

## Bankruptcy of Husband Over Joint Property (Case Study of Decision Number 165 / PDT.SUS.PKPU / 2018 / PN.NIAGA.JKT.PST)

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**Abstract.** *The research aims to analyze the legal implications of husband's bankruptcy on rights and obligations regarding joint property in terms of Decision Number 165/Pdt.Sus.PKPU/2018/PN.Niaga.Jkt.Pst. The research method used is normative legal research with statutory and case approaches. The results indicate that by the implementation of the unity of property, the bankruptcy experienced by the husband is treated as bankruptcy of joint property. The legal implications of the husband's bankruptcy on the rights and obligations regarding joint property that are reviewed from Decision Number 165/Pdt.Sus.PKPU/2018/PN.Niaga.Jkt.Pst, the husband and wife, Ikhwan Andi Mansyur and Ir. Indah Sari, lost their right to manage and control the assets including revocation of Personal Guarantees, because those are part of bankruptcy assets. This study aims to analyze the legal implications of the husband's bankruptcy on the rights and obligations regarding joint property reviewed from Decision Number 165/Pdt.Sus.PKPU/2018/PN.Niaga.Jkt.Pst. The research method used is normative legal research with a statutory approach and a case approach. The results of this study indicate that with the implementation of unity of property, the bankruptcy experienced by the husband is treated as the bankruptcy of the unity of property. The legal implications of the husband's bankruptcy on the rights and obligations regarding joint property reviewed from Decision Number 165/Pdt.Sus.PKPU/2018/PN.Niaga.Jkt.Pst are that the husband and wife, Ikhwan Andi Mansyur and Ir. Indah Sari, lost their rights to manage and control their assets, including to cancel personal guarantees, because personal guarantees are included in the bankruptcy estate.*

**Keywords:** Bankruptcy; Debtor; Joint; Property.

### 1. Introduction

The Indonesian constitution, through the 1945 Constitution, Article 28B paragraph

(1), provides guarantees to every citizen to build a family life and have children in a legal marriage bond.<sup>1</sup>The validity of marriage in Indonesia is regulated by Law No. 1 of 1974 concerning Marriage, specifically in Article 2 paragraphs (1) and (2).<sup>2</sup>In Indonesian marriage law, marriage has unique characteristics because it is not merely viewed as a legal event, but also contains religious values. This is proven by the requirement that every marriage must be carried out in accordance with the religious guidance and beliefs of each party carrying out the marriage.

With the enactment of the Marriage Law, the Marriage Law applies to all Indonesian citizens as far as marriage is concerned. Marriage is an agreement made between a woman and a man as husband and wife with the aim of forming a happy family based on the Almighty God. Then every marriage must be recorded according to the applicable laws and regulations. A marriage that is declared valid not only creates a physical and spiritual relationship between husband and wife, but also forms legal consequences for assets in marriage.

Based on Article 35 paragraph (1) of the Marriage Law, property in a marriage is divided into 2 (two), namely joint property and property brought in. Joint property is property obtained during the marriage, without distinguishing which party obtained or contributed to obtain the property. The purpose of implementing joint property is to create material economic needs for neighbors. Joint property includes movable property, immovable property, and securities. In carrying out legal actions against joint property, there must be agreement from both parties.<sup>3</sup>

Everything becomes a unity even though before marriage there was individual property. However, joint property does not apply to property brought before the marriage, both movable and immovable property. Joint property does not only include assets (properties acquired), but also includes liabilities (debts arising from joint interests) in a marriage. The problem of joint property arises when there is a debtor who is still bound in a legal marriage, and is unable to pay off his debts that have matured, or is also known as bankruptcy.<sup>4</sup>

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<sup>1</sup>Heryanti, BR (2021). "Implementation of Changes in the Marriage Age Limit Policy". in *Ius Constituendum Journal*, Volume 6 No 2 April 2021, p. 120. url<https://journals.usm.ac.id/index.php/jic/article/view/3190>accessed January 23, 2024.

<sup>2</sup>Waluyo, Bing. (2020). "The Validity of Marriage According to Law Number 1 of 1974 Concerning Marriage". in *Journal of Communication Media for Pancasila and Citizenship Education*, Volume 2 No 1 April 2020. p. 198. url<https://ejournal2.undiksha.ac.id/index.php/JMPPKn/article/view/135/98>accessed January 23, 2024.

<sup>3</sup>Djuniarti, Evi. (2017). "Joint Property Law Reviewed from the Perspective of Marriage Law and Civil Code". in *Journal of Legal Research*, Volume 17 No 4 December 2017, p. 14. url<https://ejournal.balitbangham.go.id/index.php/dejure>accessed January 25, 2024.

<sup>4</sup>Logika, Adela., & Anggoro, Tedy. (2021). "Legal Consequences of Husband's Bankruptcy on Joint Property Based on Decision Number 510/Pdt.G/2019/PN.JKT.SEL". in *PALAR (Pakuan Law Review)*, Volume 7 No 2 November 2021, p.283. url<https://journal.unpak.ac.id/index.php/palar>accessed January 25, 2024.

Bankruptcy itself is a process where a debtor who is in financial trouble and cannot pay his debts is declared bankrupt by the court, namely the Commercial Court. Then the assets of the debtor who cannot pay off his debts will be distributed to creditors to pay off his debts in accordance with applicable laws and regulations. Based on Article 1 number (1) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, it states that what is meant by Bankruptcy is a general seizure of all assets of the bankrupt debtor whose management and settlement are carried out by the Curator under the supervision of the Supervisory Judge as regulated in this Law.<sup>5</sup>

Therefore, based on the description above, it is important to examine the legal aspects regarding the concept of joint property in the bankruptcy of the husband, as well as the legal consequences of the bankruptcy decision. The purpose of this study is to analyze the legal implications of the husband's bankruptcy on the rights and obligations regarding joint property reviewed from Decision Number 165/Pdt.Sus.PKPU/2018/PN.Niaga.Jkt.Pst.

## **2. Research Methods**

The approach method in this study uses a statutory approach and a case approach. The research specification uses normative legal research. The data for this study were taken through library research which was conducted by reading, analyzing, and drawing conclusions from documents sourced from laws and regulations, journals, books, legal publications, and others. In this study, the data was examined using a prescriptive analysis method by providing arguments for the results of the research that had been conducted.

## **3. Research Results and Discussion**

### **3.1. Joint Property in the Bankruptcy of Husband**

In general, marriage will create a unity of property called joint property. The concept of joint property is contained in the Civil Code and Law Number 1 of 1974 concerning Marriage.<sup>6</sup> Joint property is property acquired throughout the marriage, from the time the marriage takes place until the marriage ends or the marriage is dissolved due to divorce, death, or a court decision. The issue of resolving joint property is often complicated and sometimes difficult to resolve.

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<sup>5</sup>Dantes, Komang Febrinayanti. (2021). "The Legal Impact of Bankruptcy Decisions on the Assets of Husband and Wife Who Do Not Enter into a Marriage Agreement for Separation of Assets". in Undiksha Citizenship Education Journal, Volume 9 No 3 September 2021, p. 918. url<https://ejournal.undiksha.ac.id/index.php/JJPP/article/view/40164> accessed January 25, 2024.

<sup>6</sup>Nagara, B. (2016). "Division of Marital Assets or Joint Assets After Divorce According to Law Number 1 of 1974". in Lex Crimen, Volume 5 No 7 October 2016, p.52. url<https://ejournal.unsrat.ac.id/index.php/lexcrimen/article/view/14110> accessed February 3, 2024.

This is because each party argues that they are the ones who contributed the most to the acquisition of the joint property among the other parties.

In Article 35 of Law Number 1 of 1974 concerning Marriage, it is explained that property acquired during a marriage becomes joint property. Regarding the joint property, the husband or wife can act with the consent of both parties, while the property brought by each husband and wife has full rights to carry out legal actions regarding their property. The Civil Code contains a clear provision that all property brought, whether originating from the husband or wife, is automatically a joint property of the husband and wife, unless before the marriage they entered into a marriage agreement containing provisions that with the marriage there is no mixing of assets at all, or the mixing is limited to mixing what was obtained during the marriage.

In relation to joint property, Article 36 paragraph (1) of the Marriage Law regulates the rights and obligations of husband and wife regarding the management of joint property, which stipulates that regarding joint property, husband and wife can act with the agreement of both parties.<sup>7</sup>Based on this provision, it can be seen that the position of husband and wife regarding joint property is the same, which means that the husband can act on joint property after obtaining the wife's consent, and vice versa, the wife can act on joint property after obtaining the husband's consent.

Meanwhile, Article 1 of Law No. 37 of 2004 concerning Bankruptcy and PKPU stipulates that, "If a person is declared bankrupt, then the bankruptcy also includes his/her wife or husband who is married on the basis of community of property. A husband or wife who is married on the basis of community of property, means that all of the wife's or husband's property included in the community of marital property automatically enters the bankruptcy estate."

The expansion of the meaning of joint property to include assets and liabilities is a consequence of a marriage relationship. It does not only include assets obtained alone (assets), but also includes debts that arise for the benefit and with the mutual agreement of husband and wife during the marriage (liabilities).

Therefore, if someone marries based on the Civil Code without making a marriage agreement and one of them, the husband or wife, is declared bankrupt, based on the Bankruptcy Law and PKPU Article 20, then the bankruptcy will cover all joint assets. As a consequence, all joint assets will be accounted for for the benefit of their creditors. If the husband or wife who is declared bankrupt has goods that are not included in the joint marital assets, the goods are allocated for debts that bind the bankrupt debtor which are personal in nature.<sup>8</sup>

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<sup>7</sup>Asnawi, MN (2022). Joint Property Law. Jakarta: Prenada Media. p.58.

<sup>8</sup>Hartini, Rahayu. (2020). Bankruptcy Law. Malang: UMM Press. p. 50.

Bankruptcy is a condition where the debtor is unable to make payments on debts from his creditors. The state of being unable to pay is usually caused by the financial difficulties of the debtor's business which has experienced a decline.<sup>9</sup> Meanwhile, bankruptcy is a court decision that results in a general seizure of all the assets of the bankrupt debtor, both existing and future. The management of bankruptcy settlement is carried out by a curator under the supervision of a supervising judge with the main objective of using the proceeds from the sale of the assets to pay all the debts of the bankrupt debtor proportionally (prorate parte) and in accordance with the creditor structure.<sup>10</sup>

According to Article 1 paragraph (1) in conjunction with Article 2 paragraph (1) of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (Bankruptcy and PKPU Law), a debtor who has two or more creditors and does not pay in full at least one debt that has matured and is collectible, is declared bankrupt by decision of the competent Court as referred to in Article 2, either at his own request or at the request of one or more of his creditors.<sup>11</sup>

Debtors can consist of individuals or private bodies that can be humans or legal entities such as Limited Liability Companies, Foundations, or others. Hearing the word bankruptcy is very identical to a company or corporation. However, bankruptcy can also occur to an individual, in this case someone who is bound by marriage. As in Decision Number 165 / Pdt.Sus.PKPU / 2018 / PN.Niaga.Jkt.Pst, where the husband provided a guarantee agreement and the wife was unwilling to take responsibility because she did not know about her husband's actions.

Based on article 3 in conjunction with article 4 of the Bankruptcy and PKPU Law, it is stated that a bankruptcy statement application submitted by a married debtor must have the consent of the husband or wife if there is a mixture of assets in their marriage. Bankruptcy will have legal consequences for a Debtor who is bound in marriage, namely against the assets of the husband or wife, especially against joint assets.

The provisions of joint property have different concepts between the Civil Code and Law Number 1 of 1974 concerning Marriage. The Civil Code requires all assets of husband and wife to be joint assets, while the Marriage Law states that the unity of assets of husband and wife is limited to assets generated during the marriage only or called joint assets. Meanwhile, gifts, inheritances, or assets generated

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<sup>9</sup>Nainggolan, Bernard, & Hossain, MB (2024). "The Going Concern Paradigm In Bankruptcy Process Reviewed From Regulations In Indonesia". in Jurnal Hukum UNISSULA, Volume 40 No 1 June 2024. p.275. [urlhttps://jurnal.unissula.ac.id/index.php/jurnalHukum/article/view/37175/10442](https://jurnal.unissula.ac.id/index.php/jurnalHukum/article/view/37175/10442) accessed July 2, 2024.

<sup>10</sup>Hindrawan, Prayogo, et al. (2023). "Responsibility of Curator in Applying the Principle of Pari Passu Prorata Parte in the Management and Settlement of Bankrupt Assets". in Locus Journal of Academic Literature Review, Volume 2 No 8 August 2023. p.722. [urlhttps://jurnal.locusmedia.id/index.php/jalr/article/view/223/156](https://jurnal.locusmedia.id/index.php/jalr/article/view/223/156) accessed February 10, 2024.

<sup>11</sup>Hartini, Rahayu, Op.Cit, p.49.

before marriage (property brought or original assets) remain under the management of each.<sup>12</sup> According to bankruptcy law, if one of them is declared bankrupt, then the other spouse will also be declared bankrupt and their joint assets will be seized to pay debts.

Based on Article 23 of the Bankruptcy and PKPU Law, if a person is declared bankrupt, then the bankrupt person also includes his wife or husband who are married on the basis of community of property and the bankruptcy decision does not result in the debtor losing his right to carry out legal acts (*volkomen handelingsbevoegd*), but only losing his capacity to manage and transfer his assets.<sup>13</sup>In the Civil Code (KUHPerdata), marriage can result in joint property or a mixture of property. This combination of property can include assets and/or liabilities (debts).

### 3.2. Legal Consequences of Bankruptcy Decision Number 165/Pdt.Sus.PKPU/2018/PN.Niaga.Jkt.Pst

A debtor who has debts can only be said to be in a state of bankruptcy if declared by a judge or court with a judge's decision. The court's authority to issue a bankruptcy decision has been determined in Article 2 paragraph (1) of Law No. 37 of 2004 concerning Bankruptcy and PKPU.<sup>14</sup>Bankruptcy decisions have significant legal consequences for debtors. Since the decision was pronounced, the debtor has lost the authority to control and manage his assets. Bankrupt debtors are still considered competent and authorized to carry out legal acts. However, this competence is limited to actions that are not related, either directly or indirectly, to his assets.

The debtor can still perform legal acts that do not touch his assets. This is because his assets are already under general confiscation. Since the bankruptcy decision, the debtor loses the right to act freely over his bankrupt assets. All rights and obligations related to the bankrupt assets are transferred to the curator appointed by the commercial court. The debtor loses the right to manage and control his assets (*Persona Standi Inludicio*).<sup>15</sup>

Bankrupt debtors are still allowed to take legal actions related to their assets, but only legal actions that provide benefits and increase assets that are then used as bankruptcy estate. Overall, bankruptcy decisions significantly limit the debtor's

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<sup>12</sup>Djuniarti, Evi. (2017) "Joint Property Law Reviewed from the Perspective of Marriage Law and Civil Code". in Journal of Legal Research, Volume 17 No 4 December 2017, p. 460. url<https://core.ac.uk/download/pdf/268381605.pdf>accessed February 10, 2024.

<sup>13</sup>Nainggolan, Bernard. (2023). The Role of Curators in the Settlement of Bankrupt Boedel. Bandung: Alumni Publisher. p.31.

<sup>14</sup>Asikin, Z. (2020). Bankruptcy Law. Yogyakarta: Andi Publisher. p.33.

<sup>15</sup>Ishak. (2015). "Legal Efforts of Debtors Against Bankruptcy Decisions". in Kanun Jurnal Ilmu Hukum, Volume 17 No 1 March 2015, p.197. url<https://jurnal.usk.ac.id/kanun/article/download/6059/4993>accessed February 15, 2024.

authority over their assets, with certain exceptions that aim to protect the interests of creditors and maximize the value of the bankrupt estate.

After the issuance of a bankruptcy declaration decision, any new obligations or agreements made by the debtor can no longer be fulfilled using the bankrupt assets. The only exception is if the obligation or agreement is proven to benefit the bankrupt assets themselves. In other words, a bankruptcy decision limits the debtor's ability to make new financial commitments that will affect the bankrupt assets, unless the commitment clearly benefits or increases the value of the bankrupt assets.

All claims relating to the rights and obligations concerning the bankrupt estate must be filed by or addressed to the curator. If the claim is filed or continued by or against the bankrupt debtor directly, then the legal consequences will not affect the bankrupt estate, even if the claim results in a decision punishing the bankrupt debtor. During the bankruptcy process, parties who wish to demand fulfillment of obligations from the bankrupt estate cannot file claims directly with the bankrupt debtor. Instead, they must register their claims to be matched in the debt verification process. The bankruptcy process changes the procedure for settling claims against the debtor, where the curator becomes the main party handling matters related to the bankrupt estate, and creditors must follow a special procedure to file their claims.

When a debtor who is married and has a common property is declared bankrupt, the bankruptcy condition can have legal implications for his/her spouse. However, the law provides certain protections for spouses of bankrupt debtors. In a situation where a husband or wife is declared bankrupt, the spouse has the right to reclaim all movable and immovable property that is their personal property as well as property obtained as a gift or inheritance. This provision aims to protect the rights of spouses of bankrupt debtors, especially regarding personal property that should not be included in the bankrupt estate. This shows that even though there is a common property in marriage, the law still recognizes and protects individual property rights in the context of bankruptcy.

Liability for debts, both for husband and wife, is usually charged to their respective assets, while for debts incurred for the benefit of the family, it is charged to joint assets, but if the joint assets are insufficient, it is charged to the husband's assets. If the husband's assets are absent or insufficient, it is charged to the wife's assets, but if not agreed otherwise, the assets remain controlled by each husband or wife.<sup>16</sup>

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<sup>16</sup>Sebayang, SM (2017). "Legal Consequences of Husband's Bankruptcy on Joint Assets According to Law Number 37 of 2004 Concerning Bankruptcy (Analysis of Supreme Court Decision of the Republic of Indonesia Number 057 PK/Pdt.Sus/2010)". in *Jurnal Notarius*, Volume 3 No 2 December 2017, p.121. url <https://jurnal.umsu.ac.id/index.php/delegalata/article/view/1163> accessed March 2, 2024.

This means that the bankruptcy of a husband or wife also results in the bankruptcy of the husband or wife who is married in a union of assets (does not make a separation of assets agreement in the marriage union). The purpose of the union of assets in Article 23 of Law No. 37 of 2004 can give rise to multiple interpretations for certain groups. Some argue that the wife's assets in the marriage, whether originating from a gift due to family inheritance or assets brought before the marriage, are confiscated to pay off the husband's bankruptcy. Likewise, vice versa, that the husband's assets in the marriage, whether the husband's assets brought in or whether originating from a gift due to family inheritance or assets brought before the marriage, are confiscated to pay off the wife's bankruptcy.<sup>17</sup>

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 community of assets or in other words, the assets they own are not based on a marriage agreement or separation of assets in their marriage, then the husband and wife will be jointly responsible for the burden of payment to their creditors. So that there is ambiguity in the regulation of joint assets in the bankruptcy dimension located in the articles of the Bankruptcy Law and PKPU which are considered to tend to mix up the concept of joint assets in the Marriage Law and the Civil Code.<sup>18</sup>

Unlike the Civil Code, the concept of Law No. 1 of 1974 stipulates that every marriage will result in joint property. This joint property is not born from a marriage agreement, but is born because of the law. Therefore, if you want to file a bankruptcy petition against a debtor who is 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 know whether there is joint property or not, and who should be petitioned for bankruptcy.

The existence of joint assets results in the bankruptcy of the bankrupt husband against his spouse (wife). This is in accordance with Article 23 of Law No. 37 of 2004 concerning Bankruptcy and PKPU, namely: "Bankrupt debtors as referred to in Article 21 and Article 22 include the husband or wife of the bankrupt debtor who is married in a community of property." The bankruptcy of a husband or wife who is married in a community of property is treated as the bankruptcy of the community of property.

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<sup>17</sup>Dwiyanti, A., & Adlina, S. (2023) "Ambiguity of Joint Property Arrangements in the Dimension of Bankruptcy Reviewed Based on the Principle of Justice". in *Padjajaran Law Review*, Volume 11 No 1 July 2023, p.85. url<https://jurnal.fh.unpad.ac.id/index.php/plr/article/view/1268> accessed March 2, 2024.

<sup>18</sup>Giyanthi, et al. (2022) "Legal Status of Marital Property in the Event of Bankruptcy of Husband/Wife Without a Marriage Agreement". in the *Legal Reference Journal*, Volume 3 No. 1 February 2022. p. 41. url<https://www.ejournal.warmadewa.ac.id/index.php/juprehum/article/view/4621> accessed March 6, 2024.



Without reducing the exceptions as referred to in Article 25 of Law No. 37 of 2004 concerning Bankruptcy and PKPU, the bankruptcy includes all objects included in the union, while the bankruptcy is for the benefit of all creditors who are entitled to request payment from the united assets. If the husband who is declared bankrupt has objects that are not included in the union, then the assets are included in the bankruptcy assets. Likewise, if the wife is bankrupt, but can only be used to pay the personal debts of the husband or wife who is declared bankrupt.

As a consequence of the provisions of Article 22 of Law No. 37 of 2004 concerning Bankruptcy and PKPU, any and all agreements between a debtor who is declared bankrupt and a third party made after the declaration of bankruptcy will not and cannot be paid from the bankrupt's assets, unless these agreements generate profits from the assets.<sup>19</sup> Therefore, lawsuits filed with the aim of obtaining fulfillment of obligations from the bankrupt estate, during bankruptcy, which are directly filed against the bankrupt debtor, can only be filed in the form of a report for verification.

In the event that the verification is not approved, then the party who does not approve the verification legally takes over the position of the bankrupt debtor in the ongoing lawsuit, even though the lawsuit only has legal consequences in the form of verification, but it is sufficient to be used as one of the pieces of evidence that can prevent the expiration of the rights in the lawsuit.<sup>20</sup>

In article 60 of the Bankruptcy and PKPU Law, 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 property union. If, during the marriage, movable property has been inherited, bequeathed in a will, movable property has been given to the wife, then if there is a dispute over the said property, it must be proven that there has been a legal act of inheritance, will or gift.<sup>21</sup>

The Supreme Court of Indonesia Decision Number 165/Pdt.Sus.PKPU/2018/PN.Niaga.Jkt.Pst issued a bankruptcy verdict against Ikhwan Andi Mansyur, as an individual. Based on Article 64 paragraph (1) of Law No. 37 of 2004 concerning Bankruptcy and PKPU, it is determined that: "the bankruptcy of a husband or wife who are married in a community of property, is treated as the bankruptcy of the community of property", so that joint property can be used as collateral and collateral for bankruptcy.

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<sup>19</sup>Hamonangan, A., et al. (2021). "The Role of Curators in Bankruptcy of Limited Liability Companies". in the PKM MAJU UDA Journal, Volume 2 No. 1 April 2021. p.28. url<https://ejurnal.darmaagung.ac.id/index.php/pkmmajuuda/article/view/1182> accessed March 10, 2024.

<sup>20</sup>Ndoen, MR, & D Septianto, CD (2024). "The Position of Creditors as Recipients of Fiduciary Guarantees in the Case of Bankrupt Debtors". in Paulus Law Journal, Volume 5 No 2 March 2024. p.214. url<https://ojs.ukipaulus.ac.id/index.php/plj/article/view/553> accessed April 2, 2024.

<sup>21</sup>Hartini, R., Op.Cit, p.51.

At the time the bankruptcy verdict was announced, Ikhwan Andi Mansyur was bound in a marriage without a separation of property agreement and in his marriage he had joint property. Therefore, the property became collateral for the actions of one of them, thus it is legally justified if the assets owned by Ikhwan Andi Mansyur during the marriage are used as collateral and liability for bankruptcy.

This bankruptcy application was submitted by the creditor considering that the Respondent as debtor did not make payments on debts that had matured, so in accordance with the conditions and bankruptcy decision of Article 2 paragraph (1) of the Bankruptcy and PKPU Law, that "a debtor who has two or more creditors and does not pay in full at least one debt that has matured and can be collected is declared bankrupt by court decision either at his own request or at the request of one or more of his creditors."

The existence of joint property causes a husband to go bankrupt against his spouse (wife), in accordance with Article 23 of the Bankruptcy and PKPU Law. Bankruptcy of a husband or wife who is married in a unity of property is referred to as bankruptcy of joint property. Without considering the exceptions in Article 25 of the Bankruptcy and PKPU Law, bankruptcy applies to all liability units (husband or wife). Creditors have the right to demand payment from the unity of the husband and wife's joint property.<sup>22</sup>

If a person who is still married is declared bankrupt, then the bankruptcy also applies to the wife or husband of the bankrupt debtor who is married in a community of property. In a community of property, all joint property is part of the bankrupt estate, unless otherwise specified in the marriage contract. The legal consequences of bankruptcy for a husband and wife in bankruptcy cannot be separated from their position as married couples, where there is no marriage agreement (separation of property). Based on this, the husband and wife debtor are individuals who can be declared bankrupt, both husband and wife. Therefore, the debtor can go bankrupt by himself or because his creditors sue him in bankruptcy court. If a debtor who is legally married and has joint property files for bankruptcy, then there are legal consequences for his partner, both husband and wife. The legal consequences of a husband's bankruptcy on joint property affect his wife. This provision is based on Articles 21, 22, and 23 of the Bankruptcy and PKPU Law.<sup>23</sup>

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<sup>22</sup>Hadiwibowo, H. (2023), "Legal Effects of Bankruptcy on Marital Couples Without a Marital Agreement (Analysis of Supreme Court Decision Number: 510/PDT.G/2019/PN JKT.SEL)". in *Jurnal Pembaharuan Hukum*, Volume 2 No 4 October 2023, p.164. url<https://ejurnal.politeknikpratama.ac.id/index.php/jhpis/article/view/2642/2512> accessed April 3, 2024.

<sup>23</sup>Ibid, p.165.

Article 25 confirms that all objects that form a single joint property can be involved in the bankruptcy process. All agreements between the debtor who is declared bankrupt and third parties made after the declaration of bankruptcy will not and cannot be paid from the bankrupt property, unless the agreements bring benefits from the bankrupt property. Given the equal position of husband and wife in marriage according to Law Number 1 of 1974, this provision is less meaningful. According to Law Number 1 of 1974, this provision no longer has any meaning. In the same way, it is important to remember that it is difficult to say where the inherited property ends and the joint property begins when joint rights have been mixed, for example through an exchange with added value, a sale, or a repurchase.

The Commercial Court at the Central Jakarta District Court decided on 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 verdict and declared bankrupt. Where based on Article 64 Paragraph (1) of Law Number 37 of 2004, joint assets can be used as collateral and collateral as security in the event of bankruptcy.

During his marriage, Ikhwan and his wife had joint assets that were used as collateral for the actions of one of them. The assets owned by Ikhwan Andi Mansur that he obtained through his marriage can be used as collateral and collateral in a bankruptcy case. Then Ir. Indah Sari, the wife of Ikhwan Andi Mansur, filed a lawsuit to cancel the Personal Guarantee on June 20, 2019 at the South Jakarta District Court Number 510/Pdt.G/2019/PN.Jkt.Sel.<sup>24</sup> regarding the Personal Guarantee Agreement made by her husband before a notary without the knowledge and approval of Ir. Indah Sari as the legal wife of Ikhwan Andi Mansur. The joint assets used as Personal Guarantee are as follows:

- a. Personal Guarantee Deed No. 23 was made and signed by Ikhwan Andi Mansur (Defendant I) before Indah Prastiti Extensia, SH, Notary in Jakarta on April 19, 2013;
- b. Personal Guarantee made under the hand of Defendant I on March 4, 2015 and registered (waarmerking) by Co-Defendant II, Notary in Jakarta with Number W.296/III/IPE/2015 dated March 30, 2015;
- c. Personal Guarantee made in the hands of Defendant I dated March 4, 2015 and legalized by Defendant II, Notary in Jakarta with No. L.44/III/IPE/2015 dated March 4, 2015.

The collateral in the letters is the joint property between the Plaintiff and Defendant I (Ikhwan Andi Mansur) which is included in the bankruptcy estate. Because the bankruptcy of Defendant I also resulted in the Plaintiff (his wife) becoming bankrupt, then based on Article 24 of Law Number 37 of 2004, the Plaintiff and Defendant I, as well as co-Defendant I as a debtor, lost their rights to

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<sup>24</sup>Logic, Adela, & Anggoro, Tedy., Op.Cit., p.282.

control and manage the property included in the bankruptcy estate since the date the bankruptcy declaration decision was pronounced.

With the declaration of bankruptcy, it has changed the legal status of a person to be unable to carry out legal acts to control and manage assets since the declaration of bankruptcy was pronounced. Therefore, all joint assets of the Plaintiff and Defendant I (wife and husband) which become bankrupt 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 who was appointed in the Decision to manage the bankruptcy process.

By making a Personal Guarantee, it is contrary to the rules of marriage law, as regulated in Article 36 Paragraph (1) of Law Number 1 of 1974 concerning Marriage, which requires Article 36 Paragraph (1) of the Marriage Law: "Regarding joint property, the husband or wife may act with the consent of both parties." Therefore, the husband can only be authorized to act after obtaining the consent of the Plaintiff as the wife, so legally, the husband in carrying out legal acts in the form of providing a personal guarantee (*borghtoch*) without the wife's permission is breaking the law so that he is "legally unable" to provide any personal guarantee, as regulated in Article 36 paragraph 1 of Law Number 1 of 1974 concerning Marriage.<sup>25</sup>

Due to the default of Ikhwan Andi Mansyur in fulfilling his obligations to PT Smfl Leasing Indonesia, PT Smfl Leasing Indonesia filed a Suspension of Debt Payment Obligations ("PKPU") against Ikhwan Andi Mansyur and the Notary which was registered on November 12, 2018 at the Commercial Court at the Central Jakarta District Court and registered in Case Number 165/Pdt-Sus-PKPU/2018/PN.Niaga.Jkt.Pst. which then Ikhwan Andi Mansyur was declared in a state of Temporary Suspension of Debt Payment Obligations (PKPU) for 14 days from the date the verdict was read on December 5, 2018 based on Decision Number 165/Pdt-Sus-PKPU/2018/PN.Niaga.Jkt.Pst.

Furthermore, on February 4, 2019, the Commercial Court at the Central Jakarta District Court, Decision Number 165/Pdt-Sus-PKPU/2018/PN.Niaga.Jkt.Pst declared Ikhwan Andi Mansyur (as Personal Guarantor) bankrupt with all its legal consequences. With the bankruptcy of Ikhwan Andi Mansyur, the joint assets in his marriage are threatened with general confiscation in a state of bankruptcy as regulated in Article 64 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations.

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<sup>25</sup>Inayatillaha, Revi, et al. (2018). "Liability of Husband and Wife in Credit Agreements with Joint Property Collateral in Marriages with Marriage Agreements". in *Acta Diurnal*, Volume 1 No 2 June 2018. p.191. url <https://jurnal.fh.unpad.ac.id/index.php/acta/article/view/168> accessed April 2, 2024.

Related to the bankruptcy status of a husband or wife who is married to a bankrupt debtor without a marriage agreement (separation of property). In other words, the bankruptcy of a husband or wife also results in the bankruptcy of the wife or husband who is married in a union of property (does not make a marriage agreement or separation of property agreement in their marriage).<sup>26</sup>

By referring to the legal provisions as mentioned above, the Plaintiff as a wife who is married with mixed assets with her husband (in Bankruptcy) has also by law lost her right to carry out management and control actions regarding assets that are included in the bankruptcy estate, which in this case also includes appointing and appointing a power of attorney to represent herself in court in filing a lawsuit related to the rights she claims to have where these rights concern and are related to the bankruptcy estate.

This is also in line with the provisions in Article 26 paragraph (1) of the Bankruptcy and PKPU Law which states that all claims regarding rights or obligations relating to bankrupt assets must be submitted by or against the curator. Therefore, Ir. Indah Sari as the Plaintiff does not have the authority and ability or legal standing (*persona standi in judicio*).

This case emphasizes the importance of a prenuptial agreement in protecting each spouse's personal assets. Without a prenuptial agreement, joint assets are considered as one unit, so if one spouse is declared bankrupt, it will affect the other spouse. In this case, Ir. Indah Sari could not avoid bankruptcy even though she felt unrelated to her husband's debts.<sup>27</sup>

The absence of a prenuptial agreement in the context of joint property that is the object of bankruptcy is a complex issue that has significant impacts on husband and wife. In the Indonesian legal system, a prenuptial agreement serves as a legal tool that allows couples to regulate the separation of their property, either before or during marriage.

The purpose of preventive legal protection is to prevent violations of the law before they occur. Making a marriage agreement either before or during the marriage is a preventive measure that can be taken by a husband and wife in marriage. A marriage agreement allows couples to arrange the separation of their assets, so that the wife's personal assets will not be the object of bankruptcy if the husband is declared bankrupt.

Without a prenuptial agreement, if one of the spouses is declared bankrupt, then all assets acquired during the marriage are considered joint assets. According to

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<sup>26</sup>Yuhelson. (2016). "Priority of Distribution of Assets of Bankrupt Debtors (Boedel Banklit) Against Preferred Creditors and Separatist Creditors Based on the Principles of Justice and Legal Certainty". in Doctoral Dissertation, Jayabaya University. p.125. <https://repo.jayabaya.ac.id/1276/1/DISERTASI%20YUHELSON.pdf> accessed April 10, 2024.

<sup>27</sup>Dantes, Komang Febrinayanti, Op.Cit, p.922.

Article 119 of the Civil Code, the unity of assets between husband and wife begins when the marriage takes place, unless there is a prenuptial agreement that states otherwise. All assets, both tangible and intangible, acquired during the marriage become part of the unity of assets, including profits or losses incurred during the marriage.

If one of the spouses goes bankrupt, all of the joint assets will become the object of bankruptcy. This means that assets acquired during the marriage can be used to pay off the debts of the bankrupt spouse. Based on Article 64 of the Bankruptcy and PKPU Law, a joint asset is considered bankrupt if one of the spouses files a bankruptcy petition while the marriage is still ongoing. As a result, the joint assets between husband and wife will be divided equally in the bankruptcy process.

In the Decision of the Central Jakarta Commercial Court Number 165/Pdt.Sus.PKPU/2018/PN.Niaga.Jkt.Pst, where a husband and wife, Ikhwan Andi Mansyur and Ir. Indah Sari, were declared bankrupt because they had unpaid debts, even though Ir. Indah Sari felt that she was not involved and did not enjoy the debt made by her husband, she was still declared bankrupt because she was bound in a marriage without a separation of property agreement or prenuptial agreement. This shows that without a prenuptial agreement, both parties have equal obligations for the debt.<sup>28</sup>

In the bankruptcy decision of Ikhwan Andi Mansyur, the peace plan submitted could not be accepted. Because based on the decision, the voting results on the debtor's peace plan were not approved by more than 50% (fifty percent) of the creditors present and/or 2/3 of the total number of creditor votes present in accordance with the provisions of Article 282 paragraph (1) of the Bankruptcy and PKPU Law.

The voting results on the permanent PKPU of PT Malacca Elab (in the PKPU) and Ikhwan Andi Mansyur (in the PKPU) do not meet the requirements to be granted an extension of the Permanent Debt Payment Obligation Suspension. So that the temporary PKPU for 45 days and for 14 days against PT Malacca Elab (in the PKPU) and Ikhwan Andi Mansyur (in the PKPU) ended and were declared bankrupt with all its legal consequences.

Therefore, the result of the bankruptcy decision of Ikhwan Andi Mansyur also affected his wife who did not have the legal capacity to file a lawsuit to cancel the Personal Guarantee. Based on Article 24 of the Bankruptcy and PKPU Law, his wife also lost her right to control and manage the assets included in the bankrupt

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<sup>28</sup>Munah, F., & Deni, F. (2024). "Legal Protection of Wives in Husband's Bankruptcy (Case Study of Semarang Commercial Court Decision No. 01/Bankrupt/2019/PN.Niaga.Smg.)". in *Binamulia Hukum*, Volume 13 No 1 July 2024, p.282. url<https://ejournal.Hukumunkris.id/index.php/binamulia/article/view/834> accessed May 20, 2024.

estate, thus changing the legal status of a person to be incapable of carrying out legal acts to control and manage his assets including joint assets used as collateral.

#### 4. Conclusion

Based on the results of the research conducted, it can be concluded that with the bankruptcy of the husband who is unable to pay off his debts that have matured, it also results in the bankruptcy of joint assets. Because in the marriage there is no agreement on separation of assets (marriage agreement). Furthermore, the legal consequences of Bankruptcy Decision Number 165 / Pdt.Sus.PKPU / 2018 / PN.Niaga.Jkt.Pst are that with the declaration of bankruptcy of Ikhwan Andi Mansyur, the debtor who is still bound by a legal marriage, has an impact on the bankruptcy of his partner, Ir. Indah Sari. Thus, with the bankruptcy of the debtor and his partner, they lose the right to carry out legal actions in controlling and obtaining assets that are included in the bankruptcy estate. Suggestions are addressed to the legislative body as the team drafting the law, to make it clear especially in the Bankruptcy Law and PKPU. In order to clarify protection for couples who are not directly involved in bankruptcy. Then, suggestions are also addressed to prospective couples who want to get married to make a marriage agreement before or during the wedding. As one of the preventive legal protection steps to prevent unwanted things from happening, such as the bankruptcy that occurred in this case.

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