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Legal Protection for Wives in the Division of Joint Assets Following the Husband's Bankruptcy

Ferryani Krisnawati
Universitas Wijayakusuma Purwokerto, Indonesia
ferryanikrisna@gmail.com

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ABSTRACT: *This research is motivated by the lack of public understanding regarding marriage agreements that regulate the separation of assets, especially for couples related to reciprocal agreements between creditors and debtors. Many debtors who are married do not have a separation of assets agreement, so that when bankruptcy occurs, assets in the marriage can be affected. Bankruptcy can be caused by various factors, both from individual and business aspects. Based on the decision of the commercial court, bankruptcy status has legal consequences, including for joint assets in marriage. The problem arises because the marriage legal system in Indonesia basically adheres to the concept of joint assets, unless the couple has made a separation of assets agreement before marriage through a prenuptial agreement. This study aims to analyze the legal implications of bankruptcy decisions on husband and wife assets and examine legal protection for couples who do not have a separation of assets agreement. The research method used is normative juridical with a statutory approach and case studies of court decisions. The results of the study indicate that without a separation of assets agreement, joint assets in marriage can be confiscated to settle the debts of bankrupt debtors. However, the Constitutional Court through Decision No. 69/PUU-XIII/2015 has revised Article 29 of the Marriage Law, which now allows for separation of property agreements to be made after the marriage has taken place. This change provides more protection for married couples in facing financial risks due to bankruptcy.*

Penelitian ini dilatarbelakangi oleh kurangnya pemahaman masyarakat mengenai perjanjian perkawinan yang mengatur pemisahan harta, khususnya bagi pasangan yang berhubungan dengan perjanjian timbal balik antara kreditur dan debitur. Banyak debitur yang telah menikah tidak memiliki perjanjian pemisahan harta, sehingga ketika terjadi pailit, aset dalam perkawinan dapat terdampak. Kepailitan dapat disebabkan oleh berbagai faktor, baik dari aspek individu maupun bisnis. Berdasarkan putusan pengadilan niaga, status pailit membawa konsekuensi hukum, termasuk terhadap harta bersama dalam perkawinan. Masalah muncul karena sistem hukum perkawinan di Indonesia pada dasarnya menganut konsep harta bersama, kecuali jika pasangan telah membuat perjanjian pisah harta sebelum menikah melalui perjanjian pranikah (prenuptial agreement). Penelitian ini bertujuan untuk menganalisis implikasi hukum putusan pailit terhadap harta suami-istri serta menelaah perlindungan hukum bagi pasangan yang tidak memiliki perjanjian pemisahan harta. Metode penelitian yang digunakan adalah yuridis normatif dengan pendekatan perundang-undangan dan studi kasus terhadap putusan pengadilan. Hasil penelitian menunjukkan bahwa tanpa adanya perjanjian pemisahan harta,

harta bersama dalam perkawinan dapat disita untuk menyelesaikan utang debitur pailit. Namun, Mahkamah Konstitusi melalui Putusan No. 69/PUU-XIII/2015 telah merevisi Pasal 29 Undang-Undang Perkawinan, yang kini memungkinkan perjanjian pisah harta dibuat setelah perkawinan berlangsung. Perubahan ini memberikan perlindungan lebih bagi pasangan suami-istri dalam menghadapi risiko finansial akibat kepailitan.

Keywords: *Legal Protection, Separation of Assets, Bankruptcy Law, Husband and Wife.*

I. INTRODUCTION

As social beings, humans inherently desire to interact with others and have a desire to reproduce. Therefore, humans marry to produce offspring. Marriage is an institution revered and emphasized in various religious teachings. Marriage arises from the intrinsic desire of individuals to connect with one another, particularly between men and women, to establish a family and household (Soeroso, 2015).

In Indonesia, marriage is regulated by the Civil Code (KUHPerdata) and Law Number 1 of 1974 concerning Marriage. Article 1 of Law Number 1 of 1974 concerning Marriage defines marriage as a physical and spiritual bond between a man and a woman as husband and wife, with the aim of forming a happy and eternal family (household) based on the belief in the One Almighty God. This article implies that marriage is a bond marked by mutual commitment from both parties (Qoryna et al., 2021).

In the realm of marital law, it is important for couples to understand that marriage encompasses not only emotional relationships but also legal matters that impact the rights and responsibilities of each party. This relates to the management of joint and personal property, along with the legal implications for third parties (Tatang & Yunio, 2024). To mitigate potential future issues, engaged couples should consider drafting a prenuptial agreement that provides clarity and legal protection regarding the management and distribution of assets during the marriage (Nelli, 2021).

Article 29 paragraph (1) of Law Number 1 of 1974 concerning Marriage stipulates that before or during a marriage, both parties may, with mutual consent, enter into a written agreement authorized by a Marriage Registrar. The provisions of this agreement also apply to third parties, as long as they are involved.

Legal protection of assets in a prenuptial agreement applies from the commencement of the marriage, designed to safeguard the assets of both spouses. Parties are permitted to separate their respective assets acquired through inheritance or gifts, which remain under the control of each individual (Waluyo & Iswandi, 2022).

In a household, both partners must be motivated to improve their economic situation to meet the requirements of living together. To meet the requirements of living together, husbands and wives who run businesses often enter into debt or loan agreements with creditors to obtain additional capital for their companies (Judiasih, 2015).

Debtors can obtain loans from both banking and non-banking financial institutions (Fhadillah et al., 2023). Entrepreneurs with non-legal entities can go bankrupt if they cannot repay their debts, which can result in a mix of personal and business assets.

Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, Article 1 paragraph (1), defines bankruptcy as the complete seizure of all assets belonging to the bankrupt debtor, the management and settlement of which is carried out by a curator under the supervision of a supervisory judge, as stipulated in this law. In this case, the husband and wife enter into a prenuptial agreement or separation of assets.

Article 119 of the Civil Code states that upon marriage, joint property is established between the husband and wife, unless otherwise specified in the prenuptial agreement. Joint property during the marriage cannot be changed or terminated by agreement between the husband and wife. Article 121 stipulates that joint property includes all debts incurred by either party, both before and during the marriage.

A prenuptial agreement, also known as a separation of assets agreement, serves to safeguard the assets of each party in a marriage. Assets acquired by one party remain their individual assets, while the husband remains obligated to meet household needs and comply with applicable laws and regulations (Yunanto, 2018).

In a prenuptial agreement, the most important principle is that it must not conflict with applicable laws and regulations, including Law Number 1 of 1974 concerning Marriage. This ensures that the prenuptial agreement is of high moral character. Based on the provisions of Article 29 paragraph (2) of Law Number 1 of 1974 concerning Marriage, which states that the agreement cannot be separated if it violates the boundaries of law, religion, and morality, this is in accordance with statutory provisions. It is recommended that prospective husbands and wives use prenuptial agreements as a way to circumvent the provisions of the Civil Code governing their assets. The provision states that once the couple is married, their assets will be combined into joint assets.

The Separation of Assets Theory and Legal Protection Theory are used to analyze the issues outlined above. Providing legal protection demonstrates the state's commitment to its citizens, ensuring the upholding of the principles of justice, security, and safety for the welfare of the people. As Rahardjo (2009) explains, legal protection is a legal mechanism provided to individuals harmed by others, enabling them to exercise their rights under the law.

Legal protection is divided into two legal subjects: preventive law and repressive law. Preventive legal protection aims to prevent disputes and direct government action to be more cautious in making decisions based on careful consideration. Conversely, repressive legal protection focuses more on resolving disputes that have already occurred. Therefore, legal protection for individuals in social life is crucial (M. Hadjon, 2007).

Based on the above definition, it is clear that every legal act can have consequences in the form of rights and obligations that must be fulfilled. Failure by one party to fulfill their rights and obligations can have detrimental consequences for one of the parties to the agreement. Therefore, legal protection plays a crucial role in protecting individuals and mitigating potential problems that may arise.

Normative legal certainty refers to the condition in which an action is formulated and implemented appropriately, because it is governed by clear and logical regulations. In this context, clarity refers to the formation of a cohesive framework of norms that coexist harmoniously, thus preventing potential clashes or conflicts between them. Legal certainty indicates the formation of clear, eternal, consistent, and unwavering laws, ensuring that their application is not influenced by subjective factors (Istinah, 2016).

Certainty and justice go beyond mere moral imperatives; they fundamentally define the essence of law. Utrecht argues that legal certainty encompasses two interpretations: the first relates to the existence of comprehensive rules that inform individuals about permitted and prohibited actions. The second interpretation holds that legal certainty serves as protection for individuals against the whims of the government. The presence of comprehensive regulations allows individuals to understand the actions the state can take or enforce against them (Syahrani, 1999).

From the above description, it can be concluded that legal certainty is a fundamental guarantee of justice within the legal framework. Legal certainty provides a clear framework that allows individuals to confidently undertake legal action. This occurs when a husband and wife declare bankruptcy and have divided their post-marital assets (Cholil, 2023).

II. METHOD

The author uses juridical-normative research in compiling this paper. The normative research method is also known as the positive legal research method. This research focuses on the study of existing laws and regulations (law in books) or can be called an analysis of the rules or norms that apply in society. This normative research approach can be characterized as a literature review, which largely utilizes secondary data sources, including primary legal documents, secondary legal materials, and tertiary legal materials. Most of the data comes from codified laws and regulations that govern society. To support the compilation of this paper, the author uses existing legal sources, specifically the 1945 Constitution, the Civil Code, Law Number 1 of 1974 concerning Marriage, Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, as well as additional legal materials such as textbooks and journals relevant to the author's discourse.

III. RESULT AND DISCUSSION

Post-Marital Asset Separation Agreement in the Event of Bankruptcy

A prenuptial agreement is a legal agreement between two parties that regulates property and assets. One party is deemed to have made a commitment to perform a specific action, while the other party has the authority to request that the agreement be implemented. A prenuptial agreement is an agreement between a prospective husband and wife to regulate the impact of the marriage on their assets. This agreement is made before or during the marriage.

A prospective husband or wife can enter into a prenuptial agreement, a type of marriage contract, to define their intentions regarding marital assets. From the above definition, it can be concluded that prospective husband and wife are permitted to enter into a prenuptial agreement that differs from the principles or patterns established by law, provided it does not violate public order and morality (Hafifi et al., 2024).

Articles 139 and 154 of the Civil Code stipulate that prospective husband and wife have the right to deviate from laws and regulations governing the division of property by entering into a prenuptial agreement, provided that the agreement does not violate morality. This is because the Civil Code considers all assets of a husband and wife to be joint property at the time of marriage, including assets acquired before marriage. If the assets obtained do not include joint assets, then the prospective husband and wife must enter into a marriage agreement.

For an agreement to be enforceable, as stipulated in Article 1320 of the Civil Code, it must meet four requirements: the consent of those who bind themselves, the capacity to enter into an agreement, a specific matter, and a lawful cause.

In this regard, a marriage agreement is a special agreement subject to the same legal standards as other agreements. Therefore, to enter into a marriage agreement, both parties must mutually agree, both the married couple and the prospective husband and wife. This also aligns with Gustav Radbruch's theory, which states that the three basic legal values are justice (philosophical), legal certainty (jurisprudential), and benefit (sociological). For a marriage agreement to be considered valid, it must benefit both parties, both husband and wife. If one party fails to comply, a dispute will arise. Therefore, to prevent future complications, the contents of the marriage agreement must benefit both parties involved in the marriage.

Therefore, the purposes of a prenuptial agreement are as follows:

1. To separate the assets of husband and wife so that they are not mixed up.

2. If a husband and wife have debts, the obligations are the responsibility of both parties.

3. If one party wishes to sell their assets or enter into a credit transaction, the husband or wife does not need to seek the consent of the other party.

4. A prenuptial agreement can also help prevent an unhealthy marriage.

In this scenario, it can be concluded that the purpose of a prenuptial agreement is to provide preventative and repressive legal protection, namely to prevent problems or disputes arising in the household in the future.

According to Article 1338 of the Civil Code, an agreement is binding and must be complied with by the parties in good faith. If either party violates it, they will be subject to the legal consequences stipulated in the agreement.

Essentially, the legal relationship between a creditor and a debtor is a contractual legal relationship based on a debt agreement agreed to by the parties. In this situation, the agreement has legal consequences in the form of reciprocal rights and obligations. A debt agreement is considered valid if it meets the subjective and objective criteria set out in Article 1320 of the Civil Code.

The terms and conditions stipulated by the creditor and debtor must be outlined in a general credit agreement. The parties, adhering to the principle of freedom of contract, can formulate and draft the agreement by determining its terms as they wish, provided that such terms are not prohibited and permitted by law, and are feasible to implement. In formulating the credit agreement, the parties have established provisions or clauses outlining their respective rights and obligations (Fatahillah, 2023).

Borrowing from a creditor requires collateral from the debtor to ensure repayment. In credit arrangements, the parties typically stipulate that if the debtor defaults, the creditor has the right to claim part or all of the proceeds from the sale of the collateralized asset to satisfy the debtor's obligations. In practice, collateral is often used in the form of real estate. There are two categories of collateral: regular collateral and special collateral, which includes fixed assets and immovable property. In this study, the author uses a credit agreement secured by collateral in the form of land and buildings through mortgage rights. The formation of a debt agreement is the initial stage in the assignment of mortgage rights, which is then followed by the execution of a Deed of Granting of Mortgage Rights by the Land Deed Making Officer.

Next, the APHT is registered with the local national land office and a mortgage certificate is issued containing the following provisions: This certificate serves as the basis for the creditor to execute the collateral object if the debtor cannot fulfill his debt obligations or defaults. As a result, the debtor's default will have legal consequences: a. The debtor is obliged to compensate for losses suffered by the creditor (Article 1234 of the Civil Code); b. This applies if the obligation is reciprocal. The creditor has the right to file for cancellation of the obligation through legal channels (Article 1266 of the Civil Code); c. In the case of an obligation to provide something, the risk shifts to the debtor if a default occurs (Article 1237 paragraph (2) of the Civil Code); d. The debtor is obliged to fulfill the obligation if it can still be fulfilled or is threatened with cancellation along with payment of compensation (Article 1267 of the Civil Code); e. The debtor is responsible for covering court costs if the matter is brought to the District Court and the debtor is found guilty. The creditor will liquidate the collateral owned by the debtor in the event of default or default, with the proceeds being used to pay off the debtor's obligations, including reimbursement of costs, losses, and interest. Because the marriage contract is made between husband and wife, there will be an exception to joint property, so that all assets and liabilities acquired during the marriage remain the property of each husband and wife. Article 29 paragraph (1) of the Marriage Law stipulates that a marriage agreement that has been ratified binds third parties; thus, a marriage agreement has no binding force if it is not registered with the marriage registrar. Researchers are of the opinion that by making a marriage agreement after the Constitutional Court Decision, after being ratified, it will result in a legal separation of assets applicable to third parties. However, Article 29 paragraph (4) of the Marriage Law stipulates that a marriage agreement must not be detrimental to third parties. Thus, in the case of debt repayment to third parties, both parties are jointly responsible, unless otherwise specified in the mutual agreement.

Legal Consequences of Post-Marital Separation of Property Agreements

A prenuptial agreement is fundamentally related to the legal concept of joint property in marriage. A prenuptial agreement is often described as a deviation from the legal concept of joint property. However, a prenuptial agreement can regulate matters beyond property.

A prenuptial agreement can cover a variety of topics, not just joint property (Ramadhan & Misbahuzzulam, 2024). In a prenuptial agreement, both parties must specifically stipulate that there will be no mixing of assets or any other type of pooling of assets, such as profits and losses, income, or profits. According to Article 144 of the Civil Code, the absence of a combination of joint assets does not necessarily mean the absence of joint profits and losses, unless expressly stated. According to Article 186 of the Civil Code, separation of assets is permitted in marriage, meaning that every woman has the right to file a case with a judge for separation of assets at any time during the marriage.

The management and settlement of bankruptcy assets is a stage in a bankruptcy case that must be completed by the parties involved in the bankruptcy dispute after the court decision is issued. The party appointed by the court to oversee and settle the bankruptcy estate is under the supervision of a supervisory curator. Bankrupt assets are divided as part of the management and settlement procedures (Riawati et al., 2021). Based on Article 70 Paragraph (2) letters a and b of Law Number 37 of 2004 concerning Bankruptcy in Indonesia, business entities registered with the ministry and possessing the special expertise required to manage or settle bankrupt assets are subject to the ministry's responsibilities and obligations in the field of legislation.

Article 64 paragraph (1) of the Bankruptcy Law, further affirmed in Article 241 of the Bankruptcy Law, states that a husband or wife bound by marriage constitutes part of the bankrupt estate. This means that the confiscation of joint assets of a husband and wife will be implemented if one of them is declared bankrupt by the court. Meanwhile, Article 62 paragraph (1) stipulates that if a husband or wife is declared bankrupt, the wife or husband has the right to reclaim all movable and immovable property, namely the wife's or husband's own property and any property acquired by each party as a gift or inheritance. The property of a husband or wife who has entered into an agreement to separate the assets of the husband or wife is not the property of the husband or wife.

A declaration of bankruptcy has all consequences for the debtor, the bankrupt debtor's assets, and any agreements made before and after the bankruptcy. The debtor's civil rights to manage the debtor's assets are lost as a result of the declaration of bankruptcy. The suspension of these rights is effective from the date the bankruptcy declaration decision is issued. This also applies to married couples in bankruptcy, who must use their assets to satisfy the debtor's creditor obligations in accordance with the terms of the agreement. The curator, who holds mortgage rights, pledge rights, and other collateral rights over the differences, has the authority to execute them. The debtor is required to obtain the curator's approval if a new reciprocal agreement is made or will be executed, as a consequence of bankruptcy, regarding agreements made before and after the agreement. However, the debtor may request clarification from the curator regarding the continuation of the agreement if the reciprocal agreement has been executed.

There are many examples where the debtor is a married couple. Generally, when a husband and wife are married, assets are considered joint assets or assets of both parties. However, if a prenuptial agreement is entered into between the two, including an agreement regarding the separation of assets, then it will constitute individual property, not community property. Therefore, the assets of a husband or wife who enters into a marital property separation agreement and is declared bankrupt are equivalent to the assets acquired before the marriage or assets brought into the marriage.

Therefore, if the debtor, i.e., husband or wife, is declared bankrupt, the legal consequences of bankruptcy apply only to the husband or wife's assets, not to the husband and wife's joint assets. The assets included in the bankruptcy estate are the assets of the husband and wife alone, not their joint assets. This is to ensure that the husband and wife can fulfill their obligations if they have agreed to the prenuptial agreement. Therefore, the joint assets cannot be considered bankruptcy assets if they have been mutually agreed to as community assets.

Thus, it is clear that the legal consequence of the debtor's decision to separate assets is that the joint assets are not included in the bankruptcy estate and therefore cannot be seized by the receiver. The curator has the authority to seize the assets of each husband and wife, or to seize each of their assets individually, both assets acquired before the marriage and assets brought by the husband and wife.

IV. CONCLUSION

If the debtor defaults after the marriage contract has been made and ratified, then bankruptcy will be imposed on the creditor. This separation of assets applies to third parties. However, Article 29 paragraph (4) of the Marriage Law stipulates that a marriage contract must not cause losses to creditors or third parties. A marriage contract must be ratified by a marriage legal advisor to be binding on third parties or creditors, as stipulated in Article 29 paragraph (1) of the Marriage Law. Therefore, the husband and wife are obliged to pay off their debts to creditors or third parties together, unless they have reached another agreement. The legal consequence of a bankruptcy decision for a debtor who entered into a marriage contract is that the assets of the husband and wife are referred to as bankrupt debtors. These assets are their respective assets, not joint assets, and can be included in the bankruptcy bond. The assets of each business entity also include assets acquired by each debtor before entering into marriage.

V. REFERENCES

Cholil, M. (2023). Urgensi Pengaturan Hukum Kepailitan Transnasional Kawasan Association of Southeast Asian Nations. *Media Iuris*, 6(3), 417–434. https://doi.org/10.20473/mi.v6i3.43536

Fatahillah, F. (2023). Perbandingan konsep Hukum Kepailitan Amerika (Chapter 11) dan Hukum Kepailitan Indonesia. *Jurnal USM Law Review*, 6(3), 1262. https://doi.org/10.26623/julr.v6i3.7906

Fhadillah, Z., Astiti, N., Cholil, M., Alfan, M., & Aliefia, M. (2023). Problematika Kepailitan Transnasional Terhadap Pengurusan dan Pemberesan Aset Debitur Pailit. *Notaire*, 6(2), 307–324. https://doi.org/10.20473/ntr.v6i2.43545

Hafifi, M., Sa`adah, S., & Hefni, W. (2024). Perjanjian Perkawinan Dan Konsekuensinya Terhadap Harta Bersama Pasca Perceraian (Studi Komparatif Hukum Perdata Dengan Kompilasi Hukum Islam). *Al Qalam: Jurnal Ilmiah Keagamaan Dan Kemasyarakatan*, 18(2), 1402. https://doi.org/10.35931/aq.v18i2.3421

Istinah, S. (2016). Perbandingan Sistem Pemerintahan Dalam Sistem Common Law dengan Sistem Civil Law (Studi Sistem Pemerintahan Presidensiil Indonesia Dengan Sistem Pemerintahan Presidensiil Amerika Serikat). *Jurnal Hukum*, 31(1), 1617. https://doi.org/10.26532/jh.v31i1.655

Judiasih, S. (2015). *Kajian Terhadap Kesetaraan Hak dan Kedudukan Suami dan Isteri atas Kepemilikan Harta Dalam Perkawinan*. Bandung: Rafika Aditama.

M.Hadjon, P. (2007). *Perlindungan Hukum Bagi Rakyat Di Indonesia*. Peradaban.

Nelli, J. (2021). Putusan Mahkamah Konstitusi Tentang Status Anak Di Luar Perkawinan Dan Relevansinya Pada Pembaharuan Hukum Keluarga Milenial Di Indonesia. *Hukum Islam*, 21(1), 78. https://doi.org/10.24014/jhi.v21i1.12726

Qoryna, B., Sa'adah, S., & Ramadhan, H. (2021). Status Kewarisan Orang Hilang/ Mafqud Perspektif Kompilasi Hukum Islam dan Hukum Perdata. *Rechtenstudent*, 2(3), 316–330. https://doi.org/10.35719/rch.v2i3.78

Rahardjo, S. (2009). *Hukum Progresif*. Mataram: Genta Press.

Ramadhan, A., & Misbahuzzulam. (2024). Tinjauan Hukum Islam dan Hukum Positif Indonesia Terhadap Pertanggungjawaban Hutang Suami Istri Dalam Ikatan Pernikahan. *Rayah Al-Islam*, 8(3), 940–952. https://doi.org/10.37274/rais.v8i3.1000

Riawati, R., Muskibah, M., & Alissa, E. (2021). Asas Nebis In Idem Dalam Perkara Kepailitan. *Zaaken: Journal of Civil and Business Law*, 2(3), 392–409. https://doi.org/10.22437/zaaken.v2i3.9415

Soeroso, R. P. (2015). *Pengantar Ilmu Hukum*. Jakarta: Sinar Grafika.

Syahrani, R. (1999). *Rangkuman Intisari Hukum*. Bandung: Citra Aditya Bakti.

Tatang, T., & Yunio, M. (2024). Dogma Hukum Indonesia terhadap Perkawinan Lintas Keyakinan. *Jurnal Locus Penelitian Dan Pengabdian*, 3(8), 645–657. https://doi.org/10.58344/locus.v3i8.3057

Waluyo, S., & Iswandi, I. (2022). Perjanjian Penetapan Harga Dalam Perspektif Hukum Positif Dan Hukum Islam. *JISMA: Jurnal Ilmu Sosial, Manajemen, Dan Akuntansi*, 1(4), 565–576. https://doi.org/10.59004/jisma.v1i4.197

Yunanto, Y. (2018). Titik singgung keragaman sistem hukum dalam pembagian harta kekayaan perkawinan pada perkawinan serial. *Masalah-Masalah Hukum*, 47(4), 385. https://doi.org/10.14710/mmh.47.4.2018.385-399