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# A Lacuna of the Indonesian Copyright Law on the Works of Artificial Intelligence

*by* Elza Syarief

# A Lacuna of the Indonesian Copyright Law on the Works of Artificial Intelligence

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***Abstract***

*In the Industry Revolution 4.0 era, Artificial Intelligence (AI) is commonly used in business and daily life. Similar to human mind, AI can create copyrighted works such as literature, arts, music. It is so unfortunate that Law No. 28 of 2014 concerning Copyright (Undang-undang No. 28 Tahun 2014 tentang Hak Cipta) only admits a natural person as an author to be given a copyright protection. Therefore, a question arises how to grant AI and its works a copyright protection in Indonesia. This research compares the approaches of the Indonesian Copyright Law and the United Kingdom Copyright, Designs, and Patents Act 1988 because the UK has granted legal protection to the works of AI. To achieve the objectives, the Progressive Law Theory by Satjipto Rahardjo is used as theoretical framework because it allows a breakthrough of laws to establish a better law. This research utilizes a normative legal approach with a comparative law approach. Hence, all data used is secondary data, primarily the Copyright Law of Indonesia and the UK. The data is collected from library and analyzed by using a qualitative method. The research finds that Law No. 28 of 2014 concerning Copyright of Indonesia has not been updated to keep up with the most current technical development of industry revolution 4.0 that primarily adopts the advanced technologies, such as robotics and AI. However, the United Kingdom Copyright, Designs, and Patents Act 1988 has made a breakthrough without violating its fundamental principle of its Copyright Law to fill the lacuna regarding the works of AI by adopting the "Work Made for Hire" doctrine. This approach may be adapted by the Indonesian Copyright Law to make it more progressive in granting protection the works created by AI.*

***Keywords:*** *Copyright Law, Artificial intelligence, Indonesia, United Kingdom*

**Abstrak**

Di era Revolusi Industri 4.0, *Artificial Intelligence* (AI) biasa digunakan dalam bisnis dan kehidupan sehari-hari. Mirip dengan pikiran manusia, AI dapat membuat karya cipta seperti sastra, seni, musik. Sangat disayangkan bahwa Undang-Undang No. 28 tahun 2014 tentang Hak Cipta hanya mengakui orang sebagai penulis yang diberikan perlindungan hak cipta. Oleh karena itu, timbul pertanyaan bagaimana memberikan perlindungan hak cipta bagi AI dan hasil karya ciptanya di Indonesia. Penelitian ini membandingkan pendekatan Undang-Undang Hak Cipta Indonesia dan Undang-Undang Hak Cipta, Desain, dan Paten tahun 1988 dari United Kingdom karena negara ini telah memberikan perlindungan hukum terhadap karya-karya AI. Untuk mencapai tujuan tersebut, Teori Hukum Progresif oleh Satjipto Rahardjo digunakan sebagai kerangka teori karena memungkinkan ada terobosan hukum untuk membentuk hukum yang lebih baik. Penelitian ini menggunakan pendekatan hukum normatif dengan pendekatan perbandingan hukum. Oleh karena itu semua data yang digunakan adalah data sekunder, utamanya Undang-Undang Hak Cipta Indonesia dan Inggris. Data dikumpulkan dari perpustakaan dan dianalisis dengan metode kualitatif. Penelitian ini menemukan bahwa Undang-undang No. 28 tahun 2014 tentang Hak Cipta di Indonesia belum diperbarui untuk mengikuti perkembangan teknologi terbaru dari Revolusi Industri 4.0 yang mengadopsi teknologi canggih, seperti robot dan AI. Namun, Undang-Undang Hak Cipta, Desain, dan Paten tahun 1988 di United Kingdom telah membuat terobosan tanpa melanggar prinsip dasar dari Undang-Undang Hak Cipta tersebut untuk mengisi kekosongan terkait karya AI dengan mengadopsi doktrin "*Work Made for Hire*". Pendekatan ini dapat diadaptasi oleh Undang-Undang Hak Cipta Indonesia untuk membuatnya lebih progresif dalam memberikan perlindungan pada karya yang diciptakan oleh AI.

**Kata Kunci:** Hukum Hak Cipta, Kecerdasan Buatan, Indonesia, United Kingdom

## A. Background

In Indonesia, an author has a right upon his/her work to protect the usage of his/her work in society and even has the right to prohibit other people in using his/her work without permission and to sue violators. Copyright is one of intellectual property rights. Copyright is generally defined as an exclusive right for authors or the right holders to announce or multiply their work or give permission with certain limits allowed by the law. In the modern digital era today, information can be accessed everywhere, consequently copyright law becomes essential and crucial. Creative works are not merely created by using papers and pens anymore. Technology has advanced and become an unseparated part of society. People nowadays can write works of literature with smartphones, gadgets, and computers.

As the digitalized human mind, artificial intelligence can create copyrighted works such as literature, arts, music, and many more. For example, Sony Corporation has been using artificial intelligence to create music by using 665 data of music from different genres, such as pop, rock, and electronic music.[1] In 2016, a group of museums and researchers in the Netherlands unveiled a portrait entitled "The Next Rembrandt," a painting generated by computer by analysing thousands of works from the 17th-century Dutch artist Rembrandt Harmenszoon van Rijn.[2]

The English Oxford Living Dictionary states that the definition of "artificial intelligence" is "the theory and development of computer systems able to perform tasks normally requiring human intelligence, such as visual perception, speech recognition, decision-making, and translation between languages."[3] In 1956, John McCarthy from Massachusetts Institute of Technology suggested to use the term "artificial intelligence" in a conference on the Dartmouth Summer Research Project on Artificial Intelligence at Massachusetts Institute

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[1] Hieronimus Patardo, "Sony pakai AI untuk hasilkan musik", https://www.tek.id/future/sony-pakai-ai-untuk-hasilkan-musik-b1XkP9fgL, accessed on 31st August 2019.

[2] Andres Guadamuz, "Artificial Intelligence and Copyright", https://www.wipo.int/wipo_magazine/en/2017/05/article_0003.html, accessed on 29th August 2019.

[3] Bernard Marr, "The Key Definitions of Artificial Intelligence (AI) That Explains Its Importance", https://www.forbes.com/sites/bernardmarr/2018/02/14/the-key-definitions-of-artificial-intelligence-ai-that-explain-its-importance/#6ca33b994f5d, accessed on 12th December 2019.

of Technology. John McCarthy is considered the founding father of artificial intelligence.

Artificial intelligence software combines machine learning and the ability of autonomy learning without rule-based programming. It provides varies of facilities, including data amount, performance, and trade-offs between computational complexity. In detail, artificial intelligence includes machine learning, natural language processing, system expert, vision, speeches, planning, and robots.

In Indonesia, it is not clearly stated by Law No. 28 of 2014 concerning Copyright whether a computer program can be admitted as an author of a work which is eligible to gain copyright protection. The current Indonesian Copyright Law merely recognizes a natural person or a few people as an author to be given copyright protection. In some cases, few companies can act as the copyright holders of the copyright license on their employee's work, such as record companies and photo studios.

Different from the copyright law of the United Kingdom, namely the United Kingdom Copyright Act, Section 9 (3) of the Copyright, Design and Patents Act (CDPA) states that the law admits a work created by a computer program (computer-generated works). The question arises a fundamental issue pertaining to the status of AI and its works under the existing Copyright Law in Indonesia.

## B. Research Questions

This research poses the following questions:

1. What are the approaches of Copyright Laws in Indonesia and the United Kingdom?
2. Should Indonesia adopt progressive approaches to prove protection for the works created by artificial intelligence?

## C. Research Methodology

A normative legal approach is adopted by this research because it examines legal documents and materials without giving a consideration to social factors.[4] Normative legal research deals with concepts that appears on the rules and regulations in society.[5]

[4] Amiruddin and Asikin, Z, *Pengantar Metode Penelitian Hukum*, Jakarta: PT Raja Grafindo Persada, 2012

[5] Muhammad, A, *Hukum dan Penelitian Hukum*, Bandung: PT. Citra Aditya Bakti, 2004.

Soekanto and Mamuji emphasize that a normative legal research studies law as a norm,[6] hence it is often referred to as a doctrinal research.[7]

According to Soekanto,[8] there are five types of legal research, namely:

1. Research on the principles of law which is conducted by analysing the rules of law, written or unwritten laws.
2. Research on the systematic of law which aims to examine the meaning of systematic law which contains in subjects of law, rights and obligations or objects of law.
3. Research on the synchronization of law which aims to review laws vertically or horizontally. If it is reviewed vertically, it means regulations are examined based on the hierarchy of law. If it is reviewed horizontally, it means that it aims to find the strengths and weaknesses of the regulation.
4. Research on comparative laws which aims to compare two or more legal systems or regulations of different states.
5. A research on history of law which aims to analyse the legal facts of the past events and to relate them with the facts of the present law.

This research uses a comparative law by comparing and contrasting the Copyright Law of Indonesia and the UK to find out whether AI and its works are somehow can be acknowledged. Data utilized by this research is a secondary data which consists of:

1. Primary legal materials constitute of authoritative legal materials that are comprised of legislation, official records, or minutes in the making of laws and regulations.[9] The primary legal material in this research is Law No. 28 of 2014 concerning Copyright (*Undang-undang No. 28 Tahun 2014 tentang Hak Cipta*) of Indonesia and the United Kingdom Copyright, Design, and Patent Act 1988.
2. Secondary legal materials which aim to explain primary legal materials. For example: reports, books, research results, journals, etc.

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[6] Soekanto, S. and Mamudji, S, *Penelitian Hukum Normatif, Suatu Tinjuan Singkat*, Jakarta: PT Raja Grafindo Persada, 2011.

[7] Soerjono and Abdurahman, H, *Metode Penelitian Hukum*, Jakarta: Rineka Cipta, 2003.

[8] Soekanto, S., *Pengantar Penelitian Hukum*, Jakarta: UI Press, 1986.

[9] Marzuki, P.M., *Penelitian Hukum*, Jakarta: Kencana, 2005.

3. Tertiary legal material as a guidance and explanation to primary legal material and secondary legal material, namely the English Oxford Living Dictionary.[10]

Since the research adopt a normative legal approach which is derived from secondary data, consequently data collection uses material and documents that are obtained from library.[11] The research uses a qualitative method to analyse the collected secondary data. This method employs an inquiry approach which traditionally social science research which "generate words, rather than numbers". Accordingly, it focuses on the meaning (content analysis) and it is inductive by developing the concepts based on collected secondary data.[12]

## D. Research Findings and Discussions

### 1. The Approaches of Copyright Law in Indonesia and the United Kingdom

a. Copyright Law in Indonesia

Article 1 Number 1 of Law No. 28 of 2014 concerning Copyright (the Indonesian Copyright Law) states that "copyright means as an exclusive right of the author vested automatically on the basis of declaratory principle after works are embodied in a tangible form without reducing by virtue of restrictions in accordance with the provisions of laws and regulations".

Article 1 Number 2 of the Indonesian Copyright Law stipulates that that "Author means a person or several persons who individually or jointly produce works that are unique and personal." Based on this provision, it is obvious that an author receives protection according to the Indonesian Copyright Law if the following requirements are met, namely:

1) Categorized as a protected work by Indonesian Copyright Law;
2) Consist in fields of scientific, artistic, or literature;

[10] *Supra* note 6.
[11] *Ibid.*
[12] Soebani, B.A., *Metode Penelitian Hukum*, Cet. Ke-1, Bandung: Pustaka Setia, 2009.

3) Resulted from inspiration, ability, thought, imagination, dexterity, skill or expertise; and
4) Have been expressed in tangible form.

The new improvement in technology has caused ambiguity and create a legal gap in the Indonesian Copyright Law because it has limited the provisions from accepting the possibility of a non-human authors.

b. Copyright Law in the United Kingdom

Section 1 Paragraph 1 of the United Kingdom Copyright, Designs, and Patents Act 1988 defines that "Copyright is a property right which subsists in accordance with this part in the following descriptions of work – (a) original literary, dramatic, musical or artistic works, (b) sound recordings, films or broadcasts and (c) the typographical arrangement of published edition". To be admitted as an author in the United Kingdom Copyright, Design and Patent Act 1988, a person must fulfil the following criteria:

1) A person who originates or gives existence to anything;
2) The said anything must be original (original works of authorship); and
3) The said anything is in the fields of literature, dramatic, musical, artistic, or other intellectual works which can be given exclusive rights.

The United Kingdom makes a breakthrough to keep up with the Industrial Revolution 4.0 by revising its copyright law in Section 9 Paragraph 3 the United Kingdom Copyright, Designs, and Patents Act. It stipulates that "(3) In the case of a literary, dramatic, musical or artistic work which is computer-generated, the author shall be taken to be the person by whom the arrangements necessary for the creation of the work are undertaken." The United Kingdom further defines "computer-generated" work in Section 178 the United Kingdom Copyright, Designs, and Patent Act 1988. It states that "Computer-generated, in relation to a work, means that the work is generated by a computer in circumstances such that there is no human author of the work." It is apparent that if a computer creates a work which is operated by AI, the computer program will not be considered

as an author. Yet, the work is automatically considered as "computer-generated work". Hence, the one who is considered as an author is the one who operates it, namely the artificial intelligence. The author according to the United Kingdom Copyright, Designs, and Patents Act 1988, is not necessarily a natural person who creates the copyrightable work. The author can be in the scope of employment.

The approach of the UK is derived from the adoption of the "Work Made For Hire" doctrine. The doctrine sets a relationship between operator and AI and employer. It determines that:

1) the operator is referred to as the "employer" and artificial intelligence as the "employee". Therefore, the copyright works created by artificial intelligence is given to the operator by law, or
2) if the operator made his/her action in creating works by using artificial intelligence is within his/her scope of work, and if it is based on work-agreement, then the works produced by an operator is owned by the company and the authorship falls into the operator.

When artificial intelligence is considered as the "employee" of the operator who acts as the "employer" of the program. The employer who produces the copyrightable work can be admitted as the author as long as the work is original and fixed in material form.[13] In this regard, it can be advanced that:

1) A computer-generated literary, dramatic, musical, or artistic work is still considered copyrightable work;
2) There are none or minimum involvement of human author the process of doing the work;
3) The person who arranges specific action to be done for the work to be created is claimed as the author in copyright law; thus the copyright does not own by the program, but rather the operator;
4) If the operator-author is under-employment, and the work is created undertaken the employee's job, then the first-hand owner for the copyrighted work is the employer.

The regulation Section 9 Paragraph (3) the United Kingdom Copyright, Designs, and Patents Act has been used in a case involving

[13] The United Kingdom, *Copyright, Design and Patent Act*, UK Copyright, Design, and Patent Act 1988, Section 11 Paragraph 2.

electronic pool games between *Nova Productions Ltd v Mazooma Games Ltd*.[14] Individual frames displayed on the screen when the game was played were held to be computer-generated artistic works authored by the person. It was held that "devised the appearance of the various elements of the game and the rules and logic by which each frame is generated and the person who wrote the relevant computer program."

Consequently, if artificial intelligence generated a copyright-protected work, the owner of the rights granted to an author will be the person whose actions triggered the generated work. If the person is under-employment status and the created work undertaken by the employee's job, the claimed author of a work created by artificial intelligence will be held by the employer.

## 2. A Need of Progressive Approaches in Protecting Works Created by Artificial Intelligence in Indonesia

The Progressive Law Theory by Satjipto Rahardjo is the way of law to adjust with the dynamic context in life. It has to ensure a quality to serve and to bring people to prosperity and happiness. To achieve this purpose, law should make a breakthrough in order to establish a better law.[15] The Progressive Law Theory rejects all statements which determines that the law institution is final and absolute, but it is rather determined by its ability to serve humanity.[16]

As humans keep on changing from time to time, it is relevant for law to keep up with humans' dynamic life and legal cultures. In this regard, law is continuously being in a process and making, it continually develops itself to make perfection. The said perfection quality may be based on several factors, namely justice, prosperity, people's concerns and many more.[17] Law is not trapped by a mere "legal certainty" rhythm, status quo, and a final scheme. When law is considered as a final scheme, it does not exist as a solution for human problems anymore. This is because humans are forced to fulfil legal certainty requirements only.[18]The fundamental philoso-

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[14] Anne Fitzgerald and Tim Seidenspinner, "Copyright and Computer-Generated Materials – Is It Time To Reboot the Discussion About Authorship?", Victoria University of Law and Justice Journal, Vol. 47, No. 5, 2013, p. 55

[15] Rahardjo, S, *Penegakan Hukum Progresif*, Jakarta: Kompas, 2010.

[16] Mahfud, M.D, *Politik Hukum di Indonesia*, Jakarta: Rajawali Pers, 2009.

[17] *Ibid*.

[18] Mukhidin, Hukum Progresif Sebagai Solusi Hukum yang Menyejahterakan Rakyat, *Jurnal Pembaharuan Hukum*, Vol. 1, No. 3, Desember 2014.

phy of Progressive Law Theory is that the purpose of law is to ensure a fair, prosper, and happy life for humans.[19] Rahardjo asserts that law must make a breakthrough out of the mainstream absolute law mindset.[20]

Richard Susskind states that there are three supporting factors of law changes, namely as 'challenge, liberation, and information technology'.[21] Technology creates new ways each time to provide service for humanity with less cost. Artificial has the ability to generate new ideas through the use of software that mimics the configuration of human neural networks. This process can be both independents of human intervention and automatic. The results are surprisingly varied with different levels of complexity and artistic value. This gives the impression that technology has progressed so advanced that it is capable of creativity and innovation.

In current progressive technology, authors may not be limited to humans or corporates only, but also computer programs such as artificial intelligence. Google, Apple, Sonny are examples of companies using artificial intelligence to generate work for them. Artificial intelligence unlike human developers, do not need financial incentives. The AI performance does not depend on tangible rewards, but rather on the data input and commands it received. If the protection for works created by artificial intelligence exists, investments for artificial intelligence development will be bigger and better, thus creating more advanced technologies to help humans in the future. This fits with the Progressive Law Theory of Satjipto Rahardjo.

There are some reasons by the creative or artistic works of Artificial Intelligence needed to be protected in Indonesia. In the absence of such a protection, an economic disadvantage may occur because the AI work is free to be duplicated, reused, or taken by other people and be claimed as their own. AI is currently used by lots of big companies such as Google and Sony to generate work for personal or industrial goals. The use of AI as a way to create works of copyright has already been done by big companies for a faster work and better profit.

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[19] Kusuma, M, *Menyelami Semangat Hukum Progresif; Terapi Paradigmatik atas Lemahnya Penegakan Hukum di Indonesia*, Yogyakarta: LSHP, 2009.

[20] Rahardjo, S, *Hukum Progresif Sebagai Dasar Pembangunan Ilmu Hukum Indonesia, Menggagas Hukum Progresif Indonesia*, Semarang: Pustaka Pelajar, 2006.

[21] Qur'ani Dewi Kusumawardani, "Hukum Progresif dan Perkembangan Teknologi Kecerdasan Buatan", VeJ, Vol. 1, No. 1, June 2019.

Millions of dollars may be invested by a company for artificial intelligence development to create a work. However, this can turn to be a massive disadvantage if the work cannot be protected by the law and then used by everyone for free. It will be a massive loss for investors.

In addition to economic disadvantage, people may easily use the existing works created by AI as a way to create more accessible works without the effort of creativity and the process of creation. Subsequently, they claim it as their creative works to gain a copyright-ownership. In the absence of the protected AI works, there could be a 'new trend' in art or literacy creation which prefers to modify the AI works to eliminate the creativity of humans for easier and faster works. Therefore, in order to avoid this to happen, Indonesia should consider to provide legal certainty pertaining to the works created by AI to avoid the elimination of human creativity.

The current Indonesian Copyright Law does not apply to the works created by a non-human entity such as computer-generated works, including AI. AI is not recognized as the subject of law in Indonesia. Thus, it is not admitted as an author of a copyrighted work and cannot obtain protection under the Indonesian Copyright Law. This lack of protection may cause great disadvantages for the artificial intelligence owner or the operator of the work. The work will be vulnerable to be duplicated or copied and eventually be reclaimed as a new work. Hence, it is imperative to provide legal protection for the AI works since the existence of legal certainty helps to bring justice and expediency towards copyright life in Indonesia.

## E. Conclusions

It is believed that by using AI, the spend of time and money can be efficient. However, protection for the works generated by artificial intelligence is still vague in Indonesia since this country does not acknowledge the computer-generated works as a copyrightable work. It can be concluded that the Indonesian Copyright has not been updated to keep up with the most current technical development of industry revolution 4.0 that primarily adopts the advanced technologies, such as robotics and AI. However, the United Kingdom has made a breakthrough without violating its fundamental

principle of its Copyright Law to fill the lacuna regarding the works of AI. Different from the Indonesian Copyright Law, the United Kingdom Copyright, Designs, and Patents Act 1988 in its most current version has regulated that any computer-generated (non-human authors) works, to be given to protection by adopting the "Work Made for Hire" doctrine. Accordingly, the United Kingdom has a new and broader approach to the protected works by acknowledging the works of AI.

The United Kingdom Copyright Law has also adopted a more progressive notion regarding protection for works created by artificial intelligence. This approach may be adapted by the Indonesian Copyright Law if it utilizes the approach of Progressive Law Theory. If Indonesia were to apply this approach, then it could motivate the use of AI in Indonesia and to improve human creativity since the duplication of AI works is regarded as a violation of the Copyright Law.

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