

# TELENISA

STATISTICS AND FINDINGS 2017



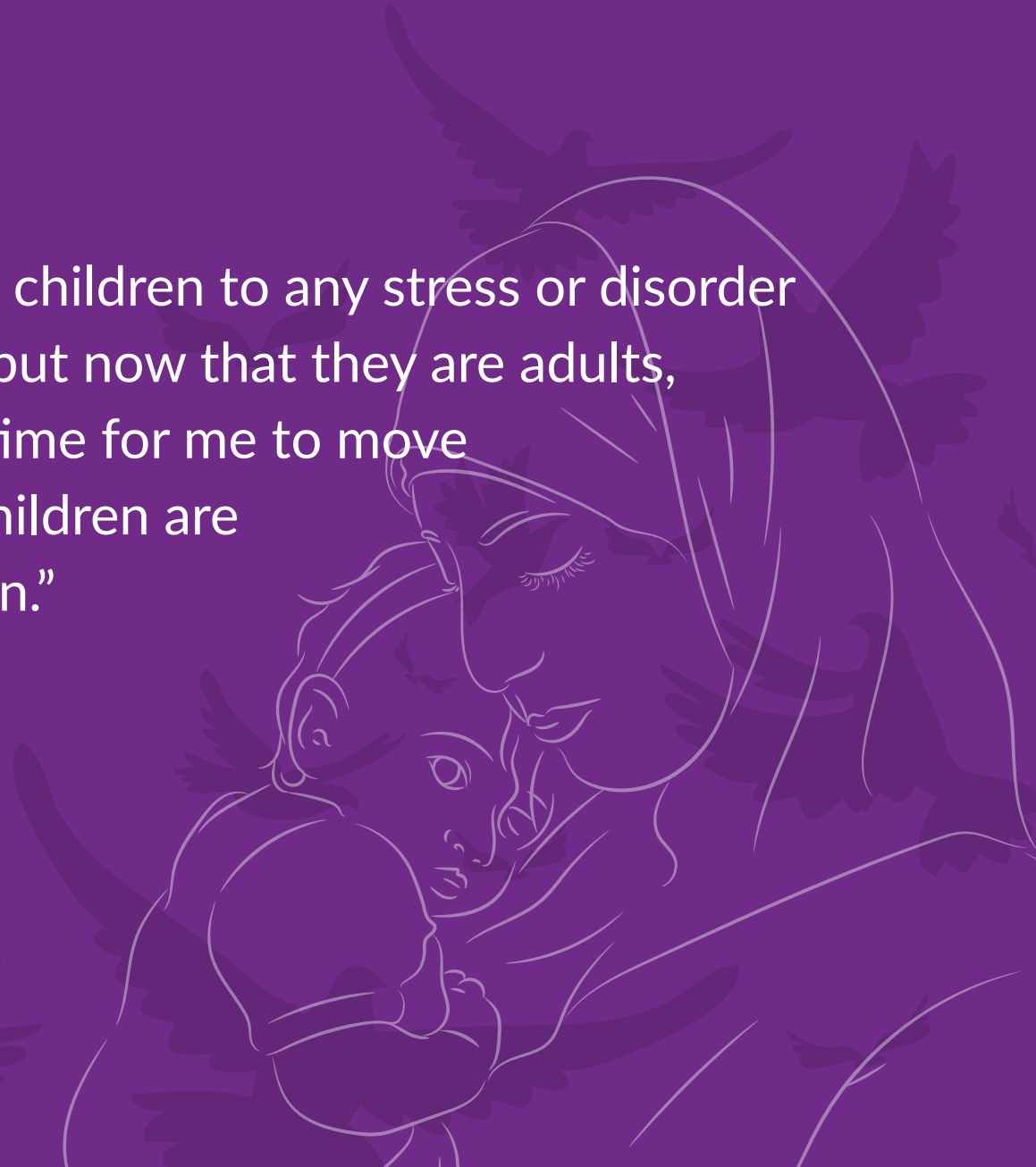
sisters in islam



“I did not want to subject my children to any stress or disorder while they were growing up but now that they are adults, I have decided it is the best time for me to move forward with life. Even the children are supporting me in this decision.”

- **PUAN L, GOMBAK**

*Quoted from Telenisa's Client*



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# Assalammualaikum,

It is my pleasure to present to you our Telenisa findings for the year 2017.

In our continuous effort to advance the rights of Muslim women in Malaysia, Sisters in Islam works within the framework of Islam, universal human rights principles, constitutional guarantees, as well as lived realities and experiences of women.

The free legal service provided by Telenisa advises clients not only on Islamic Family Law but also responds to cases related to Syariah Criminal Offences Law in Malaysia.

Issues that affect Muslim women have consistently revolved around the handful of crucial topics namely domestic violence, maintenance issues, *nusyuz*, child custody, polygamy and *fasakh* divorce. In 2017, we recorded an increase in awareness among Muslim women with regards to these topics, at the same time, we also see an increase in cases filed under all these issues. This points to the aggravating fact that there is still a need for greater respect among Muslim men as to their responsibilities in the marriage institution.

I would like to express my personal appreciation to all who have been involved in making Telenisa a success, including the team who have worked tirelessly in caring for all our clients, and our partners, the Kuala Lumpur Legal Aid Centre and the Selangor Legal Aid Centre. I would also like to thank the chambering students who spent time with us and we wish them the very best as future defenders of women's rights in Malaysia.

It is my wish that the findings in this booklet will create greater awareness for issues affecting Muslim women in Malaysia and support the advocacy for reform of laws, policies and practices that would lead to justice and equality for women.

**ROZANA ISA**

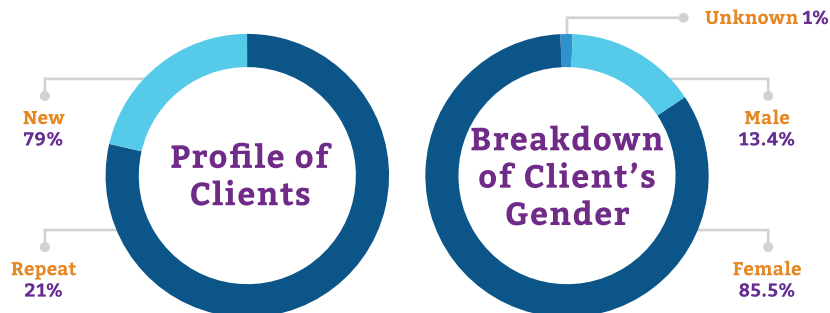
*Executive Director  
Sisters In Islam*



## OUR CLIENTS

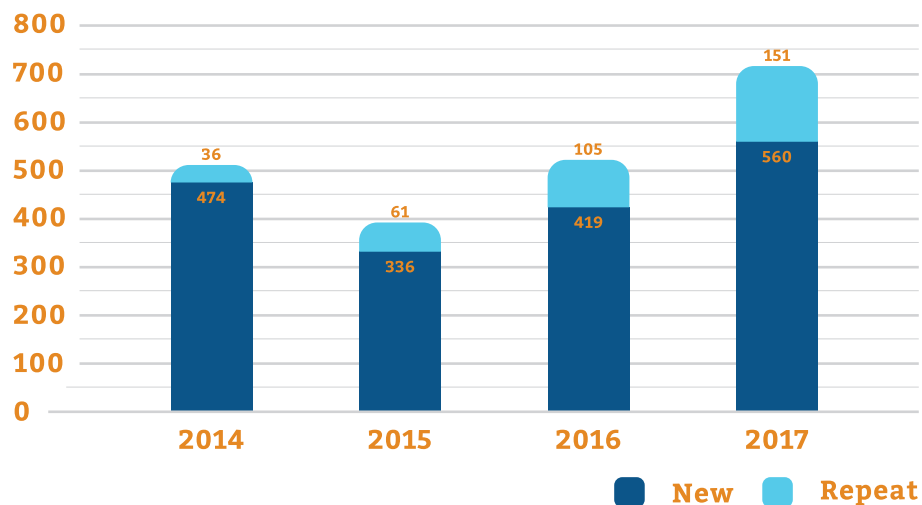
# Client's Demography

In 2017, Telenisa had a total of 709 clients with 560 people being new clients. This was an increase of 69.2% from 2016. 606 clients (85.5%) were female and 95 clients (13.4%) were male. 8 clients (1.1%) were of unknown gender.



In 2016, there were 419 clients with 25% repeat clients.  
In 2015, there were 336 clients with 18% repeat clients.  
In 2014, there were 474 clients with 7.5% repeat clients.

## Number of New & Repeat Clients from 2014 – 2017



The surge of clients in 2017 can be attributed to the launch of Telenisa's Facebook page, Telenisa's Mobile Legal Clinics and various awareness programmes and fairs participated by Telenisa.

One of Telenisa's challenges is to balance the need to have relevant and reliable statistics versus the need for clients to maintain their privacy. Thus, some Telenisa statistics are classified as 'Unknown' for this reason.

## OUR CLIENTS

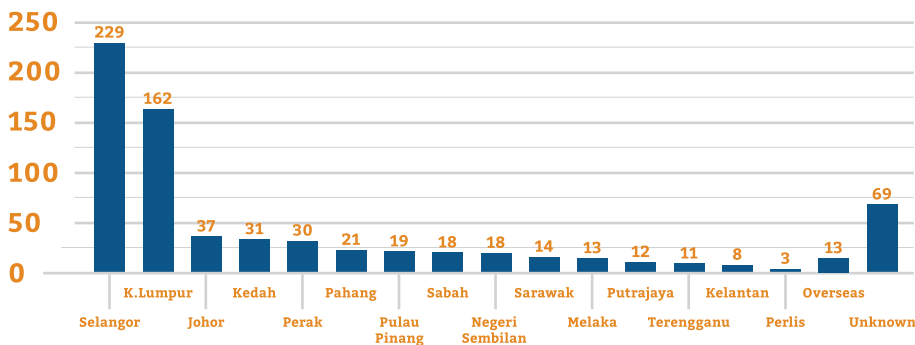
# Client's Location

Telenisa's clients are mostly from the Klang Valley. In 2017, we received 32 clients from Sabah and Sarawak compared to just 8 clients in 2016.

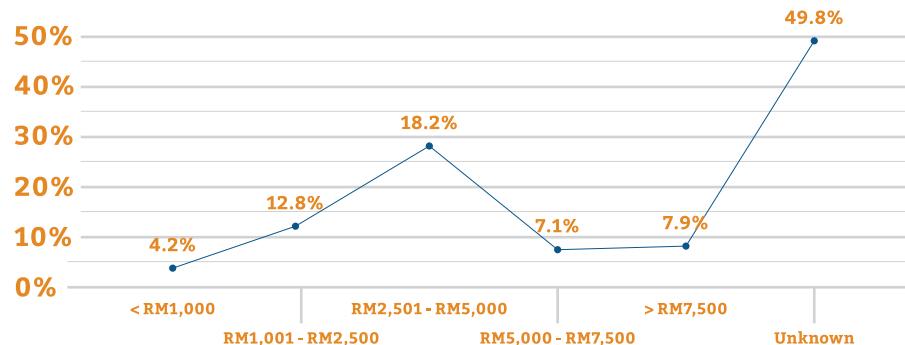
14 clients located overseas are Malaysians living in the UK, Germany and Russia.

Our non-Malaysian clients (residing in Malaysia) are Egyptians, Indonesians, Filipinos, Syrians, Pakistanis, Bangladeshis and Moroccans amongst others.

## Client's Location



## Client's Household Income



Most of our clients fell under the RM 2501-RM 5000 income bracket (18.2%). However, it is to be noted that 15% of Telenisa's clients fell within the RM 5000 and above income bracket.

This finding proves that marital issues can be found within all walks of life and therefore could be considered as a social issue.

Our clients are usually in a situation of confusion when they first come to us. We provide the necessary support by listening and understanding their issues before providing unbiased legal advice. We make sure that our clients leave us with information and options for them to consider. These, alongside their open hearts, courage and strength are the critical elements for them to resolve the issues they are facing.

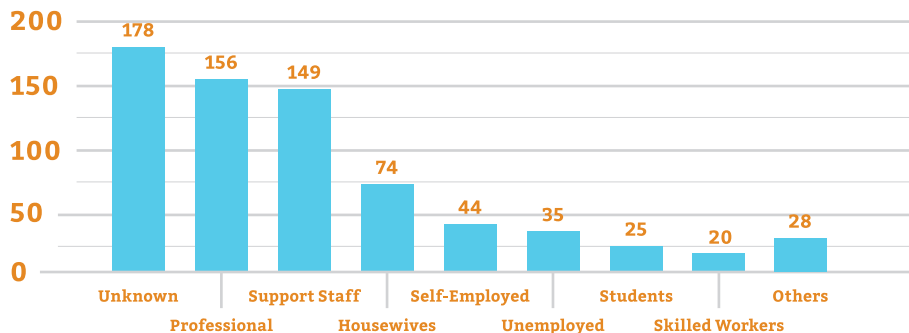
## OUR CLIENTS

# Client's Background

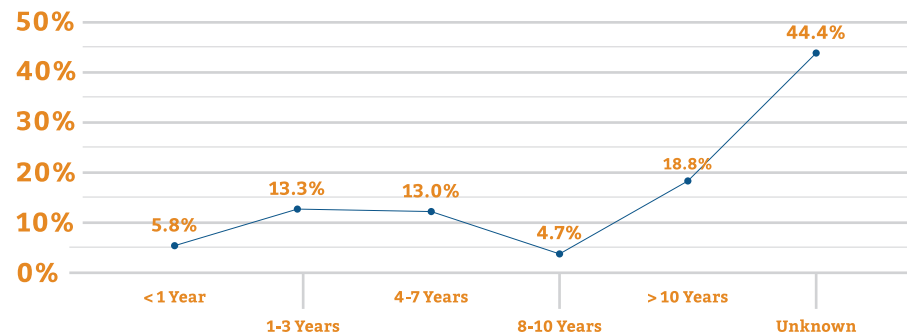
The category with the highest number of clients are professionals with 156 clients (22%), followed by support staff at 149 clients (21%). Housewives came in third at 74 clients (10.4%) followed by self-employed clients at 44 clients (6.2%).

The data collected points to the fact that majority (52%) of our clients are employed and have their own income. About 19% are unemployed or are still studying. The unknown category is due to client's wishes to retain their privacy.

## Client's Occupation



## Client's Length of Marriage



Telenisa also notes down client's length of marriage. This data is further divided into five different categories. Clients in the early stages of marriage, between less than 1 year up to 3 years, accounts for 19.1% of our clients. Interestingly, clients who are a decade into their marriage had a similar number albeit a little lower at 18.8%.

From our conversations with the clients, most of them opt out of the marriage before having children or when the children had become adults. When asked why did they wait for so long before taking action, they cite their children's welfare and upbringing as a major concern.

# Types of Divorces

Women have been increasing their awareness of their economic and social rights including their rights in a marriage and within the family. Women have reached out to organisations such as ours and other women's groups to build their knowledge and exposure to issues on women. Awareness programmes as well as interaction on social media have also heightened the awareness on women's issues. This is one of the reasons for the rise in divorce cases instituted by the wife.

There are a few ways to dissolve marriage under the **Islamic Family Law (Federal Territory) Act 1984 (IFLA)**.

The first and most frequent type of divorce is *Talaq* by mutual agreement. This is where the husband utters the divorce to his wife in front of a Judge and the Judge is satisfied. This divorce is reconcilable within the iddah period\*. This is the easiest way to achieve a divorce as both the husband and wife agree to the divorce.

The second type is *Talaq* by unilateral pronouncement. It is the same as the above but the divorce is being uttered outside of Courts; usually during heated arguments between the couple, without the presence of witnesses. The couple would then have to go to verify the validity of the divorce at

the Court. This divorce is also reconcilable within the iddah period\*.

However, we realise that the cases that come to us are more complex and we have to handle them more delicately as often, the wish to divorce is one-sided.

*Ta'liq* is divorce due to the husband violating a stipulation/ agreement that they have entered upon marriage which a wife can initiate. The wife may file for a *ta'liq* divorce and this divorce is reconcilable, within the iddah period\*.

Next is *fasakh*. This divorce is to be initiated by the wife and the divorce is granted through a Court Order. The wife may file for divorce citing 12 of the reasons as mentioned in the Islamic Family Law. *Fasakh* is irreversible and the couple may not *rujuk* (reconcile). If they would like to reconcile, they would have to have a new *akad nikah*.

*Li'an* is when the husband takes an oath stating that his wife has had sexual relations with another man, while still

I've been married for almost 8 years. My husband and I have been in a long distance relationship for the past year. However, it has been two months since my husband disappeared, forgoing my nafkah zahir and batin. I have tried to contact him but he has changed his number. I went to look for him but he refused to see me. I understand that he is in a relationship with his colleague. I would like to know, when can I claim for a divorce?

- **PUAN A, JOHOR**

*Quoted from Telenisa's Client*

married to him. The wife would also have to take an oath, denying her husband's oath. The Judge would then order them to separate, forever and they may never reconcile.

*Khul'* is when the wife bargains to divorce by redemption as the husband does not agree to divorce. The amount of redemption has to be agreed upon by both the husband and wife. If they do not come to consensus, the Judge may assess and make necessary decisions.

Presumption of death is also a method of divorce as stated under **Section 53 IFLA**. Where the husband died, is believed to have died or has not been heard of for a period of four years or more, the living spouse may file for a divorce under this stipulation.

*\*Iddah period is a waiting period whereby a wife is not allowed to marry to ensure her womb / uterus is clear from her husband's semen or to eliminate her sadness over the demise of her husband. Length of iddah period may vary.*

## WOMEN'S RIGHTS IN FAMILY

# Fasakh

For the second year running, *fasakh* has the highest number of cases for dissolution of marriage. Telenisa recorded 137 cases or 45.7% of *fasakh* cases in 2017. In previous years, it was 47% (2016), 32.5% (2015) and 44.3% (2014).

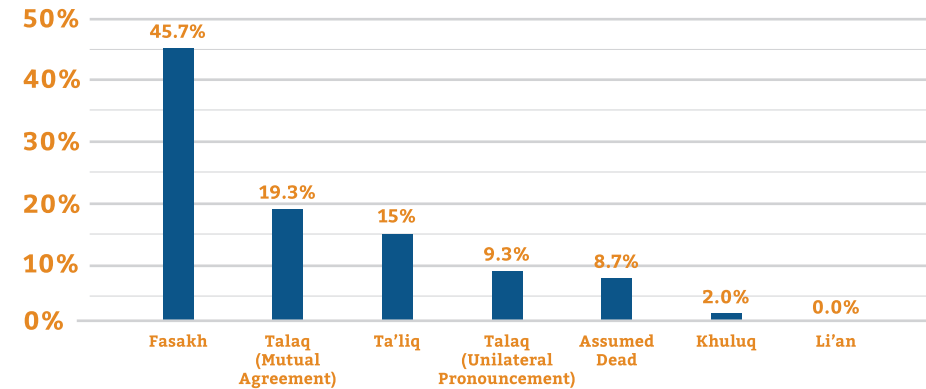
***Fasakh* is a method of divorce that can be initiated by the wife.**

Section 52 IFLA states that a woman may apply to the court for a dissolution of marriage through *fasakh* if her husband has, for example:

- Been imprisoned for more than three years,
- Disposed her property(ies),
- Been treating her cruelly.

*Fasakh* also allows a wife to void or invalidate her marriage, including a marriage to which she did not give consent to (only where the marriage has not been consummated).

## Types of Divorces



The Syariah Court requires the wife to provide strong grounds and evidence before pronouncing divorce through *fasakh*. Amongst the evidence needed by the Court are police reports, medical reports and witnesses in cases where the wife claims that the husband treats her with cruelty. The time frame till conclusion of the divorce is typically longer than a divorce initiated by the husband or if mutually agreed upon. However, if the Judge is satisfied with the wife's claim, the Judge may dissolve the marriage without the presence or consent of the husband.

Clients are likely to need legal representation at some point as *fasakh* involves complicated legal processes in establishing proof in court. Unfortunately, access to lawyers is costly, causing many of our clients to abandon other rights such as arrears in wife maintenance and matrimonial property as long as they are divorced and free from their husbands.

# Ta'liq

*Ta'liq* is a stipulation of the rights and responsibilities of a husband and wife in a marriage.

The standard *ta'liq* provided by each State is restricted to its terms, which only covers the maintenance, or if the husband abandons his wife for a fixed period of time or harm is inflicted against the body of the wife.

Couples have the options to either, add to the existing *ta'liq* stipulations provided by the State, to be read by the husband right after the solemnisation, or adding *ta'liq* stipulations later on provided it is done when the marriage is in force. Both parties must agree with the stipulations set out in the *ta'liq*. The *ta'liq* must be read by the husband to the wife in front of two witnesses (Muslim men, sane, and adults), and be registered at the Islamic Religious Department.

When a party fails to carry out the obligations set forth in the *ta'liq* agreement, then, when a party complains to the Syariah Court, their marriage may be revoked.

Sisters In Islam recommends that polygamy be included as one of the additional terms of *ta'liq* in order to protect the rights of the wife. We also encourage the wife to include other stipulations that are deemed necessary and appropriate to protect her rights, provided they are not contrary to Hukum Syarak.

Additional *ta'liq* is a method provided by the law to protect the rights of the wife should a situation she does not want in her marriage, such as polygamy, takes place.

### CONTOH PERJANJIAN TA'LIQ

Daripada Sister In Islam

Perjanjian ini dibuat pada ..... antara ..... (selepas ini digelar sebagai "Suami") bagi satu pihak dan ..... (selepas ini digelar "Isteri") bagi pihak lain.

#### **Walhal:-**

1. Suami dan Isteri telah bersetuju untuk berkahwin dan mengijab kabulkan nikah pada .....
2. Suami dan Isteri telah bersetuju bahawa hak dan tanggungjawab mereka sebagai suami isteri hendaklah tertakluk kepada syarat dan Ta'liq seperti dinyatakan di bawah ini.
3. Perjanjian dan ta'liq yang dinyatakan di bawah ini adalah tambahan kepada perakuan nikah dan hendaklah menjadi syarat penting dalam ijab kabul dan pernikahan Suami dan Isteri.

Maka, kedua-dua Suami dan Isteri dengan ini bersetuju seperti berikut:-

1. Saya, ..... dengan ini melafaz dan berikrar seperti berikut:-
  - (a) Manakala saya merujuk akan Isteri saya tanpa redhanya,
  - (b) Manakala saya meninggalkan Isteri atau gagal memberi nafkah zahir atau batin kepada Isteri selama satu (1) bulan Hijrah atau lebih,
  - (c) Manakala saya menggunakan kekerasan atau kezaliman degan memukul atau mendera Isteri sama ada secara fizikal, mental atau emosi,

*Example of Ta'liq Tambahan*

# Domestic Violence

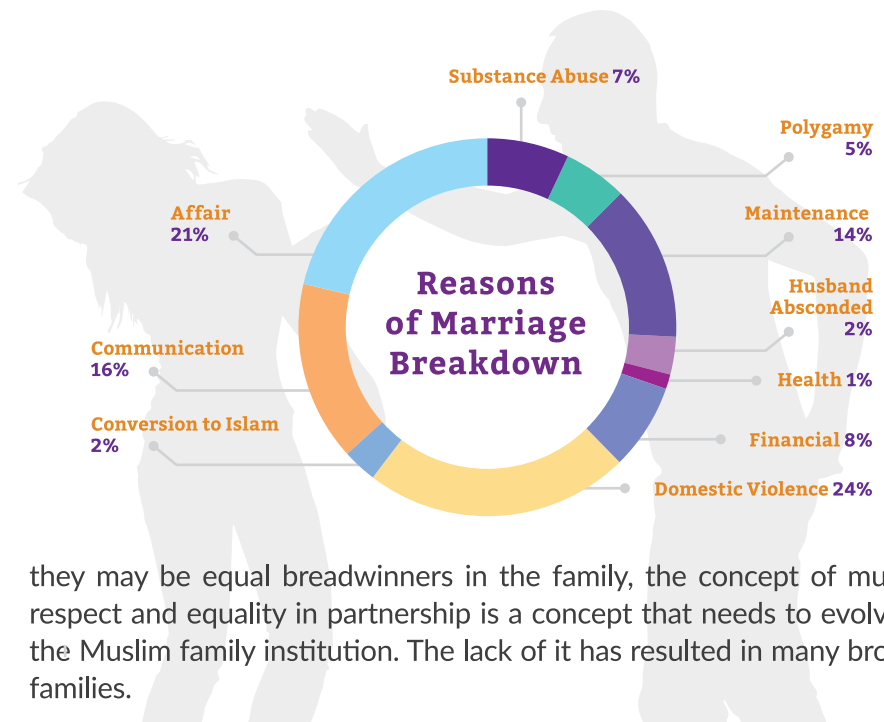
### Domestic Violence Remains The Main Cause For Divorce

In 2017, domestic violence remains the main reason for breakdown of a marriage at 24% or 216 cases. The second reason is infidelity (21%), followed by communication issues (16%) and maintenance (14%).

Domestic violence can take the form of physical or psychological violence and abuse. Psychological abuse remains the highest form of domestic violence in 2017 at 38.3% even though lower from 2016's 44.9%. Psychological abuse may result in anxiety, withdrawal or depression. This instability will affect domestic violence survivors' ability to continue their own lives and their children's wellbeing.

Women have become more demanding of their position as an equal partner in a marriage. Acts which are humiliating and harmful are being rejected by women as behaviour that should not exist in a partnership. As women's roles in society and the family begin to evolve, for example

### Breakdown on the Types of Domestic Violence



they may be equal breadwinners in the family, the concept of mutual respect and equality in partnership is a concept that needs to evolve in the Muslim family institution. The lack of it has resulted in many broken families.

Islam does not allow husbands to act cruelly to his wife, either physically or mentally. The Quran stresses love, kindness and justice in family relationships and prohibits cruelty of all kinds [Quran, 4:19 and 30:21]

The ideal relationship between a husband and wife is one built together through mutual friendship and affection (*mu'asyarah*), what is considered good and reasonable (*ma'ruf*) according to religious principles, societal values, human reasons and fitra or innate human nature (*mu'asyrah bi al-ma'ruf*).

# What is Domestic Violence?

Domestic violence is abusive behaviour by a person or through a third party to his or her spouse, child or any other member of the family, to gain or maintain control over the person.

The abuse may be physical, sexual, financial, social or psychological actions such as slapping, making you feel worthless, forced sex, threats or misappropriating property etc.

If you have been subjected to any of the abuse such as above, these are the steps that could be taken:

### Medical

Go to a Government Hospital for a medical check-up at the Accident & Emergency unit. Do not forget to state that you are a domestic violence survivor and ask for a copy of your medical report.

### Police

Make a police report and ask for a copy of the report. If you believe you are still in danger from the abuser, apply for an Interim Protection Order (IPO). The police will assist you in obtaining the IPO

and refer you to the Welfare Department. An investigating officer (IO) will be assigned to your case. Remember to ask for the IO's name and phone number!

### Welfare Department

The police will provide you with an IPO Request Letter. With this letter, go to the nearest Welfare Department office. The Welfare Officer will assist you in getting the IPO.

If you are worried that the abuser will disregard the IPO, insert provisions that will make the IPO stronger, such as, power of arrest or prohibiting the abuser from coming close to the survivor.

### Court

The Welfare Officer will assist you at Court to obtain the IPO.

You may also contact Talian NUR or NGOs such as AWAM, WAO or WCC Penang to find out more.

### What is an EPO?

A survivor can obtain quicker protection through the Emergency Protection Order (EPO) without making a police report. EPO can be issued by the Welfare officer at any time, effective for only seven days.

### What is an IPO?

Interim Protection Order (IPO) is to protect the survivor from further abuse. It is issued pending investigation of a domestic violence offence. It will end under these circumstances:

- Police found no further action for investigation
- Criminal proceeding instituted and survivor does not apply for Protection Order (PO) within seven days of notice
- When the survivor obtains the PO

### What is a PO?

Protection Order (PO) can be applied by the survivor during criminal court proceedings, which is renewable only upon its expiry.

If the perpetrator still commits a crime against the protected person(s), the perpetrator will be liable to a RM 4,000 fine or jail of not more than one year or both.

*\*power of arrest can be attached when applying for IPO and PO*

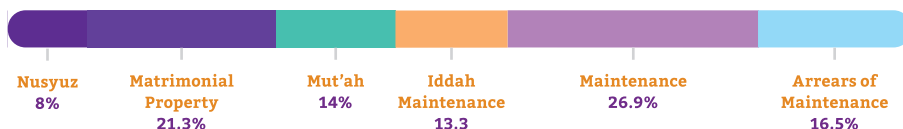
# Issues Affecting Wives

Telenisa's clients remain aware of their rights during and after the divorce. The main issue always brought up by clients is maintenance. In 2017, 26.9% clients had issues with maintenance compared to the 38.4% last year.

The second highest issue is matrimonial property, at 21.3%. Not many knew that they have rights to a portion of the properties that they have acquired together during the marriage.

Matrimonial property is property obtained between a husband and wife during the course of their marriage. Matrimonial property is embodied in the Islamic Family Law to recognise the role of the spouses (usually the wife) who has directly or indirectly contributed to the acquisition of assets during the course of the marriage. Contribution can be direct through financial contribution in the purchase price. While indirect contribution is through the cost of maintaining the upkeep of the house, or looking after the household and the children while the husband goes out to earn a living.

### Issues Faced by Wives Due to Divorce



“My ex-husband and I bought a house together. I paid half of the deposit and my ex the other half. He also paid for the monthly installments. 5 years ago, we renovated the kitchen but I paid for it. Now he wants me to leave the house. What are my rights? Can I claim for my money back or do I claim the right to continue to live there?”

- **PUAN R, KUALA LUMPUR**  
*Quoted from Telenisa's Client*

# Wives' Maintenance

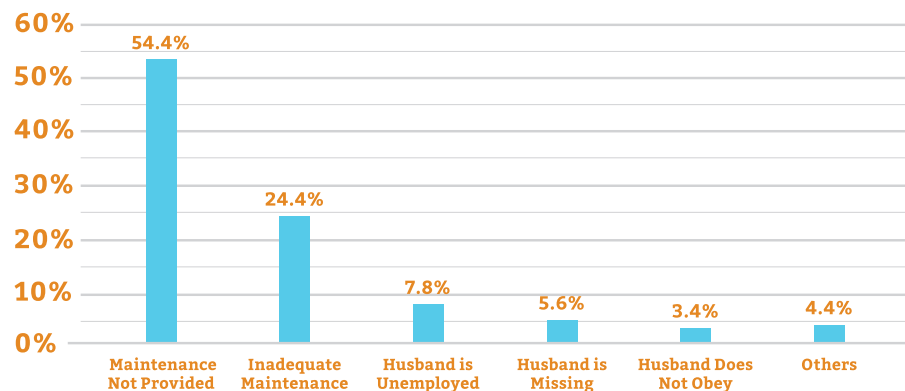
Maintenance has been a recurring issue affecting wives over the years

وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلَدَهُنَّ حَوْلَيْنِ كَامِلَيْنِ لِمَنْ أَرَادَ أَنْ يُنِمَّ الرِّضَاعَةَ  
وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ لَا تُكَلَّفُ نَفْسٌ إِلَّا وُسْعَهَا لَا  
تُضَارَّ وَالِدَةُ بَوْلِدِهَا وَلَا مَوْلُودٌ لَهُ بِوَلَدِهِ وَعَلَى الْوَارِثِ مِثْلُ ذَلِكَ فَإِنْ  
أَرَادَا فِصَالًا عَنْ تَرَاضٍ مِنْهُمَا وَتَشَاوُرٍ فَلَا جُنَاحَ عَلَيْهِمَا وَإِنْ أَرَدْتُمْ أَنْ  
تَسْتَرْضِعُوا أَوْلَدَكُمْ فَلَا جُنَاحَ عَلَيْكُمْ إِذَا سَلَّمْتُمْ مَا آتَيْتُم بِالْمَعْرُوفِ وَالْقَوَا  
اللَّهُ وَاعْلَمُوا أَنَّ اللَّهَ يَبْصِرُ مَا تَعْمَلُونَ بِصِيرٍ

In the Quran [2:233], it is stated:

“Mothers may breastfeed their children two complete years for whoever wishes to complete the nursing [period]. Upon the father is the mothers' provision and their clothing according to what is acceptable. No person is charged with more than his capacity. No mother should be harmed through her child, and no father through his child. And upon the [father's] heir is [a duty] like that [of the father]. And if they both desire weaning through mutual consent from both of them and consultation, there is no blame upon either of them. And if you wish to have your children nursed by a substitute, there is no blame upon you as long as you give payment according to what is acceptable. And fear Allah and know that Allah is Seeing of what you do.”

## Issues in Wives' Maintenance



Hence, it is a word of Allah that husbands are to provide their wives with maintenance. Nevertheless, men still take it lightly as though it is an option and not an obligation.

Out of 90 cases involving maintenance, 54.4% shared that their husbands do not provide maintenance at all. While there are wives who earn, contribute to the family and take care of their own personal expenses, a lot more wives are heavily dependent on maintenance from the husband as a primary means for the family to live on. Without it, it creates a lot of pressure on the family and exacerbates the instability of the relationship between the wife and the husband. Stability of income and dealing with financial issues is a critical factor in creating a strong family unit.

# Nusyuz

*Nusyuz* is rarely discussed openly by women in Malaysia. *Nusyuz* is disobedience or the literal translation of the Arabic word is 'ill-mannered'.

According to **Section 59 of the Islamic Family Law (Federal Territory) 1984**, *nusyuz* is defined as where a wife does not obey the lawful wishes and commands of her husband.

However, **Surah An-Nisa verses 34 and 128** clearly state that both husband and wife can be found *nusyuz*. Nevertheless, under the Islamic Family Law of Malaysia it is not provided that husbands may be found *nusyuz* as well.

Women in Malaysia are usually threatened with *nusyuz* by their husbands. This is often reflected in cases which includes physical or psychological domestic violence. Nevertheless, *nusyuz* conviction is not automatic because the power to declare a wife as *nusyuz* or otherwise is within the jurisdiction of a Syariah Judge, and not the husband.

If a woman is deemed *nusyuz* by the Judge, she will not be entitled to *iddah* maintenance (if divorced) or monthly maintenance (if still married).

If the wife/ ex-wife repents and obeys her husband, she is no longer considered *nusyuz* and will be provided with maintenance again.

Women should be advised that it is not considered *nusyuz* if they leave their matrimonial home, if it is due to any kind of violence.

"I left the house because I can not bear to be continuously humiliated and beaten (by my husband). He hardly gave me and my son maintenance. I took my child with me, back to my parents' house ... What do I do now? I'm worried that he will come to take my child away from me because he said I am *nusyuz* for leaving the house without his permission.

Please help me, I do not want him to take my child with him and my child is still breastfeeding"

- **PUAN D, KEDAH**

*Quoted from Telenisa's Client*

A wife who has been deemed *nusyuz* will still maintain her rights as a mother. She will still be able to fight for her children's custody. Her husband may not use *nusyuz* as an excuse. The Islamic Family Law clearly states that the mother is the most suitable person to look after a child. Only if the welfare of the child is affected under the mother's care that she might lose custody of the child. Welfare of the child is the paramount consideration by the Courts.

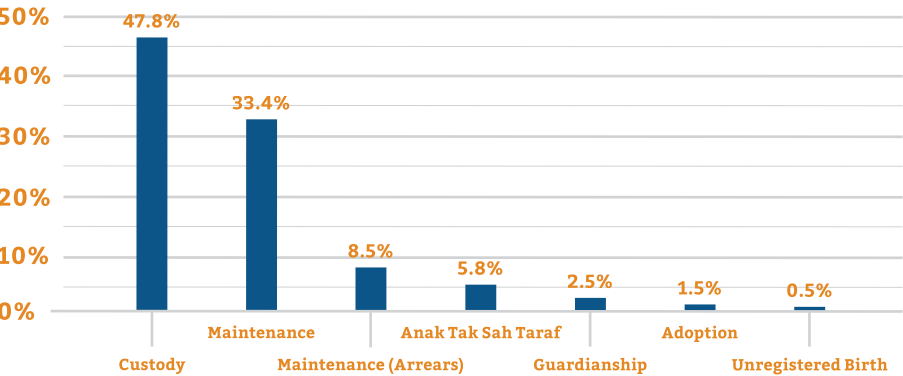
Sisters in Islam has advocated for the removal of the *nusyuz* provision in the law. It is a provision that often times forces a woman to stay with her husband even with the threat of abuse or violence or harm to her or her children. It is a provision that is unjust and incompatible with the notion of equality in a marriage.

# Child Custody

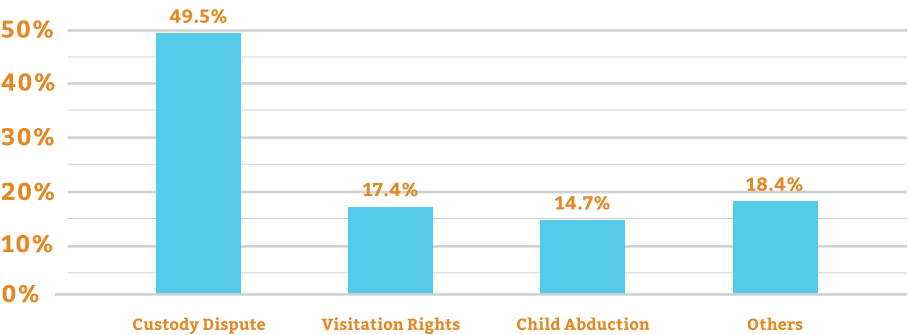
Children tend to be victims when their parents are in dispute.

For 2017, the main issue concerning children is custody at 47.8% (190 cases) followed by maintenance at 33.4% (167 cases). In 2016, a similar trend was recorded with custody at 49% and maintenance at 30.9%. In child custody cases, almost half were due to custody disputes. Most clients complain that their husbands filed for custody but they do not actually care for the children, instead, their parents or siblings were the ones who ended up looking after the children.

## Cases Involving Children



## Issues in Child Custody



17.4% of cases were issues on visitation rights. Some parents do not agree on supervised visitation as they believe they should have complete access to the children since they are a parent to the children too.

Some parents end up abducting the children from their custodian when the children are at school or they just do not send the children back home to the custodians after their time with the children.

Others are issues such as the demand to change the child custody order, child custody procedure and the child custody of anak tak sah taraf.

# Child Maintenance

Child maintenance is often an issue with parents who do not see eye to eye.

Telenisa records inadequate payment of maintenance as the most frequent issue at 29.9%. One of our clients shared that her ex-husband just refuses to provide the stipulated amount and therefore, she has to contribute to the cost every month.

The next issue under child maintenance is that the father does not provide maintenance at all at 26.9%. Complaints of fathers disobeying court orders are also received frequently at Telenisa. Others include unemployed fathers, or fathers who have gone missing.

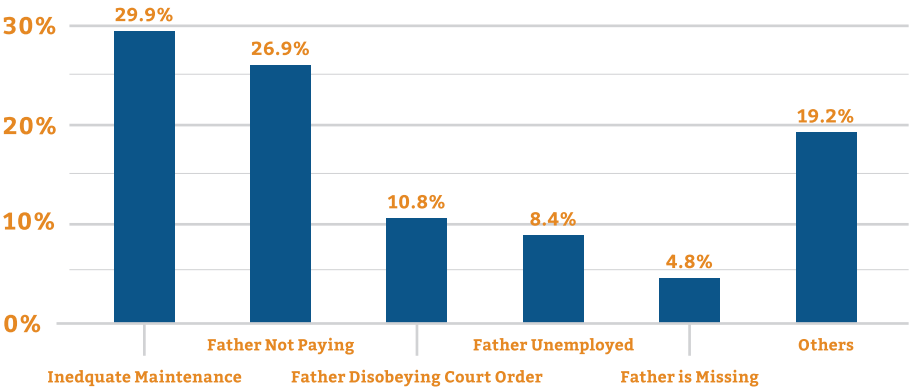
Amongst other issues brought up by clients are that the fathers would like to reduce the child maintenance or the father would like to pay maintenance but to the 5 year old child directly, bypassing the mother, which is completely impracticable.

This is further evidence that the Syariah Courts is lax in its enforcement of its court orders. Sisters in Islam recommends that Syariah Courts impose stringent punishments on fathers who do not provide maintenance to their children such as jail sentences. The Syariah Courts should also be able to make orders to

“My 4 year old daughter was left home alone because my ex-husband wanted to go on a date with his new wife! What kind of a father is that? He could have just sent her back to me. I would never forgive him if anything happened to her while she was alone!”

- **PUAN K, PETALING JAYA**  
*Quoted from Telenisa's Client*

Issues in Child Maintenance



assist in the consistent payment of *nafkah* such as through salary or Employees Provident Fund (EPF) deductions; etc. to ensure that the best interests of their children are upheld.

# Anak Tak Sah Taraf

Anak tak sah taraf is defined as children born out of wedlock or born less than 6 months after the date of marriage of his/her parents. The Islamic Family Law stipulates that only the mother and her relations have the sole custody of the child. In fact, the duty to maintain the child falls on the mother alone. The father has no paternity rights over the child, is exempted from providing maintenance and having access to custody of the child.

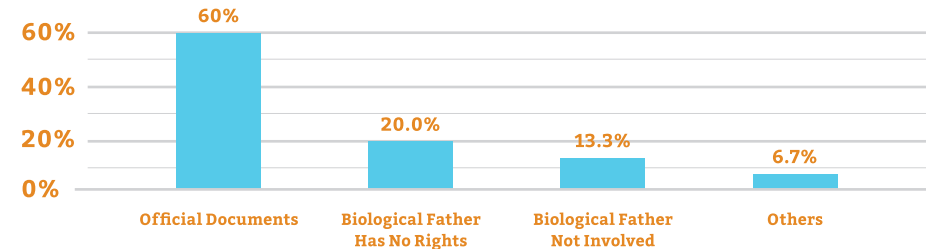
Over and above this, there is a fatwa stating that the biological father or anyone who claims to be the father of an anak tak sah taraf is denied paternity rights. It follows that the child will not be able to inherit from him, not his/her mahram and is not the guardian of the child.

This fatwa applies even if the couple marries after discovering the pregnancy and continues to have the child. The difficulty arises for the child when he or she grows up and faces the social stigma of him/her as a “bin/binti Abdullah” child. This has caused a lot of trauma and disarray on the dynamics of the families that we have assisted.

## Trends on Anak Tak Sah Taraf (2014 – 2017)



## Issues involving Anak Tak Sah Taraf (2017)



For 2017, we recorded 5.8% of cases involving anak tak sah taraf . Among the issues raised in 2017 are mostly on documentation issues (60%) and biological fathers incapable to undertake their rights and duties on the child as a result of lack of legal recognition (20%).

However, there were clients who sought for information on abortion of foetus besides complaints of the biological father not providing child maintenance.

One of our clients problem started when he wanted to apply for an identification card (IC) for their then 12 year old son. He was born in 2004 and named “Adam bin Rahman” instead of “Adam bin Abdullah”.

When they applied for the IC the National Registration Department informed them the child had to be named with a “bin Abdullah”. They were furious as the child had lived with his father’s name till that date and to change it now would cause a lot of confusion to the child.

The child constantly asks his parents why is it taking so long for his IC to be ready as he enquired his friends and it did not take as long for their IC to be issued as his. The matter is still under resolution.

# Anak Tak Sah Taraf

## The 'bin Abdullah' Case at Federal Court

### BIN ABDULLAH: CERITA DI SEBALIKNYA

1. Adam bin Rosli telah dilahirkan pada 17 April 2010, 5 bulan dan 24 hari daripada tarikh perkahwinan ibu bapanya.
2. Ayahnya ingin mendafarkan namanya sebagai Adam bin Rosli. Malangnya, Adam bukan seperti kanak-kanak yang lain.
3. Pihak JPN telah menganggap Adam sebagai anak tidak sah taraf. Namanya kemudian didaftarkan dengan 'Adam bin Abdullah'.
4. Pada 27 Julai 2017, Mahkamah Rayuan memutuskan bahawa anak-anak seperti ini boleh dibin/bintikan dengan nama bapanya.
5. Namun, ramai yang menentang keputusan ini kerana seolah-olah tidak menghormati agama.
6. Bagaimana pula dengan nasib kanak-kanak seperti Adik Adam? Adakah dia menjadi mangsa keadaan?

APAKAH SITUASI YANG AKAN DIHADAPI OLEH ADIK ADAM JIKA DIA DIGELAR SEBAGAI "ANAK TAK SAH TARAF"?

## Facts of the Case

A Muslim couple was legally married on 24 October 2009.

On 17 April 2010, a child was born who was 5 months and 24 days (5 months and 27 days according to the Islamic Qamariah Calendar) from the date of their marriage.

On the application for the child's birth registration, the father applied for his surname to be applied on the child's birth registration. However, the National Registration Department (NRD) rejected the application, instead they have ascribed the child to be named as "bin Abdullah" on grounds that the child was conceived out-of-wedlock.

## Timeline of Court Decisions

**30 November 2016:** A judicial review was filed to quash the NRD decision that refused to correct information in the Birth Register of the child. High Court judge decided against the application.

**27 July 2017:** The Court of Appeal of Appeal decided that a child that was conceived out-of-wedlock can take the father's surname. The Court of Appeal decided that the National Registration Department was bound by their duties under Births and Deaths Registration Act (BDRA).

**September 2017:** The National Registration Department (NRD) appealed the matter to the Federal Court. On 8th September 2017, the Federal Court granted the NRD and two others leave to appeal against the Court of Appeal's decision.

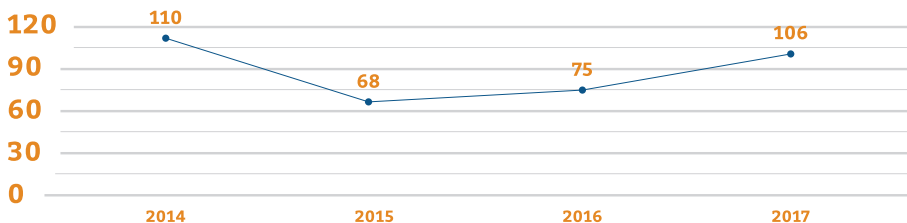
**7 February 2018:** The case is still pending and is awaiting decision from the Federal Court.

# Polygamy

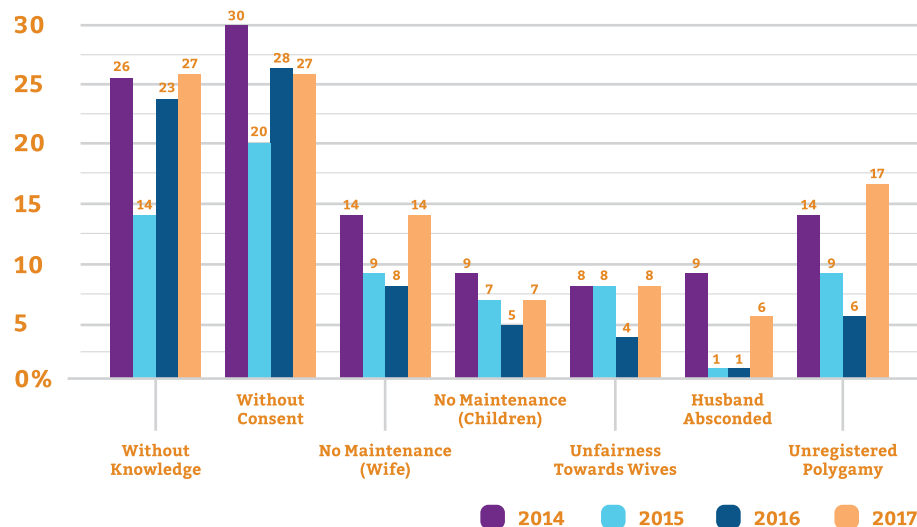
Polygamy issues have also been rising in 2017 with 106 cases from 75 cases (2016) and 68 cases (2015) but slightly lower from the 110 cases in 2014.

Like previous years, the most number of complaints relating to polygamy is due to husbands contracting into subsequent marriages without their wives' consent nor their wives even had the knowledge of it happening. Husbands are required to apply to the Syariah Court for permission to marry subsequent wives under the Islamic Family Law of Malaysia. The judge then must consider whether the husband can properly maintain his current and future families. The judge is also required to obtain the views of the existing wife. The leniency in the law to contract polygamous marriage, is further circumvent by mischievous husbands who secretly marry at the border without seeking court permission, but later on register the marriage by paying a small fine.

**Number of Polygamy Cases (2014-2017)**



**Breakdown of Polygamy Cases**

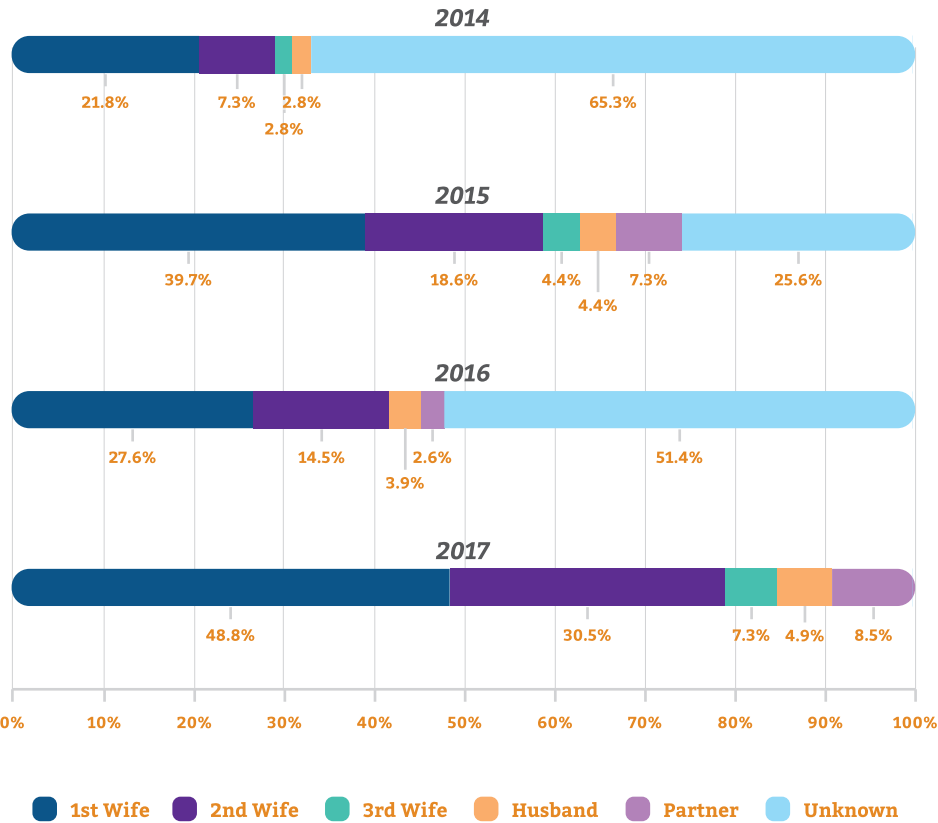


When marrying at the border, the new wives will not be accorded with the right of a wife under the IFLA if unregistered. Unregistered marriages will cause all sorts of issues later on for the wives and children. Among the issues are registration of birth, inheritance and matrimonial properties.

The Holy Quran [4:129] clearly states *“And you will never be able to be equal [in feelings] between wives, even if you should strive [to do so]. So do not incline completely [towards one] and leave another hanging. And if you amend [your affairs] and fear Allah - then indeed, Allah is ever Forgiving and Merciful”*.

# Polygamy

Breakdown of Polygamy Clients



2017 saw the numbers of first wives reaching out to Telenisa increase to 48.8% from the previous 27.6% (2016).

Through our analysis, first wives are usually in a state of shock and trauma as most of them had just found out that their husbands have married a second wife. Some are nervous, some are worried about themselves and their children's future and some others are just plain unhappy. Some are looking for ways to deal with this new situation, and protect themselves and their children whilst others are not able to tolerate being in a polygamous marriage and would rather divorce.

Second and third wives are usually seeking for information on how to register their marriage in Malaysia or how to exercise their rights as wives. Some husbands refuse to register their subsequent marriages in Malaysia and therefore, most of the second and third wives seek to find out if they can register their marriage in Malaysia, ex- parte (the application of one party alone).

The number of partners (or girlfriends of married men) reaching out to Telenisa have also increased in 2017. Partners usually enquire on polygamy marriage procedure (locally and abroad), their rights as the subsequent wife and the rights of their future children amongst others.

Husbands have also been in touch with Telenisa. Among the questions raised are what are their rights in a polygamous marriage. Some husbands are already in a polygamous marriage while some others are planning to marry their girlfriends.

# Division of Property

*Faraid* is the distribution of the estate of a deceased person among their heirs. At Telenisa, we receive countless inquiries regarding *faraid* at 68%. The inquiries usually come hand-in-hand with family disputes, break ups and anxiety.

Telenisa advises that other than *faraid*, every Muslim should learn the various ways to manage their worldly goods (*harta pusaka*) through methods such as *wasiat*, *hibah*, *wassiyyah* and *waqaf*.

*Wasiat* is a declaration made during a person's lifetime in respect to their assets, to be carried out for the purpose of charity or for other purposes permissible by Islamic law after their death.

*Hibah* on the hand is a gift of asset(s) made voluntarily by a donor during a person's lifetime to the beneficiaries.

*Wassiyyah* is the assignment of wealth, after death, to some beneficiaries of choice or simplified as trust. In this case, the donor states how they wish their wealth to be divided and distributed after their death.

Finally, *waqaf* is a charitable endowment – in cash or fixed asset – that is dedicated towards the benefit of the community in the name of Allah. The fruits of *waqaf* may be utilised for any Syariah compliant purposes.

Sisters in Islam is calling for a review of *faraid* rules. In the early days of Islam, women could not own property, were not educated and did not have jobs. Thus, it was the responsibility of their male kins to support them.

“I want to marry her but I do not want things to go sour between me and my two adult sons. I want everyone to be happy.”

- **MR. T, PUCHONG**

*Quoted from Telenisa's Client*

*Mr T is a client who will soon convert into Islam and plans to marry his Muslim partner of 5 years. He was worried about his properties as he was told that non-Muslims may not get any part of a Muslim's properties.*

## Breakdown of Property Issues



Today, women have to support themselves when their husband/father/ mother passes away. Thus, there is no apparent reason to justify that the male kin should inherit more than the female kin. As such, *faraid* rules have the effect of being biased against women as they do not address the changing realities of society today.

Families should be aware that assignment of beneficiaries to EPF funds and insurance policies may also be challenged under *faraid*.

# Legal Aid Training for Chambering Students

Sisters in Islam works closely with the Kuala Lumpur and Selangor Legal Aid Centres. The Legal Aid Centres send the chambering students for their legal aid training at SIS for a duration of 14 weeks. The students are provided with basic Syariah knowledge at the start of the training and their knowledge is further enhanced by being part of the Telenisa Legal Clinic. We expose them to further knowledge by encouraging our chambering students to attend court as part of their legal aid training. The students attend both the Syariah Lower Court and the Syariah High Court to observe the court cases, code of conduct, processes as well as the judgements delivered. Telenisa's Legal Officers also provide support (legal and moral support) to some of our clients where their cases are more complex, emotionally draining or dangerous to the clients' safety.

## Observation on Judges

Some of the observations made about Syariah Court judges include the following:

- most of the judges were clear when explaining the procedures and legal system to the Plaintiff (wife) when the Plaintiff was unrepresented.
- the Syariah Court judges were far more approachable compared to the Civil Court judges.
- one judge was not interested in hearing the submission of the Plaintiff who is a wife.
- another judge was observed to disregard certain standard operating procedures in a fasakh divorce when he insisted not to proceed with the case because the husband didn't turn up.
- unnecessarily hurtful remarks made by some male judges to the wives.

## Observation on Court Procedures & System

Most cases did not start at the designated time, for example if the case is scheduled to start at 9:00 am, the case only starts after an hour, or even later.

Other issues include failure to publish or update significant information of the case (notice) outside of the courtroom. The chambering students recommend for the Syariah Courts to implement the e-filing system so that the information regarding the client's case can be checked online, especially if they are not represented by lawyers.

Another glaring issue is the attitude of the Registrar who does not respect the court process due to using the telephone and laughing during court proceedings. There were also times when the Registrar was not helpful and responded rudely when approached for information.

The chambering students are of the opinion that a number of cases like khalwat and Wali Hakim, should be carried out in chambers instead.

## Observation on Syarie Lawyers

Syarie lawyers were mostly unprepared and often late to court.

The ineffectiveness and inadequate knowledge of court procedures is particularly alarming - for example:

- one lawyer was not aware of the procedure to appoint Hakam,
- another lawyer was oblivious to the procedures, preparations and report submission on marriage registration procedures conducted abroad. This resulted in a client's case being interrupted because the documents were inadequate and eventually the case was delayed even though the client was fully ready.

The unprofessional attitude of a Syarie lawyer is also manifested when the lawyer during a court proceeding gave irrelevant answers to the judge's questions.

# Complaints from Clients

We have received many complaints from our clients regarding the Syariah Court system, judges, Syarie lawyers, the Police and the religious departments. These are amongst the significant ones:

### Complaints on Court System

For Syariah Courts, it is not compulsory for clients to have legal representation, they may appear in court and represent themselves. However, clients often complain that they do not know what is happening as the legal system and process is quite complicated.

There are also instances where the case has been pending for more than a year as the husband refuses to divorce the client. Thus, he has not been attending the proceedings. The Court simply refuses to proceed instead of providing the client with advise or alternatives, in order for the proceedings to be concluded in a speedier manner.

### Complaints on Religious Department

Clients who attend counselling sessions were not provided with sound and constructive advice. Some were told to just be patient so that the husbands would not declare them as nusyuz.

### Complaints on Judges

In one of our high profile cases, a judge postponed the case to a later date known to parties pertaining to a divorce case. However on the said date, the wife, present with complete documents found out that a decision was delivered a day prior to the notified date, leaving her and her lawyers without any clear further recourse to her rights.

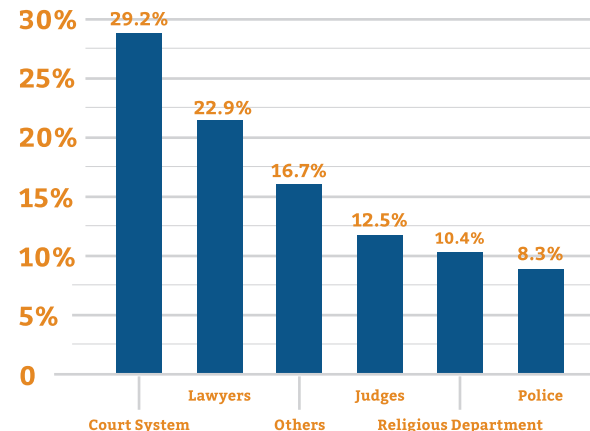
### Complaints on Syarie Lawyers

Clients mostly have issues with their Syarie lawyers. Most of the time, their lawyers didn't prepare them for trial. There was no pre-trial meetings or discussions even though clients asked for it. Normally clients would only know about the issues to be heard on the same day that their case was scheduled.

Furthermore, some lawyers do not update their clients on the status of their cases and therefore, clients have to constantly follow up with their lawyers or contact the Courts directly.

Worst, is when a lawyer didn't follow the instructions of the client; in front of the judge, the lawyer deviated from the instruction, claiming it to be in the best interest of the client which was never discussed prior to that.

## Breakdown of Complaints from Clients

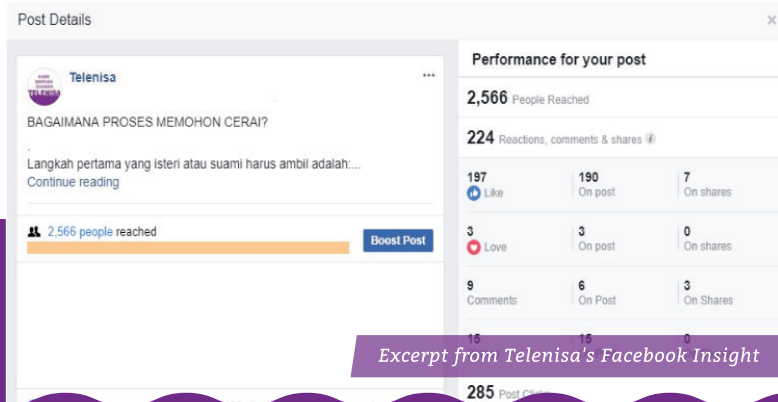


### Complaints on Police

The most common complaint that we received regarding the police is that they do not follow the standard operating procedures.

In one of our cases, a client believed that her daughter was being abused by her husband. Our client went to make a report to the police but they refused to go and help the client's daughter citing that it is a domestic issue and 'they cannot get involved in it'.

## MOVING FORWARD



### Virtual Outreach

Telenisa's Facebook page has recently celebrated its first anniversary!

This page has been an avenue for women seeking help as we have been sharing articles, quotes from the Holy Quran and hadiths besides visuals of Telenisa's activities such as the mobile legal clinics, forums and fairs.

As of February 2018, 1300 people are following the Facebook page. The post with the highest reach of 2,566 people is on the process to seek divorce.

This further shows that people are actively seeking for information and awareness raising on Muslim women's rights is much needed.



*University students engaging with Telenisa*

### Telenisa – Going Forward

Telenisa is looking forward to grow our force in terms of human resources, funding and services. Our long-term goal is to set up Telenisa Legal Aid Centres in all states in Malaysia.

We also wish to collaborate with other Non – Governmental Organisations and Non – Profit Organisations, corporate groups, local Members of Parliament, state representatives and local and grassroots leaders to raise awareness through the various spaces and platforms that they have access to.

We would also like to carry out further outreach to families, communities in urban and rural areas through more impactful platforms such as Telenisa's Mobile Legal Clinics. Through the Telenisa Mobile Legal Clinic, we are able to engage face-to-face with women and men and provide on-the-spot assistance and legal advice.

All of us at Telenisa are committed to advocate for justice and equality of women in marriage as well as other issues faced by women.

# What You Can Do To Help

Telenisa continues to exist since the service was established in 2003 due to the generous contributions and various funding received from all walks of life including individual donors, foundations and corporate entities. Your contributions will go a long way towards supporting Sisters in Islam to serve more clients and to advocate in bringing equality and justice to women in Malaysia.

CONTRIBUTIONS CAN BE CHANNELLED THROUGH: SIS Forum (Malaysia) | 5641 8240 5457 (Maybank)

## Organisations That Work to Help & Support Women

<b>Talian NUR</b>  15999 <i>Domestic violence, child abuse</i>	<b>TENAGANITA</b>  03 – 7770 3671 <i>Counselling &amp; free legal advice for foreign workers</i>	<b>Women’s Aid Organisation (WAO)</b>  03 – 7956 3488 <i>Counselling &amp; shelter (violence against women)</i>	<b>All Women’s Action Society (AWAM)</b>  03 – 7877 4221 <i>Counselling (sexual harassment &amp; rape)</i>	<b>Legal Aid Centre (Selangor)</b>  03 – 5510 7007 <i>Free legal representation</i>	<b>Legal Aid Centre (Kuala Lumpur)</b>  03 – 2072 2050 / 2051 / 2052 <i>Free legal representation</i>
<b>Perak Women for Women (PWV)</b>  05 – 546 9715 <i>Counselling</i>	<b>Women Centre for Change (WCC) Penang</b>  04 – 228 0342 <i>Counselling &amp; free legal advice</i>	<b>Sabah Women’s Action Resource Group (SAWO)</b>  088 – 269 291 <i>Counselling &amp; free legal advice</i>	<b>Sarawak Women for Women Society (SWWS)</b>  088 – 280 200 <i>Counselling &amp; free legal advice</i>		

# Sisters in Islam

SIS FORUM - MALAYSIA (266561W)

## SIS Forum (Malaysia)

No.4, Lorong 11/8E, Petaling Jaya  
46200 Selangor, Malaysia

T (603) 7960 3357 / 5121 / 6733

F (603) 7960 8737

E [sis@sistersinislam.org.my](mailto:sis@sistersinislam.org.my)

W [sistersinislam.org.my](http://sistersinislam.org.my)

## Telenisa

No.4, Lorong 11/8E, Petaling Jaya  
46200 Selangor, Malaysia

T (603) 7960 8802

E [telenisa@sistersinislam.org.my](mailto:telenisa@sistersinislam.org.my)

**Open On** Tuesdays, Wednesdays & Thursdays  
**Hours** 10.00 a.m. - 5.00 p.m.



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