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DAFTAR ISI

JURIDICAL REVIEW OF UNILATERAL ENGAGEMENT ANNULMENT AS AN UNLAWFUL ACT IN CONNECTION WITH CODE OF CIVIL LAW (CASE STUDY OF DECISION NUMBER 45/Pdt.G/2019/PN.Sng) Yustya Laraswati, Yuniar Rahmatiar, Muhamad Abas..... 102-115

JURIDICAL REVIEW OF POLYGAMY PERFORMED BY CIVIL SERVANTS VIEWED FROM GOVERNMENT REGULATION NUMBER 45 OF 1990 (STUDY OF DECISION NUMBER 325/PDT.G/2019/PA.PWL) Windi Destriyanti, M. Gary Gagarin Akbar, Zarisnov Arafat 116-131

LEGAL PROTECTION OF CHILDREN AFTER DIVORCE DIVORCE RELATED TO ACT NUMBER 16 OF 2019 AMENDMENT TO ACT NUMBER 1 OF 1974 CONCERNING MARRIAGE (Decision Study Number 1145/pdt.g/2020/PA.Krw) Jihan Alfadia, Muhammad Abas, Zarisnov Arafat 132-144

CURRENT CONDITIONS FOR THE PROVISION OF CIVIL MEASURES CONTRA DROGS CONTRACTING CLASS I PARTIELLE ON THE BASIS OF LEGISLATION No. 35 OF 2009 ON DRUGS (Study of Judgment No. 446/Pid.Sus/2020/PN.Gpr) Jasa Sudjana, Deny Guntara, Yuniar Rahmatiar 145-162

LEGAL CONSEQUENCES OF DELAY REPORTING OF SHARE ACQUISITION BETWEEN PT. AGRO PRATAMA AND PT. DHARMA SATYA NUSANTARA BASED ON LAW NUMBER 5 OF 1999 CONCERNING PROHIBITION OF MONOPOLY PRACTICES AND UNFAIR BUSINESS COMPETITION (KPPU Case Study Number 29/KPPU-M/2019) Annisa Putri Azra, Anwar Hidayat, Yuniar Rahmatiar 163-181

OPTIMALIZATION OF THE ROLE AND FUNCTIONS OF THE LOCAL PROPERTY BOARD IN THE SUPERVISION OF THE USE OF LIMITED LANDS IN THE CABITATES OF THE NATIONS RELATED TO THE LAW NUMBER 17 OF 2014

(Case Study at the People's Representative Council of Karawang District)

Norma Indah Nur Fitrianingsih , M.Gary Gagarin Akbar , Sartika Dewi ...182-195

Universitas Buana Perjuangan Karawang

Vol. 8 No.2 (2023)

Submit: 3-Jun-2023

Revised: 10-jun-2023

Published: 3-Sep-2023

JURIDICAL REVIEW OF UNILATERAL ENGAGEMENT ANNULMENT AS AN UNLAWFUL ACT IN CONNECTION WITH CODE OF CIVIL LAW (CASE STUDY OF DECISION NUMBER 45/Pdt.G/2019/PN.Sng)

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Abstract: According to Al-Hamdani, engagement is a man's request for another person's daughter or a woman who is under someone's guardianship, as an introduction before marriage. Engagement as a planned action is undeniable that it can be canceled for that action. The problems raised in this study are how the unlawful act in canceling a unilateral engagement according to the Civil Code and how the judge's considerations in lawsuit No. 45/Pdt.G/2019/PN.Sng. The purpose of this study is to find out how the cancellation of the engagement is said to be an unlawful act and to see the judge's considerations in granting the lawsuit Number: 45/Pdt.G/2019/PN.Sng. The research method used is a qualitative research method. Using a normative juridical approach and using data analysis methods, legal reasoning is problematic. The results of this study show that, in the decision of case No.45/Pdt.G/2019/PN.Sng, the judge considered that: unilateral cancellation of engagement categorized as unlawful acts is correct, in accordance with Article 1365 of the Civil Code. The Defendant unilaterally cancelled the engagement with the Plaintiff which has violated the norms of decency and decency in society.

Keywords: Engagement Cancellation, Unlawful Act, Judge's Consideration

1. Introduction

Al-Hamdani defined engagement as a man's request for a woman who is a person's daughter or a woman who is a person's guardian as a pre-marriage introduction. Another first step to marriage is engagement. After both the male and female parties have decided they want to get married, the engagement occurs.

Universitas Buana Perjuangan Karawang

Vol. 8 No.2 (2023)

Submit: 3-Jun-2023

Revised: 10-jun-2023

Published: 3-Sep-2023

Both sides came to this arrangement after first making an application, which was a request or argument made by the male to the woman.¹ Both parties are deemed to have been engaged by deed, and this right is followed by the filing of legally enforceable signs. In this instance, an agreement between the two parties has been reached to bind both parties (a man and a woman) to advance to a higher level, namely marriage.

Indonesia has a number of legal restrictions that govern engagement. In Indonesian customary law, engagement is governed by the regional customs. The parents of both sides perform the engagement personally or with a representative of the male side's family.² Islamic law does not use the phrase "engagement," although the Compilation of Islamic Law (hence referred to as KHI) does use the term "proposal" or "khitbah." A proposal, also known as a khitbah, is an action taken to facilitate romantic relationships between men and women. It can be carried out by both those looking for a partner and dependable middlemen. The Civil Code, sometimes known as the Civil Code, does not explicitly define engagement under western law. Only the marriage vows described in Article 58 of the Civil Code are governed by it.

It is true that engagement is a premeditated act, but the act can still be canceled. The engagement was terminated, and as a result, both parties received money and had their reputations restored. On the other hand, this is different where customary law recognizes engagement as a legal act. Legal repercussions in the form of claims from other parties who have been affected by the cancellation of the engagement have been associated with engagement by jurisprudential judgment, which is an engagement that, if canceled unilaterally, will have this effect. According to Civil Code Article 1365, the redress sought by the party who

¹Soerjono Wignjodipoero, *Pengantar dan Asas-asas Hukum Adat*, Gunung Agung, Jakarta, 1987, hlm.124.

² *Ibid*, hlm.124.

Universitas Buana Perjuangan Karawang

Vol. 8 No.2 (2023)

Submit: 3-Jun-2023

Revised: 10-jun-2023

Published: 3-Sep-2023

was wronged is based on unlawful activities.³ Because both sides' families saw it at the engagement and the local community was aware of it, it was claimed that it was an illegal act. Additionally, if it is canceled without warning or consultation, it violates social norms of politeness and does harm to women's self-esteem and reputation.⁴

In essence, society permits betrothed to break off their engagement; nonetheless, an engagement involves a commitment to marry from the man to the woman, and breaking that pledge is inappropriate.⁵ The Civil Code or Law No. 1 of 1974 Governing Marriage is applied when a civil engagement or exchange of commitments takes place. However, while marriage vows are not mentioned in Law No. 1 of 1974, Book I of the Civil Code's provisions on marriage can be enforced under Law No. 1 of 1974's Article 66.⁶

The author in this instance pursues a case at the Subang District Court for the cancellation of an engagement that has been cancelled. As opposed to this, where Tsaniah Nur Jannah (hereinafter referred to as the plaintiff) and Robi Mardiyana (hereinafter referred to as the defendant) had called off their engagement. The guy unilaterally and without providing a valid cause called off the engagement, resulting in losses to the woman that were both tangible and immaterial. Costs incurred by the plaintiff that become substantial losses total Rp. 83,310,000.00 (eighty three million three hundred and ten thousand rupiahs), while immaterial losses total Rp. 2,000,000,000.00 (two billion rupiahs) as a result of the plaintiff's feelings of embarrassment. Because of this, the plaintiff endured

³ Muhammad Rizaldy Hariansyah, Ingkar janji untuk menikah dalam perspektif Undang-Undang Hukum Perdata (studi kasus putusan Mahkamah Agung Republik Indonesia No.1653 K/PDT/2010).

⁴ R. Sukbukti dan R. Tjitrosudibio, Kitab Undang-Undang Hukum Perdata, Balai Pustaka, Jakarta, 2014, hlm. 15.

⁵ Abdul Rahman Ghazaly, fikih Munahakat, Kencana, Jakarta, 2006, hlm.73.

⁶ Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Pasal 66

Universitas Buana Perjuangan Karawang

Vol. 8 No.2 (2023)

Submit: 3-Jun-2023

Revised: 10-jun-2023

Published: 3-Sep-2023

psychological pressure in addition to a negative reaction from social interaction.⁷ The plaintiff's request for compensation in the amount of Rp 100,000,000 was granted by the judge, who determined that this case involved an illegal act.

In light of the context mentioned above, the problem is formulated as follows:

1. According to the Civil Code, what constitutes unilateral engagement cancellation as an unlawful act?
2. What factors did the judge take into account when issuing decision number 45/Pdt.G/2019/PN.Sng approving the lawsuit for annulling the engagement as an unlawful act?

2. Method

This study is normative and use qualitative research techniques. The following factors should be taken into account:

A normative juridical approach, or a strategy that is carried out by looking at laws and regulations with this research, was applied in this study. The library approach is this method, which entails reading books, rules and regulations, and other papers relevant to the investigation. The specifications in this study are analytical descriptive. In this study describes the method carried out to find out the situation, a matter by describing it in as much detail as possible based on existing facts regarding the cancellation of an engagement unilaterally as an unlawful and default act and the legal consequences that may occur with the review of the decision Number 45/Pdt.G/2019/PN.Sng.

⁷ Putusan Perdata Direktori Putusan Mahkamah Agung Republik Indonesia Nomor. 45/Pdt.G/2019/PN.Sng

Universitas Buana Perjuangan Karawang

Vol. 8 No.2 (2023)

Submit: 3-Jun-2023

Revised: 10-jun-2023

Published: 3-Sep-2023

3. Analysis or Discussion

The framework of thinking is a conceptual description of how theory relates to numerous aspects that have been recognized as significant difficulties.⁸

In the book titled "Perbuatan Melawan Hukum Pendekatan Kontemporer," there is discussion on pembatalan pertunangan and contemporary law. There are various types of permasalahan in Dr. Munir Fuady's book that can lead to the emergence of a melawan hukum.⁹ Therefore, this book will be very helpful to scholars as they compile their research.

As a result, if the marriage pledge is followed by an announcement (engagement) that subsequently proves to have been broken or the marriage has not occurred, this might serve as justification for requesting payment of fees, losses, and interest based on actual losses incurred by one party. Due to this, if the bet is unilaterally canceled, the party that feels wronged has the right to request a refund.

3.1. Illegal Act Prohibiting Cancellation of One-sided Engagement

An act that violates the law, violates the rights of others, causes another party to suffer a loss, and, of course, requires restitution from the individual who committed the unlawful act are all considered to be unlawful acts.¹⁰

Here, the term "illegal act" refers to an illegal act under civil law. The court previously interpreted "against the law" to mean only breaking written law (the applicable laws), but developments in the Netherlands since 1919 have led to a wider interpretation of the term, including more than just breaking the law. A

⁸ Sugiono, *Metodologi Penelitian Kualitatif kualitatif dan R dan D*, Alfabeta, Bandung, 2017, hlm.62.

⁹ Munir Fuady, *Perbuatan Melawan Hukum Pendekatan Kontemporer*, PT Citra Aditya Bakti, Bandung, 2017, hlm.93.

¹⁰ Indah Sari. "Perbuatan melawan hukum dalam hukum pidana dan hukum perdata".dalam Jurnal ilmiah hukum dirgantara.Volume 11 No.1, September 2020, hlm.54.

Universitas Buana Perjuangan Karawang

Vol. 8 No.2 (2023)

Submit: 3-Jun-2023

Revised: 10-jun-2023

Published: 3-Sep-2023

written invitation, but it also includes any behavior that violates social mores or decency.¹¹

The party who ends the engagement is responsible for making up any losses. Any losses that do arise are related to the preparation of material objects for marriage, such as fees paid for civil state registration and other losses sustained. After that, the psychological status of the harmed individual and his family suffers as the immaterial element. This occurred as a result of the announcement making the engagement widely known.

3.2. The Judge's Reasons for Deciding That the Engagement Cancellation Lawsuit in Case No. 45/Pdt.G/2019/PN.Sng Was an Unlawful Act.

When making a decision in a case, the judge takes into account his or her own justifications or reasoning. It's crucial to know where legal factors stand in a decision. It might even be argued that it forms the basis of a judge's ruling legally. Legal choices, as they are frequently referred as, fall short of upholding the sense of justice in the community. The process of a law, in which the executive, legislature, and reasons for justice have all been carefully and thoroughly reviewed, needs to be clarified in relation to this incorrect notion.

Judges must be able to translate or interpret statutory provisions in such a way that these provisions can serve as the basis for the creation of new laws in order to achieve justice for society. This is because judges interpret the law as more than just a mouthpiece for the law that merely attaches articles from the law to an event or case at hand.¹²

The results of the evidence may be utilized as information for the judge to consider in reaching a decision while the case is being examined by the judge. The proof phase of an examination during a trial is the most crucial. In order to secure

¹¹ Munir Fuady, konsep hukum perdata, rajawali pers, Jakarta, 2014, hlm.249.

¹² Junaedi Efendi, Rekonstruksi Dasar Pertimbangan hukum hakim, PT Pendamedia Group, Jakarta, 2018, hlm.109-110.

Universitas Buana Perjuangan Karawang

Vol. 8 No.2 (2023)

Submit: 3-Jun-2023

Revised: 10-jun-2023

Published: 3-Sep-2023

an accurate and impartial judge's ruling, proof seeks to establish with confidence that an event or fact that has been offered actually occurred. Before it is evident to the court that the event or fact actually occurred, that is, the truth can be verified, such that it appears that there is a legal relationship between the parties, the judge cannot render a judgement.¹³

Judges must base their rulings on the most comprehensive and well-balanced theory and research findings possible. In case number 45/Pdt.G/2019/PN.Sng, the plaintiff sued the defendant through the Subang District Court on the grounds of committing an unlawful act (PMH) since the defendant had unilaterally canceled the engagement without notifying the plaintiff in advance. The plaintiff requested Rp 2,000,000,000.- (two billion rupiah) in damages since the cancellation of the engagement caused him to incur tangible and immaterial losses. However, the Panel of Judges' verdict from March 5, 2020, which partially upheld the plaintiff's allegation that the defendant's activities were unlawful (PMH), also awarded the plaintiff inconsequential compensation in the amount of Rp. 100,000,000.- (one hundred million rupiah) in cash and all at once.

In his lawsuit, the plaintiff claimed that the defendant's act, which took the form of his decision to call off their engagement and break their marriage vows, qualified as blindness against the law in accordance with the rulings of the Supreme Court of the Republic of Indonesia Number 3191K/Pdt/1984 dated 8 February 1986 and the Supreme Court Agung RI No 3277K/Pdt/2000 dated 18 July 2003.

The Supreme Court of the Republic of Indonesia's Decision No. 3191K/Pdt/1984, dated 8 February 1986, states as its rule of law: "By failing to fulfill the Defendant's promise to marry the Plaintiff, the Defendant has violated the norms of decency and decency in society, the Defendant's actions constitute

¹³ *Ibid*, hlm.141.

Universitas Buana Perjuangan Karawang

Vol. 8 No.2 (2023)

Submit: 3-Jun-2023

Revised: 10-jun-2023

Published: 3-Sep-2023

an unlawful act which causes loss to the Plaintiff, the Defendant is required to pay the damages." The plaintiff's compensation claim, which seeks reimbursement for all expenses incurred while they shared a home, must be rejected because it was not pre-approved. While the Supreme Court of the Republic of Indonesia ruled in Decision Number 3277K/Pdt/2000, dated July 18, 2003, that "by failing to keep a marriage promise, the act is an act of blindness against the law because it violates the standards of decency and decency in society," such behavior is illegal. This judgement is comparable to the Supreme Court of the Republic of Indonesia's judgement Number 3191K/Pdt/1984, which was issued on February 8, 1986.

Based on the two (two) rulings of the Supreme Court of the Republic of Indonesia, it is clear that the judge gave fair meaning when she deemed a marriage pledge that goes against social norms of decency to be illegal. Unlawful behaviors have never before been connected to marital vows, thus this is obviously a novel phenomenon. Or, to put it another way, the judge's interpretation of the law was successful in classifying the breaking of a marriage pledge that harms the other party as an unlawful act. a choice that offers clarity in the event that the marital pledge is broken. According to Article 58 of the Civil Code, legal certainty does not address the existence of a loss.

In order to understand how the Supreme Court Decisions Numbers 3191K/Pdt/1984 and Number 3277K/Pdt/2000 relate to one another, it is necessary to take into account two (two) different factors. The first of these is the judge's decision's legal foundation. Naturally, one cannot just stumble onto statutory provisions that have been put in place as a mechanism for the accomplishment of just national law, even as a legal finding. The Supreme Court's decision number 3277 K/Pdt/2000 is based on each judge's authority, which has been governed by statutory regulations, as well as the judge's authority to determine the law where the rules are unclear and could potentially result in injustice. This first component is obvious. The second is the judge's decision's role

Universitas Buana Perjuangan Karawang

Vol. 8 No.2 (2023)

Submit: 3-Jun-2023

Revised: 10-jun-2023

Published: 3-Sep-2023

as a jurisprudential and legal discovery that will expand chances for the meaning of justice in the domestic legal system. Every judge will use this case law as a model for deciding a similar situation that, at the time this judgement was written, lacked clear rules and did not favor justice or humanity.

It is only valid if the panel of judges reviewing and ruling on this case determines that the defendant performed an unlawful act by breaking off the engagement and annulling the marital vows to the plaintiff. This conclusion is based on the legal principles found in the 2 (two) jurisprudence above. What is meant by an unlawful act depends on whether it violates another person's rights or gets in the way of that person's legal obligations, as stated in a decision by the Dutch Supreme Court from before 1919, or whether it does so in accordance with Article 1365 of the Civil Code, which states that "Any act that violates the law, which brings loss to another person, obliges the person who, due to his error, issues the loss, to make up for the loss.

The following requirements must be met in order to claim that the perpetrator did something that was against the law:

1. The violation of the law affected or threatened the plaintiff's legal interests;
2. The plaintiff's interests were protected by the rules that were broken;
3. The interest falls within the range of interests that Article 1365 of the Civil Code was intended to protect;
4. The violation of these rules is against the plaintiff's propriety;
5. There is no legal justification; and 5.

Meanwhile, for an act to be considered unlawful, it must comply with the following conditions:

1. There is a breach of the written and unwritten codes of conduct, which the offender should have broken;
2. There is no legal justification.

Universitas Buana Perjuangan Karawang

Vol. 8 No.2 (2023)

Submit: 3-Jun-2023

Revised: 10-jun-2023

Published: 3-Sep-2023

It is not commonplace for engagement celebrations to serve as a platform for sharing news and wedding plans with family, close friends, and other important people in the couple's lives. Engagement can be seen as having bound both parties (male and female) to continue to a higher level, namely marriage. According to the testimony of the witnesses a week after the engagement ceremony, it was discovered that the Defendant had unilaterally broken his promise to marry the Plaintiff by breaking it without disclosing his reasons. This caused the Plaintiff and his family to feel deeply ashamed and depressed.

The judges' panel concluded from the aforementioned statement that it cannot be justified in light of the social order's guiding principle of decency because, in general, everyone must exercise caution when acting or associating and consider others' interests in addition to their own, negating the need to justify the defendant's actions and upholding them in accordance with the decency standards already in place.

Since the defendant's actions damaged the plaintiff's reputation and prevented him from attending college by making him feel ashamed, low in self-esteem, and depressed, the defendant's actions constituted a unilateral annulment that violated the plaintiff's subjective rights. At the time of the engagement, which was witnessed by the families of both parties, invited guests, and the local community, it was known that if it was annulled, the community would be informed.

If it relates to the *aquo* case, as stated in the decision, that the engagement between the Plaintiff and the Defendant was carried out on a large scale with the invitation of family, neighbors, and coworkers to demonstrate that the engagement had been conveyed or announced to the general public, and if one observed the fact that the defendant had revoked their wedding vows, specifically on September 17, 2019, up until the lawsuit was filed in the *aquo* case, it can be argued that the engagement was. Therefore, it is appropriate that the defendant, who ended the engagement unilaterally, be found to have caused the plaintiff to

Universitas Buana Perjuangan Karawang

Vol. 8 No.2 (2023)

Submit: 3-Jun-2023

Revised: 10-jun-2023

Published: 3-Sep-2023

suffer a loss, including both material and immaterial losses, for which the plaintiff may bring a claim for damages.

The term "immaterial loss" refers to something that is abstract in character and does not happen right away. The "material loss" being discussed is the loss of expenses incurred during the engagement event, which is Rp. 81,130,000.- (eighty one million one hundred and thirty thousand rupiah). Nominal value, which can be estimated, is based on the judge's authority to evaluate an activity that resulted in an inconsequential loss by considering the repercussions of the stated action. This is consistent with Supreme Court precedent from May 23, 1970, No. 610K/SIP/1968, which states that "Even though the amount demanded for compensation is considered inappropriate, while the plaintiff absolutely demands that amount, the judge has the authority to determine how much should be paid, this right does not violate Article 178 paragraph (3) HIR."

Referring to the jurisprudence mentioned above, it relies on the panel of judges' authority by stating that the plaintiff's good name has been tarnished as a result of the annulment of the marriage vows, and that this has led to the plaintiff feeling ashamed, low self-esteem, and depressed when the defendant's actions are contrary to the propriety, thoroughness, and prudence as described in Article 1365 of the Civil Code. Additionally, the defendant's actions in relation to Supreme Court decisions 3191K/Pdt/1984 and 3277K/Pdt/2000 can be categorized as unlawful acts because in those two rulings, a legal principle is stated, "by breaking his promise to marry the plaintiff, the defendant has violated the norms of decency and decency in society, and the defendant's actions constitute an unlawful act harming the plaintiff, for which the defendant is required to pay damages."

The Panel of Judges came to the conclusion that the Defendant's acts in calling off the engagement and breaking the pledge to marry the Plaintiff constituted an unlawful act based on all of the aforementioned factors.

Universitas Buana Perjuangan Karawang

Vol. 8 No.2 (2023)

Submit: 3-Jun-2023

Revised: 10-jun-2023

Published: 3-Sep-2023

4. Conclusion

The following can be deduced from the descriptions that have been provided thus far in respect to the existing subject matter:

1. A violation of the law is any action or omission that causes a person to suffer loss for which compensation may be sought. One-sided cancellations are illegal and subject to legal action (PMH), as well as being against social norms and decency.
2. In my opinion, the judge's decision in case number 45/Pdt.G/2019/PN.Sng complies with Article 1365 concerning Illegal Acts and satisfies the requirements of the Legal Act itself. Because the defendant unilaterally canceled the engagement with the plaintiff that had been mutually agreed upon and involved the relatives of both parties without giving a valid reason, this act violated social norms of decency. Therefore, the defendant's actions were unlawful.

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