

## Juridical Review Of Sharing Joint Assets As Banking Credit Collateral (Analysis of Decision Number 1436/Pdt.G/2017/PA.Ckr)

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**Abstract.** *Joint assets are property acquired by a married couple, husband and wife can act on their joint assets with the consent of both parties. Marital Property Law has an important position in family life even when the marriage is still ongoing. In an activity regarding money loans at a bank, there is usually a handover of debt guarantees provided by the debtor to the creditor. In this case the debtors use joint assets as collateral for their credit agreement. The purpose of writing this thesis is to determine the legitimacy of using joint assets as collateral and the status of these joint assets by analyzing various sources of applicable law in Indonesia. In this analysis, it was found that joint assets used as collateral for credit cannot be processed in terms of assets back and forth until the obligation debt of debtors is completed.*

**Keywords:** *Joint assets, Collateral, Credit Agreement*

### INTRODUCTION

A marriage has the aim of forming a family (household) as stated in Article 1 of Law Number 1 of 1974 in conjunction with Law Number 16 of 2019 concerning Marriage. In this law, 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 based on belief in the Almighty God.

For the benefit of humanity at large, marriage is a way to maintain the continuity of the species through legitimate and responsible offspring. So marriage is a way to achieve peace of mind and peace of mind, to keep oneself pure from heinous acts as well as enjoyment and happiness in life, as well as a means to fortify oneself from falling into the abyss of disgrace. The purpose of marriage in Islam is bones back formationfamily to fulfill the demands of human nature, relations between men and women in order to create a happy family based on love and affection, to obtain legitimate offspring in society by following the provisions regulated by sharia.

Nowadays, many marriages end in divorce. Marriage is no longer considered something sacred so that if divorce occurs it is normal and not taboo, even in certain circles divorce can be used as a means to increase popularity. Therefore, divorce is increasingly occurring not only among ordinary people, but also among intellectuals. Divorce has legal consequences as a consequence, namely the status of the husband or wife and the position of the children, as well as regarding joint property acquired during the marriage. Determining the status of property

ownership during marriage important to obtain clarity regarding the position of the assets in the event of the death of one of the husbands or wives, which is the inheritance that will be inherited by the respective heirs. Likewise, if a divorce occurs, there must be clarity about what is the wife's right and what is the husband's right. Assets in marriage are differentiated into joint assets and original or inherited assets. This is regulated in Article 35 of Law Number 16 of 2019 concerning Marriage.

All assets obtained during marriage, outside of inheritance, are joint assets. 3 When carrying out their business, people need capital to develop their business. Therefore, in order to meet business capital, In general, society needs pebanking financial institutions. Based on this, it means that people's interest in applying for credit loans from banks has increased. This itself is stated in Article 1 Paragraph (2) of Law no. 10 of 1998 concerning Amendments to Law no. 7 of 1992 concerning Banking, which states that banks are business entities whose role is to collect public funds in the form of savings and then distribute them to the public in the form of credit and/or other forms in order to improve people's living standards.

Due to the factors above, distribution must be accountable. Banks as financial institutions should be able to provide legal protection for credit givers and recipients. In the process of distributing credit funds appropriately and legally according to credit administration and the law of binding guarantees in an orderly manner, the aim is that the credit distributed to the bank to the community can be returned on time, based on the credit agreement which has been determined by both parties, it is necessary to include collateral as Credit collateral is joint assets.

The title of the thesis above is important to examine, because one of the legal consequences of a marriage is not only directed at the husband or wife, but also regarding the assets owned by both husband and wife. The arrangement of marital assets is not included in the scope of property law due to the assumption that marriage is not a way to acquire or acquire assets. A divorce that occurs during marital status has various legal impacts, one example of which is regarding joint assets or shared assets in marital status. In Indonesia, many people do not register their jointly owned assets, so that when a divorce occurs it creates new problems.

## **RESEARCH METHODS**

The research method used in writing this thesis is studynormative law, namely legal research carried out by examining library materials or secondary materials. The reason researchers use normative law is to find out their position joint property legally and produce a conclusion

## DISCUSSION

Assets are objects owned by someone that have economic value. In legal literature, objects are a translation of the Dutch term *zaak*, goods are a translation of *good* and rights are a translation of *recht*. According to Article 499 of the Civil Code, the definition of objects includes goods and rights. Goods are tangible objects, while rights are intangible objects.

When viewed from its origin, marital assets can be classified into three groups:

1. The assets each husband and wife owned before marriage, whether acquired through inheritance or business, are relevant to existing legal theories. The author also uses primary legal materials such as the Civil Code, Marriage Law, Compilation of Islamic Law, Banking Law, Mortgage Law, Big Indonesian Dictionary, Law Dictionary, as well as various other journals and literature books. other businesses, in this case called inherited assets.
2. The assets each husband and wife obtain during their marital relationship, but are obtained not because of their efforts together or individually, but because they are obtained as a gift, inheritance or will for each.
3. Assets obtained after they are in a marriage relationship through the efforts of both of them or one of them, in this case are called livelihood assets. Linguistically, joint property consists of two words, namely property and joint. According to the Big Indonesian Dictionary (KBBI) "Wealth can mean goods (money and so on) which are tangible or intangible wealth and of course valuable". Sayuti Talib in his book Indonesian Family Law says that: "Joint property is wealth acquired during marriage outside of gifts or inheritance." What this means is assets obtained through joint or individual efforts during the marriage bond.

The positive law that applies in Indonesia, the definition of joint property is regulated in Article 35 paragraph (1) of Law Number 16 of 2019 concerning Marriage, which reads: "Property acquired during marriage becomes joint property". This article seems to provide a very general formulation of the meaning of joint property, namely that any property acquired during the marriage is referred to as joint property. It doesn't matter who tries to obtain the assets in the marriage. This law requires that any property obtained during marriage be regardless of the contribution of who makes the effort, whether the husband is alone while the wife stays at home taking care of the children and managing the household, or the wife alone works while the husband lives freely, or Both husband and wife actively earn a living, then all income from this business while obtained during the marriage becomes joint property.

Marriage is closely related to assets and debts because the life of a household is directly related to income and expenses which often become a source of problems in their position. The occurrence of debts and receivables in marriage can be categorized as a joint burden, because debts and receivables in marriage are debts that are used for joint interests and by mutual agreement, so they become a joint burden and responsibility.

In writing this article, the author provides examples of cases taken from the official website of the Directory of Decisions of the Supreme Court of the Republic of Indonesia, especially in Religious Court Session Decisions with Number Decision 1436/Pdt.G/2017/PA.Ckr, where in this case the Plaintiff and Defendant are former husband and wife, who have officially divorced based on the Decision of the Cikarang Religious Court Number 0563/Pdt.G/2016/PA.Ckr dated 31 May 2016, Divorce Deed Number 1099 /AC/2016/PA.Ckr dated 11 August 2016. During the marriage between the Plaintiff and the Defendant, joint assets/marital assets (*gono-gini*) were obtained in the form of: - A plot of land with a residential house standing on it, based on the Sale and Purchase Deed No. 138/JB OBT/III/2013, in the form of Ownership Rights over a plot of land that was formerly Customary Ownership Rights Plot Number 126, Block 002, Kohir Serial Number SPPT 002-0269, covering an area of  $\pm 70 \text{ m}^2$ .

The joint assets from the divorce until the lawsuit is filed are controlled by the Defendant. Apart from having joint assets The marriage of the Plaintiff and Defendant also has joint debt obligations which are used to build a house together and used as capital for a joint trading business, in the form of:

- a) The debt to the Plaintiff's parents is IDR 35,000,000 (thirty-five million rupiah);
- b) Debt to sister Siti Endang Wahyuningsih, whose address is Kampung Selang Jati, Rt 002, Rw 003, Wanajaya Village, Cibitung District, Bekasi Regency for IDR5,000,000,- (five million rupiah);
- c) Debt to Bank Rakyat Indonesia (BRI), Tambun Unit Pamor Branch Office, Bekasi Regency I Blok M/01 No. 9, Jl. Raya Bosih Cibitung, amounting to Rp. 40,000,000,- (forty million rupiah);

Regarding joint obligations/debts between the Plaintiff and the Defendant, in this case the Defendant does not want to know, the Defendant only demands to be given rights, without ever wanting to think about obligations for these debts, even though the Plaintiff has repeatedly warned the Defendant that there are These joint assets cannot be separated because previously there were joint debts which were used to build a residence and business in the previous household.

The land and house building which were joint assets before the divorce had been used for joint residence and a place of business in the form of a food stall which had earned a monthly income of approximately IDR 10,000,000 (ten million rupiah) until now. Because joint assets are assets resulting from marriage, so The Plaintiff demands the distribution of the joint assets mentioned above in such a way that half the share goes to the Plaintiff and the other half goes to the Defendant.

In a marriage, the issue of joint property is also one of the factors that often triggers a breakdown in the household, which may occur due to trivial matters. start from disharmony in the relationship and distrust between husband and wifethus giving rise to divorce. Conflicts in marriage that cause a breakdown in the husband and wife relationship or even lead to divorce usually originate from the personalities of the husband and wife and matters closely related to marriage.

Matters regarding property have been stipulated in Article 35 of Law Number 1 of 1974 in conjunction with Law Number 16 of 2019 concerning Marriage which are divided into 3 types, namely based on Article 36 point (1) of Law Number 1 of 1974 in conjunction with Law -Law Number 16 of 2019 concerning Marriage, states that joint property is controlled by husband and wife. The wife or husband can act on joint property based on their agreement. Regarding joint property, the wife and husband have the same obligations and rights. Based on the regulations of Article 37 of Law Number 1 of 1974 in conjunction with Law Number 16 of 2019 concerning Marriage, if a marriage breaks up due to divorce, joint assets are determined according to each respective law.

The meaning of each law is customary law, religious law, or other law. so that, in the event of a divorce, joint assets are divided according to pre-existing laws for husband and wife. Such a rule would likely eliminate the meaning of controlling joint property obtained during marriage. Because the distribution tends to be unequal, which will reduce the wife's share of joint assets.

Joint assets as objects that are used as collateral objects in debt repayment are unified unified assets that cannot be divided and must be considered to remain intact until the debt is repaid. Basically, Law Number 1 of 1974 in conjunction with Law Number 16 of 2019 concerning Marriage, does not recognize the term unified assets as regulated in the Civil Code.

According to Hartono Hadisoeparto, a guarantee is: "Something given to a creditor to create confidence that the debtor will fulfill obligations that can be valued in money arising from an obligation. In the security law system in Indonesia, a mortgage is a guarantee imposed on land rights. Regarding mortgage rights, it is regulated in Law Number 4 of 1996 concerning

Mortgage Rights over Land using objects related to land, hereinafter abbreviated as (UUHT). One of the regulatory principles adopted in the UUHT is the principle of specificity. This principle requires that mortgage rights can only be imposed on specifically designated land.

As emphasized by Subekti, a person who has ownership rights to an object can do anything using the object. the(selling, pawning, giving or even destroying), as long as it does not violate the law or other people's rights. However, in practice, signing the legal owner of an object is sometimes difficult, as a result there can be cases of choosing who actually has authority over the object.

Regarding joint assets that are used as collateral for banking credit, in money lending and borrowing activities that occur in the community, it can be noted that generally it is often required that debt collateral be handed over by the borrower to the lender. Debt collateral can be in the form of goods or objects. With the guarantee provided by the debtor, the creditor will be more confident that there will be repayment from the creditor. Even though Article 8 Paragraph (1) of Law Number 7 of 1992 concerning Banking does not require collateral in providing credit, it prohibits banks from bearing the risks resulting from providing credit.

To ensure security to avoid these risks, there is a necessity to provide a guarantee in the gift credit. Matter This shows that there must be confidence from the bank regarding the existence of security for the bank through guarantees. In this regard, a guarantee is a means of protecting the creditor's security, namely the certainty of repayment of the debtor's debt or the implementation of an achievement by the debtor or by the debtor's guarantor.

During treasure joint assets are used as collateral for debt repayment, then joint assets must be whole and intact, therefore joint assets cannot be divided for any reason, until the debt is repaid. Results of Decision Number 1436/Pdt.G/2017/PA.Ckr is mGranted the Plaintiff's request and stipulated as a matter of law that the goods/properties and debts were shared between the Plaintiff and the Defendant.

States that the joint assets and joint debts must be divided in such a way that half of the share goes to the Plaintiff and the other half to the Defendant, punishes the Defendant to hand over half of the joint assets to the Plaintiff and if the real division of the disputed object cannot be carried out, then this is done auction of all objects of dispute, where the proceeds from the auction of the objects of dispute are divided 2 (two) between the Plaintiff and the Defendant.

Declaring that the requested marital confiscation is valid and valuable, both parties agree that the said assets will be handed over in full to the Plaintiff and Defendant to sell and the existing joint debt will be divided in half to be paid off.

From the explanation above, it can be concluded that the resolution of the case is by selling/auctioning the joint property, namely a plot of land with a building on it to be divided between 2 (two) between the Plaintiff and the Defendant to pay off existing joint debts.

## **CONCLUSION**

After looking at the discussion chapter above, it can be concluded that marriage cannot avoid debts and receivables, whether to meet living needs, for business capital and so on. Joint assets can be made or legitimate (a concept in welcoming the birth of the institution of mortgage rights), Citra Aditya Bakti, Bandung, 1996, p. 233 is used as collateral for credit at banking institutions because joint assets are a sum of money or wealth that has value and is the property of a husband and wife.

A debt and receivable agreement can occur if approval has been obtained by both parties concerned. If after the debt and receivable agreement occurs and the installments are still ongoing but the debtor goes through a divorce process, this does not mean that the position of joint assets as credit collateral changes to joint assets. Because joint assets are still collateral in banking and debts and receivables are obligations of both parties who have agreed, namely the husband and wife. Joint assets will become mutual assets that can be divided if the husband and wife's obligations have been paid in full.

## **SUGGESTION**

Advice from the author who has understood the discussion and conclusions is that before carrying out a marriage, in my opinion, it is important to make a marriage agreement between the bride and groom, husband and wife. This aims to ensure that if something undesirable happens, or worst of all, a divorce, then there will be no dispute regarding the distribution of assets.

A husband and wife couple who have agreed to enter into a debt and receivable agreement with an institution banking by using joint assets as credit collateral, you must comply with the regulations and take full responsibility until the debt obligations are declared paid off.

## **BIBLIOGRAPHY**

Abdul Kadir Muhammad, Property Law, Citra Aditya Bakti, 1994, Bandung

Andie Hartanto, Marital Property Law, Cet. 2, Laksbang Graphics, Yogyakarta, 2012, p.15

- Djuhaendah Hasan, Institution of material guarantees for land and other objects attached to the land in the concept of implementing the principle of horizontal separation (a concept in welcoming the birth of the institution of mortgage rights), Citra Aditya Bakti, Bandung, 1996, p. 233
- Happy Susanto, Gono-Gini's Division of Assets When Divorce Occurs, Visi Media, Jakarta, 2008
- Herowati Poesoko, Parate Executie Object of Mortgage Rights (Inconsistency of Norm Conflicts and Reasonable Reasoning in UUHT), Laks Bang PRESSindo, Yogyakarta, 2007, Page. 32
- M. Anshary, Joint Assets in Marriage and Their Problems, Bandung, 2016, Mandar Maju, Page. 29
- Soemiyati, Islamic Marriage Law and Marriage Law, Sixth Printing, Liberty, Yogyakarta, 2007, Page 12
- Sonny Dewi Judiasih, Marital Property (Study of Equality of Rights and Position of Husband and Wife regarding Ownership of Assets in Marriage), PT. Refika Aditama, Bandung, 2015, Pg. 73
- Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage
- Wasmadan Wardah Nuroniyah, Islamic Marriage Law in Indonesia, Teras Yogyakarta, 2011, Page. 213