

Legal Implications on Credit Agreements for Couple and Wife in Marriage Agreements After Marriage

Adessya Thalia Chairunissa¹, Liza Priandhini²
adessyatch@gmail.com¹, lizapriandhini@gmail.com²

^{1, 2}Fakultas Hukum, Universitas Indonesia.

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Abstract

A marriage that is legally carried out by husband and wife will have legal consequences for both parties that have an impact on the legal relationship between the two, including property in marriage. In this case, the Civil Code and the Marriage Law recognize the concept of "Marriage Agreements" to regulate the management and use of assets in marriage, whether they are inherited or joint assets. A marriage agreement made by a husband and wife is binding on both parties who made it and will apply to a third party as long as the party is involved. The problem in this study is how the legal implications of post-marital marriage agreements affect credit agreements made by married couples and the legal consequences of post-marital credit agreements on guarantees given by husband and wife to the bank. Based on this research, it can be concluded that: (1) The legal implications of post-marital marriage agreements on credit agreements made by married couples depend on the registration of the marriage agreement. If the marriage agreement is not registered, it will not affect the credit agreement. However, if the agreement is registered, it will have a significant impact on the legal standing of the debtor, the certainty of debt guarantees, and legal protection for the bank. In essence, the debtor cannot be written off in a credit agreement solely because a marriage agreement is made. (2) If a husband and wife bind themselves in a credit agreement, the guarantee provided can be in the form of joint assets they have. If the assets are still insufficient to pay off the debt, the bank can take legal action in the form of Actio Paulina..

1. Introduction

Humans are social creatures who always live side by side with other humans and have the desire to have offspring . This desire is realized by means of marriage. Marriage is a legal relationship recognized by the state that arises between a man and a woman who have the goal of eternal life. ¹ Marriage is seen as sharing a life together between a man and a woman who meet certain conditions. Basically, marriage is an agreement that binds people physically and mentally and is based on faith.

Marriage in Indonesia is now regulated by Law Number 1 of 1974 concerning Marriage (hereinafter referred to as the Marriage Law), which defines marriage 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 based on the One Godhead. Almighty. ² Subekti also expressed the opinion that marriage is a legal relationship between a man and a woman for a long time.³

This inner bond begins with the consent on the voluntary basis of the couple who will marry.⁴ Therefore, referring to the explanation of Article 6 Paragraph 1 of the Marriage Law, marriage cannot be carried out under coercion. If it is done under duress, the goal and purpose of marriage, namely to form an eternal and happy family, cannot be realized. Marriage is also considered valid if it has been carried out according to the laws of each religion or belief and must be registered. This is intended for administrative purposes, providing guarantees for the protection, enforcement, and fulfillment of human rights.

Prior to the existence of the Marriage Law, which regulates marriage in Indonesia, marriage law referred to the Civil Code (hereinafter referred to as the Civil Code). But even though marriage is governed by the Marriage Law, the Civil Code can still be used as a supplement to the Marriage Law if the Marriage Law doesn't cover something. Then, the implementation of marriage provisions in the Civil Code or the Marriage Law is further regulated in Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage (hereinafter referred to as PP Number 9 of 1975). In 2016, several provisions in the Marriage Law were amended through Constitutional Court Decision Number: 69/PUU-XII/2015 (hereinafter referred to as Constitutional Court Decision Number: 69/PUU-XII/2015).

Marriage has legal consequences for both parties, namely the husband and wife. These consequences also have an impact on the legal relationship between the two parties, the status of children in marriage, inheritance, and marital property. ⁵ Regarding marital property, Article 119 of the Civil Code has stipulated that starting from the time the marriage occurs, by law there will be a unanimous mixing of assets. (*algehele gemeenschap van goederen*) between husband

¹ R. Soetojo Prawirohamidjojo, *Person Law and Family Law* , (Bandung: Alumni, 1985), p. 31.

²Indonesia, Law No. 1/1974 concerning Marriage, LN No. 1, 1974, TLN No. 3019, Article 1.

³ Subekti, *Principles of Civil Law* , (Bandung: PT. Intermasa, 1992), p.1.

⁴ K. Wantjik Saleh, *Indonesian Marriage Law* , Fourth Printing, (Jakarta: Ghalia Indonesia, 1976), p. 15.

⁵Sonny Dewi Judiasih, *Marital Property*, (Bandung: PT. Refika Aditama, 2015), p. 3.

and wife.⁶ Therefore, the Civil Code adheres to the flow of the unity of property which causes the formation of joint property. Joint assets can be interpreted as all assets brought by husband and wife into marriage as well as assets obtained during the marriage.

On the other hand, the Marriage Law distinguishes property in marriage into joint property and innate property. Article 35 of the Marriage Law defines joint property as property acquired during marriage. Meanwhile, innate property is the respective property owned by the husband or wife obtained as a grant or inheritance. Inheritance or grant if obtained during the marriage, it will remain the property of each. Ownership of innate property is in the control of each party as long as the parties do not specify otherwise.

As legal subjects who have rights and power over their assets, husbands and/or wives can take legal actions to manage and develop their assets. Some legal actions include giving leases, buying and selling acts, or binding in credit agreements with third parties. The third party in the binding credit agreement is often occupied by the bank as the creditor. Article 36 of the Marriage Law also states that:

“(1) Regarding joint property, husband or wife may act with the consent of both parties; and (2) Regarding each other's property, husband and wife have the full right to take legal actions regarding their property.

The definition of credit agreement is not explicitly spelled out in the laws and regulations. Wirjono Prodjodikoro defines an agreement as a legal relationship regarding assets between two or more legal subjects in which one party promises or at least can be considered as promising to perform an act. Meanwhile, the other party has the right to demand the implementation of the promise.⁷ Then, credit is defined in Article 1 number 11 of Law Number 10 of 1998 concerning Banking which is the provision of money or an equivalent claim based on a loan agreement and agreement. An agreement is made between the bank and the debtor which gives legal consequences, namely, the debtor must repay the debt after a certain period of time accompanied by the provision of interest.

Borrowing and lending activities in practice often require the delivery of debt guarantees by the debtor to the bank. Collateral can be in the form of movable property, immovable property, or an individual guarantee. The guarantee is either a material guarantee or in the form of a debt guarantee promise. The material guarantee will provide material rights to the bank as the creditor.⁸ If a husband and wife bind themselves in a credit agreement, the collateral provided can be in the form of joint assets they have.

To regulate the management and use of assets in marriage, whether they are innate or joint, the Civil Code and the Marriage Law recognize the concept of

⁶ The Civil Code [Burgelijk Wetboek], (hereinafter KUHPER) was translated by R. Subekti and R. Tjitrosudibio, (Bandung: Balai Pustaka, 1992), Ps. 119.

⁷ Wirjono Prodjodikoro, *Civil Law on Certain Agreements*, (Bandung: Sumur, 1981), p. 11.

⁸ Gregorio Terok, “The Function of Collateral in Lending”, *Lex Privatum*, Vol.1, No.5, November 2013, p.203

"Marriage Agreement." A marriage agreement is an agreement made or made by the prospective bride and groom that aims to regulate the rights and obligations of husband and wife on assets in marriage, namely, inherited assets, assets obtained during the marriage, and assets obtained before the marriage takes place. Marriage agreements are discussed in Article 29 of the Marriage Law, namely:

(1) At or before the marriage takes place, the two parties with mutual consent may enter into a written agreement ratified by the marriage registrar, after which the contents shall also apply to the said third party; (2) The agreement cannot be ratified if it violates the boundaries of law, religion, and morality ; (3) The agreement comes into force from the time the marriage takes place ; and (4) During the marriage, the marriage agreement cannot be changed unless from both parties there is an agreement to change it and the change does not harm a third party ."

Currently, marriage agreements can not only be made before the marriage but can also be made after the marriage takes place. Marriage agreements made after marriage (postnuptial agreements) are not taboo for the people of Indonesia. This is because some couples feel the need to make a marriage agreement at the time of the marriage to protect the interests of both parties or each party.

After the issuance of the Constitutional Court Decision Number: 69/PUU-XII/2015, where the decision contains an application to ratify the marriage agreement even though the marriage has already taken place, One of the rulings stated that at the time of marriage, before the marriage took place, or during the marriage bond, both parties, upon mutual consent, may submit a "written agreement," which is approved by the marriage registrar or notary. The substance of the ratified agreement also applies to third parties, as long as the parties are still stuck. The written agreement in question is a marriage agreement. Making a marriage agreement has an impact, one of which is for third parties who may feel that there are clauses in the marriage agreement that are detrimental to their interests or have other impacts on married couples. Thus, the author is interested in discussing this topic further and raising this discussion into a thesis entitled "Legal Implications on Credit Agreements for Married Couples in Marriage Agreements After Marriage."

2. Research Method

Research methodology has a significant function in finding information or data needed in solving various problems that aim to provide solutions to these problems, as Suhartono's opinion "research method is a comprehensive way or strategy to obtain the required data".⁹ In This research uses normative juridical research methods, namely where the research carried out emphasizes the use of

⁹Irawan Suhartono. *Social Research Methods; A Research Technique in the Field of Social Welfare and other Social Sciences*. (Bandung: Youth Rosda Karya, 2002), p. 9.

written legal norms which are supported by the results of interviews with resource persons and/or informants.¹⁰The author will conduct interviews with the Bank as an informant and a Notary as a resource person who has faced problems regarding married couples who get credit facilities from the Bank and on their way to make post-marital agreements. In this study, judging from the nature of the type of research used is explanatory, namely research that describes and explains the symptoms that arise from the subject matter by seeking answers to problems by examining legal sources.¹¹ Secondary data has a role in the assessment carried out in research, namely to obtain information and as the main data used in answering the problems that exist in this research through library research. Secondary data in the field of law is seen from three angles of binding strength, namely primary legal material, secondary legal material and tertiary legal material. In this study, the types of data used are as follows:

a. Primary legal materials

Primary legal materials are binding legal materials and are obtained from several relevant legal regulations. In this legal research, the primary legal materials used are:

- 1) Code of Civil law
- 2) Law Number 1 of 1974 concerning Marriage
- 3) Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage

b. Secondary legal material

Secondary legal materials are all publications about law that are not official documents.¹²The secondary legal materials used by the authors are books on topics closely related to this research, journals, research results, theses, legal literature, as well as other sources of secondary legal materials related to the topic of the research problem.

c. Tertiary legal materials

¹⁰Soerjono Soekanto and Sri Mamudji, *Normative Legal Research A Brief Review*, Ed. 1, Cet.8, (Jakarta: Raja Grafindo Persada, 2005), p. 13-14.

¹¹ Soerjono Soekanto, *Introduction to Legal Research* , Cet. 3., (Jakarta: University of Indonesia (UI – Press), 2010), p. 42.

¹²Peter Mahmud Marzuki, *Legal Research* , (Jakarta: Prenadamedia Group, 2014), p. 182

Tertiary legal materials are instructions or explanations to support primary legal materials or secondary legal materials.¹³ Tertiary legal materials used on internet sites, legal dictionaries.

The data collection tool in this research is a document study conducted to obtain secondary data with a qualitative data analysis method where it provides an overview and explains in detail and depth.¹⁴

3. Results and Discussion

Legal Implications for Post-Marriage Marriage Agreements With Credit Agreements Made by Husband and Wife

The Constitutional Court's decision Number : 69/PUU-XII/2015, has an impact on Article 29 of the Marriage Law, so that the sound also changes, becoming:

- 1) At or before the marriage takes place or during the marriage, both parties with mutual consent can submit a written agreement which is legalized by the marriage registrar or notary, after which the contents also apply to the third party involved.
- 2) The marriage cannot be legalized if it violates the boundaries of law, religion, and morality.
- 3) The agreement takes effect from the time the marriage takes place, unless otherwise specified in the marriage agreement.
- 4) As long as the marriage takes place, the agreement can be regarding marital property or other agreements, it cannot be changed or revoked, unless from both parties there is an agreement to change or revoke and the change or revocation does not harm a third party .

If it is associated with a third party or an agreement made with a third party, it can be concluded that a marriage agreement can be made at the time of the marriage, before the marriage takes place, or during the marriage by obeying the boundaries of law, religion, and decency. If the agreement is to be changed or revoked, then the act must not harm a third party. This also applies to banks as third parties who make credit agreements with husband and wife. The credit agreement is a loan agreement between the bank, in this case as a creditor, and another party as a debtor, in which the debtor has an obligation to pay off the debt and has a certain period of time with the provision of interest. This refers to the definition of credit in Article 1 Number 11 of Law Number 10 of 1998, namely, credit is defined as the provision of money or an equivalent claim, based on an

¹³Zainuddin Ali, *Legal Research Methods* , (Jakarta: Sinar Graphic, 2017), pp. 24

¹⁴ Mukti Fajar and Achmad Yulianto, 2015, *The Dualism of Normative & Empirical Legal Research* , (Yogyakarta: Pustaka Pelajar), p. 283.

agreement or loan agreement between a bank and another party that requires the borrower to pay off the debt after a certain period of time with interest.¹⁵

The form of the postnuptial agreement is still made the same as the prenuptial agreement, which is made by hand or by a notarial deed. The contents of the two agreements remain the same, containing all matters deemed necessary to safeguard the rights and interests of both parties, for example, regarding property, division of roles in the household, accounts payable, and so on. The marriage agreement also has benefits for both parties, such as legally protecting the property of both parties and easily being able to distinguish which is the property of Gono-Gini and which is the personal property of each.

A marriage agreement made by a husband and wife is binding on both parties who made it and will apply to a third party as long as the party is involved. In essence, the parties bound by this marriage agreement will get legal protection. Particularly the parties involved in a husband and wife's property in a marriage.

A marriage agreement, on the other hand, can result in losses if it is made in bad faith. One of the parties that can be harmed is a third party, namely the bank. The legal implications of post-marital marriage agreements on credit agreements made by husband and wife depend on the registration of the marriage agreement. If the marriage agreement is not registered, it will not affect the credit agreement. However, if the agreement is registered, it will have a significant impact on the legal standing of the debtor, the certainty of debt guarantees, and legal protection for the bank. Article 152 of the Civil Code states that:

"The provisions contained in the marriage agreement, which contain deviations from the union according to the Law in whole or in part, will not apply to third parties, before the day the provisions are recorded in a general register, which must be held for that at the Registrar's Office at the District Court. , in which the legal area of the marriage has been carried out, or, if the marriage takes place abroad, at the registrar where the marriage certificate was recorded."

The Postnuptial Agreement starts retroactively, starting from the time the marriage takes place. Thus, the assets that have been obtained during the marriage, along with the existing debts and burdens throughout the marriage, which were obtained before the postnuptial agreement was made, do not change and cannot be changed by the marriage agreement. Legal consequences of postnuptial agreements The agreement may not be retroactive, even if it is declared valid from the time the marriage takes place.

This is also related to the prohibition on transferring or transferring rights between the two husband and wife parties, as stated in Civil Code Articles 1467

¹⁵ Indonesia, Law No. 10/1998 on Banking, LN No. 182, 1998, TLN No. 3790, Article 1.

and 1678, which prohibit buying and selling or granting during the sale and purchase. If one day the husband and wife want to make the postnuptial agreement, while at the same time the inn performs the separation and distribution of the assets that have been obtained, it can be done by submitting an application for the separation and distribution of assets through a court order. After completing this stage and receiving a judge's determination, it is only recommended that the marital property be separated and distributed before a Notary.

In terms of whether or not the marriage agreement is recorded by a third party, it is also regulated in Article 29 Paragraph (1) of the Marriage Law, and Article 12 Letter H of PP No. 9 of 1975. This provision states that the marriage agreement will apply to a third party after being ratified by the registrar, which is then recorded in the marriage certificate. Through Constitutional Court Decision Number 69/PUU-XIII/2015, the recording and ratification of marriage agreements can be submitted to anyone, not just marriage registrar employees. However, it is also submitted to a notary.

As long as the marriage agreement has not been recorded and ratified, the bank may consider the marriage to take place without separation of assets. However, if the bank does not know that the marriage agreement is not registered and legalized, then the bank can assume that the husband and wife are married without separation of assets. Then, if the bank finds out that the marriage agreement owned by the husband and wife related to him is not registered and ratified, he cannot assume that there is no marriage agreement between the husband and wife, so that if there is a debt between the husband and/or wife and the bank, the settlement of the debt is carried out by involving the joint assets owned by the husband and wife.¹⁶

Therefore, before a post-nuptial marriage agreement is made, it is important to make an announcement in advance to find out whether there are parties who object or feel aggrieved. In addition, after the announcement is made, if a husband and wife want to enter into a credit agreement with the Bank, a recapitulation of assets must be carried out. The recap of assets in this case is the assets owned starting from the marriage, until the credit agreement is made and there must be a clear division of the assets of gono-gini.

R. Soetojo Prawirohamidjojo and Marthalena added that if a husband and wife do not want the bank to be involved in the marriage agreement, then the entire marriage agreement does not have to be registered and ratified. Husband and wife can also register and ratify only certain provisions in the general register if they want only certain provisions that apply to the bank. These things are left to

¹⁶ Dian Trisna Dewi, " Legal Consequences of Registration of Marriage Agreements on Third Parties According to Positive Law", *Journal of Law and Notary*, Vol.2, No.2, 2018, p.40

the husband and wife on which terms they will register. Husband and wife are not required to register, as long as they are willing to bear the consequences.¹⁷ In addition to binding on banks, recording in the general register is also intended to fulfill the principle of publicity, namely notification to banks outside the husband and wife to comply with the marriage agreement made. If the marriage agreement is not registered, then the marriage agreement is only valid internally which only binds the parties who made it.¹⁸

The credit agreement and its collateral that have been signed by the debtor remain binding, valid, and do not cancel anything in connection with the post-marriage separation agreement. Therefore, whether or not the credit agreement and guarantee are renewed will return to the Bank's own provisions. From an administrative point of view, it is better to change it. However, in practice in the field, changes are made in conjunction with other changes such as addendums to terms, conditions, and so on.¹⁹

The existence of a post-marital separation agreement is an informative matter. If you look at the facts in the field at Bank IBK Bank, indeed there is no married couple who has credit facilities and after that, they made an agreement to separate their assets after marriage and made an announcement to the Bank.²⁰ It is different from the facts at Bank Sinarmas, that this *Postnuptial Agreement* is indeed informative, so that if there is no notification from the debtor to the Bank, the Bank will not know about it. Therefore, to mitigate risks that may arise in the future, the Bank may include a *covenant clause* in the credit agreement, which essentially means that whatever changes experienced by the debtor (including the post-marital separation agreement) are obligated to notify the Bank and remain obligated to do so. to be signed jointly.²¹

Legal Consequences of Post-Marriage Credit Agreements on Collaterals Given by Husband and Wife to Banks

The guarantee given must refer back to the marriage agreement itself. The assets that have been owned starting with the marriage until the marriage agreement deed is made after the marriage will be included in the mixed assets section or

¹⁷ R. Soetojo Prawirohamidjojo and Marthalena Pohan, *Person and Family Law (Personen en Familie – Recht)*, Cet.I, (Surabaya: Airlangga University Press, 2000), p.83

¹⁸ Hauna Nur Aziza, Liza Priandhini, Akhmad Budi Cahyono, "Legal Consequences on Third Parties for Underhand Marriage Agreements Legalized by Notaries After Divorce (Study of High Court Decisions DKI. Jakarta Number 477/PDT/2019/PT.DKI.)", *Notary Indonesia*, Vol.2, No.2, 2020, p.241

¹⁹ Interview with Anggi Laura as Legal Consultant at Bank Sinarmas on July 15, 2022 at 19.00 WIB via Zoom Video Call.

²⁰ Interview with Tommy Putra Pertama as Branch Manager at Bank IBK Bank on 27 June 2022 at 19.00 WIB on Jalan Kemang Selatan 1D.

²¹ Interview with Anggi Laura as Legal Consultant at Bank Sinarmas on July 15, 2022 at 19.00 WIB via Zoom Video Call

not. Therefore, husband and wife must give mutual consent. This is because the post-marital marriage agreement is not retroactive, which means that the separation of new assets applies to assets that will be obtained after the post-nuptial agreement is made. For assets that have been obtained by a husband and wife prior to the existence of this post-nuptial agreement, they will be considered joint property. If the post-nuptial agreement does not apply retroactively, it must do a recapitulation of assets with a court order, and the assets obtained will be considered gono-gini assets, or the assets are separated, or the assets must be explained about the gono-gini assets. In addition, it must be seen who the debtor is – whether the debtor is the husband or wife. If the party who becomes the debtor is the husband and the assets are separated in the name of the wife, then the credit agreement must be added to, novated, or changed for the debtor to make it more perfect.

Herlien Budiono states:

"If a husband and wife make a marriage agreement throughout the marriage, while the agreement is declared valid from the time of the marriage, then there has been mixed assets formed. In such a situation it is not possible to divide the mixed assets so that from the time of marriage until the date the marriage is made it remains a mixed property, whereas since the marriage agreement the assets are separated."²²

When the husband and wife register and ratify the agreement, credit agreements and banks will accept that the legal effects of marriage agreements change after the wedding. Legal effects include the possibility of switching debtors, recalculating debt guarantees, and/or carrying out guarantees. In essence, the debtor cannot be written off in a credit agreement solely because a marriage agreement is made. The debtor still has an obligation to fulfill his achievements. If the debtor is unable to meet its obligations for any reason other than "force majeure," it is said to be in default. You can be in default if you don't reach your goals at all, if you're late reaching your goals, or if you reach your goals but not in the way that was promised.²³

Debtor turnover can be seen as a change in the legal status of the person who is getting the credit. If the debtor is a husband who got his wife's permission before signing the credit agreement, he or she can change to a husband on his own position or a wife on her own position after the marriage agreement is finalized. It depends on the substance of the marriage agreement drawn up and agreed

²² Herlien Budiono, *Thus This Deed , Questions and Answers Regarding the Making of Notary Deeds in Practice* , p. 93

²³ San Smith, *Legal Consequences for Creditors With a Marriage Agreement Made Based on the Decision of the Constitutional Court No. 69/Puu-Xii/2015 Dated October 27, 2016 That Has Been Valid Since the Marriage Was Held*, Thesis, Faculty of Law, University of North Sumatra, 2019, p.78

upon by husband and wife. Marriage agreements that are commonly agreed upon include, among others:²⁴

1. The right of the wife to take care of her personal property, both movable and immovable property and with the right to enjoy the results and income from her own work or other sources;
2. The authority of the wife in managing her property so that she does not require assistance or transfer of power from her husband;
3. Revocation of wills, as well as other provisions that can protect the wealth and continuation of the husband and wife's business;
4. Inherited property in marriage. These innate assets include assets obtained from the business of husband and wife as well as from grants, inheritance, or gifts obtained by each during the marriage; and
5. All debts and receivables brought in by marriage. These debts will be the responsibility of each or become a joint responsibility with certain limitations.

Even though there has been a change of debtor, the bank still has the right to get repayment. The fulfillment of such obligations is carried out by paying attention to the contents of the marriage agreement, who is the party appointed to pay off the debt. Debt repayment can be delegated to the husband or to the wife in accordance with the agreement. This happens because in essence the marriage agreement is intended to separate joint assets into the personal property of each husband and wife and can also separate joint debts, namely debts made at the time of the marriage to become personal debts of each husband or wife. ²⁵This happens because the essence of the application of the marriage agreement in Article 29 of the Marriage Law is about the separation of assets.

Regarding debt in marriage, Subekti distinguishes it into 2 (two), namely, personal debt (private debt) and union debt (*gemeenschap*) . According to Subekti, a personal debt must be paid for by the husband or wife who made the debt. The existence of an opportunity to make a marriage agreement in an ongoing marriage bond will allow a husband and wife to have bad faith in making a marriage agreement that can harm other parties.²⁶

If one of the parties appointed in the marriage agreement to pay off the debt is unable to pay off the debt to the bank, then according to J. Satrio there is a debt responsibility system in the family. The debt is divided into husband's personal

²⁴ Dian Trisna Dewi , *Op., Cit.*, hlm.35

²⁵ San Smith, *Op., Cit.*, p.38

²⁶Intan Pandini, Azmi Fendri, Suharizal, " The Legal Consequences of a Marriage Agreement Made Before a Notary Against Creditors as Third Parties", *Scientific Journal of Light Simultaneous Law*, Vol.25, No.2, December 2018.hlm.232-237

debt, wife's personal debt, and joint debt (family). The accountability system in question is:

"(a) The husband's personal debt is accountable to the husband's property; (b) The wife's personal debt is accounted for to the wife's property; (c) Joint/family debts are accounted for to joint assets; (d) If the joint property is not sufficient then it is charged to the husband's property; and (e) If the husband's property is insufficient or non-existent, it is charged to the wife's property."

These things are legal efforts to minimize the impact caused by the marriage agreement on credit and bank agreements. If the assets are still insufficient to pay off the debt, the bank can take legal action in the form of *actio pauliana*. *Actio pauliana* is a lawsuit for the cancellation of a legal action. In this discussion, the legal act in question is the making of a marriage agreement. Sutan Remi Syahdeni defines *actio pauliana* as a right granted by law to a creditor to submit an application to the court for the cancellation of all actions that are not required to be carried out by the debtor on his assets which are known by the debtor the act is detrimental to the creditor.²⁷ The basis of creditor rights using the *Actio Pauliana principle* as the basis for cancellation is if the creditor can prove that the debt made by husband and wife was obtained before the marriage agreement was made and the marriage agreement was registered with the marriage registrar. Therefore, a third party can demand the cancellation of the marriage agreement because it has harmed the creditor.²⁸

According to Tommy Putra Pertama as *Branch Manager* at IBK Bank, if viewed from the bank's perspective, if the legal efforts still cannot settle the debtor's debt settlement, the bank can execute the collateral provided by the debtor on the basis of default. Husband or wife as debtors in a credit agreement who is proven to have defaulted because they cannot fulfill their obligations to creditors must be responsible for all legal actions that have been carried out. If there is a default, then the husband or wife must give up the assets that are used as collateral in the credit agreement to be executed through several institutions according to the type of guarantee in order to fulfill the debt repayment. One of them is the sale of collateral objects through auctions. If the auction proceeds of the collateral object exceed the amount of debt that must be repaid, the excess proceeds from the sale will be handed over to the husband or wife as debtors. However, if the auction results do not meet the amount to be paid, then the husband or wife again has an obligation to pay off the credit debt of their assets.²⁹

²⁷ Sutan Remy Sjahdeni, *Bankruptcy Law Understanding Law Number 37 of 2004 concerning Bankruptcy, Cet.4*, (Jakarta: Graffiti Main Library, 2009), page 250

²⁸ San Smith, *Op., Cit.*, p.46

²⁹ Interview with Tommy Putra Pertama as Branch Manager at Bank IBK Bank on 27 June 2022 at 19.00 WIB on Jalan Kemang Selatan 1D.

In the event of a default, the Bank may try to save the credit by executing the guarantee. The post-marriage marriage agreement won't stop the Bank from executing the guarantee as long as the guarantee is perfectly bound. So, the Bank doesn't have anything to do with whether or not a married couple splits up their assets. The credit agreement does not need to be renewed for the last step, which is putting the debtor's collateral to use.³⁰ But before the Bank executes the guarantee, which is the last step it will take to save credit, the Bank will notify and/or warn the debtor. If this step isn't taken, the Bank may offer to help the debtor restructure.

4. Conclusion

Based on this research, it can be concluded that: (1) The legal implications of post-marital marriage agreements on credit agreements made by married couples depend on the registration of the marriage agreement. If the marriage agreement is not registered, it will not affect the credit agreement. However, if the agreement is registered, it will have a significant impact on the legal standing of the debtor, the certainty of debt guarantees, and legal protection for the bank. In essence, the debtor cannot be written off in a credit agreement solely because a marriage agreement is made. (2) If a husband and wife bind themselves in a credit agreement, the guarantee provided can be in the form of joint assets they have. If the assets are still insufficient to pay off the debt, the bank can take legal action in the form of Actio Paulina.

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³⁰Ibid.

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