



Generative AI and Copyright Law: A Rule of Law Comparison between Indonesia and South Korea

Maya Ruhtiani^{1✉}, Yuris Tri Naili², Astika Nurul Hidayah³, Hyun Kyung Park⁴

¹² Faculty of Social Sciences, Universitas Harapan Bangsa, Indonesia

³ Faculty of Law, Universitas Muhammadiyah Purwokerto, Indonesia

⁴ Faculty of Law, Youngsan University Yangsan, South Korea

Corresponding: mayaruhtiani@uhb.ac.id

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The advancement of generative artificial intelligence (AI) presents significant legal challenges to modern copyright systems, particularly in redefining originality and authorship in relation to AI-generated works. This study critically examines how copyright law in Indonesia and South Korea addresses these challenges through the normative lens of the rule of law. It explores how generative AI disrupts conventional legal concepts, especially concerning authorship attribution, ownership, and the legitimacy of protecting non-human creations under copyright. Using a normative juridical method, the research applies statutory, conceptual, and theoretical approaches to analyze the comparative legal responses of both countries. The focus is on the presence or absence of specific legal frameworks governing AI-generated content and their implications for legal certainty, distributive justice, and the adaptability of copyright law in the face of technological change. Findings show that Indonesia's Copyright Law Number 28 of 2014 remains centered on a human authorship model and has yet to address the complexities introduced by digital innovation. Conversely, South Korea demonstrates a more progressive legal posture, reflected in its legislative discourse and policy developments regarding AI-assisted works and exceptions for text and data mining. The study concludes that Indonesia must initiate legal reform to align its copyright system with the evolving nature of authorship in the digital era. This reform should be grounded in the principles of the rule of law to ensure the protection of both moral and economic rights of creators in an increasingly AI-driven creative landscape. This research provides timely insights for policymakers and legal scholars navigating the intersection of copyright law and artificial intelligence, emphasizing the urgent need for adaptive legal frameworks in the age of artificial creativity.

Keywords: copyright, generative artificial intelligence, rule of law

I. Introduction

The massive development of technology impacts the pattern of human life, which runs faster and easier in carrying out various activities. With the existence of technology, humans are

increasingly able to interact with each other without being limited by space and time. Technological advances also affect how humans work. What was originally accustomed to doing work manually has now become fully automated and digital. One of the things that has changed human work patterns to automated and digital patterns is the existence of artificial intelligence, commonly known as artificial intelligence. The exponential progress in AI gave rise to the concept of "Generative AI", which went viral and has been widely applied in various fields such as entertainment, finance, and healthcare. On one hand, the rise of generative AI frees people from tedious and time-consuming work. On the other hand, it raises various concerns, such as problems with plagiarism, privacy, and overall human replacement. The rise of generative AI has raised concerns regarding the legal validity and protection of the work created. AI is transforming many parts of human existence, including the creation and production of art and literature. However, most countries' present copyright legislation has failed to protect works produced by AI, including creative works created using AI technology and even computer-generated works. This is creative output created solely by algorithms or computer programs, and therefore cannot solve the complicated concerns involved with AI-generated works.

The primary problem revolves around the concept of uniqueness. Although AI has the ability to produce novel outcomes, it often depends on patterns acquired from preexisting human content. This raises concerns about possible infringement and the constraints on the exclusivity of protection. Moreover, the utilisation of AI methods for scrutinising content, such as identifying plagiarism or extracting data, brings up concerns regarding the legal rights of fair use and derivative works. These tools possess the capacity to temporarily replicate copyrighted material, perhaps resulting in legal complications. As the creative landscape generated by AI continues to change, there is an urgent need for the evolution of the legal framework, balancing the interests of creators of creative works, users, and technological advancements. Moreover, the basis of copyright law currently rests on the concept of human-generated copyrighted works. However, the introduction of artificial intelligence (AI) and its growing role as an assistant to humans in the creation of various types of works, including literary and artistic works, is causing substantial disruption to this established legislative policy. As a result, deciding who should be recognized as the creator of such works has become a hotly debated topic among politicians and the legal system.

Problems regarding the rule of law for AI also occur in Indonesia. In terms of positive law, AI cannot be categorized as a legal subject, but AI can be categorized as a legal object in positive law in Indonesia. AI cannot be classified as a legal subject or held criminally liable when associated with criminal liability in Indonesia. At the same time, AI as a program cannot commit a criminal act that it might commit. Although the legal rules regarding AI have not been expressly regulated in Indonesian legislation, AI has been widely used to create creative works. This will certainly cause problems in the future, such as problems in the field of copyright. Therefore, legal regulations related to AI must be regulated in the Copyright Law in Indonesia. Meanwhile, other countries, including the United Kingdom, China, India, and South Korea, have taken substantial steps and launched projects to address the issue of AI-generated works. They have gone beyond the international legal community to establish legal clarity in this matter. This difference becomes evident through recent legal developments, such as the lawsuit filed on January 13, 2025, by South Korean broadcasters KBS, MBC, and SBS against Naver for allegedly using their news content to train AI models without authorization. While Indonesia has not yet seen similar litigation, the Directorate General of Intellectual Property (DGIP) has stated that no copyrights have been granted for works entirely generated by AI, raising concerns among legal scholars about potential future disputes.¹

Previous research on AI was researched by Byungun Yoon² In 2022, entitled A Comparative Study of the Copyright Laws for Artificial Intelligence in the UK and Korea, the

¹ EUIPO, *The Development of Generative Artificial Intelligence From A Copyright Perspective* (EU: European Union Intellectual Property Office, 2025), <https://doi.org/10.2814/3893780>.

² Byungun Yoon, "Comparative Study of the Copyright Laws for Artificial Intelligence in the UK and Korea," *Comparative Law Review* 28 (December 13, 2022): 281-314, <https://doi.org/10.12775/CLR.2022.009>.

results showed that South Korea has different characteristics from the UK. South Korean copyright law does not cover works produced by artificial intelligence, in contrast to the UK, which includes the concept of artificial intelligence in its laws. In 2024 Ranti Fauza Mayana³ examining the Legal Issues of Artificial Intelligence-Generated Works: Challenges on Indonesian Copyright Law, the results show that Indonesia's copyright legal framework is based on the principle of human authorship. In this regard, works not entirely created by humans are not eligible for copyright protection. Also in 2024, Kyungsuk Kim⁴ authored Korean Copyright Issues in Text Data Mining for Generative AI, which explores legal ambiguities in South Korea concerning text and data mining (TDM), a critical process in training AI models. Kim argues that South Korean copyright law lacks explicit legal provisions to regulate TDM practices, despite their centrality to AI development. The study calls for legislative updates that accommodate technological advancement while safeguarding creators' rights. The most recent study was conducted by Dornis and Stober⁵ in 2025, titled Generative AI Training and Copyright Law. Their conceptual analysis reveals that conventional copyright regimes lack the normative foundations to regulate both the use of copyrighted material as training data and the legal status of AI-generated outputs. They advocate for structural reform in copyright law, particularly in areas such as data transparency, informed consent, and recognition of algorithmic creativity.

While these four studies offer valuable insights into the limitations of traditional copyright law in addressing AI-generated content, several key research gaps remain. All prior studies adopt a single-jurisdictional or Western comparative focus; none of them provide a direct comparative analysis between Indonesia and South Korea, two jurisdictions that reflect different levels of technological development and legal responsiveness. Moreover, previous research predominantly emphasizes doctrinal and technical aspects such as licensing, authorship attribution, and TDM without embedding these issues within a broader normative legal framework. This study differentiates itself by applying the rule of law as a central analytical lens, evaluating how principles such as legal certainty, fairness, and adaptability can guide copyright reform in the context of generative AI. Furthermore, while Mayana's 2024 study offers important observations on the limitations of Indonesian copyright law, it does not propose concrete regulatory solutions or situate the analysis within a comparative or theoretical framework. By addressing these gaps, the present research provides an original contribution through its combined normative and comparative approach, offering a regulatory roadmap for Indonesia based on international best practices and grounded in the fundamental values of a modern legal system. This approach ensures that copyright law can evolve not only in response to technological innovation but also in alignment with the foundational principles of legal legitimacy and human rights protection in the digital era.

II. Research Problems

This article addresses two main research questions. First, how do the legal systems in Indonesia and South Korea define and regulate issues related to authorship, originality, and ownership of works created by Generative AI from the perspective of the Rule of Law? Second, how do copyright policies governing Generative AI-generated content in both countries incorporate and uphold the essential principles associated with the Rule of Law?

³ Ahmad M Ramli Ranti Fauza Mayana, Tisni Santika, Yin Yin Win, Jamil Adrian Khalil Matalam, "Legal Issues of Artificial Intelligence - Generated Works: Challenges on Indonesian Copyright Law," *LAW REFORM* 20, no. 1 (2024): 54-75, <https://doi.org/https://doi.org/10.14710/lr.v20i1.61262>.

⁴ K. Kim, "Korean Copyright Issues in Text Data Mining for Generative AI," *Journal of AI Law and Regulation* 1, no. 1 (2024): 64-76, <https://doi.org/10.21552/aire/2024/1/8>.

⁵ Tim W. Dornis and Sebastian Stober, "Generative AI Training and Copyright Law," February 21, 2025, <http://arxiv.org/abs/2502.15858>.

III. Research Methods

This study applies a normative juridical research method supported by a comparative legal approach to analyze how copyright laws in Indonesia and South Korea respond to the emergence of Generative Artificial Intelligence (AI) within the framework of the rule of law. The research incorporates three main approaches: the statutory approach, which examines relevant copyright legislation and its applicability to AI-generated works; the conceptual approach, which explores key legal concepts such as authorship, originality, and creativity; and the theoretical approach, which evaluates the underlying legal principles and rule of law values that inform copyright regulation.⁶ The primary legal materials consist of national legislation, international agreements, and court decisions, while secondary materials include academic journal articles, legal commentaries, policy papers, and expert analyses. Legal materials were collected through documentary research and qualitative data collection methods, utilizing legal databases, government publications, and scholarly sources. The analysis employs legal interpretation techniques grammatical, systematic, and teleological as well as comparative analysis to identify similarities and differences in the two legal systems. Inductive reasoning is used to draw conclusions about the normative adequacy and future adaptability of copyright frameworks in the context of AI generated content.

IV. Result and Discussion

1. Generative AI Analysis in the Perspective of the Rule of Law

Lon Fuller⁷ In his work titled *The Morality of Law*, he views the rule of law as a combination of formal institutions of society with what he calls the inner morality of law, which describes the formalistic principle. Simmonds⁸ interprets Fuller's formalistic portrayal of the rule of law as being external, asserting that compliance with the law is obligatory. One has the option to either accomplish it or not, with the second concept being a matter of degree rather than a clear-cut good or terrible idea. It involves striving to achieve the ideal based on one's utmost capability. Attaining aspirational morality necessitates the establishment of norms and order, which are upheld by the moral obligation to fulfil one's duties. This framework enables human beings to thrive, aligning with the ultimate objective of the rule of law. This is where the rule of law serves its purpose as a tool that promotes human development and acknowledges the potential of both men and women. This objective can only be attained if there are explicit and knowledgeable regulations. According to Simmonds, these principles are inherent to law as they are integral to the very concept of law. To comprehend the nature of law, we must examine its objective, which is the attainment of the ideal state known as the rule of law, as elucidated by Lon Fuller's concepts in his work, *The Morality of Law*.

Indonesia also applies the concept of a state based on law, which is explained again by the principles put forward by Jimly Asshiddiqie⁹ In his work entitled *The Idea of the Indonesian Legal State*, namely to reformulate the main ideas of the concept of the Legal State and its application, the main principles of the Legal State (The Rule of Law) can be reformulated in the true sense. The first principle is the primacy of law, which means that all issues are settled according to the highest legal standard. The normative acknowledgement of the supremacy of law is seen in the creation of legislation and the constitution. Empirical recognition refers to the

⁶ Irwansyah, *Penelitian Hukum, Pilihan Metode & Praktik Penulisan Artikel, Edisi Revisi* (Yogyakarta: Mirra Buana Media, 2022).

⁷ Lon L. Fuller, *The Morality of Law*, Revised Ed (London: Yale University Press, 1964).

⁸ N.E. Simmonds, *Central Issues in Jurisprudence: Justice, Law and Rights* (London: Sweet & Maxwell, 2008), <https://books.google.co.id/books?id=f4o5AQAIAAJ>.

⁹ Jimly Asshiddiqie, *Gagasan Negara Hukum Indonesia* (Jakarta: BPHN, 2012), <http://library.stik-petik.ac.id/detail?id=47442&lokasi=lokal>.

acknowledgement demonstrated by the majority of individuals via their actions that the law holds the highest authority. Furthermore, the principle of legal equality, which entails treating every individual in law and government with equal status, is acknowledged as a normative standard and put into practice by empirical means. Furthermore, it is imperative to adhere to the notion of legality, which entails ensuring that all government actions are grounded in legitimate and documented laws and regulations.

Furthermore, there is the Limitation of Power, namely the limitation of the power of the State and state organs by implementing the principle of vertical division of power or horizontal separation of power. Fifth, Independent Mixed Organs exist to limit the power and regulation of independent government institutions, such as the central bank, military organization, and police organization. The sixth factor is the presence of a judiciary that is both independent and impartial. When performing their legal responsibilities, judges must not allow themselves to be swayed by individuals seeking to advance their own political or economic agendas. Seventh, there is the State Administrative Court. Namely, in every State of Law, there must be an opportunity for every citizen to sue the decision of a State administrative official and the implementation of the decision of a state administrative judge (administrative court) by a state administrative official. Furthermore, in addition to the State Administrative Court, there must be a Constitutional Court that guarantees justice for every citizen.

The next principle is democratic (*demokratische rechtsstaat*), namely the adoption and practice of the principle of democracy or people's sovereignty, which guarantees the participation of the community in the process of making state decisions so that every law that is established and enforced reflects the values of justice that live in society. Then, the law must function as a means of realizing the goals of the state (welfare *rechtsstaat*); namely, the law is a means to achieve the idealized goals together. The ideals of the law itself, both those institutionalized through the idea of a democratic state (democracy) and those realized through the idea of a legal state (nomocracy) are intended to improve public welfare. Furthermore, there is transparency and open social control over every process of making and enforcing laws so that the weaknesses and deficiencies in the official institutional mechanism can be complemented by direct community participation (direct participation) to guarantee justice and truth. The last principle is that we must believe in the One Almighty God, specifically regarding the ideals of the Indonesian Legal State based on Pancasila. The idea of the state cannot be separated from the value of the One Almighty God, which is the first and main principle of Pancasila.

Law is traditionally perceived as a means of attaining human progress, in accordance with the ideals of the rule of law that are universally recognised and established in Indonesia. The widespread consensus on the rule of law is that it is considered a concept that deserves safeguarding, notwithstanding its susceptibility to political exploitation. When applied to the mathematical principles of AI solutions, the AI system will undermine the primary purpose of the rule of law, which is to promote human progress. The concept of the rule of law is often seen as a means to handle the issue of ensuring the fair and consistent application of laws, particularly by preventing the misuse of authority through arbitrary exercise.¹⁰ In the realm of AI technology, power is wielded by the technology itself, yet remains concealed from any form of evaluation or assessment. Another concept is the notion that the legitimacy of governance stems from the ethical entitlement to govern, which necessitates that the regulations be transparently articulated in a comprehensive, equitable, and unequivocal manner. The objectives set forth by the rule of

¹⁰ Martin Krygier, "What's the Point of the Rule of Law?," *Buffalo Law Review* 67, no. 3 (2019): 743-91, <https://digitalcommons.law.buffalo.edu/buffalolawreview/vol67/iss3/16/>.

law in the field of AI could be more achievable. Thus, the concept of the rule of law is a political aspiration, albeit its specific meaning and structure are still subject to debate and, to some degree, disagreement.¹¹

AI technologies provide various possibilities to enhance human existence and the operation of governments. Artificial intelligence systems provide the capability to enhance efficiency and effectiveness in several domains such as healthcare, transportation, education, and public administration, owing to their immense power, scale, and speed. Artificial intelligence has the capability to assume control of monotonous, hazardous, disagreeable, and intricate tasks that would otherwise be performed by humans. Nevertheless, AI technologies possess the capacity to adversely affect human rights, democracy, and the principles of law. It is important to comprehend the interplay of potential and threats in AI, considering its "socio-technical" character. Artificial Intelligence (AI) encompasses a wide array of sophisticated technologies that function inside a human framework and are specifically created to fulfil human objectives. Therefore, AI technologies can be regarded as a reflection of the values and preferences of the individuals involved in their development and utilisation.

Artificial intelligence has the potential to undermine individual freedom and fairness, particularly in significant areas like the criminal justice system. The intricate and obscure nature of AI systems can compromise the right to a just trial, including the right to equal treatment, as individuals affected by algorithmic choices may not have sufficient means to thoroughly analyse and contest their reasoning. Utilising AI in this particular situation helps mitigate arbitrary and discriminatory actions, however court decisions that rely on or are influenced by AI can have adverse effects on the establishment of rules and the autonomy of judicial decisions. Thus, it is imperative for judicial actors to possess a suitable level of comprehension of the artificial intelligence they employ in order to guarantee the responsibility of AI-assisted judgements. To maintain a fair and transparent judicial process, it is crucial that methods utilised for criminal sentencing judgements, which carry the danger of a convicted criminal committing more crimes, are interpretable, verifiable, and subject to challenge by the accused.

The use of AI to collect and analyse data on online and offline activities, including monitoring website and social media usage and extracting information through biometric surveillance, poses a threat to the rights of freedom of expression, association, and assembly. The utilisation of AI in this manner leads to the perception of constant surveillance and eavesdropping, which has the capacity to instill anxiety and incite political mobilisation. Social media networks employ AI to influence the selection of posts and adverts, creating an experience that manipulates individuals by exploiting their interests. This can possibly reinforce divisive, anti-democratic, or violent worldviews. AI is also employed to produce exceedingly authentic yet deceptive films, counterfeit accounts, and other synthetic stuff that can impede an individual's capacity to develop an informed viewpoint. Facial recognition systems have the potential to hinder citizens from freely engaging in their rights to gather and form groups, so eliminating the safeguard of remaining anonymous and discouraging social unity and democratic involvement. The utilisation of AI-powered biometric surveillance can deprive individuals of their entitlement to be informed and give consent for the gathering of their personal data.

Based on the previous discussion, there is a relationship between the concept of the Rule of Law and AI technology that continues to develop and can replace the role of humans in the future. Based on the explanation of the Rule of Law put forward by legal experts, the use of AI

¹¹ Stanley Greenstein, "Preserving the Rule of Law in the Era of Artificial Intelligence (AI)," *Artificial Intelligence and Law* 30, no. 3 (September 17, 2022): 291–323, <https://doi.org/10.1007/s10506-021-09294-4>.

technology can be contrary to the principles of the Rule of Law because the principles of the rule of law are equality, democracy, equality before the law, justice for the people, freedom of speech and protection from the government. In contrast, AI technology is developed by certain companies or the government with certain goals oriented towards the benefits of using the technology, both materially and to control a country. AI technology can be formed according to the wishes of its developers or creators, so it can pose a risk of data manipulation, which has the potential to cause conflict and threaten state security.

It is associated with Generative AI, which is a derivative of AI technology, which in this case is technology that is specialized in creating works of art or text in the form of images or videos. Generative AI, in this case, can be used as a means in the political system in a country, including Indonesia. Generative AI can produce very realistic but fake videos and create fake accounts and other artificial content that can hinder a person's ability to get opinions based on facts, and this can be used for political interests during general elections or by the government to lead public opinion. From the Rule of Law perspective, Generative AI technology cannot be used to implement the principles of the Rule of Law, especially regarding human rights, democracy, and the supremacy of law. The use of this technology reflects the values and choices of the people who build and use it so that the work or content produced is only intended for personal interests, not for the interests of the state or playing a role in realizing the Rule of Law.

2. Generative AI in the Perspective of Copyright Law in Indonesia and South Korea

Generative AI as a producer of creative works is a concept resulting from the exponential speed of AI technology that is widely applied in various fields, such as the entertainment, financial, and health industries. On the one hand, the emergence of Generative AI frees people from tedious and time-consuming work. On the other hand, it raises various concerns, such as problems with plagiarism, privacy, and replacing humans. The advent of Generative AI prompts enquiries on the legal standing and safeguarding of the generated works, as well as concerns about their originality. This gives rise to apprehensions over possible violation and the boundaries of uniqueness for safeguarding copyright.¹² Furthermore, the utilisation of AI techniques for content analysis, such as plagiarism detection or data utilisation, raises concerns regarding fair use rights and derivative works. These tools have the ability to replicate copyrighted materials, which may lead to legal disputes. Therefore, it is necessary to conduct a thorough examination of copyright law in Indonesia.

According to Article 1, Paragraph 2 of the Indonesian Copyright Law, an author is defined as an individual or group of individuals who create a distinctive and personal piece of work. This concept demonstrates a perspective that prioritises the needs and interests of humans. It signifies that the author/creator exercises artistic discretion and so imparts their individuality into a particular piece. Consequently, creations made independently by entities that are not human are not eligible for copyright safeguard according to the Indonesian Copyright Law. In addition, a work is defined as a creation in the domains of science, art, and literature that is produced through inspiration, skill, thought, imagination, and expertise. It must also be manifested in a tangible form, as specified in Article 40. Consequently, works that are derived or transformed from existing works are crucial in assessing the copyrightability of works generated by Generative AI.

¹² Jim Euchner, "Generative AI," *Research-Technology Management* 66, no. 3 (May 4, 2023): 71-74, <https://doi.org/10.1080/08956308.2023.2188861>.

A work possesses originality and constitutes a manifestation of creativity if it is the product of an individual's creative process. The principle of manifestation of a work states that a work is eligible for copyright protection only when it is manifested in a tangible form, rather than remaining as an abstract idea. In Indonesian Copyright Law, the principle of originality is understood to refer to the author's intellectual production. According to the theory of copyright personality, the uniqueness and individuality of a work come from the connection between the process of creating a work that can be protected by copyright and the person who is responsible for making it.¹³ Therefore, in the absence of a human author, a work lacks originality and personality, rendering copyright non-existent.¹⁴ When considering the originality of a work and the role of AI in its creation, it is important to examine the involvement of AI in the creative process. Transparency is a crucial aspect in this regard, as it helps address issues related to the creation of protected works and the responsibility for them. These issues arise when the creative choices in a work can be attributed to AI.¹⁵

The difficulty stems from the anthropocentric notion of copyright, which is based on the belief that only people possess the ability to create and generate original works under the framework of copyright. The capacity for creation has consistently been a significant aspect that sets humans apart from machines. Additionally, according to Article 1, paragraph 2 of the Indonesian Copyright Law, a creator is defined as an individual or collective entity that generates works with distinct and individualistic attributes.¹⁶ This provision demonstrates that the distinctive and individual qualities of a work are the outcome of the creative procedure carried out by its originator. Thus, an individual who produces an innovative piece is granted exclusive, though not unlimited, privileges to utilise their product. This includes the right to manufacture, replicate, distribute, or engage in any form of commercialisation to gain economic advantages. Nevertheless, this gives rise to copyright concerns that only pertain to individuals and organisations recognised by law. Simultaneously, Generative AI has the capability to produce artistic, musical, and literary creations without extensive human or legal entity participation. Moreover, according to Article 39, in cases where the author of a work is unidentified and the work remains unpublished, the State will assume the copyright ownership of the work.¹⁷

The subjects of copyright encompass creators, copyright holders, and owners of related rights. The Indonesian Civil Code acknowledges both individuals and legal entities as legal beings. The Copyright Law classifies legal subjects into two categories: natural persons (individuals or humans) and legal persons (corporations). A legal entity refers to a group of individuals or specific funds that are officially recognised by the law as having legal status and the ability to possess rights and responsibilities. A legal entity is a non-natural legal entity, meaning its existence is established by a natural legal person (a group of individuals) whose position is authorised or acknowledged by law.¹⁸ According to the Indonesian Copyright Law,

¹³ Fadjar Ramdhani Setyawan, Sudarsono Sudarsono, and Yuliati Yuliati, "Teori Ajaran Cita Hukum (Idee Das Recht) Di Dalam Perlindungan Ekspresi Budaya Tradisional Di Indonesia," *De Jure: Jurnal Hukum Dan Syar'iah* 13, no. 1 (June 28, 2021), <https://doi.org/10.18860/j-fsh.v13i1.10025>.

¹⁴ M. Maggiore, *Artificial Intelligence, Computer Generated Works and Copyright* (London: Edward Elgar Publishing, 2018).

¹⁵ Jacques de Werra, "AI Transparency: An Emerging Principle in the IP Ecosystem?," *Journal of Intellectual Property Law and Practice* 18, no. 6 (June 5, 2023): 407-8, <https://doi.org/10.1093/jiplp/jpad041>.

¹⁶ Yati Nurhayati et al., "The Issue of Copyright Infringement in 4.0 Industrial Revolution: Indonesian Case," *Jurnal Media Hukum* 26, no. 2 (2019), <https://doi.org/10.18196/jmh.20190128>.

¹⁷ Evita Isretno Israhadi, "The Impact of Developments in Artificial Intelligence on Copyright and Other Intellectual Property Laws," *Journal of Law and Sustainable Development* 11, no. 11 (November 6, 2023): e1965, <https://doi.org/10.55908/sdgs.v11i11.1965>.

¹⁸ Tang Rofi Aulia Rahman, Akhmad Al-Farouqi, Shu-Mei, "Should Indonesian Copyright Law Be Amended Due to Artificial Intelligence Development?: Lesson Learned from Japan," *NTUT J. of Intell. Prop. L. & Mgmt* 9, no. 1 (2020): 34-57, <https://lawdata.com.tw/tw/detail.aspx?no=389920>.

legal entities are given the authority, ownership of rights, and responsibilities linked to copyright. Indonesian copyright law primarily focusses on individuals who are recognised as legal entities. Non-legal entities cannot be granted legal rights, including economic and moral rights, based on the Indonesian Copyright Law, as there is no justification or legal provision for such. In addition, it is only legal entities that possess the legal capacity to participate in legal proceedings.¹⁹

Additionally, the Indonesian Copyright Law explicitly defines a "Author" as an individual who creates a work. As a result, AI cannot be considered an author under this law due to its adherence to the "human authorship requirement". Moreover, AI cannot be deemed a "author" due to the absence of legal recognition. AI is not recognised as having the same level of creativity and personality as humans in the legal context, particularly in relation to copyright. Therefore, when AI generates a work, it is not considered a product of creativity and is not eligible for copyright protection since it is not produced by a legal entity. AI is seen as a specialised instrument that aids individuals in the creation of works within the realm of copyright. If a work that is subject to copyright is produced by humans utilising AI as a technical instrument, the outcome can be safeguarded by copyright law.

Based on the previous discussion, from the perspectives of the Rule of Law and Copyright Law, Generative AI is not recognized as a legal subject. Until now, it has functioned merely as a human-assisting tool in the development of modern technologies, whose use demands the formulation of specific legal frameworks. In Indonesia, the rules governing AI and Generative AI have not yet been explicitly regulated, resulting in a legal vacuum. As such, only entities recognized by the law qualify as legal subjects, in accordance with the fundamental principles of the Rule of Law. In the absence of legal provisions addressing the subject status of AI in the context of copyright law, Indonesia continues to adhere to its current legal regime, including the application of one of the key pillars of the Rule of Law, the principle of legality (due process of law), which mandates that all state actions must be grounded in valid and written laws and regulations.

In contrast, the development of artificial intelligence (AI) has emerged as a central concern within the global legal landscape, and South Korea offers a compelling example of a nation that has proactively addressed this challenge. As one of Asia's technological pioneers, South Korea has taken significant steps to regulate and support the advancement of digital technologies, including AI. This proactive stance is evident in the country's strategic legal responses to the rise of AI, which reflect a more adaptive and future-oriented governance approach than Indonesia's. South Korea's commitment is illustrated through a series of major policy milestones – beginning with the National Strategy for Artificial Intelligence in 2019, followed by the Roadmap for Improving AI Laws and Regulations in 2020, and reinforced by the publication of the Digital Bill of Rights in 2023.²⁰ These foundational documents demonstrate a coherent and evolving policy direction that integrates AI as an essential component of the nation's broader social and economic transformation agenda.

The development of AI regulation in Korea emphasizes a staged approach that prioritizes technological advancement before implementing a comprehensive legal regime. This approach is considered progressive, as it supports industry growth while allowing for risk management to develop in parallel. The model also provides the flexibility to respond to the fast pace of

¹⁹ Ranti Fauza Mayana, Tisni Santika, Yin Yin Win, Jamil Adrian Khalil Matalam, "Legal Issues of Artificial Intelligence – Generated Works: Challenges on Indonesian Copyright Law."

²⁰ Syafrinaldi Syafrinaldi et al., "Artificial Intelligence, Innovation, and Copyright: Comparing Intellectual Property Law in Indonesia and South Korea," *Lex Scientia Law Review* 8, no. 2 (December 15, 2024): 1143–80, <https://doi.org/10.15294/lslr.v8i2.1227>.

technological change. A draft law titled the Act on the Promotion of the AI Industry and the Establishment of Trustworthy AI is currently under review by the National Assembly. The bill aims to consolidate various previously scattered legislative proposals into a unified legal framework.²¹ Certain provisions within the bill impose specific obligations on high-risk AI systems, including requirements for user notification and safety assurances. Debate has emerged regarding the regulation of generative AI and deepfake technologies, which some experts argue require stricter boundaries. Civil society organizations have raised concerns about the adequacy of protections for human rights and privacy in the upcoming regulatory framework. These debates illustrate the tension between fostering innovation and preserving fundamental legal values.

South Korea's personal data protection framework has been strengthened through the Personal Information Protection Act (PIPA), which grants data subjects the right to refuse automated decision-making. The latest amendments, set to come into effect in March 2024, expand these protections by requiring data controllers to provide explanations and to conduct human-led reviews of impactful AI decisions. To support AI development, the Personal Information Protection Commission (PIPC) has issued technical guidelines on the anonymization of unstructured data used in AI training. This initiative is part of a principle-based regulatory approach that aims to integrate privacy safeguards across the entire lifecycle of AI systems, from planning and training to deployment. The training of generative AI models requires access to large volumes of data, which often includes copyrighted content. The use of such data raises concerns over potential violations of the exclusive rights of authors as outlined in the Korean Copyright Act. Key provisions grant both moral and economic rights to creators, including the right to reproduce and distribute their works.

The absence of explicit provisions in Korean law permitting the use of copyrighted material for AI training has created legal uncertainty for technology developers. The fair use clause, introduced through the 2011 amendment, has yet to be clearly interpreted in the context of AI. The correlation between fair use and AI training lacks robust legal precedent in the country. Text and Data Mining (TDM) has emerged as a primary method for training generative AI systems. In this regard, several countries such as Japan and the European Union have implemented legal exceptions for TDM activities.²² South Korea is currently considering a similar amendment to its Copyright Act to permit the use of copyrighted materials for AI training under specified conditions.

Article 93 of the Korean Copyright Act provides protection for database producers over the structure, selection, and presentation of data compiled through significant investment. This provision has been tested in key cases such as *Saram-in v Job Korea* and *Yanolja*, which examined the legal aspects of automated crawling and scraping of database content by digital platforms. In these cases, courts assessed that systematic copying of economically valuable databases could constitute infringement, particularly when done without authorization or when it interfered with the legitimate interests of the data producer. These decisions offer a foundational legal basis for evaluating increasingly complex data collection activities conducted by AI systems. Outputs produced by generative AI also raise new legal questions regarding their eligibility for copyright protection. Under current Korean law, works generated entirely by AI are not recognized as

²¹ Seung-Keun Song Xie, Hua-Qian, "A Foundation for Legal Judgment on Copyright of Generative AI Content: Focusing on Copyright Disputes in South Korea, the United States, and China.," *International Journal of Advanced Culture Technology* 12, no. 4 (2024): 247-53, <https://doi.org/10.17703/IJACT.2024.12.4.247>.

²² Dornis and Stober, "Generative AI Training and Copyright Law."

eligible for copyright due to the absence of a human author. Legal doctrine in Korea continues to regard humans as the only legal subjects capable of holding copyright.

The Ministry of Culture, Sports and Tourism, together with the Korea Copyright Commission, has issued official guidance stating that human contributions in editing or enhancing AI-generated works may be eligible for copyright protection. This guidance aims to accommodate the role of human creativity within AI-assisted processes. Concerns have also emerged over the potential for AI to generate outputs that infringe on the intellectual property rights of others, such as trademarks, artistic styles, or the likeness of public figures. The lack of specific regulations addressing infringement caused by AI outputs presents a legal gap that may disadvantage rights holders.²³ The South Korean government, through the Ministry of Science and ICT, has developed collective industrial standards to promote trust in AI systems. These standards address transparency, risk management, and accountability across the full lifecycle of AI development, including responsibility for the outcomes produced by AI systems. These technical regulations are enacted under the Industrial Standardization Act and provide mandatory guidelines for developers and industry stakeholders. The issuance of such standards demonstrates the government's seriousness in fostering an AI ecosystem that is not only innovative but also transparent and responsible.²⁴

South Korea's approach to AI regulation demonstrates a synergy between legal reform, public policy development, and the implementation of technical guidance. Collaboration between government institutions and private sector stakeholders illustrates a holistic and phased model of AI governance. The legal trajectory undertaken by South Korea suggests that adapting the law to emerging technologies is a continuous process. Legal clarity, copyright protection, and privacy safeguards form the core foundations for building a conducive environment for AI-based innovation. Through regulatory reinforcement, industry standards, and comprehensive policy formulation, South Korea is taking progressive steps toward constructing a legal system that can accommodate the complex realities of generative technology.²⁵ The success of this approach may serve as an important reference for other nations currently grappling with similar challenges in the era of artificial intelligence.

The comparative analysis between Indonesia and South Korea reveals different yet complementary approaches in addressing the legal implications of Generative AI, particularly within the context of copyright law. These differences are rooted in each country's legal tradition, level of technological development, and responsiveness to the emergence of AI-generated content. Indonesia adopts a strictly anthropocentric approach to copyright law, as reflected in Article 1(2) of its Copyright Law, which defines an author as an individual or group of individuals who create a work with distinctive and personal characteristics. This provision explicitly emphasizes that copyright protection applies only to works resulting from human creativity. The principle of originality in Indonesian law is closely tied to the personality and intellectual contribution of the creator. Therefore, works generated entirely by non-human entities, such as AI, are not eligible for copyright protection under Indonesian law. Similarly, South Korea upholds a human-centered doctrine in its copyright framework, wherein only natural persons are legally recognized as holders of copyright. However, South Korea

²³ Xie, Hua-Qian, "A Foundation for Legal Judgment on Copyright of Generative AI Content: Focusing on Copyright Disputes in South Korea, the United States, and China."

²⁴ Syafrinaldi et al., "Artificial Intelligence, Innovation, and Copyright: Comparing Intellectual Property Law in Indonesia and South Korea."

²⁵ Jinyoung Nam, Yoonhyuk Jung, and Junghwan Kim, "Understandings of the AI Business Ecosystem in South Korea: AI Startups' Perspective," *Telecommunications Policy* 48, no. 6 (July 2024): 102763, <https://doi.org/10.1016/j.telpol.2024.102763>.

demonstrates greater flexibility in practice. Government authorities have issued official guidelines stating that human contributions in editing or refining AI-generated works may qualify for copyright protection. This opens limited opportunities for recognizing hybrid works, provided there is demonstrable human involvement in the creative process.

In terms of regulation and policy development, Indonesia has not yet established a specific legal or regulatory framework governing AI or Generative AI technologies. The current legal system relies solely on the existing provisions of copyright law, with no formal policy in place to address the legal status of works produced by AI. Indonesia's legal approach remains firmly rooted in traditional principles of the rule of law, such as the principle of legality, which requires that all state actions be grounded in valid, written legislation. In contrast, South Korea has adopted a proactive and phased regulatory model that integrates national AI strategies, legislative roadmaps, and evolving digital rights frameworks. The 2019 National AI Strategy, the 2020 AI Legal Improvement Roadmap, and the 2023 Digital Bill of Rights reflect Korea's long-term vision of harmonizing AI development with legal and ethical safeguards. The draft law titled *The Act on the Promotion of the AI Industry and the Establishment of Trustworthy AI*, currently under review in the National Assembly, demonstrates Korea's forward-looking commitment to comprehensive AI regulation, including the management of Generative AI and deepfake technologies.

Regarding data usage and copyright exceptions, Indonesia currently lacks provisions that allow the use of copyrighted works for AI training, such as through Text and Data Mining (TDM). The absence of such exceptions, combined with a strict interpretation of copyright law, makes the training of AI models potentially infringing. Furthermore, the Indonesian legal system has yet to develop a doctrinal or policy response to the reality that AI systems rely heavily on copyrighted data for training purposes. Although South Korea similarly lacks explicit legal provisions for TDM, it is considering amending its Copyright Act to permit such uses under specific conditions. The fair use clause introduced in 2011 has not yet been tested in AI-related contexts, which contributes to ongoing legal uncertainty.²⁶ Nonetheless, Korea has taken proactive steps to strengthen personal data protection through the Personal Information Protection Act (PIPA), and its Personal Information Protection Commission (PIPC) has issued technical guidelines that incorporate privacy safeguards into the entire AI lifecycle. Judicial precedents such as *Saram-in v. Job Korea* have also provided important legal foundations for assessing the legality of data scraping and collection practices used in AI model training.

Institutionally, Indonesia's engagement with AI governance remains limited and fragmented. There is no dedicated regulatory body for AI, nor has there been meaningful multi-stakeholder dialogue to develop policies addressing copyright in the context of AI. This institutional vacuum poses a significant challenge for Indonesia in keeping pace with the complex legal issues arising from AI-generated works. On the other hand, South Korea has embraced a collaborative, multi-institutional approach. Government agencies such as the Ministry of Science and ICT, the Ministry of Culture, Sports and Tourism, and the Korea Copyright Commission work alongside industry stakeholders and civil society to develop technical standards, ethical guidelines, and legal reforms. These efforts promote transparency, risk management, and accountability across the AI ecosystem.

Overall, South Korea has established a more adaptive and responsive legal framework that balances the promotion of AI innovation with the protection of fundamental legal principles,

²⁶ Dal Yong Jin, "AI in Cultural Production in the Korean Cultural Industries," *Telematics and Informatics Reports* 13 (March 2024): 100113, <https://doi.org/10.1016/j.teler.2023.100113>.

including privacy, intellectual property, and human rights. While the issue of authorship in AI-generated content remains unresolved, Korea's ongoing legal reforms and inclusive policymaking process provide a dynamic foundation for future regulation.²⁷ In contrast, Indonesia remains in a more static and traditional legal position, anchored in human-centered copyright norms and lacking a forward-looking regulatory vision to respond to the transformative impact of AI in the creative industries. To remain legally relevant and competitive, Indonesia must begin developing a clear and integrated regulatory roadmap that combines copyright reform, AI governance, and the foundational principles of the rule of law in an increasingly technology-driven society.

3. The Intersection of Generative AI Copyright with the Principles of the Rule of Law in Indonesia and South Korea

Within the framework of the Asian copyright system, copyright ownership is exclusively granted to individuals. China, renowned for its cutting-edge AI technology and widespread implementation of AI programs, has encountered challenges with the legal ownership of AI-generated works. An important case, Shenzhen Tencent v. Shanghai Yingxun, involved the Nanshan District People's Court deciding whether works generated by Generative AI, like Dream Writer, could be protected by copyright.²⁸ The court ruled that works created by Generative AI were indeed eligible for copyright protection. Nevertheless, the court emphasised that individuals asserting themselves as creators must satisfy the overall criteria for intellectual originality as stipulated by Chinese law.²⁹

In India, the copyright law assigns authorship of computer-generated literary or artistic works to the individual responsible for arranging their creation. Nevertheless, it is crucial to acknowledge that the human artist remains the primary driving force behind the scenes, despite the enormous contribution of AI in the creative process. The Indian Copyright Act of 1957 does not provide a clear and specific definition of the term "author" as it pertains to artistic and literary works. Nevertheless, the Copyright Act in India offers a thorough comprehension of the term. As to the Act, the term "author" in relation to a literary work denotes the individual responsible for its creation, but for a musical piece, it pertains to the composer. For works of art, excluding photography, the artist is regarded as the "author".³⁰ In addition, the Act acknowledges the individual who captures the photograph as the "author" in the context of photography. Australia and Thailand have divergent approaches when it comes to copyright legislation. Australia and Thailand have not implemented legal protections for Generative AI works, in contrast to China and India. This is because the copyright cannot be issued when the conditions of human creators or their contributions are not fulfilled during the production of a work. Ultimately, the creator is seen to have not successfully shown the combined qualities of hard work, expertise, and intellect that contribute to the idea of originality.³¹

The copyright law in Singapore imposes obligations on human writers rather than AI technology, acknowledging the essential role of human participation in the creation of every

²⁷ Yoon, "Comparative Study of the Copyright Laws for Artificial Intelligence in the UK and Korea."

²⁸ Alesia Zhuk, "Navigating the Legal Landscape of AI Copyright: A Comparative Analysis of EU, US, and Chinese Approaches," *AI and Ethics*, May 30, 2023, <https://doi.org/10.1007/s43681-023-00299-0>.

²⁹ Aviv H. Gaon, "Different Paths to AI Authorship," in *The Future of Copyright in the Age of Artificial Intelligence* (Edward Elgar Publishing, 2021), <https://doi.org/10.4337/9781839103155.00018>.

³⁰ Said Saidakhrarovich Gulyamov, "AI Authorship and Ownership of Intellectual Property in Industrial Power and Control Systems," in *2023 5th International Conference on Control Systems, Mathematical Modeling, Automation and Energy Efficiency (SUMMA)* (IEEE, 2023), 217-21, <https://doi.org/10.1109/SUMMA60232.2023.10349471>.

³¹ Bernd Carsten Stahl, "Embedding Responsibility in Intelligent Systems: From AI Ethics to Responsible AI Ecosystems," *Scientific Reports* 13, no. 1 (May 18, 2023): 7586, <https://doi.org/10.1038/s41598-023-34622-w>.

work produced by Generative AI. The case of *Asia Pacific Publishing Pte Ltd v Pioneers & Leaders (Publishers) Pte Ltd* provides clear evidence of the Singapore High Court's identification of four crucial criteria that establish copyright eligibility. In addition, the historical background of copyright law in Singapore confers unique privileges to individuals rather than corporate entities, highlighting that legal rights originate from human creativity.³² This historical viewpoint further strengthens the notion that originality is closely connected to the act of human creation. Hence, it is essential to establish the author's identity prior to assessing the originality of a piece. In order to categorise a work as a "original work" deserving of copyright protection, it is imperative to ascertain the human authorship from which the work derives.³³

Indonesia must establish regulations on the ownership of works generated by Generative AI. Indonesia's primary legal framework for copyright protection is Law Number 28 of 2014. Within the realm of creations generated by Generative AI, it becomes evident that the concept of a creator, as outlined in Article 1, refers to a human or a group of individuals who develop distinct and personal works either individually or collectively. This term illustrates a perspective that places humans at the centre, suggesting that the creator's creative decisions imbue a work with a unique quality. This method implicitly alludes to the concept of human-created uniqueness, and it does not acknowledge Generative AI technology as it does not meet the criteria for copyright protection. Moreover, according to Article 1 number 27, the term "person" encompasses both individuals (humans) and legal entities who meet the criteria to possess rights and responsibilities as legal subjects. According to this, the subject of copyright law refers to both individuals and legal entities. According to the copyright law in Indonesia, individuals and legal entities are acknowledged as copyright owners.

The following is a comparative table of regulations regarding Generative AI between Indonesia and other countries in the Asian region:

³² Pamela Samuelson, "Generative AI Meets Copyright," *Science* 381, no. 6654 (July 14, 2023): 158–61, <https://doi.org/10.1126/science.adi0656>.

³³ Euchner, "Generative AI."

Table 1. Legal Provisions of Generative AI in Asia

Country	Legal Basis	Specific Provisions Regarding Generative AI	Legal Subjects of Generative AI	Policy on the Use of Generative AI Works
Indonesia	Law No. 28 of 2014 concerning Copyright	No AI-Specific Provisions	Humans and Legal Entities	No Generative AI Use Policy
India	Copyright Act, 1957	No AI-Specific Provisions	Humans and Legal Entities	No Generative AI Use Policy
Singapura	Copyright Act 2021	No AI-Specific Provisions	Humans and Legal Entities	No Generative AI Use Policy
China	Copyright Law of the PRC	Draft Regulation and Jurisprudence	Humans and Legal Entities	In further regulatory development
Thailand	Copyright Act B.E. 2537 (1994)	No AI-Specific Provisions	Humans and Legal Entities	No Generative AI Use Policy
South Korea	Copyright Act of the Republic of Korea	No explicit provisions; amendment for TDM under review	Humans and Legal Entities	Limited guidance via 2023 Copyright Guide for Generative AI (draft policy stage)

Source: Tim W. Dornis and Sebastian Stober

Based on the table, most countries, including Indonesia, India, Singapore, and Thailand, still lack specific provisions governing works produced by Generative AI within their copyright systems. In these jurisdictions, copyright protection is generally limited to works created by humans, and no legal framework explicitly recognizes or protects outputs autonomously generated by AI. Consequently, the status of copyright for Generative AI-generated works remains legally uncertain and unregulated. This gap poses significant challenges for developers, creators, and regulators alike, especially as AI-generated content becomes more prevalent across creative industries. On the other hand, China has demonstrated regulatory advancement by drafting AI-specific provisions. These developments indicate a shift toward recognizing the legal implications of AI-generated content, including the potential to grant certain rights to developers or operators of AI systems. Although these regulations remain in the proposal stage, they signal a proactive legislative trajectory that distinguishes China from its regional counterparts.

South Korea, while not yet granting copyright protection to fully autonomous AI creations, has made notable progress in addressing this issue. Under its Copyright Act, only works created by natural persons are eligible for protection. However, South Korea has taken steps toward clarifying how copyright law applies to AI-assisted works through the 2023 Copyright Guide for Generative AI, issued by the Ministry of Culture, Sports and Tourism. While not legally binding, this guide provides preliminary policy direction by affirming that if a human meaningfully contributes to an AI-generated work – such as through selection, modification, or curation – that human contribution may qualify the output for protection. Additionally, South Korea is currently reviewing an amendment to its Copyright Act to introduce exceptions for Text and Data Mining (TDM), a critical issue in the development of Generative AI systems.

Associated with the concept of the Rule of Law in Indonesia, the implementation of the use of AI and Generative AI creations must be by the principles of the Rule of Law, which include the supremacy of law, legal certainty, equality before the law, accountability and transparency,

public participation, and respect for human rights. The development and use of Generative AI must comply with applicable laws and regulations in Indonesia to ensure that its use does not violate the law, including being subject to applicable laws on copyright law, and regulations regarding Generative AI must comply with the 1945 Constitution. Regulations regarding Generative AI must provide legal certainty for developers, users, and the general public by setting clear limitations and obligations regarding the development and use of Generative AI, including provisions regarding data use, copyright, and legal responsibility. Every individual or entity involved in the development and use of Generative AI must be treated equally before the law. In this case, regulations must be applied evenly regardless of who uses or develops Generative AI technology, whether a large company, startup, or individual.

About the protection of human rights, the use of Generative AI must consider its impact on human rights, ensure that this technology is not used for discriminatory purposes or harm certain groups, and Generative AI must be carried out with transparency and accountability related to developers and users of Generative AI to ensure compliance with regulations and ensure transparency of training data used in Generative AI technology so that the public can understand and trust the technology. In addition, Generative AI must follow ethical principles, such as not being used for detrimental purposes, spreading disinformation, or violating human rights. With a comprehensive approach based on the principle of the Rule of Law, Indonesia must ensure that the development and use of Generative AI are carried out responsibly and by applicable legal and ethical values.

The application of the concept of the Rule of Law to Generative AI creations can be seen in the following diagram:

Figure 1. Diagram of Generative AI Creations in the Concept of the Rule of Law



Source: David Leslie (2021) "AI, Human Rights, Democracy and The Rule of Law"

Based on the diagram, the emergence of Generative AI will impact social life in various groups, especially in its use, which does not yet have clear usage guidelines and specific legal regulations. For this reason, legal instruments are needed, according to the principles of the rule of law in Indonesia, to anticipate potential violations of the law in the scope of copyright and the principles of the rule of law. Indonesia must create legal instruments that regulate the application of Generative AI based on the supremacy of law, legal certainty, and protection of human rights, as well as the principle of accountability in creating laws and regulations related to Generative AI.

Based on the previous discussion, South Korea is a country with a strong civil law tradition and a deep commitment to the application of rule of law principles in the formation and implementation of public policy, including in addressing the legal challenges posed by Generative Artificial Intelligence (Generative AI). From the rule of law perspective, an ideal legal system is characterized by legal certainty, accountability, equality before the law, public participation, and the protection of human rights. These foundational principles serve as the normative benchmark in South Korea's legal response to technological advancements, including the rise of AI. One of the key aspects of the rule of law is legal certainty. South Korea seeks to ensure legal certainty in relation to Generative AI through a systematic and progressive regulatory approach.³⁴ The government has issued several key policy documents, such as the National Strategy for Artificial Intelligence in 2019, the Roadmap for Improving AI Law, System and Regulation in 2020, and the Digital Bill of Rights in 2023. These documents not only provide strategic direction but also serve as the legal foundation for reforming existing laws to remain relevant in the face of rapid technological change. In the context of Generative AI, this approach demonstrates that South Korea integrates technological policymaking within a measurable and normatively accountable legal framework.

The principle of legal accountability is also strongly reflected in South Korea's legal system, wherein policymakers, industry actors, and state institutions are held accountable for the legal and social impacts of AI development. This is evident in the active involvement of institutions such as the Ministry of Science and ICT, the Korea Copyright Commission, and the Personal Information Protection Commission, all of which have issued ethical guidelines, technical standards, and regulations on data protection. The release of industry standards such as the Requirements to Enhance Trustworthiness for AI Systems in December 2023 represents a concrete step toward ensuring accountability and transparency throughout the entire AI lifecycle. With regard to equality before the law and the protection of individual rights, South Korea reinforces these values through the amendment of the Personal Information Protection Act.³⁵ The amendment grants individuals the right to refuse automated decision-making and to request explanations for decisions that significantly affect their rights. This provision reflects the protection of the right to due process of law in the digital age, where algorithmic decision-making increasingly influences personal outcomes.³⁶

Public participation and transparency are also prioritized. The South Korean government encourages dialogue between public institutions, the private sector, and civil society in shaping AI-related policies. This inclusive process ensures that the resulting legal norms are not only responsive to technological needs but also reflective of societal values, thereby guaranteeing democratic legitimacy in the creation of new regulations. Nonetheless, not all dimensions of the rule of law have been fully addressed. For instance, in the area of Text and Data Mining (TDM), which is essential for training Generative AI models, South Korea's Copyright Act does not yet contain explicit exceptions. This creates legal uncertainty and may conflict with the principle of predictability and accessibility of law, which requires that legal norms be clear, accessible, and foreseeable for developers, companies, and society.³⁷ However, the government's proposal to amend the law and introduce a TDM exception reflects legislative willingness to resolve this gap.

Furthermore, South Korea's judiciary has played an important role in ensuring consistency in legal interpretation, particularly through key cases such as *Saram-in v. Job Korea* and *Yanolja*. These cases addressed issues related to database rights and large-scale data scraping. Importantly, the courts did not automatically deem all forms of automated data collection to be unlawful; instead, they assessed the context, intent, and economic impact—demonstrating a careful and balanced application of legal norms and the fair protection of rights. From the

³⁴ Xie, Hua-Qian, "A Foundation for Legal Judgment on Copyright of Generative AI Content: Focusing on Copyright Disputes in South Korea, the United States, and China."

³⁵ Jin, "AI in Cultural Production in the Korean Cultural Industries."

³⁶ National Commission on New Technological Uses of Copyrighted Works (CONTU), "Final Report on the National Commission on New Technological Uses of Copyrighted Works", (1981) 3 Computer L. J." (US, 1981).

³⁷ Dornis and Stober, "Generative AI Training and Copyright Law."

standpoint of substantive rule of law, South Korea does not recognize Generative AI as a legal subject. Rather, it is treated as a technological tool. Authorship and copyright ownership remain with the human creator who demonstrates original and creative contribution, thereby avoiding confusion regarding legal liability. This approach is aligned with the principle of legal personality, which limits the assignment of rights and obligations only to entities that are legally recognized.

South Korea’s approach to Generative AI, when viewed through the lens of the rule of law, demonstrates a strong commitment to the principles of a modern legal state. The rule of law is not only understood as a structural framework but also as a set of values that demand the protection of individual rights, transparency in regulation, and the adaptability of legal norms in response to rapid technological change. Although certain areas, such as copyright exceptions for AI training, are still under development, South Korea has laid a robust legal foundation to navigate the era of artificial intelligence in a fair, accountable, and rights-respecting manner. Despite different levels of regulatory maturity, both countries understand that the rise of Generative AI demands adaptive and principled legal responses. The rule of law provides the benchmark for such responses, requiring that new regulations be clear, consistently applied, and protective of both individual rights and societal interests.

Table 2. Comparative Analysis Generative AI and Copyright in South Korea and Indonesia from a Rule of Law Perspective

Aspect	South Korea	Indonesia
Legal Tradition	Civil law system with strong institutional enforcement and judicial review	Civil law system with developing institutional structure and limited AI jurisprudence
AI Policy Framework	National Strategy for AI (2019), Roadmap for AI Law Reform (2020), Digital Bill of Rights (2023)	No formal national AI policy; early-stage legislative discussions
Copyright Law & Generative AI	Copyright requires human authorship; AI-generated works not protected unless human input exists	Copyright requires human authorship; no legal position on AI-generated works
Text and Data Mining (TDM)	Not yet permitted; TDM exception bill under review	No legal framework or exception for TDM
Fair Use Doctrine	General fair use clause introduced in 2011 (influenced by KORUS FTA)	Closed-list exceptions; no general fair use or flexible interpretation
Judicial Engagement	Active jurisprudence (e.g., <i>Saram-in v. Job Korea</i> , <i>Yanolja</i>) provides legal clarity	No Generative AI or TDM-related court decisions to date
Ethical & Technical Standards	2023 “Trustworthiness for AI Systems” issued by Ministry of Science and ICT	No binding technical or ethical standards for AI yet
Data Protection Framework	PIPA amended to address automated decision-making and AI-related rights (effective 2024)	Personal Data Protection Law passed in 2022; implementing regulations in progress
Alignment with Rule of Law	Strong alignment: clarity, transparency, judicial oversight, and policy coherence	Partial alignment: legal gaps, limited predictability, and institutional fragmentation

The comparative table reveals substantial differences between South Korea and Indonesia in their regulatory readiness and application of rule of law principles in the governance of Generative AI, particularly in the area of copyright and intellectual property. The table categorizes the key components where each country's legal framework either aligns with or deviates from fundamental elements of the rule of law, such as clarity, consistency, responsiveness, and judicial accountability. The first point of divergence lies in the existence of a national AI policy framework. South Korea demonstrates strong top-down coordination through strategic documents like the National Strategy for AI (2019) and Digital Bill of Rights (2023). These documents set the tone for cross-sectoral governance and ensure policy coherence, a cornerstone of legal consistency under the rule of law. In contrast, Indonesia currently lacks a national AI policy, relying instead on fragmented and reactive measures. The absence of centralized policy direction reflects a gap in legal foreseeability and systematic governance, which undermines efforts to regulate a rapidly evolving technology like Generative AI. Regarding copyright protection and AI-generated works, both countries share a common doctrinal foundation in requiring human authorship. However, South Korea has gone further by issuing clarifications and engaging in legislative discussion concerning the non-protectability of works created solely by AI. This reflects the country's proactive stance in adapting existing laws to contemporary challenges, consistent with the rule of law principle of legal clarity. Indonesia, although legally aligned in requiring originality, has not yet issued interpretative guidance on AI-assisted works, leaving developers and rights holders in a state of legal ambiguity.

In relation to Text and Data Mining (TDM), a critical process in Generative AI development, South Korea's Copyright Act does not yet permit it but shows legislative responsiveness through a pending amendment. The move to explicitly allow TDM under certain conditions demonstrates South Korea's alignment with international legal standards and its commitment to updating statutory frameworks to meet technological realities. Indonesia, by contrast, remains legally silent on TDM. The absence of TDM exceptions within Indonesian law highlights a failure to anticipate and regulate this essential AI process, raising concerns over legal predictability and equal access to innovation. One of the most striking differences is the presence of a fair use doctrine. South Korea's adoption of a general fair use clause since 2011 offers its judiciary and policymakers interpretive flexibility an essential component of responsiveness under the rule of law. Even though its scope is still limited, it lays the groundwork for accommodating future technologies. Indonesia's closed-list exception model, which restricts copyright exceptions to those explicitly enumerated in law, does not afford the same flexibility, thereby limiting judicial discretion and slowing the ability to adapt legal frameworks to emerging technologies like Generative AI.

Judicial engagement is another area where South Korea demonstrates stronger alignment with rule of law principles. Landmark decisions in *Saram-in v. Job Korea* and *Yanolja* show how courts are actively interpreting existing legal norms in the context of new technology. This builds jurisprudential depth and fosters legal certainty and consistency. Indonesia, on the other hand, has no judicial precedents on AI or TDM, reflecting an underdeveloped jurisprudential framework that weakens the enforcement and evolution of legal norms in this space. When it comes to technical and ethical standards, South Korea again takes the lead. The 2023 issuance of Requirements to Enhance Trustworthiness for AI Systems introduces a comprehensive industry standard that incorporates principles like transparency, fairness, and explainability norms that are directly tied to accountability and public trust. The existence of such standards is a strong indicator of regulatory maturity and an extension of rule of law values into the technical domain. Indonesia has yet to develop similar binding standards, which presents a regulatory gap in ensuring responsible AI deployment.

In the area of data protection, both countries have taken significant steps, though South Korea has achieved greater integration with AI regulation. The amendments to PIPA that grant individuals rights over automated decision-making reflect a human-centric approach to AI governance and strengthen individual rights an essential element of rule of law. Indonesia's

Personal Data Protection Law (2022) is a promising step, but its practical application remains uncertain due to a lack of implementing regulations. This undermines enforceability, a key rule of law requirement. Lastly, the overall alignment with the rule of law is more advanced in South Korea. The country exhibits higher levels of legislative adaptation, judicial interpretation, administrative support, and international alignment. Indonesia shows growing interest in aligning its laws with technological development, but institutional fragmentation and regulatory inertia still hamper the realization of a fully responsive legal system.

V. Conclusion

This study concludes that the legal systems in both Indonesia and South Korea define authorship and originality in copyright law as concepts inherently tied to human creators. As a result, works generated solely by Generative AI are excluded from copyright protection. South Korea has demonstrated a more advanced and adaptive legal framework, as reflected in the publication of the 2023 Copyright Guide for Generative AI and in its proposed legislative amendments concerning text and data mining. In contrast, Indonesia currently lacks specific provisions and interpretative guidance under Law Number 28 of 2014, which leads to legal uncertainty and a lack of clarity regarding AI-generated works. From the perspective of the rule of law, South Korea's legal approach reflects a higher degree of clarity, predictability, and institutional responsiveness. Indonesia, on the other hand, needs to initiate substantial reforms in order to close the regulatory gap. To begin addressing this issue, it is recommended that Indonesia issue interpretive guidelines on AI-assisted creative works, revise its copyright legislation to accommodate emerging technologies, and consider including a legal exception for text and data mining. These steps are essential to ensure that future legal developments align with the principles of legal certainty, fairness, and adaptability in the era of artificial intelligence.

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