

INDONESIA¹

OVERVIEW OF MUSLIM FAMILY LAWS & PRACTICES (Updated as at 5 AUGUST 2022)

Indonesia has a reservation to Article 29 of CEDAW.² The Government of Indonesia in its 2011 report to the CEDAW Committee:³

Acknowledged that the Marriage Law still sets a very young minimum age for a woman to enter into marriage; stipulates that the husband is the head of the family, and the wife, the homemaker; and enables the husband to practice polygamy. Similarly, the Compilation applied in civil disputes in religious courts also contains provisions that are discriminatory for women;

Informed that the Department of Religious Affairs is preparing Material Draft Law on the Marriage Law to address the problems in the revision of the Marriage Law. This draft is aimed at resolving problems that often occur in the field, such as the young marriage age, polygamy, unregistered marriages that did not provide protection for women, and so forth; and

Cautioned that fact that many often overlook is that the process of legislating a law is a very arduous struggle involving a tug-of-war between different powers using all sorts of means which, even despite strong oversight, could sometimes produce counter-productive results. Although not a majority, there are radical groups (both religious and secular) pushing for their own agenda. On the one side, women activists wish to change the marriage age for women and the clause “husband is the head of the family,” while on the other side, some pressure groups are fighting for unconditional freedom to practice polygamy, unregistered religious marriages, and other issues. Any effort to change the marriage law must be done very carefully. If the debate and the legislation process cannot be overseen and controlled properly, new laws produced may include provisions that go against women's interests, and could even be more discriminatory for women compared to existing laws. In anticipation, the current discourse is to address the shortcomings of the law by creating implementing regulations that ensure the protection of women's rights. Key to this is ensuring that these implementing regulations do not have any gaps or weaknesses that could render them contradictory to superior laws.

¹ This Musawah project to map Muslim Family Laws globally was led by Zainah Anwar and coordinated by Lead Researcher Sharmila Sharma, with substantive support from Salma Waheedi and students at the International Human Rights Clinic, Harvard Law School. For this Indonesia country table, we would also like to thank Alyssa Oravec and Darshana Prakasam from Harvard Law School, and Dr. Sri Wiyanti Eddyono for their inputs in its preparation. This table was last updated in 5 August 2022 as part of the Campaign for Justice in Muslim Family Laws, we would like to thank Persatuan Rahima for the recent update.

² United Nations Treaty Collection Website, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsq_no=IV-8&chapter=4&clang=en

³ Indonesia State party report, U.N. Doc. CEDAW/C/IDN/6-7 (2011), paras. 35-36, 198, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

Family Law Matter	Description				
	Legislative Framework	Case Law	Policy	Procedure	Practice
<p>Equality of spouses in marriage</p> <p><i>Is there a Constitutional provision on equality and are there exceptions? Are there specific laws that recognise marriage as a partnership of equals i.e. are family laws and/or other laws relating to marriage and family relations codified or uncodified? If codified, what are the titles of all the applicable laws? If codified, do these laws apply to all citizens irrespective of religion? If not, do these laws apply to all Muslims or are there different codified laws for different sects within Islam? If uncodified, or if codified laws do not sufficiently address a</i></p>	<p>There are Indonesia's Constitution guarantee</p> <p>Article 27 of the Constitution states that all Indonesians shall be equal before the law and the government and shall be required to respect the law and the government, with no exceptions.⁴ Gender equality is not specifically mentioned.</p> <p>Article 28B(1) Every person shall be entitled to establish a family and to further descendants through legal marriage⁵</p> <p>Article 28D (1) Every person shall be entitled to recognition, guaranty, protection, and equitable</p>	<p>Criminalization of victims of domestic violence</p> <p>Komnas Perempuan's 2021 annual report specifically addressed the criminalization of victims of domestic violence. These incidents occur against a backdrop of imbalanced gender relationships within society. Therefore, the existence of genderless coverage gives husbands the opportunity to report or to legally sue their wives who were initially victims of domestic violence.</p>	<p>Indonesia has a reservation to Article 29 of CEDAW.³²</p> <p>The Government of Indonesia in its 2011 report to the CEDAW Committee:³³ Acknowledged that the Marriage Law still sets a very young minimum age for a woman to enter into marriage; stipulates that the husband is the head of the family, and the wife, the homemaker; and enables the</p>	<p>Indonesia has a reservation to Article 29 of CEDAW.³⁸ The Government of Indonesia in its 2011 report to the CEDAW Committee:³⁹</p> <p>Acknowledged that the Marriage Law still sets a very young minimum age for a woman to enter into marriage; stipulates that the husband is the head of the family, and the</p>	<p>According to the 2016 UNDP Human Development Report, Indonesia ranked 113 on the UNDP Human Development Index and 105 on the UNDP Gender Inequality Index.⁴⁰</p> <p>According to Indonesia's 2012 Demographic and Health Survey, about 15% of households in Indonesia are headed by women.⁴¹</p> <p>Although women's equality is outlined in the constitution, women's participation in the public sphere, for example, is influenced by gender relations developed between partners/within the</p>

⁴ Article 27 of the Constitution of Indonesia (1945), https://www.constituteproject.org/constitution/Indonesia_2002.pdf

⁵ The 1945 Constitution of the Republic of Indonesia <https://www.mkri.id/public/content/infoumum/regulation/pdf/uud45%20eng.pdf>

³² United Nations Treaty Collection Website, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=_en

³³ Indonesia State party report, U.N. Doc. CEDAW/C/IDN/6-7 (2011), paras. 35-36, 198, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

³⁸ United Nations Treaty Collection Website, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=_en

³⁹ Indonesia State party report, U.N. Doc. CEDAW/C/IDN/6-7 (2011), paras. 35-36, 198, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

⁴⁰ UNDP, "Human Development Report 2016", Table 5, pp. 214-217, http://hdr.undp.org/sites/default/files/2016_human_development_report.pdf

⁴¹ Statistics Indonesia et al., "Indonesia Demographic and Health Survey 2012", Table 2.8, p. 19, <http://dhsprogram.com/pubs/pdf/FR275/FR275.pdf>

<p><i>particular issue, how is the issue addressed e.g. what Muslim school of law is applicable? Do these laws explicitly state gender-stereotypical roles between husbands and wives e.g. the husband is the head of the household or the wife is the primary caregiver?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(1)(c) Paras. 17-18 GR21 Paras. 54-55 GR29</p>	<p>legal certainty as well as equal treatment before the law⁶.</p> <p>Article 28G (1) Every person shall be entitled to protection of his/ her own person, family, honor, dignity, and property under his/her control, as well as be entitled to feel secure and be entitled to protection against threat of fear to do or omit to do something being his/her fundamental right.</p> <p>National Law Law No. 39/1999 concerning Human Rights (“Human Rights Law”), applicable to all Indonesians, states that during marriage, a wife and husband have equal rights and responsibilities with regard to all aspects of marriage, contact with their children, and rights to joint control of assets.⁷</p> <p>In addition, the Human Rights Law guarantees the right to form a family and continue one’s lineage</p>	<p>Forms of criminalization utilized include accusations of child neglect, document falsification, defamation, theft within the family. The criminalization of victims of domestic violence is a form of re-victimization with the intention of silencing victims from reporting cases or fighting for their rights (rights to custody, divorce, or joint assets), as well as exhibiting the perpetrators power and control over their wife or ex-wife. This is evident in cases where the husband holds a higher position in terms of social and economic relations, or where the husband has close relationships with law enforcement agencies or power networks. Cases of</p>	<p>husband to practice polygamy. Similarly, the Compilation applied in civil disputes in religious courts also contains provisions that are discriminatory for women;</p> <p>Informed that the Department of Religious Affairs is preparing Material Draft Law on the Marriage Law to address the problems in the revision of the Marriage Law. This draft is aimed at resolving problems that often occur in the field, such as the young marriage age, polygamy, unregistered marriages that did not provide</p>	<p>wife, the homemaker; and enables the husband to practice polygamy. Similarly, the Compilation applied in civil disputes in religious courts also contains provisions that are discriminatory for women; Informed that the Department of Religious Affairs is preparing Material Draft Law on the Marriage Law to address the problems in the revision of the Marriage Law. This draft is aimed at resolving problems that</p>	<p>family. Gender relations developed within the family have a significant influence on the gender-based human development index, which highlights the role of women in the public sphere. The gender-based human development index released by the Ministry of Women’s Empowerment and Child Protection shows that although women’s participation in politics, employment, and as working professionals increased between 2010-2019, gender-based discrimination is one of the obstacles faced by women in the public sphere, one example of which is unequal relations with their husbands in the domestic sphere. This is portrayed, for example, in the political sphere when women become members of parliament because they face many obstacles both in the public sphere and in their relationships with their</p>
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⁶ Ibid

⁷ Article 51 of the Human Rights Law (1999), <http://www.refworld.org/docid/4da2ce862.html>

	<p>through legal marriage. A valid marriage can only take place with the willing consent of the prospective husband and wife in question, in accordance with the provisions of the legislation [Article 10].</p> <p>A woman who marries a man of foreign nationality does not automatically join their husband's citizenship status, but has the right to maintain, change, or regain her citizenship status [Article 47].</p> <p>A wife has the same rights and responsibilities as her husband in all matters relating to marriage, relations with her children, and the right to ownership and management of joint assets. After the termination of a marriage, the woman has the same rights and responsibilities as her ex-husband with regard to their children, with due regard for</p>	<p>domestic violence against wives proceed slower than cases against husbands.³¹</p>	<p>protection for women, and so forth; and Cautioned that fact that many often overlook is that the process of legislating a law is a very arduous struggle involving a tug-of-war between different powers using all sorts of means which, even despite strong oversight, could sometimes produce counter-productive results. Although not a majority, there are radical groups (both religious and secular) pushing for their own agenda. On the one side, women activists wish to change</p>	<p>often occur in the field, such as the young marriage age, polygamy, unregistered marriages that did not provide protection for women, and so forth; and Caution that many often overlook is that the process of legislating a law is a very arduous struggle involving a tug-of-war between different powers using all sorts of means which, even despite strong oversight, could</p>	<p>husbands.⁴²</p> <p>One example of this is in the depiction of women's participation in Indonesia, which indicated a continuous increase in the field of employment between 2010-2019, but has not yet indicated equal contributions to women's incomes. The rate of women working in the formal sector was 39.31 percent in 2019, while in the informal sector the rate reached 60.69 percent. These rates are compared to 47.39% of men working in the formal sector, and 52.61% who work in the informal sector⁴³. Including the difference in wages received by men and women with the same level of education, the average wage/salary of female workers is lower than men in both urban and rural areas, according to BPS</p>
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³¹ Komnas Perempuan, 2021 Annual Report, pg.40 <https://komnasperempuan.go.id/uploadedFiles/1466.1614933645.pdf>

⁴² Ministry of Women's Empowerment and Child Protection (KPPPA), *Gender-based Human Development 2020 [Pembangunan Manusia Berbasis Gender 2020]*, Jakarta: 2020, Pg. 104 <https://www.kemnpppa.go.id/index.php/page/read/24/3060/pembangunan-manusia-berbasis-gender-2020>

⁴³ Ibid

	<p>the best interests of the child. [Article 51]</p> <p>Indonesia has also ratified the International Convention on Civil and Political Rights through Law No. 12/2005, which specifically outlines the right of men and women to marry in article 23 paragraph (2), and regulates the obligations of state parties in paragraph (4), stipulating that State Parties to the present Covenant must take appropriate steps to ensure the equal rights and responsibilities of husbands and wives in regard to marriage, both during a marriage and at the time of its termination. In the event of the termination of a marriage, the necessary provisions must be made to protect the children⁸.</p> <p>Law of the Republic of Indonesia No. 52/2009 on Population Development and Family Development Article</p>		<p>the marriage age for women and the clause “husband is the head of the family,” while on the other side, some pressure groups are fighting for unconditional freedom to practice polygamy, unregistered religious marriages, and other issues. Any effort to change the marriage law must be done very carefully. If the debate and the legislation process cannot be overseen and controlled properly, new laws produced may include provisions that go</p>	<p>sometimes produce counter-productive results. Although not a majority, there are radical groups (both religious and secular) pushing for their own agenda. On the one side, women activists wish to change the marriage age for women and the clause “husband is the head of the family,” while on the other side, some pressure groups are fighting for unconditional freedom to</p>	<p>and KPPPA data from 2019 on the average wage for women.⁴⁴ This phenomenon persists as gender discrimination remains in analyzing the cultural burden within society that constructs the image of women being fully responsible in the domestic sphere causing the majority of women workers to choose to work in informal rather than formal jobs. Secondly, the wages of women workers are lower than that of men, meaning that the contribution of women’s incomes remains low compared to men⁴⁵.</p> <p>According to data World Economic Forum reported in 2021, Indonesia have closed 68.8% of its overall gender gap, corresponding to a rank of 101st globally. Beyond the performance of this indicator, women participate in the labour market significantly less</p>
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⁸ International Covenant on Civil and Political Rights, Number 12, 2005 <https://www.dpr.go.id/doksetjen/dokumen/-Regulasi-UU-No.-12-Tahun-2005-Tentang-Pengesahan-Kovenan-Internasional-Tentang-Hak-Hak-Sipil-dan-Politik-1552380410.pdf>

⁴⁴ Ibid, Hal 127-128

⁴⁵ Ibid, Pg. 115

	<p>5. In implementing population development and family development, all residents have the right to: a. form a family and continue their lineage through legal marriage;</p> <p>The Law No. 1/1974 on Marriage (“Marriage Law”) is the main codified law that governs marriage and family relations in Indonesia.⁹</p> <p>The Marriage Law applicable to all Indonesian citizens is Law No.1/1974 on Marriage¹⁰. Law No. 1/1974 on Marriage (“the Marriage Law”) is the main codified law that governs marriage and family relations in Indonesia.¹¹</p> <p>As a political product, on one hand, the Marriage Law accommodates principles of equality, but on the other</p>		<p>against women's interests, and could even be more discriminatory for women compared to existing laws. In anticipation, the current discourse is to address the shortcomings of the law by creating implementing regulations that ensure the protection of women's rights. Key to this is ensuring that these implementing regulations do not have any gaps or weaknesses that could render them contradictory to superior laws.</p>	<p>practice polygamy, unregistered religious marriages, and other issues. Any effort to change the marriage law must be done very carefully. If the debate and the legislation process cannot be overseen and controlled properly, new laws produced may include provisions that go against women's interests, and could even be more discriminatory</p>	<p>than men (55.9% of women and 84% of men) and wage and income gaps remain large (69.7% and 51.7%, respectively). In addition, 81.8% of the women's employment is in the informal sector (compared to 79.4% of men).⁴⁶</p>
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⁹ Marriage Law (1974), <https://www.scribd.com/doc/53066173/Undang-undang-Republik-Indonesia-No-1-Tahun-1974-Tentang-an>

¹⁰ This law has been tested in the Constitutional Court eight times between 2007- 2019, testing different articles (including three test that were granted: the Examination of Article 7 paragraph 1 on Marriageable Age through decision 22/PUU-XV/2017, Article 43 paragraph (1) on child civil relationships through decision 46/PUU-VIII/2010, and Article 29 paragraph (1) on Marriage Agreements through decision 69/PUU-XIII/2015, and five other tests that were rejected). In addition, eight articles were followed up through Government Regulations. <https://www.dpr.go.id/jdih/index/id/742>

¹¹ Marriage Law (1974), <https://www.scribd.com/doc/53066173/Undang-undang-Republik-Indonesia-No-1-Tahun-1974-Tentang-an>

⁴⁶ World Economic Forum, “Global Gender Report 2021” https://www3.weforum.org/docs/WEF_GGGR_2021.pdf

	<p>hand, it also accommodates stereotypes and the standardization of gender bias in marital relations, as it accommodates religious perspectives that are not friendly toward women.¹²</p> <p>Several articles regulate equality within marriage, including: Adhering to the principle of monogamy: [Article 3 of the Marriage Law] strengthened in the explanation of the law. Equal rights and obligations in building a family based on mutual love and affection (Article 33), as well as having an equal standing before the law and in conducting legal actions, and being equal in building a family life and social life within the community (Article 30-31).</p> <p>The Marriage Law stipulates the condition of equality in the requirement of consent of the prospective bride and</p>		<p>In a number of regions, since 2012, regional regulations have emerged both through Regional Regulations and Regulations of the Regional Head adopting the Marriage Law. With titles largely including the theme of family resilience, the majority of regulations have multiple interpretations of the concepts of family, the rights and responsibilities of husbands and wives, and the roles they play. Most of the regulations are exactly the same between the</p>	<p>for women compared to existing laws. In anticipation, the current discourse is to address the shortcomings of the law by creating implementing regulations that ensure the protection of women's rights. Key to this is ensuring that these implementing regulations do not have any gaps or weaknesses that could render them contradictory to superior laws.</p>	
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¹² It is appreciated that the Law has been proposed to be amended due to the high number of articles that are detrimental to the position of women. However, unfortunately, the legislature only amended the article on the age of a child, while other articles remained unchanged, including the permissibility of polygamy for discriminatory reasons, as well as conflicting articles related to the role of a husband and wife. Indonesian National Commission on Violence against Women, *Independent Report Regarding the Implementation of the Convention on the Elimination of All Forms of Discrimination against Women in Indonesia, 2007 - 2011* Submitted to the CEDAW Committee, https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/IDN/INT_CEDAW_NGO_IDN_52_9020_E.pdf, par.61

	<p>groom, in cancelling an engagement, proceeding with a separation, as well as creating a marriage contract, acting and taking legal action on joint assets, filing for a divorce in court, and in childcare, determining their place of residence, and in civil relations with their children (Article 43).¹³</p> <p>Equal marriageable age, at 19 years for both men and women, which was originally regulated in regard to the child marriage age (16 years) for women, was cancelled by a Constitutional Court decision (2014)</p> <p>Meanwhile, strengthening stereotypes around the role of husbands and wives, and other forms of discrimination against women (particularly women with disabilities) are evident in that, for example:</p> <p>The husband is the head of the household (leader).</p>		<p>different regions. There are 21 policies from various regions, including: data found in the media.³⁴ Although most of the policies use neutral language, the content of several articles has multiple interpretations, which can lead to standardization of gender bias. There are also some areas with discriminatory regulations, as they apply the concept of standardizing gender bias, for example, a Depok Municipality Regulations, which stipulates the following: (1) A woman can be</p>		
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¹³ Constitutional Court Decision 46/PUU-VIII/2010

³⁴ Purwakarta District, Bekasi District, Sumatera Selatan Province, Jawa Barat Province, Sumatera Selatan Province, Gorontalo Province, Sumatera Barat Province, Karawang District, Depok District, Cilegon District, Nusa Tenggara Barat District, Bangka Selatan District, Serang District, Banten Province, Riau Province, Bengkulu Province, Tuban District, Bogor District, Kampar District, Tasikmalaya District, and so on.

	<p>[Article 31 paragraph (3)], As the head of the household, the husband is responsible for protecting and meeting the economic needs of the family, and the wife is responsible for managing the household (Article 34). These articles ignore the facts/reality of society, in that, as revealed by Statistics Indonesia's National Economic Social Survey, in 2020 there were a total of 11.44 million families headed by women¹⁴.</p> <p>This standardization of gender bias results in the neglect of women's economic role in the family, as well as a strong stigma around activities conducted by women in the public sector.</p> <p>In the Polygamy Regulation, a man may marry 4 wives, with discriminatory marriage allowances against women, in cases in which the wife is unable to fulfil her obligations, has an incurable disease or disability, or is</p>		<p>the head of the household if: a. her husband has died; b. her husband is not fulfilling his obligations, c. the couple have divorced. (2) A wife can act in the place of the head of the household if her husband is no longer able to support her physically and mentally due to permanent physical or mental disability. (3) In families consisting solely of a mother and child, the mother is obliged to provide for her children both physically and mentally, and so on. [Depok Municipal Regulation No.9/2017].</p>		
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¹⁴ Nasional, "Beban Hidup Perempuan Kepala Keluarga Saat Pandemi Covid 19 Makin Berat" <https://nasional.tempo.co/read/1512787/beban-hidup-perempuan-kepala-keluarga-saat-pandemi-covid-19-makin-berat/full&view=ok>

	<p>unable to give birth (Article 4).</p> <p>The validity of marriage is based on religion, as stipulated in Article 2 (1), meaning that marriage is based on the rules of the religion of the persons to be married. This article means that interfaith couples must choose or submit to one religion.¹⁵</p> <p>The marriage law provides different arrangements for Muslim and non-Muslim citizens. The marriages of Muslim citizens are registered through the Religious Affairs Office (KUA) and Religious Courts (Article 63). Meanwhile, non-Muslims register their marriages with population and civil registration officials. Muslim citizens are subject to the Compilation of Islamic Law (KHI) which acts as a guide for marriage registrar employees at the KUA and religious court judges in handling cases related to</p>		<p>In terms of regulations with multiple interpretations, there are more than 11 regional policies on family resilience, with the formulation of “national policies, aimed at developing quality families, which are directed toward: a. family structure and legality; In addition, a different article stipulates that the regional government is obliged to facilitate the Implementation of Family Resilience, including: Family structure and legality, in order to reduce the rate of divorce³⁵. At the beginning of 2020, the</p>		
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¹⁵ This article has been submitted for review in the Constitutional Court with the application being rejected by the Court through decision No.68/PUU-XII/2014
³⁵ <https://jdih.jabarprov.go.id/page/info/produk/7025>

	<p>marriage, inheritance, and <i>waqaf</i> (Islamic charitable endowment), through Presidential Instruction No. 1/1991¹⁶</p> <p>There have been several breakthroughs in the Compilation of Islamic Law (KHI) regarding the protection of women that are not in the Marriage Law. However, several articles of the KHI adopt principles of stereotypes and discrimination against women.</p> <p>Several principles of the Marriage Law that provide protection to women were adopted by the KHI, including legalizing marriage through registration and divorce in court, requirement of the minimum age for marriage, consent of the prospective spouses,</p>		<p>Family Resilience Bill appeared in the list of priority bills (prolegnas).³⁶ Several articles of the bill restore the domestication of women, including regulations that read:"A wife's obligations are a. to manage household affairs to the best of their ability; b. to maintain family integrity; and c. to treat their husbands and children well, and fulfil the rights of their husbands and children according to religious norms, social ethics, and the provisions of laws and</p>		
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¹⁶ The compilation of Islamic law (KHI) is a summary of various legal opinions taken from various books written by Fiqh scholars and commonly used as references in the Religious Courts, which have been processed and developed, and compiled into a collection called a compilation. Although historically, the development of the compilation based the majority of its references on the Shafi'i school, the book 'Al Fiqh 'alal Muadzahibil Arba'ah' was also used as a reference. See the Supreme Court, *Himpunan Peraturan Perundang-Undangan yang Berkaitan dengan Kompilasi Hukum Islam dengan Pengertian dalam Pembahasannya* [Collection of Legislations Related to the Compilation of Islamic Law with Explanation in its discussion] – Jakarta: Indonesian Supreme Court, 2011. The KHI is considered uncontroversial as it is seen as a form of the state accommodating to Islamic politics.

³⁶ Draft Law on Family Planning, Indonesia <https://www.dpr.go.id/dokakd/dokumen/RJ2-20200214-122745-3039.pdf>

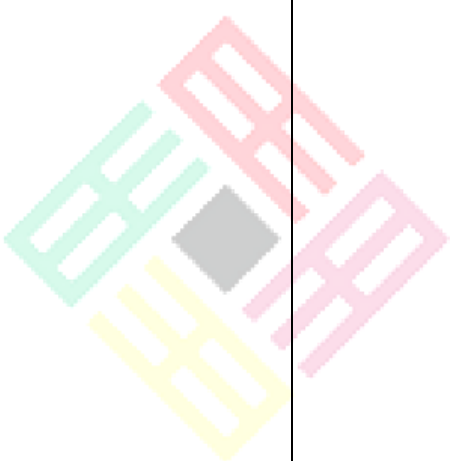
	<p>marriage contracts, prevention and annulment of marriage, joint assets, the right to child custody before they reach adulthood, and the father's obligation to provide financial support for childcare.</p> <p>Several regulations that are not contained in the Marriage Law, but have been added to provide protection to women include regulations on <i>taklii-talak</i>, an agreement pronounced by the groom after the marriage ceremony and noted in the Marriage Certificate, as a form of promise (<i>talak</i>) of divorce if he does not fulfil his duties as a husband (Articles 45-46), the obligation to provide a dowry (<i>mahar</i>) as the right of the bride (Articles 33-38), the provision of a consolatory gift (<i>mut'ah</i>), and the right to child custody (<i>hadhanah</i>). As the Marriage Law also standardizes stereotypes and discrimination against women,¹⁷ several articles in the KHI still reflect the views</p>		<p>regulations, and so on. According to media reports, the bill attracted public anger as the appearance of the Family Resilience Bill represents a threat to the survival and room for movement of women. Women are domesticated and caged in the name of being obliged to manage household affairs to the best of their ability, maintaining family integrity, and treating their husbands and children in accordance with religious norms, social ethics, and the regulatory provisions, which</p>		
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¹⁷ In dissecting the KHI, Muhammad Ulil Abshor, stated that there are 6 studies in the form of papers and journal theses that examine the KHI from women's perspectives. Muhammad Ulil Abshor, *Modernisasi Hukum Keluarga Islam (Komparasi Studi KHI)[The Modernization of Islamic Family Law (A comparative Study of the KHI)]*, Ed. 1, Cet.1 Rajawali Pers: Depok, 2020, Pg. 13-14

	<p>of <i>fiqh</i> scholars, which place women within the context of the past, and take a protectionist rather than substantive approach to the protection/equality of women, including:</p> <ol style="list-style-type: none"> 1. The concept of <i>wali nikah</i> (marriage guardianship), which requires women to have a guardian to get married (stated in articles 19-23) 2. Regulations regarding witnesses, which require witnesses to be male, Muslim, fair, past the age of puberty (<i>aqil baligh</i>), and not suffer from memory loss, or deafness.¹⁸ 3. Regulation for women who are pregnant outside of marriage to be married to the man who impregnated her. 4. The implementation of <i>nusyuz</i>, which is only applicable to women. 5. The rights and responsibilities of husbands 		<p>are standardized in Article 25 paragraph (3). This Article is a threat to the achievement of the SDGs, particularly in overcoming poverty, realizing a healthy society, educational attainment, gender equality and women's empowerment, eliminating inequality, and women's participation in decision making.³⁷</p>		
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¹⁸ According to Musdah, this provision is discriminatory toward three groups: non-Muslims, women, and persons with disabilities.

³⁷ Media Indonesia, "RUU Ketahanan Keluarga Mengancam Pencapaian SDGs," 27 February 2020 <https://mediaindonesia.com/opini/292736/ruu-ketahanan-keluarga-mengancam-pencapaian-sdgs>

	<p>and wives are positioned to strengthen protectionist approaches, by positioning women as inferior to the leadership of men within the household, as guides, protectors, and sources of religious knowledge for their wives and families. This includes the regulation of economic obligations (Article 84), such as incomes, family living expenses, and places of residency. The wife's obligations are increasingly enforced by the phrase "physically and spiritually devoted" to the husband.</p> <p>6. The ability to marry four women under certain conditions.</p> <p>7. The enforcement of <i>Li'an</i> upon women who are accused of being adulterous by their husbands, as well as the consequences on the cost of raising children.</p> <p>The Marriage Law is applicable to all Indonesians regardless of religion.¹⁹ The</p>				
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¹⁹ Indonesia State party report, U.N. Doc. CEDAW/C/IDN/2-3 (1997), p. 72, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

	<p>Law exclusively recognises religious marriages.²⁰</p> <p>Article 2(1) provides that a marriage is lawful when entered in accordance with the laws of the respective religions and beliefs of the parties; and Pursuant to Article 63 of the Marriage Law: (i) the Religious Court adjudicates matters under the Marriage Law where the parties are Muslims (the majority of the population in Indonesia); (ii) the General Court adjudicates matters under the Marriage Law where the parties are non-Muslims; and (iii) all decisions of the Religious Court requires the confirmation of the General Court.</p> <p>In addition: Under the Law No. 7/1989 on the Religious Court (“Religious Court Law”) as amended by Law No. 3/2006, the Religious Court has, among others, jurisdiction</p>				
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²⁰ Articles 2(1), 63 of the Marriage Law (1974), <https://www.scribd.com/doc/53066173/Undang-undang-Republik-Indonesia-No-1-Tahun-1974-Tentang-an>; Adriaan Bedner & Stijn van Huis, “Plurality of marriage law and marriage registration for Muslims in Indonesia: a plea for pragmatism”, (Utrecht Law Review, 6:2, 2010), p. 179, <https://core.ac.uk/download/pdf/15603396.pdf>

	<p>over matters relating to marriage and the family, including marital property and inheritance where the parties are Muslims, as well as the <i>Shari'ah</i> economy;²¹ a Article 4 of the Compilation of Islamic Laws in Indonesia ('Compilation') states that in line with Article 2(1) of the Marriage Law, Muslim marriages are valid if concluded according to Islamic law.²² The Compilation, which was formalised by Presidential Instruction No. 1/1991,²³ is a codification of Islamic laws that the Religious Court in Indonesia apply in the adjudication of various matters before them, including matters relating to marriage and the family where the parties are Muslims.²⁴</p>				
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²¹ Articles 49, 50 of the Religious Court Law (1989), <http://peraturan.go.id/inc/view/11e44c4e667c43309f4a313231333533.html>; Law No. 3/2006, <http://peraturan.go.id/inc/view/11e44c4e40752af093c9313231323530.html>; ASEAN Law Association, "Indonesian Legal System", *ASEAN Legal Systems*, p. 79, <http://www.aseanlawassociation.org/papers/JudicialSystem.pdf>

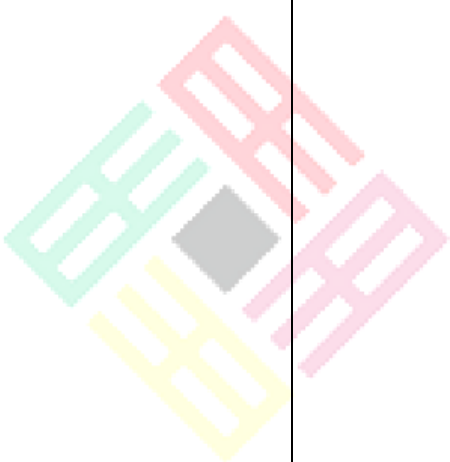
²² Article 4 of the Compilation of Islamic Laws in Indonesia (1991), <http://www.hukumonline.com/pusatdata/detail/13200/node/732/inpres-no-1-tahun-1991-penyebaranluasan-kompilasi-hukum-islam>

²³ Jan Michiel Otto, "Sharia and National Law in Indonesia", in *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*, ed. Jan Michiel Otto (Leiden, The Netherlands: Leiden University Press, 2010), p. 433, <https://openaccess.leidenuniv.nl/bitstream/handle/1887/21170/file221087.pdf?sequence=1>

²⁴ Compilation of Islamic Laws in Indonesia (1991), <http://www.hukumonline.com/pusatdata/detail/13200/node/732/inpres-no-1-tahun-1991-penyebaranluasan-kompilasi-hukum-islam>

	<p>Despite the equality guarantee under the Constitution and Article 51 of the Human Rights Law, the Marriage Law provides for a marital framework based on 'reciprocal' or 'complementary' rights (as opposed to 'equal' rights) between the two spouses that in turn is based on the concept of male guardianship over women and children, albeit keeping "a significant distance from the patriarchal norms of classical <i>Shari'ah</i>":²⁵ Article 1 defines marriage as a physical and spiritual bond between a man and a woman as husband and wife, having the purposes of establishing a happy and lasting family founded on the belief in God; Article 30 proclaims the family as the fundamental basis of the structure of society; Article 31(1) provides that the rights and position of the</p>				
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²⁵ Articles 1, 30, 31(1), 31(3), 33, 34(1)-(3) of the Marriage Law (1974), <https://www.scribd.com/doc/53066173/Undang-undang-Republik-Indonesia-No-1-Tahun-1974-Tentang-an>; Jan Michiel Otto, "Sharia and National Law in Indonesia", in *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*, ed. Jan Michiel Otto (Leiden, The Netherlands: Leiden University Press, 2010), pp. 459-460, <https://openaccess.leidenuniv.nl/bitstream/handle/1887/21170/file221087.pdf?sequence=1>

	<p>wife are equal to the rights and position of the husband both in family and social life. This is reflected in Article 79(2) of the Compilation;²⁶ Article 31(3) states that the husband is the head of the family, the wife is the homemaker. This is reflected in Article 79(1) of the Compilation;²⁷ Article 33 states that the husband and wife shall love and respect each other, be faithful to one another and give one another physical and moral support. This is reflected in Articles 71(1), (2) and (4) of the Compilation;²⁸ Article 34(1) states that the husband shall protect his wife and provide for all necessities of life required in a family to the best of his ability while Article 34(2) states that the wife shall manage the household to the best of her ability. This is somewhat reflected in</p>				
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²⁶ Article 79(2) of the Compilation of Islamic Laws in Indonesia (1991), <http://www.hukumonline.com/pusatdata/detail/13200/node/732/inpres-no-1-tahun-1991-penyebaranluasan-kompilasi-hukum-islam>

²⁷ Article 79 of the Compilation of Islamic Laws in Indonesia (1991), <http://www.hukumonline.com/pusatdata/detail/13200/node/732/inpres-no-1-tahun-1991-penyebaranluasan-kompilasi-hukum-islam>

²⁸ Article 77(1), (2), (4) of the Compilation of Islamic Laws in Indonesia (1991), <http://www.hukumonline.com/pusatdata/detail/13200/node/732/inpres-no-1-tahun-1991-penyebaranluasan-kompilasi-hukum-islam>

	<p>Article 80 of the Compilation. Article 80(2) reflects Article 34(1) of the Marriage Law. However:²⁹ Article 80(1) provides that the husband is the counsellor of the family but vital decisions regarding the household must be made by the husband and wife; Article 80(3) provides that husband must give his wife a religious education and also provide her with the opportunity to learn useful knowledge for the religion and the nation; Article 80(4) provides that the husband must financially provide for his wife and children in accordance with his means. Articles 80(5) and 80(7) provide that a husband's obligation to maintain his wife only arises if the wife is obedient (<i>tamkin</i>) and stops when she is disobedient (<i>nusyuz</i>). Article 80(6) provides that the wife could free her husband from his obligation to maintain her. Article 81 obligates the husband</p>				
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²⁹ Articles 80, 81 of the Compilation of Islamic Laws in Indonesia (1991), <http://www.hukumonline.com/pusatdata/detail/13200/node/732/inpres-no-1-tahun-1991-penyebarlusasan-kompilasi-hukum-islam>

	provide housing for his wife and children. Article 34(3) states if that if either the husband or the wife neglects his or her responsibilities, the other party may lodge a complaint with the court. This is reflected in Article 71(5) of the Compilation. ³⁰				
<p>Minimum and equal legal age for marriage</p> <p><i>Is there a minimum age of marriage? Are there exceptions to the minimum age (e.g. min. age at 18, with exceptions to 16)? Is there an absolute minimum age without exceptions? Is there equality in the minimum age of marriage? Does the minimum age of marriage match the age of majority? Is there a minimum age</i></p>	<p>The minimum legal age for marriage is 16 for females and 19 for males as per Article 7 of the Marriage Law as well as Article 15 of the Compilation. However, Article 7 also provides that a court may permit girls and boys below 16 and 19 respectively to marry provided that both parents consent to the marriage.⁴⁷</p> <p>The law does not stipulate an absolute minimum age below</p>	<p>In June 2015, the Constitutional Court rejected the case by Koalisi 18+ which called for the review of the Marriage Law with the view to changing the minimum legal age for marriage to 18 and at the same time equalising the age for marriage between women and men.⁶²</p>	<p>The Government of Indonesia in its 2011 CEDAW report, when referring to the 2008 case, asserted that:⁶⁵</p> <p>It does not tolerate underage marriages; and The Department of Religious Affairs is raising awareness about</p>	<p>The official performing the religious ceremony of the marriage must verify that the marriage is lawful.⁷³</p> <p>The marriage registrar (<i>Pegawai Pencatat Nikah</i>) may not</p>	<p>According to UNICEF's State of the World's Children 2016 report, 14% of women aged 20- 24 in Indonesia were first married by 18 and according to the Indonesian government, 11% of women were married below 16.⁷⁸</p> <p>According to Indonesia's 2012 Demographic and Health Survey, the median age at first marriage for women is 20.1 and men is</p>

³⁰ Article 71(5) of the Compilation of Islamic Laws in Indonesia (1991), <http://www.hukumonline.com/pusatdata/detail/13200/node/732/inpres-no-1-tahun-1991-penyebarluasan-kompilasi-hukum-islam>

⁴⁷ Article 7 of the Marriage Law (1974), <https://www.scribd.com/doc/53066173/Undang-undang-Republik-Indonesia-No-1-Tahun-1974-Tentang-an>; Article 15 of the Compilation of Islamic Laws in Indonesia (1991), <http://www.hukumonline.com/pusatdata/detail/13200/node/732/inpres-no-1-tahun-1991-penyebarluasan-kompilasi-hukum-islam>

⁶² Girls Not Brides, "Indonesia", *Child marriages around the world*, <http://www.girlsnotbrides.org/child-marriage/indonesia/>

⁶⁵ Indonesia State party report, U.N. Doc. CEDAW/C/IDN/6-7 (2011), para. 199, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

⁷³ Adriaan Bedner & Stijn van Huis, "Plurality of marriage law and marriage registration for Muslims in Indonesia: a plea for pragmatism", (Utrecht Law Review, 6:2, 2010), p. 181, <https://core.ac.uk/download/pdf/15603396.pdf>

⁷⁸ UNICEF, "The State of the World's Children 2016", Table 9, pp. 150-153, https://www.unicef.org/publications/files/UNICEF_SOWC_2016.pdf; Indonesia State party report, U.N. Doc. CEDAW/C/IDN/6-7 (2011), para. 199, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

<p><i>verification process before the marriage is concluded?</i></p>	<p>which a marriage may not be authorised.</p>	<p>Koalisi 18+ resubmitted its case to the Constitutional Court in May 2017, which was granted by the Court (2018), and followed up by the DPR and the government by ratifying Law No. 16/2019 on the Amendment of Law No.1/1974 on Marriage, which changed the age of marriage.</p>	<p>sanctions for officials who permit the marriage of couples under 18. The Department of Religious Affairs is currently in the process of developing guidelines which suggest that marriage should not take place until both parties are 18 years old.⁶⁶</p>	<p>register an under-aged marriage that has not be properly authorised although the marriage was not prevented.⁷⁴</p>	<p>24.3.⁷⁹</p>
<p><u>Applicable CEDAW Provision</u> Article 16(2) Paras. 36-39 GR21</p>	<p>The People's Representative Council (DPR) made changes to the marriageable age in Article 7 or the Marriage Law on 15 October 2019. The amendment of the article followed the decision of the Constitutional Court of the Republic of Indonesia (2017) on the examination of the age of marriage. With the cancellation of Article 7 of the Marriage Law by the Constitutional Court, the regulation of Law No.16/2019 states that the permissible age of marriage for men and women is 19 years of age. However, paragraph (2) still provides for marriage dispensation, although with more stringent requirements than previously, in that a request for dispensation must be submitted to the Court with</p>	<p>A high profile case in 2008 involved an <i>ulama</i> and businessman who married a 12-year-old girl with the support of the religious community. The court acquitted him of all charges.⁶³</p>	<p>Indonesian female Islamic clerics (<i>ulama</i>) have issued a religious ruling (<i>fatwa</i>) calling on the Indonesian government to raise the legal age for marriage for girls from 16 to</p>	<p>The Marriage Law stipulates that marriage prevention must be conducted by a court official or marriage registrar, including the provision on the age of marriage as regulated in Article 7 (19 years) and Article 16. Marriage</p>	<p>According to Girls Not Bride, factors that contribute to the high prevalence of child marriage in Indonesia include socioeconomic reasons e.g. poverty, financial incentives and lack of education as well as cultural norms that permit child marriage to continue e.g. child marriage is often used as a way to normalise male violence against women and marriage is used as a way to rectify situations associated with female sexual experience outside of marriage.⁸⁰</p> <p>Indonesia as a country is ranked 2nd in ASEAN and 8th in the world in terms of cases of child marriage. 22 of the 34 provinces have child marriage rates above the national average.</p>

⁶³ Indonesia State party report, U.N. Doc. CEDAW/C/IDN/6-7 (2011), para. 199, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

⁶⁶ Information obtained from Indonesian advocate, February 2017

⁷⁴ Article 68 of the Compilation of Islamic Laws in Indonesia (1991), <http://www.hukumonline.com/pusatdata/detail/13200/node/732/inpres-no-1-tahun-1991-penyebaran-kompilasi-hukum-islam>

⁷⁹ Statistics Indonesia et al., "Indonesia Demographic and Health Survey 2012", Table 4.3, p. 43, <http://dhsprogram.com/pubs/pdf/FR275/FR275.pdf>

⁸⁰ Girls Not Brides, "Indonesia", *Child marriages around the world*, <http://www.girlsnotbrides.org/child-marriage/indonesia/>

	<p>urgent reasoning and accompanied by sufficient supporting evidence. In addition, dispensation may only be granted by the Court upon listening to the testimonies of the prospective bride/groom. The marriageable age regulated by the KHI automatically adheres to Law No.16/2019.</p> <p>Currently, 16 districts/provinces in Indonesia have issued policies on the prevention of child marriage, including Seluma⁴⁸, Sanggau⁴⁹, Tangerang,⁵⁰ Nusa Tenggara Barat,⁵¹ Lombok Timur, Lombok Barat,⁵²⁵³</p>	<p>According to the results of research conducted by the Judicial Monitoring Society (<i>Masyarakat Pemantauan Peradilan</i>) involving 160 marriage dispensation decisions and 200 divorce decisions, as well as 873 religious court decisions and 40 general court decisions regarding marriage dispensation and 508,276 religious court decisions and 4,345 general court decisions regarding divorce,⁶⁴ the average age of girls involved in marriage dispensation</p>	<p>18.⁶⁷</p> <p>The Indonesian government stated in a 2012 report submitted to the CEDAW committee that they had several programs in place to reduce child marriage and forced marriage by targeting several factors, including: (i) improving the family welfare system and strengthening the economy, (ii) raising awareness on the health risks</p>	<p>registrars are not allowed to conduct or assist in conducting a marriage if they are aware of any violation of the provision on the age of marriage, although there have been no reports of prevention of marriage (Article 20)</p> <p>Marriage registrars who refuse to</p>	<p>Despite the government having increased the marriageable age to 19 and tightened dispensation regulations, in practice, incidences of child marriage remain high. From a geographical perspective, child marriage is more than twice as likely to occur among girls from rural areas compared to those in urban centres. According to data from the National Development Planning Agency (Bappenas) (2021), although the child marriage rate decreased nationally from 11.21 percent (2018) to 10.82 percent (2019), the number of child marriage</p>
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⁴⁸ Regulation of the District Head of Seluma No. 27/2018, <https://peraturan.bpk.go.id/Home/Details/101262/perbup-kab-seluma-no-27-tahun-2018>

⁴⁹ Regulation of the District Head of Sanggau No.3/2019,

⁵⁰ Regulation of the District Head of Tangerang No.78/2017

<https://jdih.tangerangkab.go.id/apps/www/storage/document/Perbup%2078%20Tahun%202017%20perkawinan%20pada%20usia%20ANAK.pdf>

⁵¹ NTB Provincial Regulation No.5/2021, <https://jdih.ntbprov.go.id/subyek/pencegahan-perkawinan-anak>

⁵² Regulation of the District Head of Lombok Barat No.30/2018, <http://jdih.lombokbaratkab.go.id/pencarian/226/detail>

⁵³ Jaringan Dokumentasi & Informasi Hukum, "Pencegahan Perkahwinan Pada Umur Anak", 24 August 2020 <https://jdih.lomboktimurkab.go.id/produk-hukum-pencegahan-perkawinan-pada-usia-anak.html>

⁶⁴ Indonesian Judicial Monitoring Society (Masyarakat Pemantau Peradilan Indonesia – MaPPI) Universitas Indonesia Faculty of Law, Notes on Fulfilling Access to Justice for Women in Conflict with the Law, First Print: 2019, pp. 51-52 <http://mappifhui.org/wp-content/uploads/2020/11/Catatan-Pemenuhan-Akses.pdf>

⁶⁷ Bethan McKernan, "Female Islamic clerics declare rare fatwa against child marriage", *The Independent*, 28 April 2017, <http://www.independent.co.uk/news/world/female-islamic-clerics-child-marriage-fatwa-muslim-indonesia-java-a7707201.html>

	<p>Lumajang,⁵⁴ Balangan,⁵⁵ Cianjur,⁵⁶ Bantul⁵⁷ Cianjur, Dompu,⁵⁸ Cirebon⁵⁹, Bandung, Lampung Barat, and DIY Yogyakarta⁶⁰, and 236 villages in Lombok Timur have issued village regulations on the prevention of child marriage.⁶¹</p>	<p>cases is 14.5 years. This figure is far younger than the average age of boys in marriage dispensation cases, at 16.5 years; The results of the decisions show that 99% of the applications submitted were granted by the judges; In terms of the reasons for applying for marriage dispensation, it was found that in 31% of cases, the girl was pregnant, 25% were submitted as the two children were in love, 21% because the</p>	<p>of pregnancies in underage children, (iii) providing free educational programs and 12 years of compulsory schooling (kindergarten to high school), (iv) reducing child marriage and increasing the capacity of youth to develop their future careers, including how to address social stigma⁶⁸.</p>	<p>officiate a marriage due to a violation of the Marriage Law, including in regard to age, must submit a written statement of refusal accompanied with the reasons for the refusal. The parties to the marriage have the right to submit an application to the court upon the marriage</p>	<p>cases in 18 of Indonesia's provinces increased.⁸¹</p> <p>Even though the marriageable age has changed, cases submitted to the Supreme Court in 2020 regarding marriage dispensation remained high, with 411 cases being submitted to the District Courts, and 15 being passed by the court, and 64,196 cases being submitted to the Religious Courts, and 63,231 being passed. These numbers increased during the COVID-19 pandemic from the previous year, with</p>
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⁵⁴ Regulation of the District Head No. 23/2021 https://jdih.lumajangkab.go.id/file/Perbup_No_23_2020_tentang_Pencegahan_Perkawinan_Pada_Usia_Anak.pdf

⁵⁵ Regulation of the District Head No.30/2017 <https://jdih.balangkab.go.id/upload/peraturan/Perbup%20no%2030%20ttg%20Pendewasaan%20Usia%20Perkawinan.pdf>

⁵⁶ Regulation of the District Head No.10/2021 <https://peraturan.bpk.go.id/Home/Details/139103/perbup-kab-cianjur-no-10-tahun-2020>

⁵⁷ <https://jdih.bantulkab.go.id/produkhukum/detail/1708/peraturan-bupati-tahun-2017-nomor-4.htmtinggi>

⁵⁸ Regulation of the District Head No. 43/2018 <https://jdih.bantulkab.go.id/produkhukum/detail/1708/peraturan-bupati-tahun-2017-nomor-4.html>

⁵⁹ Regulation of the District Head No.12/2021 <https://ykp.or.id/wp-content/uploads/2021/03/Perbup-Nomor-12-Tahun-2021-tentang-Pencegahan-Perkawinan-Pada-Usia-Anak.pdf>

⁶⁰ DP3AP2, "Prevention Against Child Marriage through District Regulation", 15 January 2021 <https://dp3ap2.jogjaprov.go.id/berita/detail/579-pendewasaan-usia-perkawinan-pencegahan-perkawinan-anak-melalui-peraturan-desa>

⁶¹ Lombok Timur KAB, "236 Districts Implement Child Marriage Prevention Regulation", 16 August 2021 <https://portal.lomboktimurkab.go.id/baca-berita-906-236-desa-di-lotim-miliki-perdes-pencegahan-perkawinan-anak.html>

⁶⁸ Indonesia's National Development Planning Agency, 2020-2024 National Mid-term Development Plan

⁸¹ KOMPAS, "Second in ASEAN, Current Situation on Child Marriage" 20 May. 2021 <https://www.kompas.com/sains/read/2021/05/20/190300123/peringkat-ke-2-di-asean-begini-situasi-perkawinan-anak-di-indonesia?page=all>.

		<p>children were at risk of violating religious values, 16% because the children had already engaged in sexual activity, 8% because the children were deemed at risk of violating social values, and 4% because they were at risk of engaging in sexual activity; 55% of decisions contained information stating that the children involved in the dispensation application submitted were present in court; The research was used as an incentive for the Supreme Court to develop a guideline for judges and other court institutions in handling cases of marriage dispensation, through Supreme Court</p>	<p>The government has also included in their planning document (RPJMN 2020-2024) that child marriage is an issue faced in Indonesia. There is a gender gap issue in education, in that the average length of schooling for girls is lower than for boys, at 7.65 years to 8.56 years. Girls who discontinue their schooling are vulnerable to child marriage. A total of 22.91 percent of women aged 20-24 years were first married before the age of 18. The direction of policies and</p>	<p>registrar's refusal by including the marriage registrar's statement of refusal. The Court will examine the case and determine whether to support the refusal or allow the marriage to proceed (Article 21 of the Marriage Law).</p> <p>Registrars who violate the provisions on the prevention of marriage, including child marriage, are sentenced to 3 (three) months imprisonment</p>	<p>23,126 cases being submitted in 2019.⁸²</p> <p>The number of marriage dispensations granted by Religious Courts in 2021 decreased by 7.01% (4,502 cases) compared to the data from 2020. However, this shows that the rate of child marriage will remain high in 2021.⁸³</p> <p>According to the National Commission for Violence Against Women, the increase in the number of marriage dispensations tripled compared to the previous year, from 23,126 to 64,211, which is worrying as over the past five years the figure has increased</p>
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⁸² Supreme Court of Indonesia, "Data Perkara Peradilan Agama Tingkat Pertama" <https://badilag.mahkamahagung.go.id/perkara-diterima-dan-diputus-pada-tingkat-pertama/data-perkara/perkara-diterima-dan-diputus-pada-tingkat-pertama>

⁸³ National Commission on Violence Against Women KOMNAS "Reminder on International Women's Day 2022 and Notes on Gender Violence against Women", 8 March 2022 <https://komnasperempuan.go.id/siaran-pers-detail/peringatan-hari-perempuan-internasional-2022-dan-peluncuran-catatan-tahunan-tentang-kekerasan-berbasis-gender-terhadap-perempuan>

		<p>Regulation No. 5/2019 on the Guidelines for Adjudicating Marriage Dispensation Applications.</p>	<p>strategies initiated by the government is to increase the quality of child welfare and strengthen efforts to prevent various forms of violence against children, including child marriage.⁶⁹</p> <p>the Government plans to decrease the current child marriage prevalence from 11.2% (2018) to 8.74% by 2024. The Government is also targeting to reduce it to 6.94% by 2030 in its effort to contribute to the Sustainable Development Goals (SDGs).⁷⁰</p>	<p>or a maximum fine of IDR 7,500 (Seven Thousand Five Hundred Indonesian Rupiah) [Article 45 of the Government of the Republic of Indonesia Regulation No. 9/1975 on the Implementation of Law No. 1/1974 on Marriage].</p> <p>The Supreme Court issued Supreme Court Regulation (PERMA) No. 5/2019 as a guide to</p>	<p>almost eight times (756%)⁸⁴.</p> <p>A joint Musawa-Rahima report noted, for example,⁸⁵ that:</p> <p>Cultural norms based on patriarchal and increasingly conservative interpretations of Islam majorly contribute towards early marriage, manifesting in policy changes that codify social pressure on parents to curb children's sexual activities by turning to marriage.⁸⁶</p> <p>A study found 40% of Indonesian adolescents engaged in premarital sexual activity (<i>muhrim</i>), which has led to parents forcing young couples to marry after being caught; in 2019, the State party drafted but, after</p>
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⁶⁹ Ibid.

⁷⁰ Relief Web, "Government of Indonesia Commits to End Child Marriage", 5 Feb 2020 https://reliefweb.int/report/indonesia/government-indonesia-commits-end-child-marriage?qclid=Cj0KCQiA_cOBhDFARIsAIFg3ewuOpAOKa8QLqFbP_swHtpaRSjyVdxCUz3RUtaJ4nsWN474_D6OsaAip0EALw_wcB

⁸⁴ National Commission on Violence Against Women KOMNAS "Increase Of Cyber Sexual Harassment on Child Marriage and Prevention During the Covid-19 Pandemic in 2021" <https://komnasperempuan.go.id/catatan-tahunan-detail/catahu-2021-perempuan-dalam-himpitan-pandemi-lonjakan-kekerasan-seksual-kekerasan-siber-perkawinan-anak-dan-keterbatasan-penanganan-di-tengah-covid-19>

⁸⁵ Musawah, "Joint Thematic Report on Indonesia 2021" <https://www.musawah.org/resources/musawah-rahima-joint-thematic-report-on-indonesia-2021/>

⁸⁶ UNICEF, BPS and Bappenas, p. 45.

			<p>In 2020, the Indonesian government launched a national strategy for the prevention of child marriage, outlining five strategies, including 1) Maximizing the Capacity of Children; 2) A Supportive Environment for the Prevention of Child Marriage; 3) Service Expansion and Accessibility; 4) Strengthening Regulations and Institutions; 5) and Strengthening Stakeholder Coordination.⁷¹</p> <p>In terms of the programs</p>	<p>adjudicating marriage dispensation requests, after changes to Article 7 of the Marriage Law, which regulates the dispensation mechanism and the classification of judges who can handle dispensation cases, including those who have been declared by the Head of the Supreme Court to be child judges, and have undergone training on women in conflict with the law and</p>	<p>international outcry, postponed a revision to the criminal code that would criminalise consensual sex and cohabitation outside marriage, resulting in a prison sentence and/or fine.⁸⁷</p> <p>Despite the age of marriage being raised to 19, parents may still request dispensation from the courts under Article 7(2). In January–June 2020, about 34,000 applications were made to the Religious Courts, and 97% were granted.⁸⁸ In a study of the Tuban, Bogor and Mamuju districts, the majority of marriage dispensation cases were approved despite lax verification methods and lack of express consent from the subjects of the marriage, seen as a “legitimate way to prevent behaviors perceived to be socially and</p>
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⁷¹ UNICEF, “National Strategy Against Child Marriage in Indonesia, 2021” <https://www.unicef.org/indonesia/media/2856/file/National-Strategy-Child-Marriage-2020.pdf>

⁸⁷ Allard, Tom, and Agustinus Bea Da Costa. “Millions may risk jail as Indonesia to outlaw sex outside marriage.” Reuters, 19 Sept 2019. <https://www.reuters.com/article/us-indonesia-politics-rights-idUSKBN1W32BV>

⁸⁸ Sanuri. “Marriage Dispensation in Indonesia on The Perspective of Maqāsid Al-Ushrah”. *Al-Hukama’ : The Indonesian Journal of Islamic Family Law*, vol. 11, no. 01, June 2021, pp. 26-56, doi:10.15642/alhukama.2021.11.01.26-56. <http://jurnalfsh.uinsby.ac.id/index.php/alhukama/article/view/1172/837>

			<p>conducted by the Indonesian government, in its concluding observations on 15 November 2021 the CEDAW committee emphasized that the strategies implemented require more concrete and transparent tactics on the abolition of child marriage, particularly in terms of the situation in various remote areas of Indonesia, in which Religious Court mechanisms have</p>	<p>hold a certificate on the juvenile criminal justice system.⁷⁵</p> <p>Judges have been issued regulations for handling cases of marriage dispensation per the Supreme Court Regulation No.5/2019⁷⁶ and the State party has written that the Ministry of Women Empowerment and Child Protection</p>	<p>religiously unacceptable.”⁸⁹ Activists report that many of these cases occur without the consent of the child to be married, amounting to forced marriage, and some parents even bribe or lie to local officials to falsify ages on birth and marriage documents to circumvent the age limit.⁹⁰ More worryingly, the dispensations are gendered: 67.7% of female subjects were aged 14–15 years, while 75% of the male subjects were aged 17–18 years, raising concerns that child marriage is disproportionately targeted towards the girl child.⁹¹ but the research cited above and the high number of cases approved show</p>
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⁷⁵ https://bawas.mahkamahagung.go.id/bawas_doc/doc/perma_05_2019.pdf

⁷⁶ https://jdih.mahkamahagung.go.id/index.php?option=com_remository&Itemid=46&func=fileinfo&id=8395; Loasana, Nina A. "Supreme Court introduces handbook on child marriage dispensations." <https://www.thejakartapost.com/news/2020/12/05/supreme-court-introduces-handbook-on-child-marriage-dispensations.html>.

⁸⁹ Koalisi 18+ and UNICEF. "Revealing the truth of marriage dispensation: An analysis of child marriage practice in Tuban, Bogor and Mamuju Districts." Jan 2019. <https://www.girlsnotbrides.org/documents/887/UNICEF-Marriage-Dispensation-Research-Brief.pdf>

⁹⁰ Interview with Indonesian activists, September 2021; Mazrieva, Eva. "My parents thought this man would take care of me': In Indonesia, former child brides push back, seek change." VOA News, 2019. <https://projects.voanews.com/child-marriage/english/region/indonesia.html>.

⁹¹ Parents' reasons: The dispensation subject has already been in a relationship/engaged (98%), S/he has reached 'maturity', aqil baligh (91%) S/he is ready to 'settle down' (91%) S/he is already employed (89%). Judges' considerations in ruling The fiqiyah principle, which stipulates that approving the exemption is to prevent mudarat (damage) (9 The existence of an intimate relationship between the subject and his/her partner (96%) The parents' "anxiety" (presumably over their child's risky behaviour) (89%)Koalisi 18+ and UNICEF, p. 5.

			<p>the ability to grant marriage dispensations as regulated in Law No.16/2019.⁷²</p>	<p>(MoWECP) is monitoring applications to ensure the best interest of children⁷⁷,</p>	<p>that marriage is still widely considered to be in the best interest of the child(ren) especially in cases of underage pregnancy, exacerbated by lack of access to sexual and reproductive health education and contraceptives. At a recent workshop for judges, Rahima heard that many judges felt they were put in a difficult position between parents and their children, and did not have sufficient justification to prevent the marriage, thus the decisions to allow the dispensations are made quickly and affirmatively.⁹² The workshop helped to sensitise judges towards gender justice and non-discrimination principles, progressive Islamic justifications for preventing child marriage, and the negative impacts on the child's lives, especially the girl child—Article 12 of No.5/2019 already states</p>
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⁷² UNITED Nations, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&DocTypeID=5

⁷⁷ CEDAW/C/IDN/RQ/8, para. 128.

⁹² Interview with Indonesian activists, September 2021.

					<p>the judge must advise parents on the ill effects of child marriage and the religious perspective, thus more of such gender-sensitive trainings are greatly needed, especially in rural areas and those of high prevalence. Child marriage is also on means of recruitment for terrorism networks in Indonesia, involving various factors, including arranged marriages, not being involved in any activities outside of marriage, pressure from the family, a lack of mentoring programs within social institutions, the lack of mentors once terrorist inmates are released from prison, the absence of counselling and trauma healing.⁹³</p>
<p>Women's consent to marriage</p> <p><i>Is a marriage valid without the woman's consent? Is the</i></p>	<p>Regardless of their age, both prospective brides and grooms must consent to the marriage. Consequently, <i>ijbar</i> marriages are</p>	<p>Article 29 paragraph (1) of the Marriage Law regulates marriage contracts regarding the</p>	<p>Forced marriage is one sexual violence crime regulated in the Law on Sexual</p>	<p>All Muslim marriages must be conducted under the</p>	<p>Some women create marriage contracts that not only pertain to the scope of household assets, but bind themselves in new forms</p>

⁹³ Paper Khariroh Maknunah (Outrech Director Yayasan Prasasti, Seminar on Child Marriage in Terrorist Circles, 22 July 2021). <https://www.radicalismstudies.org/1831/2021/07/literature/materi-13th-webinar-perkawinan-anak-di-lingkaran-kelompok-teroris.html>

<p><i>practice of forcing women to marry against their will (ijbar) prohibited? Is there a standard marriage contract? If so, what are its broad provisions and is there anything particular in the contract that ought to be highlighted on the basis that it advances women's rights or otherwise? Is it mandatory to register a marriage?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(1)(b) Paras. 15-16 GR21 Paras. 25-26, 33-34 GR29</p>	<p>prohibited.</p> <p>Article 6(1) of the Marriage Law states the agreement of both parties to the marriage is a precondition for marriage.⁹⁴ The requirement for consent is also reflect in Articles 14 (both parties), 16 (prospective bride) and 27 (guardian of the prospective bride and prospective groom) of the Compilation.⁹⁵</p> <p>Article 22 of the Marriage Law states that a marriage may be nullified by non-fulfilment of the preconditions for marriage on the part of either of the parties.⁹⁶ In a similar vein, Article 71(f) provides that a marriage may be nullified if forced.⁹⁷</p> <p>The mandatory registration of marriages is provided for in Article 2(2) of the Marriage</p>	<p>separation of assets, which can only be made before or at the time of marriage. However, with the decision of the Constitutional Court No. 69/PUU-XIII/2015, a marriage contract is no longer interpreted solely as an agreement made before marriage (prenuptial agreement), but may also be made after the marriage takes place (postnuptial agreement).¹⁰⁵</p> <p>The Decision of the Constitutional Court No. 64/PUU-X/2012 has an impact on joint property, requesting the bank to open an</p>	<p>Violence Crimes. The definition of forced marriage is to force, to place a person under one's control or the control of another person, or to abuse one's power to perform or allow a marriage to be performed with oneself or another person¹⁰⁹.</p> <p>Marriage Contracts: The Constitutional Court has expressed the following opinion on the purpose of creating a marriage contract: To separate assets between a</p>	<p>supervision of the marriage registrar (<i>Pegawai Pencatat Nikah</i>), otherwise, the marriage will not be legally recognised. Prior to the marriage ceremony, the marriage registrar must first enquire whether the prospective bride and groom consent to the marriage in the presence of two witness. If the prospective</p>	<p>that are agreed upon as part of the marriage contract. For example, that the couple promise not to commit adultery or polygamy, that the husband and wife are to respect each other as part of an equal relationship, and so on, as a means of reminding each other as a couple to respect each other.¹¹⁴</p> <p>A Komnas Perempuan report on Aceh found practices of forced marriage, including: Forced marriage as a form of "covering up family disgrace". This practice occurs, for example, in regard to victims of rape who fall pregnant as a result of the violent acts carried out against them. The impetus for these</p>
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⁹⁴ Article 6 of the Marriage Law (1974), <https://www.scribd.com/doc/53066173/Undang-undang-Republik-Indonesia-No-1-Tahun-1974-Tentang-an>

⁹⁵ Articles 14, 16 of the Compilation of Islamic Laws in Indonesia (1991), <http://www.hukumonline.com/pusatdata/detail/13200/node/732/inpres-no-1-tahun-1991-penyebaran-kompilasi-hukum-islam>

⁹⁶ Article 22 of the Marriage Law (1974), <https://www.scribd.com/doc/53066173/Undang-undang-Republik-Indonesia-No-1-Tahun-1974-Tentang-an>

⁹⁷ Article 71(f) of the Compilation of Islamic Laws in Indonesia (1991), <http://www.hukumonline.com/pusatdata/detail/13200/node/732/inpres-no-1-tahun-1991-penyebaran-kompilasi-hukum-islam>

¹⁰⁵ <https://www.hukumonline.com/klinik/detail/ulasan/lt5847e8ddabfea/keberlakuan-putusan-mk-tentang-perjanjian-kawin-terhadap-perkawinan-wni/>

¹⁰⁹ The Law on Sexual Violence Crimes was enacted on 12 April 2022, <https://www.dpr.go.id/doksileg/proses2/RJ2-20170201-043128-3029.pdf>

¹¹⁴ Komnas Perempuan, *Referensi Referensi bagi Hakim Peradilan Agama tentang Kekerasan dalam Rumah Tangga* [Reference for Religious Court Judges on Domestic Violence], Jakarta: 2012

	<p>Law⁹⁸ and also Article 5 of the Compilation.⁹⁹ The procedure for the registration of marriages is detailed in Law No. 23/2006 on Population Administration (“Population Administration Law”) as amended by Law No. 24/2013.¹⁰⁰ The Marriage Law contains several provisions regarding women’s consent within marriage, including:</p> <ol style="list-style-type: none"> 1. The consent of the bride and the groom regulated in Article 6 (l) of the law. 2. The requirement for parental permission if the bride and groom are not yet 21 years of age, as is regulated in Article 16 of the KHI. The KHI even 	<p>account in their spouse’s name that may be used as joint property. This provision implies equality between the husband and wife in accessing each other’s bank account information. The decision grants the wife the right to obtain a share of joint assets in the form of savings or deposits in the name of their husband, which have been difficult to access to date due to banking confidentiality.¹⁰⁶ During the COVID-19 pandemic, child marriages have nearly tripled compared to</p>	<p>husband and wife in order that their wealth is not mixed. Each party within the marriage is individually responsible for their own debts. If one party wishes to sell their assets, they are not required to request permission from their spouse (husband/wife). 4) The same is true for credit facilities applied for, in that no prior permission is required from their spouse (husband/wife) in</p>	<p>bride does not consent to the marriage, the marriage ceremony cannot be performed.¹¹¹ Muslim marriages must be registered with the Office of Religious Affairs at the sub-district Levels (KUAKec).¹¹² The marriage registrar asks the bride and the groom to state their consent in</p>	<p>actions stems from community/religious leaders. The two rape victims who were forced to marry the perpetrators were eventually abandoned by the perpetrators after marriage.</p> <p>Being forced to marry, and afraid of being labelled a rebellious child and school fees not being paid.</p> <p>Refusing the wife’s right to divorce is a form of forced marriage by refusing to grant a divorce to a wife who demands the right to terminate their marriage, the perpetrator is in fact using the marriage as a weapon to strengthen his position of power of women.¹¹⁵</p>
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⁹⁸ Article 2(2) of the Marriage Law (1974), <https://www.scribd.com/doc/53066173/Undang-undang-Republik-Indonesia-No-1-Tahun-1974-Tentang-an>

⁹⁹ Article 5 of the Compilation of Islamic Laws in Indonesia (1991), <http://www.hukumonline.com/pusatdata/detail/13200/node/732/inpres-no-1-tahun-1991-penyebaran-kompilasi-hukum-islam>

¹⁰⁰ Article 34-38 of the Population Administration Law, <http://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=54eeefde4>; Law No. 24/2013, <http://www.refworld.org/docid/54eeefce4.html>

¹⁰⁶ The Body of Indonesian Religious Courts, *Majalah peradilan Agama*, Ed. 7 October 2005

¹¹¹ Articles 6, 17 of the Compilation of Islamic Laws in Indonesia (1991), <http://www.hukumonline.com/pusatdata/detail/13200/node/732/inpres-no-1-tahun-1991-penyebaran-kompilasi-hukum-islam>

¹¹² Article 34(4) of the Population Administration Law (2006), <http://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=54eeefde4>

¹¹⁵ Komnas Perempuan, https://drive.google.com/file/d/10W63_apqAl2TTic-AchNUC9hGWKsO4cc/view

	<p>emphasizes in the subsequent article that without the consent of the bride and the groom, the marriage may not go ahead, including the consent of persons with disabilities.</p> <p>3. A marriage that occurs as a result of coercion may be annulled [Article 71 of the KHI].</p> <p>4. The consent of the two parties can be formalized in a written agreement ratified by an official marriage registrar (Article 29 of the Marriage Law). In the KHI, the consent of the two parties can be stated during <i>taklik talak</i>¹⁰¹, and in the marriage contract (regulated in Articles 45-51 of the KHI). The KHI distinguishes <i>taklik talak</i> from the marriage contract. However, the arrangement is intended to protect women from changes in the husband's attitude</p>	<p>the previous year. Marriage dispensations increased from approximately 23 thousand to 64 thousand in Religious Courts in 2020 (Badilag, 2020). In addition, the COVID-19 pandemic has also contributed to high rates of pregnancy in a number of regions, including due to the closure of healthcare facilities; limited services for women and children; avoiding examinations due to fear of contracting COVID-19, and contraceptive limitations. These conditions have to potential to increase the rate of child marriage to 13 million over the 2020-2030 period. Girls are more</p>	<p>the context of pledging assets.¹¹⁰</p>	<p>front of two witnesses before proceeding with the marriage (Article 17 of the KHI).</p> <p>The Decision of the Constitutional Court regarding marriage contracts (Article 29) brought changes to the mechanisms of the marriage contract, including that¹¹³;</p> <ul style="list-style-type: none"> • it is produced in written form, meaning that it can be 	<p>Hanging Divorce: conditional divorce, in which the husband does not wish to reconcile. This model of forced marriage is carried out by holding women in the institution of marriage by deliberately leaving them in a state of hanging divorce.</p> <p>The practice of <i>Kawin Cina Buta</i>: the practice of forced divorce and forced marriage. <i>Kawin cina buta</i> is mandatory for women who wish to reconcile with their husbands after divorce upon the basis of the professions of three <i>talak</i>. This form of divorce is considered legal, with both the husband and wife being required to marry [and divorce] another person [before being allowed to reconcile their original marriage]. Due to the legality of polygamy, the husband may keep his new wife, while the wife must terminate her new marriage</p>
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¹⁰¹ A statement pronounced by the groom upon completion of the marriage ceremony and included in the marriage certificate in the form of a promise of divorce if, in the future, the husband is unable to fulfil his obligations.

¹¹⁰ The Decision of the Constitutional Court No. 64/PUU-X/2012, <https://www.bphn.go.id/data/documents/64-2012.pdf>

¹¹³ Agustine, O. (2017). POLITIK HUKUM PERJANJIAN PERKAWINAN PASCA PUTUSAN MAHKAMAH KONSTITUSI NOMOR 69/PUU-XIII/2015 DALAM MENCIPTAKAN KEHARMONISAN PERKAWINAN. *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, 6(1), 53-67. doi: <http://dx.doi.org/10.33331/rechtsvinding.v6i1.121>

	<p>throughout the marriage; and, as violations of the <i>talik talak</i> vows are considered “legally binding”, this provides the wife the right to file a lawsuit with the court without having to rely on the authority of the husband as the party with divorce rights.¹⁰²</p> <p>5. Consent for joint assets to be used as collateral by one of the parties (Article 92 of the KHI).</p> <p>6. The wife’s consent for reconciliation applications submitted by the husband in front of a marriage registrar (Article 167 of the KHI)</p>	<p>vulnerable than boys, as 1 in 9 women aged 20-24 married under the age of 18, while the figure for men is only 1 in 100. According to a Komnas Perempuan report, throughout 2020 and the COVID-19 pandemic, forced marriages increased by 300%. Several factors play a part with forced marriages occurring under the pretext of paying debts, repaying kindness, covering disgrace (for example due to pregnancy before marriage), and reducing the burden on the family¹⁰⁷.</p>		<p>produced through a notarial deed or written by hand</p> <ul style="list-style-type: none"> the marriage contract may be produced before or during the marriage ceremony in principle, the marriage contract cannot be altered during the marriage, unless both parties agree 	<p>with divorce. The woman must cover all costs of the wedding, including <i>mahar</i> (dowry) and “wages” for conducting marital relations before the divorce. The woman must wait for the <i>iddah</i> period (3 months and 10 days) before being able to reconcile with her original husband.¹¹⁶</p> <p>The Indonesian KUPI (Congress of Women Ulema) released a statement in support of Eliminating Sexual Violence, one of the points of which opposed forced marriage, which is one of the crimes outlined in the Law on the Elimination of Sexual Violence (UU TPKS)¹¹⁷.</p>
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¹⁰² Supreme Court of Indonesia, “Types of Marriage Contract” 2013 <https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/segi-segi-perjanjian-perkawinan-oleh-jasmani-muzayin-sh-152>

¹⁰⁷ National Commission on Violence Against Women KOMNAS, “Child Marriage is a Harmful Practice” 3 August 2021 <https://komnasperempuan.go.id/siaran-pers-detail/siaran-pers-komnas-perempuan-tentang-perkawinan-anak-merupakan-praktik-berbahaya-harmful-practice-yang-menghambat-indonesia-emas-2045-3-agustus-2021>

¹¹⁶ Komnas Perempuan, *Pelapor Khusus Komnas Perempuan untuk Aceh Sebuah Laporan Temuan Dokumentasi Kondisi Pemenuhan Hak Asasi Manusia Perempuan Pengungsi Aceh Sebagai Korban Juga Survivor Rangkaian Pengalaman Dan Suara Perempuan Pengungsi Terhadap Kekerasan Dan Diskriminasi Komisi Nasional Anti Kekerasan Terhadap Perempuan* [Komnas Perempuan’s Special Reporter for Aceh – A Report of Findings Documenting the Conditions of Fulfilling Human Rights for Acehese Refugee Women as Victims, as well as Survivors of a Range of Experiences and Voices of Refugee Women Against Violence and Discrimination the National Commission on Violence Against Women]. 2006, *manusia-perempuan-pengungsi-aceh*, https://drive.google.com/file/d/10W63_apgAl2TTic-AchNUC9hGWksO4cc/view

¹¹⁷ as an effective way to protect humans from sexual violence that undermines human dignity and also representing the correct way to realize *maqashidus syariah* (the goals of Shari’a), particularly to protect one’s honor, lineage, and spirit (*hifdz al ‘irdh, an-nasl wa an-nafs*). Consensual sexual relations within a marriage are also an important

	<p>7. The bride's consent to the acceptance/rejection of the groom's <i>mahar</i> (dowry) offering (Article 38 of the KHI)</p> <p>8. Consent from the wife before the court if the husband is to remarry (Article 58 of the KHI and Article 38 of the Marriage Law)</p> <p>Although the Marriage Law and the KHI regulate the consent of the prospective bride and groom, in the article regulating pregnancies outside of marriage (Article 53 of the KHI), there is a strong chance of the woman being forced into marriage. This practice is often conducted by the community, including in response to cases of rape. Even if it is not the perpetrator, the family of the woman (victim) will look for a</p>	<p>Komnas Perempuan reported that, in 2020, 320 cases of divorce occurred due to a background of forced marriage¹⁰⁸.</p>		<p>to change the contract and the changes do not harm any third party. The marriage contract regarding property is binding for the parties and any third parties, starting from the date of the marriage ceremony before a marriage registrar (Article 47 of the KHI), including the revocation of the contract upon joint agreement in front of a marriage registrar</p>	
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prerequisite for the realization of a peaceful (*sakinah*) and devout (*maslahah*) family. The principle of *mawaddah wa rahmah* (tranquility, love, and mercy) is the main pillar in realizing a peaceful family, which cannot be achieved if the marriage involves sexual violence. <https://kupi.or.id/dokumen/2021/07/548/tanyajawabruupks/>
¹⁰⁸ National Commission on Violence Against Women, "Increase Of Cyber Sexual Harassment on Child Marriage and Prevention During the Covid-19 Pandemic in 2021" <https://komnasperempuan.go.id/catatan-tahunan-detail/catahu-2021-perempuan-dalam-himpitan-pandemi-lonjakan-kekerasan-seksual-kekerasan-siber-perkawinan-anak-dan-keterbatasan-penanganan-di-tengah-covid-19>

	<p>man for their daughter to marry.¹⁰³</p> <p>According to the 2012 Indonesian CEDAW report, the rate of forced marriage remains high in seven provinces. In the concluding observations, the CEDAW committee commented on forced marriage requesting that the government abolish forced marriage, including prohibiting marriage dispensation, to prevent patriarchal marriage traditions including <i>ijbar</i> and <i>muhrim</i>, and to encourage a systemic understanding through training for judges in providing the guarantee of protection to victims of forced marriage/child marriage. The committee also encouraged the government to conduct effective assessments of perpetrators of forced marriage, including providing support for victims to access shelters and services¹⁰⁴.</p> <p>The Law on the Elimination of Sexual Violence (UU TPKS) identifies forced</p>			<p>(Article 50 of the KHI). The procedure for marriage contracts in the KHI is that during or before the marriage ceremony is held, the prospective bride and groom can produce a written agreement ratified by a marriage registrar on the position of property within the marriage. The agreement may include the mixing of personal assets or the separation of their respective salary-based</p>	
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¹⁰³ Komnas Perempuan, Laporan Kekerasan Terhadap Perempuan Berbasis Budaya [Report on Culture-based Violence Against Women], Jakarta: 2013

¹⁰⁴ https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/IDN/CO/8&Lang=En

	marriage as a form of criminal sexual violence.			assets as long as it does not conflict with Islamic values. The contents of the agreement may stipulate respective authority to enter into a mortgage bond on personal and joint property, or company property [Article 47 of the Marriage Law]	
<p>Women's capacity to enter into marriage</p> <p><i>Is consent of a marital guardian (wali) required? If so, can a woman choose her own wali? Can a woman go before a court or other competent authority to seek</i></p>	Regardless of her age, a prospective Muslim bride who is getting married for the first time requires the consent of a marital guardian (<i>wali</i>) to enter into marriage. The marital guardian must be a male relative of the prospective bride (e.g. father,	The Supreme Court stipulates jurisprudence in the Court's decision (1985) regarding the condition for a marriage proposed by a woman of 24 years old and who has	The Regulation of the Minister of Religion (2005) on Marriage Guardianship explains that the mechanism for requesting a guardian (<i>wali</i>	The ante-nuptial contract must be written and authorised or legalised by the marriage registrar (<i>Pegawai</i>	According to research conducted by a religious court judge on cases and determination of absent guardians (<i>wali adhol</i>) in religious courts, there are several reasons for submissions to be made in <i>wali adhol</i> cases. ¹²⁹

¹²⁹ Supreme Court of Indonesia, "Wali's Qualification" <https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/kualifikasi-adhol-nya-wali-dalam-penetapan-wali-adhol-di-pengadilan-agamamahkamah-syarayah-oleh-m-natsir-asnawi-shi-313>

<p><i>permission to marry if her wali refuses to consent to her marriage? Can a woman negotiate her martial rights prior to marriage and can these rights be changed during marriage? If so, who can change these rights and under what circumstances e.g. mutual consent?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(a), 16(1)(b) Paras. 15-16 GR21 Para. 34 GR29</p>	<p>paternal grandfather, brother, uncle, etc.).¹¹⁸</p> <p>A judge can act as guardian in the absence of a wali or if the wali opposes the marriage.¹¹⁹</p> <p>Regardless of religion, prospective brides and grooms below 21 require the consent of both their parents to marry under Article 6(2) of the Marriage Law.¹²⁰ This is reflected in Articles 15 and 107 of the Compilation.¹²¹</p> <p>Pursuant to Article 29 of the Marriage Law, at the time of or prior to the marriage performance, both parties may by mutual consent conclude an ante-nuptial contract. The conditions in</p>	<p>already been married (widowed) not requiring the consent of her parents or a guardian¹²⁵. Four wali adhol cases were settled at the cassation level in 2020, while 1,189 cases were filed in first level courts regarding wali adhol¹²⁶, indicating and increase from previous years with only 1,060 cases in 2018.</p>	<p>hakim) is intended for women who do not have a male relative (wali nasab) able or willing to assist in her marriage. The submission of such requests is known to be a short process, in which the case is examined swiftly and settled immediately.</p>	<p><i>Pencatat Nikah</i>). In practice, the marriage contract usually relates to marital property rights.¹²⁷</p> <p>Requests for the determination of wali adhol are submitted by the prospective bride to the Religious Court in cases in which her legal guardian is not willing to act as a</p>	<p>The prospective husband of the prospective wife is a convert. The prospective husband has been involved in the criminal act of drug abuse The prospective husband is not a civil servant The guardian is not pleased with the choice of the prospective husband The distance between the places of residence of the prospective spouses The guardian does not wish to have a son-in-law who lives in the same area</p>
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¹¹⁸ Articles 20-22, 107 of the Compilation of Islamic Laws in Indonesia (1991), <http://www.hukumonline.com/pusatdata/detail/13200/node/732/inpres-no-1-tahun-1991-penyebaran-kompilasi-hukum-islam>

¹¹⁹ Article 23 of the Compilation of Islamic Laws in Indonesia (1991), <http://www.hukumonline.com/pusatdata/detail/13200/node/732/inpres-no-1-tahun-1991-penyebaran-kompilasi-hukum-islam>

¹²⁰ Article 6(2) of the Marriage Law (1974), <https://www.scribd.com/doc/53066173/Undang-undang-Republik-Indonesia-No-1-Tahun-1974-Tentang-an>

¹²¹ Article 15 of the Compilation of Islamic Laws in Indonesia (1991), <http://www.hukumonline.com/pusatdata/detail/13200/node/732/inpres-no-1-tahun-1991-penyebaran-kompilasi-hukum-islam>

¹²⁵ <https://badilag.mahkamahagung.go.id/yuriprudensi/peraturan/yuriprudensi>, bisa dilihat juga <https://jdih.go.id/files/1276/Yurisprudensi-Mahkamah-Agung-RI-No-002K-AG-1985-Tahun-1985.pdf>

¹²⁶ M. Natsir Asnawi, *Kualifikasi Adhol-Nya Wali Dalam Penetapan Wali Adhol Di Pengadilan Agama/Mahkamah Syar'iyah: Telaah atas Beberapa Penetapan Wali Adhol*, <https://badilag.mahkamahagung.go.id/perkara-diterima-dan-diputus-pada-tingkat-pertama/data-perkara/perkara-diterima-dan-diputus-pada-tingkat-pertama>

¹²⁷ Information obtained from Indonesian advocate, February 2017

	<p>the contract must not be contrary to the law, religion or morality. Throughout the continuance of the marriage, the contract cannot be changed except by mutual agreement between the parties.¹²²</p> <p>In a similar vein, the Compilation provides that both prospective bride and groom may enter into a marriage agreement in the form of:¹²³</p> <p>Vows expressed by a husband after the solemnisation of the marriage, the breach of which may entitled the wife to a divorce (<i>taklik talak</i>). The vows cannot be contrary to Islamic law. While the expression of vows is not compulsory, once they are made, they cannot be retracted ; Other agreements which are not contrary to Islamic law. This includes an agreement regarding property in the</p>			<p>guardian in the marriage. As a result of the legal guardian of the prospective bride being unwell to act as guardian, the registration of the marriage may be rejected by the Religious Affairs Office/Marriage Registry Office. These conditions have a psychological and social impact on women. As a solution to the problem, the prospective bride can apply to the local religious court for the</p>	
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¹²² Article 29 of the Marriage Law (1974), <https://www.scribd.com/doc/53066173/Undang-undang-Republik-Indonesia-No-1-Tahun-1974-Tentang-an>

¹²³ Articles 45-52 of the Compilation of Islamic Laws in Indonesia (1991), <http://www.hukumonline.com/pusatdata/detail/13200/node/732/inpres-no-1-tahun-1991-penyebaran-kompilasi-hukum-islam>

	<p>marriage. In the Marriage Law, the regulation on guardians (<i>wali</i>) only applies to children who have not yet reached 18 years of age or has never been married. Guardianship over children and their assets only applies if neither of their parents are present, as a condition of marriage. The guardian may prevent the marriage of one of the prospective spouses if the marriage could cause the other party to suffer in the case of the individuals under 21 years of age. [Article 14] The Marriage Law also stipulates that a guardian may be appointed by the parents through a will (<i>surat wasiat</i>) or verbally in front of two witnesses, and that the guardian is obliged to represent the child and their assets, including respecting the child's religion and beliefs, and so on, and is responsible for any errors/negligence of guardianship (Article 51). In addition, their power can be revoked by the court if the guardian demonstrates neglect or misdemeanour.</p>		<p>determination of a <i>wali adhol</i>. If her guardian is reluctant or refuses to act as guardian, a woman who intends to marry can register with the KUA. The application for a <i>wali adhol</i> is then submitted to the religious court where she resides to determine a marriage guardian (<i>wali nikah</i>). If there is no dispute, then the application for examination is simple, without any replication and conclusion stages. Once the application has been examined, the court will issue a determination or decision</p>	
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	<p>Meanwhile, the KHI differentiates between a marriage guardian (<i>wali nikah</i>) and guardianship. There are two marriage guardians: a legal guardian by descent (<i>wali nasab</i>) and a court-appointed guardian (<i>wali hakim</i>). The <i>wali nasab</i> is the most closely related male relative of the prospective bride, for example her father, grandfather, and so on (Article 21 of the KHI). The position of the <i>wali nikah</i> can be shifted from the most entitled individual to another if they do not meet the requirements of a <i>wali nikah</i>, for example due to speech impairment, hearing impairment, or <i>udzur</i> (age-related illness) (Article 22 of the KHI). Having <i>wali nikah</i> is one of the pillars of marriage (Article 14 of the KHI), and must be fulfilled by a woman's prospective husband who intends to marry her (Article 19 of the KHI). As <i>ijab kabul</i></p>			<p>(<i>beschikking, d ecree</i>).¹²⁸ However, if the case to apply for a guardian involves a dispute between the woman and her legal guardian (father/other), the case is a lawsuit (<i>contentiosa</i>), which can only be settled by a decision or verdict. The assessment of the lawsuit in court is conducted in a contradictory (<i>contradictoir</i>) manner, in that the Defendant/Respondent is given the right and opportunity to</p>	
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¹²⁸ Dr. H. Nur Mujib, Mh, Sengketa Wali Nikah Antara Seorang Gadis Dengan Ayah Kandungnya [Marriage Dispute between a Woman and her Biological Father], <https://www.pa-jakartatimur.go.id/artikel/362-sengketa-wali-nikah-antara-seorang-gadis-dengan-ayah-kandungnya>

	<p>(consent) is given by the <i>wali nikah</i> and groom (Article 27 of the KHI), the <i>wali nikah</i> must be an adult Muslim man, who is mature (<i>akil baligh</i>)¹²⁴.</p> <p>In the KHI, the <i>wali</i>'s position is considered one of the pillars of marriage [Article 14 of the KHI], and the <i>wali</i> provides consent (<i>ijab kabul</i>) alongside the groom, meaning that women are not able to represent themselves in an equal capacity to men in the marriage ceremony (<i>akad nikah</i>). Article 27 of the KHI states that <i>ijab kabul</i> is provided by the <i>wali</i> and the groom, and is reinforced by Article 29 of the KHI which stipulates that the person with the right to proclaim <i>ijab kabul</i> is the prospective groom. In several traditions, the ceremony is considered valid without the presence of the woman at the place where the ceremony is held, as those required to be</p>			<p>refute the Plaintiff/Applicant's claims, and vice versa, the Plaintiff/Applicant also has the right to contest the Defendant/Respondent's objections. The case examination proceeds with a rebuttal process, the form of both replications and conclusions. Exceptions to <i>contradictoir</i> examinations can be made through <i>verstek</i> or without rebuttal, if the party</p>	
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¹²⁴ Women cannot provide consent (*ijab kabul*) on their own behalf, as a condition of marriage based on the KHI. If a woman does not have a relative who is able to act as her legal guardian (*wali nasab*), as they do not exist or are not able to be present as they are not aware, unwilling, or refuse to act as *wali nasab*, then the woman can choose to replace the *wali nasab* with a court-appointed guardian (*wali hakim*) through a court decision (Article 23 of the KHI). Marriages may be annulled if conducted without a legal guardian, or if the role is carried out by someone without the legal right to act as guardian (Article 71 of the KHI). If a woman does not have a guardian, the *wali hakim*, or appointed guardian, is given the right and authority to act as marriage guardian (*wali nikah*) (Article 1).

	present at the marriage ceremony consist only of the bride's guardian, the groom or his guardian, and two witnesses.			concerned does not attend the trial providing without a valid reason, despite having been legally and properly summoned by the bailiff. Once the dispute between the 2 (two) or more parties has been resolved from the beginning until completion, the court will issue a decision/verdict on the lawsuit.	
Polygamous marriages <i>Does the law prohibit polygamy or impose strict conditions on such practice?</i>	A Muslim man may marry up to four wives at one time. ¹³⁰ While Article 3(1) of Marriage Law states that in principle, a	In the Constitutional Court Case No. 12/PUU-V/2007, a challenge was posed on the constitutionality	The Minister of Defence issued a letter (2015) on Marriage and Divorce	Once an application of to enter into a polygamous marriage is	In practice, polygamy is fairly exceptional in Indonesia. ¹⁴⁵ According to Indonesia's 2012 Demographic and Health

¹³⁰ Article 55 of the Compilation of Islamic Laws in Indonesia (1991), <http://www.hukumonline.com/pusatdata/detail/13200/node/732/inpres-no-1-tahun-1991-penyebarluasan-kompilasi-hukum-islam>

¹⁴⁵ Jan Michiel Otto, "Sharia and National Law in Indonesia", in *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*, ed. Jan Michiel Otto (Leiden, The Netherlands: Leiden University Press, 2010), p. 468, <https://openaccess.leidenuniv.nl/bitstream/handle/1887/21170/file221087.pdf?sequence=1>

<p><i>Is the permission of the court required for a polygamous marriage? Is the permission of an existing wife required for a polygamous marriage? Is it necessary to inform an existing wife of the polygamous marriage? Are temporary marriages such as traveler's marriages (misyar) recognised? Is it necessary to register a polygamous marriage? Can a woman stipulate in the marriage contract that her intended husband cannot enter into a polygamous marriage?</i></p> <p><u>Applicable CEDAW Provision</u> Para. 14 GR21 Para. 34 GR29</p>	<p>man may be married to one woman and a woman shall be married to only one man, Article 3(2) provides that the court may permit a husband to have more than one wife.¹³¹</p> <p>Article 4 of the Marriage Law provides that:¹³² A husband intending to have more than one wife is required to submit a petition to the court; The court shall only grant permission for a husband to enter a polygamous marriage if: (i) his wife is unable to perform her conjugal duties; (ii) his wife suffers from a physical infirmity or an incurable disease; or (iii) his wife cannot bear children. Article 5 of the Marriage Law provides that a court can</p>	<p>of the restrictions placed by the Marriage Law on the practice of polygamy. The Constitutional Court, in upholding the constitutionality of the Marriage Law, stated that the principle of marriage in Indonesia was monogamy, and limitations, as such, on polygamy were constitutional. In arriving at its decision, the Constitution Court: (i) pointed to the Marriage Law stating that marriage in principle was monogamous, and polygamy was only allowed for specific reasons and in</p>	<p>Approval/Permits for Ministry of Defence Employees with 5 conditions (referring to Government Regulations), being that, firstly, the marriage does not conflict with the teachings of the individual's religion; Secondly, that it fulfils one of the alternative conditions: that the wife is unable to fulfil her obligations, the wife has an incurable disease, or the wife cannot give birth to children; Thirdly,</p>	<p>filed, the court summons the petitioning husband and wives. If it finds that the law's conditions for polygamy are fulfilled, it issues a decision permitting the polygamous marriage. Without such decision, the marriage registrar at the Office of Religious Affairs (<i>Kantor Urusan Agama</i> or 'KUA') is forbidden to</p>	<p>Survey, 0.7% of marriages in Indonesia are polygamous.¹⁴⁶</p> <p>According to media reports, polygamy is on the rise among conservative Muslim groups. There are websites that openly advertise Indonesian women who accept polygamy and are looking for marriage.¹⁴⁷ In practice, polygamy is fairly exceptional in Indonesia.¹⁴⁸ According to Indonesia's 2012 Demographic and Health Survey, 0.7% of marriages in Indonesia are polygamous.¹⁴⁹ According to media reports, polygamy is on the rise among conservative Muslim groups. There are websites that openly advertise</p>
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¹³¹ Article 3 of the Marriage Law (1974), <https://www.scribd.com/doc/53066173/Undang-undang-Republik-Indonesia-No-1-Tahun-1974-Tentang-an>

¹³² Article 4 of the Marriage Law (1974), <https://www.scribd.com/doc/53066173/Undang-undang-Republik-Indonesia-No-1-Tahun-1974-Tentang-an>

¹⁴⁶ Statistics Indonesia et al., "Indonesia Demographic and Health Survey 2012", Table 4.2.1, p. 43, <http://dhsprogram.com/pubs/pdf/FR275/FR275.pdf>

¹⁴⁷ Arya Dipa, "Polygamists to file judicial review on marriage law", *The Jakarta Post*, 3 January 2016, <http://www.thejakartapost.com/news/2016/01/03/polygamists-file-judicial-review-marriage-law.html>; Laura Gumbs, "As Conservative Islam Rises in Indonesia, Polygamy Flourishes" *The Irrawaddy*, 1 July 2013, <http://www.irrawaddy.com/news/asia/as-conservative-islam-rises-in-indonesia-polygamy-flourishes.html>; Muslim Matrimonials, "Indonesian women who accepts polygamy, looking for friendship", <http://www.muslima.com/en/women/friendship/indonesia/polygamy/that-accept-polygamy>

¹⁴⁸ Jan Michiel Otto, "Sharia and National Law in Indonesia", in *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*, ed. Jan Michiel Otto (Leiden, The Netherlands: Leiden University Press, 2010), p. 468, <https://openaccess.leidenuniv.nl/bitstream/handle/1887/21170/file221087.pdf?sequence=1>

¹⁴⁹ Statistics Indonesia et al., "Indonesia Demographic and Health Survey 2012", Table 4.2.1, p. 43, <http://dhsprogram.com/pubs/pdf/FR275/FR275.pdf>

	<p>only entertain a petition for a polygamous marriage if: (i) there is consent of his wife or wives; there is assurance that the husband can provide for the sustenance of his wives and their children; and (iii) there is warranty that the husband will treat his wives and their children justly.¹³³</p> <p>Articles 55-59 of the Compilation reflect the provisions of the Marriage Law. Article 71 provides that a polygamous marriage may be annulled if concluded without the authorisation of the Religious Court.¹³⁴</p> <p>Under Government Regulation No. 10/1983 on permission relating to marriage and divorce for civil</p>	<p>accordance with requirements and procedures that did not contradict Islamic teachings; and (ii) noted that provisions on the limitation of polygamy did not contradict the right to form a family, religious freedom and the right to practice religious teachings, as well as to be free from discriminatory treatment as provided for by the Constitution.¹³⁷</p> <p>Over three years, from 2018 to 2020, the record of polygamy applications in religious court case</p>	<p>that the wife is in agreement, that the individual has sufficient funds, and that they provide written evidence guaranteeing to treat their children and wives fairly; Fourth, they must be able to provide a reason for having more than one wife; and fifth, they must obtain permission from the relevant officials in their scope of work.</p> <p>In 2019, the Aceh Government (government and</p>	<p>register the marriage. If a man marries a second wife without a judicial decision, he faces a fine. Likewise, the registrar who registers a polygamous marriage without prior court permission faces sanction, even imprisonment.¹⁴⁴</p> <p>The marriage procedure for men who intend to marry</p>	<p>Indonesian women who accept polygamy and are looking for marriage.¹⁵⁰</p> <p>According to media data, in 2018 the chairman of the PSI party prohibited its members from practicing polygamy. According to him, PSI believes that fighting for justice and eliminating discrimination must start from the family and home. Therefore, to achieve this, his party opposes the practice of polygamy.¹⁵¹</p> <p>In September 2021 the Partai Keadilan Sejahtera (Prosperous Justice Party) announced a program to allow male members or cadres to practice polygamy</p>
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¹³³ Article 5 of the Marriage Law (1974), <https://www.scribd.com/doc/53066173/Undang-undang-Republik-Indonesia-No-1-Tahun-1974-Tentang-an>

¹³⁴ Articles 55-59, 71 of the Compilation of Islamic Laws in Indonesia (1991), <http://www.hukumonline.com/pusatdata/detail/13200/node/732/inpres-no-1-tahun-1991-penyebarluasan-kompilasi-hukum-islam>

¹³⁷ Indonesia State party report, U.N. Doc. CEDAW/C/IDN/6-7 (2011), para. 200, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

¹⁴⁴ Jan Michiel Otto, "Sharia and National Law in Indonesia", in *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*, ed. Jan Michiel Otto (Leiden, The Netherlands: Leiden University Press, 2010), p. 468, <https://openaccess.leidenuniv.nl/bitstream/handle/1887/21170/file221087.pdf?sequence=1>

¹⁵⁰ Arya Dipa, "Polygamists to file judicial review on marriage law", *The Jakarta Post*, 3 January 2016, <http://www.thejakartapost.com/news/2016/01/03/polygamists-file-judicial-review-marriage-law.html>; Laura Gumbs, "As Conservative Islam Rises in Indonesia, Polygamy Flourishes" *The Irrawaddy*, 1 July 2013, <http://www.irrawaddy.com/news/asia/as-conservative-islam-rises-in-indonesia-polygamy-flourishes.html>; Muslim Matrimonials, "Indonesian women who accepts polygamy, looking for friendship", <http://www.muslima.com/en/women/friendship/indonesia/polygamy/that-accept-polygamy>

¹⁵¹ <https://www.cnnindonesia.com/nasional/20181212011946-32-352918/psi-tolak-praktik-poliqami>.

	<p>servants as amended by Government Regulation 45/1990.¹³⁵</p> <p>Male civil servants must obtain the permission from his office to enter into a polygamous marriage. The application must be in writing stating his reasons for his polygamous marriage; Female civil servants are not allowed to be second, third or fourth wives.</p> <p>The Penal Code (KUHP) recognizes the regulation of marital crimes, including conducting a marriage despite being aware of the marriage or existing marriages representing a legal barrier, including hiding an existing marriage that represents a legal barrier from other parties, which is punishable by 7 years imprisonment [Article 279 of the KUHP]</p>	<p>reports was high (In 2020, 1,033 cases were submitted to the Religious Court and 834 were granted, decreasing from the previous year with 1,132 cases and 988 granted). In 2018, 1,034 cases were submitted.¹³⁸ In the directory of Supreme Court decisions, there are 7 decisions related to marriage crimes due to polygamy being committed by military soldiers for violations, for example, entering an unregistered marriage without the permission of their superior officer, entering an unregistered marriage prior to becoming a soldier, entering an unregistered marriage</p>	<p>People's Representative Council) discussed the draft <i>Qanun</i> (law) on Family Law, which specifically regulates the legislation of polygamy. However, to date the national government has not approved the law meaning that it is not yet enforceable. In response to the Draft <i>Qanun</i>, the <i>Balai Syura Ureung Inong (Balai Syura)</i> of Aceh deemed the specific regulation legalizing polygamy to be inappropriate, considering that many Acehnese</p>	<p>more than one wife is regulated in the KHI, stating for example that:</p> <ol style="list-style-type: none"> 1. A husband who wishes to have more than one wife must obtain permission from the Religious Court [Article 56]. 2. The application for a permit is subject to Government Regulation No. 9/1975. 3. Marriage with a second, third, or fourth wife without 	<p>as a means of helping widows, orphans, and the poor as a result of the COVID-19 pandemic. In its release, Komnas Perempuan responded that the program's decision showed that the parties who formulated the program did not have a gender justice perspective.¹⁵² The program was later withdrawn due to strong protests from the community, accompanied by an apology from the party leadership for causing a national uproar and hurting many parties.¹⁵³</p> <p>According to the 2019 Pekka (Female Head of Households) report, of its 68,850 members, 65% were married. They had become female heads of households for various reasons, one of which being that their</p>
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¹³⁵ Article 4 of the Government Regulation No. 10/183; <http://www.peraturan.go.id/inc/view/11e44c4e7f9ecac09a78313231343336.html> as amended by Article 2 of Government Regulation 45/1990, <http://www.peraturan.go.id/inc/view/11e44c4f18a9e750a9f0313231383532.html>

¹³⁸ <https://badilag.mahkamahagung.go.id/perkara-diterima-dan-diputus-pada-tingkat-pertama/data-perkara/perkara-diterima-dan-diputus-pada-tingkat-pertama>

¹⁵² <https://komnasperempuan.go.id/siaran-pers-detail/siaran-pers-komnas-perempuan-tentang-meneguhkan-solidaritas-dan-hak-bebas-dari-diskriminasi-jakarta-2-oktober-2021>

¹⁵³ <https://nasional.kompas.com/read/2021/09/30/19265781/pks-cabut-anjuran-soal-kader-berpoligami>

	<p>The Cianjur District Government issues a Regional Regulation (2021) on the prevention of marriage contracts commonly entered into in Cianjur in the form of unregistered marriages that are subject to a particular time frame.¹³⁶</p>	<p>more than once, marrying without adhering to the proper procedures, entering an unregistered second marriage, and marrying with a <i>wali hakim</i>.¹³⁹ Additional issues related to unregistered marriages include the existence of <i>itsbat nikah</i> (marriage certificates for unregistered marriages). Although the reason for applying for an <i>itsbat nikah</i> may not be related to polygamy, the possibility of a polygamous background is one of possibilities outlined in Article 7 of the KHI, as</p>	<p>continue to live under the poverty line, the many social issues that prevail within the community, and that many other issues require more urgent attention and prioritization. According to data from Statistics Indonesia, Aceh has the highest poverty rate in Sumatera, and the sixth highest in Indonesia, at 15.97%. This issue is considered more important to address than the issue of legalizing polygamy.¹⁴¹</p>	<p>permission from the Religious Courts has no legal force [Article 157]. To obtain permission from the Religious Courts, the following conditions must also be met: a. the wife's consent; and b. a guarantee that the husband is able to fulfil the everyday needs of his</p>	<p>husband had committed polygamy, leaving them to make a living and to be largely responsible for their families.¹⁵⁴ Of the 71 cases of undocumented marriages, 42 involved the practice of polygamy or husbands having more than one wife. Several of the cases involved public officials. Women who enter into unregistered marriages are vulnerable to violence, including physical violence, for example being beaten or kicked, even while pregnant, receiving death threats, threats of being divorced, abandoned, kicked out of the house, or being accused of committing marital crimes in the husbands marriage with their first wife.¹⁵⁵</p>
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¹³⁶ <https://peraturan.bpk.go.id/Home/Details/184693/perbup-kab-cianjur-no-38-tahun-2021>

¹³⁹ https://putusan3.mahkamahagung.go.id/rumusan_kamar/index/kategori/kejahatan-perkawinan.html

¹⁴¹ <http://balaisyura.com/2020/02/22/balai-syura-meminta-pemerintah-aceh-meninjau-ulang-pengaturan-poligami-dalam-ganun-hukum-keluarga/>

¹⁵⁴ <https://pekka.or.id/wp-content/uploads/2020/04/Laporan%20tahun%202019%20BI.pdf> , Yayasan Pemberdayaan Pekka 2019 Annual Report, Pg. 55

¹⁵⁵ Victims are also often subjected to sexual violence, for example forced abortion, being forced to engage in sexual activities because they are considered to be spouses who have not yet divorced or under the threat of withdrawing financial support for their children. The difficulty for women who are married in a religious/customary way is that they are not recognized by the state as legal wives and children in the eyes of the law, resulting in any children born only having civil relations with their mother. Although the Constitutional Court made a legal breakthrough, stating that children born out of wedlock have civil relations with their father, the practice is difficult to enforce, as not all men are willing to undergo a DNA test. Also, the wife does not receive legal protection if she becomes a victim of domestic violence, and it is difficult

		<p>well as marriage in the context of finalizing divorce, loss of marriage certificate; Obstacles regarding the validity of one of the conditions of marriage; Marriages conducted before the enactment of the Marriage Law; and marriages conducted by those with no impediments to marry according to the Marriage Law. The number of <i>itsbat nikah</i> applications in the religious court reports is relatively high, representing one of the top ten types of cases filed, with a total of 50,650 cases in 2020.¹⁴⁰</p>	<p>In October 2021, the Ministry of Home Affairs (Directorate General of Population and Civil Registration) issued a statement on their official YouTube channel stating that a husband and wife married in an unregistered marriage are able to obtain a family card.¹⁴² According to the Director General of Population and Civil Registration, the policy is based on the law that requires residents to be registered on a family card, and</p>	<p>wives and children. The wife or wives' consent can be given in writing or orally. However, even if there is written consent, it is confirmed through the wife's verbal consent at the religious court session. The consent is not required for a husband if his wife or wives cannot be sought for consent and are unable to</p>	
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to claim the right to physical and psychological support, post-divorce support, and inheritance rights for children if the husband dies, because the marriage was not registered.

¹⁴⁰ Meanwhile, according to the 2020 Religious Court reports, applications for polygamy permits is one of the highest number of cases, with 1,029 applications for polygamy permits. # According to Komnas Perempuan's annual report, polygamy is a form of domestic violence which contributes to incidences of divorce as, based on religious court data from 2020, polygamy is one reason for the filing of requests for divorce received. Directorate General of the Religious Supreme Court, *2020 Annual Report*, Pg. 8-10 <https://badilag.mahkamahagung.go.id/laptah/laptah/laptah>, <https://drive.google.com/file/d/16wLbVpPWnviFdX57vs1kc2CmeMwa5Nr/vie>

¹⁴² Ditjen Dukcapil KDN – Contrarius Actus dan SPTJM <https://www.youtube.com/watch?v=ltPhvvGp6Vc>

			<p>based on the provision of the Marriage Law that marriages are legalized based on religion, indicating that unregistered marriages are legal. However, that a note will be recorded on the family card that "this marriage is unregistered". Unregistered marriage partners must attach a statement of absolute responsibility for the validity of their marriage, which must be sighted by two witnesses. According to media reports, Komnas Perempuan stated that the policy would justify unregistered marriages, negatively impacting women</p>	<p>be a party to the agreement, or if there has been no news from his wife or wives for at least two years, or for other reasons that require a Judge's assessment [Article 58] In the event that the wife does not wish to give her consent and the application for permission to marry more than one person is based on one of the reasons stipulated in Articles 55 paragraph (2) and 57, the Religious Court may</p>	
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			and children. ¹⁴³	determine whether or not to grant permission after examining and hearing the wife in question during the religious court session, and the wife or husband can file an appeal or cassation against the decision.	
Divorce rights <i>Is there equal right to divorce</i>	Indonesian law provides Muslims with three main mechanisms for divorce: (i)	In 2011 the submission of Article 39 paragraph (2) letter	The Supreme Court issued decision	The Law on Religious Courts	The number of women who are applying for divorce is

¹⁴³ The policy does not take into consideration the Religious Courts' authority to legalize unregistered marriages (*nikah sirih*) using *itsbat nikah*, or the authority of the District Court to determine unregistered marriages for non-Muslims. It is important for the government to note Article 36 of the Law of the Republic of Indonesia No. 24/2013 on Amendments to Law No. 23/2006 on Population Administration, which states that in the event that a marriage cannot be proven by a marriage certificate, the registration of the marriage is conducted after a court decision is made. The policy also received responses from academics who focus on family law, stating that, in practice, unregistered marriages are conducted due to certain conditions that do not allow the marriage to be registered by the state, for example, polygamous marriages conducted without the permission of the first wife, underage marriages that have not received a marriage dispensation from the court, or due to marriage impediments. The policy should be coordinated with the religious courts and the Ministry of Women's Empowerment and Child Protection, as the religious courts provide a solution to married couples whose marriages have not been registered by issuing **itsbat nikah** to legalize the marriage, in order to then receive a marriage certificate. With *itsbat nikah*, the court can select which marriages meet the requirements of marriage or not, and have been conducted without any prohibition of marriage. This is important considering that prosepice spouses who are under a marriage ban are forbidden from marrying. The policy has the potential to increase the number of unregistered marriages, which then has the potential to harm more women and children. <https://www.kompas.com/tren/read/2021/10/08/180000065/pasangan-nikah-siri-bisa-punya-kartu-keluarga-ini-kata-komnas-perempuan?page=all>

<p><i>between women and men? Can the husband divorce without reason and without having to go to court? What are the main forms of divorce? Can all forms of divorce be sought only through the courts? Are the grounds for divorce the same for the husband and wife? Is unilateral divorce by repudiation (talāq) prohibited? If unilateral divorce is not prohibited, what is the procedure i.e. is the presence of the spouse to be divorced required, are witnesses required, does the spouse seeking divorce need</i></p>	<p>repudiation (<i>cerai talak</i>); (ii) judgement of the court (<i>cerai gugat</i>); and (ii) redemptive divorce (<i>khul'</i>).¹⁵⁶</p> <p>Articles 39(1) of the Marriage Law provide that all instances of divorce must go through the courts and may only be granted after the court has been unsuccessful in its endeavour to reconcile the parties. This requirement is reflected in Article 115 of the Compilation and Article 65 of the Religious Court Law.¹⁵⁷</p> <p>Article 39(2) of the Marriage</p>	<p>f of the Marriage Law to the Constitutional Court filed for the cancellation of the phrase "husband and wife disputes and quarrels" as a reason for divorce which was not in favor of women, as it did not take into consideration women's vulnerability in quarrels. The claim was rejected by the Court through decision 38/PUU-IX/2011 based on the legal consideration that men and women</p>	<p>KMA/032/SK/IV/2006 on the examination of witnesses to divorce and the limitation of substitute heirs. Witnesses represent a form of evidence. In Islamic law, witnesses are not required to conduct divorce, and the husband is able to divorce his wife without the presence of any witnesses.</p>	<p>regulates the divorce procedure initiated by wives [Article 73] To protect the wife, the divorce suit is filed with the court whose jurisdiction is where the plaintiff (wife) resides. The plaintiff files a written or oral complaint with the Religious</p>	<p>rising significantly.¹⁷⁰ For instance: Data from Banjarmasin Religious court shows that in 2015, women filed 1,186 divorce cases (<i>cerai gugat</i>) and men filed 334 divorce cases (<i>cerai talak</i>). In 2016, women filed 1,522 divorce cases compared to 423 filed by men;¹⁷¹ In Jambi Religious court, women filed 1,350 divorce cases in 2016 as compared to 865 divorce cases filed by men.¹⁷² According to official and media reports as well as information on the</p>
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¹⁵⁶ Articles 39-40 of the Marriage Law (1974), <https://www.scribd.com/doc/53066173/Undang-undang-Republik-Indonesia-No-1-Tahun-1974-Tentang-an>; Articles 113-128 of the Compilation of Islamic Laws in Indonesia (1991), <http://www.hukumonline.com/pusatdata/detail/13200/node/732/inpres-no-1-tahun-1991-penyebaruasan-kompilasi-hukum-islam>; Article 66-88 of the Religious Court Law (1989), <http://peraturan.go.id/inc/view/11e44c4e667c43309f4a313231333533.html>; Jan Michiel Otto, "Sharia and National Law in Indonesia", in *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*, ed. Jan Michiel Otto (Leiden, The Netherlands: Leiden University Press, 2010), pp. 465-467, <https://openaccess.leidenuniv.nl/bitstream/handle/1887/21170/file221087.pdf?sequence=1>

¹⁵⁷ Article 39(1) of the Marriage Law (1974), <https://www.scribd.com/doc/53066173/Undang-undang-Republik-Indonesia-No-1-Tahun-1974-Tentang-an>; Article 115 of the Compilation of Islamic Laws in Indonesia (1991), <http://www.hukumonline.com/pusatdata/detail/13200/node/732/inpres-no-1-tahun-1991-penyebaruasan-kompilasi-hukum-islam>; Article 65 of the Religious Courts Law (1989), <http://peraturan.go.id/inc/view/11e44c4e667c43309f4a313231333533.html>

¹⁷⁰ Jakarta Post/Asia News Network, "More Indonesian women choose divorce", *The Star*, 25 August 2016, <http://www.thestar.com.my/news/regional/2016/08/25/more-indonesian-women-choose-divorce/>; Dina Afrianty, "Why divorce doesn't work for Indonesian women", *The University of Melbourne*, 16 August 2016, <http://indonesiaatmelbourne.unimelb.edu.au/why-divorce-doesnt-work-for-women/>

¹⁷¹ Ridwan Anwar, "Ketua PA Banjarmasin Berikan Materi di Workshop Penyebab Tingginya Angka Perceraian", *Seputar Peradilan Agama*, 16 February 2017, <http://badilag.mahkamahagung.go.id/seputar-peradilan-agama/berita-daerah/ketua-pa-banjarmasin-berikan-materi-di-workshop-penyebab-tingginya-angka-perceraian-16-2>

¹⁷² Ridwan Anwar, "Perkara Cerai di PA Jambi meningkat", *Seputar Peradilan Agama*, 16 February 2017, <http://badilag.mahkamahagung.go.id/seputar-peradilan-agama/berita-daerah/perkara-cerai-di-pa-jambi-meningkat-16-2>

<p><i>to go to court, is the divorced spouse informed of the divorce? Is the unilateral right to divorce delegated to the wife? If so, is it by law or through the marriage contract? Is it mandatory to register a divorce?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(1)(c) Paras. 17-18 GR21 Paras. 34, 39-40 GR29</p>	<p>Law provides that all instances of divorce must be founded upon sufficient grounds indicative of the incompatibility of the husband and wife living together in harmony.¹⁵⁸</p> <p>Article 116 of the Compilation lists the following eight grounds for divorce: (i) a spouse commits adultery or is a drunk, gambler, drug addict, or suffers from another addiction that is different to recover from; (ii) a spouse has left the other for two consecutive years without permission and reason; (iii) a spouse is sentenced to imprisonment for five years or more after the conclusion of the marriage; (iv) a spouse</p>	<p>have equal rights in marriage.</p> <p>A Supreme Court decision which became jurisprudence in Case 137K/AG/2007 produced the decision that a wife who sues for divorce from her husband is not always punished with <i>nusyuz</i>. Although the divorce suit is filed by the wife, if the wife is not proven to have <i>nusyuz</i>, the husband may be sentenced to provide <i>iddah</i> support to his ex-wife on the grounds that the ex-wife must undergo an <i>iddah</i> period, the</p>	<p>Therefore, the decision stipulates that divorce witnesses are required to be present.¹⁶⁹</p> <p>The Supreme Court issued Supreme Court Regulation No. 1/2014 on the Provision of Legal Services for the Poor in Courts, which provides legal services, including in cases of filing for divorce with the waiver of court fees for poor women.</p>	<p>Court. Child custody, child maintenance, <i>hadhanah</i>, wife maintenance and joint property lawsuits can be filed together with divorce lawsuits. A down-payment of the court fees is paid to the bank and can be litigated on a pro Deo basis/free of charge for low-income individuals.</p>	<p>ground:¹⁷³</p> <p>Reasons women file for divorce include: (i) inharmonious relationship (including domestic violence); (ii) failure on the part of the husband to provide financial maintenance; (iii) abandonment by the husband of the wife and children; and (iv) increase awareness among women of their rights; Women who have greater financial independence are more likely to apply for divorce than women who do not; Often times, divorce puts women in financial and psychological hardship for various reasons e.g.</p>
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¹⁵⁸ Article 39(2) of the Marriage Law (1974), <https://www.scribd.com/doc/53066173/Undang-undang-Republik-Indonesia-No-1-Tahun-1974-Tentang-an>

¹⁶⁹ "Guidelines on Implementation and Administration of Equality in Religion" 2010
<https://perpustakaan.mahkamahagung.go.id/assets/resource/ebook/Pedoman%20Pelaksana%20Tugas%20dan%20Administrasi%20Peradilan%20Agama.pdf>

¹⁷³ Ridwan Anwar, "Ketua PA Banjarmasin Berikan Materi di Workshop Penyebab Tingginya Angka Perceraian, *Seputar Peradilan Agama*, 16 February 2017, <http://badilag.mahkamahagung.go.id/seputar-peradilan-agama/berita-daerah/ketua-pa-banjarmasin-berikan-materi-di-workshop-penyebab-tingginya-angka-perceraian-16-2>; Komisi Nasional Anti Kekerasan Terhadap Perempuan, "Kekerasan terhadap Perempuan Meluas: Negara Urgen Hadiri Hentikan Kekerasan terhadap Perempuan di Ranah Deomstik, Komunitas and Negara", *Catatan Tahunan Tentan Kekerasan Terhadap Perempuan*, 2016, p. 2, <http://www.komnasperempuan.go.id/wp-content/uploads/2016/03/KOMNAS-PEREMPUAN-CATATAN-TAHUNAN-2016edisi-Launching-7-Maret-2016.pdf>; Jakarta Post/Asia News Network, "More Indonesian women choose divorce", *The Star*, 25 August 2016, <http://www.thestar.com.my/news/regional/2016/08/25/more-indonesian-women-choose-divorce/>; Dina Afrianty, "Why divorce doesn't work for Indonesian women", *The University of Melbourne*, 16 August 2016, <http://indonesiaatmelbourne.unimelb.edu.au/why-divorce-doesnt-work-for-women/>

	<p>has conducted an act of serious violence that endangers the other; (v) a spouse has experienced disabilities or incurable disease; (vi) there is conflict between the spouses that renders it difficult to live in harmony; (vii) violation of a conditional <i>talak (ta'liq talaq)</i> by the husband; and (viii) the conversion of a spouse from Islam to another religion.¹⁵⁹</p> <p>A Muslim man may repudiate the marriage (<i>cerai talak</i>) by submitting a request to the Religious court where the wife resides to hold a court proceeding to witness his pronouncement. The man's application must contain: (i) the names, age and place of residence of both the husband and wife; and (ii) reasons for his request. The Religious court must</p>	<p>purpose of which is <i>istibra</i>, which is also in the husband's interests.¹⁶⁵</p> <p>In 2020, Komnas Perempuan recorded the 5 highest causes of divorce based on data from the Religious Judiciary Agency (<i>badilag</i>), including, with the highest number of cases, constant disputes and quarrels (176,683), financial reasons (71,194), one party leaving (34,671), domestic violence (3,271), and drunkenness (1,218).¹⁶⁶ The 5 highest causes of divorce did not change from 2019.¹⁶⁷ Meanwhile, in 2021, religious court data</p>		<p>The Plaintiff and Defendant are summoned to attend the trial, at least 3 working days before the trial is held. During the trial, a peaceful resolution is sought and the trial proceeds with mediation once the plaintiff and defendant are present. If a peaceful resolution is found, the case is closed. Once a decision is made and enters into</p>	<p>difficulty finding a job because they have been out of the workforce for years, they find themselves solely responsible for their own and their children's needs due the lack of financial support from their former husbands, having to juggle between work and motherhood and social stigma of being divorced. However, women, especially those who have suffered under abusive husbands would rather face these hardships than face abuse.</p> <p>Data from Religious Court Agency (Badilag) annual reports show that between 2018 and 2020, a higher number of divorce lawsuits were filed by women than men. In 2020, 377,776 lawsuits were filed for</p>
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¹⁵⁹ Article 116 of the Compilation of Islamic Laws in Indonesia (1991), <http://www.hukumonline.com/pusatdata/detail/13200/node/732/inpres-no-1-tahun-1991-penyebaran-kompilasi-hukum-islam>. See also Article 19 of Government Regulation 9/1975, <http://www.peraturan.go.id/inc/view/11e44c4e75160160b153313231343138.html>

¹⁶⁵ Supreme Court of Indonesia, Case 137K/AG/2007 <https://badilag.mahkamahagung.go.id/yuriprudensi/peraturan/yuriprudensi>

¹⁶⁶ <https://komnasperempuan.go.id/catatan-tahunan-detail/catahu-2021-perempuan-dalam-himpitan-pandemi-lonjakan-kekerasan-seksual-kekerasan-siber-perkawinan-anak-dan-keterbatasan-penanganan-di-tengah-covid-19>

¹⁶⁷ National Commission on Violence Against Women KOMNAS, "Increase Of Cyber Sexual Harassment on Child Marriage and Prevention During the Covid-19 Pandemic in 2021" <https://komnasperempuan.go.id/catatan-tahunan-detail/catahu-2021-perempuan-dalam-himpitan-pandemi-lonjakan-kekerasan-seksual-kekerasan-siber-perkawinan-anak-dan-keterbatasan-penanganan-di-tengah-covid-19>

	<p>summon the husband and his wife for reconciliation within 30 days of the receipt of the husband's application. If the court fails to reconcile the couple and it is clear that there is conflict between the spouses that renders it difficult to live in harmony, the court will grant the husband permission to repudiate the marriage before the court. After the session, the presiding judge draws up a declaration that records the divorce, which he then sends on to the marriage registrar.¹⁶⁰</p> <p>A Muslim woman may sue for divorce (<i>cerai gugat</i>) by submitting an application for divorce to the Religious court where she resides on the basis of one or more of the grounds for divorce provided</p>	<p>revealed that the leading cause of divorce was constant disputes (lack of harmony), with 279,205 cases. The second highest cause was finances, with 113,343 cases, followed by one party leaving with 34,671 cases, and then domestic violence with 42,387 cases¹⁶⁸. In 2017, the religious courts had more specific categories for the reasons for divorce, including categories containing violence against women. The initial 15 types of causes of divorce in 2017 became 14: adultery, drunkenness,</p>		<p>legal force, the Plaintiff and Defendant can collect the divorce certificate directly or through a proxy provided that they have a special power of attorney to collect the divorce certificate. If the divorce lawsuit is based on the fact that one of the parties has received a prison sentence, to obtain a decision on the</p>	<p>divorce.¹⁷⁴ The divorce rate in 2020 decreased by 142.8% compared to the causes of divorce in 2019.. The decline in the divorce rate was caused by the COVID-19 pandemic. The Supreme Court of the Republic of Indonesia, through Circular Letter (SEMA) No. 1/2020, issued Guidelines for the Implementation of Duties While Preventing the Spread of the 2019 Coronavirus Disease (COVID-19) within the Court.</p>
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¹⁶⁰ Articles 117, 129-131 of the Compilation of Islamic Law in Indonesia (1991), <http://www.hukumonline.com/pusatdata/detail/13200/node/732/inpres-no-1-tahun-1991-penyebarluasan-kompilasi-hukum-islam>; Articles 66-72 of the Religious Court Law (1989), <http://peraturan.go.id/inc/view/11e44c4e667c43309f4a313231333533.html>; Jan Michiel Otto, "Sharia and National Law in Indonesia", in *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*, ed. Jan Michiel Otto (Leiden, The Netherlands: Leiden University Press, 2010), p. 466, <https://openaccess.leidenuniv.nl/bitstream/handle/1887/21170/file221087.pdf?sequence=1>; Adriaan Bedner & Stijn van Huis, "Plurality of marriage law and marriage registration for Muslims in Indonesia: a plea for pragmatism", (Utrecht Law Review, 6:2, 2010), p. 180, <https://core.ac.uk/download/pdf/15603396.pdf>

¹⁶⁸ KOMNAS, "Reminders on International Women's Day 2022 and Notes on Gender Violence Against Women" <https://komnasperempuan.go.id/siaran-pers-detail/peringatan-hari-perempuan-internasional-2022-dan-peluncuran-catatan-tahunan-tentang-kekerasan-berbasis-gender-terhadap-perempuan>

¹⁷⁴ Supreme Court of Indonesia, Annual Data on Islamic Law Stage 1 <https://badilq.mahkamahagung.go.id/perkara-diterima-dan-diputus-pada-tingkat-pertama/data-perkara/perkara-diterima-dan-diputus-pada-tingkat-pertama>

	<p>by Article 116 of the Compilation.¹⁶¹</p> <p>A Muslim woman may also seek a redemptive divorce (<i>khul'</i>) through the courts based on one or more the grounds in Article 116 of the Compilation. A <i>khul'</i> requires the consent of husband and payment of a mutually agreed compensation by the wife to the husband.¹⁶²</p> <p>Under Government Regulation No. 10/1983 on permission relating to marriage and divorce for civil servants as amended by Government Regulation 45/1990, a civil servant initiating a divorce or a civil servant against whom a divorce being sought must apply for permission to divorce or provide an explanation for the divorce</p>	<p>gambling, one party leaving, being sentenced to prison, polygamy, domestic violence, disability, continuous disputes and quarrels, forced marriage, apostasy, financial reasons, and others.</p>		<p>divorce, it is sufficient evidence for the plaintiff to deliver a copy of the Court decision accompanied by a statement expressing that the decision has entered into permanent legal force. [Article 74 of the Law on Religious Courts] If the divorce lawsuit is filed on the basis that the husband has a physical disability of illness and is unable to fulfil</p>	
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¹⁶¹ Articles 132-147 of the Compilation of Islamic Law in Indonesia (1991), <http://www.hukumonline.com/pusatdata/detail/13200/node/732/inpres-no-1-tahun-1991-penyebaran-kompilasi-hukum-islam>; Articles 73-86 of the Religious Court Law (1989), <http://peraturan.go.id/inc/view/11e44c4e667c43309f4a313231333533.html>; Jan Michiel Otto, "Sharia and National Law in Indonesia", in *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*, ed. Jan Michiel Otto (Leiden, The Netherlands: Leiden University Press, 2010), p. 466, <https://openaccess.leidenuniv.nl/bitstream/handle/1887/21170/file221087.pdf?sequence=1>; Adriaan Bedner & Stijn van Huis, "Plurality of marriage law and marriage registration for Muslims in Indonesia: a plea for pragmatism", (Utrecht Law Review, 6:2, 2010), p. 180, <https://core.ac.uk/download/pdf/15603396.pdf>

¹⁶² Articles 1(i), 124, 148 of the Compilation of Islamic Laws in Indonesia (1991), <http://www.hukumonline.com/pusatdata/detail/13200/node/732/inpres-no-1-tahun-1991-penyebaran-kompilasi-hukum-islam>

	<p>suit in writing.¹⁶³</p> <p>Article 84 of the Compilation of Islamic Law states that <i>nusyuz</i> only applies to wives, resulting in wives not receive a living, or support for clothing (<i>kiswah</i>) and a place of residence (<i>maskan</i>), household expenses, or medical or care expenses for the wife. A wife can be considered <i>nusyuz</i> if she does not wish to perform her obligations, unless she can provide a legitimate reason. While the wife is in <i>nusyuz</i>, the husband's obligations toward his wife no longer apply, except in matters related to his children's welfare. The husband's obligations return when the wife is no longer <i>nusyuz</i>. This article legitimizes the delegation of blame onto the wife in cases of domestic violence. Wives are considered to have instigated domestic violence as a result of their disobedience (<i>nusyuz</i>), allowing their husbands to punish them</p>			<p>his obligations as a husband, the Judge may order the Defendant to undergo a medical check. [Article 75 of the Law on Religious Courts] If the divorce lawsuit is filed on the basis of marital disputes (<i>syiqaq</i>), to get a divorce decision, witness statements must be heard from family members or individuals who are close to the husband and wife. The court, after hearing witness statements regarding the</p>	
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¹⁶³ Article 3 of the Government Regulation No. 10/1983; <http://www.peraturan.go.id/inc/view/11e44c4e7f9ecac09a78313231343336.html> as amended by Article 1 of Government Regulation 45/1990, <http://www.peraturan.go.id/inc/view/11e44c4f18a9e750a9f0313231383532.html>

	using violence, or by revoking their right to a living, <i>kiswah, maskan</i> , household expenses, and so on. The meaning of <i>nusyuz</i> is solely based on the husband's decision, meaning that the benchmark is also set by the husband. For example, a case experienced by a female victim of domestic violence who left home to stay temporarily in a service provider institution. The husband requested that she return home. The Judge presiding over the case determined that, in this case, the woman had committed <i>nusyuz</i> , despite the fact that she left the house in order to protect herself from domestic violence at the hands of her husband ¹⁶⁴ .			nature of the dispute between husband and wife, may appoint one or more members of each party's family or another person to become a judge. [Article 76]	
<p>Women's financial rights after divorce</p> <p><i>Is there a legal concept of matrimonial assets? Is there equal division of marital property upon dissolution of the marriage? Is the</i></p>	Generally, upon divorce, a Muslim woman may be entitled to: (i) financial maintenance during the waiting period after the divorce (<i>iddah</i>); (ii) a consolatory gift (<i>mut'ah</i>); and (iii) a share of the	The problem of enforcing court-ordered financial rights of a women may be illustrated in the divorce case of <i>Ibu D</i> in the Religious court in Cianjur	Government Regulation (1990) on Marriage and Divorce Permits for Civil Servants Article 8. If a divorce occurs at the will of a male	A couple can stipulate different terms for marital property rights in the marriage contract. If there is no	According to academic research and information on the ground, a woman has very limited avenues for redress if former husbands do not comply with their obligations arising from a court-ordered maintenance

¹⁶⁴ Komnas Perempuan, Referensi bagi Hakim Peradilan Agama tentang Kekerasan dalam Rumah Tangga, https://komnasperempuan.go.id/uploadedFiles/webOld/file/pdf_file/Instrumen%20HAM%20Perempuan/PP1_%20Referensi%20Hakim%20Peradilan%20Agama%20Tentang%20KDRT.pdf

<p>woman's role as wife and mother recognised as contribution to the acquisition of assets? What spousal maintenance are available to the wife after a divorce? Is she entitled to maintenance during the waiting period after the divorce (<i>iddah</i>)? Is she entitled to a consolatory gift or compensation upon divorce (<i>mut'ah</i>)? Who is responsible for the financial maintenance of children following a divorce? Can the couple agree to the division of assets acquired during marriage in the marriage contract? Can this stipulation be amended? If so, by who and on what basis e.g. mutual consent?</p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(c), 16(1)(h) Paras. 30-33 GR21 Paras. 34-35, 43-48 GR29</p>	<p>matrimonial assets (<i>harta bersama</i>).</p> <p>The Marriage Law guarantees the protection of women's rights in gaining access to property/wealth and other rights that should be obtained by women due to divorce. The court is mandated to make a decision, with reference to the Compilation of Islamic Law (KHI) (for Muslims). The matter is regulated in Article 37 of the Marriage Law.</p> <p>The KHI guarantees women's rights to joint property and other liberties during the divorce process and after the divorce has been settled, including the right to a living during the <i>iddah</i> period, <i>Mut'ah</i> and parenting compensation (<i>Hadlanah</i>), any owing dowry</p>	<p>highlighted in an academic research.¹⁸² The woman's husband had left her for another woman and no longer provided her with maintenance. Her husband, however, did not want to divorce. The woman went to the Religious court herself, without help from the Office of Religious Affairs (KUA) or a legal representative to file for a divorce. She found that the court clerks were willing to help her with her suit. She claimed for child support for her daughter (the court ordered a lower amount than she claimed for) and also</p>	<p>civil servant (ASN), then he is obliged to give up part of his salary to support his ex-wife and children; The distribution of the salary is 1/3 to the male civil servant in question, 1/3 to their ex-wife, and 1/3 to his child or children; If there are no children from the marriage, then half of the male civil servant's salary must be submitted to his ex-wife; The salary is not required to be divided with the ex-wife if the reason for divorce</p>	<p>contract in place the general law applies to the couple. The couple can also apply to the court for a mediator to help them reach a mutual agreement regarding their marital property rights.¹⁸⁵</p> <p>For the filing of a joint property lawsuit¹⁸⁶ The husband/wife approaches the Religious Court with a claim for joint property</p>	<p>due to the lack of enforcement mechanisms.¹⁸⁷</p> <p>Many decisions regarding post-divorce rights are ignored by husbands, making it difficult for women to ask their ex-husbands to pay compensation for post-divorce rights. The implementation of most decisions regarding <i>Iddah</i>, <i>Mut'ah</i>, and child support, which are set as certain amounts, is constrained if the husband does not intend to honor the decision, meaning that women receive no guarantee or protection, including in the execution of payments requiring large costs even exceeding the nominal rights of the wife and children which is requested.¹⁸⁸</p>
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¹⁸² Stihn Cornelis van Huis, "Islamic courts and women's divorce rights in Indonesia: the cases of Cianjur and Bulukumba", (Netherlands: Leiden University, 2015), p. 164, https://openaccess.leidenuniv.nl/bitstream/handle/1887/35081/Proefschrift_Van_Huis_def_inhoud.pdf?sequence=19

¹⁸⁵ Information obtained from Indonesian Advocate, February 2017

¹⁸⁶ Supreme Court of Indonesia, Standard Procedures <https://badilag.mahkamahagung.go.id/prosedur-standar/prosedur-berperkara/prosedur-berperkar>

¹⁸⁷ Dina Afrianty, "Why divorce doesn't work for Indonesian women", *The University of Melbourne*, 16 August 2016, <http://indonesiaatmelbourne.unimelb.edu.au/why-divorce-doesnt-work-for-women/>; Stihn Cornelis van Huis, "Islamic courts and women's divorce rights in Indonesia: the cases of Cianjur and Bulukumba", (Netherlands: Leiden University, 2015), p. 164, https://openaccess.leidenuniv.nl/bitstream/handle/1887/35081/Proefschrift_Van_Huis_def_inhoud.pdf?sequence=19

¹⁸⁸ Badilag [Religious Judiciary Agency], *Majalah Peradilan Agama* [Religious Courts Magazine], Edition 7 October 2015, <https://badilag.mahkamahagung.go.id/majalah/publikasi/majalah/majalah-peradilan-agama-edisi-5>

	<p>(<i>mahar</i>) with the following conditions:</p> <ol style="list-style-type: none"> 1. The right to receive a place of residence and appliances in the place of residence for herself and her children. As guaranteed in article 81 of the KHI, the husband must provide a place to stay for his wife and children or ex-wives during the <i>iddah</i> period. 2. The right to receive an adequate <i>mut'ah</i> in the form of either money or goods is forfeited if the divorce takes place prior to the consummation of the husband and wife's relationship. (Articles 149 and 158-1 of the KHI) 3. The right to alimony (<i>nafkah</i>), residence (<i>maskan</i>), and clothing (<i>kiswah</i>), can be suspended due to <i>talak bain</i>¹⁷⁵/<i>nusyuz</i> in cases in which the woman is 	<p>for her share of marital property. In its judgement, the court ordered: (i) a lower amount of child support than the woman claimed for; and (ii) for the joint marital property to be divided equally among the former spouses. After the court judgement, the former husband only handed over a small portion of the marital property that the woman was entitled to. As the woman lacked the necessary funds to seek a formal execution order from the Religious court, she tried to solve the case through family negotiations, even calling the police at one point to no avail because of the lack of a formal execution</p>	<p>is that the wife committed adultery, and/or has been either physically or psychologically cruel or abusive towards her husband, and/or the wife is an alcoholic, or has a drug or gambling addiction that has proven difficult to overcome, and/or the wife has left her husband for two consecutive years without the husband's permission and without a valid reason, or for other reasons beyond his control; If the divorce occurs at the will of the wife, then she is not entitled</p>	<p>addressed to the Chief Justice of the Court. Plaintiffs who are unable to pay the fees may file a lawsuit on a pro Deo basis/free of charge, provided that they complete a statement of incapacity. In the joint property lawsuit, the object of the dispute is explained, including its size and boundaries. Court summons 3 working days before the trial, adanya efforts</p>	<p>Although women's rights to access to joint property and other rights after divorce are guaranteed, and can be decided by the Court, based on results published by the Independent Judicial Research Institute (LEIP), there are obstacles to the fulfillment of the rights that women are entitled to, due to problems related to execution,¹⁸⁹ The lack of adequate legal mechanisms to ensure that the Defendant pays support to the child and/or wife; In practice, a significant number of husbands do not wish to fulfil their obligations, as they rely on the good faith of the husband. The issue is exacerbated when the defendant reasons that they have lost their job and are unable to pay the support. There is no mechanism that is able to ensure that the respondent does not</p>
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¹⁷⁵ Translator's Note: A *talak bain* is an irrevocable divorce by pronouncing three *talaks* at short intervals, or in close succession, or together.

¹⁸⁹ Lembaga Kajian dan Advokasi Independensi Peradilan (Judicial Independence Research and Advocacy Institute - LeIP), *Assesmen awal permasalahan eksekusi putusan perkara perdata di Indonesia [Initial assessment of problems in the execution of decisions in civil cases in Indonesia]*, 2018 https://leip.or.id/wp-content/uploads/2018/10/LeIP_Asesmen-Awal-Eksekusi-Putusan-Perdata.pdf

	<p>not pregnant and the divorce was filed at the will of the husband.</p> <p>4. To provide compensation for parenting costs until the child reaches 21 years of age (Article 149), as the mother has custody rights until her children are 21 years of age (151)</p> <p>5. To receive ½ of all joint assets if divorce occurs as a result of the death of the husband, in which case the wife receives ½ of all joint assets, unless otherwise specified in the marriage contract (Article 97)</p> <p>6. The rights available to women in the KHI can be supported by the court through a judge's decision, as stated in Article 24 of the Marriage Law, which stipulates, for example, that:</p> <p>The Court has the authority to determine alimony to be paid by the husband to guarantee and maintain the welfare of and educate their</p>	<p>order for the former husband to handover the share of her marital property. The Supreme Court's Decision on Cassation (2009) includes in the decision an order to instruct the husband to pay for all the post-divorce rights of the wife before the execution of the divorce pledge by entrusting (consigning) the amount of money to the Registrar of the Religious Courts. The above consignment model has been put into practice by the Padang Religious High Court (PTA) (2013).¹⁸³</p> <p>Decisions can assign a larger share of the joint property to the wife, if during the marriage the husband fails to provide for the wife, the husband</p>	<p>to a share of her ex-husband's income; This provision does not apply, if the wife files for a divorce because her husband has committed polygamy, and/or the husband has committed adultery, and/or has been either physically or psychologically cruel or abusive towards his wife, and/or the husband is an alcoholic, or has a drug or gambling addiction that has proven difficult to overcome, and/or the husband has left his wife for two consecutive years without the wife's permission and without a valid reason, or for other reasons</p>	<p>to reach a peaceful resolution through mediation with both parties who appear before the court. The plaintiff and the defendant are free to elect a mediator judge or other party who is certified as a mediator, and the costs of using an outside mediator are fully borne by the plaintiff. In filing the joint property lawsuit or during the trial, the plaintiff or defendant may use the services of a lawyer/advocat</p>	<p>neglect to carry out his obligation to pay for his children and/or wife's expenses on a regular basis, as a form of protection for children and women. There is no mechanism that binds a third party (the institution where the respondent works) to ensure the execution of the payment of support by a defendant who is absent; In several divorce cases, it was found that the state and religious courts had attempted to ensure the payment of child support by submitting a copy of the divorce decision and an application to the leadership and/or treasurer of the agency where the ex-husband worked to deduct the salary of the ex-husband automatically each month in order to pay the child support. Organizations have refused on the grounds that the decision only binds the divorced husband and wife,</p>
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¹⁸³ <https://drive.google.com/file/d/0B5UQVcJ8Df8WM1JTU3M2LWR3QnM/view?resourcekey=0-kUBKTh10mgY9C8tvIai9Iq> MAJALAH PERADILAN AGAMA [The Religious Courts Magazine] Edition 6 | May 2015, pg. 19

	<p>children, as well as to determine what is required to ensure the maintenance of good that are the joint property of the husband and wife, or goods that are the property of the husband, or goods that are the property of the wife (Article 41). Some of these rights can only be obtained by women under certain conditions, including:</p> <ol style="list-style-type: none"> 1. That the divorce not take place as a result of <i>li'an</i>, the husband may withhold parental support payments for his child (Article 162 of the KHI) 2. <i>Mut'ah</i> is not provided in cases in which divorce takes place before the relationship between a husband and wife is consummated, or divorce is filed due to <i>nusyuz</i>. <p>Article 41(c) of the Marriage Law states that the court may obligate the former husband to pay financial maintenance and/or impose one or other obligation to the</p>	<p>oppresses the wife, the joint assets originate from the wife's business, or the husband does not obey religious teachings. These considerations can be found in the cassation decision (2010). The same example was found in the Padang (2012) decision, where the <i>judex facti</i> granted part of the lawsuit and divided the joint assets by assigning 2/3 to the wife and 1/3 to the husband. The decision was then upheld by the Supreme Court in the case of cassation (2014).¹⁸⁴ Decisions that include reinterpreting the provisions of <i>mut'ah</i>. To date, <i>mut'ah</i> has been interpreted narrowly as a voluntary gift whose position is equal to the dowry stipulated in the</p>	<p>beyond her control. If the ex-wife of the civil servant in question remarries, her right to a share of her ex-husband's salary is annulled effective from the time she remarries.</p>	<p>or incidental attorney. The trial process includes the initiation of reconciliation, the reading of the lawsuit, the defendant's answer, the plaintiff's replication, the defendant's duplicate, the evidence, followed by a local examination, conclusions, assembly deliberation, and the decision.</p>	<p>not the organization. There were also many cases in which husbands failed to present themselves at work as they were only receiving a third of their salary. Changes in the execution of joint assets from performing an action to paying a sum of money. During the execution, it has been found that the joint property only consists of a building, while land ownership are not included as part of the joint property, meaning that the application can be made through the payment of a sum of money. High execution costs Execution cannot be conducted after the court's decision, but an application must be submitted for execution, with the expenses that must be paid including registration fees, PNBP, confiscation of executions, summons, transportation, witnesses, filing, auctions, rental of heavy equipment, and security. Decisions on child</p>
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	<p>former wife.¹⁷⁶</p> <p>In accordance with the Compilation, if the divorce is initiated by the man (<i>cerai talak</i>), a woman is entitled to:¹⁷⁷</p> <p>Financial maintenance during the waiting period after the divorce (<i>iddah</i>) unless she is disobedient (<i>nusyuz</i>). The <i>iddah</i> period depends on the woman's situation e.g. whether she is menstruating or pregnant and generally ranges from three months to one year; and</p> <p>A consolatory gift or compensation (<i>mut'ah</i>) which may take the form of money or object. The amount of the compensation is evaluated according to what is deemed reasonable based on the husband's financial capacity. Article 35 of the Marriage Law provides for a matrimonial assets regime whereby: (i) property</p>	<p>marriage contract, or solely based on the voluntary capacity of the husband.</p> <p>However, several times the Supreme Court has made legal breakthroughs by using <i>mut'ah</i> as a means to punish husbands who wish divorce while at the same time being the cause of disputes and quarrels, and even perpetrators of domestic violence leading to divorce. This can be seen in decision No. 276 K/AG/2010, where the Supreme Court determined a <i>mut'ah</i> of IDR 50 million, as the divorce was caused by the husband practicing illegal polygamy.</p>			<p>support or <i>iddah</i> support, or other post-divorce rights for wives are often only in the hundreds of thousands or several million [Indonesian rupiah]. However, the execution costs incurred amount to tens of millions, far exceeding the amount of child support or <i>iddah</i> support or post-divorce rights obtained by wives.</p> <p>Unclear orders within the decision</p> <p>Decisions regarding the wife's rights do not contain an element of punishing one of the litigants, for example an order that adjudicates the surrender of property/money.¹⁹⁰</p>
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¹⁷⁶ Article 41(c) of the Marriage Law (1974), <https://www.scribd.com/doc/53066173/Undang-undang-Republik-Indonesia-No-1-Tahun-1974-Tentang-an>

¹⁷⁷ Articles 149, 152, 153, 158 of Compilation of Islamic Law in Indonesia (1991), <http://www.hukumonline.com/pusatdata/detail/13200/node/732/inpres-no-1-tahun-1991-penyebaran-kompilasi-hukum-islam>

¹⁹⁰ <https://badilag.mahkamahagung.go.id/majalah/publikasi/majalah/majalah-peradilan-agama-edisi-5>

	<p>acquired during the marriage shall become joint property; and (ii) property brought into the marriage by the husband and the wife respectively and property acquired by either of them as a gift or inheritance shall remain under their respective control, unless otherwise decided between the parties. Following a divorce, pursuant to:¹⁷⁸</p> <p>Article 37 of the Marriage Law, the joint property will be settled in accordance with the respective laws; Article 51(3) of the Human Rights Law declares that a wife and her former husband have equal rights with regard to all matters concerning joint assets while not undermining children's rights, in accordance with prevailing law.</p> <p>The Compilation outlines the Muslim matrimonial assets regime:¹⁷⁹</p> <p>Article 1(f) defines matrimonial assets (<i>harta</i></p>				
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¹⁷⁸ Articles 35, 37 of the Marriage Law (1974), <https://www.scribd.com/doc/53066173/Undang-undang-Republik-Indonesia-No-1-Tahun-1974-Tentang-an>; Article 51(3) of the Human Rights Law (1999), <http://www.refworld.org/docid/4da2ce862.html>

¹⁷⁹ Articles 1(f), 85, 86, 87, 91, 97 of Compilation of Islamic Law in Indonesia (1991), <http://www.hukumonline.com/pusatdata/detail/13200/node/732/inpres-no-1-tahun-1991-penyebarluasan-kompilasi-hukum-islam>

	<p><i>bersama</i>) as property or assets acquired either individually or jointly during the marriage, whether or not it is registered on behalf of the parties;</p> <p>Article 85 provides that the existence of a matrimonial assets regime does not preclude husbands and wives from owning their own assets;</p> <p>Article 86 provides that in principle, there is no mixing of matrimonial assets and the assets owned individually by the husband and wife. A husband or wife remains in full control of property owned by them;</p> <p>Reflecting Article 35 of the Marriage Law, Article 87 provides that property brought into the marriage by the husband and the wife respectively and property acquired by either of them as a gift or inheritance shall remain under their respective control, unless otherwise decided between the parties;</p> <p>Article 91 provides that</p>				
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	<p>matrimonial assets may be tangible (e.g. immovable property, movable objects and securities) or intangible (either rights or obligations);</p> <p>Article 97 provides that upon divorce, each party has the right to receive half of the marital property unless they had agree otherwise in the marriage contract. Following a divorce, Article 41(b) of the Marriage Law states that the father is responsible for all expenses of the children's sustenance and education; if it can be shown that the father is unable to fulfil his obligations, the court may determine that the mother shall have a share in such responsibility. The Compilation reflects this position through the following:¹⁸⁰</p> <p>Articles 105 and 156 states that after a divorce, fathers are responsible for the financial maintenance of their</p>				
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¹⁸⁰ Article 41(b) of the Marriage Law (1974), <https://www.scribd.com/doc/53066173/Undang-undang-Republik-Indonesia-No-1-Tahun-1974-Tentang-an>; Articles 105, 149(d), 156 of the Compilation of Islamic Law in Indonesia (1991), <http://www.hukumonline.com/pusatdata/detail/13200/node/732/inpres-no-1-tahun-1991-penyebaranluasan-kompilasi-hukum-islam>

	<p>children at least until they turn 21; Article 149(d) provides that if the divorce is initiated by the man, he must finally provide for his children until they reach 21; Article 156 provides that a father upon divorce, the father is Under Government Regulation No. 10/1983 on permission relating to marriage and divorce for civil servants as amended by Government Regulation 45/1990 provides that:¹⁸¹</p> <p>Where a male civil servant initiates a divorce, he must financially maintain his wife until she marries unless the wife was found to be at fault for the divorce e.g. committed adultery, violently abuse the husband or suffers from a serious addiction. If the male civil servant has children with his former wife, his salary will be divided into 1/3 for himself, 1/3 for the former wife and 1/3 for the children. If he no children,</p>				
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¹⁸¹ Article 8 of the Government Regulation No. 10/1983; <http://www.peraturan.go.id/inc/view/11e44c4e7f9ecac09a78313231343336.html> as amended by Article 4 of Government Regulation 45/1990, <http://www.peraturan.go.id/inc/view/11e44c4f18a9e750a9f0313231383532.html>

	<p>then he keeps half his salary and maintains his wife with the other half; Where a male civil servant is divorced at the initiation of his wife, his salary need not divide his salary according to the Regulation unless the wife had sought divorce because he entered into a polygamous marriage or he committed adultery, violently abused her or suffers from a serious addiction.</p>				
<p>Custody of Children</p> <p><i>Do parents have equal rights over the custody of their children? If no, who has priority right over the custody of the child? Is custody decided based on the best interest of the child? Do mothers automatically lose custody upon remarriage or if she is deemed disobedient or when the child reaches a designated age when custody goes to father?</i></p> <p>Applicable CEDAW Provision</p>	<p>Under the Compilation:¹⁹¹</p> <p>During marriage, both the husband and wife are obligated to care for and nurture their children, both on their physical, spiritual growth and the development of their religious education and intelligence; Upon a divorce, a mother has priority right over the custody of her children until they reach 12. Thereafter, the child is given the option of being under the care of either mother or father until</p>	<p>Constitutional Court Decision No. 46/PUU-VIII/2010 provides a breakthrough for the civil rights of children outside of marriage, which supports the rights of children and women who give birth to children outside of marriage, either due to unregistered marriages or as a result of rape, or divorce due to <i>li'an</i>. The Constitutional Court Decision states</p>	<p>Regarding child care, as an implementing rule of the Child Protection Law, the Government has issued several policies related to childcare conducted by parents, single parents, and childcare institutions, through Government</p>	<p>The right of <i>hadhanah</i> given to the wife is filed together with the divorce lawsuit or after the divorce decision acquires permanent legal force. If there is a third-party claim, then the Court will postpone the joint</p>	<p>According to academic research, in the Religious courts, custody cases can be either resolved in a separated file or integrated into divorce file. Custody cases are mostly brought by women. In custodial cases, women can face two kinds of problems:²⁰¹</p> <p>Losing their right to custody. The problem arises particularly when the man argues that the divorce petitions are motivated by the wife's alleged bad</p>

¹⁹¹ Article 77(3), 98, 105, 156 of the Compilation of Islamic Laws in Indonesia (1991), <http://www.hukumonline.com/pusatdata/detail/13200/node/732/inpres-no-1-tahun-1991-penyebaranluasan-kompilasi-hukum-islam>

²⁰¹ Euis Nurlaelawati, "Islamic Justice in Indonesia: Family Law Reform and Legal Practice in the Religious Courts", (Nanzan University Asia-Pacific Research Centre Report, No. 9, 2013), p. 20, https://www.ic.nanzan-u.ac.jp/ASIAPACIFIC/documents/2013_no.9/01_Euis.pdf

<p>Articles 16(1)(d), 16(1)(f) Paras. 19-20 GR21</p>	<p>they reach the age of 21; A custodian loses custody over the child if it is clear that he or she is unable to guarantee the child's physical safety or spiritual growth, even though the child's financial maintenance is met. In such instances, the Religious court may assign custody over the child to other relatives who have rights of custody over children (e.g. the non-custodian parent, maternal grandmother, etc.). Other applicable laws include the following:¹⁹²</p> <p>Article 51(2) of the Human Rights Law states that following the dissolution of marriage, a wife and her former husband have equal rights and responsibilities with regard to all matters concerning their children, taking into account the best</p>	<p>that children born out of wedlock have a civil relationship with their mother and their mother's family, as well as with the man as their father which can be proven based on science and technology and/or other evidence according to law, to be biologically related, including having civil relations with the father's family.</p> <p>According to the views of Bahrudin Muhammad, as quoted by Badilag, Constitutional Court Decision No.46/PUU/VIII/2010 provides legal certainty for children born outside of marriage, as: a. a</p>	<p>Regulation No.44/2017 on the Implementation of Childcare. The arrangement was later converted into an implementing regulation through a Minister of Social Affairs Regulation (2020), which stipulates the procedures and conditions for childcare arrangements.¹⁹⁷</p> <p>In November 2021, the Ministry of Education and Culture issued a circular letter (No.28) on how to write a diploma, which stipulates that the inclusion</p>	<p>property case until there is a Court decision within the General Court which has obtained permanent legal force. [Article 86 of the KHI]</p> <p>This right of custody cannot be exercised immediately, prior to execution.</p> <p>The procedure for executing <i>hadhanah</i> chronologically can be detailed as follows:²⁰⁰</p> <p>The <i>hadhanah</i> decision has</p>	<p>behaviour. Therefore, while mother have priority right to right to custody over their children below 12, they often lose custody in this manner; Failing to execute decisions giving them the right to become custodian. In this instance, mothers are awarded the right but cannot enforce the right in practice due to lack of effective enforcement mechanisms of the court order. According to one religious judge, in child custody (<i>hadlanah</i>) cases, they often encounter obstacles in the implementation of their decisions. There is no specific regulatory law regarding the execution of custody, unless it continues to follow civil procedural law. Obstacles in the execution of childcare in</p>
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¹⁹² Article 51(2) of the Human Rights Law (1999), <http://www.refworld.org/docid/4da2ce862.html>; Articles 41(a), 49 of the Marriage Law (1974), <https://www.scribd.com/doc/53066173/Undang-undang-Republik-Indonesia-No-1-Tahun-1974-Tentang-an>

¹⁹⁷ <https://peraturan.bpk.go.id/Home/Details/157302/permensos-no-1-tahun-2020>

²⁰⁰ Dr. H. Muchlis, Sh, Mh. (Deputy Chairperson of the Central Jakarta Religious Court), Permasalahan Eksekusi Hadhanah Anak Makalah Makalah Rapat Kerja Daerah (Rakerda) [Problems with the Execution of Child Custody (*hadhanah*) Regional Working Meeting Papers] Pta Dki Jakarta and Jakarta Religious Courts 9-10 March 2021, https://www.pta-jakarta.go.id/filepdf/lainlain/rakerda/Permasalahan_Eksekusi_Hadhanah_Anak_oleh_Drs._H._Muchlis_S.H._M.H._Wakil_Ketua_PA_Jakarta_Pusat.pdf

	<p>interests of the child; Article 41(a) of the Marriage Law states that, following a divorce, both the father and mother remain responsible for the sustenance and education of their children. In case of a dispute concerning custody of the children, the Court shall decide the matter;</p> <p>Article 49 of the Marriage Law provides that a court may order the divestment of parents' custody rights over their children if: (i) there was gross neglect of responsibility for the children; (ii) evil conduct of life.</p> <p>Article 2 of the Child Protection Law UU.23/2002 in conjunction with Law No.35/2014 provides regulations regarding the protection of children, one of the principles of which is in the best interests of the child: Each child has the right to be cared for by their own</p>	<p>child born to a woman who does not have a legal marriage bond with the man who impregnated her, b. a child born to a woman as a result of being raped by one or more men; c. a child born to a woman who is <i>dili'an</i> (disavowed) by her husband; d. a child born to a woman whose pregnancy was caused by the wrong person (mistaking the person), who was thought to be her husband; and e. a child born to a woman whose pregnancy is the result of an unlawful marriage, for example a marriage between siblings or breast-feeding siblings.¹⁹³</p> <p>The Indonesian Council of Ulema</p>	<p>of the name of the father, mother or guardian is as per the request of the father, mother or guardian of the student. This policy allows the name of a single parent, for example the mother, to be written on the student's certificate. This policy was initiated by a petition created by Mrs. "P" as a single mother, who submitted a petition to the Minister of Education and Culture with the title 'Single Mothers Have the Right to Have Their</p>	<p>permanent legal force Parties who, if they do not want to implement the <i>hadhanah</i> decision voluntarily; The winning party (plaintiff) files an application for execution to the Religious Court which presides over the <i>hadhanah</i> case; The Religious Court has set a grace period or a warning; the residence of the Head of the Religious Court issues an execution order;</p>	<p>regard to the judge's decision include:²⁰² If the decision of the panel of judges is to give <i>hadhanah</i> rights to the mother and the child is already in the mother's control, the <i>hadhanah</i> execution process is easier to carry out, as the child's is already physically with the mother, meaning that when the <i>hadhanah</i> decision is made, it can be executed immediately. The panel of judges may decide to extend <i>hadhanah</i> rights to the mother although the child is physically in the father's possession. The panel of judges may decide to extend the right to <i>hadhanah</i> to the father where they child is already in the possession of the father. The Marriage Law does not specify whether the mother</p>
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¹⁹³ Badilag, Perlindungan Hak Anak di Peradilan Agama [Protecting Children's Rights in Religious Courts], *Majalah Peradilan Agama* [The Religious Courts Magazine] Edition 9 June 2016, pg. 19, <https://badilag.mahkamahagung.go.id/majalah/publikasi/majalah/majalah-peradilan-agama-edisi-5>

²⁰² Dr. H. Muchlis, Sh, Mh. (Deputy Chairperson of the Central Jakarta Religious Court), Permasalahan Eksekusi Hadhanah Anak Makalah Makalah Rapat Kerja Daerah (Rakerda) [Problems with the Execution of Child Custody (*hadhanah*) Regional Working Meeting Papers] Pta Dki Jakarta and Jakarta Religious Courts 9-10 March 2021, https://www.pta-jakarta.go.id/filepdf/lainlain/rakerda/Permasalahan_Eksekusi_Hadhanah_Anak_oleh_Drs._H._Muchlis_S.H._M.H._Wakil_Ketua_PA_Jakarta_Pusat.pdf

	<p>parents, unless there are valid reasons and/or legal rules indicating that separation is in the best interests of the child as a final consideration (Article 14 of the Child Protection Law). The Child Protection Law stipulates that in the event of a divorce, the child is not capable of making a decision and if the mother is an Indonesian citizen, in the best interests of the child or at the request of the mother, the government is obliged to take care of the Indonesian citizenship status of the child. (Article 29 of the Child Protection Law) The provisions of Article 105 letter a of the KHI, which sides with mothers in terms</p>	<p>(MUI) has a different opinion on the Constitutional Court's decision¹⁹⁴ The opinion of one of the presiding judges of the religious court, Bahruddin Muhammad¹⁹⁵, differs stating that Constitutional Court decision no. 46/PUU-VIII/2010 on the rights of children outside of marriage include material rights, namely the right to financial support and inheritance, and immaterial rights, namely the right to guardianship and</p>	<p>Names Written on their Children's Certificates, Stop Discrimination in the Education World'.¹⁹⁸ Mrs. P recounted in her petition that since her divorce from her husband, she has been the one to take care of and raise her child, including paying for school fees, and asked that her name as their mother be included in the child's diploma. However, she faced obstacles from the school</p>	<p>Execution at the place where the defendant is sentenced to surrender the child; The execution is assisted by two witnesses; The bailiff takes the child amiably, with adhering to the prevailing customs, if they are not submitted voluntarily, then the execution is carried out by force;</p>	<p>or father is entitled to custody (<i>hadhanah</i>) of their children. Explicit provisions on childcare are found in the KHI within Article 105, which directly appoints the mother as the person who has the right to care for a child who is not yet <i>mumayyiz</i> (12 years old). This provision is considered to be in accordance with the Islamic <i>fiqh</i> tradition that holds women responsible for parenting. However, Article 49 of the Marriage Law states that if a parent is considered unfit to care for their child, if they have neglected their obligations or behaved badly, they may lose their custody and guardianship rights.²⁰³</p>
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¹⁹⁴ Although the Indonesian Council of Ulema (*Majelis Ulama Indonesia* - MUI) responded to the Constitutional Court Decision (2012) on the status of children outside of marriage, they still do not have rights to a *nasab* relationship with the wali nikah, inheritance, or financial support (*nafkah*) with their biological father on the grounds of maintaining legal offspring (*hifz al-nasl*). The MUI states that the form of punishment required is determined through *ta'zir* (a discretionary punishment for crimes for which no specific punishment is stated in Islam and it is left to the sharia ruler to specify its type and amount) in the form of the obligation to meet the needs of the child throughout their life and to provide wealth through mandatory wills, with the aim of protecting the child, and not validating *nasab* (lineage). <http://mui.or.id/wp-content/uploads/files/fatwa/Kedudukan-Anak-Hasil-Zina-dan-Perlakuan-Terhadapnya-final.pdf>

¹⁹⁵ Ahmad Zaenal Fanani, et al., Badilag, Perlindungan Hak Anak di Peradilan Agama [Protecting Children's Rights in the Religious Courts], *Majalah Peradilan Agama* [The Religious Courts Magazine] Edition 9 June 2016, pg. 17 <https://badilag.mahkamahagung.go.id/majalah/publikasi/majalah/majalah-peradilan-agama-edisi-5>, and <https://drive.google.com/file/d/0B5UQVcJ8Df8WaFU1Qk9iNnM0ZUE/view?resourcekey=0-oanBfXISBwvMNdvW35DzJQ>

¹⁹⁸ <https://www.change.org/p/nadiem-makarim-diskriminasi-pada-ibu-tunggal-di-dunia-pendidikan>

²⁰³ The Badilag Journal has written that the decision of *hadhanah* given directly to the mother as regulated in the KHI is a rule based on their being female, as women are associated with the issue of childcare. On the one hand, this can make it easier for women to get custody rights of their children. However, on the other hand, the right to custody is often an obstacle for women, as the right to receive child support is often ignored by the husband/father. Therefore, women often bear the costs of childcare

	<p>of child care, face different arrangements regulated in Article 26 paragraph 1a of the Child Protection Law, which states that parents are obliged and responsible for nurturing, caring for, educating, and protecting their children.</p> <p>The Child Protection Law emphasizes the principle of the best interest of the child in terms of child care,</p>	<p><i>hadhanah</i>, This opinion is based on an expanded interpretation of the concept of <i>nasab</i> (lineage). The socially-dominant patrilineal system in Arab societies always places the child into the concession of the dominant father, meaning that if an adulterous relationship occurs, the woman and the child born out of adultery become victims of subordination. In the past, <i>nasab</i> was no more than a tool to legitimize and guarantee the lineage of kings as a form of paternal representation. In the past, <i>nasab</i> was little</p>	<p>which did not allow her name to be written on the certificate, including from the foundation, on the grounds that it violated a government regulation. Based on her experience, Mrs. P created a petition which managed to get the support of 16,244 signatures.¹⁹⁹</p>	<p>The bailiff makes a report of the execution which is signed by the bailiff and two witnesses in duplicate</p>	
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on their own. The judge's decision to extend the right to custody to the woman is not solely for the protection of women and children, but the right to child custody is based on the KHI, as a cover for the reluctance or inability of the Judge to comprehensively consider their decision on custody rights. Making decisions in accordance with the regulations is considered safe as they do not involve any special notes in the Judge's track record, thereby supporting the Judge's career. Badilag, Perlindungan Hak Anak di Peradilan Agama [Protecting Children's Rights in Religious Courts], *Majalah Peradilan Agama* [The Religious Courts Magazine] Edition 9 June 2016, pg. 18 <https://badilag.mahkamahagung.go.id/majalah/publikasi/majalah/majalah-peradilan-agama-edisi-5>

¹⁹⁹ Ibid.

		more than a matter of image and identity, with little correlation to the rights of women and children. Therefore, it is necessary to purify the meaning of <i>nasab</i> in relation to biological children. ¹⁹⁶			
<p>Guardianship of Children</p> <p><i>Do parents have equal rights over the guardianship of their children? If no, who has priority right over the guardianship of the child? Is guardianship decided based on the best interest of the child?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(d), 16(1)(f) Paras. 19-20 GR21</p>	<p><i>The definition of guardianship is regulated in the Child Protection Law (No.35/2014), which states that a guardian is a person or entity who exercises custody as a parent to a child [Article 1].</i></p> <p>The Marriage Law does not define guardianship, only refers to guardians, (Article 6 paragraph [4], which specifies the person who cares for the child or has a biological relationship along a straight line of descent, for as long as they remain living and are in a state in which they can express their will). Meanwhile, the KHI distinguishes between</p>	<p>Several Supreme Court Jurisprudence have issued parenting decisions that have an impact on guardianship, with heavy considerations based on the activity of women, due to women changing religions. These decisions were made before the issuance of Supreme Court Regulation No.3/2017 on the importance of judges identifying gender justice in handling cases of women dealing with the law. One example</p>	<p>The government has issued policies on guardianship that regulated the procedures and conditions of guardianship, including the procedures and conditions for child custody through Government Regulation No.44/2017 and Government Regulation No.29/2019 on the Terms and Procedures for</p>	<p>Guardians are determined through a lawsuit or application. Applications are requests submitted by the applicant to the court in order for the court to make a decision due to statutory provisions or necessity.²⁰⁸ The requirements and procedures for appointing a</p>	<p>In 2019, 3,459 guardianship applications were registered in 332 Courts of First Instance. A verdict was reached in 3,134 of the cases. Meanwhile, in 2020, 4,602 guardianship applications were registered. Guardianship applications significantly increased. Diversity in petitioners for guardianship were evident in several Religious Courts, A proportion of the requests were submitted by parents, relatives, and other persons. Most guardianship requests are submitted before the child has reached the age of 18</p>

¹⁹⁶ stating that one of the barriers to inheriting is that the child's status is illegitimate <https://badilag.mahkamahagung.go.id/majalah/publikasi/majalah/majalah-peradilan-agama-edisi-5>

²⁰⁸ Rustam and Musthofa (Deputy Chairman and Judge of the Bajawa Religious Court) Hak Anak Dan Hak Wali Dalam Penetapan Perwalian [The Rights of Children and Guardians in the Determination of Guardianship], <http://pa-demak.go.id/pengumuman/22-artikel/270-hak-anak-dan-hak-wali-dalam-penetapan-perwalian>

	<p>several terms of guardianship, which differ from traditional guardians, including <i>wali hakim</i> (court-appointed guardians), <i>wali nikah</i> (marriage guardians), and <i>wali pengampu</i> (supporting guardians), who have different rights and authority. Meanwhile, the meaning of guardianship in the KHI is the authority given to a person to carry out a legal action as a representative for the interests of and on behalf of a child whose parents are no longer alive and is not capable of carrying out legal actions;</p> <p>Both the Marriage Law and the KHI regulate authority, and the conditions and loss of guardianship rights. Several implementing regulations on parenting also regulate the standards of care for guardians, whether carried out by an individual or by an agency/institution.</p>	<p>was a verdict (2007) which stated that it was in the best interests of the child that the Supreme Court decision grant custody to the father as the mother often traveled abroad, meaning that it was in the interests of the person looking after the child while the mother is abroad. However, several conventions have been set forth that refer to considerations of divorces filed due to adultery.</p> <p>The Supreme Court Cassation Decision (2001) stated that in the case of divorce, the custody of the underage child was extended to the person with the closest and most intimate relationship</p>	<p>Appointing Guardians.</p>	<p>guardian are regulated through a Government Regulation (2019), which outlines the conditions that must be met to become a guardian, one of which is a written statement that the person has never and will never exploit, neglect, or mistreat a child, or apply corporal punishment for any reason, including to enforce discipline. The appointment of a guardian is submitted together with a request for the</p>	<p>(eighteen), or before they have married.²⁰⁹</p> <p>In the context of caring for children who are under 21 years of age, parenting rights are given to the woman/mother, in practice</p> <p>As a support for the implementation of the judge's guidelines issued by the Supreme Court for cases of women dealing with the law, in regard to the Care and Guardianship of children, guidelines are provided on the judge's behavior in the cases they preside over, for example guardianship cases ²¹⁰</p> <p>1. The Judge should make a decision that forces the husband as the divorce applicant or defendant to maintain responsibility for providing financial support to children under the age of 12, even if the wife will remarry;</p>
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²⁰⁹ Mahkamah Agung Republik Indonesia, Masyarakat Pemantau Peradilan Indonesia Fakultas Hukum Universitas Indonesia (MaPPI FHUI), Australia Indonesia Partnership for Justice 2 (AIPJ 2) 2018, *Pedoman Mengadili Perkara Perempuan Berhadapan Dengan Hukum*, hal. 45. <http://mappifhui.org/wp-content/uploads/2018/01/Pedoman-Mengadili-Perkara-Perempuan-Berhadapan-dangan-Hukum-MaPPI-FHUI-2018.pdf>

²¹⁰ Ibid

	<p>There is no gender preference regarding the rights or authority held by a guardian or regarding guardianship, except stipulations in the KHI on marriage guardians (<i>wali nikah</i>), which are based on Islamic fiqh in that the status of <i>wali nasab</i> can only be assigned to a man.</p> <p>The powers of guardians are regulated in the Child Protection Law, the Marriage Law, and the KHI, as follows: Article 50 of the Marriage Law provides that children under 18, unmarried and not being under the authority of their parents shall be placed under guardianship. Guardianship applies to the children personally and to their properties.</p> <p>The power of a guardian who exercises parental power can be obtained through a will or verbally before 2 (two)</p>	<p>with the child, or their mother, as the divorce was filed because the husband committed adultery with another woman.²⁰⁶</p> <p>The Decision of the Supreme Court of the Republic of Indonesia (2007), cited custody law (Article 105 of the KHI) by appointing custody to the father. The judge's decision contained the perspective that the woman was highly active, meaning that she was unable to supervise, care for, and educate the child. The decision provided the concession that, although custody rights were given to the father, the mother did not lose her right to a say in matters related to care and education.²⁰⁷</p>		<p>revocation of the power of custody. Applications for the revocation of the power of custody that are received by the Court are determined through a trial, and a person or legal entity is declared as the Guardian after being appointed by the Court.</p>	<ol style="list-style-type: none"> 2. The Judge may not use the reasoning of the mother's work status requiring her to spend time outside of the home to withhold child custody rights from the wife; 3. The Judge must be able to provide an objective assessment of who is deemed more entitled to act as guardian and the property of an orphan. 4. The Judge should make a decision that forces the husband as the divorce applicant or defendant to maintain responsibility for providing financial support to children under the age of 12, even if the wife will remarry; 5. The Judge may not use the reasoning of the mother's work status requiring her to spend time outside of the home to
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²⁰⁶ Supreme Court of Indonesia, 126K/Pdt/2001 <https://jdih.go.id/files/1276/Yurisprudensi-Mahkamah-Agung-RI-No-126-K-PDT-2001-Tahun-2003.pdf>
²⁰⁷ Hukum Online, "The Custody Right Doesn't Necessarily Fall on Mothers", <https://www.hukumonline.com/berita/a/hak-asuh-anak-belum-mumayyiz-tak-selamanya-iatuh-ke-tangan-ibu-lt609b706f045b6/?page=2>

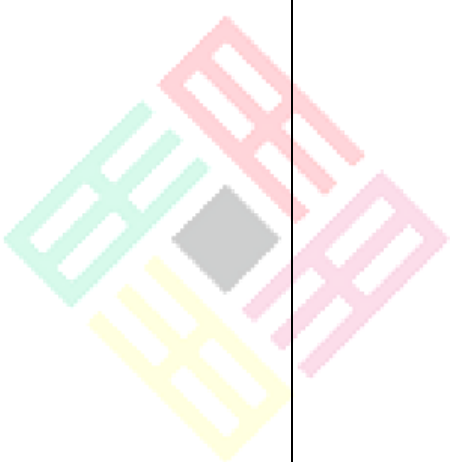
	<p>witnesses [Article 51 of the Child Protection Law]</p> <p>Article 107 of the Compilation reflects this provision but stating that children under 21 are placed under the guardianship.²⁰⁴</p> <p>1. The guardian is obliged to take care of himself and the property of the people under his guardianship, the guardian is also obliged to provide religious guidance, education and other skills to the children under his guardianship [Article 110 of</p>	<p>The Supreme Court's decision (1995) gave custody to the father because the mother was a non-Muslim. This decision was based on the Judge's preference to refer to the religious foundation of the law, despite Article 105 of the KHI stating that custody rights over children under 12 years are handed to the mother. The Supreme Court issued Supreme Court Circular Letter</p>			<p>withhold child custody rights from the wife;</p> <p>6. The Judge must be able to provide an objective assessment of who is deemed more entitled to act as guardian and the property of an orphan.</p> <p>Thus, the fulfilment of inheritance rights to children outside of marriage represents a legal sanction as well as legal responsibility for the biological father. Discrimination against children's inheritance rights</p>
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²⁰⁴ Article 50 of the Marriage Law (1974), <https://www.scribd.com/doc/53066173/Undang-undang-Republik-Indonesia-No-1-Tahun-1974-Tentang-an>; Article 107 of the Compilation of Islamic Laws in Indonesia (1991), <http://www.hukumonline.com/pusatdata/detail/13200/node/732/inpres-no-1-tahun-1991-penyebaran-kompilasi-hukum-islam>

	<p>the KHI].</p> <p>2. A guardian is prohibited from binding, encumbering, or alienating the property of a person under his guardianship, unless the act is beneficial to the person under his guardianship and unavoidable [Article 110 of the KHI].</p> <p>3. The guardian is obliged to surrender all assets of the person under his guardianship, if the person concerned has reached the age of 21 years or is married [Article 111 of the KHI]</p> <p>4. The guardian may use the property of a person under his guardianship, as long as it is necessary for his interests according to propriety or <i>bil ma'ruf</i> if the guardian is poor.</p> <p>The different categories of guardians regulated in the KHI, are also regulated in terms of the powers that they each hold.</p> <p><i>Wali Nikah</i> (marriage guardians), consisting of <i>wali nasab</i> and <i>wali hakim</i> [Article</p>	<p>No.1/2017 on the Implementation of the Formulation of the Results of the 2017 Supreme Court Chamber Plenary Meeting as a Guide to the Implementation of the Court's Duties. In the formulation, general civil chamber letter d stated that, "The right of the biological mother to take care of minors after a divorce can be passed to the biological father as long as the granting of these rights has a positive impact on the child's growth and development by taking into account the interests/presence/de sires of the child during the divorce process".</p>			<p>based on religious texts is unfounded, as there is not a single text or piece of literature that states that one of the barriers to inheriting is the child being illegitimate.</p>
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	<p>20 of the KHI]. <i>Wali Nikah</i> are men who meet the requirements, in that they are Muslim, <i>aqil</i> and <i>baligh</i> [Article 20]. There are four groups who are entitled to request an <i>itsbat nikah</i> [Article 7 [4] of the KHI], or four groups in order of position according to the composition of kinship with the bride. The presence of <i>wali nikah</i> is a requirement of marriage [Article 19 of the KHI]. The <i>wali</i> can prevent marriage, even when the guardian does not carry out his responsibilities as a father [Article 62], The <i>wali</i> conducts the ceremony with the groom. The wali is also one of the parties who signs the marriage certificate [Article 11 of Government Regulation No.9/1975]</p> <p>The <i>wali hakim</i> is an official who is appointed and given the rights and authority to act as a marriage guardian [Article 1b KHI], the title of wali nasab may be transferred due to disability [impairment, deafness, or old age] [Article 22 of the KHI]. The wali hakim can act as</p>				
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	<p>guardian if the wali nasab is not able to attend or his whereabouts are unknown or if the legal guardian is reluctant/refuses to officiate the wedding. The guardian may object if the groom is represented [Article 29].</p> <p>The power of the guardian may be revoked by the Court if the guardian is unable or neglects to carry out his guardianship duties, in which case the Religious Court can appoint a relative to act as guardian upon the relative's request [Article 107]</p> <p>The Court may remove persons with an alcohol, drug, or gambling addiction, or mental illness and/or persons who neglect or abuse their rights and authority as a guardian [Article 109 of the KHI].</p> <p>A guardian is prohibited from binding, encumbering, or alienating the property of a person under his guardianship, unless the act is beneficial to the person under his guardianship and unavoidable.</p> <p>In addition to having power, the obligation of the guardian</p>				
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	<p>is to be responsible for the child and to manage the property of the child concerned in the best interest of the child [Article 33 of the Child Protection Law]</p> <p>The guardian is obliged to give the right to worship, in according to their religion, thoughts, and expression, in accordance with their level of intelligence and age [Article 6 of the Child Protection Law].</p> <p>Guardians are obliged to ensure and are responsible for the child's protection [Article 20 of the Child Protection Law]</p> <p>The guardian is obliged to take care of the child under their control and their property to the best of their ability by respecting the religion and beliefs of the child, and to make a list of the child's property since obtaining guardianship and record all changes in the child's property under their guardianship, as well as losses incurred due to their own mistake or negligence. [Article 51 paragraph [3] of the Child Protection Law]. If</p>				
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	<p>there is a loss of the property of the child under their control, if there is a claim by the child or the child's family with a court decision, the guardian must replace the property lost [Article 54 of the Child Protection Law] Article 51(2) of the Marriage Law provides that a guardian shall preferably be selected from among the children's relatives or other adults who are sound of mind, just, honest and of good conduct. This is reflected in Article 107(4) of the Compilation.²⁰⁵</p> <p>Article 14 of the Child Protection Law states that each child has the right to be cared for by their own parents, unless there are valid reasons and/or legal rules indicating that separation is in the best interests of the child as a final consideration. In the event of separation from their parents, the child maintains the right to: meet directly and have personal contact on a</p>				
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²⁰⁵ Article 51(2) of the Marriage Law (1974), <https://www.scribd.com/doc/53066173/Undang-undang-Republik-Indonesia-No-1-Tahun-1974-Tentang-an>; Article 107(4) of the Compilation of Islamic Laws in Indonesia (1991), <http://www.hukumonline.com/pusatdata/detail/13200/node/732/inpres-no-1-tahun-1991-penyebaran-kompilasi-hukum-islam>

	regular basis with both parents; and receive parenting, care, education, and protection for their development from both parents in accordance with their abilities, talents, and interests; obtain financial support from both parents; and obtain other children's rights				
<p>Family Planning</p> <p><i>Do women require the consent of the husband to practise family planning, including abortions and sterilisation in law or in practice?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(e), 12 Paras. 21-23 GR21</p>	<p>Laws that provide state recognition of reproductive rights and rights to reproductive health are the Law on Health (NO.36/2009), and the Law on Population Development and Family Planning Development (KPKB) (No. 52/2009), including:</p> <p>Every resident has the right to receive information, protection, and assistance to realize reproductive rights in accordance with social ethics and religious norms; (Article 5 of the KPKB Law) Husbands and/or wives have the same position, rights, and obligations in carrying</p>	<p>The decision of the Judge of the Muara Bulian District Court (2018) sentenced a 15-year-old child, who was a rape victim, to a six-month prison sentence and three months of job training, for aborting a pregnancy resulting from rape at the hands of her older brother. The perpetrator of the rape, who was the victim's brother (incest) and also underage, was sentenced to two years prison</p>	<p>In the 2020-2024 National Medium-term Development Plan (RPJMN), in terms of maternal mortality rates (MMR) and infant mortality rates (IMR), the rate of pregnancies with HIV is one indicator of health status and the success of MMR and IMR health development.²¹⁵ In the CEDAW report, the Government stated that it was implementing the</p>	<p>Government Regulation No. 61/2014 on Reproductive Health accommodates the needs of women victims of sexual violence not to continue their pregnancies through <i>safe abortion</i>. The time interval for abortion is extremely short, namely 40 days from the time the pregnancy is</p>	<p>The 2020 Ministry of Health Report showed 4,627 maternal deaths in Indonesia. The figure increased from 2019 with 4,221 deaths. Most maternal deaths in 2020 were caused by bleeding with 1,330 cases, gestational hypertension with 1,110 cases, and circulatory system disorders with 230 cases. The percentage of deaths of mothers who gave birth under the age of 20 or over the age of 35 was 33% of all maternal deaths.²¹⁸ Based on data from the Ministry of Health, in 2020, 2,404,754 pregnant women</p>

²¹⁵ MMR and IMR Health Department Analysis <https://berkas.dpr.go.id/puskajianggaran/analisis-apbn/public-file/analisis-apbn-public-62.pdf>

²¹⁸ Ministry of Health Indonesia, Health Profile 2020 <https://www.kemkes.go.id/downloads/resources/download/pusdatin/profil-kesehatan-indonesia/Profil-Kesehatan-Indonesia-Tahun-2020.pdf>

	<p>out family planning. [Article 25] The use of contraceptive devices, drugs, and methods that pose a risk to health are carried out with the consent of the husband and wife after receiving information from health workers who have the expertise and authority to do so. [Article 26]</p> <p>Abortion is strictly prohibited by law, except when it is necessary to save the pregnant woman's life, prevent a significant risk to her physical health or if the pregnancy was due to rape that may psychological trauma to the victim.²¹¹</p> <p>In Article 75 of the Law on Health (No. 36/ 2009) and Article 194 of the Criminal Code, it is stated that</p>	<p>It is not appropriate to impose criminal sentences on victims of sexual violence. Sexual violence is a complex crime and its victims require assistance from the state to treat their trauma, rather than punishment in the form of imprisonment, especially where children are involved.</p> <p>On Thursday, 19 July 2018, a 15-year-old girl in Batanghari, Jambi was sentenced to prison by the Muara Bulian District Court for having an abortion. According JakartaPost news reports,²¹⁴ the aborted pregnancy was the</p>	<p>Maternity Insurance Program (Jampersal) to reduce maternal and child mortality (2019), including financing antenatal services, delivery assistance by health workers, postpartum services, and family planning services.²¹⁶</p>	<p>identified. Meanwhile, the abortion approval process is lengthy as it requires the approval of experts and investigators who declare the pregnancy to have occurred as a result of rape. According to a study by Komnas Perempuan, in reality, many women only realize they are pregnant after the 40-</p>	<p>were tested for HIV in Indonesia. From these tests, 6,094 (0.25%) of pregnant women were found to be HIV positive. According to World Bank data, the total fertility rate decreased from 5.7 children per woman in 1960 to 2.4 in 2015.²¹⁹</p> <p>According to Indonesia's 2012 Demographic and Health Survey:²²⁰</p> <p>The median birth interval in Indonesia is 60.2 months, with 11% of children being born less than 24 months after their siblings; 11% of married women have an unmet need for family planning services, with 4% having an unmet need for spacing and 7% an unmet need for limiting of</p>
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²¹¹ Article 299 of the Criminal Code (1952), https://www.unodc.org/res/cld/document/idn/indonesian_penal_code_html/I.1_Criminal_Code.pdf; Article 75 of the Law No. 36/2009 on Health, <http://www.peraturan.go.id/inc/view/11e44c4f0294c5c0afd4313231383135.html>; Fanny Tanuwijaya, "Abortion on Law and Moral Perspective in Indonesia," (Journal of Law, Policy and Globalization, 28, 2014), p. <http://iiste.org/Journals/index.php/JLPG/article/viewFile/14975/15223>

²¹⁴ ICJR: Penderitaan Anak Korban Perkosaan di Jambi Bukan Langkah Tepat, 21 Juli 2018 <https://icjr.or.id/icjr-penderitaan-anak-korban-perkosaan-di-jambi-bukan-langkah-tepat/>

²¹⁶ Indonesia Ministry of Women Empowerment and Child Protection, Indonesia's Eighth Periodic CEDAW Report (2012 - 2019) Par.174 Indonesia https://www.kemenpppa.go.id/lib/uploads/list/215d1-translasi-cedaw-report_eng.pdf

²¹⁹ World Bank, "Fertility rates, total (births per woman)", <http://data.worldbank.org/indicator/SP.DYN.TFRT.IN>

²²⁰ Statistics Indonesia et al., "Indonesia Demographic and Health Survey 2012", Tables 5.6, 7.1, 7.8.2, 7.20, pp. 56, 74, 82, 95, <http://dhsprogram.com/pubs/pdf/FR275/FR275.pdf>

	<p>abortion is a crime, and anyone who has an abortion will be sentenced to a maximum of 10 years in prison and a maximum fine of 1 billion rupiah. Abortion can be performed if an indication of a medical emergency is detected early in the pregnancy, which threatens the life of the mother and/or fetus, they suffer from a severe genetic disease or congenital defect, which makes it difficult for the baby to live outside the womb; or the pregnancy was caused by rape [Article 75 of the Health Law]. Abortion may be performed after counselling and before 6 (six) weeks of pregnancy.</p> <p>(Article 76 of the Health Law). This regulation makes women who are forced to have abortions extremely vulnerable, including to death. This situation may potentially contribute to the maternal mortality rate. The Ministry of Health stated that</p>	<p>result of rape by the girl's older brother. The girl had been raped 8 (eight) times by her older brother since September 2017, and all 8 (eight) times, the rapist threatened to injure the victims if his wishes were not fulfilled.</p> <p>This is not the first time that rape victims who have abortions have been punished in Indonesia. Previously, in 2016, a domestic worker in Jakarta with the initials BL, was sentenced to 8.5 years in prison after disposing of a fetus after being raped by a man she met on Facebook. However, in this case the panel of judges examining the case rejected the prosecutor's demands</p>		<p>day period has passed.²¹⁷</p>	<p>children; 62% of married women are using a method of contraception, with 58% of women using a modern method; and Knowledge of at least one method of family planning is high (99%) among married women in Indonesia. According to a Komnas Perempuan study on reproductive health rights, several types of barriers and discrimination are experienced by women, especially vulnerable groups, in accessing services and information on reproductive health. Lack of information on reproductive and sexual rights for women in rural and remote areas. Barriers experienced by persons with disabilities to barriers from family due to protection and ignorance; Environmental barriers—facilities and infrastructure being difficult to reach; socio-cultural barriers due</p>
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²¹⁷ KOMNAS, "Neglect of Reproductive and Sexual Rights: Threats to the Safety and Right to Life of Indonesian Women and Girls. KOMNAS Perempuan Policy Paper" <https://komnasperempuan.go.id/kertas-posisi-detail/pengabaian-hak-reproduksi-dan-seksual-ancaman-bagi-keselamatan-dan-hak-hidup-perempuan-dan-anak-perempuan-indonesia-kertas-kebijakan-komnas-perempuan-untuk-pemenuhan-hak-reproduksi-dan-seksual-dan-10-risalah-kebijakan>

	<p>abortion contributes 1-5% to maternal deaths, with the most common cause being excessive bleeding. Meanwhile, acts of forced abortion carried out by other parties, who request/force a woman to have an abortion are not regulated.</p> <p>The draft bill on the Indonesian criminal code (RKUHP) which is being deliberated by the Government (August 2019 version), contains provisions criminalizing several acts related to abortion.²¹²:</p> <p>The abortion article is said to be pending discussion, as consultations with the Indonesian Doctors Association (IDI) are still required.²¹³</p> <p>Forced contraception is currently a crime of sexual violence, and is regulated in the Law on Human Rights Violations (No. 26/2000),</p>	<p>and sentenced him to a punishment in the form of rehabilitation in a social institution after taking into account the condition of the victim, who was experiencing mental stress and trauma at the time due to giving birth to an unexpected baby.</p> <p>The exception of abortion for rape victims in the Health Law, in practice, does not provide a way out for rape victims who are traumatized and wish to abort their pregnancy. This is due to the strict requirements to conduct an abortion for the victim (with a maximum gestational age of 40 days)., Although, in practice, often women victims of rape are not aware of their pregnancies</p>			<p>to the stigma that people with disabilities are useless, and organizational barriers as there are no programs specifically designed for women and adolescents with disabilities. A vulnerable group that is also susceptible to unwanted pregnancies and sexually transmitted infections is sex workers.</p>
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²¹² ICJR, The Abortion Article in the draft bill on the Indonesian criminal code (RKUHP) is discriminative and a threat to rape victims, 05 Sep 2019 <https://icjr.or.id/icjr-dan-pkbi-pasal-penguguran-kandungan-dalam-rkuhp-diskriminatif-dan-ancam-korban-perkosaan/>

²¹³ Ibid

	which stipulates that forced sterilization as a crime against humanity, must contain the following elements: 1) be conducted as part of a widespread or 2) systematic attack, 3) knowing that the attack was directed against the civilian population. Sterilization is one means of contraception.	until after their pregnancy is more than 40 days.			
<p>Personal rights of spouses</p> <p><i>Does a woman need the consent of her spouse or guardian to work, choose a profession, leave the house, travel, drive, receive various health services, study, etc. on her behalf? Does a woman have the right to retain her birth name upon marriage or to choose her family name? Can a woman protect her personal rights through her marriage contract?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(1)(g)</p>	<p><i>The Indonesian constitution guarantees equal rights to work, health and education to both men and women.</i></p> <p>Article 27(2) of the Constitution guarantees every Indonesian the right to work and earn a human livelihood.²²¹</p> <p>Article 28E of the Constitution guarantees the right of every person to freely choose one's education, employment and place of residence within Indonesia.²²²</p>	<p>Several jurisprudences on Supreme Court decisions, which require mutual consent (one of which is the wife's consent) are found in joint property cases, including:</p> <p>a. A Supreme Court Decision (1998) states that actions against joint assets by a husband or wife must obtain the approval of both the husband and</p>	<p>Husband's permission: The Law on the Protection of Migrant Workers (2017) is one of the policies that is considered conducive. However, according to Komnas Perempuan's records, the policy still contains prerequisites for a husband/parent or guardian's permission to be</p>	<p>Women can negotiate their role within the family and in public in marriage contract.²²⁶</p> <p>Adopting the husband's name: In the context of adopting the identity of an individual/resident, including women, based on a policy issued by the</p>	<p>According to the UNFPA, the first reliable national data on violence against women in Indonesia that is based on an extensive survey that was carried out in 2016, showed that more than 42% of women reported experiencing restrictions or limitations to their freedom, such as being prevented from seeing friends, communicating with family, performing religious practices or seeking health care without permission.²²⁹</p> <p>According to Indonesia's</p>

²²¹ Article 27(2) of the Constitution of Indonesia (1945), https://www.constituteproject.org/constitution/Indonesia_2002.pdf

²²² Article 28E of the Constitution of Indonesia (1945), https://www.constituteproject.org/constitution/Indonesia_2002.pdf

²²⁶ Information obtained from Indonesian advocate, February 2017

²²⁹ Maria Endah Hulupi, "New survey shows violence against women widespread in Indonesia", *UNFPA News*, 10 May 2017, <http://www.unfpa.org/news/new-survey-shows-violence-against-women-widespread-indonesia>

<p>Para. 24 GR21 Para. 34 GR29</p>	<p>Article 45 of the Human Rights Law declares that women's rights are human rights. Article 48 states that women and men have equal rights to adequate access to and conditions of schooling and education. Article 49 states that women have the right to select, be selected and appointed to an adequate job, position or a profession, in line with prevailing law.²²³</p> <p>In addition to the constitution guaranteeing the right to employment, healthcare, and an education, the laws/regulations under it, including the Health Law and Education Law, emphasize equal access to men and women.</p> <p>Meanwhile, in the context of marriage, women are positioned in an equal arrangement, by requesting the woman's consent first, including</p>	<p>wife, meaning that an oral agreement to sell joint land made by the husband, and which has not been approved by the wife, is an illegal agreement according to the law.</p> <p>b. Supreme Court Decision (1970) stating that any object purchased, if purchased using money from joint assets, remains joint property, despite being purchased or built in an individual nature.</p> <p>c. The decision of the Supreme Court (2002) states that joint assets can be null and void by law if a credit agreement is to be pledged/transferred to another party by the</p>	<p>placed abroad (article 13(b)), which has the potential to limit women from becoming migrant workers and opens up space for various types of abuse to occur²²⁴.</p> <p>Prospective Indonesian migrant workers must fulfil document requirements, including a statement of permission from their husband or wife that has been cited by the village head or <i>lurah</i>, in order that the person concerned can be placed abroad, with the following provisions: To be</p>	<p>Ministry of Home Affairs, in producing population documents, including family cards (KK), national identity cards (KTP), and other civil registry documents, an individual may not deviate from the name contained on their birth certificate. That is, if the birth certificate does not include a surname or name other than what is written according to the authentic birth</p>	<p>2012 Demographic and Health Survey:²³⁰</p> <p>63% of married Indonesian women were employed at the time of the survey; 65% of married women earning cash made independent decisions on how to spend their earnings; 50% of married women aged 15-49 do not own a house while 59% do not own land; among women who do own assets, 13% of women own a house and land by themselves; 86% of married women participate either alone or jointly with their husband in making decisions pertaining to their own healthcare, major household purchases, and visits to their family or relatives; and 35% of women aged 15-49 accept at least one reason as a justification for wife beating. Women are most</p>
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²²³ Articles 45, 48, 49 of the Human Rights Law (1999), <http://www.refworld.org/docid/4da2ce862.html>

²²⁴ Laporan Independen Lembaga Nasional Hak Asasi Manusia tentang 25 Tahun Pelaksanaan Kesepakatan Global Beijing Platform for Action (BPfA+25) Di Indonesia, Hal. 21 <https://komnasperempuan.go.id/uploadedFiles/444.1613785203.pdf>

²³⁰ Statistics Indonesia et al., "Indonesia Demographic and Health Survey 2012", Table 13.1, 13.2.1, 13.4.1, 13.5, 13.7.1, pp. 186-187, 190, 192, 195, <http://dhsprogram.com/pubs/pdf/FR275/FR275.pdf>

	<ul style="list-style-type: none"> • The right to determine the provision of a dowry. If the prospective bride agrees, the delivery of the dowry may be suspended either in whole or in part. • The right to determine the marriage contract with their partner with contracts that do not deviate from Islamic law. • Permission of required equally from the husband and wife, which can result in divorce. Divorce occurs if one partner (husband/wife) leaves the other for 2 (two) consecutive years without the permission of the other party and without a legitimate reason or due to other circumstances, beyond their control. <p>Regulations regarding the permission of other parties in the marriage law, include:</p> <ul style="list-style-type: none"> • Parental permission for a man/woman to marry 	<p>husband. The husband must obtain the approval of the wife as the entitled party.</p>	<p>able to be placed abroad, Prospective Indonesian Migrant Workers are required to possess documents including: a certificate of marital status, for those who are married, with a photocopy of their marriage certificate attached; a permission statement from their husband or wife, parental permission, or guardian permission, cited by the village head or <i>lurah</i>; Work competency certificate; a health certificate based on the results of health</p>	<p>certificate. For example, the issuance of a passport will also refer to the Birth Certificate, KTP and KK. This is also confirmed in Article 42 of the Government Regulation (implementation of the Population Administration Law) which states that the issuance of identity documents is carried out by means of the applicant showing/submitting a photocopy of their ID card or other</p>	<p>likely to agree that if a wife goes out without telling her husband, it justifies wife beating (24%).</p> <p>According to World Bank data, female labour force participation increased from 50% in 1990 to 51% in 2016.²³¹ During the same period, male labour force participation increased from 81% to 84%.²³² According to the 2016 UNDP Human Development Report:²³³</p> <p>43% of women over 25 have at least some secondary education as compared to 52% of men of the same age group; 99% of females and males aged 15-24 are able to read and write a short simple sentence; and 74% of women and men are satisfied with their freedom of choice. According to the Indonesian government, the following</p>
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²³¹ World Bank, "Labour force participation rate, female (% of female population ages 15+) (modelled ILO estimate)",

<http://data.worldbank.org/indicator/SL.TLF.CACT.FE.ZS>

²³² World Bank, "Labour force participation rate, male (% of male population ages 15+) (modelled ILO estimate)", <http://data.worldbank.org/indicator/SL.TLF.CACT.MA.ZS>

²³³ UNDP, "Human Development Report 2016", Tables 5, 9, 14, pp. 214-217, 230-233, 250-253, http://hdr.undp.org/sites/default/files/2016_human_development_report.pdf

	<p>someone who has not reached the age of 21 (twenty one) years old.</p> <ul style="list-style-type: none"> • The husband's permission as a condition for permitted abortion according to Article 76 of the Health Law • Divorce suits are filed by the wife or her attorney at the Religious Court. unless the wife leaves the joint residence without the husband's permission. <p><i>Can a woman protect her personal rights through her marriage contract?</i></p> <p>As explained in the themes related to joint property and marriage contracts, <i>de jure</i> both in the Marriage Law and the KHI, the wife has an equal position in managing assets, and has power over assets that belong to her. This arrangement is as described in several articles of the Marriage Law.</p>		<p>and psychological examinations; a passport issued by their local immigration office;</p> <p>Meanwhile, in Law No. 11/2020 on Job Creation (the Omnibus Law), there is no obligation for a work contract to be known by the husband/wife, in the event that the worker is married, including in Government Regulation No. 34/2021 on the Use of Foreign Workers (PP 34/2021).</p> <p>Women's Financial Programs: Indonesia's Minister of Finance²²⁵ stated that, issues faced by women in</p>	<p>population document to complete the requirements set by the agency or institution that issues other identity documents. The practice of using last names such as the husband's name or surname/family name can only be used if it is stated in an authentic population document such as a birth certificate or family card, Therefore, legally, the use of the husband's name must be preceded by a court order</p>	<p>are examples of obstacles faced by wives when exercising their personal rights.²³⁴</p> <p>Many women actively earn a living and are often the main income earners of their household. However, the stereotype of women playing supporting roles or as servants still exists; and</p> <p>In the workplace, there is an assumption that working women are single and are not supporting a family.</p> <p>. Adopting a husband/family name: Although there are no policies related to the adoption of the family/husband's name in a woman's official identification documents, in practice, in various official and non-official settings, it is not uncommon for a woman to be referred to by her husband's name. Subsequently, if they have children, in various school-</p>
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²²⁵ Srimulyani, Sambutan pada Acara Toronto Centre For Global Leadership In Financial Supervision 2018, <https://www.kemenkeu.go.id/publikasi/siaran-pers/siaran-pers-menkeu-paparkan-solusi-akses-keuangan-untuk-perempuan-pengusaha>

²³⁴ Indonesia State party report, U.N. Doc. CEDAW/C/IDN/6-7 (2011), paras. 31, 159, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

	<p>Women have equal rights in managing and owning their respective assets obtained from gifts or inheritance (UUP and KHI)</p> <p>Regarding joint property, the husband or wife can act on the consent of both parties. As for their inherent property, the husband and wife have the full right to take legal action regarding their property [Article 36 of the Marriage Law]</p> <p>The existence of joint property in a marriage does not rule out the possibility of property belonging individually to the husband or wife [Article 85 of the KHI] Basically, there is no mixing between a husband's and wife's property due to marriage [Article 86 of the KHI]. The wife's property remains the wife's right and is fully controlled by her, just as the husband's property remains the husband's right and is fully controlled by him [Article 86 of the KHI]. The</p>		<p>accessing finances, for example female entrepreneurs continuing to demonstrate reluctance to access banking services, are due to three main reasons. Firstly, the high interest rates compared to loans from family or friends; Secondly, the complex procedures and documents; and thirdly, a lack of need or want. In addition, banks requiring collateral is another reason why small business owners, especially women, do not borrow from banks. Because of these difficulties women tend to use part of their earnings to</p>	<p>issued by the district court where the applicant is domiciled.²²⁷ The inclusion of family/surname/descendant names behind the first name can be used if the inclusion of the family/surname/descendant name is carried out through legal proof of descent, in accordance with Article 52 of the Adminduk Law.²²⁸</p>	<p>based and casual settings, they will be referred to by their child's name.</p>
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²²⁷ <https://www.hukumonline.com/klinik/a/nama-marga-cl5706>

²²⁸ <https://www.hukumonline.com/klinik/a/nama-marga-cl5706>

	<p>innate property of each husband and wife and the assets obtained by each as a gift or inheritance are under their respective control, as long as the parties do not specify otherwise in the marriage contract [Article 87 of the KHI], as regulated in Article 36 of the Marriage Law.</p> <p>Husbands and wives have the full right to perform legal acts on their own property in the form of grants, gifts, <i>sodaqah</i>, and so on [Article 87 of the KHI]</p>		<p>invest in capital. Some women may not be able to make these decisions independently due to their dependence on external stakeholders or family members. The Indonesian government stated that it would increase the disbursement of the People's Business Credit (KUR) scheme, as well as launch and distribute credit schemes for ultra micro-enterprises (UMi). Through the Ministry of Cooperatives and SMEs, the government has allocated funds to startups through financial management institutions with low interest rates, at 4.5 percent per</p>		
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<p>Inheritance rights</p> <p><i>Are women and men in the same degree of relationship to a deceased entitled to equal shares in the estate and to equal rank in the order of succession? Are there procedures to address any inequalities in inheritance between women and men e.g. can a will be written, can beneficiaries agree to inherit equal shares of the estate or can the children agree to forgo their inheritance in favour of their mother upon the death of their father?</i></p> <p><u>Applicable CEDAW Provision</u> Paras. 34-35 GR21 Paras. 49-53 GR29</p>	<p>Generally, inheritance rights between Muslim women and men are unequal.</p> <p>The Compilation details the inheritance laws for Muslims and generally follows the dominant interpretations of <i>Shari'ah</i>.²³⁵</p> <p>Articles 176-191 of the Compilation detail the inheritance shares. In many instances, such as in the cases of widows and widowers and siblings, a woman is entitled to half the share of a man.²³⁶</p> <p>The assets that belong to each party due to inheritance can be fully managed by each individual wife/husband themselves (Article 35 and</p>	<p>There are several court decisions used as jurisprudence by the Supreme Court, as they are considered to be breakthroughs, but provide a sense of justice, despite not being in accordance with the KHI, for example:²³⁷ A daughter defeated her brother in Supreme Court Decision No. (1995), with the KHI Article 174 paragraph (2) stating that if all heirs are present, only children, fathers, mothers, wives, and husbands are entitled</p>	<p>year.</p> <p>In the case of inheritance, there are cases that indicate the will to control inheritance independently, even though in fact there are also rightful heirs. Meanwhile an application is submitted by a third party, in order for all rightful heirs to be determined. With the background of various parties submitting applications for the determination of heirs, the judiciary process becomes lengthy and protracted,</p>	<p>The Law on Religious Courts (2006) provides the authority for religious courts to settle cases related to inheritance. There are two ways to submit an inheritance claim. Firstly, through a lawsuit as there is a dispute of the object of the inheritance. This can be caused by a heir not wishing to share the inheritance,</p>	<p>According to a research report by United Nations Research Institute for Social Development (UNRISD), Indonesia has diversity in practicing inheritance for women, based on different customary laws (<i>adat</i>), matrilineal, parental and patrilineal. The link between customary law and religious is very dynamic in term of inheritance. In West Sumatera culture, where most of the residents are Muslims, the customary law states that the inheritance goes to women, while in Lombok, which also has a majority Muslim population, women do not have any right to inherit property.²⁴⁵ Research conducted by Prof. Sulistyowati on the</p>
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²³⁵ Jan Michiel Otto, "Sharia and National Law in Indonesia", in *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*, ed. Jan Michiel Otto (Leiden, The Netherlands: Leiden University Press, 2010), p. 468, <https://openaccess.leidenuniv.nl/bitstream/handle/1887/21170/file221087.pdf?sequence=1>

²³⁶ Articles 171-214 of the Compilation of Islamic Laws in Indonesia (1991), <http://www.hukumonline.com/pusatdata/detail/13200/node/732/inpres-no-1-tahun-1991-penyebaranluasan-kompilasi-hukum-islam>

²³⁷ Jurisprudence is the decisions of judges or courts that are permanent and justified by the Supreme Court as a Court of Cassation or decisions of the Supreme Court itself which are permanent. <https://www.mahkamahagung.go.id/id/artikel/4206/pembangunan-hukum-perdata-melalui-yurisprudensi>

²⁴⁵ Sri Wiyanti Eddyono et. al, "When and Why the State Respond Responds to Women's Demands: Understanding Gender Equality Policy Change in Indonesia", *UNRISD Research Report 2016*, [http://www.unrisd.org/80256B3C005BCCF9/\(httpAuxPages\)/695474BA6D066870C1257FF60053961A/\\$file/Indonesia%20claims%20making%20report.pdf](http://www.unrisd.org/80256B3C005BCCF9/(httpAuxPages)/695474BA6D066870C1257FF60053961A/$file/Indonesia%20claims%20making%20report.pdf)

	<p>Article 36 of the Marriage Law).</p>	<p>to receive an inheritance.²³⁸ The judge determined the heirs who were Muslim as heirs of Non-Muslims, who were previously Muslim, with the argument that the Islamic inheritance system adhered to both the <i>nasabiyah</i> and <i>hukmiyah</i> kinship system. The kinship system was prioritized over religious differences. The kinship of a child continues to recognize his biological mother, Islam does not teach enmity by severing horizontal relations with non-Muslims, particularly where they have blood ties²³⁹. Inheritance to children outside of marriage is</p>	<p>taking a long time, and inherently costing a lot of money. If each heir submits their own application. On this issue, the Supreme Court issued a Circular Letter of the Supreme Court No. 1/2017 on the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber of 2017 as a Guide to the Implementation of Duties for the Court, which states that "The lawsuit in inheritance cases and applications for the distribution of inheritance according to</p>	<p>causing a conflict between the heirs. The final stage of the lawsuit will produce a legal product in the form of a decision.²⁴⁴ The second method is a request submitted by the heirs in the event that there is no dispute. Upon the request, the court will issue a legal product in the form of a determination. An application can be submitted to the Religious Court by</p>	<p>pluralism of inheritance law in Indonesia, including Islamic inheritance, showed that the implementation of Islamic inheritance law is extremely diverse. This diversity includes discussing the legal substance of who has the right to inherit and the amount, both of which are implemented differently depending on the region (Java or outside Java) which is largely determined by court actors (religious/state), including diversity in judges' perspective on the debate around women, as to whether women are entitled and in what amount. Inheritance law also does not stand alone in the context of the issue of women, as it is associated with marriage, divorce, and child custody rights.²⁴⁶</p>
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²³⁸ Ibid, pg. 24

²³⁹ Badilag, *Majalah Peradilan Agama, Dinamika hukum waris di Indonesia*, Edition 10, December 2016, pg. 19

<https://drive.google.com/file/d/0B5UQVcJ8Df8WcnJLb3k2TUJGbdQ/view?resourcekey=0--Y2Oxj0glcAeMWnTtNg1A>

²⁴⁴ <https://www.hukumonline.com/klinik/detail/ulasan/lt4de5d5fa395d9/bagaimana-proses-permohonan-penetapan-ahli-waris-dari-pengadilan-agama->

²⁴⁶ Sulistyowati Irianto, *Pluralisme Hukum Waris dan Keadilan Perempuan*, Yayasan Pustaka Obor Indonesia, Jakarta: 2016, Pg.17

		<p>the result of Constitutional Court Decision No. (2010) Article 43 paragraph (1) of the Marriage Law stating that "children born outside of marriage only have a civil relationship with their mother and their mother's family", one of which is the right to inheritance, as a legal contextualization of the norms governing the inheritance rights of children outside of marriage. It also refers to the right to financial support, the right to guardianship, and the right to child custody (<i>hadhanah</i>).²⁴⁰. Another decision related to inheritance in favor of women's justice is the decision on inheritance through a mandatory will to a stepdaughter.</p>	<p>Islamic law must consider all entitled heirs as parties. If not, the Chairperson of the Court or a judge appointed prior to the determination of the panel of judges, can give instructions to correct it.²⁴³</p>	<p>submitting an Application Letter signed by the applicant or his legal proxy and addressed to the Head of the Religious Court, which includes the residence of the Applicant (Perdadta).</p> <p>Petitioners who are illiterate can submit their application orally before the Head of the Religious Court. The judge will examine the application and issue a determination.</p>	<p>Several of the findings obtained include:</p> <p>Based on the results of their research, Daniel s Lev stated that although in West Sumatra the majority are Muslims, until 2008, most inheritance cases were resolved in the District Court, rather than the Religious Courts. This was due to the assumption that the district court was the guardian of customs related to the matrilineal kinship system, or the customary law of inheritance based on matrilineal lines²⁴⁷. In inheritance law, there have been many progressive decisions related to women, the provide equality to widows and daughters in the form of the right to inherit and to receive the same share as men. The wife's rights to the property of marriage are guaranteed.</p>
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²⁴⁰ Ibid, Pg. 20

²⁴³ Ahmad Z. Anam, *Plurium Litis Consortium dalam Permohonan Penetapan Ahli Waris (Hakim Pratama Madya Pengadilan Agama Mentok)*, <https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/plurium-litis-consortium-dalam-permohonan-penetapan-ahli-waris-oleh-ahmad-z-anam-8-4>

²⁴⁷ Ibid, 38

		<p>There is also the Decision (2011) to grant inheritance to the children of heirs who have died by making them substitute heirs.</p> <p>The Court's Decision (1998), (2000/ t) gives sons and daughters an equal share to inheritance²⁴¹.</p> <p>A greater share of joint property being granted to the wife. The Supreme Court (2010) granted the wife 3/4 of the joint property as the joint property was produced by the wife, and the husband had not provided maintenance for his wife's children for 11 years. The decision took into consideration the experience of the</p>			<p>However, the reality is not ideal for women, due to later disputes with the husband's family, due to the belief that the woman does not have the right to joint property in the marriage, for example widowers being chased from their houses by their husband's family. In the case of inheritance litigants, the composition of marriages shows that marriages more than once or polygamous marriages with or without offspring give rise to conflict in the future. Children born from different marriages or wives will be the parties to the dispute over the inheritance of the deceased husband²⁴⁸.</p>
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²⁴¹ Directorate General of Religious Courts, *The Religious Court Magazine Edition 6* | May 2015, <https://drive.google.com/File/d/0B5Uqvcj8Df8Wm1Jtu3M2Lwr3Qnm/View?Resourcekey=0-Kubkth10mqy9C8tviai9lq>

²⁴⁸ Ibid.hal.57

		<p>woman (upon divorce the wife and children were forced to leave home by the husband) The Panel of Judges in their consideration stated that, based on the evidence and facts presented at the trial, it became apparent that the husband had not provided financial support from his salary, and that all of the joint assets were procured by the wife from her income. Therefore, for the sake of justice, the judge made the decision to grant $\frac{3}{4}$ of the property to the wife.²⁴²</p>			
<p>Violence against women in the family</p> <p><i>Are there laws that define what constitute domestic violence such as battery, female circumcision, marital rape and other forms of</i></p>	<p>The constitution guarantees a sense of security, non-discrimination, and safety from acts of violence, including:</p> <ul style="list-style-type: none"> • The right to recognition, guarantee, protection, and fair legal certainty and equal 	<p>Religious courts are sometimes reluctant to use the Elimination of Violence in the Household Law in divorce cases even when violence was cited as the reason for</p>	<p>The National Commission for Women is a State institution that advocates for the eradication of gender-based violence.²⁶⁷</p>	<p>A chief judge of the court must issue a letter containing a protection ruling within seven days of</p>	<p>Various sources suggest a relatively high prevalence of violence against women, including domestic violence, in Indonesia:</p>

²⁴² Kelompok Kerja Perempuan Dan Anak Mahkamah Agung RI Masyarakat Pemantau Peradilan Indonesia Fakultas Hukum Universitas Indonesia (Mappi Fhui), *Pedoman Mengadili Perkara Perempuan Berhadapan Dengan Hukum*, Mahkamah Agung Republik Indonesia Australia Indonesia Partnership for Justice 2, Jakarta: 2018, hal 70

²⁶⁷ National Commission of Women website: <http://komnasperempuan.or.id/>

<p><i>sexual assault and violence that affect a woman's mental health which are perpetuated by traditional attitudes? Is there specific legislation that recognises domestic violence as a crime? Is the husband allowed to discipline his wife? Can a suspected perpetrator marry his alleged abused victim to avoid punishment? Are there support services for women who are the victims of aggression or abuses?</i></p> <p><u>Applicable CEDAW Provision</u> GRs 12 & 19 Para. 40 GR21</p>	<p>treatment before the law [Article; 28D (1)]</p> <ul style="list-style-type: none"> The right to personal protection, family, honor, dignity, and property under their control, and the right to a sense of security and protection from the threat of fear to do or not do something which is a human right. [Article 28G(2)] The right to be free from discriminatory treatment on any basis and the right to protection against such discriminatory treatment [28I paragraph (2)] The right to live in physical and spiritual prosperity, to live, and to have a good and healthy living environment, and the right to obtain health services [Article 28H paragraph (1)] The right to receive facilities and special 	<p>divorce.²⁶⁴ This is because the domestic violence law is criminal law. In the Indonesian legal system, there is a strong distinction between public and private law. The Religious court usually only use the law that relates to family or private law to process the divorce.²⁶⁵</p> <p>In 2014, the implementation of a <i>Qanun Jinayat</i> (Islamic law) regulating 10 <i>jarimah</i> (crimes) (<i>khamar</i> (inebriation), <i>maisir</i> (gambling), <i>khalwat</i> (a man and woman being unchaperoned), <i>ikhtilat</i> (groups of men and women</p>	<p>The Director General of Public Health issued Memorandum to clarify that female circumcision has no health benefits and hurts women.²⁶⁸</p> <p>Currently, the Law on Crimes of Sexual Violence (2022) lists 9 criminal acts of sexual violence, including non-physical and physical sexual harassment, forced marriage, forced contraception, and sexual torture, sexual slavery, electronic-based sexual violence,</p>	<p>receipt of an application for protection by a victim of domestic violence.²⁶⁹</p> <p>According to Indonesia's Code of Criminal Procedure (KUHAP), the prosecution of rape requires evidence of semen in medical records and corroboration from at least two sources, including a witness.²⁷⁰</p> <p>In 2017, the Supreme Court issued</p>	<p>According to the UNFPA, the first reliable national data on violence against women in Indonesia that is based on an extensive survey that was carried out in 2016, showed that: Just over 41% of Indonesian women reported having experienced physical, sexual, emotional and/or economic, violence at least once in their lifetime, and 16% of women reported having experienced one or more of these forms of violence in the past 12 months; and Over 33% of women aged 15-64 reported having experienced physical and/or sexual violence in their lifetime.</p> <p>According to the National Commission for Women,</p>
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²⁶⁴ Indonesia State party report, U.N. Doc. CEDAW/C/IDN/6-7 (2011), para. 207, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

²⁶⁵ Information obtained from Indonesian Advocate, February 2017

²⁶⁸ Director General of Public Health issued Memorandum No. HK.00.07.1.3.104.1047a (2006); Indonesia State party report, U.N. Doc. CEDAW/C/IDN/6-7 (2011), para. 132, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

²⁶⁹ Articles 28, 29 of the Elimination of Violence In the Household Law (2004), <https://www.wcwonline.org/pdf/lawcompilation/Indonesia-Regarding-Elimination-of-Violence-in-Household.pdf>

²⁷⁰ "Indonesia's Compliance with the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment," Committee Against Torture, Apr. 2008, https://www.ecoi.net/file_upload/1228_1270637573_komnasperempuan-indonesia40th.pdf

	<p>treatment to access equal opportunities and benefits in order to achieve equality and justice. [Article 28 H paragraph 20]</p> <p>The Human Rights Law also guarantees the protection of a sense of security, and the protection of women from being subjected to violence and discrimination at home and in public, including:</p> <ul style="list-style-type: none"> • Equal treatment and protection in accordance with human dignity before the law. • The right to fair assistance and protection from an objective and impartial court. • Specialized treatment and protection for vulnerable groups • The right to protection of one's self, family, honor, dignity, and property rights. • The right to recognition before the law as a human person wherever they are. 	<p>interacting together), <i>zina</i> (adultery), sexual assault, <i>liwath</i> (homosexuality), <i>musahaqah</i> (lesbianism), rape, and <i>qadzaf</i> (slander related to adultery/sodomy)) was contested by a civil society organization in the Supreme Court. However, the Supreme Court refused their request due to an ongoing review of the Law on the Formation of Legislation, which was being contested in the Constitutional Court.</p> <p>Several religious court decisions on divorce filed by women have provided justice for women including:</p> <p>Religious court decisions requiring the husband to pay financial support in</p>	<p>as well as 10 types of violence listed in other laws, which are also forms of sexual violence. During the pandemic, the Ministry of Women's Empowerment and Child Protection (KPPPA) issued 8 protocols for handling female victims during the COVID-19 pandemic.</p>	<p>guidelines for judges dealing with cases of women in conflict with the law. (Supreme Court Regulation No.3/2017), including the handling of cases in religious courts related to family law.²⁷¹ The Law on Crimes of Sexual Violence contains special procedural laws that are not regulated in other laws, specifically related to the protection of victims</p>	<p>violence, violence against women ('VAW') in Indonesia is on the rise since 2010 and requires urgent attention: Overall, the number of VAW cases handled by service provider institutions increased by 35% between 2011 and 2012 and 9% between 2014 and 2015. The Commission noted that as the statistics only reflect reported cases, coupled with unreported cases, the situation on VAW in Indonesia is more serious than the statistics reflect; With regard to domestic violence, there were 6,725 reported cases of violence against the wife (60% of domestic violence cases); followed by 930 cases of violence against girls (24%) and the remaining cases relate to violence against former partners and domestic workers.</p>
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²⁷¹ <http://mappifhui.org/wp-content/uploads/2020/10/PEMANTAUAN-PERMA-211020.pdf>

	<ul style="list-style-type: none"> • The right to a sense of security and peace and protection against the threat of fear to do or not do something. • Rights specifically attached to women due to their reproductive abilities are guaranteed and protected by law. <p>KDRT The Law on Domestic Violence Eradication (UU PKDRT) is a special law on protection from domestic violence that provides protection for women (including domestic workers) from physical, psychological, and sexual violence (including domestic rape), and economic neglect as a criminal act that differs from the criminal act of persecution regulated in the Criminal Code. The law also regulates mechanisms for the protection and obligations of law enforcement officers (Police, Attorney, Lawyers, and Courts), health workers,</p>	<p>the form of <i>iddah</i> to the wife as long as she is not <i>nusyuz</i>. This post-divorce financial right for women can be seen in the Supreme Court Cassation Decision (2008) and the Cassation Decision with legal considerations</p> <p>The husband should be sanctioned to provide <i>iddah</i> financial support to the wife if it is proven that the wife is not <i>nusyuz</i></p> <p>The results of a Rifka Annisa survey of 1,500 religious court decisions on divorce cases showed that only one decision was made in which the judge utilized their <i>ex-officio</i> right to determine the payment of <i>iddah</i> and <i>mut'ah</i> support²⁶⁶</p>			<p>In 2020, during the pandemic, Komnas Perempuan conducted a survey distributed across Indonesia. The results of the survey related to the pandemic and the fulfilment of women's rights: The majority of respondents admitted to conducting domestic work (women 89%; men 83.4%), More women experienced all types of violence than men. Meanwhile, during the COVID-19 pandemic, the number of cases of violence against women was recorded by Komnas Perempuan in their 2021 annual records, including:</p> <p>In Komnas Perempuan's records, despite the rate of violence against women (VaW) decreasing, the decreasing numbers were not an accurate representation of the situation. Due to the dynamics of VaW during the pandemic, the decrease in reported cases was a result of victims being afraid</p>
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<https://drive.google.com/file/d/0B5UQVcJ8Df8WM1JTU3M2LWR3QnM/view?resourcekey=0-kUBKTh10mgY9C8tvlai9lg>

	<p>social workers, and volunteer mentors to provide services, protection and recovery to victims, and ordered the establishment of coordinating ministry for efforts to prevent domestic violence.</p> <p>Article 28G of the Constitution provides that every person shall have the right to:²⁴⁹</p> <p>Protection of his/herself, family, honour, dignity, and property, and shall have the right to feel secure against and receive protection from the threat of fear to do or not do something that is a human right; and Be free from torture or inhumane and degrading treatment.</p> <p>Article 28H of the Constitution provides guarantees the right to live in physical and spiritual prosperity, to have a home and to enjoy a good and healthy environment.²⁵⁰</p> <p>Law No. 23/2004 regarding</p>			<p>to report incidences of violence due to their close proximity to the perpetrator as a result of large-scale social restrictions (PSBB); victims tend to confide in their families or remain silent; technological literacy issues; and complaint service models that were not prepared for pandemic conditions (not yet shifted to online complaint services). For example, during the pandemic, religious courts limited their services and curtailed the trail process.</p> <p>In 2020, there were 299,911 cases of VaW, which increased in 2021 to 338,496 cases. Domestic violence and personal relations were the most common forms of violence against women, at 79% (6,480 cases). Komnas Perempuan's 2021 annual report showed that domestic violence resulting in femicide perpetrated by husbands were at the highest (34 perpetrators of</p>
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²⁴⁹ Article 28G of the Constitution of Indonesia (1945), https://www.constituteproject.org/constitution/Indonesia_2002.pdf

²⁵⁰ Article 28H of the Constitution of Indonesia (1945), https://www.constituteproject.org/constitution/Indonesia_2002.pdf

	<p>Elimination of Violence in the Household (“Elimination of Violence in the Household Law”) criminalises a number of acts of domestic violence. It provides for protection of the victim (within 24 hours by police), health service and criminal action.²⁵¹</p> <p>Article 1 of the Law defines “violence in household” as any act against anyone particularly woman, bringing about physical, sexual, psychological misery or suffering, and/or negligence of household including threat to commit act, forcing, or seizure of freedom in a manner against the law within the scope of household.”²⁵²</p> <p>The Criminal Code also contains some general prohibitions that are applicable to domestic violence such as assault and battery, etc.²⁵³</p> <p>The Law on Domestic</p>				<p>327 cases in 2021). The most common motives for femicide were revenge/heartbreak (30.4%), rape (14.9%), jealousy (14.3%) and theft (12.5%). Other motives included unwanted pregnancies, refusing sex, being forced to marry, unrequited love, refusing to reconcile.</p> <p>The Supreme Court has issued a Decree on the Guidelines for the Implementation of Restorative Justice in the General Courts. However, based on a study conducted by Komnas Perempuan, mediation or peace efforts are widely used as an alternative in resolving domestic violence cases, meaning that cases are not forwarded to court.</p> <p>According to the Indonesian government and UNFPA Indonesia, while the</p>
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²⁵¹ Elimination of Violence in the Household Law (2004), <https://www.wcwonline.org/pdf/lawcompilation/Indonesia-Regarding-Elimination-of-Violence-in-Household.pdf>

²⁵² Article 1 of the Elimination of Violence in the Household Law (2004), <https://www.wcwonline.org/pdf/lawcompilation/Indonesia-Regarding-Elimination-of-Violence-in-Household.pdf>

²⁵³ Criminal Code (1952), <http://www.wipo.int/edocs/lexdocs/laws/en/id/id039en.pdf>

	<p>Violence Eradication also has a derivative regulation: Government Regulation no. 4/2006 on Organizing and Cooperation in Recovery of Victims of Domestic Violence</p> <p>During the pandemic, the Ministry of Women's Empowerment and Child Protection specifically issued 8 Protocols on Violence Against Women during the COVID-19 pandemic.²⁵⁴</p> <p>The Criminal Code also contains some general prohibitions that are applicable to domestic violence such as assault and battery, etc.²⁵⁵</p> <p>Media reported that Indonesia's parliament passed on tuesday 12 April 2002 a long-awaited bill to tackle <u>sexual violence</u>, aimed at providing a legal framework for victims to secure justice in a country where sexual abuse has often been regarded as a private matter.²⁵⁶ Indonesia</p>				<p>enactment of the Elimination of Violence in the Household Law was a breakthrough in the handling of domestic violence cases, there are still substantive and implementation problems associated with it. This include: Inadequate budget allocation; Law enforcement officials and legal sanctions being too lenient in the handling and addressing domestic violence cases – a consequence of the view that a balance needs to be sought between causing remorse for the perpetrator and preventing acts of domestic violence since such cases involve an emotional relationship between victims and perpetrators;</p> <p>Victims themselves do not report cases of domestic violence or retracting their reports even when they do; and Lack of comprehensive</p>
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²⁵⁴ https://infeksiemerging.kemkes.go.id/download/Protokol_Penanganan_Kasus_Kekerasan_terhadap_Perempuan_di_Masa_Pandemi_COVID-19.pdf

²⁵⁵ Criminal Code (1952), <http://www.wipo.int/edocs/lexdocs/laws/en/id/id039en.pdf>

²⁵⁶ <https://edition.cnn.com/2022/04/12/asia/indonesia-sexual-violence-bill-abuse-forced-marriage-intl-hnk/index.html>

	<p>has ratified the Sexual Violence Act (2022) which lists 9 types of violence (physical sexual harassment, non-physical sexual harassment, forced contraception, forced sterilization, forced marriage, sexual torture, sexual exploitation, sexual slavery, and electronic-based sexual violence). It also lists 10 types of sexual violence listed in other laws, which are also included as types of sexual violence (rape, obscene acts, sexual violence against children, violations of decency, pornography, forced prostitution, sexual exploitation for the trafficking of persons, sexual violence at home, money laundering with not sexual violence, criminal acts of sexual violence) in laws and regulations.²⁵⁷ The inclusion of the types of sexual violence in other laws in the Law on the Elimination of Sexual Violence (TPKS) is considered to be a bridge between the problems faced</p>				<p>data to enable strategic handling of the issue.</p>
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²⁵⁷ <https://nasional.tempo.co/read/1581603/uu-tpks-disahkan-berikut-jenis-tindak-pidana-kekerasan-seksual-yang-diatur/full&view=ok>

	<p>by victims contained in the Criminal Code, including rape and obscene acts, which are the source of problems in the legal substance.²⁵⁸</p> <p>Forced abortion is not included in the TPKS Law. Forced abortion is regulated by Health Law No.36/2009. Abortion can only be performed if there is an indication of a medical emergency detected at an early stage of pregnancy, which threatens the life of the mother and/or fetus, or if the pregnancy is a result of rape which can cause psychological trauma to the rape victim [Article 75 of the Health Law]. Abortion must be performed after conducting counselling and before the pregnancy reaches 6 (six) weeks counted from the first day of the woman's last menstrual cycle, except for in cases of medical emergency; and be performed by a healthcare worker who possesses a</p>				
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<https://nasional.kompas.com/read/2022/04/16/19283451/delik-perkosaan-dalam-uu-tindak-pidana-kekerasan-seksual>

	<p>certificate issued by the minister and health service providers (Article 76 of the Health Law). Criminal sanctions for procedures that do not meet the above provisions are 10 years imprisonment and a fine of IDR 1 billion. The law makes women who are victims of forced abortion vulnerable to punishment.</p> <p>Regulation of Female Circumcision: The Ministry of Health banned female circumcision through Circular Letter No. HK.00.07.1.3.1047a in 2006. However, the prohibition was later removed through the Regulation of the Minister of Health No. 1636/2010, which allows female circumcision in Indonesia and subsequently the Regulation of the Minister of Health No. 6/2014, which states that female circumcision is not a medical act but allows the practice of female circumcision as it is considered to be different to FGM and symbolic in nature. The Regulation of the Minister of Health on Female Circumcision has received</p>				
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	<p>much criticism, particularly from women’s rights activists. The regulation is considered to make women vulnerable to human rights violations.</p> <p>Virginity testing: In August 2021, the media reported that the Indonesian army had abolished the requirement for personnel of all levels of the Women’s Army Corps (<i>Korps Wanita Angkatan Darat – Kowad</i>) to undergo vaginal, cervical, and hymen examinations as part of the selection process²⁵⁹. Virginity Tests were eliminated from the Medical Examinations of Candidates for the Women’s Army Corps through Technical Instructions (Juknis) B/13/72/VI/2021 dated June 14, 2021 on the Completion of the Technical Guidelines for the Physical Examination.²⁶⁰ Meanwhile in the Indonesian National Police, media information stated that a prohibition letter</p>				
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²⁵⁹ <https://nasional.kompas.com/read/2021/08/12/12531141/tni-ad-hapus-tes-keperawanan-calon-kowad-komnas-perempuan-harap-diiikuti>

²⁶⁰ <https://komnasperempuan.go.id/siaran-pers-detail/peringatan-hari-perempuan-internasional-2022-dan-peluncuran-catatan-tahunan-tentang-kekerasan-berbasis-gender-terhadap-perempuan>

	<p>was issued by the National Police Chief on virginity tests in 2014.</p> <p>In terms of the regulation of rape and sexual harassment through <i>Qanun</i> in Aceh Province, due to regional autonomy and the implementation of Sharia law, caning is applied as a punishment, including for rapists and perpetrators or sexual assault. In addition, the victim is also required to take an oath, including an oath stating that the perpetrator may be freed from punishment, if it is not proven that the victim has been subject to <i>qadzaf</i> (threat of whipping).²⁶¹</p> <p>Caning has been reported to be a serious obstacle in the recovery of female victims²⁶²</p> <p>The Aceh Government is currently discussing efforts to change the Qanun</p>				
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²⁶¹ <http://dsi.acehprov.go.id/wp-content/uploads/2017/02/Qanun-Aceh-Nomor-6-Tahun-2014-Tentang-Hukum-Jinayat.pdf>

²⁶² Komnas Perempuan, **Kertas Kebijakan** Penguatan Perlindungan Hukum Bagi Perempuan Dari Pelecehan Seksual Dan Pemerkosaan Di Aceh [Policy Paper – Strengthening Legal Protections for Women from Sexual Harassment and Rape in Aceh], Jakarta: 2021

	Jinayat. ²⁶³				
<p>Nationality rights</p> <p><i>Does a wife have the right to confer her citizenship on foreign husbands and children? Can the nationality of an adult woman be arbitrarily removed because of marriage or dissolution of marriage or because her husband or father changes his nationality?</i></p> <p><u>Applicable CEDAW Provision</u> Article 9 Para. 6 GR21</p>	<p>Women have the right to citizenship as guaranteed in the Constitution Article 28D paragraph (4) Everyone has the right to citizenship. The Human Rights Law states that everyone has the right to have, obtain, replace, or maintain their citizenship status. And all individuals are free to choose their nationality, have the right to enjoy the rights that originate and are attached to their citizenship without discrimination, and must carry out their obligations as a citizen in accordance with the provisions of the legislation (Article 26).</p> <p>A woman who marries a man of foreign nationality does not automatically follow her husband's citizenship status but has the right to retain, change, or regain her citizenship.</p> <p>However, unfortunately these arrangements are different</p>	<p>In 2016, the Citizenship Law was contested (Article 41) as it prohibited an individual from becoming a member of the flag raising ceremony on August 17 to commemorate the 71st year of Indonesia's Independence at the presidential palace, as they had not been registered by their parents, who had a mixed marriage between an Indonesian mother and a foreign national father. However, the request was rejected by the Constitutional Court in Decision 80/PUU-XIV/2016</p>	<p>The Indonesian government did not provide a report on the issue of citizenship rights due to mixed marriages in the 2012 CEDAW report.</p> <p>The Government ensuring the rights of a child to a name and acquires nationality, as stipulated in the Law No. 39/1999 on Human Rights, Law No. 23/2002 on Child Protection and Law No. 12/2006 on Citizenship. The Government is targeting all children aged 0-18 years old be registered and issued birth certificates through the implementation</p>	<p>The procedure for mixed marriages is regulated in Article 60 of the Marriage Law, requiring the fulfilment of requirements determined by the laws applicable to each party. Marriage registration is based on the laws applicable to each party, and a certificate is provided stating that the conditions have been met. If the recording official refuses to provide a certificate, the</p>	<p>Based on a dissertation study conducted on the regulation of mixed marriages and its impacts, Indonesian citizens lose their citizenship if the law of the country of the foreign national who marries the Indonesian citizen requires them to adopt the citizenship of the foreign national. The regulation in Article 26 of the Citizenship Law is neutral. However, for women it has different impacts, as women occupy a vulnerable position in life. The above citizenship arrangements are not sufficient to provide protection to women in mixed marriages. Indonesian women who marry foreign nationals who take on the citizenship of their husbands lose their Indonesian citizenship, while their children obtain dual citizenship, in this case the mother's Indonesian</p>

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<https://www.kompas.id/baca/desk-regional/2022/02/15/revisi-ganun-jinayat-untuk-memperberat-hukuman-pelaku-kejahatan-seksual>

	<p>from those contained in the Marriage Law, Citizenship Law and the KHI</p> <p>An Indonesian woman or man may pass their nationality to their non-Indonesian spouses. In the event that the foreign spouse is denied Indonesian citizenship on account of dual citizenship, the foreign spouse may be given a permanent residence permit in line with prevailing law.²⁷²</p> <p>An Indonesian woman or man who marries a foreign spouse will lose their Indonesian nationality if by law of the countries of their foreign spouses, their citizenship will follow that of the foreign spouse. To retain their Indonesian citizenship, they need to submit a letter stating their citizenship preference to the Official or to the Embassy of Indonesia</p>		<p>of National Program for Indonesian Children 2006-2015.²⁷⁸</p> <p>In the Concluding Observations, the Committee responded, however, that it remains concerned that article 41 of Law No. 12/2006, on Citizenship of the Republic of Indonesia, excludes children who were born to an Indonesian and a non-Indonesian parent before 2006 from obtaining Indonesian nationality. The Committee recommends that the State party ensure that</p>	<p>matter will be decided by the court with no appeal against the refusal with reasons or not. If the court decides that the refusal is unreasonable, the decision counts as a substitute for the statement. The statement/substitute decision no longer holds power if the marriage is not performed within 2 (six) months of the statement being issued. The registration of mixed marriages is</p>	<p>citizenship as well as the citizenship of the father²⁸⁰. An independent Komnas Perempuan report to the CEDAW committee highlighted the need to change the Citizenship Law to ensure equal rights for women and men to retain or change their citizenship, particularly for women who have migrated due to being trafficked for the purpose of transnational marriage, although sexual exploitation has not occurred²⁸¹.</p>
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²⁷² Article 19 of the Law No. 12/2006 on Citizenship of the Republic of Indonesia, <http://www.refworld.org/pdfid/4538aae64.pdf>

²⁷⁸ https://www.kemennppa.go.id/lib/uploads/list/215d1-translasi-cedaw-report_eng.pdf

²⁸⁰ http://eprints.undip.ac.id/52222/1/RINGKASAN_DISERTASI_AMALIA_DIAMANTINA.pdf

²⁸¹ <https://komnasperempuan.go.id/laporan-internasional-detail/laporan-independen-komisi-nasional-anti-kekerasan-terhadap-perempuan-kepada-komite-cedaw-pelaksanaan-konvensi-penghapusan-segala-bentuk-diskriminasi-terhadap-perempuan-di-indonesia-tahun-2007-2011>

	<p>whose jurisdiction covers the domicile of the foreign spouse, unless such statements will result in dual citizenship of the applicants.²⁷³</p> <p>An Indonesian mother or father may pass their citizenship to their children regardless of whether they are born in Indonesia or abroad.²⁷⁴</p> <p>A child who has a mother or father who is a non-Indonesian is allowed to hold dual citizenship until the child reaches 18. Once the child reaches 18 or gets marry, the child must choose one citizenship within three years of reaching 18 or getting married.²⁷⁵</p> <p>Article 29(1) of the Law No. 23/2002 on Children Protection allows a child born from a marriage of an Indonesian citizen and a foreign citizen to earn</p>		<p>Indonesian nationality is conferred to children born to an Indonesian and a non-Indonesian parent before 2006, with a view to preventing statelessness.²⁷⁹</p>	<p>conducted by an authorized registrar. If a mixed marriage is performed without first presenting a statement or substitute decision to an authorized registrar, the parties may be sentence to one month imprisonment. In addition, if a marriage registrar records a marriage and is aware that no statement of substitute decision has been provided, they may be sentenced to 3 (three) months imprisonment</p>	
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²⁷³ Article 26 of the Law No. 12/2006 on Citizenship of the Republic of Indonesia, <http://www.refworld.org/pdfid/4538aae64.pdf>

²⁷⁴ Article 4 of the Law No. 12/2006 on Citizenship of the Republic of Indonesia, <http://www.refworld.org/pdfid/4538aae64.pdf>

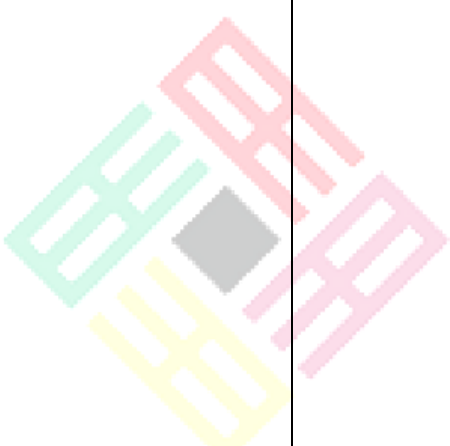
²⁷⁵ Article 6 of the Law No. 12/2006 on Citizenship of the Republic of Indonesia, <http://www.refworld.org/pdfid/4538aae64.pdf>

²⁷⁹ https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/IDN/CO/8&Lang=En

	<p>citizenship from either the father's side or the mother's in accordance with the provision of existing laws.²⁷⁶</p> <p>Article 29(2) states that in the event of divorce of a marriage, the child has the right to choose their citizenship or the court will issue a ruling based on the parent who has been granted custody. If the mother is Indonesian, the government is obliged to arrange for citizenship of the Republic of Indonesia for the child.²⁷⁷</p> <p>In the law, marriage between Indonesian citizens (male or female) and foreign nationals is referred to as mixed marriage. (Article 57 of the Marriage Law) For this marriage, a person can lose their Indonesian citizenship if the law applicable to their foreign partner requires them to adopt the citizenship of the foreigner. (Article 58)</p>			<p>and career-related sanctions (Article 60 of the Marriage Law). The same arrangements as Article 60 and Article 61 of the Marriage Law are regulated in Articles 58-66 of the KHI Indonesian citizens who lose their citizenship or wish to regain their citizenship follow the procedures regulated in Government Regulation No. 2/2007 on the Procedures for Obtaining, Losing, Cancelling, and Regaining</p>	
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²⁷⁶ Article 29(1) of the Law 23/2002 on Children Protection, http://www.arnec.net/wp-content/uploads/2015/03/ANNEX-3-Laws-of-child_protection.pdf

²⁷⁷ Article 29(2) of the Law 23/2002 on Children Protection, http://www.arnec.net/wp-content/uploads/2015/03/ANNEX-3-Laws-of-child_protection.pdf

	<p>The outcomes of marriage will determine the applicable public and civil law. Loss of citizenship, one cause of which is marriage, is also regulated in Article 31 of Government Regulation No. 2/2007 on the Procedures for Obtaining, Losing, Cancelling, and Regaining Indonesian Citizenship. Meanwhile, the provision of immigration facilities for children with dual citizenship is regulated in the Regulation of the Minister of Law and Human Rights No. M.80-HI.04.01/2007 on the Procedures for the Enrolment, Registration, and Provision of Citizenship Facilities as Indonesian citizens with dual citizenship.</p>			<p>Indonesian Citizenship. The Regulation of the Minister of Law and Human Rights (2007) on the Procedures for the Enrolment, Registration, and Provision of Citizenship Facilities as Indonesian citizens with dual citizenship.</p>	
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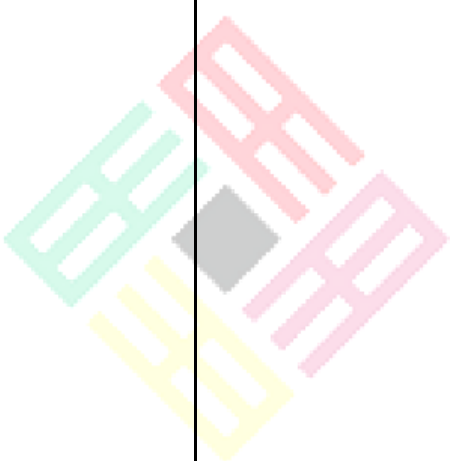
ACCESS TO JUSTICE (please include sources to information as much as possible)

SYSTEM	PROCEDURES	CHALLENGES FOR WOMEN	GOOD PRACTICES IN COURT SYSTEM
<p><i>How are Muslim family law (i.e. marriage and family related) cases administered in your country? (E.g. Do you have a Quazi/Kadhi court system, family courts or civil courts?)</i></p> <p>The Marriage Law regulates the marriage of Muslim citizens through the religious courts, while marriages between non-Muslim individuals are conducted through the District Court (Article 63 of the Marriage Law).</p> <p>In accordance with the authority of the judicial body at the Supreme Court, the Religious Courts are judicial bodies that have the authority to examine, hear, decide, and resolve cases of Muslim citizens [Article 25 of the Law on Judicial Power, Article 1 of Law N0.50/2009 on Religious Courts, Article 63 of the KHI].</p> <p>Family Courts have not been integrated between divorce cases and criminal cases (domestic</p>	<p><i>Are the procedures pertaining to family matters (e.g. divorce, maintenance etc) are defined in the family law and/or are there guidelines/policies available for judges/Kadhis?</i></p> <p>The Supreme Court issued several Supreme Court Regulations as a guide for judges in handling cases dealing with the law, through Supreme Court Regulation No. 3/2017, which is a judge's guideline for identifying and considering the vulnerability of women in the trial process.</p> <p>Civil society organizations responded by issuing monitoring guidelines for the implementation of the guidelines provided to judges.</p> <p>The Attorney General's Office also issued Guidelines on Access to Justice for Women and Children in Handling Criminal Cases in 2021. The guidelines cover the handling of criminal</p>	<p>In general, women who are in conflict with the law face challenges to obtaining justice, including: legal substance that does not favor women and may contain discriminatory regulations. For example, (Marriage Law), law enforcement officers tend to blame women/are not friendly toward women, as well as the lack of and not optimal legal assistance for women.</p> <p>Several views on increasing access to justice for women in the religious courts are summarized in the Badilag journal listing the issues faced by women, including:</p> <p>Rifka Annisa Yogyakarta's view that wives who experience domestic violence and file for a divorce do not receive support in the form of <i>iddah</i>, <i>mut'ah</i>, <i>maskan</i>, and <i>kiswah</i> (access to justice:10)</p> <p>In 2010, Stijn van Huis observed that many religious court decisions issued by the Cianjur Religious Court regarding the post-divorce rights of women and children were ignored. Thus, there is no reciprocal relationship between access to religious courts for divorced widows and economic</p>	<p><i>Are there any good practices, procedures or policies that you would like to share pertaining to how courts in your country deal with family law cases?</i></p> <p><i>(E.g. prioritising certain types of cases, timely delivery of decisions, clear procedure, etc)</i></p> <p>The national strategy for access to justice is one of the priorities of the government's planning for the development of a just national law. This strategy was initiated in 2009, and has been implemented until now. This strategy is an indicator that is applied, for example, in the religious courts. The national strategy for access to justice is an indicator for assessing legal dispute resolution mechanisms and institutions, as well as individual capacity/capabilities to obtain justice, including the fulfilment of human rights standards.</p> <p>The report on access to justice showed that religious courts can</p>

<p>violence), which are tried by the General Court</p> <p><i>How many courthouses/court rooms around the country that administer Muslim family law cases?</i></p> <p>Religious Courts at the first level are located in the cities/districts. The appellate level courts, or the high religious courts, are located in the province [Article 6-8 of Law No.7/89 on Religious Courts]. The religious courts established a special court in Aceh, the provincial level Islamic Syari'ah Court, (Article 3A of the Law on Religious Courts No.50/2009), which handles cases outside of family law, dealing with Sharia cases (10 crimes in the Qanun Jinayat include: <i>khamar, maisir, khalwat, ikhtilath</i>, adultery, rape, sexual assault, <i>liwath</i>, <i>musahaqah</i>, and <i>qadzaf</i>).</p> <p>The religious courts currently consist of 359 first level courts and 29 appellate courts. And there are 5,945 religious affairs offices throughout Indonesia's subdistricts.</p> <p><i>If civil or Kadhi courts - what cases are handled by what courts?</i></p>	<p>cases involving women and children in conflict with the law at the inquiry, investigation, pre-prosecution, prosecution, and court examination stages.</p> <p><i>In general practice do judges/Kadhis follow procedures?</i></p> <p>Based on a report from the Judicial Commission in Indonesia, in 2020, there were 71 reports on violations of the code of ethics and the behavior of judges. Religious court cases represented the fourth most reported cases of the 14 types of cases reported.</p> <p>Religious courts are the second most widely reported by the public. According to a report on disciplinary penalties from the Indonesian Supreme Court Oversight Body (Bawas Mahkamah Agung) and the Judicial Commission from 2021, 24 religious court judges violated the code of ethics and received punishments for their behavior (10 of whom were Chairpersons of Religious Courts).</p> <p>The judge's compliance with the procedure can be determined by their decisions. Research on religious court decisions includes,</p>	<p>protection for them.</p> <p>Komnas Perempuan has claimed that, in fact, access to justice for women in conflict with the law in religious courts still faces many obstacles. For example, the judge's decisions have not been optimally in favor of or oriented toward gender justice. This occurs as, firstly, some law enforcement officials do not fully understand gender-based violence. Secondly, the condition and position of women in the private and public spheres remains weak. Thirdly, women have limited authority in the name of law meaning that the rights of women and children are not considered.</p> <p>Research from Syarif Hidayatullah University in collaboration with the Asia Foundation concluded that religious court judges were less than optimal in providing protection for women's rights, including because they were bound by legal provisions stating that the judge's decision must not exceed that which was requested or petitioned (<i>ultra petita</i> principle).</p> <p>The Supreme Court issued one of the guidelines for judges to handle cases of women dealing with the law in 2017. This positive step was followed by the attorney general in 2021 issuing guidelines on access to justice for women and children</p>	<p>be differentiated between two forms: Firstly, access to justice related to public services, and secondly, access to legal services more closely related to substantive justice.</p> <p>Within the scope of family law, Badilag's 2020 report is a form of access to justice for public services, including waiver of litigation fees, hearings outside the building, courts, legal aid posts, integrated service for mobile courts, foreign marriage <i>itsbat</i>, information, facilities for persons with disabilities. These services are considered a good practice by religious courts which are pioneers for other courts in Indonesia.</p> <p>Good practice is evident in Judges' decisions related to substantive justice. The Supreme Court produces Court jurisprudence, which interprets the law and becomes a reference for decisions on similar cases in providing justice to women, including in cases of <i>nusyuz</i> (2007), Adult women do not require a parent/guardian's permission to marry (1998)</p> <p>The mechanism for implementing</p>
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<p>The Religious Courts have the authority to examine, decide, and settle cases at the first level for individuals who are Muslim in the field of marriage, inheritance; wills; <i>waisat</i> (grants); <i>waqf</i>; <i>zakat</i>; <i>infaq</i>; <i>sadaqah</i>; and Islamic finances.</p> <p><i>How many Muslim family law-related judges? Are there women working within the court system as judges/marriage registrars e.t.c?</i></p> <p>At the end of 2020, the number of technical personnel for the Religious Courts was recorded as 7,956 individuals, judges as 3,340 individuals, clerks at 3,360 individuals, and judicial staff as 1,256 individuals. The following is a description of the Human Resources of the Religious Courts as of December 2020. The number of judges and clerks based on the 2020 Badilag report: Chief Justices of the Court: 29 individuals, Deputy Chairpersons 29, Chief Judges 29, Judicial Judges 8, Non-Palu Judges 298, PTA/MSy 1, 365.</p> <p>The total number of judges is 3,340 (2,497 male judges and 843 female judges). The number of clerks is 3,360, with 1,761 women and 1,579 women.</p>	<p>for example, marriage dispensation. This research was conducted by a judicial monitoring community organization that conducted a study on 160 marriage dispensation decisions and 200 divorce decisions issued in 2019, read and analyzed 873 religious court decisions and 40 general court decisions on marriage dispensation, and 508,276 religious court decisions and 4,345 general court decisions on divorce cases. The most common reason for applying for marriage dispensation was that the girl was pregnant at 31%. The average age of the girls involved in marriage dispensation cases was 14.5 years. This figure was much younger than the average age of boys involved in the cases at 16.5 years; The results of the decisions showed that 99% of the applications submitted were granted by the judges;</p> <p>Judges' decisions related to women dealing with the law (sexual violence, domestic violence, etc.) showed that more than 84% of perpetrators were known by the victim (friends, boyfriends, relatives, teachers, and so on). In terms of community expectations in cases of sexual</p>	<p>in handling criminal cases.</p> <p>Support which is also oriented to the protection of women is carried out by the judiciary through legal aid service posts using court budgets, based on Supreme Court Regulation (Perma) No. 1/2014 on the Guidelines for Providing Legal Services for Low-income Individuals in Courts.</p> <p>In accessing legal justice, women with disabilities experience significant barriers due to the lack of facilitation of procedures for people with disabilities when dealing with the law. In the field, women with disabilities often experience discrimination as both perpetrators, victims, and witnesses.</p> <p>The results of research conducted by Balai Shura, an umbrella women's rights organization in Aceh, mapped access to services for women in conflict with the law in 2018 in the implementation of the Qanun Jinayat. According to the results of the mapping conducted in 9 regions in Aceh, women face many obstacles in obtaining access to legal justice. These obstacles are found in all lines of the legal process, including the legal substance, structure, and culture. The regulation of the Jinayat Qanun, which has multiple interpretations, makes women extremely vulnerable. The lack of legal assistance for women who are considered to have</p>	<p>the chamber system in the Supreme Court has been in effect as of 2011. Family law is part of the Chamber of Religion. The results of the Plenary Chamber serve as guidelines for handling cases, including cases in religious courts, for example:</p> <ol style="list-style-type: none"> (1) regarding overdue support payments (<i>nafkah madiyah</i>) for children who have been neglected by their fathers, related to the order for the husband to pay post-divorce obligations to his wife (2) In Marriage and Divorce Permits for Civil Servants, the distribution of salaries must be stated in a declaratory decision. (3) The husband's obligation to provide <i>mut'ah</i> and <i>iddah</i> maintenance payments upon divorce from a wife who has not committed <i>nusyuz</i> (4) Applications for polygamous marriage <i>isbat</i> (certificates) on the basis of unregistered marriages, even if pertaining to reasons related to the children's interests, must be declared unacceptable. To ensure the interests of the child, an application for the parentage of
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<p><i>Do lawyers represent clients?</i></p> <p>The role of advocates in providing legal assistance is regulated by Law No.18/2003 on Advocates. The role of an advocate is to provide legal services, inside and outside the court. In supporting their profession, advocates are required to swear an oath in the High Court. As legal assistants, advocates are given the status of free and independent law enforcers, as guaranteed by law. Advocates also have an obligation to provide free assistance to people who can't afford it.</p> <p>In addition to advocates, legal aid institutions and community organizations can provide legal aid and assistance. Apart from advocates, legal assistance can also be provided by paralegals, or anyone from the community or society, or a legal aid provider who has attended paralegal training, is not an advocate by profession, and does not independently assist.</p> <p>Access to justice for women to obtain legal assistance is supported by the Regulation of the Minister of Law and Human Rights No. 3/2021 on Paralegals in Providing Legal</p>	<p>violence, 35.8% of the community want a prison sentence of 10 to 15 years for perpetrators of rape. In practice, the average sentence imposed by judges on perpetrators of rape is only 5.2 years from the maximum sentence of 12 years outlined in Article 285 of the Criminal Code. This gap in the sentencing is due to a portion of perpetrators apologizing to the victim and/or demonstrating repentance for their actions, which is one consideration in the lightening of sentences for perpetrators.</p> <p>According to media reports, 3 high court decisions at the appeal level of Aceh Syari'ah Court acquitted perpetrators of rape who had been sentenced to 200 months imprisonment by the first court of the Syari'ah Court. However, the decisions were annulled by a Supreme Court Cassation Decision, which sentenced the perpetrators to 16 years and 6 months imprisonment. Another decision was also acquitted by the appeals court of the Syari'ah Court in the case of a father raping his son, where the father was sentenced</p>	<p>violated the Qanun Jinayat, for example by committing <i>khalwat</i>, adultery, and so on, means that women do not have the opportunity to obtain quality assistance. The availability of female officers or officers who have a female perspective is limited, including a lack of quality services from supporting institutions such as the Integrated Service Center for the Empowerment of Women and Children. The limited spaces for the detention of women, including women who have children under five, places women in a vulnerable situation.</p> <p>Violators of Qanun Jinayat are stigmatized for being considered immoral, resulting in minimal access to legal aid services, despite the Qanun Jinayat regulating the right to legal aid. An impact of this stigma is that individuals are reluctant or afraid to provide assistance, as they may be subjected to blasphemy and intimidation from the public for defending violators of the Qanun Jinayat.</p>	<p>the child can be submitted.</p> <p>(5) Payment of obligations due to divorce, particularly <i>iddah</i>, <i>mut'ah</i>, and <i>madliyah</i> expenses, can be included in the ruling with the sentence paid before making the divorce pledge. (2017)</p>
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<p>Aid²⁸². This access to legal aid finances legal aid services from legal aid institutions that assist poor people or groups, including women. Currently, there are 524 legal aid institutions accredited by the government between 2018 and 2021, with only 215 districts/cities having legal aid institutions out of a total of 514 districts/cities throughout Indonesia. There are still 299 districts/cities that do not have any legal aid institutions. The lack of aid institutions has an impact on the limited access of women in certain districts/cities to assistance.</p> <p>Currently, there are 115 service institutions that are members of a service provider forum that provide assistance to women in conflict with the law (victims), which are spread across 32 provinces.</p> <p>The results of the justice index report conducted by the civil society consortium for justice, ranked family law second among society in terms of problems that are commonly experienced, particularly related to the issue of divorce. However, this is inversely proportional to the legal</p>	<p>to 180 months in prison, but was acquitted at the appellate level of the Syari'ah court. This case received public criticism regarding the capacity of judges to handle rape cases involving both children and adult women.</p>		
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²⁸² The court provides access to legal aid in the form of waiver of court fees (Supreme Court Regulation No.1/2014) on Guidelines for Providing Legal Services for Low-income Individuals in Court.

aid that is accessed. The research showed that 64% of individuals did not use legal aid/assistants to help resolve the legal problems that they experienced, 60 percent of whom were women.			
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