AL RISALAH: Jurnal Ilmu Syariah dan Hukum

VOLUME 26 NO 1, MAY 2026
P-ISSN: 2252-8334 / E-ISSN: 2550-0309
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https://doi.org/10.24252/al-risalah.vi.66265

Legal Certainty and Protection of Separate Property in Divorce Disputes: An Analysis of Supreme Court Decision No. 4557K/PDT/2024

Akhirudin[1*], Richard C. Adam[2]
[1]*E-mail: akhirudin.207242020@stu.untar.ac.id*
[2]*E-mail: richardmakumba@yahoo.com*
[1,2]*Universitas Tarumanagara, Indonesia*
*corresponding author

Article history:
Received in revised form: 04 March 2026
Acceptance date: 28 March 2026
Available online: 05 April 2026

Keywords:
Legal Protection; Personal Property; Divorce.

How to Cite:
Akhirudin, & Richard C. Adam. (2026). Legal Certainty and Protection of Separate Property in Divorce Disputes: An Analysis of Supreme Court Decision No. 4557K/PDT/2024. Al-Risalah Jurnal Ilmu Syariah Dan Hukum. https://doi.org/10.24252/al-risalah.vi.66265

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Abstract

In general, joint property is understood as property acquired by a married couple during their marriage, so that in the event of divorce, each party has the right to claim that property. If no property separation agreement was made before the marriage, disputes often arise during divorce regarding the ownership status of the property, with both the husband and wife claiming that the disputed property belongs to them. This situation highlights the legal uncertainty surrounding the separation of personal and joint property, particularly with regard to property received as a gift from the parents of one of the parties. The legal problem becomes even more complex because Law Number 1 of 1974 concerning Marriage does not provide detailed regulations regarding the difference between joint property and personal property, thus causing legal problems in court practice when gifts or presents are claimed as joint property. This study uses a normative legal research method with a legislative and case approach, specifically analyzing Supreme Court Decision Number 4557K/Pdt/2024. The results of the study show that the classification of property as joint property or separate property is largely determined by the existence of concrete evidence regarding the origin of the property. Legal protection for holders of separate property rights is strengthened through a convincing system of evidence to overcome the unpreparedness and limitations of existing normative regulations. Therefore, legal protection of property in divorce cases must be based on the principles of justice, legal certainty, and proportional evidence so that the rights of each party can be protected fairly.

INTRODUCTION

Marriage carries a broad meaning that can be understood in both legal and social contexts, as well as throughout the duration of the marital relationship.[1] Various issues may arise within a marriage, including matters related to offspring and property.[2] Property-related disputes frequently occur due to the absence of clear regulations governing the division of assets, whether in cases of inheritance following the death of one party or as a result of divorce. This also includes issues concerning premarital assets owned by each party, which often become a source of conflict.[3]

In practice, it is often difficult for married couples to maintain a harmonious household, which may ultimately lead to divorce.[4] The accumulation of unresolved domestic problems commonly drives couples to choose separation. Divorce does not only involve issues concerning children but also gives rise to other complex matters, particularly disputes over property, which can consume significant time and attention. In cases where no prenuptial agreement has been established, divorce may result in disputes between the spouses regarding the division of assets.[5]

Property disputes between spouses are still considered relatively taboo in society. Generally, such issues are only debated after a court has issued a divorce decision. It is not uncommon for divorce proceedings that have reached the court stage to be marked by conflicts arising from the division of marital property.[6] This situation further complicates the divorce process, as each party tends to claim that the contested joint property (harta gono-gini) constitutes their rightful share.[7]

One illustrative case is a joint property dispute filed before the District Court of Kisaran. In this case, a man identified as CBR lived as husband and wife with a woman identified as AA since 2011, with their marriage officially registered at the Civil Registry

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[1] B. Waluyo, "Sahnya Perkawinan menurut Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan", *Jurnal Media Komunikasi Pendidikan Pancasila dan Kewarganegaraan* Vol. 2, No. 1 (2020): 193.
[2] Yunanto, "Titik Singgung Keragaman Sistem Hukum dalam Pembagian Harta Kekayaan Perkawinan pada Perkawinan Serial", *Masalah-Masalah Hukum,* 47, No. 4 (2018): 385.
[3] Ria Desviastanti, Perlindungan Hukum Terhadap Harta Dalam Perkawinan Dengan Pembuatan Akta Perjanjian Kawin, (Tesis Pasca Sarjana Program Magister Kenotariatan Universitas Diponegoro Semarang, 2010), hlm.4-5.
[4] Mark Cavin Sabudu, "Akibat Hukum Perceraian Terhadap Kedudukan, Hak dan Kewajiban Bekas Suami Istri Menurut Hukum Positif yang Berlaku di Indonesia", *Jurnal Lex Privatum* Vol. VI, No. 9 (2018): 127.
[5] Yenita Martha Pandiangan, Analisis Yuridis Atas Tuntutan Suami Terhadap Harta Bawaan Istri Yang Diperoleh Semasa Perkawinan, (Studi Kasus Perkara Perdata No.146/Pdt.G?2014/PN.Dps), hlm. 1-2.
[6] Andi Tenri Lukman, Ma'ruf Hafidz, dan Hamzah Baharuddin, "Penyelesaian Pembagian Harta Akibat Perceraian di Pengadilan Agama Maros", *Journal of Lex Generalis (JLS)* Vol. 2, No. 2 (2021): 740.
[7] Rahman Marwanto, Harta Gono Gini, Sengketa dan Penyelesaiannya Setelah Perceraian, (Jakarta: Pustaka Ilmu, 2012), hlm.56.

Office in Kisaran. From this marriage, they had two children, a boy and a girl. Due to prolonged domestic conflicts that could not be resolved amicably, CBR filed for divorce (cerai talak) at the Religious Court of Kisaran on July 27, 2018. The court granted the divorce on September 20, 2018, through a default judgment (verstek), which was later formalized by Divorce Certificate Number 920/AC/2018/PA.Kis dated October 25, 2018.

However, the divorce did not resolve all disputes. CBR subsequently reported AA to the North Sumatra Regional Police (Polda Sumatera Utara), alleging criminal acts of embezzlement and document forgery under Article 372 and Article 263 of the Indonesian Criminal Code (KUHP). The object of the dispute was a parcel of land and a building that had been given to AA by her father as a gift. Ownership rights over the property had been formally transferred to AA on November 5, 2018. The police report caused both material and immaterial harm to AA, particularly because it lacked legal standing, as no decision had yet been issued by the Religious Court of Kisaran regarding the division of joint property.

Subsequently, AA filed a lawsuit for an unlawful act (perbuatan melawan hukum) to establish that CBR had no legal claim over the disputed property. The lawsuit asserted that the land and building in question were not joint marital assets but rather premarital or personal property (harta bawaan) under the control of the rightful owner. Based on this issue, it is necessary to examine the legal protection afforded to holders of rights over premarital assets in the context of property disputes arising from divorce, particularly in light of Supreme Court Decision Number 4557K/Pdt/2024, as well as the obstacles to such legal protection.

Compared to prior research conducted by Ramona Febiola Simorangkir et al., which focuses on the commingling of premarital and joint assets due to shared management during marriage and highlights inconsistencies in court decisions arising from the ambiguity of Article 37 of the Marriage Law, this study offers a more specific analytical focus. It not only examines the normative and empirical aspects of asset commingling but also provides an in-depth analysis of legal protection for premarital assets originating from parental gifts within the context of divorce disputes, using a case-based approach centered on Supreme Court Decision Number 4557K/Pdt/2024. This decision is particularly significant because it emphasizes the affirmation of premarital asset status, even when such assets are acquired during marriage, as long as their origin can be concretely proven. In situations where marriage regulations do not provide adequate technical provisions regarding evidentiary mechanisms for premarital assets, this decision demonstrates the active role of judges in filling legal gaps through proportional

and equitable evaluation of evidence, making it a relevant reference for judicial practice and the development of marriage law in Indonesia.

Furthermore, prior research by Hofri-Winogradow and Bennett, titled "Looking Through Trusts in Relationship Property Redistribution Regimes: A Comparative Perspective," published in an international journal, highlights that the lack of clear mechanisms for proving the origin of assets often compels judges to exercise broad discretion. This, in turn, may lead to disparities in judicial decisions and legal uncertainty in the division of marital property.[8] Therefore, findings from both national and international studies underscore that legal protection for premarital assets heavily depends on concrete proof of their origin and the existence of preventive legal instruments. This reinforces the relevance of analyzing Supreme Court Decision Number 4557K/Pdt/2024 within the framework of Indonesian marriage law.

METHODS

The research method employed in this study is normative legal research, which aims to provide analysis and identify legal rules, legal principles, and legal doctrines in order to examine the relevant legal issues. The study adopts a descriptive research specification, meaning that it seeks to systematically describe the object under investigation. This descriptive approach is intended to provide a clear and comprehensive picture of the issues being discussed. The research utilizes two main approaches: a statutory approach, which involves examining various laws and regulations related to the research problem, and a case approach, which focuses on an in-depth analysis of court decisions that have obtained permanent legal force, particularly by understanding the *ratio decidendi*, or the legal reasoning applied by judges in deciding a case.

The type of data used in this study is secondary data, consisting of primary and secondary legal materials. Primary legal materials include legally binding sources such as the 1945 Constitution of the Republic of Indonesia, the Civil Code, Law Number 1 of 1974 on Marriage, the Compilation of Islamic Law, as well as relevant court decisions, including District Court Decision Number 21/Pdt.G/2023/PN.Kis, High Court Decision Number 10/PDT/2024/PT MDN, and Supreme Court Decision Number 4557K/Pdt/2024. Secondary legal materials consist of official documents such as legal textbooks, academic journals, and related articles relevant to the issues discussed. The data analysis in this study employs a qualitative approach, which is used to explain and

[8] Hofri-Winogradow, Adam S. and Bennett, Mark J., 'Looking Through' Trusts in Relationship Property Redistribution Regimes: A Comparative Perspective (October 25, 2024). Available at SSRN: https://ssrn.com/abstract=4999658

interpret the legal issues under examination. This qualitative analysis aims to present a clear and comprehensive description of the problem through several steps, including data collection, systematic data presentation, and ensuring that the findings are easy to understand.

RESULT AND DISCUSSION

1. Legal Protection of Holders of Rights over Premarital Assets in Relation to Property Disputes in Divorce Cases Based on Supreme Court Decision Number 4557K/Pdt/2024

Legal protection for holders of rights over premarital assets in the context of property disputes arising from divorce is regulated under Article 119 paragraph (1) of the Indonesian Civil Code (KUHPerdata), which states that from the moment a marriage is concluded, by operation of law, a complete community of property between husband and wife arises, unless otherwise stipulated in a prenuptial agreement.[9] This provision is further elaborated in Articles 120 in conjunction with 121 of the Civil Code, which provide that such community property includes movable and immovable assets owned at present or acquired in the future, income and profits obtained during the marriage, debts incurred by either spouse before or during the marriage, and losses suffered during the marriage. Accordingly, under the Civil Code, marital property is recognized as a single unified category, namely joint property, which results in the automatic commingling of assets belonging to both spouses, whether acquired before or during the marriage, in the absence of a prenuptial agreement establishing separation of assets.[10] However, a more specific distinction is provided in Article 35 paragraphs (1) and (2) of Law Number 1 of 1974 on Marriage, which stipulates that assets acquired during marriage constitute joint property, while premarital assets and assets obtained individually as gifts or inheritance remain under the control of each respective party, unless otherwise agreed.[11] Thus, Indonesian positive law distinguishes between joint marital property and personal property, whereby premarital assets and assets obtained through specific mechanisms such as gifts, inheritance, or grants remain the personal property of the recipient.[12] Article 36 of the Marriage Law further affirms that legal

[9] Wahjono Darmabrata dan Surini Ahlan Sjarif, *Hukum Perkawinan dan Keluarga di Indonesia* (Jakarta: Hukum Universitas Indonesia, 2004), 96.
[10] Djaja B.Meliala, Hukum Perdata Dalam Perspektif BW, (Bandung: Nuansa Aulia, 2014), hlm.64.
[11] Soemiyati, *Hukum Perkawinan Islam dan Undang-Undang Perkawinan* (Yogyakarta: Liberty, 2007), 99.
[12] D. A. Harimurti, "Perbandingan Pembagian Harta Bersama menurut Hukum Positif dan Hukum Islam", *Jurnal Gagasan Hukum* Vol. 3, No. 2 (2021): 149.

actions concerning joint property require the consent of both spouses, whereas each party retains full authority over their respective personal assets.[13]

In the case at hand, the disputed land and building originally belonged to Suriyono, the father of AA, and were subsequently granted to AA as a gift. Since the property was not acquired as joint marital property during AA's marriage to CBR, AA holds full legal authority to undertake legal actions concerning the property without requiring CBR's consent.[14] This position is reinforced by Article 87 paragraphs (1) and (2) of the Compilation of Islamic Law, which affirm that premarital assets and assets obtained as gifts or inheritance remain under the control of each spouse, who has full authority to perform legal acts over such property. The transfer of ownership was carried out lawfully in accordance with applicable laws and regulations.[15]

Therefore, AA is entitled to legal protection, as sufficient evidence demonstrates that the transfer of rights over the disputed property was legally valid. Consequently, CBR's actions may be classified as an unlawful act under Article 1365 of the Civil Code, as they violate AA's subjective rights, cause harm, and contravene principles of propriety. The Supreme Court Decision Number 4557K/Pdt/2024 ultimately affirms that the disputed property constitutes premarital property rather than joint property, thereby granting AA the right to act independently without CBR's consent.[16] Furthermore, ownership rights over the land and building remain vested in AA, both during and after the marriage, as supported by Article 28H paragraph (4) of the 1945 Constitution, which guarantees the right to private property and protection against arbitrary deprivation.[17]

Nevertheless, legal protection for premarital assets in this case also encountered significant obstacles, particularly due to errors in the application of law by the Judex Facti, as identified by the Supreme Court in its cassation considerations.[18] Although the District Court and High Court recognized the disputed property as premarital assets belonging to the Plaintiff, the Supreme Court found a more fundamental juridical issue, namely the misidentification of absolute jurisdiction, given that the parties were Muslim

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[13] H.F.A. Volmar, Pengantar Studi Hukum Perdata, (Jakarta: Rajawali, 2005), hlm. 63-64.
[14] P. Siringoringo, P. Saragi, dan I. Januar, "Hasil dari Harta Bawaan, Hadiah dan Warisan dalam Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan", *Honeste Vivere* Vol. 33, No. 2 (2023): 142.
[15] H.Ismuha, Pencaharian Harta Bersama Suami Istri, (Jakarta: Bulan Bintang, 1978), hlm.153.
[16] Harjono, *Konstitusi Sebagai Rumah Bangsa* (Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, 2008), 176.
[17] L. Andayani, S. M. I. Slamet, dan I. Dwiprigitaningtias, "Kedudukan Harta Bawaan (Harta Asal) dalam Proses Peralihan Hak Menurut Perspektif Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan", *Jurnal Academia Praja* Vol. 7, No. 1 (2024): 111.
[18] Yasir, M., & Ramadhan, R. 'Pemeriksaan perkara gugatan pembagian harta bersama melalui badan peradilan agama', Innovative: Journal of Social Science Research, 4 (3), (2024), 14362.

and the dispute concerned marital property, which should fall under the jurisdiction of the Religious Court. Additionally, the absence of a prenuptial agreement created further challenges in evidentiary assessment, allowing differing interpretations regarding the status of assets acquired during marriage. In addressing this issue, the Supreme Court emphasized not merely the existence of a prenuptial agreement but rather the importance of concrete proof regarding the origin of the property, particularly the fact that the disputed assets were derived from a parental gift. This reasoning demonstrates that even in the absence of a prenuptial agreement, legal protection for premarital assets can still be upheld, provided that their origin can be clearly and convincingly established, while also highlighting the active role of judges in bridging normative gaps in order to ensure legal certainty and justice.[19]

2. Obstacles to the Legal Protection of Holders of Rights over Premarital Assets in Relation to Property Disputes in Divorce Cases

Premarital assets in Indonesian marriage law refer to property owned by each party, whether husband or wife, prior to the marriage or acquired during the marriage through grants or inheritance. Law Number 1 of 1974 on Marriage explicitly distinguishes between joint property and premarital assets, with premarital assets remaining under the full control of each respective party. However, in practice, when divorce occurs, obstacles often arise in protecting the rights of holders of premarital assets due to insufficient understanding and inadequate evidentiary support in court. One of the primary obstacles lies in proving the origin of the property. In divorce disputes, the party claiming an asset as premarital property must demonstrate both ownership and the source of acquisition.[20] This often creates difficulties, as authentic evidence such as sale and purchase deeds, certificates, or grant/inheritance documents may be unavailable or insufficient, resulting in premarital assets frequently being treated as joint property when such proof cannot be adequately presented.[21]

Another obstacle stems from the overlap between national law and customary law. In certain regions, the regulation of marital property remains heavily influenced by local customary systems, which may differ from the framework of national law. For example, in some areas, premarital assets are considered to merge into joint property after

[19] S. Ndraha, T. T. Daya, R. Silaban, dan C. Nurita, "Perlindungan Hukum terhadap Harta Bawaan dengan Membuat Akta Perjanjian Perkawinan", *DIKTUM* Vol. 3, No. 3 (2025): 98.
[20] Mira Henstin, Marwanto, dan Ni Putu Purwanti, "Pembagian Harta Bersama Berbentuk Tabungan Bank dalam Perkara Gugatan Harta Bersama", *Kertha Semaya* Vol. 4, No. 2 (2018): 9–10.
[21] Pasal 35, Undang-undang Nomor 1 Tahun 1974 tentang Perkawinan.

marriage, leading to differing interpretations in court decisions. This indicates that the legal protection of premarital assets has not yet achieved full normative harmonization.[22]

Additionally, the limited public understanding of the concept of premarital assets further hampers legal protection. Many individuals still assume that all assets within a marriage automatically become joint property, without distinguishing premarital assets, leading to unilateral claims in divorce disputes that are inconsistent with applicable legal principles. Furthermore, the lack of detailed juridical instruments regulating the technical mechanisms for protecting premarital assets constitutes a significant barrier.[23]

he Marriage Law provides only general provisions without detailed guidance on evidentiary procedures, dispute resolution, or mechanisms for registering premarital assets prior to marriage.[24] This legal gap often results in uncertainty in judicial decisions, as judges must rely on broad interpretations based on principles of justice and fairness. From a judicial perspective, judges also face considerable challenges in distinguishing between premarital and joint property, as they must assess not only formal evidence but also factual circumstances.[25]

Differences in judicial reasoning and the absence of uniform guidelines in adjudicating divorce cases contribute to disparities in decisions, ultimately weakening legal protection for holders of premarital assets. Therefore, the obstacles to legal protection in such cases are not merely normative but also practical and cultural. Strengthening legal protection requires a comprehensive approach through regulatory reform, increased public awareness, and broader access to legal assistance, in order to ensure a balanced realization of justice, legal certainty, and legal benefit in divorce cases.[26]

From a judicial perspective, the burden on judges is quite substantial in distinguishing between premarital assets and joint property. Judges are required not only to assess formal evidence but also to take into account the factual circumstances in practice. However, differences in judicial reasoning and the absence of uniform guidelines in adjudicating divorce cases have led to disparities in court decisions, which in turn weaken legal protection for holders of rights over premarital assets.[27]

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[22] Muhammad Kamran Imran, "Pelaksanaan Pembagian Harta Bersama dalam Perkawinan Poligami setelah Perceraian", *Pleno Jure* Vol. 9, No. 1 (2020): 28–29.
[23] Hilman Hadikusuma, Hukum Perkawinan Adat, (Bandung: Mandar Maju, 2019), hlm.87.
[24] K. Indriyani, A. Agung, dan S. Indrawati, "Pengalihan Harta Bersama Ditinjau dari Perspektif KUHPerdata dan Undang-Undang Perkawinan", *Jurnal Kertha Semaya* Vol. 9, No. 5 (2021): 886
[25] M. Yahya Harahap, Hukum Acara Perdata, (Jakarta: Sinar Grafika, 2019), hlm.214.
[26] Retno Indriani, Harta Bawaan dalam Perkawinan dan Problematika Hukumnya, Jurnal Hukum IUS QUIA IUSTUM, Vol. 27 No. 2 (2020), hlm. 255.
[27] Lilik Mulyadi, Hukum Acara Perdata Indonesia, (Bandung: Citra Aditya Bakti, 2016), hlm.198.

Thus, it can be concluded that the obstacles to legal protection for holders of premarital assets in divorce disputes are not merely normative in nature but also practical and cultural.[28] Efforts to strengthen such legal protection must be carried out through three main approaches: improving regulatory frameworks, enhancing public understanding, and expanding access to legal assistance. These measures are essential to ensure that the principles of justice, legal certainty, and legal utility in divorce cases can be realized in a balanced manner.[29]

CONCLUSION

Based on the results of the research and the analysis of Supreme Court Decision Number 4557K/Pdt/2024, it can be concluded that legal protection for premarital assets in divorce disputes fundamentally depends on the ability of the concerned party to concretely prove the origin of the asset's acquisition. This remains the case even though the absence of a prenuptial agreement often creates juridical obstacles and differing interpretations in judicial practice. Therefore, as a solution to the normative and practical challenges identified, concrete measures are required, including the refinement of regulations that provide technical guidelines for proving premarital assets, particularly those obtained through grants or gifts during marriage.

In addition, the public should be encouraged to maintain proper asset documentation and to consider establishing prenuptial agreements as a preventive instrument to minimize future disputes. Efforts to enhance public legal awareness through continuous legal education, as well as expanding access to legal assistance, are also essential so that all parties understand their rights and obligations proportionately. In this way, legal protection for premarital assets in divorce cases is expected to achieve a balanced realization of legal certainty, justice, and legal utility in practice.

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[28] Hendriyadi, M. A. Saputra, dan L. N. Azizah, "Harta Gono Gini dalam Perspektif Normatif Yuridis, Psikologis dan Ekonomis", *Jurnal Az-Zayyan* Vol. 1, No. 2 (2024): 86.
[29] N. G. Aurelia, "Prinsip Keadilan dalam Pembagian Harta Gono-Gini setelah Terjadinya Perceraian dari Perspektif Teori Perjanjian", *Jurnal Kertha Desa* Vol. 13, No. 1 (2025): 51.

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