

NON-FUNGIBLE TOKEN AS A CONDITION FOR INTELLECTUAL PROPERTY REGISTRATION AND DIGITAL ASSET MARKETING STRATEGY USING DIGITAL TOKENS

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Abstract

Creativity is unlimited. Creativity is not only visible in real terms that can be touched by human hands, but now it is widespread in cyberspace. This creativity can be in the form of music, inventions, logos, and others that can be protected by intellectual property. The protection of intellectual property can be combined with a Non-Fungible Token. The purpose of this research is to examine the use of Non-Fungible Tokens as an intellectual property registration and the use of Non-Fungible Token as a marketing strategy for digital assets. The research method is normative juridical which will multiply from some secondary literature, books, journals, and other sources related to intellectual property, Non-Fungible Tokens, and marketing strategies. The use of Non-Fungible Tokens as a condition for intellectual property registration can have a positive impact, especially in terms of determining novelty requirements. Businesses can use Non-Fungible Tokens as a marketing strategy to market their works or digital assets..

INTRODUCTION

The boundary between the real world and the virtual world is becoming more and more artificial. Human creativity is growing to the point that it can create a "new world" that once may never have been thought would happen. Today, creators, as those who create creativity, are increasingly venturing into the digital world. This brings humans to be more inclined to cyberspace. Creativity that is shown or shared in cyberspace so that everyone from various parts of the world can see, enjoy, or even transact the results of creativity in the form of the work.

Creativity can be in the form of creating musical works, inventions, logos and others. The work may be protected by intellectual property, depending on the type of work it produces. There are 7 (seven) branches of intellectual property, namely copyright, patent, brand, industrial design, integrated circuit layout design, trade secret, and plant variety protection. Copyright protection applies declaratively or automatically, but in order to create more legal certainty, creators or creators can register their copyrighted works to the Directorate General of Intellectual Property to issue copyright certificates for works registered on behalf of the creator (creator). In contrast to protection for patents, trademarks, industrial designs, integrated circuit layout designs, and plant variety

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protection using a constitutive system or first to file system where protection will be obtained if registered first. Trade secrets are protected as long as information in the field of technology and/or business is kept confidential by the owner of the trade secret.

Nowadays creators are switching to "spread" their works through digital by minting their works into Non-Fungible Tokens (hereinafter abbreviated as NFTs). NFT is a crypto technology such as a digital certificate that certifies who owns photos, videos, or other virtual forms. NFT assets will be recorded on the blockchain, a kind of digital "ledger" similar to the network that supports Ethereum, Bitcoin, and other cryptocurrencies. Until now, the Meta Forest Society Program Manager guarantees that the owners of NFTs that have been purchased cannot be faked and can be very easily traced who the creator and original ownership are. NFTs are very tempting for creators because their works can be more guaranteed to guarantee ownership of a work, although there are still pros and cons related to NFTs among creators. The way NFTs work can also provide more definite and clear economic rights because payments related to the sale of works can be regulated in smart contracts and everything is tracked and recorded in the system. NFTs, which are a kind of digital ownership certificates with crypto technology, can be used as a condition for intellectual property registration. This is because blockchain technology will not delete every activity that occurs in the system. This can be used for registration of a work in the real world, which in this case is intellectual property registration to the Directorate General of Intellectual Property (DJKI).

In addition, NFTs in the future will become part of online identities. Lately NFT marketing strategies have a lot of takers. This is because NFT marketing is considered one of the best methods to market the buying and selling activities of digital assets because NFTs provide ownership certifications that are only accessible to buyers and sellers. The more people who are interested in NFTs can make marketing strategies using digital tokens or NFTs themselves more effective.

As far as the author's search, there has been no research that discusses the same thing related to the topic that the author will discuss. Based on the description above, the author is interested in discussing more about the registered works and marketing strategies for works using Non-Fungible Token (NFT) which will be outlined in a research entitled "NON-FUNGIBLE TOKEN (NFT) AS A CONDITION FOR REGISTERING INTELLECTUAL PROPERTY AND MARKETING STRATEGIES FOR WORKS USING DIGITAL TOKENS".

METHOD

This research uses normative juridical methods with a statutory approach (statute approach) and conceptual approach (conceptual approach). Legal material tracing techniques use document studies by examining rules and concepts related to intellectual property, non-fungible tokens, and marketing strategies. The analysis of this research study uses qualitative analysis.

RESULTS AND DISCUSSION

Legal Certainty of Non-Fungible Token (NFT) Use for Intellectual Property Registration Non-Fungible Token (NFT)

NFTs are unique certificates of authenticity on blockchains that are usually issued by the creators of the underlying assets. These assets can be digital or physical in nature. Based on the quote, an NFT is a certificate of authenticity unique to the blockchain that is usually issued by the creator of that asset. Assets can be digital or physical. These assets can be sold by minting one of

the creator's digital assets as an NFT. Creators can mint any digital creation as an NFT, from art to writing to music to video games.

NFTs are digital assets formed based on a unique code so that they cannot be exchanged. The characteristic of NFTs is the use of blockchain-based technology, which is a ledger that contains "blocks" related to information and transactions, such as transaction timestamps, and character sets (block hashes) where blocks are permanent so they cannot be repaired or deleted. NFTs are traded online, often with cryptocurrency, and are generally encoded within smart contracts on a blockchain. Based on the quote, NFTs are traded online, often with cryptocurrency, and are generally encoded in "smart contracts" on the blockchain. A smart contract is basically software containing a protocol, agreement and relationship between two or more parties managed using a decentralized system.

Intellectual Property Registration

There are 7 (seven) branches of intellectual property, namely:

- 1) Copyright
- 2) Patent
- 3) Brand
- 4) Industrial design
- 5) Integrated circuit layout design
- 6) Trade secrets
- 7) Plant variety protection

The seven branches of intellectual property do not all have to be registered. The purpose of intellectual property registration is so that the owner of the intellectual property gets protection for his work. Legal interests protected in the regulation of intellectual property rights are useful to protect reputation, encourage and reward every innovation and its creation through an incentive system, and prevent duplication. Protection of intellectual property works can be in the form of granting exclusive rights. Exclusive rights consist of moral rights and economic rights. Intellectual property has a natural right to own and control what it has created because everyone has the right to moral and material protection of his creation. It reflects that moral rights are inalienable for creators. Economic rights are concerned with a form of compensation and encouragement for creators to obtain economic benefits as well as increase innovation with which can ultimately also benefit society.

In general, intellectual property protection uses a constitutive system or known as first to file principal. First to file principal is the first registrant to obtain exclusive rights and legal protection.

There are specificities for the intellectual property, copyright, and trade secret branches. Copyright protection arises automatically based on the declarative principle that has been regulated in Article 1 point 1 of Law Number 28 of 2014 concerning Copyright. Legal protection in copyright can be proven by a system that announces the first to announce the copyrighted work (first to announce). First to announce is the right to first announce one's own work and automatically as the owner of the work. More generally, copyright protection is known as a declarative system or first to use system. The declarative system means that registration is not issuing rights, but only providing legal suspicion, or presumption iuris. The function of the declaration system is to facilitate proof that the person is suspected to be the first legitimate owner because of the first user.

Trade secrets are not included in the first to file system because there is no discussion in the trade secret law regarding registration and if withdrawn in the first to use system it will be difficult to prove who the rights holder is in the event of a problem with the trade secret. The transfer of trade secrets must be registered at the Directorate General of Intellectual Property of the Ministry of Law and Human Rights and announced in the general news of trade secrets.

Non-fungible Token as a Condition for Intellectual Property Registration

Works that can be protected are the results of human thought that are embodied in tangible form and the results of these works must be new. New can mean that it has never existed before, has never been registered before, and is not a work that has become public domain. This novelty term applies to all branches of intellectual property, except trade secrets because what is protected from trade secrets is information. The novelty terms for copyright are not explicitly regulated. Copyright protects works in the fields of science, art, and literature that are embodied in tangible form (fixation). Copyright protection applies automatically in accordance with the declarative principle, which is generally the lifetime of the creator plus 70 (seventy) years since the creator dies which is calculated from January 1 of the following year or for 50 (fifty) years since the first announcement was made for several types of works as stipulated in Article 58 of Law Number 28 of 2014 concerning Copyright.

This novelty requirement is closely related to the moral rights of intellectual property owners because whether or not a work or invention or creation produced will remain attached to a person or group of people who made it for the first time. For example, the character "Si Unyil" who has the characteristics of a doll wearing a red shirt, sarong and peci will still be known to be created by Mr. Suyadi from Indonesia. Another example is a patent in the field of aeronautics by H. J. Habibie from Indonesia, one of which found how crack point propagation on aircraft works so as to make aircraft safer. The following are the novelty requirements of each branch of intellectual property in Indonesia:

- 1) Patent. Article 3 Law Number 13 of 2016 concerning Patents stipulates that patent protection, both patents and simple patents, is granted for new inventions. Furthermore, Articles 5 and 6 of Law Number 13 of 2016 concerning Patents stipulate that an invention is considered new if on the date of receipt, the invention is not the same as the previously disclosed technology. It may also be announced if within a maximum of 6 (six) months before the date of receipt has been shown or within 12 (twelve) months before the date of receipt there is another party who announces by violating the obligation to maintain the confidentiality of the invention.
- 2) Brand. The element of novelty in the mark can be seen from whether the requested mark has distinguishing power or not, is not a common name and/or symbol of public property, and whether the applied mark has similarities in principal or in whole with the registered mark. The terms of brand novelty are not explicitly regulated, but can be seen from the arrangements in Article 20 and Article 21 Law Number 20 of 2016 concerning Brands and Geographical Indications jo. Article 108 of Law Number 11 of 2020 concerning Job Creation.
- 3) Industrial design. The novelty requirements for industrial design are regulated in Article 2 Law Number 31 of 2000 concerning Industrial Design which states that industrial design rights are granted for new industrial designs.
- 4) Integrated circuit layout design. The setting of novelty conditions for this branch is regulated in Article 2 Law Number 32 of 2000 concerning Integrated Circuit Layout Design which regulates for integrated circuit layout design rights is granted for original integrated circuit layout design. The original in question is the independent work of the designer and is not something common for designers when the integrated circuit layout design is made. The phrase "is not something common for designers" indirectly states that the design work of integrated circuit layouts must also meet the element of novelty, although it is not further stipulated about the period of novelty in the law.
- 5) Plant variety protection. Article 2 paragraph (1) Law Number 29 of 2000 concerning the Protection of Plant Varieties stipulates that varieties that can be given protection include varieties of new types or plant species. Furthermore, paragraph (2) stipulates that a variety that is considered new is if at the time of receipt of the application for the right to protection of plant varieties, propagation materials or crops from varieties have never been traded in Indonesia or have been traded but not more than one year or have been traded abroad for no more than four years for annuals and six years for annual crops.

The novelty element of 5 (five) branches of intellectual property is tested at the time of substantive examination. A substantive check is an examination of an application for novelty

aspects, which can be carried out with existing references. Substantive examination is carried out by "examiners" who are experts who are specially educated and appointed to carry out the task. The definition is a substantive examination that the author writes based on the branch of intellectual property of industrial design which mainly looks at elements of novelty. The integrated circuit layout design branch does not carry out administrative checks, it is a condition for acceptance of the integrated circuit layout design is an original work (original / really made by the person concerned). Substantive examinations for other branches of intellectual property, namely patents, trademarks, integrated circuit layout design, and plant variety protection, must meet the corresponding requirements stipulated in the law.

The assessment of the substantive examination of the mark relates to the good faith of the trademark application filed, the assessment of the elements of the mark that are rejected or cannot be registered. Substantive examination in patents according to the explanation of Article 5 paragraph (3) of Law Number 13 of 2016 concerning Patents, excluding articles regulating simple patents, is an examination of inventions in assessing the fulfillment of patent applications on new terms, contains inventive steps, can be applied in industry, meets the provisions of the unity of invention, is clearly disclosed, and is not included in the category of inventions that cannot be granted patents. Based on Article 30 of Law Number 29 of 2000 concerning the Protection of Plant Varieties, substitutive examination of plant varieties is carried out by PVP inspectors which includes the novelty, uniqueness, uniformity, and stability of varieties that are applied for PVP rights.

Examiners from the Directorate General of Intellectual Property will check whether the submitted intellectual results meet the elements of novelty or not for the branches of patents, brands, industrial designs, and integrated circuit layout designs. Especially for the protection of plant varieties, substantive examinations, one of which is novelty, will be tested by inspectors from the Ministry of Agriculture. This novelty requirement is also the first and main requirement of an intellectual property application, so the fulfillment of this condition is very important. This is because the novelty of a work or invention or intellectual work so as not to cause indications or not the same as existing works. Pre-existing works that are created the same can be called plagiarism. The definition of plagiarism according to the Publication Ethics Committee of the World Association Meedicine Editors (WAME) is:

Plagiarism is the use of others' published and unpublished ideas or words (or other intellectual property) without attribution or permission, and presenting them as new and original rather than derived from an existing source.

Based on the definition above, we know that plagiarism not only includes words, but can also be intellectual property without mentioning permission or consent from the owner or holder of intellectual property and showing as if the work is something new. We must also remember that producing an intellectual work requires creativity, time, energy, and even funds such as for research and development, so it is not easy to produce it and it needs to be appreciated.

The author believes that this element of novelty can be facilitated by using a technology that is increasingly developing today, namely blockchain, more specifically by using NFTs. NFTs which are digital certificates using the blockchain system can trace the work created first. If the same work is to be printed, the blockchain system will know and the same work will not be able to be digitally certificated. This is because the system in NFT uses blockchain that allows distribution of databases, so that every party in the network can verify transactions that occur. In addition, the NFT system does not allow to change or delete such digital tokens or certificates.

Furthermore, the use of NFTs to facilitate testing the novelty requirements of intellectual property for which registration is applied using a constitutive system. First, elements of novelty that can still be seen from time, such as patents or protection of plant varieties, can be seen from the first time photos or videos of inventions or plant varieties that want to be submitted applications to the Directorate General of Intellectual Property or the Ministry of Law and Human Rights, uploaded to the marketplace and printed digital certificates. Based on the upload, it can be seen when the new work is completed and ready to be applied for protection from the state. Likewise with brands in the form of logos, images, sounds, and others. Photos or videos of

trademark applications can be uploaded to the marketplace and obtained digital certificates. Likewise, product photos and/or videos for industrial design applications as well as integrated circuit layout design photos and/or videos can be uploaded and digital certificates created.

Second, intellectual property applicants can include a link to view works created by digital certificates using NFTs and intellectual property inspectors from the Directorate General of Intellectual Property or inspectors from the Ministry of Agriculture can more easily check for novelty elements. If it is not obtained unlawfully and the uploader is the original owner, the use or utilization of NFTs is very effective and makes it easier to recognize a work.

In other words, the use of NFTs can make it easier for intellectual property owners to make claims for their work. The NFT system has similarities with the constitutive system or first to file system, whoever registers first, he is the one who is eligible. In this case, the party who uploads and converts the work (photos, videos, sounds and others) into digital tokens, he is the one who has the right to the work. Another plus is that if the photo or video is sold on marketplaces such as NFTs that are rife lately, owners of intellectual property can get economic benefits from licensing or selling digital tokens on NFT marketplaces such as opensea and others.

Digital Asset Marketing Strategy Using Digital Tokens

Marketing is not only needed by tangible products. The definition of marketing itself is an overall system of business activities aimed at planning, pricing, promoting, and distributing goods and services that satisfy needs, both to existing and potential buyers. Intangible products, in this case are works or digital assets, must also be marketed so that people know there is something offered by business actors and something is bought by the community. An intellectual property can be a digital asset. The existence of the internet and technology that is increasingly vigorous in its development brings marketing to be more diverse and even makes products that should be marketed into one of the marketing strategies. The product is a digital token or NFT. NFTs are predicted to become online identities and are considered one of the best methods to market the buying and selling activities of digital assets because they provide ownership certifications that only buyers and sellers can access.

New innovations in the field of technology are always accompanied by innovations in other fields, including in the field of marketing. Companies and/or commercial institutions (both companies, individuals, and government institutions) are required to always innovate, reshape the ways of doing business in new, more innovative ways. It is not impossible for NFTs to become a marketing strategy in itself. Marketing strategy is an overall system of business activities through planning, pricing, promoting, and distributing goods and services that satisfy and meet the needs of buyers. Based on this understanding, there are at least 4 (four) elements in a marketing strategy using NFT, namely:

First, product planning. Products become one of the essential things because they become objects that are traded. The product to be sold in this case is a work or digital asset in the form of images, logos, and others. Creating a work can be planned in advance, be it an order from a client, or born from inspiration. Products that have been transformed from ideas into works can be marketed through NFTs by minting. NFT minting is the process of minting NFTs by converting a work or digital asset into tokens that are placed on the blockchain and become tokens of ownership and can be traded on the NFT marketplace. The product created, which in this case is a work, is certainly something unique and / or in demand by the market, both large scope or small scope where the work is intended for certain circles. The number of products sold is also determined by the business actor or creator.

Second, pricing. The price of a product is obtained from production costs multiplied by the profit margin obtained, but for determining the price of a work often does not have a definite reference. There is no dominant factor that can control the price in NFTs because there is heterogeneity and the price is determined from the offer. This can be due to taste factors and trends that make prices dynamic. The pricing of a work or digital asset sold using an NFT can also affect the reputation of the owner of the NFT. Today, NFTs are widely used by creators to sell digital works, such as images, animations, music, and more. The price of the work or digital

asset can increase from the increasing name of the creator who sells the work. Moreover, creators sell limited or rare works, the price will be higher.

Third, promotion. Promotion for the sale of works using NFT marketing strategies is in the community. For example, the Indonesian NFT community created an exhibition to promote works from creators to NFT communities and international collectors. The work of business actors can be promoted in the community and/or to the community through social media. The influence of online promotion is very effective because it can reach people in any corner of the world, especially the product sold is a work in the form of digital assets.

Fourth, the distribution of goods and services. The distribution of goods and services in this case is in the form of a work or digital asset. The occurrence of transactions is very easy and fast with the existence of an online system, especially the products sold by business actors are digital assets. Digital assets can be easily distributed to buyers when using blockchain-based NFTs. Moreover, all transactions from sellers (business actors) and buyers can be recorded all in the system.

Business actors can work in the real world and cyberspace. The work becomes a digital asset that can be protected. Real-world works can be protected by intellectual property by registering with the Directorate General of Intellectual Property, unless works in the form of plants can apply to the Ministry of Agriculture, and works converted into digital tokens can be protected using digital certificates with a blockchain system. For example, if business actors create a work in the form of a product logo that is made unique according to certain seasons or activities, it can be an attraction for the community because those who sell are business actors they already know and the products sold are seasonal. The logo created seasonally from the product can be protected by the brand and protected by the state in real time, the product where the logo is attached can be sold to the public, and the image of the seasonal logo can be sold using NFT marketing strategies and can be sold to the public in the online world.

CONCLUSION

The use of Non-Fungible Token as a condition for registering intellectual property can have a positive impact, especially in terms of determining novelty requirements. This can facilitate inspection by the Directorate General of Intellectual Property. The use of Non-Fungible Token can make it easier for intellectual property owners to make claims for their work because every transaction and/or info related to the owner's work can be recorded. The NFT system has similarities with the constitutive system or first to file system. Business actors can use Non-Fungible Token as a marketing strategy to market their works or digital assets. In addition to fulfilling elements of the marketing strategy, Non-Fungible Tokens are predicted to have an online identity of the token that cannot be replaced and provide ownership certifications that can only be accessed by buyers and sellers.

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