

TAX IMPOSITION ANG LEGAL ENFORCEMENT ON THE DIGITAL ASSET OF NON-FUNGIBLE TOKEN (NFT)

Annisa Intan Dwitanti

University Of Indonesia

intandwitanti@gmail.com

Dian Puji Simatupang

University Of Indonesia

dian.puji@ui.ac.id

ABSTRACT

Non-Fungible Token (NFT) is a token on a blockchain network used as an authentic marker in the ownership of digital creation. Dramatical development of NFT has become one of investment instrument in Indonesia, arises a big question in the matter of tax imposition. The problem of this research is, how is the regulation on tax imposition of NFT as a digital asset and how is the legal enforcement effort if occurs taxpayer deviation on the NFT transaction. The method of this research using qualitative descriptive method by using normative-juridical approach. The result shows that NFT as a digital asset does not have particular provision regarding tax imposition in Indonesia, however concerning the transaction by using cryptocurrency, the tax imposition will be applied in accordance with the Minister of Finance Regulation (PMK) Number 68/PMK.03/2022. In terms of the legal enforcement on the tax payment of NFT transaction may be penalized through administrative sanctions and criminal sanctions based on the law Number 28 the year of 2007 concerning general provision and tax procedures.

Keywords: *Non-Fungible Token; Tax Imposition, Legal Enforcement*

INTRODUCTION

The rapid development of technology in the field of digital commerce have brought a convenience impact for the people's mobility and efficient life. One of the latest technologies is the existence of blockchain, which is a database containing transaction records that are distributed, validated, and managed by worldwide computer network.¹ Blockchain is a system that underlies the development of cryptocurrency where the method of forming virtual coins which providing a secure ownership and transactions by using cryptographic system.²

Non-Fungible Token (hereinafter referred to as NFT) is a digital asset on the blockchain network whose uniqueness and ownership could be demonstrated and verified using distributed ledger technology (DLT). NFT is part of digital asset which has strong relation to the blockchain that underpins by cryptocurrency such as Ethereum or Bitcoin, or in other words, NFT is a set of certain data stored in digital ledger in this case is blockchain.

NFT could be used to prove token ownership for the unique digital version from digital asset (such as photo, video, or other digital content) or other physical asset (such as painting, statue, or another tangible asset). Basically, NFT could be understood as digital asset which represent various kinds of tangible or intangible object which is unique. NFT is unique certificate of

¹Simanta Shekhar Sarmah, Understanding Blockchain Technology, *Journal of Computer Science and Engineering* 2, p. 23.

²Cameron Harwick, Cryptocurrency and the Problem of Intermediation, *The Independent Review* 4, p 570.

authenticity on the blockchain issued by the creator of digital asset.³NFT has an investment instrument has value through a market mechanism. The factors are driven by high demand and supply of the NFT's offer.

According to Statista Digital Economy Compass 2022, Indonesia placed in the 8th position of NFT users in 2021, with 1.25 million users.⁴Basically, NFT sales are carried out by cryptocurrency, while in Indonesia the NFT's transaction are carried out in the form of Rupiah due to the legal currency in Indonesia is Rupiah.⁵Sales of NFTs are generally made through platform such as Opensea. However, Indonesia has its own platform for example TokoMall.

The presence of NFT as digital asset that can be traded certainly interlinked to Indonesian Commercial Law. Fundamentally, the transaction on buying and selling of crypto asset has been regulated by the Ministry of Trade and Commodity futures Trading (Bappebti). Even though the rule concerning crypto asset has been regulated through the commodity futures trading supervisory agency regulation Number 8 of 2021 concerning guidelines for the implementation of crypto asset physical market trading on the futures exchange, however, the regulation which concern to the matter of NFT in Indonesia have not been regulated to this day.

Along with the development of NFT as an investment instrument in Indonesia, it certainly arises a big question in terms of tax collection considering that taxes have an important role in the country's income. Based on this description, this article contains the formulation of the problem including: how are the tax arrangements for NFT digital asset transactions? And what about the law enforcement efforts if there is taxpayer deviation from paying taxes on NFT digital asset transactions?

METHOD

The research method in this article using descriptive analysis with a normative juridical approach. The author uses primary legal materials in the form of statutory regulations including Law Number 7 of 2021 concerning Harmonization of Tax Regulations and Regulation of the Minister of Finance (PMK) No. 68/PMK.03/2022 concerning Value Added Tax and Income Tax on Crypto Asset Trading Transactions. The author also uses secondary legal materials in the form of books and journals as reference material.

ANALYSIS AND DISCUSSION

Regulation of the Imposition of Taxes on NFT Digital Asset Transactions

NFT is a tool that provides facilities for creators to sell digital assets. Investors will pay a certain number of rewards according to the rate given by the creator of the work and the creator of the work will receive rewards equivalents to the digital asset. NFT is classified as a product that is supported through cryptocurrency in terms of making transactions.Indonesia uses the term crypto asset as a substitute for cryptocurrency not as a means of payment but as a commodity that can be traded on the Futures Exchange.⁶ This has been regulated in Article 1 number 7 of the Regulation of the Commodity Futures Trading Supervisory Agency Number 8 of 2021 concerning Guidelines for the Implementation of Crypto Assets Physical Market Trading on the Futures Exchange which states that:

³Lennart Ante, The Non-FungibleToken (NFT) Marketandits Relationship with Bitcoin and Ethereum, BRL Working Paper Series 20, p. 1

⁴Monavia Ayu Rizaty, "10 Negara Pengguna NFT Terbesar, Indonesia Masuk Daftar", <https://databoks.katadata.co.id/datapublish/2022/06/06/10-negara-pengguna-nft-terbesar-indonesia-masuk-daftar>, diakses pada 14 Juni 2022.

⁵Indonesia, Undang-Undang No. 7 Tahun 2011 *Tentang Mata Uang*, LN No. 64 Tahun 2011, TLN No. 5223, Ps 2 Ayat (1).

⁶AisyahWardatul Jannah. (2022). "Perkembangan Hukum Positif Dan Hukum Islam Di Indonesia Terhadap Eksistensi Cryptocurrency", Jurnal Jatiswara Vol. 37:1. p.133

“Crypto assets are intangible commodities in digital form, using cryptography, information technology networks, and distributed ledgers, to regulate the creation of new units, verify transactions, and secure transactions without interference from other parties.”⁷

Thus, every individual who owns crypto assets and benefits from these transactions will of course be subject to an obligation to pay taxes. This also applies to individual creators who receive economic benefits from NFT digital asset transactions. If the profits from this NFT digital asset transaction are converted into conventional currency, the creator of the work will be given an obligation to pay taxes

According to P. J. A Adriani, Professor of Tax Law at the University of Amsterdam as quoted by Santoso Brotodihardjo, the definition of tax is a contribution to the state (which can be imposed) owed by those who are obliged to pay it according to the laws and regulations, with no return of achievement, which can be directly appointed and whose purpose is to finance general expenses in connection with the state's duty to administer the government.⁸

Indonesia implements tax imposition through a self-assessment system, which is a tax collection system in which taxpayers determine the amount of tax owed themselves in accordance with the provisions of the tax law. Through the imposition of this tax, the income earned by the taxpayer through the return on investment in NFT digital assets must be reported in the Annual Tax Return (hereinafter referred to as the Annual SPT).

Regarding the amount of tax that will be charged to the work creator, it will be calculated based on the transaction value of the NFT sale after being converted into conventional currency. Article 4 Paragraph (1) of the HPP Law, stated that “the object of the tax referred to is income, namely any additional economic capacity received or obtained by the taxpayer, both from Indonesia and outside of Indonesia.”⁹

Meanwhile, royalties or rewards resulting from the sale of NFT digital assets will be subject to tax objects imposed on taxpayers as further explained in Article 4 Paragraph (1) letter h of the HPP Law. In connection with the NFT buying and selling process carried out with cryptocurrencies, the imposition of taxes is enforced as stipulated in the Minister of Finance Regulation (PMK) No. 68/PMK.03/2022 concerning Value-Added Tax and Income Tax on Crypto Asset Trading Transactions.

The imposition of income tax on crypto assets applies to income received or earned by sellers of crypto assets, trade providers through electronic systems, and crypto asset miners as referred to Article 19 PMK No. 68/PMK.03/2022. Furthermore, in Article 20 Paragraph (1) PMK No. 68/PMK.03/2022 states that income received or earned by sellers of crypto assets in connection with crypto asset transactions is the object of income tax.¹⁰ Furthermore, Article 20 Paragraph (1) PMK No. 68/PMK.03/2022 states that income received or earned by sellers of crypto assets in connection with crypto asset transactions is the object of income tax.¹¹ Article 20 Paragraph (2) PMK No. 68/PMK.03/2022 mentions what is meant by income is including income from all types of crypto asset transactions, in the form of buying and selling Crypto Assets with fiat currency payments, exchanging crypto assets with other crypto assets (swaps),

⁷Indonesia, *Peraturan Bappebti tentang Pedoman Penyelenggaraan Perdagangan Pasar Fisik Aset Kripto (Crypto Asset) di Bursa Berjangka*, Peraturan Bappebti No. 8 Tahun 2021.

⁸Santoso Brotodihardjo. (1978). *Pengantar Ilmu Hukum Pajak*. Jakarta: Eresco, p. 2.

⁹Indonesia, *Undang-Undang Harmonisasi Perpajakan*, UU No. 7 Tahun 2021, LN No. 246 Tahun 2021, TLN No. 6736, Ps. 4.

¹⁰Indonesia, *Peraturan Menteri Keuangan tentang Pajak Pertambahan Nilai dan Pajak Penghasilan Atas Transaksi Perdagangan Aset Kripto*, PMK No. 68 Tahun 2022, Ps. 19.

¹¹Indonesia, *Peraturan Menteri Keuangan tentang Pajak Pertambahan Nilai dan Pajak Penghasilan Atas Transaksi Perdagangan Aset Kripto*, PMK No. 68 Tahun 2022, Ps. 20 Ayat (1).

crypto asset transactions other than transactions with fiat currency and swaps.¹² Meanwhile, these incomes will be subject to income tax at a rate of 0.1% (zero-point one percent) of the transaction value of crypto assets, excluding Value Added Tax (VAT) and Sales Tax on Luxury Goods.¹³

Furthermore, income received or earned by a Trading Operator Through Electronic Systems (PPMSE) from the provision of electronic means used for crypto asset transactions is also classified as an object of income tax.¹⁴ The types of income from providers of electronic means used for crypto asset transactions that can be taxed as regulated in Article 28 Paragraph (2) of PMK No. 68/PMK.03/2022 including:

Article 28 Paragraph (2)

- a. Delivery of services for providing electronic means used for crypto asset transactions
- b. Delivery of withdrawal services (withdrawal)
- c. Delivery of deposit services
- d. Delivery of crypto asset transfer services between electronic wallets (-e-wallet)
- e. Delivery of services for providing and/or managing crypto asset storage media or electronic wallets (e-wallet)
- f. The delivery of other services in relation to crypto assets other than those referred to letters A to E of this article.”

By virtue of Article 28 Paragraph (3) PMK No. 68/PMK.03/2022, the types of income mentioned above will be subject to income tax based on the general rate as referred to in the provisions of the Income Tax Law. However, the rule regarding the general tax rate imposed on legal entities as confirmed in Article 17 of Law Number 7 of 2021 concerning Harmonization of Tax Regulations is 22% (twenty two percent).¹⁵

In terms of income in connection with crypto assets received or obtained by crypto asset miners is income from the crypto asset system in the form of block rewards, rewards for transaction verification services (transaction fees) or other income from the crypto asset system and/or other income other than the income. Income related to crypto assets is subject to a tariff of 0.1% (zero-point one percent) of the income received or earned by crypto asset miners, excluding Value Added Tax (VAT) and Sales Tax on Luxury Goods.¹⁶

Thus, the imposition of taxes on NFT digital asset transactions does not have specific tax regulations. However, in connection with the NFT digital asset being a product that is supported through cryptocurrency, the regulation on the imposition of tax on digital asset transactions has been regulated in PMK No. 68/PMK.03/2022.

Law Enforcement in the Case of Taxpayer Deviations in Payment of Taxes on NFT Digital Asset Transactions

Law enforcement as defined by Satjipto Rahardjo is an attempt to realize legal ideas into a reality.¹⁷ Through this, to realize legal ideas, it means that justice is the core of law enforcement. According to Satjipto, law enforcement is not merely a matter of applying laws and regulations

¹²Indonesia, *Peraturan Menteri Keuangan tentang Pajak Pertambahan Nilai dan Pajak Penghasilan Atas Transaksi Perdagangan Aset Kripto*, PMK No. 68 Tahun 2022, Ps. 20 Ayat (2).

¹³Indonesia, *Peraturan Menteri Keuangan tentang Pajak Pertambahan Nilai dan Pajak Penghasilan Atas Transaksi Perdagangan Aset Kripto*, PMK No. 68 Tahun 2022, Ps. 21 Ayat (1).

¹⁴Indonesia, *Peraturan Menteri Keuangan tentang Pajak Pertambahan Nilai dan Pajak Penghasilan Atas Transaksi Perdagangan Aset Kripto*, PMK No. 68 Tahun 2022, Ps. 28 Ayat (1).

¹⁵Indonesia, *Undang-Undang Harmonisasi Perpajakan*, UU No. 7 Tahun 2021, LN No. 246 Tahun 2021, TLN No. 6736, Ps. 17 Ayat (1).

¹⁶Indonesia, *Peraturan Menteri Keuangan tentang Pajak Pertambahan Nilai dan Pajak Penghasilan Atas Transaksi Perdagangan Aset Kripto*, PMK No. 68 Tahun 2022, Ps. 30 Ayat (1).

¹⁷Satjipto Rahardjo. (2009). *Penegakan Hukum Suatu Tinjauan Sosiologis*. Yogyakarta: Genta Publishing

to concrete events. However, law enforcement is an individual activity and its characteristics to realize the expectations desired by law.

Basically, law enforcement has functions to form protection for the interests of certain individuals. Therefore, law enforcement is an important aspect in Indonesia as a state of law because through the law enforcement which will concern into 3 (three) legal objectives, namely justice, certainty, and legal expediency of the societies feeling.

Law enforcement can be pursued in various ways, including applying sanctions to a case, in this case administrative sanctions or civil sanctions to criminal sanctions carried out through a series of trial processes in court. Law enforcement not only limited to the rule of law, but the active role and response of law enforcement officers in dealing with law enforcement problems certainly plays an important role.

NFT digital assets are not something new for the public. However, behind the sophistication of the work system that can distinguish the originality of a work, NFT digital asset transactions have the potential to cause tax evasion by taxpayers. Therefore, legal certainty in the field of taxation is not only a matter of tax subjects, tax objects, rates, and taxation procedures, but also legal certainty related to law enforcement procedures for irregularities that occur in the taxation sector.

In order to enforce the tax law, especially in the field of NFT digital asset transactions, the law enforcement process begins with an effort to remind citizens who already have tax obligations, in this case, are taxpayers, through the submission of letters of appeal and warning letters.

If these efforts have not been successful, the next process is the imposition of administrative sanctions due to violations committed by taxpayers. In the event where taxpayer experiences delays or does not submit the annual (SPT) report, it may be subject to sanctions as stated under Article 7 of Law Number 28 of 2009 concerning Stipulation of Government Regulation in Lieu of Law Number 5 of 2008 concerning Fourth Amendment to Law Number 6 1983 concerning General Provisions and Tax Procedures to become Law (hereinafter referred to as UU KUP). In addition, there are also sanctions for increasing taxation for taxpayers who do not have good intentions in attaching correct information and cause losses to the state. Through the tax shortfall, it must be repaid with an increase of 200% from the total tax deficiency as stated in Article 13A of the (UU KUP).¹⁸ However, this provision only applies to the imposition of taxes whose nominal amount has been determined, while the imposition of taxes on taxpayers on NFT digital asset transactions does not have a fixed nominal amount. Therefore, this interest imposition provision does not apply to NFT digital asset taxpayers.

Furthermore, if the enforcement of administrative sanctions does not produce results, the criminal law enforcement process is a further option. In the event that the taxpayer commits a crime in the field of taxation, it can be classified into 2 (two) forms, namely the form of violation and the form of crime.

In case of tax crime in the form of violation, Article 38 of the (KUP) Law states that a person who violates the provisions of Article 13A of the (KUP) Law in case of not submitting an SPT or submitting an SPT but the contents are incorrect or incomplete or attaching information whose contents are not correct, causing losses to state revenues, then the taxpayer may be subject to a fine in the amount of at least 1 (one) time the amount of unpaid or underpaid tax payable and a maximum of 2 (two) times the unpaid or underpaid tax payable or imprisonment for a minimum of 3 (three) months. or a maximum of 1 (one) year.¹⁹

¹⁸Indonesia, UU No. 28 Tahun 2007, *Undang-Undang tentang Ketentuan Umum dan Tata Cara Perpajakan*, LN. No. 85 Tahun 2007, TLN No. 4740, Ps. 13A.

¹⁹Indonesia, UU No. 28 Tahun 2007, *Undang-Undang tentang Ketentuan Umum dan Tata Cara Perpajakan*, LN. No. 85 Tahun 2007, TLN No. 4740, Ps. 38.

Furthermore, the crime of taxation in the form of criminal, Article 39 of the KUP Law explains that:

“Article 39”

(1) Any person who knowingly:

- a. does not register to be given a Taxpayer Identification Number or does not report his business to be confirmed as a Taxable Entrepreneur.
- b. misuse or use without right the Taxpayer Identification Number or Taxable Entrepreneur Confirmation.
- c. does not submit a Notification Letter.
- d. submit a Notification Letter and/or information whose contents are incorrect or incomplete.
- e. refuse to carry out the examination as referred to Article 29;
- f. showing books, records, or other documents that are false or falsified as if they were true, or do not represent the actual situation.
- g. not keeping books or records in Indonesia, not showing, or not lending books, records, or other documents.
- h. does not keep books, records, or documents that form the basis for bookkeeping or recording and other documents including the results of data processing from electronically managed books or online application programs in Indonesia as referred to in Article 28 paragraph (11); or
- i. not depositing taxes that have been withheld or collected so that it can cause losses to state income...”²⁰

Against such action, the taxpayer may be subject to a fine of at least 2 (two) times the amount of tax payable which is not or underpaid and a maximum of 4 (four) times the amount of tax payable which is not or underpaid or imprisonment for a minimum of 6 (six) months and a maximum of 6 (six) years.²¹ As for other forms of crime as referred to Article 38 and Article 39 of the KUP, there are other forms of money laundering.

Based on this, in the event of a taxpayer deviation in paying the NFT digital asset tax, if the taxpayer is proven not to have paid income tax on the transaction profits that have been obtained in a negligent condition, the taxpayer can be subject to sanctions in the form of imprisonment for a minimum of 3 (three) months or a maximum of 1 (one) year as stipulated in Article 38 of the KUP Law. Meanwhile, if the taxpayer is proven to have abused his authority in this case the NPWP knowingly and intentionally not filling out the income tax return correctly and it is known to the tax authorities, the taxpayer can be subject to sanctions in the form of imprisonment for 6 (six) months and a maximum of 6 (six) months imprisonment. 6 (six) years as stipulated in Article 39 of the KUP Law.

²⁰Indonesia, UU No. 28 Tahun 2007, *Undang-UndangtentangKetentuanUmum dan Tata Cara Perpajakan*, LN. No. 85 Tahun 2007, TLN No. 4740, Ps. 38.

²¹Indonesia, UU No. 28 Tahun 2007, *Undang-UndangtentangKetentuanUmum dan Tata Cara Perpajakan*, LN. No. 85 Tahun 2007, TLN No. 4740, Ps. 39 Ayat (1).

CONCLUSION

Indonesia implements self-assessment system in the imposition of taxes where taxpayers are responsible for calculating and reporting the amount of tax independently through the Annual tax report (SPT). NFT digital assets do not have specific tax regulation provisions in Indonesia. However, in relation to transactions that are supported through cryptocurrencies or cryptocurrencies, the income received in the NFT digital asset transaction will be subject to a tax of 0.1% for crypto asset sellers and crypto asset miners as regulated in PMK No. 68/PMK.03/2022. Meanwhile, income earned from Trading Operators Through Electronic Systems will be subject to a 22% tax as regulated in Article 28 Paragraph (3) of PMK No. 68/PMK.03/2022 jo. Article 17 of Law no. 7/2021.

In law enforcement of Taxpayers regarding tax payments on income from NFT digital asset transactions, it begins with the provision of an appeal letter to Taxpayers as the owner of the obligation to pay taxes. If it has not been successful, then administrative sanctions can be imposed in the event of a violation committed by the Taxpayer, one of which is the delay in paying taxes. In the event that the imposition of administrative sanctions cannot be carried out properly, by virtue of Article 38 and Article 39 of the KUP Law, the taxpayer may be subject to criminal sanctions.

BIBLIOGRAPHY

Books:

Adrian Sutedi. (2011). *Hukum Pajak*. Jakarta: Sinar Grafika.

Santoso Brotodihardjo. (1978). *Pengantar Ilmu Hukum Pajak*. Jakarta: Eresco.

Satjipto Rahardjo. (2009). *Penegakan Hukum Suatu Tinjauan Sosiologis*. Yogyakarta: Genta Publishing.

Journal articles:

Ante, Lennart. (2021). "The Non-Fungible Token (NFT) Market and its Relationship with Bitcoin and Ethereum" *BRL Working Paper Series* 20: 1

Harwick, Cameron. (2017). "Cryptocurrency and the Problem of Intermediation" *The Independent Review* 4: 570.

Sarmah, Simanta Shekhar. (2018). "Understanding Blockchain Technology" *Journal of Computer Science and Engineering* 2: 2.

Aisyah Wardatul Jannah (2022), "Perkembangan Hukum Positif Dan Hukum Islam Di Indonesia Terhadap Eksistensi Cryptocurrency", *Jurnal Jatiswara* 37:1

Regulation:

Indonesia, Undang-Undang No. 16 Tahun 2009, Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 5 Tahun 2008 Tentang Perubahan Keempat Atas Undang-Undang Nomor 6 Tahun 1983 Tentang Ketentuan Umum dan Tata Cara Perpajakan Menjadi Undang-Undang.

Indonesia, Undang-Undang No. 7 Tahun 2011 Tentang Mata Uang, Lembar Negara No. 64 Tahun 2011, Tambahan Lembar Negara No. 5223.

Indonesia, Undang-Undang No. 7 Tahun 2021 Tentang Harmonisasi Perpajakan, Lembar

Negara No. 246 Tahun 2021. Tambahan Lembar Negara No. 6736.

Indonesia, Peraturan Bappebti No. 8 Tahun 2021 Tentang Pedoman Penyelenggaraan Perdagangan Pasar Fisik Aset Kripto (Crypto Asset) di Bursa Berjangka.

Indonesia, Peraturan Menteri Keuangan No. 68 Tahun 2022 Tentang Pajak Pertambahan Nilai dan Pajak Penghasilan Atas Transaksi Perdagangan Aset Kripto.

Website:

Rizaty, Monavia Ayu. (2022). *10 Negara Pengguna NFT Terbesar, Indonesia Masuk Daftar*. Available from: <https://databoks.katadata.co.id/datapublish/2022/06/06/10-negara-pengguna-nft-terbesar-indonesia-masuk-daftar>. [Accessed June 14, 2022].