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Legal Protection for Victims of Unilateral Cancellation of Marriage Following Engagement

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Original Article

Abstract

The unilateral cancellation of marriage following engagement may cause significant legal harm because Indonesian law does not explicitly regulate pre-marital legal relationships. This study examines the legal consequences of such cancellations and evaluates the effectiveness of existing legal protection under Law No. 1 of 1974 on Marriage, as amended by Law No. 16 of 2019, Articles 58 and 1365 of the Indonesian Civil Code, relevant legal doctrines, and judicial precedents. Using a normative legal research method with statutory, conceptual, and case approaches, the study analyzes primary, secondary, and tertiary legal materials. The findings indicate that unilateral cancellation following engagement constitutes a tort by causing economic, non-economic, social, psychological, and cultural harm. The current legal framework remains predominantly remedial, creating legal uncertainty. Therefore, regulatory reform is needed to establish integrated preventive and remedial legal protection for affected parties.

Keywords: *Unilateral Cancellation of Marriage, Legal Protection, Tort, Engagement*

Abstrak

Pembatalan perkawinan secara sepihak setelah peminangan menimbulkan kerugian hukum akibat belum adanya pengaturan yang secara eksplisit mengatur hubungan hukum pada fase pra-perkawinan dalam sistem hukum Indonesia. Penelitian ini bertujuan menganalisis dampak hukum pembatalan perkawinan secara sepihak serta mengevaluasi efektivitas perlindungan hukum bagi korban berdasarkan Undang-Undang Nomor 1 Tahun 1974 sebagaimana diubah dengan Undang-Undang Nomor 16 Tahun 2019, Pasal 58 dan Pasal 1365 Kitab Undang-Undang Hukum Perdata, doktrin hukum perdata, dan yurisprudensi. Penelitian menggunakan metode hukum normatif dengan pendekatan perundang-undangan, konseptual, dan kasus melalui analisis bahan hukum primer, sekunder, dan tersier. pembatalan perkawinan secara sepihak memenuhi unsur perbuatan melawan hukum karena menimbulkan kerugian materiil, immateriil, sosial, psikologis, dan budaya. Perlindungan hukum yang tersedia masih bersifat represif dan belum memberikan kepastian hukum akibat kekosongan pengaturan mengenai hubungan pra-perkawinan. Oleh karena itu, diperlukan reformulasi regulasi yang mengintegrasikan perlindungan hukum preventif dan represif guna menjamin kepastian hukum, keadilan, dan perlindungan yang efektif bagi korban pembatalan perkawinan secara sepihak.

Kata kunci: *Pembatalan Perkawinan, Perlindungan Hukum, Perbuatan Melawan Hukum, Peminangan*

1. INTRODUCTION

Marriage is a legal institution encompassing religious, social, moral, and civil dimensions. Under the Indonesian legal system, marriage is defined as a physical and spiritual union between a man and a woman established to form a happy and enduring family based on belief in the One Almighty God, as stipulated in Law No. 1 of 1974 on Marriage, as amended by Law No. 16 of 2019. Although the Marriage Law comprehensively regulates the legal requirements, solemnization, and legal consequences of marriage, it provides little guidance on legal relationships during the pre-marital stage, particularly after an engagement. In Indonesian society, an engagement is not merely a cultural tradition but also a social commitment involving both prospective spouses and their respective families, thereby creating legitimate legal and social expectations.

The increasing incidence of unilateral cancellation of marriage following engagement reflects broader social change and the evolving dynamics of contemporary life.¹ Such cancellations frequently occur after substantial wedding preparations have been completed, resulting in significant financial losses, including expenses for the wedding ceremony, dowry, catering, documentation, and other related costs.² Beyond these economic losses, the affected party may also suffer non-economic harm, including emotional distress, humiliation, reputational damage, social stigma, and strained family relationships.³ In Indonesian communities, where customary values and communal ties remain influential, the consequences of a canceled marriage extend beyond the prospective spouses to affect their extended families.

Indonesian positive law does not expressly regulate civil liability arising from the unilateral cancellation of marriage following engagement. Article 58 of the Indonesian Civil Code generally precludes compelling a party to proceed with a marriage or claiming damages, except under limited circumstances after the formal public announcement of the intended marriage. This regulatory gap has been addressed primarily through legal doctrine and judicial interpretation, particularly by applying Article 1365 of the Indonesian Civil Code governing tort liability (*perbuatan melawan hukum*). Nevertheless, judicial decisions remain inconsistent in characterizing a broken promise to marry as either a breach of contract or a tort, thereby creating legal uncertainty for the injured party.

¹ Angela Florida Mau, "Tantangan Perkawinan Di Tengah Perubahan Sosial: Perspektif Keluarga Kontemporer," *Risoma: Jurnal Riset Sosial Humaniora Dan Pendidikan* 3, no. 1 (2024): 91–107, <https://doi.org/10.62383/risoma.v3i1.511>.

² Safira Yuvika Jasmine and I. Made Pria Dharsana, "Pembatalan Rencana Perkawinan Oleh Satu Pihak Yang Menimbulkan Kerugian," *Al-Manhaj: Jurnal Hukum Dan Pranata Sosial Islam* 5, no. 2 (2023): 1375–86, <https://doi.org/10.37680/almanhaj.v5i2.2603>.

³ Margareth Anggel Lee et al., "Analisis Perlindungan Hukum Terhadap Perempuan Korban Ingkar Janji Menikah: Studi Putusan No.10/PDT.G/2024/PN KFM," *Student Research Journal* 4, no. 2 (2026): 226–37, <https://doi.org/10.55606/srj-yappi.v4i2.2520>.

The issue of unilateral cancellation of marriage following engagement has become an important subject of Indonesian civil law because it concerns the legal protection of individuals who suffer both economic and non-economic losses. Although Law No. 1 of 1974, as amended by Law No. 16 of 2019, regulates the legal requirements and consequences of marriage, it does not comprehensively govern legal relationships during the pre-marital stage, particularly after an engagement. This normative gap has prompted scholarly discussion regarding the appropriate basis for civil liability under Article 1365 of the Indonesian Civil Code, judicial precedents, and the doctrine of tort liability.

Swetasoma argues that a broken promise to marry may constitute a tort in its broader sense because it violates principles of propriety, morality, and prevailing social norms.⁴ However, the study focuses primarily on post-dispute legal remedies and does not address preventive legal protection for injured parties. Similarly, Cynthia and Hadiati contend that Article 58 of the Indonesian Civil Code, together with Supreme Court Decision No. 3191 K/Pdt/1984, provides a legal basis for pursuing damages under Article 1365 of the Indonesian Civil Code, although their analysis remains confined to the normative construction of liability.⁵

A different perspective is offered by Hidayat and Sarbini, whose empirical legal research demonstrates that legal protection remains ineffective due to limited public legal awareness, inadequate legal education, and the absence of specific legislation governing the cancellation of marriage before the wedding ceremony.⁶ Haspada further observes that judges consider moral values, social norms, and principles of propriety when determining compensation; however, the available legal protection remains predominantly remedial rather than preventive.⁷ Jasmine and Dharsana broaden the concept of compensable harm by recognizing psychological injury in addition to economic losses, yet they likewise do not address the need for specific statutory regulation governing legal relationships arising from engagement.⁸

The existing literature has primarily examined unilateral cancellation of marriage from the perspectives of tort liability, judicial interpretation, and compensation for damages. However, little attention has been devoted to the absence of a comprehensive legal framework governing the pre-marital relationship following engagement or to the development of an integrated model of preventive and remedial legal protection. This

⁴ Cokorda Gede Swetasoma, "Pengingkaran Janji Kawin Sebagai Kualifikasi Perbuatan Melawan Hukum: Studi Putusan Nomor 1644 K/Pdt/2020," *Jurnal Yustitia* 15, no. 1 (2021): 61–74, <https://doi.org/10.62279/yustitia.v15i1.705>.

⁵ Femmie Cynthia and Mia Hadiati, "Akibat Hukum Terhadap Ingkar Janji Untuk Menikah," *Unes Law Review* 6, no. 4 (2024): 9789–95, <https://doi.org/10.31933/unesrev.v6i4.1922>.

⁶ Muhammad Hidayat and Ilyas Sarbini, "Perlindungan Hukum Bagi Calon Pengantin Atas Batalnya Perkawinan," *Nalar: Journal of Law and Sharia* 2, no. 2 (2024): 138–51, <https://doi.org/10.61461/nlr.v2i2.90>.

⁷ Deny Haspada, "Analisis Hukum Gugatan Ganti Rugi Dalam Kasus Pembatalan Perkawinan," *Jurnal Hukum Mimbar Justitia* 11, no. 1 (2025): 65–80, <https://doi.org/10.35194/jhmj.v11i1.5177>.

⁸ Jasmine and Dharsana, "Pembatalan Rencana Perkawinan Oleh Satu Pihak Yang Menimbulkan Kerugian."

study seeks to address that gap by examining the legal consequences of unilateral cancellation of marriage following engagement and proposing a regulatory framework capable of providing greater legal certainty, justice, and effective protection for affected parties.

Nabilah identifies inconsistencies in judicial decisions regarding whether a broken promise to marry should be characterized as a breach of contract or a tort, thereby contributing to legal uncertainty.⁹ Similarly, Sari finds that the existing legal framework remains primarily remedial, focusing on claims for damages only after harm has occurred.¹⁰ In contrast, Selatang et al. emphasize that a promise to marry carries significant moral and social value; consequently, its breach affects not only the prospective spouses but also their families and the broader community.¹¹

Existing scholarship has largely focused on the legal classification of broken promises to marry, judicial precedents, and compensation based on Article 1365 of the Indonesian Civil Code. This study contributes to the literature by examining the legal consequences of unilateral cancellation of marriage following engagement and by developing an integrated model of preventive and remedial legal protection. The proposed framework is grounded in the regulatory gap under Article 58 of the Indonesian Civil Code, relevant legal doctrines, prevailing social values, and principles of Indonesian civil law.

This study aims to comprehensively examine the legal consequences of unilateral cancellation of marriage following engagement for the injured party, including its economic, non-economic, social, psychological, and cultural impacts, and to assess whether such conduct satisfies the elements of a tort under Article 1365 of the Indonesian Civil Code. Furthermore, the study evaluates the effectiveness of the existing legal protection framework through an analysis of the Marriage Law, Articles 58 and 1365 of the Indonesian Civil Code, relevant legal doctrines, and judicial precedents in order to identify regulatory deficiencies governing the pre-marital stage. Finally, the study proposes an integrated model of preventive and remedial legal protection as a *ius constituendum* recommendation for legal reform aimed at enhancing legal certainty, promoting justice, and strengthening protection for victims in accordance with the evolving Indonesian civil law system.

⁹ Nur Nabilah, "Pengingkaran Janji Menikahi Dalam Perspektif Maqasid Syari'ah: Analisis Perbandingan Putusan Nomor 17/Pdt.G/2016/PN.Kds Dan Nomor 5/Pdt.G/2019/PN.Bms" (Universitas Islam Negeri Sunan Kalijaga Yogyakarta, 2023), <https://digilib.uin-suka.ac.id/id/eprint/61734/>.

¹⁰ Yuliana Indah Sari, "Perlindungan Hukum Bagi Perempuan Atas Pengingkaran Janji Kawin Pada: Putusan Hakim Nomor: 14/Pdt.g/2023/Pt.Kpg Ditinjau Berdasarkan Kitab Undang-Undang Hukum Perdata," *Jurnal Res Justitia: Jurnal Ilmu Hukum* 5, no. 1 (2025): 587–98, <https://doi.org/10.46306/rj.v5i1.269>.

¹¹ Fabianus Selatang et al., "Persepsi Dan Makna Pembaharuan Janji Perkawinan Terhadap Keutuhan Perkawinan Oleh Pasutri Katolik," *Jurnal Ilmu Keluarga Dan Konsumen* 16, no. 2 (2023): 108–19, <https://doi.org/10.24156/jikk.2023.16.2.108>.

2. RESEARCH METHODOLOGY

This study employs a normative legal research method, which conceptualizes law as a system of legal norms to examine the legal protection available to victims of unilateral cancellation of marriage following engagement. A normative approach was selected because the study focuses on the absence of explicit legal norms governing legal relationships during the pre-marital stage.

The research adopts three complementary approaches: the statutory approach, the conceptual approach, and the case approach. The statutory approach examines Law No. 1 of 1974 on Marriage, as amended by Law No. 16 of 2019, together with Articles 58 and 1365 of the Indonesian Civil Code. The conceptual approach analyzes legal doctrines concerning breach of contract, tort liability (*perbuatan melawan hukum*), legal protection, and the principle of good faith. The case approach reviews relevant decisions of the Indonesian Supreme Court and lower courts concerning disputes arising from broken promises to marry.

The study relies on primary, secondary, and tertiary legal materials collected through library research. The legal materials are analyzed qualitatively using descriptive-analytical and prescriptive methods. Legal interpretation is conducted through grammatical, systematic, historical, and teleological approaches to identify normative gaps and formulate recommendations for strengthening legal protection in the context of unilateral cancellation of marriage following engagement.

3. RESEARCH RESULT AND DISCUSSION

3.1. Legal Consequences of Unilateral Cancellation of Marriage Following Engagement

The unilateral cancellation of marriage following engagement constitutes a legal event with consequences that extend well beyond the termination of a personal relationship between two individuals. Although Law No. 1 of 1974 on Marriage, as amended by Law No. 16 of 2019, regulates only the annulment of legally valid marriages, social practice demonstrates that an engagement creates a relationship of trust and legitimate expectations capable of giving rise to legal consequences.

Engagement is not merely an expression of an intention to marry but a formal commitment involving the prospective spouses, their extended families, the broader community, customary values, and religious norms.¹² Consequently, the unilateral cancellation of a marriage after substantial wedding preparations have been completed

¹² Muhammad Fa'iq Abiyu and Imam Ibnu Hajar, "Peminangan Sebagai Tradisi Kultural Dalam Proses Perkawinan Masyarakat Desa Weru Kecamatan Paciran Kabupaten Lamongan," 1 (2024): 457–64, <https://proceedings.uinsa.ac.id/index.php/konmaspi/article/view/2534>.

should not be regarded solely as a moral issue. Rather, it constitutes a legal issue that may inflict substantial harm on the injured party.

The most immediate consequence is economic loss. The prospective spouses and their families typically incur significant expenses in preparation for the wedding, including venue reservations, decorations, catering, photography and videography services, wedding attire, invitation printing, dowry-related expenses, transportation, and, in many cases, the costs associated with customary ceremonies.¹³ These expenditures are generally made in reliance on the mutual expectation that the marriage will proceed as planned. When one party unilaterally cancels the marriage without lawful justification, these expenditures become actual financial losses. Such losses satisfy the requirement of actual damage recognized under Article 1365 of the Indonesian Civil Code as a basis for tort liability.

Beyond economic harm, unilateral cancellation of marriage may also result in substantial non-economic losses. Victims frequently experience emotional distress, disappointment, diminished self-esteem, anxiety, depression, and, in some cases, long-term psychological trauma.¹⁴ In Indonesian society, where family honor and social reputation continue to hold considerable importance, the cancellation of an engagement is often perceived as a form of public rejection that adversely affects the dignity of the injured party. These consequences become even more severe when the cancellation occurs after a public announcement of the intended marriage or following the completion of customary engagement ceremonies. The findings of this study further indicate that such non-economic harm is experienced not only by the prospective spouses but also by their extended families, who frequently bear the accompanying social and emotional burdens.

Unilateral cancellation of marriage also produces significant social consequences. Within Indonesia's predominantly communal society, engagement is regarded as a social bond that establishes relationships between two families rather than merely between two individuals. Accordingly, the unilateral termination of an engagement may give rise to interfamily conflict, erode public trust, and expose the injured party—particularly women—to social stigma and reputational harm.¹⁵ Many victims subsequently encounter social exclusion or face difficulties in establishing future marital relationships because the failed engagement is perceived as a personal or familial failure. These circumstances demonstrate that the consequences of unilateral cancellation extend beyond the private sphere and become matters of broader social concern.

¹³ Haspada, "Analisis Hukum Gugatan Ganti Rugi Dalam Kasus Pembatalan Perkawinan."

¹⁴ Efrius Kantriburi et al., "Akibat Hukum Terhadap Pembatalan Pernikahan: Studi Putusan Mahkamah Agung Ri Nomor 1644 K/Pdt/2020," *Jurnal Komunitas Yustisia* 5, no. 3 (2022): 284–96, <https://doi.org/10.23887/jatayu.v5i3.51906>.

¹⁵ Dinda Sri Rezeki et al., "The Return of Engagement Tokens in the Cancellation of Marriage by the Female Party: An Analysis of Fiqh Munakahat and Aceh Qanun," *Aceh Journal of Islamic Law* 2, no. 2 (2026): 36–55.

Unilateral cancellation of marriage frequently conflicts with the customary values observed in many regions of Indonesia. In numerous Indigenous communities, engagement is regarded as an agreement between families that carries moral obligations and, in certain circumstances, customary sanctions if terminated without legitimate justification.¹⁶ Consequently, the unilateral cancellation of marriage is viewed not only as a breach of personal commitment but also as a violation of propriety, family honor, and the social equilibrium maintained within customary communities. These findings underscore that the cultural dimension of engagement represents an important consideration that has yet to be adequately accommodated within Indonesia's positive legal framework.

The unilateral cancellation of marriage following engagement satisfies the elements of a tort under Article 1365 of the Indonesian Civil Code when the five essential elements of tort liability are established: (1) an act, (2) unlawfulness, (3) fault, (4) damage, and (5) a causal relationship between the act and the resulting harm. The element of an act is fulfilled by the unilateral decision to cancel the intended marriage. The element of unlawfulness should not be interpreted narrowly as a mere violation of statutory law but, consistent with the modern development of the doctrine of *onrechtmatige daad*, encompasses conduct that contravenes principles of morality, propriety, and good faith. Fault is established where the cancellation is undertaken without a legitimate justification or in a manner that demonstrates a lack of responsibility. The element of damage is satisfied by the economic and non-economic losses suffered by the injured party, while causation is established where those losses are the direct consequence of the unilateral cancellation.

This interpretation is consistent with the evolution of contemporary civil law doctrine, which recognizes the principle of good faith as a fundamental principle governing all legal relationships. This study argues that a pre-marital relationship that has progressed to the stage of engagement gives rise to reasonable reliance and legitimate expectations deserving of legal protection. Consequently, the unilateral cancellation of marriage without a legitimate legal basis constitutes an abuse of rights that is inconsistent with the principles of good faith, fairness, and propriety. Although an engagement does not create a formal contractual relationship, it may nevertheless give rise to civil liability when one party acts in bad faith and causes harm to the other. Swetasoma argues that a broken promise to marry constitutes a tort in its broader sense because it violates prevailing standards of morality and propriety.¹⁷ Likewise, Cynthia and Hadiati identify Article 1365 of the Indonesian Civil Code as the principal legal basis

¹⁶ Devriansyah Devriansyah, "Praktik Peminangan Adat Dan Sanksi Denda Membatakannya Menurut Adat Melayu Jambi: Studi Kasus Di Kecamatan Pauh, Kabupaten Sarolangun, Jambi" (Universitas Islam Negeri Sunan Kalijaga Yogyakarta, 2021), <https://digilib.uin-suka.ac.id/id/eprint/48825/>.

¹⁷ Swetasoma, "Pengingkaran Janji Kawin Sebagai Kualifikasi Perbuatan Melawan Hukum: Studi Putusan Nomor 1644 K/Pdt/2020."

for imposing civil liability for a broken promise to marry.¹⁸ Building upon these studies, the present research extends the analysis by identifying the multidimensional consequences of unilateral cancellation, encompassing economic, psychological, social, and cultural harm, as well as violations of the victim's civil rights. Rather than merely classifying the conduct as a tort, this study explains how such losses arise and demonstrates why the legal system should provide more comprehensive protection for injured parties.

This study also complements the findings of Hidayat and Sarbini, who emphasize that legal protection remains ineffective because of the absence of specific legislation governing the cancellation of marriage prior to the wedding ceremony.¹⁹ The present study demonstrates that the central problem extends beyond limited public legal awareness to include the absence of clear legal norms regulating pre-marital relationships, thereby requiring courts to rely extensively on judicial interpretation of Article 1365 of the Indonesian Civil Code. Furthermore, the findings are consistent with those of Haspada and Jasmine and Dharsana, who conclude that both economic and non-economic losses arising from the unilateral cancellation of marriage may serve as a valid basis for claims for damages under the doctrine of tort liability.²⁰

The findings of this study further indicate that a pre-marital relationship following engagement has evolved into a legal relationship characterized by trust, good faith, and legitimate expectations that warrant legal protection. The absence of explicit regulation in the Marriage Law should not justify denying legal protection to injured parties. The evolution of the doctrine of *onrechtmatige daad* has enabled courts to safeguard legitimate legal interests through the application of Article 1365 of the Indonesian Civil Code. Such an approach is also consistent with the broader function of law as an instrument for protecting individual rights and achieving substantive justice.

Accordingly, the unilateral cancellation of marriage following engagement should no longer be regarded solely as a moral or private matter but rather as a legal issue giving rise to civil consequences. The resulting harm extends beyond economic loss to include psychological, social, cultural, and reputational injury, all of which warrant legal protection. Therefore, in light of the modern development of the doctrine of *onrechtmatige daad*, the unilateral cancellation of marriage without a legitimate justification satisfies the elements of tort liability under Article 1365 of the Indonesian Civil Code and provides the injured party with a legal basis for seeking compensation.

3.2. Effectiveness of Legal Protection for Victims of Unilateral Cancellation of Marriage Following Engagement

¹⁸ Cynthia and Hadiati, "Akibat Hukum Terhadap Ingkar Janji Untuk Menikah."

¹⁹ Hidayat and Sarbini, "Perlindungan Hukum Bagi Calon Pengantin Atas Batalnya Perkawinan."

²⁰ Haspada, "Analisis Hukum Gugatan Ganti Rugi Dalam Kasus Pembatalan Perkawinan"; Jasmine and Dharsana, "Pembatalan Rencana Perkawinan Oleh Satu Pihak Yang Menimbulkan Kerugian."

The Indonesian legal system provides mechanisms for protecting victims of unilateral cancellation of marriage; however, such protection remains indirect, fragmented, and largely dependent on judicial interpretation. Law No. 1 of 1974 on Marriage, as amended by Law No. 16 of 2019, primarily regulates the legal requirements for marriage, the solemnization of marriage, the rights and obligations of spouses, and the annulment of legally valid marriages. It does not comprehensively address legal relationships arising during the pre-marital stage.

Legal relationships during the pre-marital phase, particularly following engagement, are not expressly regulated under the current legal framework. As a result, individuals who suffer harm due to the unilateral cancellation of marriage lack a specific statutory basis for legal protection. Consequently, legal remedies have been developed primarily through the general principles of tort liability under the Indonesian Civil Code.

Article 58 of the Indonesian Civil Code does not provide effective legal protection for victims of unilateral cancellation of marriage following engagement. As a general rule, the provision establishes that a promise to marry does not entitle either party to compel the marriage or to claim damages if the promise is not fulfilled. An exception applies only where the intended marriage has been formally announced to the competent authorities, in which case compensation may be awarded for actual losses. This provision reflects the classical civil law tradition, which places significant emphasis on individual autonomy in choosing a spouse.²¹ However, within the Indonesian social context—where customary law, religious values, and communal traditions continue to play an important role—this approach has become increasingly inadequate because an engagement has evolved into a legal and social relationship characterized by mutual trust, financial investment, and family honor.

More effective legal protection has emerged through the application of Article 1365 of the Indonesian Civil Code governing tort liability (*perbuatan melawan hukum*). In a number of judicial decisions, courts have interpreted the concept of “unlawfulness” broadly, extending it beyond violations of statutory provisions to include conduct that contravenes principles of propriety, morality, good faith, and social responsibility. This approach reflects the modern development of the doctrine of *onrechtmatige daad* in contemporary civil law. Accordingly, the unilateral cancellation of marriage following engagement may constitute a tort where the essential elements of an act, fault, damage, and causation are satisfied.

Judicial practice further demonstrates an increasing willingness to protect injured parties through tort actions. Supreme Court Decision No. 3191 K/Pdt/1984 represents a landmark precedent because it recognized that a broken promise to marry resulting in demonstrable harm may constitute a tort under Article 1365 of the Indonesian Civil

²¹ Germana Carobene, “Forced Marriages. Cross-Cultural Implications and Legal Connections,” in *Migrant Families and Religious Belonging*, ed. Giovanni Giulio Valtolina and Laura Zanfrini (IOS Press, 2023), <https://doi.org/10.3233/STAL230005>.

Code. A similar approach is reflected in Supreme Court Decision No. 1644 K/Pdt/2020 and Kupang High Court Decision No. 14/Pdt.G/2023/PT.Kpg, both of which awarded compensation for economic and non-economic losses arising from the unilateral cancellation of marriage. These decisions illustrate how the judiciary has sought to fill the regulatory gap left by the Marriage Law through the application of general principles of tort liability.

Despite these judicial developments, the effectiveness of legal protection remains limited. One of the principal weaknesses is the lack of consistency in judicial reasoning. While some courts classify a broken promise to marry as a tort under Article 1365 of the Indonesian Civil Code, others characterize the relationship as giving rise to contractual obligations and therefore analyze the dispute under the law of contract. These divergent approaches produce different evidentiary standards, varying scopes of recoverable damages, and different forms of civil liability. Consequently, the protection afforded to victims continues to depend substantially on judicial discretion, thereby undermining legal certainty and the consistent application of the law.

The principal weakness of the existing legal framework lies in its failure to recognize the legal relationship that arises following an engagement. Engagement creates a relationship of trust and legitimate expectations, prompting the parties to undertake various legal and financial commitments, such as paying deposits for wedding venues, contracting service providers, conducting customary ceremonies, and, in some cases, integrating the economic interests of both families.²² Despite these substantial commitments, the relationship has not been formally recognized as a legal relationship capable of producing civil consequences when one party unilaterally withdraws from the intended marriage. Consequently, injured parties frequently encounter difficulties in establishing a legal basis for their claims because Indonesian positive law does not specifically regulate civil liability arising during the pre-marital stage.

The existing legal framework is predominantly remedial, providing protection only after harm has occurred through judicial proceedings. Victims may seek compensation under Article 1365 of the Indonesian Civil Code by establishing the essential elements of tort liability, namely an unlawful act, fault, damage, and causation. Available remedies include compensation for economic and non-economic losses, as well as *restitutio in integrum*, which seeks to restore the injured party, as far as possible, to the legal position that existed prior to the occurrence of the harm.²³ Nevertheless, this remedial mechanism does not always provide effective access to justice because litigation is often

²² Muhammad Saeful Amri, "Ganti Rugi Pembatalan Pertunangan Analisis Putusan Hakim Nomor: 5/Pdt.g/2019/PN BMS," *Indonesian Journal of Shariah and Justice* 4, no. 1 (2024): 39–62, <https://doi.org/10.46339/ijsj.v4i1.104>.

²³ Sokhib Naim et al., "Perwujudan Restitutio in Integrum Sebagai Hak Anak Korban Tindak Pidana," *Jurnal Usm Law Review* 8, no. 3 (2025): 1683–96, <https://doi.org/10.26623/julr.v8i3.12668>.

costly, time-consuming, and procedurally complex, with a substantial evidentiary burden placed upon the claimant.

The Indonesian legal system has yet to develop an effective framework for preventive legal protection against the unilateral cancellation of marriage following engagement. At present, no legal mechanism requires the parties to observe the principle of good faith throughout the engagement period or to pursue alternative dispute resolution before the cancellation of the intended marriage. From the perspective of contemporary legal theory, however, preventive legal protection plays a critical role in avoiding harm before disputes escalate into litigation.²⁴ The absence of such preventive mechanisms indicates that Indonesian law continues to emphasize ex post remedies rather than preventing violations of legal rights.

These findings support those of Hidayat and Sarbini, who conclude that legal protection for prospective spouses remains inadequate because of weak implementation and the absence of specific statutory regulation.²⁵ Likewise, the findings are consistent with Cynthia and Hadiati, who identify Article 1365 of the Indonesian Civil Code as the principal legal basis for civil liability arising from a broken promise to marry.²⁶ The present study, however, argues that the principal deficiency lies not merely in the implementation of existing legal norms but in the broader normative gap concerning legal relationships during the pre-marital stage, which generates systemic legal uncertainty.

This study also extends the analysis presented by Haspada, whose research primarily focused on claims for damages arising from the cancellation of marriage.²⁷ The present findings demonstrate that the effectiveness of legal protection should not be assessed solely by the availability of judicial remedies. Rather, it should also be evaluated in terms of legal certainty, the consistency of judicial decisions, and the capacity of the legal system to provide preventive protection before harm occurs. Accordingly, legal protection should be understood not only as the right to seek compensation after a violation has occurred but also as a guarantee that clear and consistent legal rules can prevent harmful conduct from occurring in the first place.

The evolution of the broad doctrine of *onrechtmatige daad* has become an important mechanism for addressing the regulatory gap concerning the unilateral cancellation of marriage following engagement. By extending the concept of unlawfulness to include violations of propriety, morality, and good faith, courts have been able to provide legal protection to injured parties despite the absence of explicit statutory provisions in the Marriage Law. However, reliance on expansive judicial interpretation cannot constitute

²⁴ Georgios Stathis and Jaap Van Den Herik, "Ethical and Preventive Legal Technology," *AI and Ethics* 5, no. 2 (2025): 1069–86, <https://doi.org/10.1007/s43681-023-00413-2>.

²⁵ Hidayat and Sarbini, "Perlindungan Hukum Bagi Calon Pengantin Atas Batalnya Perkawinan."

²⁶ Cynthia and Hadiati, "Akibat Hukum Terhadap Ingkar Janji Untuk Menikah."

²⁷ Haspada, "Analisis Hukum Gugatan Ganti Rugi Dalam Kasus Pembatalan Perkawinan."

a sustainable long-term solution because it risks producing inconsistent decisions and undermining legal certainty.

The effectiveness of legal protection for victims of unilateral cancellation of marriage following engagement in Indonesia remains limited. Although Article 1365 of the Indonesian Civil Code and the development of judicial precedent provide a legal basis for victims to recover damages, the existing framework remains predominantly remedial, case-specific, and dependent upon judicial interpretation. At the same time, the Marriage Law and Article 58 of the Indonesian Civil Code fail to provide adequate legal certainty regarding legal relationships arising during the pre-marital stage. Accordingly, Indonesian family law requires legislative reform that explicitly recognizes the legal significance of pre-marital relationships following engagement, establishes the rights and obligations of the parties based on the principle of good faith, and introduces an integrated framework of preventive and remedial legal protection. Such reform would enhance legal certainty, strengthen the protection of victims' rights, and promote an appropriate balance between individual autonomy in choosing a spouse and civil liability for losses arising from the unilateral cancellation of marriage following engagement.

4. CONCLUSION

The unilateral cancellation of marriage following engagement gives rise to multidimensional harm, including economic, non-economic, social, psychological, and cultural losses, all of which may satisfy the elements of tort liability under Article 1365 of the Indonesian Civil Code in light of the modern, broad interpretation of the doctrine of *onrechtmatige daad*. This study further demonstrates that the existing legal framework provides predominantly remedial protection and remains heavily dependent on judicial interpretation because Indonesian law does not expressly regulate legal relationships during the pre-marital stage. Consequently, the current framework fails to provide adequate legal certainty for individuals harmed by the unilateral cancellation of marriage following engagement.

The findings underscore the need to reform Indonesian family law by establishing a statutory framework that explicitly recognizes the legal significance of pre-marital relationships following engagement and strengthens both preventive and remedial mechanisms for protecting injured parties. Such reform would enhance legal certainty, promote fairness, and provide more effective legal protection for victims.

This study is limited by its reliance on a normative legal research approach and therefore does not examine the empirical experiences of victims, legal practitioners, or judicial officers. Future legislative reform should establish a more comprehensive legal framework governing civil liability for the unilateral cancellation of marriage following engagement. In addition, future research should adopt empirical and comparative

approaches to develop a legal protection model that is better aligned with evolving societal values and the continuing development of modern family law.

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