

Regulatory Approaches to NFT in Indonesia: Considering the Implementation of the French *Droit De Suite* System?

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ABSTRACT: The development of Non-Fungible Tokens (NFT) has significantly impacted global economic trade. However, in Indonesia, the regulation surrounding NFT remains insufficient, particularly concerning law enforcement and equitable royalty distribution for commercialized artistic works. This research adopts a normative juridical approach, employing statutory, comparative, and conceptual analysis methods. Findings indicate that NFT, as three-dimensional artistic creations, fall under the protection of the Copyright Act. While Indonesia has addressed NFT regulation in various laws and government regulations, detailed provisions regarding digital transactions involving three-dimensional artworks are lacking. Moreover, inadequate legal safeguards for NFT sales underscore the pressing need for legal reform. Therefore, the adoption of *Droit De Suite* through legal transplantation is proposed as a prudent strategy for legal modification, offering numerous normative and operational benefits. *Droit De Suite* is a principle born from the Berne Convention, where the requirement to apply *Droit De Suite* is that the state must give permission or legally recognize that the state has been regulated in its legislation. In addition, *Droit De Suite* is the right given to the artist or creator and his heirs to resell copyrighted works that have been produced previously, so that the creator's heirs are entitled to a share of the resale of a work. This approach holds promise for enhancing the legal framework surrounding NFT and promoting fair treatment of artists and stakeholders in Indonesia's digital economy landscape.

KEYWORDS: *Droit De Suite*; French Regulations; Indonesian Regulations; NFT.



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I. INTRODUCTION

The development of Intellectual Property Rights is something that has a huge influence on the development sector of the country's economy.¹ By definition, Intellectual Property Rights is a right that is born from human activities by utilizing the power of reason, intellectual or human thinking in producing a creation.² Intellectual Property Rights is considered an intangible movable object and is a property right in intellectual work.³ Intellectual Property Rights are divided into two, namely: First, Industrial Property Rights consisting of Patents, Trademarks, Designs, Integrated Circuit Layout Designs, and Trade Secrets; and Second, Copyright itself which in this case protects literary works, written works, and works of art.⁴

In the era of information technology, it is undeniable that it has affected all aspects of human life, especially in the aspect of industrial production. In the development in the field of technology and industry, there are many masterpieces of innovations that have been discovered, one of which is about: the Internet of Things, Artificial Intelligence, the use of digital data storage (Big Data), robot technology, as a means to carry out activities and improve the quality of human life. The rapid technological and digital advances also influences world economic trade, where the emergence of a new commodity known as Non-Fungible Tokens (NFT). NFT is a type of tokens that have some specific attributes that make them unique. It can represent any asset with specific characteristics, they are not "mutually

¹ Ni Nyoman Dianita Pramesti & I Ketut Westra, "Perlindungan Karakter Anime Berdasarkan Undang-Undang Hak Cipta" (2021) 10:1 Jurnal Magister Hukum Udayana Udayana Master Law Journal 79–90.

² Luh Mas Putri Pricillia & I Made Subawa, "Akibat Hukum Pengungkapan Karya Cipta Film Tanpa Izin Pencipta Di Media Sosial" (2018) 6:11 Kertha Semaya Jurnal Ilmu Hukum 1–15.

³ Carlos Correa & Jorge E. Viñuales, "Intellectual Property Rights as Protected Investments: How Open are the Gates?" (2016) 19:1 Journal of International Economic Law 91–120.

⁴ Ni Made Dwi Marini Putri, "Perlindungan Karya Cipta Foto Citizen Journalist Yang Dipublikasikan Di Instagram" (2017) 6:2 Jurnal Magister Hukum Udayana Udayana Master Law Journal 224–236.

interchangeable".⁵ In another sense, NFT is a sales activity for 3 (three) dimensional digital painting artworks that can be traded through a special platform.⁶

Regarding the regulation of copyright in the form of digital works of art, NFT, in Indonesia are regulated in Law Number 28 of 2014 on Copyright, and Government Regulation Number 80 of 2019 on Trading Through Electronic Systems. This regulation is regulated 3 (three) dimensional digital works of art are recognized as digital objects or assets which are intangible movable objects, property rights in intellectual works, and are protected. However, the regulation on NFT in Indonesia is currently not comprehensively regulated,⁷ because researchers in this case have found many legal gaps, one of which is regarding digital transactions in the form of 3 (three) dimensional works of art.

Even though the regulation of Act No. 28 year 2014 on Copyright have progressed compared to the Copyright Act of 2002 ("Copyright Act"), this does not mean that the current Copyright Law has no shortcomings, but the current Copyright Act still has several notes that need to be improved considering that the issues of intellectual property continue to grow. Copyright as part of intellectual property when classified under the law of property according to the Civil Code ("Indonesian Civil Code") is an intangible movable object that has an exclusive nature and can be defended by anyone.⁸

Copyrights are divided into several rights such as the right of adaptation, distribution rights, broadcasting rights, *Droit De Suite*, and other rights.⁹

⁵ Siti Saroh et al, "Analisis Transaksi Digital Non Fungible Token (NFT), Sebagai Instrumen Investasi Menurut Perspektif Ekonomi Islam" (2023) 9:1 Jurnal Ilmu Ekonomi Islam 378–386.

⁶ Jan Schwiderowski et al, "Value creation and capture in decentralized finance markets: Non-fungible tokens as a class of digital assets" (2023) 33:1 Electronic Markets 45.

⁷ Muhammad Alief Bayu Syahputra & Rahandy Rizki Prananda, "Aturan Non Fungible Token (NFT) dalam Hukum di Indonesia" (2023) 6:1 UNES Law Review 1799–1806.

⁸ Article 5 paragraph (1) Copyright Act.

⁹ Bernard Nainggolan, *Pemberdayaan Hukum Hak Cipta dan Lembaga Manajemen Kolektif* (Bandung: Alumni, 2023).

Although many rights are contained, in this study, researchers then categorized them into moral rights and economic rights. Moral rights are rights that protect the interests of the creator.¹⁰ Although ownership of a copyrighted work can be transferred to another party, but not with moral rights because moral rights will continue to be attached and inseparable from the original creator.¹¹ Meanwhile, economic rights can simply be interpreted as the right to enjoy the benefits of economic value arising from the use of copyright for themselves creators as well as through the use by others under the license agreement.¹²

Droit De Suite in the Indonesian Civil Code, defined as *zaaksgeslacht*, or in this case based on Black's Law Dictionary 9th Edition, has the meaning as "right to follow", namely as a right will continue to follow the ownership of objects, or rights that follow the object in the hands of anyone (*het recht volgt de eigendom van de zaak*).¹³ The right of difference is an absolute right on an object, thus giving the owner of the object the power to defend the ownership of an object from any act of claim or violation committed by others. In copyright, *Droit De Suite* is a French term that introduces the law in the sense of the artist's resale right, which is the right given to the artist or creator and his heirs to the resale of copyrighted works that have been produced before, so that the creator's heirs can be entitled to a share of the resale of a work.¹⁴

However, in the category of rights to objects mentioned in the Copyright Act, the resale right is one right that is not regulated.¹⁵ The difference in

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² Stephen M Stewart, *International Copyright and Neighbouring Rights* (London: Butterworth & Co Publishers Ltd, 1983); Michael O'Hare, "Copyright and the protection of economic rights" (1982) 6:1 *Journal of Cultural Economics* 33–48.

¹³ Angelin Michelle Liady & Abdul Salam, "Application of the *Droit De Suite* Principle in Dispute Settlement of Fiduciary Guarantee Agreements" (2022) 21:2 *Pena Justisia: Media Komunikasi dan Kajian Hukum* 162–187.

¹⁴ Radian Suparba, "Dilema *Droit De Suite* Untuk Karya Seni Rupa" (2019) 2:2 *JIPRO: Journal of Intellectual Property* 38–44.

¹⁵ Muhammad Masyhuri, Ahsana Nadiyya & Gresika Bunga Sylvana, "The Urgency of Regulating Resale Royalty Right on Painting Copyrights in Indonesia (Comparative Study of Germany and Australia)" (2023) 4:3 *Journal of Law and Legal Reform* 365–398.

treatment regarding the right of resale that applies in Europe with the Indonesian Copyright Act caused great losses for the creators of works.¹⁶ If the right of resale is regulated, the creators will not only be protected through the protection of the work produced but will also get a sense of appreciation for the use of the work activity, because the work produced has its philosophical value.

The Indonesian Copyright Act does not regulate resale rights, of course, in the view of the researcher, this indicates a legal gap that needs to be corrected, and against legal issues like this. The government in this case should take legal action to improve regulations which are none other than intended as an answer to the government's seriousness in responding to the growing issues of intellectual property law, especially in this case is related to the activity of transferring rights to the sale and purchase rights that have been carried out by the sale and purchase transaction of a work (*Droit De Suite*) which is closely related to moral rights and economic rights. Therefore, there are two 2 (two) pivotal inquiries that need to be researched; First, how is the protection of copyright of Non-Fungible Token (NFT) based paintings in Indonesia; and Second, how is the Mechanism of Transplanting Resale Rights Rules into the Indonesian Copyright Legal System?

II. METHODS

This research using normative juridical legal research that examines library materials or can be referred to as a literature study. Conducting studies related to legal instruments relating to the legal transplantation of Resale Rights to copyright regulated in other countries. The author uses the type of normative research includes research on legal principles, legal systematics, comparative law, or legal history.¹⁷ The research approach method used includes the statute approach and conceptual approach which are analysed descriptively.¹⁸

¹⁶ *Ibid.*

¹⁷ Soerjono Soekanto & Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: Raja Grafindo Persada, 2003).

¹⁸ *Ibid.*

III. COPYRIGHT PROTECTION OF PAINTING WORKS BASED ON THE NFT PLATFORM IN INDONESIA

The world has now entered the era of Society 5.0 (Artificial Intelligence to expand human capabilities and address social challenges), which is an era where humans are more likely to use digital technology as part of carrying out daily activities.¹⁹ In today's digital age, the use of technology information has encouraged the development of the conception of copyright protection from the real world to the digital realm.²⁰ In this context, the protection of two dimensional digital artworks in the digital realm needs special attention, as an implication of technological developments.

Development of technology information, there are many masterpieces of innovations that have been discovered, one of which is the use of blockchain technology with the main infrastructure of peer-to-peer implementation (connecting networks) in producing and providing trading facilities for buying and selling digital products such as NFT.²¹ The work system that occurs in Blockchain technology, as revealed by Azhar Natsir Ahdiyati, S.Pd., M.Ds. (A Lecturer in Visual Communication Design (DKV) at Kuningan University, West Java as well as an artist of digital painting in the form of NFT.²²

In the context of NFT, the meaning of the openness contained in blockchain technology, by Azhar Natsir Ahdiyati, S.Pd., M.Ds.²³ explains that this refers to the aspect of publicizing information openly to the public. This means that blockchain technology provides information openly for anyone to be able to access information related to digital asset ownership, transaction history, and the authenticity of digital assets produced by the creator (Creator) through the blockchain network.

¹⁹ Nabeel Mahdi Althabhwani, Zinatul Ashiqin Zainol & Parviz Bagheri, "Society 5.0: A New Challenge to Legal Norms" (2022) 6:1 Sriwijaya Law Review 41–54.

²⁰ Habbi Firlana & Pascalis Dani Kriti Wibowo, "The Future of Intellectual Property Protection: Issues Against the Metaverse and Non-Fungible Tokens (NFTs)" (2023) 16:2 Indonesian Law Journal 185–203.

²¹ Ujang Badru Jaman et al, "The Legal Framework and Taxation of Non-Fungible Tokens" (2024) 7:1 Jurnal Hukum Bisnis Bonum Commune 46–57.

²² Azhar Natsir Ahdiyati, Zoom Meeting, Personal Interview conducted on 15 December 2023, at 10:48 am, Recording minute 03:21.

²³ Azhar Natsir Ahdiyati, Zoom Meeting, Personal Interview conducted on 15 December 2023, at 10:52 am, Recording minute 04: 33.

Furthermore, it explained that two-dimensional digital products produced and traded on specialized digital marketplace platforms such as: OpenSeas.io, Ethereum, Nifty Gateway, Mintable, and others, are not limited to just art products, Many other things are sold, including: music, games, videos, and other digital goods.

Besides the same working system mechanism, both generating and making transactions for the sale and purchase of digital products in the form of NFT with the implementation of peer-to-peer (connecting networks) on blockchain technology, it is necessary to know that the creator as a seller and buyer, both use digital currency (Bitcoin, Ethereum) as an electronic payment instrument stored in a digital wallet.²⁴

Apart from the working mechanism of Blockchain technology, for digital products that have been realized so that they are ready to be traded on a special marketplace platform, only then can the creator determine the price of the creation, the function of the creation, and the amount of royalties earned by the creator in accordance with the provisions of the platform where the creator conducts digital marketing and the choices above are included in a smart contract that is stored and connected in a blockchain network database that cannot be changed again (Immutable). Ahdiyati also explained that blockchain technology has a fairly good security system and can be guaranteed certainty, considering that blockchain technology has a number of authentication requirements that must be met by the creator when producing and trading digital work products, this is because blockchain technology consists of secret codes that cannot be changed or modified by the users themselves in relation to a series of processes to produce a digital work product.²⁵

According to Sulistyawan Wibisono (an Australian TradeMarks Attorney),²⁶ explained that the use of technology blockchain in creating and producing a digital work of art such as NFT of course in the basic principle

²⁴ Soonpeel Chang, "Legal Status of Virtual Currency in Indonesia in the Absence of Specific Regulations" (2018) 8:3 Indonesian Law Review 328–348; Sri Mulyani, Siti Mariyam & Hieu Hong Trung Le, "Legal Construction of Crypto Assets as Objects of Fiduciary Collateral" (2023) 19:1 Law Reform 25–39.

²⁵ Muhammad Rizanfirdaus, Zoom Meeting, Personal Interview conducted on 10 December 2023, at 12:30 WIB.

²⁶ Sulistyawan Wibisono, Zoom Meeting, Personal Interview conducted on 12 December 2023, at 13:10 WIB, recording minute 05:10.

of copyright intellectual property still gets the same legal protection as other works of creation, as long as, a work meets the general principles that apply generally, namely: 1) protection of work will be given automatically if it has been realized in real terms and is an original idea of the creator; 2) against a work produced applies the principle of automatic protection (automatic protection); 3) against a work does not require registration in advance and then get protection, even though work is just personal consumption; 4) copyright is something that needs to get legal recognition as a right to intangible property (intangible) and 5) copyright is not something that is absolute.²⁷ Thus, both the digital masterpiece's three dimensions and non-digital as long as they meet the criteria of the basic principles that apply generally can be given legal protection.

However, the existence of basic criteria that apply generally, it must be understood that legal protection and legal recognition are not the same thing.²⁸ This means that a masterpiece may receive legal protection but not necessarily legal recognition from the state. Therefore, in order to get recognition from the government, then against the masterpiece created, it is also advisable to be able to do the recording to the Directorate General of Intellectual Property Law (DJKI), although based on the provisions of Copyright Act in Indonesia does not require the recording. However, the recording process in this case is intended as a convenience in the process of proof in front of the trial (dispute) if in the future against the masterpiece produced by the creator, there is a violation of the law committed by irresponsible individuals so as to cause harm to the creator of the work on his work.

Although the Copyright Act does not require a record, it is necessary to underline in relation to the recording process referred to in Chapter X (ten) of the Copyright Act that this is a form of legal protection provided by the state against copyrighted works produced by the creator in order to avoid legal disputes in the future. In other words, the recording process contained in Article 64 of the Copyright Act is intended as a form of validity of proof

²⁷ Sulistyawan Wibisiono, Zoom Meeting, Personal Interview conducted on 12 December 2023, at 13:10 WIB, recording minute 06:27.

²⁸ Sulistyowati, Wahyu Nugroho & Umar Ma'ruf, "The Problem of Legal Protection for Human Rights Activists" (2023) 6:1 Sociological Jurisprudence Journal 56–62; Siti Nurhayati, "Social Inclusion For Persons With Disabilities Through Access To Employment In Indonesia" (2020) 2:1 Prophetic Law Review 1–21.

of perfect ownership marked with a copyright registration letter for ease of proof in court (dispute) for copyright infringement committed by irresponsible persons unlawfully.²⁹

IV. IMPLEMENTATION OF COPYRIGHT LAW AND ELECTRONIC TRANSACTIONS IN DIGITAL SPACES (CYBERSPACES) UTILIZED IN INDONESIA

In the context of law, copyright protection and electronic transactions that occur in digital space (cyberspace) in Indonesia are regulated in Copyright Act and Law Number 19 year 2016 Amendment to Law Number 11 year 2008 on Information and Electronic Transactions (“Electronic Transaction Information Act”). These two laws are present as legal instruments provided by the state through the codification of written law in order to protect certain rights while appreciating the masterpiece innovations that have been produced by creators in the fields of literature, art, and science.

However, referring to the provisions of the Copyright Act and the Electronic Transaction Information Act, there is no explicit mention of copyright protection for two-dimensional digital paintings in the digital realm (cyberspace) that has been confirmed by Andri Krisna Budi Wibowo, S.T. (A State Civil Apparatus from the Directorate of Intellectual Property Services Subdivision and Geographical Indications of the Regional Office of the Ministry of Law and Human Rights of Yogyakarta Special Region).³⁰ According to Wibowo, the Copyright Act is not explicitly mentioned, but basically the creations produced both for 2 (two) dimensional digital painting artworks and non-digital painting artworks are equally protected through the Copyright Act due to the existence of basic principles in creations that have been realized in real terms, that creation will be given automatic protection without requiring a recording process.³¹

²⁹ Article 64 of the Copyright Act.

³⁰ Andri Krisna Budi Wibowo, Subdivision of Intellectual Property Services and Geographical Indications of the Regional Office of the Ministry of Law and Human Rights of Yogyakarta Special Region, Personal Interview conducted on 21 December 2023.

³¹ *Ibid*

Referring to two principles of copyright, namely embodiment (fictionalization) and originality. In addition to the legal protection of a work will be given automatically at the time the work has been expressed in a tangible form (can be read, heard, seen, and enjoyed by others), originality, in this case, is also intended as a sign of authenticity in a work as long as the originality of the resulting copyright does not plagiarize the work of others. Nevertheless, this certainly does not reduce the urgency or importance of the registration of the work to the Directorate General of Intellectual Property (DJKI) to obtain a sign of ownership of a work in the form of a recording letter of creation.

In the context of copyright with the work produced both digitally and non-digitally, if examined theoretically and aligned with the results of primary data obtained by researchers, it can be concluded that the use of blockchain technology makes it possible for everyone, who is equipped with skills such as: knowing the science of marketing, branding and good communication can produce a work of art or an innovation. Blockchain technology has a good security system,³² through this technology, a person is also able to easily operate the use of tools available on the blockchain network in producing and trading a digital product.

The development of technology information that grown rapidly, bringing a new problem related to the supervision and prosecution of an offense that occurs in digital space (cyberspace). The development of technology information about the use of digital technology in producing a creation needs to be studied further, considering that information technology continues to develop and is something new. In these cases the role of government and law enforcement officials is vital such as: conducting training, coordinating between central and regional institutions, and

³² Huaqun Guo & Xingjie Yu, "A survey on blockchain technology and its security" (2022) 3:2 *Blockchain: Research and Applications* 100067; Agung Rizky et al, "Use of Blockchain Technology in Implementing Information System Security On Education" (2021) 4:1 *BEST Journal (Biology Education, Sains and Technology)* 62–70.

collaborating to prepare a legal instrument regarding the legal protection of Intellectual Property Rights in the digital spaces.³³

V. THE PRINCIPLES OF RESALE RIGHTS (*DROIT DE SUITE*) UNDER THE PROVISIONS OF THE COPYRIGHT LAW SYSTEM IN FRANCE

Intellectual Property refers to the embodiment of a work resulting from the process of creativity and innovation which is classified as intangible,³⁴ Intellectual Property Rights in France are classified as property rights included in the systems of ownership, property rights and civil and commercial obligations as stated in the Article 34 of the French Constitution.³⁵ Intellectual Property Rights are divided into Copyright and Industrial Property Rights (patents, trademarks, trade secrets, industrial designs, plant varieties, circuit layout designs, and geographical indications).

Copyright is regulated in section one of the French intellectual property law. Copyright by definition is contained in L111-1-IPC states that the creator of a work of his creation can enjoy the results because the creator has exclusive rights that are inherent and enforceable by everyone. The form of the work can be protected if the copyright is an original work of the mind that has a form (ideas, concepts or principles cannot be protected by copyright) because they are not declared.

Moral rights have four components in the intellectual property setting in France. These four components are the right of paternity, the right to have his work honored, the right to disclose his work and the right to reconsider

³³ Andri Krisna Budi Wibowo, Subdivision of Intellectual Property Services and Geographical Indications of the Regional Office of the Ministry of Law and Human Rights of Yogyakarta Special Region, Personal Interview conducted on 21 December 2023.

³⁴ Neil Anderson, Kristina Potočnik & Jing Zhou, "Innovation and Creativity in Organizations: A State-of-the-Science Review, Prospective Commentary, and Guiding Framework" (2014) 40:5 *Journal of Management* 1297–1333; Qing Lin & Zheng Lian, "On Protection of Intangible Cultural Heritage in China from the Intellectual Property Rights Perspective" (2018) 10:12 *Sustainability* 4369.

³⁵ European Parliament, *Copyright Law in the EU Salient features of copyright law across the EU Member States* (European Union: Comparative Law Library Unit, 2018).

or withdraw work. Moral rights have the right to have his name, authorship, and work honored and it is inherent to his person and cannot be revoked, but can be transferred to his heirs.³⁶

Economic rights are defined as the right to exploit the work created by the creator.³⁷ This economic right includes three components, namely the right to perform the work and the right to reproduce the work of art. Furthermore, the right of resale is also one of the economic rights of the creator. Article L 123-1-IPC states that the creator shall enjoy during his lifetime, the exclusive right to exploit his work in any form and to obtain monetary benefits.

As a pioneer country in providing protection and legal certainty to the rights arising from intellectual processes, both works of art and works of pure art, France has shown a concrete form of protection of exclusive rights, one of which is by accommodating the principle of *Droit De Suite* which provides explicit legal protection in the Intellectual Property Rights Law in France and its implementing rules.³⁸

Artists Resale Right (ARR) or known as *Droit De Suite* in some property law and civil law literatures, is a principle in intellectual property law whose regulation was pioneered by France since the late 19th Century through Directive 2001/84/EC of the European Parliament and of the Council of 27 September 2001 on the resale right for the benefit of the author of an original work of art.³⁹ France was the country that first introduced *Droit De Suite* and placed the right as part of moral rights to reward artists for their creative efforts in the form of legal protection.

The rules on *Droit De Suite* in Directive 2001/84 focus on the welfare of the creator by taking into account the historical and cultural aspects of society towards the awareness in appreciating an artist who not only focuses on his work but also on his creator as well as his social status life, then also

³⁶ Article L 111-1 Code de la propriété intellectuelle (The French Intellectual Property Code).

³⁷ O'Hare, *supra* note 12.

³⁸ J D Stanford, "Economic Analysis Of The Droit De Suite– The Artist's Resale Royalty" (2003) 42:4 Australian Economic Papers 386–398.

³⁹ Anthony O'Dwyer, *The Nature of the Artists' Resale Right (Droit de Suite): from Antiquity to Modernity* (Rochester, NY, 2017).

on the position of visual artists whose attention is not more dominant than song or music writers and composers.⁴⁰ The regulation on *Droit De Suite* was formed as an effort to raise the degree and social status of an artist who is sometimes neglected by the majesty of his own work, and tries to change the paradigm of the position of artists from manual laborers and slaves to noble workers because works of art are the result of the process of intellectual genius.⁴¹

The *Droit De Suite* is a principle born out of the Berne Convention, the condition to implement *Droit De Suite* is that the state must give permission or legally recognize that the state regulates *Droit De Suite* in legislation. France regulated this through several laws and regulations, namely: (1) The French Intellectual Property Code, and (2) Directive 2001/84/EC of the European Parliament and of the Council of 27 September 2001 on the resale right for the benefit of the creator of an original work of art. France and other EU member states are subject to these regulations and effectively enforce the *Droit De Suite*, which has the effect of contributing to the economy. The usefulness of the enforceability of *Droit De Suite* has given visibility to artists' moral rights and economic rights that not only affect the artist or creator directly but also their families and heirs.

Under the French Intellectual Property Code a creator can enjoy the exclusive right to exploit his work in any form and to obtain economic benefits, if the creator dies then the right will remain for his heirs for 70 years afterward⁴² which also applies to *Droit De Suite*.⁴³

As a result of the invisibility of the *Droit De Suite* arrangement, according to the report of the Council of Europe Social and Economic Committee on the Implementation and Effects of the Resale Rights Directive (2001/84/EC), global fine art auction sales of "Modern" artworks (artists born between 1875 and 1945) totalled approximately €3.5 billion in 2010.

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² Article L123-1 Code de la propriété intellectuelle (The French Intellectual Property Code).

⁴³ Article L123-7 Code de la propriété intellectuelle (The French Intellectual Property Code).

The EU "heirs" market (works by artists who died within 70 years of the date of sale) accounted for €1 billion, and the number of artists benefiting from such rights annually, between 2005 and 2010 was €14 million in royalties distributed in 2010, to 6,631 artists and their heirs.⁴⁴ This confirms that the legal component and protection of intellectual property in France and other EU countries has established an ecosystem of utilizing Intellectual Property Rights as a source of income (IP Commercialisation).

Moreover, the implementation of resale rights regulation in France had a positive impact on creators, as it provides protection for their original works and allows for commercialization. The French Intellectual Property Code emphasizes the recognition of the originality and quality of the work created, so through the codification of the law in France, artists feel fully protected and can also fully experience the economic value and benefits arising from their work. This is evidenced by the absence of implementing regulations for the Indonesian Copyright Act, leading to frequent violations and harm to artists. The Copyright Act also fails to address the growing issues of intellectual property rights in the digital sphere, as it is limited in its scope and lacks adequate enforcement instruments. Overall, the regulations in France are more comprehensive and aligned with international agreements, while the regulations in Indonesia are in need of improvement to better protect artists and their works.⁴⁵

More than that, it should be noted that in its implementation, it can be seen that the regulation of *Droit De Suite* as applicable in France, through the regulation of the French Intellectual Property Code can be seen in its implementation has had a positive impact on the owner of the work or the creator, this is because in the legal regulation of the French Intellectual Property Code, the work produced as long as it can be accounted for originality can and is not the result of duplication of works belonging to others also has a value of usefulness, of course, the artists of the work can

⁴⁴ *Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee: Report on the Implementation and Effect of the Resale Right Directive (2001/84/EC)*, 52011DC0878 (2011).

⁴⁵ World Intellectual Property Organization, "IP Asset Development and Management: A Key Strategy for Economic Growth", online: *WIPO Knowledge Repository* <<https://tind.wipo.int/record/24578>>.

feel the values of the benefits of the works that have been produced to then carry out commercialization activities of works of art. In comparison, as for things that distinguish the copyright arrangements in force in Indonesia from France is the regulation of copyright in France one step ahead of the regulations in force in Indonesia, this can be seen from the many international agreements that are applied in the codification of the French Intellectual Property Code in France which is a follow-up to the results of conventions and agreements between European Union countries related to copyright arrangements.

Meanwhile, the regulation in Indonesia has not fully taken specific action to reform the legal regulation, specifically copyright. This can be seen from the absence of implementing regulations of the Copyright Act, so that in the realm of practice in the field there are often violations committed by irresponsible people who then cause harm to the artists. In addition, it can also be assessed that the current Copyright Act has not been able to answer the problems of Intellectual Property Rights which are increasingly growing, especially in the digital sphere, because the current Copyright Act is limited to certain objects and the absence of implementing regulations, so that in practice it also creates restrictions on the space for artists and law enforcement when it will produce works of art or conduct law enforcement, because the instruments are not yet adequate.

VI. INDONESIAN COPYRIGHT LEGAL SYSTEM IN VIEW OF RESALE RIGHTS (*DROIT DE SUITE*)

The basic concept of moral rights recognizes that a work will exist or live beyond the economic marketplace. Every creation is attached to the personality rights of its creator and the creator's unique personal expression, which exists or lives together with the creator's economic interests. The element of personality attached to a work is eternal, meaning that it will last beyond the time a creator can sell his work to the public. Moral rights are seen as an extension of the creator's personality, meaning that a creator

has the right to control his/her creation in the future not for economic reasons, but for very personal reasons.⁴⁶

The moral rights granted to a creator in the view of "Creator's Rights" have two different views. Firstly, the work is an extension of the personality of the creator who created it. The work reflects the creator even after it has been sold and published. Due to the close bond between the creator and his/her work, a creator is not only entitled to financial remuneration but also has the right of continuous control over his/her work and the use of the work. The second view, "Copyright", states that there is no creation without an audience. A work reflects and drives a culture, and is deeply embedded in the society that raised and educated the creator. In this view, a creator is entitled to the rights of his/her work not only for his/her own sake, but because the creator develops the culture of which the creator is a part.⁴⁷

Commence from the history of the Indonesian Copyright Act which was issued by the government in 2002 and has been revised under the Copyright Act in 2014. This Copyright Law is a regulation formed based on Presidential Decree of the Republic of Indonesia Number 18 of 1997 on the Ratification of the Berne Convention for the Protection of Literacy and Artistic Works, Presidential Decree Number 19 of 1997, as well as the implementation of the World Intellectual Property Organization Performance and Phonograms Treaty, through Presidential Decree Number 74 of 2004 on the Ratification of the WIPO Performance and Phonograms Treaty 1996.⁴⁸ The concept of *Droit De Suite* as described above is the equivalent of the French word which means "the right to follow". *Droit De Suite* in relation to an artist's artwork according to Anthony Odwyer⁴⁹ was defined as follows.

⁴⁶ Jessica Watkins, "Garcia v. Google, Inc. and the Limited Rights of Motion Picture Actors Under American Copyright Law" (2016) JPTOS Published Article; Jacob M Victor, "Garcia v. Google and a 'Related Rights' Alternative to Copyright in Acting Performances", (2014), online: *Yale Law Journal* <<https://www.yalelawjournal.org/forum/garcia-v-google>>.

⁴⁷ M Hawin & Budi Agus Riswandi, *Isu-isu Penting Hak Kekayaan Intelektual di Indonesia* (Yogyakarta: Gadjah Mada University Press, 2020).

⁴⁸ Suparba, *supra* note 14.

⁴⁹ *Ibid.*

"In the context of the artist resale right, it allows artists to follow the success of their artistic works. This future involves an economic entitlement that the artist may participate in...in practical terms this means that, after the first sale of the artistic work, every subsequent public sale, for example through a dealer or a gallery is subject to a sort of royalty."

According to Renaud Donnedieu de Vabres,⁵⁰ *Droit De Suite* resale royalty was a concept that was first recognized in France following the sale of Millet's paintings in 1858. The concept of resale royalty/resale rights can also be defined as the right of visual artists to receive a percentage of the resale revenue of their works in the art market.⁵¹

Droit De Suite in Indonesian Civil Law is taken from the meaning in Black's Law Dictionary as "right to follow", or in other terms, it is also defined as *zaaksgesvolg*. This is one of the characteristics of property rights, namely a right that continues to follow the owner of the object or a right that follows the object in the hands of anyone (*het recht volgt de eigendom van de zaak*). The property right itself is an absolute right, which is a right attached to an object, a right that gives direct power over the object and can be defended against claims by any person.⁵²

Droit De Suite is a right granted to artists and their heirs to the resale of their copyrighted works. The creator of the artwork along with his/her heirs get a share of the resale of the artwork.⁵³ Conceptually, copyright can be transferred or transferred, either in whole or in part due to inheritance, grants, endowments, wills, written agreements or due to other reasons justified in accordance with the provisions of the legislation. The provision confirms that the economic rights to a work of creation will remain in the hands of the creator or copyright holder as long as the creator or holder of the right does not transfer all economic rights to the transferee of the rights to creation, as well as economic rights transferred by the creator or holder

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

⁵² *Ibid.*

⁵³ Catherine Jewell, "The artist's resale right: a fair deal for visual artists", (2017), online: *WIPO Mag* <https://www.wipo.int/wipo_magazine/en/2017/03/article_0001.html>.

of the right can not be transferred for the second time by the same creator or copyright holder.⁵⁴

In Indonesia, moral rights are inalienable, which means that they cannot be transferred to other parties. This is according to the explanation of Article 24 of the 2002 Copyright Act, integrity rights⁵⁵ cannot be transferred while the creator is still alive, except by the will of the creator based on statutory regulations. However, the extent of the inseparability of this right of attribution is not clear. Furthermore, Article 5 of the Copyright Act, stated that the creator has the right of attribution and the right of integrity. The article provides these rights actively, meaning that the creator has the exclusive right to include or not include his/her name, to use a pseudonym, or to change his/her creation, title, and subtitle. The provisions in the Copyright Act provide a clearer understanding than the previous law.

The development of the Copyright Act in Indonesia to date provides attribution rights and integrity rights to a creator. However, the Copyright Act did not provide adequate changes. Copyright Act is limited to providing moral rights protection passively to actively and recognize the moral rights of performers.

From the analysis described above, the concept of moral rights in the Indonesian Copyright Act system has not led to aspects of commercialization, which provides a model of management and financing specifically against the work of fine art or works of pure art. More specifically regarding the regulation of *Droit De Suite* there is no explicit arrangement that is regulated and included in the Copyright Act, this is very different from the French state that gives attention and focus to intellectual works in the form of fine art or works of art that not only focus on aspects of protection but also aspects of commercialization of Intellectual Property Rights.

⁵⁴ Suparba, *supra* note 14.

⁵⁵ Article 24 of Law Number 19 of 2002 on Copyright.

VII. LEGAL TRANSPLANTATION OF FRENCH DROIT DE SUITE ARRANGEMENT INTO THE INDONESIAN COPYRIGHT LAW SYSTEM

The law according to Koesnoe is not a dead sentence, but law is a crystallization of values that have lived in a particular society.⁵⁶ A law that does not have a strong basis in its making, then the law will only be empty and without direction in its implementation. Legal transplantation as a means of legal system development in Indonesia must be understood how the background of the transplanted law will be able to run and develop in carrying out development in Indonesia. According to Wiratman, Legal Transplantation can be useful to understand how the character of legal development from other countries in theoretical and practical levels for Indonesian law.⁵⁷

Legal transplantation has sociological and ideological consequences if the transplanted law does not have a strong foundation as well as values that are in line with the place or country that is the destination of the legal transplantation. Legal transplantation will also never be completed if the transplantation is not carried out by paying attention to the legal substance, legal structure and legal culture of a country where legal transplantation will be carried out. In addition, the legal substance that is brought should have the same values, ideology, and spirit in building legal substance against the values and ideology of the State of Indonesia. The legal substance should also include laws that have a responsive nature to the development of society and find out whether the substance of the law will cause problems.⁵⁸ The clearest parameter on how to measure the substance of the law that matches the values that exist in Indonesia is, its suitability with Article 2, namely,⁵⁹ "Pancasila is the source of all sources of state law." Furthermore, Article 3 paragraph (1) also explains that "The 1945 Constitution of the

⁵⁶ Syprianus Aristeus, "Transplantasi Hukum Bisnis di Era Globalisasi Tantangan Bagi Indonesia" (2018) 18:4 Jurnal Penelitian Hukum De Jure 513–524.

⁵⁷ Syahriza Alkohir Anggoro, "Transplantasi Hukum Di Negara-Negara Asia: Suatu Perbandingan" (2021) 1:1 Indonesia Law Reform Journal 19–31.

⁵⁸ Zainal Arifin Mochtar & Eddy O S Hiariej, *Dasar-Dasar Ilmu Hukum - Memahami Kaidah, Teori, Asas, dan Filsafat Hukum* (Jakarta: Red & White Publishing, 2021).

⁵⁹ Law Number 11 the year 2012 on the Formation of Laws and Regulations.

Republic of Indonesia is the basic law in the Legislation".⁶⁰ Hence, the legal structure, is the completeness of legal drivers to have an ecosystem in shaping, socialising and enforcing the transplanted law. Debriefing of law enforcers must be carefully prepared. In addition, the driving institution must also prepare a national-scale information portal to respond to the development of today's information system. It is the legal structure that can be a link between the substance of the law and the community or address contained in the regulation.

Legal culture, as the most concrete form of how the transplanted law can run effectively or not. Judging from the addressees who are in the law are able to understand, obey and carry out the law. then, the consistency of law enforcement also needs to be considered. How law enforcers can enforce the law, how law enforcers can process actions that violate the applicable rules indiscriminately. Autonomous understanding which means that there is legal awareness from conscience, is considered necessary so that the law is not obeyed on the basis of pressure or coercion outside oneself.

The legal transplantation method has four ways presented by Nandang Sutrisno.⁶¹ First, other countries' legal products are textually transplanted into Indonesian legal products. Second, other countries' legal products are transplanted into Indonesian legal products but by modifying the contents of the transplanted legal products. Third, participating in international conventions so that the legal transplantation carried out by participating countries is based on the results of international conventions. The country must also have a commitment and ratify the international agreement. Fourth, legal products of other countries are transplanted based on the values brought by the legal products, into Indonesian legal products.

In terms of legal transplantation of resale rights in the French setting to Indonesia. A suitable model of legal transplantation is to modify the existing arrangements in France to be applied in Indonesia. Moreover, the legal transplant model by taking the values of French legal arrangements to Indonesia can also be applied as long as the value is appropriate or

⁶⁰ *Ibid.*

⁶¹ Interview with Nandang Sutrisno, S.H., M.H., LL.M., Ph.D. on 15 December 2023 at 10.30 in Faculty of Law University Islam Indonesia.

modifications need to be made from the country of origin, namely France to Indonesian law. Regarding the explanation of the concept of legal transplantation method above, it can be explained that this does not only refer to one of the provisions of legal norms, but this method can be applied to a number of applicable laws. Since this study focuses on legal transplantation related to intellectual property, specifically on the principle of resale right, the law that can be transplanted is Copyright Act. So that the philosophical basis, sociological basis and juridical basis will be in harmony with the values that exist in Indonesia. This will also have implications for the legal culture that can run in accordance with the people in Indonesia.

NFT is something new in the world of technology and digital economy. The legal regulations regarding NFT in Indonesia are currently not comprehensively regulated. However, for digital works of art such as NFT through special platforms, based on the provisions of the Copyright Act, digital products such as NFT are categorized as intangible movable objects in the form of "rights" that are part of digital assets and are recognized as protected intangible works of art based on the provisions of Article 499 Indonesian Civil Code.

By regulating the *Droit De Suite*, the law acts as a social engineering tool by raising the degree and social status of an artist who is sometimes neglected by the majesty of his own work, and tries to change the paradigm of the position of the artist from manual laborer and slave to noble worker, because works of art are the result of the process of intellectual genius. As a pioneer country in providing protection and legal certainty to the rights arising from intellectual processes, both in the fine arts and in the visual arts, the legal component and protection of intellectual property in France and EU countries has created an ecosystem of exploitation of Intellectual Property Rights as a source of income (IP Commercialization).

The *Droit De Suite* has given visibility to the artist's moral and economic rights, which affect not only the artist or creator directly, but also their families and heirs. In contrast to Indonesia, the concept of moral rights in its copyright system has not yet led to the commercialization aspect, which can provide a special management and financing model for works of fine

art or works of art. More specifically, the regulation of the *Droit De Suite* is not explicitly regulated and included in the Copyright Act.

Therefore, Indonesia needs to learn from France regarding the provision of the legal protection of *Droit De Suite* in the copyright system by paying attention to the management and financing aspects, considering that *Droit De Suite* do not only talk about the aspect of moral rights but is closely related to the incentives for economic contributions that can benefit artists and their heirs. The method of legal transplanted will be much more appropriate if Indonesia modifies the law on matters related to the *Droit De Suite* both normatively and operationally practical level without the need to adopt the entire copyright arrangements in the country that will be used as a source of transplanted without ignoring the philosophical, sociological and juridical aspects that will also have an impact on the legal culture of Indonesian society.

Apart from the explanation of the theoretical approach and strategic steps that have been or will be taken by the government, in this case the Directorate General of Intellectual Property Law (DJKI) as the authorized and responsible state institution, it is also necessary to realize that the synergy between government agencies both at the central and regional levels and also artist activists must be able to work together with each other, because this is nothing but a chain of interests of each other that are interrelated. Both from the government side and artists must be able to provide constructive suggestions for the benefit of sustainable legal development. So that when these two legal subjects can work together with each other, of course, the intellectual property problems have been able to be answered and resolved, with legal products that can be produced in the form of reform of laws and technical regulations. As a result, when these two legal subjects can work together with each other, of course, the intellectual property issues have been able to be answered and resolved, with legal products that can be produced in the form of reform of laws and technical regulations which are the implementers of laws and regulations which are also accompanied by an increase in the quality of human resources that grow in a balanced manner in terms of quality and quantity

which continues to grow in the face of the reality of technological advances in this era of digitalization.

VIII. CONCLUSION

NFT represents a new frontier in the digital economy, lacking comprehensive regulation in Indonesia. However, the existing Copyright Act acknowledges them as protected intangible works, falling under the category of intangible movable objects. Meanwhile, France and EU countries lead in establishing legal frameworks, notably through the *Droit De Suite*, which elevate artists' status and protect their moral and economic rights. In contrast, Indonesia's copyright law lacks explicit provisions for moral rights commercialization, including resale rights. To bridge this gap, Indonesia can adopt lessons from France's legal system, employing legal transplantation to adapt and integrate resale rights, while considering the broader philosophical, sociological, and juridical implications on Indonesian legal culture.

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