

LEGAL ANALYSIS OF COPYRIGHT PROTECTION FOR E-BOOKS IN THE FORM OF NON-FUNGIBLE TOKENS (NFTs)

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Abstract

Non-Fungible Tokens (NFTs) serve as a digital platform that aids creators of digital works, particularly E-Books, in marketing or introducing their creative outputs. This platform offers easy access and high-security systems to safeguard the copyright of E-Book creators. This study aims to analyze and provide insights into the copyright protection of E-Book works in the form of NFTs, under the perspective of Copyright Law. Additionally, the study seeks to determine whether NFT transactions can serve as a solution for Intellectual Property protection in Indonesia. The research employs a normative legal research method, utilizing literature review and descriptive techniques. The findings reveal that NFTs can indeed offer a solution for intellectual property protection in Indonesia. By transforming works into NFTs, their copyright is protected through ownership tokens that are automatically integrated into the blockchain (digital ledger).

Keywords: non-fungible tokens, copyright, e-books

A. Background

Nowadays, technological advancements have rapidly progressed, providing society with the convenience of internet accessibility that can be utilized in various fields. One of these fields is digital commerce, as people's practical mindset has led to the creation of more convenient and efficient processes. This phenomenon has given rise to what is known as the digital economy. Activities within the digital economy are closely intertwined with objects of Copyright, which serve as commodities for trade.

In this context, the regulation of Intellectual Property Rights forms the foundation for the rights arising from human intellectual capabilities across various domains. According to Abdul Atsar, intellectual property is a set of rights that emerge to protect the outcomes of one's intellectual thoughts and/or creativity, resulting in a product or process that holds value and utility for humanity.¹

One form of Intellectual Property (IP) is Copyright. According to Article 1 paragraph (1) of Law No. 28 of 2014 concerning Copyright, Copyright is defined as the "exclusive right of the creator that arises automatically based on declarative principles after a creation is manifested in

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¹ Abdul Atsar, *Mengenal Lebih Dekat Hukum Hak Kekayaan Intelektual* (Yogyakarta: Depublish, 2018).

tangible form without diminishing the limitations as stipulated by the provisions of the legislation." From this definition, it can be concluded that Copyright arises directly and automatically once the creation has been materialized or brought into reality.

In the current era, characterized by the rapid development of the internet, numerous creators are producing their intellectual works in digital forms such as digital books, commonly known as e-books, with the hope of making their works more accessible and quickly recognizable to the broader public. However, in this context, there are factors that can harm e-book creators, such as the lack of awareness regarding the protection of intellectual property. This lack of awareness has led to instances of plagiarism by certain individuals, thereby infringing upon existing works.²

Examining the issue of Copyright, which ultimately leads to the concept of law itself, especially concerning efforts to protect two-dimensional artistic works in the form of Non-Fungible Tokens (NFTs).³ The presence of NFTs began in 2014 when they were introduced on a platform called Counterparty. The artwork "Quantum" was the first-ever NFT introduced at that time, and it is currently valued at 7 million US dollars.⁴ It gained wider recognition among the public in 2017 and remains popular to this day due to being perceived as an easy way to engage in buying and selling digital artwork.

NFT is a digital asset stored on a distributed public ledger, which records transactions and has unique identification codes and metadata that differentiate each other, all within a blockchain network. These NFTs can be considered digital assets representing real-world objects like artworks, paintings, animations, photos, videos, graphics, music, signatures, tickets, books, and other creative works. Unlike cryptocurrencies, where each unit is considered interchangeable, NFTs are non-fungible tokens, meaning they are not mutually interchangeable.⁵ Furthermore, NFTs have become increasingly popular, and the number of transactions has experienced a dramatic increase, leading to a new trend accompanied by numerous NFT transactions at staggering prices.

² Cornelius Novan Trihansyah, "Perlindungan Hak Cipta Atas Karya Lukisan Digital Dalam Bentuk Non-Fungible Token (NFT) Di Indonesia," *Jurnal Kertha Semaya* Vol. 11, no. No. 6 (2023).

³ Tasya Safiranita Ramli Dio Bintang Gidete, Muhammad Amirulloh, "Pelindungan Hukum Atas Pelanggaran Hak Cipta Pada Karya Seni Yang Dijadikan Karya Non Fungible Token (NFT) Pada Era Ekonomi Digital Legal Protection for Copyright Infringement on Artworks Used as NonFungible Token (NFT) Works in the Digital Economy Era," *Jurnal Fundamental Justice* Vol. 3, no. No. 1 (2022).

⁴ Georgia Coggan, "What Are NFT? Non-Fungible Tokens Explained," Creative Blog: "Art and Design Inspiration.," accessed January 10, 2023, <https://www.creativebloq.com/features/what-arenfts>.

⁵ Dewi Sulistianingsih dan Apriliana Khomsa Kinanti, "Hak Karya Cipta Non-Fungible Token (NFT) Dalam Sudut Pandang Hukum Hak Kekayaan Intelektual," *Kritha Bhayangkara* Vol. 16, no. No. 1 (2022).

NFT transactions between e-book creators and buyers can lead to legal consequences, as these transactions involve the division of rights, including copyright and ownership. Through NFT transactions, a creator can easily prove the existence and ownership of digital assets such as videos, images, art, event tickets, and more. Furthermore, creators can earn royalties with each successful trade on any NFT marketplace or through peer-to-peer exchanges. Essentially, NFTs offer distinct advantages and value due to their relative scarcity as digital items.⁶

In this regard, besides the advantages gained by society, there are also negative aspects rooted in the current era of the fourth industrial revolution, namely that there are still many legal and technical issues surrounding NFTs. In their implementation, NFTs still face challenges in claiming ownership of artwork due to the lack of transparency inherent in the blockchain system, often operated by anonymous entities. This allows anyone to claim a digital artwork as their own by attaching a token to it. As previously explained, transactions on the blockchain are publicly recorded in a digital ledger and cannot be altered, making it more feasible to attach identities to transactions. However, this can also make it more difficult to recognize and address cases of art theft if a work is stolen within the NFT framework.⁷ Hence, it is intriguing to be further examined by the author and articulated in this journal article titled "A Juridical Analysis of Copyright Protection for E-Books in The Form of Non-Fungible Tokens (NFTs)."

B. Identified Problems

Meanwhile in this research, the author focuses on 2 main discussions, which:

1. How is the copyright protection for e-books under the perspective of Copyright Law?
2. Can the NFT transaction model serve as a solution for the protection of Intellectual Property Rights in Indonesia?

C. Research Methods

The method employed in this research is the normative legal research method, also referred to as legal library research.⁸ This research utilizing the normative legal approach is conducted through literature review, examination of legal regulations, policies, and theories related to Copyright Law. The data used by the author consists of secondary data, comprising primary sources such as legal regulations pertaining to Copyright, and secondary sources

⁶ Rachel Anzani Putri Recca Ayu Hapsari, Aprinisa Aprinisa, "Perlindungan Hukum Terhadap Teknologi Non-Fungible Token (NFT) Sebagai Identitas Karya Intelektual," *ASMIR Law Journal* Vol. 4, no. No. 2 (2022).

⁷ Ida Ayu Dewi, Ni Kadek Risma Setya Cahyani, dan Sukihana, "Perlindungan Hukum Terhadap Karya Seni Dalam Bentuk Non-Fungible Token (NFT)," *Jurnal Kertha Wijaya* Vol. 11, no. No. 4 (2022).

⁸ Soerjono Soekanto & Sri Mamudji, *Penelitian Hukum Normatif* (Jakarta: Raja Grafindo Persada, 2003).

encompassing data obtained from library materials and documents like books, articles, as well as previous research studies in the form of legal literature and scholarly journals. The research employs a descriptive analysis technique, wherein the collected material is described and explained using words based on the facts and findings resulting from this research.

D. Research Findings and Discussions

1. Copyright Protection of E-books from the Perspective of Copyright Law

The creation of works by humans constitutes a part of Intellectual Property owned by every individual. Intellectual Property represents the outcome of human thought processes manifested in the form of designs, arts, written works, or other embodiments derived from intellectual ideas. In this era, numerous creations are materialized through digital platforms, supplanting conventional media like canvases or sculptures on stone or wood. E-books have emerged as an innovation due to technological advancements, and many e-book creators upload their works to digital mass media with extensive reach. This situation necessitates regulations that protect this realm, particularly copyright. Copyright arises automatically once a creation is materialized, meaning that e-book creators are inherently protected by copyright over their produced works.

Electronic books (e-books) have brought about significant changes, particularly in teaching methods and academic research. E-books offer the convenience of being accessible anywhere, regardless of time and place. They can be read through Personal Computers (PCs), smartphones, and tablets. E-books have advantages in terms of accessibility, usability, and relatively low costs. Due to these advantages, it's not surprising that academics also consider e-books as one of the sources for their knowledge acquisition and research endeavors.

However, alongside these benefits, it can also open up new avenues for copyright infringement due to the lack of validation or verification processes for the ownership of a created e-book. This occurs because anyone can access and sell e-books without the proper rights. Cases of ebook piracy fall under the category of digital economic intellectual property theft that needs attention in the present times.

An example of copyright infringement is highlighted in a case quoted from the journal "Notarius Volume 13 Number 1" titled "Copyright

Protection for Piracy of Literary Works: E-Book Version Novel in Tokopedia." In this context, the journal includes an interview with a digital novel writer named Rustina Zahra, who stated that her creative work was pirated and sold online by others at a lower price than her authorized selling price, without her permission. The online shops involved were Cherries Shop, Superstar Novel, and Sabitah Sh0p. This

indicates the existence of e-book authorship infringement in Indonesia, which can potentially affect other e-book authors as well.

Regarding the legal protection of intellectual property for digital art, the relevant intellectual property regulation in Indonesia concerning copyright is Law Number 28 of 2014 on Copyright (Copyright Law). This law stipulates that copyright is an exclusive right automatically owned by the creator. This right is based on a declarative principle, arising once a work or creation is materialized in a tangible form, without prejudice to limitations as prescribed by applicable laws and regulations. The mentioned exclusive rights entail that others are prohibited from utilizing those rights without permission from the owner or creator, unless justified according to prevailing laws and regulations.⁹

The provisions regarding permission from the copyright owner are often disregarded by plagiarists, as they may consider them unimportant to adhere to. Legal protection for copyright is a legal system comprising the following components:

- a. The subject of protection includes copyright owners or holders, law enforcement agencies, registration officials, and offenders;
- b. The object of protection encompasses all types of copyrights regulated by the law;
- c. Registration of protection refers to copyrights that are protected only when they are registered and substantiated with a registration certificate, except as otherwise provided by the law;
- d. The duration involves the period of copyright protection as provided by the Copyright Law, which is the creator's lifetime plus 50 years after their death; e. Legal protection measures take the form of both criminal and civil penalties against proven violators.¹⁰

The provision that directly governs the creation of E-Books to obtain and be protected by Copyright is such that E-Book creators possess exclusive rights in the form of moral and economic rights. Moral rights are stipulated in Article 5 paragraph (1) of the Copyright Law, which states: *"Moral rights as referred to in Article 4 are inherent and perpetual rights of the Creator to: a. Always be identified or not identified as the author in copies related to the use of their creation for the public; b. Use their real name, pseudonym, or anonymous name; c. Modify their creation in accordance with societal norms; d. Change the title and subtitles of their work; and e. Maintain their rights in cases of*

⁹ S. Purwanda, "Hilangnya Hak Eksklusif Tanaman Rempah Asli Indonesia," *Jurnal Hasil Penelitian Ilmu Sosial Dan Humaniora* Vol. 8, no. No. 1 (2022).

¹⁰ S. Sudjana, "Efektivitas Penanggulangan Pembajakan Karya Cipta Dalam Perspektif Sistem Hukum," *Jurnal Res Nullius Law Journal* Vol. 4, no. No. 1 (2022).

distortion, mutilation, modification, or any action that may harm their personal honor or reputation."

Referring to Article 8 of the Indonesian Copyright Law, which states: *"Economic rights are the exclusive rights of creators or copyright holders to gain economic benefits from their creations."* Moreover, economic rights are also regulated in Article 9(1) of the Copyright Law, which states: *"Creators or copyright holders as referred to in Article 8 have economic rights to carry out:*

- a. *Publishing the creation;*
- b. *Reproduction of the creation in all forms;*
- c. *Translation of the creation;*
- d. *Adaptation, arrangement, transformation of the creation;*
- e. *Distribution of the creation or its copies;*
- f. *Performance of the creation;*
- g. *Announcement of the creation;*
- h. *Communication of the creation; and*
- i. *Rental of the creation."*

According to Philipus M. Hadjon, legal protection involves safeguarding human dignity and recognition of human rights possessed by legal subjects based on applicable legal provisions. In terms of copyright protection, there are two types of protection applied. The first one is preventive protection, which involves taking measures to prevent copyright infringement of e-books. One of these measures is the recording of creations to strengthen evidence that the creator holds copyright over their work. Although this recording is not obligatory to obtain copyright, as a fundamental principle, copyright automatically attaches to e-books that have been materialized by their creators. This is reflected in Article 66 of the Copyright Law, which states, *"The registration of creations and related rights products shall be submitted with a written application in the Indonesian language by the Creator, Copyright Holder, Holder of Related Rights, or their Proxy to the Minister."*

Furthermore, there is also repressive legal protection, which serves as a final recourse for creators to address copyright infringements that occur later on. This can be pursued through either litigation or non-litigation channels. Typically, this involves remedies such as seeking damages or even imprisonment penalties for copyright violators.

2. E-Books in the Form of NFTs Becoming a Solution for Intellectual Property Protection in Indonesia

The widespread use of the internet in digital economic activities has led to an innovation that provides a space to establish copyright through proof of ownership in the form of a unique code recorded within a blockchain system (digital ledger). This facilitates e-book creators in marketing their digital written works.

With the technological advancements of today, the emergence of blockchain technology has given rise to a development known as Non Fungible Tokens (NFTs). This innovation allows for the identification and recognition of artwork as a sequence of digital code, which is verified by interconnected computers. NFTs are regarded as intangible personal property, meaning that the digital work cannot be physically touched but possesses a value applied to it. Consequently, every e-book creator using NFTs is automatically confirmed as the owner. In technical terms, NFT certificate holders can sell their works through NFT marketplaces or platforms using cryptocurrency as the asset's value. The referenced cryptocurrency is a virtual currency, and when evaluated against conventional currency, the value of art in the form of NFTs can be exceptionally high. This is what has contributed to the global popularity of NFT transactions.

In terms of intellectual property protection, particularly for written works like e-books, the system present in NFTs can serve as a solution for its assurance. This is due to the fact that each work that undergoes the verification process as an NFT will automatically be recognized as the property of the individual who registers the work. Furthermore, with access available to anyone to enjoy the resulting work, copyright protection for the e-book is guaranteed because the blockchain system verifies that the work belongs to a specific individual. Additionally, artworks in the form of NFTs have distinct advantages over conventional artworks. Conventional artworks face higher risks of physical damage and theft.¹¹ In contrast, creations in the form of NFTs, being digital, are stored within a highsecurity blockchain system. This is due to the fact that all transactions are recorded and verified by each user within the blockchain.

In NFTs, there is an account verification process that can prevent plagiarism and imitation within the NFT scope. In this context, the introduction of a two-part verification system involves image recognition technology and specialized human review. This verification system makes NFTs a secure choice for digital transactions, especially in the buying and selling of works like e-books.

The advantages that NFTs can offer, categorized as one of the solutions in intellectual property protection, include:¹²

- a. The certainty of ownership over the digital work is established through the inclusion of a unique code or token for each work in the form of an NFT. The ownership certificate for the digital work is held by the token holder, and in the event of a transaction within the NFT, the transfer of ownership certificate to the buyer occurs

¹¹ Widiatmoko Adi Putranto Indah Novita Sari, *Perlindungan Arsip Vital Dan Penanganan Arsip Pascabencana* (Yogyakarta: UGM Press, 2022).

¹² Recca Ayu Hapsari, Aprinisa Aprinisa, "Perlindungan Hukum Terhadap Teknologi Non-Fungible Token (NFT) Sebagai Identitas Karya Intelektual."

automatically. To ensure the originality of the work, data verification can be performed through historical NFT records on the blockchain ledger.

- b. Creators retain control over the distribution of their digital work. In the presence of NFT transactions, creators can transform their digital work into a token or NFT, granting them full control over their creation.
- c. Anti-plagiarism measures are in place. Blockchain technology allows each digital work in the form of an NFT to possess unique and special encryption technology. This prevents digital works in the form of NFTs from being copied, as each token is recorded in a publicly accessible ledger, allowing all internet users to identify genuine tokens.

E. Conclusions

NFT provides a space for realizing e-book copyright through ownership in the form of a unique token or code recorded in the blockchain system. Legal protection for NFT technology as an intellectual property identifier clarifies that in Indonesia, there is no specific regulation explicitly governing NFTs. However, in this regard, the copyright of e-book creators is generally protected by the Copyright Law, which is linked to the NFT creation process. Furthermore, E-books in the form of NFTs can be considered a solution for intellectual property protection in Indonesia, referring to the Copyright Law. This law ensures certainty in ownership rights for digital artworks transformed into NFTs with unique codes or tokens, thereby safeguarding against plagiarism. This security is due to the presence of blockchain technology within NFTs, providing protection for e-book creators in the form of NFTs.

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