

Legal Analysis Of Copyright Of Artificial Intelligence (Ai) Digital Works As An Object Of Fiduciary Guarantee

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Abstract. *The development of digital technology and the creative economy has made copyright, including Artificial Intelligence (AI)-based works, an economically valuable asset with the potential to be utilized in financing activities. Normatively, based on Law Number 28 of 2014, copyright is an intangible movable object that contains economic rights and can be transferred. Furthermore, Law Number 42 of 1999 provides space for intangible movable objects to be used as fiduciary collateral. Thus, legally, digital copyright meets the qualifications as an object of fiduciary collateral. This research uses a normative juridical method with a statutory and conceptual approach. The research data is sourced from primary, secondary, and tertiary legal materials, which are analyzed descriptively and analytically to examine the regulation of copyright on AI works and their relationship to fiduciary guarantee law in Indonesia. The research results show that copyright on digital works based on Artificial Intelligence normatively meets the qualifications as an object of fiduciary guarantee because it is an intangible movable object containing economic rights and can be transferred. However, its implementation in practice still faces obstacles in the form of the absence of technical regulations regarding the burden mechanism, intangible asset valuation standards, and certainty of execution in the event of default. Thus, strengthening regulations and technical guidelines is needed to ensure legal certainty in the use of digital copyright as an object of fiduciary guarantee.*

Keywords: Artificial Intelligence; Copyright; Digital Works; Fiduciary Guarantee.

1. Introduction

The development of artificial intelligence (AI) technology has had a significant impact on various aspects of life, including the creation of digital works. This innovation has given rise to legal challenges, particularly regarding copyright on works produced by AI. In a constitutional context, Article 28C paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that everyone has the right to develop themselves through the fulfillment of their basic needs, including in the fields of technology, science, and art. In addition, Article 28H paragraph (4) emphasizes that everyone has the right to protection of their personal property rights. This provision indicates that the law must be able to provide protection for intellectual works, including in the development of digital technology.

AI is now capable of producing various forms of work, such as images, music, and writing, which has sparked debate about copyright status and ownership. In existing legal systems, copyright is generally granted to the individual or legal entity that creates a work, but in the context of AI, determining who is entitled to such legal protection is difficult.¹

Copyright can be understood as a personal right, namely a civil right inherent in the creator. The term "copyright" itself comes from foreign terminology, namely copyrights in English and auteursrecht in Dutch.² Etymologically, this term is composed of two words: "right" and "copyright." In the Big Indonesian Dictionary, "right" is defined as the authority given to someone and can be used freely, whether desired or not. Meanwhile, "copyright" refers to the results of human works born from reason, feelings, knowledge, imagination, and experience.³ The development of AI technology has resulted in works that are not directly generated by human activity, creating new challenges in the context of copyright protection. Yet, digital works produced by AI also have the potential to be used as collateral in economic transactions.

¹ Henry Soelistyo Budi, *Copyright Law in the Digital Era*, Rajawali Press, Jakarta, 2020, p. 45

² Eddy Damian, *Copyright Law*, Sinar Grafika, Bandung, 2005, p. 35.

³ Dictionary Compilation Team, *Big Indonesian Dictionary*, Third Edition, Balai Pustaka, Jakarta, 2002

In collateral law, an asset must have economic value and legal certainty to be used as collateral. Therefore, the legal status of copyright on AI works is important to examine to determine whether the work qualifies as a legally valid collateral object. In various countries, the debate regarding copyright for AI works is ongoing. Some legal systems emphasize that copyright can only be granted to humans, while others are beginning to consider the possibility of AI as creators or at least granting rights to AI owners or developers. These differing approaches have implications for the recognition of AI works in collateral law, given that the legal certainty of an asset is a key factor in its use as collateral in credit agreements and other financial transactions.⁴

2. Research Methods

This research uses a normative juridical approach. The research specification used is descriptive analytical, the data used in this study includes secondary data sources from primary legal materials, secondary legal materials, and tertiary legal materials. Data collection in this research uses a literature study method, the data analysis method uses a prescriptive analysis method.

3. Results and Discussion

3.1. The Position of Copyright of Digital Artificial Intelligence (AI) Works in Guarantee Law.

Artificial intelligence (AI) is a branch of computer science that focuses on developing systems and machines capable of performing tasks that typically require human intelligence. AI utilizes algorithms and mathematical models to enable computers and other systems to learn from data, recognize patterns, and make intelligent decisions. AI capabilities even enable the creation of works that can mimic or surpass human inventions.

The rapid development of AI has made various areas of work and daily life easier. However, this progress has also raised various global issues, particularly regarding legal aspects and human rights protection.

Intellectual property. In the context of the creative industry, works previously produced only by individuals or groups of humans can now also be created by non-human entities such as AI. This phenomenon raises legal challenges regarding the recognition of rights and protection for creators, both human and entities that utilize AI to produce works.

⁴ Daniel J. Gervais, *AI and Copyright: The Upside-Down Question of AI Authorship*, Cambridge University Press, Cambridge, 2021, p. 112

Mochtar Kusumaatmadja said that law is a means of development and a means of renewal in a society. Without the certainty of law and social order that is created for him, it is impossible for a human being to develop the talents and abilities given to him by God to the maximum in society. Relevant to this statement, the development of human creativity requires the existence of various supporting regulations so that legal certainty is created.

Countries around the world have attempted to establish copyright laws for works related to artificial intelligence (AI). The United States provides copyright protection through the Copyright Act, which stipulates that a work is only legally protected if it is original. Originality is defined as a work that is independently created and contains elements of creativity. The United States Supreme Court, in the case of *Feist Publications, Inc. v. Rural Telephone Service Co.*, emphasized that creativity is a key element in granting copyright protection. Copyright law in the United States essentially implies that protected works are creations produced by humans. To date, no creators from non-human entities, including artificial intelligence (AI), have been recognized. Autonomously produced AI works are generally rejected for registration by United States copyright authorities.⁵

The UK, through its Copyright, Designs and Patents Act (CDPA), takes a different approach. The law recognizes the existence of computer-generated works, and copyright in those works rests with the party who makes the necessary arrangements for their creation. Therefore, copyright in AI works rests with the operator or individual operating the AI system. This comparison is relevant for Indonesia in assessing the potential development of legal interpretations of copyright guarantees for AI works, although implementation cannot be straightforward due to differences in legal systems.⁶

In the legal context in Indonesia, if we look at the copyright provisions as a guarantee law in Indonesia, there are no specific regulations that underlie it. Article 1 paragraph (2) of Law No. 42 of 1999 concerning Fiduciary Guarantees states:

that fiduciary security is a security right over movable objects, both tangible and intangible, as collateral for the repayment of certain debts, which gives the Fiduciary Recipient a priority position over other creditors. This definition shows that fiduciary security is a material security institution and can be imposed on intangible movable objects.

⁵ Anna Ramalho, "Will Robots Rule the (Artistic) World? A Proposed Model for the Legal Status of Creations by Artificial Intelligence Systems", Forthcoming in the *Journal of Internet Law* (2017), 5. Pg. 170

⁶ Christoph Antons, "Copyright Law Reform and The Information Society in Indonesia", Third Conference on European and Asian Intellectual Property Rights: New Paradigms of Copyright Law in the Information Society, Vol. 3, no. 1 (2014), 10

Copyright, which is part of intellectual property rights, is categorized as a form of intangible movable property, so it can also be called an immaterial property right. This categorization is inseparable from the economic rights inherent in the creation itself. Economic rights are defined as the exclusive rights of the Creator or Copyright Holder to obtain economic benefits from the creation. Based on Article 16 paragraph (2) of the Copyright Law, copyright can be transferred or assigned through inheritance, grants, endowments, wills, written agreements, and other reasons that are justified in accordance with the provisions of laws and regulations.

Thus, copyright has been normatively recognized as an object that can be the subject of civil legal relations, including the transfer of rights through written agreements commonly used in business and financing practices. However, these regulations are formulated with the assumption that the creation is produced by a recognized legal subject, namely a human being or a legal entity. Law Number 28 of 2014 concerning Copyright defines a creator as a person or several people who individually or jointly produce a creation that is unique and personal.

This provision raises legal issues when associated with digital works produced by Artificial Intelligence (AI), considering that AI cannot be qualified as a legal subject and does not have the legal capacity to act as a creator. The ambiguity regarding the status of creators and copyright holders of AI works has implications for legal certainty regarding ownership of economic rights. Without confirmation regarding the legitimate party as the copyright holder, the transfer of copyright as referred to in Article 16 paragraph (2) of the Copyright Law has the potential to be legally challenged.

From a legal perspective, a collateral object must meet the requirements of legal certainty, economic value, and transferability. Copyright, in principle, meets these requirements. Artificial Intelligence (AI) can be considered a collateral object as long as it is linked to copyright in the digital works it produces. This is because copyright is an intangible object with economic value and can be transferred, as stipulated in the Copyright Law.⁷

From a material perspective, Article 499 of the Civil Code states that objects are not only tangible goods but also include rights that can be controlled. Copyright falls into this category of rights because it grants its holder the economic right to obtain benefits.

of a creation. Therefore, even if the work is produced by Artificial Intelligence (AI), as long as the copyright to the work is legally owned by a human or legal entity, the copyright of the AI work can be viewed as an intangible movable

⁷ Munir Fuady, *Debt Guarantee Law*, Erlangga, Jakarta, 2013, p. 12

object that meets the requirements as an object of collateral, particularly in the form of fiduciary collateral.

However, uncertainty regarding copyright ownership raises doubts about the eligibility requirements for collateral. This situation indicates a normative gap in Indonesian positive law regarding explicit regulation of the copyright status of AI works, potentially weakening their position in collateral legal relationships and creating legal risks for interested parties.

3.2. Copyright of Digital Artificial Intelligence (AI) Works as Fiduciary Guarantee Objects in Indonesia.

In Indonesian law, fiduciary guarantees are specifically regulated in Law Number 42 of 1999 concerning Fiduciary Guarantees, which stipulates that movable objects, both tangible and intangible, can be used as objects of fiduciary guarantees as long as they are owned by the debtor and can be legally transferred.

Copyright, including copyright on digital works produced by Artificial Intelligence (AI), falls under the category of intangible assets that have economic value and can be exploited commercially. Furthermore, Article 499 of the Civil Code states that assets include goods and rights that can be controlled, so that copyright normatively meets the criteria for assets that can be pledged.

This recognition is reinforced by the Copyright Law (Law No. 28 of 2014), which stipulates that copyright can be transferred through a written agreement, either in part or in full. Based on this legal basis, copyright in AI works has the potential to become the object of fiduciary collateral, provided that the copyright holder has been legally designated as the debtor providing the collateral.⁸

In principle, the object used as fiduciary collateral must be stated in a deed of fiduciary collateral encumbrance as regulated in Article 5 paragraph (1) of the Fiduciary Collateral Law, which states that the encumbrance of an object with fiduciary collateral must be made through a notarial deed in Indonesian and is a Fiduciary Collateral Deed.

The fiduciary guarantee deed must contain at least the following:

- a. Identity of the giver and recipient of the fiduciary.
- b. Data on the main agreement guaranteed by fiduciary.
- c. Description of the object that is the object of fiduciary guarantee.
- d. Guarantee value.
- e. The value of the object that is used as the object of fiduciary guarantee.

⁸ Sri Soedewi Masjchoen Sofwan, Op. Cit, pp. 27-28

After the deed of fiduciary security encumbrance is drawn up, the next step is the obligation to register the object encumbered by the fiduciary security. This registration is related to the principle of publicity, which aims to provide third parties with the opportunity to learn about the registration, the characteristics of the object being pledged, and that a particular object has been encumbered as collateral for the benefit of a particular creditor.

Registration of fiduciary collateral objects is carried out at the Fiduciary Registration Office. After registration, the office will issue and deliver a Fiduciary Collateral Certificate to the fiduciary recipient on the same date the registration application is received. Therefore, the fiduciary collateral is considered valid from the date it is recorded in the fiduciary register.⁹

In principle, a Fiduciary Guarantee Certificate has the same enforceable power as a final and binding court decision. Therefore, if the debtor, as the Fiduciary Provider, defaults, the creditor, as the Fiduciary Recipient, has the right to sell the object of the fiduciary guarantee.

Article 29 of the Fiduciary Guarantee Law states that the execution of objects that are the object of fiduciary guarantees can be carried out through the implementation of an executorial title by the Fiduciary Recipient, the sale of objects through a public auction, or a private sale based on an agreement between the parties if in this way the highest price can be obtained that is profitable for both parties.

Utilizing copyright as a fiduciary security provides flexibility for the financing system, particularly in the digital economy. The economic value of AI creations can be quantified and accounted for, allowing copyright to serve a dual purpose: as a means of protecting creators and as a financing instrument.

In the national financing system, financial institutions require collateral to guarantee the repayment of debtors' debts. In the context of Indonesian property security law, fiduciary collateral is one of the most flexible instruments because it can encumber movable property, both tangible and intangible.¹⁰

Banks, as financial intermediary institutions, have the authority to disburse credit by requiring collateral to implement the principle of prudence. In the development of the digital economy, intangible assets such as property rights

⁹ J. Satrio, *Law on Guarantee of Fiduciary Property Rights*, PT. Citra Aditya Bakti, Bandung, 2002, p. 247

¹⁰ Munir Fuady, *Debt Guarantee Law*, Citra Aditya Bakti, Bandung, 2013, p. 45

Copyright on computer programs and Artificial Intelligence-based works can be considered normatively as an alternative form of collateral.¹¹

Besides banks, finance companies are also the institutions that most frequently use fiduciary guarantee schemes in their financing activities. The characteristic of fiduciary guarantees, which do not require physical delivery of the collateral, provides debtors with the flexibility to continue using the collateral in their business activities.¹²

The development of artificial intelligence technology in Indonesia demonstrates significant dynamics within the national digital economy ecosystem. One relevant example is Nodeflux, an Indonesian technology company specializing in AI-based computer vision and video analysis. The products they develop include software, algorithms, and AI-based systems that have economic value and are used by various government agencies and the private sector.

From an intellectual property law perspective, the system can be qualified as a computer program that is included in the protected creations based on Law Number 28 of 2014. Copyright for the computer program contains economic rights that can be transferred, licensed, or utilized commercially, so that legally it is an intangible movable object that has material value.

Because any rights held by a creator are essentially divided into two: moral rights and economic rights. Both of these rights are exclusive rights held by the creator to utilize and enjoy the copyright. Moral rights are rights that cannot be separated from the creator forever. Meanwhile, economic rights are rights that can be transferred to another party (another party who holds the copyright), and through these rights, the creator obtains economic benefits from his creation.¹³

However, the main obstacles lie in valuation and enforcement mechanisms. The value of AI-based copyrights is highly dependent on licensing, usage contracts, system updates, and the technology's competitiveness in the market. Therefore, while normatively possible, implementing digital copyrights as fiduciary collateral requires a cautious approach and the development of more comprehensive intangible asset valuation standards.

AI is not a legal entity, so it cannot directly hold copyright. Copyright for AI works must be owned by a human or legal entity as the legitimate rights holder, so that a fiduciary agreement can be legally created and executed.

¹¹ Hermansyah, Indonesian National Banking Law, Kencana, Jakarta, 2014, p. 123

¹² Gunawan Widjaja & Ahmad Yani, Business Law Series: Fiduciary Guarantees, RajaGrafindo Persada, Jakarta, 2000, p. 32

¹³ Anis Mashdurohaturun, Problems of Copyright Protection in Indonesia, Yustisia, Vol. 1 No. 1, 2012, p. 71

There is a legal vacuum regarding AI digital copyright because neither the Copyright Law nor the Fiduciary Guarantee Law specifically regulates the status of copyright generated by AI. This ambiguity poses risks for parties seeking to pledge AI copyright, particularly regarding fiduciary registration and enforcement procedures in the event of default by the debtor.

Thus, although copyright of AI works theoretically qualifies as an object of fiduciary guarantee, obstacles related to legal subjects, regulatory gaps, implementation difficulties, and uncertainty of legal practice are important challenges that must be considered.

To enable AI copyright to be used as an object of fiduciary guarantee in Indonesia, legal reconstruction is needed at both the regulatory and practical levels through the addition of provisions regarding the recognition of AI copyright, guidelines for the registration of intangible objects, economic valuation mechanisms, and legal practice standards at the notary and court levels to ensure legal certainty and protection for the parties.

4. Conclusion

The position of copyright of digital works produced by Artificial Intelligence (AI) in Indonesian guarantee law does not yet have clear legal certainty, because Law Number 28 of 2014 concerning Copyright still positions humans as creators so that AI cannot be positioned as a legal subject. This condition has implications for guarantee law, because the unclear subject of copyright holders impacts the difficulty of placing economic rights over AI works as objects of material guarantee. In contrast to several other countries that have provided certain legal constructions for AI works, such as linking copyright ownership to the developer or controller of the AI system, Indonesian law still does not have similar regulations. Therefore, although conceptually copyright of AI digital works has economic value and is relevant in guarantee law, its position still requires a clearer regulatory basis. In principle, the copyright of digital works of Artificial Intelligence (AI) has the potential to be used as an object of fiduciary security in Indonesia. Law Number 42 of 1999 concerning Fiduciary Security recognizes intangible movable objects that have economic value and can be transferred as objects of fiduciary security, so that copyright as part of intellectual property rights meets this qualification. However, the absence of specific regulations regarding copyright of AI works creates the risk of legal uncertainty in the practice of imposing fiduciary security. Therefore, the optimal use of copyright on AI works as objects of fiduciary guarantee can only be carried out if there is clarity regarding the ownership of economic rights and the support of firm and adaptive legal regulations.

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