



# Legal Protection and Implementation of Tax Laws for Non-Fungible Token (NFT) in Indonesia

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**Abstract.** This study examines the implementation of the NFT phenomenon and how legal protection and tax enforcement are for NFTs. Non-Fungible Tokens or NFTs are digital assets that can be traded with cryptocurrencies, NFT assets themselves consist of digital art, music, moving images (GIFs), videos and several other digital assets. This study uses a normative juridical research method with a statutory approach, which in this paper analyzes how legal protection is in laws and regulations for works of non-fungible tokens (NFT) and examines the taxation of NFTs. This study obtained the result that there is no legal regulations regarding the existence of NFTs in Indonesia, which aims to create guarantees of protection and legal certainty. In addition, NFT does not yet have tax law provisions, therefore it is necessary to formulate these NFT tax law provisions.

**Keywords:** NFT, Intellectual Property Rights, Tax Law, Legal, Regulations.

## 1 Introduction

Along with the development of the times, technology is also developing rapidly, especially in the field of digital commerce, this is because people are currently looking for ways to make life more efficient and easier, one of the phenomena of digital culture at this time is NFT. Where NFT is a digital asset that can be traded with crypto currency, NFT assets themselves consist of digital art, music, moving images (GIF), videos and several other digital assets.

This NFT is contained in a Blockchain which is a form of ledger that is distributed and used as a transaction tool in virtual worlds such as bitcoin, ethereum, and solana, where NFT or non-fungible token is a method of financial security consisting of digital data and stored on the blockchain.

One uniqueness of this NFT is that it can be used to create unique digital assets because every NFT token is different. Another uniqueness of NFT is that it can be recorded in the blockchain network, then the ownership, source, and movement of NFT can also be tracked in real-time as NFTs are transparent so they can be seen on the blockchain network. NFTs cannot be counterfeited or replicated, as each token resides

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in an immutable digital ledger and a decentralized network that allows tokens to be authenticated.

Due to the absence of legal regulation of NFT works, can lead to crimes against NFTs, especially those that violate intellectual property rights. NFT does not have a system to validate whether the work is original or not. The Copyright Law also does not have rules that require transparency in NFT works so that anyone can easily run them anonymously in the blockchain system. Anyone can claim work and modify that work through the tokenization mechanism even though the work in question is not their own creation. This condition, makes it easier for someone to plagiarize either half or all of the other people's work without permission and reap benefits for themselves. What's more, if the work has been entered into the NFT, the blockchain system will automatically record the ownership and the records cannot be changed, deleted, or stolen. So that anyone who first registers the work in the NFT can be said to be the rightful owner. In accordance with Opensea's statement, that at least 80% of the NFTs made with this tool are works of plagiarism, fake collections, and spam.

Even so, OpenSea has now overcome this problem, namely by implementing a two-level duplicate detection system. At the first level, Opensea will implement digital image recognition technology with the aim of scanning all NFTs on offer and comparing them to the original NFT collection. Technology will look for potential content that is rotated, modified, and more. Then, humans will also be involved to decide on deletion. Second, OpenSea also implements account verification. They will start providing verification forms for accounts whose collection volume exceeds 100 eths . Collections owned by verified accounts will be accompanied by a verified badge.

However, this NFT, especially in Indonesia, does not yet have a legal basis that regulates NFT. Technological developments demand a proactive legal response, especially in providing regulatory guarantees and legal protection. Technological developments require a legal role, one of which is the Non-Fungible Token (NFT), which this NFT is increasingly developing into a means of producing works of economic value. Therefore, is there a need for certain regulations regarding NFT?

In addition, NFTs can be categorized as valuable or high-value assets like cryptocurrencies or other blockchain-based digital assets. Even though the legalizations of NFTs and cryptocurrencies have not been recognized by the Government of Indonesia, the Income Tax Law (PPh) confirms that any additional economic capabilities received by taxpayers, both from Indonesia and from outside Indonesia, are a tax object. but there are no provisions governing the imposition of taxes on NFTs. Seeing this situation, how then is the tax law applied to NFT transactions in Indonesia?

## **2 Research Methods**

The normative juridical research method used in this paper analyzes how legal protection is in laws and regulations for non-fungible token works (NFT) and examines the taxation of NFTs. The research uses primary data sources, namely, invitational regulations and uses secondary materials such as books, literature, and journals.

### 3 Results and Discussion

In Indonesia, NFT does not yet have a legal basis. According to the legal dictionary, the meaning of legal basis is a legal instrument that protects or becomes the basis. Another meaning of legal basis is the Law. Law is a set of rules made with the aim of regulating and is a form of social control tool in society. According to E. Utrecht, the law is a set of life instructions, both orders, and prohibitions, which regulate order in a society that should be governed by members of the community

As we all know, NFT is a unique digital asset and can only be owned by one person. Through this NFT, digital work can have a token that can later be used as proof of legal ownership. NFT can also be optimized as a means and space to hone people's creativity, especially the millennial generation, to work through digital content in NFT. As a market, of course, the best and most creative works can be used as a means to make a profit.

However, NFTs can actually be misunderstood as a "black market" or even used as a place to leak personal data which should be a violation of the law when there is a lack of public awareness and outreach from the government. In Indonesia, the absence of legal regulations regarding NFTs is enough to cause anxiety in itself, especially for people or especially artists who want to take advantage of their existence in order to obtain large profitability.

With the presence of this NFT, of course, it can provide challenges and influence for law enforcement and development, as assets that are part of the property rights to the object itself are regulated in various regulations that supervise them, such as copyrights and ownership rights. And as a transaction that provides profit, the seller is subject to income tax. Besides this, NFT also has some potential in criminal acts, as previously happened in the OpenSea marketplace (one of the NFT sales platforms) where there are several uploads selling ID card photos, then as a digital asset that has exclusive NFT value it has the potential to be misused by perpetrators of crimes such as money laundering crime. If the purpose of the NFT is to trade works, then in fact KTP (Indonesian Citizen Identity Card) cannot be traded because an ID Card is not a work and does not qualify as a copyright. This is exacerbated by the existence of legal problems regarding NFTs, which are divided into two aspects: first, there is an absence of specific regulations regarding NFTs. This makes NFTs, which are digital markets, actually used by a handful of "unscrupulous persons" to carry out illegal transactions, including violations of the law, through buying and selling ID Card photos, which are actually personal data. Second, the lack of public awareness about the digital market and its various consequences. This is actually a common problem for Indonesian people who have not adapted well to various things related to digitalization.

Seeing the phenomena that occur, in simple terms, it can be seen that the presence of NFT has had a big impact on society. Law as an orderly rule in society aims to regulate not only human behavior but regulate social structures and systems. From the many phenomena, it can be generally described as technological developments that have started since the 1980s, which are then often referred to as the digital revolution. The digital revolution itself participated in the development of the Industrial Revolution.

NFTs deal with legal and policy issues in a variety of areas. Matters that have the potential to become a concern include commodities, cross-border transactions, KYC (Know Your Customer) data, etc. In some countries, such as India and China, the legal situation is very strict for cryptocurrencies, and also for the sale of NFTs. Exchange, trade, sell or buy NFTs. By law, users can only trade derivatives on authorized exchanges such as stocks and commodities or exchange tokens with someone from person to person. Some countries, such as Malta and France, are trying to implement purpose-appropriate laws to regulate digital asset services. Elsewhere, problems were resolved using existing legislation.

Dedy Permadi as a spokesperson for Kominfo explained that all electronic system operators (PSE) must ensure that the platform is not used for actions that violate the rules. This is stated in the act No. 11 of 2008 concerning of information and Electronic Transaction (ITE), as well as its amendments and implementing regulations.

NFTs can be implemented in the Indonesian legal system through recognition from the government, as was the case with peer-to-peer lending companies in their early days. Because blockchain technology is relatively new and currently unregulated, governments may enforce regulatory protection environments to assess the reliability of block-chains in relation to NFT transactions.

Reporting from Kompas, Indonesia does not yet have specific regulations for NFTs. However, until now, all NFT transactions in Indonesia are still being monitored by the Commodity Futures Trading Regulatory Agency (Badan Pengawas Perdagangan Berjangka Komoditi (Bappebti)), because NFT is included in the crypto asset category.

Quoted from Kata Data, in March 2022, Bappebti said that it still needed time to make specific NFT regulations in Indonesia. The Head of the Bappebti Bureau also said that NFT is not only related to commodities but also related to IT, therefore a coordination meeting is needed with ministries or agencies related to the preparation of the framework.

NFT has links with various aspects of Indonesian law, such as property law. According to the Civil Code, objects are every item and every right that can become an object of property rights (Article 499 of the Civil Code). As a relic of the colonial era, property law is not intended to cover digital objects. However, the legal conception of these objects has recognized the existence of intangible movable objects such as receivables, other billing rights and copyrights as stipulated in Article 16 paragraph (1) of Law Number 28 of 2014 concerning Copyright.

In its development, Indonesia also recognizes the existence of digital goods which are intangible goods in the form of electronic information, as regulated by Government Regulation No. 80 of 2019 concerning Trade Through Electronic Systems. Reflecting on this, NFT as a string of code that functions as a token can be classified as digital goods in Indonesian law. In addition to property law, the existence of NFTs is also related to intellectual property law. Based on article 25 of Law Number 11 of 2008 concerning Information and Electronic Transactions, states that electronic information and/or electronic documents compiled into intellectual works, internet sites, and the intellectual works contained therein are protected as intellectual property rights actually based on statutory provisions so that this NFT can be protected as intellectual property

rights because NFT is actually a work of art that is encrypted into the blockchain network. Because NFTs are works of art, works of music, videos, game items, etc. that are encrypted into the blockchain network, NFTs are often associated with copyrights. The copyright is attached to the creator of the copyrighted work.

Regarding this NFT, problems related to copyright can arise if the person who encrypts the work into the blockchain network is not the creator of the work and without the permission of the creator or copyright holder. If this does happen, the creator of the copyrighted work or the copyright holder can sue the perpetrator who encrypted the copyrighted work for copyright infringement. In addition, perpetrators of copyright infringement can also be subject to imprisonment for up to 2 years and/or a fine of up to IDR 300 million. Ownership of an NFT does not mean that it will copyright the digital asset, creators can sell NFTs that represent their work and are not prohibited from making more NFTs from the same work. That way, the NFT is only proof of ownership that is separate from the copyright, unless another agreement has been made between the creator and the NFT buyer, the copyright can be transferred to the buyer and the copyright remains in the hands of the creator and the buyer only has ownership of the NFT.

The existence of NFTs can also be linked to Indonesian trade law because of the nature of NFTs, that is, they can be traded. In general, the buying and selling of crypto assets is regulated by the Ministry of Trade and the Commodity Futures Trading Supervisory Agency (Bappebti). Even though Indonesia currently has regulations regarding crypto assets as stipulated in the Minister of Trade Regulation Number 99 of 2018 concerning the General Policy for Organizing Crypto Asset Futures Trading (crypto assets), NFTs are still not regulated in Indonesian law.

Even though this NFT has been regulated by existing legislation, in fact, there are no regulations that specifically regulate this matter. The absence of the legal basis that exists at this time can be filled with the creation of a regulation or law that specifically regulates NFTs. Therefore, it is necessary to have legal regulations to ensure certainty of legal protection.

IP-related products (including art, books, domain names, etc.) are treated as taxable property under the current legal framework. However, NFT-based sales remain outside this scope. Although some countries, such as the U.S. (internal revenue service, IRS), tax crypto-currencies as property, most areas of the world have not considered it. This can increase financial crimes under the guise of NFT trading. The government should make the sale of NFTs reliable with tax consequences. In particular, individual participants must have a tax liability on any capital gains related to the NFT property. In addition, NFT-for-NFT, NFT-for-IP, and Eth-for-NFT (or vice versa) exchanges are taxable. In addition, for high-profit properties, or collectibles, a higher tax bracket must be applied.

According to Rochmat Soemitro, taxes are people's contributions to the state treasury based on laws that can be imposed without receiving reciprocal services. Taxes are used to pay for general expenses. Tax is the transfer of wealth from the people to the state treasury to finance routine expenses. Excess taxes are used for public savings which are the main source of public investment financing.

NFT taxation in Indonesia currently only applies to Income Tax as stated by the Directorate General of Taxes and the Minister of Finance. Director of Counseling, Service and Public Relations of the Directorate General of Taxes Ministry of Finance Neilmaldrin Noor said the tax imposition of the NFT transaction was based on Law no. 36/2008. Noor said that NFT transactions that increase economic capacity, they are subject to income tax.

But there is a possibility for NFT to be subject to Value Added Tax (VAT). If the NFT is categorized as intangible Taxable Goods (BKP). If the turnover generated by the NFT seller meets the specified limit, then the seller is classified as a taxable entrepreneur (PKP) and is required to collect 10% VAT.

Taxpayers are tax subjects who have an obligation to fulfill their obligations in paying Income Tax on cryptocurrency transactions including NFTs in the individual category. Then of course it is obligatory to report it in the Annual Tax Return. However, the core of the problem is that awareness of tax literacy is still an obstacle so the public and users of digital currencies and assets or crypto-currency and NFTs have not reported their obligatory. This certainly can reduce Indonesia's state tax revenue from investments using cryptocurrencies.

Due to the absence of tax regulations for cryptocurrencies and digital assets or NFTs in Indonesia, there is a potential for tax avoidance to occur. It can be said that there is no tax regulations in Indonesia, specifically for cryptocurrency investors, so state revenue from taxes on cryptocurrency investment transactions and NFT digital assets is still not optimal while the potential is enormous it is still lacking and not optimal.

Therefore, legal regulations are needed regarding the existence of digital assets and digital currency. From these rules, tax law provisions are formulated so that the income tax legal provisions for transactions of one of the crypto assets, namely cryptocurrency in Indonesia, can be obtained. It is also necessary to enforce strict supervision regarding the collection of taxes on digital assets or NFTs.

## 4 Authors' Contributions

GRP, MTH and IA collect the material and analyze the data provided by GRP, MTH and IA collect data from various literature and data.

**Acknowledgments.** NFT is a digital asset that can be traded with cryptocurrencies, NFT assets themselves include digital art, music, moving images (GIF), videos, and several other digital assets.

From the results of the discussion above, we can see that digital asset transactions or NFTs do not yet have a regulatory legal basis. Then it can be concluded as follows. First, namely the need for a legal basis regarding the existence of NFTs in Indonesia, in order to create guarantees of protection and legal certainty. Second, it is necessary to formulate tax law provisions so that the income tax law provisions for transactions of one of the crypto assets, namely cryptocurrencies in Indonesia, can be obtained. It is also necessary to enforce strict supervision regarding the tax collection of digital assets or NFTs.

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