

# Copyright Violation in Works of Art Using the Form of Non-Fungible Tokens (NFT) in the Era of Digitalization

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## ABSTRACT

Intellectual Property Rights (IPR) are exclusive rights granted by the state to individuals or groups to safeguard their intellectual works. Such works may include inventions, works of art, writings, designs, and trademarks, among others. In Indonesia, IPR is regulated by several laws, including the Patents Law (Law Number 13 of 2016), Copyright Law (Law Number 28 of 2014), and Marks and Geographical Indications Law (Law Number 20 of 2016), among others. These rights encompass copyrights, patents, trademarks, industrial designs, trade secrets, and other related rights. The purpose of IPR protection is to encourage innovation and creativity by providing legal protection for the fruits of intellectual labor, thereby enabling individuals and organizations to reap the benefits of their efforts. The research method used to write this is a normative legal research method. This study found that copyright infringement of two-dimensional artwork and NFT is a form of crime in the digital economy caused by weak legal regulations in cyberspace. Although regulated by the Copyright Law and ITE, protection of digital artwork in Indonesia is still inadequate. This study emphasizes the need for more comprehensive regulations to protect digital artwork and NFT in Indonesia. Stronger regulations will help prevent copyright infringement, provide legal certainty for creators, and strengthen Indonesia's position in the digital economy.

**Keywords : Intellectual Property Rights; Violation; Artworks; Non Fungible Tokens (NFT)**

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## INTRODUCTION

The development of sophisticated technology forces all aspects of life to develop so as not to be left behind. From time to time, technology continues to progress, starting from the invention of computers, digital communications, the development of smart applications, and smartphones, to digital money. In the current era of Industrial Revolution 5.0, technology is increasingly sophisticated and modern, thus triggering the birth of various innovations in various fields, including the field of Intellectual Property. The rapid progress of the times also demands the protection of the rights of every person, including intellectual property (Prawira & Griadhi, 2019).

Intellectual Property Rights commonly abbreviated as IPR, according to the law are exclusive rights granted by the state to individuals or groups to protect their intellectual works, which can be inventions, works of art, writings, designs, or trademarks. In Indonesia, intellectual property rights are regulated by various laws, such as Law Number 13 of 2016 concerning Patents, Law Number 28 of 2014 concerning Copyright, Law Number 20 of 2016 concerning Marks and Geographical Indications, and others. Intellectual Property Rights include several types of rights, including copyrights, patents, trademarks, industrial designs, trade secrets, and other related rights.

The law protects owners of intellectual property rights by granting them exclusive rights to use, produce, or sell their work for a certain period, as well as taking legal action if there is infringement or unauthorized use. The aim is to encourage innovation, creativity, and healthy competition while providing incentives for individuals or organizations to continue developing new works or discoveries.

In the current era, many works of art are expressed on digital platforms, including various forms of creativity such as visual art, music, video, graphic design, and literature. Digital technology has opened up new opportunities for artists and creators to express their ideas, share with a wider audience, and interact with fans directly through social media, websites, and other online platforms. Digital platforms allow artists to reach a global audience without geographic restrictions and offer new ways to monetize their work, such as through digital art sales, music streaming, and e-book publication. Additionally, technological developments such as Non-Fungible Tokens (NFT) have created new ways for artists to earn income from their work safely and transparently.

Non-fungible tokens are a form of digital asset in the field of art, where transactions are usually carried out through a special platform with payments using Cryptocurrency which is based on the Ethereum program (Wood, 2019). Non-fungible tokens (NFTs) function as digital tokens that represent unique ownership of an asset, such as digital art, music, video, or in-game items. By using blockchain technology, NFTs provide a guarantee that each token has different characteristics and cannot be exchanged with other tokens of the same value. NFT functions include providing proof of authentication, enabling the purchase and sale of digital assets, as well as facilitating transparency through verifiable transaction records. Additionally, NFTs also provide new opportunities for artists and content creators to monetize their work, allowing them to earn royalties from secondary sales and maintain control over their assets in a secure and decentralized digital environment.

OpenSea is a highly regarded platform for buying and selling Non-Fungible Tokens (NFTs). It is considered one of the largest and most reputable marketplaces for NFTs. Users on OpenSea can purchase, sell, or trade various types of digital assets represented by NFTs, including collectibles, digital artwork, in-game items, web domains, music, and more. The platform operates on Ethereum blockchain technology, providing secure and transparent transactions for its users. Creating, listing, and selling NFTs is relatively easy on OpenSea. Furthermore, the platform's extensive collection of NFTs can be explored by category, collection, or popularity. OpenSea also provides an auction feature that offers users a chance to bid on specific NFTs, creating an interactive experience in digital asset trading (Indriyani, 2017).

OpenSea has emerged as a favored destination for artists, creators, collectors, and investors to explore the exciting world of NFT trading. Nonetheless, it is imperative to acknowledge the potential hazards involved in trading digital assets, including value volatility, fraudulent activities, and potential copyright violations. Therefore, it is highly recommended that users conduct thorough research and comprehend the risks associated with NFT platforms like OpenSea before engaging in any transactions (Dewi, 2016).

However, challenges also arise in terms of protecting intellectual property rights and digital security. As more and more works of art are produced and distributed online, the risk of copyright infringement, plagiarism, and work theft also increases. Therefore, artists and creators need to understand and use appropriate legal protection to safeguard their rights and ownership of these works. Unfortunately, the Copyright Law and the Electronic Transaction Information Law currently do not specifically regulate copyright

protection for two-dimensional works of art in the field of technology in cyberspace. Protection of two-dimensional works of art becomes a challenge when buying and selling transactions of digital works of art on digital media often result in violations of physical works of art due to similarities between the two. Situations like this are difficult for the law to handle because technological developments and their use are faster than legal developments. Therefore, there is a dilemma in maintaining copyright and protecting the intellectual property of creators of works of art, where legal protection efforts must be adapted to the dynamics and complexity of the ever-changing digital environment (Hapsari et al., 2023).

Based on the background description above, the author wants to discuss how legal protection is for copyright infringement in works of art in the form of NFTs in the era of globalization. Therefore, an in-depth study is needed to evaluate the effectiveness of existing legal regulations and provide solutions to overcome the challenges in protecting copyright in this digital era. This study aims to examine legal protection against copyright infringement of NFT artworks, as well as offer recommendations to strengthen existing regulations to ensure that creators' copyrights are well protected amidst dynamic technological developments.

## **RESEARCH METHOD**

This study uses a normative legal research method, which is a method that involves analyzing library materials and secondary data to understand and evaluate relevant legal issues. The approach used is a normative legal approach or statute approach, where this study focuses on written legal rules such as laws and other regulations relating to the protection of intellectual property rights (Irianto, 2017). Examples analyzed in this study include Law Number 28 of 2014 concerning Intellectual Property Rights and Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions. Thus, this study aims to examine how the law regulates protection against copyright infringement in digital artwork in the form of Non-Fungible Tokens (NFT) in the digital era.

This research is descriptive-analytical, which means that in addition to describing the situation or conditions that are the focus of the research, the researcher also conducts an in-depth analysis of the concept of legal protection for NFT copyright. The data used are secondary data obtained through literature studies, involving a review of legal literature, scientific journals, articles, and relevant regulatory documents. In this way, this study aims to provide a comprehensive understanding of how existing legal regulations can be applied to protect digital artwork amidst rapid technological developments, as well as identifying the challenges faced in implementing the law.

## **RESULT AND DISCUSSION**

### **Copyright Violation of Works of Art Made into Non-Fungible Token (NFT) Works in the Digital Era.**

Violation of two-dimensional works of art and NFTs is a form of crime in digital economic activities, the government must intervene to overcome this crime. This problem arises because of weak legal regulations governing cyberspace (Kurniawan et al., 2022). The rules set out in the Constitution are to provide clear guidelines for acceptable behavior and help society function in a stable and orderly manner. Without clear rules, social life will be much more chaotic, and interactions between individuals will be more difficult to predict and regulate.

Crime in cyberspace, or cybercrime, includes various illegal or dangerous acts that occur in the digital world or through computer and internet technology, one form of crime is copyright infringement. This crime involves violations of intellectual property rights, such as software piracy, distribution of films or music without permission, or illegal use of trademarks. Therefore, there is a need for breakthrough legal regulations to provide artists with a sense of security regarding their works of art. With the development of increasingly modern technology, criminals also continue to increase, one of which is two-dimensional works of art or Non-Fungible Token works that have been copied. According to Article 55 paragraph (1) of Law Number 24 of 2014 concerning Copyright, it is stated that anyone aware of a violation of Copyright and/or Related Rights through an electronic system for Commercial Use can report it to the Minister in a form of protection provided by the government to people who feel disadvantaged by copyright crimes (Charos et al., 2023).

In resolving two-dimensional copyright cases according to Article 95 paragraph (4) of Law Number 24 of 2014, it is stated that copyright violations and in the form of piracy, as long as the residence of the parties in dispute is known or is in the territory of the State of Indonesia must first resort to resolving the dispute through mediation before carrying out criminal charges. Mediation is an effort to resolve disputes between two parties in a dispute. Apart from that, in criminal law, it is known as penal mediation. What is meant by penal mediation is the process of resolving conflicts in the context of criminal law through mediation. The mediation involves the parties involved in a criminal case, including the perpetrator, victim, and sometimes other interested parties, to reach a fair agreement or resolution and restore losses or damaged relationships due to criminal acts (Saleh, 2018).

Furthermore, it is also stated that the rights of the owner of the work are stated in Article 99 paragraph (1) of Law Number 4 of 2014 concerning Copyright which states that the creator, Copyright Holder, or owner of Related Rights has the right to file a claim for compensation with the Commercial Court for violations. Copyright or Related Rights products. Then, Article 99 paragraph (4) of Law Number 24 of 2014 concerning Copyright states that copyright holders also have the right to request a temporary order from a judge to order the perpetrator of the violation to stop all copyright infringement activities so that greater losses do not arise for the Copyright holder.

Apart from lawsuits and mediation, one way that can be done is by filing a complaint regarding crimes against the work of art created. Criminal provisions in the Copyright Law are regulated in chapter Article 9 paragraph (1), with a maximum prison sentence of 3 years, and a maximum fine of IDR 500,000,000 (Saleh, 2018).

In the Digital Economy Era, it is necessary to formulate more comprehensive copyright protection regulations. This step will help strengthen Indonesia's position in facing the digital economy, which is an important part of Indonesia's national economic strategy. In addition, the existence of comprehensive copyright protection regulations in the field of two-dimensional works of art in cyberspace can reduce the level of misuse of other people's copyrighted works in an irresponsible manner. Copyright law protection in the context of the digital economy aims to protect the rights and interests of creators while contributing to economic development in Indonesia (Sinta Dewi, 2016).

#### **Copyright Legal Protection for Works of Art Made into Non-Fungible Token (NFT) Works in the Digital Era**

It is crucial to keep in mind that intellectual property refers to the legal right that individuals or organizations have over the results of their intellectual work. This right

safeguards various creations that originate from human thought, including works of art, inventions, designs, brands, and other forms of innovation. The primary objective of intellectual property is to inspire creators and innovators by allowing them to regulate the use, distribution, and commercialization of their work, typically for a certain period. Intellectual property encompasses several key categories, such as copyrights, patents, rights associated with trademarks, industrial design rights, and trade secret rights (Lalujan, 2020).

Intellectual property protection helps encourage innovation and creativity by giving creators the right to derive economic benefits from their work and preventing others from using it without permission. On the other hand, this protection also allows society to continue to benefit from innovation and new works that continue to develop. Digital economic activities in cyberspace refer to all economic activities that occur online or through digital platforms. Along with advances in information and communication technology, cyberspace has become an important place for various economic activities, one example of which is Non-Fungible Tokens or NFT (Amelia & Mahmud, 2022).

In practice, digital economic activities do not run smoothly, because crimes against copyrighted works arise (Darnia et al., 2023). One example of NFT copyright infringement is by taking several illustrative elements of someone's work of art which are then implied into the NFT work of art without any modification at all. This incident constitutes a legal violation of intellectual property rights. NFT artwork protection is given to creators as a form of exclusive rights to their creations, which include moral rights and economic rights. Moral rights are rights that are inherent in the creator and cannot be transferred to anyone else, while economic rights are rights that allow the creator to gain financial benefits from their work. Thus, moral rights ensure recognition and protection of the creator's identity, while economic rights enable creators to obtain economic benefits from the use, sale, or licensing of their NFT artwork (Sulistianingsih & K. Kinanti, 2022).

Forms of regulation of moral rights include those listed in Law No. 28 of 2014 concerning Copyright Article 5 paragraph (1) letter e "Moral rights are rights that are eternally inherent in the creator to defend his rights in the event of distortion of the work, mutilation of the work, modification of the work, or anything detrimental to personal honor or reputation." Then, in the explanation of the Copyright Law, Article 5 paragraph (1) letter e states that distortion, mutilation, and modification of works are:

- a. Distortion of work refers to the act of damaging or distorting a creative work to change its essence or integrity.
- b. Mutilation of work is an extreme form of distortion, where a creative work undergoes major changes or damage that reduces its value or meaning
- c. Modifying a work means making changes or adjustments to a work of creation, which can be small or large changes, without losing its basic identity.

In the context of copyright, this concept is important because it relates to the moral right of the creator to maintain the integrity of his work. Moral rights protect creators from actions that could damage their reputation or alter the meaning of their work without permission. Mutilation and sorting are generally considered to violate moral rights, because they damage the integrity of the work or harm the reputation of the creator. Modifications, on the other hand, can occur with permission or as part of the development of the work. If the modification is made without permission and damages or changes the essence of the work, this can be considered a violation of moral rights. However, if the modification occurs with the consent of the creator or in a specific context such as a

license, it is usually considered legally valid. In the creative world, especially in the art and media industries, it is important to understand the limits of acceptable modifications and the risks associated with distortion or mutilation of a work. The protection of moral rights is a key aspect of copyright, giving creators the right to maintain the integrity of their work and prevent actions that could damage the value or reputation of the work

In terms of regulations related to digital artworks, in addition to referring to Law Number 24 of 2014 concerning Copyright, it is also necessary to look at Law Number. 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, especially in Article 25 which states that electronic information and electronic documents that are compiled into intellectual works contained in them are protected as intellectual property rights with the provisions of relevant laws and regulations. So that the form of protection of digital artworks, especially NFT, is Law Number 24 of 2014 concerning Copyright, Law Number. 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, and other laws and regulations (Rachmadie & Supanto, 2020).

Most NFT violations are by mutilating people's creations, because the act of taking people's artworks without modification is a process of removing most of the elements of the creation. Mutilation of a work is considered to violate moral rights because it alters or damages the work in such a way as to damage the reputation or intention of the original creator. Examples can include major changes to the artwork, the addition or removal of important elements, or changes in context that cause distortions of meaning. Legally, the mutilation of creations can be the basis for claims of moral rights violations. Creators or copyright holders can sue if their work has been mutilated which negatively impacts the integrity or value of their work. Therefore, the act of mutilation of the work must be avoided, and any modification must be made with the permission or consent of the party who has the right to modify the work, this is stated in article 5 paragraph (1) letter e of Law Number 24 of 2014 concerning Copyright (Anggriawan, 2023).

In addition, the actions of the perpetrators of the crime violate economic rights in accordance with Article 9 paragraph (1) of Law Number 24 of 204 concerning Copyright. Economic rights protect creators from acts of imitation, piracy, plagiarism, or other fraudulent acts committed by parties who are not entitled to their works. Such actions can lead to a decrease in the economic value of the work and harm the creator who should benefit from their exclusive rights. Economic rights give copyright owners the ability to fight actions that could harm their rights and maintain the financial benefits of the work they have created (Jaman, 2022).

Legal protection of NFT artworks can also use Article 32 paragraph (1) of Law Number. 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions which states that every person intentionally and without rights or unlawfully in any way alters, adds, reduces, transmits, damages, deletes, moves, conceals an electronic information and electronic document belonging to another person or the public. In NFT crimes, the perpetrator's actions can be classified as deliberately adding, changing, or subtracting an electronic information, if seen in the ITE Law, one of which includes an image which in this case is a work of art contained on the internet (Sulistianingsih & K. Kinanti, 2022).

Regulations that protect artworks in the digital economy era in Indonesia are currently not fully comprehensive. Supposedly, the protection of the dignity and dignity of the creator should not be harmed by actions that violate moral rights or economic rights. The state's foundation has provided guarantees that every citizen has the right to

their personal self-protection, honor and dignity from the threat of fear or other harmful acts, which are part of human rights.

The state has made efforts to protect and fulfill the moral and economic rights of its citizens in digital economic activities. One form of protection of these rights is regulated in the Copyright Law and the Information and Electronic Transactions Law, which in principle states that moral rights and economic rights inherent in a person's creation should not be used without the consent of the copyright holder. However, the formulation of these rules has not been able to provide more in-depth and specific protection against the new types of crimes that are developing in digital media, which are often systematically and organized.

## **CONCLUSION**

The development of sophisticated technology forces all aspects of life to develop so as not to be left behind. From time to time, technology continues to advance, ranging from the invention of computers, digital communication, the development of smart applications, smartphones, to digital money. In the era of the industrial revolution 5.0 like today, technology is increasingly sophisticated and modern, thus triggering the birth of various innovations in various fields, including in the field of Intellectual Property. The rapid progress of the times also requires the protection of the rights of everyone, including intellectual property.

Intellectual Property Rights or commonly abbreviated as IPR, according to the Law are exclusive rights granted by the state to individuals or groups to protect their intellectual works, which can be in the form of inventions, works of art, writings, designs, or trademarks. In Indonesia, intellectual property rights are regulated in various laws, such as Law Number 13 of 2016 concerning Patents, Law Number 28 of 2014 concerning Copyright, Law Number 20 of 2016 concerning Trademarks and Geographical Indications, and others. Intellectual Property Rights include several types of rights, including copyrights, patents, trademarks, industrial designs, trade secrets, and other related rights.

Violations of two-dimensional artworks and NFTs are a form of crime in digital economic activities, in which case the government must intervene in overcoming these crimes. This problem arises due to the weak legal rules that regulate cyberspace. The importance of the rules set out in the Act is to provide clear guidelines for acceptable behavior and help society function in a stable and orderly manner. Without clear rules, social life will be much more chaotic, and interactions between individuals will be more difficult to predict and regulate. The form of legal protection refers to regulations related to digital artworks, in addition to referring to Law Number 24 of 2014 concerning Copyright, it must also look at Law Number. 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions.

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