

Vol. 10, Issue. 2,  
May 2024

#### Article History

Received: 21 Oct 2023

Reviewed: 19 Des 2023

Accepted: 29 Jan 2024

Published: 10 Feb 2024

## Breaking The Promise to Marry Unlawful Acts or Default

Auliah Ambarwati<sup>1\*</sup>, Muh. Fadli Faisal Rasyid<sup>2</sup>, Saharuddin Saharuddin<sup>3</sup>, Devi Dwi Wulandari<sup>4</sup>, Muh. Akbar Fhad Syahril<sup>5</sup>

<sup>1</sup> Faculty of Law, Andi Sapada Institute of Social and Business Sciences,

Email: [ambarwati.irwan94@gmail.com](mailto:ambarwati.irwan94@gmail.com)

<sup>2</sup> Faculty of Law, Andi Sapada Institute of Social and Business Sciences

Email: [fadlifaisal643@gmail.com](mailto:fadlifaisal643@gmail.com)

<sup>3</sup> Faculty of Law, Andi Sapada Institute of Social and Business Sciences

Email: [andisaharuddin41@gmail.com](mailto:andisaharuddin41@gmail.com)

<sup>4</sup> Faculty of Law, Andi Sapada Institute of Social and Business Sciences

Email: [devidwiw08@gmail.com](mailto:devidwiw08@gmail.com)

<sup>5</sup> Faculty of Law, Andi Sapada Institute of Social and Business Sciences

Email: [akbar9.a9@gmail.com](mailto:akbar9.a9@gmail.com)

\*email correspondence: [ambarwati.irwan94@gmail.com](mailto:ambarwati.irwan94@gmail.com)

**Abstract:** This study aims to find civil law arrangements regarding the juridical analysis of breaking a promise to marry or what is commonly referred to as Broken Marriage Promises as an unlawful act. What are the legal consequences of breaking a marriage promise as unlawful? This study uses a normative legal research type with a statutory approach. The types and sources of legal materials use primary, secondary, and tertiary legal materials. Analysis of legal materials uses deductive logical reasoning, which is studied from a qualitative perspective. The results of the study show that breaking a promise to marry or commonly called promises of marriage as an unlawful act, is regulated in Article 58 of the Civil Code and several judges' decisions such as Supreme Court Decision Number 3191 K/Pdt/1984, Supreme Court Decision Number 3277 K/Pdt/2000, Decision of the Supreme Court Number 1644 K/Pdt/2020. The legal consequences of breaking a marriage promise as an unlawful act, namely if a person suffers a loss due to breaking of the marriage promise, both material and immaterial losses, then he can be sued for compensation following the loss suffered if the element of the unlawful act is fulfilled according to Article 1365 of the Civil Code.

**Keywords:** Marriage promise; Unlawful act; Default.

### INTRODUCTION

According to Aristotle, humans are Zoon Politicon, meaning that humans as creatures basically want to associate and gather with other fellow humans, so creatures who like to socialize, and become part of society and because of their nature who like to associate with

each other, humans are called social creatures.<sup>1</sup>

In agreements that are made orally without written evidence, this is what causes breach of promise. If one party reneges, it is difficult to hold them accountable. Even after dating and then an engagement procession is carried out, it does not mean that a man or a woman can do as they please, especially only with seduction and then ignore the applicable rules.<sup>2</sup>

The broken promise made by the male party to the female party will be a very detrimental thing for women. Moreover, from several cases that occur in the community that the promise of marriage can be the cause of extramarital relations, and not all cases regarding this can be prosecuted legally unless there is sufficient evidence.<sup>3</sup> Settlement in this way is considered to make the relationship between the two parties no better and the legal process that requires a short time for this.

Marriage is an agreement whose purpose is to realize happiness between the two parties (husband and wife), is not limited to a certain time and has a religious nature (there is an aspect of worship).<sup>4</sup> Sayuti Thalib considers marriage to be a sacred covenant between a man and a woman to form a family.<sup>5</sup>

Marriage is not only a physical bond manifested in the form of an agreement at the time of marriage made by the parents of both parties, but an inner bond manifested in the form of a sincere agreement between the two prospective brides in the sense that there is no element of coercion from one party to the other also plays a very important role in strengthening the bond of marriage in creating a happy and eternal family.<sup>6</sup>

Between a man and a woman, meaning that in a marriage bond according to the Marriage Law, it can only occur between a man as a husband and a woman as a wife. Forming a happy and eternal family, meaning that marriage aims to obtain peace, pleasure, comfort, physical and mental tranquility for eternity in married life.<sup>7</sup>

In the sense that marriage to form a family must be able to bring peace and tranquility until the end of its life, Based on the Almighty God, meaning that marriage must be based

---

<sup>1</sup> Vania Madeline Jevera, Fajar Sugianto, and Sanggup Leonard Agustian, "Pertanggungjawaban Hukum Pengingkaran Janji Kawin," *Tanjungpura Law Journal* 6, no. 2 (2022): 195–212.

<sup>2</sup> Wirda Fahiroh, "Perlindungan Hukum Terhadap Perempuan Korban Tidak Terpenuhinya Janji Kawin Perspektif KUH Perdata (Studi Putusan Mahkamah Agung Nomor 1644 K/Pdt/2020)" (INSTITUT AGAMA ISLAM NEGERI MADURA, 2022).

<sup>3</sup> Mesya Nurfitriah, "Janji Menikahi Yang Mengikat Dalam Kaitannya Dengan Asas Pacta Sunt Servanda," *Jurnal USM Law Review* 6, no. 1 (2023): 79–93.

<sup>4</sup> Hasmawati Hasmawati and Muh. Akbar Fhad Syahril, "The Effectiveness of Mediation Process to Press Divorce Rates," *Amsir Law Journal* 1, no. 2 (April 24, 2020): 78–84, <https://doi.org/10.36746/alj.v1i2.26>.

<sup>5</sup> Sayuti Thalib, "Hukum Kekeluargaan Indonesia (Cetakan Kedua)," *Jakarta: Universitas Indonesia*, 2009.

<sup>6</sup> Micael Josviranto et al., "Analisis Kasus Putusan Pengadilan Negeri Maumere Nomor 8/Pdt. G/2019/Pn MME Tentang Wanprestasi Dalam Ingkar Janji Menikah," *Gema Wiralodra* 12, no. 2 (2021): 320–31.

<sup>7</sup> Muh Akbar Fhad Syahril, "The Effectiveness Of The Annulment Of Marriage Due To Impersonation And Its Legal Consequence," *IOSR Journal Of Humanities And Social Science (IOSR-JHSS)* 23, no. 2 (2018): 2279–0845, <https://doi.org/10.9790/0837-2302023944>.

on religious provisions, marriage cannot be separated from religion. In the sense that the validity of a marriage is measured by the provisions stipulated in religious law.<sup>8</sup>

In the Quran surah Ar.Rum mentioned

*"He made for you from your own kind a mate in whom you take pleasure, and he made love and affection between you; indeed, this is an evidence for those who think."*

## RESEARCH METHOD

To find answers to what is questioned, the right method is needed, which in this study uses the type of normative legal research or also called dogmatic research, doctrinal legal research, theoretical research. Usually this research is also referred to as law in books research.<sup>9</sup> The nature of normative legal research is theoretical-rational. Normative legal research has a tendency to image law as a perspective discipline (according to the applicable legal provisions or rules).<sup>10</sup>

## DISCUSSION

### Legal Basis for Promise to Marry as an act against the Law

Pitlo asserts that both from a historical perspective and from the systematic nature of the law, default cannot be classified as unlawful. M.A. Moegni Djojodirdjo in his book entitled "Unlawful Acts", argues that it is very important to consider whether someone will file a claim for compensation for default or for unlawful acts.<sup>11</sup>

According to Moegni, there will be differences in the burden of proof, calculation of losses, and the form of compensation between default and unlawful claims. In an unlawful claim, the plaintiff must prove all the elements of unlawfulness in addition to being able to prove the wrongdoing of the debtor.

In a default, it is sufficient for the plaintiff to prove that there is a default or that the agreement has been breached. In an action against the law, the plaintiff may claim restitution (restitutio in integrum). However, this claim is not available if the action is based on default.<sup>12</sup>

Promises to marry or commonly referred to as promises to marry are different from marriage agreements. The term marriage promises is used in the Civil Code Article 58, which reads:

"The promise of marriage does not give rise to a right to sue before a judge for the

---

<sup>8</sup> Josviranto et al., "Analisis Kasus Putusan Pengadilan Negeri Maumere Nomor 8/Pdt. G/2019/Pn MME Tentang Wanprestasi Dalam Ingkar Janji Menikah."

<sup>9</sup> Syahrudin Nawi, *Penelitian Hukum Normatif Versus Penelitian Hukum Empiris*, 5th ed. (Makassar: PT.Umitoha Ukhuwah Grafika, 2017).

<sup>10</sup> Burhan Ashshofa, *Metode Penelitian Hukum* (Jakarta: Rineka Cipta, 2005).

<sup>11</sup> Djojodirdjo M A Moegni, "Perbuatan Melawan Hukum," *Jakarta: Pradnya Paramita*, 1979.

<sup>12</sup> Rai Mantili and Sutanto Sutanto, "Kumulasi Gugatan Perbuatan Melawan Hukum Dan Gugatan Wanprestasi Dalam Kajian Hukum Acara Perdata Di Indonesia," *Dialogia Iuridica* 10, no. 2 (2019): 1–18.

continuance of the marriage, nor to sue for reimbursement of costs, damages and interest, due to injury done to him, any agreement for compensation in this case is void. However, if the notice of marriage is followed by an announcement of marriage, then this may give rise to grounds for claiming reimbursement of costs, damages and interest, based on the actual losses that one party may have suffered in respect of his property, due to the injury of the other party, while not taking into account the loss of profit.”<sup>13</sup>

The marriage agreement itself is regulated in Articles 119, 139 of the Civil Code and in Article 29 of Law No.1 of 1974 concerning Marriage.<sup>14</sup>

A promise to marry is an agreement between a man and a woman to marry each other. As explained earlier, the promise to marry comes from an agreement that gives birth to an obligation.<sup>15</sup>

Unlawful acts themselves are regulated in Article 1365 of the Civil Code, which stipulates that every unlawful act that causes harm to another person, obliges the person who commits the act to compensate. Mariam Darus Badruzaman in the Draft Law (RUU) on Bonds tried to formulate it in full, as follows:<sup>16</sup>

1. An unlawful act that causes damage to another person, obliges the person who through his fault or negligence causes the damage to compensate for the loss.
2. Unlawful is any act that violates the rights of others or is contrary to the propriety that must be respected in social intercourse against the person or property of others.
3. A person who deliberately omits to perform an act that he is obliged to perform is likened to a person who commits a prohibited act and thereby violates the law.

Mariam Darus Badruzaman has absorbed the development of new thinking about unlawful acts. This is because in this concept, the definition of unlawful is not only defined as against the law (written law) but also against the propriety that must be respected in the society (unwritten law).<sup>17</sup>

The assessment of whether an act is unlawful is not sufficient if it is only based on a violation of legal rules, but the act must also be assessed from the point of view of propriety. The fact that a person has violated a legal rule can be a factor of consideration to assess whether or not the act that caused the loss is in accordance with the decency that a person should have in the association with fellow citizens.<sup>18</sup>

Supreme Court Decision No. 1644 K / Pdt / 2020 relates to a broken promise to marry, where the male party with the initials AS invites a woman with the initials SSL to marry, who is then traditionally engaged, because he feels that he is engaged, AS persuades SSL to have

---

<sup>13</sup> *Vide* Article 58 of the Civil Code.

<sup>14</sup> *Vide* Law Number 1 Year 1974 on Marriage

<sup>15</sup> Josviranto et al., “Analisis Kasus Putusan Pengadilan Negeri Maumere Nomor 8/Pdt. G/2019/Pn MME Tentang Wanprestasi Dalam Ingkar Janji Menikah.”

<sup>16</sup> Wirjono Prodjodikoro, “Perbuatan Melawan Hukum,” *Jakarta: Sumur Bandung*, 1984.

<sup>17</sup> Mariam Darus Badruzaman, “Asas-Asas Hukum Perjanjian,” *PT Citra Aditya Bakti, Bandung*, 2001.

<sup>18</sup> Mantili and Sutanto, “Kumulasi Gugatan Perbuatan Melawan Hukum Dan Gugatan Wanprestasi Dalam Kajian Hukum Acara Perdata Di Indonesia.”

a husband and wife relationship, and SSL follows the seduction of AS, two months later AS canceled the engagement with SSL, which SSL then sued AS, in this case the Banyumas District Court decided that AS had committed an unlawful act (PMH), which then had to pay compensation of IDR 100 million.<sup>19</sup>

Likewise, in Supreme Court Decision No. 3277 K/Pdt/2000, the panel of judges at that time considered that the non-fulfillment of the promise to marry meant that the Defendant had violated the norms of decency, community decency, and the Defendant's actions were unlawful. Because the act of not fulfilling the promise of marriage caused harm to the Plaintiff, the Defendant is obliged to pay compensation, the amount of which is stipulated in the verdict.

Breach of the promise of marriage as a legal basis for Article 58 of the Civil Code is within the scope of family law and not within the scope of property law, so that in the case of breach of the promise in question, it is not a default because it does not regulate the relationship between debtors and creditors, but is classified as an unlawful act.

### **Legal consequences of breaking a promise to marry as an unlawful act**

There are two types of civil lawsuits, namely default and tort. Default is an act of a person who does not fulfill his promise or performance as agreed by the parties. Meanwhile, an unlawful act is an act that violates the provisions of the law, both written law (laws), and unwritten law, namely acts that are contrary to decency and contrary to the decency prevailing in society, this is in line with the issue of breaking promises to marry:

- a) Breach of promise to marry in this writing is not included in the scope of default in Article 1234 of the Civil Code, because it is breaking promises to marry does not have the same legal consequences as default, such as: Paying losses suffered by creditors or briefly called compensation. Compensation is regulated by law and given provisions on what can be intended in the compensation. Article 1247 of the Civil Code determines: The debtor is only obliged to reimburse the costs of loss and interest that have actually been or should have been expected when the agreement was born, unless the non-fulfillment of the agreement was due to a trick committed by him.<sup>20</sup> Thus, damages are limited, covering only foreseeable losses that are a direct result of the non-fulfillment of the agreement.
- b) Cancellation of the agreement or also called the breakdown of the agreement. Regarding the cancellation of the agreement or also called the breakdown of the agreement as a second sanction for the negligence of a debtor, there may be people who cannot see the nature of its cancellation as a punishment. The cancellation of the

---

<sup>19</sup> Devi Dwi Wulandari, "Analisis Yuridis Ingkar Janji Kawin Sebagai Perbuatan Melawan Hukum" (Institut Ilmu Sosial dan Bisnis Andi Sapada., 2022).

<sup>20</sup> *Vide* Article 1247 of the Civil Code.

agreement aims to bring both parties back to the situation before the agreement was made;

- c) Risk transfer is mentioned in Article 1237 paragraph (2) of the Civil Code, which means risk is an obligation to bear losses if an event occurs outside the fault of one party, which befalls the goods that are the object of the agreement. In this case it is closely related to force majeure;<sup>21</sup>
- d) Payment of court costs, if it goes before a judge, in article 1267 of the Civil Code, the creditor can demand that the negligent debtor: fulfillment of the agreement or cancellation accompanied by reimbursement of costs, losses and interest. He can also determine the performance of the agreement accompanied by compensation, for example, compensation for losses due to late performance.<sup>22</sup>

The wording of article 1365 of the Civil Code, in addition to the normalization of wrongful acts, as such the wording also regulates limitatively the legal principle of compulsory compensation thereof. In fact, in various court cases, judges often *ex officio* (the authority of judges in their positions) provide and determine compensation (*schadevergoeding*), even if the victim does not demand it.

In the case of tortious liability, the aggrieved party can sue on the grounds of tortious act. In order to prove that the refusal of marriage vows falls under the category of wrongful acts, it is necessary to know the elements of wrongful acts contained in Article 1365 of the Civil Code:

- a) The existence of an unlawful act is preceded by the act of the perpetrator. The intended action includes doing something (active) or not doing something (passive). Not doing something is meant when someone does not do something even though according to the law he has an obligation to do something (legal obligation).
- b) The act must be against the law In this case, it is not limited to written regulations (positive law), but an act is qualified as against the law if it is contrary to decency, propriety, accuracy, and prudence in the society (unwritten law).
- c) Losses Losses caused by unlawful acts can be in the form of property losses or material losses and moral or immaterial losses. Material losses generally include losses suffered and expected profits, while immaterial losses are determined based on an assessment, where it is endeavored that the victim is as much as possible restored to the state before the occurrence of the unlawful act committed by the perpetrator. It is important to note that the loss in question does not arise from a breach of agreement. The Civil Code does not regulate damages arising from tortious acts. Therefore, the rules used for this compensation are analogically, using the rules due to default as stipulated in Articles 1243-1252 of the Civil Code.

---

<sup>21</sup> *Vide* Article 1237 of the Civil Code.

<sup>22</sup> *Vide* Article 1267 of the Civil Code.

- d) There is a Causal Relationship between Unlawful Acts and Losses The doctrine of causality is very important in both civil and criminal law. In civil law causality is to see whether there is a causal relationship between the tort and the loss caused so that the perpetrator can be held liable.
- e) The Existence of Fault In law, the element of fault is considered to exist when one of the following three conditions is met:
  - 1) There is an element of willfulness.
  - 2) There is an element of negligence.
  - 3) There is no justification or excuse.

Compensation for tort claims in the Civil Code only regulates material losses but does not regulate immaterial damages. Material loss (*materiële schadevergoeding*) is a tangible loss that can be valued in money. The granting of material damages can be given by the judge with evidence of the losses suffered. Non-pecuniary loss (*immateriële schadevergoeding*) in the form of anything of an intangible nature, the amount of which cannot be calculated mathematically, with the proviso that the amount of compensation must be reasonable. The given of immaterial damages can be granted by the judge at his discretion, in accordance with the principle of *ex aequo et bono* (*naar een goede justitie recht doen*).

In other words, it depends on the subjectivity of the judge. The spiritual atmosphere (*geistlichen hintergrund*) is based on, among others, the severity of the burden borne by the victim, the status and position of the victim, the situation and conditions in which the unlawful act occurred, the situation and mental state of the victim, the situation and mental state of the perpetrator, the background of the unlawful act, the type of unlawful act, namely whether intentional, negligent, absolute or intangible responsibility (moral, ideal).

As described above, a person who commits a tort is obliged to compensate for damages. For this reason, it is necessary to further understand what claims are possible in tort actions. Article 1365 of the Civil Code provides the possibility of several types of prosecution, among others:

- a) compensation for losses in the form of money;
- b) compensation in kind or restoration of the situation to its original state;
- c) a statement that the act committed was unlawful;
- d) prohibition to perform an act;
- e) nullification of something unlawfully done;
- f) promulgation of a judgment or of a remedy.
- g) Payment of damages does not always have to be monetary.



## CONCLUSION

Promises to marry, which in the Civil Code are called promises to marry, are regulated in Article 58, where broken promises to marry cannot be prosecuted unless there has been an announcement, to be said to be an act against the law, this can be seen in the elements of Article 1356 of the Civil Code, as well as several judges' decisions which show that promises to marry can be called an act against the law. The legal consequences of the act of breaking the promise to marry, gives the injured party to sue because they have been materially and immaterially harmed.

## GRATITUDE

This research manuscript is one of the research grants carried out periodically by the Institute for Research and Community Service (LP2M)". Thank you to the Head of LP2M, Andi Sapada Institute of Social and Business Sciences for passing this internal grant proposal, so that this research paper can be completed and published..

## REFERENCES

- Ashshofa, Burhan. *Metode Penelitian Hukum*. Jakarta: Rineka Cipta, 2005.
- Badruzaman, Mariam Darus. "Asas-Asas Hukum Perjanjian." *PT Citra Aditya Bakti, Bandung*, 2001.
- Moegni, Djojodirjo M A. "Perbuatan Melawan Hukum." *Jakarta: Pradnya Paramita*, 1979.
- Nawi, Syahrudin. *Penelitian Hukum Normatif Versus Penelitian Hukum Empiris*. 5th ed. Makassar: PT.Umitoha Ukhuwah Grafika, 2017.
- Nurfitriah, Mesya. "Janji Menikahi Yang Mengikat Dalam Kaitannya Dengan Asas Pacta Sunt Servanda." *Jurnal USM Law Review* 6, no. 1 (2023): 79–93.
- Prodjodikoro, Wirjono. "Perbuatan Melawan Hukum." *Jakarta: Sumur Bandung*, 1984.
- Thalib, Sayuti. "Hukum Kekeluargaan Indonesia (Cetakan Kedua)." *Jakarta: Universitas Indonesia*, 2009.
- Fahiroh, Wirda. "Perlindungan Hukum Terhadap Perempuan Korban Tidak Terpenuhinya Janji Kawin Perspektif KUH Perdata (Studi Putusan Mahkamah Agung Nomor 1644 K/Pdt/2020)." *INSTITUT AGAMA ISLAM NEGERI MADURA*, 2022.
- Hasmawati, Hasmawati, and Muh. Akbar Fhad Syahril. "The Effectiveness of Mediation Process to Press Divorce Rates." *Amsir Law Journal* 1, no. 2 (April 24, 2020): 78–84. <https://doi.org/10.36746/alj.v1i2.26>.
- Jevera, Vania Madeline, Fajar Sugianto, and Sanggup Leonard Agustian. "Pertanggungjawaban Hukum Pengingkaran Janji Kawin." *Tanjungpura Law Journal* 6, no. 2 (2022): 195–212.



- Josviranto, Micael, Patrick Sanry Mero Nurak, Garvatius Portasius Mude, Alfonsus Hilarius Ase, and Maria Guntilda Plea. "Analisis Kasus Putusan Pengadilan Negeri Maumere Nomor 8/Pdt. G/2019/Pn MME Tentang Wanprestasi Dalam Ingkar Janji Menikah." *Gema Wiralodra* 12, no. 2 (2021): 320–31.
- Mantili, Rai, and Sutanto Sutanto. "Kumulasi Gugatan Perbuatan Melawan Hukum Dan Gugatan Wanprestasi Dalam Kajian Hukum Acara Perdata Di Indonesia." *Dialogia Iuridica* 10, no. 2 (2019): 1–18.
- Nurfitriah, Mesya. "Janji Menikahi Yang Mengikat Dalam Kaitannya Dengan Asas Pacta Sunt Servanda." *Jurnal USM Law Review* 6, no. 1 (2023): 79–93.
- Syahril, Muh Akbar Fhad. "The Effectiveness Of The Annulment Of Marriage Due To Impersonation And Its Legal Consequence." *IOSR Journal Of Humanities And Social Science (IOSR-JHSS)* 23, no. 2 (2018): 2279–0845. <https://doi.org/10.9790/0837-2302023944>.
- Wulandari, Devi Dwi. "Analisis Yuridis Ingkar Janji Kawin Sebagai Perbuatan Melawan Hukum." Institut Ilmu Sosial dan Bisnis Andi Sapada., 2022.
- Law Number 1 of 1974 Concerning Marriage