

Regulatory Model for Taxation of Non-Fungible Token Digital Assets as Creative Works in Indonesia

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Abstract

The Non-Fungible Token (NFT) is one form of trade utilising crypto assets as a medium of exchange. This system has proven effective in assisting creators in protecting both their economic and moral rights. However, the existence of Regulation of the Minister of Finance No. 68/PMK.03/2022 concerning Value Added Tax and Income Tax on Cryptocurrency Trading does not adequately address the phenomenon of NFT trading. This raises an intriguing issue regarding the formulation of tax collection for NFTs as digital assets that can be traded and serve as a source of state revenue. This study employs a socio-legal approach with qualitative methods. Based on an analysis of legislation, the theory of justice, and tax collection theory, three alternative models for regulating income tax and VAT on NFTs in Indonesia are proposed. The first model suggests specific regulation in the form of a Minister of Finance Regulation. The second model recommends classifying NFT trading platforms as Permanent Establishments (PE). The third model advocates for the application of tax treaties to prevent double taxation. This study is expected to contribute to the development of NFT taxation regulations in Indonesia.

1. Introduction

Digital technology has become a fundamental necessity in cross-border communication¹ and serves as a trigger for the economic development of a nation,² facilitating smoother international trade.³ As a consequence, the territorial boundaries of legal jurisdictions between countries become less applicable.⁴ One topic that has gained significant attention among scholars is economic transactions involving cryptocurrency. Despite its advantages, this new business phenomenon carries considerable risks. Cryptocurrency transactions have now become a target for new tax objects by governments as regulated under Regulation of the Minister of Finance No. 68/PMK.03/2022 concerning Value Added Tax and Income Tax concerning Cryptocurrency Trading.

Non-Fungible Token (NFT) is one of the buying and selling systems that utilise cryptocurrency as a medium of exchange. This system has successfully helped creators protect their works, as well as their economic and moral rights, thereby curtailing the likelihood of fraud and providing proof of ownership authenticity.⁵ NFTs typically

¹ Stefano Elia et al., "Resources and Digital Export: An RBV Perspective on the Role of Digital Technologies and Capabilities in Cross-Border e-Commerce," *Journal of Business Research* 132 (August 1, 2021): 158–69, <https://doi.org/10.1016/j.jbusres.2021.04.010>.

² Raéf Bahrini and Alaa A. Qaffas, "Impact of Information and Communication Technology on Economic Growth: Evidence from Developing Countries," *Economies* 7, no. 1 (March 2019): 21, <https://doi.org/10.3390/economies7010021>; Girmay Giday Haftu, "Information Communications Technology and Economic Growth in Sub-Saharan Africa: A Panel Data Approach," *Telecommunications Policy* 43, no. 1 (February 1, 2019): 88–99, <https://doi.org/10.1016/j.telpol.2018.03.010>; Thong Trung Nguyen, Thu Anh Thi Pham, and Huong Thi Xuan Tram, "Role of Information and Communication Technologies and Innovation in Driving Carbon Emissions and Economic Growth in Selected G-20 Countries," *Journal of Environmental Management* 261 (May 1, 2020): 110162, <https://doi.org/10.1016/j.jenvman.2020.110162>.

³ Ying Wang et al., "Cross-Border e-Commerce Firms as Supply Chain Integrators: The Management of Three Flows," *Industrial Marketing Management* 89 (August 1, 2020): 72–88, <https://doi.org/10.1016/j.indmarman.2019.09.004>.

⁴ A. Ummu Fauziyyah Syafruddin, "Ekonomi Global Perspektif Konsep Maqashid Syariah Imam Al-Syatibi," *Mu'amalah: Jurnal Hukum Ekonomi Syariah* 2, no. 1 (June 26, 2023): 49–66, <https://doi.org/10.32332/muamalah.v2i1.7022>.

⁵ Yining Li, "Can NFT Refresh the Field of Digital Copyright Protection? The Positive Role and Potential Risks of NFT in Digital Copyright Protection," in *Proceedings of the 6th International Conference on Economic Management and Green Development*, ed. Xiaolong Li, Chunhui Yuan, and John Kent, Applied Economics and Policy Studies (Singapore: Springer Nature, 2023), 311–18, https://doi.org/10.1007/978-981-19-7826-5_31; Eynat Mendelson-Shwartz, Ofir Shwartz, and Nir Mualam, "Protecting Street Art Rights Using an NFT-Based System," *Journal of Urban Technology* 30, no. 3 (May 27, 2023): 81–100, <https://doi.org/10.1080/10630732.2023.2180983>; Ferdinand Regner, André Schweizer, and Nils Urbach, "NFTs in Practice – Non-Fungible Tokens as Core Component of a Blockchain-Based Event Ticketing Application," 2019.

encompass digital artworks such as photography, gaming assets, profile pictures, music, and art.⁶ These digital creations are original works protected by copyright. In Indonesia, five NFT projects have demonstrated significant economic profitability. First, the "Ghozali Everyday" selfie project generated revenue of IDR 1.5 billion.⁷ Second, Karafuru, an animated design project by an Indonesian artist, yielded IDR 1 trillion.⁸ Third, the NFT Mindblowon Universe project earned IDR 106.44 billion. Fourth, "Si Juki: Lost in Jukiverse," brought in IDR 7.73 billion. Finally, Baliverse, an NFT project by a Balinese artist, earned IDR 2.90 billion.⁹

NFTs and their economic impacts have the potential to become a new source of revenue from the taxation sector. However, there are currently no regulations in place to levy taxes on NFT transactions. At present, the efforts by the government, particularly the Directorate General of Taxes (DJP), include monitoring individuals and taxpayer groups with extraordinary wealth, referred to by the DJP as High Wealth Individuals (HWIs).¹⁰ For instance, the DJP requested that Ghozali promptly create a Taxpayer Identification Number (NPWP) and pay income tax on the sales of his NFTs.¹¹

Studies on NFTs have been extensively conducted and can be classified into the following categories: Research by Wu et al. indicates that numerous industries utilise NFTs to create economically valuable innovations.¹² Li and Chen argue that NFTs represent a new business model centred around digital ownership, portable and

⁶ Chih-Hung Wu, Chien-Yu Liu, and Ting-Sheng Weng, "Critical Factors and Trends in NFT Technology Innovations," *Sustainability* 15, no. 9 (January 2023): 7573, <https://doi.org/10.3390/su15097573>.

⁷ Rachel Farahdiba Regar, "Kilas Balik Kisah Viral Ghozali Everyday, Hasilkan Rp 1,5 Miliar Dari Unggahan Swafoto NFT," *Tempo*, January 2, 2023, <https://seleb.tempo.co/read/1674813/kilas-balik-kisah-viral-ghozali-everyday-hasilkan-rp-15-miliar-dari-unggahan-swafoto-nft>.

⁸ Fahmi Ahmad Burhan, "Karafuru, NFT Buatan RI Mendunia dan Tembus Transaksi Rp 1 Triliun - Fintech Katadata.co.id," *Katadata.co.id*, June 3, 2022, <https://katadata.co.id/desysetyowati/digital/6299b5e036777/karafuru-nft-buatan-ri-mendunia-dan-tembus-transaksi-rp-1-triliun>.

⁹ Boy Riza Utama, "Project NFT Asal Indonesia Terpopuler, Bukan Cuma Ghozali Lho!," *Dunia Fintech* (blog), August 20, 2022, <https://duniafintech.com/project-nft-asal-indonesia/>.

¹⁰ Nur Jamal Shaïd, "DJP Bentuk Satuan Tugas Untuk Awasi Kepatuhan Pajak 'Crazy Rich,'" 2023, <https://money.kompas.com/read/2023/07/02/191117126/djp-bentuk-satuan-tugas-untuk-awasi-kepatuhan-pajak-crazy-rich>.

¹¹ Maya Citra Rosa, "Ini Besaran Pajak yang akan Dibayar Ghozali Everyday Hasil Jual Foto Selfie NFT," *KOMPAS.com*, January 16, 2022, <https://www.kompas.com/wiken/read/2022/01/16/101000781/ini-besaran-pajak-yang-akan-dibayar-ghozali-everyday-hasil-jual-foto>.

¹² Wu, Liu, and Weng, "Critical Factors and Trends in NFT Technology Innovations."

composable digital assets, and decentralised communities.¹³ On the legal front, Mendelson's research shows that NFTs can provide legal protection for artists' works,¹⁴ while Hwang asserts that NFTs enhance the creativity of content creators¹⁵ and can prevent plagiarism of individuals' works.¹⁶ Research by Orchard et al. reveals that NFTs can be exploited for money laundering.¹⁷ Teichmann and Boticiu state that money laundering through NFTs cannot be detected using manual methods.¹⁸

The development of NFTs is also linked to taxation aspects. Morton and Curran's research highlights that the Australian Taxation Office (ATO) treats NFTs as taxable assets subject to income tax. However, issues remain concerning the ownership and valuation of NFTs.¹⁹ In the European Union, NFTs are subject to Value Added Tax (VAT), as shown in Ness's research, which classifies NFTs as digital collectables or digital art objects.²⁰ Research by Rahman and Jin suggests that implementing tax regulations on NFTs can increase state revenue and curb illegal financing activities, as NFTs can also be used for cybercrimes.²¹ Sitompul's research notes that NFTs are not

¹³ Sen Li and Yan Chen, "How Nonfungible Tokens Empower Business Model Innovation," *Business Horizons* 66, no. 4 (July 1, 2023): 543–54, <https://doi.org/10.1016/j.bushor.2022.10.006>.

¹⁴ Mendelson-Shwartz, Shwartz, and Mualam, "Protecting Street Art Rights Using an NFT-Based System."

¹⁵ Yohan Hwang, "When Makers Meet the Metaverse: Effects of Creating NFT Metaverse Exhibition in Maker Education," *Computers & Education* 194 (March 1, 2023): 104693, <https://doi.org/10.1016/j.compedu.2022.104693>.

¹⁶ Zahra Mohammadzadeh, Marcel Ausloos, and Hamid Reza Saeidnia, "ChatGPT: High-Tech Plagiarism Awaits Academic Publishing Green Light. Non-Fungible Token (NFT) Can Be a Way Out," *Library Hi Tech News* ahead-of-print, no. ahead-of-print (January 1, 2023), <https://doi.org/10.1108/LHTN-04-2023-0067>; Hamid Reza Saeidnia and Brady D. Lund, "Non-Fungible Tokens (NFT): A Safe and Effective Way to Prevent Plagiarism in Scientific Publishing," *Library Hi Tech News* 40, no. 2 (January 1, 2023): 18–19, <https://doi.org/10.1108/LHTN-12-2022-0134>.

¹⁷ Samuel Orchard, "Money Laundering Risks: The Case of Non-Fungible Tokens—Key Recommendations for Australia," in *Financial Crime, Law and Governance: Navigating Challenges in Different Contexts*, ed. Doron Goldbarsht and Louis de Koker (Cham: Springer Nature Switzerland, 2024), 229–55, https://doi.org/10.1007/978-3-031-59547-9_10.

¹⁸ Fabian Teichmann and Sonia Boticiu, "How Do Cybercriminals Launder the Proceeds of Their Crimes?," *International Cybersecurity Law Review* 5, no. 1 (March 1, 2024): 67–77, <https://doi.org/10.1365/s43439-023-00104-y>.

¹⁹ Elizabeth F. Morton and Michael F. Curran, "Understanding Non-Fungible Tokens and the Income Tax Consequences," *Journal of Tax Administration* 9, no. 1 (October 31, 2024): 6–49.

²⁰ Stephanie Ness, "VAT/GST Harmonisation Challenges for Digital Assets Such as Bitcoin and NFTs in the EU Following Case C-264/14 (Skatteverket v David Hedqvist)," *International Cybersecurity Law Review* 5, no. 3 (September 1, 2024): 459–90, <https://doi.org/10.1365/s43439-024-00124-2>.

²¹ Jahidur Rahman and Yahan Jin, "The Control of Tax Corruption: Evidence from Nonfungible Token Market in China," *Journal of Money Laundering Control* 26, no. 5 (February 27, 2023): 1066–82, <https://doi.org/10.1108/JMLC-01-2023-0005>.

yet included in Indonesia's tax regulations, posing a risk of tax evasion.²² Similarly, Jaman et al. state that the absence of regulations on NFTs prevents the government from optimising tax revenue from this sector.²³ These prior studies highlight the necessity of examining a regulatory model for the taxation of NFTs as digital creations.

2. Problem Statement

The rapid rise of NFT transactions involving creative works on marketplaces, which yield remarkable profits for market players, highlights the urgent need for specific regulations on NFT taxation in Indonesia. This development opens the door to a crucial discussion on designing effective tax policies for NFTs as tradeable digital assets, transforming their profitability into a significant source of state revenue.

3. Methods

This study employs a socio-legal approach with a descriptive qualitative and juridical-sociological methodology, aiming to describe and qualitatively analyse the phenomenon of creative works transactions through NFTs on marketplaces. The analysis is framed within the context of tax collection theories and tax regulations in Indonesia. Primary data was garnered from interviews with representatives from the Directorate of Counselling, Services, and Public Relations at the Central Office of the Directorate General of Taxes. Secondary data comprises legislation related to income tax and value-added tax, including: a) The 1945 Constitution of the Republic of Indonesia (UUD NRI 1945); b) Law No. 7 of 2021 concerning the Harmonisation of Tax Regulations in Indonesia; c) Law No. 36 of 2008 concerning Income Tax; d) Regulation of the Minister of Finance (PMK) No. 68/ PMK. 03/2022 concerning Value-Added Tax and Income Tax on Cryptocurrency Trading; and e) Regulation of the Minister of Trade of the Republic of Indonesia No. 31 of 2023 concerning Business Licencing, Advertising, Development, and Supervision of Business Actors in Electronic Commerce.

Data was collected from in-depth interviews, focus group discussions (FGDs), and documentation. Interviews were performed with informants from the Directorate of

²² Anggia Debora Sitompul, "Imposition of Tax Law on Cryptocurrencies and NFT in Indonesia," *Pancasila and Law Review* 3, no. 1 (June 29, 2022): 39–48, <https://doi.org/10.25041/plr.v3i1.2555>.

²³ Ujang Badru Jaman et al., "The Legal Framework and Taxation of Non-Fungible Tokens," *Jhbbc*, February 17, 2024, 46–57, <https://doi.org/10.30996/jhbbc.v7i1.10349>.

Counselling, Services, and Public Relations at the Central Office of the Directorate General of Taxes in Jakarta. This process began with in-depth interviews as the primary data source, which were then analysed using a descriptive qualitative method. The analysis involved several steps: grouping and identifying the data, followed by an examination of the interview results in relation to government policies, using tax collection theories, justice theories, and taxation regulatory instruments in Indonesia.

4. Main Heading of the Analysis or Discussion or Results

4.1. NFT (Non-Fungible Token) Selling and Buying Transaction Flow

OpenSea is one of the largest platforms globally for Non-Fungible Token (NFT) transactions, accessible via Opensea.io through mobile devices or other platforms. NFTs are unique digital assets that cannot be directly exchanged for other assets due to their distinct values. OpenSea functions as an online marketplace where users can buy, sell, and discover various types of NFTs, including digital artworks, collectables, in-game items, and other digital assets. The platform supports a wide range of NFTs, from digital art and collectable cards to decentralised domain names and in-game assets, offering flexibility for creators and collectors to trade different types of digital assets. Essentially, OpenSea serves as a marketplace akin to eBay or Amazon, facilitating online transactions for NFT products.²⁴

Users in Indonesia are required to follow these steps to perform transactions on Opensea: To transact on OpenSea, users must first create a digital wallet compatible with the platform, such as MetaMask, Coinbase Wallet, TrustWallet, WalletConnect, or Fortmatic. MetaMask is a popular choice due to its ease of use. Users simply download the MetaMask browser extension or mobile app and follow the instructions to set up an account. It is crucial to securely store the seed phrase (recovery phrase), as it is the only way to regain access to the wallet in case of a lost password. The next step involves funding the wallet with cryptocurrency, typically Ethereum (ETH), which is used for transactions on OpenSea. ETH can be purchased on local cryptocurrency exchanges such as Indodax, Tokocrypto, or Pintu and transferred to the user's wallet address.

²⁴ "OpenSea NFT, Ini Pengertian dan Cara Membuatnya," kumparan, accessed on August 30, 2024, <https://kumparan.com/berita-bisnis/opensea-nft-ini-pengertian-dan-cara-membuatnya-1yYO7Nhr2W>.

Once the wallet is funded with ETH, users connect it to OpenSea by visiting the website and clicking the "Connect Wallet" button. After the wallet is connected, users can browse the platform for various NFTs, using search and filter features to explore categories such as digital art, in-game items, price ranges, or popularity

Users can choose the "Buy Now" option for direct purchases or "Make an Offer" to negotiate the price. Transactions require confirmation through the digital wallet and payment in ETH, including "gas fees," which vary depending on Ethereum network traffic. Users must ensure their ETH balance is sufficient to cover the transaction and gas fees. To sell an NFT, users need to have the NFT stored in a wallet connected to OpenSea. They can access their profile page on OpenSea, select the NFT to sell, and click the "Sell" button. After setting the price and selecting the type of sale (fixed price or auction), users confirm the transaction through their wallet. Once the transaction is completed, the sale is recorded on the Ethereum blockchain, the NFT is transferred to the buyer's wallet, and the seller receives ETH as payment. To withdraw or convert cryptocurrency from a digital wallet to a bank account in Indonesia, users must follow these steps: Ensure the digital wallet, such as MetaMask or Trust Wallet, is connected and ready for use; transfer the cryptocurrency from the wallet to a local cryptocurrency exchange, such as Indodax, Tokocrypto, or Pintu, which supports conversions to Indonesian Rupiah; once the cryptocurrency reaches the exchange, sell or trade it for Rupiah at the current market exchange rate;²⁵ after converting the cryptocurrency to Rupiah, initiate a withdrawal by providing valid bank account details, including the account number and bank name in Indonesia; confirm the withdrawal request, which typically involves security verification steps; once the request is confirmed, the exchange processes the withdrawal and transfer the funds in Rupiah to the user's bank account. The processing time usually ranges from a few hours to several working days, depending on the policies of the respective exchange.

4.2. Measures Taken by the Directorate General of Taxes in Response to NFT Selling and Buying as a New Phenomenon

²⁵ Cut Sarah Dwindahany and Subagio Efendi, "Should Excessive Marketing Expenses Be Remunerated? Lessons from Indonesia's Tax Court Decisions," *Jurisdictie: Jurnal Hukum Dan Syariah* 15, no. 1 (July 9, 2024): 1–33, <https://doi.org/10.18860/j.v15i1.26915>.

The phenomenon of buying and selling NFTs has become an intriguing topic of discussion from both economic and legal perspectives. Technology serves as the primary instrument in today's digital trade. Rapid technological advancements have also become a focus for governments to regulate, aiming to provide both benefits and legal protection for the public. States play a crucial role in regulating both private and public legal aspects. The phenomenon of NFTs being sold on marketplaces has captured the attention of many countries.

The use of NFTs by artists to sell digital works on marketplaces is part of the public's current efforts to gain access to global (cross-border) trade. Non-Fungible Tokens (NFTs) are digital assets stored in a distributed public ledger. These assets record transactions and have unique identification codes and metadata on blockchain networks. NFTs can be considered digital assets that represent real-world objects such as artwork, animations, photos, videos, images, music, signatures, tickets, and various other creative works.²⁶

One notable NFT transaction phenomenon in Indonesia that has sparked widespread discussion is 'Ghozali Everyday,' which sold NFTs in the form of photographs on the platform OpenSea.io. The owner of 'Ghozali Everyday,' Sultan Gustaf Al Ghozali, managed to sell his selfies from 2017 to 2021 at a price of 0.0001 ETH (Ethereum), equivalent to approximately IDR 48,000 per photo. One of his photos reached a record price of 66.346 ETH, equivalent to IDR 3.1 trillion. Ghozali earned billions of rupiah from this platform.²⁷ The floor price of Ghozali's photo collection rose significantly as of 13 January 2022, reaching 0.3 ETH, equivalent to IDR 14.3 million per selfie.²⁸ The rising trend of NFT transactions, particularly in Indonesia, should be seen as an opportunity to increase state revenue through taxation. However, as of now, the Directorate General of Taxes (DJP) has yet to issue specific regulations on NFT taxation.

²⁶ Dewi Sulistianingsih and Apriliana Khomsa Kinanti, "Hak Karya Cipta Non-Fungible Token (NFT) dalam Sudut Pandang Hukum Hak Kekayaan Intelektual," *Krtha Bhayangkara* 16, no. 1 (June 2022): 197–206, <https://doi.org/10.31599/krtha.v16i1.1077>.

²⁷ Lidya Julita S, "5 Foto NFT Termahal di Dunia, Ghozali Everyday Cuma Recehan," CNBC Indonesia, January 23, 2022, <https://www.cnbcindonesia.com/tech/20220123154402-37-309704/5-foto-nft-termahal-di-dunia-ghozali-everyday-cuma-recehan>.

²⁸ Nur Fitriatus Shalihah, "Viral Foto Selfie Dijual hingga Miliaran, Ini Sebab NFT Bisa Amat Mahal," KOMPAS.com, January 13, 2022, <https://www.kompas.com/>.

The Directorate General of Taxes (DJP) indirectly encouraged Ghozali Everyday through media channels to register for a Taxpayer Identification Number (NPWP) and provided tax education at the East Semarang Primary Tax Office (KPP Pratama Semarang Timur). Ghozali has since registered for an NPWP under the guidance of Account Manager Deni Rusmawati Agustin. Ghozali also urged the public (taxpayers) to submit their Annual Income Tax Returns (SPT) no later than 31 March 2022.²⁹ In an interview with an Educator at the P2Humas Directorate of the DJP, it was revealed that the Directorate General of Taxes has imposed income tax (PPh) on Ghozali, as his earnings meet the income criteria outlined in Article 4, paragraph (1) of Law Number 36 of 2008. Income, as defined under Article 4, paragraph (1), includes "any additional economic capacity received or obtained by a taxpayer, whether originating from within or outside Indonesia, which can be used for consumption or to increase the taxpayer's wealth, in any form or under any name."³⁰

The tax Ghozali must pay is calculated based on his current income from personal trading activities (buying and selling in the short term). This is subject to Final Income Tax (PPh Final) under Articles 56 and 57 of Government Regulation No. 55 of 2022 concerning Adjustments to Income Tax Regulations at a rate of 0.5%, with a maximum turnover of IDR 4.8 billion per year. Profits from cryptocurrency transactions, such as Bitcoin, must be reported in the Annual Tax Return, and Bitcoin holdings must be declared as assets. The self-assessment system principle of tax collection, as regulated in Article 12, paragraph (1) of the General Provisions and Tax Procedures Law (UU KUP), states:

"Every taxpayer shall pay the tax owed in accordance with the provisions of taxation laws and regulations, without relying on the issuance of a tax assessment notice."

The taxation of NFT transactions in Indonesia is based on the added economic value from buying and selling transactions, as regulated under Article 4, paragraph (1) of

²⁹ Direktorat Jenderal Pajak Kementerian Keuangan RI, "Komitmen Taat Pajak, Ghozali Kini Sudah Punya NPWP," Direktorat Jenderal Pajak, 2022, <http://pajak.go.id/id/berita/komitmen-taat-pajak-ghozali-kini-sudah-punya-npwp>.

³⁰ Imaduddin Zauki, Wawancara, Jakarta, Mei 2024.

Law Number 7 of 2021 concerning the Harmonisation of Tax Regulations. Taxation on NFT transactions in Indonesia follows a self-assessment system³¹ because, in practice, Regulation No. 68 of 2022 (PMK No. 68/2022) cannot be used as a basis for taxing all NFT transactions, particularly those conducted on marketplaces based in Indonesia. For instance, on the NFT marketplace OpenSea, the developer or initial seller is only subject to gas fees and service fees paid to the blockchain and marketplace where the NFT is listed (uploaded). Subsequently, when the second party or buyer decides to resell the NFT, they incur gas fees, service fees, and royalty fees payable to the blockchain, marketplace, and developer.³² Under the system used by OpenSea, taxation on NFT transactions relies on the self-assessment system. In this system, taxpayers are responsible for calculating, paying, and reporting their tax obligations independently, with the government acting as a supervisor.

The Director General of Taxes is authorised to conduct examinations as stipulated in Law Number 6 of 1983 concerning General Provisions and Tax Procedures, as amended by Law Number 16 of 2009. Supervision of the self-assessment taxation mechanism is critical due to the potential for non-compliance in taxpayer reporting. To carry out effective audits, the Directorate General of Taxes has developed a plan and strategy based on the SMART-C framework: Specific, Measurable, Attainable, Relevant, Time-bound, and Continuous Improvement.³³ This strategy aims to enhance taxpayer compliance, increase revenue from audits, and improve the quality of examinations. To optimise the taxation of NFT transactions, the government, through the Directorate General of Taxes (DJP), could engage in outreach and harmonisation efforts with platforms facilitating NFT trading (example OpenSea, Rarible, SuperRare). These measures are expected to enable more effective and efficient taxation and supervision in the future. As the government has previously treated business actors providing

³¹ Amelia Ayu Paramitha and Fajar Kusuma Ramadhani, "Tinjauan Yuridis Pengenaan Pajak Penghasilan dalam Non Fungible Token (NFT) di Indonesia," *Jurnal Supremasi*, February 28, 2023, 15–27, <https://doi.org/10.35457/supremasi.v13i1.2584>.

³² Cornelia Lyman, "Berapa Biaya Minting NFT Di OpenSea Di Tahun 2024, Bisa Gratis? - Pintu Blog," August 23, 2024, <https://pintu.co.id/blog/berapa-biaya-minting-nft-di-opensea>.

³³ A Circular Letter of the Directorate General of Taxes No. SE-09/PJ/2015 concerning Assessment Strategy and Planning of 2015, accessed on 29 September 2024.

electronic communication facilities as value-added tax collectors such as Bukalapak, Tokopedia, Netflix, Amazon and Spotify.

Building taxpayer awareness in the community is part of DGP duty as a government agency (fiscus). Devotion theory is one of the appropriate theories to build taxpayer awareness in Indonesia. The theory of devotion is closely related to the concept of citizens' moral and social obligations. This theory emphasises the importance of individual contributions to the welfare of society and the state. Under this theory, Ghozali's obligation to pay income tax is seen as a form of devotion or loyalty to the state, where moral duty serves as the fundamental basis for fulfilling his social role.³⁴ Every citizen is viewed as having responsibilities not only towards themselves but also towards the broader community. Paying taxes is not merely a legal obligation but also a moral duty that supports the sustainability of the state.³⁵

Furthermore, the theory of devotion views the relationship between citizens and the state as a reciprocal relationship grounded in collective responsibility. These moral and social obligations are not only passive, such as compliance with the law but also active, involving participation in national life, including contributing to economic development and collective welfare.³⁶ Ghozali's compliance in consciously registering for a Taxpayer Identification Number (NPWP) and paying income tax reflects his social commitment to supporting justice. This obligation serves as an act of devotion that can provide benefits to society as a whole, fostering equity and prosperity for the community.³⁷

4.3. Regulatory Model for Income Tax and VAT on NFTs in the Form of Digital Creative Works

³⁴ Anita Candrasari and Sutjipto Ngumar, "Kontribusi Pajak Hotel Dan Restoran Terhadap Peningkatan Pendapatan Asli Daerah Kota Surabaya," *Jurnal Ilmu Dan Riset Akuntansi (JIRA)* 5, no. 2 (2016), <https://jurnalmahasiswa.stiesia.ac.id/index.php/jira/article/view/271>.

³⁵ Bustamar Ayza, *Hukum Pajak Indonesia* (Jakarta: Kencana, 2016).

³⁶ Fatma Ulfatun Najicha, "Peranan Hukum Pajak Sebagai Sumber Keuangan Negara Pada Pembangunan Nasional Dalam Upaya Mewujudkan Kesejahteraan Rakyat," *Ius Civile: Refleksi Penegakan Hukum Dan Keadilan* 6, no. 1 (April 30, 2022): 169–81, <https://doi.org/10.35308/jic.v6i1.4568>.

³⁷ Fauziah Aqmarina and Imahda Khoiri Furqon, "Peran Pajak sebagai Instrumen Kebijakan Fiskal dalam Mengantisipasi Krisis Ekonomi pada Masa Pandemi Covid-19," *FINANSIA: Jurnal Akuntansi dan Perbankan Syariah* 3, no. 2 (December 4, 2020): 255–74, <https://doi.org/10.32332/finansia.v3i2.2507>.

NFTs can be regarded as digital assets representing real-world objects, such as artworks, animations, photos, videos, images, music, signatures, tickets, and various other creative works. This perspective does not classify NFTs as crypto assets. According to the definition of crypto assets in Article 1 of PMK 68/OMK.03/2022, a crypto asset is an intangible commodity in the form of a digital asset that uses cryptography, peer-to-peer networks, and distributed ledgers to regulate the creation of new units, verify transactions, and secure transactions without third-party intervention. NFTs can be included as digital assets, but cannot be used as a medium of exchange. The concept in the Civil Code is regulated in article 499 which explains that objects include goods and rights. Property is every item and every right that can be controlled by property rights. NFTs in the study of civil law are intangible movable objects as equated with copyright. NFTs are intangible digital assets and in trading, transactions use crypto money or cryptocurrency.. As such, the trade of NFTs, in its business process, is not bound by the tax regulations stipulated in the PMK. Below is an explanation of the conceptual differences between the two in trading practices: Table 1. The Differences between Crypto Trading Practices and NFTs

Table 1. *The Differences between Crypto Trading Practices and NFTs*

Element	Crypto Asset	NFT
Definition	Digital assets such as Bitcoin and Ethereum are used as a medium of exchange leveraging blockchain technology.	Blockchain-based digital assets representing unique ownership of an item or digital work.
Fungibility	Fungible (interchangeable with equivalent value).	Non-fungible (non-interchangeable due to unique value and characteristics). One NFT digital artwork does not hold the same value as another
Purpose	As digital currency for transactions, investments, or exchange mediums.	As proof of digital ownership for artworks, collectables, music, or other virtual items.
Trading Method	Traded on cryptocurrency exchanges such as Binance, Coinbase, Kraken.	Traded on NFT platforms such as OpenSea, Rarible, SuperRare.

Concept of property	Objects as a medium of exchange and including intangible movable property	Objects in the form of copyrighted works and including intangible movable property
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Source: Processed data

John Rawls asserts that justice is the primary value of social institutions, just as truth is the primary value of systems of thought.³⁸ According to Rawls, there are two key principles of justice: first, equality in the acquisition of basic rights, and second, socio-economic disparities are justifiable as long as they are regulated by a system ensuring that such disparities benefit society as a whole. For example, the imposition of taxes on the wealthy by the state exemplifies justice. Through taxation, the state can provide subsidies to its citizens to promote equality and fairness.³⁹ Similarly, individuals engaged in NFT trading, who have income opportunities through marketplace transactions, present a potential source of state revenue. Business activities such as those carried out by Ghazali and the creators of Karafuru animation designs illustrate opportunities for state revenue through NFT-related income. It is equitable for NFT traders with substantial earnings to be subject to income tax.

According to Mochtar Kusumaatmadja's theory of legal development, the law serves three primary functions: first, as a tool to create order and organisation in society; second, as a means to maintain and sustain existing achievements; and third, as a mechanism to preserve, protect, and secure established outcomes.⁴⁰ While cryptocurrency trading is already regulated, a new phenomenon resembling it—NFT trading—has emerged. In this context, the law must accommodate changes in societal trading behaviour. The regulation of NFT taxation represents a legal response to shifts in public behaviour towards greater tax compliance. Establishing regular tax compliance for NFT trading can be achieved by implementing the principle of legal certainty that, in the form of new regulations, must embody justice. This justice should

³⁸ Wai Chee Dimock, *Residues of Justice: Literature, Law, Philosophy* (Univ of California Press, 2023).

³⁹ Yosef Keladu, "Kesamaan Proporsional Dan Ketidaksamaan Perlakuan Dalam Teori Keadilan Aristoteles," *DISKURSUS - JURNAL FILSAFAT DAN TEOLOGI STF DRIYARKARA* 19, no. 1 (April 4, 2023): 54–78, <https://doi.org/10.36383/diskursus.v19i1.347>.

⁴⁰ R. Otje Salman and Eddy Damian, eds., *Konsep-konsep hukum dalam pembangunan kumpulan karya tulis Prof. Dr. Mochtar Kusumaatmadja, S.H., LLM* (Bandung: Penerbit Alumni, 2022), 14.

align with the positive values prevailing in society.⁴¹ Such values can be realised in tax regulations that do not impose undue burdens on the public.

Based on the above considerations, it is within the sovereignty of the state to increase national revenue through specific regulations for NFT trading. Drawing from discussions with tax educators at the Directorate General of Taxes (DJP), legal norm analysis, and the theory of state sovereignty, the following income tax collection models can be proposed:

First, a regulation akin to PMK No. 68/OMK.03/2022, which governs income tax for cryptocurrency trading, could be introduced for NFTs. While crypto assets and NFTs are distinct, their business processes share similarities, as both involve trading conducted via electronic trading platforms. Therefore, NFTs require separate regulatory treatment. Drafting such rules in the form of a Ministerial Regulation offers a faster alternative to the lengthy political process of enacting laws. Income tax could potentially be collected automatically through exchange platforms such as Indodax, Triv, Ajaib, Luno, and Pintu. In countries like the United States, South Korea, Germany, and Japan, efforts are underway to classify NFTs as securities assets, similar to cryptocurrencies. However, in practice, NFTs have not yet met the requirements to qualify as cryptocurrency or securities assets. NFTs serve as digital proof of ownership of artworks, collectables, music, or other virtual items rather than functioning as a digital currency for transactions, investment, or exchange, as is the case with cryptocurrencies. NFTs and crypto assets are both intangibles. However, in the study of property law, crypto assets function as a medium of exchange, while NFTs are movable intangible objects such as ownership of copyright.

Second, Designating NFT trading platforms as Permanent Establishments (PEs): In practice, there are two types of NFT trading platforms: domestic and foreign. Domestic companies are generally required to possess a Taxpayer Identification Number (NPWP) as part of the licensing requirements for conducting electronic trading

⁴¹ Herri Swantoro, *Harmonisasi Keadilan dan Kepastian Dalam Peninjauan Kembali* (Jakarta: Kencana, 2017), 213.

activities. To address foreign NFT marketplaces that do not have a legal entity in Indonesia, establishing a Permanent Establishment (PE) in Indonesia is necessary.

The regulation of Permanent Establishments is specifically addressed in Minister of Finance Regulation No. 35/PMK.03/2019 concerning the Determination of Permanent Establishments. Article 4 of this regulation defines a Permanent Establishment as a business entity used by a foreign individual or foreign entity to conduct business or activities in Indonesia, provided it meets the following criteria: the presence of a place of business in Indonesia, a permanent place of business, and the utilisation of a place of business by a foreign individual or foreign entity

Under the Income Tax Law (UU PPh), a Permanent Establishment (PE) in Indonesia can take the form of a branch office, representative office, or any individual or entity conducting business activities in Indonesia. A PE is defined as a business entity used by a foreign tax subject, whether an individual or a legal entity, to engage in business activities within Indonesia. Permanent Establishments are specifically regulated under Minister of Finance Regulation No. 35/PMK.03/2019 concerning the Determination of Permanent Establishments. This regulation provides the following definitions of foreign individuals or entities as foreign tax subjects: a) Foreign Individuals: Individuals who do not reside in Indonesia or individuals present in Indonesia for a period of 183 days within a 12-month period to conduct business or engage in activities in Indonesia; b) Foreign Entities: Entities that are not incorporated in Indonesia and do not have a domicile in Indonesia but conduct business or engage in activities in the country.

According to Law No. 36 of 2008 concerning Income Tax (UU PPh), the 183-day threshold in a year is applied to PEs when Indonesia and the country of origin of the company or PE do not have a tax treaty (P3B). However, if a tax treaty exists between Indonesia and the country of origin of the company or PE, the time threshold for PE status follows the provisions agreed upon in the treaty.

A Permanent Establishment (PE) is a business form used by a foreign taxpayer (non-resident taxpayer), either an individual (natural person) or an entity (legal person), to conduct business or activities in Indonesia. According to Article 2, paragraph (5) of Law

No. 36 of 2008 concerning Income Tax, a PE refers to a business form used by an individual who does not reside in Indonesia, an individual who stays in Indonesia for no more than 183 days within a 12-month period, or an entity that is neither incorporated nor domiciled in Indonesia, to conduct business or activities in the country. The 183-day threshold applies when there is no tax treaty or Double Tax Avoidance Agreement (DTA) between Indonesia and the foreign company's country of origin. If a tax treaty exists, the time threshold for determining PE status follows the agreement made between the two countries.

According to Law No. 36 of 2008, Article 26 Income Tax (PPH Pasal 26) is imposed on income received by foreign taxpayers from Indonesia that is not derived from a PE in Indonesia. The criteria for classifying an individual or company as a foreign taxpayer are as follows: a) An individual who does not reside in Indonesia, an individual who stays in Indonesia for no more than 183 days in a year (12 months), or a company that is neither incorporated nor domiciled in Indonesia but operates its business through a PE in Indonesia; b) An individual who does not reside in Indonesia, an individual who stays in Indonesia for no more than 183 days in a year (12 months), or a company that is neither incorporated nor domiciled in Indonesia but earns income from Indonesia without conducting business through a PE in Indonesia.

The establishment of a PE in Indonesia is generally based on an application by the taxpayer, although there are instances where the Directorate General of Taxes (DJP) advises foreign businesses to establish a PE in Indonesia. For example, online travel agents (OTAs) operating in Indonesia may be encouraged to establish a PE. While OTAs may be supervised by other ministries, such as the Ministry of Tourism and Creative Economy, their tax obligations remain under the jurisdiction of the DJP.⁴² Currently, the establishment of a PE in Indonesia is voluntary and depends on taxpayer awareness. This approach is partly due to the possibility that foreign businesses are already paying income taxes in their home countries. To avoid double taxation, tax

⁴² Zauki, Wawancara. (Jakarta, 11 October 2024)

treaties are essential to harmonise tax obligations and prevent overlapping tax burdens.

Third, Tax Treaty. As an institution tasked with ensuring the well-being of its citizens, the state can impose obligations on its people,⁴³ one of which is the obligation to pay taxes. Taxes are used to fund government programmes across various sectors.⁴⁴ According to Mardiasmo, paying taxes is a form of citizens' devotion to the state.⁴⁵ People must comply with this obligation, as the state has existed and served its citizens since ancient times. Under this theory, there is no need to question the justification for paying taxes to the state.⁴⁶ However, tax collection must be based on legal provisions to prevent abuse of power, as stipulated in Article 23A of the 1945 Constitution of the Republic of Indonesia.⁴⁷ Based on the above analysis, domestic NFT marketplaces can be regulated through national legislation. However, for foreign businesses, it is essential to establish specific international agreements (tax treaties) to address double taxation issues. Bilaterally, a country can enter into tax treaties with other nations to avoid double taxation. These agreements essentially allocate or limit the taxing rights of each country concerning certain types of income.

Double taxation avoidance agreements (DTAs) are bilateral tax treaties between two countries that regulate the allocation of taxing rights over income received or earned by residents of one or both contracting states.⁴⁸ The primary objectives of DTAs are as follows:⁴⁹ 1) Facilitating international trade and investment flows by: a) avoiding the imposition of double taxation; b) providing reduced tax rates in the source country on certain types of income; 2) Enabling enhanced enforcement of domestic tax rules by

⁴³ Y. Sri Pudyatmoko, *Pengantar Hukum Pajak* (Yogyakarta: Andi, 2009).

⁴⁴ Khoirul Hidayah, *Pokok-pokok hukum pajak: kajian konsep dan kritik pengaturan pajak di Indonesia* (Malang: Setara Press, 2020).

⁴⁵ Mardiasmo, *Perpajakan*, Ed. rev (Yogyakarta: Andi, 2019).

⁴⁶ Siti Kurnia Rahayu, *Perpajakan Konsep Dan Aspek Formal* (Bandung: Rekayasa Sains, 2018).

⁴⁷ Ayza, *Hukum Pajak Indonesia*.

⁴⁸ Abbas Arfan et al., "The Implementation of Maqashid Sharia: Heterogeneity of Scholars' Fatwas Towards Islamic Banking Contracts," *Legality: Jurnal Ilmiah Hukum* 32, no. 1 (March 14, 2024): 105–28, <https://doi.org/10.22219/ljih.v32i1.32170>.

⁴⁹ Nataherwin, Syanti Dewi, and Widyasari, *Pajak Internasional* (Ponorogo: Uwais Inspirasi Indonesia, 2023), 132–33.

minimising tax avoidance practices and facilitating the exchange of information, mutual consultations, or mutual agreements between the contracting states.

The status of a Double Taxation Avoidance Agreement (DTA) in a country depends on its legal system. In Indonesia, DTAs are treated as *lex specialis* in relation to domestic laws. Therefore, if there is a conflict between Indonesia's domestic laws and the provisions of a DTA, the rules in the DTA take precedence. It is important to note that the primary purpose of a DTA is to avoid double taxation. To prevent the same income from being taxed twice by different countries for the same taxpayer, a DTA limits a country's right to impose taxes on such income. When the domestic tax laws of two countries simultaneously impose taxes on the same income, the DTA provides a mechanism to either eliminate or restrict the taxing rights of one or both countries. In other words, by entering into a DTA, a country agrees to have its taxing rights restricted in accordance with the limitations set forth in the agreement. This ensures a fair allocation of taxing authority and reduces the risk of double taxation, fostering smoother international economic relations.⁵⁰

5. Conclusion

The efforts of the Directorate General of Taxes (DJP) in overseeing NFT trading transactions involve public outreach and encouraging compliance with income tax payments, as regulated in Article 4, paragraph (1) of Law Number 36 of 2008. Final Income Tax (PPh Final) is imposed under Articles 56 and 57 of Government Regulation No. 55 of 2022 concerning Adjustments to Income Tax Regulations, with a rate of 0.5% and a maximum turnover of IDR 4.8 billion per year. The self-assessment system, as stipulated in Article 12, paragraph (1) of the General Provisions and Tax Procedures Law (UU KUP), serves as a personal awareness system for fulfilling tax obligations. The theory of devotion is closely related to the concept of citizens' moral and social obligations, emphasising the importance of individual contributions to societal and national welfare. Fostering personal awareness is a means of realising individual contributions to the state through acts of devotion.

The challenges faced by the DJP in supervising NFT trading include the lack of

⁵⁰ Nataherwin, Dewi, and Widyasari, *Pajak Internasional*.

awareness among NFT traders regarding their tax obligations, insufficient understanding of tax compliance, and data limitations on NFT transactions. These issues necessitate cross-sectoral cooperation between ministries. NFTs should continue to be recognised as digital proof of ownership for artworks, collectables, music, or other virtual items rather than as digital currency for transactions, investments, or exchanges, as is the case with cryptocurrencies. NFTs and crypto assets are intangible objects. According to property law, the difference is that crypto assets function as a medium of exchange, while NFTs are intangible movable property like ownership of copyrights. A regulatory framework for income tax and VAT on NFTs in the form of digital creative works in Indonesia can be implemented through the following models: First, introducing specific regulations through a Ministerial Regulation, similar to PMK 68/OMK.03/2022, which governs income tax and VAT for cryptocurrency trading; second, treating NFT trading platforms as Permanent Establishments (PEs); third, establishing tax treaties to avoid double taxation and facilitate compliance for businesses operating as PEs.

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