Legality of Artificial Intelligence-Generated Advertising in Commercial Activities Based on Legal Certainty

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Abstract: To understand and analyze the legality concerning the use of artificial intelligence in commercial activities. To explore and analyze the legal certainty of advertising generated by artificial intelligence. This research also helps the author gain insight and firsthand knowledge on how AI-generated advertising is regulated under Indonesian law. Through this normative legal method, results will be obtained that align with practical applications. This will make the research more concrete and accountable for its authenticity and validity. Artificial intelligence technology is fundamentally developed by generating results through the input of big data or pre-existing data, which is then trained to produce the desired outcomes. Although the technology is created to ease human life, its development has led to complexities, particularly in relation to the law. One current debate centers on the copyright of works created by artificial intelligence (AI). This has become a polemic due to the illegal use of data for training purposes.

Keyword: Advertising Legality, Artificial Intellegence, Legal Certainty.

INTRODUCTION

Nowadays, technological advancements are rapidly developing across various fields, including the use of artificial intelligence (AI) in campaign design within the realm of digital marketing. Many design processes now heavily rely on AI technology. One common issue that arises is the cloning or reproduction of existing artworks, created instead by AI systems. Artificial intelligence is essentially a technology developed to produce outcomes by inputting large datasets, or "big data," which are then trained to generate desired results. While this technology is intended to simplify human life, its development has introduced complexities, particularly in legal contexts. One of the current debates centers on copyright issues related to works produced by AI.

This controversy arises because much of the data used for training AI is often sourced illegally. Another prominent case involves the heightened public scrutiny of AI-generated content following Jason Allen, a game designer, winning the top prize at the Colorado State Fair art competition using an AI Art Generator. Ario Anindito, a comic artist from Bandung and one of Marvel's leading illustrators, has expressed concerns that this practice could harm

other artists or creators. In the realm of digital marketing, many designs utilize AI-generated outputs whose licensing and legality cannot always be verified, as they are often trained using numerous images, including people's faces. Additionally, some content is created to spread hoaxes by incorporating people's images, which are then edited in ways that serve malicious purposes, potentially leading to harassment.

AI-generated art can also be considered ineligible for copyright registration because, according to the Indonesian Copyright Act , the definition of a creator only applies to humans. Therefore, artificial intelligence cannot be recognized as a creator entitled to ownership of its works. However, the law provides room for determining copyright holders, which may include those involved in the creation of AI-generated works, such as the AI owners, AI users, or both parties jointly, depending on their respective contributions. Many works created for digital marketing advertisements using artificial intelligence clearly feature images that have their own copyrights, as illustrated in the example below. Referring to the regulations in Indonesia, particularly Article 12 paragraph (1) of Law No. 28 of 2014 on Copyright, which states that: "Every person is prohibited from making commercial use, duplication, publication, distribution, and/or communication of portraits created for advertising or commercial purposes without written consent from the person depicted or their heirs."

Based on this article, it is understood that developers of artificial intelligence (AI) systems and users of such systems may only utilize AI-generated works for personal purposes. Any actions beyond this—such as commercial use, duplication, publication, distribution, or communication without permission—can be deemed a violation and may result in legal accountability. Thus, if an AI-generated artwork is found to replicate or adopt someone else's work without authorization, it can be classified as plagiarism and a breach of copyright. To address the issue of plagiarism in AI-generated art, clear and specific regulations are needed regarding copyright protection for works created using AI. Such regulations should define copyright and ensure protection for creative works in the digital era, emphasizing Copyright as an Exclusive Right.

According to Article 4 of Law No. 28 of 2014 on Copyright, copyright is an exclusive right comprising moral rights and economic rights. These rights ensure that creators or rightful owners maintain control and benefit from their works, even as technology advances. The government also needs to clarify the rights and obligations of artificial intelligence creators as copyright holders. The application of this doctrine would benefit Indonesia by providing legal certainty, fairness, and utility for society. The gap between das sollen (what ought to be) and das sein (what is) serves as the foundation for this scientific writing.

METHOD
Based on the title and problems discussed above, this research uses a normative legal research method, which focuses on the examination of written legal standards. This method is used to gather data in the form of legal concepts, theories, and principles for interpreting laws and regulations. There are two types of data collection methods: primary data and secondary data. Primary data refers to data obtained directly, while secondary data refers to data obtained from literature. In this study, the author uses secondary data from library documents, including legislation, books, official documents, and articles relevant to the subject matter under investigation.
1. Type of Research
The method used in this research is normative juridical by means of library research, where library materials serve as the primary data sources to explore theories and concepts that have been established by previous legal experts.
2. Research Approach
This study employs a Conceptual Approach, which focuses on the development and understanding of theories, concepts, and basic principles related to the research topic. In this

approach, researchers use theoretical concepts as a foundation to explore and resolve problems without being tied to empirical data or field studies. This approach is commonly used in normative, philosophical, or legal research where the emphasis lies in analyzing principles, understanding abstract ideas, and interpreting existing theories.

3. Nature of Research

This research is descriptive aiming to describe and interpret the object of study as it truly is. In descriptive research, the researcher does not manipulate or control the research variables. The data reported is directly obtained from real-life conditions or ongoing situations. Therefore, the researcher observes events naturally and can answer research questions related to relationships or associations between variables. This type of research can also be used to examine comparisons or comparative relationships among existing variables.

4. Data Analysis

The data analysis method used in this research is **qualitative**. Data analyzed using this method is presented in textual or narrative form. This method requires a subjective approach to interpret data more deeply. Qualitative data analysis is a method of processing data in depth using data obtained from library-based observations.

5. Sources of Legal Material

Data sources refer to everything that provides information about the data. The data sources used in this research are legal materials, categorized as follows:

a. Primary Legal Materials:

Primary materials are original sources obtained directly from the object of the research. The primary materials in this study include:
- The Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata)
- Law Number 28 of 2014 on Copyright
- Minister of Trade Regulation Number 31 of 2023 on Business Licensing, Advertising, Development, and Supervision of Business Actors in Electronic Commerce

b. Secondary Legal Materials:

Secondary legal materials support and strengthen the analysis and provide a deeper understanding of the primary legal materials in the study. These include prior research journals and books related to the topic.

c. Tertiary Legal Materials:

Tertiary sources serve as supplementary references that provide guidance for understanding both primary and secondary legal materials. These include:
1) Publicly published issues
2) Online media that present reports related to the topic.

RESULTS AND DISCUSSION

Amid the rapid pace of digital transformation, artificial intelligence has emerged as a revolutionary technology driving significant changes across various sectors, including creative fields like graphic design. Initially developed to assist with data processing and repetitive tasks, AI has now evolved to independently generate creative content and support human creative processes. This technology leverages advanced techniques such as machine learning, neural networks, and complex algorithms like generative adversarial networks (GANs) to produce visual works that are entirely novel.

In the realm of graphic design, AI not only enhances efficiency but also fosters the emergence of new forms in visual art, aesthetics, and message delivery. With this technology, designers can create unique, faster, and more cost-effective designs while introducing innovative methods to craft responsive designs that meet contemporary demands. As artificial intelligence continues to evolve, graphic designers are increasingly integrating this technology into various stages of the creative process, from conceptual planning to final execution. Through machine learning algorithms, AI can identify effective patterns, colors, and

compositions, while also offering suggestions or recommendations to enhance designers' productivity. Social media is evolving rapidly, and alongside its growth, artificial intelligence technology, which plays a crucial role in the advertising industry, has also undergone significant advancements. One notable development is the emergence of AI-based virtual advertising models, which are increasingly created and utilized due to their cost-effectiveness, practicality, and efficiency.

Although artificial intelligence is designed to provide convenience for humans in everyday life, everything in the world must adhere to rules. In both global and Indonesian regulations, advertising, artificial intelligence, and the resulting images are bound by rules, particularly concerning patents and copyrights. The creation of works produced by artificial intelligence must comply with Indonesia's Intellectual Property Rights (IPR) laws.

Proof of Legality in Artificial Intelligence-Generated Advertising

a. The output of artificial intelligence, which has yet to be clearly defined or recognized as a work eligible for copyright registration, also remains legally untested for use in advertisements and public dissemination. Numerous generative AI websites or applications have yet to demonstrate accountability regarding copyright legality. Advertising in Indonesia is governed by specific regulations, with several types of advertisements categorized under Law No. 32 of 2002 on Broadcasting and other related regulations. In general, advertisements in Indonesia can be categorized as Public Service Announcements, Commercial Advertisements, Government Advertisements, Public Announcements, Television and Radio Advertisements, Online Advertisements.

The legality of advertising utilizing outputs from artificial intelligence has become a significant topic in the current legal landscape. The use of artificial intelligence in content creation, including advertisements, raises various legal challenges that need to be addressed, particularly concerning copyright, data protection, and accountability for generated content. Advertising created with artificial intelligence lacks clear legal frameworks regarding both the production process and distribution in Indonesia. The use of artificial intelligence in content creation, including advertising, poses various legal challenges that need to be considered, particularly in relation to copyright, data protection, and accountability for the content generated. If a company explicitly states that its application must not be used for commercial purposes, the principle of limited liability may apply. However, if the company does not assert its responsibility regarding the use of its AI application, under the principle of strict liability, the company could be held accountable for damages resulting from the use of its application. In this context, accountability must be linked to a recognized legal entity. In Indonesia, recognized legal entities include individuals and legal bodies.

Artificial Intelligence can be seen as an electronic agent acting on behalf of the owner of electronic information. As an entity that operates an electronic system to process information automatically, the electronic agent holds responsibilities, including civil liability in its role as an intermediary in commerce. Therefore, the operators of the electronic system and entities acting as electronic agents have legal obligations in carrying out these functions. This artwork is often used by artificial intelligence companies as material to create advertising content. Designers using artificial intelligence to create ads must be more cautious when selecting materials to be used in the ads, both the source and the output that will be generated. This is to avoid using materials that are not legally permissible.

Steps that can be taken to ensure the legality of artificial intelligence-generated works include:

1. Evaluate the Source Data Used to Ensure that the data or content used in training the artificial intelligence does not infringe on copyrights. If training is done with copyrighted data without permission, the results from the AI model may not be legally usable. Therefore, AI developers must ensure they have the rights to use all the data in the training process.

2. Ensure the Originality of the Work to According to Indonesia's Copyright Law No. 28 of 2014, works created by AI must meet the standards of originality. This means the work must have its own uniqueness and not simply replicate or duplicate another work. If a work is deemed non-original, it can be considered plagiarism and does not meet the criteria for legal protection.
3. Review the "Terms and Conditions" to Always review the terms and conditions of the AI platform or application being used. Some platforms may impose restrictions, such as prohibiting the use of the generated works for commercial purposes or placing other limitations that could affect the legal aspects of the work.

Legal certainty of advertising generated by artificial intelligence in commercial activities.

In the process of visualizing marketing content for advertising, this aspect is closely related to the field of visual communication or graphic design. Marketing content is often presented in engaging visual formats, whether as static images or audiovisual content such as videos. Artificial intelligence technology plays a significant role in graphic design through the application of machine learning and computer vision, making it easier for users. According to the provisions in the Copyright Law, the use of creations without permission for commercial purposes violates the economic and moral rights of the creator. In the context of machine learning for AI Art, data is often used without screening, as Indonesia does not yet have regulations governing the use of data for Artificial Intelligence training. Companies providing AI Art services are considered legal subjects equal to individuals under Article 1, Paragraph 27 of the Copyright Law, which defines legal entities as part of the definition of "person." Viewed from its form, the company providing AI Art services can be categorized as a legal subject. A legal subject encompasses all entities that have rights and obligations. Rights are powers and authorities granted to the legal subject, while obligations are responsibilities or burdens that the legal subject must fulfill.

As a legal subject under the category of "rechtspersoon" (legal entity), an AI Art company that develops artificial intelligence technology to create artworks has rights and obligations that must be complied with according to the applicable laws. The AI Art company holds a clear position as a legal entity, with the right to conduct business transactions, own assets, and legal obligations, including being responsible for actions taken. Additionally, the company is entitled to protect its interests and rights through legal channels, especially when copyright violations occur during the creation of artworks by artificial intelligence. In this regard, the AI Art company has economic interests through the artworks it generates, which can contribute to the company's profits.

In June 2023, the European Parliament approved the E.U. AI Act, a regulatory package aimed at protecting consumers from potentially harmful artificial intelligence applications. In the United States, AI usage regulations in government agencies were published through the Blueprint for an AI Bill of Rights, whose draft was released in October 2022. These regulations are designed to minimize the negative impacts of artificial intelligence on society. Such regulations could be adapted by Indonesia to govern the use of artificial intelligence within the community. In Indonesia, the government has issued Minister of Communication and Information Regulation No. 9 of 2023, which addresses AI ethics . However, this regulation does not yet provide legal protection for creators whose works are used in the AI training process. Indonesia still requires regulations that provide legal certainty regarding the use of data for AI training, while also considering innovation aspects so that the development of artificial intelligence is not hindered.

A specific AI regulation in Indonesia is expected to provide legal certainty for users and creators, strengthen Indonesia's position in the technology sector, and support the use of AI technology to enhance productivity, efficiency, and technological advancements in the future.

CONCLUSION

Artificial intelligence (AI) is revolutionizing industries, particularly in creative sectors like graphic design. Initially designed to streamline data processing, AI has evolved to autonomously create content, improving efficiency and enabling more innovative designs. This technology utilizes advanced algorithms, such as machine learning and neural networks, to produce unique and cost-effective visual work. In advertising, AI-driven models are becoming increasingly popular due to their cost-effective and practical applications. However, there are significant legal challenges surrounding AI-generated content, especially regarding copyright, data protection, and liability. Indonesia currently lacks a clear regulatory framework to govern AI-generated advertising content.

To ensure the legality of AI-generated works, companies must carefully assess data usage, guarantee originality, and follow platform terms and conditions. Indonesia needs to develop specific regulations to provide legal clarity, protect creators' rights, and foster innovation in AI, securing its position as a leader in technology development.

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