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Legal Certainty of Digital Assets Non-Fungible Token (NFT) on The Opensea Platform

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Abstract: The role of technology in everyday life has become more sufficient. This technology results in digitalization which gives rise to digital assets that later become crypto assets that use blockchain technology to store data. The development of these crypto assets presents a technology called Non-Fungible Token (NFT) which is a technology linked to a work of art or other digital assets that serves to protect the artwork or digital assets and as proof of ownership. NFT presents a new way for artists to sell their art more safely and avoid harmful actions. However, the widespread use of NFT technology has created a problem due to the lack of legality regarding NFT. The formulation of the problems discussed in this thesis are: 1. What is the legal certainty for digital assets in the form of Non-Fungible Tokens (NFT) on the Opensea digital platform? 2. What is the legality of Smart Contracts in each transaction of Non-Fungible Token (NFT) through the Opensea digital platform? The research method used is a normative juridical research method, taking a statutory approach and having a descriptive-analytical nature. From the results of this research, can be seen that NFT has not been clearly regulated in Indonesian positive law, resulting in a legal vacuum. Regulations regarding Crypto are regulated by Bappebti as the governing body. Bappebti itself has not specifically regulated NFT regulations in Bappebti regulations. Besides that, other arrangements are seen through the Civil Code which regulates NFT as an intangible object ITE Law which regulates the implementation of the transaction. And regarding the protection of its Intellectual Property Rights through the Copyright Law. Then regarding the validity of the Smart Contract in Non-Fungible Token (NFT) transactions it is considered valid in Indonesian positive law based on the Pacta sunt servanda principle and must be based on the compliance of Article 1320 of the Civil Code.

Keyword: Legal Certainty, Eletronic Transactions, Non-Fungible Token, Smart Contracts, Copyright.

INTRODUCTION

Non-Fungible Token (NFT) is a token that has a unique ID so that each token is distinguishable and therefore cannot be shared or combined. Due to its unique nature, NFTs can be used to represent ownership of digital assets (Regner, Urbach, and Schweizer 2019).¹ These assets include but are not limited to works of art, collections, videos, documents, or anything else in digital form. Simply put, NFT is a method of storing data in the public ledger of the Blockchain technology network through a unique Identification (ID) that cannot be duplicated so that it can be used to provide proof of ownership of digital assets.²

Basically, transactions through NFTs are the same as buying collector items that are entirely digital. NFT allows someone to buy and own original items from the NFT. NFT also has a built-in certification that serves as proof of ownership of an NFT digital asset (Prameswati, Sari, and Nahariyanti 2022).³ With the existence of blockchain technology, buyers can verify that they buyer is the sole owner of the NFT they purchased. NFTs can only be owned by one person at a certain time and can be traded online and purchased using Cryptocurrency through a platform, one of which is Opensea (Prameswati, Sari, and Nahariyanti 2022).⁴

In practice, NFT has both positive and negative impacts that need to be considered, namely that NFTs can open-up new potential tools for committing copyright infringement. For example, there are digital works of art that are published in the form of NFTs without the permission of the creators of these digital works of art. This is due to the lack of maximum verification of creators by the Non-Fungible Token (NFT) marketplace. There are even some Non-Fungible Token (NFT) marketplaces that do not provide verification of creators and/or previous creations which can open up potential copyright infringements.

Since the issuance of NFTs as proof of ownership of digital artworks, NFT publishers are considered as owners and creators of digital artworks on blockchain technology. Thus, NFT issuers or holders have the right to sell NFTs on the marketplace. Therefore, parties who are not creators who are able to issue NFTs are very detrimental to the original creators of these digital works of art, both from a moral and especially from an economic perspective (Ashyira).⁵

Apart from that, on the Opensea platform, a marketplace that is supposed to sell digital artwork that is converted into NFTs, a phenomenon occurs which makes the platform end up as a marketplace for selling personal data for profit. Information relating to a person, both related to personal life. One example of a case that started with a phenomenon experienced by an Indonesian citizen, Sultan Gustaf Al Ghozali, commonly called Ghozali Everyday. This man posted his selfies that he had made since 2017 with a total of up to 933 photos on the Opensea Marketplace, which eventually sold to a total of Rp. 1.7 billion.⁶ This resulted in many people flocking to follow what Ghozali was doing for personal gain. So, what Ghozali did raises the question of how a portrait of this person can be traded.

The trend of buying and selling NFTs can also open up other violations that can occur in NFT transactions, namely copyright infringement on works of art that are used as NFTs. We can see this in the example of the violation that occurred in the Twisted Vacancy case

¹ Regner, Ferdinand; Urbach, Nils; and Schweizer, André, "NFTs in Practice – Non-Fungible Tokens as Core Component of a Blockchain-based Event Ticketing Application," ICIS 2019 Proceedings, Vol.1 (2019): 3.

² Emurgo Indonesia Webinar, Semua Yang Perlu Kamu Ketahui Tentang Crypto NFT, 7 April 2021

³ Prameswati Vinanda dkk, "Data Pribadi Sebagai Objek Transaksi di Nft Pada Platform Opensea," Journal Civic Hukum Volume 7, No. 1, (May 2022): 2.

⁴ Ibid

⁵ Ashyira Angelia, "Legal Protection for Artists Whose Digital Works Are Issued Without Permission in The Form of Non-Fungible Token (Nft) (Juridical Review on Law of The Republic of Indonesia Number 28 Of 2014 on Copyrights)," EJournal Brawijaya University: 2-3.

⁶ "Journal: Fenomena Ghozali Everyday dan Salah Kaprah soal NFT," News Liputan6, accessed October 24, 2022, <https://www.news.liputan6.com>.

against Kendra Ahimsa where Twisted Vacancy mutilated Kendra Ahimsa's artwork which was used as NFT. The existence of loopholes for carrying out unlawful actions as mentioned above is due to the absence of a legal umbrella that regulates repressive legal protection in the form of sanctions for perpetrators of copyright infringement.

The right to privacy as a citizen's constitutional right which is regulated in Article 28 G paragraph (1) of the 1945 Constitution, becomes an object that the state must also protect through the crystallization of a law (Juaningsih 2021).⁷ Cases of copyright infringement on NFT artworks are an example of the problem of legal certainty in conducting NFT transactions. With the advancement of information and communication technology that continues to develop, it demands clear regulations as a legal umbrella for the implementation of Non-Fungible Token (NFT) transactions in an effort to provide legal certainty. Normally, the Non-Fungible Token (NFT) can be tied to the Civil Code as the basis for civil aspects, Law no. 11 of 2008 concerning Information and Electronic Transactions (ITE) as the basis for NFT transactions as digital assets, Law no. 28 of 2014 concerning Copyright in regulating copyright protection in works of art that are used as NFTs, as well as in Bappebti Regulations concerning arrangements for the implementation of the physical market for assets.

METHOD

The research method in this study is normative juridical. This type of normative juridical research refers to legal norms contained in statutory regulations, legal books, court decisions, and legal norms that exist in society. Research with normative juridical is aimed at research on legal principles, legal systematics, and level of legal synchronization. This type of normative juridical research refers to the legal norms that exist in society. In addition, also see the synchronization of a rule with other rules hierarchically.

RESULTS AND DISCUSSION

Legal Certainty in Non-Fungible Token (NFT) as Digital Assets

Non-Fungible Token (NFT), is an asset that cannot be exchanged with other assets. NFTs are the only assets in the digital world that can be traded like goods in the real world, whereas in NFTs, goods have no form. The NFT certificate of ownership itself is in the form of a digital token that uses the same program as Cryptocurrency, such as Bitcoin and Ethereum. NFTs have only one digital signature, which does not allow NFTs to be exchanged or equivalent to one another (Sundari, Faiza, and Rahma 2022).⁸

NFT sales rely on file uploads via the auction market on the NFT sales platform (Adhami, and Giudici 2019)⁹, an example is via the Opensea platform. The file is then recorded as an NFT and thus can be bought or sold later using digital currency (Wilson, Karg, and Ghaderi 2021).¹⁰ While NFTs of creation representing a work of art may be exclusive to an artist, they can still retain the copyright to the work of art (Ante 2021).¹¹ All buying and selling transactions that are carried out will be recorded automatically and officially in a

⁷ Juaningsih dkk., "Rekonsepsi Lembaga Pengawas Terkait Perlindungan Data Pribadi Oleh Korporasi Sebagai Penegakan Hak Privasi Berdasarkan Konstitusi," *Salam: Jurnal Sosial dan Budaya Syar-I* (2021): 469-486.

⁸ Sundari, Siti Nur Faiza, "Analisis Bisnis Jual Beli Non-Fungible Token (NFT) Pada Marketplace Opensea Menurut Perspektif Hukum Islam," *Lailatur Rahma, Journal of Islamic Economics and Business (JIEB)* Vol. 12 No. 1 (April 2022): 8.

⁹ Adhami, S., & Giudici, G, "Initial Coin Offerings: Tokens as Innovative Financial Assets," *Blockchain Economics and Financial Market Innovation* (2019): 61–81.

¹⁰ Wilson, K. B., Karg, A., & Ghaderi, H, 2021, "Prospecting non-fungible tokens in the digital economy: Stakeholders and ecosystem, risk and opportunity. *Business Horizons*," <https://doi.org/10.1016/j.bushor.2021.10.007>

¹¹ Ante, L, "Non-fungible token (NFT) markets on the Ethereum blockchain: Temporal development, cointegration and interrelations," *SSRN Electronic Journal*, 22 (2021): 1–23.

digital book called Blockchain (Windiastruti and Athief 2019).¹² All sales and purchase records are accessible to the general public, so if someone wants to buy the artwork, then he/she has to enter into the Cryptocurrency system to register his/her name as a buyer and thus the buyer has the right to have a special license for the item he/she purchased (Febriandika, Fadli, and Mi'raj 2022).¹³

1. Legal Certainty of Non-Fungible Token (NFT) Digital Assets Based on the Civil Code

Basically, NFT can be categorized as a digital asset as well as a crypto asset, so we can relate NFT to various laws in Indonesia. First, in the Civil Code (KUHPPerdata) we recognize the term object law. In Article 499 of the Civil Code, it is explained that "Goods are every object and every right that can be the object of property rights". Furthermore, it is stated in Article 503 of the Civil Code which classifies goods into 2 types, namely tangible objects and intangible objects. Intangible goods are goods that do not have a physical form. Even though the object law referred to in this article does not specifically regulate digital objects, the conception of object law recognizes the existence of intangible movable objects such as receivables, other billing rights, and copyrights.

In Indonesia, it has been recognized that digital goods are included in intangible objects. This is stated in Article 1 number 19 of Government Regulation no. 80 of 2019 concerning Trade Through Electronic Systems, namely "Digital Goods are any intangible goods in the form of electronic or digital information including goods which are the result of conversion or transformation as well as goods which are originally electronic in form, including but not limited to software, multimedia, and/or electronic data." Then NFT is considered as a string of code that functions as a token and can be classified as digital goods in Indonesian law.

Furthermore, in theory NFT is an ownership token connected to a work or digital asset. It can be said that NFT can function as a deed explaining a right to a certain object, or indicating proof of ownership.¹⁴ Then NFTs can be classified as securities because they apply as proof of ownership (property deeds) by explaining the authenticity of a property object.¹⁵

In this connection, it is also added in the Civil Code itself, namely in Article 511 number 5, namely what is considered as movable property because it is determined by law are shares in the debt of the Indonesian state, both those registered in the ledger, as well as certificates, debt acknowledgments, bonds, or securities. others, along with coupons or interest proof letters related to that.

2. Legal Certainty of Non-Fungible Token (NFT) Digital Assets Based on ITE Law

First, NFT can be said to be in the form of Electronic Information because the form of the NFT itself is a token with a special code that is integrated into a blockchain system that is connected to digital works or assets. This is in accordance with Article 1 number 1 of the ITE Law, namely Electronic Information is one or a set of electronic data, including but not limited to writing, voice, images, maps, designs, photos, electronic data interchange (EDI), electronic mail (electronic mail). , telegram, telex, telecopy or the like,

¹² Windiastruti, F. C., & Athief, F. H. N, "Inacoin Cryptocurrency Analysis: An Islamic Law Perspective," *Journal of Islamic Economic Laws*, 2(2) (2019): 152–177.

¹³ Nur Rizqi Febriandika, Fadli, Denizar Abdurrahman Mi'raj, "How are NFT (Non-Fungible Token) transactions reviewed according to Islamic law?" *Borobudur Law Review* Volume 4 Issue 1 (2022), pp. 1-12 (May 2022): 6.

¹⁴ "(Non-Fungible Token) NFT Sebagai Instrumen Surat Berharga," *klik legal*, accessed December 29, 2022, <https://kliklegal.com/non-fungible-token-nft-sebagai-instrumen-surat-berharga/>.

¹⁵ *Ibid*

letters, signs, numbers, Access Codes, symbols, or processed perforations that have meaning or can be understood by people who are able to understand them.

NFTs can be classified as intangible or intangible property rights. Because basically NFT is a work of art that is encrypted into the Blockchain network which can be associated with copyright. Article 25 of the ITE Law states that "Electronic Information and/or Electronic Documents compiled and registered as intellectual works, copyrights, patents, brands, trade secrets, industrial designs, and the like must be protected by this Law with due observance of the provisions of the Laws -invitation." From the provisions of this article, it can be seen that works sold as NFTs can be protected by intellectual property rights. Thus, every NFT buying and selling transaction has legal consequences because NFT has ownership rights to objects and copyrights (Minar 2022).¹⁶

In conducting NFT transactions, a platform is needed to carry out these transactions, which in this study was carried out through the Opensea digital platform. Described in Article 17 paragraph (1) of the ITE Law states that "Organization of Electronic Transactions can be carried out in the public or private sphere.". Therefore, sales through the Opensea platform are said to be in the private sphere because of the nature of Opensea which is an open platform run by an independent company. Furthermore, it can be understood that NFT as a crypto asset uses blockchain technology to store unique data where the implementation of this blockchain technology has developed into a Smart Contract. All NFT transactions on the Opensea platform will be connected to Crypto Wallet which will always ask for a digital signature that will be linked to the Smart Contract in every buying and selling transaction made on the Opensea platform. This is of course binding, in accordance with what is explained in Article 18 paragraph (1) of the ITE Law.

3. Legal Certainty of Non-Fungible Token (NFT) Digital Assets Based on Copyright Law

NFT acts as a proof of ownership token of a work of art. This proof of ownership does not make the owner of the NFT have unlimited rights over a work represented by the NFT (Minar 2022).¹⁷ Ownership of an NFT does not give full authority to the owner of the NFT to duplicate a work of art represented by the NFT. NFT can be likened to securities where the NFT itself represents ownership of assets or valuables with an irreplaceable exchange rate (Mathematics 2016).¹⁸ Copyright cannot protect NFTs, but only applies to the work represented by that NFT. This is in accordance with what is explained in Article 1 point 1 of the Copyright Law, where Copyright is an exclusive right to a work that is manifested in a tangible form and in Article 1 point 3 of the Law.

Article 31 of the Copyright Law explains that the original creator who is recognized by law is the person whose name is mentioned, declared as the creator of a work, mentioned in the creation registration certificate, and/or listed in the general list of creations as the creator. For this reason, creators can make copyright management information and/or copyright electronic information on their creations in accordance with Article 6 of the Copyright Law. So, in digital artworks connected via NFT the copyright owner can be determined based on copyright management information and/or copyright electronic information contained in the NFT. Information on copyright management in accordance with Article 7 paragraph (1) of the Copyright Law includes information on methods or systems that can identify the originality of the substance of creation and its

¹⁶ Nindya Amaris Minar, "Fakta Hukum: "Disrupsi Tren Non-Fungible Token (NFT): Celah Potensi Eksploitasi Karya Seni," *Tribune Express LK2 FHUI EDISI* (2) (August 2022): 5.

¹⁷ Ibid

¹⁸ Yosaf Caesar Simurat, et al, "The Deception of Art: Analisis Potensi Ancaman NFTs (Non-Fungible Tokens) Terhadap Keamanan Nasional Indonesia," *Journal of International Relations* Vol. 8 No. 3 (2022): 282.

creator as well as information codes and access codes. Then for copyright electronic information in accordance with Article 7 paragraph (2) of the Copyright Law includes information about a work, which appears and is attached electronically in connection with the activity of announcing a work, the author's name, alias or pseudonym, the creator as the copyright holder, terms and conditions of use of works, numbers, and information codes. Such information may not be removed, altered, or tampered with. Therefore, artwork associated with an NFT owns copyright protection to the digital artwork and not to the NFT itself (Ashyira).¹⁹

Purchasing an NFT does not mean that there has been a transfer or granting permission to use a copyright for a digital artwork associated with the NFT.[1] However, in Article 16 paragraph (2) of the Copyright Law it is stated that copyright can be transferred or transferred, either in whole or in part due to inheritance, grants, endowments, wills, written agreements, or other reasons justified by law. So, it can be understood, the transfer or granting of permission to use copyright can occur if a license agreement is made for the digital artwork or there is also a transfer of copyright as stipulated in the Copyright Act.

If the creator of a work that has been associated with an NFT wants to transfer or grant a permit as stipulated in Article 16 paragraph (2) of the Copyright Law to a buyer, then an agreement can be made through a Smart Contract. NFT ownership cannot provide copyright unless it has been specified in the Smart Contract agreement. However, in general, in NFT transactions there is no firm legal agreement between the NFT maker and the NFT buyer, there is no guarantee that the purchase of the NFT grants the license or ownership of the metadata to the buyer of the NFT or other related intellectual property (Ashyira).²⁰

Then it is explained in Article 99 paragraph (1) of the Copyright Law which explains about civil lawsuits that can be filed by the creator or copyright holder of the artwork. The civil lawsuit includes a claim for compensation, a request for confiscation of goods resulting from the implementation, and a request for surrender of all or part of the violation. Then it was also added to Article 99 paragraph (4) which explains that the copyright holder has the right to request a temporary decision from the judge to order the perpetrators of the violation to stop all copyright infringement activities so that no greater losses arise for the copyright holder. Such lawsuits can be submitted to the commercial court in accordance with Article 95 paragraph (2) of the Copyright Law which are in Jakarta, Medan, Surabaya, and Makassar (Gidete, Amirulloh, and Ramli 2022).²¹

In addition, copyright owners can also make complaints about crimes against their creations. This Criminal Provision is regulated in Chapter XVII of the Copyright Law, namely in articles 112-120. Criminal acts violating economic rights to digital works of art can be prosecuted based on violators of Article 113 paragraph (2) of the Copyright Law based on the economic rights violated in Article 9 paragraph (1). With punishment in the form of a maximum imprisonment of 3 (three) years and a maximum fine of Rp. 500,000,000.00 (Five Hundred Million Rupiah). So, in making use of NFT technology, the thing that must be considered is to avoid the occurrence of p.

¹⁹ Ashyira Angelia, "Legal Protection for Artists Whose Digital Works Are Issued Without Permission In The Form Of Non-Fungible Token (Nft) (Juridical Review On Law Of The Republic Of Indonesia Number 28 Of 2014 On Copyrights)," *Journal of Faculty of Law, Brawijaya University*: 8.

²⁰ Ibid

²¹ Dio Bintang Gidete, Muhammad Amirulloh, Tasya Safiranita Ramli, "Perlindungan Hukum atas Pelanggaran Hak Cipta pada Karya Seni yang dijadikan Karya Non-Fungible Token (NFT) pada Era Ekonomi Digital," *Jurnal Fundamental Justice Volume 3, Nomor 1 (March 2022)*: 13.

4. Legal Certainty of Non-Fungible Token (NFT) Digital Assets Based on Law of Bappebti

The definition of crypto assets is explained in Article 1 number 7 of Bappebti Regulation No. 8 of 2021. Crypto assets are intangible commodities that are digital in form, using cryptography, information technology networks, and distributed ledgers, to regulate the creation of new units, verify transactions, and secure transactions without the interference of other parties. It is further explained in Article 1 point 6 of Bappebti Regulation No. 8 of 2021 concerning Guidelines for Organizing Crypto Asset Physical Market Trading on Futures Exchanges. The Physical Crypto Asset Market is a physical market for Crypto Assets that are held using electronic facilities owned by Physical Crypto Asset Traders for buying or selling transactions of Crypto Assets whose market supervision is carried out by the Futures Exchange. Then those who organize the Physical Market Next, in Article 2 paragraph (1) letter states that Trading in the Physical Crypto Asset Market puts forward the principles of good corporate governance by prioritizing the interests of Futures Exchange Members, Traders, Physical Crypto Assets, and Crypto Asset Customers to obtain transparent and fair prices. So, in this study what is meant by the Physical Market for Crypto Assets is Opensea.

However, this is the problem. As described in Article 5 paragraph (1) Bappebti Regulation No. 8 of 2021 that trading in the Physical Crypto Market can only be carried out using electronic facilities owned by Crypto Asset Traders which are facilitated and market supervision is carried out by the Futures Exchange which has obtained approval from the Head of Bappebti. This is emphasized again through Article 13 paragraph (1) of Bappebti Regulation No. 8 of 2021 that in order to be able to carry out their activities in facilitating trade transactions in the Physical Crypto Asset Market, they must obtain approval from the Head of Bappebti. So, it can be clearly seen in Article 5 paragraph (1) and Article 13 paragraph (1) of Bappebti Regulation No. 8 of 2021 that in order to be able to carry out trading on the physical market for crypto assets requires approval from Bappebti.

Regarding the approval by Bappebti, we can see it through the official Bappebti website on the Prospective Crypto Asset Physical Trader page. On that page, we can see that there are already 27 Physical Crypto Asset Traders, where the Opensea platform itself has not been registered with Bappebti. This can cause crypto asset customers to make buying and selling transactions of their crypto assets.

In addition, it is explained in Article 1 paragraph (1) Bappebti Regulation No. 11 of 2022 concerning the Establishment of a List of Crypto Assets Traded on the Physical Market of Crypto Assets that prospective traders of Physical Crypto Assets or Physical Traders of Crypto Assets can only trade Crypto Assets on the Physical Market of Crypto Assets whose list has been determined by the Head of Bappebti in the list of Crypto Assets traded on Crypto Asset Physical Market. So, it is understood that the crypto assets to be traded must be registered with Bappebti before they can be traded on the physical market for crypto assets. We can see this in Appendix II to Bappebti Regulation No. 11 of 2022 which contains a total of 383 types of crypto assets traded on the physical crypto asset market, where the Non-Fungible Token (NFT) itself has not been listed on this list. As stipulated in Article 7 of Bappebti Regulation No. 11 of 2022 that in the event that before this Agency Regulation was enacted, prospective Crypto Asset Physical Traders who have traded types of crypto assets that are not included in the list of crypto assets traded on the physical crypto asset market, the settlement steps referred to in Article 4 shall apply *mutatis mutandis* against types of crypto assets that are not included in the list of crypto assets traded on the physical crypto asset market. Then what is meant in Article 4 is that unregistered crypto asset traders are prohibited from facilitating the crypto asset trade and

traders must take a settlement step by asking the customer to liquidate their crypto assets and transfer the customer's crypto assets to the customer's wallet or wallet.

Legality of Smart Contract in NFT transaction using Opensea

The validity of Smart Contracts in Indonesia is supported by the principle of freedom of contract. This is regulated in the provisions of Indonesian contract law in Article 1338 of the Civil Code which reads "All agreements made in accordance with the law apply as laws for those who make them. This agreement cannot be withdrawn other than by agreement of both parties or for reasons determined by law. An agreement must be carried out in good faith. The words "who made it" refer to the parties to the agreement. Then it is called binding "as a law" which means as the law binds the community and likewise as a binding agreement."²² It is this principle of freedom of contract that is the cornerstone of the validity of a contract whose arrangements are unknown in the existing contract law system (Wirdjono 1993).²³ With the existence of the principle of freedom of contract, is used as a basis for placing Smart Contracts as a form of contract that is recognized in the Indonesian contract law system. Despite the existence of this principle of freedom of contract, a contract must still fulfill the elements of the validity of the contract to become a legally binding contract in accordance with Article 1320 of the Civil Code (Harahap 2015).²⁴

Article 1 number 17 of Law no. 11 of 2008 concerning Information and Electronic Transactions (ITE) reads "Electronic Contracts are agreements between parties made through an electronic system." Then the Electronic System is also explained in Article 1 point 5 of the ITE Law which reads "a series of electronic devices and procedures that function to prepare, collect, process, analyze, store, display, announce, transmit, and/or disseminate Electronic Information." So, it can be concluded that a Smart Contract can be considered an electronic contract to carry out an electronic transaction to bind the parties contained in the electronic system.²⁵

The ITE Law also states that the legal requirements for an electronic contract in electronic transactions are in accordance with the legal requirements for an agreement based on Article 1320 of the Civil Code. Then clarify in Government Regulation no. 82 of 2012 concerning the Implementation of Systems and Electronic Transactions in Article 47 paragraph (1) it is explained that "Electronic Transactions can be carried out based on Electronic Contracts or other contractual forms as a form of an agreement made by the parties." Then added to Article 47 paragraph (2) it is explained that an Electronic Contract is considered valid if

1. There is an agreement between the parties
2. Performed by legal subjects who are capable or authorized to represent in accordance with the provisions of the laws and regulations
3. There are certain things; And
4. The object of the transaction may not conflict with laws and regulations, decency, and public order.

So based on this article, it can be said that a Smart Contract can be said to be valid if it meets the requirements of the Law.

²² "Pelaksanaan Suatu Perjanjian," Hukum Online, accessed December 4, 2022, <https://www.hukumonline.com/berita/a/pelaksanaan-suatu-perjanjian-lt5a5c2fbdae8c4>.

²³ Wirdjono Prodjodikoro, *Azas-Azas Hukum Perjanjian* (Sumur, 1993), 18.

²⁴ Gostan Adri Harahap, *Beberapa Batasan Asas Kebebasan Berkontrak dalam Hukum Perjanjian Menurut KUHPerdata* (01 Dunia Ilmu, 2015), 3.

²⁵ "Keabsahan Smart Contract Sebagai Perjanjian yang Mengikat Para Pihak," Hkalaw Office, accessed December 4, 2022, <https://hkalawoffice.com/keabsahan-smart-contract-sebagai-perjanjian-yang-mengikat-para-pihak/>.

After going through this analysis, it can be concluded that based on the ITE Law an electronic contract, including a Smart Contract, can be said to be valid if it fulfills the legal terms of the agreement as stipulated in Article 1320 of the Civil Code. So the terms of the NFT transaction using a Smart Contract can apply all the requirements except for the implementation of the legal terms of the agreement of the parties' skills wherein the Terms of Service of the Opensea platform stipulates that the minimum age for users of the Opensea platform is 18 years or at least 13 years old by using a parent or guardian's account. their approval and supervision. This of course contradicts the age of adulthood in the Civil Code, which is 21 years. So as a result, if someone who carries out an NFT transaction is under the age of 21 it can cause the conditions for a valid agreement according to Article 1320 of the Civil Code not to be met (Miantari, Windari, and Yuliantini 2018).²⁶

In Article 1320 of the Civil Code, there are two types of legal conditions for agreements, namely subjective and objective conditions. The terms of competence of the parties are included in the subjective requirements. If these subjective requirements are not met, then either party may request cancellation of the agreement (Saputra 2019).²⁷ So if the user making the NFT transaction has not reached the age of majority, or is under 21 years of age, the NFT transaction agreement does not meet the subjective requirements. Thus, the agreement can be cancelled at the will of one of the parties to the agreement. The agreement is still binding and can be continued if the parties wish to continue it (Saputra 2019).²⁸ However, if a user making an NFT transaction has not yet reached the age of majority but uses a parent or guardian's account and is under their supervision, then the transaction can be said to be valid because it is considered that the transaction is represented by the user's parent or guardian.

CONCLUSION

Based on the analysis in this study it can be concluded that the Non-Fungible Token (NFT) in Indonesian positive law does not yet have legal certainty because there is no clear regulation and there is a legal vacuum. This analysis can be seen through the uncertainty in NFT arrangements regulated by CoFTRA as the institution that regulates crypto assets in Indonesia according to the *lex specialis derogate legi generali* principle, so *lex specialis* in NFT arrangements is regulated through CoFTRA regulations. In the CoFTRA regulations, the NFT itself has not been specifically regulated, has not been registered as a crypto commodity or asset, and its market implementation has not been registered with Bappebti. Several other provisions can be seen as *Lex Generali* in NFT arrangements such as the Civil Code which regulates NFT as an object based on Article 499 of the Indonesian Civil Code (KUHPer) as intangible movable objects according to Articles 499 and Article 511. NFTs can be classified as rights intangible wealth because NFT itself is a work of art that is encrypted into the Blockchain network in accordance with Article 25 of Law no. 11 of 2008 concerning Information and Electronic Transactions. Based on this article, NFTs can be maintained by using Intellectual Property Rights (IPR), namely through Copyright and Smart Contract Legitimacy in Indonesia, which can be said to be valid, supported by the principle of freedom of contract regulated in Article 1338 of the Civil Code. Implementation of Smart Contracts also still has to fulfill the elements of contract validity to become a legally binding contract in accordance with Article 1320 of the Civil Code in accordance with what is regulated through

²⁶ Ni Kadek Diah Miantari, Ratna Artha Windari, and Ni Putu Rai Yuliantini, "Perlindungan Hukum Dalam Transaksi Belanja Online (E-Commerce) Yang Dilakukan Oleh Anak Dibawah Umur Melalui Media Sosial di Desa Baktiseraga," *e-Journal Komunitas Yustisia Universitas Pendidikan Ganesha* Vol. 1, No. 2 (2018): 8.

²⁷ Sena Lingga Saputra, "Status Kekuatan Hukum terhadap Perjanjian dalam Jual Beli Online yang dilakukan oleh Anak di Bawah Umur," *Jurnal Wawasan Yuridika*, Vol. 3. No. 2 (2019): 214.

²⁸ Sena Lingga Saputra, "Status Kekuatan Hukum terhadap Perjanjian dalam Jual Beli Online yang dilakukan oleh Anak di Bawah Umur," *Jurnal Wawasan Yuridika*, Vol. 3. No. 2 (2019): 214.

Government Regulation No. 82 of 2012 concerning the Implementation of Electronic Systems and Transactions in Article 47 paragraph (1) and paragraph (2).

REFERENSI

- Achmad Ali. (2012). *Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (Judicialprudence) Termasuk Interpretasi Undang-Undang (Legisprudence)*. Jakarta: Kencana.
- Gostan Adri Harahap. (2015). *Beberapa Batasan Asas Kebebasan Berkontrak dalam Hukum Perjanjian Menurut KUHPerduta: 01 Dunia Ilmu*.
- Wirdjono Prodjodikoro. (1993). *Azas-Azas Hukum Perjanjian*. Sumur.
- Adhami, S., & Giudici, G. (2019). "Initial Coin Offerings: Tokens as Innovative Financial Assets" *Blockchain Economics and Financial Market Innovation: 61–81*.
- Ante, L. (2021). "Non-fungible token (NFT) markets on the Ethereum blockchain: Temporal development, cointegration and interrelations" *SSRN Electronic Journal, 22: 1–23*.
- Ashyira Angelia. "Legal Protection for Artists Whose Digital Works Are Issued Without Permission in The Form of Non-Fungible Token (Nft) (Juridical Review on Law of The Republic of Indonesia Number 28 Of 2014 on Copyrights)" *EJournal Brawijaya University: 2-3*.
- Ashyira Angelia. "Legal Protection for Artists Whose Digital Works Are Issued Without Permission In The Form Of Non-Fungible Token (Nft) (Juridical Review On Law Of The Republic Of Indonesia Number 28 Of 2014 On Copyrights)" *Journal of Faculty of Law, Brawijaya University: 8*.
- Dio Bintang Gidete, Muhammad Amirulloh, Tasya Safiranita Ramli. (2022). "Perlindungan Hukum atas Pelanggaran Hak Cipta pada Karya Seni yang dijadikan Karya Non-Fungible Token (NFT) pada Era Ekonomi Digital" *Jurnal Fundamental Justice Volume 3, Nomor 1: 13*.
- Emurgo Indonesia Webinar, Semua Yang Perlu Kamu Ketahui Tentang Crypto NFT, 7 April 2021
- Juaningsih, dkk. (2021). "Rekonsepsi Lembaga Pengawas Terkait Perlindungan Data Pribadi Oleh Korporasi Sebagai Penegakan Hak Privasi Berdasarkan Konstitusi" *Salam: Jurnal Sosial dan Budaya Syar-I: 469-486*.
- Ni Kadek Diah Miantari, Ratna Artha Windari, and Ni Putu Rai Yuliantini. (2018). "Perlindungan Hukum Dalam Transaksi Belanja Online (E-Commerce) Yang Dilakukan Oleh Anak Dibawah Umur Melalui Media Sosial di Desa Baktiseraga" *e-Journal Komunitas Yustisia Universitas Pendidikan Ganesha Vol. 1, No. 2: 8*.
- Nindya Amaris Minar. (2022). "Fakta Hukum: "Disrupsi Tren Non-Fungible Token (NFT): Celah Potensi Eksploitasi Karya Seni" *Tribune Express LK2 FHUI EDISI (2): 5*.
- Nur Rizqi Febriandika, Fadli, Denizar Abdurrahman Mi'raj. (2022) "How are NFT (Non-Fungible Token) transactions reviewed according to Islamic law?" *Borobudur Law Review Volume 4 Issue 1 (2022), pp. 1-12: 6*.
- Prameswati Vinanda, dkk. (2022) "Data Pribadi Sebagai Objek Transaksi di Nft Pada Platform Opensea" *Journal Civic Hukum Volume 7, No. 1: 2*.
- Regner, Ferdinand; Urbach, Nils; and Schweizer, André. (2019). "NFTs in Practice – Non-Fungible Tokens as Core Component of a Blockchain-based Event Ticketing Application" *ICIS 2019 Proceedings, Vol.1: 3*.
- Sena Lingga Saputra. (2019). "Status Kekuatan Hukum terhadap Perjanjian dalam Jual Beli Online yang dilakukan oleh Anak di Bawah Umur" *Jurnal Wawasan Yuridika, Vol. 3. No. 2: 214*.
- Sundari, Siti Nur Faiza. (2022). "Analisis Bisnis Jual Beli Non-Fungible Token (NFT) Pada Marketplace Opensea Menurut Perspektif Hukum Islam" *Lailatur Rahma, Journal of Islamic Economics and Business (JIEB) Vol. 12 No. 1: 8*.

- Wilson, K. B., Karg, A., & Ghaderi, H. (2021). "Prospecting non-fungible tokens in the digital economy: Stakeholders and ecosystem, risk and opportunity. *Business Horizons*" <https://doi.org/10.1016/j.bushor.2021.10.007>
- Windiasuti, F. C., & Athief, F. H. N. (2019). "Inacoin Cryptocurrency Analysis: An Islamic Law Perspective" *Journal of Islamic Economic Laws*, 2(2): 152–177.
- Yosaf Caesar Simurat, et al. (2022). "The Deception of Art: Analisis Potensi Ancaman NFTs (Non-Fungible Tokens) Terhadap Keamanan Nasional Indonesia" *Journal of International Relations Vol. 8 No. 3*: 282.
- News Liputan 6. (2022). *Fenomena Ghozali Everyday dan Salah Kaprah soal NFT*. Available from: [Journal: Fenomena Ghozali Everyday dan Salah Kaprah soal NFT," News Liputan6](#). [accessed 24 October 2022].
- Klik Legal. (2021). *(Non-Fungible Token) NFT Sebagai Instrumen Surat Berharga*. Available from: <https://kliklegal.com/non-fungible-token-nft-sebagai-instrumen-surat-berharga/>. [Accessed 29 December 2022].
- Hukum Online. (2018). *Pelaksanaan Suatu Perjanjian*. Available from: <https://www.hukumonline.com/berita/a/pelaksanaan-suatu-perjanjian-lt5a5c2fbdae8c4>. [Accessed 4 December 2022].
- HK Law Office. (2021). *Keabsahan Smart Contract Sebagai Perjanjian yang Mengikat Para Pihak*. Available from: <https://hkalawoffice.com/keabsahan-smart-contract-sebagai-perjanjian-yang-mengikat-para-pihak/>. [Accessed 4 December 2022].