

Legal Issues in Generative AI under Indonesian Law – Copyright and Personal Data Privacy

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1. Introduction

On 10 August 2020, the government of Indonesia acknowledged the significance of artificial intelligence (“AI”) by launching a plan for the Indonesian National Strategy on Artificial Intelligence (*Strategi Nasional Kecerdasan Artifisial*) for 2020-2045, known as “Stranas KA”, in several priority areas, specifically healthcare, bureaucratic reform, education and research, food security, mobility, and smart cities.¹ For instance, in the education sector, AI has the potential to extend quality education services to underserved areas like rural communities and cater to individuals with disabilities and special needs.² By tailoring content and learning approaches to each learner’s traits, AI can provide personalized and adaptive learning experiences automatically, enhancing accessibility and effectiveness.

Nevertheless, AI is not expressly regulated yet in Indonesia. A mix of legal issues arises in the rapidly evolving AI landscape, particularly in the realm of generative AI (“GenAI”),³ since ultimately Generated Data is a result of creative Users’ thinking and efforts. In this article, we simplify GenAI and related concepts, and limit our analysis to the following two primary actors.

“Users”	means those who use generative AI services and, if necessary, customize the services to improve Generated Data for their own business purposes; normally, non-AI companies (including law firms) fall into this category.
“Service Providers”	means those who develop GenAI Services to be provided to customers, either based on GenAI they develop (e.g., ChatGPT and DALL-E) or using API to connect to GenAI developed by a third party; this excludes AI model developers, which create the AI language model itself (e.g., OpenAI LP for GPT).
“GenAI Services”	means services developed by the Service Providers based on GenAI. Application Programming Interface (API) may be used to develop and provide GenAI Services if GenAI is developed by a third party.

¹ The Strategy and other information can be accessed at the official website at <https://ai-innovation.id/strategi>.

² Stranas KA, page 97.

³ A type of AI technology used to generate or create Generated Data which has characteristics or regularities similar to Training Data.

“Data”	includes any text, images, materials, photos, audio, video, and all other forms of data or communication.
“Generated Data”	means new data (output) that Users obtain through GenAI Services provided by Service Providers.
“Training Data”	means data (input) that is entered when developing GenAI and to which Users normally do not have access.

This article will examine the legal issues associated with AI under copyright and personal data protection laws in Indonesia. In terms of copyright, GenAI’s ability to generate Generated Data raises questions, for example, about the ownership and authorship of Generated Data. In the personal data protection field, AI processes vast amounts of Training Data to make informed decisions, but this often involves processing personal information, which requires compliance with data protection laws to ensure protection of individuals’ privacy rights.

2. Applicability of the Indonesian Copyright Law

In Indonesian regulations, AI may fall within the definition of an ‘electronic agent’ under Law No. 11 of 2008 on Information and Electronic Transactions, as amended (“EIT Law”) which is “a device in an Electronic System that is made to take any action on Electronic Information in an automatic way by a Person.”⁴ Article 25 of the EIT Law provides for the possibility of protection of Electronic Information and/or Electronic Documents compiled into intellectual works and on internet sites, which may include Generated Data, under intellectual property rights, as set forth in laws and regulations. Therefore, provided that AI fulfils the formal and substantive requirements, AI should be eligible for intellectual property protection.

(1) Overview of copyright and related laws regulating GenAI in Indonesia

Copyright protection in Indonesia is governed by Law No. 28 of 2014 on Copyright (“**Copyright Law**”). However, the Copyright Law does not cover AI, or GenAI in particular.

Copyright is the right of the author to exclusive use of copyrighted works and to prevent their use by third parties, and accrues automatically without registration. Rights under the Copyright Law relating to protected works include economic rights (*hak ekonomi*) and moral rights (*hak moral*).⁵ Economic rights are the rights, vested exclusively in the author or copyright holder, to gain economic benefits from the work.⁶ Economic rights may be assigned by written agreement.⁷ The moral rights of authors are personal and exclusive to the author. Moral rights may not be assigned while the author is alive, but the exercise of these rights can be transferred by

⁴ An Electronic System is defined as a set of electronic devices and procedures having the function of preparing, collecting, processing, analyzing, storing, displaying, publishing, sending, and/or disseminating Electronic Information. Electronic Information is one or a set of electronic data, including but not limited to writing, audio, image, map, design, photo, electronic data interchange (EDI), electronic mail, telegram, telex, telecopy or the like, characters, signs, numbers, Access Codes, symbols, or perforations that have been processed and have meaning or can be understood by persons who are able to understand them. Person refers to individual persons, whether Indonesian citizens, foreign citizens, or legal entities.

⁵ Article 4 of the Copyright Law.

⁶ Article 8 of the Copyright Law.

⁷ Article 16 of the Copyright Law.

inheritance and may be assigned after the author's death.⁸

Although copyright arises automatically when a work is fixed in a tangible form, the Copyright Law provides for a system of voluntary registration (*pencatatan*) of copyright.⁹ Registration of a copyright confers on the owner the legal presumption that the registrant or recorder is the author of the work, against which proof may be submitted through the courts. The rights of the author do not depend upon registration.

In general, unless a use falls within the Copyright Exceptions (as defined below), the use of copyrighted works, such as reproducing, copying, or distribution without permission from the author of the work is considered copyright infringement, i.e., a violation of economic rights, especially for commercial use. The Copyright Law provides for certain copyright uses that are not considered infringement ("**Copyright Exceptions**"),¹⁰ **provided that** (a) information on the authors of the works is mentioned and (b) the unauthorized use of all or a substantial part of copyrighted works is carried out for purposes of (among other things) (i) education, research, scientific writing, report writing, criticism or review of an issue, without harming the fair interest of the author or the copyright holder; (ii) security and governance, legislative, and judicial purposes; (iii) lectures given only for purposes of education and science; or (iv) performances or shows that are free of charge, provided that they do not harm the fair interest of the author or the copyright holder. In addition, Copyright Exceptions extend to facilitation of access for and by people with disabilities (e.g., braille or audio books) for non-commercial purposes, and changes to architectural works made under certain technical considerations.

It is important to note that Copyright Exceptions in Indonesia do not include the fair use doctrine or similar principles that might cover use of copyrighted works with GenAI. Therefore, in principle, it is likely that commercial use of copyrighted data with GenAI constitutes copyright infringement.

(2) The risk of copyright infringement in the input phase


When it comes to providing and utilizing GenAI Services, both Service Providers and Users are required to use input Data for Training Data and Generated Data, respectively. However, there is a potential risk of copyright infringement for both parties if the input Data used for producing Training Data contains copyrighted content belonging to others, and if this use has not been authorized by the copyright holders. As noted in Section 2(1) above, unless a use falls within one or more Copyright Exceptions, using copyrighted material without permission could constitute copyright infringement.

In this case, when Service Providers use input Data (which might include copyrighted content) to create Training Data for offering GenAI Services to Users, and when Users employ that input Data (including copyrighted works) in GenAI Services, they might attempt to claim protection under the Copyright Exceptions for educational or research purposes. However, please note that for this exception to apply, the Copyright Law requires that the use be performed "without harming the fair interest of the author or the copyright holder," specifically, an interest based, on balance, on enjoying the economic benefits of a creation. Considering this, the use of copyrighted

⁸ Article 5 of the Copyright Law.

⁹ Article 66 of the Copyright Law.

¹⁰ Article 44 of the Copyright Law.



input Data by Service Providers to create Training Data might not meet this criteria, as their primary intent in developing and offering the GenAI Service to Users is commercial or business-oriented. This situation could be regarded as copyright infringement under Article 9, paragraph (3) of the Copyright Law. Conversely, Users potentially could argue that they fall within the Copyright Exception, even though current legislation does not expressly clarify the meaning of “educational purposes.”

(3) The risk of copyright infringement in the output phase

In the output phase, when utilizing User prompts, GenAI generates Generated Data by combining Training Data and input provided by Users. If the Generated Data partially or entirely reproduces a copyrighted work, or includes elements of a copyrighted work, it potentially could constitute copyright infringement. The Copyright Law does not distinguish between partial and complete reproductions when determining infringement. Thus, using Generated Data that resembles or copies copyrighted works for commercial purposes might indeed infringe copyright.

The Copyright Law does not expressly safeguard individual components of copyrighted works; rather, it safeguards these works as unified entities, such as books, written pieces, or cinematic creations. This perspective might pose challenges for copyright holders when attempting to prove infringement, especially if the Generated Data shares similarities with their copyrighted works. The term “substantial part” is acknowledged in the Copyright Law, referring to the crucial and distinguishing segments of a creation. By interpreting the provisions of Article 44 paragraph (1) of the Copyright Law, it suggests that unauthorized use of a substantial part of a creation, in a manner that is not exempt under the Copyright Exceptions, could indeed be considered copyright infringement.

According to the Copyright Law, prior to initiating any criminal complaints, copyright holders should aim to resolve disputes through mediation.¹¹ Criminal cases related to infringement will only be processed based on complaints lodged with the Commercial Court by copyright holders. The Copyright Law details criminal sanctions for copyright violations based on the type of unauthorized actions, including imprisonment for up to ten years and/or a monetary fine of up to IDR 4 billion (approximately USD 260,000).

(4) The degree of risk

As mentioned above, theoretically speaking, use of copyrighted works with GenAI is likely to infringe copyright in Indonesia. However, given that copyrights are not enforced actively in Indonesia, due to the inconvenience of judicial procedures, the degree of substantive risk might be low, depending on the situation. If you would like to use GenAI, while being aware of this potential risk, it is advisable to assess the degree of risk carefully, taking into account the situation and circumstances at hand.

(5) Protectability of GenAI and Generated Data

As discussed above, Indonesia does not have any legislation that deals expressly with AI and its products. The

¹¹ Article 95 paragraph (4) of the Copyright Law.

definition of copyright refers to Article 1 item 1 of the Copyright Law: an “*exclusive right of the author that arises automatically based on declarative principles after a creation is realized in tangible form without diminishing restrictions in accordance with the provisions of the legislation.*” This definition emphasizes two key elements: the declarative principle and realization in tangible form. The declarative principle signifies that protection is granted upon declaration, while realization in tangible form implies that only tangible expressions of ideas are eligible for protection. At face value, this provision suggests potential protection for both GenAI and Generated Data under the Copyright Law. Nevertheless, additional factors warrant examination.

A fundamental aspect to address is the term “author” as set forth in the Copyright Law. Article 1 item 2 provides that individuals producing ‘distinct and personal’ (*khas dan pribadi*) creations are considered authors. Considering this definition, GenAI cannot be recognized as an author, given its status as machine technology designed to mimic human behaviour. Consequently, under Copyright Law, works generated by GenAI, including Generated Data, may not qualify for copyright protection, as GenAI is not regarded as an author.

Nonetheless, Users might still be subject to contractual agreements with the platform administrator, such as a Service Provider, which place limitations on the rights to utilize works created by GenAI Services. These contractual relationships may shape the use of Generated Data despite the absence of traditional copyright protections.

3. Applicability of the Indonesian Personal Data Protection Law

(1) Overview of personal data protection law in Indonesia

Indonesia’s main legislation governing the protection of personal data is Law No. 27 of 2022 on Personal Data Protection (“**PDP Law**”). This law aims to protect the privacy rights of individuals and governs the processing of personal data. In addition, even though most of the provisions of the EIT Law focus on electronic transactions, the EIT law also contains notable provisions that deal with personal data, which remain valid after the issuance of the PDP Law (the PDP Law, EIT Law, and their respective amendments, implementing and other regulations, collectively, “**PDP Regulations**”).

The PDP Law defines “personal data” as data regarding individuals who are identified or can be identified separately or in combination with other information, either directly or indirectly, through an electronic or non-electronic system. The definition of personal data in the PDP Law is similar to the definition of personal data in the PDP Regulations. The PDP Law categorizes personal data into general personal data and specific personal data. General personal data includes generic information, such as name, gender, nationality, religion, and marital status. Specific personal data includes specific, individualized information such as health data, biometric data, genetic data, criminal records, and personal financial data.

The PDP Law applies beyond the jurisdiction of the Republic of Indonesia in certain circumstances. Consequently, organizations based overseas (including individuals, public entities, and international organizations) can be prosecuted in the Republic of Indonesia for violations of the PDP law, if those organizations engage in activities that fall within the scope of the PDP Law, either within the Republic of Indonesia’s jurisdiction or outside the country, and those activities have legal consequences:

- a. within the jurisdiction of the Republic of Indonesia; and/or
- b. outside the jurisdiction of the Republic of Indonesia, for data subjects who are Indonesian citizens.

As a general rule, any personal data processing activity, which includes acquisition, collection, processing, analysis, storage, repair, distribution, display, announcement, disclosure, updates, transfer, deletion, and/or destruction (“**data processing**”) requires the prior written consent of the personal data owner¹² (known as the ‘data subject’ under the PDP Law)¹³ – instead of prior notice only; and the consent is valid for the purpose(s) of which the data owner has been notified;¹⁴ consent must be given expressly, freely, without duress and in writing in the Indonesian language. A request for consent must be given to the data subjects along with other information, including the processing period and notice of the rights of the data subject, in a document known as a ‘privacy notice’ or ‘privacy policy’. In addition to consent, the PDP Law recognizes lawful bases for processing of personal data from a data subject, which were the primary grounds for data processing prior to the PDP Law: specifically, contract, legal obligation, vital interest, public duty, and/or legitimate interest.

For more details about the PDP Law, please see our newsletter on PDP [here](#).

(2) The risk of violation of personal data protection by Users and Service Providers


In the event that Users and Service Providers collect and process personal data from data subjects to be input and used as Training Data in order to provide GenAI Services, as well as for use as input Data for generating Generated Data using GenAI Services, Users and Service Providers must adhere to the requirements of the PDP Law; specifically, they must send prior notice to and request the consent of data subjects (in a privacy notice) and obtain consent from the data subjects, before processing the relevant personal data, unless the Users and Service Providers can justify other Lawful Bases (as defined below) for the processing. Further, depending on the nature of the Generated Data, if Generated Data contains personal data or will be used in ways that impact a data subject’s personal data, Users and Service Providers also must consider how they handle and distribute the content to avoid infringing data subjects’ rights, as this also may qualify as data processing activity.

As noted in Section 3(1) above, aside from consent, the PDP Law allows data processing by a data controller as: (a) a fulfilment of obligations in an agreement, if the data subject is a party to the agreement, or to fulfil the request of a data subject at the time of entering into an agreement, (b) fulfilment of the legal obligations of the data controller in accordance with the provisions of laws and regulations, (c) fulfilment of the protection of vital interests of the data subject, (d) performance of duties in the context of public interest, public services, or exercising the authority of the data controller based on the laws and regulations, and/or (e) fulfilment of other legitimate interests, taking into account the purposes, needs, and balance of interests of the data controller and the rights of the data subject, (collectively, “**Lawful Bases**”). Users and Service Providers who feed personal data into GenAI for their own specific reasons might be exempt from obtaining data subjects’ consent, as

¹² Article 14 paragraphs (2) and (3) of Government Regulation No. 71 of 2019 on Operation of Electronic System and Transaction (“**GR 71**”) and Articles 1 item (4) and 2 paragraph (2) item (c) of Minister of Communication and Informatics Regulation No. 20 of 2016 on the Protection of Personal Data in Electronic Systems (“**Reg 20**”).

¹³ Article 14 paragraphs (2) and (3) of GR 71 and Articles 1 item (4) and 2 paragraph (2) item (c) of Reg 20.

¹⁴ Art. 14 (3) of GR 71 and Art. 20 (2) a of PDP Law.



explained above. In particular, the “legitimate interests” referenced above appear to be a convenient Lawful Basis, because of its flexibility, for businesses that use personal data with GenAI. However, you should consider and make a careful assessment as to whether legitimate interests actually are at issue, taking into account the situations and circumstances in which you wish to rely on this Lawful Basis.

As noted in Section 3(1) above, the extraterritorial application of the PDP Law is broad and might apply to foreign individuals, organizations, or bodies located outside the Republic of Indonesia who/that directly engage in or relate to process of personal data in the Republic of Indonesia, particularly those who process personal data of Indonesian citizens. Consequently, even offshore Service Providers or foreign Users may find themselves compelled to adhere to mandatory rules in the PDP Law. This requirement comes into play when utilizing personal data of Indonesian citizens for GenAI and GenAI Services, and entails various responsibilities, including obtaining the relevant data subjects’ consent, notifying them that their personal data will be processed for Users and Service Providers’ own purposes, conducting data processing impact assessments for the processing of sensitive personal data, complying with certain reporting requirements for overseas transfers of personal data (if personal data is transferred abroad) (e.g., where GenAI servers are located overseas), and other relevant obligations.

The PDP Law sets forth various administrative penalties, such as warning letters, suspension of data processing activities, deletion of personal data, and imposition of administrative fines. These fines could amount to a maximum of 2% of the violator’s annual revenue, although the specific calculation method and fine criteria are yet to be defined. Additionally, the PDP Law outlines criminal consequences, including imprisonment for up to six years and/or a monetary fine of up to IDR 6 billion (approximately USD \$400,000). Where the offense is committed by a corporation or entity, the criminal sanctions can extend to the management, controller, instructor, or beneficial owner of the entity, as well as the entity itself.

4. Conclusion

Copyright Law comes into play when GenAI generates work that may be protected by copyright, and raises questions about the authorship and ownership of that work. The PDP Law governs the processing of personal data to ensure individual privacy rights are upheld, including when information is used in connection with GenAI Services. Since there is no established legal guidance or precedent that has dealt specifically with these matters in the context of GenAI, you cannot avoid the legal risks completely. If you wish to develop or utilize GenAI for business purposes in Indonesia, we recommend that you consider and assess the extent of the relevant risks with care.

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