

## NFTs and Intellectual Property: Addressing Legal Certainty for Consumer Protection

**Alif Ardianysah\***

University of Jember, Indonesia

**Nuzulia Kumala Sari**

University of Jember, Indonesia

\*Corresponding Author's Email: 230720101019@mail.unej.ac.id

Article	Abstract
<p><b>How to cite:</b> Alif Ardianysah &amp; Nuzulia Kumala Sari, 'NFTs and Intellectual Property: Addressing Legal Certainty for Consumer Protection' (2024) Vol. 5 No. 2 Rechtenstudent Journal Sharia Faculty of KH Achmad Siddiq Jember State Islamic University.</p> <p><b>DOI:</b> 10.35719/rch.v5i2.305</p> <p><b>Article History:</b> Submitted: 18/06/2024 Reviewed: 28/06/2024 Revised: 05/07/2024 Accepted: 15/07/2024</p> <p><b>ISSN:</b> <b>2723-0406 (printed)</b> <b>E-ISSN:</b> <b>2775-5304 (online)</b></p>	<p>This paper aims to provide a view regarding NFT transactions in the future to provide legal certainty, especially for IPR by using normative research methods along with supporting theories to find that in fact NFT transactions in Indonesia are far from legal because they do not meet the rules of NFT transactions where PTSE regulations, especially NFT transactions, do not provide legal guarantees to their owners, one of which is the chain of suppliers, namely Opensea, which is not yet optimal, so there is a need for regulations or crypto exchanges, especially NFTs, which not only provide certainty but the crypto market in Indonesia does not experience scams because in terms of analysis NFTs can be categorized as <i>inherity distinctives</i> or as signs that inherently have distinguishing power, immediately if they get protection through use, because some parties often cheat by taking screenshots, but for parties who make legitimate transactions, they have a differentiating way of gaining access to increasing the digitalization of works has reduced the potential value of copyright scarcity, which has become a significant problem in copyright disputes.</p> <p><b>Keywords:</b> <i>NFTs, Intellectual Property, Consumer.</i></p> <p><b>Abstrak</b></p> <p>Penulisan ini bertujuan agar dapat memberikan pandangan terkait transaksi NFT kedepannya memberikan kepastian hukum khususnya pada HKI dengan menggunakan metode penelitian normatif beserta teori-teori pendukung menemukan bahwa dalam faktanya memang transaksi NFT di Indonesia jauh dari kata sah karena tidak memenuhi kaidah-kaidah transaksi NFT dimana aturan PTSE khususnya transaksi NFT tidak memberikan jaminan hukum pada pemiliknya salah satunya adalah rantai dari pemasok yaitu opensea belum optimal sehingga perlunya regulasi atau bursa kripto khususnya NFT yang tidak hanya memberikan kepastian tetapi pasar kripto yang ada Indonesia tidak mengalami scam karena secara analisa NFT bisa dikategorikan <i>inherity distinctives</i> atau sebagai tanda yang secara inheren memiliki daya pembeda, segera apabila mendapat perlindungan melalui penggunaan, karena beberapa pihak sering kali melakukan cara curang dengan melakukan screenshot tetapi bagi pihak yang melakukan transaksi sah memiliki cara pembeda dalam memperoleh akses ke peningkatan digitalisasi karya telah mengurangi potensi nilai kelangkaan hak cipta, yang telah menjadi masalah signifikan dalam sengketa hak cipta.</p> <p><b>Kata Kunci:</b> <i>NFT, Kekayaan Intelektual, Konsumen.</i></p>

### Introduction

The increasingly widespread development of technology today has a great impact on human life which is getting faster and more flexible, with the very rapid development of

technology, humans are becoming more adept at interacting with each other, because the ease of interaction is assisted by the existence of sophisticated browsers. With the influence of social interaction, technological advances also affect the way humans live, which were initially accustomed to doing work manually, now changing to being completely digitalized.<sup>1</sup> The impact of technological developments on the existence of copyright and protection is of great interest. In the era of the Industrial Revolution 5.0, the convergence of digital technology and the internet in various industrial circles has changed all aspects of industrial production.<sup>2</sup> The use of NFT by artists to sell their work in digital form is an asset in digital form that is stored in a distributed public ledger (ledger) and records transactions and has a unique and different metadata identification code from each other on the blockchain network. This NFT can be said to be a digital asset that represents real-world objects such as works of art, paintings, animations, photos, videos, images, music, signatures, tickets, and other creative works.

Unlike cryptocurrencies which are considered the same as others so that their tokens can be exchanged or called fungible tokens. Non-Fungible in words English meaningful "freely replaceable, in whole or in part, with another of a similar nature or type" in this case the token as a blockchain key, meaning it is an item entered into a digital database. Simply put, NFT can be understood as a digital certificate that can be used to validate who owns a particular asset in the cryptoart world, this certificate represents ownership of an authentic work of art. Furthermore, works of art or masterpieces, for example paintings, become valuable items, because they can be supported by factors such as who made the work of art or the quality of the item. If a painting is only issued once, the painting cannot be recreated by anyone else except the artist or painter himself.

In digital files or artworks, it is certainly different where the digital files or artworks can be easily duplicated so that anyone can have the digital artwork. With the NFT, the digital artwork can be authenticated to create a digital ownership certificate which certificate can be traded. Similar to Crypto, records of NFT ownership will be stored in a shared ledger known as the blockchain.<sup>3</sup> Based on the decision of Bappepti and Bank Indonesia, it can be explained that NFT can be legally traded, but is not permitted as a means of payment. This shows the lack of integrated regulations regarding crypto assets in general, or NFT in particular. The existing regulations regarding NFT are limited to the sale and purchase of NFT as regulated in Bappepti Regulation No. 7 of 2020 concerning the Determination of the List of Crypto Assets That Can Be Traded in the Physical Crypto Asset Market. However, this regulation only regulates the types of NFT that may be traded in Indonesia and does not comprehensively regulate other matters that need to be regulated further.<sup>4</sup>

NFT buying and selling transaction activities cause several legal issues in terms of the legality of NFT buying and selling transactions carried out through a smart contract system in an automatic blockchain through a computer system that replaces the role of a third party which creates a new legal relationship but has legal regulations so that it needs to be analyzed

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<sup>1</sup>Bagus Gede Ari Rama, Dewa Krisna Prasada, dan Kadek Julia Mahadewi, 'Urgensi Pengaturan Artificial Intelligence (AI) Dalam Bidang Hukum Hak Cipta Di Indonesia' (2023), Volume 12 dan Jurnal Rechtsens: 210.

<sup>2</sup> Recca Ayu Hapsari, Aprinisa Aprinisa, Rachel Anzani Putri, 'Perlindungan Hukum terhadap Teknologi Non-Fungible Token (NFT) sebagai Identitas Karya Intelektual' (2023), Volume 4 dan AMSIR Law Jurnal: 237.

<sup>3</sup> Ni Kadek Risma Setya Cahyani Dewi dan Ida Ayu Sukihana, 'Perlindungan Hukum Terhadap Karya Seni Dalam Bentuk Non-Fungible Token' [2022], Volume 11 dan Jurnal Kertha Wicara: 907.

<sup>4</sup> Fahrurrozi Muhammad, 'Menimbang Perlunya Regulasi Yang Lebih Komprehensif Tentang *Non-Fungible Tokens* (NFT)' Badan Pembinaan Hukum Nasional, 2021: 192.

based on the positive law that is currently in effect, namely Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions (PP PSTE), furthermore the use of foreign languages in agreements that conflict with Article 47 of PP PSTE in conjunction with Law Number 24 of 2009 concerning the Flag, Language and National Emblem in conjunction with Article 26 paragraph (1) of Presidential Regulation Number 63/2019 concerning the use of Indonesian, the use of cryptocurrency which is prohibited from being used as a means of transaction by Law Number 7 of 2011 concerning Currency, as well as its sales platform, namely Open Sea as an electronic system organizer that does not yet have an electronic certificate based on Article 42 of PP PSTE. Considering that NFT is a new investment instrument object as a digital asset, it needs to be studied further in order to provide a comprehensive legal understanding in this case by raising one of the cases of NFT buying and selling activities carried out, namely NFT buying and selling on Open Sea.<sup>5</sup>

### Research Method

The author decided to use normative legal research methodology based on the challenges studied. Legal research normative legal research method is a technique used in legal research that requires reviewing legal materials and linking them to the problems studied, in this case the adjustment of digital financial services industry regulations with healthy business competition which is analyzed descriptively qualitatively which aims to obtain a complete picture of the legal conditions that apply in a particular place and at a particular time that occurs in society and then the results are described systematically, logically and effectively so as to facilitate data interpretation and drawing conclusions.<sup>6</sup>

The approach used by the author in this case is a legislative approach which is done by examining all laws and regulations related to the legal issues being handled. <sup>7</sup>The next approach is that the researcher does not move from the existing legal rules because there are no rules that regulate them while there are problems that must be faced so that a concept is needed in the future to regulate them. The use of legal protection theory and sign theory with distinguishing power to be used as an analytical tool to obtain a good analysis.

### Results and Discussion

#### Legal Certainty in NFT Transaction Regulation in Indonesia

The problem in terms of NFT is so exciting to study because in its implementation, even though it has a distinctive feature, it still cannot be categorized as property rights. According to Rahmi Jened, if the distinguishing power comes from a company or a business formed by an individual, making all of its products themselves, of course, while also bearing its brand. Through the distribution of modern goods and/or services, especially NFT, the creator is not involved in every stage of distribution or retail. The existence of a distinguishing mark in NFT can be categorized as *an inherity distinctives* or as a mark that inherently has distinguishing

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<sup>5</sup> Fathurrohman Siliwangi dan Faiz Mufidi, 'Jual Beli *Non Fungible Token* (NFT) sebagai Aset Digital dengan Hak Cipta berdasarkan Peraturan Perundang-Undangan' (2022), Volume 2 dan Bandung Conference Series : Law Studies: 1335.

<sup>6</sup> Soerjono Soekamto dan Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat* (Raja Grafindo Persada, 2009: 13-14.

<sup>7</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Kencana, 2021), 133.

power, immediately if it gets protection through use, because some parties often cheat by taking *screenshots*, but for parties who make legitimate transactions, they have a distinguishing method.<sup>8</sup>

The application of NFT in the categorization of IPR can be interpreted in terms of its exclusivity because only certain people can obtain the rights to the intellectual work, besides NFT is still not accessible to the Indonesian market, so the lack of regulations regarding the NFT market from abroad causes someone to lose IPR from a work because there is no regulation.<sup>9</sup> NFT trading only refers to Bappebti Regulation No. 7 of 2020 concerning the Determination of the List of Crypto Assets That Can Be Traded in the Physical Crypto Asset Market.

If associated with the previous provisions, then NFT transactions automatically use English which is contrary to applicable law and can potentially be null and void. This is emphasized by the provisions of Law Number 24 of 2009 concerning the Flag, Language and National Emblem in conjunction with Article 26 paragraph (1) of Presidential Regulation Number 63/2019 concerning the use of the Indonesian language, both articles read: "Indonesian must be used in memorandums of understanding or agreements involving state institutions, government agencies of the Republic of Indonesia, Indonesian private institutions, or individual Indonesian citizens"

NFT transactions on Open Sea, in addition to using foreign languages, the payment method used in making transactions is the Ethereum cryptocurrency, which based on positive law, the use of cryptocurrency as a currency is contrary to Law Number 7 of 2011 (Law 7/2011) concerning Currency as stated in Article 21(1) which if violated will be subject to sanctions in Article 33 of Law No. 7/2011, namely in the form of imprisonment for a maximum of 1 (one) year and a maximum fine of IDR 200,000,000.00 (two hundred million rupiah).<sup>10</sup>

The legal issue needs to be considered that NFT transactions in the internet medium so that the provisions of Article 21 (2) letter c can be applied regarding the exception to the use of the rupiah currency in international trade transactions as per Article 21 (2) of Law Number 7/2011 concerning currency. The aspect of the electronic transaction organizer (PSE) in this case is Open Sea which organizes and manages the ethereum-based NFT exchange. Open Sea is not registered as a legitimate PSE with Open Sea not having been certified as a legitimate PSE by the Indonesian Ministry of Communication and Information (Kominform RI) as in Article 42 of the PSTP PP.<sup>11</sup>

NFTs almost never require a transfer of ownership. As a result, the scope of copyright is limited. It is argued by some that NFTs are digital versions of the original

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<sup>8</sup> Rahmi Jened, *Hukum Merek Dalam Era Global dan Integrasi Ekonomi*. (Jakarta: Kencana, 2015), 63.

<sup>9</sup> Iswi Hariyani, Cita Yustisia Serfiyani, dan R. Serfianto, *Haki Dan Warisan Budaya* (Gadjah Mada University Press, 2020), 19.

<sup>10</sup> Fathurrohman Siliwangi dan Faiz Mufidi, 'Jual Beli *Non Fungible Token* (NFT) sebagai Aset Digital Dihubungkan dengan Hak Cipta berdasarkan Peraturan Perundang-Undangan' (2022), Volume 2 Bandung Conference Series : Law Studies: 1336.

<sup>11</sup> *Ibid.*,

work. However, NFTs are more comparable to receipts for signed versions of the work than the work itself. This may be viewed through the lens of copyright reasoning; in some circumstances, it has been argued that scarcity itself is a component of copyright. By artificially limiting the availability of the work, copyright is believed to generate value for the artist. Conversely, a lack of copyright protection can decrease the value of the work as more people gain access to free versions. In recent years, the increasing digitization of works has reduced the potential value of copyright scarcity, which has become a significant issue in copyright disputes.<sup>12</sup>

### **The Realization of Consumer Protection in Intellectual Property Rights Through NFT Transactions**

Legal protection is an effort to provide protection for human rights that are violated by others so that they harm themselves and the protection given to the community is intended so that the community can enjoy the rights that the law has given. Legal protection is protection given to a person's dignity and honor, and the granting of recognition of human rights based on legal provisions in the form of applicable regulations and/or rules in order to protect one thing over another.<sup>13</sup>

M. Isnaeni is of the opinion that basically the issue of legal protection when viewed from its source can be divided into two (2) types, namely "external" legal protection and "internal" legal protection. Internal legal protection, basically the legal protection in question is packaged by the parties themselves when making an agreement, where when packaging the contract clauses, both parties want their interests to be accommodated on the basis of an agreement. Legal protection is divided into two types, namely external legal protection and internal legal protection as a means of legal protection to protect the interests of the parties who enter into an agreement, which is described as follows:<sup>14</sup>

1. External legal protection is legal protection created by the authorities through regulations in the form of laws and regulations. In general, this legal protection is prepared by the law makers in this case the government in order to prevent losses and injustice.
2. Internal legal protection is legal protection that is a fortress to protect the interests of the parties that is built on the basis of agreement, to be stated in the forms of clauses of the contract that they build together. This internal legal protection can be built well.

### **Conclusion**

It can be concluded from the previous discussion that NFT regulations still need a lot of improvement, especially transactions that do not use Indonesian, which causes many problems that occur where the purchase of NFT does not use Indonesian currency and is very inconsistent with PTSE, where the problem that should not be missed is how the

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<sup>12</sup> Aaron Bryant Korengleng, 'Perlindungan Hukum Hak Kekayaan Intelektual Terhadap Pendaftaran dan Transaksi Karya Non-Fungible Token Yang Bukan Oleh Pemilik Hak Cipta', (2023), Volume 3 dan Bureaucracy Journal: Indonesia Journal of Law and Social-Political Governance, 1568.

<sup>13</sup> Lucky Bil Barkah dan Asep Hakim Zakiran, 'Perlindungan Hukum Terhadap Investor Aset Digital Kripto Ditinjau dari Peraturan BAPPEBTI Nomor 5 Tahun 2019 Tentang Ketentuan Teknis Penyelenggaraan Pasar Fisik Aset Kripto di Bursa Berjangka' Bandung Conference Series: Law Series, (2023): 472.

<sup>14</sup> Moch. Isnaeni, *Seberkas Diorama Hukum Kontrak* (Revka Petra Media, 2017), 41.



characteristics of IPR can be guaranteed in this NFT transaction, especially free from copyright disputes and the existence of exclusive rights for NFT buyers.

## Bibliography

### Book

- Iswi Hariyani, Cita Yustisia Serfiyani, dan R. Serfianto, *HAKI DAN WARISAN BUDAYA* (Gadjah Mada University Press 2020).
- Moch. Isnaeni, *Seberkas Diorama Hukum Kontrak* (Revka Petra Media 2017).
- Peter Mahmud Marzuki, *Penelitian Hukum* (Kencana, 2021).
- Rahmi Jened, *Hukum Merek Dalam Era Global dan Integrasi Ekonomi* (Kencana, 2015).
- Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat* (Raja Grafindo Persada, 2009).

### Journal

- Aaron Bryant Korengleng, 'Perlindungan Hukum Hak Kekayaan Intelektual Terhadap Pendaftaran dan Transaksi Karya Non-Fungible Token Yang Bukan Oleh Pemilik Hak Cipta', (2023) Volume 3 dan Bureaucracy Journal: Indonesia Journal of Law and Social-Political Governance.
- Bagus Gede Ari Rama, Dewa Krisna Prasada, dan Kadek Julia Mahadewi, 'Urgensi Pengaturan Artificial Intelligence (AI) Dalam Bidang Hukum Hak Cipta Di Indonesia' (2023) Volume 12 dan Jurnal Rechtsens.
- Fahrurrozi Muhammad, 'Menimbang Perlunya Regulasi Yang Lebih Komprehensif Tentang Non-Fungible Tokens (NFT)' (2021). Badan Pembinaan Hukum Nasional.
- Fathurrohman Siliwangi dan Faiz Mufidi, 'Jual Beli Non Fungible Token (NFT) sebagai Aset Digital dengan Hak Cipta berdasarkan Peraturan Perundang-Undangan' (2022) Volume 2 dan Bandung Conference Series : Law Studies.
- Fathurrohman Siliwangi dan Faiz Mufidi, 'Jual Beli Non Fungible Token (NFT) sebagai Aset Digital Dihubungkan dengan Hak Cipta berdasarkan Peraturan Perundang-Undangan' (2022) Volume 2 dan Bandung Conference Series : Law Studies.
- Lucky Bil Barkah dan Asep Hakim Zakiran, 'Perlindungan Hukum Terhadap Investor Aset Digital Kripto Ditinjau dari Peraturan BAPPEBTI Nomor 5 Tahun 2019 Tentang Ketentuan Teknis Penyelenggaraan Pasar Fisik Aset Kripto di Bursa Berjangka' (2023) Bandung Conference Series: Law Series.
- Ni Kadek Risma Setya Cahyani Dewi dan Ida Ayu Sukihana, 'Perlindungan Hukum Terhadap Karya Seni Dalam Bentuk Non-Fungible Token' (2022) Volume 11 dan Jurnal Kertha Wicara.
- Recca Ayu Hapsari, Aprinisa Aprinisa, Rachel Anzani Putri, 'Perlindungan Hukum terhadap Teknologi Non-Fungible Token (NFT) sebagai Identitas Karya Intelektual' (2023), Volume 4 dan AMSIR Law Jurnal.

### Legislation

- Law Number 24 of 2009 concerning the Flag, Language and National Emblem (State Gazette of the Republic of Indonesia 2009 Number 109)
- Law Number 7 of 2011 concerning Currency (State Gazette of the Republic of Indonesia 2011 Number 64)

Law Number 39 of 1999 concerning Human Rights (State Gazette of the Republic of Indonesia 1999 Number 65)

Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions (State Gazette of the Republic of Indonesia 2019 Number 185)

Presidential Regulation Number 63/2019 concerning the use of the Indonesian language (State Gazette of the Republic of Indonesia 2019 Number 180)

Bappebti Regulation No. 7 of 2020 Concerning Determination of List of Crypto Assets That Can Be Traded in the Physical Crypto Asset Market.