

ENGAGEMENT CANCELLATION AND ITS LEGAL IMPLICATION
IN MALAYSIA
(Woman's Rights Perspective)

Thesis

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2015

STATEMENT OF THE AUTENTICITY

In the name of Allah (swt),

With consciousness and responsibility towards the development of science, the author declares that the thesis entitled:

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Malang, 19th of February 2015

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Author,

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TRANSLITERATION GUIDANCE

A. Consonant

Arab	Latin	Arab	Latin
ا	A	ط	Th
ب	B	ظ	Zh
ت	T	ع	'
ث	Ts	غ	Gh
ج	J	ف	F
ح	H	ق	Q
خ	Kh	ك	K
د	D	ل	L
ذ	Dz	م	M
ر	R	ن	N
ز	Z	و	W
س	S	ه	H
ش	Sy	ء	'
ص	Sh	ي	Y
ض	Dl		

B. Vocal, long –pronounce and dipthong

Vocal *fathal* = A

Vocal *kasrah* = I

Vocal *Dhomah* = U

Long –Vocal (a)= Â e.g. قال become Qâla

Long-vocal (i) = Î e.g. قيل become Qîla

Long-vocal (u)=	û	e.g.	دون	become	Dûna
Diphthong (aw) =	و	e.g.	قول	become	Qawlun
Diphthong (ay) =	ي	e.g.	خير	Become	Khayrun

C. Ta' marbûthah (ة)

Ta' marbûthah transliterated as “t” in the middle of word, but if *Ta' marbûthah* in the end of word, it transliterated as “h” e.g. الرسالة للمدرسة become *al-risalat li al-mudarrisah*, or in the standing among two word that in the form of *mudlaf* and *mudlaf ilayh*, it transliterated as *t* and connected to the next word, e.g. فخر حمدة الله become *fi rahmatillâh*

D. Auxiliary Verb dan Lafdh al-Jalâlah

Auxiliary verb “al” (ال) written with lowercase form, except if it located in the first position, and “al” in lafadh jalâlah which located in the middle of two word or being or become *idhafah*, it remove from writing.

- Al-Imâm al-Bukhâriy said ...
- Al-Bukhâriy in muqaddimah of his book said ...
- Masyâ' Allâh kâna wa mâ lam yasya' lam yakun.*

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ABSTRACT

Uswatul Fikriyah, Student ID Number 11210071. **Engagement Cancellation and Its Legal Implication in Malaysia (Woman's Rights Perspective)**. Thesis. Al-Ahwal Al-Syakhshiyah Department of Sharia Faculty, State Islamic University Maulana Malik Ibrahim of Malang. Supervisor: Dr. Hj. UmiSumbulah, M.Ag.

Key Words: Engagement Cancellation, Legal Implication, Woman's Rights

Process of Marriage in Malaysia is commonly undertaken with various accompanying Customs. It is accepted in Islam as something good and considered beneficial like *peminangan* or Engagement. Enactment of Islamic Family Law which is used in States of Malaysia essentially does not give meaningful and specific term of engagement. In one section of Islamic Family Law mentions agreement for marriage that done orally or in writing and done directly or through intermediary i.e. the man who trusts to express application to a girl. The regulation about engagement cancellation is contained in Section 15 Islamic Family Law Federal Territory 1984 Malaysia. This section explains that engagement cancellation has legal implication although according to opinion of scholars (*jumhur ulamâ*) engagement is not marriage contract. In this matter, woman in Malaysia still blur about their rights in the case of engagement cancellation that has been regulated in Legislation. Many of women are detrimented because of engagement cancellation in financial and non- financial side.

Base on the background above, the problems are as follows: 1) what is legal implication of engagement cancellation in Malaysia, 2) what are woman's protection aspects in Act 303 Islamic Family Law Federal Territory 1984 Malaysia viewed from woman's rights perspective.

This research is normative research which use library material or library research. Approach used in this research is statue approach. Data collecting method is done by documentation method begun from legal material determination, legal material inventirization, and legal material observation comprehensively, systematically, and structural analysis.

The result of this research can get the conclusion that engagement in Malaysia contains legal implication as explain in section 15 Islamic Family Law Federal Territory 1984 Malaysia. It is because engagement is considered as a contract. All of parties that involved in this contract must obey it as long as there is no legal reason to deny it. Implications of engagement cancellation in Malaysia are someone who become the victim of engagement cancellation can absolutely posses all of gifts given in time of engagement. Conversely, someone who cancels the engagement must return all of gifts and carry all of losses expenses to prepare engagement and wedding party. In this matter, to get their rights the victim of engagement cancellation can do prosecution in Syariah Court. Regulation of Act 303 Islamic Family Law Federal Territory 1984 Malaysia contains woman's

rights protection aspect. In this Legislation woman has their rights according to her position, i.e. rights before marriage, rights in marriage, and rights after divorce. The purpose of Woman's rights protection is to woman can get her rights in marriage life and support gender equality in family life. This woman's protection aspects are accordance with some views of gender figure like Asghar Ali Engineer, Qasim Amin, and other woman's rights view.

ملخص البحث

أسوة الفكرية، رقم القيد 11210071، 2015. إبطال الخطبة وآثارها القانونية في ماليزيا (حقوق المرأة النظري). بحث جامعي. شعبة الأحوال الشخصية، كلية الشريعة بجامعة مولانا مالك إبراهيم الإسلامية الحكومية بمالانج. المشرف: الدكتور الحاجة. أم سميلة، الماجستير.

الكلمات الرئيسية: إبطال الخطبة، الآثار القانونية، حقوق المرأة.

تبدو عملية النكاح في ماليزيا عموما بمختلف العادات التي تكون مقبولة في الإسلام بأنها أمور طيبة ومنفعة للأمة، مثل حفلة الخطبة. لا يعرف تفصيلا قانونا الأسرة الإسلامية في ماليزيا الخطبة. ولكن، ذكر الخطبة في الفصل من الفصول فيهم مصطلح الوعد للنكاح شفويا أو كتابة مباشرة أو غير مباشرة من أجل نداء إلى المرأة. التنظيم المتعلق بإبطال الخطبة الوارد في الفصل 15 من قانون الأسرة الإسلامية الاتحادية سنة 1984. ينص هذا الفصل أن إبطال الخطبة له الآثار القانونية رغم أن الجمهور يقولون أنها ليست عقد النكاح. في هذه الحالة، كانت المرأة في ماليزيا لاتزال ضابطة حول حقوق المرأة في إبطال الخطبة الذي قد ينظم في القانون حتى يسبب للمرأة الخسائر المالية وغير المالية على حد سواء.

وعلى هذا الأساس، يبدو هناك مشكلتان، هما: (1) ما هي الآثار القانونية لإبطال الخطبة في ماليزيا؟ (2) كيف حماية حقوق المرأة في قانون الأسرة الإسلامية الاتحادية رقم 303 سنة 1984 من النظري حقوق المرأة؟

هذا البحث من البحوث المكتبية المستخدمة الكتب. والمدخل المستخدم مدخل القانون. أما منهج جمع بياناته هو منهج الوثائق بداية من تحديد المواد القانونية، ومخزونها، ومناقشتها بطريقة شاملة، ومنظمة، ومنهجية.

من هذه البحوث يمكن أخذ الاستنباط أن الخطبة في ماليزيا لها الآثار القانونية كما ورد في الفصل 15 لقانون الأسرة الإسلامية الاتحادية سنة 1984 لأن الخطبة تُعبر كالعقد. يجب أن تمثل جميع الأطراف في العقد وغير مسموح بخيائه. كانت الآثار القانونية في الخطبة تملك المرأة على جميع

الهدايا التي تعطي في الخطبة ويجب للرجل إرجاع كافة الهدايا ويتحمل جميع الخسائر التي قد أنفقت على حفلة الخطبة والنكاح. بجانب ذلك، تمكن للمرأة القيام بمطالب إلالمحكمة الشرعية كما ورد في قانون الأسرة الإسلامية الاتحادية رقم 303 سنة 1984 من أجل الحصول على حقوقها قبل النكاح، وفي النكاح، وبعد النكاح. تُهدف هذه الحماية من أجل الحصول حقوقها فالنكاحوتشجع حدوث المساواة بين الجنسين في الأسرة. كانت حماية حقوق المرأة مناسبة لآراء الرجال، مثل أصغر على أنجنير، وقاسم أمين، وهلم جرا

ABSTRAK

Uswatul Fikriyah, NIM 11210071. **Pembatalan Pertunangan dan Akibat Hukumnya di Malaysia (Perspektif Hak-hak Perempuan).** Skripsi. Jurusan Al-Ahwal Al-Syakhshiyah. Fakultas Syariah, Universitas Islam Negeri Maulana Malik Ibrahim Malang. Pembimbing: Dr. Hj. Umi Sumbulah, M.Ag.

Kata Kunci: Pembatalan Pertunangan, Akibat Hukum, Hak Perempuan

Proses pernikahan di Malaysia pada umumnya didahului dengan berbagai adat yang mengiringinya. Adat- adat tersebut diterima dalam Islam sebagai suatu yang baik dan dirasa memberikan banyak manfaat seperti prosesi upacara peminangan atau pertunangan. Enactment Undang- undang Keluarga Islam yang berada di negeri-negeri di Malaysia pada dasarnya tidak memberikan pengertian secara spesifik tentang istilah pertunangan. Dalam salah satu seksyennya menyebutkan dengan istilah janji untuk berkahwin yang diadakan secara lisan atau tertulis dan dilakukan secara langsung sendiri dengan melalui perantara untuk menyatakan permohonan kepada seorang perempuan. Peraturan mengenai pembatalan pertunangan termuat dalam seksyen 15 Islamic Family Law Federal Territory 1984 Malaysia. Seksyen ini menyebutkan bahwa pembatalan pertunangan mempunyai legal implikasi padahal berdasarkan pendapat jumhur ulama pertunangan belum termasuk pada kontrak perkawinan. Dalam hal ini perempuan di Malaysia masih kabur mengenai hak-haknya dalam kasus pembatalan pertunangan yang telah diatur dalam undang- undang. Sehingga banyak diantara perempuan mengalami kerugian akibat pembatalan pertunangan baik dari segi financial maupun non financial.

Atas dasar ini maka muncul rumusan masalah sebagai berikut: 1) Apa legal implikasi pembatalan pertunangan di Malaysia , 2) bagaimana aspek perlindungan hak-hak perempuan dalam Act 303 Islamic Family Law Federal Territory 1984 Malaysia dari perspective hak perempuan.

Penelitian ini merupakan penelitian normatif yang menggunakan data kepustakaan atau library research. Pendekatan yang digunakan adalah pendekatan perundang- undangan. Adapun metode pengumpulan data dilakukan dengan metode dokumentasi mulai dari penentuan bahan hukum, inventarisasi bahan hukum, dan pengkajian bahan hukum secara komprehensif, sistematis, dan terstruktur.

Dari penelitian ini dapat ditarik kesimpulan bahwa pertunangan di Malaysia telah mengandung akibat hukum sebagaimana termuat dalam seksyen 15 Islamic Family Law Federal Territory 1984 Malaysia. Hal ini karena pertunangan dianggap sebagai suatu kontrak. Semua pihak yang terlibat dalam kontrak tersebut harus mematuhi selama tidak ada suatu alasan yang dibenarkan untuk mengingkarinya. Implikasi dari pembatalan pertunangan di Malaysia adalah pihak yang menjadi korban dapat memiliki secara mutlak semua pemberian yang diberikan pada waktu pertunangan. Sebaliknya pihak yang membatalkan

pertunangan harus mengembalikan semua pemberian dan menanggung semua kerugian yang telah dibelanjakan untuk pesta pertunangan dan perkawinan. Dalam hal ini untuk mendapatkan hak- haknya korban pembatalan pertunangan dapat melakukan suatu tuntutan di Mahkamah Syariah. Peraturan dalam Akta 303 Islamic Family Law Federal Territory 1984 Malaysia mengandung aspek perlindungan hak-hak perempuan. Dalam undang- undang ini perempuan mempunyai hak sesuai dengan posisinya, yaitu hak sebelum terjadinya pernikahan, hak dalam pernikahan dan hak setelah putusnya pernikahan. Perlindungan hak perempuan ini bertujuan agar perempuan dapat memperoleh hak-haknya dalam perkawinan dan mendorong terjadinya kesetaraan gender dalam keluarga. Aspek perlindungan hak perempuan ini sesuai dengan pandangan dari beberapa perspektif tokoh seperti Asghar Ali Engineer, Qasim Amin, dan pandangan hak perempuan yang lain.