Reliance Loss, Dignity, and Marital Freedom: Legal Responsibility for Unilateral Engagement Cancellation in Indonesia and the Netherlands

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Received: 04-11-2025; Revised: 15-02-2026; Accepted: 30-06-2026

Abstract

Study Objectives: This research analyzes the legal responsibility arising from the unilateral annulment of an engagement and compares the legal approaches in Indonesia and the Netherlands to protect women from losses incurred as a result of such unilateral cancellation.

Method/Approach: The method used is normative law research with a case, conceptual, and comparative approach.

Novelty: This study focuses on the judge's decision to classify engagement as a legal relationship, thereby qualifying the annulment of the engagement as an unlawful act.

Findings: The results show that Indonesian courts treat the annulment of unilateral engagement as an unlawful act, deeming it contrary to social values, norms of decency, ethics, and prevailing norms. The Dutch legal system generally does not treat engagement as a binding legal relationship and emphasizes the principle of individual freedom in deciding to marry.

Conclusion: The comparative results indicate that Indonesia places greater emphasis on legal protection for those who suffer harm, particularly women, while the Netherlands places greater emphasis on legal certainty and individual freedom

Keywords: Comparative Private Law; Engagement Cancellation; Gendered Harm; Marital Freedom; Reliance Loss

Introduction

Marriage is a personal-status relationship that must rest on the free and full consent of both prospective spouses. International human rights instruments and Indonesian marriage law therefore protect not only the right to marry but also the freedom to withdraw before a valid marriage is concluded.[1] A legal system that

[1] Alexander Kennedy, "Legal Compliance of Indonesian Marriage Law with the Universal Declaration of Human Rights," *Lex Prospicit* 3, no. 1 (October 8, 2025), https://doi.org/10.19166/lp.v3i1.8937.

imposes performance of a marriage promise, or makes withdrawal prohibitively costly, risks transforming social commitment into coercion. Comparative private law must nevertheless address a different question: whether a party who reasonably relied on a concrete marriage plan may recover expenditure, property, or loss caused by conduct that is independently wrongful.

The distinction is central to disputes over unilateral engagement cancellation. Engagements frequently generate wedding deposits, ceremonial costs, gifts, relocation decisions, family commitments, and public announcements. Their termination can also produce psychological and reputational consequences. Yet the state cannot protect these interests by treating marriage itself as an ordinary contractual performance. Freedom of marital consent remains a continuing right until the marriage is validly celebrated.[2]

In Indonesia, engagement is shaped by legal pluralism. State civil law, Islamic law, customary practices, family expectations, and judicial precedent operate simultaneously. An engagement may be understood as a moral promise, a customary bond, evidence of a planned marriage, or an agreement with limited proprietary effects. Recent scholarship on legal pluralism emphasizes that these normative orders do not merely coexist. Courts selectively translate social expectations into state-law concepts, especially when formal legislation leaves remedial questions open.[3]

The social significance of engagement helps explain why its cancellation can be experienced as more than the end of a private relationship. Qualitative research on cancelled weddings shows that former partners face disrupted identities, financial commitments, family conflict, and social scrutiny. These effects vary according to the duration of the engagement, the publicity of the wedding plan, the parties' economic interdependence, and the surrounding gender norms.[4] The existence of serious consequences, however, does not answer the juridical question of which losses the law should protect.

Private-law analysis should distinguish four interests. The expectation interest seeks the value of the promised marriage and is incompatible with marital freedom. The reliance interest concerns expenditure reasonably incurred because the marriage was expected to occur. Restitution concerns property or benefits

[2] Yohanes Payong Keda et al., "The Legal Position Of Church Marriage From The Perspective Of Marriage Law And The Constitutional Rights Of Christians In Indonesia," *Awang Long Law Review* 8, no. 1 (November 29, 2025), https://doi.org/10.56301/awl.v8i1.1864.

[3] Henry F. Fradella, "Facially Neutral, Functionally Not: Law, Discretion, and the Status-Based Regulation of Lgbtq Identity in the Shadow of Equal Protection," 2026, https://doi.org/10.2139/ssrn.6926680.

[4] Chenjie Zheng, "'My Daughter Got Married': Intergenerational Negotiation of Weddings among Well-Educated Urban Women in Post-Patriarchal China," *The Journal of Chinese Sociology* 13, no. 1 (February 14, 2026): 3, https://doi.org/10.1186/s40711-026-00254-6.

transferred on the condition of marriage. A separate tort interest arises when a party uses fraud, coercion, humiliation, violence, or abuse of vulnerability. Modern contract theory supports differentiating exchange-based obligations from relational promises whose performance depends on continuing personal autonomy.

Engagement gifts illustrate this distinction. A ring, ceremonial contribution, or transfer of money may be an absolute gift, a conditional gift, or evidence of a different transaction. Its legal treatment should depend on intention, ownership, and unjust enrichment, not on moral blame for ending the relationship. Contemporary scholarship increasingly analyzes engagement property through conditional-gift and restitution doctrines rather than through a generalized action for breach of promise.[5]

Indonesia and the Netherlands provide a revealing comparison. The Indonesian Civil Code was historically derived from the Dutch civil code. Article 58 of the Indonesian Civil Code and Article 1:49 of the current Dutch Civil Code share a basic rule: a promise to marry does not create an action to compel marriage. Both also recognize a narrow route to actual financial loss after the marriage plan has entered a formal stage.[6] Despite this common ancestry, the two systems have developed differently in practice.

Indonesian courts have repeatedly awarded damages by construing a broken marriage promise as breach of contract or an unlawful act. The Netherlands generally maintains a strict autonomy rule and redirects post-engagement disputes to specific doctrines governing actual financial loss, gifts, ownership, or unjust enrichment. Other jurisdictions likewise adopt mixed models, allowing limited remedies for betrothal-related expenditure while refusing to enforce the marriage promise itself.[7]

The Indonesian cases are also marked by gender. Women plaintiffs often describe shame, psychological distress, reduced social standing, and the consequences of premarital sexual relations. Some judicial reasoning frames these injuries through honor or virginity. Comparative research on betrothal damages confirms that humiliation can be legally relevant, but it also warns that

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[5] Thomas Gigant, Almudena Cañibano, and Kerstin Alfes, "Insider to What? A Dynamic Analysis of Freelancers' Perceived Insider/Outsider Status through the Lens of the Psychological Contract," *Journal of Occupational and Organizational Psychology* 99, no. 1 (March 14, 2026), https://doi.org/10.1111/joop.70105.

[6] Megan N. Reed, "Roka Engagements and the Hybridization of Arranged and 'Love' Marriage in Urban India," *Journal of Marriage and Family* 87, no. 5 (October 9, 2025): 2042–55, https://doi.org/10.1111/jomf.13115.

[7] Mohammad Al-Masaeid and Mohammad Almomani, "Paying to Tie the Knot: Does Education Make Marriage More Expensive? Evidence from Jordan," *Journal of Economic Studies* 52, no. 9 (December 15, 2025): 253–73, https://doi.org/10.1108/JES-06-2025-0454.

compensation may reproduce gendered assumptions if courts treat women's sexuality or future marriageability as property that has depreciated.[8]

Recent socio-legal and public-health studies demonstrate that virginity is a socially constructed and gendered status rather than a medically reliable measure of sexual history or moral worth. Legal reasoning that monetizes 'loss of virginity' can intensify stigma, obscure consent, and apply asymmetric standards to women.[9] Research in Indonesia similarly shows that dating norms, sexual expectations, and family values are changing and contested. Courts should therefore identify the specific wrongful conduct and proven harm instead of relying on a generalized assumption that a woman's dignity is diminished because a relationship ended.[10]

A second problem concerns non-pecuniary damages. Psychological suffering and reputational injury may be genuine, but their valuation requires a transparent connection between the wrongful conduct, evidence, severity, and amount awarded. Comparative damages scholarship stresses that non-pecuniary awards should recognize injury without becoming punitive, arbitrary, or detached from the claimant's proof.[11]

Existing Indonesian scholarship largely examines individual decisions or debates whether a broken promise constitutes default or an unlawful act. It has not sufficiently compared Article 58 with its Dutch counterpart, separated the protected interests, or evaluated the gender implications of damages. The comparative inquiry is particularly important because Indonesian adjudication often uses living norms to pursue social justice, whereas Dutch private law more clearly separates personal-status freedom from proprietary claims.[12]

This article addresses two questions. First, how should Indonesian law characterize and remedy losses arising from unilateral engagement cancellation? Second, what lessons follow from the contrast between Indonesian judicial practice and Dutch law? The article argues for a dual-track model. The first track permits reimbursement of verified reliance expenditure and restitution of conditional

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[8] Sania Anwar, "Rethinking Relational Loss," 2025, https://doi.org/10.2139/ssrn.5487186.

[9] Alex Sharpe, "Deceptive Sex: Rethinking Consent from the Gender Margins," *The Modern Law Review* 88, no. 4 (July 29, 2025): 689–711, https://doi.org/10.1111/1468-2230.12943.

[10] Katy Snell, "Designed Not to Work but Working Perfectly: The Silencing of Victims of Corporate Crime," *The Howard Journal of Crime and Justice* 65, no. 2 (June 10, 2026): 215–25, https://doi.org/10.1111/hojo.70026.

[11] Freya Augusteijn et al., "The Predictability of Court-Adjudicated Compensation for Pain and Suffering Damages within the Criminal Proceedings and the Role of Victim Labels: A Case Study on Victims of Sexual Crime in the Netherlands," *Criminology & Criminal Justice* 26, no. 1 (February 28, 2026): 22–48, https://doi.org/10.1177/17488958231222190.

[12] Tecle Hagos Bahta and Mihreteab Tsighe Taye, "Resolving Marital Disputes in Ethiopia's Plural Legal Order: Jurisdiction, Recognition and Legal Uncertainity," *International Journal of Law, Policy and The Family* 40, no. 1 (January 29, 2026), https://doi.org/10.1093/lawfam/ebaf043.

transfers. The second permits damages only where conduct independent of the refusal to marry satisfies the elements of an unlawful act. This model protects women from demonstrable harm while preserving equal freedom to marry or not to marry.

Research Method

This study uses normative legal research. It combines statutory, case, conceptual, and functional comparative approaches. The statutory materials include Article 58, Articles 1320 and 1338, and Article 1365 of the Indonesian Civil Code; Article 6 of the Marriage Law; Article 13 of the Compilation of Islamic Law; Article 1:49 of Book 1 of the Dutch Civil Code; and international guarantees of free marital consent. Islamic law is relevant because the Compilation of Islamic Law treats engagement as preliminary and permits either party to terminate it in a proper manner.[13]

The case approach examines five Indonesian decisions: Maumere District Court Decision No. 8/Pdt.G/2019/PN Mme, Banyumas District Court Decision No. 5/Pdt.G/2019/PN Bms and its appellate trajectory, Subang District Court Decision No. 45/Pdt.G/2019/PN Sng, Probolinggo District Court Decision No. 25/Pdt.G/2022/PN Pbl, and Makassar District Court Decision No. 82/Pdt.G/2014/PN Mks. These cases were selected because they expressly classify the legal consequences of a marriage promise and award or assess material and non-material losses.

The Dutch comparison uses Article 1:49 and four decisions. ECLI:NL:PHR:2023:470 and ECLI:NL:PHR:2013:CA2925 clarify the non-enforceability of a marriage promise. ECLI:NL:RBAMS:2024:5376 is relevant to gifts, money, and an engagement ring. ECLI:NL:RBROT:2021:13177 illustrates the evidentiary requirements for economic claims after an intimate relationship ends. The latter decisions are used functionally and analogically. They do not all concern a pure action for breach of engagement, but they demonstrate how Dutch courts identify a specific proprietary basis rather than treating relationship breakdown as liability in itself.

The analysis applies five comparison criteria: the legal characterization of engagement; the interest protected by the claim; the threshold of wrongfulness; the categories and proof of recoverable loss; and the relationship between remedies, gender equality, and free marital consent. Legal materials are interpreted systematically and prescriptively. The study does not conduct interviews or

[13] Mohamad Iqhbal Bin Kunji Mohamad, Mohammad Naqib Hamdan, and Aimi Nadia Mohd Yusof, "Third-Party Refusal of Medical Treatment – a Critical Analysis of Case Report from Islamic Ethical Perspectives," *BMC Medical Ethics* 26, no. 1 (April 12, 2025): 48, https://doi.org/10.1186/s12910-025-01209-1.

measure the social effects of the decisions. Its findings concern doctrinal coherence and comparative design rather than the empirical frequency of engagement disputes.

Results and Discussion

Engagement between Marital Autonomy and Private-Law Reliance

The first analytical step is to separate the marriage decision from transactions made in contemplation of marriage. Under Indonesian contract law, an enforceable agreement must satisfy consent, capacity, a defined object, and a lawful cause. Article 1338 then gives binding force to valid agreements. An undertaking to perform a personal-status act, however, cannot be assessed as if it were an agreement to deliver goods. Article 58 specifically removes the action to compel marriage and restricts damages arising merely from failure to marry.[14]

Article 58 protects a continuing freedom of consent. This principle is consistent with the Marriage Law and human rights law. A promise made months earlier cannot substitute for consent at the moment of marriage. The same logic explains why contractual clauses that penalize a party merely for refusing marriage should be treated cautiously. They can exert economic pressure that undermines voluntary consent.

The autonomy rule does not immunize every act occurring during an engagement. A defendant may be liable for fraudulently inducing expenditure, appropriating property, publicly humiliating the claimant, using threats, or committing sexual violence. Liability in such circumstances does not arise because the defendant failed to become a spouse. It arises because the defendant violated an independent legal duty. This distinction is compatible with the Supreme Court's longstanding recognition that conduct surrounding a marriage promise may amount to an unlawful act when it violates law, propriety, or carefulness and causes loss.[15]

Indonesian jurisprudence currently lacks a stable method for making this distinction. Recent doctrinal studies identify divergent classifications of similar facts as breach of contract and unlawful act. The disparity affects limitation rules, proof, recoverable losses, and the conceptual status of the engagement.[16] A more

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[14] Mohamed Mahroof Ali Abdullah, Azizah Mohd, and Norliah Ibrahim, "Maqāṣid Al-Sharīʿah As A Framework For Muslim Family Law Reform In Sri Lanka: A Pathway Toward Gender Justice," *IIUM Law Journal* 34, no. 1 (May 27, 2026): 187–238, https://doi.org/10.31436/iiumlj.v34i1.1214.

[15] Al Farabi, "The Autonomy of Indonesian Islamic Court: Inventing and Refining 'Broken Marriage' as a Unilateral and No-Fault Divorce Ground," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 18, no. 2 (October 1, 2025): 155–74, https://doi.org/10.14421/ahwal.2025.18201.

[16] Gautam Mohanty and Gaurav Rai, "Delays, Disruptions, and Diminished Margins: Reassessing Loss Delays, Disruptions, and Diminished Margins: Reassessing Loss Claims in Indian

coherent approach should begin with the interest claimed rather than the label chosen by the plaintiff.

Indonesian Judicial Practice: Contract, Unlawful Act, and Living Norms

The Maumere case treated the parties' oral agreement and Sikka customary procession as a binding commitment.[17] The plaintiff had incurred customary and wedding-related expenditure after the defendant repeatedly affirmed the marriage plan. The court characterized the failure to proceed as default and awarded material and non-material damages.[18] The decision recognizes reliance and the social meaning of customary commitment. Its doctrinal weakness lies in treating the marriage performance itself as the contractual obligation, rather than identifying a narrower obligation concerning expenditure, property, or good-faith conduct.

The Banyumas litigation adopted an unlawful-act framework. The engagement had been publicly conducted under Javanese custom, a wedding time had been discussed, and the defendant later withdrew. The first-instance court awarded non-material damages, the High Court increased the award, and the Supreme Court upheld the result in Decision No. 1644 K/Pdt/2020.[19] The judicial trajectory demonstrates strong protection for social and psychological harm. It also exposes the need for a clearer explanation of causation and valuation when material expenditure is rejected but a substantial non-pecuniary award is granted.

The Subang case similarly classified unilateral cancellation as an unlawful act and awarded both engagement expenditure and non-material damages.[20] The court relied on the public engagement, the parties' relationship, and the social consequences for the plaintiff. This approach is more defensible when the award reimburses proven costs or responds to deceptive conduct. It becomes less certain when wrongfulness is inferred solely from the defendant's final refusal to marry.

Construction Law Claims in Indian Construction Law," *SSRN Electronic Journal*, 2025, https://doi.org/10.2139/ssrn.5367991.

[17] Alice Ollino, "Satisfaction as a Remedy for Internationally Wrongful Acts: A Reassessment in Light of Inter-State Judicial Practice," 2024, 153–77, https://doi.org/10.1007/978-94-6265-627-7_7.

[18] Emad Ahmad Abousud and Mustafa Ibrahim Araibi, "Toward a Risk-Calibrated Civil Liability Framework for Personal Data Breaches: A Comparative Study of Saudi, Jordanian, and EU Law," *Qubahan Academic Journal* 6, no. 2 (May 16, 2026): 311–38, https://doi.org/10.48161/qaj.v6n2a2514.

[19] Nauval Ihza Maydiaz and Miftakhul Huda, "Notary Liability for Typographical Errors in Authentic Deeds from the Perspective of Legal Certainty," *Journal of Law, Politic and Humanities* 6, no. 3 (March 15, 2026): 1641–47, https://doi.org/10.38035/jlph.v6i3.3117.

[20] Eka NAM Sihombing, Cynthia Hadita, and Novita Sartika Elisabeth, "Implementation of Jurimetry in Determining Compensation in the Realm of State Administrative Court," *JAPHTN-HAN* 5, no. 1 (January 30, 2026): 21–40, https://doi.org/10.55292/japhtnhan.v5i1.205.

The Probolinggo case involved a formal engagement, a fixed wedding date, distributed invitations, and extensive preparations. The marriage plan was cancelled shortly before the ceremony. The court granted part of the claim under an unlawful-act theory.[21] The temporal proximity to the ceremony strengthens a reliance claim because expenditure was foreseeable, concrete, and difficult to avoid. Yet the proper legal question remains whether the defendant acted wrongfully in causing or failing to mitigate that reliance, not whether the court should indirectly enforce the marriage.

The Makassar case treated the planned marriage and preparations as a binding agreement and awarded actual expenditure and substantial non-material damages. The decision illustrates the strongest contractual construction. It also shows why a generalized default theory is problematic. It can collapse three distinct matters into one: the personal decision not to marry, reimbursement of documented preparation costs, and compensation for separate abusive conduct.[22]

Table 1: Indonesian Cases on Unilateral Engagement Cancellation

Case	Legal construction	Principal factual reliance	Award identified in the decision	Doctrinal concern
Maumere No. 8/Pdt.G/2019/PN Mme	Default	Customary engagement, cohabitation, ceremonial goods, planned marriage	Material IDR 13.95 million; non-material IDR 50 million	Treats marriage performance as an enforceable obligation
Banyumas No. 5/Pdt.G/2019/PN Bms; PT 423/PDT/2019/PT SMG; MA 1644 K/Pdt/2020	Unlawful act	Public proposal, customary fixing of the date, relational and social consequences	Non-material award increased on appeal and upheld	Valuation and causal basis of non-pecuniary loss require clearer criteria

[21] Harison Citrawan, Budi Suhariyanto, and Aghia Khumaesi Su'ud, "Postcolonial Social Control and the Historicisation of Crimes in Indonesia's Penal Practices," in *The Palgrave Handbook of Criminology and the Global South* (Cham: Springer Nature Switzerland, 2025), 1–16, https://doi.org/10.1007/978-3-031-74932-2_85-1.

[22] Nicholas L. Georgakopoulos, Margaret Tarkington, and Bridget J. Crawford, "Spousal Economic Abuse: Tax Complicity and Solutions," 2026, https://doi.org/10.2139/ssrn.6272359.

Case	Legal construction	Principal factual reliance	Award identified in the decision	Doctrinal concern
Subang No. 45/Pdt.G/2019/PN Sng	Unlawful act	Ring exchange, family involvement, engagement costs	Material IDR 81.31 million; non-material IDR 100 million	Wrongfulness must be separated from the mere refusal to marry
Probolinggo No. 25/Pdt.G/2022/PN Pbl	Unlawful act	Fixed wedding date, invitations, venue and other preparations, late cancellation	Claim granted in part, including proven preparatory loss	Strong reliance facts, but liability should turn on induced expenditure and conduct
Makassar No. 82/Pdt.G/2014/PN Mks	Default	Toraja engagement, venue, salon, church and other wedding preparations	Actual expenditure IDR 35.07 million; non-material IDR 1 billion	Contract classification and proportionality of non-material damages

Source: Processed from the Cited Court Decisions.

Table 1 demonstrates that Indonesian courts reach protective outcomes through different doctrinal routes. The classification is not a technical detail. A contract claim assumes a legally enforceable obligation, while an unlawful-act claim requires a duty independent of the promised performance. The mixed approach creates uncertainty concerning defenses, causation, the legal status of customary commitments, and the measure of damages

The cases reveal three recurrent judicial considerations. First, courts examine the public and familial character of the engagement. Second, they assess the extent to which the plaintiff changed her position or incurred expenditure. Third, they use propriety, decency, and living social norms to identify wrongfulness. These considerations can support liability, but they should not be combined without a structured test.

A structured test should ask: Did the defendant induce a specific and reasonable reliance? Was the expenditure foreseeable and proportionate to the parties' plan? Could the claimant reasonably mitigate the loss? Was property transferred conditionally? Did the defendant commit deception, coercion, humiliation, or another independent wrong? This method allows customary practices to explain reliance and social context without converting custom into a power to force marriage.

The distinction also controls the measure of damages. Verified deposits, ceremony costs, travel expenses, and property transferred for the contemplated marriage are capable of documentary proof. They are reliance or restitutionary interests. Lost expectations of becoming a spouse, future support, or imagined marital income should not be recoverable because they price the marriage itself and contradict Article 58.

Non-pecuniary damages require a higher threshold. Recent Indonesian analysis of broken-promise cases also questions large immaterial awards where the court does not identify objective indicators of severity or a separate wrongful act.[23] The existence of social disapproval does not automatically establish that the defendant legally caused every reputational consequence. Courts should identify the audience, the publication or humiliating conduct, medical or psychological evidence where relevant, the duration of harm, and proportionality.

Gendered Harm and the Limits of Compensation

The plaintiffs in the selected cases are women, and their claims cannot be understood without the gendered allocation of engagement risk. Families may expect women to bear ceremonial preparation, sexual respectability, and reputational consequences. A protective court response is therefore understandable. Substantive equality, however, requires more than awarding higher damages. It requires the court to avoid legal categories that reinforce the same hierarchy that produced the harm.

The phrase 'loss of virginity' is especially problematic as a head of material loss. It treats sexuality as an asset capable of depreciation and implies that a woman's social or marital value depends on sexual history. Current gender and health scholarship rejects virginity testing and hymenal status as reliable or neutral indicators.[24] A court should instead examine consent, deception, coercion,

[23] Auliah Ambarwati et al., "Breaking The Promise to Marry Unlawful Acts or Default," *JUSTISI* 10, no. 2 (February 10, 2024): 273–81, https://doi.org/10.33506/js.v10i2.2481.

[24] Monica Christianson and Carola Eriksson, "Virginity Control and Hymen (Re)Construction: Gender Analysis from the Perspective of Young Women," *Archives of Sexual Behavior* 54, no. 9 (October 31, 2025): 3641–55, https://doi.org/10.1007/s10508-025-03272-6.

reproductive or health consequences, psychological injury, and any independently actionable sexual offense or tort.

A promise to marry may be relevant evidence of deception, but it should not retroactively determine whether sexual relations were consensual or convert every relationship breakdown into civil liability. The court must evaluate the concrete conduct. If a defendant deliberately used a false marriage plan to obtain money, property, or sexual access, the wrong lies in fraud, coercion, exploitation, or abuse. If both parties freely maintained a relationship and one later changed their mind, the law should not impose damages merely because social norms judge the woman more harshly.

The same caution applies to honor and shame. Courts may recognize proven psychological and reputational injury, but the award should not affirm that a cancelled engagement objectively diminishes a woman's dignity. Human dignity is inherent. The compensable wrong is the defendant's harmful conduct or a demonstrable injury, not a presumed reduction in the claimant's worth. Contemporary non-pecuniary damages theory supports reasoned, evidence-based awards rather than symbolic sums untethered from the nature of the injury.[25]

Indonesian judges already have a relevant procedural framework. Supreme Court Regulation No. 3 of 2017 directs judges to identify unequal power relations, gender stereotypes, discrimination, and the physical or psychological impact on women.[26] Applied to engagement disputes, the regulation supports two simultaneous duties: recognizing gendered vulnerability and refusing stereotypical assumptions about sexuality, obedience, or marriageability.

This approach also creates gender-neutral doctrine. Men or non-gendered family parties may incur reliance losses, and either prospective spouse must remain free to withdraw. The legal test should therefore protect proven interests without assuming that one gender owns the marriage promise or that one party's dignity depends on completing the marriage.

Dutch Law: A Clear Autonomy Rule and Specific Proprietary Claims

Article 1:49 (1) of the Dutch Civil Code states that a promise of marriage gives no action to compel marriage and no action for damages for non-fulfilment.

[25] Valerie P. Hans et al., "Guiding Jurors' Damage Award Decisions: Experimental Investigations of Approaches Based on Theory and Practice.," *Psychology, Public Policy, and Law* 28, no. 2 (May 2022): 188–212, https://doi.org/10.1037/law0000342.

[26] Isobel Renzulli, "Discrimination and Gender Stereotypes in Judicial Decisions: The Jurisprudence of the European Court of Human Rights in Light of JL V Italy – A Retreat into the Shadows?," *Netherlands Quarterly of Human Rights* 41, no. 3 (September 30, 2023): 155–73, https://doi.org/10.1177/09240519231191172.

Contractual terms departing from that rule are void.[27] The provision makes marital autonomy the starting point. It prevents parties from using ordinary contract law to transform an engagement into legally compelled personal status.

Article 1: 49 (2) creates a narrow exception. Where the formal notice of the intended marriage has been recorded, the failed plan may ground compensation for financial losses actually suffered. Loss of future earnings or profits is excluded, and the claim expires eighteen months after the formal notice. The exception protects mature reliance after the relationship has entered an official administrative stage, while preserving freedom not to marry.

The Advocate General's opinion in ECLI:NL:PHR:2023:470 expressly contrasts historical enforcement of marriage promises with the modern exclusion of coercive effect under Article 1:49.[28] ECLI:NL:PHR:2013:CA2925 likewise treats Article 1:49 as the relevant limitation where a party invokes violation of a marriage promise.[29] These authorities confirm that non-performance of the promise is not itself an ordinary breach generating general damages.

Dutch disputes after an engagement may still concern property. In ECLI:NL:RBAMS:2024:5376, the court addressed money, gifts, and an engagement ring through their specific legal status rather than through an action for the failed marriage promise.[30] This method aligns with comparative scholarship that treats engagement rings and wedding gifts as ownership, conditional-gift, or restitution questions.[31]

Similarly, ECLI:NL:RBROT:2021:13177 concerned financial contributions after an affective relationship and required a concrete basis for unjust enrichment or another civil obligation.[32] The end of the relationship did not by itself establish liability. The claimant had to prove enrichment, impoverishment, absence of legal basis, and the connection between them.

The Dutch model is not necessarily more protective in every case. The formal-notice requirement may exclude substantial expenditure incurred before registration, and strict proprietary categories may under-recognize relational vulnerability. Its principal advantage is doctrinal clarity. It distinguishes the protected freedom from specific economic claims and reduces the risk that damages will indirectly coerce marriage.

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[27] Mohammad Muslim Al-Zawahreh and Ruba Yousef Abu Safia, "The Impact of Void Contracts on Digital Transactions in Civil Law," 2026, 463–74, https://doi.org/10.1007/978-3-031-95310-1_37.

[28] Parket bij de Hoge Raad, 12 May 2023, ECLI:NL:PHR:2023:470.

[29] Parket bij de Hoge Raad, 14 June 2013, ECLI:NL:PHR:2013:CA2925.

[30] Rechtbank Amsterdam, 9 September 2024, ECLI:NL:RBAMS:2024:5376.

[31] Joel Slemrod and Yulia Kuchumova, "Gifts to Government," *International Tax and Public Finance* 30, no. 2 (April 20, 2023): 453–92, https://doi.org/10.1007/s10797-021-09715-9.

[32] Rechtbank Rotterdam, 11 January 2022, ECLI:NL:RBROT:2021:13177.

Comparative Findings and a Dual-Track Model for Indonesia

The central comparative finding is not that Indonesia protects women while the Netherlands protects freedom. Both legal systems recognize freedom not to marry, and both can protect actual economic interests. The difference lies in doctrinal discipline. Dutch law makes non-enforceability explicit and channels exceptions through narrow proprietary rules. Indonesian courts often begin with social harm and then select contract or unlawful-act doctrine to justify compensation.

This divergence is notable because Article 58 of the Indonesian Civil Code and Article 1:49 of the Dutch Civil Code express closely related principles.[33] Indonesian adjudication has evolved through legal pluralism, local concepts of propriety, and the judicial search for substantive justice.[34] That development can respond to real vulnerability, but it should not eclipse the statutory autonomy rule.Table 2 sets out the comparative structure and the proposed Indonesian position.

Table 2: Comparative Legal Models and Proposed Indonesian Standard

Issue	Indonesia: current judicial tendency	Netherlands	Proposed Indonesian standard
Status of engagement	May be treated as contract, unlawful-act relationship, or living-law commitment	Marriage promise is not enforceable under Article 1:49(1)	Engagement does not create a duty to marry; specific transactions may create limited duties
Freedom to withdraw	Recognized implicitly, but large damages can exert indirect pressure	Expressly protected; contrary contractual clauses are void	No specific performance, penalties, expectation damages, or presumed fault from withdrawal
Preparatory expenditure	Often recoverable, but legal basis varies	Actual financial loss may be claimed after formal notice; other claims require a specific basis	Recover reasonable, foreseeable, documented reliance caused by the defendant, subject to mitigation

[33] Dutch Civil Code, Book 1, art. 1:49; Indonesian Civil Code, art. 58.

[34] Achmad Hariri and Basuki Babussalam, "Legal Pluralism: Concept, Theoretical Dialectics, and Its Existence in Indonesia," *Walisongo Law Review (Walrev)* 6, no. 2 (October 31, 2024): 146–70, https://doi.org/10.21580/walrev.2024.6.2.25566.

Issue	Indonesia: current judicial tendency	Netherlands	Proposed Indonesian standard
Gifts and transfers	Sometimes absorbed into a general damages claim	Analyzed through ownership, gift, condition, or unjust enrichment	Apply restitution and conditional-gift rules separately
Non-pecuniary loss	Awards may rely on shame, dignity, virginity, or social norms	Not recoverable for mere breach of promise	Require an independent wrong, proven psychological or reputational injury, and proportional valuation
Customary and family norms	Important in establishing social meaning and wrongfulness	Limited role in the statutory framework	Use custom to assess reasonable reliance and context, not to compel marriage or reproduce gender stereotypes
Limitation and procedure	Depends on the chosen contract or tort basis	Eighteen months for Article 1:49(2) claim	Adopt a specific and reasonably short limitation period for engagement-reliance claims

Source: Authors' analysis based on Indonesian and Dutch legislation and Case Law.

The proposed model has two tracks. Track one concerns reliance and restitution. A claimant may recover reasonable expenditure specifically incurred for the planned marriage when the expenditure was induced or clearly accepted by the defendant, was foreseeable, is documented, and cannot reasonably be recovered from third parties. Conditional gifts and transfers should be restored according to their purpose and the parties' intention. The court should deduct benefits retained and losses that could reasonably have been mitigated.

Track two concerns independent wrongs. Non-pecuniary and additional material damages should be available only if the claimant proves conduct that would be wrongful even without the marriage promise. Examples include intentional deception to obtain money or property, coercion, sexual violence, threats, disclosure of intimate information, public humiliation, defamation, or abuse

of a position of dependency. Comparative betrothal scholarship supports separating recoverable humiliation from the mere disappointment of non-marriage.[35]

The model resolves the default-versus-unlawful-act debate. Ordinary default should not be used to enforce the marriage promise. A contract may still govern a distinct transaction, such as shared payment of a venue or a written allocation of cancellation costs, provided the term does not penalize the freedom not to marry. Article 1365 may apply where the conduct independently satisfies wrongfulness, fault, loss, and causation. The judicial focus moves from the broken relationship to the legally protected interest.

The model also disciplines the use of living law. Customary ceremonies can prove that the marriage plan was public, serious, and reasonably relied upon. They can explain why expenditure was foreseeable. They should not establish that one party has lost the legal freedom to withdraw or that community stigma is automatically attributable to the defendant. Contemporary legal-pluralism analysis supports contextual translation rather than automatic incorporation of every social sanction into state law.[36]

For non-pecuniary loss, courts should state the independent wrong, evidence, severity, duration, causal link, and reasons for the amount. They should reject 'loss of virginity' as a proprietary head of damage. Where sexual conduct involves deception or coercion, the court should analyze the relevant personal, tort, criminal, and victim-protection rules directly. This protects women more accurately than treating sexuality as an object transferred in reliance on marriage.

A specific legislative provision would improve certainty. It could restate Article 58 in modern language, expressly preserve free consent, allow recovery of verified reliance loss and conditional transfers, establish a limitation period, and confirm that independent unlawful acts remain actionable. Such reform would align Indonesian private law with human rights while retaining the judiciary's concern for substantive harm.

The model also has practical implications for adjudication. Courts should require a loss schedule supported by invoices, bank records, contracts with vendors, proof of non-refundable payments, and evidence of mitigation. Judges should distinguish payments made by the claimant, her family, or third parties. Family members should recover only losses belonging to them or validly assigned. This prevents double recovery and clarifies standing.

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[35] Yongming Yuan, "Needed by the System, Weakly Rewarded by Desire: Male Antization and Intimate Exclusion in Modern East Asia," 2026, https://doi.org/10.2139/ssrn.6717100.

[36] Chagai Schlesinger, "Religious Legal Pluralism in the Shadow of the Centralistic State," *Oxford Journal of Legal Studies* 45, no. 3 (August 29, 2025): 583–611, https://doi.org/10.1093/ojls/gqaf010.

Mediation remains appropriate for the return of gifts, allocation of cancellation costs, and protection of privacy. It must not pressure a party to marry. The freedom protected by marriage law is non-negotiable. Settlement should concern financial consequences and respectful closure, not the continuation of the relationship.

Finally, gender-sensitive adjudication should be symmetrical in legal structure but attentive to unequal facts. The test applies to every prospective spouse. Its application may still recognize that women often bear greater social and economic consequences. Equality requires courts to identify those consequences with evidence and without reproducing stereotypes.

Conclusion

Indonesia and the Netherlands share a basic civil-law rule that a promise to marry cannot be specifically enforced. Their judicial development, however, differs. Dutch law places marital autonomy at the center of Article 1:49 and allows only narrowly defined financial or proprietary claims. Indonesian courts have used breach of contract and unlawful-act doctrines to compensate women for expenditure, psychological suffering, and social harm. This practice responds to real reliance and gendered vulnerability but produces inconsistent classifications and uncertain limits.

The appropriate solution is not to remove protection. It is to identify the protected interest more precisely. Verified and foreseeable wedding expenditure may be recovered as reliance loss. Conditional gifts and transfers may be restored through restitutionary rules. Damages beyond those interests should require an independent unlawful act, such as fraud, coercion, humiliation, violence, or abuse. The mere decision not to marry must remain non-actionable.

Courts should also discontinue the treatment of virginity as a material asset and use objective criteria for psychological and reputational harm. Customary norms may explain the seriousness of reliance, but they cannot override continuing marital consent. A modernized statutory provision based on these principles would reconcile legal certainty, substantive gender justice, and individual freedom.

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