

The Formulation of Legal Protection Arrangement Toward the Body Integrity of the Woman as the Victim of Not-fulfilled Promise to Marry in the Human Right Perspective

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Abstract: The law formed to create the discipline of the provision formulation in order its norm conception and formula steady, overall and harmony, not contradictory and overlapping one and another. Through this law, it hopefully that all authority institutions create provision having specific firm and standardized guidance in the process and method of creating provision in planned, integrated and systematic ways. In line with human right, the matter of legal protection toward the body integrity of the woman as the victim of not fulfilled promise to marry becomes the matter of woman right to protect her dignity and prestige and self integrity as human being. The woman right forms part of human right that has to be respected and supported. The reason is that the woman body integrity relates to human life value or dignity and prestige of human being confessed in the Universal Declaration of Human Rights (10 December, 1948). Based on the fact, the research problem refers to how the legal protection arrangement toward the woman as the victim of not fulfilled promise to marry in the perspective of human right. This study forms normative legal research using method os qualitative judicial analysis. The research showed that the woman as the victim of not fulfilled promise to marry should obtain guarantee of legal protection because the woman body integrity referred to part of integrity of humanity essence. Based on regulation part, the human right is defined as series of right binding on the human essence and existence as the creatute of the only God and as the God's gift that need to be respected, supported and protected by the country, law, government and everyone for the honor and protection of human dignity and prestige. One of them is related to specific right given by the law to protect the women. This legal protection includes the protection on the woman as the victim of not fulfilled promise to marry.

Key words: Arrangement formulation, legal protection, body integrity, human right, human essence, human dignity

INTRODUCTION

Indonesia is legal country having purpose to create the legal orderness, safety, justice and welfare in the life of state and nation. Act 27 Verse (1) of the Fundamental Constitution of 1945, states that all the citizen have the same position in the law and government and have duty to support the law and government without any exception.

It need good governance in order to perform legal country in any aspects such as in the aspect of formulating the provision. To create good provision, many preresquites are needed related to its system, principle, preparion of method and discussion, technique, construction and implementation. The Law Number 12 of 2011 forms the legal basic for formulating the good provision. This law is formulated to create dicipline in making the provision that its norms

conception and formulation are excellent, integrated and harmony, not contradictory and overlapping. With this law, hopefully all the institutions researcherized of formulating the provision have firm and standarized specific guidance in the process and method of creating the provision in planned, integrated and systematic ways (Dina, 2013).

There are two legislation functions that the researcherity of formulating the law and the law making process as the series of activities from: applying, discussing, approving legitimating and issuing the law draft in the state paper (Saldi, 2010).

The Convention of CEDAW is the International Human Right instrument binding legally and included convention ratified by the most countries (Lapian and Gandhi, 2012). It is also the only international instrument formulated specifically to increase and protect the women rights and considered as the bill of rights for women

(Indonesia has participated in this process). This convention places the women right in the gender matter as the core and central in the theory and practice of human right. The fundamental of CEDAW becomes the equality principle or equality between men and women guaranteeing not only equality in formal as the law regulation (*de jure*) but also in substantive or *de facto*, that the real equality and the result truly applied.

Indonesia is one of the CEDAW members. On July 24, 1984, Indonesia ratified CEDAW through the Law Number 7 of 1984 on the Ratification of the Convention of the Elimination on all forms of discrimination toward women. Having legitimated CEDAW it becomes the process of fulfilment women right in (HAP) Indonesia.

The ratification of convention CEDAW made by Indonesia means a whole Indonesia country and nation has duty to implement all the principles included in the convention. This country has to formula legal regulations needed to achieve the provision in the international treaty.

Indonesia has to do the basic duty as the member of convention CEDAW that is to eliminate all forms of discrimination toward women and agree to do it with appropriate and effective ways toward the action. Including the principle of equality in other provision forms explanation of the Fundamental Constitution of 1945. According to the Konvention CEDAW, the basic principle of state duty covers as follow:

- To guarantee the women right through the law and policy as well as guarantee the result
- To guarantee the practical implementation of the rights through specific steps or rules creating condusive condition to increase the women ability acces on the available opportunity and chance

Sunaryati (2002) stated that “the law is not merely the written regulation” it consists of:

- Provision
- Jurisprudicial rules (case law) or court decision having been jurisprudence
- Conventions/laws of habit
- International treaties
- International institutions
- Process and procedure
- Legal education
- Legal actors
- Legal infrastructures and tools

In the human right, the matter of legal protection toward the woman as the victim of not fulfilled promise to

marry refers to the problem of women right to protect her dignity and prestige and self integrity as human being. The women right is part of the human right that must be respected and kept high. For the reason that the woman body integrity is related to the human living value in this case the human dignity and prestige confessed in the Universal Declaration of Human Rights (10 December, 1948) (Mukadimahnya). The recognition that the equal and absolute dignity and rights of mankind is the basis of freedom, justice and peace in the world that the highest aspirations of ordinary people is the enjoyment of freedom of expression and belief and free from the fear of deprivation that human rights must be protected through law enforcement, reaffirming the belief in the basic human rights of human dignity and value and equal rights of men and women, reaffirming respect and respect for human rights and fundamental freedoms. Thus, justice and truth as the symbol of humanity can be felt and got by woman in such above condition.

Moreover, the human right has two sides; moral and legal sides. Based on the moral side, the human right is a moral response supported by society members. In this case, the society will accept the certain right form that should be got by every individual, considered as part of human characteristics, though it may not be included in the law. Therefore, the society accept morally of the human right existence that everyone has.

From the legal side, the human right means series of right embedded on the essence and existence of human being as the God creature and as the God gift needed to be respect, kept high and protected by the country, law, government and everyone for the honor and protection of human dignity and prestige. One of them is related to the specific right given by the law to protect the women. The legal protection covers protection toward the body integrity of the woman as the victim of not fulfilled promise to marry.

The human existence cannot be separated from the human right. The human right has embedded to human being, when this right lost means that the lost of someone humanity. Therefore, the human right has fundamental characteristic meaning that its existence become a must, anyone cannot disturbe and anyone must get his human right.

The violation and negation of human right are not only personal tragedy but also result in social awareness and even result in tension between the society and country. In the Human Right Carter of the United Nations states.

“Respect for human rights and human dignity is the the foundation of freedom, justice and peace in the world”. The declaration of human right in general standard has insisted on:

- The effort to increase award on rights and freedom
- Guarantee the confession and its implementation generally and effectively

Human has basic rights to live, for dignity and development his personality as the pole of human right taken from human mind will and gift. Based on culture, history and sources, people talk about society. When we want to make the welfare society it needs instruments from the government, also as the agent of the society. In this case, the government is created by the society to the society including its people. Of course, the government belongs to the "good governance" and together with the participation of all society components.

Thus, the existence of the Law Number 39 of 1999 as the law of human right guaranteed the human dignity and prestige becomes the basic protection on the the woman as the victim of not fulfilled promise to marry. In line with the Indonesian commitment as the member of CEDAW having moral and legal duty to keep high and conduct the Universal Declaration on the Human Right it is necessary to give legal protection toward the body integrity and prestige of the woman as the victim of not fulfilled promise to marry.

MATERIALS AND METHODS

The study is normative legal research examining the legal rules, concepts, philosophical thoughts or principle as the backgrounds of the need on legal protection toward the body integrity of the women in the national law. This study focuses on the philosophical approach, statute approach, conceptual approach, case approach. The legal materials collected are calculated and analyzed juridically with focusing on legal penalty using legal interpretation.

RESULTS AND DISCUSSION

The fundamental of formulating provision: The provision refers to real form of written legal development. This written provision gives legal certainty. The legal certainty forms one of the legal purpose, other than legal justice and benefit. As stated by Gustav Radbruch, there are 3 legal purposes, justice, benefit and certainty.

Based on the three legal purposes, the justice refers to equality of right in front of the law. Benefit means goodness in human life and it decides the legal content. Certain refers to guarantee that the law (content of justice and norms advancing the goodness) has truly functioned as obeyed rules (Bernard, 2010). The legal certainty and its principle give protection for every citizen

from the researcheryity of possibly despotic government. This certainty places as a value that has to exist in each legal made and implemented. The value has close relation to positive legal instrument and the country role in actualizing the positive law (Fernando, 2007).

According to Bagirmanan, in order to the law making results in a tough and qualified Law it may use three fundamentals in formulating the law: first, judicial fundamental (juridische gelding); second, sociological fundamental (sociogische gelding) (Bagir, 1994) and third, phylosophical fundamental. The important of the three fundamental in line the law making has legally legitimated rule (legal validity) and able to apply effectively because it can or will be accepted by the society familiarly and apply for long term.

According to Jimly (2006), related to the fundamental of law making and seeing the technical side, the fundamental of law making must be reflected in "considerant" of a law. The considerant of a law must include good legal norm, becoming the fundamental of applying the law that consist of: first, philosophical fundamental, meaning that the law always contents ideal legal norms of a society to where the great future of society and county follow. Second, sociological fundamental means that every legal norm put in the law must reflect the socociety demands and needs of the legal norm appropriate with the reality of their legal consciousness. Third, political fundamental covers that the considerant must reflect the existence of constitutional focus system in line with the purpose and basic norm included in the Fundamental Constitution of 1945 as source of main policy or legal politic that background the certain law making. Fourth, the judicial fundamental means that in formulating a law this fundamental must be placed in the considerant part "reminding". Fifth, administrative fundamental means that it has "facultative" (appropriate to the needs) in the definition that not all laws include this fundamental. In law making technic, usually this fundamental is included in part "observe". It contents focus quotion in line with order existence to arrange administration (Jimly, 2006).

The formulation of legal protection arrangement toward the body integrity of woman as the victim of not-fulfilled promise to marry in the human right perspective: Indonesia in conducting legitimation of international treaty is based on the constitution, the Fundamental Constitution of 1945. Then, in October, 23 of 2000 it issued the Law No. 24 of 2000 on the International Treaty, where the signing or changing of nota diplomatic or through the ways has been agreed by all parties in the treaty. Having played actively in the formulating of the

international treaty, specially the multilateral one it hopefully increase the knowlegde views as the comparation and legal sources accepted universally for a whole Indonesian nation.

Based on the above fact, comprehensively the CEDAW confesses in specific ways the women right and as the international instrument of human right and it also becomes the universal standard arranging the women right in Indonesia as the member country. As the integrated country, Indonesia becomes a subject of the international law having right and duty to make international treaty in arranging relation with other countries that include as other subject of the international law. The International Treaty results in Reciprocity (Prinsip reciprocity adalah suatu prinsip timbal balik yang saling menguntungkan para pihak yang turut serta dalam suatu perjanjian internasional) rights and duties for Indonesia and other country that together stating agreement to be binded.

Therefore, in line with protection toward the woman as the victim of not fulfilled promise to marry, the Indonesian government on the name of Indonesian Nation in formulating the national law has to more focus on violation experience happened before and after becoming victim seeing the woman as the victim. The priority comes to protection toward woman body integrity.

Sexual action between man and woman based on promise to marry begin with the feeling of love between them, however, it needs to consider that the willing to do it as the man effort to give promise to marry the woman thus the action is conducted. This condition often happen to women, helplessness to process on the violation being experied in the case of promise to marry.

Based on above explanation, it needs legal principle being able to consideration to create legal protection arrangement toward body integrity of the woman as the victim of not fulfilled promise to marry in human right perspective, that the formulation of substantive arrangement gives protection guarantee. The principles are as follow.

Protection principle: The existence of arrangement, that its substance give protection specificy and concretely toward body integrity and honor of the woman as the victim of not fulfilled promise to marry, purposes to give protection toward the woman as victim and the child born as the result of the irresponsible deed of the man. Also, it give protection toward the child in order not to get negative label from the society that there is legal certainty for the child status.

Equality principle: The existence of arrangement, that its substance give protection specificy and concretely toward body integrity and honor of the woman as the victim of not fulfilled promise to marry results in balancing the gender equality. Presenting unbias gender law but it considers the woman experience before and after becoming victiom. This equality may create justice for woman and equality, harmony and conformity in society life.

Responsibility principle: The existence of arrangement, that its substance give protection specificy and concretely toward body integrity and honor of the woman as the victim of not fulfilled promise to marry means to understand the available values in the humanity essence to give confession toward human dignity and prestige and not seize the human freedom as the protected individual creature. Thus, when ignorance toward humanity essence happens, the one must responsible of mistake resulted a victim.

Principle sameness: The existence of arrangement, that its substance give protection specificy and concretely toward body integrity and honor of the woman as the victim of not fulfilled promise to marry means that the available legal implementation will not result in injustice for the woman and happen imbalance and violation in any forms. It needs to take some steps to develop justice for all the people including the woman as the victim of not fulfilled promise to marry.

The above principles may become consideration of formulating the national regulation with substance more focusing on woman subject. For, till now, the phenomenon show that there is no concrete arrangement where its substance giving protection toward the woman as the victim of not fulfilled promise to marry. Thus, it places the woman suffers any forms of violations.

In the human right perspective, the form of violation conduct toward woman is not viewed merely as judicial matter such as criminal toward body even soul but it has happened drastically friction opinion. The violation conduct has come to enter the political, economic, social and cultural, educational and other matters that must be understood comprehensively. In other word, woman may suffer any forms of violence, anywhere and anytime like happening on the woman as the victim of not fulfilled promise to marry.

In the human right, the problem of legal protection toward body integrity of the woman as the victim of not fulfilled promise to marry refers to human right of woman to protect her dignity and prestige and self integrity as human being. The woman right becomes part of human right that must be honored and kept high. For the body

integrity of woman is related to human life value or human life dignity and prestige confessed in. The Universal Declaration of Human Rights (10 December, 1948) (Mukadimahnya) (The recognition that the equal and absolute dignity and rights of mankind is the basis of freedom, justice and peace in the world that the highest aspirations of ordinary people is the enjoyment of freedom of expression and belief and free from the fear of deprivation that human rights must be protected through law enforcement, reaffirming the belief in the basic human rights of human dignity and value and equal rights of men and women, reaffirming respect and respect for human rights and fundamental freedoms). Therefore, the woman can feel and get the justice and truth becoming humanity symbol in such above condition.

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The violation and negation of human right are not only personal tragedy but also result in social awareness and even result in tension between the society and country. In the Human Right Carter of the United Nations states: "respect for human rights and human dignity is the the foundation of freedom, justice and peace in the world". The declaration of human right in general standard has insisted on:

- The effort to increase award on rights and freedom
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The important Declaration as the Fundamental of human right forms statement that "all people born with freedom and have the same dignity and rights". Moreover, "the rights and freedom in the declaration become the right of everyone without exception whether in line with gender, nation, skin color, religion, politic and ect." (Acts 1, 2).

Human has basic rights to live, for dignity and development his personality as the pole of human right taken from human mind will and gift. Based on culture, history and sources, people talk about society. When we want to make the welfare society it needs instruments from the government, also as the agent of the society. In this case, the government is created by the society to the society including its people. Of course, the government belongs to the "good governance" and together with the participation of all society components.

The writer believes that ideal formulation in purpose to give legal protection toward body integrity of the woman as the victim of not-fulfilled promise to marry with parameter of the Law Number 39 of 1999 on the human right, the ninth part on the woman right in the Act 49 need to be added formulation in line with the right of body integrity stating:

"The woman has right to get specific protection toward her body integrity from any action that violating the humanity prestige and her body integrity resulting or may result in loss, physical, psycis, sexual social and economic suffers".

Having created the above formula it becomes substantial consideration and truth that every citizen without exception of the woman as the victim of not-fulfilled promise to marry has right to:

- Get feeling of save and free from any violation forms resulting or may result in physical, psycis, sexual social and economic losses and suffers
- Any forms of violation happening refers to human right violation that the country has to attempt to protect the victim and punish the doer
- Create state responsibility by giving legal protection right for the victim of not-fulfilled promise to marry by giving better condition

There are three kinds of rights taken from the Woman Right as the fundamental opinion in formulating the legal protection arrangement toward the body integrity of the woman as victim of not-fulfilled promise to marry in the human right perspective:

- Fundamental right
- Right of equality
- Right of body integrity and woman prestige

The explanation of fundamental right refers to woman right meaning that part of human right cannot be eliminated because she is a human. The woman has researchery as complete individual on herself, her thought, feeling and body. For that reasons, she has right to define the meaning of herself and decide his life choice. Respecting and accepting the originality of woman, the woman experience closes her to her original spirit.

The right of equality means that woman as the right owner has to develop well to find his life happiness and welfare in all fields such as politic, economic, social or culture. Giving equality becomes part of humanity substance leading to justice life. Also, it is rationalisation of advance of human society. The formulating regulation guarantees that woman does and get human right and freedom in line with equality.

The right of woman body integrity has lead to the originality woman body. It becomes the life value of woman dignity and prestige. It relates to decision on her body in line with sexuality, production and reproduction as the integrative subject stating the woman integrity in dercribing herself to find the good development of physical and mental condition and achieve well welfare. The right covers to respect woman existence and her ability in perform creation and her life pattern. Collecting experiences, feeling and thoughts become the integrity of woman life.

The existence of legal protection arrangement toward body integrity of the woman as the victim of not-fulfilled promise to marry needs first structural support in line with legal upholding with strong commitment toward the purpose in the substantive law. Second, the cultural support, that are legal attitude, behavior, or consciousness of the society acting in various roles related to woman role. Third, support of infrastucture and tool helping woman to experience empowering process have to be developed. The strategic programs of woman empowering relating the components of law system are:

- Reform in the legal field with support by research and also the inisiative of law makers having chosen to the emancipation between men and women
- Advocacy it develops woman cases or problem to appear that the decision makers see them
- Education it is about woman rights in fields of social, culture, politic and economic through mass media, paralegal training, legal education, general opinion and others

It purposes to protect and recover the woman as victim, that it performs the coping with woman as the victim and the state responsibility. The country must

responsible on the human right violation conducted by individual cooperation even by means of policies being made. Performing the appearance of the Law related to legal protection toward body integrity of the woman as the victim of not-fulfilled promise to marry in the human right perspective becomes the coutry responsibility in fulfilling the principle of due diligent or to prevent, to protect, to do investigation, to claim, to prosecute, to punish and to give compensate or to recovery.

It is time that the woman interest becomes perspective in defining the human right having woman perspective and it must get support from the available legal system (international, national, regional) in the level of substance, structure and culture.

CONCLUSION

in the human right perspective, the form of violation conduct toward woman is not viewed merely as judicial matter such as criminal toward body even soul but it has happened drastically friction opinion. The violation conduct has come to enter the political, economic, social and cultural, educational and other matters that must be understood comprehensively. In other word, woman may suffer any forms of violence, anywhere and anytime like happening on the woman as the victim of not fulfilled promise to marry.

Therefore, the responsibility of human right protection belongs to not only the country only but also to all individuals as citizen. The woman Right becomes part of human right that has to be respected and kept high. For the body integrity of woman is related to human life value or human life dignity and prestige confessed in The Universal Declaration of Human Rights (10 December, 1948). Therefore, the woman can feel and get the justice and truth becoming humanity symbol in such above condition.

From the legal side, the human right means series of right embedded on the essence and existence of human being as the God creature and as the God gift needed to be respect, kept high and protected by the country, law, government and everyone for the honor and protection of human dignity and prestige. One of them is related to the specific right given by the law to protect the women. The legal protection covers protection toward the body integrity of the woman as the victim of not fulfilled promise to marry.

Thus, the existence of the Law Number 39 of 1999 as the human right law guaranting the human dignity and prestige becomes the fundamental of protection toward the woman as the victim of not fulfilled promise to marry. It refers to woman reminder using certain methods, that

woman individually or group understand their right in the constitution then they able to keep and claim for their right and duty when they are violated.

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