



## THE ROLE OF LEGAL MORALITY IN RESOLVING BREACH OF MARRIAGE PROMISE CASES

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### ABSTRACT

The concept of the Indonesian rule of law is grounded in the legal ideals of Rechtsidee Pancasila, as articulated in Article 1 paragraph (3) of the 1945 Constitution. This framework establishes Pancasila as the rechtsidee and the ultimate source of all legal authority in Indonesia. Consequently, every statutory regulation must embody and implement the values of Pancasila. The formation of law is not merely a technical process but an imperative moral demand, reflecting the necessity for all individuals to live in accordance with moral principles and just laws. Legal morality posits that the law exists to serve humanity, and when obstacles to justice arise, they must be addressed, whether in theoretical understanding or practical application. In the context of marriage promise cases, the application of legal morality through a restorative justice approach is crucial. This method aims to achieve fair restorative justice, protecting the dignity and honor of women affected by breaches of marriage promises. The law, when applied with moral integrity, convinces the parties involved that it represents the most ethical solution. Restorative justice principles, when applied to marriage promise cases, seek to create a just outcome by providing a win-win solution for both perpetrators and victims. This approach avoids the escalation of conflicts and prevents the accumulation of unresolved cases within the legal system. One of the practical applications of Pancasila values in this context is the emphasis on deliberation and consensus, aiming to achieve justice for all parties involved. Settling disputes through restorative justice, particularly penal mediation, offers a faster, less costly, and more effective resolution compared to conventional civil mediation processes.

### A. INTRODUCTION

In every civilized society, law and morality always go hand in hand, forming the foundation for a just and orderly life. In Indonesia, the link between law and morality has become more apparent with the implementation

of Pancasila as the state's philosophical and legal foundation. Morals without law are powerless and law without morals is worthless. Legal knowledge and moral values are an inseparable unity.<sup>1</sup> Positive law develops in line with the understanding of legal positivism so that it has an impact on the development of science and practice. In its development, law does not move in a vacuum but follows the social order.<sup>2</sup> Law cannot be separated from values and morals, moral values in law become a tool to reach the foundations of society so that law enforcement is in line with dynamic developments in society. Hugo Sinzheimer's opinion is that law always moves dynamically following the social order that develops in society so that it always deals with concrete things and living people.<sup>3</sup> Therefore, law should not be separated from values and morals. Law is not only limited to the text of the law with the aim of providing legal certainty, but more than that, the law can be interpreted with the aim of providing justice for justice seekers.<sup>4</sup>

In the development of law, the existence of society becomes part and constitutes an inseparable whole.<sup>5</sup> Based on the popular adage put forward by Marcus Tullius Cicero, *Ibi societas ibi ius* (where there is society there is law). Society needs a government structure to create laws that provide order in social life.<sup>6</sup> The expected law cannot be separated from moral rules because the formation of an orderly society comes from good moral behavior. Thomas Aquinas argued that moral commands contain the value of doing good things and avoiding evil. Therefore, moral commands need to be concretized in the form of just legal rules.<sup>7</sup> The existence of law is expected to be a way to solve problems that arise in society. Laws that are detached from morals cannot reach the bottom of society,<sup>8</sup> eroded by the dynamics that are increasingly developing in society which then gives rise to conflicts of interest between the state and society.

Morals are teachings about the good and bad of human actions and part of consciousness that contains values in it. Humans grow up in social life with

<sup>1</sup> Trevor RS Allan, "The moral unity of public law," *University of Toronto Law Journal* 67, no. 1 (2017): 19.

<sup>2</sup> Niklas Luhmann, *Law as a social system*. (Oxford: socio-legal studies, 2004), 65.

<sup>3</sup> Esmi Warassih, Karolus Kopong Medan and Mahmutarom, *Pranata Hukum: sebuah telaah sosiologis*. (Semarang: Suryandaru Utama, 2005), 31.

<sup>4</sup> Susan Kneebone, "The rule of law and the role of law: Refugees and asylum seekers," *Refugees, asylum seekers and the rule of law: Comparative perspectives*, (2009): 47.

<sup>5</sup> Ota Weinberger, *Law, institution and legal politics: fundamental problems of legal theory and social philosophy*. (Springer Science & Business Media, 1991), 45.

<sup>6</sup> David M. Trubek, "Toward a social theory of law: an essay on the study of law and development," *The Yale Law Journal* 82, no. 1 (1972): 21.

<sup>7</sup> Fithriatus Shalihah and Oksep Adhayanto, "Hukum, Moral, Dan Kekuasaan Dalam Telaah (Hukum adalah Alat Teknis Sosial)," *Fiat Justisia* 10, no. 4 (2017): 676.

<sup>8</sup> Cahya Wulandari, "Kedudukan moralitas dalam ilmu hokum," *Jurnal Hukum Progresif* 8, no. 1 (2020): 9.

a conceptual system of morals and law, so that this system becomes part of their lives, by learning the moral language of a society as well as understanding the morals that are formed in that society.<sup>9</sup> Laws in moral institutions relate to good human behavior. Law seems to put forward a requirement that a good legal life is created by members of society who live well too. However, if law has become technology then these requirements are no longer necessary, depending on the good and successful use of law as technology.<sup>10</sup> The state has the responsibility to guarantee the protection of the rights that its citizens have by nature and provide respect for the rights they have in the form of normative rules in a constitution. Because human rights themselves are found in the essence of humanity and for the sake of humanity.<sup>11</sup> For this reason, every human being has it and this right cannot be revoked by anyone, even himself.

Indonesia is a country of law, which generally understands that the rule of law can be seen from three basic principles, namely supremacy of law, equality before the law, and law enforcement. In every legal country, in its description, the characteristics of the protection of Human Rights (HAM) will be seen.<sup>12</sup> Indonesia is a country based on Pancasila as a means of unifying the nation with the aim of upholding and elevating human dignity which is the identity and guideline of the Indonesian nation so that it is closely related as a tool of social control that influences social life. In accordance with the Preamble to the 1945 Constitution, Pancasila is a fundamental principle that has a very strong position.<sup>13, 14</sup> Therefore, each value must be used as a reference and guide in national and state life to achieve national ideals. Pancasila as a philosophy, outlook on life and state ideology in Indonesia contains its own legal ideals (*rechtsidee*). Pancasila values must be seen as basic state norms (*Grund norm/Staats fundamental norm*) which are the source of all sources of law in Indonesia.<sup>15</sup>

Pancasila as the basis of the state, as well as the *Weltanschauung* of the Indonesian nation, of course needs to be imbued and become the color of

<sup>9</sup> Wulandari. "Kedudukan moralitas dalam..." 10.

<sup>10</sup> Rahardjo Satjipto. *Hukum dan Perilaku: Hidup Baik Adalah Dasar Hukum Yang Baik*. (Jakarta: Kompas Media Nusantara, 2009), 66.

<sup>11</sup> Niken Savitri and Aep Gunarsa, *HAM perempuan: Kritik teori hukum feminis terhadap KUHP*. (Bandung: Refika Aditama, 2008), 2.

<sup>12</sup> Daniel Moeckli et al., *International human rights law*. (Oxford University Press, 2022), 88.

<sup>13</sup> Fauzan Indra and Azis Budianto, "The Position of Pancasila as Legal Ideals and Source of All Legal Sources in Indonesia," In *Proceedings of the 1st International Conference on Law, Social Science, Economics, and Education, ICLSSEE 2021, March 6th 2021, Jakarta, Indonesia*. 2021.

<sup>14</sup> Siti Zahra Maulida, Murphy Xavier and Mccarty Elliot, "The Essence of Pancasila as the Foundation and Ideology of the State: The Values of Pancasila," *International Journal of Educational Narratives* 1, no. 2 (2023): 98.

<sup>15</sup> Dairani, "Argumentasi Hukum Dan Upaya Mempertahankan Eksistensi Pancasila Sebagai Sumber Dari Segala Sumber Hukum Negara," *HUKMY: Jurnal Hukum* 1, no. 1 (2021): 24.

people's daily lives, the lives of state administrators and state policies. Each precept has a justification of historicity, rationality and actuality, which, if examined in depth, is firmly believed and implemented consistently.<sup>16</sup> Pancasila is very important in the development of national law, in that each of its five basic values contains values that can become a source of national legal principles.<sup>17</sup> These five principles include, Belief in One Almighty God, Just and Civilized Humanity, Indonesian Unity and Democracy which is led by wisdom in Deliberation/Representation, and by realizing social justice for all Indonesian people. Pancasila is the source of law or basic norms (grund norm) of all sources of Indonesian law, as the philosophical source of the nation and state whose material content must not conflict with the values contained in Pancasila.

Pancasila as a basic norm is the direction for living the life of the state, especially in legal development activities both theoretically and practically which are continuously in process to achieve legal ideals. This has been described in the theory of Hans Kelsen and Hans Nawiasky which states that Pancasila is the state's fundamental norm. Pancasila guarantees human rights which are naturally owned by every human being who naturally have the same level and must be treated in accordance with human values.<sup>18</sup> Humans have had these human rights since birth and cannot be taken away by anyone, so the state is obliged to protect them in accordance with the mandate of the Preamble to the 1945 Constitution, that in fact independence is the right of all nations and therefore, colonialism over the world must be abolished, because it is not appropriate. with humanity and justice. Such an affirmation must be applied in every action, such as in making legislation with implementation using Pancasila values.

Women as one of the forces of society have equal rights in fulfilling freedom and change for the advancement of women,<sup>19</sup> so that human rights must be stated explicitly and specifically guaranteed. In setting several international conventions, the main aim is to understand more deeply the conventions related to women in order to become a benchmark for equality and justice for women. Regulation of legal protection for women is in line with the existence of human rights which continues to develop. In Indonesia,

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<sup>16</sup> I. Wayan Sudirta, "Rekonstruksi Pemahaman Atas Nilai-Nilai Pancasila Dalam Kehidupan Berbangsa Dan Bernegara." PhD diss., Universitas Kristen Indonesia, 2023.

<sup>17</sup> Hariyanto, "Pembangunan Hukum Nasional Berdasarkan Nilai-Nilai Pancasila," *Volkgeist: Jurnal Ilmu Hukum Dan Konstitusi*, (2018): 58.

<sup>18</sup> Ahmad Zaini, Mohammad Zainor Ridho and Entol Zaenal Muttaqin, "The Existence of Human Rights in Indonesia The Future of Human Rights on Democratic State," *al-Qisthas: Jurnal Hukum dan Politik*, 11 (2020): 73.

<sup>19</sup> I. Gusti Ayu Purnamawati and Made Suyana Utama, "Women's empowerment strategies to improve their role in families and society," *International Journal of Business, Economics and Law* 18, no. 5 (2019): 123.

regulations that provide legal protection for women's human rights basically exist but do not protect women optimally. If we look closely, there are actually many vulnerable conditions that occur so that women in Indonesia need protection. With a patriarchal societal structure, socio-culturally men take precedence over women, even marginalizing women. Besides that, wrong interpretations of gender have reduced the universality of women's human rights in Indonesia. As experienced by women who are victims of failure to fulfill their marriage vows as a response to the phenomenon of injustice that appears in various forms. So it positions women who are victims of not fulfilling their marriage promises as experiencing injustice.

The case of a woman who was a victim of not fulfilling her marriage promise began with a dating relationship between an adult man and woman who were not yet married as lovers who loved each other.<sup>20</sup> In this relationship, they bind themselves to each other with a promise of marriage. Usually it is the man who makes the marriage vows. This promise is made verbally, there are also communication tools via cellphone such as messaging applications, namely WhatsApp, WeChat, Line, and Kakao Talk, SMS (Short Message Service), via computer or. With the promise of marriage made by the man, the woman voluntarily gives up her body, resulting in sexual intercourse. But in the end the man did not keep his promise. There appears to be a reason that gives rise to an incident where women who question their marriage promises to men, whether they are not pregnant or pregnant, often experience various forms of violence, the victims of which are women.

Women who are victims of failure to fulfill their marriage vows cause losses to the woman, because it is directly related to the integrity of the woman's body. As a complete person who includes the physical image and psychological image of women in building their self-concept. Thus showing the phenomenon of injustice that continues to emerge in various forms, which can result in and result in acts of violence against women both not pregnant and while pregnant.<sup>21</sup> The impact also has both long-term and short-term consequences for the women who experience it.<sup>22</sup> The suffering experienced

<sup>20</sup> Pdt Dr Paul Gunadi, *Telaga 3-Hidup Tanpa Penyesalan: Memilih Pasangan Hidup*. (Malang: Evernity Fisher Media, 2017), 26.

<sup>21</sup> R. Valentina Sagala and Ellin Rozana, *Pergulatan Feminisme dan HAM*. (Bandung: Institut Perempuan, 2007), 22.

<sup>22</sup> Dampak jangka panjang terjadi jika korban kekerasan tidak mendapat penanganan dan bantuan (konseling psikologis) yang memadai, misal munculnya sikap atau persepsi negatif terhadap laki-laki atau terhadap seks. Dampak yang lain adalah trauma, yaitu "luka jiwa" yang disebabkan karena seseorang mengalami sesuatu diluar batas normal(berdasarkan standar dirinya sendiri). Dapat juga muncul mimpi-mimpi buruk (nightmares) ingatan-ingatan akan kejadian yang muncul secara tiba-tiba (flashback), jika gejala tersebut berkepanjangan sampai 30 hari, besar kemungkinan korban mengalami Post Traumatic Stress Disorders(PTSD) atau stress pasca trauma. Dampak jangka pendek, berakibat pada fisik korban seperti luka-luka, memar pada bagian tubuh tertentu, infeksi, dan kerusakan organ reproduksi.

by women who are victims of failure to fulfill their marriage promises takes various forms, such as physical suffering (when women want to fulfill their marriage promises,<sup>23</sup> in the end they have to experience abuse such as being slapped, hit, kicked, cornered with cigarettes, even injured, the impact of this violence is external or internal injuries to the body, collisions, serious injuries, broken bones, physical disabilities and some even die). Even when a woman is pregnant, it will physically endanger the woman and the baby in the womb.

Pshikis suffering, the image of a woman is degraded, through hurtful words/speech, dirty words, shouts, insults, threats that suppress women's emotions, (so that they feel their human dignity has been lost or degraded). Impacts a person's feeling of helplessness and/or severe psychological suffering, disturbing or suppressing the victim's emotions, distrust of men, feelings of guilt, shame and humiliation, feelings of extreme anger, can lead to suicide. Sexual suffering (deprivation of chastity, reproductive disorders, contracting venereal disease, pregnancy disorders). The social suffering experienced by the victim is tension in social relations because they feel not accepted by society, stigma labeling as a woman who has had sex with a man, feelings of helplessness, anti-social behavior, low self-esteem, shame, anxiety, difficulty sleeping or eating, suicidal behavior, depression, alcoholism, drug abuse, smoking, changing partners and even attempting suicide. It also often happens that people change their place of residence because they become the object of ridicule. Economic suffering, incurring medical treatment costs due to the physical and psychological impacts experienced, recovering mental health from psychological disorders that arise and also having to incur costs for pregnancy, childbirth, and raising her child.

Based on the forms of violence experienced by women victims of failure to fulfill their marriage vows, Article 1 and Article 2 of the Declaration on the Elimination of Violence Against Women,<sup>24</sup> emphasizes several fundamental changes in society's perspective regarding violence against women, firstly recognizing the existence of gender-based violence. This means that violence against women is an action that is based on or because someone is a woman, and not for example because of social status, economic status, racial differences, and so on. This violence occurred only because the person (victim) was a woman. Second, emphasizing can result (or is likely to result in). This changes the perspective of society and the law towards violence, which tends to wait for evidence of violence with physical evidence (for example, a woman who suffers because she is afraid of being killed by her husband cannot be

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<sup>23</sup> Putusan perkara No. 522 K/Sip/1994

<sup>24</sup> Pasal 1: Setiap tindakan berdasar perbedaan jenis kelamin yang berakibat atau mngkn berakibat pada kesengsaraan atau penderitaan perempuan secara fisik, seksual atau pshikologis termasuk ancaman tindakan tertentu, pemaksaan atau perampasan kemerdekaan secara sewenang-wenang baik yang terjadi didepan umum atau dalam kehidupan pribadi,

categorized as a victim of violence as long as she has not experienced the murder). Given the definition of this Declaration, it is recognized that acts which may result in the same are equivalent to causing, as long as the act complies with the entirety of this definition. Third, recognizing forms of physical, psychological, sexual and economic violence, this is of course a very fundamental change considering that initially the law tended to define violence as merely physical violence.

Fourth, recognize that violence against women can occur in the private or public sphere (occurring in public or in private life), for example domestic rape (marital rape). Thus, the Declaration on the Elimination of Violence Against Women has clearly provided a very fundamental change in the way human rights view violence. This declaration also contains areas where States are obliged to make policy changes to eliminate violence against women.<sup>25</sup> According to Rachmad Safa'at (1998),<sup>26</sup> A survey conducted by MACTH International, a non-governmental organization in Canada, found that violence against women is the most common problem. In general, various acts of violence are directed against women in society and can be identified concretely, such as threats of violence and violence that actually occurs, which damage women's dignity as human beings. Leaving women in a state where they are easily criticized and full of fear, conditions women in a state where their skills and abilities are not appreciated, places women in a marginal position in society, closes down the possibility of women being able to participate in the decision-making process in determining the development of society.

Regarding acts committed by men against women, the victim's failure to fulfill a marriage promise is considered to violate the essence of a woman's humanity and this act is an act that causes harm and suffering (physical, psychological, sexual, social and economic) to women, both in terms of conditions. not pregnant or in the condition of being pregnant.<sup>27</sup> Apart from that, the suffering experienced by women both during and after violence occurs is in fact much more traumatic than that experienced by men. But far from that, it is a form of attack or denial of human rights which causes women to lose their bodily integrity. So it is deemed necessary to provide legal protection for women who are victims of failure to fulfill their marriage vows so that they are not insulted and toyed with by men and to avoid the birth of children with the status of illegitimate children.

<sup>25</sup> R. Valentina Sagala and Ellin Rozana, *Pergulatan Feminisme dan HAM*. (Bandung: Institut Perempuan, 2007), 29.

<sup>26</sup> Rachmad Safa'at, *Buruh Perempuan: Perlindungan Hukum dan Hak Asasi Manusia*. (IKIP Malang, 1998), 75.

<sup>27</sup> Harkristuti Harkrisnowo, "Tindakan Kekerasan Terhadap Perempuan dalam Perspektif Sosio-Yuridis," *Jurnal Hukum Ius Quia Iustum* 7, no. 14 (2000): 163.

This marriage vow is a promise given by a man to a woman to marry. However, the problem is when criminal acts arise which are motivated by the marriage promise and ultimately the marriage promise is not fulfilled, causing losses, especially immaterial losses, such as psychological disorders due to trauma to shame or moral sanctions experienced by women as victims and even the victim's family. due to failure to fulfill the marriage promise. Marriage promises in the civil aspect are actually regulated in Article 58 of the Civil Code with the condition that if the notification of marriage has been followed by an announcement, then this can be the basis for demanding compensation for costs, losses and interest based on actual losses suffered by one party due to goods as a result and rejection of the other party. However, in reality, many victims prefer to report this act at the police station. For this reason, researchers try to provide ideas regarding resolving marriage promise cases using a restorative justice approach.

Apart from civil law, the case of marriage promises is actually already known in Balinese community customs. This marriage promise is categorized as a customary offense called Lokika Sanggraha. This Lokika Sanggraha offense is regulated in Article 359 of the Adhigama Book and is considered to be the community's custom regarding the sanctions given to those who promise to marry. Restorative justice is the resolution of criminal cases involving the perpetrator, victim, family of the perpetrator/victim and other related parties to jointly seek a fair solution by emphasizing restoration back to its original state, and not retaliation. In the law enforcement process for the above matters, it is not just about enforcing norms but rather about the values contained therein. Law enforcement by prioritizing these values is in line with progressive law enforcement that the law was created for humans. Law requires morals, there is a close connection between law, morals and religion. Laws that are not accompanied by morality will have no meaning and are considered to be of no quality because the quality of law is measured by morals.

Moral values should not be separated from the law itself. Laws without moral values in them are just words that provide rules or provisions as a norm but eliminate the values contained in Pancasila and which are intended to be realized through law.<sup>28</sup> The position of moral values in legal science and its implications for law enforcement in Indonesia must be seen as rules/laws that remain full of values, therefore morals are an inseparable part of legal science. The views of legal experts and law enforcers on the law itself influence the level of practice. If law is seen as a rule that is full of values and contains

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<sup>28</sup> Rantawan Djanim, "Hubungan Antara Fakta, Norma, Moral Dan Doktrin Hukum Dalam Pertimbangan Putusan Hakim," *Lex Publica* 2, no. 1 (2015): 234.



morals, then the truth that is to be realized is more substantive truth.<sup>29</sup> To support law enforcement that is no longer confined to legal dogmatics or a formalistic legalistic way of thinking, it is time to develop progressive legal ideas in the law enforcement process as part of the development of the modern legal system. In Indonesia, a legal system based on Pancasila is used.<sup>30</sup> And it is time for the development of science and law enforcement to be based on the culture of the Indonesian nation itself, based on the values of Pancasila which are full of moral values.

An approach with a restorative justice mechanism can provide justice, starting with the police receiving the report and after that summoning the victim, the reported person, who is accompanied by their respective families to sit down together to find the best solution. The victim and the perpetrator and their family negotiate and make a mutual agreement which is outlined in a joint statement, where this statement is used as the basis for the perpetrator to be able to take responsibility for his actions to the victim, either in the form of providing compensation for maternity costs or other things in accordance with the problems reported, this is very welcomed. Both parties rather than having to process it through time-consuming formal procedures that only focus on the perpetrator but ignore the interests of the victim so that it does not fulfill a sense of justice for women as victims and their families. Judging from the background of the legal system regarding the explanation of restorative justice for resolving marriage promise cases, from a substantive perspective, marriage promises have not been regulated in the Criminal Code, so there is still a legal vacuum while the police's authority to implement restorative justice refers to the Criminal Procedure Code and the discretion of the Chief of Police. In terms of legal structure, the police are law enforcers who carry out duties at the inquiry and inquiry stage in accordance with applicable laws and regulations. Lastly, from a legal culture perspective, it can be seen that there is still confusion among the police as law enforcers regarding how to handle marriage promise cases in the criminal justice system because the substance of marriage promises is still a legal vacuum.

The problems and alternative solutions above can be used as reflection for law enforcers so that they always prioritize legal, justice and restorative values in resolving these problems. Because what we are really looking for in all these cases is justice to create a better life. As stated by the famous philosopher Aristotle, justice determines what good relationships are between human beings.<sup>31</sup> This is because the law is upheld and certain, the law also

<sup>29</sup> Thomas L. Shaffer, "Practice of Law as Moral Discourse," *Notre Dame Law*, 55 (1979): 231.

<sup>30</sup> Robiatul Adawiyah and Umi Rozah, "Indonesia's criminal justice system with Pancasila perspective as an open justice system," *Law Reform* 16, no. 2 (2020): 155.

<sup>31</sup> R. Otje Salman Soemadiningrat, *Filsafat Hukum (Perkembangan & Dinamika Masalah)*. (Bandung: Refika Aditama, 2009), 68.

aims to realize justice. The form of oppression experienced by society, especially women, with the loss of the right to obtain justice, certainty and benefits is certainly contrary to the constitutional mandate and statutory provisions relating to human rights.

## **B. RESEARCH METHODS**

This study is normative legal research that uses several approaches to understand and analyze legal phenomena.<sup>32</sup> The approaches used are the philosophical approach, the legislative approach, and the case approach. The philosophical approach in normative legal research aims to explore and understand the basic concepts and principles underlying law. By using this approach, researchers attempt to explore the meaning, goals and values contained in the law. A philosophical approach helps in understanding abstract aspects of law, such as justice, rights and obligations, as well as how these values are applied in the legal system. The statutory approach (statute approach) focuses on the analysis of applicable written regulations. In this context, researchers examine laws, government regulations, and various other legal provisions to understand how legal norms are regulated and applied. The legal sources used include the 1945 Constitution and the Civil Code. This approach is very important because it provides a concrete and clear basis for what positive law regulates. Through analysis of legal texts, researchers can identify relevant provisions and interpret how these provisions apply in practice. The case approach is used to understand how the law is applied in concrete situations through analysis of court decisions. In this approach, researchers examine various legal cases to see how legal principles are implemented and decided by judicial institutions. The case approach provides a real picture of the dynamics of law application in the field, as well as how judges interpret and apply legal norms in specific situations.<sup>33</sup>

## **C. RESULT AND DISCUSSION**

The concept of the rule of law in the sense of the rule of law advocated by Dicey contains three main elements. First, the principle of supremacy of law, namely the principle of legal primacy which originates from the regularity of law to oppose the influence of power absolutism, arbitrary power, preventing arbitrariness and broad discretionary authority from the government. Second, the principle of equality before the law is a principle for and for all groups that originates from the ordinary law of the land and is implemented by the ordinary court. This means that everyone is equal before

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<sup>32</sup> Hardijan Rusli, "Metode Penelitian Hukum Normatif: Bagaimana?," *Law Review Fakultas Hukum Universitas Pelita Harapan* 5, no. 3 (2006): 55.

<sup>33</sup> Rodolfo Sacco, "Legal formants: a dynamic approach to comparative law (Installment I of II)," *The American Journal of Comparative Law* 39, no. 1 (1991): 19.

the law, no one is above the law, both state officials and citizens are obliged to obey the same law. Third, the constitution is the ordinary law of the land, constitutional law is not the source but the consequence of individual rights which are formulated and confirmed by the judiciary (ordinary court). The concept of the Indonesian rule of law is based on the legal ideals of *Rechtsidee Pancasila*, (Article 1 Paragraph (3) of the 1945 Constitution). According to Soepomo, legal ideals do not only include written basic laws, but also unwritten basic laws which are reflected in the habits, codes of conduct (mores), culture and way of life of the Indonesian people.

Thus, Pancasila in its position as a legal ideal also functions as the source of all legal sources.<sup>34</sup> The position of Pancasila as the basis of the state and state ideology is no longer questioned. Therefore, Pancasila must be used as a paradigm (frame of thinking, source of values, and orientation) in legal development, including all efforts to reform it.<sup>35</sup> Thus, Pancasila is called a fundamental state norm (*Staats fundamental norm*). According to Kusumaatmadja, the aim of law based on Pancasila is to provide protection to humans, namely protecting humans passively (negatively) by preventing arbitrary actions, and actively (positively) creating social conditions that run naturally so that every human being fairly obtains broad and equal opportunities. to develop all human potential. The position of Pancasila in terms of law gave birth to the Pancasila legal system in Indonesia. The Pancasila legal system puts up signs and gives birth to guiding principles in national legal politics. The most common signs are prohibitions against the emergence of laws that conflict with the values of Pancasila. Therefore, every law that is born in Indonesia must be based on Pancasila and contain consistency in content from the highest to the lowest hierarchy.

Pancasila in its position as a legal ideal functions as the source of all sources of law, the consequence of which is that there must be no conflict between positive law and legal ideals.<sup>36</sup> In this case the legal norm becomes null and void. So it can be concluded that the material and formal content of a statutory regulation must be based on Pancasila as a basic norm. If a statutory regulation conflicts with the values of Pancasila which are embodied in the 1945 Constitution, then the statutory regulation is declared unconstitutional. The Pancasila values embodied in the 1945 Constitution are the basis for the formation of statutory regulations. In Indonesia, makers of

<sup>34</sup> Vincentius Setyawan, "Pancasila As A Philosophical Basis Of Law Formation In Indonesia," *NUSANTARA: Journal Of Law Studies* 2, no. 1 (2023): 5.

<sup>35</sup> Kadar Pamuji and Tedi Sudrajat, "The Ideals of Pancasila Law in the Process of Forming Legislation," In *The 2nd International Conference of Law, Government and Social Justice (ICOLGAS 2020)*, pp. 166-173. Atlantis Press, 2020.

<sup>36</sup> Wawan Andriawan. "Pancasila Perspective on the Development of Legal Philosophy: Relation of Justice and Progressive Law." *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* (2022): 7.

legal products, especially in the Criminal Code, have not specifically regulated marriage promises, so it is often considered that this case of marriage promises still has a legal vacuum. In the Civil Code, in particular Article 58 paragraph (1) of the Civil Code states that marriage promises do not give rise to the right to demand before a judge whether the marriage will take place, nor does it require compensation for costs, losses and interest resulting from injuries done to the person, any agreement for compensation in this case is void.<sup>37</sup> From the sound of paragraph (1) of Article 58 of the Civil Code, when examined it contains two elements, namely:

- a) The aggrieved party cannot sue the other party before the court to fulfill his promise to carry out the marriage as promised; And
- b) The party who suffers losses due to non-fulfillment of marriage promises cannot claim compensation for losses in the form of costs, losses and interest.

Article 58 of the Civil Code formulates three things. First, the promise to marry does not give rise to the right to sue before a judge for the marriage to take place. It also does not give rise to the right to claim compensation for costs, losses and interest resulting from failure to fulfill the promise. All compensation agreements in this case are void. Second, if the marriage notification is followed by an announcement, then this can be a basis for claiming damages. Third, the expiry period for claiming compensation is 18 months from the announcement of marriage plans.

A marriage vow is a promise given by a man to marry a woman who is his lover, on the basis of this promise the woman is willing to comply with all her lover's wishes. The man then broke his promise and the woman who was betrayed felt that her honor and dignity as a woman had been damaged so she decided to report the perpetrator's actions to the police. The act of breaking a promise actually fulfills the element of error because it contains an error in the form of intention where the perpetrator who promises marriage is fully aware of the consequences of this action. Therefore, he must be responsible for his actions. The victim usually sues for the losses suffered as a result of the perpetrator's actions. What is called actual compensation, which includes compensation for mental suffering, such as pain, shame, stress, loss of reputation, excessive fear, is most appropriate for women who are victims of broken marriage promises. In practice, this compensation is known as immaterial compensation. This immaterial compensation is the provision of an amount of money whose amount cannot be calculated mathematically, but

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<sup>37</sup> Abdul Halim Barkatullah and Tavinayati Tavinayati, "Janji Kawin dalam Perspektif Hukum Perdata," *Lambung Mangkurat Law Journal* 5, no. 1 (2020): 30.

rather is at the discretion of the judge, but also with the condition that this amount depends on many things, including the following:<sup>38</sup>

- 1) The heavy mental burden carried by the victim
- 2) Status and position of the victim
- 3) Situations and conditions in which unlawful acts occur
- 4) The situation and mental condition of the victim
- 5) The situation and mental condition of the perpetrator
- 6) The background to the commission of the unlawful act
- 7) The type of unlawful act, namely whether it was intentional, negligent or absolute responsibility.

As a result of persuasion in the form of a promise to marry, the woman is willing to comply with the man's wishes. Without a promise to marry, of course the woman is not willing to do something her male partner asks her to do. The most obvious loss suffered by the woman is the damage to her honor and good name in the eyes of society. By suing the man, his good name and honor in society can be restored. Women who are victims of failure to fulfill their marriage vows cause losses to the woman, because it is directly related to the integrity of the woman's body. as a complete person that includes the physical image and psychological image of women in building their self-concept. Thus highlighting injustice that appears in various forms, which can result in and result in acts of violence against women both pregnant and non-pregnant.

The impact also has long and short consequences for the women who experience it. The suffering experienced by women promising to marry takes various forms, such as:<sup>39</sup>

- 1) Physical suffering, when women fulfill their promise of marriage, in the end they have to experience abuse such as being hit with cigarettes and even being injured, the impact of this violence is external or internal injuries to the body, collisions, serious wounds, broken bones, physical disabilities and even death. when Even women who are pregnant will physically endanger the woman and the baby in her womb.
- 2) Psychological suffering, a woman's self-image is lowered, through hurtful words, insults, shouts, dirty words, threats that suppress women's emotions so that women feel that their dignity as a human

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<sup>38</sup> Munir Fuady, *Perbuatan Melawan Hukum (Pendekatan Kontemporer)*. (Bandung : Mandar Maju, 2005), 142.

<sup>39</sup> Vito Anggriawan Yudatama, "Tanggung Gugat Pria Terhadap Wanita Yang Melahirkan Anak Akibat Perbuatan Ingkar Janji Kawin," PhD diss., Universitas Airlangga, 2014.

being has been lowered. which results in feelings of helplessness and/or severe psychological suffering in a person, disturbing and suppressing the victim's emotions, feelings of guilt, shame, humiliation, feelings of extreme anger, some even leading to distrust of men and suicide.

- 3) Sexual suffering (deprived of chastity, contracting venereal disease, reproductive organ disorders and pregnancy disorders).
- 4) The social suffering experienced by victims is tension in social relationships because they feel not accepted by society, feelings of helplessness, anti-social, low self-esteem, shame, anxiety, difficulty sleeping or eating, depression, suicidal behavior, drinking alcohol, drug abuse, smoking, changing partners, frequently changing residences because they are ridiculed due to the stigma of women having had sex with men.
- 5) Economic suffering, incurring medical treatment costs due to the physical and psychological impacts experienced, costs of restoring mental health from psychological disorders that arise, as well as costs for pregnancy, childbirth and raising children.

Violation of marriage promises has a very significant and multidimensional impact on women, including physical, psychological, sexual, social and economic suffering. The physical violence experienced is not only physically detrimental but also life threatening, especially for pregnant women. The resulting psychological impact damages women's self-esteem and dignity, causing deep trauma. Sexual suffering experienced, such as disorders of the reproductive organs and venereal diseases, exacerbates the victim's physical and emotional vulnerability. The inherent social stigma makes victims feel isolated and not accepted by society, which can encourage destructive behavior. In addition, the economic impact of medical and recovery costs increases the burden on victims' lives, creating a cycle of suffering that is difficult to break.

Based on the forms of violence experienced by women who are victims of failure to fulfill their marriage vows, Article 1 and Article 2 of the Declaration on the Elimination of Violence against Women emphasize several fundamental changes in society's perspective regarding violence against women, firstly recognizing the existence of gender-based violence. This means that violence against women is an action that is based on or because someone is a woman, and not for example because of social status, economic status, racial differences. Violence is only because the person (victim) is a woman. Second, emphasizing that it can result (or is likely to result in), this changes the perspective of society and the law towards violence which tends to wait for

evidence of violence with physical evidence (for example, a woman who suffers from fear of being killed by her husband cannot yet be categorized as a victim of violence as long as he has not experienced the murder).

Based on the Principle of Non-Discrimination in relation to cases of non-fulfillment of marriage promises, this is one of the acts of discrimination carried out by men as perpetrators of breaking marriage promises against women, in this case as victims, because the actions of men who do not fulfill their marriage promises will have implications for physical violence, psychological, social and economic impact on women. In this principle of State Obligations, the obligations of the state include:<sup>40</sup>

- a) Guarantee women's rights through laws and policies and guarantee results;
- b) Guarantee the practical implementation and rights through action steps or special temporary regulations, creating conducive conditions for increasing women's opportunities and access to existing opportunities and enjoying equal/fair benefits from the results of using these opportunities.
- c) The state not only guarantees, but also realizes women's rights.
- d) Not only does it guarantee *de-Jure* but also *de-facto*.
- e) The state must not only be responsible and regulate it in the public sector but also implement it regarding the actions of people and institutions in the private sector (family) and the private sector.

Apart from that, the Principle of State Obligation also means that the State is placed as the main actor who has obligations and responsibilities. In the human rights system, states do not have rights and only have obligations or responsibilities to fulfill the rights guaranteed in human rights instruments. In this context there are 3 (three) State obligations, namely: respect (obligation to respect), protect (obligation to protect) and fulfill (obligation to fulfill).<sup>41</sup>

We can see various efforts that must be made by the state to carry out its obligations related to marriage vows in Article 2 Letter b, namely providing legal protection for women's rights as stated in Article 2 letter a. In providing

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<sup>40</sup> Achie Sudiarti Luhulima, *Hak Perempuan dalam Konstitusi Indonesia*. (Jakarta: Yayasan Obor Indonesia, 2006), 89.

<sup>41</sup> Rini Maryam, "Menerjemahkan Konvensi Penghapusan Segala Bentuk Diskriminasi Terhadap Perempuan (CEDAW) Ke Dalam Peraturan Perundang-Undangan (Translation Of Convention On The Elimination Of All Forms Of Discrimination Against Women (CEDAW) Into The Regulation Of Legislation)," *Jurnal Legislasi Indonesia* 9, no. 1 (2018): 101.

protection the state can take appropriate legislative action.<sup>42</sup> These include reviewing regulations aimed at protecting women on a regular basis in order to revise, revoke or expand them based on needs in accordance with developments in society or living law, as in the case of marriage vows, which so far has not had a legal umbrella where it should and is appropriate for the state or government. take steps to form adequate regulations to protect women as victims of marriage promises resulting in physical and psychological suffering where women feel their human dignity and worth are being humiliated, through hurtful words/speech, dirty words, shouts, insults, threats that are oppressive women's emotions so that women feel their image as a woman has been degraded.

In law, there is a specific legal morality, which consists of a reflection of the moral opinions found in society in general and which are developed in practice in the field of law and which are bound up in legal institutions and teachings. Legal morality is a special field for legal experts and legal scholars. Often this morality must be protected against majority opinion and against important political and social interests, for example, the principle of due process in courts against political interference. Good law enforcement governance can be translated as the art or style of good legal morals. Thus, what is meant by good in terms of good law enforcement, requires more moral-legal points (moral law) in its implementation.

In the matter of good legal moral style, which is to control procedural compliance of government officials and the rule of law is placed as the highest legal norm (supreme), it must be understood that the issue of good moral style of law enforcement is relevant to the interests of society, so awareness is very necessary. the public regarding the obligations and rights they have to monitor and assess the performance of law enforcement officials in executive bodies as well as officials who fill the ranks of the bureaucracy, civil or military, as well as legislative bodies and judicial bodies. This kind of awareness needs to be developed, so that society will be able to evaluate based on existing benchmarks. Only in such conditions, with the right to demand predictability, accountability, transparency and participation, can society evaluate the performance of law enforcers and prevent them from deviant actions.

Law is the rules and guidelines that regulate life in society in order to create peace and order together.<sup>43</sup> Progressive legal ideas occupy a separate

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<sup>42</sup> Komisi Nasional Hak Asasi Manusia, "Lembaga Studi dan Advokasi Masyarakat (ELSAM)," *Fakultas Hukum Universitas Udayana, "Kejahatan Terhadap Kepentingan Umum Dan Kejahatan Terhadap Martabat Dilihat Dari Sudut Pandang Hak Asasi Manusia"*, makalah disampaikan pada Pertemuan KOMNAS HAM, ELSAM, dan Universitas Udayana di Bali (2005): 20.

<sup>43</sup> Friedrich A Hayek, *Law, legislation and liberty, volume 1: Rules and order*. Vol. 1. (University of Chicago Press, 2011), 39.



legal position. Various groups in handling legal cases, especially in the country, emphasize the preposition of Progressive Legal theory. Especially the emphasis is on the element of benefit in the form of human peace in society, nation and state. Legal thinking needs to return to its basic philosophy, namely law for humans. With this philosophy, humans become the determinant and point of orientation for law. The law is tasked with serving humans, not the other way around. Therefore, law is not an institution that is free from human interests. The quality of law is determined by its ability to serve human welfare. This causes Progressive Law to embrace a legal ideology that is pro-justice and pro-people law. With this ideology, the dedication of legal actors takes a primary place in carrying out recovery. Legal actors are required to prioritize honesty and sincerity in law enforcement. They must have four and care about the suffering experienced by the people and this nation. The interests of the people (their welfare and happiness) must be the point of orientation and ultimate goal of administering the law. The assumptions underlying legal progressivism are:<sup>44</sup>

- 1) The law is for man, and not for himself.
- 2) The law is always in the status of law in the making and is not final.
- 3) Law is an institution that has human morals, and not a technology that has no conscience.

The underlying assumption in legal morality emphasizes that the law liberates the law for humans, meaning that if there are obstacles to their achievement, liberation is carried out, both in knowledge, theory and practice. That Legal Morality will always seek justice and the benefit of the law and must dare to move away from the linear, marginal and deterministic path, and move more towards law that is always in process (law as process, law in the making).

The application of Legal Morality as an effort to improve the resolution of criminal cases requires that National Police Investigators be able to carry out their duties and authority in a professional, accountable and moral manner so that Law Enforcement can be in line with the objectives of the law itself, namely providing legal certainty, legal benefits and a sense of justice in society. Therefore, the urgency of legal morality requires readiness for law enforcers in terms of increasing the quality and quantity of human resources, strategic policies in carrying out duties and authority, as well as increasing supervision of the attitudes and behavior of law enforcers through empowering the supervisory function at the start of investigations. Law enforcers also need public support and trust in law enforcement efforts by increasing the resolution of criminal cases through the implementation of Law Enforcement, quickly,

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<sup>44</sup> Arief Barda Nawawi, *Kebijakan Hukum Pidana (Penal Policy)*. (Semarang: Universitas Diponegoro, 1984), 112.

simply, cheaply and with legal certainty, legal justice and benefits. With internal improvements in law enforcement and strong support from the community, it is hoped that law enforcement will be realized with substantive justice in order to improve the resolution of criminal cases by upholding the values of legal rules and norms that apply in society, so that they can meet community expectations. will realize legal certainty, legal justice and legal benefits.

The theory of legal certainty according to Apeldoorn has two aspects, the first concerns the question of whether the law can be formed (*bepaalbaarheid*) in concrete matters. This means that parties seeking Justice want to know the law in specific matters before starting a case. Second, legal certainty means legal security. This means protection for the parties against the judge's arbitrariness. In the positivism paradigm, the definition of law must prohibit all regulations that are similar to law, but are not orders from a sovereign authority, legal certainty must always be upheld whatever the consequences and there is no reason not to uphold this because in the paradigm positive law is the only law. Law cannot be separated from values and morals, moral values in law become a means of reaching out to the foundations of society so that law enforcement is in line with dynamic developments in society.

Legal certainty is seen from the perspective of seeking justice by wanting to know the law in specific matters before starting a case by the parties, including law enforcement in the investigation and investigation stage. Bearing in mind that the legal substance regarding marriage promises is still a legal vacuum so it cannot provide a legal umbrella for victims of non-fulfillment of marriage promises, in this case women. One of them is that the application of restorative justice is very appropriate for cases of marriage promises and according to investigators, they did not find any obstacles in its application.

An overview of the forms of principles, mechanisms and positions of application of restorative justice in resolving marriage promise cases is a legal moral concept which aims to realize the concept of applying moral law in the principles of restorative justice which is fair in resolving marriage promise cases as a form of protection for dignity and honor.

#### **D. CONCLUSION**

The basic principles of legal morality emphasize justice in providing protection to perpetrators and victims and become a reference for parties including the police as mediator, perpetrators, victims and the community involved. The basic value of legal morality is reflected in the restorative justice process which refers to the principles of fast and low-cost justice. The advantage of the penal mediation process in settlement through restorative justice is that people prefer to report cases of marriage promises by producing

a win-win solution in order to achieve the satisfaction of each party. The restorative justice legal policy in handling marriage promise cases consists of Perkap no. 6 of 2019 concerning Investigation of Criminal Acts, Circular Letter from the Chief of Police Number: SE/8/VII/2018 concerning the Implementation of Restorative Justice, Republic of Indonesia State Police Regulation No. 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice and Circular Letter from the Chief of Police Number: SE/7/VII/2018 concerning Termination of Investigations. Thus, the substance of this policy is a reference for resolving cases of marriage promises which still experience a legal vacuum in the criminal law system and to provide protection and a legal umbrella for victims of non-fulfillment of marriage promises. The women's rights that are violated are the right to protect the dignity of women and the victim demands a form of reparation or the right to recovery in the form of compensation that prioritizes the implementation of the values contained in the principles of Pancasila. The mechanism for implementing restorative justice still refers to the discretion of the Chief of Police, namely numbers. 3 letters c in SE Number: SE/8/VII/2018 of 2018.

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