

NFTS AND COPYRIGHT : ARE INTELLECTUAL PROPERTY LAWS READY?

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Abstract

The rise of digital technologies, particularly Non-Fungible Tokens (NFTs), introduces new challenges to intellectual property law, especially copyright. NFTs redefine ownership and distribution of digital works, but also raise concerns over legal protection for creators, especially when they lack control over tokenisation. This article examines how well Indonesia's current legal framework addresses these issues through normative, comparative, and case study approaches. The findings reveal that existing laws are insufficient, highlighting the need for legal reform and improved digital and legal literacy among the public and creative industries.

Keywords: NFTs, Copyright, Intellectual Property Law

A. INTRODUCTION

Digital transformation in recent years has fundamentally changed the way humans create, distribute, and own intellectual works. One innovation that has emerged from this development is *Non-Fungible Token* (NFT) technology, which is a blockchain-based digital asset that is unique and non-interchangeable. NFTs allow one to "own" a digitised version of a work such as visual art, music, even items in a game online, through a system of recording transactions on the blockchain. The popularity of NFTs has increased rapidly since 2020, when a number of digital works were successfully sold at fantastic values through various platforms such as OpenSea and Rarible. The development of digital technology has given birth to various forms of innovation in transactions and asset ownership, one of which is through *Non-Fungible Tokens* (NFTs). NFTs are digital assets that

represent unique ownership of a work, recorded using blockchain technology. This phenomenon has become popular since 2020 and is growing as a new medium for trading art, music, and even digital property.

The emergence of NFTs also poses new legal challenges, especially in the context of copyright protection. Many cases show that digital works attributed to NFTs are traded without the permission of the original creator, resulting in infringement of the creator's moral and economic rights.¹ This raises fundamental questions regarding the readiness of existing intellectual property law to deal with such technological developments. However, this phenomenon also brings complex legal consequences, especially in the context of intellectual property law. NFTs are not just a matter of technology or digital assets, but also concern the economic and moral rights of creators of original works. Many cases show that digital works tokenised into NFTs are sold or reproduced without the permission of the creator, leading to copyright infringement. For example, there have been incidents where digital artists have found their works being traded in the form of NFTs without their knowledge or consent. This raises the issue of whether the existing legal system, especially intellectual property law, is capable of providing effective protection to the rights of creators in this digital age.

In Indonesia, regulations regarding intellectual property still refer to Law No. 28 of 2014 on Copyright, which has not explicitly regulated digital assets such as NFTs.² Meanwhile, in the global realm, there has not been a strong consensus regarding copyright protection standards in the context of NFTs, although some countries have begun to update.³ As a result, there is a legal vacuum that opens the gap for misuse of works in the digital space. Normatively,

¹ Mosley, J. (2022). *Intellectual Property and the NFT Marketplace: Legal Issues and Challenges*. *Journal of Intellectual Property Law & Practice*, 17(4), 276-285.

² Directorate General of Intellectual Property. (2020). *Guidelines for Copyright Protection in the Digital Age*. Ministry of Law and Human Rights of the Republic of Indonesia.

³ Ma, J. (2023). Rethinking Copyright Law in the Age of NFTs: A Comparative Perspective. *European Intellectual Property Review*, 45(1), 34-42.

copyright law in Indonesia still refers to Law Number 28 Year 2014 on Copyright. This law regulates the exclusive rights of creators over works in both physical and digital forms, but has not explicitly included a protection mechanism for works that are used as NFTs.⁴ On the one hand, NFTs can be considered a new medium for distributing works, but on the other hand, this technology creates a new layer of complexity because ownership of an NFT does not necessarily mean copyright ownership of the content it represents.

Global debates are also ongoing regarding the extent to which NFTs can or should be protected by the intellectual property legal system. Some countries have begun to update their regulations or at least give new legal interpretations to the existence of NFTs. The European Union, for example, through its *Digital Services Act* and *Markets in Crypto-Assets Regulation* (MiCA), has begun to address the regulation of digital assets, although it has not specifically touched on the copyright aspects in NFTs. Meanwhile, the United States and the United Kingdom have published legal guidelines that attempt to bridge the gap between blockchain technology and intellectual property rights, although they are also still in the early stages of development.⁵

In Indonesia, the challenge is not only the lack of specific regulations, but also the low level of legal and digital literacy. Many creators of digital works do not understand how to protect their works in the digital space, including the risks of unauthorised tokenisation. In addition, the lack of law enforcement that is adaptive to new technologies has left many cases of copyright infringement in NFTs untouched by the legal process. This reinforces the impression of a legal vacuum in the face of the rapid development of digital technology. Thus, it is important to examine the extent to which the current intellectual property law is able to provide legal protection to digital works that are not infringed upon. traded in the form of NFTs.

⁴ Republic of Indonesia. (2014). Law Number 28 of 2014 concerning Copyright. State Gazette of the Republic of Indonesia Year 2014 Number 266.

⁵ WIPO. (2022). *NFTs and Intellectual Property: Questions and Answers*. World Intellectual Property Organisation. Retrieved from <https://www.wipo.int>

This issue becomes highly relevant not only for the benefit of the creators of the works, but also for the development of a fair and sustainable digital ecosystem. Based on the above background, the problems in this study are to what extent is intellectual property law, especially related to copyright, able to provide legal protection to digital works traded in the form of NFTs in the current technological era?.

B. RESULTS AND DISCUSSION

The development of blockchain technology has created a significant transformation in the way humans interact with digital assets. One of the biggest implications is the emergence of *Non-Fungible Tokens* (NFTs), which serve as a digital representation of ownership of a unique object, such as artwork, music, or even legal documents. NFTs are non-fungible because they have a unique digital identity, unlike cryptocurrencies like Bitcoin or Ethereum which are fungible.

NFTs derive their value from their digital scarcity and verified authenticity through blockchain technology. In this context, NFTs offer the potential to provide significant economic value to digital works that were previously easily copied and reproduced without limit. However, the existence of NFTs also poses legal challenges, particularly in the protection of copyright as a form of intellectual property. One of the main issues is the ambiguity between NFT ownership and copyright ownership. In most cases, the purchaser of an NFT only acquires rights to the token itself, not to the copyright of the work being tokenised.⁶ This means that even if a person purchases an NFT of a digital artwork, he or she does not have the right to the copyright. automatically acquire the right to reproduce, distribute, or commercially exploit the work, unless such rights are explicitly transferred through a licence agreement.

⁶ Elkins, K. (2021). NFTs and Copyright Law: Ownership Versus Rights. *Harvard Journal of Law & Technology Digest*, 35(2).

This problem is exacerbated by the lack of public and industry understanding of the legal restrictions on NFTs. Many creators of digital works are unaware that by selling NFTs without clear licensing terms, they may lose control over the distribution and use of their works in the digital realm.⁷ Conversely, many purchasers mistakenly assume that the purchase of an NFT grants them all exclusive rights to the work. This lack of clarity opens up opportunities for copyright infringement, both intentional and unintentional.

In the international legal framework, copyright is guaranteed through conventions such as the *Berne Convention for the Protection of Literary and Artistic Works* and the *Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)*. Both stipulate that creators have exclusive rights over their works, including the right to reproduce, distribute, and communicate the work to the public. However, these conventions have not specifically regulated the protection of blockchain-based digital assets such as NFTs, as the emergence of NFTs is relatively new and has not been part of a comprehensive international discussion.⁸

In Indonesia, legal protection of digital works has actually been regulated through Law Number 28 of 2014 concerning Copyright. Article 40 paragraph (1) states that protected works include computer programmes, works of fine art, and other works in digital format.⁹ However, there are no explicit provisions regarding the legal status of NFTs and how they relate to the copyright attached to digital content. This creates legal grey areas, especially in terms of rights enforcement, proof of ownership, and digital dispute resolution.

⁷ Adams, R. (2021). Legal Risks of Smart Contracts and NFTs in Creative Industries. *Stanford Technology Law Review*, 24(1), 67-89.

⁸ Ma, J. (2023). Rethinking Copyright Law in the Age of NFTs: A Comparative Perspective. *European Intellectual Property Review*, 45(1), 34-42.

⁹ Republic of Indonesia. (2014). Law Number 28 of 2014 concerning Copyright. State Gazette of the Republic of Indonesia Year 2014 Number 266.

In addition, law enforcement on copyright infringement in the context of NFTs in Indonesia still faces structural barriers. One of them is the lack of capacity of law enforcement agencies in understanding blockchain technology and the mechanism of NFT transactions. Coupled with the absence of legal instruments or jurisprudence that can be used as a reference in resolving NFT and copyright disputes, the resolution of these cases is very limited. Various countries have started to respond to this legal vacuum by introducing new regulatory frameworks. In the United States, for example, some states have begun to include NFTs in the discussion of amendments to the Digital Millennium Copyright Act (DMCA), although it is still in the initial discussion stage.¹⁰ Meanwhile, the European Union through the *Digital Services Act* and *Markets in Crypto- Assets Regulation (MiCA)* has begun to develop a legal framework to protect digital assets, although its implementation of NFTs and copyright is still not concrete.¹¹

World organisations such as the World Intellectual Property Organization (WIPO) have also expressed the importance of developing global guidelines regarding NFTs and intellectual property rights. In its official document, WIPO emphasises that while NFTs offer innovation in the distribution system of works, copyright regulations must still be adhered to and adapted to technological developments. In addition to the need for regulation, there is an urgent need for digital legal education and literacy among creators, NFT buyers, and technology industry players. Without adequate understanding, the rights of creators will continue to be at risk of exploitation, and NFT buyers will remain in legal limbo. Therefore, technology-responsive intellectual property law reform is an absolute necessity, both in terms of legislation, institutions, and public awareness.

¹⁰ Copyright Alliance. (2023). *NFTs and Copyright Infringement: A Policy Brief*. Washington, D.C.

¹¹ European Commission. (2023). *Markets in Crypto-Assets Regulation (MiCA)*. Brussels: EU Publications.

Thus, current intellectual property law, particularly in the realm of copyright, has not been fully able to provide adequate legal protection to digital works traded through NFTs. Although the principle of copyright protection still applies, Technological complexity, normative vacuum, and limited understanding of the law have weakened the effectiveness of such protection. Inclusive legal and policy reforms are needed so that intellectual property law can synergise with technological developments that continue to advance.

C. CONCLUSION

The development of blockchain technology and the emergence of Non-Fungible Tokens (NFTs) have brought significant changes in the way digital works are traded and owned. However, these changes have also raised various legal issues that have not been fully anticipated by the current intellectual property legal system, both in Indonesia and globally. While the basic principles of copyright still apply - such as moral rights and economic rights of creators - in practice, existing legal mechanisms have not been able to reach the complexity of NFT transactions, especially when copyright infringement occurs in an anonymous and cross-jurisdictional digital environment. One of the key challenges is the mismatch between the ownership of NFTs and the copyright ownership of the represented works. The regulatory vacuum, low digital legal literacy, and lack of technical understanding among law enforcement officials exacerbate this situation. Thus, it can be concluded that intellectual property law, particularly copyright, is currently not fully prepared to provide effective protection to digital works traded in the form of NFTs. A comprehensive and adaptive regulatory update to the development of digital technology is needed so that legal certainty and copyright protection can be guarantee

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