

Legal Implications of the Cancelation of Pataru Sere Sahatan (Engagement) in Mandailing Society, Pasar Binanga Village, Barumun Tengah Sub-District, Padang Lawas Regency, Indonesia

Astria Is'a Anwi Siregar^{1*}, Edy Ikhsan², T. Keizerina Devi³

¹²³Faculty of Law, University of Sumatera Utara, Indonesia

Abstract

Engagement is an initial action before a marriage. In jurisprudence, it is considered as a bond in which, if it is canceled unilaterally it will cause legal implications such as the injured party. The research used a juridical empirical method. The nature of the research was descriptive analytic. The result of the research shows that in the unwritten Mandailing customary law, the process of engagement is done orally based on their belief, starting from adat procession. The procedure of engagement in the Mandailing community in the post-jurisprudence is that the series of the engagement is in the written form to make it authentic evidence to be used when there is a dispute in the cancelation of engagement. The Mandailing customary law at Pasar Binanga Village does not recognize default complaint in litigation when one of the parties breaks it as it is stipulated in Article 1243 and Article 1365 of the Civil Code. However, the Supreme Court's Ruling No. 396K/Sip/1958 and No. 68K/Pdt/2009 states that the cancelation of engagement by one of the parties in customary law is considered a default and illegal based on the consideration that the engagement is a pledge between the future groom's side and the future bride's side which has to be made by good faith.

Keywords: Legal Implications, the cancelation of Pataru Sere Sahatan, Mandailing Customary Law

INTRODUCTION

Indonesia is an archipelago of diverse tribes, cultures, and customs of marriage ceremonies. Custom marriages are usually unique and different from one another so that the legal provisions are also different. Legal regulations and customs procedures in marriage have become one of the researches of customary law. The engagement and marriage procession of the Mandailing Tribe in North Sumatra Province, especially in Pasar Binanga Village, Central Barumun Sub-District, Padang Lawas Utara Regency (Paluta) is one of the ethnic groups in Indonesia that has uniqueness and practice in applying customs.

The customary law on engagement and marriage in the Mandailing Tribe in customary garments and marriages was customary garments dominated by red, gold, and black. The groom wore a headdress called an ampu-mahkota worn by the Mandailing Kings in the past, a baju godang suit, a gold-colored belt with two tiny knives called bobat, a simple bracelet on the upper arm, and a samping cloth binding with the Tapanuli songket. Whereas the bride wore a headdress called bulang with a golden color and

a bead folded up, a chest lining with a black necklace with gold accessories and two sheets of songket cloth, also a simple golden color upper arm bracelet.

The traditional marriage procession of the Mandailing Tribe engaged many members of Dadap na tolu, such as Mora, Kahanggi and Anak Boru. The procession of the wedding ceremony begins with the traditional session called makkobar / makkatai, which speaks in a very special and distinctive speech. Each member has reciprocated speeches, such as reciprocating pantun in turns. The first person who opened the talk was the spokesperson that had hajat (suhut) and continued with the law that had hajat (anak Boru suhut), the brother-in-law of the Anak Boru (pisang raut), the attendees (paralok-alok), the customary king of the village (hatobangan), and the customary king of the next village (The King of the Torbing Balok) and the King of the Diraja Adat / Chief of the Assembly (King of the Panusunan Bulang).

The traditional session is then known as mangupa or mangupa tondi dohot badan. This session has been performed since the emergence of Islam and adopted by the Mandailing Tribe who adhered to the teachings of Islam and customs of Mandailing Tribe. Generally, there are words of guidance provided at the wedding. The goal is to strengthen the body and spirit. Pangupa or mangupa ingredients are dishes that

Correspondence address:

Astria Is'a Anwi Siregar

Email : putsrf85@gmail.com

Address : Univeristas Sumatera Utara

are put in big tampa and filled with rice, eggs, and organic chicken and salt.

Every dish has a symbolic meaning. For example, a round egg made of yolk and egg white reflects the roundness (wholeness) of the body (tondi). The Pangupa must be eaten by the bride and groom as a sign that life difficulties will arise in family relationships. In order to do this, the bride and groom must be prepared and willing to have a good connection.

The lineage system adopted by the Mandailing tribe was patrilineal lineage, and when weddings between males and females of the Mandailing tribe generated male children, the male lineage became the heir to the lineage of his father to the clan he brought. However, if the descendant of the marriage is a daughter, the girl is not the successor or descendant of her father to the custom of Mandailing.

The involvement of a jurisprudential decision was seen as an engagement that, if canceled unilaterally, would have legal implications in the form of allegations made by other sides which were adversely affected by the unilateral cancelation of the agreement. The claim of the offending party is based on the failure to act in the form of an act against the law under Article 1243 of the Civil Code and Article 1365 of the Civil Code. Since the constitutional law has been implemented, therefore, the unilateral cancelation of the agreement has legal implications for those who cancel it not only by customary law but also by civil law.

Cancelation of the engagement case under Supreme Court Decision No. 68K / Pdt/2009, which is deemed to be binding on the case-law of the Supreme Court because it includes material conditions to be presented by the male to the woman and a pledge made by the female party to be engaged in marriage. The cancelation of the engagement is regarded to be an act of default and also an act against the law.

In the case of law No. 396K / Sip/1958, it is the case that a person unilaterally breaks off his engagement with a female without any previous cancelation of the engagement because the man's parents marry his son to another woman. The male family requested the return of the dowry cash provided to the women's family of IDR 1,500 (one thousand five hundred rupiahs). Under customary law, cash provided to females by males at the moment of the engagement is not a down payment that will be refunded if the marriage is canceled. The money must be seen as a bond, but it must be returned twice by the

woman if the engagement is broken by the woman's decision, and if the male party decides to cancel the engagement then the money is not returned at all.

Since the decisions No. 396K / Sip/1958 and No. 68K / Pdt/2009 followed by other court decisions in the same case then, in the case of the cancelation of the engagement, the case law has been implemented with the same decision that the cancelation of the engagement is an act of default and also an act against customary law which can be prosecuted in civil law by offender

There is no question of variations in terms of engagement in the Mandailing of customary law. They all lead to the same objective. Engagement according to the customary law of Mandailing is a procession of ceremonies carried out by the future bridegroom's family to bind the bride and groom's family so that, at the specified time, a marriage between the future bridegroom and the bride can be realized.

In the traditional ceremony of engagement in the Mandailing Tribe, there are times between the groom and the bride who is going to get married, sometimes they still don't know each other, in this case, the parents of both parties who play a role and bring the extended family together from both sides. The engagement procession may also be a means of gaining the consent of the family of the bride and groom to be able to hold a marriage on the date agreed by the parents of both sides.

In the Mandailing tradition, the engagement can only be held if the bridegroom's marriage procession for the future bridegroom has been received and has been approved by the family of the bride. This engagement period is no longer said to be the dating period but the waiting period for the inauguration day of the bride and groom's wedding. Besides, the engagement period to get to know each other's character to adjust to each other between the bride and groom and may be accompanied by plans that will be carried out after they are legally husband and wife.

OBJECTIVE OF THE STUDY

1. To examine the implementation of the engagement in accordance with customary law before and after jurisprudence No. 396K / Sip/1958 and No. 68K / Pdt/2009
2. To find out the cause of the cancelation of the engagement under the Mandailing customary law in Desa Pasar Binanga

Kecamatan Barumun Tengah Kabupaten Padang Lawas.

3. To evaluate the legal implications of the cancelation of engagement under the customary law of Mandailing in Pasar Binanga Village, Barumun Tengah Subdistrict, Padang Lawas Regency (according to jurisprudence No. 396K / Sip/1958 and No. 68K / Pdt/2009)

Data Collection

This study is a descriptive analysis. The type of study is normative law. The data source used for this research is secondary data consisting of:

- a. Primary legal material in the form of rules/regulations and legislation is the main foundation used in this research, including jurisprudence No. 68K / Pdt/2009, No. 396K / Sip/1958 and the customary law of Mandailing in Pasar Binanga Village, Barumun Tengah Subdistrict, Padang Lawas Regency.
- b. Secondary legal material that provides clarification on primary legal material, such as books, research findings and/or scholarly work.
- c. Tertiary materials are materials that provide instruction and clarification on primary and secondary legal materials, such as general dictionaries, legal dictionaries, encyclopedias, etc.

The data collection method used in this study is the library research method. To further develop these research data, the study was performed directly with the informants using the pre-prepared evaluation procedures. Also, the research is supported by direct interviews with the Sultan Kali Hasibuan, Hobar Siregar as Hatobangon, Mangsuruddin Hasibuan as Hatobangon, Mahlil Hasibuan as Hatobangon as a customary leader who knows more about the issues of engagement and marriage in Pasar Binanga Village, Barumun Tengah Subdistrict, Padang Lawas Regency. All informants are regarded to be Indigenous Community Mandailing figures.

RESULT AND DISCUSSION

Engagement is a pre-marital act. The engagement happened after a prenuptial agreement was reached between future bridegrooms. This agreement shall be reached by both sides upon request or consideration made

by future groom to the future bride. The act of engagement is said to have tied both parties to this by handing over the dowry. In this case, an agreement has been reached between the two parties to bind the two parties (male and female) to proceed with the marriage.

Engagement in Indonesia is regulated by some legal provisions. In Indonesian customary law, engagement is regulated by the customary law of each tradition. The engagement shall be made by the parents of both sides or by an ambassador or person representing the future groom's family. Engagement is not permitted by Islamic law, but *khitbah* in the Compilation of Islamic Law (KHI) allowed. *Khitbah* is an activity of a relationship between a man and a woman that is not only conducted by an individual seeking a partner but can also be conducted by a trusted intermediary. The engagement under Western law is not explicitly laid out in the Civil Code (Civil Code). The Civil Code deals only with the promise of marriage.

Engagement is a proposed action that may result in the cancelation of the act. Indonesia's positive marriage law, in particular, controls the cancelation of a marriage, although not in detail. The proposal may be canceled because the event did not give rise to legal implications and the parties are free to terminate the agreement (Article 13 KHI). The outcome of the cancelation of the engagement was in the form of damages and sanctions on both parties. However, this is distinct where the customary law of engagement is acknowledged as a legal act.

In the Mandailing Community, engagement is a sacred obligation that should not be broken or unilaterally canceled because, in unilateral cancelation or termination of engagement by either party, the parties may be subject to customary sanctions by the Mandailing Community.

Engagement of the customary law in Community of Mandailing has three main purposes, including:

1. Assuring a marriage takes place soon.
2. Limit promiscuity between potential brides, particularly where there is a lot of youthful promiscuity.
3. It provides both parties the chance to get to know each other between potential brides, including their respective grooms. So they could be expected to be a harmonious couple.

Engagement Implications:

- a. Both parties are bound to have a marriage.
- b. Engagement binds do not imply that both sides should not (force) marriage.
- c. There is usually nothing compulsive in nature.
- d. There is a special relationship between future in-laws and future daughters-in-law.
- e. Engagement Canceled

Engagement may still be canceled in the following terms:

- a. If the cancellation is indeed the will of the two sides that typically occur only after an engagement has been made for some time.
- b. If one party fails to meet its pledge then the recipient of the dowry must be returned or multiplied the sum of the dowry. However, if the party providing the dowry fails to meet its pledge, the dowry does not have to be returned.

The factors that led to the cancellation of engagement the Mandailing Community of Pasar Binanga Village, Central Barumon sub-district, Padang Lawas Regency have many factors, in particular, the external factors of the agreement taken by the families of the two sides.

The possible causes of the cancellation of the engagement are:

1. The two potential couples who are engaged can not understand each other's personalities. Each personality has a separate enough that it is hard to direct to a marriage. These engaged couples often quarrel to risk making the couple change their minds due to the absence of a goal.
2. One of the future bridegrooms is finding a better match than their fiancée and attempting to break the engagement.
3. Something went wrong with one of the couples, so the future bridegrooms changed their minds and canceled their engagement.
4. There were too many demands from one of the future bridegrooms, especially the future bride about the cost of the marriage so that the men changed their minds, to cancel the engagement because they could not meet the demands of the bride's family.

According to the customary law of Mandailing before the decision of Decrees No. 396K / Sip/1958 and No. 68K / Pdt/2009 of the Supreme Court, the jurisprudence has become a jurisprudence in which the verdict is followed by another verdict in the same case and therefore the jurisprudence has no binding legal force to be complied with by the parties involved.

The engagement does not have any legal implications and does not impose any sanctions unless the candidates to the marriage comply with it. The penalty that can be imposed on the future groom's family if they unilaterally terminate the engagement under Mandailing customary law is that the *boli* given to the future groom's family can not be withdrawn. In the case of a future bride's family, if they unilaterally cancel the engagement, the *boli* must be returned twice the amount given.

Legally applicable in Indonesia prior to the imposition of jurisprudence, an engagement may not be brought before the court as an act of default or an act against the law which may be brought under civil law pursuant to Article 1243 of the Civil Code of default and Article 1365 of the Civil Code of an act against the law, that is to claim, the compensation of the party who caused the loss to the party who suffered the loss.

However, following the decision of the Supreme Court No. 396K / Sip/1958 and No. 68K / Pdt/2009 which, in the same case, is legally regarded as an agreement that has binding legal power for future brides and groom parties. The requirements relating to the engagement are based on the requirements of the agreement as set out in Article 1313 of the Civil Code on agreements in particular, which states that 'Agreement is an act with which one or more people are bound by one or more people. This event generates a legal basis between two or more persons who are referred to as an agreement in which there are rights and responsibilities..

Engagement is regarded legally to be an agreement that fulfills the criteria of the treaty as stipulated in Article 1320 of the Civil Code, which states that an agreement can be said to have been valid under four circumstances, that is to say, four conditions:

1. Their arrangement shall be binding;
2. The ability to make an engagement;
3. It's a certain thing;
4. The Legal Cause.

Their binding agreement is voluntary between the parties that intend to carry out the action they have pledged. Engagement is legally regarded to be the agreement of future bridegrooms to bind the sons and daughters of the parties to the marriage at an agreed time. The agreement was made verbally on the condition that some goods/money was used as a sign of engagement. The sides to the agreement are the two persons to be engaged and each parent or trustee of the future bridegrooms. The purpose of the agreement is an engagement for the marriage of future bridegrooms.

The parties have the ability to engage. A certain thing is that the parties to which engagement is bound to agree must be a clear object or, at the very least, must be determined not to be vague. The object of the agreement is to hold marriage between the future bridegrooms at the agreed time. A permissible or legal cause implies that the agreement contained must not conflict with the law, in violation of public order and morality.

Whereas the provisions of the first and second conditions referred to above are subjective conditions, if the first and second conditions are not met, then the engagement may be cancelled, but that does not imply that the agreement is null and void as long as the two sides to the agreement have no objection, but that the engagement may be canceled unilaterally if one party disagrees the agreement. The third and fourth conditions are objective which, if not completed or if one of the conditions is not met, the engagement is null and void or is considered to have never been fulfilled.

The explanation above shows that the engagement of a jurisprudential decision is an engagement that, if unilaterally canceled, has legal implications as a claim by the injured party for unilateral cancellation of the engagement. The claim of the injured party is based on a default in an action against the law under Article 1243 of the Civil Code and Article 1365 of the Civil Code. One-sided cancellation of the agreement results in legal implications in both customary and civil law. The engagement made by the parties is a strong bond in both civil and customary law.

Based on the decision of the Supreme Court No. 396.K / PDT/1958 and No. 68.K / PDT/2009 that the cancellation of engagement is a breach of the agreement as well as an act against the law of the party which has canceled the engagement. Under customary law, the injured party may bring a breach of the agreement and legal action

against the law before the Court. The legal implication of the cancellation of the engagement based on the customary law of Mandailing in Pasar Binanga Village, Central Barumun Subdistrict was not implemented based on Supreme Court Decrees No. 396.K / PDT/1958 and No. 68.K / PDT/2009, but instead has its legal provisions that apply to generations of Mandailing Indigenous Peoples, as follows:

1. The engagement is null and void, and the marriage of the engaged couple has not proceeded.
2. The future bride must return boli (dowry) that has been given by future grooms with a value twice the value received by the bride if the bride is canceled.
3. The future bride has the right to have a boli (dowry) provided by the future groom and is not allowed to get back the boli (dowry) provided to the future bride as customary legal sanctions for the future groom.
4. Parties that cancel the engagement receive social sanctions, such as exclusion from the association of indigenous and tribal peoples in Pasar Binanga Village, Central Barumun sub-district.

CONCLUSION

1. Engagement process in accordance with Mandailing customary law prior to the issuance of act legislation No. 396.K / PDT/1958 and No. 68K / PDT/2009 are in accordance with the provisions of Mandailing customary law which is not specified where all engagement processions are conducted verbally on the basis of trust that starts with the procession of the Manyapai boru traditional procession (approach to women's family processions) continued with Padamos Hata (receiving responses to proposals), then followed with pataru sere sahatan (payment of a dowry) and finished with a procession of Mangalehen manganese pamunan (set of future bride in the procession of feeding her by the nuclear family), while the implementation of the process of engagement with the Indigenous Community of Mandailing after the completion of the jurisprudence can be made in writing, the entire series of engagement processions can be used as authentic evidence of the engagement if it is canceled in the future.
2. The factors that cause the cancellation of the engagement of the Mandailing Indigenous

Community in Pasar Binanga Village, Barumun Tengah subdistrict, are if the future groom cancels the engagement, the factors are as follows.

- a. Future grooms have met other women who are more compatible and have more in common than future brides so that they can cancel their engagement.
- b. The future groom's family discovered a disgrace or a negative side of the future bride after the engagement, making them cancel the engagement.
- c. The future bride's family is too expensive to hold the marriage after the engagement so that the future groom family can not afford that make them cancel the engagement.

Factors that will lead the future bride to cancel the engagement are:

- a. The future bride's family discovered a disgrace or a negative side of the future groom after the engagement, making them cancel the engagement.
 - b. Future bridegrooms have very different characteristics, and personalities or future grooms are rude to future brides.
 - c. Future brides have met other men who are more compatible and have more in common than future grooms so that they can cancel their engagement.
3. The legal implications of the cancelation shall be subject to Mandailing customary law in Pasar Binanga Village, Barumun Tengah sub-district, Padang Lawas District (according to the provisions of Jurisprudence No. 396K / SIP/1958 and No. 68K / PDT/2009) concerning the cancelation of the engagement on the basis of Mandailing customary law are stipulated, which have been handed down from generation to generation. The engagement is canceled as a marriage by the spouse owing to a third party. As stipulated in Jurisprudence No. 396K / SIP/1958 and No. 68K / PDT/2009 concerning the cancelation of engagement, the treaty has legal force binding on both sides. The engagement provisions are based on the conditions required of the agreement lined in Article 1313 of the Civil Code.

ACKNOWLEDGEMENT

We would like to thank the Faculty of Law, University of Sumatra Utara and their supervisors who have provided input and suggestions.

REFERENCES

- [1]. Lubis, A.B., *Perkawinan Mandailing*, Medan : Keluarga Padang Lawas, 2010
- [2]. Djojodigoeno, *Asas-Asas Hukum Adat*, Jakarta : Intermasa, 2000
- [3]. Lidya Nasution, *Hukum Adat Mandailing*, (Medan : USU Press, 2010), hlm. 33
- [4]. Iman Sudiyat, *Hukum Adat, Sketsa Adat*, (Yogyakarta : Liberty, 2011), hlm. 11
- [5]. Wawancara dengan Mahlil Hasibuan selaku Hatobangon Desa Pasar Binanga Kecamatan Barumun Tengah Kabupaten Padang Lawas, pada hari Senin, tanggal 19 November 2018, pada pukul 11.00 Wib di tempat kedimananya.
- [6]. Darmabrahta Prayono dan Surini Ahlan Sjahrif, *Hukum Perkawinan dan Keluarga di Indonesia*, (Jakarta : Fakultas Hukum Universitas Indonesia, 2004), hlm. 22
- [7]. Trusno Sudikno, *Bahan Pembelajaran Hukum Keluarga dan Perkawinan*, (Jakarta: Ghalia Indonesia, 2012), hlm. 36
- [8]. Wawancara dengan Mahlil Hasibuan selaku Hatobangon Desa Pasar Binanga Kecamatan Barumun Tengah Kabupaten Padang Lawas, pada hari Senin, tanggal 19 November 2018, pada pukul 11.00 Wib di tempat kedimananya.