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Bankruptcy of Individual Debtors Regarding Joint Assets of Husband and Wife

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Abstract: Marriage is 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 or household based on the Almighty Godhead. The existence of this marriage results in the union of the husband's assets with the wife's assets, which is usually known as joint assets. However, this can be waived if there is a marriage agreement before the marriage takes place. The regulation of the concept of joint property in a husband and wife marriage experiencing bankruptcy is divided into two, namely for husband and wife who are married with a marriage agreement and for husband and wife who are married with a union of assets. For bankruptcy resolution, if joint assets are insufficient to pay debts, it must be proven that the debt is a personal debt or a joint debt.

Keyword: Bankruptcy, Joint Property, Marriage Agreement.

INTRODUCTION

The 1945 Constitution guarantees a person's rights to form a family and extend the lineage through a valid marriage, as found in Article 28B paragraph (1). Article 1 of the Marriage Law defines marriage as a spiritual and physical bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on belief in the Almighty God. The Civil Code does not define marriage, Article 26 of the Civil Code only states that the law views marriage only in civil relationships. Prof. Subekti is of the opinion that Article 26 of the Civil Code states that a valid marriage is only a marriage that meets the requirements set out in the Civil Code and religious requirements and regulations are set aside. According to the Civil Code, marriage results in a union of assets. This is contained in Article 119 of the Civil Code, "From the moment the marriage takes place, by law a complete union between the assets of the husband and wife applies, just regarding that with the marriage agreement there are no other provisions. "The union throughout the marriage cannot be dissolved or changed by any agreement between the husband and wife." This means that from the moment the marriage takes place there is a union of the husband's assets with the wife's assets, which is usually known as joint assets. This provision can be waived if there is a marriage agreement before the marriage takes place.

Joint property is property acquired by a husband and wife during the marriage, regardless of which party produces it (either the husband or wife alone, or the husband and wife together), the property becomes joint property between the husband and wife. Common property applies to movables, immovables, and securities.

The meaning of a marriage agreement or the contents of a marriage agreement are not explained in the Marriage Law or the Civil Code. Marriage agreements in the Marriage Law are only regulated in one article, namely Article 29, "At the time before the marriage takes place, both parties, by mutual agreement, can enter into a written agreement that is ratified by the Marriage Registrar, after which the contents also apply to third parties as long as the third party stuck." Marriage results in the birth of rights and obligations for both husband and wife. On average, in Indonesia, the obligation to earn a living lies with the husband as the head of the family, however, along with the many needs of daily life, many wives also work to help their husbands earn a living. This is done in various ways, either by working for an agency or institution or by working as an entrepreneur.

When a husband or wife who works as an entrepreneur has difficulty obtaining business capital, of course they will apply for a loan from a bank or individual. This loan is not only to one creditor, meaning the debtor has many debts to several creditors. Problems will arise if debtors take out loans without their respective partners knowing or agreeing. If the debtor goes bankrupt, all assets of the debtor and his/her spouse will be sold to pay off the debtor's debts, even though the spouse is not aware of the loan, because it is assumed that indirectly the spouse also enjoys the proceeds from the loan.

This applies to married couples who are not bound by a marriage agreement, as regulated in Article 64 paragraph (1) of Law No. 37 of 2004 concerning Bankruptcy and PKPU, that the bankruptcy of a married husband or wife in a union of assets, is treated as bankruptcy of the assets association. This provision is in line with Article 23 of Law No. 37 of 2004 concerning Bankruptcy and PKPU, that bankrupt debtors as referred to in Article 21 and Article 22 include the wife or husband of the bankrupt debtor who is married in a union of assets. This means that the bankruptcy of a husband or wife also results in the bankruptcy of their respective partners who were married in a union of assets (not making a marriage agreement or an agreement to separate assets in their marriage). To what extent will the limits of assets included in the bankruptcy estate be and what will be the resolution if the joint assets are insufficient to pay off debts.

Based on the background above, the problems to be studied are as follows:

1. How is the concept of joint property regulated in the marriage of a husband and wife who experience bankruptcy?
2. How to resolve bankruptcy when the joint property is not enough to pay the debt?.

METHOD

The problem approach method used is normative juridical, namely legal research using a statutory approach and a conceptual approach. The legal approach uses statutory regulations as primary legal material, by taking an inventory of related statutory regulations and then analyzing the substance of statutory regulations relating to bankruptcy and marriage agreements, so that harmonization or disharmonization can be identified between the same statutory regulations. with others. A conceptual approach is used to obtain clarity on legal concepts regarding joint property in a husband and wife marriage who are bound by a marriage agreement.

RESULTS AND DISCUSSION

Arrangement of the Concept of Joint Property in the Marriage of a Husband and Wife Experiencing Bankruptcy

The Concept of Joint Assets Between Husband and Wife

Talking about bankruptcy regarding husband and wife's assets, the consequences of which will have an impact on marital assets, you must look at several regulations contained in the Civil Code, because in the Bankruptcy Law itself, both previous and newest, it still uses concepts in the Civil Code, this can be seen from the editorial of the article -Related articles that still use the term 'unity of assets'.

The marriage legal system for those who are subject to the Civil Code recognizes the principle that from the moment the marriage takes place, by law the mixing or unification of assets between husband and wife applies as long as it is not agreed otherwise in an agreement between husband and wife (Article 119 paragraph (1) of the Civil Code). In other words, if it is desired between husband and wife that this does not happen for the sake of legal unity of assets, then before entering into marriage they must first enter into a marriage agreement (Article 147 of the Civil Code).

Throughout the marriage, the unity of assets may not be abolished or changed by agreement between husband and wife (Article 119 paragraph (2) and Article 186 paragraph (2) of the Civil Code). The unity of assets can only be changed by a judge's decision as intended in Article 186 paragraph (1) of the Civil Code. According to the provisions of Article 186 paragraph (1) of the Civil Code, this claim can only be filed by the wife and only if the husband has taken the following attitude:

- a. If the husband, because of his obviously bad behavior, has squandered the assets of the union and therefore has exposed all members of the family to ruin;
- b. If due to irregularity or the way the husband manages the assets is not good and as a result there is no longer any guarantee for the wife's marital assets (inherited assets) and for all the wife's rights, or if due to gross negligence on the part of the husband in managing the wife's marital assets then the wife's marital assets it's in danger.

According to the provisions of Article 139 of the Civil Code, by entering into a marriage agreement, both prospective husband and wife have the right to deviate from the provisions of the law concerning the unity of assets. This is a deviation from Article 119 of the Civil Code, as long as the agreement does not violate decency, public order and the provisions regulated in subsequent articles concerning marriage agreements. With the threat of annulment (null and void), the marriage agreement according to the provisions of Article 147 paragraph (1) of the Civil Code must be made by notarial deed and must be made before the marriage takes place. In other words, if the agreement is made with an authentic deed but is not a public official who has the position and functions as a notary or especially if the marriage agreement is made with a private deed, then the marriage agreement is invalid, so it has no legal force and is void. by law. According to Article 147 paragraph (2) of the Civil Code, the marriage agreement comes into force from the time the marriage takes place. Furthermore, Article 147 paragraph (2) of the Civil Code stipulates that it is not permissible to agree that the agreement will come into force for another time (not from the time the marriage takes place). After the marriage takes place, according to Article 149 of the Civil Code, the agreement cannot be changed in any way. Based on the conception of the Civil Code, in marriage there is only one type of property, namely union property. These assets have existed since the marriage took place. In this conception, it means that since marriage there has been:

- a. Association of assets due to law. In this context, what is known is only mixed assets or joint assets of husband and wife, inherited assets or assets belonging to each husband or wife are not known. All inherited assets brought or acquired by the husband or wife into or during the marriage will become joint property.
- b. If agreed, an agreement can be made to eliminate mixed or joint assets. In this context, there is no known mixed property or joint property, what exists is the property of each husband

or wife, both what was brought into the marriage and what each husband and wife acquired during the marriage.

c. If the prospective husband and wife agree through a marriage agreement that regulates the separation of assets, there will be limited mixing of assets. This means that there is an agreement between husband and wife that during the marriage, only certain assets will be included in the joint property union. The rest will remain the property of each husband and wife.

Different from the Civil Code, the concept of joint property in the Marriage Law is based on customary law patterns. In customary law, marital assets can usually be separated into 4 groups as follows:

a. Items obtained by a husband or wife by inheritance or gift from their respective relatives and brought into the marriage

b. Items obtained by a husband or wife for themselves and for their own services before marriage or during marriage

c. Items acquired during marriage by husband and wife as joint property

d. Items that are given to husband and wife together at the time of marriage

The Marriage Law adheres to the concept of customary law, which is clearly visible from its regulations regarding joint property. Article 35 paragraph (1) states that property acquired during marriage becomes joint property. Article 35 paragraph (2) states that the assets inherited from husband and wife as well as assets obtained as gifts or inheritances are under their respective control, provided that the parties do not determine otherwise.

Judging from the regulation of marital assets according to the Marriage Law, the Law actually recognizes limited mixing of assets, meaning that assets united in marriage are assets acquired by the husband or wife during the marriage, while inherited assets are brought by each husband. wife into marriage is not included in joint assets.

The legal construction in the Marriage Law does not recognize marriage agreements as regulated in the Civil Code. The marriage agreement is the only proof of the existence of movable objects which are inherited assets according to the conception of the Civil Code. This is logical because the source of law in the Marriage Law is based on customary law. As we know, in principle, customary law does not recognize written agreements. A marriage agreement cannot bind third parties, either for profits or losses, so that the husband or wife or other parties cannot claim the benefits promised in the marriage agreement made. This is also expressly stated in Article 63 UUKPKPU.

Article 21 of the UUKPKPU states that bankruptcy covers all of the debtor's assets at the time the bankruptcy declaration is made, along with all assets acquired during the bankruptcy. In the case of bankruptcy of an individual, each statement regarding the bankruptcy debtor includes the husband or wife of the bankruptcy debtor who is married in a union of assets. This formulation still adopts the concept of unity of assets in the Civil Code. Even though the Marriage Law does not fully adopt the concept of unity of assets according to the Civil Code, it is limited to a limited mixing of assets.

So it should be, when a husband and wife marry after the Marriage Law comes into effect and are then declared bankrupt, then the bankruptcy assets are limited to united assets, namely joint assets, inherited assets should be protected by law. It is not clear why the law makers still use the term "United Property" which is a term in the Civil Code. In the Explanation of the UUKPKPU there is no explanation regarding whether "unitary assets" are joint assets according to the concept of the Marriage Law or unitary assets according to the concept of the Civil Code, so that in this case it can give rise to many interpretations. The use of the term "Unity Property" in the UUKPKPU clearly refers to the provisions in the Civil Code.

There are those who argue that in fact the union assets referred to in the UUKPKPU do indeed refer to the Marriage Law, but there must still be a marriage agreement for proof. The automatic

separation of assets by law as regulated in Article 35 of the Marriage Law does seem to be given less attention, because if there is no proof of the marriage agreement it will be very difficult to prove whether it is joint property or inherited property, the debtor could lie that the assets are included in the bankruptcy assets are inherited assets so that they are protected in the event of bankruptcy. Usually the judge also proves that the item is inherited or joint property, looking at whether or not there is a marriage agreement.

Bankruptcy of Married Husband and Wife with a Marriage Agreement

According to Article 60 paragraph (1) *Failissement Verordening*, if a husband is declared bankrupt, the wife is allowed to take back all her own movable and immovable property, which is not included in the marital assets. Article 60 paragraph (2) *Failissement Verordening* determines that if the husband or The wife during her marriage brings items that are not included in the union assets (marriage with a marriage agreement), so this must be proven according to the provisions of Article 150 of the Civil Code. According to Article 150 of the Civil Code:

"In the event that there is no unity of assets between husband and wife, regarding the entry of movable property, except for registration letters in the ledger regarding general debts, securities letters and other receivable letters in their names, it cannot be proven by other means except by including this matter in the marriage agreement, or by proving it with a statement letter signed by a notary and the parties concerned and this letter must be attached to the original marriage agreement document, which must also be recorded in the marriage agreement."

According to Article 60 paragraph (3) *Failissement Verordening*, if during the marriage there are movable assets that are inherited or bequeathed, these items must be proven according to the method as intended in Article 166 of the Civil Code. Article 166 Civil Code:

Concerning the existence of movable property which as an inheritance, or gift fell to each husband and wife during the marriage, this must be demonstrated by means of a written statement.

In the absence of a written statement, which contains all the movable property that fell to the husband during the marriage, or in the absence of documents showing this, the husband has no right to take the property as his own.

In the event that there is no written statement regarding all movable property that fell to the wife during the marriage, or in the absence of documents showing what kind of items they are, or how much each item costs, then the wife or her heirs, have the right prove the existence or value of the goods with witnesses, even if necessary by showing general knowledge.

If there is a dispute regarding goods originating from investment or purchased with money belonging to the wife who is outside the union, according to Article 60 paragraph (4) the wife may take the money back if she can prove it by submitting sufficient evidence and the judge in this case will determine the truth of the wife's ownership.

After the enactment of the UUKPKPU, the provisions in the *Failissement Verordening* were amended with the provisions of Article 62 paragraph (1) of the UUKPKPU which states that if a husband or wife is declared bankrupt, the wife or husband has the right to take back all movable and immovable objects which constitute the property of the wife or husband. and assets obtained as gifts or inheritance. Between Article 60 paragraph (1) *Failissement Verordening* and Article 62 paragraph (1) UUKPKPU, in essence they have the same meaning, only in Article 60 paragraph (1) *Failissement Verordening* which mentions the possibility of bankruptcy of the "husband" without opening the possibility of the "wife" also being declared bankrupt, while Article 62 paragraph (1) UUKPKPU opens up the possibility that both the wife and the husband will be declared bankrupt.

After that, according to Article 60 paragraph (5) *Failissement Verordening*, if the property belonging to the wife has been sold by her husband, but has not been paid for or the money

from the sale is still separate from the bankruptcy assets (not yet included or mixed into the bankruptcy assets), then the wife may take the money payment or money from the sale. In Article 62 paragraph (2) UUKPKPU it is regulated that if objects belonging to the wife or husband have been sold by the husband or wife and the price has not been paid or the proceeds of the sale have not been mixed into the bankruptcy assets, the wife or husband can take back the money from the sale.

Basically, the provisions of Article 60 paragraph (5) *Failissement Verordening* and Article 62 paragraph (2) UUKPKPU are the same. The purpose of this provision is that if a husband is declared bankrupt and has sold his wife's property or vice versa if the wife or husband is declared bankrupt, the wife or husband has the right to take back the money from the sale if the price has not been paid or the money from the sale has not been mixed with the bankrupt's assets. Article 62 paragraph (3) UUKPKPU states that for personal claims against a wife or husband, the creditor of the bankruptcy estate is the husband or wife. The meaning of these two provisions is the same, a husband or wife can become a creditor for debts made by the wife or husband personally with their respective partners.

Furthermore, Article 61 *Failissement Verordening* determines that the wife may not make a claim for the benefits agreed to in the marriage agreement and conversely creditors may not take advantage of what the wife has agreed to in the marriage agreement.

In Article 63 of the UUKPKPU it is stated that a wife or husband has no right to claim the profits agreed upon 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 promised in the marriage agreement to the wife or husband, who was declared bankrupt. Between Article 61 *Failissement Verordening* and Article 63 UUKPKPU, in essence it has the same meaning that when a husband or wife is declared bankrupt, their partner (wife or husband) may not claim the benefits agreed upon in the marriage agreement from the bankrupt assets of the husband or wife who is declared bankrupt, and also Creditors of a husband or wife who is declared bankrupt may not claim the benefits agreed to by the wife or husband in the marriage agreement.

Bankruptcy of Married Husband and Wife with Unity of Property

In the event that a husband or wife is married with united assets, Article 62 paragraph (1) *Failissement Verordening* stipulates that the bankruptcy of a husband or wife who is married with united assets, is treated as bankruptcy of the united assets. Furthermore, Article 62 paragraph (1) *Failissement Verordening* determines that without prejudice to the exceptions as intended in Article 20 *Failissement Verordening*, bankruptcy covers all assets in marriage with a union of assets. The provisions of this article are in line with the provisions of Article 21 *Failissement Verordening* which determines that the term "bankrupt debtor" includes the husband or wife of the bankruptcy debtor who is married on the basis of a union of assets. In other words, the bankruptcy of a husband or wife also results in the bankruptcy of a married wife or husband in a union of assets, who did not make an agreement to separate assets during the marriage.

According to Article 62 paragraph (2) *Failissement Verordening*, for legal actions which result in binding of the union's assets, it is not necessary to pay attention to which of the husband or wife carries out the legal action. In other words, whether the debt is incurred by the husband or the wife, the debt becomes a burden on the joint assets if one of them is declared bankrupt by the court.

Article 64 paragraph (1) UUKPKPU states that the bankruptcy of a married husband or wife in a union of assets, is treated as bankruptcy of the union of assets. Such provisions are essentially the same as the provisions of Article 62 paragraph (1) *Failissement Verordening* which have not been changed or revoked. UUKPKPU is a logical provision, because bankruptcy is about

assets, not about the person concerned. The provisions of Article 64 paragraph (3) UUKPKPU state that in the event that a husband or wife who is declared bankrupt has objects that are not included in the unity of assets, these objects are included in bankruptcy assets, but can only be used to pay the personal debts of the husband or wife who is declared bankrupt.

From the provisions of Article 64 paragraph (1) and 64 paragraph (3) of the UUKPKPU, it can be concluded that the bankruptcy of a husband or wife who is married with a limited union of assets also by law results in the bankruptcy of the wife or husband who is their life partner. Bankruptcy assets not only include assets of husband and wife who are in a union (joint assets), but also include all assets of husbands whose wives are outside the union, provided that:

a. For actions carried out by a husband or wife for joint interests, regardless of who does it, what constitutes bankruptcy assets is unitary or joint assets.

b. For actions carried out by a husband or wife for their own (personal) interests, the assets that constitute bankruptcy assets are the assets inherited by each husband or wife.

If a person enters into a marriage with a complete (full) community or unity of assets without a marriage agreement, and one of them is declared bankrupt by a judge, then the bankruptcy will cover the entire community of assets, except for the assets referred to in Article 20 *Failissement Verordening*. So all joint assets will be intended for the benefit of the creditors.

In the event that a person who is declared bankrupt is in "limited community of marital assets" (only shared income, profits and losses), the personal assets of each party must also be accounted for. Regarding this matter, there are two opinions, the first opinion says that the personal assets of the party who does not owe the debt can be burdened with joint debt or joint debt (gaming community debt); Pitlo's second opinion is that personal property that is not owed cannot be burdened with joint debt, for the reasons:

a. The provisions contained in the *Failissement Verordening* confirm that the wife can file a lawsuit based on her personal rights (personal law)

b. Why is there a need for an article that regulates the unity of assets, if the wife's personal assets will also be burdened by the union debt made by the husband?

If Pitlo's opinion is combined with the articles in the *Failissement Verordening*, there will be harmony and suitability. To emphasize this, the essence of the Articles of the Bankruptcy Regulations which discuss the existence of personal assets (husband or wife) who are declared bankrupt will be explained, namely:

a. If a bankrupt has personal assets, even though he or she is married in a community of (limited) assets, then these personal items are also affected by the bankruptcy. These objects are not responsible for bills against joint assets, but are limited only to paying off debts that bind the bankrupt personally (for example: debts made by the bankrupt before marriage, debts left by his parents).

b. If bankruptcy befalls a husband or wife, then their partner (wife or husband) has the right to take all items that are not included in joint assets, as long as it can be proven according to the methods of proof regulated in the Civil Code.

In principle, what needs to be held as a benchmark is the bankruptcy of a husband or wife, which is bankruptcy for their partner as well unless there is a marriage agreement between them and there are assets that can be proven. So, if a bankrupt debtor who is bound by marriage marries without making a marriage agreement, then the debt of the bankrupt debtor (either husband or wife) is also a debt of their partner, and their assets will both be collected to pay the debt.

Bankruptcy Settlement When Joint Property Is Insufficient To Pay Debts

Basically, according to the provisions of Article 64 paragraph (3) UUKPKPU, assets that are not included in unitary assets (personal or inherited assets) can be included in bankruptcy assets, but can only be used to pay the personal debts of a husband or wife who is declared

bankrupt. According to these provisions, the personal assets of the husband or wife can only be used to pay the personal debts of the husband or wife who is declared bankrupt.

The inherited assets of a husband or wife who are not involved in debt, if the joint assets are not sufficient to pay debts, can actually be used to pay debts created during the marriage, but first it needs to be proven whether at the time the debtor took legal action, the couple's debts were from the bankruptcy debtor knows or agrees. A person is deemed to know or agree in writing, namely with a deed, orally or secretly. If it can be proven that the spouse of the bankrupt debtor knew and agreed to the debts created during the marriage, then even though they were not directly involved as a party to the agreement or as a guarantor, the assets of the spouse of the bankrupt debtor can be taken to be included in the bankruptcy debt for payment of the debt.

In principle, what needs to be used as a benchmark in the bankruptcy of a husband or wife is that when one party goes bankrupt (husband or wife), then the partner will also go bankrupt unless there is a marriage agreement and there are inherited assets that can be proven.

In practice, for most people, when someone is declared bankrupt it will be very embarrassing, so if they are still trying, people will try not to be declared bankrupt, if necessary, family or ancestor property can also be used to pay existing debts. As long as the parties who control their personal assets or personal assets each agree and volunteer to provide their personal assets or assets to be included in the bankruptcy debt to pay the debts of the bankruptcy debtor, there will actually be no problems.

A husband or wife has their own responsibilities in carrying out domestic life, including when one party is declared bankrupt, then each party must be responsible for their actions. The responsibilities of a husband or wife can be divided into internal and external responsibilities. Internal responsibility is the distribution of burdens in the relationship between husband and wife. It turns out that this is not clearly regulated in the Marriage Law. However, in Article 36 paragraph (2) it is stated that personal assets in the form of inherited and gifted assets as well as inherited assets belong to the husband or wife concerned alone and over these assets each husband or wife has complete authority. On this basis, it can be concluded that according to the Marriage Law, the principle of internal responsibility is that each husband or wife is solely responsible for their personal debts.

Joint property includes all the results of the husband and wife's efforts and income throughout the marriage, including the results of the husband and wife's property. The husband and wife together have the authority to bind it to a third party, so a joint debt is eligible if the husband and wife each bear half of the joint production or debt. Joint production is the production necessary for the life of the family concerned, including production of daily needs, production for health and treatment and children's education, which are not personal production.

Apart from internal principles, there are also external principles which in essence are each individual's personal debts before and during the marriage and their personal assets. According to the external principle, both husband and wife are responsible for joint debts created by them with joint assets. According to the Civil Code, personal debts are first repaid from the personal assets of the debt maker. If these assets are not sufficient based on the consideration that the husband and wife have a very close relationship, then the deficiency can be taken from the union assets.

According to the principle of resolving external debts to third parties according to the concept of the Civil Code, husband and wife are each responsible for their own personal debts, namely their respective personal assets. Unity assets cover union debts. The personal assets of the husband/wife can be held accountable for the joint debts made by themselves, or conversely, the joint debts can be repaid from the personal assets of the husband or wife who created the debt. This provision is logical or reasonable, because creditors do not know and do not need to know whether the person dealing with them is buying for household needs or personal needs.

Therefore, his position deserves protection, namely that his bills can be paid off both from personal assets and community assets.

If the provisions of Article 64 paragraph (3) UUKPKPU are connected to the principle of responsibility above, it can be concluded that although personal assets can only be used to pay the personal debts of a husband or wife who is declared bankrupt, if the parties voluntarily wish to hand over their personal assets, they are included in the boedelbankruptcy to be used as debt repayment is permitted.

So in essence, according to the principle of responsibility explained above, inherited assets can actually be used to pay off debts created during marriage if joint assets are insufficient. In bankruptcy itself, based on Article 64 paragraph (3), although there are restrictions, the husband's or wife's personal assets can only be used to pay the husband's or wife's personal debts. However, if the parties voluntarily want to give their share of assets to be used as payment for debts incurred by their partner which resulted in bankruptcy, then this is permitted. So the position of inherited assets if the union assets used to pay debts are not sufficient to pay off debts created during the marriage can be used to pay the debt, if the party controlling them agrees, or also for other reasons that justify the inclusion of inherited assets or personal assets into the bankruptcy estate.

This is permissible because when giving a loan the creditor does not know and does not need to know whether the debtor is actually using it for the common good or for personal gain. The creditor only knows when the debt is due when the debt will be paid in full by the debtor.

CONCLUSION

Based on the previous discussion, it can be concluded that the regulation of the concept of joint property in the marriage of husband and wife who experience bankruptcy is divided into 2, namely first, for husband and wife who are married with a marriage agreement, when the husband or wife is declared bankrupt, their partner (wife or husband) cannot claim profits. agreed in the marriage agreement to the bankruptcy estate 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 benefits agreed to by the wife or husband in the marriage agreement. Second, for husband and wife who are married with a union of assets, if the bankrupt debtor who is bound by marriage marries without making a marriage agreement, then the debt of the bankrupt debtor (either husband or wife) is the debt of their partner as well, and their assets will both be collected to pay the debt. the.

For bankruptcy resolution, if joint assets are insufficient to pay debts, it must be proven that the debt is a personal debt or a joint debt. If it is a personal debt, then the debt repayment will be the personal assets of the bankrupt debtor, the personal assets of the spouse will remain safe and will not be collected, and if the personal assets are insufficient then the share of the joint assets of the bankrupt debtor will be used. The personal assets or inherited assets of the bankrupt debtor's spouse can be included in the bankruptcy debt to be used as debt payments, if the party who controls the assets voluntarily surrenders their personal assets or inherited assets to pay the debt.

REFERENCE

- Fred B.G. Tumbuan, Principles of Law on Bankruptcy as amended by PERPU No.1/1998.
Gunawan Wijaya, Bankruptcy and the Wealth of Husband and Wife, Bening Kliping, Bandung, 2002.
Hilman Hadikusuma, Indonesian Marriage Law according to Legislation, Customary Law, Religious Law, Mandar Maju, Bandung, 2003.
Imran Nating, The Role and Responsibilities of the Curator in the Management and Settlement of Bankruptcy Assets, RajaGrafindo Persada, Jakarta, 2004.

- Isis Ikhwansyah, et al. *Legal Analysis of Disputes and Family Law and Marital Property*, Keni Media, Bandung, 2012.
- Jerry Hoff, *Bankruptcy Law in Indonesia (Indonesian Bankruptcy Law)*, translated by Kartini Muljadi, Tatanusa, Jakarta, 2000.
- Moch. Isnaini, *Indonesian Marriage Law*, Surabaya, Refika Aditama, 2016.
- Muljadi, Kartini, and Gunawan Widjaja, *Guidelines for Handling Bankruptcy Cases*, Jakarta, Rajawali Press.
- Soerjono Soekanto, *Indonesian Customary Law*, RajaGrafindo Persada, Jakarta, 2002.
- Subekti, *Principles of Civil Law*, Jakarta, Intermasa, 1994.
- Sumarti Hartono, *Introduction to Bankruptcy Law and Postponement of Payments*, Liberti, Yogyakarta.
- Surojo Wignojodipro, *Introduction and Basics of Customary Law*, Jakarta, Mount Agung, 1968.
- Sutan Remy Sjahdeini, *Bankruptcy Law Understanding Law No. 37 of 2004 concerning Bankruptcy and PKPU*, Pustaka Utama Grafiti, Jakarta, 2010.
- Zainal Asikin, *Bankruptcy Law and Postponement of Payments in Indonesia*, Raja Grafindo Persada, Jakarta, 2001.
- Bankruptcy Regulation
Civil Code
Law No.37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations
Law No.16 of 2019 on Amendments to Law No.1 of 1974 on Marriage
Compilation of Islamic Law
- Ardi Hanum Bratakusuma, et al. *Legal Position of Joint Property of Husband and Wife After Bankruptcy Decision (Study of PT. GPF Decision)*, Diponegoro Law Review, Volume 5 Number 2 of 2016
- Adela Logika, *The Effects of Husband's Bankruptcy Law on Joint Assets Based on Decision Number 510/PDT.G/2019/PN.JKT.SEL*, Pakuan Law Review, Volume 07 Number 02 July-December 2021
- Evi Djuniarti, *Joint Property Law Viewed from the Perspective of the Marriage Law and Civil Code*, Journal of Legal Research, Vo.17 No.4, 2017.
- I Gede Krisna, *The Position of Marital Assets as Bankruptcy Assets of Religiously Divorced Husbands and Wives*, Jurnal Kertha Semaya, Vol.9, No.4, 2021.
- Putu Indri Sri Giyanthi, *Legal Status of Marital Assets in the Event of Husband/Wife Bankruptcy Without a Marriage Agreement*, Journal of Legal Preferences, Vol.3 No.1, Maret 2022.