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**WOMAN SUES RIGHT OF HER BODY INTEGRITY AS THE
WOMEN RIGHT: THE LAW IMPLICATION AND
JURISPRUDEN ANALYSIS / COURT DECISION ON THE CASE
OF WOMEN AS THE VICTIMS OF NOT FULFILMENT
PROMISE BEING MARRIED**

Lusiana M Tijow and Fence M Wantu

ABSTRACT

The women as the victims of not fulfilment promise being married began from relationship between adult man and woman and not yet tied in marriage as lover couple. In this relationship, they usually promise each other to marry. Mostly, the man who gave his promise to the woman. This promise said face to face, by communication tools or handphone such as using message application WhatsApp. With this promise, often the woman would voluntarily give her body that intercourse happened. However, the man broke his promise finally. It showed a cause resulting an event where the woman asking for the promise that the man made, whether in pregnant condition or not that the woman often suffered any kinds of violence that finally the woman became the victim. It covered the personal intact involving physical and psychological images of woman in constructing her self concept as a woman. Thus, showing the unfair phenomenon continuing happen in any forms, that "may result and "result" in violence action toward woman in not or pregnant conditions. Evenmore, the effect gave long term and short term result for the woman who suffered it. The suffering may form in: physical, psychic, sexual, social and economic ones. The problem formula of this study covered how the the legal implication and how the juridpredencial analysis of court decision toward the body integrity of the woman as the victim of not fulfilment the promise being married. This normative legal study used method of qualitative juridicial analysis.

Keywords: Body Integrity, Legal Implication, Analysis of Jurisprudence

**RETROACTIVE PRINCIPLE IN POSTNUPTIAL AGREEMENT
IN PROVIDING OF LEGAL PROTECTION FOR
UNEMPLOYED HOUSEWIVES**

Nur Hayati
Notarisppat.nurhayati@gmail.com

ABSTRACT

This paper explores the impact of the expansion of norms which is caused by Constitutional Court Decision Number 69/PUU-XIII/2015 towards Matrimonial Agreement which is made during marriage (Postnuptial Agreement), which applies retroactively since the start of the marriage, unless determined otherwise by the parties. The main focus of this paper is the legal consequences of Postnuptial Agreement which applies retroactively since the start of the marriage associated with the legal protection for unemployed wives. Specifically, this paper will observe the separation of properties, which are acquired since the start of the marriage until the Postnuptial Agreement is made, if the wife is unemployed. By applying a retroactive matrimonial agreement, the community property (which previously exists) will be separated based on which party acquired the property. This could potentially harm an unemployed wife financially, because by its retroactive nature, her husband would obtain more property than his wife. In fact, there could have been an agreement about the duties of both husband and wife before the Postnuptial Agreement was made. This paper will discuss will compare regulations regarding Postnuptial Agreement in Indonesia with regulations regarding Postnuptial Agreement in Netherlands. As a conclusion, this paper will explain that Postnuptial Agreement still requires further regulation through statutes, acts, or other form of regulation, especially regarding the retroactive nature of Postnuptial agreement, so that its regulation would not harm unemployed housewives financially.

Keyword: Postnuptial agreement, legal protection, unemployed housewife

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THE LAW IMPLICATION AND JURISPRUDEN ANALYSIS / COURT DECISION ON THE CASE OF WOMEN AS THE VICTIMS OF NOT FULFILMENT PROMISE BEING MARRIED

Lusiana Margareth Tijow¹, Fence Wantu

1. Faculty of Law, The State University of Gorontalo
2. Faculty Of Law, The State University of Gorontalo

Abstract:

The women as the victims of not fulfilment promise being married began from relationship between adult man and woman and not yet tied in marriage as lover couple. In this relationship, they usually promise each other to marry. Mostly, the man who gave his promise to the woman. This promise said face to face, by communication tools or handphone such as using message application WhatsApp. With this promise, often the woman would volunteraly give her body that intercourse happened. However, the man broke his promise finally. It showed a cause resulting an event where the woman asking for the promise that the man made, whether in preagnant condition or not that the woman often suffered any kinds of violence that finally the woman became the victim. It covered the personal intact involving physical and pscological images of woman in constructing her self concept as a woman. Thus, showing the unfair phenomenon continuing happen in any forms, that "may result and "result" in violence action toward woman in not or pregnant conditions. Evenmore, the effect gave long term and short term result for the woman who suffered it. The suffering may form in: physical, psychic, sexual, social and economic ones. The problem formula of this study covered how the the legal implication and how the juridpredencial analysis of court decision toward the body integrity of the woman as the victim of not fulfilment the promise being married. This normative legal study used method of qualitative juridicial analysis.

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A. Introduction

The guaranty of human right must be performed through respect and upheld as well as guaranted the right protection by the country. The Human Right refers to series

of rights embedding on nature of human existence as the God creatures and refers to His grace that must be respect, upheld and protected by the country, law, government, and anyone for the honour and protection of human dignity and prestige².

The Women Right refers to Human Right. Upholding the women right becomes part of upholding the human right. As stated in the international commitment of United Nation Declaration in 1993, protection, fulfilment, and respect women right are responsibility of all parties of state institutions (executive, legislative, and judicative) as well as political party and Non-Governmental Organisation (NGO). Even, the citizen as individual has responsibility to protect and fulfill the women right.

The phenomenon of violence toward women was increasingly in its intensity in line with the existence of human right that continuing to progress. In Indonesia, the regulation giving legal protection toward women right basically has been existed however it has not protected women right optimally. As we know, there were many critical conditions happen that women in Indonesia need protection. In structure of patriarchy society, socioculturally the man has priority than woman, even more taking aside the woman. Moreover, wrong interpretation on gender has decreased the universal of women right in Indonesia. Such as what happened toward the woman as the victim of not fulfillment promise being married as a response of unfair phenomenon appeared in various forms. Thus, it placed the woman as the victim of not fulfillment promise being married suffering of injustice .

Table of Judge Decision on the victim of Not Fulfillment Promise Being Married

| No | Number of Decision | The Court Giving Decision | Act Used | Punishment Duration |
|----|--|---------------------------|-------------------------------|---------------------|
| 1 | <i>Nomor 144 / PID / 1983 / PT Medan</i> | PT Medan | 293, 375 and 378 the Criminal | Cancel |

²Pasal 1 angka 1 Undang-Undang Republik Indonesia Nomor 39 Tahun 1999 Tentang Hak Asasi Manusia.

| | | | Code | |
|---|-----------------------------------|----------------------------|---|--|
| 2 | Nomor:43/PTS.Pid./B/1985/P.N.Gir. | PN Gianyar | Act 5 verse (3) b. Number 1 Drt.of 1951. The Book of Adi Agama | Arranged in crime Offense of Sangraha Logical custom |
| 3 | <i>Nomor.33/MMT-III/X/AD/87</i> | Military Court of Surabaya | 378 of the Criminal Code | Freed |
| 4 | <i>No reg.75/PDT-PN/2010/PN</i> | PN Kupang | - | Freed |
| 5 | <i>Number 522 K/Sip/1994</i> | Supreme Courth | Attact moral honor, steal with violence, and persecution resulting serious injures, and 1365 the Civic Code | Punish |

Based on the above table, there was disparity between one decision to others. It resulted from different conditions related to defendant condition, together with action and fulfilled or not the elements in the act being accused. Generally, the decision made showed, though the condition of victim was clear as the victim of not fulfillment promise being married, however the judge tended to give decision free because there was not any act or rule concretely with substance arranging on body integrity and honor of woman as the victim of not fulfillment promise being married .

Based on the violence forms suffered by the woman as the victim of not fulfillment promise being married, the Declaration of Abolishment Violence toward

Woman ³Act 1 and 2 gave priority on several basic changes in line with social perspective on violence toward woman, *first*, admit on the existence of “gender based violence”. Meaning, violence toward woman referred to an action based or resulted from someone is woman, and there was no relation to social status, economic status, racial different or others.

This violence happened because the someone (victim) is woman. *Second*, it emphasized “may result in “ (*or is likely to result in*). this changed social and legal perspective toward violence that tend to act “waiting for the proof” of happening violence using physical proof (for example, a woman who suffered because of afraid being murdered by his husband was not yet categorized as violence victim as long as she has not been killed yet).

With the definition of the Declaration, it confessed that any action “may result in” equal to “result in”, as long as the action in according with the whole definition. *Third*, it confessed the forms of physical, psychis, sexual, and economic violences that of course it became basic changing remember on the previously the law tended to formula violence as the physical violence only.

Fourth, it confessed that violence toward woman may happen in private or public scopes (*occurring in public or in private life*), for example rape in household

³Pasal 1: Setiap tindakan berdasar perbedaan jenis kelamin yang berakibat atau mungkin berakibat pada kesengsaraan atau penderitaan perempuan secara fisik, seksual atau psikologis termasuk ancaman tindakan tertentu, pemaksaan atau perampasan kemerdekaan secara sewenang-wenang baik yang terjadi di depan umum atau dalam kehidupan pribadi,

Pasal 2 : Kekerasan terhadap perempuan harus dipahami mencakup, tapi tidak hanya terbatas pada: tindak kekerasan secara fisik, seksual, dan psikologis yang terjadi di dalam keluarga dan dimasyarakat termasuk pemukulan, penyalahgunaan seksual atas perempuan dan anak-anak, kekerasan yang berhubungan dengan mas kawin, perkosaan dalam perkawinan (*marital rape*), pengrusakan alat kelamin perempuan dan praktik-praktik kekejaman tradisional lainnya terhadap perempuan, kekerasan diluar hubungan suami isteri dan kekerasan yang berhubungan dengan eksploitasi perempuan, perkosaan penyalahgunaan seksual, pelecehan, dan acaman seksual di tempat kerja. Dalam lembaga-lembaga pendidikan dan sebagainya, perdagangan perempuan dan pelacuran paksa serta termasuk kekerasan yang dilakukan dan dibenarkan oleh Negara dimanapun terjadinya.

(*marital rape*). Therefore, the Declaration of Abolishment Violence toward Woman clearly has given changing of fundamental formula for the perspective of human right on the violence. This declaration involved the areas where the country has responsibility to do changing on the policy to abolish violence toward women⁴.

The woman as the victim of not fulfillment promise being married considered has againts the human nature of a woman and the action refered to an action resulting in big losses and suffereing (Physic, psychic, sexual, social, and economy) toward woman, whether in preagnant condition or not.⁵ Moreover, the suffering happening in time of violence and after the event in fact give more traumatic than for the man.⁶ However, the principle one was that it was form of violence or denial toward human right resulting in woman lost her body integrity.

The body integrity of the woman as the victim of not fulfillment promise being married was part of integral of right problem. In this case, the principle covered in *The Universal Declaration of Human Rights*. The body integrity⁷ referred to description of ideal body related body completeness of someone. The Body Integrity referred to the whole or complete body of a woman covering bodily and non bodily. Woman would feel lost of her body integrity when she lost her body component one of them was her feminim part of body⁸ (virginity or woman vagina).

The woman body integrity has close related to the description of woman self

⁴ R. Valentina Sagala dan Ellin Rozana, *Pergulatan feminism dan HAM*, Institut Perempuan, Bandung, 2007, hlm 29

⁵Harkristuti Harkrisnowo, *Op. cit* Hlm.3

⁶*Ibid*

⁷M.M. Nilam Widyarini, *Kunci Pengembangan Diri*, Jakarta, PT. Elex Media Komputindo, 2009, Hlm. 77

⁸<http://Mualang.artikata.com/arti-365379-kehormatan.html>

concept that must be kept and honored as its nature of human. This woman's self-concept⁹ covered her self-feeling on her whole personal life with unique characteristics, that she would easily be known as someone with certain characteristics. Someone who is able to know what becoming her need, benefit and weakness will be able to think rationally and objectively.

In line with violence forms suffered by the woman, it placed the woman as the violence victim. The limitation of violence victim can be decided in victimological science. Victimology as a science studying the position and role of victim in a criminal action. The reason would be that in any criminal action there must be actor and victim. Therefore, the focus of victimology were the victim and the scope covering on how someone becoming victim, or the process of victimisation happen. According to Sahetapy, victimisation referred to physical or inclusive suffering taken from financial, economic, religion, or psychic meanings universally or mentally related to the action. The woman as the victim of not fulfillment promise being married that experienced specific events may call as the violence victim.

B. Research Method

This study referred to normative legal study, discussing the legal rules, legal concepts, philosophical ideas or legal bases as the cause that woman claimed for her body integrity referring the woman's right and analyzing the legal implication and the court decisions related to the woman as the victim of not fulfillment promise being married. Thus, the justice access can be obtained toward the body integrity of woman

⁹Lukaningsih, Zuyina Luk, *Pengembangan Kepribadian*. Yogyakarta, Mulia Medika, 2010

as the victim of not fulfillment promise being married in the perspective of woman right. This study focused on philosophical, statute, conceptual, and case approaches. The legal material being collected was managed and analyzed qualitatively judicially with focusing on legal penalty that one of them using legal interpretation.

C. Discussion

1. The Right of Woman Body Integrity

In the World Conference of UN on any forms of violences toward woman, the right of woman body integrity in the Documents of UN A. 162/122/ADD. Paragraph 277 stated that the right of woman body integrity was used increasingly to catch scope of guaranty needed to protect anyone specially the woman in againts the violence and harassment leading on the decreasing of health, freedom, and self integrity from any threats.

In the dictionary of Wikipedia Indonesian language, human body belongs to a whole physical structure of human organism. Body¹⁰ refers to material appearing from the human. Using term of body integrity in this study, the writers conclude that body integrity is one unity and completness of human organism.

Etimologically, *perempuan*¹¹ (woman) taken from the word *empu* means being honor. Moreover, it explains friction term from *wanita* to *perempuan* is the word *wanita* considered taken from Sansekerta with the basic word *wan* meaning passion that the word *wanita* referring on the passion object Thus, changing the word *wanita* to *perempuan* refers to change object to subject.

¹⁰ <http://www.tulang-elisa.org/roh-jiwa-dan-tubuh/>

¹¹ Zaitunah Subhan, *Op. Cit.*, Hlm. 19

Using the title “ *perempuan* “, hopefully, it was not merely able to feel this life, but able to empower the woman potentials related to macro interest. *Perempuan* (woman) referred to someone (human) having genital organ, menstruate, pregnant, having birth, and feeding the baby.¹²

Therefore, the writers believe that body integrity of woman related to self/personal completeness as a whole bodily and non bodily of a woman showing a unity and cannot separated from woman life.¹³ It close related to protection toward personal completeness¹⁴ that also related to virginity (genital organ/miss V) and related to self concept and dignity of a woman.

2. Broken Promise to Marry

The Indonesian Dictionary defines the term of *ingkar* (denial) and *janji* (promise). The definition of the word *ingkar*¹⁵ is : a)Do not justify, denial, not admit, deny, b)Not keeping up, c)Do not obey, do not want. The definition of *janji*¹⁶ refers to: a)Statement showing willingness and agreement to do, b)Agreement between two parties (each of them states willingness and agreement to do something), c)The requirement must be fulfilled.

¹² Peraturan Daerah Provinsi Daerah Khusus Ibukota Jakarta, Nomor 08, Tahun 2011, *Perlindungan Perempuan Dan Anak Dari Tindak Kekerasan*

¹³Lusiana M Tijow, *Perlindungan Hukum terhadap integritas tubuh perempuan korban tidak dipenuhinya janji kawin dalam perspektif hak asasi manusia*, Malang, Disertasi Universitas Brawijaya, hlm. 92

¹⁴ Hak bagi integritas tubuhnya dipergunakan secara meningkat untuk menangkap rentang jaminan yang diperlukan untuk melindungi semua orang dan terutama perempuan dalam melawan kekerasan dan pelecehan yang mengarah pada pengurangan, kesehatan, kemerdekaan, dan kedaulatan diri dari ancaman. Lihat Konferensi Dunia PBB dalam Semua Bentuk Kekerasan Terhadap Perempuan yang berhubungan dengan hak akan integritas tubuh Dokumen PBB A. 162/122/Add. Paragraf 277

¹⁵Departemen Pendidikan dan Kebudayaan Republik Indonesia, *Kamus Besar Bahasa Indonesia*, Cet III, Jakarta, Balai Pustaka, , 1990, Hlm.332 dalam Lusiana M Tijow

¹⁶*Ibid*

Taken from the meaning of *ingkara* and *janji* above, the writers obtained definition of *ingkara janji*(broken promise) as denial and not being kept up on the statement or agreement stating willingness and agreement to do something.

Broken promise to marry in this study¹⁷ refers to broken promise conducted before legal marriage happen. This broken promise means denial and not kept up the statement or agreement stating willingness, agreement to do something by the two parties.

3. The Legal Implication: Legal Injustice and Woman becoming the Violence Victim

Difficulty faced by woman as the victim of not fulfillment promise being married placed on paradigmatic problem becoming the basic on how the legal scholars and law enforcer gave the meaning on the law itself. This condition appeared in Indonesia where generally the legal scholars have focused on the legal meaning as norm and basic regulation. To isolate legal from social reality. That, the legal product, legal apparatus, and legal culture have not yet completely honor the woman.

In line with the woman as the victim of not fulfillment promise being married, the Criminal Code stated that it was not criminal in the following conditions:

1. Two people not yet married do sexual activity, though:
 - a. The Action considered against and bother the moral feeling of society
 - b. The woman willing to do sexual activity because of trickery or promise being married, but denial
 - c. Result in pregnancy of the woman and the man does not want to marry or there is obstacle to marry according to the law.
2. A man having wife impregnates a girl (meaning that they have do adultery), but his wife do not make any claim
3. Someone lives together with someone else as husband and wife but not in

¹⁷ *Ibid*

marriage relation, even though the action is despicable and against or both the moral feeling of the society

In the scope of legal meaning, the problem of humanity on the victim of broken promise to marry was ignored. The legal enforcers have long debate on the legal procedure, bias logical structure that there is no humanity to the woman as the victim of broken promise being married. They debated in line with formal proofs that should be fulfilled called as the victim of broken promise to marry, witness information, voluntarily and others. The limitation of the victim of broken promise to marry was fixed. Even though, it was difficult to fulfill such criterion, as we know the effect of this action eliminated future socially and culturally.

Whereas, there always any differences between written law and practical law in the society that finally collide and result in injustice. The law was not existed in vacuum place but exist in interest constellation of those who giving meaning to the law that were judge, police, advocate, government, and society.

Many women as the victim of broken promise to marry covered what happen to them, as result of stigma labelling and threat of sanction that they may get by the society that tend to cornering and blaim them. That was the reason why many cases of woman as the victim of broken promise to marry being reported or found out were too late.

Thus, it was difficult to bridge legal justice in order to make it closer to social justice. It was important to fulfill proof and truth of material however the justice for women as the victim of broken promise to marry could not be ignored. The Declaration of Universal Human Right giving confession of natural dignity and equal right as the

fundamental of freedom, justice, and world peace must become basic of justice legal protection for the women as the victim of broken promise to marry.

Not yet existence of substantive and concrete regulation to give protection toward body integrity and honor for women as the victim of broken promise to marry referred to ignorance of human right, and unprotected constitutional rights as mandated by the constitution

The law that care of body integrity of woman as the victim of broken promise to marry could give justice as main idea and goal of humanity wealfare. In the General Declaration of Human Right (DUHAM) of 1948,¹⁸ as a human, woman has right to live, right to be honor her dignity, right to get feeling of safe, and right to be treated indiscriminative.

The woman protection, specially in the private spaces, showed by appearing the CEDAW, Convention on The Elimination of all Forms of Discrimination Against Women, in 1979, then ratified by Indonesian government via the Law number 7 of 1984.¹⁹

Based on Acts 1 and 2, violence toward woman was categorized in several forms, namely, physical, sexual, psychological, and economic violence, and deprivation of liberty²⁰. In line with its scope, violence toward woman might happen in household or

¹⁸KOMNAS PEREMPUAN, *Op. Cit*, Hlm. 49

¹⁹*Ibid*

²⁰Yang dimaksud dengan kekerasan tersebut adalah sebagai berikut : (a) Kekerasan fisik adalah setiap perbuatan yang menyebabkan rasa sakit, cedera, luka atau cacat pada tubuh seseorang dan atau menyebabkan kematian; (b) Kekerasan psikologis adalah setiap perbuatan dan ucapan yang mengakibatkan ketakutan, hilangnya rasa percaya diri, hilangnya kemampuan untuk bertindak, dan rasa tidak berdaya pada seseorang. (c) Kekerasan seksual adalah tiap-tiap perbuatan yang mencakup pelecehan seksual sampai kepada memaksa seseorang untuk melakukan hubungan seksual tanpa persetujuan korban atau disaat korban tidak menghendaki; dan atau melakukan hubungan seksual dengan cara-cara yang tidak wajar atau tidak disukai korban; dan atau menjauhkan (mengisolasi) dari kebutuhan seksual. (d)Kekerasan ekonomi adalah tiap- tiap perbuatan yang membatasi seseorang untuk

family (domestic violence), in the wide society (public) and in State environment (conducted by or in the country scope).

As what happened to woman as the victim of broken promise to marry, for it related to be confessed social identity of woman as the victim of broken promise to marry with empiric fact, including:

1. Strong myth giving lost for woman with the condition that man did sexual action with woman because of love relationship thus, though the man gave promise to marry her, the woman should not believe and should not give her body and honor;
2. The did conducted volunterily, that when the man did not keep his promise to marry and he decided to break the love without any formal reason was considered normal because the woman consciously has given her body and honor;
3. Only unkind woman who willing to gave her body and honor to the man though there was any promise to marry, in not preagnant condition, the woman may have another relationship to other man, and when she got preagnant, it was her own problem;
4. The woman as the victim of broken promise to marry could leave her couple anytime she want;
5. The woman as the victim of broken promise to marry did not belong to criminal toward the country or society, only on personal/private integrity (in this case, the woman self-victim);
6. The woman as the victim of broken promise to marry could not get protection for there was no national regulation yet in spesific and concrete ways;
- 7.

If the woman suffered above fact meant that her right to live as a human and a woman has been violated and lead her suffering loss appeared in any forms, that

bekerja di dalam atau di luar rumah yang menghasilkan uang atau barang; dan atau membiarkan korban bekerja untuk dieksploitasi; atau menelantarkan anggota keluarga (e) Perampasan kemerdekaan secara sewenang-wenang adalah semua perbuatan yang menyebabkan terisolirnya seseorang dari lingkungan sosialnya (penjelasan: di antaranya larangan keluar rumah, larangan komunikasi dengan orang lain)

²¹“can result in” and “result in ” violated action toward woman in preagnant condition or not.

The effect gave long term ²² and short one. Thus, the woman sufferring as the victim of broken promise to marry has cause-effect relation in various forms such as:

- 1) Physical violance²³(when woman wanted to claim for the promise being stated by the man, what she got usually hitting, violatiom such as: slap, hit, pull hair, kick, cornerred with ciggarett, wound with weapon) appeared from the violance was outside injure or in body, collision, serious injure, broken bone, physical defective even death. Lossing of eating passion, sleep disorder (insomnia, nightmare, difficult to sleep), central nerve disorder and worry disorder. Even when the woman in preagnant condition, it would give risk to her physically and to the baby in her womb.

- 2) Psychic suffering, underestimate woman image, using words or action hurting, bad words, scraming, insertion, threat preassuring woman emotion, disstress and feeling (thus, she felt lost or underestimated her dignity and prestidge as human). The action resulted in fear, lost of self confidence, lost of ability to act, hopeless and/or serious psychic suffer on someone bother or preasured victim emotional. The effect were in forms of traumatic, nightmare or self afraid, afraid to meet other people, sleep or eat disorder, emotional disorder, fair of close relationship, untrust the man, guilty feeling, shy and insulted, feeling of mad, may cause to suicide.

²¹R. Valentina Sagala dan Ellin Rozana, Definisi Deklarasi CEDAW yang telah memberikan perubahan mendasar dan cara pandang masyarakat mengenai kekerasan terhadap perempuan

²²Dampak jangka panjang terjadi jika korban kekerasan tidak mendapat penanganan dan bantuan (konseling psikologis) yang memadai, misal munculnya sikap atau persepsi negatif terhadap laki-laki atau terhadap seks. Dampak yang lain adalah trauma, yaitu “luka jiwa” yang disebabkan karena seseorang mengalami sesuatu diluar batas normal(berdasarkan standar dirinya sendiri).

Dapat juga muncul mimpi-mimpi buruk(nightmares) ingatan-ingatan akan kejadian yang muncul secara tiba-tiba(flashback), jika gejala tersebut berkepanjangan sampai 30 hari, besar kemungkinan korban mengalami Post Traumatic Stress Disorders(PTSD) atau stress pasca trauma.

Dampak jangka pendek, berakibat pada fisik korban seperti luka-luka, memar pada bagian tubuh tertentu, infeksi, dan kerusakan organ reproduksi.

²³Putusan perkara No. 522 K/Sip/1994

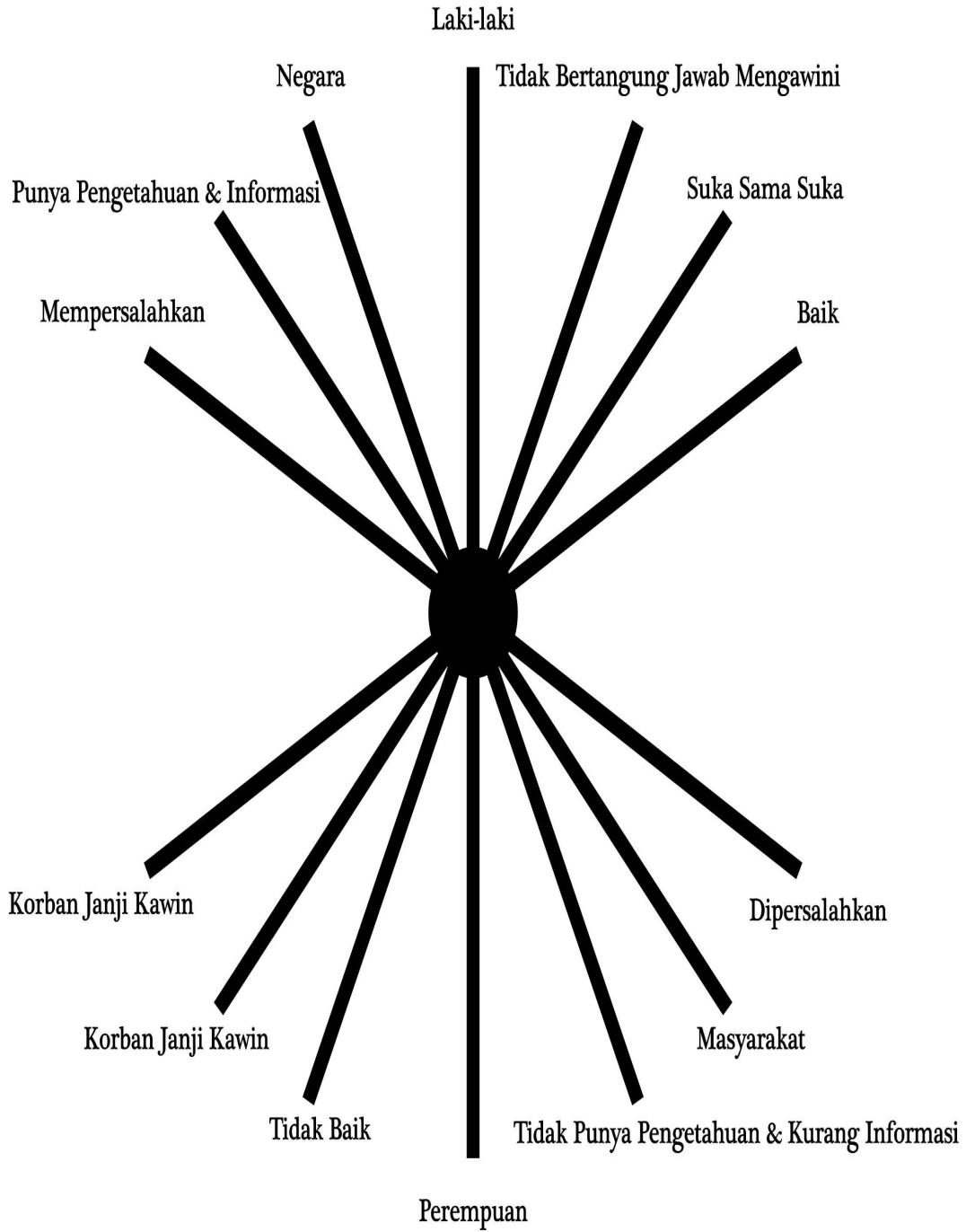
- 3). the sexual suffer (being taken away dignity, disorder of reproduction organ, getting the sexual deases, and pregnancy disorder).

- 4). The social suffer experience by the victim refred to strength of social relation because feeling of not accepted by the society, stigma labelling as woman who has did sexual activity with man, hopless feeling, anti social action, low confidence, suiside trial, depression, shame, worry, sleep or eat disorder, depression, drunk, using drugs, smoke, free sex to try to commit suiside. Often, the woman moved to other place because of being mockery object.

- 5). The economic suffer covered spending fee for recovery as result of physical and psychic effect experienced, recovering mentally health from psychological interference, spending fee for pregnancy cost, giving birth to growing the kid.

With the suffer being experienced, the woman as the victim of broken promise to marry decreased her right on her life would decrease its value. The right for woman refered to the right on her body and honor. Such suffer considered as violanve toward woman referring to peak suffering. The effect of violance suffered by the woman as the victim of broken promise to marry was lost of prestidge and self concept of woman. She would see hersel negatively, blame herself, considered herself as the one who responsibility on violanced action being suffered.

Gambar I. Pola Pikir dominasi & Hegemoni Kasus Perempuan korban tidak dipenuhinya janji kawin.



Roda Kekerasan



4. The Analysis of Jurisprudence/Judge Decision toward the Case of Broken Promise to Marry

In deciding a case, the judge did process, read, examine deeply from his perspective in doing interpretation and found legal finding. Reading rule was not only using regulation logic, but also social logic purposing to give meaning related to the fact and need of today society.

The analysis of decision related to the case of broken promise to marry. It related to decision considering justice to the woman as the victim of broken promise to marry by doing analogy. The interpretation trying to find out a justice to the woman the victim of broken promise to marry.

In this case, the judge tried to find purpose from creating rule by doing interpretation toward the law applied and tried to any relation one formula to another in a legal systematic. This formula was in needed to examine condition suffering by woman.

This interpretation purposed to justice and put high the human in protection

substance toward human right as specially the women as the victim of broken promise to marry. In this situation, Satjipto Rahardjo²⁴ stated as interpretation with not always be based on logic, but also leave logical routinity.

*The Decision of Military Court III-18 Ambon*²⁵

In 1986, the court handled its member case who had sexual action to the victim labelling S, but with trickery and promise to marry. The suspect asked the victim S to come to Namlea, the place of suspect, with a promise being asked victim to meet his boss to ask permission to marry.

In the court, it applied act 378 of the Criminal Code, that the element of unity command and series or lies using promise to face the commander of unity finally make the victim give thing or honor to the suspect considered as the proof. The judge interpreted that honor or the victim genital organ as the proof, and had been used. The Military Court stated in its decision to the suspect that first the suspect proven had committed fraud and second he had falsified the document.

The decision *Number.33/MMT-III/X/AD/87* of the Military High Court Surabaya strengthened the previous decision where the suspect had proven conducting falsifying the document and fraud. The suspect appealed with its memory postulate related to widen the meaning of thing. He stated that the judge did not use correctly the meaning of genital organ or woman honor as thing. He believed sexual activity being conducted based on willingness of the two parties.

The postulate (reason) filed by the suspect was accepted by the Supreme Court that the Appellate Assembly stated that the previous judge decision was wrong in

²⁴Satjipto Rahardjo, *Op.Cit.* Hlm. 172

²⁵Ibid

implementing the law because widening the meaning of thing as woman honor or genital organ. Thus, using act 378 of the Criminal Code, there was nothing that the victim given to the suspect. Finally, the suspect was free from any indictment that he had committed fraud.

The judge interpretation to the second case almost the same as the decision of judge Bismar Siregar, specially in the case with no regulation yet, the judge should be able to stand based on the condition and feeling of the woman. Hopefully, there is serious discussion toward any statements with no proof value.

The element of voluntarily still needed the agreement of the two parties. The availability of violence and threat would result in that there was no the agreement. The judge consideration was only based on suspect's statement. He did not examined psychologically of the promise value that the woman gave away voluntarily her honor. However, the fact that the victim met the suspect and lived together with him should be an evidence for the judge to make decision that the relationship happened because of promise to marry.

In the Legal Area of Kupang State Court No reg.75/PDT-PN/2010/PN²⁶

In line with broken promise to marry, the judge decided the man not guilty though the woman had experienced suffering such as pregnant without marriage, gave birth and took care the kid and the consequence in living in the society. The violence againsts the woman in Indonesia should not always be seen as a conduct that begun by (physical) violence or physical violence threat.

The violence againsts the woman must be seen comprehensively using

²⁶<http://mell-benu.blogspot.co.id/2012/04/peraturan-yang-belum-berpihak-pada-hak.html> diakses pada tanggal 6/7/2016 jam 6.50 WIB

consideration of many things such as the case of the violence happen in which the decision making of the woman to give her honor resulted from a promise to be married by the man that finally made her to do the action should be a consideration for the judge to protect the woman.

The verdict of the case Number 522 K/ Sip / 1994

The Supreme Court gave decision to punish the man with initial D who conducting sexual activity with the woman with initial R by a promise to marry and finally the woman got pregnant. The pregnancy brought D to force R to do abortion because the pregnancy was not expected.

The effort to force R was conducted by hitting and kicking. The Supreme Court punished D using penal that he had attacked moral honor, stolen with violence, and persecuted resulting in serious injure. In this case, the Supreme Court stated that not fulfillment promise to marry considered action againts the law.²⁷ Therefore, the suspect was given punishment by paying for compensation to the plaintiff in this case recovery the plaintiff's image.

The Supreme Court stated that the man's conduct was againts the moral decency and norm in the society. The promise to marry conducted by the man belonged to seduction because there was lure to be married that the woman gave away her honor. The decision of the Supreme Court of this case gave breakthrough in the act 58 the Civic Code²⁸, using the act on the action againts the law belonged to award given

²⁷www.hukumonline.com/berita/baca/tidak-menepati-janji-menikahi-adalah-mph

²⁸rumusannya *pertama*, janji menikah tidak menimbulkan hak untuk menuntut di muka hakim untuk dilangsungkannya perkawinan. Juga tidak menimbulkan hak untuk menuntut penggantian biaya, kerugian, dan bunga, akibat tidak dipenuhinya janji itu. Semua persetujuan ganti rugi dalam hal ini adalah batal.

to the woman related to her legal protection, however the using of the term action againsts the law has wide meaning that may be asked for compensation of the conduct.

In several judge's decisions above, it showed the judge attitude, generally, however, related to the action for not fulfilled the promise to marry, the society showed less honor on the woman right as individual who has body integrity as part of her huminity natural. Thus, it wounded other right.

The society has not yet seen this action as form of againsts the human right. Even though, this action should be seen not only destroy future, but also destroy the body integrity of woman as individual and belonged to violation of woman right.

It involved the judge in interpreting the meaning of acts applied. The progressive interpretation to uphold woman right and justice for the woman as the victim of not fulfillment promise to marry were needed. The woman experience before and after becoming the victim should be more considered in making the national regulation.

*The Decision of Medan High Court Number 144 / PID / 1983 / PT Medan.*²⁹

The Judge of Medan High Court, Bismar Siregar, renewed the decision of the Court. He stated that the defendant, MR Sidabutar, had proven to do fraud. In his decision, the judge gave punishment 3 years in prison, in which Bismar gave analogy that the woman genital organ as thing (*bonda*).

The Tapanuli word gave meaning to *bonda* (honor, genital organ) as thing. The defendant, MR Sidabutar, was claimed because he did not responsible of his conduct toward the victim with initial K boru Siahaan. The first indictment was the defendant

Kedua, namun jika pemberitahuan nikah telah diikuti suatu pengumuman, maka hal ini dapat menjadi dasar untuk menuntut kerugian. *Ketiga*, masa daluarsa untuk menuntut ganti rugi tersebut adalah 18 bulan terhitung sejak pengumuman rencana perkawinan

²⁹ <http://www.hukumonline.com/berita/baca/lt559fba87c3065/putusan-ibonda-i-yang-mengayun-bisma>

accused to have done fornication with underage woman based on act 293 of the Criminal Code. The second indictment was fraud using act 378 of the Criminal Code. The third one was making annoying feeling based on act 335 of the Criminal Code.

In this level, the Public Prosecutor gave commulative (additional) indictment. The 3 years punishment because of proven guilty to do fornication with underage woman that was not his wife. The prosecutor asked for appeal but did not claim for appeal memory. The judge Hakim Bismar considered the indictment of the prosecutor, that there should be any other choices. He thought that the Act 293 of the Criminal Code was not fulfilled for the victim K was only 21 years old, thus, the first indictment element was not proven, finally he used act 378 of the Criminal Code.

In this act, he did widening interpretation toward the word *thing* belong to service. Sexual activity conducted had given benefit to the defendant, for it meant that he had accepted service from the victim. He added that when the victim gave her honor because of persuasion, meaning that by giving thing. However, the Supreme Court cancelled the Bismar's decision in the level of appeal stating that MR Sidabutar was free. In the Supreme Court, the cancelling of Bismar Siregar was conducted by the judge. Taking a look the act 378, the meaning of giving a thing would result in multiple interpretation where the woman genital organ stated as thing that it became object of fraud that can weaken its legal certainty.

A thing has economic value and the woman honor may not be equated to thing that has economic value. It gave more pressure to the formal legality or supported document of the proofing tools showing letter of promise to marry, the reason of willingness from the two parties to do sexual action where there was no forced element

and series of lies and the meaning of thing was not relevant to consider.

The point was, when Bismar decided the case, to give warning to the man who likes to seduce woman with promise to marry her and the effect of the promise to the woman that gave away her honor therefore sexual action conducted and there was no responsibility from the man. However, the Supreme Court cancelled the decision of the high court and freed the defendant from any demands because of not accepting any widening meaning on the thing equal to the woman honor.

In the fact above, the decision of the supreme court was related to violation againsts the woman right, because in the *Convention on the Elimination of All Forms of Discrimination Against Women*, acts 1 and 2 pointed out on the society perspective on the violence againsts the woman, *firstly*, the violence againsts the woman referred to an action resulted from or because the victim was woman. *Secondly*, it pointed out that the action "can result in" thus, it would change the society and law perspective toward violence tending to wait the proof of happening the violence with physical one. Using this declaration, the action that "can result in" was similar to "result in". *Thirdly*, it confessed any violences physically, psychically, sexually, and economically. Finally, *fourthly*, it accepted that violence againsts woman can happen in the private and public scopes. Thus, the judge can consider deeply and completely in line with all aspects in this case.

This would fulfill not only formal aspect required by the Law, but also the justice feeling of the victim toward the situation and condition experienced by the victim and her family. it also gave pressure toward formal aspect that becoming guarantee that the legal certainty applied.

However, if in application there was unfulfilled justice, the equality in giving priority on application a regulation should be reconsidered. Giving priority on justice fulfillment for the woman as the victim of broken promise to marry was needed by considering any aspects experienced and suffered by the woman that the claim for justice sense was equal to the condition.

*The Decision of the Gianyar State Court*³⁰ dated 20 January 1986, Number: 43/PTS.Pid./B/1985/P.N.Gir.

A man called I ketut G. had long relationship with a girl named Ni Made S. in this relationship, I ketut G. and Ni Made S. have conducted sexual activity for the agreement of the two. Ni Made S. was willing to have sex with I ketut G. because I ketut G. promised that he would marry her and live with her forever. However, I ketut G. has broken his promise that finally Ni Made S. gave birth a son and I Ketut G. refused to marry Ni Made S.

For the action, I Ketut G. was faced the court of indictment that firstly he had relationship with Ni Made S., also as witness, since 1978 and gave promise to marry and live forever that the witness Ni Made S. willing to gave her honor by having sex with the defendant, namely: in May, 5 1983. The defendant had done sexual activity, firstly, with Ni Made S., secondly, thirdly, fourthly, fifthly, sixthly, seventhly and eighthly conducted on the day and date that cannot be stated clearly and the last one (ninethly) happened on September, 5 1983, then to support the promise between defendant and witness Ni Made S. by orally, the defendant and witness Ni Made S made

³⁰ Nyoman Serikat Putra Jaya, *Relevansi Hukum Pidana Adat Dalam Pembaharuan Hukum Pidana Nasional*, Citra Aditya Bakti, Bandung, 2005, Hlm. 209

statement in front of the district leader of Payangan in May, 5, 1984 stating that the defendant would marry the witness Ni Made S. if he had found good moment.

However, the defendant broken his promise and refused to marry Ni Made S. and he broke his love relationship with Ni Made S. without any formal reason. The defendant action referred to criminal regulation arranged and threatened by offence of logical custom of Sangaraha in the Book of Adi Agama jo Act 5 verse (3) b. Number 1 Drt. of 1951.

In several decisions above, it concluded elements of the case of not fulfillent promise to marry covering: 1) There was relationship began by feeling of love each other between man and woman before formal marriage; 2) There was seduction and promise to marry from the man; 3) from the seduction and promise sexual action happened; 4) The man broke the relationship without any rason that he broken his promise to marry the girl; 5) There was demand to fulfill the promise to marry from the woman; 6) There was violence toward the woman when she asked for the man to marry her.

Based on the elements above, they can be fundamental consideration by relating the condition experience by the woman as the victim of broken promise to marry from loving relationship and loving each other, the man gave promise to marry and they tied each other to be loyal in the relatinship to the time when they get married, with the promise, the woman volunterallygave her body and honor that sexual action happen, that finally the man broke the relationship without any reason and broken his promise to marry. Therefore, denial and broken promise of statement that he would and ready to marry (based on the provision of the law) the woman happened.

The condition experienced by the woman with above elements identified that woman must keep, honor and uphold her honor. Philosophically, the woman honor belongs to a precious value that must be kept. There were two definition related to honor ³¹ first, that honor was living value of human; and second, honor in the prestige level tended to showing that dignity keeping high.

The honor for woman meant woman virginity³². The virginity was close related to body integrity of woman. Based on the judge decision in interpreting act applied in the above cases, it needs renewal of criminal law in the Cariminal Code that must adapt with the new developments. If maybe facing obstacle with the proof because the promise to marry stated orrally in above cases, the Supreme Court refers to document evidence, witness information and expert. From the documents, it relates to messages from Hp or email, expert information, the man conducts that againts the local custom where the unmarried woman should be honor by her husband candidate. Related to psychic violence experience by the woman using verbal one, it places the woman as the victim. The action of not fulfill the promise to marry refers to an action thar takes away the future, destroy dignity and prestige of the victiom. However, the essence is the conduct againts the woman right on her body integrity and honor.

The judge must examine psychologically on a value of promise that the woman give away her honor. The man conduct has destroyed the future and the body integrity of the woman as individual that it needs rule in renewal criminal law that can protect the body integrity of woman and give punishment to the man who often give promise and destroy the body integrity of woman.

³¹[Hhttps://malang.wordpress.com/2009/06/14/kehormatan-sebagai-nilai-dan-hak-asasi-manusia](https://malang.wordpress.com/2009/06/14/kehormatan-sebagai-nilai-dan-hak-asasi-manusia)

³²[Hhttp://www.artikata.com/arti-365379-kehormatan.html](http://www.artikata.com/arti-365379-kehormatan.html)

The body integrity of woman refers to woman honor involving in moral because it relates to form of conscience awareness appeared along with human life. The lost of woman honor gives her body integrity because it relates to bodily and non bodily of a woman that must get legal protection.

F. Summary

The woman right of body integrity shows on her originality and completeness. In this case, the humanity nature of woman refers to unity thought of feeling and body that develop her self concept and existence. The living value and woman dignity and prestige describe herself into good developed physical and mental condition, and obtain good welfare. The legal implementation on ignorance and denial of human right is that woman does not get justice and legal certainty and place her as victim and experience various forms of violences. By experiencing such violences such as physical, psychic, sexual, social and economic. The effect of the violences in short and long terms may destroy her dignity that give influence on her self concept and eliminate possibility for her to have her right protected by the Constitution. The problem of woman as the victim of not fulfillment promise to marry considers as intra individual one, but it is social problem related to Human Right. The cases of woman problem as the victim of not fulfillment promise to marry needs to get attention from the decision makers (Judge, Prosecutor, Police) that the actor can be criminalized using consideration of the elements of promise to marry elements, covering 1) There was relationship began by feeling of love each other between man and woman before formal marriage; 2) There was seduction and promise to marry from the man; 3) from the seduction and promise sexual action happened; 4) The man broke the relationship without any reason that he

broken his promise to marry the girl; 5) There was demand to fulfill the promise to marry from the woman; 6) There was violence toward the woman when she asked for the man to marry her.

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