

## **Business Analysis of Selling and Buying Non-Fungible Tokens (NFT) at MarketPlace OpenSea according to The Perspective of Islamic Law**

### **(Analisis Bisnis Jual Beli *Non Fungible Token* (NFT) Pada MarketPlace OpenSea Menurut Perspektif Hukum Islam)**

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**Abstract:** Non-Fungible Token is a digital asset in the form of a certificate of ownership of an artwork, such as photos, videos, songs, or games in virtual form. These digital assets are stored in the Blockchain. NFT is a derivative of cryptocurrency, and the difference is that crypto-assets such as Bitcoin are the same as physical money because they have an exchange rate and can be traded. Meanwhile, NFT does not have the exact exchange rate because of its unique nature. NFT opens new investment opportunities for investors in the country to market their work in the global market. Since the Ghazali everyday phenomenon, many people have started following Ghazali's steps by selling various kinds of NFTs in the form of selfie ID cards, pornographic content, and self-identity that contain elements of *ḍarar*. The study method in this research is case study qualitative phenomenology. This study aims to identify and analyze the business of buying and selling NFT on the opensea.io marketplace from an Islamic perspective. This study shows that the more people who can see the opportunities and gaps in the NFT business, the more people will be engaged in the NFT buying and selling business. Buy and sell NFT using cryptocurrency as an illegal commodity to trade because crypto-assets contain elements of *gharar*, *ḍarar*, and *qimar*. Even though the form of this NFT exists, when this NFT is transacted using Cryptocurrencies whose form does not exist, it can be said that this buying and selling transaction is invalid.

**Keywords:** Buy and Sell; NFT; Opensea.io; Artwork.

**Abstrak:** NFT atau Non Fungible Token merupakan aset digital berupa sertifikat kepemilikan sebuah karya seni, seperti foto, video, lagu, atau game dalam bentuk virtual. Aset digital ini disimpan dalam blockchain. NFT merupakan turunan dari cryptocurrency, bedanya aset kripto seperti bitcoin sama halnya dengan uang fisik karena memiliki nilai tukar dan dapat diperdagangkan. Sedangkan, NFT tidak memiliki kesamaan nilai tukar karena sifatnya yang unik. NFT membuka peluang investasi baru bagi para investor di tanah air untuk memasarkan karyanya di pasar global. Semenjak fenomena Ghazali Everyday yang menjadikan foto selfinya

<http://jurnalfebi.uinsby.ac.id/index.php/elqist>

sebagai NFT ramai diperbincangkan dimedia sosial banyak sekali yang mulai mengikuti jejak Ghozali menjual berbagai macam NFT dalam bentuk selfi KTP, konten pornografi, dan identitas diri yang mengandung unsur *ḍarar* (bahaya). Metode penelitian dalam penelitian ini ialah kualitatif studi kasus fenomenologi. Tujuan penelitian ini untuk mengetahui dan menganalisa bisnis jual beli NFT pada market place opensea.io dalam perspektif Islam. Hasil penelitian ini menunjukkan Semakin banyak masyarakat yang bisa melihat kesempatan dan celah dari bisnis NFT maka akan semakin banyak masyarakat yang bergerak dalam bisnis jual beli NFT Namun sangat disayangkan untuk saat ini NFT ditransaksikan menggunakan mata uang *Cryptocurrency*. Jual beli NFT menggunakan mata uang crypto sebagai komoditi haram untuk diperdagangkan. Sebab aset crypto mengandung unsur *gharar*, *ḍarar*, dan *qimār*. Sekalipun wujud dari NFT ini ada namun ketika NFT ini ditransaksikan menggunakan *Cryptocurrency* yang wujudnya tidak ada maka bisa dikatakan transaksi jual beli ini tidak sah.

**Kata Kunci:** Jual Beli; NFT; Opensea.io; Karya Seni.

## INTRODUCTION

Every human being needs property (material) to fulfil his life needs.<sup>1</sup> Therefore people will try to acquire wealth.<sup>2</sup> Islam obliges every Muslim, especially those who have amenability, to work. Work is one of the efforts that allow humans to have wealth. To enable humans to try (search for treasure), Allah almighty expands the earth and provides various facilities that humans can utilize. One form of work is business.<sup>3</sup>

The word business is defined as a trading or commercial business in trade. Business is an interaction between two parties in a specific form to obtain benefits. Because these interactions have risks, good management is needed to minimize them. In Islam, the interaction between two or more parties is called *mu'āmalah*. *Fiqh al-Mu'āmalah* is an aspect of Islamic law that excluded *Fiqh al-'Ibādah*. In subsequent developments, *Fiqh al-Mu'āmalah* was narrowed down to include only business-related matters, such as buying and selling, leasing, accounts payable, and pawning.

In addition to seeking sustenance, Islam also emphasizes and even requires the halal aspect, both in terms of the acquisition, management, and utilization. There is no reproach against wealth and efforts to possess it in Islam. Except when we get it illegally, neglect the owner, or use it in vain (not justified according to Sharia).

Not all economic and business activities are mentioned in detail by the Quran. It is because economic and business activities are extensive and develop from time to time. On that basis, the Quran only provides general guidance in the

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<sup>1</sup> Maisarah leli, “ *Konsep Harta Dan kepemilikan Dalam Perspektif Islam*”, Jurnal AT-Tasyri'iy, Vol. 2, No. 2 (2019), p. 1-16.

<sup>2</sup> Muhammad Nizar, “*Sumberdana Dalam pendidikan Islam (kepemilikan Harta Dalam Perspektif Islam)*”, Jurnal Al-Murabbi, Vol. 1, No. 2 (2016), P. 379-398.

<sup>3</sup> Irwansyah, “*Konsep Harta Dan Kepemilikannya Menurut Hukum Islam*”, Jurnal Dusturiah, Vol. 8, No. 2 (2018), p. 129-147.

form of fundamental principles that Muslims can describe throughout the ages, according to their needs, social conditions, and the development of the times.<sup>4</sup>

The development of today's buying and selling can be done with online media. The object of buying and selling is also very diverse, not only primary needs but also far more reached by online media. Recently, the virtual world has been stirred up by the viral news of Ghozali, who managed to sell his selfies on Non Fungible token (NFT) for billions. NFT has become popular because it is considered very flexible in determining and proving ownership of an asset. NFTs are digital assets that represent real-world objects such as art, music, in-game items, and videos.

The first known quantum NFT was created by Kevin McCoy and Anil Dash in May 2014,<sup>5</sup> It consists of a video clip made by McCoy's wife, Jennifer. McCoy registered the video on the Namecoin blockchain and sold it dash for \$4 during a live presentation for the Seven on Seven Conference at the new Museum in New York City. However, NFT is now becoming famous for selling and buying digital art.<sup>6</sup> NFT will create digital scarcity. Digital art is only sold on a limited basis, with many fans. The fewer items available and the more buyers, the higher the price.

In cryptocurrencies such as Bitcoin and Ethereum, when buying and selling NFT transactions, the money used uses Ethereum. As we know, Bitcoin is one of the currencies that is not recognized for its existence because it is contrary to Law Number 7 of 2011 and Bank Indonesia Regulation number 17 of 2015. The National Sharia Council of the Indonesian Ulema Council (MUI) has issued a fatwa regarding the use of Cryptocurrencies such as Bitcoin and Ethereum is haram. MUI not only forbids cryptocurrencies as currency but also as digital assets and commodities. The underlying reason is that cryptocurrencies do not have a form that can be handed over to buyers and will eventually cause uncertainty when transacting.

With the phenomenon of Ghozali's selfie photos, many people want to follow Ghozali's steps by selling various kinds of goods, such as selfies with ID cards, photos of food, photos of drinks, some even selling sexy photos.

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<sup>4</sup> Eka Murlan, "*Konsep Kepemilikan Harta Dalam Ekonomi Islam Menurut Afzalur Rahman Di Buku Economic Doctrines Of Islam*", (Skripsi—UIN Sultan Syarif Kasim Riau, Pekanbaru, 2011), p. 25.

<sup>5</sup> Wikipedia: "Token Yang Tidak Dapat Dipertukarkan", wikipedia.org, 24 March 2022, accessed 28 March 2022 at 8:48 am.

[https://id.m.wikipedia.org/wiki/Token\\_yang\\_tidak\\_dapat\\_dipertukarkan](https://id.m.wikipedia.org/wiki/Token_yang_tidak_dapat_dipertukarkan).

<sup>6</sup> Digital art is a work created using digital technology or presented in digital technology. Digital artwork includes images created using computer editing or using software such as Corel Draw, Adobe Photoshop, etc. Digital artwork also includes animation, image and video manipulation that incorporates multiple technologies, and 3D renderings. Although there are still many artists who use paints and brushes to create their art, there are also those who use the digital world to sell their work using cameras and computer technology. For example, the Governor of West Java, Mr Ridwan Kamil, sold his paintings to the NFT. The paintings were marketed using the opensea marketplace and sold for 0.09 ETH or equivalent to 4.2 million.

Cryptocurrency as a means of buying and selling transactions also raises various questions regarding the status of the NFT itself. Based on the above phenomenon, the researcher wants to examine how the public is currently discussing the NFT buying and selling business on the market place opensea.io.

## RESEARCH METHOD

This research method uses case study qualitative research on phenomenology.<sup>7</sup> Qualitative research is case study research whose research is more interested in the process, meaning, and understanding of participants' experience and subjective appreciation. In this study, what was studied was human experience through the case study of people who were research participants so that researchers could understand the lives of participants. In Islamic economics, phenomenology can be applied as a research method. In this study, the phenomenon of buying and selling selfie photos belonging to Ghazali at NFT will focus on this study. The phenomenon of buying and selling NFT encourages the public to want to follow in the footsteps of Ghazali, who wants to do business with online media.

The focus of this research is the phenomenon of buying and selling NFT in market place Opensea. Some people do not understand the risks that will be accepted if selling personal data such as photo ID cards and photos that lead to pornography. In Opensea, photos that have been uploaded cannot be deleted anymore. The data of this study were taken from internet media, journals, and news related to NFT and related books. Data analysis in qualitative research is inductive and continuous with the ultimate goal of producing understanding, concepts, and the development of a new theory.

## RESULTS AND DISCUSSION

### Business in Islam

The form of business transactions is not regulated in detail in Islam. Islam only regulates existing values and principles as guidelines for doing business. It shows that Islam shows flexibility and flexibility in its law. Because of this, the forms of business transactions can develop according to the times.<sup>8</sup> However, it must be guided by the basic rules that have been established in Islam. There are several principles related to business, namely:

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<sup>7</sup> Boedi Abdullah, *Metode Penelitian Ekonomi Islam Muamalah* (Bandung: CV Pustaka Setia, 2014), p. 75.

<sup>8</sup> Rosinta Romauli Situmaeng, "Dampak Bisnis Online Dan Lapangan Pekerjaan Terhadap Peningkatan Pendapatan Masyarakat (Studi Kasus Jasa Bisnis Online Transportasi Grab Di Kota Medan)", *Jurnal AJIE – Asian Journal Of Innovation And Entrepreneurship*, Vol. 03, No. 03 (2018), p. 2477-3824.

- a. The principle of all business transactions is permissible as long as the Qur'an and Sunnah do not prohibit or forbid it. If there is a new form of business, what needs to be analyzed is whether there is evidence from the Quran and Sunnah that forbids the new form and practice of business transactions or not.
- b. The principle is not allowed to eat other people's property (*bā'il*)
- c. The principle of mutual willingness, namely avoiding coercion, eliminates one's right to vote in business activities.
- d. The principle does not contain the practice of exploitation and mutual harm that will cause one party to feel mistreated.
- e. The principle does not contain elements of *ḍarar* (danger), *gharar* (deception, obscurity), usury, *maysir* (gambling), *rishwah* (bribery), immorality (sin), and injustice.

In addition to adhering to buying and selling principles, someone who does business must also pay attention to business ethics. In this case, ethics can be grouped into three:

- a. Ethics that speaks with the heart and trust of a businessman
  - 1) A businessman needs to have the right motivation and intentions in running his business. Wealth is a mandate from God and handed over to us so that we can manage it as well as possible. Wealth can be a test if we do not use it in terms of disobedience, but it can also be a blessing in abundance if we use it to give charity in the way of Allah.
  - 2) Allah guarantees the sustenance of every creature, but that makes a person have to be silent without doing anything. In doing business, we must realize that human effort is only part of the causes of obtaining something that is coveted.
  - 3) The sustenance given by Allah almighty is not only material but can be non-material (spiritual). Sustenance in the form of material can encourage human life physically, but sustenance obtained spiritually can encourage the spiritual life of every creature.

- b. Ethics related to business morals

Business people are the key to morale in the business itself. Therefore the Messenger of Allah was sent to the world to perfect human character.<sup>9</sup> An entrepreneur must hold good business ethics and Islamic business morals, including *ḥusn al-khuluq* (good manners and right conduct). God will open his heart and launch his sustenance if all business ethics have

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<sup>9</sup> Hendi Suhendi, *Fiqh Muamalah* (Jakarta:PT Rajagrafindo Persada, 2016), p. 71

gone well. Good morals are the first capital to give birth to ethical business practices.<sup>10</sup>

1) Honesty

Honesty is the essential point when running a business because success in terms of promotion and advertising will be realized with honesty. With us doing dishonesty, it will have a huge impact on the business that we will run.<sup>11</sup>

2) Fulfilment of promises

Fulfilment of promises is one of the consequences of honesty. People who make buying and selling contracts trust each other with their partners. If the promise is ignored, trust will be difficult to earn a second time. It will create a bad image for a person in business.<sup>12</sup>

3) Tolerance, flexibility, and hospitality

In Islam, business is used not only for material gain but for a much bigger purpose, namely to connect relationships that will benefit both parties. So for that, we need an attitude of tolerance, flexibility, and hospitality in doing business.<sup>13</sup>

c. Ethics related to property development

1) Halal aspects are not allowed to do business related to forbidden things.

2) Accepting each other well between the two parties is not justified when doing business. There is an element of coercion from one of the parties.

3) Doing business must have valuable benefits and can be felt by all people.

### Online Business Under Sharia Principles

An online business is a business that is run online using internet media, while the information to be conveyed or sold uses a website or application media. In the future, online businesses will have excellent opportunity prospects because everyone wants practicality and convenience in meeting their daily needs. A transaction or contract will be valid if the conditions and pillars have been fulfilled. In Islamic law, there are several pillars and conditions related to a contract, namely:<sup>14</sup>

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<sup>10</sup> Biki Zulfikri Rahmat, "Corporate Social Responsibility Dalam Perspektif Etika Bisnis Islam", *Jurnal Amwaluna*, Vol. 1, No. 1 (2017), p. 98-115

<sup>11</sup> *ibid*

<sup>12</sup> *ibid*

<sup>13</sup> *ibid*

<sup>14</sup> Arip Purkon, *Bisnis Online syariah*, (Jakarta: PT Gramedia Pustaka Utama, 2014), p. 26.

- a. The existence of two or more parties which carry out the contract (transaction)

The parties involved in the transaction contract must meet the conditions for the transaction's validity. Both parties must meet the requirements of having legal skills and have the authority to carry out transactions.

- b. There is a *Ṣighat* Contract

*Ṣighat* contract is something that shows what is in the heart of the party making the contract the occurrence of a contract. *Sighat* is usually called *ijāb* and *qabūl*. *Ijāb* is the determination of specific actions that show the satisfaction of what is said by the first party, both those who submit and those who receive. At the same time, *qabūl* is the person who says after the person who pronounces the consent. These words show satisfaction with the words of the first person.

The words of consent and *qabūl* can be done orally, in writing, in correspondence, signs, or other forms that clearly show that consent and *qabūl* have occurred. The objectives contained in the *ijāb* and *qabūl* must be clear and present, and appropriate so that they can be understood by each party entering into the contract. *Ijāb* and *qabūl* must also be in direct contact somewhere (contract assembly). It can also be done in different places, but it is understood by both parties so that, both of them understand each other.

Consent and *qabūl* in online buying and selling transactions are the same as transactions in the real world. *Ijāb* and *qabūl* transactions can be carried out with various media. However, the essential thing about *ijāb* and *qabūl* is the substance so that it is easy and understandable for both parties who are making the contract. So, it can be accepted willingly by both parties in conducting online transactions. The two sides did not meet physically, but they met in a virtual world assembly.

- c. There is a contract object.

Goods or services that are the object of the contract transaction must comply with the provisions of *Shara'*, namely, the object must be lawful, holy (not unclean), can be handed over, and be known by both parties. Objects in online business are generally services, digital or non-digital commodities. It is not much different from real-world business. Therefore, online businesses must meet the required criteria, namely in legal services or commodities, have value and benefits, have clarity in form, function, and condition, and be handed over to an agreed place

(media).<sup>15</sup> Several things can cause an online business to be illegal, including:

- 1) The system is haram. For example, there is an element of gambling in it.
- 2) Goods or services that are used as objects of the transaction are goods that are prohibited
- 3) because they violate the agreement
- 4) There are elements of usury, fraud, fraud, and injustice.

### **Business Analysis of Buying and Selling NFT at the Opensea Market Place According to the Islamic Law Perspective**

NFT, or the abbreviation of Non-Fungible Tokens, are assets that cannot be exchanged with others. NFT is the only asset in the digital world that can be traded just like goods in the real world, but the difference is that in NFT, it is not in a tangible form. This certificate of ownership from NFT is in the form of a digital token. NFTs are used in the same programming as cryptocurrencies, such as Bitcoin or Ethereum.<sup>16</sup> NFTs have only one digital signature, which does not allow NFTs to be exchanged or equivalent to each other. For example, one NFT clip will not be the same as another NFT because they are both NFT.

In Raden Muhammad's research, cryptocurrency on a global scale has experienced a significant increase as a means of payment and investment medium. Even though cryptocurrencies have not received official recognition from the government, there are no laws governing Bitcoin transactions.<sup>17</sup> Then, according to Azizah, there are pros and cons regarding cryptocurrencies that have not yet reached a bright spot. Bank Indonesia remains in its opinion that the legal currency in Indonesia is Rupiah. In the perspective of Islamic law, cryptocurrencies may have elements of *gharar* and may because their use cannot be seen in their physical form.<sup>18</sup>

Indrayani and Hamin added that many countries still do not recognize the legality of cryptocurrencies. It is because there are elements of gambling, unstable, and violence in bitcoin cryptocurrency transactions. The existence of Bitcoin Cryptocurrency can be considered legal if it meets business security requirements

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<sup>15</sup> Nanda Ameliany, "Analisis pemasaran Terhadap Bisnis Online (E-Commerce) Dalam Jaringan Sosial Internet", Jurnal Negotium, Vol. 2, No. 1 (2019), p. 12-20.

<sup>16</sup> Bitcoin is peer-to-peer electronic money used for payments or transfers of bitcoins. Meanwhile, Ethereum focuses its Blockchain on running decentralized programs. Bitcoin is primarily used to transfer electronic money peer to peer. At the same time, Ethereum is widely used to run any application, including to transfer electronic money in the form of either or other Ethereum tokens.

<sup>17</sup> Raden Muhammad Arvy Ilyasa, "Legalitas Bitcoin Dalam transaksi Bisnis Di Indonesia", Journal Lex Scientia Law Review, Vol. 3, No. 2 (2019), p. 115-128.

<sup>18</sup> Andi Siti Nur Azizah, "Fenomena Cryptocurrency Dalam Perspektif Hukum Islam", Shautuna: Jurnal Ilmiah Mahasiswa Perbandingan Mazhab, Vol. 1, No. 1 (2020), p. 62-80.



and is guaranteed by the laws and regulations.<sup>19</sup> Also, Fageh and Nur Iman revealed in their research that the spoiler of crypto commodities, if traded and used as currency assets are, more than their benefits.<sup>20</sup>

How NFT work is to provide tokens to create digital ownership certificates that can be traded.<sup>21</sup> NFT is like traditional works of art. For example, in Leonardo Davinci's Monalisa painting, Monalisa's painting is precious because there is only one original as well as NFT. Even though many people can see it for free on the Internet, but they cannot sell it because there are goods on the Internet, not the real thing. In NFT, the original owner of this digital asset will be recorded about whom the original owner is in a ledger called Blockchain. People cannot falsify the records in this ledger because they will be maintained by thousands of computers around the world.

In the everyday Ghozali phenomenon, 933 photos have been collected. One photo is valued at 3 USD. The great thing is that the photo was sold out within three days. The total of all assets owned by Ghozali is 1.7 billion. Thirty-nine million have been disbursed, or the equivalent of 0.8 Ethereum. With this Ghozali phenomenon, many people are willing to post their data on Opensea. Opensea often has data theft because we post photos that cannot be deleted anymore. If we post without the person's permission, it will be subject to IT Law no. 11 of 2008 Article 27 paragraph 1 concerning information and electronic transactions.

The site for shopping for NFT is currently the largest. Opensea.io is a *peer-to-peer* that claims to be a supplier for collections of rare items. Many artists have fallen victim to thieves who have registered and sold their work without permission. In Opensea.io, you do not have to require owner verification to have an NFT listing. Things like this are very detrimental to the artist or the original owner of the item. Buyer protection is also not optimal. It is due to the absence of verification for NFT creators and inconsistent listings across platforms.

The presence of the government is very much needed in terms of NFT supervision. Currently, NFT is starting to bloom after the Ghozali everyday phenomenon. Even many artists are starting to participate in promoting Blockchain. The government can provide information and educate the public about NFT, such as the value of art and the safety of investing, even in supervising

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<sup>19</sup> Dewi Indrayani Hamin, "Cryptocurrensi Dan Pandangan Legalitas Menurut Islam: Sebuah Literatur Review", Jambura: Jurnal Ilmiah Manajemen Dan Bisnis, Vol. 3, No. 2 (2020), p. 127-139.

<sup>20</sup> Achmad Fageh and Aldi Khusmufa Nur Iman, "Cryptocurrency as Investment in Commodity Futures Trading in Indonesia; Based on Maqāsid al-Sharī'ah Approach", Jurnal Hukum Islam, Vol. 19, No. 2 (2021), p. 175-192.

<sup>21</sup> Ferry Mulyanto, "Pemanfaatan Cryptocurrensi Sebagai Penerapan Mata Uang Rupiah Kedalam Bentuk Digital Menggunakan Teknologi Bitcoin", Jurnal IJNS Indonesian Journal On Networking And Security, Vol. 4, No. 4 (2015), p. 19-26.

transactions involving personal data, such as selfie ID cards.<sup>22</sup> In NFT, the public must know the working mechanism of NFT as an investment that has a guarantee because NFT does not have a physical basis but must still have good credit, and the product is not illegal and contains personal data in it.

There are so many works of art that are sold at NFT that the public should be able to use them as an opportunity to channel their creativity. However, it is also necessary to pay attention to security, legality, legal certainty, and government intervention. In this case, the government has a role in terms of legality, so the community does not become a victim. It can be done, for example, with a policy on guarantees. The importance of this supervision is due to prevent money laundering, terrorism funds, and corruption.<sup>23</sup>

It is also straightforward to sell NFT and the marketplace today is OpenSea.io. On the OpenSea page, buy and sell NFT using Ethereum crypto. To sell or buy, we are charged an Ethereum gas fee. Assets Crypto themselves in Law No. 7 of 2019 and Central Bank of Indonesia (BI) Regulation number 17 of 2015 that Crypto as commodities is not legal to trade. Because Crypto contains elements of *gharar*, *ḍarar*, and *qimār*.<sup>24</sup> In this case, the ulema has not given a fatwa regarding the halal and haram of NFT, but the MUI fatwa regarding Crypto that is used to buy and sell NFTs is declared *haram* (forbidden).

**Table 1.** NFT Market Capitalization

Year	Value	Total
2018	\$40,961,222	586 billion
2019	\$141,556,148	2.02 trillion
2020	\$338,035,012	4.84 trillion
August 2021	\$24,452,855,042	350,169 trillion

Source: Liputan6

Based on the volume table provided in 2021, the prospects for the NFT business in the future can be said to have a very positive trend from the community. One of them is opening up new investment opportunities for investors in the country to market their work in the global market.<sup>25</sup> Besides that, Indonesian artists also benefit from this NFT; it can help artists to earn income

<sup>22</sup> Muhammad Fajar Sidiq dkk, "Sentralisasi Pengawasan Informasi Menggunakan Blockchain Ethereum", Jurnal JTIK -Teknologi Informasi Dan Ilmu Komputer, Vol. 7, No. 6 (2020), p. 1187-1195.

<sup>23</sup> Keisya Naomi Natalia Nababan, "Tinjauan Transaksi Bitcoin Di Indonesia", Jurnal Jurist Diction", Vol. 2, No. 5 (2019), p. 1745-1763.

<sup>24</sup> Luqman Nurhisam, "Bitcoin Dalam Kacamata Hukum Islam", Jurnal Ar Raniry, Vol. 4, No. 1 (2017), p. 165-186.

<sup>25</sup> Jonathan Pandapotan Purba, "Journal : Fenomena Ghazali Dan Salah Kaprah Soal NFT", Liputan6, 24 Januari, 2022, accessed 24 Januari 2022 at 11.40 am. <https://www.liputan6.com/news/read/4866618/journal-fenomena-ghazali-everyday-dan-salah-kaprah-soal-nft>

from their digital artworks. Artists also have the opportunity to market their work to a broader global market without worrying about their work being stolen by others.<sup>26</sup> Even though, there are still many Indonesian people who are not familiar with NFT and are still exploring to discover the function of NFT itself.

The progress of NFT in Indonesia is getting faster. It is because Indonesian people are very creative and are supported by diverse community cultures. The MSME business in Indonesia is very creative. The more people who can see the opportunities and gaps in the business from NFT, the more people will be engaged in the NFT buying and selling business. Based on data from the Ministry of SME Cooperatives, currently, it reaches 64.2 million, and in 2020 it contributed to the Gross Domestic Product by 60.51% or worth Rp. 9,580 Trillion with the ability to absorb 96.92% of the total workforce and can collect up to 60.42% of the total investment.<sup>27</sup>

NFT has many advantages. The uniqueness created by this NFT will make people want to buy these assets. However, we also need to be careful to see whether the goods are by the Shari'a or not. Moreover, this NFT is traded in the digital market, which is very prone to fraud cases. According to the MUI, NFT cannot be used as a medium of exchange but can be traded like physical assets, in general, using ETH payment instruments.<sup>28</sup> According to MUI, there are five steps in conducting NFT transactions:

1. The copyright ownership session. Among the works sold are obtained using the halal method, not plagiarism or the like, are perfectly owned, and do not have harmful content such as pornography.
2. The NFT process session confirmed, among other things, that NFT could be used as a legal and actual fact of ownership.
3. NFT sales session to Opensea.io must be clear and agree on the value, criteria, payment equipment, and where and when handed over.
4. NFT buying and selling sessions by fellow investors confirmed that there was a digital legacy that became the *underlying asset*. There was an actual transfer of NFT and the payment equipment.
5. The rights and obligations between the parties are recognized, the parties' rights are guaranteed, mitigate risks, and are free from misuse of transactions such as for immorality, oppression, or harm.

*Salaf* and *Khalaf* Moslem scholars think –most of the Maliki, Syafi'i, and Hambali schools of thought comment– that copyright on original works has the benefit of being a valuable asset as if it is allowed to be used in a *Shara'* way. The

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<sup>26</sup> Moh Mufid, "Ushul Fiqh Ekonomi Dan keuangan Kontemporer Dari Teori Ke Aplikasi", (Jakarta: Prenadamedia Group, 2018), p. 34

<sup>27</sup> [www.kominfo.go.id](http://www.kominfo.go.id)

<sup>28</sup> Asep Zaenal Ausop, "Teknologi Cryptocurrency Bitcoin Untuk Investasi Dan Transaksi Bisnis Menurut Syariat Islam", Jurnal Sositetnologi, Vol. 17, No. 1 (2018), p. 74-92.

Fiqh Institute of the Organization of the Islamic Conference decided that the trade name, address, brand, and creations and creations are special rights owned by their owners.

The decision of the MUI Fatwa Commission said that Intellectual Property Rights (IPR) are considered as one of the property rights that find legal protection as long as wealth does not conflict with Islamic law. IPR can be used as the object of a contract, either a commercial or non-commercial contract, and can be waqf and bequeathed.

One of the *muqtaḍā* (objectives) of the agreed agreement is the transfer of ownership. According to the agreement, the seller has NFT or other objects, while the buyer has ETH. The conditions for buying and selling in Sharia are the criteria for paid equipment that must be in form, halal, transparent, can be handed over, and the designation is halal. The need for risk mitigation is an obligation so that all parties can be protected.

Moreover, it becomes a sin when we lose because of our neglect of risk mitigation. As Allah Almighty says in al-Baqarah verse 195:

وَأَنْفِقُوا فِي سَبِيلِ اللَّهِ وَلَا تُلْقُوا بِأَيْدِيكُمْ إِلَى التَّهْلُكَةِ وَأَحْسِنُوا إِنَّ اللَّهَ يُحِبُّ الْمُحْسِنِينَ.

"Spend in the cause of Allah and do not let your own hands throw you into destruction 'by withholding'. And do good, for Allah certainly loves the good-doers."

### **NFT Analysis of the *Maqāṣid Sharia* View**

According to the language, *Maqāṣid Sharia* consists of two words. The first, *Maqāṣid* means intent, purpose, goal, principle, and ultimate goal. At the same time, the word Sharia itself has the meaning of a road to a spring, namely a path that must be followed by every Muslim. *Maqāṣid Sharia* is the intent and purpose behind the provisions of Islamic law or commonly referred to as the intention of enacting the law. This Shari'a aims for the human happiness life in this world and the Hereafter by taking a useful path and preventing or rejecting what can be destructive.

Al-Shatibi explained that the laws were prescribed for the benefit of the people. The essence of *Maqāṣid* is to avoid evil, take advantage and reject harm, or it can be said to achieve benefit because of the stipulation of Islamic law, so that benefit is created to maintain the goals of *Shara*. *Maqāṣid* consists of five elements: the maintenance of religion, the maintenance of reason, the maintenance of the soul, the maintenance of offspring, and property

maintenance.<sup>29</sup> Maintaining religion at the *ḍarūriyyāt*, namely maintaining and carrying out religious obligations such as earning a lawful and reasonable living, as in the word of Allah in Surah al-Nahl verse 114:

فَكُلُوا مِمَّا رَزَقَكُمُ اللَّهُ حَلَالًا طَيِّبًا وَاشْكُرُوا نِعْمَتَ اللَّهِ إِن كُنتُمْ إِيَّاهُ تَعْبُدُونَ

*"Then eat of what Allah has provided for you [which is] lawful and good. And be grateful for the favour of Allah, if it is [indeed] Him that you worship."*

Islam is a religion that highly upholds and supports the development of the times. Not far from Crypto or NFT from an Islamic point of view. Islam appreciates all forms of progress and development of both sciences in architecture, technology, and technology in conducting transactions. Islam provides five guidelines or what is commonly known as a guide to life because this is an essential part of human life. These five basic guidelines are called *Maqashid Sharia*, or the five basic guidelines in religious Sharia.

In the realm of discussing *Cryptocurrencies* and all types of derivatives on the *Blockchain*, all of that has been regulated in the guidelines above. *Crypto* and its derivatives were included in the category of interactions involving wealth. Sharia assistance is the primary goal of safeguarding assets (*Hifd al-Māl*). In the context of safeguarding assets, Islam has protected transactions and interactions in *Mu'amalah Māliyyah* in human life. Islam has also regulated how to transact reasonably and lawfully so that it does not cause harm to one party so it can cause harm to everyone.

The main provisions in transactions are explained if the exchange between objects and objects or objects with services with a certain nominal has the main provisions, namely: if goods are exchanged for goods or services with one item, then it must be clear later, namely the object must be transparent, while if the service is then the object must be transparent. Services must also be precise and have an exchangeable value. So it can be concluded that its form of existence must be seen. For example, between money and goods, both have material that can be accounted for by the existence of these goods.

Therefore, the main requirement in Islamic jurisprudence is that the object must be visible or materially have a form. After that, it can only be said that the item can be confirmed to be perfect or something that indicates that it belongs to us, which means that the form of the item exists and is interchangeable. Do not let transactions that are a mirage that can be seen, but the goods' form cannot be felt. Transactions like this model can cause uncertainty. Islam is cautious in guarding

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<sup>29</sup> Nur Hayati, Ali Imran Sinaga, *Fiqh dan Ushul Fiqh* (Jakarta: Prenadamedia Group, 1, 2018), p. 75

and not providing certainty, for example, gambling or *qimār*, which is not clear or uncertain.

On the one hand, the person who manages it will benefit without thinking about the fate of the person who has put his wealth. Things like this can lead to manipulatives or what is commonly called *gharar*. So that *gharar* and *qimār* are something that Islam significantly prevents. Because this can cause harm and imbalance in terms of transactions, it will potentially cause harm to one party.

Crypto Transactions can lead to something gambling or unclear because it is not presented physically. Regarding buying and selling of NFT, the issue is that the NFT itself is transacted using Crypto, namely in the form of ETH, although in form, this NFT can be stored in a gallery and then printed and tangible. Even though the form of this NFT exists, when this NFT is transacted using cryptocurrency whose form does not exist, it can be said that this buying and selling transaction is not valid.

Digitally, Crypto has values that can be seen but cannot be displayed in a form that can be proven materially. If only Crypto could be realized in the material form, then there would be no problem, but this is not the case. So why in this case, the ulama, especially the MUI, are very strict. It is because all of this is not by the existing Sharia. Do not let this transaction when buying and selling NFT will only benefit one party or one particular community but will cause losses for many people. Therefore, it is hoped that the state will take part in providing a legal umbrella for transactions using cryptocurrency so that the public is protected from losses due to the impact of NFT buying and selling transactions. The rules of *fiqh* say:

الحكم يدور مع العلة الماثورة وجودا وعدما

*"Judgment revolves with the causedness of existence and non-existence."*

The law of *fiqh* is very flexible, except for the fundamental laws that have been regulated, whose nature or standard has been that way from the start. For example, the *fiqh* of worship and prayer from the prophet's time until now cannot be changed even when the law is still mandatory. However, as long as specific causes can give birth to the benefit, matters relating to interaction with fellow human beings can be compatible with the benefit itself. Therefore, Islam came to provide values, not results. If the result is already obligatory, it must be obligatory like this.

If this cryptocurrency can be solved, for example, if it does not exist, then its form is held. If there is a chance for Crypto to *qimār* then provide a guarantor or an authority to facilitate it. If all these causes exist, then all activities can be determined. Moreover, all of this will provide certainty, protection, and honour in life.

## CONCLUSION

From the explanation above, it can be concluded that many people and micro small and medium enterprises (MSME) players can see the opportunity from the NFT business to start and expand their business to the global market. However, NFTs that are transacted using Cryptocurrencies are still a legal debate. The MUI fatwa states that crypto assets are prohibited from buying and selling NFTs. In Law No. 7 of 2019 and BI Regulation number 17 of 2015, crypto assets as commodities are not legal to be traded for crypto-assets themselves. Because crypto-assets contain elements of *gharar*, *ḍarar*, and *qimār*. In buying and selling NFT itself is transacted using crypto money, namely in the form of ETH, although in form, this NFT can be stored in a gallery and then printed and tangible. Even though the form of this NFT exists, when this NFT is transacted using a Cryptocurrency whose form does not exist, it can be said that this sale and purchase transaction is invalid. Suppose this cryptocurrency can provide an apparent guarantor authority and provide legal certainty and protection for the MSME community. In that case, it will solve the problem and provide a broader reach to market their digital artwork to the global market in a halal manner.

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