

REVIEW OF PURCHASING AND SELLING NFTS IN *ISTIHSAN*

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Abstract

So far, NFTs have been defined as digital tokens that are shaped like ownership certificates for virtual and physical assets. These NFTs are usually traded online and are often paid for using cryptocurrencies, especially Ethereum. However, the problem is that in 2021 the MUI issued a fatwa that cryptocurrency is illegal. This is because it there are elements of qimar, dbarar, and gharar. For this reason, it is necessary to study the methodology of Islamic law regarding Non-Fungible Tokens (NFT) through istihsan (juristic preference). This study uses a qualitative approach. The data were collected from library study, documentation and observation. In analyzing the data used descriptive-analytic analysis with the approach used is ushuliyah. This study revealed that from istihsan point of view, transactions using Non-Fungible Tokens are permitted. This is because, from Qiyas Khafi perspective, NFT is known as the underlying assets of the transaction. Up to the operational level, if qiyas khafi is of greater benefit, then qiyas jali may be abandoned. What is used is qiyas khafi to maintain the principles of maqasid shari'a. Therefore, within the istihsan framework, Non-Fungible Token transactions are allowed through qiyas khafi due to an element of greater benefit.

Keywords: *Non-fungible Token Transaction, Istihsan, Maqasid Shari'a.*

Abstrak

Selama ini NFT didefinisikan sebagai token digital yang berbentuk seperti sertifikat kepemilikan untuk aset virtual dan fisik. NFT ini adalah biasanya diperdagangkan secara online dan sering dibayar untuk menggunakan cryptocurrency, khususnya Ethereum. Namun yang menjadi persoalan ialah pada tahun 2021 MUI pernah memfatwakan haram penggunaan cryptocurrency karena mengandung unsur gharar, dbarar, dan qimar. Untuk itu, diperlukan kajian metodologi hukum Islam tentang Non-Fungible Token (NFT) melalui istihsan.

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Penelitian ini menggunakan pendekatan kualitatif. Sementara metode pengumpulan data yang dipakai dalam penelitian ini adalah metode literatur, dokumentasi dan observasi. Dalam menganalisis data yang telah dikumpulkan, peneliti menggunakan analisis deskriptif-analitis dengan pendekatan ushuliyah. Hasil penelitian ini menyatakan bahwa dalam tinjauan istihsan, transaksi dengan menggunakan Non-Fungible Token diperbolehkan. Hal ini dikarenakan dalam tinjauan qiyas khafi, NFT dikenal asset yang mendasari transaksi tersebut (underlying assets). Hingga dalam tataran operasionalnya, bila qiyas khafy lebih besar manfaatnya, maka qiyas jaly itu boleh ditinggalkan dan yang dipakai adalah qiyas khafy demi terpeliharanya prinsip-prinsip maqasid syari'ah. Oleh karena itu, dalam kerangka istihsan, transaksi Non-Fungible Token diperbolehkan melalui qiyas khafi dikarenakan adanya unsur maslahat yang lebih besar.

Kata kunci: Non-fungible Token, *Istihsan*, Maqashid Syariah.

Introduction

The increasing of interested parties in the Non-Fungible Token (NFT) between 2017 and 2020 is high. It is including the NBA and Nike. The NBA uses NFT to produce its basketball player cards in digital form as conventional basketball cards, while Nike launches its sneakers in NFT in digital form.¹

Non-fungible and token are the two major components of the term NFT. Fungible is the ability to convert or replace a digital or conventional asset with something of equal value (for instance, Rp 2000 note may be exchanged for four Rp 500 coins). In contrast, non-fungible indicates that the person will receive something different.

¹ Jacob Gallagher, “NFTs Are the Biggest Interest Craze. Do They Work for Sneakers.,” *The Wall Street Journal*, 2021, p. 224.

The idea of NFT comes from investing hundreds of millions of aesthetic pleasure as an artist's work.² In its history, NFT has been known since 2014 with value of around 7 million US dollars. The platforms are called Counterparty and Quantum.³

NFT became famous in 2017 until now because it is known as an easy method of selling and buying work in digital form.⁴ Technically, NFTs are digital assets stored in distributed public ledgers that record transactions and have unique identification codes and metadata, it is different from each other on the blockchain network.⁵ NFTs also have built-in authentication that serves as proof of ownership to guarantee authenticity.⁶

Each data in an NFT is relatively unique, making verifying and validating NFT ownership easier with the support of blockchain technology. NFT is considered as the latest platform which can empower job owners. This is done using secure access and ease of tolls and methods so as to create efficient monetization of their work. That is, it can be said that all assets that have a calculated value can be searched for and traded on the blockchain network.

An NFT is a token of ownership of a digital asset that digitally replicates – without violating intellectual property rights –

² Zoë M. Mahler, “‘Why Be a Great Woman Artist When You Could Be Spectacular: The Study of Women Old Masters in the Art History Canon through Art Market Bias,’” *PhD Diss., Sotheby’s Institute of Art-New York*, 2021, p. 38.

³ Georgia Coggan, “‘What Are NFTs? Non-Fungible Tokens Explained,’” Creative Blog; ‘Art and Design Inspiration,’” accessed Dec 19, 2022, <https://www.creativebloq.com/features/what-are-nfts>, n.d.

⁴ Valeonti, Foteini, Antonis Bikakis, Melissa Terras, Chris Speed, Andrew Hudson-Smith, and Konstantinos Chalkias, “‘Crypto Collectibles, Museum Funding and OpenGLAM: Challenges, Opportunities and the Potential of Non-Fungible Tokens (NFTs).,’” *Applied Sciences* 11 11, no. 21 (2021): 9931.

⁵ Dewi Sulistianingsih and Apriliana Khomsa Kinanti, “‘Hak Karya Cipta Non-Fungible Token (NFT) Dalam Sudut Pandang Hukum Hak Kekayaan Intelektual.’” *KRTHA BHAYANGKARA* 1, no. 16 (2022): 197–206.

⁶ Kinanti.

an underlying asset that has the potential to generate value, such as goods or services, commodities, privileged information, or anything that can generate value that is recorded in a ledger on blockchain, currently the Ethereum blockchain.⁷ In other words, using smart code, NFT can be defined as a system for claiming, representing, storing, and transferring value (in a virtual world).⁸ This is because NFTs can only be owned by one owner. This ownership is handled by the unique ID and the existing metadata in the NFT, so it can never be replicated.⁹ Concepts in NFT do not sell digital archives, but what is traded is a certificate of ownership, and the evidence remains with the party who has the work recorded in the NFT blockchain network. For this reason, someone who buys an NFT does not necessarily own the original digital files and therefore does not have exclusive access to them.¹⁰ What should be noted is that a work transaction in NFT between the owner of the work and the buyer will have legal consequences because when transactions are in NFT, there will be a distribution of rights, namely copyrights and property rights.

Through NFT, a digital object can be tokenized. The token is what serves as proof of legal ownership. Tokens in NFTs are in the form of codes in a digital form called smart contracts which are protected and stored in the blockchain network on unique NFT platforms, one of which is Ethereum.¹¹

⁷ Elli Kraizberg, “Non-Fungible Tokens: A Bubble or the End of an Era of Intellectual Property Rights.,” 2022, Available at SSRN 4044957.

⁸ Chandra Y., “Non-Fungible Token-Enabled Entrepreneurship: A Conceptual Framework.,” *Journal of Business Venturing Insights*, no. 18 (2022): 1–9.

⁹ Kuriakkottu Amalraj Rajan, “Impact of Non-Fungible Tokens in Digital Assets.,” *International Journal of Research in Engineering, Science and Management* 3, no. 5 (2022): 74–75.

¹⁰ Usman W. Chohan, “Non-Fungible Tokens: Blockchains, Scarcity, and Value.,” in *Critical Blockchain Research Initiative (CBRI) Working Papers*, 2021, 1–14.

¹¹ Muhammad Usman Noor., “NFT (Non-Fungible Token): Masa Depan Arsip Digital? Atau Hanya Sekedar Buble?,” *Pustakaloka* 2, no. 13 (2021): 223–34.

Then what is the position of NFT transactions in Islamic Law? The legality status of cryptocurrency in Islamic Law still needs to be determined. The Indonesian Ulema Council (MUI), on November 11 2021 issued a fatwa regarding the prohibition of cryptocurrencies such as Bitcoin and Ethereum are haram currency. The MUI also stated that it is forbidden because there are elements of cryptocurrency is a digital commodity or asset that is unlawful to be traded because it contains elements of *qimar* (speculative), *gharar* (uncertainty), and *dharar* (can harm either party).¹²

From these legal facts, it is necessary to study the ruling of NFT to avoid these risks by providing a new interpretation to maintain *shari'ah* objectives (*maqasid al-shari'ah*). One of the legal procedures in giving a new interpretation is through *istihsan*, known as the methodology of Islamic law through the text contextuality procedure by considering the existing reality. The principle of *istihsan* can present Islamic legal solutions to various social changes. For this reason, this study is urgently needed to analyze NFT transactions from the *istihsan* point of view.

This study applies a qualitative approach. The non-fungible token research model in the *istihsan* review becomes a secondary data source that was obtained from reputable international journals, international journals, national journals, and classic books, which are in accordance with the main research problem. The analysis used in the study of the non-fungible token in the *istihsan* review is a descriptive-analytical analysis with an *ushuliyah* approach. This analysis will assist researchers in analysing non-fungible tokens in the *istihsan* review.

¹² Ardhi Barkah Apandi, Muhammad Iqbal Fasa and A. Kumedi Ja'far,. “Legalitas Dan Pandangan Majelis Ulama Indonesia Terhadap Bitcoin Sebagai Alat Transaksi.” *Reslaj: Religion Education Social Laa Roiba Journal* 2, no. 4 (2022): 311–20.

Research Findings

The NFT paradigm requires that digital object entities be separate and unique, so it is impossible to split them in half. These digital assets cannot be duplicated or shared in the real world and will only become one separate object. NFTs run on blockchain currencies just like bitcoins. NFTs act like Bitcoin, using a blockchain system. In Bitcoin, a coin is a collection of codes that can be broken whereas NFTs can be broken like traditional coins.¹³

Cryptocurrencies and NFTs differ in several ways. Cryptocurrency units are fungible tokens, meaning they are identical to units of other cryptocurrencies. In the same way that a Euro equals another Euro, a Bitcoin has the same value and characteristics as another. In contrast, NFTs are uniquely identified on the blockchain as evidenced by two NFTs not being the same even though their market value is the same. From these facts, the NFT is useless to use as currency.¹⁴

Another difference is that cryptocurrencies such as bitcoin can be divided into several parts, while NFTs are non-fungible. This is because in NFT, a collection of these codes can be embedded with digital archives so that some codes in the NFT are unique. This is the most fundamental difference between NFTs and cryptocurrencies.¹⁵

NFTs can be interpreted as tradable rights in digital assets (images, music, videos, virtual creations, works of art, tickets, creative works) representing the real world where ownership is

¹³ Denizar Abdurrahman Mi'raj. Febriandika, Nur Rizqi, Fadli Fadli, "How Are NFT (Non-Fungible Token) Transactions Reviewed According to Islamic Law?," *Borobudur Law Review* 4, no. 1 (2022): 1–12.

¹⁴ David S. Bloch, "Non-Fungible Tokens: A Solution to the Challenges of Using Blockchain Bills of Lading in the International Sales of Goods.," *Journal of Law, Market & Innovation* 1, no. 1 (2022): 44–65.

¹⁵ Noor., "NFT (Non-Fungible Token): Masa Depan Arsip Digital? Atau Hanya Sekedar Buble?."

recorded in smart contracts on the blockchain.¹⁶ Through the use of the blockchain system as a function of validating the authenticity of a work, NFT can be a promising Intellectual Property (IP) protection solution.¹⁷ NFT is also known as a unique certificate of authenticity on the blockchain, which the creator of the underlying asset usually issues. These assets can be digital or physical. Goods that can be exchanged, such as money or merchandise, can be exchanged for similar goods. Conversely, non-exchangeable goods cannot be exchanged for similar goods because their value exceeds the actual material value.¹⁸

This is one of the advantage of NFT is that it cannot be replicated or counterfeited because each token already exists in an immutable digital ledger and a decentralised network that allows tokens to be authenticated. A ledger is a mechanism on a blockchain where transaction history is publicly viewable and traceable so that code in blockchain features can be included in contracts governing the sale and purchase of NFTs. Tokens as units of account are records in a distributed blockchain and are controlled by computer algorithms of smart contracts, in which the balance values on token holder accounts are recorded, making it possible to transfer them from one wallet to another.¹⁹ In short, tokens in NFT are codes in a digital form called smart contracts that are protected and stored in the blockchain network on unique NFT platforms, one of which is Ethereum.²⁰

¹⁶ M. Dowling, “Is Non-Fungible Token Pricing Driven by Cryptocurrencies?,” *Finance Research Letters* 44 (2022): 1–6.

¹⁷ Qin Wang, Rujia Li, Qi Wang, Shiping Chen. “Non-Fungible Token (NFT): Overview, Evaluation, Opportunities and Challenges.” 2021.

¹⁸ Lennart Ante., “The Non-Fungible Token (NFT) Market and Its Relationship with Bitcoin and Ethereum.” *FinTech* 1, no. 3 (2022): 216–24.

¹⁹ Sasha Shilina, “Blockchain and Non-Fungible Tokens (NFTs): A New Mediator Standard for Creative Industries Communication.” *Российская Пиарология: Тренды и Драйверы*, 2021, 217–25.

²⁰ Hisny Fajrussalam, Nur Fadilah, Masruroh Masruroh, Febby Putri Marini, Weby Khamelia. “Pandangan Islam Terhadap NFT Di Era Digital.” *AS-SABIQUN* 4, no. 1 (2022): 151–62.

Among the characteristics of NFT are as follows:²¹

1) Unique

The uniqueness of NFTs is in the inequality of one token in each NFT, while the tokens are recorded on the blockchain system.

2) Traceable

All records of ownership, origin, and transaction movement of each NFT are visible across historical blockchain data, providing a transparent and real-time trackable picture of NFTs.

3) Authenticated

The unique feature of NFTs is that they are impossible to forge; to accomplish this, each token is recorded on an immutable digital ledger, and the network is decentralized using blockchain technology, which enables the token to be authenticated.

4) Adaptable

NFT easily adapts to digital life in the metaverse world and supports those used in NFT applications. Players can buy and trade NFTs on multiple platforms.

In practice, buying and selling NFTs can be carried out in marketplaces that support or are deliberately designed for NFT transactions. So that anyone can create and convert their digital archives into NFTs, then place them on the NFT network (minting) and then sell them on the NFT marketplace. However, this minting process requires computational resources that could be lighter and take time.²² In NFT, namely Ethereum enables building applications, or smart contracts, which are necessary for NFTs because they allow assigning ownership. In short, NFT embeds a smart contract in a digital file.

²¹ Febriandika, Nur Rizqi, Fadli Fadli, “How Are NFT (Non-Fungible Token) Transactions Reviewed According to Islamic Law?.”

²² Muhammad Usman Noor., “NFT (Non-Fungible Token): Masa Depan Arsip Digital? Atau Hanya Sekedar Buble?’, p. 223-234”

The first step in making NFT trading transactions is to have a digital wallet balance then one can specify and upload images to the NFT. The traded assets are valued on the secondary market. That person will get royalties when someone else buys it.

NFTs are stored on the blockchain, which states that digital assets are unique and not exchangeable with other assets. Digital assets can be sold with a change of ownership. Furthermore, cryptocurrency payments are received and registered on the blockchain.²³ Basically, Blockchain is public so transactions can be seen. However, encrypted blocks cannot be changed without changing all previous blocks and alerting all other users on the blockchain making it more difficult for data to be hacked.

Digital archive transactions included in the NFT platform will record who owns them. NFT is interesting because it can break the conventional paradigm that digital archives are difficult to trade. After all, they are easy to copy and distribute.²⁴ NFTs also offer the possibility to certify the ownership of various assets, such as real estate. It is the art market where NFTs are the most popular. The tokenization of physical or digital art via NFTs has enabled ownership to be verified using blockchain technology and provided a simplified means of buying and selling art.²⁵

NFTs are minted on the blockchain in a similar way to cryptocurrencies. Creators such as artists, performers, or authors link the NFT to specific items of the digital property they represent. In order to increase the value of NFTs, creators can promise to limit the number of NFTs created. For example, a maker can create only one NFT representing a digital property or

²³ Michael Dowling, "Is Non-Fungible Token Pricing Driven by Cryptocurrencies?," *Finance Research Letters* 44 (2022): 1–6.

²⁴ Noor., "NFT (Non-Fungible Token): Masa Depan Arsip Digital? Atau Hanya Sekedar Buble?. p. 223-234"

²⁵ Jon Truby, Rafael Dean Brown, Andrew Dahdal, "Blockchain, Climate Damage, and Death: Policy Interventions to Reduce the Carbon Emissions, Mortality, and Net-Zero Implications of Non-Fungible Tokens and Bitcoin. *Energy Research & Social Science* 88 (2022): 102499"

limit creation to a limited number.²⁶ NFT is also considered an application that easily adapts to digital ecosystems in the metaverse world that support their use. However, there are weaknesses in NFT. Newitz thinks NFTs can be an exciting concept for digital artwork transactions, but it is hard not to say they are just financial games. In addition, NFT has yet to become a standard that many people can accept. This is also supported by the factor of the high level of volatility in the value of Ethereum coins used to buy NFTs, making NFTs still very high risk and only for some.²⁷ From an environmental point of view, it is undeniable that NFT leaves a large carbon footprint. This is none other than because NFTs require high computational resources and crypto coins as a means of payment.

Analysis

Today's development of digital transactions is proliferating and more dominant than in other sectors. If facing digital transactions today and anticipating future developments, a jurist only relying on the conventional legal *istinbath* approach in formulating legal provisions will no longer be sufficient. Therefore, it is necessary to have a legal breakthrough through *istihsan* because this method is susceptible to social changes that demand a fast pace and the use of the latest technology.

Proponents of this concept formulated the concept of *istihsan* to avoid full dependence on an explicit understanding of the text or *dzahir al-Nas* from either the Qur'an, Sunnah or *Ijma'*.²⁸

²⁶ Gerry W. Beyer, "Non-Fungible Tokens: What Every Estate Planner Needs to Know.," *Available at SSRN (2021)* 2021 (n.d.): 2.

²⁷ Hisny, Nur Fadilah, Masruroh Masruroh, Febby Putri Marini, Weby Khamelia, Fajrussalam. "Pandangan Islam Terhadap NFT Di Era Digital.," *AS-SABIQUN* 4, no. 1 (2022): 151–62.

²⁸ Mohd Hafiz Jamaludin, Ahmad Hidayat Buang. "Syariah Courts in Malaysia and the Development of Islamic Jurisprudence: The Study of *Istihsan.*," *International Journal of Nusantara Islam* 1, no. 1 (2013): 1–12.

This was also developed to avoid excessive use of *qiyas*, which could interfere with the principle of *mashlahab* (public interest) in applying specific laws. This *istihsan* approach is essential for the harmonisation between revelation and reality. Through the concept of *istihsan*, the *mujtahid* is not supposed to be literalist in understanding the Qur'an or Sunnah and the general principles of Shari'a, as in certain situations, exceptions must be granted for the sake of *mashlahab* as well as to ensure that Shari'a law always applies.²⁹ The word *istihsan*, in terms of language, comes from the Arabic "*al-busn*" which means good, the opposite of *al-qubb*, meaning bad. This word is used to express increasing or considering something to be good.³⁰ Al-Karkhi understands that *istihsan* is the taking of a *mujtahid's* legal argument for a case that deviates from the rule of law on similar issues because stronger legal reasons require this deviation to be carried out.³¹ The basis of *istihsan* is prioritised to achieve the goal of benefit and to reject harm due to applying the law.

Literally, *istihsan* means "considering good".³² In contrast, technically, *istihsan* is the movement of the *mujtahid* from clear deductive analogy (*qiyas jali*) to vague deductive analogy (*qiyas khafti*) or from general law (*kullî*) to the law of exception (*istisna'î*) because of the existence of propositions that support this movement.³³ Al-Sarakhsi defines *istihsan* as leaving *qiyas* and practising something more robust than that because a postulate

²⁹ Muhammad Shahrul Ifwat Ishak, Syairazi Muhammad Husni Mohd Sharoni. "The Role of *Istihsan* in Applying Maslahah in Islamic Finance.," *Journal of Islamic Finance* 11, no. 1 (2022): 113–20.

³⁰ Mohd Hafiz Jamaludin, "Syariah Courts in Malaysia and the Development of Islamic Jurisprudence: The Study of *Istihsan*., p. 1-12"

³¹ Muhammad Sulaiman 'Abdullah al-Asyraf, *Al-Wadhih Fi Ushul Al-Fiqh Lil Mubtadiin* (Amman: Dar al-Nafais, n.d.), p. 140.

³² Ibn Mandzur, *Lisan Al-'Arab* (Beirut: Dar al-Kutub al-Ilmiyyah, 1999), p. 269.

³³ 'Abd al-Wahhab Khallaf, *Ilm Al-Usul Al-Fiqh* (Indonesia: al-Haramayn, 2004), p. 79.

(*dalil*) requires it in accordance with human welfare.³⁴ Al-Syatibi defines *istihsan* as prioritising or abandoning the will of a proposition using *istisna'* (exception) or by seeking relief because it is opposed by a proposition that opposes it in part of the will of the proposition. Al-Syatibi defines *istihsan* as prioritising or abandoning the will of a proposition using *istisna'* (exception) or by seeking relief because it is opposed by a proposition that opposes it in part of the will of the proposition.³⁵

Conceptually, *istihsan* is defined as the shift of the mujtahid in determining the law on a problem because of specific instructions in the Qur'an or Sunnah. In short, *istihsan* provides an exception to *shari'a* law, in certain situations because it is *maslahah*. However, scholars differ in opinion regarding its definition due to their opinions that regarding the acceptance of *istihsan* itself as a source of law. Scholars, like al-Shafi'i, who reject the validity of *istihsan* consider it free reasoning without guidance from texts. Of course, the proponents of *istihsan* reject this by saying that this is a comparison between sources of Islamic law to choose the one with stronger authority and the most beneficial for humanity.³⁶

Istihsan is a source of Islamic law accepted by most schools of *fiqh* but was strongly rejected by al-Shafi'i (d.820). Al-Shafi'i counted the most vehemently against the use of *istihsan* as the basis for *syara'*. He emphatically stated, "Whoever uses *istihsan* then he has made the Shari'a".³⁷ He also stated *istihsan* is only *taladzdzudz* (lust satisfaction/having fun) and opinions that follow the desires of lust. This expression means that a person who uses *istihsan* means making a new *shari'a* and placing himself as the

³⁴ Al-Sarakshi, *Ushul Al-Sarakhsi*, (Kuwait: Dar al-Qalam, 1977), p. 262.

³⁵ Abu Ishaq Al-Syatibi, *Al-Muwafaqat Fi Ushul Al-Syari'ah* (Mesir: Dar al-Fikr al-Araby, 1973), p. 206.

³⁶ Mohd Hafiz Jamaludin, "Syariah Courts in Malaysia and the Development of Islamic Jurisprudence: The Study of *Istihsan*.", p. 1-12"

³⁷ Abdul Karim Zaidan, *Al-Wajiz Fi Usul Al-Fiqh* (Beirut: Muassasah ar-Risalah, 1996), p. 234.

executor of the *shari'a*, even though the only authority belongs to Allah SWT.

From the explanation above, transactions on NFTs are considered valid from the perspective of Islamic law because the conditions and pillars of buying and selling are fulfilled. This is because, in NFT, *ma'qud alaihb* exists. In another word, the object of buying and selling exists. Nominally, NFTs are paid using crypto money, otherwise known as Ethereum.

Existing postulates on a general scale must guide a mujtahid in enacting laws. However, under certain conditions, if he considers the side of benefit that is specific, then he is allowed to be no longer guided by the general postulate but to consider aspects of benefit that have a specific value. In this case, no texts from the Qur'an and hadith explain the use of NFTs. This problem must, of course, be solved by the *istihsan* method.

In this case, *istihsan* plays an essential role in legalising the use of NFTs in the transaction process because NFT has the same *illat* (legal cause) as gold and silver, which may be used in the transaction process. Transaction problems using NFT are included in the *istihsan bil qiyas kbahfi* category. This is because there are great benefits, and the demands of an increasingly modern era allow NFTs to be used as payment.

In this case, the *raison d'etre* of using legal preference is to find an alternative solution when it is normatively believed that it will result in rigidity and neglect of the greater element of benefit. The basic idea of *istihsan* is that the application of *shari'a* may maintain the more fundamental main principles of *shari'a*, namely *maqasid shari'a*.

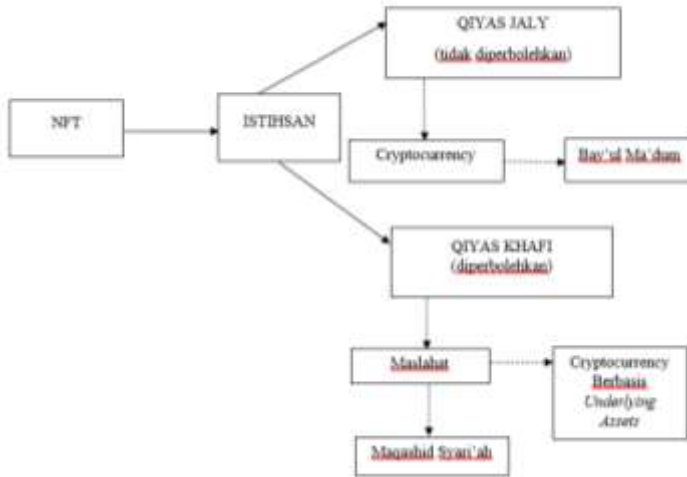


Fig. 1. The NFT Scheme from the *istihsan* Point of View

According to *Qiyas Jali*, NFT transactions are not allowed because they can be classified as a transaction for an object that is not in the assembly (*bay'ul ma'dum*). However, according to *istihsan*, through *qiyas khafi*, NFT transactions are considered permissible because there is a fundamental difference between *bay'ul ma'dum* and NFT. In NFT, the underlying assets are known. At the operational level, if *qiyas khafi* is of more significant benefit, then *qiyas jaly* may be abandoned, and what is used is *qiyas khafi* for the sake of maintaining *maqasid shari'a*.

From the *maqasid shari'a* perspective, this NFT transaction has an element of benefit that is in accordance with Islamic law, namely the emergence of primary benefit, especially guarantees of asset security (*hifdzul mal*). This is very different from transactions using conventional cryptocurrencies with no underlying asset.

Thus, NFT transactions are guaranteed to be safe and *gharar*-free, low-risk, which avoids high risks.³⁸

Conclusion

In practice, buying and selling NFTs can be carried out in marketplaces that support or are deliberately designed for NFT transactions. So that anyone can create and convert their digital archives into NFTs, then place them on the NFT network (minting) and then sell them on the NFT marketplace. NFTs have the same *illat* as gold and silver, which may be used in the transaction process. Transaction problems using NFT are included in the *istihsan bil qiyas kbafi* category. This is because there are great benefits, and the demands of an increasingly modern era allow NFTs to be used as payment. According to *Qiyas Jali*, NFT transactions are not allowed because they can be classified as a transaction for an object that is not in the assembly (*bay'ul ma'dum*). However, according to *istihsan*, through *qiyas kbafi*, NFT transactions are considered permissible as there is a fundamental difference between *bay'ul ma'dum* and NFT. In NFT, the assets underlying the transaction are known. At the operational level, if *qiyas kbafi* is of greater benefit, then *qiyas jaly* may be abandoned, and what is used is *qiyas kbafi* for the sake of maintaining *maqasid shari'a*.

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³⁸ Mohammad Farid Fad and Ali Imron, “A Halal Cryptocurrency Model Under the Maqashid Al-Shari’ah Scheme.,” *Journal of Islamic Economics Lariba* 8, no. 1 (2022): 229–41.

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