



Legal Consequences of Bankruptcy on Joint Assets after Divorce

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Abstract

Marriage is a legal event that makes 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 one and only God. However, not all marriages go as expected which leads to divorce. Marriage creates a union of assets called joint property. In the process of marriage, there are often a number of debts that the husband and wife cannot afford to pay because their joint assets are insufficient to pay these debts. The inability of a husband and wife to pay debts to creditors can be declared bankrupt based on a court decision. This will lead to a problem for joint assets when bankruptcy occurs after a divorce. This study aims to examine the legal consequences of bankruptcy on joint assets after divorce. The type of research is normative legal research. This legal research method is related to the principles and norms of bankruptcy law in Indonesia, in that, legal research is a process to find legal rules to answer the legal issues being faced. The types of approaches used are the statute approach, conceptual approach and legal facts approach. The results of this study showed that in Article 23 of the Bankruptcy Law, it is explained that if a person is declared bankrupt, those who participate in bankruptcy include the wife or husband with the status that the wife/husband after marriage is related to the union of assets. The legal consequences of the bankruptcy of joint assets that have not been divided after the divorce refer to the provisions for the distribution of joint assets in the marriage law and the Civil Code.

Keywords: Bankruptcy; divorce; joint assets; marriage

I. INTRODUCTION

Marriage is an inner and outer 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 one and only God. Marriage binds a man to a woman. According to the marriage law, a marriage creates equal rights and obligations between husband and wife. Unification of marriage law through Law Number 1 of 1974 concerning marriage (hereinafter referred to as the Marriage Law) as amended into Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage (hereinafter referred to as the Amended Marriage Law) has placed and recognize the equal position between men and women as husband and wife. Marriages that take place between husband and wife have 3 legal consequences, namely: first, the result of the husband and wife relationship; second, the impact on marital assets; third, the effect on the child being born.

Marriage is a legal event, that is to say, an event whose consequences are regulated by law, or an event that is given legal consequences. A marriage is a legal event if the marriage is a legal event. Hence, a marriage is said to be valid according to the law if a marriage is carried out according to the applicable legal rules (Dewi, 2020). The union between a man and a woman in marriage also results in a joint property called joint assets.

In Article 35 paragraph (1) of the Marriage Law what is meant by joint assets is the assets acquired during the marriage become joint assets. If one wants to deviate from these customs, he/she must comply with the marriage agreement (Ramulyo, 1995:30). The deviant habit in question is when a husband and wife want to separate the assets they have acquired during their marriage in order that these assets do not become joint assets but the assets of each party. The Civil Code also regulates joint assets which are contained in the unity book, part one, articles 119 to 122. However, not all marriages can last forever as expected in article 1 of the Marriage Law; various factors can cause a married couple to separate and divorce. Separation of a husband and wife due to divorce not only results at the end of the marriage and the determination of child custody but also has an impact on the assets acquired during the marriage for couples who carry out a joint asset. After the divorce has occurred, the position of joint assets will be regulated based on their respective laws according to article 37 of the Marriage Law. In the elucidation of Article 37 of the Marriage Law it is stipulated that if a marriage has ended due to divorce, joint assets will be regulated according to their respective laws, that is, based on customary law, religious law, and other legal rules and regulations (Judiasih, 2015:24). Although in general marriage will give rise to a joint property called joint assets, in the process of marriage there are often a number of debts that the husband and wife are unable to pay, who are called debtors, including because the joint property is insufficient to pay the debt. The inability of a husband and wife to pay debts to creditors can be declared bankrupt based on a court decision.

Bankruptcy is a process in which a debtor who has financial difficulties paying their debts is declared bankrupt by a court, in this case, a commercial court, because the debtor is unable to pay his/her debts. In Indonesia, in article 1 point 1 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Obligations for Payment of Debt (in Indonesia referred to as UUK-PKPU), it is explained that Bankruptcy is a general confiscation of all the assets of a Bankrupt Debtor whose management and settlement is carried out by the Curator under the supervision of the Supervisory Judge as regulated in this Law.

Debtor assets can be distributed to creditors in accordance with government regulations. From a historical point of view, bankruptcy law was originally intended to protect creditors by providing a clear and certain path to settling unpaid debts (Mantili & Dewi, 2021). Thus, during the bankruptcy process, the management of the debtor's assets is carried out by the curator under the supervision of a supervisory judge. One's lack of authority over their property due to bankruptcy has an impact on their household life where marital assets are not separated.

The results study conducted by Krisna & Marwanto (2021) identifying the system of sharing assets with husbands or wives who are religiously divorced based on an authorized court decision along with the legal consequences and accountability of a party in the event of bankruptcy against a husband or wife who is religiously divorced showed that the distribution of joint marital assets to husbands or wives who are divorced by religion but have not yet been decided by the court, the joint assets cannot be divided in half by the wife and husband or their heirs in accordance with their respective laws that apply to them. The responsibility of either party in the event of bankruptcy against a husband or wife who is divorced by religion can refer to the Civil Code in which both parties are responsible for the debt incurred by the husband or wife. In addition, Logika & Anggoro (2021) in their study that examined the legal consequences of a husband's bankruptcy regarding joint property based on decision number 510/pdt.g/2019/pn.jkt.sel, showed a result study *based on Court Decision No. 510/Pdt.G/2019/PN.Jkt.Sel that the husband's bankruptcy must be borne on joint assets. As in accordance with Article 64 Paragraph 1 of Law 37/2004 that the bankruptcy of husband and wife who marry in a union of assets is treated as the bankruptcy of the union of assets. In addition, Article 23 of Law 37/2004 also stipulates that debtors refer to husband and wife in the union of assets in a marriage bond. In other words, the bankruptcy of a husband then applies to the wife and vice versa. Husband and wife have the responsibility to make payments. Based on the background of the previous studies above, this study aims to examine the legal consequences of bankruptcy on joint assets after divorce.*

II. METHOD

This type of legal research is normative legal research. Legal research used is a normative method that is a legal research method that conceptualizes law as a rule or norm that becomes a benchmark for behaviour. The choice of legal research method is related to the principles and norms of bankruptcy law in Indonesia, in that, legal research is a process of finding legal rules to answer the legal issues being faced. The types of approaches used are the statute approach, conceptual approach and legal facts approach.

III. DISCUSSION

The wealth of marriage is actually an asset in the family to support its development. Joint assets and wealth serve as the main capital in a family's life which must be kept intact. One of the consequences of marriage is related to assets. The Marriage Law recognizes 3 types of assets, namely: shared assets, inherited assets and acquired assets. After the marriage takes place, the position of the different assets of the two people who bind themselves in a legal marriage bond will change. Based on the formulation of Article 35 paragraph (2) of the Marriage Law, marital assets can be classified into 3 (three), such as:

Joint assets (Article 35 paragraph 1 of the Marriage Law);

The inheritance is distinguished from the inheritance of each husband and wife and inheritance acquired from gifts or inheritance (article 35 paragraph (2) of the marriage law);

Assets originating from grants or inheritance are the assets of each husband and wife which were obtained not due to joint or individual efforts but due to grants, inheritance or wills. In other words, this type of asset refers to the asset obtained as a result of the livelihood of the husband and wife.

Building upon the classification of the types of assets, as a consequence, there are 2 (two) types of classification of property rights to assets, such as:

The existence of collective or joint property rights specifically regarding assets classified as livelihood assets, the arrangement is that the ownership rights to these assets are jointly owned by the husband and wife. With this collective ownership right, of course, the authority and responsibility for the joint assets are in the hands of the husband and wife, thus one party does not have the right to use it without the consent of the other party.

The existence of separate private property rights. The assets that are classified as the second type of assets are inherited assets and the third type of assets are those obtained in marriage but do not originate from livelihoods but can be obtained through a grant or will. Therefore, the property rights are separate from the assets owned before the marriage took place.

With the marriage taking place, there will be legal certainty regarding something that has been agreed upon by both the husband and wife to carry out a legal act (Makangiras, 2014). The effect of marriage on assets is the unification of assets in a unanimous manner which includes the union of results and income from the work of the husband and wife as well as the union of the profits and losses obtained during the marriage. Furthermore, a full property union occurs when the husband and wife do not enter into a prenuptial agreement where if it is accompanied by a prenuptial agreement then a wealth union against the husband's or wife's debt must be distinguished (Djuniarti, 2017). The division of joint assets between husband and wife after divorce is a complicated issue, so it is not surprising that there are many lawsuits for joint assets after the divorce (Sutini & Dewi, 2021).

A husband and wife can be declared bankrupt if they are unable to pay at least one debt that is past due and can be collected according to what was agreed with the creditor. Bankruptcy is a general confiscation of all the assets of a bankrupt debtor whose management and settlement are carried out by a curator under the supervision of a supervisory judge as stipulated in UUK-PKPU. Bankruptcy legal instruments are very important, namely as an institution that provides justice for the distribution of assets of bankrupt debtors to their creditors and a "fresh start" for debtors, namely as a new start financially for debtors who no longer have the ability to pay their debts to their creditors.

Bankruptcy is actually one way to resolve debt disputes (Dewi, 2021).

In essence, bankruptcy in Indonesia is to create a sense of justice for the parties in the bankruptcy process which in turn guarantees legal certainty for the parties regarding the settlement of their debts (Dewi, 2019). This bankruptcy legal institution is expected to provide justice and legal certainty for both creditors and debtors who have debt problems. Gregory Germain explains the bankruptcy system as follows: "The bankruptcy system is designed to pick up where the state law leaves off by providing for orderly collective creditor action, providing for the discharge of debts that are not paid through the bankruptcy process, and addressing the holdout problem by facilitating orderly and fair reorganization proceedings" (Germain, 2016:40).

The bankruptcy of the debtor causes juridical consequences imposed by law on the debtor. As for the juridical consequences given to the debtor, they are applicable in two ways – applicable by law and applicable according to the rule of reason which is something that has legal reasons to be declared to result in legal consequences. Referring to Article 23 of the UUK-PKPU which provides an understanding that a person who is declared bankrupt, then those who participate in bankruptcy include their wife or husband with the status that the wife/husband after marriage is united by assets. The existence of the provisions of this article leads to fairly serious legal consequences. Following the bankruptcy of the husband or wife, all the assets of both the husband and wife included in the joint assets are also subject to bankruptcy confiscation and automatically become bankrupt. When referring to Article 35 of the Marriage Law, all assets become joint assets except for assets brought into marriage in the form of gifts or inheritance. This provision only applies when the husband and wife are still legally husband and wife. Then, what if in a state of bankruptcy, the husband and wife are divorced or divorced religiously but the religious court has not yet decided? Are the assets acquired during the marriage still joint assets or can they be divided? Can these assets be included in the bankruptcy estate or not?

In the event of bankruptcy, the legal consequences of the bankruptcy decision handed down to husband and wife who are still bound by marital relations over joint assets through the court will be assessed as joint bankruptcy. This is in accordance with the provisions of Article 64 paragraph (1) of the UUK-PKPU which states, "The bankruptcy of a husband and wife who are married in a unification of assets is treated as bankruptcy of the unified assets", which means that the husband's bankruptcy is the bankruptcy of the wife and vice versa. In this case, the bankruptcy of the husband or wife also results in the bankruptcy of the wife or the husband who is married in a union of assets or in other words the assets they own are not based on a marriage agreement or separation of assets in their marriage.

However, the legal consequences of the bankruptcy of joint assets that have not been divided after the divorce again refer to the provisions for the distribution of joint assets in the marriage law and the Civil Code. In principle, the joint asset is an asset acquired by the husband and wife during the marriage and after a divorce occurs, the property becomes part of each husband and wife which must be divided, unless otherwise determined by them in the marriage agreement. Therefore, if the husband or the wife can make collateral for the joint assets that have not been divided, this act is an unlawful act that must be accounted for both criminally and civilly as described above.

By cancelling the installation of the mortgage on the joint assets, the assets cannot be used fully as a fulfilment of the obligations of a husband or wife who has been declared bankrupt. This is because the two parties are no longer husband and wife so the unification of debt payment obligations that can be carried out post-divorce cannot be done, and the one who must fulfil debt payments is he who owes post-divorce using only part of the joint property which is his part preceded with the distribution of the joint assets or shared assets.

IV. CONCLUSION

Based on the results described above, it can be concluded that the bankruptcy of the debtor causes juridical consequences imposed by law on the debtor. As for the juridical

consequences given to the debtor, they are applicable in two ways – applicable by law and applicable according to the rule of reason which is something that has legal reasons to be declared to result in legal consequences. Referring to Article 23 of the UUK-PKPU which provides an understanding that a person who is declared bankrupt, then those who participate in bankruptcy include their wife or husband with the status that the wife/husband after marriage is unified by assets. In other words, following the bankruptcy of the husband or wife, all the assets of both the husband and wife included in the joint assets are also subject to bankruptcy confiscation and automatically become bankrupt. Article 35 of the Marriage Law explains that all assets are joint property except for assets brought into marriage in the form of gifts or inheritance. In the event of bankruptcy, the legal consequences of the bankruptcy decision handed down to husband and wife who are still bound by marital relations over joint assets through the court will be assessed as joint bankruptcy. That is in accordance with the provisions of article 64 paragraph (1) of the UUK-PKPU which states, “bankruptcy of a husband and wife who are married in a partnership of assets is treated as bankruptcy of the association of assets”. In other words, the husband’s bankruptcy is also the wife’s bankruptcy and vice versa. In this case, the bankruptcy of the husband or wife also results in the bankruptcy of the wife or the husband who is married in a union of assets or in other words the assets they own are not based on a marriage agreement or separation of assets in their marriage. However, the legal consequences of the bankruptcy of joint assets that have not been divided after the divorce again refer to the provisions for the distribution of joint assets in the marriage law and the Civil Code. In principle, a joint asset is an asset acquired by the husband and wife during the marriage, and after a divorce occurs, the property becomes part of each husband and wife which must be divided, unless otherwise determined by them in the marriage agreement.

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