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## TRANSFERRING COPYRIGHT OWNERSHIP OF NFT ON THE PERSPECTIVE OF POSITIVE LAW IN INDONESIA

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### **ABSTRACT**

*The development of NFT use does not function for the public's need of objects related to copyright. In general, when someone creating NFT using another person's work needs approval from the copyright owner. This type of normative juridical research is used as an assessment of the application of positive legal norms or legal rules applied in Indonesia. The results of research on Transferring Copyright Ownership Of NFT (Non-Fungible Tokens) On The Perspective Of Positive Law In Indonesia can be regulated by using the provisions of Article 18 UUHC related to selling-buying outright of copyrighted works which in practice must meet the requirements stated in Article 1320 of the Civil Code concerning the conditions for the validity of the agreement which are the existence of an agreement, parties' requirement, particular objects, and lawful cause. The transaction of copyrighted works on NFT is not merely a sale and purchase for ordinary works of art, but also includes the rights to a copyrighted work protected by positive law in Indonesia. NFTs are protected under copyright laws and therefore have 2 (two) rights attached: economic and moral. In this regard, changing or distributing as well as modifying actions is included in violating moral rights. Even though the ownership has been transferred, the copyright holder must still be entitled to the economic and moral rights of the creator attached to the NFT.*

**Keywords:** Copyright, Non-Fungible Tokens, Positif Law, Technology.

### **INTRODUCTION**

Technology is greatly popular in this era, and becoming an integral part of an organization even of a country. The use of technology has increased over the years which has great potential to improve people's lives, especially in the economic sector of a country. The most obvious example is during the Covid-19 Pandemic, a technology using Big Data was used to analyze patients, monitor outbreaks, and track disease cases, predict their evolution, and assess infection risk. This is done without touching each other but is done using access in cyberspace.

One of the current uses of technology is the use of Non-Fungible Tokens or NFT, which are digital assets representing objects in the real world, for

example music, art, videos, and in-game items.<sup>1</sup> NFT is found in the blockchain which is a distributed public ledger that records, transactions, and provides information about the item, its creator, and its price. An NFT is a digital certificate of ownership or authenticity recorded securely in a blockchain ledger. The development of the use of NFT is increasingly spreading throughout the world, even now everyone is talking a lot about various sales using NFT, especially in the arts and entertainment world. It is very easy to use, just upload digital files containing art, music, or video.

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<sup>1</sup> Lennart Ante. "The Non-Fungible Token (NFT) Market and Its Relationship with Bitcoin and Ethereum." *MDPI*. Vol. 1 No. 3 (2022), p. 216–224, doi: <https://doi.org/10.3390/fintech1030017>.

The development of NFT use does not function for the public's need of objects related to copyright. In general, approval from the original owner of the work needs to be present for someone to use their work. Copyright law provides an exclusive set of rights for the copyright owner in a work. They consist of rights to reproduce, arrange derivatives, distribute copies, appear in public, and display publicly. Copyright protection exists in the original work of the creator embodied in any medium expression that is real, known, and then developed, where the work can be felt, reproduced, or communicated, either directly or with the help of a device. Thus, the original work represented by NFT can be protected by the Copyright Law if it is in accordance with applicable regulations, including in Indonesia. In Indonesia, the law that regulates Copyright protection is Law Number 28 Year 2014 concerning Copyright (referred as UUHC).

A person who has an NFT does not necessarily own the work represented by the NFT. For instance, when a painting is sold, there is only one true owner of the original painting, however, the creator of the painting owns the intellectual property rights allowing them to make copies, publications, or derivative works of the painting. The creator of the painting still has the copyright of the work. Unless there is a transfer agreement between the creator, purchaser, copyright files, and documents for NFT, the work remains the property of the original creator. The NFT buyer only obtains a unique hash on the blockchain containing transactional record and a hyperlink to the artwork file.

Transactions through NFT indirectly mean that the creator still owns the copyright and the purchaser of the work is the only user who has permission. This also means that the work represented by the NFT can be protected by UUHC, but the NFT itself cannot. Basically, NFT is unique, collectible, and rare so that NFT is different from other works of art. If we could go back to 20 years ago, it would be inconceivable that the conventional art market would slowly be replaced by a modern art market which is digitally transformed with sophisticated technology. NFT has managed to attract worldwide attention for its ability to use blockchain as storage for keeping digital artwork and other collectibles by changing them into unique, verifiable, and easily tradable assets.

The buying and selling of digital art products are carried out with cryptocurrencies, of which the most frequently used is Ethereum (ETH). All those long steps in selling art that could take months or years in the conventional art market, can happen in seconds in a certified and secure way thanks to blockchain technology. The use of NFT has a good purpose to create no copyright infringement of a digital artwork, thus there will be no selling, imitating, and stealing from certain parties who do not have the right to ownership of the copyrighted work. The use of NFT and blockchain systems can become a community and form a more equitable culture thanks to transparency and decentralization. In addition, blockchain and NFT also open up opportunities for new independent artists who find it difficult to enter the conventional art market. Blockchain technology also allows tokens to be held and traded securely without the involvement of a third party, so artists can directly sell their work to the collectors without intermediaries. However, the non-interchangeable nature of NFT has made a new distribution model for intellectual property monetization.

In the context of copyright, NFT is still gathering polemics in the art community and the wider community. In fact, blockchain technology and NFT provide an opening for irresponsible parties to exploit works of art. When someone has a system where anyone can create and sell tokens without the need for confirmation of the copyright validity of the work, it will be abused if there is no legal basis that can accommodate all aspects of this technology. For example, the case of an artist from Indonesia named Kendra Ahimsa or better known as the moniker "Ardneks". In early 2021, Kendra received reports of plagiarism by a crypto artist named Twisted Vacancy. Apart from some components copied straight from his illustrations without modification, Kendra feels very disadvantaged because he feels Twisted Vacancy is taking away his visual identity in the art world, especially in the world of crypto art which is still very new. The concerning matter here is that when the NFT on an artwork is encrypted and entered the blockchain, it is forever attached and cannot be erased. Based on this, Kendra's original work will forever be considered fake because Twisted Vacancy has registered the NFT first.

In theory, NFT is a tool to give artists more control over their creations, but there have been many cases where NFT has made it easier for bad actors to sell other people's art. It is crucial to differentiate ownership of NFT and ownership of underlying intellectual property when deciding the intellectual property implications of an NFT. The rights admitted by the NFT seller are contingent on the rights transferred through the license and these rights may vary by NFT. An obvious example is when purchasing a video clip of a LeBron James in NFT form, the essential rights are still owned by the original creator. In the context of copyright, ownership of the underlying rights will only be transferred if the creator of the original work specifically complies to convert the rights to the owner of the NFT. Copyright cases in the contemporary art world are complex matters and are more centered on legal aspects than aesthetics. This problem can be overcome by means of comprehensive and harmonized protection between countries, both legally and technologically. In terms of crypto art and NFT technology, it is important for the international community to harmonize the legal system related to NFT in order to avoid cases of copyright infringement that cannot be followed up like in Kendra's case.

The discussion about the purchaser of copyrighted works through NFT becomes very important, the buyer of a copyrighted work is defined as someone who pays royalties with a certain amount of digital money which then the work he has purchased can be used for the benefit of the buyer of the copyrighted work. The problem that will arise is when a buyer does not really understand the meaning of purchasing the copyrighted work. The buyer will assume that the work he has purchased with digital money is a form of copyright transfer, not a payment for the use of copyright or payment for permission to use someone else's copyrighted work. Buyers will assume that their copyrighted work is a copyrighted work whose ownership has been transferred in its entirety, and this is a natural thing because the amount of digital money submitted to the copyright owner using digital money is not cheap and some even buy copyrighted works at a price above 10 million rupiah.

Based on the previous discussion, technological developments must certainly be balanced with the understanding of the community, especially those

related to copyright and of course this will cause polemics in the future if the regulations are not explained properly. Every NFT user around the world, including in Indonesia, must be given an understanding of royalty payments and how it differs from the transfer of copyright licenses which are usually done face-to-face but this is done through cyberspace.

## FORMULATION OF THE PROBLEM

Based on the previous discussion, the problem formulation in this study is how the legal arrangements regarding the transfer of copyright to NFT and how the mechanism for transferring copyright to NFTs are reviewed from the perspective of positive law in Indonesia.

## RESEARCH METHODOLOGY

This article is researched using normative juridical research. Where in the discussion, this research prioritizes the study of the application of positive legal norms or legal rules applied in Indonesia as well as approaches through related laws and regulations, and the approach in this research is carried out conceptually. The primary legal material consists of UUHC and the implementation of the rules stated in UUHC. The technique of collecting legal materials is by studying literature, which examines books as references and previous studies to obtain theoretical foundations related to the problems to be studied.<sup>2</sup>

## ANALYSIS AND DISCUSSION

### Legal Basis of Transferring Copyright License

Unlike other types of intellectual property, copyright has exclusive rights and economic rights. Exclusive rights are moral rights owned by the creator of his copyrighted work, so other parties may not imitate or misuse it without permission. Economic rights are rights owned by the creator for royalties on the copyrighted work he owns by giving permission to other parties to exercise the economic rights on his creation in exchange of money for the copyright owner in accordance with the agreement that has been made previously. This agreement is known as a license agreement. Based on Article 16 paragraph

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<sup>2</sup> I Wayan Rideng. (2013). *Metode Penelitian Hukum Normatif*. Jakarta: Rienka Cipta, h. 136-149.

(2) of UUHC, it regulates that copyright can be transferred or diverted either partially or completely by inheritance, grant, waqf, will, written agreement, or the other reasons justified in accordance with the provisions of the legislation.<sup>3</sup>

As previously discussed, economic rights to a copyright can be transferred. However, according to Article 5 paragraph (2) UUHC, it states that converting moral rights is unable to conduct when the original creator is alive, but it can be done by transferring such rights by will or other reasons after the creator dies and in accordance with the provisions of the legislation. Therefore, the transfer of copyright is only limited to economic rights or only limited to the license. A license according to Article 1 number 20 UUHC is an approval in written form from the copyright/related right owner to transfer the economic rights of their works with specific conditions to another party. The article can be understood that a license is a written permission that can be given by one party to another party to exercise an economic right to a work or related rights product under certain conditions. Certain conditions regarding licenses are regulated in law or regulated in a license agreement between the licensor (creator) and licensee (recipient/copyright).<sup>4</sup>

Article 82 regulates the freedom to carry out a license agreement stating that the license agreement is prohibited from containing provisions causing economic loss to Indonesia. The contents of the license agreement must be aligned with the provisions of the legislation in which the license is not intended to erase or take over all the rights of the owner over his work. Article 80 UUHC states that copyright licenses are made based on an agreement. Because the form is an agreement, the conditions for the validity of an agreement are regulated in Article 1320 of the Civil Code which states four conditions, as follows:

1. An agreement between both parties;
2. The ability to take legal action;
3. The presence of a particular object;
4. The presence of a lawful cause.

The first two are subjective conditions because they are related to the subject of the agreement, while the last two are objective conditions because they are related to the object of the agreement. The consent must be free, without coercion. Free will is the first condition for the occurrence of the agreement. The four conditions must be fulfilled by parties. After that, according to Article 1338 of the Civil Code, the agreement will contain the same legal force as the force of a law.<sup>5</sup>

Based on the terms of the agreement as regulated in Article 1320 of the Civil Code, if the four conditions are met, the copyright holder who has obtained a license can exercise his economic rights as regulated in Article 9 UUHC related to the publication of works, reproduction of works in all its forms of works or copies: translation, adaptation, arrangement, transformation, distribution, performance, announcement, communication, and rental. However, there are exceptions to these provisions. The distribution of works or copies is unable to be applied to sold works or copies, or whose ownership of the work has been transferred to anyone else. Also, the economic right to rent out works or copies does not apply to computer programs if the computer programs are not essential object of the lease.

In addition to the previous discussion, the copyright holder must know about the Economic Rights to Portraits. Article 12 (1) UUHC explains that making commercial use, reproduction, announcement, distribution, and/or communication of portraits under intention of advertising are strictly illegal without a written consent of the person being photographed or their heirs. When the portrait containing 2 (two) or more people, they need to have consent from all people in the portraits or their heirs.<sup>6</sup> In addition, Article 15 of the UUHC states that unless agreed otherwise, the owner and/or holder of a work of photography, painting, drawing, architectural work, sculpture, or other works of art possesses the right to announce the work in public exhibition or reproduction in the form of a catalog designed for

<sup>3</sup> Gatot Supramono. (2010). *Hak Cipta dan Aspek-Aspek Hukumnya*. Jakarta: Rineka Cipta, h. 47.

<sup>4</sup> Endang Purwaningsih. (2005). *Perkembangan Hukum Intellectual Property Rights*. Bogor: Ghalia Indonesia, h. 23.

<sup>5</sup> Andre Gerungan. (2016). "Peralihan Hak Ekonomi Atas Hak Cipta Menurut Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta." *Lex Privatum*. Vol. IV No. 2, h. 159–161.

<sup>6</sup> Denny Kusmawan. "Perlindungan Hak Cipta Atas Buku." *Jurnal Perspektif*. Vol. XIX No. 2 Mei 2014, h. 140. <https://doi.org/https://doi.org/10.30742/perspektif.v27i3>.

exhibition purposes without the creator's approval. The provisions for Announcement of Works also apply to Portraits if they do not conflict with the provisions as previously discussed.<sup>7</sup>

### Copyright Protection on NFT

NFT is a unit of data stored on the blockchain which is a file containing linked-data set and available for public. The added value of NFT lies in the identification that is transparent and can be used as a means of proof if there is forgery of certain digital-copyrighted works owned by the creator or copyright holder. NFTs are run with the security of data stored on the blockchain in a decentralized and virtually invulnerable manner and have programming called smart contracts (code in the blockchain) to generate NFTs (known as printing). For this idea, certain software is needed (especially for a trading platform, for example OpenSea to link the user's wallet to the platform).<sup>8</sup>

Based on the use of NFT, there are several related parties, both as users who sell their copyrighted works and as users who sell other's copyrighted works, and this creates a legal relationship between related parties which can be described through a legal perspective on copyright. NFT also brings out new issues in law enforcement on copyright that are practically relevant, consisting of:<sup>9</sup>

### The Use of Copyrighted Works

Copyrighted works uploaded to NFT must be reviewed first whether the upload is an announcement form of copyright ownership and is in accordance with UUHC, especially whether the copyrighted work is the original work of the owner and/or does not interfere with the right use of the rights holder. It is essential to note that the use of NFT is unable

to represent the digital asset, but rather to validate a copyrighted work, the creator is required to create a token on the blockchain associated with the metadata of the work. This is the information to identifying token, the artwork, and the token owner, including a link to the work. In practice, the question arises mainly on two main points: First, the rights held as an unknown type of use can already be the subject of an existing license agreement. If it broadly grants the usufructuary rights, the rights owned by the creator no longer belong to him, but to the buyer. As a result, only the buyer has the right to print the NFT and offer it for resale. Second, an unlawful creation of NFTs would allow rights holders to sue for damages. Therefore, this problem must be resolved immediately and given a solution both by experts in the field of intellectual property, especially by copyright law and government.<sup>10</sup>

### Formulation in License Terms

Buyers and sellers can agree that use of rights in copyrighted works can be transferred through NFT transactions, such as buying and selling transactions for copyrighted works of art or those already registered with the Directorate General of Intellectual Property. They need to pay the particular attention to the clauses in the terms of the license agreement, although license agreements in copyright law are possible to be arranged in a very individual way. Particularly, the use of rights may be restricted in terms of region, period, or purpose of use. Most important in this context is the distinction between non-exclusive or wide-reaching exclusive rights that give the buyer exclusivity as the copyright owner/holder. In addition, the transaction method for payment through NFT also requires special regulations because the payment is not by direct payment or payment in the appropriate currency, but by using digital currency.<sup>11</sup>

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<sup>7</sup> Erna Tri Rasmala Ratnawati. "Akibat Hukum Perjanjian Jual Beli Hak Cipta Dengan Sistem Jual Putus (Sold Flat)." *Widya Pranata Hukum: Jurnal Kajian dan Penelitian Hukum*. Vol. 1 No. 2 (2019). h. 149-162. <https://doi.org/https://doi.org/10.37631/widyapranata.v1i2.44>.

<sup>8</sup> Muhammad Usman Noor. "NFT (Non-Fungible Token): Masa Depan Arsip Digital? atau Hanya Sekedar Bubble?" *Pustakaloka: Jurnal Kajian Informasi & Perpustakaan*. Vol. 13 No. 2 (2021), h. 223-234. <https://doi.org/https://doi.org/10.21154/pustakaloka.v13i2.3289>.

<sup>9</sup> Torsten Kraul. (2021). "Non-Fungible Tokens (NFTs) and Copyright Law". <https://www.noerr.com/en/newsroom/news/non-fungible-tokens-nfts-and-copyright-law>.

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<sup>10</sup> Andres Guadamuz. (2021). "Non-Fungible Tokens (NFTs) and Copyright." *WIPO*. [https://www.wipo.int/wipo\\_magazine/en/2021/04/article\\_0007.html#:~:text=Copyright issues&text=Most non-fungible tokens are,work in the public domain](https://www.wipo.int/wipo_magazine/en/2021/04/article_0007.html#:~:text=Copyright issues&text=Most non-fungible tokens are,work in the public domain.). (Accessed 17 February 2021)

<sup>11</sup> Andrés Guadamuz. "The Treachery of Images: Non-Fungible Tokens and Copyright." *Journal of Intellectual Property Law & Practice*. Vol. 16 No. 12 (2021), p. 1-19. <https://doi.org/http://dx.doi.org/10.2139/ssrn.3905452>.

### **Monitoring and Abuse**

Blockchain technology could offer unlimited tracking possibilities (e. g. via on-chain analytics), but rights holders have to face the risk of abuse as well. Also, third parties may also create NFT for certain copyrighted works (e. g. works of art), even though they are not authorized to do so. In addition, an artist can create multiple NFTs to upload his creations. This must be regulated in the license agreement clause by the NFT buyer. This is intended to prevent misuse by third parties even by the creators themselves. Based on this, the enforcement brings up some practical obstacles. While blockchains present tracking feature of NFT trades, their owners are mostly not identifiable through their wallet address. Thus, some NFT trading platforms need an identification process (KYC) for digital wallet creation. The international dimension of NFT trade will also create problems in its enforcement.<sup>12</sup>

### **Automatic Royalty Payment**

Blockchain technology allows artists as creators to participate in the commercialization of their works outside NFT selling system through smart contracts. In practical terms, for example, it is agreed in the smart contract code regarding an anti-tampering clause that a share of the proceeds will be given to the author if the buyer resells the work for a particular price. Another option is to specify that a share is mandatory for any further transactions. In this case, there is no further human transposition action needed. Through specialized techniques, external sources are able to make a certain choice automatically (for example, based on reliable databases). Thus, contract drafting here needs to possess mindful and progressive thinking.

### **View on the On-Chain NFTs and Metaverse**

Almost all digital or physical works right now exclusively are copyright objects excluded on the blockchain storage. Nevertheless, this situation is very likely to adjust due to the development in new technologies, for example on-chain NFT, which allows data stored on the blockchain independently

of the trading platform. In addition to their purpose in making digital and physically tradable assets in market, the NFTs can also provide the basis for an emerging metaverse or collective virtual space, which can evolve into a multi-billion market. Metaverse allow users to exchange services, connect to others, and send assets for instance a digital land or other items. NFT is the main infrastructure that makes it even more important like the pattern in solving legal problems that will arise in the future.

### **Overview on Transferring Copyright through License Agreement and Selling and Buying Outright on Copyrighted Works**

The creator has copyright owning to transfer or use his own copyrighted work. The transfer of copyright is intended to obtain economic benefits or commercial profits in the form of royalties, while the recipient as the copyright holder aims to obtain economic benefits from the sale of the work produced from the copyright. Basically, there are several alternatives on how to get copyright owners to obtain economic rights to their creations, such as licensing or buying and selling. The choice is made on the basis of business considerations or based on profit prospects. Article 17 UUHC regulates about prohibition for the same seller to sell their copyrights through a license agreement or selling-buying outright a second time. In addition, it is emphasized in Article 18 UUHC that the results of written works, songs, and/or music with or without text are transferred in a selling-buying outright agreement and/or an indefinite transfer, the copyright reverts to the creator when the agreement reaches a period of 25 (twenty-five) years. In addition, formally the transfer of copyright has several requirements, such as the transfer of rights must be in written form, signed by one or two parties and registered with the Directorate General of Intellectual Property.<sup>13</sup>

The transfer of copyright through licensing and selling-buying outright has a significant difference, because the transfer in selling-buying outright is through the buyer paying the full royalties owned by the creator, and the creator only gets royalties from his

<sup>12</sup> Daniel Gervais and João Pedro Quintais Balázs Bodó. "Blockchain and Smart Contracts: The Missing Link in Copyright Licensing?" *International Journal of Law and Information Technolog.* Vol. 26 No. 14 (2018). <https://doi.org/https://doi.org/10.1093/ijlit/eay014>.

<sup>13</sup> Edward James Sinaga. "Pengelolaan Royalti Atas Pengumuman Karya Cipta Lagu dan/atau Musik." [https://ejournal.balitbangham.Go.Id/Index.Php/Kebijakan/Article/View/1302](https://ejournal.balitbangham.go.id/Index.php/Kebijakan/Article/View/1302). Vol. 14 No. 3 (2020), h. 553-578. <https://doi.org/http://dx.doi.org/10.30641/kebijakan.2020.V14.553-578>.

copyrighted work and no longer gets a license fee for his work. On the other hand, the transfer of copyright in licensing is through buying the copyrighted work based on calculating the percentage on the number of sold works. Besides that, in the license agreement there is no transfer of ownership rights, only a temporary transfer of commercial rights. While in selling-buying outright, there is a permanent transfer of ownership rights, meaning that the creator no longer has the right to enjoy commercial rights even though he still has moral rights.<sup>14</sup>

The transfer of copyright by using a license agreement can make it easier to negotiate the acquisition and distribution of economic rights between the creator or copyright holder and other parties. The license agreement makes it easier for the creator to commercialize the work in reaching the market. Legally, the license means an agreement between the licensor and licensee in which the licensor grants the licensee permission to use his copyrighted work with payment and certain conditions. The license referred to in Article 80 paragraph (1) of UUHC is stated to use a written agreement between the creator or related right holder and another party. Article 82 UUHC contains various prohibitions on making licenses by parties entering into license agreements. License registration is regulated in Articles 83 to 86 of UUHC which describes the mandatory license which includes the meaning of compulsory license, the criteria for creation that can be included in the compulsory license, and the provisions of the compulsory license.

In contrast to the transfer of copyright through a license, in the transfer of copyright through selling-buying outright, there is a requirement of submission of the work from the seller as the creator to the buyer. This delivery is a consequence of the final sale and purchase agreement which gives rise to the rights and obligations of both parties: the seller as the creator and the buyer as the party who receives the transfer of the commercial value of the work. The seller's obligation is to submit the work as a whole and the buyer's obligation is to pay royalties from the work, while the seller's right is to receive payment in full

and the buyer's right is to enjoy the commercial value of the work. This payment in full is a feature of the sale and purchase agreement (cash and carry). This full payment is intended as a payment for royalties from the work but is paid only once as a sign that the work has been purchased from the seller, in this case the creator. That is why this agreement is said to be a selling-buying outright agreement, this termination refers to a one-time payment and no more royalties for the commercial use of the work like in a license agreement.

The transfer of copyright in selling-buying outright occurs entirely to the buyer as the copyright holder. The transferring here is essentially not the transfer of ownership of moral rights, but the transfer to enjoy or exploit the commercial value owned by the creator. This is in accordance with the moral rights possessed by the creator which is eternally attached to the creator. In addition, in the selling-buying outright agreement, there must also be an agreement regarding the elements contained in the agreement, such as agreeing on the necessity of the Author submitting the work, having an agreement on royalties, on the obligation that the economic rights to the work are transferred entirely to the buyer, and agreeing regarding the delivery of economic rights indefinitely. In addition, the selling-buying outright agreement must also meet the skill element, meaning that the parties who make the agreement are adults age 21 years old or not 21 years old but married. However, if by chance the parties are underage, their parents must be represented in making the agreement. It may happen that the creator is not yet an adult, so the legal action must be represented by a parent or guardian.

The selling-buying outright agreement must also meet the conditions for certain things that have been agreed upon. In this agreement, the objects of the agreement or promised upon are the goods and the price: the goods in the form of copyright and the price in the form of the amount of royalties that must be paid in full. Furthermore, in order for this agreement to be valid, it must also fulfill a lawful cause, which means that the selling-buying outright agreement must not conflict with the law, decency or public order. As for the selling-buying outright agreement, there is indeed for the transfer of ownership rights, but only ownership of economic rights, which is the right

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<sup>14</sup> Lailatusafa'ah Indrasrani. "Perubahan Status Penerima Lisensi Terhadap Perjanjian Lisensi Hak Cipta." *Populis: Jurnal Sosial dan Humaniora*. Vol. 3 No. 2 (2018), h. 865-874. <https://doi.org/http://dx.doi.org/10.47313/pjsh.v3i2.475>.

to enjoy commercial value only and does not result in a transfer of ownership of moral rights, meaning that the creation of the work remains in the hands of the seller, meaning that the copyright certificate remains on the name of the creator cannot be transferred even if it has been sold. In theory, it is not possible if the copyright buyer resells it to another party because basically the ownership of moral rights remains with the creator. However, in practice, if both parties agreed, the copyright buyer may resell the copyrighted work because the creator has absolute rights over his creation and is free to do anything about his copyrighted work, including to allow the buyer to resell it.<sup>15</sup>

### **Buying and Selling Transaction of Copyrighted work through NFT (Non-Fungible Tokens) Based on Positive Law in Indonesia**

The process of transferring copyright using NFT is the process of transferring economic rights to a copyrighted work by granting the transfer in its entirety or by using a license agreement for the use of the work. If it is associated with UUHC, then as the legal basis it refers to Article 16 and Article 18. In Article 16, the transfer of copyright is carried out in written form with a license agreement, so the copyright regulations are like intangible movable objects. Therefore, all transfers are also subject to the provisions of the Civil Code related to the transfer of intangible objects. According to Article 613 Paragraph (1) of Civil Code, the delivery of intangible objects is carried out by making authentic deed or underhand deed, so another person receives the rights to the object, while in Article 18 UUHC refers it as selling-buying outright, or in practice known as sold flat. In the explanation of Article 18 UUHC, selling-buying outright is an agreement that requires the creator to submit his work through payment in full by the buyer, thus the economic rights of the work are transferred entirely to the buyer without a time limit.

Based on the type, buying, and selling through NFT refers as a selling-buying outright, because the buyer can directly own the copyrighted work

uploaded by the creator, and the user makes the royalty payment directly through the digital wallet on the NFT sales platform. When a transaction occurs on the NFT, the copyrighted work produced by the creator immediately changes ownership without any special conditions agreed upon by the creator with the owner or copyright holder as in a general license agreement. However, this also cannot be separated from the conditions that must be met in the transfer of copyright through selling-buying outright as legal requirements stated in Article 1320 of Civil Code, as follows:<sup>16</sup>

#### **Agreement**

The selling-buying outright agreement requires an agreement on the obligation of the creator to give his work, an agreement on royalties, an agreement on the obligation that the economic rights to the work are transferred entirely to the buyer and an agreement on the delivery of economic rights indefinitely. In this regard, the NFT sales platform cannot be seen directly. The agreement in buying and selling at NFT is only based on an interest in the copyrighted work which is then purchased by someone as a collection to add to their NFT.

#### **Parties' Requirements**

The selling-buying outright agreement must also meet some requirements, meaning that the parties making the agreement have matured, age 21 years old or not 21 years old but are married. However, if by chance the parties are underage, their parents must be represented in making the agreement. It may happen that the creator is not yet an adult, so the legal action taken must be represented by a parent or guardian. In terms of the ability to have transaction through the NFT trading platform, the parties would not know this because there are no special requirements in terms of creating an account on the NFT seller platform.

#### **Particular Objects**

The selling-buying outright agreement must also meet the conditions for certain objects that have been

<sup>15</sup> Irawati, (2018), 'Implikasi Perubahan Status Penerima Lisensi Terhadap Perjanjian Lisensi Hak Cipta Pada Organisasi Ksbsi', *Law Reform* Vol. 14 No. 2 (2018), h. 162-175. <https://doi.org/https://doi.org/10.14710/lr.v14i2.20864>.

<sup>16</sup> Putu Ayu Ira Kusuma Wardani. "Pengaturan Bentuk dan Syarat Sahnya Perjanjian Lisensi Hak Cipta." *Jurnal Kertha Semaya*. Vol. 9 No. 7 (2021), h. 1224-1234. <https://doi.org/https://doi.org/10.24843/KS.2021.v09.i07>.



agreed upon. In this agreement, the object of the agreement is the goods and price, for the goods in the form of copyright and the price in the form of the amount of royalties that must be paid in full. On the NFT sales platform, each object of the copyrighted work and its price are clearly displayed and can be accessed by the buyer, who then pays the amount of digital money listed on the sales platform as a transaction agreed between the two parties.

### **Lawful Cause**

In order for the selling-buying outright agreement to be valid, it must also fulfill a lawful cause, meaning that the selling-buying outright agreement made must not conflict with the law, decency or general order. As for the selling-buying outright agreement, there is indeed a transfer of ownership rights, but only ownership of economic rights which is the right to enjoy commercial values only, and does not result in a transfer of ownership of moral rights, meaning that the creation is the creator of the work remains in the hands of the seller. This means that the copyright certificate remains in the name of the creator and cannot be transferred even if it has been sold. Lawful cause in NFT transactions cannot be detected because anything can be purchased if it is according to the wishes of the owner of the copyrighted work and the buyer of the NFT itself, even though it is considered to be against the law, morality and public order because the regulations follow NFT sales platform instead of following legal regulations existing in Indonesia.

Basically, NFTs are protected under copyright regulations in Indonesia. However, based on the transfer, the copyright holders assume that when NFTs have transferred ownership of their copyrights, they can freely change the form of the NFT, modify, duplicate, and redistribute it with or without changes, commercially or non-commercially. This concept is known as the copyleft concept in copyright, which emphasizes the freedom of the copyright holder for a copyrighted work that has changed ownership. Based on this and as discussed previously, NFTs are protected under copyright law and therefore are attached to 2 (two) rights, namely economic and moral rights. In this regard, changing or distributing as well as modifying actions is included in violating moral rights. Even though the ownership has been

transferred, the copyright holder must still be entitled to the economic and moral rights of the creator attached to the NFT.

### **CONCLUSION**

The transfer of copyright ownership to NFTs (Non-Fungible Tokens) on the perspective of positive law in Indonesia can be regulated by using the provisions of Article 18 UUHC related to selling-buying outright of copyrighted works which in practice must meet the requirements stated in Article 1320 of the Civil Code concerning the conditions for the validity of the agreement which are the existence of an agreement, parties' requirement, particular objects, and lawful cause. If the transfer of copyright ownership to the NFT is not in accordance with positive law in Indonesia then it cannot be categorized as a transfer of copyright ownership because it does not meet the requirements as stated in the legislation and can be categorized as an illegal act because it is contrary to the right owned by the owner or copyright holder who must be protected, thus the copyrighted work is not misused and harms the moral rights and economic rights of the owner and copyright holder, while the transaction pattern on the sale of NFT almost all ignores positive laws in Indonesia which is related to the validation of copyrighted works and protection to buyers of copyrighted works in the form of NFT. Based on this, the transaction of copyrighted works on NFT is not merely a sale and purchase for ordinary works of art, but also includes the rights to a copyrighted work protected by positive law in Indonesia. Therefore, the seller as the copyright owner and the buyer as the full or partial copyright holder must know the regulations known as copyright transfer law.

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