects alone. The legal system, in Friedman's conceptualization, is an organic entity that is responsive to social, technological and economic changes in society.

b. Legal System Trichotomy: Substance, Structure, and Culture

Lawrence M. Friedman, in his book *American Law An Introduction*, puts forward the theory of the Legal System. According to him:

A legal system in actual operation is a complex organism in which structure, substance, and culture interact. A legal system is the union of "primary rules" and "secondary rules." Primary rules are norms of behavior, secondary rules are norms about those norms - how to decide whether they are valid, how to enforce them, etc (Friedman, 1975).

This theory states that the *legal* system consists of elements of legal *structure*, *legal substance*, and *legal culture* (Ansori, 2017). This analytical framework provides a broader way to understand how the legal system functions and changes in accordance with social developments.

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E-ISSN: 2580-9113

P-ISSN: 2581-2033

LEX JOURNAL: KAJIAN HUKUM & KEADILAN

1) Legal Substance

The substantive norms and rules used by institutions, the actual behavior patterns of actors in the system" is the definition of legal substance according to Friedman's theoretical perspective. This component includes all legal norms, both written and unwritten, that govern social interactions and individual behavior. Constitutions, legislatures, regulations, judicial precedents, and private contracts are examples of the substance of law (Friedman, 1975).

Friedman emphasizes that the substance of law is not static, but rather continues to evolve in response to social, economic and technological change. He argues that "the substance of law contains statements about what individuals in society should do or not do... "substance" is a product of the system, a consequence or output of social life in the system" (Friedman, 1975). Thus, the substance of law can be understood as a normative formulation of the dominant values and interests in society at a particular time.

2) Legal Structure

Legal structure is the second element in Friedman's trichotomy and refers to "the institutional framework of the legal system, the institutions, their organization, and their operational patterns." This component includes institutions that create, interpret, and enforce the law, such as legislatures, courts, administrative agencies, and law enforcement officers. Legal structure is the institutional aspect of the legal system that provides the operational framework for law implementation.

3) Legal Culture

According to Friedman, "the attitudes, values, and opinions held in society, some of which are part of a general ideology, tastes, and expectations... relating to law and the legal system" is the third and perhaps most prominent component of his theoretical framework. Legal culture is the sociopsychological dimension of

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E-ISSN: 2580-9113

P-ISSN: 2581-2033

LEX JOURNAL: KAJIAN HUKUM & KEADILAN

the legal system that describes how people perceive, experience and interact with law and legal institutions.

According to Friedman, "External legal culture is the legal culture of the general public; internal legal culture is the legal culture of those who perform specialized legal tasks." This distinction recognizes that legal professionals can have different views, principles and practices from the general public. This may cause dissonance between the two spheres of legal culture.

In Friedman's perspective, legal change is not merely a technocratic process of adjusting legal norms, but rather a complex socio-political process involving dynamic interactions between diverse actors, institutions and interests: "Changes in the legal system may be a response to social forces acting on the system ... [or] the result of the internal dynamics of forces emerging from within the system itself."

Analysis of Ai's Position in the Copyright Perspective Based on Friedman's Legal System Theory

a. Legal Substance Dimension

In the dimension of legal substance, the position of AI in the copyright system in Indonesia reveals various ambiguities and normative lacunae. Some of the substantial issues that arise include:

1) Normative Problems of "*Authorship*"

Human creativity is naturally linked to the concept of "authorship" in conventional copyright law. The majority of jurisdictions, including Indonesia through Law No. 28 of 2014, do not have copyright laws that explicitly regulate works produced by artificial intelligence. existing legal vacuum leads to uncertainty in legal practice.

Tersedia di online: <http://ejournal.unitomo.ac.id/index.php/hukum>

E-ISSN: 2580-9113

P-ISSN: 2581-2033

LEX JOURNAL: KAJIAN HUKUM & KEADILAN

2) Problems of Originality

The question of relevant standards of originality arises because the doctrine of originality as a condition of copyright protection faces conceptual challenges in AI works because AI systems perform their work through algorithmic processing of training data. The substance of conventional law does not provide a clear standard for determining the originality of non-human works.

3) Regulatory Void and Normative Fragmentation

The majority of jurisdictions have yet to create a comprehensive regulatory framework to govern AI work. Jurisdictions that have adopted such provisions show great differences in the way they regulate, leading to normative fragmentation worldwide (Ramalho, 2017). Such a situation demonstrates what Friedman calls the "lag" of the law, where technology and social practices advance behind the substance of the law.

b. Dimensions of Legal Structure

From a legal structure perspective, the challenges faced in accommodating AI in the copyright system include:

1) Institutional Capacity

Most copyright institutions, such as the Directorate General of Intellectual Property in Indonesia, have not developed the necessary technical capacity to overcome the difficulties associated with the registration and enforcement of copyrighted intellectual works. This lack of institutional capacity has the potential to hamper the implementation of regulations, even if the substance of the law has been changed.

2) Adjudication Mechanism

The judicial system faces challenges in applying traditional copyright doctrines to disputes involving AI works. Limited technical understanding of AI

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E-ISSN: 2580-9113

P-ISSN: 2581-2033

LEX JOURNAL: KAJIAN HUKUM & KEADILAN

technology among legal professionals and judges could potentially lead to inconsistencies in the interpretation and application of the law.

3) Cross-Jurisdictional Coordination

AI technologies and applications are spreading across the globe, so regulations and decisions must work together across jurisdictions. Effective coordination mechanisms do not yet exist within the complicated structure of national copyright laws, leading to jurisdictional conflicts and legal uncertainty for stakeholders.

c. Dimensions of Legal Culture

In the legal culture dimension, AI's place in the copyright system is influenced by several socio-cultural factors:

1) Public Perception of AI

The general public and stakeholders' perceptions of AI's ontological status and creative capabilities differ significantly. Some sections of society may oppose legal recognition of non-human "creativity", while other sections may more readily contemplate the inclusive influence of AI. These perceptual divisions impact the legitimacy and social acceptability of substantive legal reformulations.

2) Creative Industry Expectations

The creative and technology industries have different expectations regarding legal protections for AI works. AI technology developers and technology companies tend to push for more comprehensive protections, while some traditional creators may be concerned about the disruptive impact of the proliferation of AI works on the creative profession (Bonadio & McDonagh, 2020).

3) Inequality of Access and Digital Literacy

Asymmetric access to artificial intelligence technologies and digital literacy in society leads to differences in the capacity to utilize or respond to regulations

Tersedia di online: <http://ejournal.unitomo.ac.id/index.php/hukum>

E-ISSN: 2580-9113

P-ISSN: 2581-2033

LEX JOURNAL: KAJIAN HUKUM & KEADILAN

relating to works of artificial intelligence. These inequalities may lead to differences in the implementation and impact of copyright law reforms.

When we look at copyright law from the perspective of Friedman's theoretical framework, we see how complex regulatory issues are. The AI phenomenon challenges conventional copyright law norms as well as the institutional and cultural forces of the legal system.

To thoroughly reform the copyright law system to enable the use of AI works, an approach that considers changes in the substance, structure, and culture of copyright is required simultaneously. Friedman argues that the success of legal reform depends on the harmonization of all three elements of the legal system.

Ultimately, the legal position of AI in the copyright system is the result of larger socio-technological changes, which necessitate legal changes. The development of the copyright law framework to accept artificial intelligence is a reflection and contribution to the social transformation catalyzed by the technological revolution of artificial intelligence.

The Legal Position of *Artificial Intelligence* (Ai) in the Perspective of Copyright Law: An Analysis Based on L. J. van Apeldoorn's Theory of Legal Certainty

In the last ten years, major advances in artificial intelligence (AI) technology have resulted in a new paradigm in the discussion of copyright and intellectual property rights. This complexity increases as intellectual works created by artificial intelligence systems begin to appear in various forms, such as literature, music, visual arts, and even software. This phenomenon poses a major problem for the conventional copyright legal system, which has traditionally relied on the premise of human creativity as the basis of copyright protection.

Tersedia di online: <http://ejournal.unitomo.ac.id/index.php/hukum>

E-ISSN: 2580-9113

P-ISSN: 2581-2033

LEX JOURNAL: KAJIAN HUKUM & KEADILAN

a. Legal Certainty Theory According to L. J. van Apeldoorn

1) Basic Conception of Legal Certainty

L.J. van Apeldoorn, a renowned Dutch jurist, wrote the book "*Inleiding tot de Studie van het Nederlandse Recht*", first published in 1932, which discussed the theory of legal certainty thoroughly. Apeldoorn considered legal certainty as a fundamental principle of the rule of law that guarantees that laws are implemented in a predictable manner and understood by citizens. He believed that legal certainty is the primary condition for justice and social order.

Apeldoorn views legal certainty (*rechtszekerheid*) as a multidimensional concept that includes several essential aspects:

- a) *Normative certainty (normatieve zekerheid)*: Relates to the clarity and certainty of legal norms, which allows legal subjects to know with certainty what actions can and cannot be done (Scholten, 1949).
- b) *Factual certainty (feitelijke zekerheid)*: Concerns the consistent implementation of legal norms in legal practice, including in court decisions and government actions.
- c) *Temporal certainty (temporele zekerheid)*: Relates to the stability of law in the time dimension, which requires that legal rules do not change abruptly without adequate transition (Scholten, 1949).

2) Criteria for Legal Certainty in the Normative System

Apeldoorn sets out several requirements that a legal system must meet in order to be considered to guarantee legal certainty:

- a) *Accessibility (toegankelijkheid)*: Legal norms must be easily accessible to legal subjects.
- b) *Predictability (voorspelbaarheid)*: The legal consequences of an action must be reasonably predictable by the legal subject.

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P-ISSN: 2581-2033

LEX JOURNAL: KAJIAN HUKUM & KEADILAN

- c) Stability (*stabiliteit*): The legal system should have a sufficient degree of stability to allow for long-term planning.
- d) Coherence (*coherentie*): Legal norms must form a coherent whole and not contradict each other.
- e) Consistency of implementation (*consistente implementatie*): Legal norms must be applied consistently in similar cases (Apeldoorn, 1963).

b. Ai Problematics in the Framework of Copyright Law

One of the fundamental issues in the context of AI's legal standing is the ambiguity of its ontological status within the legal framework. In the traditional legal perspective, entities that can be legal subjects are limited to natural humans (*natuurlijke personen*) and legal entities (*rechtspersonen*). Despite having the ability to produce products that are substantially comparable to human creativity, artificial intelligence systems do not yet have a clear legal status as autonomous subjects.

This ambition runs counter to Apeldoorn's principle of normative certainty, which requires that there should be clarity about who or what can be bearers of rights and obligations in the legal system. The status of AI, whether it is a legal object or a legal subject, raises important uncertainties that impact all aspects of copyright protection for works created by AI systems (Abbott, 2016).

Based on Apeldoorn's theory of legal certainty, the current regulatory framework governing the position of AI in the context of copyright has not met the criteria of normative certainty. This is indicated by:

- 1) Legal Lacunae: The majority of jurisdictions, including Indonesia, do not have explicit provisions governing the legal status of AI and the works it produces in the context of copyright. Law Number 28 of 2014 on Copyright has not specifically accommodated the AI phenomenon (Hidayati, 2019).
- 2) Terminological Inconsistencies: There are significant variations in the terminology used to describe AI works, such as "computer-generated works", "AI-

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E-ISSN: 2580-9113

P-ISSN: 2581-2033

LEX JOURNAL: KAJIAN HUKUM & KEADILAN

generated content", or "machine-created works", leading to uncertainty in the application of legal norms.

- 3) Regulatory Fragmentation: Various jurisdictions adopt different approaches in dealing with AI works, creating uncertainty in the context of cross-border transactions.

This condition creates a situation where legal subjects cannot know with certainty what norms apply to AI works, which is contrary to Apeldoorn's principle of normative certainty. AI's legal position in the copyright perspective currently does not meet the standards of adequate legal certainty. This uncertainty is indicated at the normative (regulatory vacuum and inconsistency), factual (implementation inconsistency), and ontological levels (ambiguity of legal subject status). This phenomenon causes the works produced by artificial intelligence to not fulfill Apeldoorn's principles of legal certainty, namely predictability, accessibility, stability, coherence, and consistency of implementation.

4. CONCLUSION

The legal position of AI in the copyright system still faces a lot of uncertainty, mainly because the current law still relies heavily on the concept of "human creativity". AI is not yet recognized as a legal subject, so the works it produces cannot be easily. This creates a significant legal vacuum. Indonesia does not yet have an adequate legal framework to regulate AI-generated works, so there is a need to adapt the law to be relevant to technological developments.

Protection of copyrighted works produced by *Artificial Intelligence* (AI) does not yet have a clear legal basis in the Indonesian copyright law system. Law No. 28 of 2014 on Copyright only provides protection to works created by humans, so works produced entirely by AI are not included in the current legally protected category. When viewed from Satjipto Rahardjo's theory of legal protection, the law should not only be understood as a normative text, but as a tool to protect human interests and answer real

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E-ISSN: 2580-9113

P-ISSN: 2581-2033

LEX JOURNAL: KAJIAN HUKUM & KEADILAN

needs in society. Law should favor substantive justice, not merely legalistic. In this context, the legal vacuum over AI works has the potential to cause injustice, especially for users, developers, and owners of works with economic value.

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P-ISSN: 2581-2033

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