

Analysis Of Non-Fungible Token (Nft) Sale And Purchase Transactions In The Perspective Of Fatwa Dsn Mui Number 110 Of 2017 On The Sale And Purchase Contract

Setiawan bin Lahuri¹, Alya Zhafirah Nasywa²

^{1,2}Hukum Ekonomi Syari'ah, UNIDA Gontor, Indonesia

alyaznasywa13@gmail.com

Abstract: The development of digital technology has driven the emergence of Non-Fungible Token (NFT) transactions as a form of unique and non-interchangeable digital assets. This study aims to analyze NFT transactions from the perspective of the Indonesian National Sharia Council - Indonesian Ulema Council (DSN-MUI) Fatwa No. 110 of 2017 on sale and purchase contracts. The research employs a qualitative approach with descriptive analysis to examine the transaction mechanisms of NFTs and their compliance with sharia principles. The findings indicate that NFT transactions fulfill several aspects of sharia-compliant sale and purchase contracts, such as the presence of *sighat* (offer and acceptance), the clarity of the object (*mutaman*), and price determination (*tsaman*) agreed upon by both parties. However, issues related to the principle of *tawāzun* (balance) remain, particularly concerning environmental sustainability due to the high energy consumption involved in NFT transactions. Therefore, while NFT transactions can generally be considered permissible under sharia law, further studies are needed to evaluate their ecological impact and ensure full compliance with Islamic principles. Keywords: Non-Fungible Token (NFT), Sharia-Compliant Trade, DSN-MUI Fatwa, Sale and Purchase Contract, Sharia Principles.

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A. INTRODUCTION

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The rapid development of the times has made economic activities undergo many changes. Economic activities are closely related to buying and selling transactions, before the discovery of money as a means of human transactions, ancient humans used a system of exchanging goods or commonly called barter, at that time the seller and buyer had to meet directly to make transactions. As the times progressed, money was discovered as a medium of exchange (Laily & Syam, 2021). The form of the medium of exchange itself starts with valuable metals such as gold, then to make it easier to have the medium of exchange, it develops into paper assets such as paper money (Sari, 2016). Starting from the covid-19 phenomenon, people are accustomed to using digital-based applications because they are more efficient and easier with only smartphones and the internet. One of the impacts of this economic development, namely e-commerce activities, is one of the impacts of economic development on a fast, secure and confidential payment system (Bank Indonesia, 2013).

The rapid development of e-commerce has encouraged the development of payment instruments from cash to non-cash payment instruments. The development of electronic-based

payment systems or non-cash payment instruments has resulted in the emergence of many new innovations in payment systems that are expected to provide flexibility, efficiency, and simplicity in facilitating transactions. Bank Indonesia adapts paper payment instruments into electronic money (Era et al., 2019). The rapid development of technology is not just about e-commerce and electronic money, or digital assets such as cryptocurrency. One of the latest innovations is the Non Fungible Token (NFT), which is a digital token that is very unique and cannot be exchanged with each other because of its uniqueness. NFTs can be in the form of artwork, music, videos, digital collectibles, and others. The transaction of buying and selling NFTs is very similar to buying and selling online in general, where users create an account, and connect it with a digital wallet, and agree to the terms and conditions that apply to the marketplace platform used (AISYA, 2022).

Non-Fungible Tokens (NFTs) in the past three years have shown a trend that has attracted people's interest in selling their digital works. The NFT phenomenon is classified as a modern phenomenon that has become a trend today due to sensational news. The news of al-Ghazali to the community's response to making NFTs as one of the high-income digital assets. With so much interest in NFTs, several questions arise in the community with how the regulations on buying and selling NFTs. DSN MUI comes with DSN MUI fatwa No. 110 of 2017, buying and selling transactions must fulfill the provisions related to *sighat* (contract statement), *mutqan* (object of sale and purchase), and *tsaman* (price). This research will argue whether the sale and purchase of NFT has fulfilled these provisions because if you look further, NFT does not have a clear object only based on digital objects, with another possibility that it is related to the principle of *tawazun* (balance), because the user of a high carbon footprint in the NFT transaction process can have a negative impact on the environment (Fahmi, 2023).

In a study, Ahmad et al (2022) (Saroh et al., 2023), suggested that potential problems related to value uncertainty and price speculation in NFT transactions. It was found that in NFT transactions, if there is clarity regarding the object and value being traded, then the transaction can be considered valid in Islamic law, but transactions that contain speculative elements must still be avoided. Meanwhile, according to research by Sari & Widyanto (2021) Syahputra (2024), in their research, they suggest that there are many challenges faced in identifying several main challenges in NFTs, such as the uncertainty of the NFT market and potential problems with *gharar* (uncertainty). NFTs are considered to have the potential to be developed in the Islamic financial market, with strict supervision in the use of NFTs so that there is no element of speculation that violates sharia principles.

In the review of *muamalah fiqh*, in the research of Farhan & Abdullah (2020), it is stated that NFT transactions can be accepted if they meet *fiqh* requirements, such as transparency in transactions, no elements of *gharar* or usury, and the existence of clear objects. According to research by Hidayat & Fauzi (2023), that NFT is considered valid in the perspective of sharia if the transaction is carried out transparently and clearly, and the NFT object has a value that can be accounted for. From this research, it is known that there is no MUI Fatwa to accommodate the rapid development of digital transactions, and there is a need for adjustments to handle the unique characteristics of NFT transactions, and to be more in line with technological and market developments. As well as the importance of stricter regulations

regarding NFT transactions, to ensure that they are free from elements that contradict sharia. Thus, this study aims to explain the practice of buying and selling NFT and analyze it as an object of buying and selling in the perspective of Fatwa DSN MUI No. 110 of 2017, in order to provide a deeper understanding of the suitability of NFT transactions with the principles of Islamic law (Zipan, Efridani Lubis, 2022).

B. METHOD

This research uses a literature study by collecting data and information related to NFTs and the views of scholars related to copyright issues, the definition of property, and the study of the validity of these transactions. The data that has been collected is then analyzed in accordance with the Fatwa DSN MUI, and examines several scholarly opinions (Thalib & Meinarni, 2022). This research uses descriptive analysis by presenting the object under study in the form of NFTs, in the sale and purchase agreement on the framework of Fiqh Muamalah, it will be studied from several points: a) the nature of NFTs as *ba'i* objects (*mabi'*) which are included in the category of transacted objects (*al-ma'qud 'alaihi*), b) cryptocurrency as a transaction tool (*tsaman*) which is included in the category of transacted objects (*al-ma'qud 'alaihi*), c) two parties (seller and buyer) who make transactions, and d) *shigat* in NFT sale and purchase transactions. With primary data sources: DSN MUI Fatwa No. 110 of 2017, and secondary data sources: Books, journals and other articles related to NFTs (Julianto, 2023).

C. RESULTS AND DISCUSSION

1. Non-fungible token (NFT) concept

Non-Fungible Token (NFT) is a type of cryptocurrency derivative product in the form of smart contracts from Ethereum. NFTs are unique in that they cannot be exchanged between each other (equivalent, non-fungible), so they are compatible to identify something or someone with unique steps and methods. It is stated by Dowling (2022), that NFTs are digital assets that can be traded via blockchain, including the contents of NFTs are images, videos, music and even parts of the virtual world (Fahmi, 2023). NFTs are also referred to as certificates of authenticity that are unique in the blockchain, issued by the creator of the asset, and the asset is in digital or physical form. By using smart contract those who create works with NFTs can easily prove that digital assets in the form of videos, images, art, event promotions, and more exist. In addition, the creators of such works also earn royalties from the sale of their works on the NFT marketplace. Due to liquidity, interoperability, and story context, NFTs protect intellectual property. Basically, NFTs are available in the form of a short code, but the code can function based on the comparative value of the rarity of the digital object. In addition, it guarantees the selling price of virtual assets that cannot be used (Jafar Maulana, 2023).

NFTs have different characteristics from cryptocurrency coins that run on a blockchain system. Another uniqueness is that NFTs cannot be exchanged directly with other NFTs. Because each token has different information, metadata, and characteristics, similar to physical works of art that cannot be replaced with each other. NFTs are the only assets in the digital world that can be traded like goods in the real world, but the difference in NFTs is not in real form. The certificate of ownership of this NFT is in the form of a digital token. NFTs are used

in the same programming as cryptocurrencies, such as Bitcoin or Ethereum. NFTs also provide legal proof of ownership of a digital item or work. The owner of the NFT has full control over the asset, even though the item is digital. In addition, NFTs cannot be divided because NFTs are just one whole unit that represents ownership of an asset. That is a big difference between NFTs and cryptocurrencies on the blockchain network. NFTs are not broken down, but the set of codes that exist in NFTs are embedded using a digital archive so that they become a unique code, the code is generated through several technical and sales steps that are set. If one wants to sell an NFT one must upload the file to an auction market, such as Rarible, OpenSea, or KnownOrigin. The file is recorded in the digital book as an NFT and can be traded for cryptocurrency (Al et al., 2024).

NFTs in their transaction mechanism use blockchain as an operationalization in smart contracts. NFTs operate on a blockchain system with certain standards or protocols, one of which is ERC-721 and ERC-1155. The ERC-721 standard initiated by a Canadian company called Crypto Kitties is able to operate the protocol to add certain codes to track and record traces of ownership in an NFT work. The NFT token is recorded on a large ledger (blockchain) that records the owner of the NFT and records all NFT transactions in it. If there is a transfer of ownership, the track record and ownership status in the network can be immediately known. This process is very possible because the token in the NFT can be added to several contracts, such as a cooperation contract with the artist who created the digital object so that he gets a sales royalty if at a later time the digital object is re-traded. A digital work that has been traded in the NFT network does not mean that the work is no longer accessible to the public. The public can still freely access and even download and archive them on their respective computers or gadgets. NFTs in their concept do not trade digital archives, but rather trade their ownership certificates.

NFTs highly preserve and maintain proof of ownership, and the proof of ownership remains with the party who owns the work on the NFT blockchain network. It was stated by Fajrussalam et al (2022) that NFTs not only have advantages in the form of security of proof of ownership of a work of art, NFTs also have quite high risks such as high levels of value volatility and the large amount of carbon footprint left behind. Environmental pollution in the form of carbon is caused because NFTs require powerful computing resources for the operation of the blockchain platform and crypto coins as a means of transaction or exchange value for NFTs. CryptoPunks is the oldest project to test the NFT market. This project was launched between June 2017 and May 2021. These NFTs are a collection of 10,000 artworks in the form of pixel images, each of which displays unique combinations, personalities, and attributes that are randomly generated. That's why no two collections are exactly alike. CryptoPunks consists of designs in the form of humans, apes, zombies, and aliens. CryptoPunk #7523 is the most expensive NFT in the form of an alien wearing a mask and is also known as the "Covid Alien". CryptoPunk #7523 itself was successfully sold for 11.75 million US dollars or IDR 168.2 billion.



Figure 2. CryptoPunk

2. Sale and Purchase Transactions in Islam

In Arabic, buying and selling is known as **al-bai'**, which means the process of transferring ownership of an object through a contract of mutual exchange. Buying and selling is considered valid if it fulfills the pillars and conditions that have been determined by Islamic law. The legal basis for buying and selling is taken from the Al-Quran and hadith, such as in Surah Al-Baqarah verse 275 which states that Allah has justified buying and selling and forbidden usury. The pillars of selling and buying in Islam consist of four main elements that must be fulfilled for the transaction to be considered valid (Syaifullah, 2014):

- a. Seller and Buyer: There are two parties to the transaction, the seller and the buyer. Both parties must have the legal capacity to conduct the transaction.
- b. Goods or Services: The goods or services being traded must exist and can be owned by the seller. The goods must be useful and not included in the category of haram goods.
- c. Price: The price of the goods or services sold must be clear and can be measured by legal tender, such as money.
- d. Ijab Qabul: There is ijab qabul, which is an expression of consent from both parties to the transaction. This can be in the form of words or actions that indicate agreement.

There are two types of buying and selling from the point of view of Islamic law, namely legal buying and selling that is canceled according to Islam. Legal buying and selling according to Islam is buying and selling that meets the terms and conditions of buying and selling that have been mentioned in the Qur'an and Hadith, while buying and selling that can be canceled according to Islamic law includes, buying and selling that is forbidden, sale and purchase of animal semen, sale and purchase with intermediaries (al-wasilat), sale and purchase of animal cubs still in their mothers' stomachs, sale and purchase of muhallaqah /baqallah (land, rice fields, gardens), sale and purchase of mukhadarah, sale and purchase of muammasah, sale and purchase of munabadzah, sale and purchase of muzabanah. Whereas buying and selling in terms of the objects being traded according to Imam Taqiyudin's opinion is divided into three, namely buying and selling visible goods, buying and selling which are mentioned in the promise, and buying and selling objects that do not exist (Kurniawaty et al., 2024).

Fatwa DSN MUI No. 110/2017 on Sale and Purchase Agreement

In the provisions of Fatwa DSN MUI No. 110 of 2017 which regulates the sale and purchase contract, one of them is the provisions related to Mutsman (Mabi'):

- a. *Mutsman / mabi* may be in the form of goods or in the form of rights, and belong to the seller in full (*al-milk al-tam*).
- b. *Mutsman / mabi* must be in the form of goods or rights that can be utilized according to sharia (*mutaqawwam*) and can be traded according to sharia and applicable laws.
- c. *Mutsman / mabi'* must exist, certain / certain and can be handed over (*maqdur al-taslim*) at the time the sale and purchase contract is made, or at an agreed time if the contract is made using a salam sale and purchase contract or an *istishna'* sale and purchase contract.
- d. In the case of *mabi'* in the form of rights, the provisions and limitations as specified in MUI Fatwa number I/MUNAS VII/5/2005 on the Protection of Intellectual Property Rights and applicable laws and regulations apply.

3. NFT Transaction Mechanism

NFTs often have purchases of digital artworks from artists, especially Beeple's digital artwork *Everyday: The First 5000 Days*. The piece was sold at auction in 2021, and fetched USD 69.3 million. This work broke the record in the auction industry market. The incident motivated artists to upload their works through NFTs (*NFTs (Non-Fungible Token) Dan Dampaknya Pada Seni Digital*, n.d.). The selling mechanism of NFTs relies on the uploading of files through the auction marketplace that exists in NFTs. The file is recorded in a ledger (smart contract) and then it is recorded that the item belongs to the NFT class and thus can be bought or sold using digital currency. Although NFTs are the work of an artist who may be presenting artwork exclusive to an artist, they can still retain the copyright of the artwork. All transactions in the buying and selling of NFTs will be automatically and officially recorded in a digital book called the blockchain. All records of the trades are accessible to the general public, so if someone wants to buy the work, they must have cryptocurrency in order to join the blockchain system (AISYA, 2022).

In the NFT sales process requires a blockchain platform to be able to run the smart contract itself, a smart contract is a program that can ensure that transactions that have occurred have occurred in accordance with the mutually agreed upon agreement between the seller and the buyer on a distributed database network. So that NFT requires a network on the platform that can continue to oversee the NFT transaction process. NFTs run on a blockchain with certain standards, namely ERC-721 and ERC-1155. The ERC-1155 standard comes with protocol capabilities that make it possible to add code to track and trace the ownership of digital archives in NFTs (Nurkhafidzoh, 2021).

In the practice of buying and selling NFTs, it is done on a special marketplace for buying and selling NFT transactions. The first step in buying and selling NFT transactions is to prepare a digital wallet (cryptocurrency) and then fill it with Ethereum balances or so on, then after that we as sellers can upload images to NFTs and set a value when the asset is traded on the secondary market, if someone is interested in buying the NFT work then the seller will get a royalty. If seen from the buyer's perspective, someone can buy in the digital market, someone

can buy and choose the digital asset on the NFT. Due to the large number of NFT enthusiasts, digital platforms such as OpenSea, Rarible, Axie, NFT Showroom, and other marketplaces that provide NFT selling markets were born (RAMABE, 2022).

Analysis of the Conformity of NFT Transactions with DSN MUI Fatwa No. 110 of 2017

Muslims in carrying out all buying and selling transactions must of course pay attention to whether the transaction is in accordance with what has been prescribed in Islamic law or not, whether the transaction contains defects or things that are prohibited in Islam or not. Many provisions are contained in the Qur'an, hadith, ijma', and so on. Umar bin Khathab RA. Said: *"No one should trade in our market except one who understands the teachings of the religion."* (HR Turmidzi).

The Non-Fungible Token (NFT) phenomenon has become a popular topic in Indonesia, especially after the best-selling "Ghozali Everyday" photo tokenization on the OpenSea marketplace, which has sparked increased curiosity and experimentation in NFTs. The Non-Fungible Token (NFT) phenomenon has become a popular topic in Indonesia, especially after the sale of the "Ghozali Everyday" photo tokenization on the OpenSea marketplace, which has sparked increased curiosity and experimentation in NFTs. In conducting NFT buying and selling transactions, the terms and conditions of buying and selling must be considered as determined in Islam. Because the sale and purchase agreement is a legal action that has the consequence of the transfer of rights to an item from the seller to the buyer, of course the pillars and conditions must be fulfilled. The pillars in buying and selling consist of the first is the seller and buyer (*aqidain*) in this context are people who have accounts in the NFT market. In this transaction, there are also provisions, namely that the person who transacts in this NFT must have a mind, because not everyone understands the concept of NFT except those who really have an interest in it. The second pillar is the exchange rate of the goods being traded (object of sale and purchase). The exchange rate here is *etherum* and the object of buying and selling in NFTs such as still images, moving images, audio, and so on. The third pillar is *ijab Kabul*. In the NFT itself, *Ijab Kabul* occurs when the seller and buyer make a transaction in a manner that has been agreed upon by the two parties, on the NFT platform itself (Ghaisani & Ramdan, 2022).

As written in the fatwa, the principles of muamalah are divided into general and specific. The general principles include *first*: May

الأصل في المعاملة الإباحة إلا أن يدل دليل على تحريمها

"The basic principle of muamalah is that it is permissible unless there is evidence that forbids it"

This rule provides the widest possible space and opportunity in bermuamalah to create various creativity and innovation as long as it does not conflict with Islamic law. The second principle, is to consider the good (*maslahat*) for humans, a human being can accept or reject everything that is destructive (*dar al mafasid wa lab masalih*). Since Islam is very familiar with *mashalah*, the increasing popularity of NFT can be seen in terms of *maslahat* (Affandi, n.d.).

The third principle is that muamalah is carried out by maintaining balance (*tawazun*). This concept is seen in sharia covering various aspects, including the balance between material and

spiritual development, utilization and preservation of resources. Therefore, in addition to meeting the needs of the world by buying and selling, we must review whether the sale and purchase is in accordance with the provisions that are syarized (Madjid, 2018).

or not, including the sale and purchase of NFT, so that our buying and selling activities are blessed and do not conflict with Islamic law. The principle of *tawāzun* here can be seen from the consideration of the implementation of buying and selling that must be in accordance with sharia and resource utilization. One of the obstacles of NFT that is more or less disturbing is the fact that there is still a large carbon footprint left behind.

The fourth principle, *muamalah* is carried out by maintaining the value of justice and avoiding elements of injustice, one of the characteristics of injustice is justice or perhaps the absence of an element of coercion when buying and selling. In each NFT platform, users must read carefully the terms and conditions that must be agreed upon in order to carry out the transaction they want to make. Because the user has read these conditions, there is no element of coercion in the transaction being carried out. Today plagiarism is rampant among national and international circles, NFTs are here to be a solution in maintaining the authenticity of these goods, because there is a copyright registered on the *blockchain* itself, because NFT is a unique token that is immune to any modification. This is in line with the principle of injustice when someone plagiarizes the work of others (Madjid, 2018).

Sale and purchase in Islamic law, one of which is regulated in DSN-MUI Fatwa Number 110 of 2017 concerning Sale and Purchase Agreements. In the fatwa there are several provisions related to the research including, provisions related to *sighat al-Aqd*', provisions related to the parties, provisions related to *mustaman (mabi')*, and provisions related to *tsaman*. We can analyze again that the provisions related to *Shighat al-'Aqd* have been fulfilled. Akad is done electronically using an official website from the NFT marketplace (Fadila et al., 2023). Furthermore, the provisions related to *Mutsman (Mabi')* or what is called the object of sale and purchase are also appropriate. The object can be proven by the existence of digital goods that have their own emotional value for an artist. Full ownership (*AL-Milk at-tam*) which includes the object and its benefits at once. Unlike other physical artwork assets, NFTs are created or printed from digital objects that represent both tangible and intangible goods. (Husna, 2019)

The next provision is *tsaman* (price), where the price in the sale and purchase of NFTs has been written together with the NFT products offered. Because NFT is a work of art, the creators set the price according to the essence of the beauty or emotional value of the artwork. NFT sale and purchase transactions can be done in cash (*albāi' al-hat*), it can also be an auction or bargaining system if the seller provides. If we choose cash then we can immediately pay it using a digital wallet that is already connected. However, a new problem arises in the NFT on the exchange rate or currency used in the NFT, namely cryptocurrency which is not authorized by the state as a medium of exchange.

Basically, all forms of buying and selling will be valid if they do not violate Islamic law. As in DSN MUI Fatwa Number 110 of 2017 concerning Sale and Purchase Agreements, here are regulated provisions related to sale and purchase contracts such as provisions related to *sighat*, *mutzman (mabi')*, as well as provisions related to *tsaman* or price According to the explanation that has been presented above, in this NFT sale and purchase transaction has

fulfilled the provisions in DSN MUI Fatwa Number 110 of 2017 and the Sale and Purchase Agreement, but there are things that are not in accordance with the principles of sale and purchase, namely in the principle of tawāzun because of the use of high carbon footprints so that it is less environmentally friendly. Regarding the issue of exchange rates that use crypto assets, there needs to be more research to further study for future researchers.

D. CONCLUSIONS AND SUGGESTIONS

Looking at the previous explanation, it can be concluded that NFT buying and selling transactions are similar to online buying and selling in general, namely through creating an account and connecting with a digital wallet, as well as agreeing to the terms and conditions of the marketplace platform used. From the perspective of DSN MUI Fatwa Number 110 of 2017, this transaction has fulfilled the provisions related to sighat (ijab and qabul), mutsman (object of sale and purchase), and tsaman (price). However, there are concerns related to the principle of tawāzun (balance) due to the high carbon footprint generated from the NFT transaction process, which can have a negative impact on the environment. Therefore, although in general NFT transactions are in accordance with sharia provisions, special attention needs to be paid to the environmental impact caused to ensure compliance with sharia principles as a whole.

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