

# Optimization of Bankruptcy Assets in the Form of Non-Fungible Token (NFT) by the Curator Based on Indonesian Bankruptcy Law

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## Abstract

This research is a normative juridical study of non-fungible token (NFT) regarding the position of NFT in relation to positive law in Indonesia, legal certainty for bankrupt assets in the form of NFT and the efforts that can be made by curators in order to optimize bankruptcy assets in the form of NFT. The results of this study indicate that NFT has met the classification of immovable and indivisible movable objects. The provisions of Article 21, Article 98 and 101 Paragraph (1) of the Bankruptcy Law have provided legal certainty to curators and bankrupt creditors that NFT is a bankrupt asset that must be optimized by the curator to pay off the debts of debtors. There are 3 main obstacles by the curator in optimizing bankrupt assets in the form of NFT, in the process of registering NFT as bankrupt assets, the process of determining the best time to sell NFT and the method of selling NFT based on the Bankruptcy Law. Against these obstacles, the Bankruptcy Law and positive law have provided efforts that can be taken by curators in the context of optimizing bankrupt assets.

**Keywords:** *Non-Fungible Token, Bankrupt, Curator.*

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## A. INTRODUCTION

Bankruptcy is one of the debt settlement mechanisms regulated in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Obligations for Payment of Debt (Bankruptcy Law). The Bankruptcy Law provides a definition of bankruptcy, namely general confiscation of all the assets of the bankrupt debtor whose management and settlement are carried out by a curator under the supervision of a supervisory judge. According to Subekti and R. Tjitrosoedibio, bankruptcy is a condition where the debtor stops paying, even though the debtor's assets are worth more than his debts (Syamsyudin, 2012). Article 2 paragraph (1) of the Bankruptcy Law regulates bankruptcy conditions, namely a debtor who has two or more creditors and does not pay off at least one debt that is due and collectible is declared bankrupt. Taking into account the terms of bankruptcy, the basis for a person's bankruptcy is the debtor's unwillingness to pay debts and not because of the debtor's inability to pay debts (Tata, 2014). The Bankruptcy Law explains that in essence, the consequences of a bankruptcy for the debtor are the general confiscation of all the bankrupt debtor's assets at the time the bankruptcy statement decision is pronounced as well as everything obtained during the bankruptcy (Horky et al., 2022; Vogel, 2022).

Legal subjects that can be declared bankrupt under the Bankruptcy Law are individuals and corporations in the form of legal entities or non-legal entities in liquidation. Companies that are declared bankrupt, they will lose their right to control

and manage all of their assets (Horky et al., 2022; Vaghani et al., 2022). The management of the company's assets is transferred to the curator specified in the bankruptcy decision. The curator as a party appointed by the Court in bankruptcy cases has the duty to manage and/or settle bankrupt assets. After the curator receives the decision on the appointment of the curator, the curator must make a record of the bankruptcy assets no later than 2 (two) days after the decision on the appointment. The curator is obliged to immediately secure the bankrupt assets and carry out the safe keeping of the bankrupt assets.

Determination of the criteria for bankruptcy assets in the Bankruptcy Law adheres to the principle of integration, which means that the debtor's assets that can be registered as bankrupt assets refer to other laws and regulations that apply in Indonesia (Elyta, 2018; Allen et al., 2022). Article 1131 of the Civil Code, which essentially regulates general guarantees, explains that all movable and immovable objects belonging to the debtor, both existing and future, are collateral for the debtor's individual agreements. The debtor's assets can be in the form of movable and immovable objects which include visible objects and invisible objects such as rights as the person can sell and pawn his rights (Subekti, 2017; Mistrangelo et al., 2022). Article 98 of the Bankruptcy Law stipulates that the curator must carry out efforts to secure bankruptcy assets and keep all letters, documents, money, jewelry, securities, and other securities by providing a receipt. Article 98 of the Bankruptcy Law implicitly stipulates that items included in bankruptcy assets are all letters, documents, money, jewelry, securities, and other securities. In practice, the main criteria for bankrupt assets are objects that have economic value that can be guaranteed at the bank (Elyta, 2019).

There is a legal adage that reads "*het recht hinkt achter de feiten aan*" which means that the law is always left behind from events. This also applies to technological developments at this time. Technological developments at this time also affect the variation of corporate debtor assets that have economic value. One of the intended debtor's assets is a non-fungible token (NFT). In 2022, news circulated regarding the sale of NFT in the form of a photo of a person named Ghazali, an Indonesian, which was sold for billions of rupiah. The value of NFT sales transactions in 2021 was USD 24.9 billion which has increased rapidly from the NFT sales transactions in 2019 of USD 94.9 million. NFT is digital asset based on Blockchain technology that is used to represent ownership of a work of art such as images, music, video clips, photos, and so on (Dmaia, 2022; Dorri, 2022). The position of NFT ownership in Indonesia has not been specifically regulated in laws and regulations. However, judging from the type in the form of works of art such as music images, photos, and video clips, their ownership is implicitly regulated in Law Number 28 of 2014 Concerning Copyright (Copyright Law). The absence of specific laws and regulations regarding NFT ownership can result in guarantees of legal certainty for bankrupt assets in the form of NFT.

The basic value of an NFT is based on human perception of value, acceptance from other parties, and on the factors of rarity and uniqueness (Gede, 2022; Kaal,

2021). This results in the value of an NFT being different and cannot be determined unequivocally. In NFT trading, the currency used is a Cryptocurrency, one of which is Ethereum. NFT is used in the Ethereum Blockchain which is a Cryptocurrency (Nadya, 2021). Ethereum as a Cryptocurrency has a characteristic, namely a selling price that is easy to change. The price of Ethereum can go up and down quickly. As of April 25, 2022, the price of 1 Ethereum is IDR 41,442,000.00 while on April 18, 2022, the price of 1 Ethereum is IDR 44,042,00.00.

NFT, which is a digital asset, provides certain obstacles for the curator as the party appointed to optimize bankruptcy assets under the Bankruptcy Law. The first obstacle is related to the process of recording NFT as individual bankruptcy assets. NFT ownership is not recorded in an official institution but is recorded in a Blockchain. Blockchain is a technology for recording interconnected transactions using unique codes that are timeless and immutable (Ida Bagus, 2018). NFT ownership is not controlled by a particular institution or government and is a Blockchain database without the control of a particular party. The curator cannot know freely about the ownership of individual bankrupt assets in the form of NFT if the debtor does not disclose these assets.

The second obstacle in the process of optimizing the company's bankruptcy assets in the form of NFT is in determining the best time to sell NFT so that the highest price can be obtained. The basic value of an NFT is based on human perception of value, acceptance from other parties, and on the factors of rarity and uniqueness. Then the NFT is traded using Cryptocurrency. Cryptocurrencies have characteristics such as selling values that always change quickly. Article 72 of the Bankruptcy Law stipulates that the curator is responsible for mistakes or negligence in carrying out management duties that cause losses to bankrupt assets (Munir, 2017). The third obstacle is related to the procedure for selling bankruptcy assets in the form of NFT. Article 185 paragraph (1) of the Bankruptcy Law stipulates that the sale of bankruptcy assets is carried out in public or by auction. Article 3 of the Regulation of the Minister of Finance Number 213/PMK.06/2020 Concerning Instructions for Implementation of Auctions stipulates that the sale of bankruptcy assets includes an execution auction. The procedure for buying and selling NFT has not yet been regulated in positive law in Indonesia.

## **B. METHOD**

This research used the juridical-normative type, namely by analyzing various laws and regulations related to bankruptcy and the handling of bankrupt assets in the form of NFT based on bankruptcy law in Indonesia. This research used library research which is carried out using secondary data, namely in the form of laws and regulations, legal theories, and doctrines of legal experts related to bankruptcy and material law. The legal materials to be used in this research are primary legal materials and secondary legal materials.

This research is in the form of a juridical study of NFT in the form of how the position of non-fungible token is related to positive law in Indonesia, how to

guarantee legal certainty for bankrupt assets in the form of NFT, and what efforts can be made by the curator in order to optimize bankrupt assets in the form of NFT. This research is expected to provide a legal perspective regarding the handling of assets in the form of NFT in bankruptcy cases in Indonesia. Besides, this research is expected to be a starting point for future research on NFT and Cryptocurrencies.

## C. RESULT AND DISCUSSION

### 1. Position of Non-Fungible Token in Positive Law in Indonesia

Non-Fungible Token (NFT) is a token used to represent anything unique that requires provable ownership. NFT provides the right to claim ownership of every unique piece of digital data that can be tracked by using the Ethereum Blockchain as a public ledger. NFT can represent digital or non-digital assets that can represent digital art such as images, music, videos, collectibles, and real-world items such as event tickets, legal documents, signatures, and so forth. NFT has only one authorized owner at a time and is secured in the Ethereum Blockchain so that no one can modify those ownership records. NFT has the following characteristics (Andrew, 2022): 1) *Non-Interoperable* i.e. an NFT that has been registered in a Blockchain, cannot be used in another Blockchain; 2) *Indivisible*, i.e. NFT cannot be divided into smaller parts; 3) *Indestructible*, i.e. the NFT and the owner's data cannot be destroyed, transferred without the knowledge of the owner; 4) *Verifiable*, that is, the original creator of an NFT can be traced through transaction data in the Blockchain without the help of a third party to authenticate; 5) *Unique*, namely NFT can be used to create unique digital assets that differentiate one NFT from another (Alexandr, 2022); 6) *Traceable* i.e. the ownership, source and movement of each NFT is visible on the Blockchain network which can be tracked directly; 7) *Authenticated*, that is, each NFT cannot be faked or replicated because each NFT is supported by an immutable digital ledger and a decentralized network; 8) *Adaptable*, i.e. NFT that is easily adaptable to digital ecosystems that support the use of NFT applications so that buyers can purchase and trade NFT on various NFT marketplace platforms.

The first NFT on the Ethereum Blockchain was *Cryptopunk*, a 10,000-character pictorial character launched in June 2017 and May 2021. Cryptopunk is a cryptoart, a limited-edition digital artwork that has been cryptographically registered on the Ethereum Blockchain and has become an NFT. (Nadya, 2017). Digital artwork cannot automatically become an NFT. Digital artwork must go through a tokenization process called minting to be used as NFT and traded on the NFT marketplace. Minting is the business of converting physical or digital assets into digital units that can be bought and sold. In launching non-fungible type token, one of the tokenizations launched is the ERC-721 type token. The ERC-721 token has the ability to add code to track and record ownership such as the transfer of ownership of a digital asset that has become an NFT (William, 2022). The minting process is simply the process of embedding a smart contract in a digital artwork so as to issue a unique identifier for a digital artwork. Proof of ownership of an NFT appears for the first time against a

party minting digital artwork into an NFT. The minting process can be done using the marketplace platform.

One of the NFT marketplaces is *OpenSea*. Everyone can create an account on OpenSea and then do minting their digital artwork for NFT. Digital artwork that has become an NFT is recorded in the creator's OpenSea account and recorded in an Ethereum address on the publicly accessible Ethereum Blockchain. Digital artwork that has been converted into NFT can be sold on the OpenSea marketplace with an auction mechanism. The process of buying and selling NFT on OpenSea uses the Cryptocurrency Ethereum. In the process of buying and selling NFT, an e-wallet is needed to store NFT and Cryptocurrency used as a means of payment. There are 3 types of digital wallets or e-wallets, namely software wallets, mobile wallets, and web wallets. In software wallets, NFT and Cryptocurrencies are stored on the hardware or computer where the software is installed. In mobile wallets, NFT and Cryptocurrencies are stored on mobile phones that have used the software. In web wallets, NFT and Cryptocurrencies are stored online in e-wallets provided by digital wallet providers using the internet.

The e-wallet is controlled by the user and encrypted with a private key. The private key is the password used by the user to be able to access his e-wallet. Crypto e-wallets generally do not use a password created by the owner but use a seed phrase determined by the crypto e-wallet provider. When a user installs and installs an e-wallet on his computer or mobile device, the e-wallet will generate 12 to 24 words which are the private key of the e-wallet. The seed phrase is recommended to be written on a note and stored in a safe place. The E-wallet can only be accessed by entering the seed phrase into the e-wallet system (Cheman, 2022). The author argues that e-wallets can be analogous to a secure repository for NFT so that it can be an object stored in an e-wallet as proof of ownership of original digital artwork. On the OpenSea marketplace, each account is required to connect its Ethereum e-wallet with an OpenSea account so that all NFT buying and selling transactions on OpenSea use the Ethereum Cryptocurrency. NFT creates virtual ownership of the underlying asset (basic asset) in the form of digital artwork and can then be traded with a means of payment in the form of Cryptocurrency.

In general, there are 2 parties in an NFT transaction, namely NFT creators and NFT collectors. An NFT creator is a party that creates a digital artwork and then converts it into an NFT. NFT creators can determine the rarity of their digital works. In addition, NFT creators get royalties for every NFT sale they make. The next party is the NFT collector, namely the party that buys and/or sells an NFT. The NFT collector purchases an NFT from a sales list sold by an NFT creator. In the process of buying and selling NFT, ownership of an NFT in the form of a unique token has been sent to the NFT collector's e-wallet using the public address of the NFT collector's e-wallet. The sent token proves that a digital copy of a digital artwork owned by an NFT collector is authentic. Ownership of an NFT can be proven from the last record of the NFT in the Blockchain and who has the private key to access an e-wallet where the NFT is recorded. Therefore, it can be concluded that NFT is proof of ownership of a



digital artwork recorded on the Blockchain that has value. The owner of the NFT has full rights over the digital artwork in the form of an NFT to use the digital artwork.

Furthermore, the author will link the position of NFT with the applicable property law in Indonesia. Provisions regarding the law of objects are regulated in the Civil Code. Article 499 of the Civil Code stipulates that what is meant by objects are any objects and rights that can become objects of property rights that are part of an asset (Abdulkadir, 2017). The provisions of Article 499 of the Civil Code implicitly explain that to an object is attached the subject and the object of rights. The subject of right is the person who owns the object while the object of the right is the object that is owned (Tan, 2021). Types of objects based on the Civil Code are divided into bodily and immovable objects, movable and immovable objects, objects that can and cannot be traded, objects that can and cannot be divided, objects that can and cannot be replaced, objects that are destroyed and those that are not destroyed in use, objects that have existed and will exist, main objects and non-main objects, main objects and auxiliary objects and a group of objects which together constitute an asset.

Based on the characteristics, NFT is a unique digital asset stored in an electronic system in the form of an e-wallet and recorded on the Blockchain. NFT is a unique token as a sign of ownership of a digital asset that has gone through a minting process. In an NFT buying and selling transaction, the NFT collector will receive a unique NFT token sent to his e-wallet address. In addition, NFT collectors also receive digital files from NFT sellers in the form of works of art in the digital form sent via media agreed upon by the parties. NFT cannot be felt by all five human senses because it is stored in the owner's e-wallet. However, rights have been attached to the NFT as proof of ownership of an NFT digital asset. To successfully sell NFT, NFT collectors must know the private key or password to be able to access the digital wallet. Based on the characteristics of the NFT which cannot be felt, it can be concluded that the NFT is an intangible object.

The implication of classifying NFT as intangible objects is related to the delivery of NFT as objects in a sale and purchase. Article 613 of the Civil Code stipulates that the surrender of intangible objects is carried out by making an authentic or underhand deed that delegates the rights over the object to another person. Within the scope of NFT and Blockchain, a system is known as a smart contract. Smart Contract is a computer system in the form of an electronic agreement in the Blockchain system with the aim of carrying out an agreement between parties that is able to execute the agreement clauses automatically (Bima, 2019). There are 5 (five) forms of smart contracts, namely (Kenny, 2022) basic token contracts, crowd sale contracts, mintable contracts, refundable contracts, and terminable contracts. The form of smart contract used in NFT transactions is a requestable contract that is embedded in a digital asset during the NFT minting process. Submission of an NFT is carried out by means of the NFT owner sending the unique NFT token in his e-wallet to the e-wallet address of the NFT buyer. The shipment will be recorded in a global ledger or Blockchain. Blockchain records the entire history of NFT transfers from the first to the last owners so that it can be proved that an NFT transfer has taken place. After the

unique NFT token is sent to the buyer, the seller will then send the original file of the digital asset that has the NFT code attached to the buyer. The NFT handed over by the seller to the buyer is a unified whole and cannot be divided because one unique NFT code only applies to one object. Therefore, NFT is included in objects that cannot be divided.

Article 509 of the Civil Code stipulates that movable objects based on their nature are objects that can move independently or be moved. NFT can be transferred by the owner of the NFT from his e-wallet to the desired destination e-wallet. Basically, NFT is in a Blockchain system because NFT is in the form of digitally stored data. The process of sending NFT from one e-wallet to another by the owner of the NFT is included in the transfer category referred to in Article 509 of the Civil Code. The author believes that the reference for NFT transfers is that they can be transferred from one e-wallet to another and when a transfer occurs, the rights attached to the NFT is also transferred. Thus, NFT fulfills the classification as movable property based on its nature as referred to in Article 509 of the Civil Code.

## **2. Guarantee of Legal Certainty for Bankruptcy Assets in the Form of Non-Fungible Token**

The main principle in the realization of clarity regarding legal regulations is the principle of legal certainty. Gustav Radbruch explained the theory of legal purposes which is divided into 3 aspects: legal certainty, justice, and expediency. Legal certainty is a protection for justice seekers against arbitrary actions, and can obtain something that is expected in certain circumstances (Mario, 2019). In a bankruptcy process, legal certainty is a safeguard for parties involved in a bankruptcy process to obtain their rights in accordance with applicable regulations. Law Number 37 of 2004 Concerning Bankruptcy and Suspension of Obligations for Payment of Debt (hereinafter referred to as the Bankruptcy Law) is a concrete manifestation of the principle of legal certainty because it regulates what rights can be obtained by parties in a bankruptcy case. The Bankruptcy Law has adopted 9 (nine) universal principles of bankruptcy, namely the principle of *concursum creditorum*, the principle of insolvency, the principle of *parity creditorum*, the principle of *pari passu pro rata parte*, the principle of debt collection, the principle that debts are due and payable, the principle that the debtor loses the right to manage his assets (Bernard, 2011). Other principles embedded in the Bankruptcy Law are the principle of balance, the principle of business continuity, the principle of justice and the principle of integration. Furthermore, to be able to provide legal certainty guarantees for bankrupt creditors, it is necessary to analyze the position of the NFT in the debtor's bankrupt assets.

Article 1 point 1 of the Bankruptcy Law stipulates that what is meant by bankruptcy is a general confiscation of all the assets of the bankrupt debtor whose management and settlement are carried out by the Curator under the supervision of the Supervisory Judge. Article 1 point 1 of the Bankruptcy Law provides an explanation that the Bankruptcy Law seeks to provide legal certainty to creditors in the form of a general confiscation of all of the debtor's assets. General confiscation of

the debtor's assets has the function of stopping the debtor's power over his property so that the debtor cannot transfer these assets other than to pay off debts to creditors. The determination of what items can be used as bankruptcy assets in the Bankruptcy Law adheres to the principle of integration.

Determination regarding bankruptcy assets is based not only on the Bankruptcy Law, but also on other applicable laws and regulations in Indonesia such as the Civil Code (hereinafter referred to as the Civil Code). Article 1131 of the Civil Code stipulates that all movable and immovable assets belonging to the debtor, both existing and future, serve as collateral for the debtor's individual agreements. Based on the provisions of Article 1131 of the Civil Code, it can be concluded that the object of general confiscation in bankruptcy cases is all the assets of the bankrupt debtor in the form of movable and immovable objects belonging to the debtor, both existing and future. Article 21 of the Bankruptcy Law stipulates that assets that can be subject to general confiscation are all assets belonging to the debtor so that these assets are related to the provision of objects as property rights as stipulated in Article 570 of the Civil Code. Article 570 of the Civil Code stipulates that property rights are the right to enjoy one's assets freely and to act freely upon these objects as long as they do not conflict with laws and regulations. Objects in the sense of the assets of a bankrupt debtor also include visible and invisible objects such as rights. Article 570 of the Civil Code stipulates that property rights are the right to enjoy one's assets freely and to act freely upon these objects as long as they do not conflict with laws and regulations. Objects in the sense of the assets of a bankrupt debtor also include visible and invisible objects such as rights. Article 570 of the Civil Code stipulates that property rights are the right to enjoy one's assets freely and to act freely upon these objects as long as they do not conflict with laws and regulations. Objects in the sense of the assets of a bankrupt debtor also include visible and invisible objects such as rights.

Article 98 of the Bankruptcy Law stipulates that the curator must carry out efforts to secure bankruptcy assets and keep all letters, documents, money, jewelry, securities and other securities by providing a receipt. Furthermore, in Article 101 Paragraph (1) of the Bankruptcy Law paragraph (1) stipulates that the objects referred to in Article 98 must be included in the recording of bankruptcy assets. In Article 101 Paragraph (1) of the Bankruptcy Law there are nouns that refer to 98 of the Bankruptcy Law, namely all letters, documents, money, jewelry, securities and other securities. The provisions of Article 98 and Article 101 Paragraph (1) of the Bankruptcy Law implicitly explain that what is included in bankruptcy assets are all letters, documents, money, jewelry, securities and other securities (Ranti, 2022). NFT can qualify as a certificate of authenticity for a digital asset, which can be equated with securities. Securities are documents that have a price or value that are issued not as fulfillment of achievements in the form of payment of a sum of money but as proof of identity for the holder as a person entitled to what is contained therein (Abdulkadir, 2013). The characteristics of NFT has in common with the characteristics of securities which are self-evident of the holder as a person entitled to what is contained therein. An object such as a digital artwork has been attached to the NFT so that the NFT holder is the



person entitled to all rights arising from a digital artwork attached to the NFT. NFT as securities is included in the category of bankruptcy assets that must be secured by the curator based on Article 98 of the Bankruptcy Law.

In the practice of settling bankruptcy assets, the main criteria for the debtor's assets that can be used as bankruptcy assets are objects that have economic value. An object generally has economic value if it can be used as collateral in a bank (Elyta, 2019). One form of material guarantee that applies in Indonesia is a fiduciary guarantee. Provisions regarding fiduciary guarantees are regulated in Law Number 42 of 1999 concerning Fiduciary Guarantees. Article 1 point 2 of the Fiduciary Guarantee Law basically regulates that what is meant by a fiduciary guarantee is a guarantee right over movable objects, both tangible and intangible, and immovable objects, especially buildings that cannot be encumbered with mortgage rights. The provisions of Article 1 point 2 of the Fiduciary Guarantee Law have emphasized that objects that can become objects of fiduciary guarantees are tangible or intangible movable objects and immovable objects that cannot be encumbered with mortgage rights. Based on the law of matter, NFT is included in the qualifications of movable and intangible objects (Gede, 2021). Based on the qualifications of NFT material and the existence of intrinsic value to an NFT, NFT is included in objects that can become objects of fiduciary guarantees. NFT that have economic value and can be objects of material collateral have met the qualifications for bankruptcy assets. Based on the characteristics of an NFT associated with the practice of settling bankrupt assets, the provisions of Article 21, Article 98 and 101 Paragraph (1) of the Bankruptcy Law have provided legal certainty to bankrupt curators and creditors that NFT is bankruptcy assets which must be optimized by the curator to pay off the debtors' debts.

### **3. Efforts of the Curator in Optimizing Non-Fungible Token in Bankruptcy Assets**

The legal consequence of a bankruptcy decision is the loss of the debtor's authority to manage and control his assets. Since the bankruptcy decision is read, the debtor's assets turn into bankruptcy assets (Sutan, 2016). Article 15 Paragraph (1) of the Bankruptcy Law stipulates that in a bankruptcy declaration decision a curator and a supervisory judge must be appointed. Article 69 Paragraph (1) of the Bankruptcy Law stipulates that the duty of the curator is to manage and/or settle bankrupt assets. The Bankruptcy Law does not regulate the timeframe for managing and sorting out bankrupt assets, however, from a series of articles in the Bankruptcy Law, it can be concluded that in managing and sorting out bankrupt assets, the curator applies the principle of speed and efficiency (Ratibulya, 2020). The act of managing bankruptcy assets carried out by the curator is in the form of taking inventory of the bankrupt debtor's assets and maintaining and maintaining the bankrupt debtor's assets so that the bankruptcy assets are not reduced in terms of number and value. In addition, the curator in carrying out the management is also expected to be able to optimize the amount and value of the bankruptcy assets so that receivables from creditors can be paid (Hadi, 2015). NFT with its characteristics can provide certain obstacles for the

curator as the party appointed to optimize bankruptcy assets based on the Bankruptcy Law. Furthermore, the author will describe these obstacles and the efforts that can be made by the curator.

The first obstacle is related to the process of recording NFT as individual bankruptcy assets. NFT ownership is not recorded in an official institution but is recorded in a Blockchain. The curator cannot know freely about the ownership of individual bankrupt assets in the form of NFT if the debtor does not disclose these assets. Debtors who do not give the curator access to assets in the form of NFT can transfer their assets without the curator's approval. This results in a reduction in bankruptcy assets that can be managed by the curator to restore the creditors' rights to the debtor's assets. Article 100 of the Bankruptcy Law stipulates that the curator must make a record of bankruptcy assets no later than 2 (two) days after receiving the decision to appoint him as curator. The curator has the obligation to immediately secure the bankrupt assets and carry out safekeeping of the debtor's bankrupt assets. The purpose of immediately recording the debtor's assets is to avoid bad faith bankrupt debtors trying to hide their assets.

The NFT is stored in the owner's e-wallet and is only known and accessed by the owner of the e-wallet using the private key attached to the e-wallet. E-wallets are not connected to the true identity of the user and cannot be checked at state institutions related to citizen identity. Even so, NFT as a digital asset has an ecosystem that is always attached to social media because the intrinsic value of an NFT arises from within the NFT community. In the process of creating an e-wallet, it is possible for the debtor to use his electronic mail (e-mail) to register for the e-wallet. Article 105 of the Bankruptcy Law basically stipulates that the curator has the right to open all letters addressed to the debtor and take all communications related to bankruptcy assets. The curator has the right to take over the bankruptcy debtor's correspondence and has the right to open all letters including letters sent via email belonging to the bankrupt debtor. With the provisions of Article 105 of the Bankruptcy Law, the curator can find out the existence of an e-wallet that stores NFT from the debtor's electronic mail. Nonetheless, it still needs good faith from the debtor to notify and provide access to his electronic mail and e-wallet. This limitation arises from the characteristics of an e-wallet which can only be accessed using the user's private key.

The process of recording bankruptcy assets in the form of NFT requires the good faith of the bankrupt debtor to disclose his assets. In cases where the bankrupt debtor is not in good faith, there are repressive measures that can be taken by the curator, namely by submitting a request to the Commercial Court to take corporal action (*gijzeling*) against the bankrupt debtor. Articles 93 and 95 of the Bankruptcy Law basically stipulate that a bankrupt debtor can be detained (*gijzeling*) if there is a request from the curator if the bankrupt debtor is not cooperative and even obstructs the curator in carrying out his management duties and refuses to provide information about his assets or tries to hide assets thing (Elyta, 2019).

The court, on the recommendation of the supervisory judge, the curator's request or the creditor's request, may determine that the bankrupt debtor is placed in

a state detention center under the supervision of a prosecutor appointed by the supervisory judge (Bismar, 2019). Article 93 Paragraph (3) and Paragraph (4) basically stipulates that the detention of a bankrupt debtor is a maximum of 30 (thirty) days and can be extended for a maximum of 30 (thirty) days. The provisions of Article 93 and Article 95 of the Bankruptcy Law can be a form of coercion for the curator so that the debtor voluntarily discloses his NFT assets so that they can be recorded in the list of bankrupt assets. However, this *gijzeling* action only applies to individual debtors and does not apply to bankrupt debtors in the form of legal entities.

The second obstacle in the process of optimizing bankruptcy assets in the form of NFT is determining the best time to sell NFT so that the highest price can be obtained. The basic value of an NFT is based on the perception of the NFT community in judging, acceptance from other parties, factors of rarity, and uniqueness. Besides that, trading against the NFT is using Cryptocurrency. Cryptocurrencies have characteristics, namely selling values that always change in a fast time. Article 72 of the Bankruptcy Law stipulates that the curator is responsible for mistakes or negligence in carrying out management duties that cause losses to the bankrupt assets. Curators are required to be careful in optimizing the sale value of bankruptcy assets in the form of NFT. The Bankruptcy Law provides a mechanism that can protect the curator from personal responsibility for determining the sale of bankruptcy assets in the form of NFT. This mechanism is on the main creditor meeting agenda regulated in Article 86 of the Bankruptcy Law.

The first meeting of creditors is mandatory and must be held no later than 30 (thirty) days after the bankruptcy decision is read. The Bankruptcy Law does not explicitly stipulate what matters must be discussed at the first creditors' meeting so that the main creditors' meeting agenda is left to the supervisory judge and curator. In practice, the agenda for the first creditor meeting is determined based on the needs, nature and type of business of the debtor, the financial condition and state of the bankrupt assets since the debtor was declared bankrupt (Elyta, 2018).

Article 100 of the Bankruptcy Law stipulates that the curator must make a record of bankruptcy assets no later than 2 (two) days after receiving the decision to appoint him as curator so that it can be concluded that at the time the first creditors' meeting was held, the curator already had a list of the debtor's bankrupt assets. The curator who already knows the debtor's assets in the form of NFT, must understand the characteristics of NFT to be conveyed to creditors at the first creditors' meeting. At the first meeting of creditors, the curator can outline a plan for dealing with bankruptcy assets in the form of NFT to creditors. In addition, the curator can also point out problems that can arise in the sale of NFT, such as the mechanism for selling NFT using Cryptocurrencies and the value of Cryptocurrencies which are always changing rapidly. After presenting the matter, the curator can seek solutions from creditors and make agreements with creditors regarding the best time to sell assets in the form of NFT. If the creditors have agreed on determining the best time to sell NFT, the curator as the party authorized to manage and settle bankrupt assets can follow

the agreement so that the curator in selling bankruptcy assets in the form of NFT can be protected from personal liability.

The third obstacle is related to the procedure for selling bankruptcy assets in the form of NFT. Article 185 paragraph (1) of the Bankruptcy Law stipulates that the sale of bankruptcy assets is carried out in public or by auction. Article 3 of the Regulation of the Minister of Finance Number 213/PMK.06/2020 concerning Instructions for Implementation of Auctions stipulates that the sale of bankruptcy assets includes an execution auction. In the auction process for executing bankruptcy assets, a limit value must be determined for the bankruptcy assets to be sold at auction.

The limit value is the minimum value of the item to be auctioned and determined by the seller. Articles 47, 48, and 49 of the PMK Auction basically stipulate that in an auction for executing bankruptcy assets, the limit value is set by the seller based on the appraisal report by the appraiser. For bankrupt assets in the form of NFT, the curator may appoint appraisers who have special competence and expertise to assess the price of an NFT. The valuation of bankruptcy assets is valid if they do not conflict with the provisions of Article 25 of the Bankruptcy Law which confirms that all actions on bankruptcy assets must not harm the bankruptcy assets. The auction process, from assessing the limit value to the auction stage, takes more than 1 day. NFT is valued using Cryptocurrencies whose value is very volatile and changes very quickly. The characteristics of Cryptocurrencies that have fluctuating selling values can of course cause the price of the NFT to differ greatly when the limit value is assessed and when the NFT is sold at auction in public. This has the potential to result in no buyers buying the NFT in a public auction.

Regarding the value of NFT which can change quickly, the last resort in the process of selling NFT is to refer to Article 185 paragraph (2) of the Bankruptcy Law which stipulates that in the event that an auction sale is not completed, a private sale can be carried out with the permission of the Supervisory Judge. Article 65 of the Bankruptcy Law explicitly gives responsibility to the Supervisory Judge to oversee the management and settlement of bankruptcy assets carried out by the curator so that there is no abuse of authority by the curator (Murdiono, 2016). Sales under the hands carried out by the curator must be with the permission of the supervising judge. Articles 65 and 185 Paragraph (2) of the UUK provide for the Supervisory Judge to know the characteristics of NFT because the sale of bankruptcy assets in the form of NFT is different from bankruptcy assets in general. The consequence of the private sale of bankruptcy property is an objection by creditors or debtors to private sale as regulated in Articles 77 and 84 of the Bankruptcy Law. As an effort to avoid objections from creditors or debtors to the sale of NFT by private selling, the mechanism for selling NFT can be conveyed by the curator at the first meeting of creditors.

The Bankruptcy Law also does not specifically regulate the procedure for selling bankruptcy assets privately so the sales technique is determined by the curator. The curator should discuss how to sell the NFT assets privately at the creditors' meeting as a form of fulfilling the principles of transparency and publicity. This is because bankrupt debtors and creditors have the right to know the process of

managing and dealing with bankruptcy assets. The curator can sell NFT by selling the bankrupt debtor's e-wallet, which contains NFT. NFT has the characteristics of being stored and recorded in the owner's e-wallet. The owner of the NFT is the party that can access the e-wallet using the private key. The curator and the buyer can determine the price of the e-wallet containing the NFT in rupiah currency which is proper and known by the supervisory judge. The form of transferring NFT sales to the buyer is by submitting the debtor's e-wallet address and the private key of the e-wallet as well as the original digital assets attached to the NFT. Buyers can access e-wallets that contain NFT and then change the private key of the e-wallet so that it cannot be accessed by bankrupt debtors. The NFT buying and selling mechanism aim to overcome the nature of NFT selling values which can change in a short time. The sale of bankruptcy assets with a private sale mechanism must be based on the precautionary principle so as not to harm the bankruptcy assets.

#### **D. CONCLUSION**

NFT is a unique digital asset stored in an electronic system in the form of an e-wallet and recorded on the Blockchain. NFT is a unique token as a sign of ownership of a digital asset that has gone through a minting process. Based on the law of matter, NFT is an intangible movable object and cannot be divided. NFT as objects have economic value and can be objects of material guarantees that have met the qualifications for bankruptcy assets. Based on the characteristics of an NFT associated with the practice of settling bankrupt assets, the provisions of Article 21, Article 98 and 101 Paragraph (1) of the Bankruptcy Law have provided legal certainty to bankrupt curators and creditors that NFT is bankruptcy assets that must be optimized by the curator to pay off the debtors' debts.

In general, there are 3 main obstacles by curators in optimizing bankrupt assets in the form of NFT, which are related to the process of recording NFT as bankrupt assets, the process of determining the best time to sell NFT and the method of selling NFT based on the Bankruptcy Law. Against the first obstacle, the effort that can be made by the curator is to take advantage of the provisions in the Bankruptcy Law which gives the right to the curator to access all letters and take over the correspondence of the bankrupt debtor. When the bankrupt debtor is not cooperative and obstructs the curator in the process of recording bankruptcy assets, the curator may request the district court to be able to detain the bankrupt debtor. Regarding the second obstacle, the legal remedy that can be taken by the curator is to take advantage of the first creditors' meeting and seek approval from all creditors regarding the procedures for selling NFT and the best time to sell NFT. Thus, if there is a potential loss from the sale of bankruptcy assets, the curator can be free from personal responsibility. Regarding the third obstacle, the legal remedy that can be taken by the curator is to carry out private sales of bankruptcy assets in the form of NFT. The sale of NFT can be carried out by means of a sale and purchase agreement and an agreement regarding the price of the NFT with the knowledge of the supervisory judge. The form of transferring bankruptcy assets in the form of NFT to the buyer is



by submitting the debtor's e-wallet address and the private key of the e-wallet as well as the original digital assets attached to the NFT.

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