

Marriage Agreement Against Bankruptcy of Individuals Bound in Marriage

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Abstract

Prenuptial agreements are becoming increasingly important in the context of modern marriage law, especially in regulating rights and obligations before the marriage bond is formed. However, the situation becomes complex when one of the spouses faces individual bankruptcy after the marriage. This article discusses the legal impact of prenuptial agreements on the bankruptcy process of individuals who are bound by marriage. Through a legal analysis and case study approach, the author explores how prenuptial agreements can affect the rights and obligations of spouses in individual bankruptcy cases. In this context, consideration and justice are important to consider. In conclusion, if there is a marriage agreement in bankruptcy, the assets of each husband and wife are not included in the joint assets so that they can be used to pay off the personal debts of the husband or wife who is declared bankrupt.

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1. INTRODUCTION

1.1. Background

In line with the rapid increase in trade and the economy nowadays, more and more problems regarding debts and receivables arise in society, especially against the backdrop of the monetary crisis that hit Indonesia, which had an adverse impact on the country's economy, causing major obstacles for the world. trade and economics in running its business, as well as in paying off debts to continue economic activities. So bankruptcy is one way of resolving debt problems that can be done fairly, quickly and effectively through existing legal provisions.

In this modern era where there is openness of information and also in the era of globalization, it is important to need a regulatory system in the economic sector to be able to support this investment situation. Regulations in the economic sector need to be created and drafted with the aim and consideration of creating a good investment situation in order to increase the growth of the country's economy. The state legal regulations issued must be able to guarantee certainty, law enforcement, order and legal protection with the aim of justice supporting growing the country's economy and providing security in development. Bankruptcy resolution is one of the existing ways to achieve this goal, namely by harmonizing laws related to ease of doing business. So Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (UU KPKPU) is an important policy in realizing this goal.

Bankruptcy is a mechanism in which there is a debtor who has obstacles in paying debts, whose bankruptcy is then decided by the court, namely the Commercial Court for this case, which has a reason, namely because the existing debt cannot be paid.

Then the debtor's assets are distributed to existing creditors according to existing laws and regulations. In article 1 number (1) of the KPKPU Law, it is stated that bankruptcy is a general confiscation of all debtor's assets in bankruptcy with management and settlement carried out. curator supervised by a Supervisory Judge based on statutory regulations.

In reality, regulations regarding bankruptcy have been changed several times. However, these regulations, which have been changed several times, sometimes still have obstacles in meeting the legal developments that society needs. The current regulations relating to bankruptcy are in Law no. 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (“UU KPKPU”) which replaced the old Bankruptcy Law, namely the old Bankruptcy Law, namely UUNo. 4 of 1998.

Delays in debt payments and bankruptcy are mostly related to debts that exist between the parties, namely debtors and creditors. So it can be interpreted that this occurs based on an agreement regarding existing debts and payments. The existing debt agreement creates an agreement between the debtor and creditor so that there are rights and obligations of the debtor and creditor that must be fulfilled.

The conditions for declaring bankruptcy are contained in Article 2 paragraph (1) of the KPKPU Law, which explains that if a debtor has two or more creditors and at least one overdue debt is not paid off and can be collected, it can be called bankrupt by a court decision. This can happen either based on the debtor's own request or a lawsuit from one or more existing creditors.

The Law on Bankruptcy and Suspension of Debt Payment Obligations (UU KPKPU) in Article 2 paragraph (1) states that a debtor can be declared bankrupt if he has more than one creditor and has debts that are already due. The formulation of bankruptcy requirements in the KPKPU Law is simpler compared to previous regulations which required the existence of a state of inability to pay. This simplification was carried out by the legislative body in order to improve bankruptcy regulations.

Furthermore, Article 28B paragraph (1) of the 1945 Constitution expressly gives every individual the right to form a family through a legal marriage. Regulations regarding the conditions for the validity of a marriage are specifically contained in the law. Apart from creating a legally valid marriage bond, marriage also has other legal consequences, such as regulations regarding joint property between husband and wife.

In a marriage, there are joint assets acquired during the marriage and assets inherited by each partner. Husband and wife can regulate their property ownership status through a marriage agreement. This research will examine how legal arrangements in marriage agreements affect the legal status of the assets of individuals who are declared bankrupt in a marriage, as well as the impact of a bankruptcy decision on the position of the assets of the husband or wife who has entered into the marriage agreement.

1.2. The main problem

The main problem in this article is related to the impact of a Marriage Agreement on the Bankruptcy of Individuals Bound in Marriage. It will also be discussed regarding legal arrangements and the status of marriage agreements regarding assets and parties bound by marriage.

2. RESEARCH METHOD

This research adopts a normative legal approach, namely a research method that

analyzes legal rules written in statutory regulations and legal literature. By using this approach, this research aims to identify any discrepancies or gaps in legal norms related to the problems studied, so that relevant legal solutions can be provided.

3. MARRIAGE AGREEMENT REGARDING THE BANKRUPTCY OF INDIVIDUALS BOUND BY MARRIAGE

3.1. Legal Regulation of Marriage Agreements and Marital Assets Against Bankruptcy in Indonesia

Marital assets are all assets owned by husband and wife during the marriage. Marital assets can include assets inherited from each partner, assets resulting from business during the marriage, joint assets acquired during the marriage, and assets given as wedding gifts. Joint property is property acquired by husband and wife during marriage, except inheritance or gifts. The conditions for the formation of joint property are the existence of a legal marriage bond, the equal status of husband and wife, and the property was acquired during the marriage period.⁷

In Article 35 of the Marriage Law, it can be seen:

- a. Assets acquired during marriage become joint assets;
- b. The assets inherited by each husband and wife as well as assets obtained by each as a gift or inheritance, are under their respective control.

In terms of managing joint assets, mutual consent is required from husband and wife. On the other hand, regarding their respective assets, the husband or wife has full authority to take legal action. If the marriage ends in divorce, the division of joint assets will be carried out in accordance with applicable legal provisions, both civil law and religious law, depending on the legal choice chosen by the couple.⁹

Assets acquired during the marriage period become joint property of the husband and wife. Management and use of joint assets requires mutual agreement from both parties. Any legal action taken against joint property must be based on a mutual agreement between the husband and wife.¹⁰ Assets acquired during the marriage period become joint property of the husband and wife. Both have the same rights and obligations in managing and utilizing these assets. If the marriage ends in divorce, the division of joint assets will be carried out in accordance with applicable legal provisions, both civil law and religious law, depending on the legal choice chosen by the couple.¹¹ The laws governing the division of joint assets during divorce can vary, depending on the religion or customs adhered to by the couple. This makes the division process unclear and has the potential to harm one of the parties, especially the wife. In fact, joint assets should be divided fairly because they were obtained during the marriage period.¹²

Assets owned by a husband or wife before marriage are called inherited assets. This inherited property is personal property and is fully controlled by the owner. Therefore, the owner of inherited assets has the right to take all legal action against his assets without needing the consent of his partner.¹³ The general rule regarding control of inherited property is that each owner has full rights to his property. However, husband and wife have the freedom to regulate the ownership status and management of inherited assets through a Marriage Agreement. In the event of divorce, the distribution of inherited assets will follow the provisions stated in the Marriage Agreement, if any. If there is no agreement, the inherited assets will remain the property of their respective owners.

Assets obtained by a husband or wife personally during marriage, whether in the form of gifts, inheritance, or personal business results, basically have the same status

as inherited assets. This means that each owner has the full right to control and take legal action against the property. However, husband and wife can regulate the ownership status and management of acquired assets through a Marriage Agreement. In the event of divorce, the division of acquired assets will follow the provisions stated in the Marriage Agreement, if any. If there is no agreement, the acquired assets will remain the property of their respective owners.

In a marriage, husband and wife have the option to make a marriage agreement that regulates the separation of assets. This agreement can be made before or after the marriage takes place. With this agreement, each party has full rights to manage and control the assets they own, both assets acquired before marriage and during marriage. Regarding financing for household needs, this can be specifically regulated in the agreement, for example being borne entirely by the husband or divided equally between the two.

Through a marriage agreement, a husband and wife can expressly state that they do not want any mixing of assets. This means that the assets owned by each party, both before and during the marriage, remain personal property. Likewise, business results or profits obtained during marriage, whether from personal assets or joint businesses, will remain the personal property of each. Thus, in a marriage with a separation of assets system, there is no concept of property together with. When making a marriage agreement, a husband and wife can expressly state that they do not want any mixing of assets as regulated by law. As a result, in a marriage there will only be two types of property, namely the husband's personal property and the wife's personal property. Each party has full rights to their personal property.

The law allows anyone, both individuals and business entities, to be declared bankrupt if they are unable to pay their debts. This applies to all types of businesses, including households. So, if a husband or wife has debts that cannot be paid, he or she can also be declared bankrupt.

The bankruptcy regulations that have been in effect in Indonesia are: *Bankruptcy Regulation Government Gazette 1905 : 217 juncto Government Gazette 1906:348* because the content and developments were no longer in accordance with the developments and legal needs of the Community, so changes were made to the Government Regulation in Lieu of Law Number 1 of 1998 concerning Amendments to the Law on Bankruptcy, which was then enacted into Law based on Law Number 4 of 1998. However, because it was felt that it had not yet met the development and legal needs of the community, a new regulation was needed, namely Law Number 37 of 2004 concerning Bankruptcy and Postponement. Debt Payment Obligations.

When discussing the bankruptcy of a married couple, it is necessary to pay attention to the provisions in the Civil Code regarding marital assets. Traditionally, the Civil Code adheres to the principle of community property, where all assets owned by husband and wife during marriage are considered as one unit. However, couples can create a prenuptial agreement to change this system. Through this agreement, the couple can choose to separate their assets, so that each party's assets remain private property. Alternatively, a couple can choose to carry out limited mixing of assets, where only certain assets will be used as joint assets.¹⁹

In accordance with the legal provisions in Article 62 paragraph (1) of the KPKPU Law, if the husband is declared bankrupt, the wife can take back all the items that previously belonged to her personally, as long as these items are not included in the assets owned jointly with the husband.²⁰ When a husband or wife in their marriage brings items that are not included in the property of the association (if any agreement

marriage), then this must be proven according to the provisions of Article 150 of the Civil Code. Article 150 Civil Code mentions:

"If there is no combination of joint assets, then the entry of movable property, with the exception of registration letters for state loans and securities and letters of receivables in the name, cannot be proven in any other way than by including them in the marriage agreement, or with a statement signed by the notary and the parties concerned, and attached to the original marriage agreement, in which this must be stated"

If during marriage, a husband gives movable property to his wife, either through inheritance, gift or will, and then a dispute arises regarding the ownership of the property, then to prove ownership, the parties to the dispute must follow the evidentiary procedures as regulated in Article 166 of the Book. Civil Law Law which states:

*"The existence of movable property obtained by each party and husband and wife by inheritance, testamentary gift or ordinary gift during the marriage must be demonstrated by a statement letter."*²²

If there is no document or letter that clearly lists the movable items acquired by the husband during the marriage and their value, then the wife or his heirs have the right to submit other evidence to prove the existence and value of these items. This evidence can be in the form of statements from witnesses who know the existence of the item or other evidence that shows that the existence and value of the item is common knowledge in the community.

In Article 62 paragraph (2) Law No. 37 of 2004 states:

*"If the property belonging to the wife or husband has been sold by the husband or wife and the price has not been paid or the money from the sale has not been mixed into the bankruptcy assets, then the wife or husband has the right to take back the money from the sale."*²³

If a husband who is declared bankrupt has sold his wife's property, or vice versa, then the party who sold the property has the right to ask for the proceeds of the sale back if the money from the sale has not been paid or has not been mixed with the bankrupt's assets. In marriages with a separation of assets agreement, debt and receivable relationships often occur between husband and wife. Therefore, a wife can act as a creditor against her husband if there is a debt that has not been repaid.²⁴

In article 62 paragraph (3) of Law No. 37 of 2004, it is mentioned:

*"For personal claims against the wife or husband, the creditor of the bankruptcy estate is the husband or wife."*²⁵

This article states that in a marriage relationship, one partner can have the right to collect debts from the other partner. This applies when one partner has a personal debt to the other.

Article 63 of Law No. 37 of 2004 states:

*"The wife or husband does not have the right to claim the profits agreed in the marriage agreement from the bankrupt assets of the husband or wife who is declared bankrupt, nor do the creditors of the husband or wife who is declared bankrupt have the right to claim the profits agreed in the marriage agreement to the wife or husband who is declared bankrupt."*²⁶

This article emphasizes that when one of the married couples is declared bankrupt, the assets that will be used to pay off their debts do not include assets obtained from the marriage agreement. This applies both to spouses who are still active and to creditors of parties declared bankrupt.

3.2. Legal Impact of Marriage Agreements in the Bankruptcy Process

The bankruptcy process does not only occur in legal entities such as companies, but can also affect individuals. When someone is declared bankrupt by the court, all of their assets, including marital assets, can become objects for repayment to creditors. This raises legal problems because in the Indonesian marriage system, assets acquired during marriage are generally considered joint property, unless the couple has entered into a marriage agreement that regulates the separation of assets.

Article 35 paragraph (1) of the Marriage Law states that all assets acquired during the marriage period become joint property of the husband and wife. However, assets owned before marriage remain the personal rights of each individual, unless there is a marriage agreement that stipulates otherwise. According to the Marriage Law, all assets obtained during marriage, whether salary, business results or other profits, automatically become joint property of husband and wife. However, assets owned by each partner before marriage, such as an inherited house or personal savings, remain their personal property, unless they make a special agreement stating that these assets become joint property.

Then Article 21 of the KPKPU Law confirms that the scope of bankruptcy is very broad. Not only assets owned when filing a bankruptcy petition, but also assets acquired after being declared bankrupt will become part of the bankruptcy filing. The main aim of bankruptcy is to ensure that all of the debtor's assets are used to pay off his debts fairly to all creditors. This article also provides protection for creditors by ensuring that they have access to all of the debtor's assets, both existing and newly acquired.

Then, Article 23 emphasizes that bankrupt debtors do not only include individuals who are declared bankrupt, but also include joint assets in marriage under the community property system. In the case of bankruptcy, if a husband or wife is declared bankrupt and they have a joint property system, then all assets owned jointly will also be part of the assets that will be auctioned to pay debts.

Article 64 paragraph (1) of the KPKPU Law explains the implications of a bankruptcy decision for married couples who are married using a joint property system. This article specifically regulates that if one of the married couples who are married using a joint property system is declared bankrupt, then all their joint assets will be considered as one unit in the bankruptcy process. Furthermore, paragraph (3) of the same article states that the impact of bankruptcy can extend to the personal assets of each spouse, even though these assets are not part of the joint assets. However, assets that are not included in joint assets can only be used to pay off personal debts of a husband or wife who is declared bankrupt. Although bankruptcy can have far-reaching impacts, there are limitations to the use of personal assets. Personal assets can only be used to pay off personal debts of a husband or wife who is declared bankrupt.

If a husband and wife do not have a marriage agreement, then when one of them is declared bankrupt, all joint assets will be responsible for paying off debts. However, each spouse's personal assets are generally not affected, unless the assets are used for family purposes. In a joint property system without a marriage agreement, joint property will be the main target in the bankruptcy process. However, personal property still has legal protection.

This means that if there is no marriage agreement, and the husband is declared bankrupt, then only the husband's joint assets and inherited assets can be used as objects of confiscation to pay off debts. Generally, the wife's assets cannot be

confiscated. The Bankruptcy Law gives the wife the right to reclaim her inherited assets or the proceeds from their sale that have not been mixed with the bankruptcy assets.

4. CLOSURE

In a marriage, husband and wife have the option to make a marriage agreement that regulates the separation of assets. This agreement can be made before or after the marriage takes place. With this agreement, each party has full rights to manage and control the assets they own, both assets acquired before marriage and during marriage. If there is a marriage agreement in bankruptcy, the assets of each husband and wife are not included in joint assets so it can be used to pay off personal debts of a husband or wife who is declared bankrupt. So that when a husband or wife is declared bankrupt, the spouse may not claim the profits agreed to in the marriage agreement from the bankrupt assets of the husband or wife who is declared bankrupt, and also creditors of the husband or wife who is declared bankrupt may not claim the profits agreed to by the wife or husband in the marriage agreement.

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