

INDONESIA¹

OVERVIEW OF MUSLIM FAMILY LAWS & PRACTICES

(Updated as at 31 May 2017)

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 particular issue, how is the issue addressed e.g. what Muslim school of law is applicable? Do these laws explicitly state gender-stereotypical roles</i></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.² Gender equality is not specifically mentioned.</p> <p>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.³</p> <p>The Law No. 1/1974 on Marriage (“Marriage Law”) is the main codified law that governs</p>		<p>Indonesia has a reservation to Article 29 of CEDAW.¹⁷</p> <p>The Government of Indonesia in its 2011 report to the CEDAW Committee:¹⁸</p> <ul style="list-style-type: none"> 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 		<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.¹⁹</p> <p>According to Indonesia’s 2012 Demographic and Health Survey, about 15% of households in Indonesia are headed by women.²⁰</p>

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.

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

³ Article 51 of the Human Rights Law (1999), <http://www.refworld.org/docid/4da2ce862.html>

<p><i>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>marriage and family relations in Indonesia.⁴</p> <p>The Marriage Law is applicable to all Indonesians regardless of religion.⁵ The Law exclusively recognises religious marriages:⁶</p> <ul style="list-style-type: none"> • 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 		<p>enables the husband to practice polygamy. Similarly, the Compilation applied in civil disputes in religious courts also contains provisions that are discriminatory for women;</p> <ul style="list-style-type: none"> • 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 		
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¹⁷ United Nations Treaty Collection Website, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=_en
¹⁸ 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>
¹⁹ UNDP, "Human Development Report 2016", Table 5, pp. 214-217, http://hdr.undp.org/sites/default/files/2016_human_development_report.pdf
²⁰ Statistics Indonesia et al., "Indonesia Demographic and Health Survey 2012", Table 2.8, p. 19, <http://dhsprogram.com/pubs/pdf/FR275/FR275.pdf>
⁴ Marriage Law (1974), <https://www.scribd.com/doc/53066173/Undang-undang-Republik-Indonesia-No-1-Tahun-1974-Tentang-an>
⁵ 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>
⁶ 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>Court.</p> <p>In addition:</p> <ul style="list-style-type: none"> • 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 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;⁷ and • 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.⁸ The Compilation, which was formalised by Presidential Instruction No. 1/1991,⁹ is a codification of 		<p>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</p> <ul style="list-style-type: none"> • 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, 		
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⁷ 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>

⁸ 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>

⁹ 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>

	<p>Islamic laws that 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.¹⁰</p> <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>”:¹¹</p> <ul style="list-style-type: none"> • 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; 		<p>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</p>		
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¹⁰ 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>

¹¹ 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>

	<ul style="list-style-type: none"> • 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 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;¹² • 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;¹³ • 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;¹⁴ • Article 34(1) states that the 		<p>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</p>		
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¹² 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-penyebaran-kompilasi-hukum-islam>

¹³ 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-penyebaran-kompilasi-hukum-islam>

¹⁴ 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-penyebaran-kompilasi-hukum-islam>

	<p>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.</p> <p>This is somewhat reflected in Article 80 of the Compilation. Article 80(2) reflects Article 34(1) of the Marriage Law. However:¹⁵</p> <ul style="list-style-type: none"> - 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 		<p>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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¹⁵ 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-penyebaranluasan-kompilasi-hukum-islam>

	<p>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 provide housing for his wife and children.</p> <ul style="list-style-type: none"> 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.¹⁶ 				
<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</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</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</p>	<p>The Government of Indonesia in its 2011 CEDAW report, when referring to the 2008 case, asserted that:²⁴</p>	<p>The official performing the religious ceremony of the marriage must verify that the marriage is lawful.²⁷</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</p>

¹⁶ 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-penyebaranluasan-kompilasi-hukum-islam>

<p><i>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 verification process before the marriage is concluded?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(2) Paras. 36-39 GR21</p>	<p>16 and 19 respectively to marry provided that both parents consent to the marriage.²¹</p> <p>The law does not stipulate an absolute minimum age below which a marriage may not be authorised.</p>	<p>changing the minimum legal age for marriage to 18 and at the same time equalising the age for marriage between women and men.²²</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.²³</p>	<ul style="list-style-type: none"> • It does not tolerate underage marriages; and • The Department of Religious Affairs is raising awareness about sanctions for officials who permit the marriage of couples under 18. <p>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.²⁵</p>	<p>The marriage registrar (<i>Pegawai Pencatat Nikah</i>) may not register an under-aged marriage that has not been properly authorised although the marriage was not prevented.²⁸</p>	<p>and according to the Indonesian government, 11% of women were married below 16.²⁹</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 24.3.³⁰</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</p>
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²⁴ 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>

²⁷ 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>

²¹ 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-penyebarnya-kompilasi-hukum-islam>

²² Girls Not Brides, "Indonesia", *Child marriages around the world*, <http://www.girlsnotbrides.org/child-marriage/indonesia/>

²³ 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>

²⁵ Information obtained from Indonesian advocate, February 2017

			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 18. ²⁶		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. ³¹
<p>Women's consent to marriage</p> <p><i>Is a marriage valid without the woman's consent? Is the 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</i></p>	<p>Regardless of their age, both prospective brides and grooms must consent to the marriage. Consequently, <i>ijbar</i> marriages are prohibited.</p> <p>Article 6(1) of the Marriage Law states the agreement of both parties to the marriage is a precondition for marriage.³² The requirement for consent is also reflect in Articles 14 (both parties),</p>			All Muslim marriages must be conducted under the supervision of the marriage registrar (<i>Pegawai Pencatat Nikah</i>), otherwise, the marriage will not be legally recognised. Prior to the marriage ceremony, the	

²⁸ 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>

²⁹ 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>

³⁰ Statistics Indonesia et al., "Indonesia Demographic and Health Survey 2012", Table 4.3, p. 43, <http://dhsprogram.com/pubs/pdf/FR275/FR275.pdf>

²⁶ 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>

³¹ Girls Not Brides, "Indonesia", *Child marriages around the world*, <http://www.girlsnotbrides.org/child-marriage/indonesia/>

³² Article 6 of the Marriage Law (1974), <https://www.scribd.com/doc/53066173/Undang-undang-Republik-Indonesia-No-1-Tahun-1974-Tentang-an>

<p><i>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>16 (prospective bride) and 27 (guardian of the prospective bride and prospective groom) of the Compilation.³³</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.³⁴ In a similar vein, Article 71(f) provides that a marriage may be nullified if forced.³⁵</p> <p>The mandatory registration of marriages is provided for in Article 2(2) of the Marriage Law³⁶ and also Article 5 of the Compilation.³⁷ 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. 24/2013.³⁸</p>			<p>marriage registrar must first enquire whether the prospective bride and groom consent to the marriage in the presence of two witness. If the prospective bride does not consent to the marriage, the marriage ceremony cannot be performed.³⁹</p> <p>Muslim marriages must be registered with the Office of Religious Affairs at the sub-district Levels (KUAKec).⁴⁰</p>	
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³³ 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-penyebarluasan-kompilasi-hukum-islam>

³⁴ Article 22 of the Marriage Law (1974), <https://www.scribd.com/doc/53066173/Undang-undang-Republik-Indonesia-No-1-Tahun-1974-Tentang-an>

³⁵ 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-penyebarluasan-kompilasi-hukum-islam>

³⁶ Article 2(2) of the Marriage Law (1974), <https://www.scribd.com/doc/53066173/Undang-undang-Republik-Indonesia-No-1-Tahun-1974-Tentang-an>

³⁷ 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-penyebarluasan-kompilasi-hukum-islam>

³⁸ 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>

³⁹ 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-penyebarluasan-kompilasi-hukum-islam>

⁴⁰ Article 34(4) of the Population Administration Law (2006), <http://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=54eeefde4>

<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 permission to marry if her wali refuses to consent to her marriage? Can a woman negotiate her marital 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>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, paternal grandfather, brother, uncle, etc.).⁴¹</p> <p>A judge can act as guardian in the absence of a <i>wali</i> or if the <i>wali</i> opposes the marriage.⁴²</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.⁴³ This is reflected in Articles 15 and 107 of the Compilation.⁴⁴</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 the contract must not be contrary to</p>			<p>The ante-nuptial contract must be written and authorised or legalised by the marriage registrar (<i>Pegawai Pencatat Nikah</i>). In practice, the marriage contract usually relates to marital property rights.⁴⁷</p>	
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⁴¹ 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-penyebaranluasan-kompilasi-hukum-islam>

⁴² 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-penyebaranluasan-kompilasi-hukum-islam>

⁴³ Article 6(2) of the Marriage Law (1974), <https://www.scribd.com/doc/53066173/Undang-undang-Republik-Indonesia-No-1-Tahun-1974-Tentang-an>

⁴⁴ 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-penyebaranluasan-kompilasi-hukum-islam>

	<p>the law, religion or morality. Throughout the continuance of the marriage, the contract cannot be changed except by mutual agreement between the parties.⁴⁵</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:⁴⁶</p> <ul style="list-style-type: none"> • Vows expressed by a husband after the solemnisation of the marriage, the breach of which may entitled the wife to a divorce (<i>talik 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 marriage. 				
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⁴⁷ Information obtained from Indonesian advocate, February 2017

⁴⁵ Article 29 of the Marriage Law (1974), <https://www.scribd.com/doc/53066173/Undang-undang-Republik-Indonesia-No-1-Tahun-1974-Tentang-an>

⁴⁶ 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-penyebarluasan-kompilasi-hukum-islam>

<p>Polygamous marriages</p> <p><i>Does the law prohibit polygamy or impose strict conditions on such practice? 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>A Muslim man may marry up to four wives at one time.⁴⁸</p> <p>While Article 3(1) of Marriage Law states that in principle, a 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.⁴⁹</p> <p>Article 4 of the Marriage Law provides that:⁵⁰</p> <ul style="list-style-type: none"> • 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. <p>Article 5 of the Marriage Law provides that a court can only entertain a petition for a</p>	<p>In the Constitutional Court Case No. 12/PUU-V/2007, a challenge was posed on the constitutionality 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 Constitutional Court: (i) pointed to the Marriage Law stating that marriage in principle was monogamous, and polygamy was only allowed for specific</p>		<p>Once an application of to enter into a polygamous marriage is 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 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</p>	<p>In practice, polygamy is fairly exceptional in Indonesia.⁵⁶ According to Indonesia's 2012 Demographic and Health Survey, 0.7% of marriages in Indonesia are polygamous.⁵⁷</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.⁵⁸</p>
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⁴⁸ 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-penyebaranluasan-kompilasi-hukum-islam>

⁴⁹ Article 3 of the Marriage Law (1974), <https://www.scribd.com/doc/53066173/Undang-undang-Republik-Indonesia-No-1-Tahun-1974-Tentang-an>

⁵⁰ Article 4 of the Marriage Law (1974), <https://www.scribd.com/doc/53066173/Undang-undang-Republik-Indonesia-No-1-Tahun-1974-Tentang-an>

	<p>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.⁵¹</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.⁵²</p> <p>Under Government Regulation No. 10/1983 on permission relating to marriage and divorce for civil servants as amended by Government Regulation 45/1990:⁵³</p>	<p>reasons and in 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.⁵⁴</p>		<p>permission faces sanction, even imprisonment.⁵⁵</p>	
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⁵⁶ 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>

⁵⁷ Statistics Indonesia et al., "Indonesia Demographic and Health Survey 2012", Table 4.2.1, p. 43, <http://dhsprogram.com/pubs/pdf/FR275/FR275.pdf>

⁵⁸ 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>

⁵¹ Article 5 of the Marriage Law (1974), <https://www.scribd.com/doc/53066173/Undang-undang-Republik-Indonesia-No-1-Tahun-1974-Tentang-an>

⁵² 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>

⁵³ 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>

⁵⁴ 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>

	<ul style="list-style-type: none"> • 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>Divorce rights</p> <p><i>Is there equal right to divorce 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</i></p>	<p>Indonesian law provides Muslims with three main mechanisms for divorce: (i) repudiation (<i>cerai talak</i>); (ii) judgement of the court (<i>cerai gugat</i>); and (ii) redemptive divorce (<i>khul'</i>).⁵⁹</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</p>				<p>The number of women who are applying for divorce is rising significantly.⁶⁷ For instance:</p> <ul style="list-style-type: none"> • Data from Banjarmasin Religious court shows that in 2015, women filed 1,186 divorce cases (<i>cerai</i>

⁵⁵ 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>

⁵⁹ 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/psatdata/detail/13200/node/732/inpres-no-1-tahun-1991-penyebaran-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>

<p><i>the procedure i.e. is the presence of the spouse to be divorced required, are witnesses required, does the spouse seeking divorce need 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>Applicable CEDAW Provision Article 16(1)(c) Paras. 17-18 GR21 Paras. 34, 39-40 GR29</p>	<p>requirement is reflected in Article 115 of the Compilation and Article 65 of the Religious Court Law.⁶⁰</p> <p>Article 39(2) of the Marriage 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.⁶¹</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</p>				<p><i>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;⁶⁸</p> <ul style="list-style-type: none"> In Jambi Religious court, women filed 1,350 divorce cases in 2016 as compared to 865 divorce cases filed by men.⁶⁹ <p>According to official and media reports as well as information on the ground.⁷⁰</p>
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⁶⁷ 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/>

⁶⁸ 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-penyebaran-kompilasi-hukum-islam>; Article 65 of the Religious Courts Law (1989), <http://peraturan.go.id/inc/view/11e44c4e667c43309f4a313231333533.html>

⁶⁹ Article 39(2) of the Marriage Law (1974), <https://www.scribd.com/doc/53066173/Undang-undang-Republik-Indonesia-No-1-Tahun-1974-Tentang-an>

⁷⁰ 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>

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>

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>

	<p>marriage; (iv) a spouse 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</i> (<i>ta'liq talaq</i>) by the husband; and (viii) the conversion of a spouse from Islam to another religion.⁶²</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 summon the husband and his wife for reconciliation within 30 days of</p>				<ul style="list-style-type: none"> • 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
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⁶² 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/>

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>

	<p>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.⁶³</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 by Article 116 of the Compilation.⁶⁴</p> <p>A Muslim woman may also seek a redemptive divorce (<i>khul'</i>) through</p>				<p>than women who do not;</p> <ul style="list-style-type: none"> • Often times, divorce puts women in financial and psychological hardship for various reasons e.g. 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
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⁶³ 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-penyebaran-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>

⁶⁴ 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>

	<p>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.⁶⁵</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 suit in writing.⁶⁶</p>				<p>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>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 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</i></p>	<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 matrimonial assets (<i>harta bersama</i>).</p> <p>Article 41(c) of the Marriage Law states that the court may obligate the former husband to pay</p>	<p>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 highlighted in an academic research.⁷⁷ The woman's husband</p>		<p>A couple can stipulate different terms for marital property rights in the marriage contract. If there is no 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</p>	<p>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 due to</p>

⁶⁵ 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>

⁶⁶ 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>

<p><i>she entitled to maintenance during the waiting period after the divorce (iddah)? Is she entitled to a consolatory gift or compensation upon divorce (mut'ah)? 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?</i></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>financial maintenance and/or impose one or other obligation to the former wife.⁷¹</p> <p>In accordance with the Compilation, if the divorce is initiated by the man (<i>cerai talak</i>), a woman is entitled to:⁷²</p> <ul style="list-style-type: none"> • 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 • A consolatory gift or compensation (<i>mu'tah</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 	<p>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 for her share of marital property. In</p>	<p>mutual agreement regarding their marital property rights.⁷⁸</p>	<p>the lack of enforcement mechanisms.⁷⁹</p>
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⁷⁷ Stijn 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

⁷¹ Article 41(c) of the Marriage Law (1974), <https://www.scribd.com/doc/53066173/Undang-undang-Republik-Indonesia-No-1-Tahun-1974-Tentang-an>

⁷² 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-penyebarlusasan-kompilasi-hukum-islam>

⁷⁸ Information obtained from Indonesian Advocate, February 2017

⁷⁹ 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/>; Stijn 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

	<p>husband's financial capacity.</p> <p>Article 35 of the Marriage Law provides for a matrimonial assets regime whereby: (i) property 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:⁷³</p> <ul style="list-style-type: none"> • 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>The Compilation outlines the</p>	<p>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 order for the former husband to handover the share of her marital</p>			
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⁷³ 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>

	<p>Muslim matrimonial assets regime:⁷⁴</p> <ul style="list-style-type: none"> • Article 1(f) defines matrimonial assets (<i>harta 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; • Article 85 provides that the existence of a matrimonial assets regime does not preclude husbands and wives from owning their own assets; • 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; • 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 	<p>property.</p>			
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⁷⁴ 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-penyebarlusasan-kompilasi-hukum-islam>

	<p>remain under their respective control, unless otherwise decided between the parties;</p> <ul style="list-style-type: none"> • Article 91 provides that matrimonial assets may be tangible (e.g. immovable property, movable objects and securities) or intangible (either rights or obligations); • 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. <p>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:⁷⁵</p> <ul style="list-style-type: none"> • Articles 105 and 156 states that after a divorce, fathers are 				
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⁷⁵ 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-penyebaran-kompilasi-hukum-islam>

	<p>responsible for the financial maintenance of their children at least until they turn 21;</p> <ul style="list-style-type: none"> • 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 <p>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.⁷⁶</p> <ul style="list-style-type: none"> • 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 				
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⁷⁶ 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>for the children. If he no children, then he keeps half his salary and maintains his wife with the other half;</p> <ul style="list-style-type: none"> • 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>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 re-marriage 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:⁸⁰</p> <ul style="list-style-type: none"> • 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 				<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.⁸²</p>

⁸⁰ 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>

⁸² 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>given the option of being under the care of either mother or father until they reach the age of 21;</p> <ul style="list-style-type: none"> • 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.). <p>Other applicable laws include the following:⁸¹</p> <ul style="list-style-type: none"> • 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 interests of the child; 				<ul style="list-style-type: none"> • 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 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.
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⁸¹ 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>

	<ul style="list-style-type: none"> 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; 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>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>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 the children personally and to their properties. Article 107 of the Compilation reflects this provide but stating that children under 21 are placed under the guardianship.⁸³</p> <p>Article 51(2) of the Marriage Law provides that a guardian shall</p>				

⁸³ 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>

	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. ⁸⁴				
<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>Applicable CEDAW Provision Articles 16(1)(e), 12 Paras. 21-23 GR21</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. ⁸⁵				<p>According to World Bank data, the total fertility rate decreased from 5.7 children per woman in 1960 to 2.4 in 2015.⁸⁶</p> <p>According to Indonesia's 2012 Demographic and Health Survey:⁸⁷</p> <ul style="list-style-type: none"> The median birth interval in Indonesia is 60.2 months, with 11% of children being born less than 24 months after their

⁸⁴ 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-penyebaranluasan-kompilasi-hukum-islam>

⁸⁵ 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>

⁸⁶ World Bank, "Fertility rates, total (births per woman)", <http://data.worldbank.org/indicator/SP.DYN.TFRT.IN>

⁸⁷ 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>siblings;</p> <ul style="list-style-type: none"> • 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 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.
<p>Personal rights of spouses</p> <p><i>Does a woman need the consent of her spouse or guardian to work,</i></p>	<p>Article 27(2) of the Constitution guarantees every Indonesian the right to work and earn a human livelihood.⁸⁸</p>			<p>Women can negotiate their role within the family and in public in marriage</p>	<p>According to the UNFPA, the first reliable national data on violence</p>

⁸⁸ Article 27(2) of the Constitution of Indonesia (1945), https://www.constituteproject.org/constitution/Indonesia_2002.pdf

<p><i>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) Para. 24 GR21 Para. 34 GR29</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.⁸⁹</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.⁹⁰</p>			<p>contract.⁹¹</p>	<p>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.⁹²</p> <p>According to Indonesia's 2012 Demographic and Health Survey:⁹³</p> <ul style="list-style-type: none"> • 63% of married Indonesian women were
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⁸⁹ Article 28E of the Constitution of Indonesia (1945), https://www.constituteproject.org/constitution/Indonesia_2002.pdf

⁹⁰ Articles 45, 48, 49 of the Human Rights Law (1999), <http://www.refworld.org/docid/4da2ce862.html>

⁹¹ Information obtained from Indonesian advocate, February 2017

⁹² 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>

⁹³ 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>

					<p>employed at the time of the survey;</p> <ul style="list-style-type: none"> • 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
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					<ul style="list-style-type: none"> • 35% of women aged 15-49 accept at least one reason as a justification for wife beating. Women are most likely to agree that if a wife goes out without telling her husband, it justifies wife beating (24%). <p>According to World Bank data, female labour force participation increased from 50% in 1990 to 51% in 2016.⁹⁴ During the same period, male labour force participation increased from 81% to 84%.⁹⁵</p> <p>According to the 2016 UNDP Human Development Report.⁹⁶</p> <ul style="list-style-type: none"> • 43% of women
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⁹⁴ 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>

⁹⁵ 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>

⁹⁶ 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>over 25 have at least some secondary education as compared to 52% of men of the same age group;</p> <ul style="list-style-type: none"> • 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. <p>According to the Indonesian government, the following are examples of obstacles faced by wives when exercising their personal rights:⁹⁷</p> <ul style="list-style-type: none"> • Many women actively earn a living and are often the main
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⁹⁷ 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>income earners of their household. However, the stereotype of women playing supporting roles or as servants still exists; and</p> <ul style="list-style-type: none"> • In the workplace, there is an assumption that working women are single and are not supporting a family.
<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</i></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>.⁹⁸</p> <p>Articles 176-191 of the Compilation detail the inheritance shares. In many instances, such as in the cases of widows and widowers</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</p>

⁹⁸ 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>their inheritance in favour of their mother upon the death of their father?</i></p> <p>Applicable CEDAW Provision Paras. 34-35 GR21 Paras. 49-53 GR29</p>	<p>and siblings, a woman is entitled to half the share of a man.⁹⁹</p>				<p>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.¹⁰⁰</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>Article 28G of the Constitution provides that every person shall have the right to:¹⁰¹</p> <ul style="list-style-type: none"> • Protection of his/herself, family, honour, dignity, and property, and shall have the 	<p>Religious courts are sometimes reluctant to use the Elimination of Violence in the Household Law in divorce cases even</p>	<p>The National Commission for Women is a State institution that advocates for the eradication of gender-based</p>	<p>A chief judge of the court must issue a letter containing a protection ruling within seven days of receipt of an application for</p>	<p>Various sources suggest a relatively high prevalence of violence against women, including domestic violence, in Indonesia:</p>

⁹⁹ 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-penyebarluasan-kompilasi-hukum-islam>

¹⁰⁰ 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)

¹⁰¹ Article 28G of the Constitution of Indonesia (1945), https://www.constituteproject.org/constitution/Indonesia_2002.pdf

<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>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</p> <ul style="list-style-type: none"> • Be free from torture or inhumane and degrading treatment. <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.¹⁰²</p> <p>Law No. 23/2004 regarding 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.¹⁰³</p>	<p>when violence was cited as the reason for divorce.¹⁰⁶ 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.¹⁰⁷</p>	<p>violence.¹⁰⁸</p> <p>The Director General of Public Health issued Memorandum to clarify that female circumcision has no health benefits and hurts women.¹⁰⁹</p>	<p>protection by a victim of domestic violence.¹¹⁰</p> <p>According to Indonesia's Code of Criminal Procedure (KUHP), the prosecution of rape requires evidence of semen in medical records and corroboration from at least two sources, including a witness.¹¹¹</p>	<ul style="list-style-type: none"> • 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:¹¹² - 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
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¹⁰² Article 28H of the Constitution of Indonesia (1945), https://www.constituteproject.org/constitution/Indonesia_2002.pdf

¹⁰³ Elimination of Violence in the Household Law (2004), <https://www.wcwoonline.org/pdf/lawcompilation/Indonesia-Regarding-Elimination-of-Violence-in-Household.pdf>

¹⁰⁶ 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>

¹⁰⁷ Information obtained from Indonesian Advocate, February 2017

¹⁰⁸ National Commission of Women website: <http://komnasperempuan.or.id/>

¹⁰⁹ 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>

¹¹⁰ Articles 28, 29 of the Elimination of Violence In the Household Law (2004), <https://www.wcwoonline.org/pdf/lawcompilation/Indonesia-Regarding-Elimination-of-Violence-in-Household.pdf>

¹¹¹ "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>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.”¹⁰⁴</p> <p>The Criminal Code also contains some general prohibitions that are applicable to domestic violence such as assault and battery, etc.¹⁰⁵</p>				<p>experienced one or more of these forms of violence in the past 12 months; and</p> <ul style="list-style-type: none"> - Over 33% of women aged 15-64 reported having experienced physical and/or sexual violence in their lifetime. • According to the National Commission for Women, violence, violence against women (‘VAW’) in Indonesia is on the rise since 2010 and requires urgent attention:¹¹³ - Overall, the number of VAW
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¹¹² 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>

¹⁰⁴ 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>

¹⁰⁵ Criminal Code (1952), <http://www.wipo.int/edocs/lexdocs/laws/en/id/id039en.pdf>

¹¹³ 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, pp. 1-2, <http://www.komnasperempuan.go.id/wp-content/uploads/2016/03/KOMNAS-PEREMPUAN--CATATAN-TAHUNAN-2016edisi-Launching-7-Maret-2016.pdf>

					<p>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;</p> <p>- 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</p>
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					<p>and domestic workers.</p> <p>According to the Indonesian government and UNFPA Indonesia, while the 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:¹¹⁴</p> <ul style="list-style-type: none"> • Inadequate budget allocation; • Law enforcement officials and legal sanctions being too lenient in the handling and addressing domestic violence cases – a consequence of
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¹¹⁴ Indonesia State party report, U.N. Doc. CEDAW/C/IDN/6-7 (2011), para. 206. 31, 159, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>; UNFPA Indonesia, "Uncovering the bigger picture of violence against women in Indonesia", *UNFPA News*, 8 March 2016, <http://indonesia.unfpa.org/news/2016/06/uncovering-the-bigger-picture-of-violence-against-women-in-indonesia>

					<p>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> <ul style="list-style-type: none"> • Victims themselves do not report cases of domestic violence or retracting their reports even when they do; and • Lack of comprehensive data to enable strategic handling of the issue.
<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</i></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</p>				

<p><i>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>permanent residence permit in line with prevailing law.¹¹⁵</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 whose jurisdiction covers the domicile of the foreign spouse, unless such statements will result in dual citizenship of the applicants.¹¹⁶</p> <p>An Indonesian mother or father may pass their citizenship to their children regardless of whether they are born in Indonesia or abroad.¹¹⁷</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</p>				
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¹¹⁵ Article 19 of the Law No. 12/2006 on Citizenship of the Republic of Indonesia, <http://www.refworld.org/pdfid/4538aae64.pdf>

¹¹⁶ Article 26 of the Law No. 12/2006 on Citizenship of the Republic of Indonesia, <http://www.refworld.org/pdfid/4538aae64.pdf>

¹¹⁷ Article 4 of the Law No. 12/2006 on Citizenship of the Republic of Indonesia, <http://www.refworld.org/pdfid/4538aae64.pdf>

	<p>citizenship within three years of reaching 18 or getting married.¹¹⁸</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 citizenship from either the father's side or the mother's in accordance with the provision of existing laws.¹¹⁹</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 republic of Indonesia for the child.¹²⁰</p>				
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¹¹⁸ Article 6 of the Law No. 12/2006 on Citizenship of the Republic of Indonesia, <http://www.refworld.org/pdfid/4538aae64.pdf>

¹¹⁹ 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

¹²⁰ 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