

# Gender Division of Labour and Polygamy (Rethinking of Marriage Law of 1974 and Its Contribution to Domestic Violence)

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## Abstract

*The Indonesian patriarchal culture and gender inequality is reflected in state policies, regulations and laws. As a pluralistic country comprising of different ethnic groups with specific cultures and traditions, Indonesia has four formal religions: Islam, Christianity, Hindu and Buddhism. Because of this, Indonesian law reflects cultural and religious diversity, including customary law or Adat law, the Marriage Law of 1974 as well as civil and criminal law. Two serious concerns of Marriage Law of 1974 are in relation to gender division of labour and polygamy which undermine Indonesian Muslim women. This paper discusses such an issue to allow women to get equality before the law and highlights its contribution to domestic violence.*

*There are two contradictory stipulations with respect to the Marriage Law of 1974: equality in marriage and gender division of labour within marriage. On the one hand, Article 31(1) and Article 33 clearly state that there is no difference between husband and wife with respect to their basic rights such as love, respect, or fidelity. On the other hand, both of these Articles are contradicted with other articles which differentiate between a husband's and wife's responsibilities. For example, Article 31 (3) and Article 34 stipulate a clear division between the roles of husbands and wives within marriage. This has become a reference point for Indonesian views in determining gender relations in marriage.*

*Marriage Law of 1974 still which supports gender division of labour between wife and husband should be revised by providing a clear statement that these roles are conditional. This means that husbands can be domestic carers including taking care of children if they have no jobs, while wives can be financial providers or the head of household if they are capable to do so. In this context, gender roles can be exchanged and are not strictly for a certain gender.*

## Abstrak

Budaya patriarki dan ketidaksetaraan gender di Indonesia terefleksi dalam kebijakan-kebijakan negara, peraturan perundang-undangan. Sebagai sebuah negara yang pluralis yang terdiri dari beragam kelompok etnis dengan budaya dan tradisinya yang spesifik, Indonesia memiliki empat agama formal: Islam, Kristen, Hindu dan Budha. Oleh karena itu, hukum Indonesia merefleksikan keragaman agama dan budaya, termasuk hukum adat, hukum pernikahan tahun 1974, dan juga hukum sipil dan kriminal. Dua hal penting yang berkaitan dengan hukum perkawinan tahun 1974 berkaitan dengan pembagian tugas gender dan poligami yang merusak muslimah Indonesia. Makalah ini mendiskusikan isu tersebut untuk membiarkan perempuan memperoleh kesetaraan sebelum hukum dan menyoroti kontribusinya terhadap kekerasan dalam rumah tangga.

Ada dua perundang-undangan yang kontradiktif berkaitan dengan undang-undang perkawinan tahun 1974: kesetaraan dalam perkawinan dan pembagian tanggung jawab kerja dalam perkawinan. Di satu sisi, Undang-Undang no. 31 (1) dan Undang-Undang no. 33 secara jelas menyatakan bahwa tidak ada perbedaan antara suami dan istri berkaitan dengan hak-hak dasar mereka seperti cinta, kehormatan dan kesetiaan. Di sisi lain, kedua undang-undang ini bertentangan dengan undang-undang yang lain yang membedakan antara tanggung jawab suami dan tanggung jawab istri. Sebagai contoh, undang-undang no. 31 (3) dan undang-undang no 34 mengatur pembagian secara jelas antara peran suami dan peran istri dalam perkawinan. Hal ini sudah menjadi titik referensi bagi pandangan-pandangan orang Indonesia dalam menentukan hubungan gender dalam perkawinan.

Hukum perkawinan tahun 1974 yang masih mendukung pembagian kerja antara suami dan istri seharusnya di revisi dengan memberkan pernyataan yang jelas bahwa peran-peran ini bersifat kondisional. Artinya bahwa suami bisa pengurus rumah tangga dengan menjaga anak-anak mereka jika mereka tidak memiliki pekerjaan, sementara istri bisa menjadi pencari nafkah atau kepala rumah tangga jika mereka mampu melakukannya. Dalam konteks ini, peran gender bisa ditukar dan tidak diterapkan secara ketat untuk gender tertentu.

**Key Words:** *gender, marriage law, labour division, polygamy*

## Introduction

Two serious concerns of Marriage Law of 1974 are in relation to gender division of labour and polygamy which undermine Indonesian Muslim women. This paper discusses this issue to allow women to get an equality before the law and highlights its contribution to domestic violence.

The Indonesian patriarchal culture and gender inequality is reflected in state policies, regulations and laws. As a pluralistic country comprising of different ethnic groups with specific cultures and traditions, Indonesia has four formal religions: Islam, the predominant religion, Christianity, Hindu and Buddhism. Because of this, Indonesian law reflects cultural and religious diversity, including customary law or *Adat* law, the Marriage Law of 1974 as well as civil and criminal law. Historically, these laws have sometimes overlapped, especially in the early 14<sup>th</sup> century. Lindsey (1999a) notes that it is difficult to differentiate between traditional customs and religious beliefs because they influence one another and both have influenced Indonesian law. Historically, cultural and social traditions were mostly influenced by 'animist and pre-Indic folk beliefs' and some are a mixture of religious teachings such as Hindu, Buddhism and Islam.<sup>1</sup> Both customary law and Islamic law still play an important role in the formulation as well as the implementation of legislation in Indonesia.

Indonesia claims to be 'a nation of the law' (*negara hukum*) which has a similar meaning to the 'rule of law' in Western thought.<sup>2</sup> The government asserts that Indonesia operates by the rule of law, but its fairness is still questionable due to both the complexity of law as well as government intervention in implementing the law. The 'rule of law' in Indonesia can be interpreted and implemented according to government interests and benefits, as Dick (2007) described, governments often enact and implement laws which reflect its interests.<sup>3</sup> To illustrate this, Indriaswati Saptaningrum argues that the historical transformation of Marriage Law from pre to post Indonesian independence, including the New Order (*Orde Baru*), is an indication of accommodating government interests.<sup>4</sup>

In the pre independence period, under Dutch Colonial rule (1596-1942),<sup>5</sup> the Marriage Law did not clearly accommodate gender equality within marital relationships whereby women were deemed responsible for domestic roles while men were heads of households. Women were classed as dependent within the legal system because husbands had to sign for them in dealing with legal matters. After independence (1945-1966), the government reformed the Marriage Law to accommodate the interests of both the government and religious leaders. At this stage, conditions for women worsened due to the spread of divorce as well as early marriage because there were no provisions on the divorce prerequisites and the minimum age for women to enter marriage. In the New Order (1966-1998), the government introduced the Marriage Law of 1974, that adopted aspects of the pre independence Marriage Law which legitimated the gendered division of labour in the family. These

had been discarded during the independence stage. The provision for an identifiable gender division of labour within marriage was aimed at accommodating conservative Muslim views about marriage,<sup>6</sup> as a result of their interpretation of the Qur'an.<sup>7</sup>

Women are an integral part of any society and their contribution is important to the development of a country. This contribution is not limited to domestic and caring roles, but also incorporates the public arena of economics and politics, which is currently male dominated. The state ideology of Indonesia *Pancasila* (five principles of Indonesian state ideology), the Constitution of 1945 and the Board Guidelines on State Policy (*Garis-Garis Besar Haluan Negara –GBHN*) 1993-1998 guarantee that women and men have similar rights and responsibilities in relation to the state. Yet, to some extent, state policies and regulations constitute gender inequalities.

The Marriage Law of 1974<sup>8</sup> is based largely on Islamic jurisprudence and specifically applies to Muslims with respect to marriage, divorce, inheritance and religious charities (*waqaf*), and the proportion of Muslims in Indonesia is 87.2 percent.<sup>9</sup> It was introduced in 1974 to accommodate Muslim interests because Islam is the predominant religion in Indonesia.<sup>10</sup> Two underlying discourses that should be highlighted in the Indonesian Marriage Law of 1974 with respect to examining the incidence of domestic violence are the provision for the gendered division of labour in marriage and polygamous marriage.

### **Gender Division of Labour in Marriage**

There are two contradictory stipulations with respect to the Marriage Law of 1974: equality in marriage and gender division of labour within marriage. Article 31(1) stipulates that both husband and wife have the same rights and roles in accordance with family life. Article 33 states that a couple must build their marital relationship on love, respect, submission, emotional and physical support. These two articles clearly state that there is no difference between husband and wife with respect to their basic rights such as love, respect, or fidelity. Yet, these fundamental guarantees are contradicted by other articles which differentiate between a husband's and wife's responsibilities. For example, Article 31 (3) specifies that the husband is the head of household, whereas the wife's role is that of domestic carer. More importantly, Article 34 clarifies further that both parties ought to fulfil these prescribed responsibilities in a responsible manner. Article 34 outlines three issues: (1) A husband is obliged to protect his wife and to fulfil her needs according to his capacity to do so; (2) A wife is obliged to

undertake her domestic responsibilities well; (3) If the husband or the wife cannot comply with those specified responsibilities, either is permitted to apply for divorce in the court.<sup>11</sup> So, these two articles stipulate a clear division between the roles of husbands and wives within marriage. The husband is the head of family and is financially responsible for the family, while the wife is responsible for the household including raising their children.<sup>12</sup> This has become a reference point for Indonesian views in determining gender relations in marriage.

There are two possible responses to article 31 and 34 in relation to the gender division of labour in marital relationships. One is that an alternative division of labour can be acceptable as long as both husband and wife negotiate such roles. Participation in decision-making is important, as one partner should not enforce their ideas and opinions on the other. Issues of control and relations of superiority and inferiority should not arise in equitable marriage. The couple may share or negotiate to manage the family. For example, the husband may have good career prospects and the opportunity to earn money for the family. Likewise, the wife may decide that she wants to stay at home to raise and educate her children. This decision requires recognising that both husband and wife make significant contributions to family, but this means that women's unpaid domestic work must be valued properly to be considered 'productive'. Work in the domestic realm does have an economic value.<sup>13</sup> Yet, few people support this view, particularly in Indonesia, arguing that a definition of work is that it contributes financially.

Another response is that the gender division of labour in the Marriage Law provisions can be considered as a form of discrimination against women as those prescribed roles and responsibilities have become normative in society. The belief that a woman's domain is the home and that she is fully responsible for domestic chores, while a man is a financial provider and a head of a household, is widespread.<sup>14</sup> The implication of such understandings is that women, to some extent, are restricted in their involvement in the public arena, especially married women. Further, it is assumed that a man (husband), at least in Makassar or Bugis, should not undertake domestic tasks such as cooking and washing because this is regarded as 'unacceptable' (taboo). In a similar vein, Nurul Ilmi Idrus (2004) suggests that a husband who undertakes such domestic roles is viewed as 'less powerful' and must be under the control or supervision of his wife, without the power to say 'no'.<sup>15</sup> The further impact of such a gendered division of labour is that it is women who are most often assaulted. These implications are consistent with current research conducted by Henny Wilujeng and her colleagues, 'The

Impacts of Gender Division of Labour on Women Working Conditions Among Low Level Class in Jakarta' (2002). Their research indicated that lower class women experienced disadvantage as a result of gender segregation including financial, social, sexual, physical and emotional abuse as well as lack of support in the workforce.<sup>16</sup> Evidence supports this research, but suggests that such abuse occurs regardless of women's social stratification and education.

Recent incidents of domestic violence demonstrate how far some men are willing to go to assert their authority within a marital relationship. A disturbing story on Television News 'Indosiar' described a husband who murdered his wife on April 2004 in Umbulhardjo Yokyakarta Central Java because she was reluctant to return home from work at her husband's request. This incident indicates that a woman may even risk death if she dares to challenge the husband's command because he is 'a household leader and controller'.

A middle class woman, Mita- aged 36, has been killed by her husband on her way from work. He met Mita and asked her to come home immediately, but Mita refused. This made him so angry that he picked up a stone and threw it at her head, resulting in her death. He put the dead body in the car and covered it with a blanket. The next morning, he called his wife in her office to hide his violence.<sup>17</sup>

Another woman aged 38 was beaten for going out in the grounds because her husband believed that she was neglecting their children. In an interview, this unemployed woman said:

My husband always gets angry or physically abuses me if either I or my children are not at home. He often kicks me when I ask him not to drink alcohol. This occurs almost every day and the most frightening is when he hits me with a piece of wood (a local term *balo-balo*). Because of that, I have a permanent broken leg.<sup>18</sup>

These women's experiences reflect the subordinate position of women in marriage relationships. This hierarchical position is a result of gender roles depicted in the Marriage Law of 1974 which are reinforced by Islamic male preachers to the bride and groom before the marriage celebration begins.<sup>19</sup> Thus, some men may become angry if their wives do not subscribe to this rule, go against their wishes, criticise them or prioritise work or recreation needs above their domestic tasks.

It is important to amend the existing Marriage Law that reinforces these gender roles in order to ensure women's rights in marriage. Apart

from the gendered division of labour, this law also makes stipulations with respect to polygamy. Several articles are deemed to support women's dignity due to the complicated requirements for men entering polygamous marriage. While polygamy is not common among the majority of the population it further reinforces women's subordination and complicates the case for change in monogamous relationships. Unfortunately, this is not properly enforced, so polygamy undermines women.

### **Polygamous Marriage**

Although polygamy had been the subject of intense debate among women activists before Indonesian independence, the question of whether it should be excised completely from the Marriage Law is still a highly contentious issue. It is important to situate this debate within the historical context. A previous Bill, 'the 1973 Marriage Bill', included controversial articles such as restrictions on polygamous marriage, permission for interreligious marriage and limiting the role of the Religious Courts. The proposed restrictions on polygamy and permission for interreligious marriage led to intense opposition from Muslims, who called for amendments to the Bill on the grounds that it was contrary to Islamic law.<sup>20</sup> However, the provisions disallowing polygamous marriage in the marriage Bill of 1973 actually benefited women because previously men were not able to take another wife at any time without gaining the consent of their existing spouse. Despite this, the Bill also had limitations with respect to gender as women had few rights of inheritance and few grounds for divorce. Due to such social and legal constraints, women's organisations intensively lobbied the government to amend the marriage Bill of 1973. As a result, the government enacted the Marriage Law of 1974.

The Marriage Law of 1974 was designed to improve Indonesian women's legal and social status, particularly with respect to divorce initiatives and inheritance as well as to accommodate Muslims' principles by allowing the practice of polygamy within strict requirements and procedures. Those Indonesian men who are inclined to practice polygamy must be dealt with by the Religious Courts. According to the Marriage Law of 1974, a husband who wishes to have more than one wife must first obtain permission from the Religious Court.<sup>21</sup> For Muslims, approval from Religious Court is required for the marriage to have legal status.<sup>22</sup> Civil servant employees, however, must also obtain permission from their supervisors before proceeding to the Religious Court as clearly stipulated in the Government Legislation (*Peraturan Pemerintah*) No. 45 of 1990. This means that they must obtain approval

from two sources, namely from their employer as well as from a Religious Court. Conversely, The Government legislation No. 10 of 1983 and No. 45 of 1990 dictates a different rule to female civil servants with regards to polygamy in that they are not allowed to be co-wives (the second, third and fourth wife).<sup>23</sup> Again, women's rights to marry even as co-wives are restricted, while men can enter polygamous marriage with some requirements such as permission from their employer and the Religious Courts.

To obtain permission, a husband must provide some evidence, described by Nasution as 'cumulative requirements': firstly, an approval from his existing wife or wives should be obtained, either in writing or orally and this is conducted in front of the Religious Court judges. Secondly, a statement of the man's ability to provide financial support for his wife and children should be available. This can be in the form of a statement from an accountant confirming his income or an income tax return. Finally, he must provide a written statement contending that he can and will treat his wives and children equitably. These requirements are clearly stated in the Marriage Law of 1974 article 5, Government regulation 9 of 1975 article 41 (b), Government regulation 10 of 1983 Article 10, and Compilation of Islamic Law Article 58 (2).<sup>24</sup>

Although a husband may fulfil these cumulative requirements, the court will not necessarily provide permission unless his existing wife is unable to perform her responsibilities as a wife, suffers from physical disabilities or incurable disease, or is unable to bear children. If at least one of these criteria is fulfilled, the judge is able to give permission for taking another wife.<sup>25</sup> From a legal perspective, according to Poerwandari (2003), there is no explicit provision to enter into a polygamous marriage for reasons of sexual satisfaction. However, some men, polygamists in particular, claim that men with 'excess testosterone' can take another wife to satisfy their sexual desires. This decision is deemed acceptable because it is believed that this will prevent adultery and abuse as well as empower women with respect to 'sharing their roles in sexual intimacy'.<sup>26</sup> These rationalisations support the claim of men's inability to control their sexual desires. They deny the importance of social and individual meanings of marriage such as love, respect and tolerance, and to extend kinship networks.

A man practicing polygamy without meeting the legal requirements, according to the Criminal Code, can be fined Rp. 7500 (equal to \$AUD 1. 10)<sup>27</sup> or imprisoned for up to five years<sup>28</sup>. This is a very small amount of money, and therefore is no disincentive for men wishing to enter into polygamous relationship without official consent. Further, jailing polygamous men is a rare occurrence due to the belief that polyga-

mous marriage is not a serious offence because it is still considered socially and culturally acceptable.

This penalty applies to all Indonesian citizens, but for government employees there are additional sanctions. They may receive different punishments based on their gender. For example, there are several possible penalties for male civil servants: to be removed from their current position and demoted; to be denied career advancement; and to be dismissed.<sup>29</sup> Female civil servants can be dismissed permanently from their job if they become co-wives, and they are not subject to the same range of outcomes as their male counterparts.<sup>30</sup> It should be stressed that polygamous marriage requirements are applied in the Religious Courts (for Muslims) and State Courts (for other religious faiths).

Clearly, if such laws are fully enforced, the Indonesian Marriage Law of 1974 actually recommends monogamous marriage. In practice, however, this is not the case. Many Muslim men who marry other women are reluctant to register their marriage in the Marriage Registration Office (*KUA*) or to seek permission from the Religious Court, whether because of the complicated court requirements or because they wish to hide their marriage from public view. Accordingly, they undergo formal religious marriage celebrations performed by an Islamic cleric who are generally men. These marriages are valid according to Islamic teachings, and are socially and culturally acceptable. Such marriage is known as *nikah siri* (*kawin siri*) or *kawin bawah tangan* which literally means 'secret marriage', but it is not considered 'legal marriage' according to Marriage Law of 1974 because they are not legally registered.<sup>31</sup>

The status of such marriages often leads to tremendous dilemmas for women and their children. Both the existing wife and the co-wife suffer. The first wife may feel betrayed or at least psychologically abandoned because her husband has married another woman without her consent, whereas the co-wife and her children have no legal rights in relation to property or other economic support, especially if the marriage is terminated whether due to divorce or death. This is consistent with findings from *LBH-Apik* which identified a number of legal and social implications for the second wife. These include not being considered a legal wife, and ineligibility for financial support or inheritance. She may also be isolated and have difficulty socialising with others due to the social stigma attached to her status as a 'mistress' which is configured as a sexual scandal.<sup>32</sup>

Similar to women, there are negative impacts on children both legal and social as a result of unregistered polygamous marriage. Such children have no legal relationship with their biological father or his

family, because they are considered to be 'illegitimate' (*anak tidak sah*), and are legally related only to the mother.<sup>33</sup> Consequently, these children are unable to get economic assistance or receive an inheritance from the father, and the woman (mother) becomes the only provider of financial and psychological support for the child. Being illegitimate has social implications too, in the form of teasing, ostracism and discrimination. Thus, the practice of illegal polygamous marriage can be classified as a form of domestic abuse.

In the light of this, Susan Blackburn (2004), provides an excellent historical overview of the significant concerns arising from the practice of polygamy in Indonesia. These concerns include the economic and social implications for women and their children as result of polygamy, and claims about the morality of polygamy derived from women's voices across a range of literature. Women's power to initiate divorce in order to legally end a polygamous marriage emerged only after the enactment of the Marriage Law of 1974. For decades, the government has not made any significant changes with respect to polygamy as these have limited support from Indonesian men and, to some extent, from women due to religious concerns.<sup>34</sup>

The Marriage Law of 1974 reflects patriarchal hegemony. There has been little effort to amend this law in order to achieve gender equality. Although some improvements have occurred in the Religious Court system such as the increase in the number of female judges (*hakim*) as well as court clerks (*panitera*), women must continue to challenge the patriarchal ideology that supports polygamy in the Religious Courts. Before the 1980s, the majority of judges were men and as such their decisions tended to benefit men. As Nasution notes, male judges are often influenced by male Islamic expertise which they often refer to with respect to religious teachings. Their points of view and decisions frequently benefit men and disadvantage women, and as such women are placed in a subordinate position and treated unequally.<sup>35</sup> This has continued to occur until recently.

Women have also been restricted in holding important positions in Indonesian society. Women were underrepresented as judges and political leaders, particularly in the role of President, because Muslim men and traditional Islamic scholars justify their interpretations as deriving directly from the Qur'anic verses and the Prophetic traditions (*hadist*). The majority of the Indonesian Islamic scholars understand Islamic teachings mostly influenced by Syafi'i scholars (*mazhab Syafi'i*), which interpret the Qur'an and the *hadist* textually, regardless of cultural and social change in the society. As a result of religious interpretations, women were not allowed to be judges because it was believed that their

judicial decisions would be based on emotional, rather than rational considerations. It has claimed that women could not make fair decisions because they may be inclined to forgive the accused too easily. These traditional assumptions, however, have changed slightly in Indonesia due to the fact that the fifth president was a woman and more women are currently appointed as judges, especially in the Religious Courts.

Discrimination against women is upheld by the Marriage Law of 1974. Unclear definitions of female responsibilities offer opportunities for men to produce their own criteria for accusing women of being 'bad' wives. Such laws position men as household leaders and economic providers, whereas women are required to be domestic caregivers. The sexual division of labour in marriage is very broadly drawn and the precise role and responsibilities of husband and wife remain unclear. Thus, it is not difficult for a man to apply to take a second wife, for instance, by claiming that his existing wife cannot fulfil her domestic role. In other words, women's inability to comply with this vaguely prescribed role sees them easily categorised as 'bad wives'. Powerful men find it easy to persuade judges and other people in the community to support their polygamous relationships. Thus, women's position within the Marriage Law of 1974 remains a disadvantaged one.

## Conclusion

Marriage Law of 1974 still which supports gender division of labour between wife and husband should be revised by providing a clear statement that these roles are conditional. This means that husbands can be domestic carers including taking care of children if they have no jobs, while wives can be financial providers or the head of household if they are capable to do so. In this context, gender roles can be exchanged and are not strictly for a certain gender. Consequently, there will sharing roles and responsibilities between a wife and a husband and no one may claim that 'I am the most important person than the other'. Moreover, as Marriage Law of 1974 contends a strict regulation for polygamy, this should be reinforced in order to assist women. It should be noted that women suffer psychological disturbances as a result of polygamous marriage.

## Endnotes:

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<sup>1</sup> T. Lindsey, "An Overview of Indonesian Law," in T. Lindsey, (ed.); *Indonesia: Law and Society*, (New South Wales: The Federation Press, 1999a), p. 3

<sup>2</sup> T. Lindsey, "From Rule of Law to Law of Rulers-to Reformation?" in T. Lindsey, (ed.), *Indonesia: Law and Society*, (New South Wales: The Federation Press, 1999b), p. 13

<sup>3</sup> H. Dick, "Why Law Reform Fails: Indonesia's Anti Corruption Reforms," in T. Lindley, (ed.), *Law Reform in Developing and Transitional States*, (New York: Routledge, 2007), p. 44

<sup>4</sup> I.D. Saptaningrum, "Sejarah UU Perkawinan dan Pembakuan Peran Perempuan dalam UU NO. 1 Tahun 1974 tentang Perkawinan [History and Reconstruction of Gender Relation in Marriage Law of 1974]", LBH Apik Jakarta, viewed 04 February 2005, <http://www.lbh-apik.or.id/penelitian-1.htm>

<sup>5</sup> The Dutch ruler provided 'Burgerlijk Wetboek (BW)' in 1938 to regulate in Indonesia, including marriage regulation on Book I chapter V articles 105-107. In Indonesia, BW is called *Kitab Undang-Undang Hukum Perdata-Belanda* [The Netherland Civil Code]. This BW sometimes still influences Indonesian laws, and some have been reformed. *Ibid.*, See also: Angkasa Online 'Kodifikasi BW', viewed 03 July 2007, <http://angkasa-online.com/11/05/kolom/kolom1.htm>

<sup>6</sup> Saptaningrum, *loc.cit.*

<sup>7</sup> See: Chapter Four

<sup>8</sup> Marriage Law of 1974 is basically statute No. 1/1974. This might be used interchangeably.

<sup>9</sup> Biro Pusat Statistik (BPS) [The National Statistics Bureau], *Jumlah Penduduk Menurut Agama Tahun 2005* [Numbers of Population Based on Religion in 2005]. Jakarta, 2005.

<sup>10</sup> The Marriage Law of 1974 applies to Muslims only, while for non Muslims, their marriage is regulated under civil laws.

<sup>11</sup> Sudarsono, *Hukum Perkawinan Nasional*, (Jakarta: Rineka Cipta, 1991), p. 296

<sup>12</sup> S. Parnohadiningrat, 'Prologue' in K Robinson & S Bessel, (eds.), *Women in Indonesia: Gender, Equity and Development*, (Singapore: Institute of Southeast Asian Studies, 2002), p. xxiv

<sup>13</sup> See: B. Probert, "Women's Working Lives," in K.P. Hughes, (ed.), *Contemporary Australian Feminism 2*, 2<sup>nd</sup> edn., (Melbourne: Longman, 1997), p. 308; A Habibie, (1997), "Peran Wanita dalam Menciptakan Keluarga Sakinah [Women's Roles in Achieving Harmonious Family]," in D.S. Anshori, E Kosasih & F Sarimaya, (eds.), *Membicarakan Feminisme: Refleksi Muslimah atas Peran Sosial Kaum Ibu* [Discourses on Feminism: Muslim Women's Reflections on Social Roles], (Bandung: Pustaka Hidayah, 1997), p. 223; PG Bourne & NJ Wikler, Commitment and the Cultural Mandate: Women in Medicine, in R Kahn-Hut, AK Daniels & R Colyard, (eds.), *Women and Work: Problems and Perspectives*, (Oxford: Oxford University Press, 1982), p. 115

<sup>14</sup> This assumption seems difficult to be proven due to the fact that more Indonesian women are currently heads of household. According to Zulminarni, a coordinator of women's empowerment for the female headed household (*Program Pemberdayaan Perempuan Kepala Keluarga-PEKKA*), there are some 6 million women who are heads of household. This comprises of widows, divorced women, separated and single women who are responsible for at least one of their family members, and women with children as a result of unwanted pregnancy. For the next program, Zulminarni and her colleagues will focus on female household heads who have husbands. SE Bambang, '6 Juta Rumah Tangga di Indonesia di Kepalainya oleh Perempuan [6 Million Household Lead by Women]' in *Jurnal Perempuan* [Journal of Women], viewed 21 September 2004, <http://www.jurnalperempuan.com/yjp.jpo/?act=berita%7C-115%7CX>

<sup>15</sup> In her ethnographic study of marriage in Bugis, Nurul Ilmi found that a husband who is involved in domestic tasks is considered as lacking power in the family relationship. This also indicates that a wife has control in the family. Interestingly, she notes that it is said that there is no gender division of labour within this culture, but the construction of masculinity suggests a different phenomena. NI Idrus, 'Behind the Notion of Siala: Marriage, Adat and Islam Among the Bugis in South Sulawesi', viewed 21 September 2004, <http://www.she.mudoch.edu.au/intersections/issue10/idrus.html>

<sup>16</sup> Wilujeng, *et.al.* identify that economic abuse can be in the form of women's economic dependence on men, or a husband refuses to provide money for family needs, or exploitation in which women receive low wages at work. Social abuse includes social expectations attached to women who are still assumed to be responsible for domesticity even though they are involved in the workforce. Due to this assumption, some married women prefer to seek work that is close to their home, so they are able to manage their 'primary' (private) and 'secondary' (public) job equally. In addition, lack of support in the workforce means that employers usually pay women less than men because they are considered as 'subservient' and 'secondary earners'. Low class women also are not covered for safety and work insurance. H. Wilujeng, A. Habsjah & D.S. Wibawa, "Dampak Pembakuan Peran Jender terhadap Kondisi kerja Kaum Perempuan Kelas Bawah di DKI Jakarta [The Effects of Gendered Division of Labour on Work for Low Income Women in Jakarta]", 2002, viewed 04 February 2005 <http://www.lbh-apik.or.id/penelitian-dampak%20pembakuan.htm>

<sup>17</sup> Indosiar News, "Jejak Kasus-Peristiwa: Amarah Suami, Nyawa Istri Melayang [Fact Sheets: A Wife Murdered Due to Husband's Anger]", viewed 24 May 2004, [http://news.indosiar.com/news\\_read.htm?id=21170](http://news.indosiar.com/news_read.htm?id=21170)

<sup>18</sup> This can be understood that a woman is abused if she lets her children going out or if she complains about the perpetrators' drinking. It is believed that this woman fails to perform her domestic roles or challenge her husband's will. Author's interview with an abused woman in Makassar (04 March 2004).

<sup>19</sup> I just refer to the ways of Muslim communities celebrate their marriage as the majority of Indonesian population. I always hear the messages when I attend Muslim marriage celebration.

<sup>20</sup> S. Butt, "Polygamy and Mixed Marriage in Indonesia: The Application of Marriage Law in the Courts," in T. Lindsey, (ed.) *Indonesia: Law and Society*, (New South Wales: The Federation Press, 1999), pp. 122-123

<sup>21</sup> Marriage Law Article 4 (2) and Compilation of Islamic Law Article 56 (1) stipulate that 'a husband who wants to marry more than one wife must obtain permission from the religious court'. It should be noted that the Compilation of Islamic Law is actually not law (*undang-undang*), but it is only a guidance for judges within the jurisdiction of Religious Court in dealing with Marriage Law, inheritance and religious foundation (*waqaf*). M.B. Hooker, "The State and Syariah in Indonesia 1945-1995," in T. Lindsey, (ed.) *Indonesia: Law and Society*, (New South Wales: The Federation Press, 1999), pp. 106-107. See also: Abdurrahman, *Kompilasi Hukum Islam di Indonesia*, (Jakarta: Akademika Pressindo, 1992), p. 126

<sup>22</sup> Compilation of Islamic Law Article 56 (3) states that 'the marriage of the second, the third and the fourth wife is legally denied without permission from the Religious Court'. This indicates that these wives and their children have no rights to claim property or to get financial support if their husband neglects or divorces them because their marriage was not legally registered in the Religious Courts. Likewise, according to Islamic teachings, this marriage is valid as long as it fulfils marriage

requirements such as agreement from bride and groom, witness, the bride's father or guardian (*wali*) and religious marriage registrar (*penghulu/imam*). See: Abdurrahman, *ibid.*

<sup>23</sup> See: Butt, *op.cit.*, p. 127; Sudarsono, *op.cit.*, p. 289

<sup>24</sup> This is likely fair and acceptable because in some cases a husband might enforce his wife to sign the consent. So, it is better for a judge to ask the wife to approve her agreement before the court. Butt, *op.cit.*, p. 127; Sudarsono, *op.cit.*, p. 289; K Nasution, *Status Wanita di Asia Tenggara: Study Terhadap Perundang-Undangan Perkawinan Muslim Kontemporer di Indonesia dan Malaysia*, (Jakarta: Indonesian-Netherlands Cooperation in Islamic Studies (INIS), 2002), p. 108

<sup>25</sup> Nasution, *loc.cit.*

<sup>26</sup> K Poerwandari, 'Ilusi Poligami [Illusion of Polygamy]', *Jurnal Perempuan* [Journal of Women], vol. 31, 2003, p. 20

<sup>27</sup> Government Regulation 9 of 1975 article 45 (1a)

<sup>28</sup> According to Criminal Code (*Kitab Undang-Undang Hukum Pidana-KUHPidana*) Article 279, 'Whoever marries while knowing that his existing marriage(s) constitute to the marriage, or marries whilst knowing that that the marriage(s) of someone else constitutes an obstacle to that marriage, can be sentenced to up to five years' jail. If this is done by withholding from another party that a marriage exists, the accused can be sentenced to up to seven years' jail'. This translation is quoted from Butt, *op. cit.*, p. 128

<sup>29</sup> Government Regulation 30 of 1980 article 6 (4). See: *Ibid.*

<sup>30</sup> Government Regulation No. 45 of 1990 article 15 (2) articulates that female civil servants who breach article 4 (2) of similar regulation can put into disciplinary sanction to resign from civil servants. See: *Ibid.*

<sup>31</sup> 'Nikah sirri' or 'kawin bawah tangan' means that the marriage is celebrated under religious or cultural practices and not registered in the Office of Religious Affairs (KUA) for Muslims or in the state court for non Muslims. If it is registered within these institutions, it will be considered 'legal marriage'. LBH-Apik, Dampak Perkawinan Bawah Tangan Bagi Perempuan [Effects of Unregistered Marriage on Women], viewed 4 February 2005, <http://www.lbh-apik.or.id/fact51-bwh%20tangan.htm>

<sup>32</sup> *Ibid.*

<sup>33</sup> Marriage Law articles 42-43 and the Compilation of Islamic Law article 100 stipulate a child from illegal marriage follows the mother's kin. On the Birth Certificate, the child uses the mother's name as it is considered as illegal child. Abdurrahman, *op.cit.*, p. 137; LBH-Apik, *ibid.*

<sup>34</sup> S. Blackburn, *Women and the State in Modern Indonesia*, (United Kingdom: Cambridge University Press, 2004), pp. 111-137

<sup>35</sup> Nasution, *op.cit.*, p. 38

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