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# Juridical Review of Fine Art Works Created Using Artificial Intelligence Technology Art Generator

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**Abstract:** This study examines legal challenges surrounding AI-generated artworks, focusing on copyright protection in Indonesia. AI art raises concerns about authenticity and ownership, prompting an analysis of existing copyright laws through a normative juridical approach and literature review. Findings show that many AI-created works fail to meet originality criteria under current laws, exposing regulatory gaps. The study also addresses issues with using copyrighted works as AI training data, particularly regarding royalties and protection on social media. Results highlight insufficient policies for creators and developers, emphasizing the urgent need for clearer legal frameworks to safeguard rights and support fair AI use in creative fields.

**Keywords**: Intellectual Property Rights; Copyright; Artificial Intelligence.



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## 1. Introduction

In the current era of globalization, technology has become an integral part of everyday life. Its development is inevitable, especially after the industrial revolution 4.0 era that prioritizes automation and technology integration. In 2019, the 5.0 industrial revolution was inaugurated with the aim of aligning advanced technologies such as AI, IoT, and robotics with human capabilities, and encouraging innovation to create systems that are more efficient, flexible, sustainable, and capable of improving welfare. The rapid development of these technologies also brings new risks that require legal regulation to anticipate the negative impacts.

Artificial Intelligence (AI) is a technology that has attracted attention for its great potential, but has also sparked controversy regarding its social, ethical, and legal impacts. AI is defined as a system that is able to interpret data, learn from it, and adapt to achieve specific goals with high efficiency. In the field of art, AI Art Generators like Dall-E utilize machine learning algorithms to create artworks by learning thousands of patterns from existing works. It is capable of producing innovative artworks, ranging from two-dimensional images to three-dimensional models.[1]

However, this progress raises concerns, such as copyright infringement, claims of works by users, and ethical issues in their utilization. The main problem that arises is the use of artwork data taken from the internet without the author's permission, potentially violating the copyright stipulated in Law Number 28 of 2014 concerning Copyright. This law only regulates computer programs as copyright-able legal objects, but has not provided legal status for AI as a legal subject, even though AI is now capable of creating works independently. This uncertainty makes it difficult to determine the legality of copyright claims on AI works. In addition, the use of AI in art has sparked a debate about the humanistic value of art. Many artists fear that AI will replace the creative role of humans, while others believe that AI-generated works lack the emotional touch that is unique to humans. In this context, the law has an important role to play in ensuring justice, both for the creators of original works and the users of the technology, by prioritizing the principle of legal certainty that protects the rights of all parties.

As AI plays a greater role in human life, clear, adaptive and balanced regulations are needed. Such regulations must be able to support technological innovation while protecting intellectual rights and ensuring ethics in the utilization of AI for various fields, including art and creativity.

This study will also examine the social and ethical implications of copyright issues related to the use of artificial intelligence (AI), particularly how these

[1] J. Smith, "The impact of artificial intelligence on creative industries," *Creative Tech Publishing.*, 2023, 45.

concerns impact creators and the broader digital landscape. Thus, this research will not only contribute to the legal field but also to the social and ethical discussions surrounding copyright practices in the context of AI technologies. The significance of this study lies in its potential to provide a more inclusive and equitable framework for copyright management that respects the rights of creators while ensuring that AI development is conducted ethically and in compliance with relevant laws. In an era of rapid technological advancement, where AI's capabilities are evolving faster than existing copyright laws can adapt, this study aims to clarify how copyright principles can be reconciled with innovative AI applications.

As globalization intensifies interactions across cultures and legal systems, this research holds broad relevance in understanding how traditional copyright frameworks can be integrated with modern technological practices. This integration is crucial to ensure that the rights of individuals especially content creators those are consistently protected across jurisdictions that may have varying approaches to copyright and AI usage.

## 2. Method

This study adopts a normative juridical method focused on the analysis of positive law, specifically the copyright protection of artworks produced by artificial intelligence (AI) technology. This approach involves examining relevant regulations, such as Indonesia's Copyright Law and the European Union's AI Act. The researcher also utilizes secondary sources, including books on Intellectual Property Rights, artificial intelligence, copyright, and national and international journal articles featuring legal case studies and expert opinions.

## 3. Discussion and Analysis

The development of AI art generators has introduced unprecedented opportunities and challenges within the creative industries. By leveraging vast database of existing visual works, these technologies can rapidly produce new images and styles, democratizing artistic creation yet simultaneously complicating traditional notions of authorship and ownership. As AI-generated art becomes increasingly prevalent, questions are emerging about the legal status of works created or transformed by algorithms—particularly concerning copyright and moral rights. The process by which AI acquires, manipulates, and generates content often blurs the boundaries between legitimate innovation and potential infringement, especially when original artworks are used as training data without transparency or proper authorization. Further complicating matters, the dissemination of AI-generated content through digital platforms and social media accelerates the pace and scope of distribution, making monitoring and enforcement even more complex. Against this backdrop, understanding the working principles of AI art

generators and their legal implications is essential for policymakers, creators, and users seeking to establish a fair and responsible framework for artistic production in the digital era.

### 3.1. AI Art Generator Working Principles That Could Violate Copyright and Moral Rights

AI Art Generator can generate new artworks from a data-set of existing works, raising various issues regarding the ownership rights and usage of the original artworks used as training data. In this context, there are concerns that the copyright and moral rights of the original artists may be violated, and the rules regarding the economic utilization of such works are still unclear. Moreover, as AI is often used to create works that circulate on social media, copyright protection in this digital space is becoming increasingly complex and challenging, especially as social media is a fast-moving platform with wide distribution of content that is difficult to monitor. These challenges demand special attention to copyright law in the digital age and the role of AI in the creative industries.The main problem in copyright protection related to the utilization of works as data-sets for Generative AI is the lack of information and documentation shared by the development company to the public.[2] There are at least two pieces of information that are important to disclose, the first is about the data-set used to train or develop Generative AI, and the second is about how Generative AI works. As the expression "data is the new oil", any data collected to be included in the data-set is considered so valuable that it tends to be kept confidential so as not to be known by competitors or other parties that could potentially harm the Generative AI development company.[3] While this may be understandable from a business or competition perspective, the collection of artwork for inclusion in the data-set must be done in a manner that is not against the law. A central judicial consensus is that "artwork generated independently by artificial intelligence cannot be eligible for copyright protection, emphasizing that at least some degree of human authorship is essential for copyright eligibility".[4]

Most Generative AI developers claim that the data-sets they use are crowdsourced by AI enthusiasts and have open-source licenses, meaning they can be used for free. In fact, a large amount of data in the data-sets that were said to be open-source licensed were found to have no clear license.[5] In other

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[2] Nicola Lucci, "ChatGPT: A Case Study on Copyright Challenges for Generative Artificial Intelligence Systems," *Cambridge University Press*, 29 Agustus 2023.

[3] Sharon Goldman, "Generative AI Datasets Could Face a Reckoning," *VentureBeat*, 21 Agustus 2023, https://venturebeat.com/ai/generative-ai-datasets-could-face-a-reckoning-the-ai-beat/.

[4] *CNBC. (2025, March 19). AI art cannot have copyright, appeals court rules. Retrieved from https: https://www.cnbc.com/2025/03/19/ai-art-cannot-be-copyrighted-appeals-court-rules.html*, t.t.

[5] Gold Jon, "Generative AI training data sets are now trackable – and often legally complicated," *Computerworld*, 26 Oktober 2023,

words, there is no clear legal basis to justify the use of such data, and this leads to copyright infringement. It should also be emphasized that it is possible that some of the artworks in the data-set of a Generative AI are not protected by Copyright.

As is known, Copyright is just like other intellectual property rights that have a period of protection, where this period can vary in each country. The term of copyright protection in Indonesia is regulated in Law No. 28 of 2014 concerning Copyright. According to Article 29 paragraph (1) of the Act, copyright is granted for 70 years after the creator dies. If the creation is made by several creators, then the term of protection is calculated from the death of the last creator. Article 29 paragraph (1) of Law No. 28 of 2014 reads as follows: "Copyright is valid during the life of the creator and continues for 70 (seventy) years after the creator dies." In addition, there are also a number of provisions regarding creations that cannot be protected by copyright. But in essence, what is at issue in this case is only the utilization of creations that are still protected by copyright. Thus, copyright protection not only protects the work during the lifetime of its creator, but also provides additional protection for a considerable period of time after the death of the creator.

Therefore, there is a need for a regulation governing developers who utilize protected or unprotected artworks. Apart from the issue of data transparency, technical matters related to the utilization of artworks as data-sets for Generative AI itself actually still need to be clarified. This can be realized if developers and service providers of Generative AI document the workings of Generative AI into a technical document to be disclosed to the public. In this case, all that is needed is an overview of the flow or mechanism of generating artwork by Generative AI and how data-sets play a role in it. Other things that are more detailed and need to be kept confidential such as the algorithm, especially the source code, of the AI system, do not need to be disclosed because they are protected by copyright. The point of this technical documentation is actually to find out whether the artwork created by the Generative AI can be considered as a derivative work by looking at how much portion of the artwork used in the data-set to produce the new artwork.

The disclosure of information related to the training and operation of the Generative AI system is a starting point in providing better Copyright protection for works of art, especially those created in digital form. Until now, there is no legislation in Indonesia that specifically regulates AI although there are provisions that implicitly mention AI in Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE) which has been amended by Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions and has been amended again by Law Number 1 of 2024 concerning the Second Amendment to Law

https://www.computerworld.com/article/3709490/generativeai-training-data-sets-are-now-trackable-and-often-legally-complicated.html.jon

Number 11 of 2008 concerning Electronic Information and Transactions. In the Law on Electronic Information and Transactions (ITE) there is the term Electronic Agent, which in Article 1 number 8 of the Law on Electronic Information and Transactions (ITE) is defined as follows:

> *"Electronic Agent is a device of an Electronic System made to perform an action on certain Electronic Information automatically organized by a Person."*[6]

Furthermore, it is stated in Article 1 number 1 of the Electronic Information and Transaction Law (ITE) that:

> *"Electronic Information is one or a set of electronic data, including but not limited to writings, sounds, images, maps, designs, photographs, electronic data interchange (EDI), electronic mail, telegram, telex, telecopy or the like, letters, signs, numbers, access codes, symbols, or perforations that have been processed which have meaning or can be understood by a person capable of understanding them."*[7]

From these definitions, it can be seen that AI, including AI Art Generator, as part of an electronic system meets the elements to be considered as an Electronic Agent if it is enabled to perform certain actions automatically in relation to the data in the data-set which is included in the Electronic Information.

As for the Law on Electronic Information and Transactions (ITE), there are no complete rules regarding the obligations of the organizers of Electronic Systems that contain Electronic Agents, more specifically regarding the obligation to disclose information related to data-sets and the obligation to make technical documentation. However, actually in the Electronic Information and Transaction Law (ITE) there are also rules that emphasize the protection of Copyright on works of art in Generative AI data-sets which can be seen in the provisions of Article 25 of the Electronic Information and Transaction Law (ITE), namely that:

> *"Electronic Information and/or Electronic Documents that are compiled into intellectual works, internet sites, and the intellectual works contained therein are protected as Intellectual Property Rights based on the provisions of the Laws and Regulations."*[8]

Based on these provisions, it can be understood that works of art that are included in a data-set as Electronic Information are certainly protected by Intellectual Property Rights. Regardless of these provisions, rules regarding Copyright that are more relevant to Generative AI still need to be made, either in a special law related to AI, revising the Electronic Information and

[6] Article 1 number 8 of the Electronic Information and Transaction Law (ITE)
[7] Article 1 number 1 of the Electronic Information and Transaction Law (ITE)
[8] Article 25 of the Law on Information Technology and Electronic Transactions

Transaction Law (ITE) or even by revising the Copyright Law (Copyright Law) to also include protection related to the utilization of creations by AI.

The emergence of Generative AI can be said to be one of the commercial goals by private companies that are its developers, given the enormous costs that must be incurred for its development and maintenance. This commercialization makes the principle of fair use related to copyright unenforceable. When referring to the Bern Convention, it is actually back to each country to determine the restrictions and exceptions to copyright protection, but in general there is consensus among countries in the world that what can be excluded is mainly the acts of non-commercial use of creation. In Indonesia, for example, this is regulated in Article 43 letter d of the Copyright Law, that exceptions can only be applied to the creation and dissemination of Copyright content through non-commercial information and communication technology media.

On the other hand, if it wants to create justice through law and legislation, the state also needs to look at what is best and needed for the wider community. This relates to the premise that the use of Generative AI will have a positive influence on the progress of a country. It is undeniable that Generative AI is able to be a solution so that people who cannot produce work due to existing limitations become more productive. Various savings can be made and efficiency in running life can also be improved. If legal issues related to copyright can be released from the use of Generative AI, the number of users will also increase and the productivity of the population in a country will also increase.

From this perspective, what is considered as fair use needs to be expanded in scope and made more concrete in order to achieve legal certainty. In various provisions regarding fair use, it appears that there are some that relate to utilization for state purposes. When referring to Article 44 paragraph (1) of the Copyright Act which states, "The use, retrieval, duplication, and / or alteration of a creation and / or related rights products in whole or in substantial part is not considered an infringement of copyright if the source is mentioned or listed in full for the purposes of: a) education, research, writing scientific papers, preparing reports, writing criticism or reviewing a problem without harming the reasonable interests of the creator or copyright holder; b) security and the administration of government, legislature, and justice; c) lectures that are only for educational and scientific purposes; or d) performances or performances that are free of charge provided that they do not harm the reasonable interests of the creator. " In letter b, the specific state needs referred to are those related to security and the administration of government, legislature and justice. In this case, it can be seen that what is meant is that when the state is the party that utilizes the work in the context of government administration, then it is not considered a violation of copyright provided that the source is still included. This rule is certainly still not enough to provide exceptions to the utilization of

creation as a data-set for Generative AI even though it is used for the good of the state, if the user is not a state institution. For that reason, one way is that through legislation, exceptions can be given to special institutions approved by the government to be able to utilize creations as data-sets for Generative AI.

For example, Article 31B of the Copyrights, Designs and Patents Act (CDPA) 1988 in the UK mentions an authorized body that is granted the right to conduct fair dealing (use of copyrighted works for certain non-commercial purposes) in the form of copying and distributing copies of works freely without the obligation to pay royalties. Furthermore, the requirements to be referred to as an authorized body are found in the provisions of section 31F of the Copyrights, Designs and Patents Act (CDPA) 1988 which must be in the form of: a) Companies engaged in the field of education; or; b) Entities formed not for profit (non-profit).

From such a classification, it can be seen that it is actually possible to grant exceptions to the utilization of creations for commercial purposes if they are engaged in certain sectors, such as education. Indeed, it is commonly known that educational and research institutions are granted exemptions to exploit inventions because good educational activities and innovation will have a positive impact on the progress of civilization. For this reason, it is possible for the state to grant such privileges to Generative AI development companies and service providers if it is deemed that the system developed will contribute to the country and society.

With the expanded scope of exceptions based on the principle of fair use, there are still elements that must be met in relation to moral rights, especially the right of attribution. The protection of moral rights is the most fundamental part of the protection of the natural rights of the creator. Moreover, in the concept of fair use, the creator has actually given up his economic rights. Therefore, the creator should not be disadvantaged twice, in terms of moral rights and economic rights. The concrete implementation of giving attribution can be done by including the name in the interface parts that can be clearly seen in the Generative AI system and also in the technical documentation, so that every creator whose work is included in the data-set for Generative AI is recognized and rewarded. This also relates to the data-set transparency described in the previous section, where those developing Generative AI using a data-set are obliged to honestly and voluntarily provide access to the data-set so that its contents can be made public.

Conversely, the right of attribution also gives the creator the right not to be named in connection with the public use of their work.[9] This may be done if the Creator does not want to be known to have a relationship or contribution to the Generative AI system that includes his/her work in the data-set. In

[9] Pasal 5 ayat (1) huruf a Undang-Undang Republik Indonesia Nomor 28 Tahun 2014 tentang Hak Cipta

addition, if the Creator feels that there is a potential misuse of his/her work included in the Generative AI data-set, and his/her artwork is altered in a way that is not in line with his/her character and adversely affects his/her reputation, he/she also has the right to refuse his/her artwork to be included in the data-set. For this reason, it is necessary to provide an effective system so that the Creator can inform the Generative AI service provider which works he wants to be withdrawn from the data-set. Where the creator objects to the inclusion of his/her name and artwork in the data-set, the Generative AI service provider shall immediately remove the artwork from the data-set.

Indirectly, it can be understood that the Generative AI service provider has the responsibility to guarantee and ensure that the algorithm of the AI system produces positive works. What is meant in this case is that the works must not only not contradict the norms in society, which are already regulated in various criminal provisions in the Electronic Information and Transaction Law (ITE), but the works produced by the Generative AI must also not tarnish the image of the creator whose work has been transformed. This is indeed subjective and highly dependent on each Creator to give judgment, making it difficult to make a regulation that can apply generally. For this reason, providing facilities for creators to give consent or otherwise refuse their work to be used in data-sets for Generative AI is sufficient moral rights protection.

### 3.2. Economic Utilization Royalty Provision

The next challenge comes in terms of economic utilization and royalty distribution. As described in the previous sections, Copyright protection has an emphasis on the protection of economic rights. Thus, to provide justice in accordance with its portion to the parties directly affected by the use of Generative AI, especially the Creator and/or Copyright Holder, in the event that the utilization of the work cannot be considered as fair use, there needs to be a mechanism for providing economic rewards in the form of royalties that are guaranteed through legislation. Ideally, royalty payments are made on the basis of an agreement or license, but keep in mind that one of the reasons given by the developers of Generative AI is the difficulty in obtaining a license for each artwork included in the data-set individually, especially since the data-set used contains millions or even billions of artworks. It is under these circumstances that procedural justice plays a significant role.

Broadly speaking, the concept of statutory licensing as found in the Copyright Law is actually one of the good solutions to bring procedural justice in the issue of royalties. What is meant by statutory licensing is the concept of granting licenses that aim to give permission to third parties to utilize copyrighted works preceded by the payment of a sum of money whose rules are stipulated in the laws and regulations or determined by the bodies authorized by the laws

and regulations.[10] This concept tends to be applied in developing countries where there are difficulties to monitor the utilization of the work due to the large number of uses and the creator is unlikely to make a license agreement one by one for each utilization of his work by third parties. As for what is usually regulated in laws and regulations, among others, are the procedures for collecting royalties, the types of creations and utilization of creations to which the rules apply, the parties that can collect royalties, the amount of royalties, how to calculate royalties and how to distribute royalties.

In Indonesia, the Copyright Law normatively does not actually provide rigid limits on the types of creations and utilization of which creations can be applied to the concept of statutory licensing. However, in Law No. 28 of 2014 concerning Copyright which can be used as a guideline for royalties distribution, as in Article 18 which reads:

> "Creation of books, and / or all other written works, songs and / or music with or without text transferred in the sales agreement and / or transfer without time limit, copyright returns to the Creator when the agreement reaches a period of 25 years. (twenty-five) years." and Article 30 which reads "Works of Business Actors in the form of songs and / or music that are transferred and / or traded to obtain economic rights, ownership of economic rights returns to the perpetrator after a period of 25 (twenty-five) years."

These two articles aim to protect the economic rights of creators or performers over their creations and prevent the transfer of economic rights permanently or indefinitely to other parties.[11] The two articles stipulate a period of copyright that coincides with the economic rights of the creator but is only limited to works in the form of written works and songs/music and does not regulate works in the form of visual images. As well as from Government Regulation (PP) No. 56 of 2021 concerning Management of Royalties for Copyright of Songs and/or Music as a derivative regulation of the Copyright Law, it can be seen that in practice the concept can also only be applied to works of art in the form of songs and/or music. PP No. 56 of 2021 also does not specifically regulate the collection of royalties related to the utilization of works as data-sets for AI Art Generator or AI generative engines in general, but focuses more on the utilization of works in the form of public announcements of works. Therefore, the *Lembaga Manajemen Kolektif* (LMK), as the party that plays the most important role in collecting and distributing royalties in the concept of

[10] Carlos M. Correa, *Intellectual property rights and the use of compulsory licenses: options for developing countries.* (2000). p. 257

[11] Yusuf, N. W., Dungga, W. A., & Elfikri, N. F. "Arrangements for the Distribution of Song Royalties as Joint Property Are Regulated in Copyright Law," *Estudiante Law Journal.* 6(2): p. 302. 2024.

statutory licensing, currently only exists in Indonesia to manage royalties on song and/or music works.

In general, the concept of statutory licensing in Copyright is more often used to address royalty issues in the context of musical performances. This is reasonable considering that a song or musical work of art can be enjoyed in performances that are open to the public in several places at the same time. Whereas visual works of art, especially those that have a physical form, can only be seen in one place at a time.

The above description seems to indicate that the utilization of visual artworks (artistic works) cannot be done in bulk so that there are no technical problems related to royalty collection. In fact, when the artwork has been converted into digital form, the opposite is true. When compared to songs or music, it is much easier to make a digital copy of an image without compromising its quality, or even to digitally modify an image. Monitoring this is certainly more difficult, so the potential for copyright infringement is also actually large. The possibility of statutory licensing for the utilization of works of art as data-sets for Generative AI should be explored, especially for works of art that are visual in nature. If it can be applied, in practice it may require a Collective Management Institution specifically tasked with collecting royalties for the utilization of works in the data-set for Generative AI and distributing them to the Creator.

In comparison, in Belgium there is a Collective Management Organization (CMO) namely SABAM (*Société d'Auteurs Belge-Belgische Auteurs Maatschappij*) or the Belgian Association of Authors, Composers and Publishers which has similar duties and functions as the Collective Management Organization (CMO) under the Copyright Act, namely to manage royalties on artworks and including digital images. In the UK, there is the Artists' Collecting Society that manages Copyright, especially the economic rights in the form of Artist's Resale Right (royalty income on each resale) of the artists who are members.

Equally important is the royalty collection mechanism of these collective institutions. To take an example, SABAM (the Belgian Association of Authors, Composers and Publishers) collects royalties for artists from various disciplines such as literature, music, audiovisual entertainment and graphic visual arts. It does this by monitoring the illegal use of works on the internet and processing royalty claims for the use of its members' works both in Belgium and other countries through reciprocal agreements with similar organizations. The collection process is done through a collective management system, where SABAM (the Belgian Association of Authors, Composers and Publishers) acts as a representative for copyright owners. After identifying whether the use of the works is legitimate or not, they then set the royalty rates according to the

stipulated terms. The collected royalties are then distributed to the members based on the type and usage of the work.[12]

In Indonesia, the determination of royalty rates can basically be determined by the government through legislation or can also be authorized to collective institutions to determine it. In Indonesia, currently the amount of royalty rates for commercial utilization of musical creations and songs that apply is in accordance with the Decree of the National Collective Management Institution (LMK) ratified through the Decree of the Minister of Law and Human Rights of the Republic of Indonesia Number: HKI.2. OT.03.01-02 Year 2016 on the Ratification of Royalty Rates for Users who Perform Commercial Utilization of Creation and/or Related Rights Products of Music and Songs.

In general, provisions regarding the amount of royalty rates usually follow the scale of utilization of the work by users proportionally. For example, in the regulation of royalty rates in Indonesia for the utilization of digital image artworks in book prints, the measure is the type and format of the use of the image. In addition, digital images used in books with high quality such as books written by famous authors, the royalty rate is usually higher compared to images used in books published by newcomer authors. In the context of utilizing digital image artwork for magazines, the royalty rate is also affected by the number of pages featuring the image.

Such tariff setting is the most ideal application of the theory of distributive justice, because all parties get a fair share in accordance with their contributions. For the context of Generative AI, creation utilization can be measured quantitatively from two perspectives. In the first perspective, what is seen is how many artworks are in a Generative AI data-set. This means that the Generative AI developer as the user must pay more royalties if it uses a data-set with more content. While in the second perspective, the assessment contains a qualitative element as well, which looks at how often the artwork in the data-set is used as a reference in creating a new work. It is logical that artists whose works have strong characteristics, such as Van Gogh in the example described in the previous section, are in demand by users. If he is still alive today, he should get a large royalty as well. Again, the portion of use of the artwork also needs to be considered. If a work is frequently referenced in the creation of a work by a Generative AI but only 1-2% of the elements of that work are referenced, it is not fair to reward it.

The technical implementation of royalty collection still needs to be studied further but it cannot be denied that this is inseparable from the cooperation of Generative AI service providers. In a system, there must be a mechanism to store data related to how often each artwork is used as a reference when users want to make artwork and how large the portion of its use is. It depends on the

[12] sabam, *SABAM*, 2024, https://www.sabam.be/en/about-sabam/annual-reports. accessed on 20 October 2024

Generative AI service provider whether they want to open the data and provide usage reports that match the facts. Such reports should ideally be submitted voluntarily to collective institutions, or vice versa, collective institutions should take the reports from Generative AI service providers.

On the other hand, the royalty sharing arrangement does not apply to works produced using AI Art Generator in any form (text, sound, or visual). Under the Copyright Law, the definition of "creator" refers to an individual or group that produces works with distinctive and personal characteristics. As in Article 1 paragraph 2 below:

> "Creator is a person or several persons who individually or collectively produce a work that is distinctive and personal."

The article emphasizes that the creator is "a person or several persons" who create the work, so works produced entirely by AI, without human intervention in the creative process, do not qualify as protect-able creations. Moreover, in the legal context, AI functions as a tool and not as the creator itself. The emergence of generative artificial intelligence makes one rethink the processes occurring in the field of creative activity and the traditional copyright system, which becomes inadequate to modern realities. Taking into account the creative potential of generative artificial intelligence will facilitate the evolution of copyright law towards hybrid approaches, with artificial intelligence as an integral, albeit secondary, tool.[13]

### 3.3. Potential Violations of Fine Art Protection on Social Media Platforms

Copyright enforcement also faces challenges on digital platforms. Many artworks and digital content are at risk of exposure to copyright infringement on social media. Platforms such as X (Twitter), which has been very aggressive in the development of Artificial Intelligence, updated their policy allowing data access for third-party AI model training effective from November 2024. Under this policy, there is an opportunity for companies to pay a license fee to use data from X. However, this policy still gives users the choice of their consent. If users are not willing to participate in providing their data, then the app can navigate to the user settings menu and disable the data sharing option for Grok (X platform's AI chatbot) training. X also provides a reporting feature that allows users to report copyright-infringing content, including unauthorized use of their work. This is in line with the principles of the Digital Millennium Copyright Act (DMCA), which provides legal protection for copyright owners. In addition, X provides information on copyright and how to protect works, helping users understand the risks associated with sharing content on the platform. While X does not have a dedicated feature for licensing works, users are encouraged to include ownership information in their posts. In terms of

[13] *Kibirige, S. (2024). The evolving role of copyright law in the age of AI-generated works. Law Journal Digital, 11(2), 270-288. https://doi.org/10.21202/jdtl.2024.43*

enforcement, X may cooperate with copyright protection agencies to address infringement more effectively. However, with the increasing use of AI to generate content, X is faced with the challenge of developing more adaptive and innovative policies to protect copyright and ensure that artists get the recognition they deserve.[14][15]

The copyright infringement reporting system is also available on other social media platforms such as Instagram. Users are also given the option to label the posts generated by the AI Art Generator to prevent misinformation from spreading about the prompted images.

Social media platforms also strongly encourage artists to declare their copyright ownership on their account profiles, which is in line with the declarative principle of copyright.

Despite the various options given to users, there are still many who criticize the policy because it is still considered to provide a great opportunity for the use of AI which is very risky. Because of this, communities of artists from various social media platforms carried out digital-based rejection movements such as the massive use of the hashtags "#TolakGambarAI" and "#HumanArtists". Through the "#TolakGambarAI" movement, artists are trying to educate the public about the copyright infringement that occurs due to the use of generative AI.[16] They emphasized that while this technology can produce images quickly and cheaply, the results often do not have the same artistic value as works created by humans. The artists also called on the public to understand that rejecting AI does not mean rejecting technological advancement, but rather encouraging the ethical and responsible use of technology.

In addition, there are still many artists who are skeptical of the protection mechanisms of their works on social media platforms, so artists also seek independent prevention so that their digital visual artworks cannot be used to train AI programs, namely by utilizing AI disruption technologies such as Glaze. Glaze is a tool or technology designed to protect artwork in the form of digital images from AI abuse, especially in the context of model training. Glaze

[14] Erlan. "X Melonggarkan Kebijakan Privasi, Mengizinkan Akses Data Untuk Pelatihan Model AI Pihak Ketiga". tek.id. https://www.tek.id/tek/x-izinkan-akses-data-untuk-pelatihan-model-ai-pihak-ketiga-b2kFY9sNK accessed 19 October 2024.
[15] Erlan, "X Melonggarkan Kebijakan Privasi, Mengizinkan Akses Data Untuk Pelatihan Model AI Pihak Ketiga," *tek.id*, t.t., diakses 19 Oktober 2024, https://www.tek.id/tek/x-izinkan-akses-data-untuk-pelatihan-model-ai-pihak-ketiga-b2kFY9sNK.
[16] Bahana. "Tagar Tolak Gambar AI Trending di X, Refleksi Sebuah Aksi Perlindungan Hak Cipta". RadarJogja. Januari 2024. https://radarjogja.jawapos.com/lifestyle/653691527/tagar-tolak-gambar-ai-trending-di-x-refleksi-sebuah-aksi-perlindungan-hak-cipta accessed pada 25 October 2024.

works by obscuring or modifying the visual elements of the artwork so that AI cannot easily extract relevant information from the image.[17]

### 3.4. Law Enforcement and Establishment of Copyright Protection Institution For Fine Art Works

With all the challenges faced to enforce Copyright Law, especially in Indonesia, the Government needs to set appropriate regulations. One way to increase protection is through the establishment of an institution that is given special authority related to the use of Generative AI such as Machine Art Generators. The authority in question must include the authority to form regulations, which regulations made also need to contain administrative sanctions. If it requires rules that contain civil and criminal provisions, of course, a law must also be made that regulates AI specifically, or in the context of Indonesia, this can also be achieved by expanding the scope of the existing Electronic Information and Transaction Law (ITE) or specifically those that intersect with Copyright.

If we reflect on the current conditions in Indonesia, the issue of Copyright in the digital context requires the attention of two ministries, namely the Ministry of Law and Human Rights (Kemenkumham) and the Ministry of Communication and Information Technology (Kemenkominfo). This is natural considering the need for special skills to analyze and understand problems in their respective domains, both in terms of technology and in terms of law. From the various phases that exist, and with their respective problems, it is indeed more reasonable if there is a special institution to handle AI itself that is part of and responsible to the Ministry of Communication and Information, because AI systems are basically still the realm of information technology. However, in practice, good coordination between various existing ministries will still be needed because in addition to the things mentioned above, AI can also bring new problems to other fields, such as defense and state security, for example.[18]

Ideally, the manager of the Generative AI system as part of the electronic system must first obtain a permit to be able to operate in Indonesian territory. For this reason, the specially formed supervisory institution must be able to formulate a standardization of AI services that are open to the public.[19] One part of the standardization is of course related to the obligation of Generative AI developers and service providers to open their data-sets to the public and prepare technical documentation on how the Generative AI works and other supporting information. If it does not meet the minimum requirements, the government must ensure that the generative AI service cannot be accessed in

[17] Kashmir Hill. "*This Tool Could Protect Artists From A.I.-Generated Art That Steals Their Style*". The New York Times, Feb 17 2023. (artikel)

[18] Antara. (2024). Kemenkominfo terapkan dua pendekatan untuk menyusun aturan lanjutan AI.

[19] Dhiratara, A. (2024). CEO Hukumonline soroti beberapa peraturan terkait AI di Indonesia. Hukumonline. https://www.hukumonline.com/berita/a/ceo-hukumonline-soroti-beberapa-peraturan-terkait-ai-di-indonesia-lt66c4ccd9763ce/ accessed 25 October 2024.

Indonesian territory.[20] The concept of similar licensing has actually been applied in other sectors such as trade, especially in the context of supervision of business actors in trade through electronic systems.

Public participation is crucial in law enforcement related to Copyright related to the use of electronic systems. One way the public can play a role is by reporting alleged copyright infringement on electronic systems, in accordance with the mandate of Article 55 paragraph (1) of the Copyright Law. In principle, this practice is the same as what is currently done, where reports from the public must first be verified by the minister in charge of government affairs in the legal field, which in this case is the Ministry of Law and Human Rights, where this report is verified first before being given a recommendation to close content or access to sites that violate copyright to then be followed up by the Ministry of Communication and Information. With the existence of one special institution, of course, communication can be carried out more effectively so that it can carry out maximum supervision and prevent copyright infringements on a massive scale more quickly.

In this context, the establishment of a special institution for copyright supervision is also in line with the efforts to harmonize the laws needed to fulfill the provisions of Trade Related Aspects of Intellectual Property Rights (TRIPs). With the existence of this institution, it is hoped that it can strengthen IPR law enforcement and increase public awareness of the importance of copyright protection. Trade Related Aspects of Intellectual Property Rights (TRIPs) is a regulation related to legal Intellectual Property Rights (IPR) as stated in the Copyright Law (Law No. 28 of 2014), which is part of international cooperation aimed at improving the protection and implementation of minimum IPR standards around the world. Thus, this agreement provides a strong global legal foundation for the protection of intellectual property rights, ranging from patents, trademarks, industrial designs, to copyrights, thus ensuring that the member countries of the World Trade Organization (WTO) have the same basic provisions in managing and protecting Intellectual Property Rights.[21]

Even though a complete regulation is made and contains a number of criminal sanctions and administrative sanctions, there are still some difficulties that can be imagined in the enforcement of Copyright law related to generative AI. Currently, the Copyright Law provides space for Creators or Copyright Holders whose rights have been infringed to be able to make reports and file civil lawsuits with the Commercial Court to obtain compensation. The difficulty is of course if the parties who commit the violation do not have an office or legal domicile in Indonesia. Moreover, the fact is that currently the

[20] Bambang, A. (2022). Prosiding Use Cases Artificial Intelligence Indonesia. Badan Riset dan Inovasi Nasional. Hlm. 89-90.
[21] World Trade Organization. (1994). Agreement on Trade-Related Aspects of Intellectual Property Rights.

majority of Generative AI development companies are located in the United States or Europe. In such conditions, it is certain that it will be difficult to file a civil lawsuit, because it is constrained by the issue of domicile, let alone jurisdiction.[22] While the United States shows a relatively conservative stance, insisting that the role of author must be human, other countries such as Canada and China began to admit the authorship of AI, accepting AI as a way to achieve creativity and originality.[23]

Thus, this issue requires cooperation between countries in the world to first harmonize the provisions related to generative AI. In order for law enforcement to run well, it is necessary to have a common view regarding the use of artworks as a data-set for generative AI. The most important thing to explain is whether generative AI in its operation can be considered to transform the artworks in the data-set and if so, the next issue is whether such actions can be included in the exemption based on the principle of fair use. These two things must be central in the discussion of Copyright in international forums in order to reach a consensus that leads to legal certainty. Because if relying on the theory of natural rights, the use of creations as data-sets for generative AI without permission is clearly a violation of the natural rights of the Creator.

## 4. Conclusion

Copyright-related legal challenges in the use of AI Art Generator data-sets arise from several factors, including potential copyright infringement and moral rights of artworks used without permission. The working principle of AI that leverages the work of artists to train models often does not pay attention to the rules of economic utilization and royalties. In addition, AI-generated works and shared on social media increase the risk of copyright infringement without adequate protection mechanisms. Law enforcement in this case also faces major challenges, considering the complexity of the technology used, as well as the absence of institutions or regulations that specifically deal with copyright infringement in the context of the use of AI in Indonesia, which can be referred to as a legal vacuum in this field. Copyright Protection for artworks that are included in the Generative AI data-set is highly dependent on the transparency of the data-set itself. If the data-set is always kept secret and not disclosed to the public, it is impossible to prove that there is a violation of Copyright, as well as moral rights or economic rights. Specifically related to economic rights, there is a way to realize distributive justice procedurally with the concept of statutory licensing as currently applied in Indonesia through the Collective Management Institution (Collective Management Institution (LMK). However, the concept of statuary licensing in Indonesia, which is regulated in Government Regulation No. 56 of 2021, has not specifically regulated the

[22] De Bruyne, J., & Vanleenhove, C. (Eds.). (2021). Artificial Intelligence and the Law. Intersentia. Hlm. 73.

[23] *Wang, Y. (2024). Copyright Issues in the Artworks Generated by Artificial Intelligence. Humanities and Computing, 9(1), 115-128. https://doi.org/10.61173/ceqxk555*, t.t.

collection of royalties related to the use of creations as a data-set for AI Art Generators or AI generative machines in general.

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