

## The Legal Standing of the Creditor Who Made a Marital Separation Agreement as a Petitioner for Bankruptcy



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**ABSTRACT:** Provisions regarding a marital agreement which can be made during the time the husband and wife are in a marriage bond can be used as an excuse by a husband and wife to separate a receivable which initially constitutes one receivable and is then to be made into two receivables to create two creditors so that they fulfil the requisites of a petition for bankruptcy and PKPU. Such a condition has occurred in the bankruptcy and PKPU petition submitted by Stefanus Maria Sudjanto. S and his wife to Goenawan Rahardja. Motivated by the phenomenon, this research is aimed at examining the legal consequences of marital separation agreements for a joint receivable in a bankruptcy and PKPU petition and determining the position of creditors in the bankruptcy and PKPU petition for a receivable that had been made before the marriage separation agreement made. To achieve these objectives, we use the normative legal research method with three approaches—statute approach, conceptual approach, and case approach. We use primary legal materials, secondary legal materials and tertiary legal materials. These legal materials were collected through a literature study. These materials were analyzed using a qualitative analysis technique. The results show the marital separation agreement made by Stefanus Maria Sudjanto. S and his wife are null and void, because it violates the legal requirements of an agreement, namely Article 1320, subsection (4) of the Civil Code. In addition, a marital agreement shall also be made in good faith in compliance with the provisions of Article 1338. The marital separation agreement, made by Stefanus Maria Sudjanto. S and his wife was made not in good faith; it is null and void. Thus, the joint receivable of Stefanus Maria Sudjanto. S and his wife having been made before the marriage agreement remains as a joint receivable. Therefore, based on the definition of debt and the principle of balance, a husband and wife who have harmed the debtor and then enter into a marital separation agreement while in the marriage bond is only a creditor and does not have legal standing as two creditors in the submission of a bankruptcy statement.

**KEYWORDS:** marital agreement; bankruptcy petition; creditor

### 1. INTRODUCTION

Getting married is a constitutional right for Indonesian citizens which is prescribed in Article 28B of the 1945 Constitution of the Republic of Indonesia (by Indonesian it is abbreviated as *UUD NRI 1945*). The article stipulates that everyone shall have the right to form a family and continue a legal marriage. Provisions regarding marriages are specifically regulated further in Law Number 1 of 1974 concerning Marriage which has been amended to Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage (hereinafter referred to as the Marriage Law). In this law, marriage is defined as 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 Belief in One Almighty God.

Marriage may have an impact on property ownership between husband and wife. In the provisions of Article 35, subsection (1) of the Marriage Law, it is determined that property acquired during marriage shall become joint property.

Provisions regarding the pooling of property after the marriage takes place as stipulated in the Marriage Law can be set aside as long as there is a marital agreement governing the separation of property between husband and wife. According to Subekti, a marriage agreement is an agreement regarding the property of husband and wife during their marriage which deviates from the principles or patterns stipulated by law (Subekti 1996). The marriage agreement is regulated in Article 29 of the Marriage Law. The provision has been tested against the 1945 Constitution of the Republic of Indonesia, based on the ruling of the Constitutional Court Decree Number 69/PUU-XIII/2015. It was determined in the decision that the marriage agreement might not only be made at the time or before the marriage took place, but also during the marriage bond.

In the marriage bond to live together the husband and wife will perform legal relations with other parties related to joint property, one of which is making a debt agreement or loan agreement. A person when entering into a debt agreement can have the capacity as a lender or as a party taking loans so that person can have the capacity as a creditor who has receivables or the capacity as a debtor who has debts. This affair will affect the property owned. For creditors, receivables are part of the assets they own, and for debtors, debt is an obligation that must be paid off with the assets they own as stipulated in Article 1131 of the Civil Code—all

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movable and immovable property belonging to the debtor, whether existing as well as those that will exist, serve as collateral for the debtor's individual engagements.

A debt agreement which a person makes after they are married will have impact on the joint property in their marriage. As regulated in Article 36, subsection (1) of the Marriage Law, if a husband or wife wants to take legal action related to joint property, it shall be based on the agreement of both parties. This provision does not apply if the parties have made a marital agreement in which it regulates property separation, so that the debts made by the husband or wife can only be accounted for against the assets of the husband or wife. In its course, a debt agreement cannot always work as agreed at the time the agreement was made. Debtors under certain circumstances sometimes do not carry out their obligations, or they are in default, thereby causing the creditors to be unable to obtain their rights. In litigation, a creditor can file a lawsuit against the debtor on the basis of default at the District Court. Settlement of debt cases through litigation can also be carried out by creditors through a bankruptcy mechanism or postponement of debt payment obligations (in Indonesia this is called *penundaan kewajiban pembayaran utang* and abbreviated as *PKPU*) by submitting a petition to the Commercial Court.

If a creditor is in a marriage bond, their receivables are part of the joint property. In some cases, after making a debt agreement, husband and wife make a marital separation agreement. This can happen because of the Constitutional Court Decision Number 69/PUU-XIII/2015 which allows the making of marital agreements to take place at the time and before the marriage takes place or while the husband and wife are in a marriage bond. The existence of the marital separation agreement is used as the basis by creditors to divide their receivables. As a result, the receivable that originally belonged to one creditor became the receivable of two creditors. Then, the two creditors filed a bankruptcy petition and PKPU petition for the receivables they had.

An act of filing a bankruptcy application and a PKPU application which was committed by creditors after making a marital separation agreement took place in 2018. The applications were submitted by Stefanus Maria Sudjanto. S against Goenawan Rahardja. The debt agreement between the two parties was made on February 12, 2007 with an amount of IDR 100,000,000 with an interest of 2.5% per month. The debt was due for payment on February 12, 2008 (Hartini 2018). In October 2018, Stefanus Maria Sudjanto. S and his wife agreed to enter into an agreement to separate property during their marriage by making a marital separation agreement before a notary (Hartini 2018).

Stephen Maria Sudjanto. S and his wife filed a bankruptcy petition against Goenawan Rahardja at the Commercial Court at the Pengadilan Negeri Semarang but the application was rejected. Then, on October 18 2018 Stefanus Maria Sudjanto. S and his wife again filed a petition for PKPU against Goenawan Rahardja at the Commercial Court at the said district court. In their petition, Stefanus Maria Sudjanto. S and his wife acted as Petitioner I and Petitioner II based on the marital separation agreement they had made before the notary which made the receivable between Stefanus Maria Sudjanto. S and his wife became separated. The husband and wife used the argument that the receivable made in 2007 was joint receivable and after they had made the marital agreement, the receivable became separate. The argument used is based on the Constitutional Court Decree Number 69/PUU-XIII/2015. With reference to the decree, Stefanus Maria Sudjanto. S together with his wife interpreted that their receivable had been separated since the marriage took place and thus they became two creditors and that fulfilled the requirements for two creditors to submit a bankruptcy petition and a PKPU petition. In fact, the receivable had existed before Stefanus Maria Sudjanto. S and his wife made the marital separation agreement, which indicated that there was only one creditor for the receivable.

This case of bankruptcy petition by husband and wife creditors occurred because of the ambiguity of norms in Law Number 1 of 1974 concerning Marriage. The Decree of the Constitutional Court Number 69/PUU-XIII/2015 in Article 29 subsection (1).

Based on these provisions, the contents of the marital agreements made by husband and wife in their marriage bond are valid for third parties as long as third parties are involved. In Article 29, what is meant by "the third party involved" is not explained clearly, giving rise to ambiguity in the validity of the contents of the agreement made within the marriage bond. This is because there is no regulation governing that marital agreements made in a marriage bond may not harm third parties. As a result, the making of a marital separation agreement in the marriage bond has occurred. The marital separation agreement was used as the basis for dividing the joint receivables of the husband and wife (one creditor) into two receivables (two creditors) to fulfill the requirements for filing bankruptcy petition. This phenomenon has encouraged the present researchers to examine the legal consequences of marital separation agreements for joint receivables in bankruptcy and PKPU petitions and to determine the standing of creditors in the bankruptcy and PKPU petitions for receivables made before the marital separation agreement.

## 2. METHOD

This research is normative legal research because it is conducted only on written rules and regulations or other legal materials (Waluyo 2008). This study uses a statute approach, conceptual approach and case approach to find answers to the issues under the study from the legal materials used. The legal materials referred to include primary legal materials, secondary legal materials and tertiary legal materials. These legal materials were collected using a literature study technique and analyzed using a qualitative analysis technique.

### 3. DISCUSSION

#### *Marital Agreement Arrangement in Relation to Joint Receivables during Marriage*

Marriage is an event of law—an event whose consequences are regulated by law, or as an event that is given legal consequences. A marriage is an event of law as long as it is a legal event (Dewi 2020). One of the important aspects of marriage which is regulated in Law Number 1 of 1974 concerning Marriage is the marital agreement. Marital agreement is a written agreement made before the marriage takes place.

An agreement in a marriage is an agreement that regulates a consequence of the existence of a marriage bond, one of which is in the field of property. The property referred to in this case include joint property. Joint property refers to assets acquired during marriage other than gifts or inheritance, or in other words assets obtained from the livelihood of the husband and wife during the period of the marriage bond. It should be emphasized that the meaning of joint property does not only include assets that are acquired, but it also includes the debts of the husband and wife that arise during the marriage bond (Asnawi 2020).

In Indonesia, there are three laws and regulations that regulate the issue of marital agreements—the Civil Code, Law No. 1 of 1974 concerning Marriage, and Presidential Instruction No. 1 of 1974 concerning the Compilation of Islamic Law. Since the enactment of Law Number 1 of 1974 concerning Marriage, in Indonesia there has been unification in the field of Marriage Law, except to the extent that it has not/is not regulated in the law, then the old regulations can be used. Even though the law regulates marriage, its substance further concerns matters related to marriage or all legal consequences related to a marriage, even more precisely it can be categorized as family law.

According to Article 139 of the Indonesian Civil Code, a marital agreement is essentially an agreement between a prospective husband and wife to regulate the consequences of their marriage on their assets. So, a marital agreement can be made both in the case that the husband and wife will marry by unanimously mixing assets or in the case that they promise that there are separate assets, or that there are assets outside that are unified. The assets referred to are both debts and receivables as well as material rights owned by both husband and wife. Matters regarding the marital agreement were then published and reaffirmed by the promulgation of Law Number 1 of 1974 concerning Marriage. A marital agreement is an agreement made by the bride and groom at the time or before the marriage takes place, and each promises to comply with what is stated in the agreement, which is legalized by the marriage registrar. In a formal sense, a marital agreement is any agreement made in accordance with the provisions of the law between husband and wife regarding their marriage, regardless of what the contents are (HR 2007). In principle, a marital agreement is an agreement regarding the property of husband and wife during their marriage, which deviates from the principles or patterns set by law. Furthermore, in Article 147 *juncto* Article 149 of the Civil Code it is stated that a marital agreement shall be made with a notarial deed before the marriage takes place, the agreement in which comes into force from the time the marriage takes place and may not be withdrawn or changed in whatsoever way during the marriage.

#### *Legal Consequences of Marital Separation Agreements on Joint Receivables in the Filing of Bankruptcy and PKPU Petitions*

Article 1 of Law Number 1 of 1974 concerning Marriage prescribes that 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 (household) based on Belief in the One Supreme God (Sutini and Dewi 2021). Marriage is an act of law which has juridical consequences, one of which is in the scope of wealth. To provide legal certainty, it is not uncommon for husband and wife to agree to make a marital agreement. Marital agreements are part of the field of family law which must comply with the provisions in Book I of the Indonesian Civil Code. Marital agreements have different characteristics from agreements in general, as stipulated in Book III of the Indonesian Civil Code (*Burgelijk Wetboek*). However, in principle, the Book III of the Civil Code also applies to marital agreements. The validity of a marital agreement is also subject to the terms and conditions of a valid agreement in general.

Article 1338 of the Civil Code confirms that, “All agreements made legally shall apply as laws to those who make them. These agreements cannot be withdrawn other than with the agreement of both parties, or for reasons stated by law as sufficient for the purpose. Agreements shall be executed in good faith.”

Based on Article 139 of the Civil Code, the existence of a prenuptial agreement is an exception to the provisions of Article 119 of the Civil Code, that is to say, when a marriage takes place, legally the unanimous union between the husband’s property and the wife’s property also applies or in other words it is limited to regulation. The main purpose of making a prenuptial agreement is to regulate between husband and wife what will happen regarding the property they bring and or what they will each get during their marriage later. Article 139 of the Civil Code contains a principle that prospective husband and wife are free to determine the contents of the prenuptial agreement they make. However, this freedom is limited by several prohibitions that shall be considered by the prospective husband and wife who will make a prenuptial agreement.

The substance of the marital agreement is handed over to the prospective couple who will marry on condition that its content of the agreement must not conflict with public order, decency, law and religion. Therefore, it can be said that couples who bind themselves in the marital agreement will receive guarantees during the marriage and afterwards so ending the marriage also means violating the agreement, thereby disobeying the marital agreement. Usually there are sanctions that must be imposed on parties who violate the marital agreement. The Civil Code provides several prohibitions regarding the contents of a prenuptial agreement, such

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as (Prodjohamidjojo 2021):

- a) The agreement shall not contravene with proper morals or public order (Article 139)
- b) The agreement shall not deviate from the authorities that the Civil Code gives to the husband as the head of the household; for example, it cannot be promised that the wife will have her own place of residence (Article 140 paragraph (1)).
- c) In the agreement, husband and wife shall not renounce their legal obligation regarding the inheritance of their descendants (Article 141).
- d) The agreement shall not stipulate that in the case of property mix, if the joint property is terminated, the husband or wife will pay the portion of the debt that exceeds the balance and the shared profit (Article 142).
- e) The agreement, in general terms, shall not be governed by rules and regulations that apply in foreign countries (Article 143).

In Article 29 of the Marriage Law it is stated that the Marital Agreement is an agreement made at or before the marriage takes place, and it is further explained that the Marital Agreement must be legalized by the marriage registrar. Thus, a marital agreement is made at the time or before the marriage takes place.

In order for a debtor to be legally declared bankrupt, he or she shall meet the requirements specified in the Bankruptcy Law- Postponement of Debt Payment Obligations (*UUK-PKPU*). Bankruptcy itself can be interpreted as follows “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” (Dewi 2023). This is where the bankruptcy institution plays an important role like a law that functions to guarantee protection for every aspect of life and every legal relationship. Hence, bankruptcy law plays a role in providing guarantees of certainty over the settlement of debt disputes between the parties. It is as explained that “Bankruptcy has become an inseparable part of society and touches various lines in people’s lives (Dewi, Dewi, and Sari 2021).

The essence of bankruptcy institutions is to provide justice for the parties. Bankruptcy institutions are also expected to become a new solution financially for debtors who no longer have the ability to pay their debts to their creditors (Dewi 2021). In Indonesia, the essence of bankruptcy is to create a sense of justice in the bankruptcy process which guarantees legal certainty for the parties regarding the settlement of their payables and receivables (Dewi 2019).

In Article 2 subsection (1) of *UUK-PKPU* it is explained that the condition for a bankruptcy petition is a debtor who has two or more creditors and does not pay off at least one debt that is due and collectible, then the debtor can be declared bankrupt by a court decision, either at his own request or at the request of the petition of one or more of the creditors. The article expressly mandates there must be at least two creditors in submitting an application to be declared bankrupt. If the creditors are in a marriage bond, their receivables should be part of the joint assets. Based on Indonesian Civil Code, marriage can result in the emergence of joint property or the emergence of unanimous union of property. This union of property may include assets and/or liabilities (debt). This is the case with the petitions for bankruptcy and PKPU submitted by Stefanus Maria Sudjanto. S and his wife against Goenawan Rahardja. Before filing the applications Stefanus Maria Sudjanto. S together with his wife made an agreement to separate assets during their marriage by making a marital separation agreement in the presence of a notary. In the bankruptcy petition submitted to the commercial court, Stefanus Maria Sudjanto. S and his wife acted as Petitioner I and Petitioner II based on the marital separation agreement that they had made before a notary so that the joint receivables of Stefanus Maria Sudjanto’s. S and his wife became separated.

The case mentioned above shows that initially there was only one creditor and that did not meet the requirements set by the *UUK-PKPU* to file a petition for bankruptcy on behalf of the debtor. Therefore, the creditor and his wife separated assets during their marriage by making a marital separation agreement before a notary. Then, there are two creditors with the agreement.

Through Article 29 of the Marriage Law, in Indonesia it is permissible to make a marital agreement when the marriage has taken place. The article determines that a Marital Agreement is an agreement made at the time or before the marriage takes place. Furthermore, the article explains the intended Marital Agreement must be ratified by a marriage registrar. It can be seen the marital agreement is permitted to be made at the time or before the marriage takes place. However, with the issuance of the Constitutional Court Decision No. 69/PUU-XIII/2015 of 2015, the provisions of Article 29 of the Marriage Law changed to mean that a Marital Agreement is an agreement made at or before marriage or during a marriage bond. The decision also stipulates that the agreement cannot be ratified if it violates legal boundaries. The legal source of the agreement is the agreement itself and the law. A marital agreement is a legal agreement because it must meet the general requirements of an agreement, unless specifically stipulated otherwise. The general requirements are regarding the legal terms of an agreement regulated in Article 1320 of the Civil Code. In addition to the matters stated in Article 1320, the making of a marital agreement must also be carried out in good faith, in accordance with the provisions of Article 1338, because an agreement made legally applies as a law for those who make it.

From the explanation above, the legal consequence of the marital separation agreement for joint receivables of husband and wife in the petition for bankruptcy and PKPU is that the petition is declared null and void as happened with the case of Stefanus Maria Sudjanto. S together with his wife, for violating Article 1320 paragraph (4) of the Civil Code, which states that one of the conditions for the validity of an agreement is if it is made on the basis of “a lawful ground”. Article 1337 of the Civil Code stipulates that “a ground is unlawful, if it is prohibited by law, or if it is contrary to proper morals or public order”.

The making of the marital separation agreement by Stefanus Maria Sudjanto. S and his wife were carried out in bad faith. The

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agreement was made only for the sake of being able to apply for bankruptcy against a debtor named Goenawan Rahardja. Hence, because the application submitted using a marital separation agreement is null and void by law, the debt of Stefanus Maria Sudjanto. S together with his wife is still the same as before the marital agreement was made, that is to say, it is still a joint receivable and Goenawan Rahardja only has one debt from only a creditor.

### *Legal Standing of the Husband and Wife Acting as Two Creditors in the Petition for Bankruptcy Over Receivables Made Prior to the Marital Agreement*

Bankruptcy policy aims to protect the interests of creditors and debtors who are in a state of difficulty settling debts and receivables, because it does not only involve one creditor but many creditors. Bankruptcy is a realization of the principles contained in Article 1131 and Article 1132 of the Civil Code (Hartono 1993). The provisions of this article may have the implication that all assets owned by the debtor become joint guarantees with the creditor for the engagements made by the debtor. The law of bankruptcy is a realization of the principle of debt collection. The principle has meaning as the concept of creditor retaliation against a bankrupt debtor by collecting their claims against the debtor or the debtor's assets. Bankruptcy law is needed as a collective proceeding means, because in the absence of bankruptcy law each creditor will compete individually to claim the debtor's assets for the benefit of each of them.

A petition for a declaration of bankruptcy is filed at a commercial court whose jurisdiction covers the area where the debtor's legal domicile is. The party applying for bankruptcy must have legal standing as the applicant. In bankruptcy cases, parties who have legal standing to apply for bankruptcy are the debtors themselves, creditors, and the public prosecutor's office and the Financial Services Authority (*OJK*).

Creditors who have legal standing to apply for bankruptcy consist of two types of legal subjects, *viz.* individuals and legal entities. In the event that the creditor filing for bankruptcy is an individual, his or her authority as an applicant for bankruptcy will be closely related to his or her marital status. Because when one gets married, joint property will arise as stipulated in Article 35 paragraph (1) of the Marriage Law, unless the husband and wife do property separation in a marital agreement.

As long as the marital separation agreement has not been made, all legal actions related to husband and wife assets become joint legal actions so that both debts and receivables in the marriage are joint debts and receivables. Therefore, husband and wife are one unit as petitioners in bankruptcy. A petition for a declaration of bankruptcy filed by a husband and wife has occurred in Indonesia, that is, a bankruptcy case which has been decided by Decision Number 18/Pdt.Sus-PAILIT/2018/PN.Niaga Smg.

In the case of the petition for a bankruptcy statement submitted by Stefanus Maria Sudjanto. S and Phan Lilie Trisnawati S (husband and wife) against Goenawan Raharjo (Tan Goen Liang) is a bankruptcy petition against individuals. The request for a bankruptcy statement was based on a debt agreement between Stefanus Maria Sudjanto. S and Goenawan Raharjo made in 2012 (Hartini 2018). Based on the agreement, there is a legal relationship between the two. Stefanus Maria Sudjanto. S is a creditor and Goenawan Raharjo is a debtor. On the receivables they have Stefanus Maria Sudjanto. S and Phan Lilie Trisnawati S (husband and wife) filed a bankruptcy declaration at the Commercial Court at the Semarang District Court.

Petition for bankruptcy declaration by Stefanus Maria Sudjanto. S and Phan Lilie Trisnawati S against Goenawan Raharjo was rejected by the Commercial Court at the Semarang District Court with Decision Number 18/Pdt.Sus-PAILIT/2018/PN.Niaga Smg. The panel of judges rejected the petition for a declaration of bankruptcy on the ground that the bankruptcy requirements in Article 2 paragraph (1) of the Bankruptcy Law were not met. Based on the considerations of the panel of judges the requirement to have two or more creditors was not fulfilled because according to the panel of judges the petitioners Stefanus Maria Sudjanto. S and Phan Lilie Trisnawati S were a married couple who could not prove the existence of a marital separation agreement. Therefore, the panel of judges declared there was only one creditor and no other creditors (Hartini 2018).

On October 18 2018, Stefanus Maria Sudjanto. S and Phan Lilie Trisnawati S (husband and wife) again made efforts to collect receivables from Goenawan Raharjo through the postponement of debt payment obligations (*PKPU*) mechanism. In the application for the *PKPU* it is again argued that there were two creditors. In the request Stefanus Maria Sudjanto. S (husband) acted as Petitioner I and Phan Lilie Trisnawati S (wife) acted as Petitioner II. Their basis for acting as two creditors was that they had made a marital separation agreement on October 15 2018 so that there was a separation of receivables between Petitioner I and Petitioner II. With that reason they hoped to have met the requirements to prove a debtor could be declared bankrupt.

In order to be decided bankrupt, a debtor must fulfill the conditions set forth in Article 2 paragraph (1) of the Bankruptcy Law and *PKPU*—having two or more creditors, not paying at least one debt that is due and collectible and at his or her own request or at the request of one or more creditors (Hartini 2018).

Having two or more creditors is an absolute requirement that must be met in a bankruptcy decision. A debtor must have two creditors because if the debtor only has one creditor, bankruptcy will lose its ratio, which is based on the goals of bankruptcy to protect creditors by dividing the debtor's assets among creditors (Hartini 2018). Therefore, if there is only one creditor, there is no need for a bankruptcy institution. It can be done simply by filing a civil suit at the district court.

In bankruptcy debt is the integral part, because without debt bankruptcy cases will never occur. Without debt the essence of bankruptcy is non-existent because bankruptcy is a legal institution to liquidate debtor assets to pay debts to creditors (Shubhan

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2015). Debt is the *raison d'être* of a bankruptcy, which means debt is the main basis for bankruptcy as a legal subject. The concept of debt in Indonesian bankruptcy law is a form of obligation to fulfill compliance in an engagement (Shubhan 2015). The time when the collectable debt against the debtor is made serves a crucial role in determining the legal standing of a husband and wife who apply for a bankruptcy declaration to act as two creditors. Positions as creditor and debtor are formed when the debt is issued based on a debt agreement. According to the principles adhered to in the Indonesian Marriage Law, property acquired during marriage becomes joint property. The principle of the union of assets can be exempted by making a marital separation agreement. If the debt is formed before the marital separation agreement is made it is a joint debt and the husband and wife are one creditor. The meaning of the provisions for making a marital agreement in Article 29 of the Marriage Law changed after the Constitutional Court Decision Number 69/PUU-XIII/2015 stipulated that a marriage agreement can also be made while in a marriage bond, and the contents of the agreement also apply to the third parties as long as involved.

In the case of the petition for PKPU submitted by two creditors Stefanus Maria Sudjanto. S and Phan Lilie Trisnawati S (husband and wife), the petition is based on joint receivables which were born in 2007. Then, on October 15, 2018 Stefanus Maria Sudjanto. S and Phan Lilie Trisnawati S made a marital separation agreement to separate the joint receivables they made in 2007, thereby making them two creditors and making Goenawan Raharjo have two debts from two creditors.

In Indonesian bankruptcy law, debt is a form of obligation to fulfill compliance born of an agreement. Goenawan Raharjo's debt is a debt that was born from a debt agreement before the existence of a marital separation agreement. Meanwhile, the marital separation agreement was only made after the debt had been born, that is to say, on October 15 2018, after the first bankruptcy petition was refused by the Commercial Court at the Semarang District Court. The refusal was based on the fact that the marital separation agreement was made by Stefanus Maria Sudjanto. S and his wife in bad faith, or in other words, the agreement was made solely for the sake of them being able to file a bankruptcy petition against the debtor on behalf of Goenawan Rahardja. The marital separation agreement violates Article 1320 paragraph (4) of the Civil Code, which states that one of the conditions for a valid agreement is if the agreement is made for "a lawful ground".

The standing of a creditor as a petitioner is not only based on possession of payable from a debtor, but debt collection through a bankruptcy mechanism must take into account the objectives and functions of the bankruptcy institution, one of which is protection for the debtor from the possibility of mass execution by creditors (Hartini 2018). If the creditor applying for bankruptcy originates from a single debt that is separated based on a marital agreement made by husband and wife after the existence of a debt, the bankruptcy institution will lose its main function, because basically the debt does not have creditors who may carry out mass executions.

Bankruptcy and PKPU Laws contain several principles for carrying out the functions of a bankruptcy institution, one which is protecting the interests of creditors and the interests of debtors. One of these principles is the principle of balance. Embodiment of the principle of balance in the provisions of the Bankruptcy Law and PKPU is that on the one hand there are provisions that can prevent abuse of bankruptcy bodies and institutions by dishonest debtors, but on the other hand there are provisions to prevent abuse of bankruptcy bodies and institutions by creditors who are not in good faith (Hartini 2018).

Making marital agreements between husband and wife with the aim of separating receivables for sake of having the capacity to become two creditors is a form of bad faith of creditors abusing bankruptcy institutions. Such actions can be detrimental to the interests of the debtor because at the time the debt agreement was made there was only one creditor. Therefore, based on the notion of debt and the principle of balance adopted in the Bankruptcy Law and PKPU, a husband and wife who make a marital separation agreement while in marriage and harm the debtor only hold a position as one creditor and do not have legal standing as two creditors in the petition for bankruptcy declaration.

## 4. CONCLUSION

The legal consequence of the marital separation agreement for joint receivables in the application for bankruptcy and PKPU is the marital separation agreement entered into by Stefanus Maria Sudjanto. S and his wife were declared null and void. The act violates the legal requirements of an agreement specified in Article 1320 paragraph (4) of the Civil Code that one of the conditions for the validity of an agreement is if it is made on "a lawful ground". In addition to Article 1320 of the Civil Code, the making of a marital agreement shall also be carried out in good faith, in accordance with the provisions of Article 1338. The making of a marital separation agreement by Stefanus Maria Sudjanto. S and his wife was committed in bad faith, and therefore, null and void. As a result, the receivable owned by Stefanus Maria Sudjanto. S and his wife before the marital agreement was drawn up remained joint receivables and Goenawan Rahardja only had one debt from one creditor.

Standing of creditors in the bankruptcy and PKPU applications for receivables that occurred before the marital separation agreement was made does not fulfill the requirements for debt and is not based on the principle of balance adopted in the Bankruptcy Law and PKPU. Stefanus Maria Sudjanto. S and Phan Lilie Trisnawati S (husband and wife) acted as two creditors based on debts arising from a debt agreement made prior to the marital separation agreement, so initially there was only one creditor for the debt. The standing of a creditor as a petitioner for bankruptcy is not only based on having receivables from the debtor but debt collection through a bankruptcy institution shall still pay attention to the functions of the bankruptcy institution. In addition, in determining

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the standing of a creditor as a petitioner for bankruptcy, the principle in the Bankruptcy and PKPU Laws, namely the principle of balance, must be considered. The use of a husband and wife marital agreement with the aim of separating receivables so that the two creditors are domiciled is a bad faith in using a bankruptcy institution because it can harm the interests of the debtor. Therefore, based on the definition of debt and the principle of balance, a husband and wife who make a marital separation agreement while in a marriage bond and harm the debtor only have a position as a creditor and do not have the legal standing to be two creditors in an application for a bankruptcy declaration.

### REFERENCES

- 1) Asnawi, M. Natsi. 2020. *Hukum Harta Bersama: Kajian Perbandingan Hukum, Telaah Norma, Yurisprudensi dan Pembaharuan Hukum*. 1st ed. Jakarta: Kencana.
- 2) Dewi, Ni Luh Putu Geney Sri Kusuma, Putu Eka Trisna Dewi, and Ni Putu Riyani Kartika Sari. 2021. "Regulation of Copyright Certificate As A Material Guarantee and Bankrupt Estate/Beodel In Indonesia." *ADI Journal on Recent Innovation (AJRI)* 2(2):186–200. doi: <https://doi.org/10.34306/ajri.v2i2.76>.
- 3) Dewi, Putu Eka Trisna. 2019. "Implementasi Penundaan Kewajiban Pembayaran Utang (PKPU) Dalam Kepailitan Ditinjau Dari Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang." *Jurnal Hukum Saraswati* 4(2):280–91.
- 4) Dewi, Putu Eka Trisna. 2020. "Akibat Hukum Perkawinan Beda Agama Yang Dilangsungkan Di Luar Negeri." *Yustitia* 14(2):1–9.
- 5) Dewi, Putu Eka Trisna. 2021. "The Execution of Bankrupt Assets in the Case of Cross-Border Insolvency: A Comparative Study between Indonesia, Malaysia, Singapore, and the Philippines." *The Indonesian Journal of Southeast Asian Studies (IKAT)* 5(1):47–59. doi: [10.22146/ikat.v5i1.64157](https://doi.org/10.22146/ikat.v5i1.64157).
- 6) Dewi, Putu Eka Trisna. 2023. "Legal Consequences of Bankruptcy on Joint Assets after Divorce." *Jurnal Hukum Prasada* 10(1):43–48. doi: <https://doi.org/10.22225/jhp.10.1.2022.43-48>.
- 7) Hartini, Rahayu. 2018. "Putusan Pengadilan Niaga Semarang Nomor 23/Pdt.Sus-PKPU/2018/PN Niaga Smg."
- 8) Hartono, Siti Soemarti. 1993. *Pengantar Hukum Kepailitan Dan Penundaan Pembayaran: Seri Hukum Dagang*. Yogyakarta: Fakultas Hukum UGM.
- 9) HR, H. A. Damanhuri. 2007. *Segi-Segi Hukum Perjanjian Perkawinan Harta Bersama*. Bandung: CV. Mandar Maju.
- 10) Prodjohamidjojo, Martiman. 2021. *Hukum Perkawinan Indonesia*. Jakarta: Indonesia Legal Center Publishing.
- 11) Shubhan, Hadi. 2015. *Hukum Kepailitan: Prinsip, Norma dan Praktik di Peradilan*. Jakarta: Kencana.
- 12) Subekti, R. 1996. *Pokok-Pokok Hukum Perdata*. Jakarta: Intermasa.
- 13) Sutini, Wiwin, and Putu Eka Trisna Dewi. 2021. "Pembagian Harta Bersama Pasca Perceraian Terhadap Kontribusi Isteri Sebagai Pencari Nafkah (Studi Komparasi Di Australia, Malaysia Dan Jepang)." *Aktual Justice* 6(2):121–39. doi: <https://doi.org/10.47329/aktualjustice.v6i2.768>.
- 14) Waluyo, Bambang. 2008. *Penelitian Hukum Dalam Praktek*. Jakarta: Sinar Grafika.



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