



Australian Government
Refugee Review Tribunal

Country Advice

Indonesia

Indonesia – IDN39064 – Polygamy –
Coercion – Social pressure – Physical
violence – State protection

28 July 2011

1. Is polygamy, under Indonesian law, subject to agreement from the existing wife?

In 2007, the Indonesian Constitutional Court upheld the right of Muslim men to have more than one wife if permission was granted by a local court. In order to obtain court permission, a number of conditions must be met, one of which is the requirement to acquire a letter of consent from the first wife. In requesting permission, a husband must also demonstrate that he has the means to care for and be fair to his wives and children.¹ According to the Indonesian Marriage Law of 1974, “a man can have multiple wives only when his first wife is: (i) unable to carry out her responsibility as a wife; (ii) suffering from a physical disability or falls victim to an incurable disease; or (iii) unable to bear children”.² To wit:

Article 3

- (1) In principle in a marriage a man shall be allowed to have one wife only. A woman shall be allowed to have one husband only.
- (2) A Court of Law shall be capable of granting permission to a husband to have more than one wife, if all parties concerned so wish.

Article 4

- (1) If a husband desires to have more than one wife, as referred to in Article 3 paragraph (2) of this Law, he shall be required to submit a request to the Court of Law in the region in which he resides.
- (2) The Court of Law referred to in paragraph (1) of this article shall grant permission to the husband wishing to have more than one wife if:
 - a. his wife is unable to perform her duties as wife;
 - b. his wife suffers from physical defects or an incurable disease;
 - c. his wife is incapable of having descendants.

Article 5

- (1) In order for a request to be submitted to the Court of Law as referred to in Article 4 paragraph (1) of this Law, the following requirements shall be obtained:
 - a. the approval of the wife or wives;
 - b. the assurance that the husband will guarantee the necessities of life for his wives and their children;
 - c. the guarantee that the husband shall act justly in regard to his wives and their children.
- (2) The approval referred to in paragraph (1) under the letter a of this article shall not be required of a husband if it is impossible to obtain the approval of his wife or wives and if she or they

¹ ‘Wife must first agree to polygamy, Indonesia court rules’ 2007, *ABC News*, 4 October
<http://www.abc.net.au/news/2007-10-04/wife-must-first-agree-to-polygamy-indonesia-court/688566> – Accessed 19 July 2011 – Attachment 1

² ‘Gender Equality in Indonesia’ 2011, Wiki Gender website, 25 May
http://wikigender.org/index.php/Gender_Equality_in_Indonesia – Accessed 19 July 2011 – Attachment 2

are incapable of becoming partner or partners to the contract, or if no information is available with respect to his wife or wives for the duration of at least 2 (two) years, or on account of other reasons requiring the judgment of a Judge on the Court of Law.³

According to the United States Department of State (USDOS), however, these conditions are not always required in practice, and many women “reportedly encounter societal pressures that make permission difficult to refuse”.⁴

Despite the existence of laws governing polygamy in Indonesia, illegitimate polygamy appears to be an ongoing issue in parts of the country. According to some women’s rights activists, “tolerance towards unregistered marriages facilitates illegitimate polygamy by the husband, as it is easier to keep it secret from the official wife.” While national studies on illegitimate polygamy were not available, anecdotal evidence suggested that between 2006 and 2008, the district of Cianjur Van Huis – which has a population of 2.1 million people – saw only eight people officially obtain court permission for polygamous marriages. In contrast to this, 35 per cent of interviewed women – 42 out of 120 – cited polygamy as their main reason for divorce. According to Bedner and van Huis, considering the low number of official polygamy permission cases, the majority of those polygamous relations must have remained unregistered.⁵

2. Is polygamy forced upon unwilling wives through social pressure or physical violence?

In her 2009 study on Islam and polygamy in Indonesia, Nina Nurmila concluded that a woman’s social network can place pressure on her to either accept or reject her husband’s polygamous marriage. Further, the way in which women responded to polygamy was affected by both their particular understanding of Islam and the attitudes of those around them. The author provided the example of Tuti, an individual living among moderate Muslims in Bandung, who “seemed overall to have negative attitudes toward polygamy”. As such, Tuti claimed to have felt less social pressure to accept polygamy as a sign of religious piety.⁶

In another of Nurmila’s case studies, Arsa, a 32-year-old business graduate, had been married for four years when she was told of her husband’s plan to marry a second wife. Arsa was unhappy with his decision, and consulted her friends, including a psychiatrist, a doctor, a psychologist and a religious expert, all of whom were in favour of the Islamist ideas regarding polygamy. Despite her unhappiness with the prospect of a second wife, her friends’ advice helped Arsa to decide that she would “prefer that her husband practice polygamy than conduct extramarital affairs without her knowledge”. Arsa’s parents, however, were not in favour of the second marriage, and in light of the extent of her growing unhappiness, suggested that she seek a divorce. Despite becoming increasingly isolated from her family, Arsa resisted divorce on religious grounds.⁷

³ Nurmila, N. 2009, *Women, Islam and Everyday Life: Renegotiating Polygamy in Indonesia*, Routledge, New York, pp. 54-55 – Attachment 3

⁴ US Department of State 2010, *International Religious Freedom Report for 2010 – Indonesia*, 17 November, Section II – Attachment 4

⁵ Bedner, A. & van Huis, S. 2010, ‘Plurality of marriage law and marriage registration for Muslims in Indonesia: a plea for pragmatism’, *Utrecht Law Review*, Volume 6, Issue 2 (June), p.184-185 – Attachment 5

⁶ Nurmila, N. 2009, *Women, Islam and Everyday Life: Renegotiating Polygamy in Indonesia*, Routledge, New York, pp. 111-112 – Attachment 3

⁷ Nurmila, N. 2009, *Women, Islam and Everyday Life: Renegotiating Polygamy in Indonesia*, Routledge, New York, pp. 82-83 – Attachment 3

Nurmila believes that polygamy is associated consistently with “significant degrees of emotional and physical violence”⁸, and some polygamous marriages violate the 2004 *Law on the Eradication of Domestic Violence*.⁹ This was demonstrated in the case of Lina, a 39-year-old civil servant whose husband had secretly married another woman. While experiencing anger and hurt due to the discovery of the second marriage, Lina rejected her husband’s request for intimacy, and refused to ‘serve’ his sexual needs. In the wake of this rejection, “he forced her violently, hitting her face and even tying her hands together, which made her feel very powerless”. This reportedly continued to occur once or twice a month, until Lina, unable to continue being violently assaulted, eventually succumbed to her husband’s demands. According to Lina:

In the beginning, my husband’s practice of polygamy was full of lies and violence in which I became the victim... Since I found out about my husband’s polygamy, we often had arguments in which he often hit my face and kicked my feet until they were blue. Once, he pushed my body violently, which broke my left arm. Therefore, I concluded that polygamy is very painful for me as the first wife.¹⁰

In 2006, the United Nations Development Programme (UNDP) provided several examples of violence related to polygamy and adultery. In one case, a wife was physically abused by her husband when she objected to his second marriage, and reported her husband’s infidelity to the police. Despite repeated threats and abuse from her husband, she refused to withdraw her police complaint, and filed for divorce at a local religious court. In another example, violence was used against a polygamous husband as a result of his actions. A husband committed adultery and took a second wife in another village, resulting in his first wife’s family assaulting the husband, who then reported the matter to police. The judge granted her a divorce, custody of her children and all of her former husband’s assets as compensation.¹¹

3. Do authorities protect women who have separated from their husbands due to polygamy, from attacks by their husbands and others?

No information was located regarding the protection of women who have separated from their husbands due to polygamy. In terms of the protection of women from domestic violence more generally, information was located that suggests a range of women’s support groups operate in Indonesia.

Acts of domestic violence against women in Indonesia are criminalised under the *Law on the Elimination of Domestic Violence (Law No. 23/2004)*, which includes physical, psychological, sexual and economic neglect under the broad definition of domestic violence. In June 2011, the Social Affairs Ministry and the Witness and Victim Protection Agency (LPSK) announced that they would jointly provide safe havens to domestic abuse victims, as well as others vulnerable to abuse. According to the Social Affairs Ministry’s Director of Children’s Services, they were able to provide victims of domestic violence facilities such as rehabilitation centres, while the LPSK had a stronger legal basis to provide protection. He

⁸ Nurmila, N. 2009, *Women, Islam and Everyday Life: Renegotiating Polygamy in Indonesia*, Routledge, New York, p. 14 – Attachment 3

⁹ Nurmila, N. 2009, *Women, Islam and Everyday Life: Renegotiating Polygamy in Indonesia*, Routledge, New York, p. 152 – Attachment 3

¹⁰ Nurmila, N. 2009, *Women, Islam and Everyday Life: Renegotiating Polygamy in Indonesia*, Routledge, New York, pp. 98-100 – Attachment 3

¹¹ United Nations Development Programme 2006, *Justice For All? An Assessment of Access to Justice in Five Provinces of Indonesia*, United Nations Development Programme website, December, p.252

http://www.undp.or.id/pubs/docs/Justice%20for%20All_.pdf – Accessed 21 July 2011 – Attachment 6

acknowledged that while the Domestic Abuse law allowed the ministry to offer temporary protection for up to seven days, some victims' family members refused to allow the government to become involved. In 2010, there were reportedly more than 105,000 reports of abuse of women in Indonesia; of these, 96 per cent were incidents of domestic violence.¹²

Police operate more than 300 'women's desks' throughout Indonesia, at which female officers receive reports from victims of sexual assault and trafficking; victims are then provided with temporary shelter. According to Amnesty International (AI), "women's police desks, although a positive initiative, need to be further promoted including amongst poor and marginalised communities to ensure that women and children victims of crime know about the services available and feel comfortable using them". AI further added that qualified police personnel and resources are lacking at the district and subsidiary levels.¹³

According to USDOS, violence against women remains poorly documented by the government, and while national figures were unavailable, officials from the Ministry of Women Empowerment stated that "11,469 cases of violence against women were reported from 20 provinces" during 2010. Many non-governmental organisations (NGOs), however, believed the actual figure was far higher, noting that many victims tend to keep silent. Despite domestic abuse being the most common form of violence against women, societal pressure forces many women not to report this abuse to police.¹⁴ A 2006 United Nations Development Programme (UNDP) report states that women "often don't complain about domestic violence because they are afraid that village authorities will not take any meaningful action, it is embarrassing, complaining may only make an abusive husband even more violent, and that their husbands might divorce them".¹⁵

In December 2009, *The Jakarta Post* reported that Mitra Perempuan, the head of a local women's crisis centre, said that free medical exams for victims of domestic violence would help police investigate reports filed by women experiencing domestic violence. According to Ms Perempuan, "[i]n Indonesia, many women think twice about reporting domestic violence... [b]esides the physical threat they face from their perpetrator husband, most of them are also cowed by society's cynical perception of divorcees". Ms Perempuan was also critical of the procedures in place for reporting domestic violence, which she believes act as obstacles for many women. As per Indonesian law, a woman claiming to have been physically abused must first report the case to police, who will then provide the victim with a letter requesting examination at a hospital. The hospital is obligated to only send examination results to police, which can then be used as evidence to follow up on the victim's report. Victims, however, must be examined in a timely manner, as injuries more than three days old are not legally considered evidence.¹⁶

¹² 'Deal pledges 'Safe Havens,' support for domestic abuse victims' 2011, *The Jakarta Globe*, 8 June <http://www.thejakartaglobe.com/home/deal-pledges-safe-havens-support-for-domestic-abuse-victims/445630> – Accessed 20 June 2011 – Attachment 7

¹³ Amnesty International 2009, *Unfinished Business: Police accountability in Indonesia*, AI Index 21/013/2009, June, p. 33 – Attachment 8

¹⁴ US Department of State 2011, *Country Reports on Human Rights Practices for 2010 – Indonesia*, 8 April, Section 6 – Attachment 9

¹⁵ United Nations Development Programme 2006, *Justice For All? An Assessment of Access to Justice in Five Provinces of Indonesia*, United Nations Development Programme website, December, p.157 http://www.undp.or.id/pubs/docs/Justice%20for%20All_.pdf – Accessed 21 July 2011 – Attachment 6

¹⁶ Widhiarto, H. 2009, 'Roll out free exams to boost violence reporting, says NGO', *The Jakarta Post*, 23 December <http://www.thejakartapost.com/news/2009/12/23/roll-out-free-exams-boost-violence-reporting-says-ngo.html> – Accessed 19 February 2010 – Attachment 10

Nurmila also cites a number of Non-Governmental Organisations (NGOs), such as Rifka Annisa in Yogyakarta, Flower of Aceh in Aceh, Institut Perempuan Bandung in Bandung and Mitra Perempuan and LBH APIK in Jakarta, which provide shelters, advocacy and legal aid for female victims of domestic violence.¹⁷

4. Do authorities encourage or coerce women who have separated from their husbands due to polygamy, to reconcile with their husbands?

While no specific information was located regarding women being coerced to reconcile with their husbands after separating on the grounds of polygamy, courts do appear to encourage reconciliation prior to granting divorce in certain circumstances, particularly where adultery is involved. According to USDOS, Muslims seeking divorce must generally use the Islam-based family court system. Women often bear a heavier evidentiary burden than men, and while the law requires the former husband to provide alimony, no enforcement mechanism exists, and divorced women rarely receive support.¹⁸

A July 2010 report by the Asia Foundation noted that while gender bias has been a “significant challenge to the principles of fairness and justice that religious courts in Indonesia are meant to uphold”, recent legislation “now requires judges to mediate family law cases before they are brought to trial”.¹⁹ An Indonesian court official cited in a 2006 UNDP report claimed that female petitioners seeking divorce are generally more tolerant of adultery than domestic violence; as such, the “Panel Judge routinely encourages parties to attempt reconciliation for petitions based on adultery”.²⁰

According to the International Development Law Organization (IDLO), while divorce in Indonesia may be permissible, it is not “something recommended by religion, particularly for Islam that considers divorce as a last resort”. In each divorce case before the courts, attempts are made to reconcile the conflicting parties. The IDLO provided information on divorce procedures in the religious court system in Indonesia, including the various stages in the trial. It is noteworthy that during the first session of the trial, the judge will ask the two parties to try to reconcile, and if unsuccessful, will oblige the two parties to try mediation. If mediation is unsuccessful, examination of the case will then continue.²¹

A 2009 report in *The Jakarta Post* stated that “[a]n increasing number of Muslim women are choosing to divorce their husbands rather than continue in a polygamous marriage”. The article reported that data from the national Islamic courts revealed that in 2006, cases of divorce resulting from wives’ disagreeing with their husbands marrying other women had risen to nearly 1,000. The Director-General for Islamic Guidance believed the number of such divorces increased again in 2008, and were expected to rise throughout 2009, and stated that “[t]here has been a significant increase in divorce because women have been rejecting polygamy in recent years”. The article also quoted Muslim scholar and lecturer at the State

¹⁷ Nurmila, N. 2009, *Women, Islam and Everyday Life: Renegotiating Polygamy in Indonesia*, Routledge, New York, p. 35 – Attachment 3

¹⁸ US Department of State 2010, *International Religious Freedom Report for 2010 – Indonesia*, 17 November, Section II – Attachment 4

¹⁹ Asia Foundation 2010, *Religious Courts: Improving Women’s Access to Justice in Indonesia*, Asia Foundation website, 23 July <http://asiafoundation.org/resources/pdfs/IDReligiousCourtsWEP4pgFINAL.pdf> – Accessed 21 July 2011 – Attachment 11

²⁰ United Nations Development Programme 2006, *Justice For All? An Assessment of Access to Justice in Five Provinces of Indonesia*, United Nations Development Programme website, December, p.266 http://www.undp.or.id/pubs/docs/Justice%20for%20All_.pdf – Accessed 21 July 2011 – Attachment 6

²¹ Hukum, A.D. 2008, ‘When Divorce Becomes the Last Resort’, International Development Law Organization, 26 July <http://www.idlo.int/DocNews/254DOC.pdf> – Accessed 9 February 2010 – Attachment 12

Islamic University in Jakarta, Siti Musdah Mulia, who interpreted the data as indicating Muslim women were “becoming increasingly aware of their rights and also more economically independent...women are now daring to fight for their rights and reject male domination”.²²

5. Do Muslim religious leaders and followers target women fleeing polygamous marriages?

No information was located suggesting that Muslim religious leaders and followers target women fleeing polygamous marriages.

²² ‘Women reject polygamy, choosing divorce’ 2009, *The Jakarta Post*, 2 February
<http://www.thejakartapost.com/news/2009/02/02/women-reject-polygamy-choosing-divorce.html> – Accessed 26 July 2011 – Attachment 13

Attachments

1. 'Wife must first agree to polygamy, Indonesia court rules' 2007, *ABC News*, 4 October <http://www.abc.net.au/news/2007-10-04/wife-must-first-agree-to-polygamy-indonesia-court/688566> – Accessed 19 July 2011.
2. 'Gender Equality in Indonesia' 2011, Wiki Gender website, 25 May http://wikigender.org/index.php/Gender_Equality_in_Indonesia – Accessed 19 July 2011.
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7. 'Deal pledges 'Safe Havens,' support for domestic abuse victims' 2011, *The Jakarta Globe*, 8 June <http://www.thejakartaglobe.com/home/deal-pledges-safe-havens-support-for-domestic-abuse-victims/445630> – Accessed 20 June 2011. (CISNET Indonesia CX267111)
8. Amnesty International 2009, *Unfinished Business: Police accountability in Indonesia*, AI Index 21/013/2009, June.
9. US Department of State 2011, *Country Reports on Human Rights Practices for 2010 – Indonesia*, 8 April.
10. Widhiarto, H. 2009, 'Roll out free exams to boost violence reporting, says NGO', *The Jakarta Post*, 23 December <http://www.thejakartapost.com/news/2009/12/23/roll-out-free-exams-boost-violence-reporting-says-ngo.html> – Accessed 19 February 2010.
11. Asia Foundation 2010, *Religious Courts: Improving Women's Access to Justice in Indonesia*, Asia Foundation website, 23 July <http://asiafoundation.org/resources/pdfs/IDReligiousCourtsWEP4pgFINAL.pdf> – Accessed 21 July 2011..
12. Hukum, A.D. 2008, 'When Divorce Becomes the Last Resort', International Development Law Organization, 26 July <http://www.idlo.int/DocNews/254DOC.pdf> – Accessed 9 February 2010.
13. 'Women reject polygamy, choosing divorce' 2009, *The Jakarta Post*, 2 February <http://www.thejakartapost.com/news/2009/02/02/women-reject-polygamy-choosing-divorce.html> – Accessed 26 July 2011.