



Legal Effects Of Bankruptcy On Marital Couples Without A Marital Agreement (Analysis Of Supreme Court Decision Number: 510/PDT.G/2019/PN JKT.SEL)

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Abstract . Male and female couples marry to have offspring. If a couple does not have a marriage agreement, it could affect the property they own together, especially if one goes bankrupt. This research is descriptive-analytical research that leads to normative juridical research. Based on the research results, it is found that in bankruptcy, the debtor (husband) cannot pay and settle debts with his creditors, resulting in a joint property without a marriage agreement being included in the bankruptcy. As a result of this decision, the debtor's wife did not accept. She filed a lawsuit with the South Jakarta District Court (Decision of the Supreme Court of the Republic of Indonesia Number 510/Pdt.G/2019/PN Jkt.Sel). It was stated that the lawsuit could not be accepted or rejected because the South Jakarta District Court lacked the authority to examine and decide on bankruptcy cases. According to the results, the union of property is the union of assets and the burden of payment. The legal consequences of marital property without a marriage agreement, if one of the parties falls into bankruptcy, the bankruptcy of the husband and wife against their joint property through a court decision will be considered joint bankruptcy by the provisions in Article 64, Paragraph 1, of Law No. 37 of 2004.

Keyword: Bankruptcy, Marital Couples, Marital Agreement.

Abstrak . Pasangan pria dan wanita menikah untuk mempunyai keturunan. Jika suatu pasangan tidak mempunyai perjanjian perkawinan, hal ini dapat berdampak pada harta benda yang mereka miliki bersama, apalagi jika salah satunya mengalami kebangkrutan. Penelitian ini merupakan penelitian deskriptif-analitis yang mengarah pada penelitian yuridis normatif. Berdasarkan hasil penelitian diketahui bahwa dalam kepailitan, pihak debitur (suami) tidak dapat membayar dan melunasi utang-utangnya dengan kreditornya, sehingga mengakibatkan harta bersama tanpa adanya perjanjian perkawinan termasuk dalam kepailitan. Akibat keputusan tersebut, istri debitur tidak terima. Ia mengajukan gugatan ke Pengadilan Negeri Jakarta Selatan (Putusan Mahkamah Agung RI Nomor 510/Pdt.G/2019/PN Jkt.Sel). Gugatan tersebut disebutkan tidak dapat diterima atau ditolak karena Pengadilan Negeri Jakarta Selatan tidak berwenang memeriksa dan memutus perkara kepailitan. Berdasarkan hasil tersebut, penyatuan harta benda adalah penyatuan harta dan beban pembayaran. Akibat hukum harta perkawinan tanpa perjanjian perkawinan, apabila salah satu pihak dinyatakan pailit, maka kepailitan suami isteri terhadap harta bersama melalui penetapan pengadilan dianggap pailit bersama menurut ketentuan Pasal 64 Ayat 1, Undang-Undang Nomor 37 Tahun 2004.

Kata Kunci: Kepailitan, Pasangan Suami Istri, Perjanjian Nikah.

A. Introduction

As social creatures, humans cannot survive without each other. Humans have the instinct to live together and interact with one another, including the instinct to form a family.¹ Article 1 of Law No. 16 of 2019, which amends Law No. 1 of 1974 regarding marriage, includes two formulations: the meaning and purpose of marriage. Marriage is the relationship between a man and a woman as husband and wife, both on the inside and the outside. In contrast, marriage aims to build a happy and enduring family or home by the will of God Almighty. The

¹ Sayuti Thalib, 2009. Hukum Keluarga Indonesia, Cet. V, Jakarta: Universitas Indonesia, p. 48.

formation of marital property is a consequence of marriage. There are two types of property in a marriage: inherited property and jointly owned property. The property of the marriage can be governed by a prenuptial/premarital agreement based on the consent of the husband and wife.²

In Article 29 of Law No. 16 of 2019, the change to Marriage Law No. 1 of 1974 allows prospective spouses to enter into a marriage agreement. This article becomes very important if it is associated with the socio-cultural society of Indonesia, which is developing and crawling towards a developed society with the main characteristics of a strong awareness of rights and obligations. Generally, the higher a person's socioeconomic level, the more considerations there are in choosing a life partner, from career continuity to the security of assets obtained thus far. In the future, a marriage agreement will be one of the most popular ways to ensure the above things. In general, as a legal subject, every person has the right to freely agree (contract), except those who are too young or under the care of a guardian.³

Marriage agreements can be made by those who are subject to civil law and Islamic law, provided that it is made with an authentic deed and binding for third parties.⁴ With the issuance of Constitutional Court Decision Number 69/PUU/XIII/2015, Article 29 of the Marriage Law has been amended so that a marriage agreement no longer refers to an agreement signed before marriage (a prenuptial agreement) but also to an agreement formed after marriage. Due to this ruling, the Constitutional Court has made the marriage contract more adaptable, allowing each couple to tailor it to their specific legal requirements. In its decision, the Constitutional Court ruled that Article 29 paragraph (1) of the UUP was declared conditionally unconstitutional insofar as it did not mean "At the time, before or during the marriage, both parties by mutual consent may submit a written agreement legalized by a marriage registrar or notary, after which the contents shall also apply to third parties for as long as the third party is involved."⁵

H. A. Damanhuri says that, in general, a marriage agreement is the same as any other agreement. It is an agreement between two people who want to get married and decide how to handle their assets. The Marriage Registrar makes the agreement official.⁶ The marital assets are joint assets obtained during the marriage, and natural assets, either by the wife or the

² K. Wantijk Saleh, 1980, *Hukum Perkawinan Indonesia*, Cet. VI, Jakarta: Ghalia Indonesia, p. 14.

³ Subekti dan Tjirosudibio, 1981, *Kitab Undang-Undang Hukum Perdata*, Jakarta: PT. Pradnya Paramitha, p. 307.

⁴ Erwan Priambada, "Akibat Hukum Perjanjian Perkawinan Yang Dibuat Setelah Perkawinan Berlangsung", *Privat Law*, Vol. III No 2 Juli-Desember 2015, p. 84.

⁵ Winsheryly Tan dan Denaya Aprinata, "Analisis Yuridis Perjanjian Kawin Pasca Perkawinan Berdasarkan Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015", *Journal of Judicial Review*, Vol. XX No. 1 (2018), p.74-87.

⁶ H. A. Damanhuri H.R, 2012, *Segi-segi Hukum Perjanjian Perkawinan Harta Bersama*, Palembang: CV. Mandar Maju, p. 7.

husband. Against joint property, deviations can be made, which can be done by making a marriage agreement. Marital property has a critical position in fulfilling the interests of the household, be they the interests of children, the husband, or the wife. To support their needs to be fulfilled, husbands or wives are sure to borrow funds from other parties. If the loan amount exceeds the value of the marital property, the husband or wife who cannot repay the loan may face bankruptcy.

Bankruptcy is a legal procedure for settling the debts of businesses, individuals, and occasionally governments that cannot pay their expenses because debtors file for bankruptcy because they cannot pay their obligations when they are due and because their liabilities outweigh their assets.⁷ Meanwhile, according to R. Subekti and R. Tjitrosudibio, in this situation, a debtor has stopped the payment of debts is called bankruptcy.⁸ From Article 1 Point 1 UUKPKPU, it is clear that bankruptcy happens when a person has debts that he or she cannot pay when they are due.

Several previous studies, such as Yahman's (2014) and Komang's (2014), are relevant to this research. These studies show that there is debt and credit between a husband and wife when one has been declared bankrupt because he cannot pay his debts to creditors while the husband and wife are still legally married. Because there is no marriage agreement, it raises a problem with the property in their marriage, including movable or immovable property, already owned, or property that will be owned in the future.⁹ ¹⁰ Property that has been included in bankruptcy property, starting when it is declared in a bankruptcy decision. A problem arises regarding bankruptcy, the legal position of a debtor bound by a married couple without a marriage agreement. Although this study has been widely researched, many default cases still exist. As a result, this study examined the legal consequences of bankruptcy on married couples who do not have a marriage agreement.

B. Methods

This research uses normative legal research methodology with a research approach to legal systematics. The nature of this research is descriptive; namely, research that describes objects, and explains an event to know the state of the object under study. The type of data in

⁷ Michelle J. White, "Corporate and Personal Bankruptcy Law: for Annual Review of Law and Social Science", Vol. 1 (2011), p. 3.

⁸ Waldi Nopriansyah, 2019. *Hukum Bisnis di Indonesia: Dilengkapi dengan Hukum Bisnis Dalam Perspektif Syariah*, Jakarta: Penerbit Kencana.

⁹ Yahman, 2014. *Karakteristik Wanprestasi dan Tindak Pidana Penipuan*, Jakarta: Penerbit Kencana.

¹⁰ Komang Febrinayanti Dantes, "Dampak Hukum Putusan Pailit terhadap Harta Kekayaan Suami Istri yang Tidak Melakukan Perjanjian Perkawinan Pisah Harta", Vol. 9 No. 3 (2021), p. 917-923.

this research is only focused on secondary data. It uses data collection techniques in the form of secondary data conducted using literature studies, combining or uniting legal materials by reading and recording legal materials related to the problem. It is then categorized systematically by the problems in the study,¹¹ to be further analyzed with qualitative juridical analysis techniques.

C. Discussion

Overview of Agreement

Article 1313 of the Civil Code defines an agreement as an act by which two or more parties bind themselves to another or others. In addition to other sources, a contract is a source of engagement. A contract is because two or more parties agree to do something.¹² A contract is a pledge from one party to another to carry out or execute something that has been agreed upon. The agreement imposes a legal responsibility on the parties who sign it. At its most fundamental level, an agreement is a series of spoken or written statements containing promises or promises to do something.¹³

In the law of agreements, there is a principle called consensual, which comes from the word consensus, which means agreement. The principle of consensual is not an agreement that requires an agreement. The consensual principle says that when two or more people agree, an obligation has existed since the agreement was made. In other words, the agreement is valid if the parties agree on the main points and no formalities are required.¹⁴ An agreement is a property-based legal relationship between two parties in which one party promises or is thought to promise to do or not do something, and the other party has the right to demand that the promise be kept.¹⁵ Article 1320 of the Civil Code stipulates that a marriage contract must be drafted by the general rules governing the validity of a contract in order for it to be enforceable.¹⁶

Marriage Agreement

Article 29 of Law Number 1 the Year 1974 on Marriage opens the opportunity for prospective spouses to make a marriage agreement. This article becomes very important if it is associated with the socio-cultural society of Indonesia, which is developing and crawling

¹¹ Ani Purwati, 2020. *Metode Penelitian Hukum: Teori dan Praktek*, Surabaya: CV. Jakad Media Publishing.

¹² J. Satrio, 2001. *Hukum Perikatan, Perikatan yang Lahir dari Perjanjian*, Bandung: Citra Aditya Bakti, p. 3.

¹³ R. Subekti, 1987. *Hukum Perjanjian*, Jakarta: Citra Aditya Bhakti, p. 6.

¹⁴ Subekti, 2005. *Hukum Perjanjian, Edisi 1*, Jakarta: Intermasa.

¹⁵ Abdul Rokim, 2012. *Kedudukan Hukum Perjanjian Perkawinan sebagai Alasan Perceraian*. MMH, Jilid 41 No. 1 Januari, p. 59-64.

¹⁶ Soerjono Soekanto, 1986. *Pengantar Penelitian Hukum*. Jakarta: UI Press, p. 15.

towards a developed society with the main characteristics of a strong awareness of rights and obligations. Usually, the higher the socio-economic level of a person, the more considerations there are in choosing a life partner, from career continuity to the security of the assets obtained. A marriage agreement may become a much sought-after alternative to secure the abovementioned matters. In principle, every individual as a legal subject has the right to freely agree (contract), except those who are immature or under guardianship.¹⁷ According to the Civil Code System, when two people marry, they usually end up owning all their belongings together.

Marital Property According to Positive Law in Indonesia

The role of legal norms in social life is crucial. Norms regulate the behavior and actions of the community by the provisions in the norms.¹⁸ Marital law encompasses all of the rules that govern the behavior and consequences of two people who intend to build a household over time. Regulation of a married couple's rights and obligations, as well as property law, governs the property of a married couple in a marriage. Marital property is essential in building a home in a successful and happy marriage. Property is inherited and concerning marriage, namely: 1) Joint assets are controlled by the parties with the consent of their spouses, and 2) In other words, control of joint property, including if you are going to carry out legal actions on a joint property, must have the consent of your spouse. As for inherited property, each party has power over their personal property, and if one party wants to take legal action on the joint property, it does not require their partner's consent. From the rule, it can be concluded that the husband's property becomes the wife's property, and vice versa: the wife's property becomes the husband's property.

Bankruptcy Law and the Legal Position of Joint Property of Married Couples According to the Bankruptcy Law and the Marriage Law

Bankruptcy or faillite, refers to strikes, inability, and obstacles to making payments.¹⁹ In Indonesia, bankruptcy refers to the inability of a debtor to pay his or her debts when they are due. Article 1 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations provides for the confiscation of a bankrupt debtor's property, which is, after that, managed by a curator under the supervision of a judge.²⁰ A person is regarded as unable to pay if, based on a personal report or application from one or more creditors and a

¹⁷ Subekti dan Tjirosudibio, Loc.Cit.

¹⁸ Atmadja, I. D. G. dan Budiarta, I. N. P., 2018. Teori-teori Hukum. Malang: Setara Press.

¹⁹ R. Subekti dan R. Tjirosudibio, 1973. Kamus Hukum, Jakarta: Raja Grafindo Persada, p. 225.

²⁰ Adrian Sutedi, 2009. Hukum Kepailitan, Bogor: Ghalia Indonesia, p. 40.

judge's ruling with a bankruptcy statement, he or she ceases making payments.²¹ In a case of bankruptcy, the debtor cannot pay its debts to its creditors due to financial difficulties caused by the failure of the debtor's firm. In contrast, bankruptcy entails confiscating all of the bankrupt debtor's assets, which a curator then manages under the supervision of a Supervisory Judge.²²

In general, marriage will give rise to a joint property union. Joint property has a significant role in fulfilling the needs of husband and wife in marriage because in their marital life. Husband and wife certainly have needs that must be met, be it clothing, food, and shelter, which will remain in the economic aspect. The husband and wife quickly borrow funds from other parties to fulfill their needs. The large number of loans made but the joint assets owned is needed to pay all debts to their creditors; in this case, they will be unable to pay off their various payment obligations. In this situation, husband and wife can be faced with a situation where they are threatened with bankruptcy.²³ The bankruptcy of a debtor in a marriage is undoubtedly a separate legal issue related to whether the legal consequences of bankruptcy can affect joint property in marriage. In this case, the bankruptcy of the husband or wife also results in the bankruptcy of the wife or husband who is married in a property union or other words, the property they own is not based on a marriage agreement or property separation in their marriage.²⁴

On the other hand, the husband and wife can be declared bankrupt if they cannot pay at least one debt that has become due and is collectible according to the terms agreed upon with its creditors. The Marriage Law has no significant differences in the bankruptcy provisions on joint property. If the husband or wife who filed for bankruptcy has an item not part of the property they own together, that item is part of the bankruptcy property. However, it can only be used to pay the personal debts of the declared bankrupt spouse. The bankruptcy also results in the bankruptcy of the wife or husband who is married in a property union. In other words, the property they own is not based on a marriage agreement or property separation in their marriage. Based on this rule, both the husband and the wife will be responsible for paying back their creditors.

Provisions related to the issue of agreements in a marriage is Article 104 of the Civil Code, which states that husband and wife, by binding themselves in a marriage, and only

²¹ Victor M. Situmorang dan Hendri Soekarso, *Pengantar Hukum Kepailitan di Indonesia*, Jakarta: Rineka Cipta, 1993, p. 40.

²² M.Hadi Subhan, 2008, *Hukum Kepailitan: Prinsip, Norma dan Praktik di Peradilan*, Jakarta: Kencana Prenada Media Group, p.1.

²³ R. Suryatin, 1983. *Hukum Dagang I dan II*, Jakarta: Pradnya Paramita, p. 264.

²⁴ Adrian Sutedi, *Op.cit.*, p. 53.

because of that, they are bound in a reciprocal agreement, will maintain and educate all their children. The effect of marriage on the property of husband and wife, according to the Civil Code, is a unanimous mixed property. Which is based on Article 119 of the Civil Code, that the property obtained during the marriage becomes joint property covering all marital property, namely: property that already exists at the time of marriage and property obtained during the marriage.

In contrast to the Civil Code, the conception of Law No. 1 Year 1974 is that every marriage must cause the existence of joint property. Every marriage must result in joint property; joint property is created by the law, not by a marriage agreement. Therefore, if you want to file a bankruptcy petition against a debtor bound by a legal marriage, you must pay attention to whether the marriage is subject to Law No. 1 of 1974 or the Civil Code. This is important to find out if more than one person owns a property and who should file for bankruptcy.

The husband or wife of a married bankruptcy debtor has the same legal position as a married bankruptcy debtor with joint marital property. Both parties (husband and wife) must be involved as parties in the bankruptcy case and declared bankrupt if one is declared bankrupt. This is due to the provisions of Article 21 and Article 62, paragraph 1, of Law No. 37 of 2004, which state that bankruptcy can occur for married couples in a property union (who have not entered into a property separation agreement in their marriage). Based on this rule, a bankruptcy verdict against joint property means that it is part of the bankruptcy estate. The bankruptcy estate is made up of all of the debtor's assets at the time he or she files for bankruptcy and any assets the debtor gets after filing for bankruptcy. The husband or wife cannot get the benefits promised in the marriage from the bankrupt spouse.

The property brought by the husband or wife into marriage does not become joint property because of marriage; it remains separate. This is because the property has existed since the wife or husband entered marriage. Even though they are married, this property becomes their personal property, which they control. According to technical legal terms, this property is called the "goods origin." "Goods of origin" can also mean gifts or inheritances that the husband or wife got on their own while married. Article 35 paragraph (2) of Law No. 1 of 1974 stipulates that "the innate property of each husband and wife and the property obtained by each as a gift or inheritance is under the control of each as long as the parties do not determine otherwise." When it comes to joint property, the husband or wife can act only with the agreement of both parties. However, regarding their property, the husband and wife have the full right to take legal action.

The Civil Code (KUHPerdata) contains an explicit provision that all assets, whether originating from the husband or wife, automatically become the joint property of the husband and wife. There is no commingling of assets between husband and wife if they enter into a marital agreement, and they will only commingle assets acquired during the marriage. In contrast, Law No. 1 of 1974 states that marriage does not affect the wealth of either party. What belongs to the wife remains the property of each party. The wife can give, sell, or grant her property without the husband's permission. Vice versa, the husband remains the absolute owner of the property he brings into the marriage.

In connection with this joint property, Article 36, paragraph (1) of Law No. 1 of 1974 regulates the rights and obligations of husband and wife in terms of managing joint property, which determines that regarding joint property, husband and wife can act upon the consent of both parties. Based on this provision, it can be seen that the position of husband and wife towards joint property is the same, which means: the husband can act on the joint property after the wife's consent, and vice versa, the wife can act on the joint property after obtaining consent from the husband, while Article 1 of Law No. 37 of 2004 determines that: "If a person is declared bankrupt, the bankrupt also includes his wife or husband who is married based on a property union." "Husbands or wives who are married with a property union mean that all of the wife's or husband's assets included in the marital property union are included in the bankruptcy estate."

Based on Article 63 of Law No. 37 of 2004, it is also stipulated that the wife or husband is not entitled to claim the benefits promised in the marriage agreement in the bankruptcy estate of the husband or wife declared bankrupt. Also, creditors of a husband or wife who has been declared bankrupt cannot get the benefits promised in the marriage contract to the husband or wife who has been declared bankrupt. This provision is in line with Article 23 of Law No. 37 of 2004, which stipulates that the term "bankrupt debtor" includes the wife or husband of the bankrupt debtor who is married in a property union (did not make a property separation agreement in their marriage).

The meaning of "property union" in Article 23 of Law No. 37/2004 can lead to multiple interpretations for specific groups. Some think the wife's marital assets, whether derived from bequests due to family inheritance or assets brought before marriage, can be confiscated to pay off the husband's bankruptcy. On the other hand, it is also possible that the husband's marital property (such as property he inherited or brought into the marriage) could be taken away to pay for the wife's bankruptcy settlement. This could happen if the husband inherited the property or received a grant because of a family inheritance.

Legal Consequences of Bankruptcy of Married Couples Who Do Not Make a Marital Agreement

Despite Article 4, paragraph 2 of Law No. 37 of 2004, this law still follows the idea of joint property from the Civil Code, which says that marriage can happen even if the couple does not own any property together. This is logical, given that a marriage subject to the Civil Code before the enactment of Law No. 1 of 1974 is still considered valid. As stipulated in Article 64, marriages and everything related to marriages that occurred before this law came into force and were carried out according to old regulations is valid. In contrast to the Civil Code, the conception of Law No. 1 of 1974 stipulates that every marriage must cause the existence of joint property. This joint property is created by the law, not by a marriage agreement. Therefore, if you want to file a bankruptcy petition against a debtor bound by a legal marriage, you must pay attention to whether the marriage is subject to Law No. 1 of 1974 or the Civil Code. This is important to find out if more than one person owns a property and who should file for bankruptcy.

The existence of joint assets results in the husband's bankruptcy against his partner (wife), in accordance with Article 23 of Law No. 37 of 2004. The bankruptcy of a husband or wife who is married in a property union is treated as bankruptcy of the property union. Without considering the exceptions in Article 25 of Law No. 37 of 2004, bankruptcy applies to all union obligations. The bankruptcy is for all creditors entitled to demand payment from the union property.

The legal position of the husband or wife of a bankruptcy debtor who is married with joint marital property is that both parties (husband and wife) must be involved as parties in the bankruptcy case and also declared bankrupt if one of them is declared bankrupt. Article 21 and Article 62, paragraph 1, of Law No. 37 of 2004 provide that bankruptcy also results in the bankruptcy of the wife or husband who married in a property union (did not make a property separation agreement in their marriage). The bankruptcy is treated as the bankruptcy of the union. If a person who is still bound by marriage declares bankruptcy, the bankruptcy also applies to the bankrupt debtor's wife/husband who is married in a property union. In a property union, all joint property is part of the bankruptcy estate unless the marriage contract says otherwise.

The legal consequences of bankruptcy on marital couples in bankruptcy cannot be separated from the position of those bound by marriage, where there is no marriage agreement (separation of assets). Based on this, the husband-wife debtor is an individual, who can be bankrupted, both husband and wife. Based on what was said above, debtors can go bankrupt on

their own or because their creditors sue them in bankruptcy court. When a debtor who is legally married and has joint property files for bankruptcy, there are legal consequences for their spouse, whether they are a husband or a wife. The legal consequences of a husband's bankruptcy on joint property affect his wife. The provisions were by Articles 21, 22, and 23 of Law Number 37 in 2004. Article 25 confirms that the entire object that has become a unit of joint property can be involved in the bankruptcy process. Any agreements between the debtor declared bankrupt and third parties made after the declaration of bankruptcy would not and cannot be paid from the bankruptcy assets, except when these agreements bring benefits from the assets.²⁵

Given the equal position of husband and wife in marriage according to Law No. 1 of 1974, this provision has little meaning. According to Law No. 1 of 1974, the provision does not have much meaning anymore. In the same way, it is essential to remember that it can be hard to tell where an intrinsic property ends and a joint property begins when joint rights have been mixed, such as through an exchange with added value, a sale, or a repurchase.

The Commercial Court at the Central Jakarta District Court decided case number 165/Pdt-Sus-PKPU/2018/PN Niaga Jkt.Pst. on February 4, 2019, Ikhwan Andi Mansur, a personal guarantor, was given a bankruptcy decision and declared bankrupt. He also had to deal with the legal consequences. Based on Article 64, Paragraph 1, of Law No. 37 of 2004, it is determined that "the bankruptcy of a husband or wife married in a property union is treated as the bankruptcy of the property union." Joint property can be used as collateral and dependents as security in the event of bankruptcy. Ikhwan Andi Mansur was married at the time of the bankruptcy decision. During their marriage, he and his wife owned property together, which became collateral for the actions of one of them. Ikhwan Andi Mansur's property, which he got through his marriage, can be used as collateral and as the property of dependents in a bankruptcy case. Ir. Indah Sari, Ikhwan Andi Mansur's wife, filed a lawsuit on June 20, 2019. The South Jakarta District Court Registrar got it and wrote it down in Register Number 510/Pdt.G/2019/PN Jkt.Sel on June 20, 2019. The plaintiff, Ir. Indah Sari is a legal subject who is not in a state of guardianship, bankruptcy, or so on. Since none of the plaintiff's joint or personal property is being taken away, she has the legal right and ability to file a lawsuit.

This bankruptcy petition was filed because the debtors have shown that they do not pay their bills on time. Then, by the requirements and bankruptcy decisions of Article 2 paragraph (1) of Law No. 37 of 2004,

"A debtor who has two or more creditors and does not pay in full at least one debt that has

²⁵ Syamsudin M. Sinaga, 2012. Hukum Kepailitan Indonesia, Jakarta: PT. Tatanusa, p. 67.

fallen due and is collectible is declared bankrupt by a court decision, either at his request or at the request of one or more of his creditors."

One of the debtors, Ikhwan Andi Mansur, is married and has not entered into a marriage agreement. As stated in the statement of claim, Plaintiff has argued and confirmed that she is the wife of Accused I, who is married and is in a legal marriage without a property separation agreement in the form of any marital agreement. In Article 23 of Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations ("Bankruptcy Law"), a bankruptcy includes the wife of a bankrupt debtor who is married in a property union:

"The bankrupt debtor referred to in Articles 21, 22 includes the wife or husband of the bankrupt debtor who is married in a property union."

In other words, the bankruptcy of the husband or wife also results in the bankruptcy of the wife or husband who was married in a property union (did not make a marriage agreement or property separation agreement in their marriage). This prompted Plaintiff (wife of Defendant I) to file the quo lawsuit. The plaintiff filed the quo lawsuit as the wife of defendant I, who is in bankruptcy. Since the quo lawsuit still falls under marital law, the District Court can look into it and decide based on Article 118 HIR; this is true even though there is a connection between the parties, such as:

1. Defendant I (Ikhwan Andi Mansur) is the husband of the plaintiff, whose marriage is valid under state law as quoted from Marriage Deed 956/01/XI/1993 dated 31 October 1993, issued by the Tebet Religious Affairs Office, South Jakarta.
2. That the issue in the case a quo is about the Personal Guarantee Agreement made by accused I in front of accused II (notary) or made "underhand," which was later legalized or *waarmerking* at the office of accused II, as a personal guarantor for the obligations/debts of Accused I to Accused II, because there is a legal defect in the making of the Personal Guarantee in the context of the applicable marital law;
3. That between Plaintiff and Accused I, there is no separation of property in the form of any marital agreement. Therefore all property acquired during the marriage is "joint property" and is subject to Marriage Law No. 1 the Year 1974 on marriage;
4. That the reasons for filing the quo lawsuit relate to the violation of marital law norms in making the Personal Guarantee of Accused I because the consent of the plaintiff did not accompany it as the wife of Accused I as required by Law No. 1 of 1974. Concerning this matter, the plaintiff, the harmed wife, filed a lawsuit to cancel the personal guarantee to the South Jakarta District Court. Based on the legal position of the Defendants and the Co-Defendants, they are all located in the jurisdiction of the South

Jakarta District Court, which is by Article 118 paragraph 1 HIR. Therefore it is appropriate for the South Jakarta District Court to have the authority to examine, hear and decide the case a quo;

5. That the Personal Guarantee, as an agreement or engagement, must be based on applicable legal principles in order to be implemented and have legal consequences as a binding agreement for the parties making it and related parties, but if the making has violated applicable legal provisions, it is appropriate for the aggrieved parties to file a lawsuit against the agreement;
6. That because the Personal Guarantee was made when Plaintiff and Accused I were in marital status. It is required by law to follow the provisions governing marriage, especially in the implementation or legal consequences of the Personal Guarantee in the future, which could potentially harm Plaintiff, especially regarding the settlement of obligations imposed in the "Joint Property."
7. That the creation of the Personal Guarantee is contrary to the rules of matrimonial law, as set out in Article 36 Paragraph of Law No. 1 of 1974 Concerning marriage, which requires Article 36 Paragraph (1) of the Marriage Law:
"Regarding joint property, the husband or wife may act upon the consent of both parties";
Therefore, Accused I can only have the authority to act after obtaining the consent of Plaintiff as the wife, so legally, Accused I in performing a legal action in the form of granting a personal guarantee (borghtoch) without the permission of the wife is unlawful so that he is "legally incapable" to grant any personal guarantee, as regulated in Article 36 paragraph 1 of Law No. 1 Year 74 on Marriage;
8. That further regulated in Article 31 paragraph 1 of Law Number 1 the Year 1974 concerning Marriage, it is stipulated as follows: *"The rights and position of the wife are equal to the rights and position of the husband in household life and social life together in society";*
9. Based on the provisions above, it is evident that Accused I is incapable of taking legal action in the form of binding herself in a personal guarantee. Because the wife is equal to the husband, any legal action concerning "joint property" must be agreed upon by both parties. Moreover, the personal guarantee was used by Accused II to request repayment of Accused I's obligations to Accused II, which resulted in a risk or concern that the repayment of such obligations would impact (threaten) the Joint Property (gono-gini property), considering that during the Marriage Accused I did not have any assets;

10. That as a result of the non-fulfillment of the provisions above, the Personal Guarantee has no legal validity, as it does not fulfill the legal requirements of an agreement as set out in Article 1320 of the Civil Code;
11. That about the consent of the wife/husband, apart from being regulated in positive law, namely Law No. 1 of 1974 Concerning Marriage, this is also by the Jurisprudence of the Supreme Court of the Republic of Indonesia as follows Supreme Court Decision No. Reg: 2961 PK/Pdt/1996
"Considering... actions against a joint property by the husband or wife must have the consent of the husband/wife.";
12. That due to the default in the fulfillment of Accused I's obligations to Accused II, Accused II filed a Suspension of Debt Payment Obligation ("PKPU") against Accused I and Accused I, which was registered on 12 November 2018 at the Commercial Court at the Central Jakarta District Court and registered with Case Number 165/Pdt-Sus-PKPU/2018/PN.Niaga.Jkt.Pst;
13. That Accused I were declared to be in a state of Temporary Suspension of Debt Payment Obligation (PKPU) for 45 days starting from the decision read out on 5 December 2018 based on Decision Number 165/Pdt-Sus-PKPU/2018/PN.Niaga.Jkt.Pst;
14. That on 21 January 2019, the Commercial Court at the Central Jakarta District Court, based on Decision Number 165/Pdt-Sus-PKPU/2018/PN.Niaga.Jkt.Pst, has declared Accused I and Accused I in a Permanent Suspension of Debt Payment Obligation (PKPU) for 14 days starting from 21 January 2019 until 4 February 2019;
15. That later, on 4 February 2019, the Commercial Court at the Central Jakarta District Court, by Decision Number 165/Pdt-Sus-PKPU/2018/PN.Niaga.Jkt.Pst, declared Accused I and Accused I (as Personal Guarantor) bankrupt with all legal consequences;
16. That Accused I was also petitioned for PKPU by Accused I, due to the Personal Guarantee signed by Accused I and with the bankruptcy of Accused I, the joint property is threatened to be in the general confiscation of bankruptcy as regulated in Article 64 of Law No. 37 the Year 2004 on Bankruptcy and Suspension of Debt Payment Obligations, namely: "the bankruptcy of a husband or wife married in a property union shall be treated as the bankruptcy of the property union".

Based on the previous decision made by the Chairman of the South Jakarta District Court, the South Jakarta District Court Panel of Judges looked into and tried the case quo. The Panel of Judges then continued to make a decision and took that into account in their answer.

The defendant who stepped in had filed an objection, saying that the South Jakarta District Court did not have the power to hear the case because:

- a. That the South Jakarta District Court is not competent or authorized to hear the case a quo because Ir. Indah Sari, who is the Plaintiff in the case a quo, is the legal wife of Defendant I, and based on Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations ("Bankruptcy Law") is expressly stated as part of the Bankrupt Debtor;
- b. That on 04 February 2019, the Commercial Court at the Central Jakarta Court decided case Number: 165/Pdt.Sus.PKPU/2018/PN.Niaga.Jkt.Pst, which one of the verdicts is "Bankruptcy Case";
- c. "declare PT Malacca Elab, domiciled at Krakatau Steel Building 9th Floor, Jalan Gatot Subroto Kav. 54, Jakarta 12950, and Ikhwan Andi Mansur domiciled at Jl. Mandala V, No. 38, RT. 10 RW 002, Menteng Dalam Village, Tebet District - South Jakarta, are in a state of bankruptcy with all its legal consequences";
- d. That the above decision of the Commercial Court has expressly stated that Defendant I, Ikhwan Andi Mansur, is in a state of bankruptcy with all its legal consequences. One of the legal consequences of Defendant I's bankruptcy is the status of his wife (Plaintiff), who was also declared bankrupt by the provisions of the Bankruptcy Law, Article 21 of the Bankruptcy Law stipulates:
"Bankruptcy covers all of the Debtor's assets at the time the bankruptcy declaration is pronounced as well as everything acquired during bankruptcy";
Furthermore, Article 23 of the Bankruptcy Law also stipulates *"The Bankrupt Debtor as referred to in Article 21 and Article 22 includes the wife or husband of the Bankrupt Debtor who is married in a property union";*
- e. Considering that against the Intervening Defendant's reply/exception, Plaintiff, in his replication, denied and argued:
The issue is the validity of the agreement made by Defendant I in front of Defendant II or made under the hand, which was then legalized or *waarmerking* at the office of Defendant II.
- f. Considering that upon the Intervening Defendant's Exception and the Plaintiff's response in its Replication, the Panel of Judges thinks that the Exception filed by the Intervening Defendant is an Exception relating to the Competence/Authority of the Court, so it must be determined which Court has the authority to examine and hear the case through an Interim Decision;

- g. Considering that based on the intervention Defendant's Exception regarding the authority to hear (absolute competence) and based on the Plaintiff's Replication against the Exception, a question arises, namely "whether the South Jakarta District Court has the authority to examine and hear the case of the Plaintiff's lawsuit Number 510/Pdt.G/2019/PN Jkt.Sel?";
- h. Considering that regarding the Exception of the authority to hear the Intervention, Defendant has submitted preliminary evidence, namely Exhibits TI.1. to TI.6, while Plaintiff submitted 1 (one) evidence, namely P.1.;
- i. Considering that based on Exhibit TI.3. namely Decision Number 165/Pidt.Sus PKPU/2018/PN.Niaga.Jkt.Pst, in petitum number 3 (three) "declare PT Malacca Elab, domiciled at Krakatau Steel Building, 9th Floor, Jalan Gatot Subroto Kav. 54, Jakarta 12950, and Ikhwan Andi Mansur domiciled at Jl. Mandala V, No. 38, RT. 10 RW 002, Menteng Dalam Village, Tebet District-South Jakarta, are in a state of bankruptcy with all its legal consequences";
- j. Considering that the bankruptcy of Defendant I and Co-Defendant II has legal consequences, based on Article 21 of Law Number 37 of 2004 concerning Bankruptcy and Debt Payment Obligations, namely bankruptcy covers all of the debtor's assets at the time the decision to declare bankruptcy is pronounced and all of its legal consequences;
- k. Considering that Article 23 further states, "The bankrupt debtor as referred to in Articles 21 and 22 includes the wife or husband of the bankrupt debtor who is married in a property union.
- l. Considering that based on the response of Defendant I (Ikhwan Andi Mansur/husband of Plaintiff) in his response confirmed that between Plaintiff and Defendant I (Ikhwan Andi Mansur), there was no separation of the property so that the property obtained during the marriage was joint property";
- m. Considering that because what is at issue, in this case, is a guarantee:
 - 1. Deed of Personal Guarantee No. 23 made and signed by Ikhwan Andi Mansur (Defendant I) before Indah Prastiti Extensia, SH, Notary in Jakarta on 19 April 2013;
 - 2. Personal Guarantee made under the hand of Defendant I on 4 March 2015 and registered (waarmeking) by Co-Defendant II Notary in Jakarta with Number W.296/III/IPE/2015 dated 30 March 2015;
 - 3. Personal Guarantee made under the hand of the 1st Defendant dated 4 March

2015 and duly legalized by the 2nd Defendant, Notary in Jakarta under No. L.44/III/IPE/2015 dated 4 March 2015;

The collateral in these documents was the joint property between Plaintiff and Defendant I (Ikhwan Andi Mansur), which had been included in the bankruptcy estate;

- a. Considering that due to the bankruptcy of Defendant I (Ikhwan Andi Mansur), which also resulted in the Plaintiff becoming bankrupt, then based on Article 24 of Law Number 37 of 2004, by law Plaintiff and Defendant I and co-Defendant I as debtors, by law lost their right to control and manage the assets included in the bankruptcy property, from the date the decision to declare bankruptcy was pronounced, and based on Article 26 paragraph (1) claims regarding rights or obligations relating to bankruptcy property must be submitted by or against the Curator;
- b. Considering that the declaration of bankruptcy has changed the legal status of a person to be incapable of performing legal acts to control and manage assets since the declaration of bankruptcy was pronounced;
- c. Considering that, therefore, all joint assets of the Plaintiff and Defendant I which have become bankruptcy assets become the authority of the curator and under the supervision of the Supervisory Judge at the Commercial Court at the Central Jakarta District Court appointed in the Decision to manage the bankruptcy process;
- d. Considering that based on the above considerations, it is reasonable for the Exception of the Intervening Defendant to be granted, and declare that the South Jakarta District Court is not authorized to examine and decide the case;
- e. Considering that because the Intervention Defendant's Exception is granted, the plaintiff is ordered to pay all costs incurred in this case.

Moreover, finally, after examining the quo case filed by Plaintiff (wife of Defendant I), it was decided in a deliberation meeting of the Panel of Judges of the South Jakarta District Court on Monday, November 18, 2019, which was decided in the Indonesian Supreme Court Decision Number 510/Pdt.G/2019/PN Jkt.Sel, by taking into account Article 134 HIR, Article 132 Rv, and other relevant regulations, to hear and decide that:

- a. Granting the Intervention Defendant's Exception regarding Absolute Competence;
- b. Declare that the South Jakarta District Court is not authorized to examine and decide case number 510/Pdt.G/2019/PN Jkt.Sel;
- c. Order the Plaintiff to pay all costs incurred in this case in the amount of Rp1,972,000.00 (one million nine hundred seventy-two thousand rupiahs);

Based on the Decision of the Supreme Court of the Republic of Indonesia, Number 510/Pdt.G/2019/PN Jkt.Sel, the wife's quo lawsuit against their joint assets cannot be accepted or rejected because the South Jakarta District Court needs to be able to look into and decide on bankruptcy cases. In addition, from the Commercial Court Decision at the Central Jakarta District Court, Number 165/Pdt-Sus-PKPU/2018/PN Niaga Jkt.Pst.; it was decided that the husband and wife (Ikhwan Andi Mansur and Ir. Indah Sari) were declared bankrupt because they could not pay and settle debts that had fallen due and had been collected as agreed by their creditors. The husband and wife's joint property will be treated as if they both went bankrupt when the court ruled that they did; this is called "joint bankruptcy." According to Article 64, paragraph 1, Law No. 37 of 2004, the bankruptcy of a husband and wife married in a property union is treated as bankruptcy of the property union. In the provisions of bankruptcy on joint assets, both the concept of the Civil Code and Law No. 1 of 1974 are similar. Bankruptcy also results in the bankruptcy of the wife or husband who is married in a property union. The property is not based on a marriage agreement or property separation in their marriage, so the husband and wife will be jointly responsible for the burden of payment against their creditors.

Arrangement of Application for Bankruptcy Statement if the Debtor is in a Legal Marriage and Does Not Make a Marriage Agreement

Married debtors can be declared bankrupt if they cease or cannot pay at least one debt that is due and collectible as agreed to their creditors. Bankruptcy results in all debtor's assets being in public confiscation, except for objects that the debtor needs. Regarding this matter, of course, it is not much different from individual debtors who are not bound by a legal marriage. What is different is the legal consequences of a bankruptcy verdict imposed on a spouse on their joint assets through a Court Decision, which will be considered joint bankruptcy by the provisions of the Bankruptcy Law. This means that a husband and wife bound by a legal marriage and do not enter into a marital agreement (separation of assets) are jointly responsible for the bankruptcy of one of their spouses with their joint assets as a security seizure. A creditor can file a bankruptcy petition against a legally married debtor but did not sign a marriage agreement, or the debtor can file a bankruptcy petition on their own. Creditors can file for bankruptcy if the debtor owes money to at least two people and has not paid off at least one debt that is due. If a debtor bound by a legal marriage wishes to file a bankruptcy petition against a spouse, a spouse's consent is required; this is closely related to the nature of the property used as collateral confiscation, which is joint property owned by the debtor and his/her

spouse.

In this regard, the husband's bankruptcy also causes the wife's bankruptcy if they are married in a property union, i.e., if the property she holds is not the result of a prenuptial agreement or a property division in their marriage.²⁶ According to this clause, the husband and wife must pay their debts together. The bankruptcy of debtors who are legally married and have a property union at the time of filing can potentially have legal ramifications for their spouses.²⁷ Article 23 of the Bankruptcy Law specifies that if a person declares bankruptcy, his or her spouse is likewise considered bankrupt based on community property or property unity. The stipulations of this article have significant ramifications for the assets of a property union-married husband and wife. This means that all assets acquired during a marriage that has become community property are vulnerable to bankruptcy confiscation and are immediately included in the bankruptcy estate.²⁸ If the property was a gift or inheritance, a bankrupt husband or wife may reclaim it. In accordance with article 62 paragraphs (1) and (2) of the Bankruptcy and PKPU Law, if the property received as a gift or inheritance by the wife or husband has been sold and the proceeds have not been paid or if the sale proceeds have not been commingled with the bankruptcy estate, the money from the sale may be recouped.

D. Conclusion

When a man and a woman marry, their separate properties are combined into a single property they both own. However, this information is not revealed if the two people sign a marriage agreement before marriage. Assume there are legal provisions to repay a spouse's or wife's debts. In such a circumstance, the debt repayment could be assessed against the original property of the spouse who incurred the loan unless a preexisting marital agreement stipulates otherwise. "Joint bankruptcy" is a term that could be used to describe the legal effects of bankruptcy for married people who own property together because merging properties means combining the property and the payment load. The bankruptcy of a married couple with a property union is treated as a property union bankruptcy. Joint assets are controlled in Article 64, paragraph 1, of No. 37, 2004. Joint assets can be used as collateral and bankruptcy dependents, so the consequences of a bankruptcy for debtors who are legally married without a marriage agreement are considered joint bankruptcy.

Several suggestions have been made by the author, particularly to the government,

²⁶ Adrian Sutedi, Loc.Cit.

²⁷ Joni, 2008. *Hukum Kepailitan*, Jakarta: Sinar Grafika, p. 107.

²⁸ Sunarmi, 2009. *Hukum Kepailitan*, Medan: USU Press, p. 106.

which is expected to make more clear changes to the regulation of marital property. The proceeds from the sale of the inherited property mainly inherited property that will be sold or leased in the event of a marriage, are also joint or personal. Moreover, couples who intend to marry should draught a prenuptial agreement that provides for the separation of marital property. If marital problems arise with the husband or wife who declares bankruptcy, the other spouse's property does not become insolvent. Thus, bankruptcy can be avoided, and household necessities can still be satisfied.

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