



Legal Analysis of the Protection of NFT (Non-Fungible Token) Art Content in the Perspective of Law in Indonesia

I B Gede Agustya Mahaputra^{1*}, I Komang Bintang Kurnianta²

^{1,2} Faculty of Law, Warmadewa University, Denpasar, Indonesia

idagustyamahaputra@gmail.com*

Abstract. NFT (Non-Fungible Token) is a record of ownership and authentication authority used in various contexts, particularly in digital art and music, where unique works can be traded and owned digitally with verified ownership guarantees through blockchain technology. This research aims to analyze and gain an understanding of the legal protection provided to owners of NFT content in the legal context of Indonesia. The phenomenon of buying and selling NFT artworks in digital format presents new opportunities for artists but also raises issues related to the protection of their copyright from actions that could harm the creators. The research addresses the legal consequences and legal protection provided to owners of NFT content in the Indonesian legal context. The research adopts a normative juridical or library research method as the primary approach. In this study, relevant primary, secondary, and tertiary data are collected and analyzed. The research findings indicate that to protect the copyright of artworks sold as NFTs, policies are needed to regulate limitations in NFT transactions. With these limitations in place, after an NFT is purchased by someone else, the new owner will have restricted rights to the artwork, such as a prohibition on reselling the work and creating licenses in their own name. Instead, the owner who purchases the artwork from the creator can only use, reproduce, and display the work to the public. Thus, the copyright of the artwork remains with the creator who sells it as an NFT. This research contributes to the understanding of legal protection for owners of NFT content in the legal context of Indonesia.

Keywords : NFT, Works of Art, Intellectual Property Rights, Legal Protection

1 Introduction

Rapid technological advancements, especially in digital trade, have been triggered by society's desire to seek a more efficient and practical way of living. One of the latest examples of technology is blockchain, a database that contains distributed, verified,

© The Author(s) 2023

M. Umiyati et al. (eds.), *Proceedings of the International Conference on "Changing of Law: Business Law, Local Wisdom and Tourism Industry" (ICCLB 2023)*, Advances in Social Science, Education and Humanities Research 804,

https://doi.org/10.2991/978-2-38476-180-7_60

and managed transaction records by a global computer network [1]. In Indonesia, the investment world has become more appealing with the emergence of Non-Fungible Tokens (NFTs), commonly known as NFTs. This NFT phenomenon has captured the attention and interest of the Indonesian community in particular. In the legal context in Indonesia, especially concerning intellectual property, there is a connection between NFTs as digital works and assets with the protection of industrial design, trademarks, and copyrights. One component of the Intellectual Property Rights (IPR) framework is copyright. "Intellectual Property Rights are rights derived from the creative activity of human intellectual power, expressed to the public in various forms that have benefits and are useful in supporting human life, also having economic value." [2] In Indonesia, the regulation concerning Intellectual Property Rights (IPR), especially related to copyright, is not something new. This fact can be observed from several changes that have occurred in the copyright laws. In accordance with Section 1 of Article 1 of Law No. 28 of 2014 Concerning Copyright, copyright is an exclusive right acquired automatically by the creator after their work is expressed in a tangible form, based on declarative principles, but still subject to the limitations stipulated in the legislation.

In NFT transactions, a person can sell an NFT representing their work, but the buyer does not acquire copyright over the work. NFTs have significant potential and relevance in the context of copyright because their purpose is to authenticate a digital object. However, there are various legal and technical issues related to NFTs. For example, there are questions about the status of NFTs in intellectual property rights since NFT owners do not directly possess the asset or artwork they purchase. They only have a record and hash code indicating ownership of a unique token associated with that digital asset. This is due to the exclusive nature of NFTs, which aims to prevent plagiarism and violations of artists' intellectual property rights, leading to some implementation challenges. NFTs run anonymously in the blockchain system, allowing anyone to claim digital art as their own by attaching a token to the work, which is one of the concerns.

NFT aims to prevent illegal duplication, which constitutes a violation of artists' intellectual property rights (IPR). However, in its implementation, NFT faces challenges due to the operation's lack of openness and anonymity in claiming ownership of works within the blockchain system. This allows anyone to assert digital art as their own by attaching a token to the work. Transactions on the blockchain are recorded publicly and cannot be altered, making it difficult to identify and capture perpetrators of art theft or stolen works within NFT.

In the regulation of digital artworks, it alludes to the Information and Electronic Transactions Law (ITE Law) and the Copyright Law. According to the explanation in Electronic Information and/or Electronic Documents Created as Intellectual Works are Protected as Intellectual Property Rights, according to Article 25 of the ITE Law, subject to relevant regulations. Protection for NFT artworks is granted to their creators, providing them with exclusive rights over the artwork, including economic and moral rights. Economic rights allow the creator to profit financially from their product, whereas moral rights are inherent to the creator and cannot be transferred [3] Creativity and human activity are the keywords behind the birth or emergence of cop-

yright. That is also the reason why copyright has the name exclusive rights. Copyright may only be created by people who engage in "mental and emotional processing." [4]

As of now, Indonesia does not have specific regulations that explicitly govern Non-Fungible Tokens (NFTs). However, the copyright of a work is generally protected under Law No. 28 of 2014 relating to copyright. Without reducing the restrictions outlined in the law, copyright is an exclusive right that is automatically owned by the artist once their work is expressed in a tangible form. In the domains of science, art, or literature, a creation is the product of the creator's labor, exhibiting its originality. [5].

The Copyright Law's Article 1 paragraph (11) states that "Publication" is an act of reciting, broadcasting, displaying a creation that is performed or used in any way, whether it is electronic or not, so that it can be read, heard, or seen by others. In Indonesia, the Copyright Law follows a "first to announce" system, meaning copyright over a work does not have to be registered. Copyright is seen as a fundamental, inalienable right that is safeguarded both while the creator is alive and for a period of time following their passing. The Indonesian Copyright Law stipulates that after the creator's passing, the copyright is protected for 70 years. As an absolute right, copyright can be maintained by anyone who possesses it, and they have the right to pursue legal action against anyone who violates that copyright.[6]

The rightful owner of a work is considered to be the one who first publishes it, whether electronically or non-electronically. Under the Copyright Law, Article 44 states that actions like the "use, reproduction, duplication, and/or alteration of a creation or related rights product, if the source is referenced or fully cited for the purposes of education, research, scientific writing, report writing, national security and government, or science, it is not deemed a copyright violation, either totally or significantly." Moreover, anyone who unlawfully violates economic rights may be subject to criminal sanctions, such as imprisonment or fines. However, currently, the validity of NFTs is not specifically regulated within the Copyright Law. The Copyright Law does not clearly differentiate between the rights of NFT owners and the rights of creators.

The provisions that can be used to define each right and legal status are stated in Article 1 paragraph (4), which declares, " The Copyright Holder is either the Creator as the owner of the Copyright, a third party who lawfully purchases the rights from the Creator, or a third party who further purchases the rights from the first." The absence and ambiguity of specific regulations lead to legal uncertainty concerning NFTs in practice. As a result, there is uncertainty regarding the legal status and rights of NFT owners and creators under the current Copyright Law.

2 Methods

Researchers utilize the normative legal method, which is an approach in legal research that focuses on analyzing and interpreting existing legal norms, including laws, regulations, court decisions, and other legal norms. This method relies on library materials and written legal sources as the basis for the research. The main objective of the nor-

mative legal method is to identify, analyze, and explain the applicable legal norms and their relationship to the case or issue being studied. The results of research using the normative legal method can provide valuable legal interpretations and perspectives to understand and resolve legal issues. Additionally, the writer also incorporates findings from empirical legal research and other sciences for analytical purposes as a normative science approach. This includes references from academic journals, previous research, articles, and other sources obtained from the internet to complement the research writing.

3 Discussions and Results

3.1 Legal Analysis of NFT Art Content Protection from an Indonesian Legal Perspective.

Artistic creations are the outcomes of human expression and inspiration, forming part of the Intellectual Property owned by each individual. Intellectual Property encompasses various human thoughts and ideas, which can be materialized in the form of inventions, designs, art, writings, or practical applications of concepts within that intellectual property.[7] Currently, with the advancement of digital technology, artistic creations are often found in digital media formats. Unlike a few years ago, when art could only be found in conventional forms like paintings on canvas or sculptures made of stone or wood, the discovery of the first computer opened up new possibilities. Since then, various types of digital art have been created, holding their own value and significance for art enthusiasts. The digital medium has enabled artists to explore new realms of creativity and expression, leading to a diverse range of digital artworks appreciated by a wide audience.

In this era of rapid technological development, a technology called blockchain emerged and later evolved into Non-Fungible Tokens (NFTs). NFT is a technology that can identify artworks as digital codes or sequences of codes that have been verified by interconnected computer networks. The existence of NFT technology is intriguing to discuss, especially in the context of artworks manifested in NFT form. A work of art in the form of an NFT possesses uniqueness in the form of a digital ownership certificate verified by the entire computer system worldwide. Anyone who owns an artwork in NFT form will automatically be confirmed as the owner. In the economic aspect, owners of NFT certificates can transact their artworks through NFT marketplaces or platforms where NFT assets are bought and sold using cryptocurrency. The value of these assets, when measured in conventional currency, can reach astonishing figures. This innovation opens up new possibilities for artists to monetize their digital creations and provides art enthusiasts with a new way to own and collect unique digital art pieces.

In terms of legal protection for intellectual property in artworks in NFT form, the objects traded as NFTs have the potential to be disseminated or duplicated by others outside of the NFT platform. Although NFT serves as proof of ownership of an item, this ownership proof does not directly protect the item from being disseminated by

others. Therefore, the objects traded as NFTs need to obtain intellectual property protection.

According to Article 25 of Law No. 11 of 2008 on Electronic Information and Transactions, "electronic information and/or electronic documents used as intellectual works, internet sites, and the intellectual works contained therein are protected as intellectual property in accordance with the provisions of the prevailing laws and regulations." Therefore, according to the relevant laws, artworks in NFT form may likewise be covered by intellectual property rights. From this provision, it can be understood that items sold as NFTs can be safeguarded with intellectual property rights or commonly abbreviated as IPR (Intellectual Property Rights).

Marketing-related artwork and intellectual property rights (IPR) are closely intertwined. As a result, IPR plays a significant role in NFTs because it acts as the legal safeguard for a work (digital NFT assets). NFTs are more appropriately described as a licensing mechanism or supporting evidence in transferring ownership of a work, but they are not the primary evidence since the primary evidence would involve registration with a public institution. " The construction of an adequate documentation system for all manifestations of human creativity is encouraged by the IPR system in order to avoid job duplication." [8] Exactly, NFTs serve as a reinforcement of Intellectual Property Rights (IPR) rather than a replacement because IPR has unique characteristics that are not possessed by NFTs. IPR involves restrictions on others utilizing and exploiting a creation for profit without authorization or payment of royalties. In this regard, NFTs differ from IPR because NFTs can be disseminated and commercialized more freely.

The same level of control and protection as IPR is not automatically granted by NFTs, even though they do offer a means of demonstrating ownership and validity of digital goods. Intellectual Property Rights offer creators legal rights and enforcement mechanisms to prevent unauthorized use, reproduction, and commercialization of their works, ensuring that they receive recognition and compensation for their creations. NFTs, on the other hand, primarily focus on verifying ownership and provenance but may not carry the same level of legal authority as IPR in terms of regulating usage and commercialization of the works.

NFTs do provide a way to prove ownership and validity of digital commodities, but they do not immediately grant the same level of control and protection as IPR.

- **Constitutive System**, is a system in which every Intellectual Property Right must be registered. This registration must meet the requirements set forth in the law and serves as official recognition and justification of an individual's Intellectual Property Right, evidenced by a registration certificate. Therefore, registration offers legal defense and guarantees legal clarity for the right's owner. The Constitutive System ensures that an individual can only be recognized and granted legal protection for their Intellectual Property Right if they have successfully registered it in accordance with the applicable provisions.

- **Declarative System**, is a form of system that does not mandate Intellectual Property Rights holders to register their rights. In the declarative system, legal protection is granted to the creator, holder, or first user of the intellectual property. If there is a claim from another party asserting ownership of the same intellectual property right,

the creator, holder, or first user must prove that they are the rightful owner of the right. Although the declarative system does not require registration of intellectual property rights, it acknowledges that registration is a form of protection that provides legal certainty. Therefore, even though not mandatory, registration is still considered an important step to provide clarity and intellectual property rights are protected by law. [9]

The laws governing copyright in Indonesia are outlined in Law Number 28 of 2014 Concerning Copyright. According to this legislation, a work's author immediately owns the copyright, which is an exclusive right. Without regard to the restrictions outlined by the applicable laws and regulations, this exclusive right applies once a work or creation manifests in tangible form. This exclusive right grants the owner or creator of the work the authority to prohibit others from utilizing the work without permission, except where authorized by the applicable laws and regulations. In other words, without permission from the owner or creator of the NFT artwork, others are not allowed to use, distribute, or exploit the NFT artwork, unless there is a valid authorization or consent in accordance with the prevailing legal provisions. This legal framework ensures that the rights of creators are protected and that they have control over the use and distribution of their works, allowing them to receive recognition and fair compensation for their creative efforts.

The growth of NFTs in Indonesia has been a focus for the Ministry of Communication and Information Technology (KOMINFO). In this connection, on January 16, 2022, the Ministry of Communication and Information Technology issued Press Release No. 9/HM/KOMINFO/01/2022 that governs the Ministry's supervision of Non-Fungible Token (NFT) Transactions in Indonesia. All Electronic System Providers (ESPs) are expected to make sure that their platforms are not used for actions that contravene laws and regulations in accordance with Law No. 11 of 2008 about Electronic Information and Transactions, as well as its amendments and implementing regulations. Administrative actions, including the termination of platform access for users from Indonesia, may be imposed for violations of these duties[10]

In the era of the digital economy, there is a need to formulate more comprehensive rules for copyright protection that will further encourage and strengthen the conditions for artists, particularly in the field of digital art, and for the legal and economic sectors in Indonesia to continue developing digital technology and the digital economy, which is a crucial factor in the Indonesian economy. Furthermore, having comprehensive rules for copyright protection that safeguard digital artworks in the online world will reduce copyright infringement and plagiarism in the future. The legal protection of copyright in digital economic activities aims to protect the interests of creators and promote the development of Indonesia's economy. By implementing such rules, it will foster a conducive environment for artists to thrive in the digital landscape while safeguarding their intellectual property rights. It will also contribute to the growth and sustainability of the digital economy in Indonesia, which plays a pivotal role in the country's economic development.

The emergence of NFTs (Non-Fungible Tokens) in the digitalization era brings new hope and significant benefits to global trade transactions. One of the main benefits is providing assurance to creators or authors of their creations. With NFTs, users indi-

rectly possess copyright over their creations, even though many may attempt to imitate the work. Additionally, the value of NFTs can continue to grow over time due to their authentic and unique nature, making NFTs a potential investment tool. The use of NFTs also has a positive impact on the development and economic growth of new creators. Therefore, NFTs not only provide advantages for creators with assurance and investment opportunities but also contribute to the growth of the creative economy and empower creators to receive fair recognition for their works.

4 Conclusion

There are no concrete rules governing the legal protection of NFT technology as an identification for intellectual works in Indonesia. However, because the creative process is an integral aspect of NFT, the Copyright Law generally protects the rights of creators. NFTs are regarded as objects related to digital art and align with the definition provided in 3rd paragraph of Article 1 of the Copyright Law. Additionally, the protection of NFTs can also be governed by the provisions of the Information and Transactions Electronically Law in Article 25, as well as Government Regulation Number 71 of 2019. It declares that under the terms of applicable laws and regulations, electronic information and/or electronic documents that are structured into intellectual works are protected as intellectual property rights. Although there is no specific regulation for NFTs yet, it can be concluded that NFTs can provide a solution for safeguarding the rights to intellectual property in Indonesia by referencing the Copyright Law. The certainty of ownership rights over digital artworks, later transformed into NFTs with their unique codes or tokens, is ensured to be free from plagiarism due to the security and authenticity provided by blockchain technology embedded in NFTs.

References

1. Nadya Olga Aletha, *Memahami Non-Fungible Tokens (NFT) di Industri CryptoArt*, 2021.
2. 2Darwance Darwance, Yokotani Yokotani, dan Wenni Anggita, "Dasar-Dasar Pemikiran Perlindungan Hak Kekayaan Intelektual," *PROGRESIF: Jurnal Hukum*, Vol 15, No. 2, 2020.
3. Muhammad Amirullah et.al, "Perlindungan Hukum Sinematografi Terhadap Pengaksesan tanpa Hak oleh Pengguna Aplikasi Telegram Berdasarkan UU Hak Cipta dan UU ITE Di Indonesia", *Ajudikasi: Jurnal Ilmu Hukum*, Volume 5 Nomor 1, 2021.
4. Alis Yulia et al., "Pengaruh NFT terhadap perlindungan Hak Cipta dan dampaknya terhadap pencemaran lingkungan," *Jurnal Galuh Justisi Fakultas Hukum Universitas Galuh*, Vol 10 No. 1, 2022.
5. Sentra HKI LPPM UNY, *Permohonan Hak Kekayaan Intelektual Hak Cipta*, Yogyakarta, 2017.
6. Khwarizmi Maulana Simatupang, "Tinjauan Yuridis Perlindungan Hak Cipta Dalam Ranah Digital", *jurnal ilmiah kebijakan Hukum*, Vol 15 No. 1, 2021.
7. Ni Kadek Risma Setya Cahyani Dewi, Ida Ayu Sukihana, "PERLINDUNGAN HUKUM TERHADAP KARYA SENI DALAM BENTUK NON-FUNGIBLE TOKEN (NFT)", *Jurnal Kertha Wicara* Vol 11 No. 4, 2022.

8. Dewi Sulistianingsih, Apriliana Khomsa Kinanti, “Hak Karya Cipta Non-Fungible Token (NFT) Dalam Sudut Pandang Hukum Hak Kekayaan Intelektual”, Jurnal KRTHA BHAYANGKARA, Vol. 16 No. 1, 2022.
9. Abdulkadir Muhammad, “Perjanjian Baku Dalam Praktek Perusahaan Perdagangan”, Bandung: Citra Aditya Bakti, 1992.
10. Ifin Rizky Al Qawiy, S.H, “Quo Vadis Transaksi Non Fungible Token dan Implikasinya Terhadap Hak Kekayaan Intelektual”, Artikel, 23 Februari 2022.

Open Access This chapter is licensed under the terms of the Creative Commons Attribution-NonCommercial 4.0 International License (<http://creativecommons.org/licenses/by-nc/4.0/>), which permits any noncommercial use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this chapter are included in the chapter's Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the chapter's Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.

