

The Legal Protection Guarantee toward the Woman Body Integrity as the Victim of Not-Fulfilled Promise to Marry In the National Law

Sugiri Bambang¹, Sudarsono², Safa'at Rachmad³, Tijow Lusiana Margareth^{4*}

1.Postgraduate Program of Law Faculty, Brawijaya University, Malang.

2.Professor of Administrative of Law, Brawijaya University, Malang.

3.Postgraduate Program of Law Faculty, Brawijaya University, Malang

4.Doctorate Candidate of Law Faculty, Brawijaya University, Malang, Indonesia and Lecturer of Law Faculty, State University Gorontalo, Gorontalo, Indonesia.

Abstract:

The essence of body integrity for women as the victim of not-fulfilled promise to marry refers to unity and whole completeness of mind, feeling, and human body by self acceptance as complete individual embedded in herself referring characteristics collectivity of physical, psychological, emotional, aspiration, and self achievement that build self concept of a woman as a whole to develop. Based on the fact, the research formulates the problem statement to be why the body integrity of woman as the victim of non-fulfilled in promise to marry should get legal protection from the national Law. The study shows that the body integrity of woman as the victim of non-fulfilled in marriage promise should get legal protection from the national Law because the woman body integrity refers to parts of humanity integral and substantial. The country should guarantee the upholding and protection for implementation of human right toward women, by doing international duty as form of ratification in implementing all forms of regulations upholding the woman right

Key Terms: Legal protection, body integrity woman, marriage promise

1. Introduction

Constitution as the highest law source in a country becomes the fundamental in conducting the state, where one of its functions refers to border the authority and guarantee the citizen right and freedom. Indonesia as legal country states firmly the guarantee of right in its constitution. The citizen constitutional right include human right and citizen right guaranteed in the Indonesian Fundamental Constitution of 1945 apply to all Indonesian people. It states in the constitution formula using phrase "every one", "all citizen", or "every citizen", showing that each individual as citizen has constitutional right without no discrimination, based on ethnic, religion, political belief, or gender (Jimly Asshiddiqie, 2007). Series of legal regulation appears in order to create peacefull and comfort condition. How far the role of law as the stabiliator in society covers many factors. One of them is source where the legal from. The Declaration of Universal Human Right refers to official interpretation toward United Nation Declaration, involving more detail rights listed as human right.

The concept of woman body integrity means having complete body such as soul and phisical, hands, nose, head, legs, eyes, hair, having special part of body such as breasts, ovarium, genital organ, heart, and others but covering all soul whether thouth, feeling, heart, and anything that cannot be seen visually however they can be felt in human instinct. The body integrity is description of ideal body related to someone complete body embedded on the person. The body integrity of woman means all or complete body of the woman (M.M. Nilam

Widyarini, 2009). Woman will feel loss of her body integrity if she has lost one of her body parts such as genital part (virginity of woman vagina).

With her body integrity, woman will more understand condition being suffered and experienced based on her experience. In general, men and women will feel loss of body integrity when they loss one of body parts (legs, hands, fingers) or special part for woman that resulting in big losses. Also, it happens to the woman as the victim of non-fulfilled marriage promise. The high of loss feeling when she gave her body to the man in the name of marriage promise, however in fact what she got were denial and betrayal of statement or agreement that should be fulfilled.

In line with the body integrity (Sexual Declaration IPPF), the fourth world conference of United Nations in women working program (FWCW), Beijing, China: 4-15 September 1995, paragraph 112, also the deep study of UN Secretary in all forms of violence toward women referred to right of body integrity, the UN Document A.162/122/Add Paragraphph 277 states that the right of body integrity are used increasingly to catch guarantee gap needed to protect all people and specially women againts violence and insulting following on decreasing health, freedom, and self integrity from threats.

2. Research Method

This study is normative legal research and going to examine the legal regulations, legal concepts, philosophical thoughts, or legal principles as the background of the need of legal protection guarantee toward the woman body integrity in the national laws. This study focuses on philosophical, statute, conceptual, and case approaches. The legal materials are collected, calculated, and analyzed in qualitative and judicial ways with focusing more on legal penal using legal maniferatation.

3. Discussion

3.1 The Essence of Woman Body Integrity

The body refers to whole human organism phisical structure, involving body form that clearly seen and unseen. Because in human body there are series of body and soul; not only hands, nose, head, legs, eyes, hair, ovarium, vagina, penis, heart, and others, but also covering whole soul like thought, feeling, heart, and anything that cannot be seen with bare eyes but they can be felt in human instinct. All of them place in one serie in the form of complete body. The body belongs to every induividual or privately, not belongs to group or public, because noone has right to arrange and keep the body but the one itself. The woman body has body and soul; it is not only hands, nose, head, legs, eyes, hair, but it also has special parts such as breasts, ovarium, vagina, heart, and others, involving whole soul like thought, feeling, heart, and anything that cannot be seen with bare eyes but they can be felt in human instinct.

The concept of woman body integrity covers having completeness body such as soul and phisical body; hands, nose, head, legs, eyes, hair, but it also has special parts such as breasts, ovarium, vagina, heart, and anything that cannot be seen with bare eyes but they can be felt in human instinct.

The body integrity refers to description of ideal body in line with completeness of someone body embedding in the person. The woman body integrity covers unity or completeness of woman body (M.M. Nilam Widyarini, 2009). Woman will feel loss of her body integrity when she losses one part of her body such as her genital part (virginity or vagina).

It is necessary for woman having body integrity because it relates to woman self concept in line with her feeling as complete individual with unique characteristic (Lukaningsih, 2010). states that self concept devide into two, first, the real self concept that individual concept on herself mostly decided by role and her relation with others and also her perception on other people judgement, and second, ideal self concept that someone description on skill and personality having dreamt (Hurlock in Lukaningsih, 2010). Any self concept has phisical and psychological aspects. With her body integrity, woman will more understand condition being suffered and experienced based on her experience. In general, men and women will feel loss of body integrity when they loss one of body parts (legs, hands, fingers) or special part for woman that resulting in big losses. Also, it happens to the woman as the victim of non-fulfilled marriage promise. The high of loss feeling when she gave her body to the man in the name of marriage promise, however in fact what she got were denial and betrayal of statement or agreement that should be fulfilled. Based on the right of body integrity, the fourth world conference of United Nations in women working program (FWCW), Beijing, China: 4-15 September 1995, paragraph 112, also the deep study of UN Secretary in all forms of violence toward women referred to right of body integrity, the UN Document A.162/122/Add Paragraphph 277 states that the right of body integrity are used increasingly to catch guarantee gap needed to protect all people and specially women againts violence and insulting following on decreasing health, freedom, and self integrity from threats (Sexual Declaration IPPF).

Concerning with the above condition, the woman convention has decided principles and regulations to eliminate gaps, subordination, and actions suffering the woman right and position in the family and society.

It needs to understand the principles followed by the Woman Convention in order to use convention as mean to give protection toward body integrity of woman as the victim of non-fulfilled marriage promise. These principles also play as mean to examine a policy, rule or provision that give effect, short-and long term, toward body integrity of woman as the victim of non-fulfilled promise to marry. The woman convention is based on the following principles (Achie Sudiarti L, 2008): (1) Substantive equality principle, that equality of right, opportunity, access, and beneficial usage; (2) Indiscriminate principle; (3) State duty principle.

The principles involved in woman convention, in fact, have no difference to the principles of this country, Pancasila. The points is the country admit the equality of right and duty between men and women. As stated in one of Pancasila principles, namely the principle of justice and civilized humanity. In this case, human will be admit and treat based on his dignity and prestige as the creature of the Only God, having the equality in level, right and duty without any discrimination of ethnic, heredity, religion and belief, gender, social position, race and many more. Justice and civilized humanity means to give priority the humanity values and dare to protect truth and justice. Realizing that human has the same level, Indonesia feels as part of all the people in the world, that it creates respect and cooperation behaviors with other countries. In other word, the government guarantee its people to feel their rights as human, feeling of safe and protected specially toward the body integrity of the woman as the victim of non-fulfilled marriage promise.

3.2 The Guarantee of Woman Right in the National Laws

The constitution as the highest legal source in a country become the base of conducting the country, in this case, one of its functions is to limit authority and guarantee its people's right and freedom. Indonesia as a legal country of course has put guarantee of human right in its constitution. The citizen constitutional right including human right and citizen right guaranteed in the Fundamental Constitution of 1945 apply to every Indonesian citizen (Jimly Asshiddiqie, 2007). Act 27 of the Fundamental Constitution of Indonesian Republic 1945 has strictly stated that "all citizen have the same position". In other words, there is no difference of right and duty between man and woman. Thus, any forms of discrimination toward women should be eliminated (Moerti Hadiati Soeroso). Moreover, it has stated in Act 15 of the Law Number 7 of 1984 on Legitimation of the Convention on Elimination of Any Kind of Discrimination toward Women, as follow: (1)The countries must give the right equality between men and women in front of the law; (2)The member countries must give the women, in line with civic matters, the same legal ability as to the men and give the same opportunity to do the ability, specially to give women the same rights to sign contracts and to take care property, as well as must give them the same treat in all levels of procedures in front of law and court; (3)The member countries agree that all contracts and documents having legal power focused to limitation of legal ability of women, must be considered cancelled and invalid; (4) The member countries must give men and women the same right in line with law related to people mobilization and freedom to choose living place and domicile.

The citizen constitutional right covering human right and citizen one stated in the Indonesian Fundamental Constitution 1945 apply to every Indonesian people. It states in formulation using phrase "every one", "all citizen", or "every citizen", showing that each individual as citizen has constitutional right without no discrimination, based on ethnic, religion, political belief, or gender, including the woman as the victim of non-fulfilled promise to marry (Jimly Asshiddiqie, 2007). Moreover, the Fundamental Constitution 1945 states strictly that "Any person has freedom from discriminative treatment based on any condition and has right to get protection from the discriminative behavior". Thus, if there is any regulation or action discriminating certain citizen, meaning that this regulation has been againsts the human right and the citizen constitutional right and of course againsts the Fundamental Constitution of 1945. Therefore, any Indonesian Woman has the same constitutional right as the Indonesian man. The woman also has right to not being treated discriminatively based on her status as woman, or on other differences. All the constitutional right explained before refer to the constitutional right of any Indonesian Woman. The Law basically refers to reflection of Human Right, thus it includes justice or not depended on Human Right included and arranged or guaranteed by the law. The Law is not seen as reflection of authority, however it must give protection toward the citizen rights. The law bases on humanity values and admits the Human Right. Norms include high values having priority on human dignity and guarantee the Human Right.

The Fundamental Constitution of Indonesian Republic 1945, Act 28A verse (1) to 28J verse (2), states:

- 1) Everyone has right to live and keep his life and living. Act 28A verse (1) covers two parts, (i) everyone has right to live; and (ii) everyone has right to keep his life and living;
- 2) Everyone has right to make family and continue his heredity toward legitimated marriage. Act 28B verse (1) comes into two parts, that: (i) everyone has right to make family toward legitimated marriage; and (ii) everyone has right to continue his heredity toward legitimated marriage;
- 3) Every child has right of living continuity, grow, and develop, as well as right to get protection from violation and discrimination. The regulation of Act 28B verse (2) covers two parts, that: (i) Every child has right of living continuity; grow, and develop, and (ii) Every child has right to get protection toward violation and discrimination;
- 4) Every child has right to develop himself through fulfillment of his basic needs, right to get education and obtain benefit from science and technology, art and culture, for increasing his living quality and for human welfare. The Act 28C verse (1) can be divided into several principles, that are: (i) every child has right to develop himself through fulfillment of his basic needs for increasing his living quality and for human welfare; (ii) every child has right to get education to increase his living quality and for human welfare; (iii) every child has right to obtain benefit from science and technology, art and culture, for increasing his living quality and for human welfare;
- 5) Every child has right to develop himself in struggling his right collectively to build his society, nation, and country;
- 6) Every child has right of admission, guarantee, protection, and legal certainty fairly and the equal treatment in front of the law. This regulation covers the definition of right of admission as individual in front of the law according to Act 28I verse (1) that refers to human right that cannot be decreased in any condition;
- 7) Every child has right to work, get fee, and get justice and appropriate treatment in working relation;
- 8) Every citizen has right to get the same opportunity in the government;
- 9) Every person has right of citizen status;
- 10) Every person has freedom to choose religion and do praying according to the religion, to choose education and teaching, to choose citizenship, to choose living place in the country area and leave it, and come back. The Act 28E verse (1) can be explained more detail into several principle: (i) every one free to believe religion and do praying according to the religion; (ii) every one free to choose education and teaching; (iii) every one has freedom to choose job; (iv) every one free to choose citizenship; (v) everyone has freedom to choose living place in the country area and leave it, and has right to comeback to his country;
- 11) Every person has right of freedom to believe in faith, express opinion and behavior, in line with his inner feeling;
- 12) Every person has right of freedom of association, freedom of peaceful of assembly, and freedom of expression;
- 13) Every person has right to communicate and get information to develop his individual and social environment, and to find, get, have, keep, manage, and give the information using any kinds of available means. This regulation includes two parts, (i) everyone has right to communicate and get information to develop his individual and social environment, (ii) everyone has right to find, get, have, keep, manage, and give the information using any kinds of available means;

- 14) Everyone has right of protection as individual, family, honour, dignity, and property his his belonging, as well as right of safe feeling and protection from afraid threat to do or not to do something of his right. Act 28G verse (1) includes two parts, that: (i) everyone has right of protection as individual, family, honour, dignity, and property his his belonging, and (ii) everyone has right of safe feeling and protection from afraid threat to do or not to do something of his right;
- 15) Everyone has right to free from torturing and treatment of understimating human dignity and right to get political asylum from other country. The Act 28G verse (2) includes two parts, that: (i) everyone has right to free from torturing or treatment of understimating human dignity and (ii) everyone has right to get political asylum from other country;
- 16) Everyone has right to live well body and soul, have living place, and get good and healthy living environment as well as right to get healthy service;
- 17) Everyone has right to get easiness and special treatment to get opportunity and benefit to get equality and justice;
- 18) Everyone has right of social guarantee making possible to develop personally as whole honour human;
- 19) Everyone has right to have personal property and the property cannot be taken cruelly by anyone;
- 20) Everyone has right to live, to not being tortured, to have freedom of thinking and inner feeling, to believe in a religion, to not being enslaved, to be accepted as individual in front of the law, and to not being claimed accordint to the law applying diminished. Those rights belong to human right that cannot be decreased in any condition, and can be drawn into seven kinds of human rights, that everyone has: (i) right to live; (ii) right to not being tortured; (iii) right to have freedom of thinking and inner feeling; (iv) right to believe in a religion; (v) right to not being enslaved; (vi) right to be accepted as individual in front of the law; and (vii) right to not being claimed accordint to the law applying diminished;
- 21) Everyone has right to have freedom from discriminative treatment on any reason and right to get protection toward the discriminative treatment;

The Law Number 39 of 1999 on the Human Right,

Act 71 decide that :” The government must honour, protect, uphold, and develop the human right according to this Law, other regulations and international laws of human right accepted by the Indonesian Republic”.

Act 72 decide that : “The government Duty and Responsibility as stated in Act 71 cover effective implementation step in fields of law, economic-political, social, culture, Country protection and others.

The above constitutional regulation strickly states the availabilty of legal protection of “a whole nation and throughout Indonesian area”. It is important to uphold the woman constitutional right by means of the legal rules giving special treatment toward woman using equality and similarity perspective. Using these regulations guaranting the iplementation of woman constitutional right, the body integrity of woman as the victim of not-fulfilment promise to marry must get legal protection as constitutional mandate. Act 2 DUHAM including equality principla shows that equality does not always mean treating all people with the same way, but more on taking needed steps to develop justice for all the people including the woman as the victim of not-fulfilment promise to marry. The protection on the body integrity of the woman as the victim of not-fulfilment promise to marry must become the state concern in national, regional, and international levels, not only as the women problem. It consider to be upholding the woman constitutional right integrated in the international constitution and treaties. The government or country must understand of the woman right stated in the constitution. The woman rights become comprehensive and very important because they create woman humanity side as the focus of Human Right concern. The soul of woman convention is beased on the purpose of United Nation Carter, that restatement of belief in Human Right, honor and dignity of each human being and the

equality of men and women rights. The law is not seen as reflection of authority, but it must give protection of citizen rights. The law based on humanity values and confess the Human Right.

4. Conclusion

The essence of body integrity for women as the victim of not-fulfilled promise to marry refers to a whole unity and completeness of thought, feeling, and human body by self acceptance as complete individual embedding and integrity of physical, psychological, emotional, aspiration, and achievement characteristic building women self concept as a whole to develop. Generally, men or women will feel loss when they loss one of their parts of body (legs, hands, fingers) or special parts of woman may result in feeling of big lossing. Like what experienced by woman as the victim of not-fulfilled promise to marry. The high level of lossing when body is given to man in the name of promise to marry but infact reveal denial and break the promise or not fulfilled the agreement. The woman body integrity must get guarantee of legal protection in the national regulations because it related to woman self integrity become ideal body description for woman based on physical, psychic, spiritual, aspiration, and self achievement as legal subject to develop self concept as woman. Therefore, woman will be from violence and insulting threatening her body integrity.

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- Sexual Declaration Right IPPF the world organization from national organization working with and for society and individu. IPPF refers to global service giver and leads to do sexual healthy advocat, reproduction health, sexual rights and reproduction right for all people.