

Legal Analysis of Judge's Consideration in Marriage Promise Case at Maumere District Court



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ABSTRACT: This research was conducted with the aim of determining whether the judge's considerations in the Maumere District Court Decision Number 8/Pdt.G/2019/ Pn.Mme regarding breach of marriage vows were in accordance with applicable law. This research is a normative legal research, namely research that focuses on studying the application of rules or norms in positive law. With the Case Approach method, *Statute Approach* and Conceptual Approach. And this research, the analysis of legal materials used is *prescriptive*, namely presenting legal materials and information which are then analyzed using several conclusions as findings from research results.

The results of the study show that: the consideration of the panel of judges in Decision Number 8/Pdt.G/2019/PN.Mme regarding this matter, the judge granted the plaintiff's lawsuit as an act of breach of contract, so that it contradicts the results of the author's research that the plaintiff should have filed a lawsuit with the type of lawsuit for Unlawful Acts (PMH), because this has harmed others. The promise of marriage is a form of Unlawful Act (PMH), the implications that arise are losses in the form of Material losses and Immaterial losses, thus it is inappropriate if in the Maumere District Court Decision Number 8/Pdt.G/2019/PN.Mme the panel of judges granted the plaintiff's lawsuit with an act of breach of contract, in line with this matter it also contradicts the Supreme Court Decision Number 3191 K/Pdt/1984 that the promise of marriage is a form of Unlawful Act (PMH)

KEYWORDS: Judge's Consideration, Marriage Promise, Breach of Contract

I. INTRODUCTION

A promise to marry is a significant commitment that carries emotional, social, and sometimes legal implications. In many jurisdictions, a breach of this promise can lead to legal consequences, especially when one party suffers harm or loss due to the annulment. While proposing or accepting a marriage proposal is largely a personal act, it can create legally recognized obligations, such as the engagement of contracts or expectations of financial support. To fully understand the legal status of such promises, it is important to examine the historical, cultural, and legal frameworks that define what constitutes a valid promise to marry and the conditions under which it may be annulled.

In Law Number 1 of 1974 concerning Marriage, as amended by Law Number 16 of 2019 (hereinafter referred to as the Marriage Law), the term "marriage agreement" is introduced. However, this marriage agreement differs from the promise to marry discussed in this study. The marriage agreement, as regulated in Article 29 of the Marriage Law, refers to an agreement made by the prospective husband and wife before or at the time of marriage, which governs the consequences of the marriage on their assets.

Meanwhile, the promise to marry, as referred to in this study, is a commitment to bind oneself to another person through marriage. A marriage agreement is typically made in writing, whereas a promise to marry is usually conveyed verbally. It may even be part of an attempt to win over a partner. Successfully gaining a partner's trust through a marriage promise does not mean one is free to engage in unlawful actions, as every action has consequences. A promise to marry that results in tangible loss to one of the parties due to the unilateral breaking of the promise can lead to liability for the damages suffered. Article 1313 of the Civil Code defines an agreement as an act by which one or more people bind themselves to one or more others. In relationships, a promise to marry often emerges, but sometimes it is broken. While the failure to fulfill a marriage promise may seem common to some, it should not be trivialized. This is especially significant because, according to Supreme Court Decision No. 3191 K/Pdt/1984, a broken promise to marry is considered an unlawful act.

However, in the Maumere District Court Decision Number 8/Pdt.G/2019/Pn.Mme, a person filed a lawsuit against his ex-girlfriend for breaking a promise to marry him. Over time, the defendant failed to keep his promise, so based on the broken promise in the agreement, Albertina Anfrida (hereinafter referred to as the plaintiff) filed a lawsuit against Servatius Yasintus (hereinafter

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referred to as the defendant) at the Maumere District Court (PN). However, the panel of judges who examined and decided the case applied breach of contract (wanprestasi). This, in the author's opinion, contradicts the relevant laws and regulations, as well as the jurisprudence of the Supreme Court.

II. CASE DISCUSSION

The Plaintiff and Defendant had been in a romantic relationship since 2010. Their relationship began in November 2010, when they started communicating intensely, accompanied by romantic words, which brought them closer together. One day, the Defendant called the Plaintiff, saying that he was sick. However, when the Plaintiff arrived at the Defendant's house, it turned out that the Defendant was not ill, and the house was quiet. This led to sexual intercourse between the Defendant and the Plaintiff. Following this incident, their relationship became more intimate, and they began living together as if they were husband and wife. On Friday, March 16, 2018, the Plaintiff and Defendant visited the Plaintiff's parents and family, bringing two roosters to announce their plans for marriage, which were set for July 2018. The marriage was to be preceded by a traditional ceremony in May 2018, after which the Plaintiff and Defendant would live together again. Both parties remained committed to the initial agreement, with the marriage scheduled for July 2018 and a face-to-face meeting of the families planned for May 10, 2018, at the Plaintiff's parents' house.

On Thursday, May 10, 2018, the Plaintiff's family waited for the Defendant and his family to arrive, but they did not come until the afternoon. At 5:00 PM WITA, the Plaintiff's family decided to take the Plaintiff, along with her belongings, to the Defendant's house. After being welcomed, the Plaintiff's family explained the purpose of their visit to accompany the Plaintiff as the Defendant's future wife and then left. On May 11, 2018, the Defendant asked the Plaintiff's family to return on May 13, 2018, to discuss the wedding plans. However, when they arrived, the Defendant told the Plaintiff's family to take the Plaintiff and the traditional items back, citing incompatibility as the reason.

The plaintiff, feeling dissatisfied with the treatment, decided to bring the matter to court. The plaintiff believed that the defendant had committed a breach of contract or broken promise, which caused psychological and social harm. As a result, the plaintiff sought compensation from the defendant, including material losses amounting to Rp13, 950,000 and immaterial losses of Rp150, 000,000.

III. PLAINTIFF'S PETITUM

Based on the case details above, the author explains that the Plaintiff's petitum is for the panel of judges to grant the lawsuit in its entirety, declare the validity of the seizure of the Defendant's assets, and confirm that the agreement to hold the wedding in July 2018 is valid and binding. Additionally, the Plaintiff requests the court to declare that the Defendant has committed a breach of contract by failing to hold the wedding as promised, despite having had intimate relations with the Plaintiff with the promise to marry her.

IV. DEFENDANTS EXCEPTION

After reviewing the Defendant's exception, the author found that the Defendant denied the Plaintiff's claim and filed an objection to the acceptance of the exception in full. The Defendant requested that the Plaintiff's claim be entirely rejected or declared inadmissible, and that the Plaintiff be ordered to pay all court costs.

V. PANEL OF JUDGE'S CONSIDERATIONS

The court assessed whether the Defendant had committed a breach of contract or an unlawful act by canceling the wedding plans that had been agreed upon with the Plaintiff. The wedding was planned for July 2018, with a traditional ceremony scheduled for May 2018. The case focused on whether the Defendant's unilateral cancellation constituted a legal violation and whether the Plaintiff was entitled to compensation.

The author's findings and analysis can be detailed in several points:

- a. Existence of a Marriage Agreement: The Panel of Judges found that there was an oral agreement between the Plaintiff and the Defendant to marry. This agreement was supported by family meetings and customary processions commonly carried out in the Sikka community. One important meeting took place on March 16, 2018, where the Defendant brought two roosters as a symbol of the marriage plan.
- b. Unilateral Cancellation by the Defendant: Despite the agreement, on May 13, 2018, the Defendant informed the Plaintiff's family that he would not proceed with the wedding plans due to incompatibility. This cancellation caused both material and immaterial losses to the Plaintiff and his family.
- c. Legal Basis:
 1. The court considered whether the Defendant's actions constituted a breach of contract (broken promise) or an unlawful act.

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2. Article 1365 of the Civil Code was used as the basis: "Every act that violates the law and causes loss to another person requires the perpetrator to compensate for the loss."
 3. The Supreme Court jurisprudence (Decision No. 3191 K/Pdt/1984) states that breaking a marriage promise can be categorized as an unlawful act.
- d. Elements of Unlawful Acts: The Panel of Judges examined four key elements of unlawful acts:
1. Unlawful Act: The Defendant's actions violated social norms and the agreements that had been made.
 2. Mistake: The act was done intentionally without a valid reason.
 3. Losses: The Plaintiff suffered both material and immaterial losses.
 4. Causal Relationship: There was a direct link between the Defendant's actions and the losses suffered by the Plaintiff.
- e. Material Losses: The Plaintiff filed a claim for losses amounting to Rp 13,950,000, which covered wedding preparation costs, such as food, drinks, and traditional items.
- f. Immaterial Losses: The Panel of Judges decided that the Defendant must pay Rp 50,000,000 as compensation for immaterial damages. This compensation was based on customary norms in Sikka, where the cancellation of a marriage is seen as a serious violation of family honor.
- g. Customary Considerations: In Sikka society, announcements of marriage have major legal and social consequences. The Defendant's actions were considered to have tarnished the Plaintiff's reputation in the community.
- h. Court Decision: The Panel of Judges concluded that the Defendant's actions were unlawful, not merely a breach of contract. The court ordered the Defendant to pay compensation for both material and immaterial losses suffered by the Plaintiff.

VI. VERDICT

In relation to the description above, the verdict decided by the panel of judges is as follows: In the exception, the court rejects the Defendant's exception. In the main case, the panel of judges grants the Plaintiff's lawsuit in part and declares the agreement between the Plaintiff and the Defendant to hold a wedding in July 2018, as communicated to the Plaintiff's family on March 16, 2018, to be valid and binding. The court also declares the Defendant to be in default (broken promise) for failing to hold the wedding with the Plaintiff in July 2018, as agreed. Therefore, the Defendant is sentenced to pay compensation, including material damages amounting to Rp. 13,950,000.00 (thirteen million nine hundred fifty thousand rupiah) and immaterial damages amounting to Rp. 50,000,000.00 (fifty million rupiah) to the Plaintiff, in cash and immediately. The court also rejects the Plaintiff's claims for anything beyond this and orders the Defendant to pay all costs arising from the case, amounting to Rp. 1,331,000.00 (one million three hundred thirty-one thousand rupiah).

VII. AUTHOR'S ANALYSIS OF JUDGE DECISION NUMBER 8/PDT.G/2019/PN.MME

A contentious lawsuit, or contentious jurisdiction, refers to a lawsuit involving a dispute between two or more parties. In a civil case, there are typically two parties: the Plaintiff and the Defendant. A contentious court has the authority to handle cases that involve disputes between the parties. In line with this description, it is important to note that in this study on civil procedural law, the author will first outline the principles of civil procedural law, as follows: (Henry Campbell, 1978)

1. The principle of *eigenrechten* (not taking the law into your own hands);
2. The principle that the judge must wait;
3. The principle of *audi et alteram partem* (listening to both parties);
4. The principle that litigation is subject to fees;
5. The principle that representation is not mandatory;
6. The principle of judicial passivity;
7. The principle of public access to hearings;
8. The principle that decisions must be accompanied by reasons;
9. The principle of fast and low-cost justice.

In line with the description above, the author then describes several things to answer all the problems in this research, namely regarding the material content of the lawsuits, therefore the following is the description:

1. Identity of the parties;
2. Posita/Reason for the claim (*fundamentum petendi*);
3. Petitum/Demand.

Article 1 of Law Number 1 of 1974 concerning Marriage, as amended by Law Number 16 of 2019, defines marriage as a physical and spiritual bond between a man and a woman as husband and wife, aimed at forming a happy and eternal family based on the belief in God Almighty. This definition of marriage consists of four elements, namely:

1. Inner and Outer Bond: Marriage involves both physical and emotional commitment without coercion.
2. Between Men and Women: Marriage is permitted only between a man as husband and a woman as wife.
3. Happy and Eternal Family: The purpose of marriage is to establish a peaceful and prosperous household.

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4. Based on Religion: Marriage must comply with the provisions of the religion adhered to by the parties.

Regarding the promise of marriage, although such promises often arise in romantic relationships, Indonesian law does not explicitly regulate them in the Marriage Law. Article 58 of the Civil Code addresses the promise of marriage, but the Marriage Law does not specifically cover engagements or promises to marry, such as a person's promise to marry their partner. This differs from the marriage agreement regulated in Article 29 of the Marriage Law. Marriage promises are often the basis for premarital sex. If one party breaks the promise, it can cause harm and lead to legal issues. It can be said that the current marriage law does not regulate marriage promises, the act of breaking such promises, or the associated sanctions. The Marriage Law only regulates the requirements for marriage in Article 6, paragraph 1, which includes the agreement of both parties to enter into marriage (Salim HS, 2019).

A marriage promise is different from a marriage contract. The marriage promise is regulated in Article 58 of the Civil Code, which states that a marriage promise does not grant the right to sue in court to compel the marriage or request compensation. However, if the promise has been announced to the civil registry officer, the injured party may sue for compensation. This claim is valid for 18 months after the announcement. On the other hand, the marriage agreement is regulated in Articles 119 and 139 of the Civil Code and Article 29 of the Marriage Law, and it governs the arrangement of assets during the marriage.

A marriage vow is a promise between a couples to marry, typically made by a man to his partner. In practice, this promise is often unilaterally cancelled, which can lead to material and immaterial losses for the other party. The case in Maumere (Maumere District Court Decision No. 8/Pdt.G/2019/PN.Mme) illustrates how a broken marriage vow can result in losses. The injured party has the right to file a lawsuit in court for the broken promise.

In a society that still upholds customary values, breaking a marriage promise can have negative consequences, particularly concerning the self-esteem and dignity of both parties, whether women or men. In the cases studied, women are often the primary victims and feel greatly disadvantaged. Not only are the prospective couple and their families affected, but also the extended families of both parties. If the marriage promise has been officially announced, it can serve as the basis for claiming compensation for the resulting losses. According to Article 51 of the Civil Code, marriage notification must be made in person or through a written document, recorded in a deed by a civil registry officer.

However, Article 58 of the Civil Code states that a marriage promise does not grant the right to demand that the marriage be carried out or to request compensation. Any compensation agreement related to the marriage promise is considered null and void by law. However, if the notification of the marriage to the civil registry officer has been followed by an announcement of the marriage, this can provide grounds for demanding compensation for costs, losses, and interest, based on the real losses suffered by one party regarding their property due to the actions of the other party. In this case, lost profits cannot be considered. This claim expires after a period of eighteen months, calculated from the date of the marriage announcement (Aufi Imaduddin, 2024).

In civil procedure, there are two forms of lawsuits: breach of contract (Article 1243 of the Civil Code) and unlawful acts (Article 1365 of the Civil Code). The case of a broken marriage promise raises the question of whether it constitutes a breach of contract or an unlawful act. A breach of contract refers to the negligence or failure to fulfill obligations in an agreement between a creditor and a debtor, whether intentional or not. For an action to be categorized as a breach of contract, it must meet the elements of an agreement between the two parties, a violation of the agreement's terms by one party, and stated negligence, where the party still does not fulfill its obligations.

A breach of a marriage promise is not exactly the same as a breach of contract. A breach of contract pertains to an obligation in a contract or agreement regulated by law. It occurs when the debtor fails to fulfill a contractual obligation established by law, agreement, custom, or propriety. In the case of a marriage promise, since there is no binding legal contract like a breach of contract, this action is more often viewed as an unlawful act, particularly if it results in material or immaterial losses. In Book III of the Civil Code, the elements of default are:

1. Failing to carry out obligations at all;
2. Fulfilling obligations but with delay;
3. Fulfilling obligations, but not in accordance with the agreement;
4. Doing something that is prohibited in the agreement.

Default is closely related to an agreement. However, a promise to marry is not considered an agreement because it is merely a commitment between the couple. On the other hand, unlawful acts include actions that violate the law or unwritten legal rules. These legal provisions aim to protect the injured party and provide compensation.

Unlawful acts in Dutch are called *onrechtmatige daad*, and in English, they are referred to as torts. In particular, the term "tort" has evolved to mean a civil wrong resulting from a breach of contract. This is similar to the understanding of unlawful acts, known as *onrechtmatige daad*, in the Dutch legal system or other Continental European countries. In principle, the purpose of establishing a legal system for unlawful acts is to achieve what is expressed in the Latin maxim *juris praecepta sunt lux, honeste vivere, alterum non laedere, suum cuique tribuere* (the motto of the law is to live honestly, not harm others, and give others their due) (Sugali, 2000).

Opinion of the Supreme Court in Decision Number 4/Yur/Rev/2018 "Regarding the legal issues arising from the unilateral cancellation of agreements, the Supreme Court (MA) has consistently held the view that if one party that has entered into an

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agreement with another party unilaterally cancels the agreement, then the party that has unilaterally canceled the agreement has committed an unlawful act." Jurisprudence explains that: "The legal stance mentioned above, where the Supreme Court views the unilateral termination of an agreement as an unlawful act, has become established jurisprudence. This is because the Supreme Court has consistently applied this stance in all decisions involving similar issues since 2014".

Based on the description above, the Supreme Court stated that unilateral cancellation falls into the category of unlawful acts. The legal basis used to assess the obligation is Book III of the Civil Code on Obligations (*Van Verbintenissen*), specifically Articles 1233 and 1234 of the Civil Code. Article 1233 of the Civil Code: "Obligations arise from an agreement or by law." Article 1234 of the Civil Code: "Obligations aim to give something, do something, or refrain from doing something."

In the context of this case, Article 1233 of the Civil Code indicates that an obligation arises from an agreement between the two parties. This obligation creates a duty for both parties to fulfill the agreement: to give something, do something, or refrain from doing something. In the case of an unfulfilled marriage promise, this obligation gives the parties involved the option to fulfill the agreement, providing something in accordance with what was previously agreed. The same point was also made by Gery R. Weydekamp in his research titled *Unilateral Cancellation of Agreement as an Unlawful Act*. In his discussion on page 152, he stated that one of the grounds for the unilateral cancellation of an agreement can be pursued with a lawsuit for unlawful acts:

1. Unilateral cancellation that is not based on reasons justified by the laws and regulations can be considered a violation of legal obligations that exist outside of every agreement, namely the duty to always act in good faith and in accordance with propriety and the principle of caution.
2. If the cancellation involves arbitrariness or uses a dominant position to exploit the weaker position (disadvantageous circumstances) of the opposing party, it is considered an unlawful act. This occurs because of arbitrariness or exploiting the weak position of the opposing party, which lies outside the execution of the obligations stipulated in the agreement. This is in line with the HogeRaad Decision in the *Lindenbaum versus Cohen* case, which stated that an unlawful act is not only a violation of written regulations but can also result from a violation of the subjective rights of others. It involves failing to meet the legal obligations of the perpetrator, violating rules and morals, and contravening the principles of propriety, accuracy, and caution that a person should exhibit in social interactions or regarding the property of others. In essence, it contradicts the good conduct expected in society, which considers the interests of others (Vendor Sugara, 2024).

The ambiguity between the meanings of unlawful acts and breach of contract impacts judicial practice. The boundaries between breach of contract and unlawful acts remain confusing and unclear in their application to civil lawsuits in court (Josviranto, 2021). These boundaries become even more blurred when applied to specific cases, and not infrequently, lawyers and judges mistakenly classify a case that actually falls under unlawful acts as a breach of contract, and vice versa. In some instances, both classifications are applied, even though they are clearly distinct (Josviranto, 2019).¹ A breach of contract can be considered an unlawful act, but there are key differences between the two. A breach of contract arises from an agreement, while an unlawful act stems from the law. In this case, even though the lawsuit was filed based on a breach of contract, the court should have viewed it as an unlawful act. The defendant unilaterally ended the relationship and failed to keep his promise to marry, which meets the elements of an unlawful act: the existence of an act, a violation of the law, fault, and harm to the plaintiff.

A marriage promise is only a commitment, but if it causes harm, a lawsuit can be filed as an unlawful act. According to Article 1365 of the Civil Code: "Every unlawful act that harms another person requires the perpetrator to compensate for the loss." Unlawful acts include actions that violate the law, the rights of others, morality, or propriety in society. To be considered unlawful, there must be an unlawful act, the perpetrator's fault, harm to the victim, and a causal relationship between the act and the loss.

This research examines the Judge's Decision in case Number 8/Pdt.G/2019/Pn.Mme, where the unfulfilled marriage promise was considered a breach of contract. The researcher will review the Maumere Court's decision, which still refers to Article 58 of the BW, stating that a "marriage promise" does not have legal consequences. This provision is no longer relevant to the current social context. The Supreme Court Decision No. 3191 K/Pdt/1984, dated February 8, 1986, declared that the failure to fulfill a marriage promise is an Unlawful Act (PMH), which is crucial for protecting women, particularly those who are victims of marriage promises. Strict legal instruments are needed, as jurisprudence, though not legally binding, has significant persuasive power. In this jurisprudence, the defendant was found to have violated moral and decency norms, thus being required to pay damages. However, the claim for compensation for living expenses together was rejected because it had not been agreed upon in advance. The defendant's actions did not meet the elements of breach of contract, so the plaintiff's lawsuit was deemed not based on legal principles.

According to the author, the court's decision in this case is inappropriate. The judge should have referred to the Supreme Court Decision No. 3191 K/Pdt/1984 and classified case Number 8/Pdt.G/2019/Pn.Mme as an Unlawful Act (PMH), not a breach of contract. In a similar case, the defendant failed to keep his promise to marry, and although the lawsuit was filed as a breach of contract, it should have been based on PMH. Both parties also practice religions outside the majority religion in Indonesia. The

¹Josviranto, M. (2019). " The role of local government in providing legal protection for tourists in Sikka Regency", *Jurnal Akrab Juara*, 4(3), 93-100, visited Friday, June 21, 2024 at 23.43 WITA

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Supreme Court's jurisprudence emphasizes that such a case is more appropriately filed as PMH, not a breach of contract. The panel of judges in the case rejected the lawsuit because it did not meet the elements of breach of contract and took into account the regulations in force at the time, consistent with the legal provisions in the jurisprudence.

VIII. CONCLUSION

Based on the research, the author concludes that the panel of judges' consideration in Decision No. 8/Pdt.G/2019/PN.Mme regarding the marriage promise is inappropriate. The judge granted the Plaintiff's lawsuit on the basis of breach of contract, even though the lawsuit should have been filed as an Unlawful Act (PMH) because it caused harm to another party. A marriage promise is a form of PMH because it leads to both material and immaterial losses and violates local laws and norms. This decision contradicts Supreme Court Decision No. 3191 K/Pdt/1984, which affirms that a marriage promise constitutes PMH. Additionally, the decision does not align with the principles of civil procedural law, which require that decisions be clearly and precisely explained.

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