

THE LEGAL IMPLICATIONS OF BANKRUPTCY FOR MARITAL PROPERTY IN THE ABSENCE OF A SEPARATION-OF-PROPERTY AGREEMENT

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Abstract:

Marriage creates legal consequences not only for the personal relationship between spouses but also for the classification, control, and exposure of marital assets to third-party claims. This study examines how Indonesian law regulates marital property and determines the legal consequences when one spouse is declared bankrupt in the absence of a marriage agreement separating property. Using normative or doctrinal legal research, the study applies a statute approach and a conceptual approach to analyse the Marriage Law, the Civil Code, Law Number 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations, and Constitutional Court Decision Number 69/PUU-XIII/2015. The findings show that Indonesian law distinguishes joint property from separate property, and this classification determines the extent to which assets may be subjected to bankruptcy administration. Articles 23 and 64 extend bankruptcy consequences to marriages governed by community of property, while Article 62 preserves the non-debtor spouse's right to reclaim assets that legally remain separate. A marriage agreement may alter the patrimonial structure, including one made during marriage after Constitutional Court Decision Number 69/PUU-XIII/2015, but its effectiveness against creditors depends on validity, timing, opposability, and existing third-party rights. This construction clarifies the legal position of the non-debtor spouse within bankruptcy proceedings. Accordingly, bankruptcy consequences cannot be determined solely by the existence or absence of a marriage agreement, but require an integrated analysis of asset classification, bankruptcy estate boundaries, and creditor protection.

Keywords: Marital Property; Bankruptcy Estate; Non-Debtor Spouse; Marriage Agreement; Creditor Protection.

INTRODUCTION

Marriage creates legal consequences not only for the personal relationship between spouses but also for the ownership, control, and disposition of property. Indonesian marriage law distinguishes property acquired during marriage as joint property from property brought into the marriage and property received individually through gift or inheritance. Article 35 of Law Number 1 of 1974 concerning Marriage, as amended by Law Number 16 of 2019, provides the basic classification, while Article 36 requires mutual consent for legal acts concerning joint

property.¹ This structure places joint property under a regime of shared interests rather than treating every asset owned by either spouse as an undifferentiated estate. The distinction becomes significant when one spouse incurs obligations to third parties because the classification of assets determines which property may be exposed to enforcement. Scholarship on marital property likewise stresses that the legal status and origin of property must first be identified before its treatment within the marital estate can be determined.²

The problem becomes more complex when one spouse is declared bankrupt. Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations regulates bankruptcy involving spouses through, among others, Articles 23, 62, and 64. Article 64 treats the bankruptcy of a husband or wife married in a community of property as bankruptcy of that community, while Article 62 preserves the possibility of reclaiming certain assets that belong personally to the non-bankrupt spouse.³ These provisions create a normative tension with the marital-property regime because the consequences of bankruptcy operate upon a pool of property in which the non-debtor spouse also has a legal interest. The issue therefore concerns more than whether joint property enters the bankruptcy estate; it also concerns the legal basis, scope, and limits of that inclusion. Existing studies identify ambiguity in the terminology of marital property and the potential consequences of bankruptcy for a spouse who did not create the relevant debt.⁴

The legal position of spouses must also be examined in light of the development of marriage agreements in Indonesian law. Article 29 of the Marriage Law originally contemplated agreements made before or at the time of marriage, but Constitutional Court Decision Number 69/PUU-XIII/2015 expanded the provision so that a marriage agreement may also be concluded during the marriage.⁵ Consequently, separation of property can no longer be understood exclusively through the concept of a prenuptial agreement. The decision also affects the temporal operation of such agreements and their relationship with third-party interests, matters that are particularly relevant when creditors have relied on an existing marital-property structure. Legal scholarship after the decision has therefore emphasized both the broader contractual autonomy of spouses and the need to preserve the interests of third parties affected by changes in marital property arrangements.⁶ In bankruptcy, this development requires careful

¹ Indonesia, *Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan*, Lembaran Negara Republik Indonesia Tahun 1974 Nomor 1, Tambahan Lembaran Negara Republik Indonesia Nomor 3019, arts. 35–36; Indonesia, *Undang-Undang Nomor 16 Tahun 2019 tentang Perubahan atas Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan*, Lembaran Negara Republik Indonesia Tahun 2019 Nomor 186, Tambahan Lembaran Negara Republik Indonesia Nomor 6401; Arini Dwiyantri and Syafira Adlina, “Ambiguitas Pengaturan Harta Bersama dalam Dimensi Kepailitan Ditinjau Berdasarkan Asas Keadilan,” *Padjadjaran Law Review* 11, no. 1 (2023): 83–85, <https://doi.org/10.56895/plr.v11i1.1268>.

² Rizki Fadhilah and Sukiati, “Hak Kekayaan Intelektual sebagai Objek Harta Bersama Perspektif Hukum Positif di Indonesia dan Hukum Islam,” *Yustisi* 11, no. 1 (2024): 234–247, <https://doi.org/10.32832/yustisi.v11i1.16207>; Dwiyantri and Adlina, “Ambiguitas Pengaturan Harta Bersama,” 83–85.

³ Indonesia, *Undang-Undang Nomor 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang*, Lembaran Negara Republik Indonesia Tahun 2004 Nomor 131, Tambahan Lembaran Negara Republik Indonesia Nomor 4443, arts. 23, 62, 64; Dwiyantri and Adlina, “Ambiguitas Pengaturan Harta Bersama,” 84–89.

⁴ Dwiyantri and Adlina, “Ambiguitas Pengaturan Harta Bersama,” 84–89; Fatma Munah and Fitra Deni, “Perlindungan Hukum Istri dalam Kepailitan Suami: Studi Kasus Putusan Pengadilan Niaga Semarang No. 01/Pailit/2019/PN.Niaga.Smg.,” *Binamulia Hukum* 13, no. 1 (2024): 277–288, <https://doi.org/10.37893/jbh.v13i1.834>.

⁵ Mahkamah Konstitusi Republik Indonesia, *Putusan Nomor 69/PUU-XIII/2015*, October 27, 2016, https://www.mkri.id/public/content/persidangan/putusan/69_PUU-XIII_2015.pdf; Damian Agata Yuvens, “Analisis Kritis terhadap Perjanjian Perkawinan dalam Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015,” *Jurnal Konstitusi* 14, no. 4 (2017): 799–819, <https://doi.org/10.31078/jk1445>.

⁶ Sonny Dewi Judiasih, Deviana Yunitasari, and Revi Inayatillah, “Model Perjanjian Kawin yang Dibuat Setelah Perkawinan Berlangsung Pasca Berlakunya Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015,” *Masalah-*

attention to when a property-separation arrangement was created and when it became opposable to creditors.

Previous studies have examined the intersection between marital property and bankruptcy from perspectives. Giyanthi, Budiarta, and Ujianti analysed the legal status of marital property when a spouse becomes bankrupt without a marriage agreement, focusing on the consequences for joint and individual assets.⁷ Zuhairroh, Sudiarto, and Wisudawan examined the position of separated property and the effect of a property-separation agreement in bankruptcy proceedings.⁸ Dwiyantri and Adlina identified ambiguity in the terminology of joint property and community of property and questioned the coherence of Bankruptcy Law provisions governing marital assets.⁹ Logika and Anggoro analysed the consequences of a husband's bankruptcy for joint property through Decision Number 510/Pdt.G/2019/PN.Jkt.Sel.¹⁰ Munah and Deni, meanwhile, focused on legal protection for a wife affected by her husband's bankruptcy.¹¹ Taken together, these studies clarify several dimensions of the problem, but the relationship among marital-property classification, the statutory scope of the bankruptcy estate, and the legal position of the non-debtor spouse remains insufficiently articulated as an integrated doctrinal problem.

This article addresses that gap by examining the relationship among Articles 35 and 36 of the Marriage Law, Article 29 as constitutionally interpreted in Constitutional Court Decision Number 69/PUU-XIII/2015, and Articles 23, 62, and 64 of the Bankruptcy Law.¹² The central issue is not assumed in advance to constitute a formal conflict of norms. Instead, the analysis asks how these provisions should be read systematically when bankruptcy affects property that is jointly held while the underlying debt may have been incurred by only one spouse. This distinction is necessary because bankruptcy of a community of property is not conceptually identical to declaring the non-debtor spouse an independent bankrupt debtor. It is also necessary to distinguish joint property from brought-in property, gifts, and inheritances that remain individually controlled unless otherwise agreed. Recent scholarship on postnuptial property separation further shows that changes in marital-property arrangements may produce legal consequences for spouses and third parties, particularly creditors.¹³

Against this background, the study addresses two questions: how Indonesian positive law regulates marital property, and what legal consequences arise for that property when a husband or wife is declared bankrupt in the absence of a marriage agreement separating property. The analysis uses the statutory structure of marital property and bankruptcy as its

Masalah Hukum 47, no. 3 (2018): 252–267, <https://doi.org/10.14710/mmh.47.3.2018.252-267>; Yuvens, “Analisis Kritis terhadap Perjanjian Perkawinan,” 811–817.

⁷ Putu Indri Sri Giyanthi, I Nyoman Putu Budiarta, and Ni Made Puspasutari Ujianti, “Status Hukum Harta Perkawinan Jika Terjadi Kepailitan Suami/Istri Tanpa Adanya Perjanjian Kawin,” *Jurnal Preferensi Hukum* 3, no. 1 (2022): 37–41, <https://doi.org/10.22225/jph.3.1.4621.37-41>.

⁸ Silvia Handayani Zuhairroh, Sudiarto, and I Gusti Agung Wisudawan, “Kedudukan Hukum Pisah Harta Antara Suami dan Istri dalam Kepailitan,” *Commerce Law* 2, no. 1 (2022), <https://doi.org/10.29303/commercelaw.v2i1.1342>.

⁹ Dwiyantri and Adlina, “Ambiguitas Pengaturan Harta Bersama,” 80–90.

¹⁰ Adela Logika and Teddy Anggoro, “Akibat Hukum Kepailitan Suami terhadap Harta Bersama Berdasarkan Putusan Nomor 510/Pdt.G/2019/PN.Jkt.Sel,” *PALAR | Pakuan Law Review* 7, no. 2 (2021): 282–298, <https://doi.org/10.33751/palar.v7i2.4174>.

¹¹ Munah and Deni, “Perlindungan Hukum Istri dalam Kepailitan Suami,” 277–288.

¹² Indonesia, *Undang-Undang Nomor 1 Tahun 1974*, arts. 29, 35–36; Mahkamah Konstitusi Republik Indonesia, *Putusan Nomor 69/PUU-XIII/2015*; Indonesia, *Undang-Undang Nomor 37 Tahun 2004*, arts. 23, 62, 64; Dwiyantri and Adlina, “Ambiguitas Pengaturan Harta Bersama,” 83–89.

¹³ Erina Nur Afifa and Dwi Aryanti Ramadhani, “Penyelesaian Sengketa Pemisahan Harta Bersama Setelah Dibuatnya Perjanjian Kawin dalam Masa Perkawinan,” *Jurnal USM Law Review* 8, no. 3 (2025): 2314–2331, <https://doi.org/10.26623/julr.v8i3.12993>; Judiasih, Yuanitasari, and Inayatillah, “Model Perjanjian Kawin,” 252–267.

principal framework, while the concepts of joint property, community of property, bankruptcy estate, and property separation are employed to clarify the relationship between the two legal regimes.¹⁴ The study aims to determine which categories of marital property may be included in the bankruptcy estate, the legal position of the non-debtor spouse, and the relevance of a marriage agreement after Constitutional Court Decision Number 69/PUU-XIII/2015.¹⁵ By doing so, the article seeks to provide a more precise doctrinal explanation of the boundary between collective marital assets and individual property without reducing the issue to the general proposition that all spousal assets are automatically subject to bankruptcy.

METHOD

This study employs normative or doctrinal legal research to examine the legal construction governing marital property and its treatment in bankruptcy under Indonesian law. Doctrinal legal research focuses on identifying, interpreting, and systematising legal rules and principles contained in authoritative legal materials.¹⁶ The study applies a statute approach and a conceptual approach. The statute approach is used to examine the relationship among Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019, Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, relevant provisions of the Indonesian Civil Code, and Constitutional Court Decision Number 69/PUU-XIII/2015.¹⁷ These legal authorities are examined to determine the classification of marital property, the legal effects of marriage agreements, the scope of the bankruptcy estate, and the statutory position of the non-debtor spouse when bankruptcy occurs within a marriage involving community property.

The conceptual approach is employed to clarify the legal concepts of joint property, community of property, brought-in property, marriage agreements, bankruptcy estates, and the position of the non-debtor spouse. It is used not as an independent theoretical framework, but to prevent the conflation of concepts originating from different legal regimes.¹⁸ Primary legal materials consist of statutes, the Civil Code, and the relevant Constitutional Court decision, while secondary legal materials comprise peer-reviewed journal articles and established legal scholarship concerning marital property and bankruptcy. The materials are collected through document study and analysed qualitatively through statutory interpretation, conceptual clarification, and systematic interpretation of the relationship among the relevant provisions.¹⁹ The analysis proceeds by identifying the applicable rules, distinguishing the legal categories of marital assets, examining their interaction with bankruptcy provisions, and constructing a coherent interpretation of the extent to which jointly held and individually owned property may be affected by bankruptcy.

¹⁴ Dwiyanti and Adlina, "Ambiguitas Pengaturan Harta Bersama," 83–89; Giyanthi, Budiarta, and Ujianti, "Status Hukum Harta Perkawinan," 37–41.

¹⁵ Yuvens, "Analisis Kritis terhadap Perjanjian Perkawinan," 799–819; Judiasih, Yuanitasari, and Inayatillah, "Model Perjanjian Kawin," 252–267; Afifa and Ramadhani, "Penyelesaian Sengketa Pemisahan Harta Bersama," 2314–2331.

¹⁶ Yuvens, "Analisis Kritis terhadap Perjanjian Perkawinan," 799–819; Judiasih, Yuanitasari, and Inayatillah, "Model Perjanjian Kawin," 252–267; Afifa and Ramadhani, "Penyelesaian Sengketa Pemisahan Harta Bersama," 2314–2331.

¹⁷ Indonesia, *Undang-Undang Nomor 1 Tahun 1974*, arts. 29, 35–36; Indonesia, *Undang-Undang Nomor 16 Tahun 2019*; Indonesia, *Undang-Undang Nomor 37 Tahun 2004*, arts. 23, 62, 64; Mahkamah Konstitusi Republik Indonesia, *Putusan Nomor 69/PUU-XIII/2015*.

¹⁸ Hutchinson and Duncan, "Defining and Describing What We Do," 101–106; Dwiyanti and Adlina, "Ambiguitas Pengaturan Harta Bersama," 83–89.

¹⁹ Hutchinson and Duncan, "Defining and Describing What We Do," 101–110; Terry Hutchinson, "The Doctrinal Method: Incorporating Interdisciplinary Methods in Reforming the Law," *Erasmus Law Review* 8, no. 3 (2015): 130–138, <https://doi.org/10.5553/ELR.000055>.

ANALYSIS AND DISCUSSION

The Legal Construction and Classification of Marital Property under Indonesian Law

The legal construction of marital property in Indonesia begins with the classification established by Law Number 1 of 1974 concerning Marriage. Article 35 distinguishes property acquired during marriage, which becomes joint property, from property brought into the marriage and property obtained individually through gift or inheritance, which remains under the control of the respective spouse unless the parties determine otherwise. This statutory distinction makes the source and time of acquisition legally relevant to the status of an asset. Article 36 then regulates authority over those categories: legal acts concerning joint property require the consent of both spouses, whereas each spouse retains authority over separate property.²⁰ Scholarship on marital assets similarly treats classification and control as related but distinct questions, because an asset must first be identified as joint or separate before the applicable authority over it can be determined.²¹ The Marriage Law therefore establishes the patrimonial structure against which later questions of liability and enforcement must be assessed.

The relationship between the Marriage Law and the Civil Code must, however, be constructed carefully. Article 119 of the Civil Code provides for a general community of property from the moment of marriage unless the spouses validly agree otherwise, whereas Article 35 of the Marriage Law limits joint property to assets acquired during marriage and preserves brought-in property, gifts, and inheritances as separate property. These provisions therefore do not establish identical property regimes. Article 66 of the Marriage Law further provides that earlier provisions contained in the Civil Code and other pre-existing marriage regulations cease to apply insofar as the relevant matters have been regulated by the Marriage Law.²² This clause prevents Article 119 from being treated as an automatic parallel rule for matters already governed by Article 35. Legal scholarship comparing the two regimes likewise identifies a substantive difference between the Civil Code's general community and the more limited statutory conception of joint property under the Marriage Law.²³

Within the Marriage Law regime, the principal criterion for identifying joint property is whether the asset was acquired during the subsistence of the marriage. Article 35(1) classifies property acquired during marriage as joint property, while Article 35(2) preserves brought-in property and property received individually through gift or inheritance under the control of the respective spouse, unless otherwise determined by the parties.²⁴ This distinction shows that marital status alone does not convert every asset associated with either spouse into joint property. Studies concerning marital assets likewise emphasize the relevance of the origin and mode of acquisition when determining whether property belongs to the joint estate or remains individually controlled.²⁵ The classification has consequences beyond internal relations

²⁰ Indonesia, *Undang-Undang Nomor 1 Tahun 1974*, arts. 35–36.

²¹ Tasya Putri Rachman, Bambang Eko Turisno, and Rahandy Rizki Prananda, “Tinjauan Yuridis terhadap Pembagian Harta Kekayaan dalam Perkawinan Bila Terdapat Hibah Menurut Undang-Undang No. 1 Tahun 1974 dan KUHPerdata (Studi Putusan Pengadilan Negeri Batam No. 325/Pdt.G/2018/PN Btm),” *Diponegoro Law Journal* 11, no. 2 (2022), <https://doi.org/10.14710/dlj.2022.33600>.

²² *Kitab Undang-Undang Hukum Perdata (Burgerlijk Wetboek)*, art. 119; Indonesia, *Undang-Undang Nomor 1 Tahun 1974*, arts. 35, 66.

²³ Roni Dianto, Trinas Dwi Hariyana, and David Novan Styawan, “Colonial Legacy and Gender Inequality in Marital Property Law: A Critical Analysis of Article 119 of the Indonesian Civil Code,” *Journal of Judicial Review* 27, no. 2 (2025): 721–746, esp. 736–737, <https://doi.org/10.37253/jjr.v27i2.11921>.

²⁴ Indonesia, *Undang-Undang Nomor 1 Tahun 1974*, art. 35; Rachman, Turisno, and Prananda, “Tinjauan Yuridis terhadap Pembagian Harta Kekayaan.”

²⁵ Justicia Firdaus Kurniawan, Dominikus Rato, and Moh. Ali, “Mixed Marriage Law on Marital Property Due to Divorce,” *MIMBAR YUSTITIA: Jurnal Hukum dan Hak Asasi Manusia* 8, no. 2 (2024): 111–123, <https://doi.org/10.52166/mimbar.v8i2.8052>; Rachman, Turisno, and Prananda, “Tinjauan Yuridis terhadap Pembagian Harta Kekayaan.”

between spouses because execution, security, and bankruptcy can operate only after the legal status of the relevant asset has been identified. Accordingly, classification functions as a patrimonial boundary that determines which assets belong to the marital community and which remain attributable to an individual spouse.

Property classification must also be distinguished from authority to perform legal acts over the property. Article 36(1) of the Marriage Law requires the consent of both spouses for acts concerning joint property, whereas Article 36(2) allows each spouse to act independently with respect to separate property.²⁶ The provision therefore connects legal authority to the preceding classification under Article 35 without merging the two issues. Research on the use of joint property as collateral demonstrates the practical significance of this distinction, particularly when one spouse attempts to encumber an asset forming part of the joint estate.²⁷ The requirement of consent protects the shared proprietary interest of both spouses in voluntary dispositions of joint assets. It should not, however, be assumed that the same consent requirement determines the consequences of bankruptcy, because bankruptcy operates through a distinct statutory mechanism. This distinction provides an important limit on how Article 36 should later be read together with the Bankruptcy Law.

The statutory property regime may be modified through a marriage agreement. Article 29 of the Marriage Law originally contemplated agreements made before or at the time of marriage, but Constitutional Court Decision Number 69/PUU-XIII/2015 interpreted the provision to permit agreements before, at the time of, or during marriage.²⁸ The decision also reformulated provisions concerning the commencement and modification of such agreements and expressly preserved the interests of affected third parties. Separation of property can therefore no longer be analysed exclusively through the category of a prenuptial agreement; postnuptial arrangements are also legally possible. Scholarship following the decision identifies creditor and third-party protection as a central issue because changes to marital-property arrangements may affect assets previously understood to belong to the joint estate.²⁹ A marriage agreement must therefore be examined not only as an expression of spousal autonomy but also in relation to its temporal effect and opposability to third parties.

Taken together, Articles 29, 35, and 36 establish a layered structure that must be determined before bankruptcy consequences can be analysed. The first layer is classification: whether an asset constitutes joint property or separate property. The second is authority: whether a legal act concerning that asset requires participation or consent from both spouses. The third is contractual modification: whether the statutory arrangement has been altered through a valid marriage agreement and whether that alteration is effective against third parties.³⁰ Scholarship on marital assets in bankruptcy shows that ambiguity arises when joint property, community of property, and separate property are used without first identifying their respective statutory bases.³¹ The Bankruptcy Law therefore encounters a pre-existing

²⁶ Indonesia, *Undang-Undang Nomor 1 Tahun 1974*, arts. 35–36.

²⁷ Vindria Shafa Clarissha, Recca Ayu Hapsari, and Yulia Hesti, “Kedudukan Harta Bersama yang Dijadikan Objek Jaminan Hak Tanggungan dalam Hutang Piutang dan Dieksekusi oleh Pengadilan (Studi Putusan Nomor 13/Pdt.Bth/2021/PN Tjk),” *IBLAM Law Review* 2, no. 1 (2022): 52–72, esp. 54–55, <https://doi.org/10.52249/ilr.v2i1.51>; Indonesia, *Undang-Undang Nomor 1 Tahun 1974*, art. 36.

²⁸ Mahkamah Konstitusi Republik Indonesia, *Putusan Nomor 69/PUU-XIII/2015*, amar mengenai Pasal 29 ayat (1), (3), dan (4); Yuvens, “Analisis Kritis terhadap Perjanjian Perkawinan,” 799–819.

²⁹ Yudiana Dewi Prihandini, “Perlindungan Hukum terhadap Pihak Ketiga atas Perjanjian Perkawinan yang Dibuat Setelah Perkawinan,” *Lex Renaissance* 4, no. 2 (2019): 354–366, esp. 364–365, <https://doi.org/10.20885/JLR.vol4.iss2.art9>; Yuvens, “Analisis Kritis terhadap Perjanjian Perkawinan,” 799–819.

³⁰ Indonesia, *Undang-Undang Nomor 1 Tahun 1974*, arts. 29, 35–36; Mahkamah Konstitusi Republik Indonesia, *Putusan Nomor 69/PUU-XIII/2015*.

³¹ Elvina Elvina and Ari Wahyudi Hertanto, “Postnuptial Agreement Versus Kepentingan Kreditor,” *UNES Law Review* 6, no. 2 (2023): 4560–4574, <https://doi.org/10.31933/unesrev.v6i2.1290>; Dwiyantri and Adlina, “Ambiguitas Pengaturan Harta Bersama,” 80–90.

patrimonial structure rather than an undifferentiated body of “spousal property.” Establishing that structure is the necessary analytical starting point for determining the scope of the bankruptcy estate and the legal position of the non-debtor spouse in the next stage of analysis.

The Scope of the Bankruptcy Estate and the Legal Position of the Non-Debtor Spouse

The bankruptcy consequences of marital property must first be situated within the general structure of the bankruptcy estate. Article 21 of Law Number 37 of 2004 provides that bankruptcy encompasses the debtor’s entire property existing at the time of the bankruptcy declaration and property acquired during the bankruptcy, subject to statutory exclusions. Article 24 subsequently removes from the bankrupt debtor the authority to control and administer property included in the bankruptcy estate from the date the declaration is pronounced.³² These provisions regulate the debtor’s patrimonial authority rather than imposing a general loss of legal capacity. When the debtor is married under a community-of-property regime, Article 23 extends the statutory concept of the bankrupt debtor to the husband or wife of a debtor married in such a community.³³ Consequently, the marital-property regime becomes relevant to determining the composition of the bankruptcy estate and the patrimonial consequences affecting the spouse who did not originate the bankruptcy petition.

Article 64 further specifies how bankruptcy operates where a marriage is subject to community of property. Paragraph (1) provides that the bankruptcy of a husband or wife married in such a community is treated as bankruptcy of the community itself, while paragraph (2) includes all assets belonging to the community for the benefit of creditors entitled to payment from community property.³⁴ Paragraph (3), however, distinguishes property belonging exclusively to the bankrupt spouse that does not form part of the community; such property remains within the bankruptcy process but is available only for that spouse’s personal debts.³⁵ The statutory structure therefore distinguishes between community assets and the individual assets of the bankrupt spouse. Scholarship on marital bankruptcy similarly identifies the scope of the marital community as a decisive issue in determining the reach of the bankruptcy estate.³⁶ The legal effect of bankruptcy consequently depends upon prior classification of the relevant property rather than merely upon its factual association with either spouse.

The position of the spouse whose own debt did not give rise to the bankruptcy must then be examined separately. Article 62 permits the spouse of the bankrupt debtor to reclaim movable and immovable property belonging personally to that spouse, including property brought into the marriage and property obtained individually through gift or inheritance. It also protects certain identifiable proceeds from the disposition of such property where those proceeds have not yet been commingled with the bankruptcy estate.³⁷ This right confirms that bankruptcy does not transform every asset connected with a marriage into property available

³² Indonesia, *Undang-Undang Nomor 37 Tahun 2004*, arts. 21, 24; Logika and Anggoro, “Akibat Hukum Kepailitan Suami,” 282–298.

³³ Indonesia, *Undang-Undang Nomor 37 Tahun 2004*, art. 23; Ardi Hanum Bratakusuma, Etty Susilowati, and Hendro Saptono, “Kedudukan Hukum Harta Bersama Suami Istri Setelah Putusan Pailit (Studi pada Putusan PT GPF),” *Diponegoro Law Journal* 5, no. 2 (2016): 1–16, <https://doi.org/10.14710/dlj.2016.11306>.

³⁴ Indonesia, *Undang-Undang Nomor 37 Tahun 2004*, art. 64(1)–(2); Logika and Anggoro, “Akibat Hukum Kepailitan Suami,” 282–298.

³⁵ Indonesia, *Undang-Undang Nomor 37 Tahun 2004*, art. 64(3); Dwiyantri and Adlina, “Ambiguitas Pengaturan Harta Bersama,” 83–89.

³⁶ Dwiyantri and Adlina, “Ambiguitas Pengaturan Harta Bersama,” 83–89; Giyanthi, Budiarta, and Ujianti, “Status Hukum Harta Perkawinan,” 37–41.

³⁷ Indonesia, *Undang-Undang Nomor 37 Tahun 2004*, art. 62; Yenny Febrianty et al., “The Legal Position of the Wife’s Inherited Property in the Marital Joint Property Due to the Bankruptcy of the Husband,” *PALAR | Pakuan Law Review* 11, no. 1 (2025): 1–14, <https://doi.org/10.33751/palar.v11i1.11615>.

to creditors. It also corresponds with Article 35(2) of the Marriage Law, which preserves brought-in property, gifts, and inheritances under the control of the respective spouse.³⁸ The non-debtor spouse may therefore experience patrimonial consequences through community property while retaining a statutory basis to recover assets that legally fall outside that community, provided their separate status can be established.

A more difficult question arises where the underlying debt was incurred by only one spouse. Article 36(1) of the Marriage Law requires mutual consent for legal acts concerning joint property, whereas Articles 23 and 64 of the Bankruptcy Law do not expressly make the bankruptcy consequences of community property dependent upon proof that the other spouse consented to the creation of the debt.³⁹ The provisions therefore regulate distinct questions: Article 36 concerns authority to undertake legal acts over joint property, while Articles 23 and 64 govern the patrimonial consequences of bankruptcy within a community-of-property regime. The difficulty lies in determining how these regimes interact when a debt created by one spouse exposes jointly held assets to collective enforcement.⁴⁰ This issue has become the subject of constitutional litigation in Case Number 34/PUU-XXIV/2026, where the petitioner and the Government have advanced different interpretations concerning whether spousal consent should affect the reach of bankruptcy over community property.⁴¹

The legal status of the non-debtor spouse must therefore be formulated cautiously. Article 23 states that the “bankrupt debtor” contemplated in Articles 21 and 22 includes the husband or wife of a bankrupt debtor married in a community of property, while Article 64(1) characterises the resulting bankruptcy as bankruptcy of the community of property.⁴² These provisions should not be collapsed into the proposition that the spouse necessarily occupies exactly the same juridical position as the original debtor whose obligation gave rise to the bankruptcy petition. Nor can the statutory extension in Article 23 simply be ignored. The more precise construction is that Article 23 extends specified bankruptcy consequences to the spouse within the community-of-property regime, while Article 64 identifies the community property as the principal patrimonial object affected.⁴³ The distinction preserves the statutory language while separating the origin of the debt, the procedural status of the debtor, and the assets subjected to bankruptcy administration.

The statutory scheme therefore produces a differentiated rather than unlimited extension of bankruptcy into marital property. Community assets may become subject to bankruptcy administration under Article 64; individual property belonging to the bankrupt spouse remains governed by the rules applicable to that spouse’s personal debts; and the other spouse retains the right under Article 62 to recover property legally excluded from the

³⁸ Indonesia, *Undang-Undang Nomor 1 Tahun 1974*, art. 35(2); Febrianty et al., “Legal Position of the Wife’s Inherited Property,” 1–14.

³⁹ Indonesia, *Undang-Undang Nomor 1 Tahun 1974*, art. 36(1); Indonesia, *Undang-Undang Nomor 37 Tahun 2004*, arts. 23, 64(1)–(2).

⁴⁰ Dwiyantri and Adlina, “Ambiguitas Pengaturan Harta Bersama,” 83–89; Logika and Anggoro, “Akibat Hukum Kepailitan Suami,” 282–298.

⁴¹ Mahkamah Konstitusi Republik Indonesia, “Harta Persatuan Masuk Boedel Pailit Akibat Hukum UU Kepailitan dan PKPU,” April 9, 2026, <https://www.mkri.id/berita/harta-persatuan-masuk-boedel-pailit-akibat-hukum-uu-kepailitan-dan-pkpu-24832>; Mahkamah Konstitusi Republik Indonesia, “Bagaimana Kedudukan Pasangan yang Tak Terlibat Perjanjian Utang Piutang?,” April 23, 2026, <https://www.mkri.id/berita/bagaimana-kedudukan-pasangan-yang-tak-terlibat-perjanjian-utang-piutang%3F--24925>.

⁴² Indonesia, *Undang-Undang Nomor 37 Tahun 2004*, arts. 23, 64(1)–(2).

⁴³ Dwiyantri and Adlina, “Ambiguitas Pengaturan Harta Bersama,” 83–89; Giyanthi, Budiarta, and Ujianti, “Status Hukum Harta Perkawinan,” 37–41; Mahkamah Konstitusi Republik Indonesia, “Konsekuensi Hukum Putusan Pailit terhadap Persatuan Harta,” May 13, 2026, <https://www.mkri.id/berita/konsekuensi-hukum-putusan-pailit-terhadap-persatuan-harta-25049>.

community.⁴⁴ Existing scholarship consequently identifies the central problem not simply as whether “joint property” enters the bankruptcy estate, but as the determination of boundaries among community property, individual property, creditor entitlements, and the legal interests of the spouse affected by bankruptcy.⁴⁵ This construction also explains why a marriage agreement may materially alter the patrimonial structure encountered by bankruptcy law. The next section therefore examines the extent to which such an agreement may restructure property relations between spouses and how its effects must be reconciled with the protection of creditors and other third parties.

Marriage Agreements, Bankruptcy Exposure, and the Protection of Third-Party Interests

A marriage agreement is legally significant in bankruptcy because it can modify the statutory property structure that would otherwise govern the spouses. Article 29 of the Marriage Law, as interpreted by Constitutional Court Decision Number 69/PUU-XIII/2015, permits spouses to conclude such an agreement before, at the time of, or during the marriage. The decision also recognises that the agreement may regulate marital property and may bind third parties insofar as their interests are affected.⁴⁶ This development means that separation of property is not confined to a prenuptial arrangement and may also be introduced after the marriage has begun. Nevertheless, the mere existence of an agreement does not determine its effect in bankruptcy. Its legal significance depends upon its content, timing, the assets and obligations affected, and whether it is legally effective against the relevant creditors.⁴⁷ A marriage agreement may therefore restructure the patrimonial relationship between spouses, but it does not automatically immunise assets from liabilities that have already arisen.

The temporal effect of a marriage agreement is particularly important after Constitutional Court Decision Number 69/PUU-XIII/2015. The Court interpreted Article 29(3) so that an agreement takes effect from the commencement of the marriage unless the agreement provides otherwise. At the same time, Article 29(4), as interpreted by the Court, permits amendment or revocation by mutual consent provided that the change or revocation does not prejudice third parties.⁴⁸ These propositions must be read together. Spouses possess broader autonomy to determine the temporal operation of their property arrangement, but that autonomy is expressly limited where third-party rights are affected. Scholarship on postnuptial agreements likewise identifies legal uncertainty for creditors when assets previously treated as joint property are subsequently separated by agreement.⁴⁹ Consequently, retroactive effect between spouses cannot simply be equated with unrestricted opposability to creditors whose rights had already arisen under the previous marital-property regime and the expectations generated by that existing property arrangement.

The distinction between *inter partes* effect and effect against third parties is therefore central to bankruptcy analysis. Between the spouses, a valid marriage agreement may redefine which assets are jointly held and which are individually owned. Against creditors, however,

⁴⁴ Indonesia, *Undang-Undang Nomor 37 Tahun 2004*, arts. 62, 64; Febrianty et al., “Legal Position of the Wife’s Inherited Property,” 1–14.

⁴⁵ Dwiyantri and Adlina, “Ambiguitas Pengaturan Harta Bersama,” 80–90; Logika and Anggoro, “Akibat Hukum Kepailitan Suami,” 282–298; Giyanthi, Budiarta, and Ujianti, “Status Hukum Harta Perkawinan,” 37–41.

⁴⁶ Mahkamah Konstitusi Republik Indonesia, *Putusan Nomor 69/PUU-XIII/2015*, amar mengenai Pasal 29 ayat (1), (3), dan (4); Yuvens, “Analisis Kritis terhadap Perjanjian Perkawinan,” 811–817.

⁴⁷ Prihandini, “Perlindungan Hukum terhadap Pihak Ketiga,” 354–366; Elvina and Hertanto, “Postnuptial Agreement Versus Kepentingan Kreditur,” 4560–4574.

⁴⁸ Mahkamah Konstitusi Republik Indonesia, *Putusan Nomor 69/PUU-XIII/2015*, amar mengenai Pasal 29 ayat (3)–(4); Yuvens, “Analisis Kritis terhadap Perjanjian Perkawinan,” 811–817.

⁴⁹ Elvina and Hertanto, “Postnuptial Agreement Versus Kepentingan Kreditur,” 4560–4574; Prihandini, “Perlindungan Hukum terhadap Pihak Ketiga,” 354–366.

the relevant inquiry is whether the agreement can lawfully alter the patrimonial basis on which existing claims were created or secured. Article 29(1), as interpreted by the Constitutional Court, expressly provides that a marriage agreement binds third parties insofar as they are affected, while Article 29(4) prohibits amendments or revocations that prejudice them.⁵⁰ Legal scholarship accordingly emphasises authentication, registration, good faith, and protection of creditor reliance when a postnuptial agreement is made.⁵¹ In bankruptcy, the analysis therefore cannot stop at the formal existence of a property-separation agreement; its effectiveness must also be assessed against the relevant creditor relationship, the timing of that relationship, and any rights already attached to the assets concerned.

Where a valid separation-of-property agreement is legally effective against the relevant creditors before bankruptcy occurs, the patrimonial structure encountered by bankruptcy law differs from that of a marriage still governed by community property. In such circumstances, the application of Article 64 depends upon whether a legally effective community of property continues to exist in relation to those creditors. The general bankruptcy rule in Article 21 remains relevant for identifying assets belonging to the debtor and therefore capable of entering the bankruptcy estate.⁵² This does not mean that every asset registered in the name of the non-debtor spouse is automatically insulated from creditor claims; ownership, security rights, joint obligations, and the legal effectiveness of the marriage agreement must still be established. The agreement may alter the classification of marital property, but its consequences in bankruptcy ultimately depend upon its validity, timing, opposability, and the creditor's legally enforceable rights against the relevant property.

A different problem arises when a marriage agreement is made after debts have arisen or when its implementation reduces the patrimonial base available to creditors. Article 29 itself protects third parties against prejudicial changes, while bankruptcy law provides an additional control mechanism through *actio pauliana*. Articles 41 to 49 of Law Number 37 of 2004 permit, subject to statutory requirements, the avoidance of pre-bankruptcy legal acts by the debtor that prejudice creditors.⁵³ The mere creation of a postnuptial agreement should not automatically be equated with a fraudulent disposition; the relevant legal act and the statutory elements of avoidance must still be established. Where implementation of the agreement entails transfers, reclassification, or other acts that diminish assets otherwise available to creditors, however, those acts may require scrutiny under the avoidance regime. Scholarship concerning joint property and *actio pauliana* similarly shows that creditor protection may require examination of transactions affecting marital assets rather than reliance solely on their formal designation.⁵⁴

The preventive function of a marriage agreement must therefore be stated in qualified terms. It can provide legal certainty by defining ownership, management authority, and the patrimonial boundaries between spouses before financial distress occurs, and it may reduce uncertainty over which assets are exposed if one spouse later becomes bankrupt.⁵⁵ It is not,

⁵⁰ Mahkamah Konstitusi Republik Indonesia, *Putusan Nomor 69/PUU-XIII/2015*, amar mengenai Pasal 29 ayat (1) dan (4); Judiasih, Yuanitasari, and Inayatillah, "Model Perjanjian Kawin," 252–267.

⁵¹ Prihandini, "Perlindungan Hukum terhadap Pihak Ketiga," 354–366; Elvina and Hertanto, "Postnuptial Agreement Versus Kepentingan Kreditor," 4560–4574.

⁵² Indonesia, *Undang-Undang Nomor 37 Tahun 2004*, arts. 21, 64; Zuhairroh, Sudiarto, and Wisudawan, "Kedudukan Hukum Pisah Harta."

⁵³ Indonesia, *Undang-Undang Nomor 37 Tahun 2004*, arts. 41–49; Monica Yuniartha Naibaho, Yuhelson, and Cicilia Julyani Tondy, "The Existence of Marriage Joint Property in the Bankruptcy Estate Due to Act of *Actio Pauliana* by Curator," *Jurnal Gagasan Hukum* 4, no. 2 (2022): 80–89, <https://doi.org/10.31849/jgh.v4i2.12147>.

⁵⁴ Naibaho, Yuhelson, and Tondy, "Existence of Marriage Joint Property," 80–89; Dwiyaniti and Adlina, "Ambiguitas Pengaturan Harta Bersama," 83–89.

⁵⁵ Judiasih, Yuanitasari, and Inayatillah, "Model Perjanjian Kawin," 252–267; Si Ngurah Ardhya and I Putu Windu Mertha Sujana, "Konsekuensi Yuridis Berlakunya Perjanjian Perkawinan Pasca Putusan Mahkamah

however, an instrument by which spouses may unilaterally remove assets from the reach of creditors after creditor rights have arisen. Its effectiveness in bankruptcy depends upon validity, timing, content, opposability, existing third-party rights, and the absence of transactions that may be challenged under bankruptcy law.⁵⁶ This construction reconciles spousal autonomy with the collective character of bankruptcy and clarifies the article's contribution: the effect of bankruptcy on marital property cannot be determined merely by asking whether a marriage agreement exists, but requires analysis of how the agreement interacts with asset classification, creditor rights, and the statutory composition of the bankruptcy estate.

CONCLUSION

Indonesian law constructs marital property through a differentiated patrimonial regime in which property acquired during marriage is classified as joint property, while brought-in property and property obtained individually through gift or inheritance remain separate unless otherwise agreed. This classification is decisive in bankruptcy because Law Number 37 of 2004 does not treat all assets connected with a marriage as an undifferentiated bankruptcy estate. Articles 23 and 64 extend bankruptcy consequences to marriages governed by community of property and subject community assets to bankruptcy administration, while Article 62 preserves the non-debtor spouse's right to recover property that legally remains outside that community. The legal position of the non-debtor spouse must therefore be distinguished from that of the original debtor, even though the spouse's proprietary interests may be affected through the community property regime. A marriage agreement may alter this patrimonial structure, including one concluded during marriage after Constitutional Court Decision Number 69/PUU-XIII/2015, but its effectiveness in bankruptcy depends on its validity, timing, opposability, and consistency with existing creditor rights. Accordingly, the legal consequences of bankruptcy on marital property must be determined through an integrated analysis of asset classification, the statutory scope of the bankruptcy estate, and creditor protection, rather than merely from the existence or absence of a marriage agreement.

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⁵⁶ Prihandini, "Perlindungan Hukum terhadap Pihak Ketiga," 354–366; Elvina and Hertanto, "Postnuptial Agreement Versus Kepentingan Kreditur," 4560–4574; Indonesia, *Undang-Undang Nomor 37 Tahun 2004*, arts. 41–49; Naibaho, Yuhelson, and Tondy, "Existence of Marriage Joint Property," 80–89.

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