

COPYRIGHT PROTECTION FOR NON-FUNGIBLE TOKENS AS DIGITAL ARTWORKS

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Abstract

The current technological developments have provided convenience for society in accessing the internet, which can be utilized in various fields, one of which is the economy. In economic activities through digital media, the term "digital economy" is used. Digital economic activities cannot be separated from copyright objects that are traded as goods. Considering that examining copyright issues ultimately leads to the concept of law itself, especially regarding efforts to protect the results of two-dimensional art in the form of Non-Fungible Tokens (NFTs), it is important to address this matter. The buying and selling of NFT art in digital media brings fresh opportunities for artists. However, it also creates problems for some parties in protecting their creations from harmful actions. Therefore, this research aims to understand the legal protection for creators of two-dimensional digital artworks, to facilitate economic activities, and to identify the appropriate legal actions for creators in the event of copyright infringement in digital media. In this research, the author employs a normative research method, focusing on literature and secondary data through a juridical-normative approach that is descriptive and analytical in nature. The study reviews and analyzes regulations related to the core issues at hand. The findings of this research clearly show that, in fact, Indonesian Law Number 28 of 2014 on Copyright and Law Number 19 of 2016 on Amendments to Law Number 11 of 2008 on Electronic Information and Transactions do not comprehensively regulate two-dimensional digital artworks. To address emerging issues, creators can take legal action in the form of filing a compensation lawsuit in commercial courts, submitting criminal reports, or filing a report to the Directorate General of Intellectual Property to request the removal of content and/or access rights if copyright infringement is suspected in digital media.

Keywords: *Copyright, Non-Fungible Token, Legal Protection*

Abstrak

Perkembangan teknologi saat ini telah memberikan kemudahan bagi masyarakat dalam mengakses internet, yang dapat dimanfaatkan di berbagai bidang, salah satunya di bidang ekonomi. Dalam kegiatan ekonomi melalui media digital, istilah "ekonomi digital" digunakan. Kegiatan ekonomi digital tidak dapat dipisahkan dari objek-objek hak cipta yang diperdagangkan sebagai barang. Mengingat bahwa pembahasan mengenai hak cipta pada akhirnya berkaitan dengan konsep hukum itu sendiri, terutama dalam upaya melindungi hasil karya seni dua dimensi dalam bentuk Non-Fungible Tokens (NFT), hal ini menjadi penting untuk dibahas. Kegiatan jual beli karya seni NFT di media digital memberikan peluang baru bagi para seniman. Namun, hal ini juga menimbulkan permasalahan bagi beberapa pihak dalam melindungi ciptaan mereka dari tindakan yang merugikan. Penelitian ini bertujuan untuk memahami perlindungan hukum bagi pencipta karya seni dua dimensi dalam media digital, memperlancar kegiatan ekonomi, dan untuk mengetahui tindakan hukum yang tepat bagi pencipta dalam menghadapi pelanggaran hak cipta di media digital. Dalam penelitian ini, penulis menggunakan metode penelitian normatif yang berfokus pada kajian pustaka dan data sekunder melalui pendekatan yuridis normatif yang bersifat deskriptif analitis. Penelitian ini mengkaji dan menganalisis

regulasi yang terkait dengan pokok permasalahan yang dibahas. Hasil penelitian ini jelas menunjukkan bahwa, pada kenyataannya, Undang-Undang Republik Indonesia Nomor 28 Tahun 2014 tentang Hak Cipta dan Undang-Undang Nomor 19 Tahun 2016 tentang Perubahan atas Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik belum mengatur secara komprehensif tentang karya seni dua dimensi dalam media digital. Untuk mengatasi masalah yang muncul, pencipta dapat mengambil langkah hukum berupa gugatan ganti rugi di pengadilan niaga, melaporkan kejahatan pidana, atau mengajukan laporan ke Direktorat Jenderal Kekayaan Intelektual untuk meminta penutupan konten dan/atau hak akses jika terjadi dugaan pelanggaran hak cipta pada karya seni digital pencipta.

Kata Kunci: Hak Cipta, Non-Fungible Token, Perlindungan Hukum

1. Introduction.

Currently, the protection of two-dimensional artworks in digital media requires special attention, as an implication of technological advancements on the existence of copyright.(D. P. Sari, 2022). In the era of Industry 5.0, a comprehensive transformation is occurring across all aspects of production in various industries through the integration of digital technology and the internet. One form of utilizing digital technology and the internet in the economic field for two-dimensional artworks is through Non-Fungible Tokens (NFTs).

NFT is a type of digital asset in the art field, where transactions typically take place on specialized platforms (such as OpenSea.io, Rarible, Foundation) with payments made through cryptocurrency based on the Ethereum program (Ethereum smart contracts) (Aini, 2023). NFT can serve as proof of ownership and existence of digital assets in the form of art, videos, photos, and music. Furthermore, creators of digital assets can profit from trading on NFT marketplaces or peer-to-peer exchanges. By utilizing blockchain technology for validating the authenticity of a work, NFTs can offer a promising solution for protecting Intellectual Property (IP) (Ante, 2022). However, the global use of NFTs within the framework of supporting the digital economy requires special attention.

The Copyright Law and the Electronic Information and Transactions Law currently do not specifically and concretely regulate the protection of copyright for two-dimensional artworks in the realm of technology within cyberspace. However, new actions have emerged that may not necessarily be illegal but still violate the moral rights, economic rights, and sense of justice for creators. One example is the case between Indonesian illustrator Kendra Ahimsa and a crypto artist named Twisted Vacancy. The artist, Twisted Vacancy, took elements from Kendra Ahimsa's physical artwork and incorporated them into an NFT digital artwork without any modifications (Tng & Disemadi, 2023). Unlike most other artists or designers, the digital media creator Twisted Vacancy does not develop the elements of his work from scratch. Instead, he searches the internet for various elements, collects them, and stores them in his asset bank, giving him the flexibility to select and use them whenever he chooses.

Protection of two-dimensional artworks becomes a dilemma when the buying and selling of digital art in digital media results in the infringement of physical artworks due to similarities between the two. Such situations cannot be prevented by law due to the rapid advancement of technology and its use, which outpaces the development of the law. In this regard, this article will discuss the protection of copyright for NFTs as digital artworks within the framework of positive law in Indonesia.

2. Research Methods

The research method used for this writing is normative legal research, which involves studying legal materials and secondary data. The approach taken is a juridical-normative approach (statute approach) with a descriptive-analytical nature (Susanti, 2018). In this paper, the author will summarize and analyze the regulations related to the core issue, namely the legal protection against copyright infringement on two-dimensional artworks that are turned into NFTs. The analysis in this paper focuses on the emerging phenomena of societal developments and economic activities that create issues such as copyright infringement in the digitization of creations, legal protection, and the appropriate legal actions to address legal problems in society.

The researcher also utilizes secondary data, which includes primary legal materials such as the Copyright Law, the Information and Electronic Transactions Law, and the Joint Regulation of the Minister of Law and Human Rights of the Republic of Indonesia and the Minister of Communication and Information Technology of the Republic of Indonesia Number 14 of 2015 and Number 26 of 2015 on the Implementation of Content and/or User Access Rights Closure for Copyright and/or Related Rights Infringement in Electronic Systems, as well as secondary legal materials such as legal literature and sources regarding the protection of copyright for two-dimensional artworks and NFTs. Regarding data collection, the method employed involves document studies, including reviewing library documents such as books and journals, as well as final papers, and documents obtained online. The data analysis method used by the researcher involves researching the legal norms found in the relevant legislation to analyze the core issues of this writing.

3. Results And Discussion

Intellectual Property is a form of legal protection for a creation, aimed at safeguarding the creator or inventor from misunderstandings regarding infringement or imitation by others (Ujang Badru Jaman et al., 2021). Intellectual property, including copyright, is closely linked to the digital economy today, as its emergence was driven by the desire of WIPO member countries to protect their economies in the era of free trade.

One of the activities in the digital economy is the buying and selling of two-dimensional artworks in cyberspace. In practice, digital economic activities present challenges for positive law, which must be addressed and provide solutions. Crimes against intellectual property are becoming more prevalent, especially with the increasing sophistication of information technology, which amplifies these opportunities for infringement (Alferdo & Aisyah, 2022).

The protection of an NFT artwork is granted to the creator of the work, providing exclusive rights to the artwork, which consist of moral rights and economic rights. Moral rights are inherent to the creator and cannot be transferred, while economic rights allow the creator to receive economic benefits from their creation (Tasya et al., 2023).

Issues in the field of technology related to NFT ownership encompass several aspects, including: the legal status of NFT ownership in the digital realm, copyright and licensing, regulations concerning consumer protection, taxation and financial reporting, and protection of works from unauthorized actions. Among these various issues related to NFTs, this article will focus on one particularly intriguing issue, namely, the relationship between NFT and copyright as a form of digital artwork.

NFT (Non-Fungible Token), blockchain, and smart contracts are interconnected technologies that work together to enable the creation, ownership, and transfer of unique digital assets in a secure and decentralized environment. At its core, an NFT is a digital token that represents ownership of a unique item or piece of content, such as artwork, music, videos, or virtual goods. Unlike cryptocurrencies, which are interchangeable (fungible), NFTs are non-fungible, meaning each token is distinct and cannot be replaced with another. This uniqueness is what makes NFTs valuable, and blockchain technology plays a key role in verifying and ensuring their authenticity (Edgard & Suroso, 2023)

Blockchain, the decentralized digital ledger technology, underpins the entire NFT ecosystem. It provides a transparent and immutable record of all transactions, including the creation, transfer, and sale of NFTs. Every time an NFT is bought, sold, or transferred, a transaction is recorded on the blockchain, making it publicly verifiable and secure. The decentralized nature of blockchain ensures that there is no single point of failure, making it resistant to tampering or fraud. Popular blockchain platforms like Ethereum, Binance Smart Chain, and Solana are commonly used for minting and trading NFTs, with each blockchain offering different features and capabilities.

Smart contracts are essential components of the NFT ecosystem, enabling the automation of transactions and interactions between buyers and sellers. A smart contract is a self-executing contract where the terms of the agreement are written directly into code, and they automatically execute when predefined conditions are met. In the case of NFTs, smart contracts define the rules for minting (creating), transferring, and selling tokens. They can also include provisions for royalties, ensuring that creators earn a percentage from future sales of their NFTs. By using smart contracts, NFTs become more efficient and secure, eliminating the need for intermediaries and ensuring that all parties involved in a transaction follow the

agreed-upon terms. Together, NFTs, blockchain, and smart contracts create a seamless and transparent digital marketplace for unique assets.

Due to the uniqueness of NFTs, protection of moral rights over them is necessary. The regulation of moral rights is outlined in Article 5, paragraph (1), letter e of Law No. 28 of 2014 on Copyright, which states, "Moral rights are rights that are permanently attached to the creator to defend their rights in the event of distortion, mutilation, modification of the creation, or anything that harms their personal honor or reputation." Furthermore, the explanation of Article 5, paragraph (1), letter e of the Copyright Law clarifies that distortion, mutilation, and modification of a creation are defined as: a. Distortion of a creation refers to the act of twisting a fact or identity of the creation. b. Mutilation of a creation refers to the process or act of removing part of the creation. c. Modification of a creation refers to altering the creation.

In terms of the regulation of digital artworks, it refers to the Copyright Law and the ITE (Information and Electronic Transactions) Law, as emphasized in Article 25 of the ITE Law, which states that any Electronic Information and/or Electronic Documents that are compiled into an intellectual creation are protected as Intellectual Property under the relevant laws and regulations. Therefore, it can be concluded that the protection of digital NFT artworks is provided through copyright laws and other related regulations.

The infringement committed by Twisted Vacancy against the artwork of Kendra Ahimsa can be classified as mutilation of a creation. This is because the act of taking elements such as the mountain and cloud images from the artwork without any modification is a process of removing a significant portion of the original creation. Mutilation of a creation occurs when part of the creation is cut out, without resulting in a new creation (Novan Trihansyah, 2023). In other words, mutilation of a creation still originates from a single creation, where a portion of the artwork is removed without any alteration to the visual elements. This differs from distortion of a creation and modification of a creation, which are also regulated in the same article, namely Article 5, paragraph (1), letter e of the Copyright Law.

Distortion of a creation can occur, for example, when a name different from the creator's identity is attributed to the artwork. In the case of artwork, distortion can be likened to plagiarism, where the entire image of another's work is copied, and it is falsely claimed as the result of the copier's own ideas and creativity. This is clearly different from the mutilation of a creation performed by Twisted Vacancy, who only took a few elements from the entirety of Kendra Ahimsa's artwork.

Article 5, paragraph (1), letter e of the Copyright Law also regulates the act of modifying a creation. In legal practice, modification is classified as the use of a creation as a basis to create a new work. Therefore, when related to artwork, modification refers to an act performed by another party to create a new piece of art using someone else's work as the foundation, without permission and without making significant changes.

The next discussion pertains to Economic Rights, which can be understood as exploitation rights, as the Copyright Law grants creators or rights holders the right to exploit the economic benefits of their creations for a certain period of time (Siliwangi, 2022). Economic rights, on the other hand, protect creators from imitation, piracy, plagiarism, and other dishonest acts committed by others on their works, which are unauthorized and result in a reduction in the economic value of those creations (Zahida & Santoso, 2023).

In the case of the practice conducted by Twisted Vacancy in creating NFT artwork through slashing and remixing methods, the economic rights of the creator whose work is used as material for part of the new creation are involved. Article 9, Paragraph (1) of the Copyright Law provides provisions that protect the economic rights of creators, which are divided into several specific rights. There are various rights related to the economic rights of a creator whose work is used in the creation of NFT artwork. These include the right to reproduction of the creation, as outlined in Article 9, Paragraph (1), letter d of the Copyright Law, which includes adaptation, arrangement, and transformation of the creation.

Adaptation of a work is a form of transformation applied to one creation into another, such as turning a novel into a television series, a sculpture into a painting, or converting a non-fiction work into a fictional story, or vice versa (N. Sari & Sarjana, 2023). Based on the definition above, it can be understood that the adaptation of a work involves utilizing an existing creation to produce a new work that carries the same content but in a different type or form.

Another form of economic rights protection is through the transformation of a work. The transformation of a work refers to the creation of a new work through a creative process that utilizes expressions from a previously existing creation (Crisandy, 2019). In the case of artwork, this action can be

illustrated by an example where elements of someone else's artwork are taken and used in their own artwork, which is then sold. The economic rights to the transformation of a work are protected by copyright law, as it involves the exploitation of a creation. This is because the right to exploit the economic value of a work can only be held by the creator.

In implementing legal protection for digital artwork, we can also refer to Article 32, paragraph (1) of the Information and Electronic Transactions Law, which essentially states that any person, intentionally and without authorization or unlawfully, by any means, modifies, adds to, subtracts, transmits, damages, deletes, transfers, or conceals any electronic information and/or electronic documents owned by others or the public. Based on the case between Twisted Vacancy and Kendra Ahimsa, the actions involved can be classified as intentionally adding, modifying, or altering electronic information.

As explained in the definition of electronic information in Article 1, number 1 of the Information and Electronic Transactions Law, "Electronic Information is a set of electronic data, including but not limited to writing, sound, images, maps, designs, photos, electronic data interchange (EDI), electronic mail, telegrams, telexes, telecopies, or the like, letters, signs, numbers, access codes, symbols, or perforations that have been processed and have meaning or can be understood by someone who is able to comprehend it." This article clarifies that electronic information includes images, which in this case refers to artwork available on the internet.

The regulations protecting artwork in Indonesia's digital economy era are currently not comprehensive enough. It is essential that the protection of the creator's dignity and honor must not be compromised through violations of moral and economic rights. The foundation of the state guarantees that all individuals have the right to personal protection, honor, and dignity from threats, fear, or any other harmful actions, as part of their human rights (Darmawan et al., 2023).

The state has utilized its authority to protect and fulfill the moral and economic rights of its citizens in digital economic activities. One tangible form of this protection is outlined in the provisions of the Copyright Law and the Law on Information and Electronic Transactions, which essentially state that the moral and economic rights attached to a person's creation cannot be used without the consent of the copyright holder. However, the formulation of these regulations has yet to adequately protect the rights of creators in a more comprehensive and specific manner, especially against new crimes that are systematically structured and occur within digital platforms.

Crimes against two-dimensional artworks and NFTs are a form of crime within digital economic activities, which must be addressed by the government. The legal issues arising from the weak protection of cyberspace are closely related to the economic growth generated by online transactions (Pratama Putra et al., 2023). Regulation and limitations by law are necessary because everyone has the obligation to exercise their rights, which may be restricted by law in recognition of the rights of others.

Activities in cyberspace through electronic media, while offering benefits and convenience, also open access to new types of crimes. Therefore, legal regulations are needed to ensure safety for artists regarding their works. Article 64, paragraph (1) of the Copyright Law states, "The Minister shall organize the registration and removal of creations and related rights products." This provides a facility offered by the government to assist creators in securing their works.

In digital economic activities, the use of the internet has significantly increased, leading to numerous violations of individuals' copyright. One such crime can be observed in everyday life, as seen in the case of Kendra Ahimsa, where a portion of her two-dimensional artwork was copied. In an effort to protect against such actions, Article 55, paragraph (1) of the Copyright Law states, "Anyone who is aware of a violation of Copyright and/or Related Rights through an electronic system for Commercial Use may report it to the Minister." Protection of the creators' rights must adhere to principles that are dynamic in response to technological developments. Such regulations encourage the public to actively participate in safeguarding creative works within cyberspace.

Another legal action in enforcing justice in the field of copyright can be seen in the dispute resolution process outlined in Article 95 of the Copyright Law, which includes mediation and court proceedings. Article 95, paragraph (4) of the Copyright Law essentially explains that, in addition to copyright violations and piracy, if the residence of the disputing parties is known or located within the territory of Indonesia, they must first undergo dispute resolution through mediation before pursuing criminal charges. According to this

provision, mediation is a mandatory process under certain conditions to resolve disputes before taking legal action.

In practice, mediation is often used in resolving civil disputes. Additionally, in criminal law, there is also the term "penal mediation." Penal mediation is a process in which the victim and the perpetrator of a crime are brought together, with both parties agreeing to participate in resolving the issue with the assistance of a mediator (Praja et al., 2021). In resolving copyright disputes, the regulation through mediation aligns with legal provisions based on the Supreme Court's regulations. Mediation efforts in resolving both civil and criminal copyright disputes are voluntary, meaning that mediation is conducted based on the agreement of the parties involved in the dispute.

Article 99, paragraph (1) of the Copyright Law states, "The creator, copyright holder, or owner of related rights has the right to file a lawsuit for damages in the Commercial Court for copyright violations or violations of related rights." As outlined in this article, the creator or copyright holder is entitled to file a civil lawsuit, which includes claims for damages, requests for the seizure of infringing goods, and requests for the surrender of all or part of the infringement.

Furthermore, Article 99, paragraph (4) essentially explains that the copyright holder also has the right to request a temporary injunction from the judge, ordering the infringer to stop all activities related to the copyright violation to prevent further harm to the copyright holder. Such a civil lawsuit can be filed in the Commercial Court, which is located in four major cities in Indonesia: Medan, Jakarta, Surabaya, and Makassar.

In addition to mediation and claims for compensation, creators can also file a complaint regarding crimes against their creations. A crime is any form of behavior that contradicts or conflicts with societal moral values and customs, as well as violates the provisions of criminal law (Setiono & Bramantyo, 2023). The criminal provisions in the Copyright Law are regulated in Chapter XVII, Articles 112-120. Regarding criminal acts of violation of economic rights over digital artworks, offenders can be prosecuted under Article 113, paragraph (2) of the Copyright Law, based on the violated economic rights stated in Article 9, paragraph (1). The punishment can include a prison sentence of up to 3 (three) years and a fine of up to IDR 500,000,000 (five hundred million rupiahs).

In the Digital Economy Era, there is a need for more comprehensive copyright protection regulations. This will encourage and strengthen Indonesia's position in facing the digital economy, which is a key strategy in the nation's economy. Additionally, the existence of comprehensive copyright protection regulations will safeguard two-dimensional artworks in cyberspace, reducing the incidence of misuse of others' copyrighted works. The establishment of copyright legal protection in digital economic activities is intended to protect the interests of creators and build the economy for Indonesia.

4. Conclusions

The Copyright Law and the ITE Law have not yet provided clear and comprehensive protection. In the case of Twisted Vacancy's actions regarding Kendra Ahimsa's artwork, it most closely violates Article 5, paragraph (1), letter e, and Article 9, paragraph (1), letter d of the Copyright Law, as well as Article 32, paragraph (1) of the ITE Law. However, when it comes to violations of physical artworks turned into NFT art, there is confusion regarding the most appropriate article to address the offender's actions. Currently, the existing Copyright Law and ITE Law are too general, without clear boundaries to address the various incidents that occur in the digital media.

The legal actions that creators can take are well accommodated by the Copyright Law, starting from the registration of works in Article 64, paragraph (1), reporting copyright-infringing content in Article 55, paragraph (1), to dispute resolution in Article 95 of the Copyright Law. This allows creators to take various legal actions to protect their works. However, in practice, challenges still arise when violations occur in cyberspace, especially when one of the parties is located in a different country.

The future expectation for the protection of copyright in NFTs as digital works of art is that the legal system will adapt and develop clearer and more comprehensive regulations to protect the rights of creators within the NFT ecosystem. One of the main hopes is to establish protections that differentiate between physical and digital ownership, ensuring that NFT holders not only acquire ownership of the digital token but also gain protection for the copyright of the associated work.

Furthermore, there is an expectation for stricter regulation of the licensing agreements accompanying NFTs, ensuring that the moral and economic rights of the creators are respected even as their works are traded in the digital marketplace. This protection should also include clear regulations regarding royalties and the distribution of revenue to the creators whenever the work is sold or transferred, providing sustained benefits to them.

Further development of copyright regulations for NFTs could also involve international cooperation, given the global nature of the NFT market. With appropriate regulations in place, a fair and transparent ecosystem can be created for digital artists, protecting their works from misuse, while fostering the growth of a more innovative and sustainable digital art industry in the future.

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