



TELENISA

STATISTICS & FINDINGS 2019

sisters in islam

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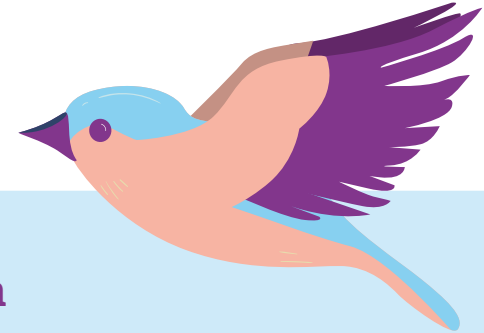
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Assalamualaikum to all,

This is the fourth year that Sisters in Islam (SIS) is releasing the annual Telenisa Statistics gathered from the data of the Telenisa Legal Clinic that SIS has been operating since 2003.

We are proud to inform that we have an increase of 6% more clients reaching out to us in 2019 as compared to 2018 and that there are also interesting observations to be made in terms of the issues that women and men face on the ground when it comes to accessing their rights and those of their children under the Islamic Family Law compared to previous years.

Child maintenance continues to be one of the top-most issues of concern. The percentages for this issue since 2016 have remained more or less the same – between 31% to 33%. Related to this, fathers are either not paying adequate maintenance or aren't able to pay at all due to unemployment.

One of the issues raised for women's knowledge, information and discussion is the provision, for example, under Section 73 (2) of the Selangor Islamic Family Law Enactment where the court may order any "person liable under *Hukum Syarak*" (grandfather, uncles or successors on the father's side) in the matter of Islamic law to pay maintenance to his children if the father is unable to. It is a provision less known to women or perhaps in the past, the effectiveness of this provision remains to be desired – nevertheless, it is there.

In the years to come, to what extent would such provisions remain relevant when state agencies and mechanisms hold the key in ensuring and assuring that children would get the maintenance that is rightly theirs? Perhaps a more encompassing way forward is for the establishment of a Federal Child Support Agency to guarantee that all children will get their maintenance timely and without further procedural or bureaucratic fuss that mothers would normally have to go through under the present existing systems. In the past, this was an option that was being explored with various study visits to countries that have been implementing this for many years and perhaps, the time has come for the relevant ministries and agencies in Malaysia to take this up seriously and make that leap forward and clearly demonstrate the nation's commitment to the lives and futures of children in Malaysia and what is rightly theirs to begin with.

For this publication, even though it is focused on 2019 for the statistical data, we have also included some updates that are relevant that have occurred in early 2020, for contextual purposes to the analysis and discussion on some of the issues.

Sisters in Islam would like to extend our gratitude to the many individuals and institutions that have been supporting our work on Telenisa. We would like to thank Yayasan Sime Darby for their generous contribution in supporting the Telenisa Legal Clinic from September 2019 onwards to 2022.

We would also like to acknowledge the Legal Aid Centres of Kuala Lumpur and Selangor for collaborating with Sisters in Islam and other NGOs since 2003, giving us the opportunity to engage with chambering students to the work on Islamic Family Law.

The publication and launch of the Telenisa Statistics 2019 would not have been possible without the support of Friedrich Naumann Foundation, who have collaborated with Sisters in Islam on various projects since 1993.

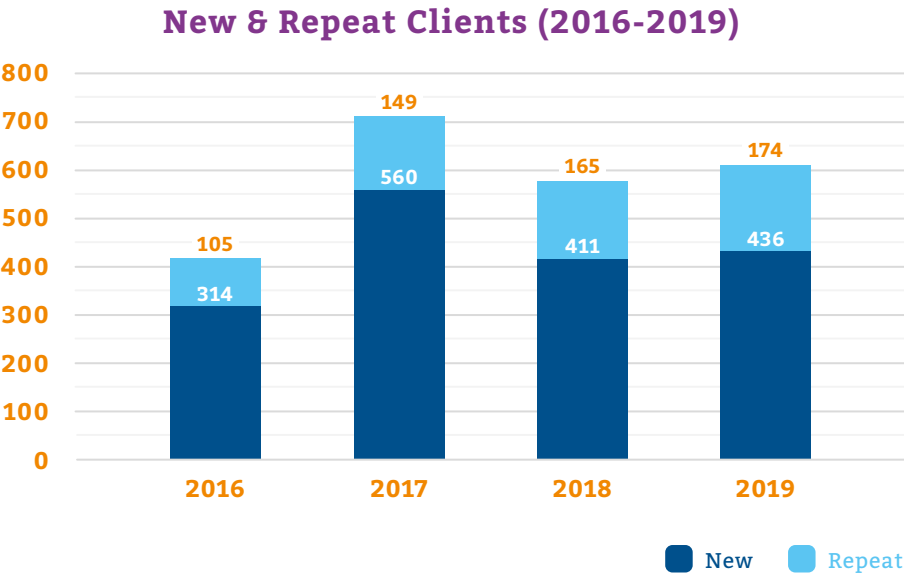
Finally, we would like to thank all our clients for coming to us and entrusting us to help them when they need it. It is our wish that such services would no longer be required one day, when equality and justice for women in the family becomes a reality for all.



ROZANA ISA
Executive Director,
Sisters in Islam

Client's Demography

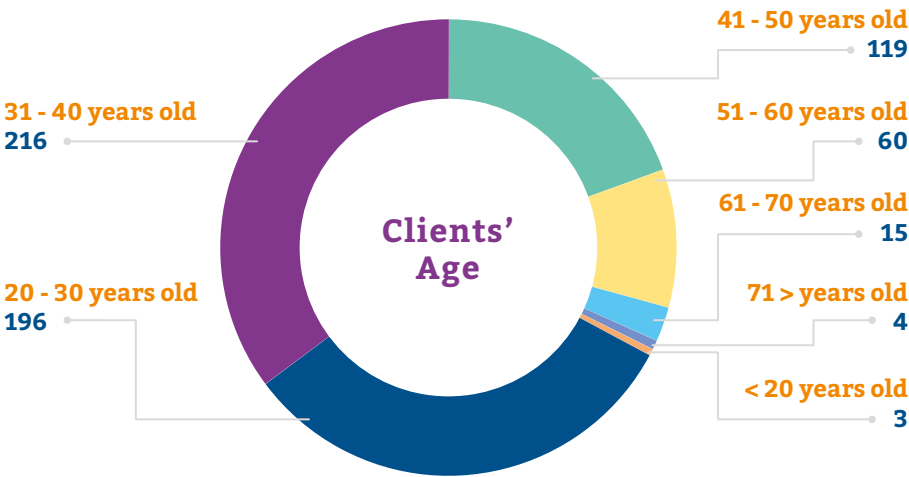
Telenisa has successfully reached out to 610 clients in 2019, an increase from 576 clients in 2018. 436 were new clients and 174 were repeat clients. 556 clients (91%) were women and 54 clients (9%) were men.



Clients' Gender



The client's age in 2019 ranged from 18 years to 72 years. The majority of Telenisa clients are between 31-40 years old (35%), followed by 20-30 years old (32%) and 41-50 years old (19%). Based on the age variation it can be concluded that the problems faced by Telenisa clients are from young adults until senior citizens.



Male Clients

Telenisa is dedicated to serve and help all of our clients, regardless of their gender. Since 2017 until 2019, Telenisa has served 212 male clients. The age range of our male clients are from young adults to senior citizens. The number of male clients has been significantly lower than our female clients throughout the years. In 2017, we had 95 male clients and 63 male clients in 2018. The number lowered to 54 male clients in 2019.

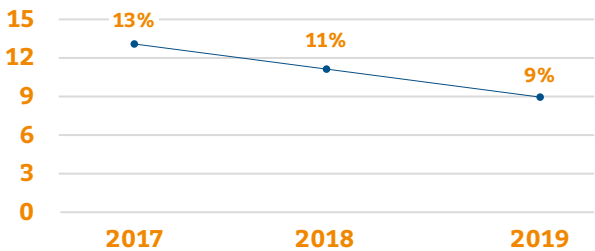
The drop in numbers of male clients would directly affect the percentages of male clients over female clients throughout the years. The percentage of our male clients in 2017 was at 13%, then dropped to 11% in 2018, and finally hit the lowest percentage in 3 years, in 2019 with only 9% of male clients.

This drop in male clients is concerning to us as male clients are more reluctant to seek

“My wife always beat me to the point of injury. I don't want to take civil action against my wife, what can I do under Shari’ah Law?”

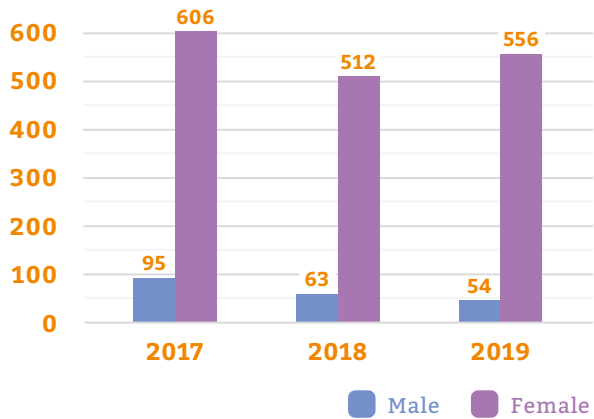
- **TELENISA CLIENT**

Percentage (%) of Male Clients



assistance regarding marital issues compared to female clients. The top 2 issues most of our male clients inquire on are child custody with 11 inquiries and divorce procedure with 9 inquiries. With 3 inquiries each respectively, matrimonial property, marriage registration, validity of *talaq* pronouncement, becomes the third most highest received inquiries from our male clients.

Male Clients vs. Female Clients



Women aren't the only victims of domestic violence. There are at least 2 of our male clients who were victims of domestic violence. They have been abused physically and psychologically by their wives.

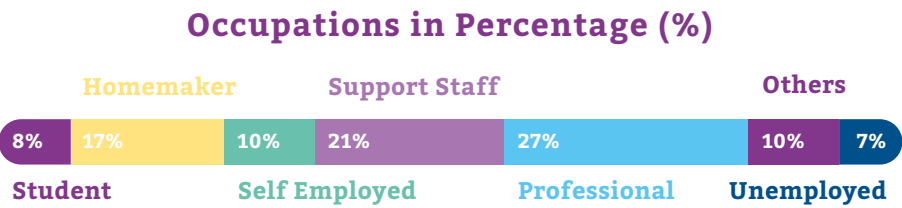
OUR CLIENTS

Method of Communication

In 2019, the most preferred method of communication by our clients is through telephone with 331 clients calling in, followed by email with 205 clients, via our Facebook page with 64 clients and 10 clients came to us for face-to-face consultation.



Telenisa clients mostly are not able to have face-to-face appointments due to factors such as limited financial resources to travel, lack of transportation or unable to find a suitable time as most of them are employed and it is difficult for them to apply for leave or take time-off from work.

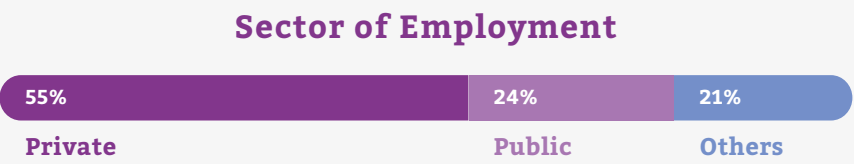


Occupation

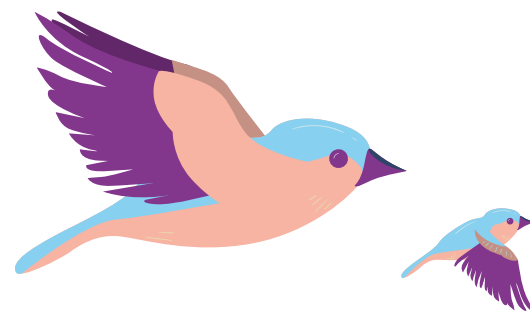
55% of Telenisa clients work within the private sector, followed by the public sector at 24% and other sectors at 21%. For this chart, other sectors also include those who are unemployed.

Our clients have various occupations. In 2019, the category with the highest number of clients are the professionals at 27% which increased from 2018 at 12%. This is followed by support staff at 21% which also increased from 2018 at 9%. Homemakers comprise 17% of our clients, an increase from 2018 at 7%.

Telenisa puts strong emphasis on assisting the more vulnerable groups such as homemakers and the unemployed. This is because the lack of income has serious repercussions on whether a woman can come forward to deal with marital and family issues. For this reason, Telenisa continues to hold knowledge and awareness sessions where we educate the Muslim public in Malaysia of their rights and responsibilities under the Islamic Family Laws.

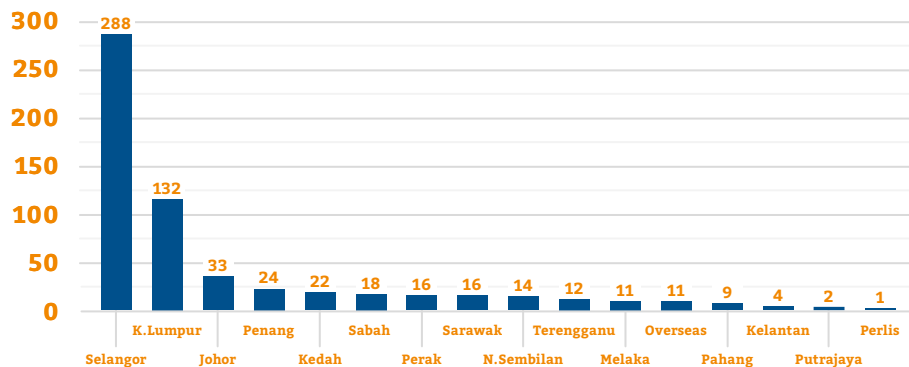


Location & Household Income



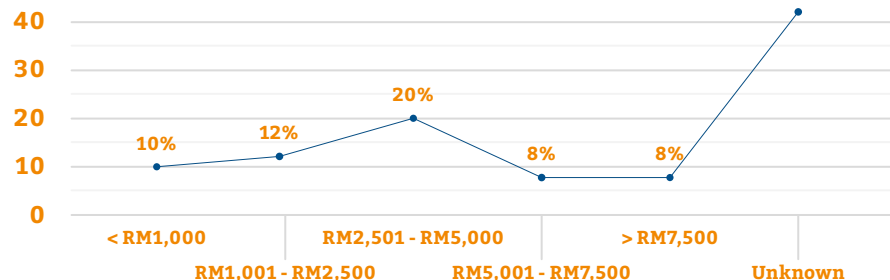
Similar to the past few years, Telenisa clients are mostly concentrated in the Klang Valley. In 2019, Selangor had 288 clients followed by Kuala Lumpur with 131 clients. Telenisa also had 34 clients from East Malaysia. Telenisa wishes to expand its services beyond the Klang Valley. Our Telenisa Mobile Legal Clinic regularly holds awareness programmes within communities across the country. We continue to plan for awareness programmes outside the Klang Valley, including East Malaysia.

Client's Location



42% of our clients' household income was unknown as they chose not to disclose the information. 20% fell within the RM2501 – RM5,000 income bracket and 12% of the clients fell within RM1,001 – RM2,500 household income bracket, whilst 10% of our clients earned under RM1,000. Based on our statistics and the income classifica, at least 1/3 of our clients are from the B40 (lower income class) with monthly

Household Income (%)

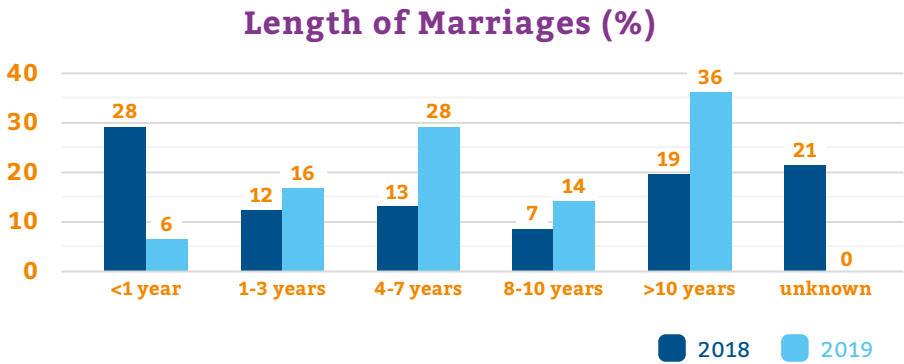


income of not more than RM4,360. This is followed by M40 (middle income class) with monthly income from RM4,361- RM9,619. Our clients are less likely to come from T20 (upper income class) with monthly income more than RM9,620. While the statistics show that our clients are less likely to come from T20 (upper income class) with monthly income more than RM9,620, we note that 27% are from a professional background. It should be noted that 42% of our clients didn't disclose their income as they wanted their privacy maintained.

Length of Marriage

Telenisa also notes down our clients' length of marriage. The highest percentage of our clients have been married for over 10 years (36%) followed by those who have been married between 4-7 years (28%). This differs from our statistics in 2018 where most of our clients were married for under 1 year.

Below is the comparison for our clients' length of marriage for 2018 and 2019:



There is a growing number of percentages for all categories of length of marriages except marriages for less than a year, which dropped significantly from 28% to 6% this year. At least for Telenisa clients,

"I have been married for over a year. At the moment, I am the sole breadwinner of the house as my husband got laid off his last job shortly after we got married. My husband has a terrible temper and he can be manipulative, and I have been subjected to verbal abuse when we have an argument. He has blamed me for every problem in our marriage. On top of that, my husband has tendencies to flirt with numerous women even after we got married."

- **TELENISA CLIENT**

"We've been married for about 3 years. My husband likes to gamble and I can't stand this. My husband often takes my money. All the house rent, bills and baby food expenses are borne by me. My husband lends a hand but he doesn't provide for me and our child. My husband often says that he does not have to provide for me since I am working. If I try to speak up in defense of my rights as a wife, I am said to be a wife who disobeys her husband and is not worthy of entering heaven. In addition, my mother-in-law and husband often forbid me to spend my money on my parents."

- **TELENISA CLIENT**

more newlyweds are making it through their first year of marriage but are struggling as they move further. Lembaga Penduduk dan Pembangunan Keluarga Negara (LPPKN) reported in November 2018 that over 1/3 of the marriages ending in divorce occurred within the first 5 years of the marriage. This trend is also observed among the Telenisa clients, in the increase of percentage from 2018 to 2019 for all categories of length of marriages except for the category below 1 year.

Marriage Breakdown

In 2019, the top three main causes to a marriage breakdown are domestic violence, infidelity and communication problems each at 15%. In comparison to 2018 statistics, domestic violence decreased from 17%. However, there is an increase of infidelity cases from 10% and communication problems from 18%. Followed by failure of the husband to provide maintenance for his wife at 14% which had caused the marriage breakdown. There is also an increase of polygamy cases in 2019 at 11% from 6% last year.

"My husband is a hot-tempered person. My husband doesn't work and I'm the only one holding up the family. I went to the Religious Office for counseling but my husband was not present. My 3-year-old was almost attacked by him and I was also recently attacked by him."

- **TELENISA CLIENT**

"My husband eloped to marry another woman, without my knowledge. When my husband registers his second marriage in Malaysia, is it necessary for the first wife to be present at the religious office? Because other than demanding a divorce, I want to know if I can object to their marriage."

- **TELENISA CLIENT**

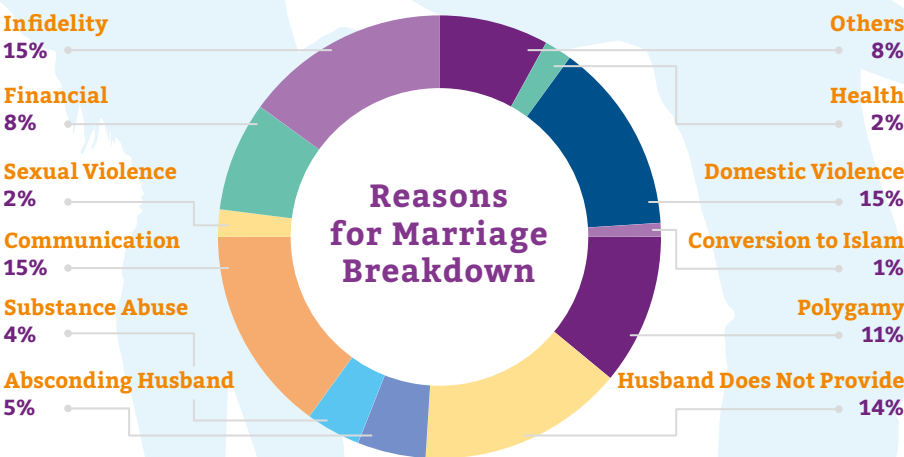
"I have applied for Fasakh. I left our matrimonial house because my husband was abusive. Do I need to file a police report to avoid being accused as Nusyuz?"

- **TELENISA CLIENT**

"I was physically abused by my husband a year ago, when I found out he was having an affair while I was in confinement. He has not been physical since then, but he threatens to hit me from time to time."

- **TELENISA CLIENT**

The next cause of marriage breakdown is due to the husband not providing maintenance (14%), either for the wife or the children. This is followed by polygamy as a cause of marriage breakdown (11%).

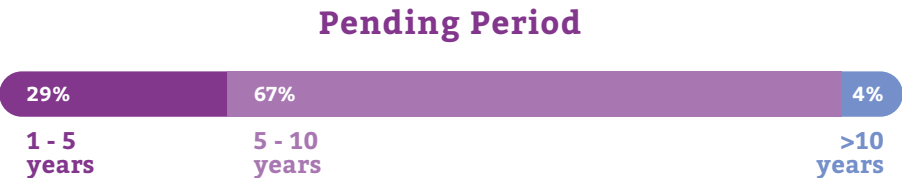


Their Experiences

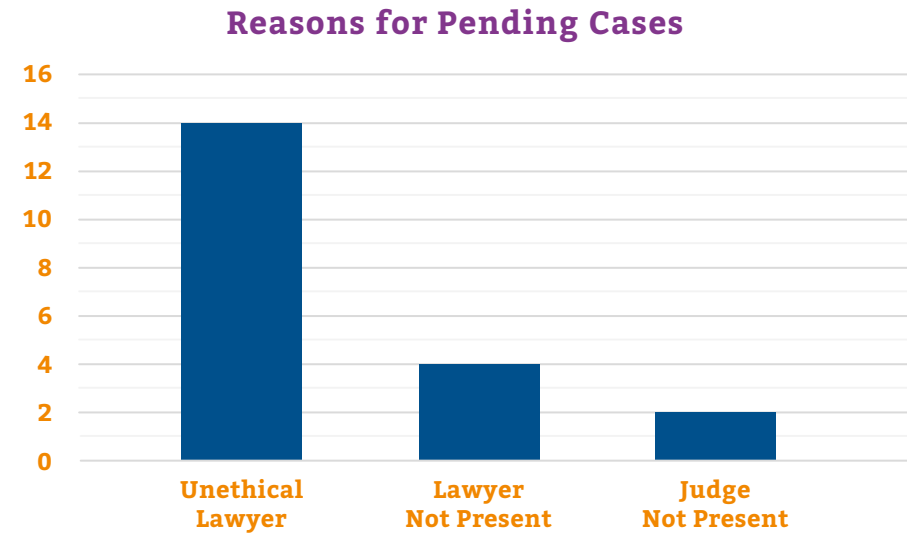


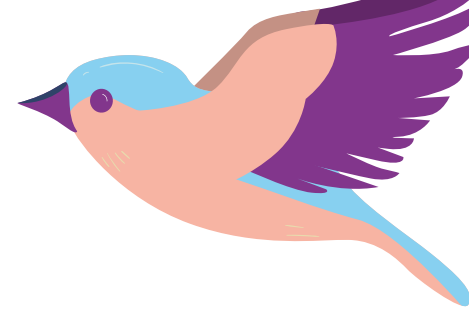
“Justice delayed is justice denied”

Telenisa clients have expressed their dissatisfaction towards several aspects of the Shari’ah Legal System, which, in their opinion, have caused their court cases to be prolonged. These clients were claiming for wife maintenance, matrimonial property, child maintenance, custody, *Mutaah* and so on and they were frustrated that the legal process they were going through was time consuming, expensive and complicated. In some cases, the women sometimes preferred not to assert their rights through the court, as they felt it was costly, both in terms of money and time.



Clients felt dissatisfied that their court cases took too long to resolve. Majority of cases from our clients took between 1-5 years to conclude. 29% are dissatisfied that their cases were still ongoing after 5-10 years and 4% complained their cases were still ongoing for more than 10 years.





Experiences with Shari'e Lawyers

During the course of our interviews, clients sometimes provided us with their views on the services they received from their Shari'e lawyers. Some of the information relayed are:

- Frustrations on high fees.
- Dissatisfaction with the service provided by the lawyer leading to the necessity to engage other lawyers.
- Some of the complaints were that their lawyers arrived late for the hearing, the lawyer came to court unprepared, or dismissed the clients request to divorce through *Ta'liq* or *Fasakh*, and yet did not offer any other legal resolution.

Experiences with the Syariah Court System

- Clients complained of complicated procedures. On one marriage dissolution, files would have to be opened at different courts - the Syariah Lower Courts and the Syariah High Court. The client was given two different dates for case hearing. This was very inconvenient for her and also, the issues and claims could not be heard and considered in a holistic manner.
- The client has a child custody case pending since 2017 in the Syariah Court. No calls or letters were received from the court regarding his trial dates but suddenly, in August 2019, he received a court order on his case without him appearing for his case.

- The client succeeded in her claim for *Mutaah* and maintenance. However, her ex-husband did not adhere to the court order. Our client applied to court for an order to deduct from her husband's monthly salary, but the court did not issue such an order. The payment remains outstanding.
- A court staff did not assist correctly with filing of cause papers. In one case, the client was directed to the wrong courtroom.

Experiences with Shari'e Judges

Some clients were also dissatisfied with the judges. Some of the complaints voiced include:

- A judge rejected evidence put by the wife due to the husband's failure to come to court and affirm the evidence given.
- A judge unnecessarily prolonged a client's divorce case which had been ongoing since 2017 because the husband is unwilling to divorce her.
- A client was advised by the judge to start a *Fasakh* case against her husband but the action failed in front of the same judge due to the husband's failure to attend court proceedings, unavailability of witness and insufficient evidence. She was very upset given that the judge knew the facts of the case.

- The client and her ex-husband had agreed out of court for shared child custody. However, this was rejected by the judge and our client was advised not to share custody as it would cause a problem to the children when it came to school registration. This shocked the client as she had come to an amicable solution with her ex-husband, not only on the shared custody but also how to manage the logistics of the children to school and their other needs.
- The client's husband submitted an application for polygamy in court. However, the husband submitted court documents to the client half an hour before the hearing started. He also stole her identification card and forged a letter stating that the client agreed to the polygamy. When the client brought this up to the judge, the judge said she was taking up the court's time and that she shouldn't act that way when she has "agreed to the subsequent marriage."

Experience with Religious Departments

There were also complaints made on the religious departments, in particular that they lacked knowledge regarding Syariah Court procedures and the rights of a wife and ex-wife.

Our Concerns

A lot of issues in Syariah Court involve women and the treatment of women in the framework of the Shari'ah Legal System, and has become subject to lively debate. Based on our clients' experiences, the discussions are often related to concerns that Muslim women are confronted with discriminative treatments and impediments to their access to justice.

These discriminative treatments can seriously impair the interests of women, and in turn the children that they support and care for. Women who have to attend many court hearings again and again have their jobs compromised, and this affects the economic security of the family unit. Women who do not receive the maintenance payments ordered by the courts cannot feed and clothe their children. Conversely, there are not enough punitive repercussions on husbands who do not attend court hearings or simply disappear or do not provide maintenance.

We hope not to only address but to achieve gender fairness and access in the courts and in judicial decisions with the willingness of all parties

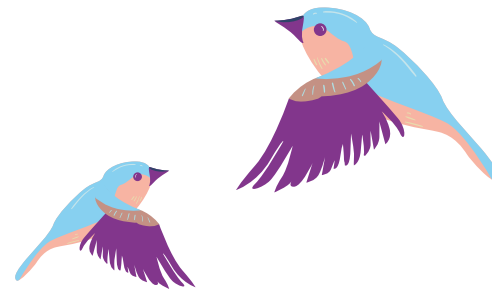
to uphold and protect women and children's interests in our Shari'ah Legal System.

Sisters in Islam has advocated for more women to be represented within the Shari'ah Legal System. Women and women's experiences and lived realities would offer a more balanced narrative to the intricacies of marital disputes, including its effect on livelihoods and the children involved.

Over the years, there have been progressive changes in women's involvement in the Shari'ah Legal System. In 2017, the number of women registered with the Shariah Lawyers Association for the group's membership has increased more than 40% (>200 women) over the period of 5 years. In 2018, The British Broadcasting Corporation (BBC) named YA Nenny Shushaidah Shamsuddin, one of Malaysia's first two female Syariah High Court judges, in its list of 100 inspiring women. She made it clear that her priority is to fight for the protection of Muslim women in her courts and wants to change the negative perceptions of Shari'ah law. The numbers of women judges, however, remain very low.

In contrast, women have been a significant contributor within the Civil Legal System. In May 2019, Datuk Tengku Maimun Tuan Mat created history when she became the first woman Chief Justice of Malaysia. On 25th November 2019, Federal Court judge Dato' Rohana Yusuf was elevated as Court of Appeal President. She is the first woman to hold the second highest position in the judiciary. For the first time in Malaysia, the apex court has a total of six women judges out of 10 Federal Court judges.

At this point in time, we must acknowledge that the majority of persons in authority in the Shari'ah Legal System in Malaysia are men. As such, men must also be given the awareness of the impact of discrimination, whether committed directly or indirectly or as a result of the system within which they operate. The experiences of women in court support the urgent need for a gender sensitisation awareness programme for all judges across the country.



WIFE'S RIGHTS

Fasakh

REMAINS THE HIGHEST NUMBER OF ENQUIRIES FOR DIVORCE

The provision for *Fasakh* is explained in the following verse:

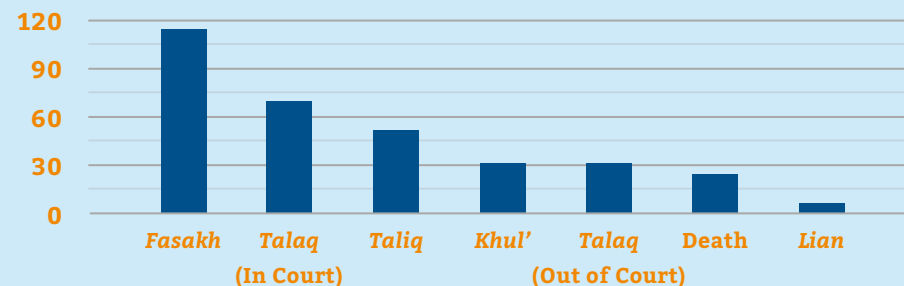
If a wife fears cruelty or desertion on her husband's part, there is no blame on them if they arrange an amicable settlement between themselves; and such settlement is best; even though men's souls are swayed by greed. But if ye do good and practise self-restraint, Allah is well-acquainted with all that ye do - (QUR'AN SURAH AN-NISA':128)

Out of the six methods in dissolving marriage under the Islamic Family Law (Federal Territories) Act 1984 (IFLA), *fasakh* remains the highest number of enquiries in 2019 with 98 cases. *Fasakh* is usually the method of divorce instituted by the wife, particularly where the husband refuses to grant a divorce.

Section 52 under the Islamic Family Law (Federal Territories) Act 1984 (IFLA) provides **12 reasons** for a wife to apply for a *fasakh* for marriages that they did not consent to including if her husband, for example:

- has been abusive to his wife;
- has disposed off his wife's property;
- has been jailed; etc.

Types of Divorce



Many of our clients apply for *fasakh* where there is domestic violence. Our clients face a really challenging process and this is one of the reasons why extensive support must be given to domestic violence survivors. The evidence required by the Syariah Court include a police report, a medical report and a witness. The survivor must prove to the judge the fact of the violence before the judge is able to dissolve the marriage without the presence or consent of the husband.

Beyond the Syariah courts, the survivor may also institute criminal proceedings against the abuser. The survivor may also need to seek shelter away from the marital home, in which case they may contact other social service providers such as the Women's Aid Organisation.

"I am currently married to an Indonesian citizen. However, I have been neglected and abandoned in Malaysia since 2017 until now. My husband has returned back to Indonesia and is no longer in touch with me. I have filed for divorce but the court advised me to sue for fasakh. I want a further explanation on fasakh."

- **TELENISA CLIENT**

Maintenance for the Wife

One of the oft-quoted hadith pertaining to maintenance is of Hindun binti 'Utbah who is the wife of Abu Sufyan. In the **Sahih Al-Bukhari**, as translated by Muhsin Khan, *Chapter al-Nafaqah*, Vol VII, 6th Edition, page 212, it is narrated by 'A'isyah that Hindun binti 'Utbah said:

“O Rasulullah, Abu Sufyan is a miser and does not give me what is sufficient for me and my children, can I take his property without his knowledge?” Rasulullah (saw) said, “Take what is sufficient for you and your children, and the amount should be just and reasonable.”

Providing maintenance for the wife remains a husband's obligation and responsibility throughout the whole marriage and if going through a divorce, up until the *Iddah* period ends (3 months from the divorce). Telenisa received 107 cases throughout 2019 regarding the wife's maintenance. Due to the reasons in the chart below, women have been facing difficulties in receiving maintenance during the marriage and after its dissolution.

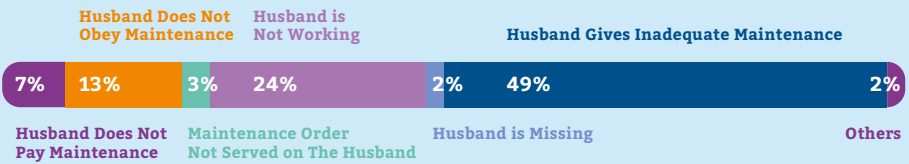
“My ex-husband filed for a divorce and lied on how I changed after moving to Johor. And for your knowledge, I have never even moved to Johor. I have lived in Kuala Lumpur for 17 years. I was never given maintenance. He gives excuses that since I am working, I have to take care of myself.”

- **TELENISA CLIENT**

The duty of a husband to provide maintenance for his wife during the marriage and also after the dissolution of marriage is also prescribed under **Section 59(1) of the IFLA**. If the man fails to do so, the wife may make a claim to the husband or a person liable under *Hukum Syarak*, further explained in the section on Child Maintenance.

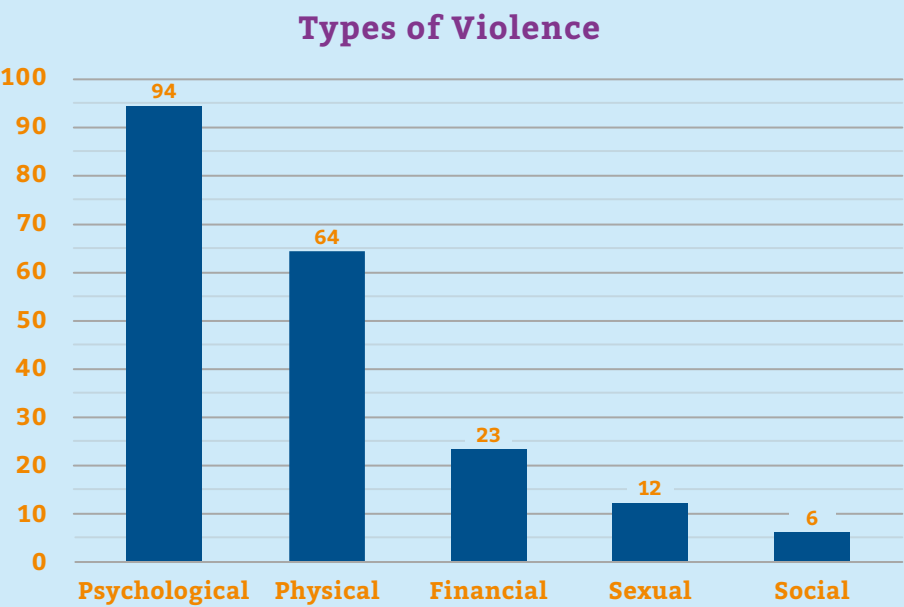
Most of our working female clients have voiced concerns that their husbands never pay maintenance because they are earning from their job or their husbands stopped giving them maintenance once they started working. The fact that a woman has an income does not absolve the husband from his duty to provide maintenance. However, given the high cost of living in Malaysia now, couples may need to reach an agreement on contributions by both husband and wife to the family.

Difficulties for Wife Maintenance



Types of Violence Women Face

Telenisa has recorded **199 cases** on violence against women in 2019. Domestic violence is typically portrayed as physical violence. However, there are other types of violence that are often not recognised as domestic violence. Our clients face other types of violence including:



At 47%, psychological (or emotional) abuse includes intimidation, threats of harm, defamation and isolation. Examples include instilling fear in a spouse through threatening behavior such as damaging property or abusing pets, constant supervision or controlling what the victim does and who they talk to and so on.

Psychological or emotional abuse undermines an individual’s sense of self-worth. Examples include constant criticism, name-calling, embarrassing, mocking and humiliating the victim;

"I am 19 years old and my husband is 22 years old. We've only been married for less than a year. I'm still learning. I want to divorce my husband for emotional, sexual and financial abuse."

- **TELENISA CLIENT**

Financial abuse makes up 12% of the abuse our clients experienced. This involves making or attempting to make the victim financially dependent on the abuser. Examples include: preventing or forbidding the spouse from working, their own money restricted or stolen, when

Types of Violence Women Face



they do have money, they have to account for every expenditure, using credit cards without permission, putting contractual obligations in their partner's name, gambling with family assets and so on.

"I didn't want to have sex with my husband before the final date of our divorce but he insisted and threatened me too, because I would be a great sinner. Does this count as rape? What can I do?"

- **TELENISA CLIENT**

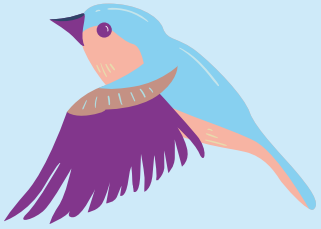
Financial abuse can leave the victim with no money for basic essentials such as food and clothing. It can leave them without access to their own bank accounts, and even with debts that have been built up set against their names. Financial abuse is a powerful method to keep domestic violence victims trapped in an abusive relationship. Even when a survivor has left the home, financial abuse can still be exerted with regard to child maintenance.

At 6%, sexual violence in the marriage and family context includes rape within marriage (marital rape). This is where a spouse does not consent or is forced to have sexual intercourse, or when the spouse is

unable to give consent because of intoxication, drugged, asleep or mentally incapacitated. Sexual abuse also includes when a spouse is forced to do something sexual that she finds degrading or humiliating, denial of the right to use contraception, to protect oneself against sexually transmitted diseases, forced abortion, female genital mutilation and so on.

Telenisa has recorded **1 case of marital rape** in 2019. Marital rape is not an offence under Malaysian laws, but a person can be prosecuted under the law for sexual violence within a marriage. Sexual violence causes poor mental health, suicidal tendencies, unwanted pregnancy, pregnancy complications or miscarriages, sexually transmitted diseases, drug abuse and so on.

3% of the Telenisa clients experienced isolation or social abuse in 2019. Social abuse is a form of abuse often closely connected to controlling behaviors. By keeping the victim from seeing who they want to see, doing what they want to do, setting and meeting goals, and controlling how the victim thinks and feels, the perpetrator is isolating the victim from the resources (personal and public) which may help them leave the relationship.



As it progresses, the isolation expands, limiting or excluding their contact with anyone but the abuser. Eventually, the victim is left totally alone and without the internal and external resources and personal relationships to change their life. In many domestic abuse cases, several types of abuse exist and interact to further disempower the victim and ensure control over the victim.

Many domestic violence victims are afraid to report the violence or leave the house because they are worried they will be declared *nusyuz*. This is not true. *Nusyuz* under the law involves a situation where a wife unreasonably refuses to obey the lawful wishes or commands of her husband, that is to say, inter alia:

- when she withholds her association with her husband;
- when she leaves her husband's home against his will; or
- when she refuses to move with him to another home or place, **without any valid reason according to *Hukum Syara'***.

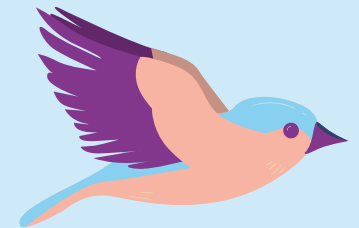
Where violence is evident within the family, the wife has every right to ensure her and her children's safety, and she will not be declared *nusyuz* for this reason. It is also to highlight that a wife cannot be declared as *nusyuz* by the husband, it must be through an application to the Syariah Court.

"I want to file for fasakh because my husband never provided maintenance for me, and last year my husband choked me."

- **TELENISA CLIENT**

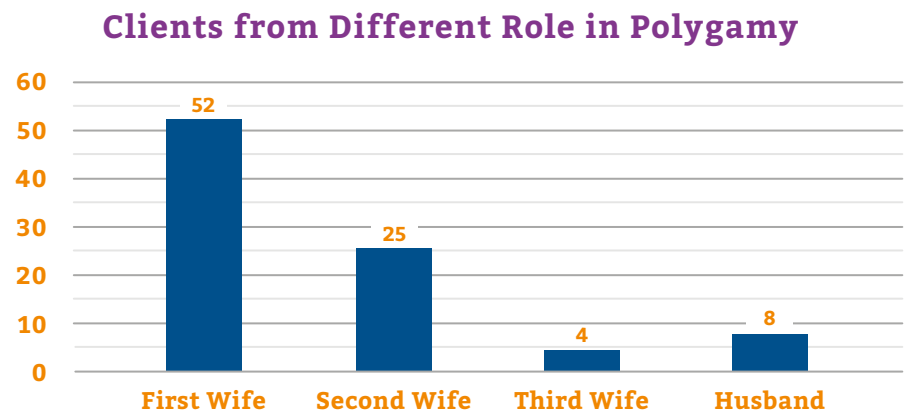
"My husband becomes controlling, when I want to go out I have to ask his permission. He also limits how many times I see my family and friends."

- **TELENISA CLIENT**



Polygamy

In 2019, 89 clients (15%) were involved in polygamous marriages. The breakdown of those involved in polygamy:



Most of the issues on polygamous marriage are related to the husband’s inability to be just and fair in maintaining two or more families. Some husbands could barely manage the financial needs and necessities for the first wife and children but continue to enter into a polygamous marriage. Sisters in Islam has consistently advocated to amend our Islamic Family Law to make it compulsory upon every

“I was shocked and disappointed when my husband got married again without my knowledge. My husband kept this marriage a secret for 6 years from me and my son. My husband does not qualify to enter into polygamy because he cannot afford it. We have 5 children. I want to file for divorce because I was abused and neglected for years while raising their children and their schooling until the end of university for 30 years of marriage. I feel so depressed and ashamed.”

- **TELENISA CLIENT**

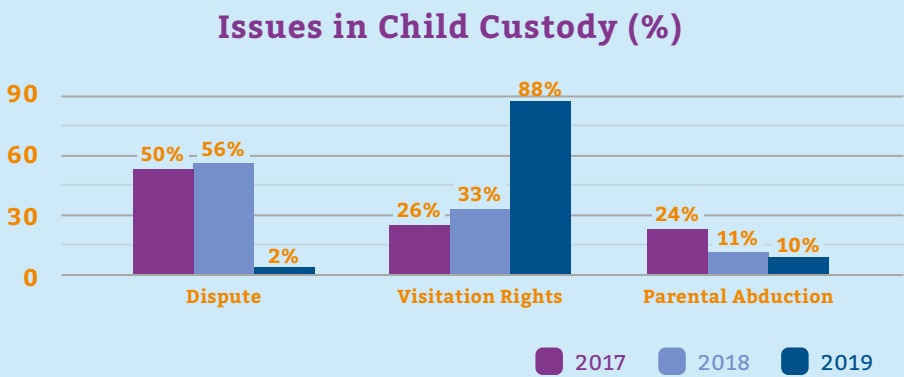
application for polygamy in court for the husband to declare all of his assets and liability for the court and to consider his financial ability before entering into another marriage. This is to ensure that no women or children are left with no means and abandoned in a marriage.

There have been instances when applying for polygamy, the husband claims to have a stable financial status, assets etc. However, in paying off claims for wife and child maintenance, the husband would plead to the court that he is unable to pay the maintenance of the wife and children due to financial difficulties and no assets.

Hence, to avoid any mischief, there must be strict requirement under the law for a declaration of assets and liability to be presented to the court for every polygamous marriage application. Furthermore, there should be a court order to ensure that husbands provide maintenance for the wellbeing of the wives and their children.

Child Custody

Child custody disputes remain the main issue when there is a marriage breakdown. In 2019, Telenisa recorded 92 cases involving child custody. The most prevalent issue among our clients is visitation rights with 88 cases. In comparison to the statistics in 2017 and 2018, this year there is a massive increase in issues relating to visitation rights and a major decrease in disputes of child custody (that is, which spouse has legal custody over the children). Our divorced female clients who were previously in a polygamous marriage stated however, that their husband usually would not argue over custody of the children upon him having a new family but the issue of visitation rights becomes more important for husbands or fathers.



My ex-husband and I, are divorced for 4 years and he has not been providing child maintenance and I felt compelled to file for child custody because I am worried he would run away with the child when I am not home or when the child is at school."

- **TELENISA CLIENT**

The main consideration for the court when it comes to *Hadhanah* (custody) is “the best interest of the child”. In general, the right of a mother in having custody of her children is given primary consideration by the courts, unless it can be shown that it is not in the interest of the child for the mother to have custody.

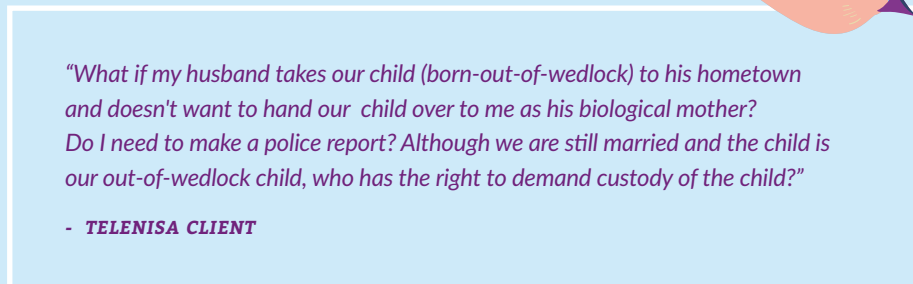
Although the mother may have custody of the child, the father is the primary natural guardian of the child under Islamic Family Laws. Where he is deceased, the legal guardianship devolves to the father’s next of kin. A legal guardian is responsible for handling all major decisions for the child, including schooling, health problems, applications for passports, identification card and so on. Legal guardianships typically end when the child reaches 18 years old. This has caused problems for mothers particularly where the husband is unavailable or is unco-operative. Whilst mothers are still unable to have guardianship, a government administrative directive allows mothers to be signatory for their children for critical issues such as passport applications, hospitalisation and surgery and schooling.

Child Custody

When one parent has sole physical custody of the child, the other parent will typically have visitation rights. Parents are free to work out their own visitation agreements, but when parents cannot agree, the court will issue a visitation order. **Our clients have raised that their former partners disagree with the arranged visitation rights as they want to be actively involved in the children's life but also having conflicting schedules with the visitation arrangements. These situations cause a lot of tension between the mother and the father, and also affects the children negatively.**

Out of 92 cases involving children custody, Telenisa notes 9 cases (10%) of parental abduction. Parental abduction is the hiding, taking or keeping hold of a child by his/her parent while defying the rights of the child's other parent or another member of the family. This is the scenario that occurs when the parents separate or begin divorce proceedings. One of our clients experienced his Malaysian born child being taken away by his foreigner wife, back to her country due to a disagreement that they had.

One parent may take or retain the child from the other to gain advantage in the pending child-custody proceedings. Another instance would be when a parent refuses to return the child at the end of an

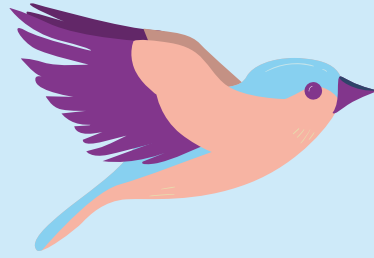


"What if my husband takes our child (born-out-of-wedlock) to his hometown and doesn't want to hand our child over to me as his biological mother? Do I need to make a police report? Although we are still married and the child is our out-of-wedlock child, who has the right to demand custody of the child?"

- **TELENISA CLIENT**

access visit or flee with the child to prevent an access visit or fear of domestic violence and abuse. It can also occur when a child has been, is about to be, or parent(s) fear that he/she will be taken into care of competent authorities, usually due to child endangerment proceedings.

The removal of children by unlawful parents to another jurisdiction (international) is not a new trend in Malaysia. The Hague Convention of October 25, 1980 on the Civil Aspects of International Child Abduction came into force on December 1, 1983. The Hague Convention aims to protect children from unlawful removal from their respective countries and to establish procedures to ensure the children's prompt return to the state of their habitual residence,

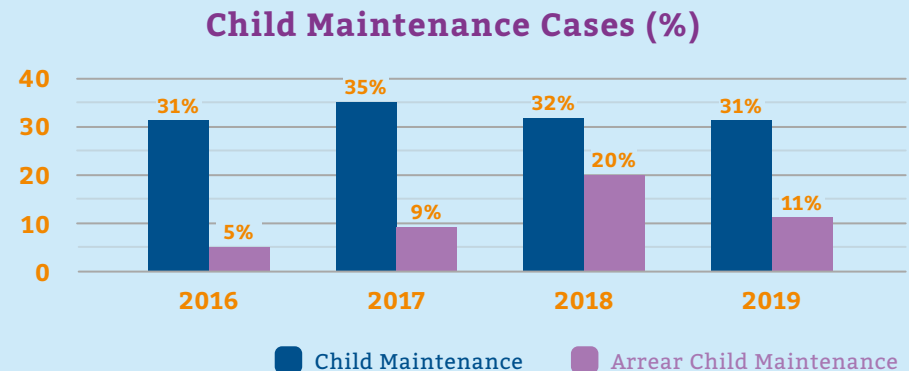


Child Maintenance

as well as to secure protection for rights of access for respective parents. Malaysia has not acceded to The Hague Convention, unlike 82 countries worldwide and as such the question arises as to the legal position of respective parents in cases of parental child abduction. Thus, in many complaints that we received, the authorities do not have adequate powers to return the child to Malaysia.

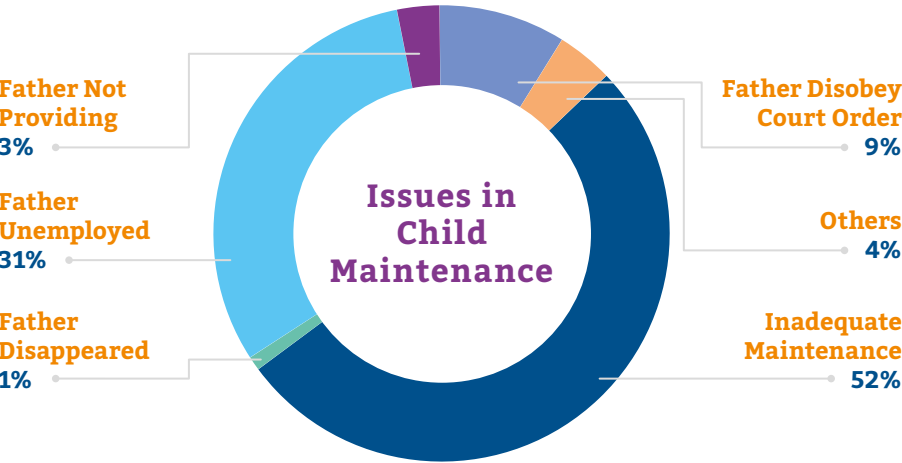
Parental child abduction is prohibited either directly or indirectly by family law statutes and also under the Penal Code and other related statutes. These include the Law Reform (Marriage and Divorce) Act (LRA), the Islamic Family Law (Federal Territories) Act (IFLA), the Penal Code and the Child Act 2001. Section 105 of the IFLA enables the court to restrain any act of taking the child out of Malaysia upon the application of either the father or mother of a child or any interested person. This section is to ensure that the non-custodial parent does not take the child out of Malaysia unless leave is obtained from the court. However, these laws cannot be applied and enforced outside Malaysia.

Child maintenance complaints are one of the most alarming issues. In 2019, out of 307 cases we received concerning children, there were a total of 95 cases involving child maintenance and 33 cases involving arrears of child maintenance. The percentage of cases involving child maintenance over the years has not significantly changed at 31% - 33%. The percentage of arrears in payment of child maintenance has increased four-fold from 2016 to 2018 - from 5% in 2016 to 20% in 2018. For 2019, 11% of the cases are in relation to arrears in payment of child maintenance.



Child Maintenance

Child maintenance according to Section 72(1) of Islamic Family Law Federal Territories Act 1984 (IFLA) includes accommodation, food, medical attention, and education is to be provided for by the father.



The top 2 issues on child maintenance are fathers not paying adequate maintenance at 52% and unemployed fathers not providing maintenance at 31%. Fathers disobeying the court order is at 9%, while maintenance order not being able to be served to the husband is at 4%. Fathers not providing any maintenance is at 3% and cases where the

"A lot of ex-husbands used to refuse to pay because they know the ex-wives can't afford legal assistance. At the end of the day, they get away scot-free. Now, if (a man) doesn't comply with the order, we will take action."

- SYARIAH JUDICIARY DEPARTMENT DIRECTOR-GENERAL
DATUK DR MOHD NA'IM MOKHTAR

father disappeared or went missing is at 1%. Sisters in Islam has been advocating for tougher sanctions on fathers who do not perform their responsibilities in supporting their children.

In some countries, the government takes responsibility in ensuring the father's payment of maintenance because it regards the child's welfare as a paramount national issue. Sisters in Islam also advocates for the development of a Federal Child Maintenance Agency to quantify, collect and pay out child maintenance payments on behalf of separated and divorced parents. The aim is to get more money to more children, by making it an automatic and seamless payment to the child, and without having to apply to court for an enforcement order every time the father fails to pay.

Regardless of who has custody of the child, the father is obligated to provide for the child. Many of our clients usually would not go to court to claim for unpaid maintenance as they feel that it will only lead them to a dead end because the father has no means anyway. However, it is provided under the law, in the event that a father is unable to provide for his child, the responsibility will be passed on to a person liable under *Hukum Syarak* as mentioned in Section 73 (2) of the Selangor Islamic Family Law Enactment.

Based on this provision, **the court may order any “person liable under *Hukum Syarak*” in the matter of Islamic law to pay maintenance** to his children if the father is unable to. Syariah judges are inclined to allow maintenance claims towards “persons liable under *Hukum Syarak*” but many wives or mothers are not aware of this possibility under the law. The wives or mothers may do so by simply naming all the ‘dependent persons’ as defendants for the maintenance claims.

The “persons liable under *Hukum Syarak*” referred to in the law are the child’s grandfather, uncles and successors on the father’s side. This is provided for under the Syariah Court Practice Directions No. 14 of 2007 entitled ‘Arrangement of Beneficiaries Payable to Maintenance’. In the same practice direction, the court can also play a role in ensuring that the living expenses of children in the absence of fathers and heirs are financed by Baitulmal.

Statistics provided by the Shari’ah Judiciary Department revealed that the number of cases registered in court regarding custody and maintenance payments also climbed from 5,831 in 2013 to 8,106 last year (2019).

We have seen some improvements with the establishment of the **Family Support Division (BSK) Support Services**. BSK is a Division established under the Department of Syariah Judiciary Malaysia (JKSM) to enforce maintenance orders issued by the Syariah Court. BSK was established to ensure that maintenance orders issued by the Syariah Court are complied with and fulfilled by the former husband/father to the former wife/children. The former wife/child may lodge a complaint with BSK.

“My ex-husband has failed to pay RM200/per month for 5 consecutive months as agreed during the Sulh process last year. What should I do if my ex-husband fails to follow the court order? I also plan to send my children to school next year when they are 4 years old. Can I change the court order for payments to be made by monthly deduction from his salary? ”

- **TELENISA CLIENT**

A BSK officer will then conduct follow-up action including hosting a negotiation session involving both parties to come to a solution. If no solution can be attained, then an Enforcement and execution order case will be filed in the Syariah Court. Starting in 2012 BSK has provided the e-Nafkah system that serves as a virtual file. The system also has a dual function of a data bank and repository of all maintenance orders issued by the Court. BSK will then monitor each case and communicate via the MySMS service.

The former wife/children who have registered the BSK case ID are able to apply for an advance of the maintenance. Each application will be vetted based on certain qualifications and the maintenance advance will be provided for six (6) months. The advance will be recouped by BSK from the former husband/father.

Department of Syariah Judiciary Malaysia (JKSM)

Blok C, Kompleks Islam Putrajaya, No. 20, Jalan Tunku Abdul Rahman, Presint 3, 62100 Putrajaya, Malaysia.

T: (+603) 8870 9200

E: portaladmin@esyariah.gov.my

Anak Tak Sah Taraf (Bin Abdullah Case)

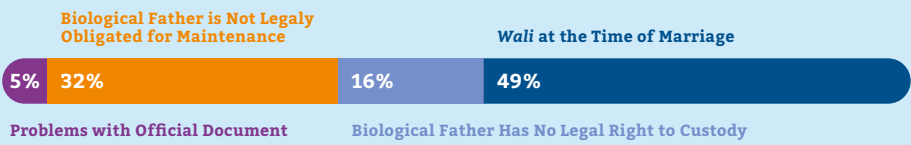
Clients with *anak tak sah taraf* face various problems due to their children’s status as ‘children born out of wedlock’ under the law.

Anak tak sah taraf means a child born out of wedlock or a child born from a *syubhah* intercourse. "Syubhah intercourse" means sexual intercourse performed on an erroneous impression that the marriage was valid under *Hukum Syarak*. Out of 19 cases of *anak tak sah taraf* that we received, 9 cases involve difficulties to nominate a *Wali* at the time of marriage, 6 cases are clients that do not receive maintenance from their biological father as under the current Islamic Family Law, biological fathers have no legal obligation to provide maintenance for his *anak tak sah taraf*, 3 cases are of clients facing conflicts in claiming for custody of their *anak tak sah taraf* as biological fathers have no legal right in custody unless the biological father applies to legally adopt the child, and 1 case where our client is facing difficulties with official documents and with the registration of the child’s birth.

A Muslim child who is an *anak tak sah taraf* is not allowed to register their father’s name as their last name. They have to substitute their father’s name with “*bin Abdullah*”. This is not a provision of the law. However, a *Fatwa* was issued by the National Fatwa Committee following the 57th National Fatwa Committee on Islamic Religious Affairs (57th National Fatwa) Meeting held on June 10, 2003 states that the *anak tak sah taraf*, whether followed by a marriage or otherwise, must be named with ‘*bin / binti Abdullah*’.

On 13 February 2020, the majority decision of the Federal Court in the case of National Registration Department, Head of the National Registration Department v Child, M.E.M.K., N.A.W. ruled that Muslim children conceived out of wedlock cannot bear their father's name. Sisters in Islam had hoped for a decision that would have resolved this matter addressing the core issue of stigmatisation of Muslim children born out of wedlock by having “*bin Abdullah*” as their surname. The usage of “*bin Abdullah*” for Muslim children born out of wedlock carries a social stigma as they are often ridiculed, attacked, bullied and targeted. The Federal Court’s decision for removing “*bin Abdullah*” from the child’s name and disallowing him to carry the father’s name will only lead to a new kind of stigmatisation of children in similar situations.

Issues on Children Born Out of Wedlock

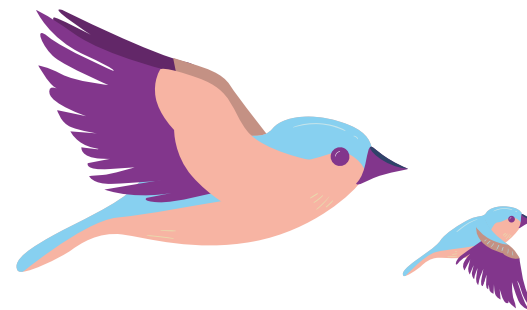


Sisters in Islam have time and again called for greater balance in the promulgation of Islamic laws and *fatwas*. The most important tenets of Islam - **justice, compassion, mercy** - must be the guiding factor. It is clear that this *fatwa* on children born out of wedlock causes harm and is not beneficial to the welfare and best interest of the child.

Child Marriage

In September 2018, Selangor became the first state in Malaysia to raise the age for Muslim female and males to marry to 18 years old, although with exceptions. In November 2019, following this progressive move, five other states have agreed to amend the law which are Penang, Sabah, Johor, Melaka and Perak (although till the date of publication their laws have not been amended). Unfortunately, there are still seven states that disagree with the legal amendment, being Sarawak, Pahang, Terengganu, Perlis, Negeri Sembilan, Kedah and Kelantan.

Recently, in January 2020, YAB Datuk Seri Wan Azizah Wan Ismail the former Minister of Women, Family and Community took the initiative to intervene in the causes of Child Marriage by launching the 5-years National Strategic Plan to Overcome the Reason of Underage Marriage. The government has looked into few factors that is making it hard to put a stop to child marriage such as low income and poverty, lack or absence of access to sexual reproductive health education (SRH) and parenting skills, lack of access to education and attendance to primary schools, the stigma and social norms where child marriages are considered the best option for solving problems, loose laws that provide for marriage applications under 18 and coordination of marriage and divorce data.



As of March 2020, Malaysia still allows for marriages of persons under 18 with no specific plans for legal reform nationally in this area.

PUBLIC STATEMENTS ON CHILD MARRIAGE

PROTECT OUR CHILDREN FROM RAPISTS AND PAEDOPHILES

MAY 13, 2013 | [SIS OFFICIAL STATEMENTS](#)

Lindungi Anak-anak Kita: Naikkan Umur Minimum Perkahwinan

The alleged rapist, a 40-year-old restaurateur, was reported in the Sabah Daily Express on 8 May 2013, the day after the alleged incident.

DECEMBER 2, 2015 | [SIS OFFICIAL STATEMENTS](#)

Move to Ban Child Marriage in Malaysia

APRIL 26, 2018 | [SIS OFFICIAL STATEMENTS](#)

Joint Statement on Child Marriage

JUNE 21, 2018 | [SIS OFFICIAL STATEMENTS](#)

End Child Marriage Now!

JUNE 30, 2018 | [SIS OFFICIAL STATEMENTS](#)

Perkahwinan Kanak-Kanak: Berhenti Berdolak-Dalik, Tangani Isu Tanpa Alasan

JULY 5, 2018 | [SIS OFFICIAL STATEMENTS](#)

Kenyataan bersama berkenaan perkahwinan kanak-kanak

JULY 22, 2018 | [SIS OFFICIAL STATEMENTS](#)

Child Bride Falls Between The Cracks For Lack of Political Will

AUGUST 1, 2018 | [SIS OFFICIAL STATEMENTS](#)

Do Not Use Islam to Justify Child Marriage

JULY 2, 2018 | [SIS OFFICIAL STATEMENTS](#)

Government Must Protect the Welfare of All Children

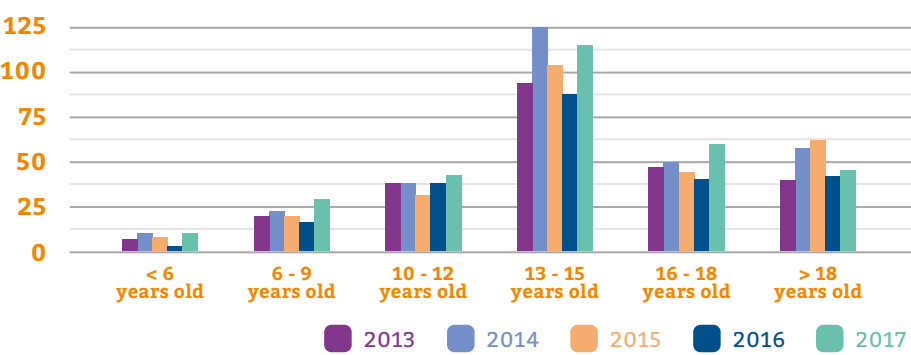
JULY 11, 2018 | [SIS OFFICIAL STATEMENTS](#)

Walk the Talk: End Child Marriage

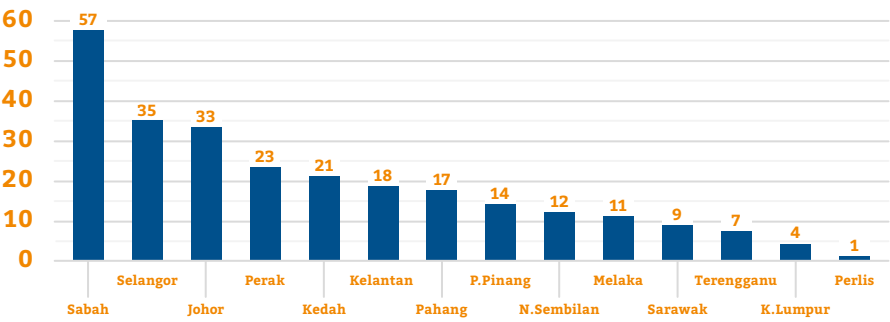
Child Abuse

Child abuse or child maltreatment is physical, sexual, and/or psychological maltreatment or neglect of a child or children, especially by a parent or a caregiver. Child abuse may include any act or failure to act by a parent or a caregiver that results in actual or potential harm to a child, and can occur in a child's home, or in the organizations, schools or communities the child interacts with. Malaysians have seen a spate in incest, rape and extreme physical abuse cases. Many appear as national headline news. For example, Malaysians were horrified when a father was charged for multiple accounts of raping and committing incest on his 15-year-old daughter. We barely recovered from the

Age Breakdown of Incest Survivors in 2013 - 2017



Number of Incest Cases by State (2017)



SOURCES: ROYAL MALAYSIA POLICE (PDRM) & WOMEN'S AID ORGANISATION (WAO)

appalling nature of that case, when we were hit with another case of four family members committing incest on two sisters in Kota Samarahan. In the middle of the year, an 18-year-old youth was also arrested for raping his eight year old sister in Sungai Petani.

Former Minister in the Prime Minister's Department, Datuk Liew Vui Keong shared that the number of incest cases filed in court in 2019 has increased compared to 2018. In 2019, 35 of the cases were recorded as no further action (NFA) compared to seven cases in 2018. As for rape cases, the number filed in court as at August 2019 was 269 cases while last year, there were 481 cases. Meanwhile, 183 molest cases were filed in court in the first eight months of 2019 compared to 384 throughout 2018. Fifty-four sexual harassment cases were recorded as at last August 2019, compared to 90 cases in 2018.

This is an area which requires the immediate attention of the government and authorities, so it does not increase further.

LEGAL AID CENTRE NGO PROGRAMME

The Legal Aid Centres of Kuala Lumpur and Selangor have collaborated with Sisters in Islam since 2003. In 2019, we received a total of **29 chambering students** who have been part of Telenisa. The students undergo Legal Aid NGO Training which is a basic introduction to the work of the NGOs involved in this programme, one of them being Telenisa. They are also provided a one-day training at Sisters in Islam where they are given an overview of Islamic Family Laws, the work of Telenisa, managing clients and providing them with legal advice, maintaining the database and so on.

During their time with Telenisa, they are also assigned for court watch at both Syaria High Court and Syaria Lower Court in Kuala Lumpur and Selangor. They are required to observe the court proceedings as part of their learning and exposure to dealing with family law cases. During one-on-one interviews with clients, their participation is encouraged, and supervised by a legal officer of Telenisa. They are also invited to volunteer for Telenisa outreach programmes such as the Mobile Legal Clinics and workshops.

Sisters in Islam would like to express our gratitude to the Selangor and Kuala Lumpur Legal Aid Centre for the continuity of this programme and to our past chambering students who have ensured the smooth running of Telenisa!



What You Can Do To Help?

Contributions can be channelled through: **SIS Forum (Malaysia) • 5641 8240 5457 (Maybank)**

Organisations That Help & Support Women

Talian NUR

15999

*Domestic violence,
child abuse*

All Women's Action Society (AWAM)

03 – 7877 4221

*Counselling, sexual
harassment & rape*

Women's Aid Organisation (WAO)

03 – 7965 3488

*Counselling &
shelter for violence
against women*

Perak Women for Women (PWW)

05 – 546 9715

Counselling

Legal Aid Centre (Selangor)

03 – 5510 7007

*Free legal
representation*

Legal Aid Centre (Kuala Lumpur)

03 – 2693 1440

*Free legal
representation*

Women Centre for Change (WCC) Penang

04 – 228 0342

*Counselling &
free legal advice*

Women Centre for Change (WCC) Seberang Prai

04 – 298 8340

*Counselling &
free legal advice*

Sabah Women's Action Resource Group (SAWO)

088 – 269 291

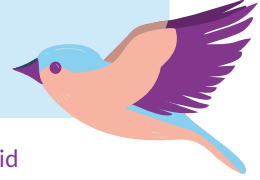
*Counselling &
free legal advice*

Sarawak Women for Women Society (SWWS)

082 – 422 660

*Counselling &
free legal advice*

THE LEGAL AID DEPARTMENT



The Legal Aid Department (LAD) is a Government department that provides legal aid services to eligible persons in accordance with the Legal Aid Act 1971. Government aims to provide legal services to the public at a lower fee as an alternative to services offered by private lawyers.



LAD's jurisdiction extends to matters as follows

1. Legal advice in all legal matters
2. Legal aid in proceeding matters (litigation) as follows:
 - i) Criminal matters
 - ii) Various type of civil matters
 - iii) Civil family matters
 - iv) Shari'ah family matters
3. Mediation for Syariah and Civil cases
4. Legal companion services

Eligibility of The Applicant

Category I (Full Sponsorship)

- Applicant source of income must not exceed RM30,000 a year
- If eligible, all costs will be borne by the government.
- Only pay RM10 for each case

Category II (Partial Sponsorship)

- Applicant source of income RM30,000 - RM50,000 per annum
- Applicants must pay the government contribution of RM2,000- RM5,000 (depending on the case)
- The total contribution will be determined by the Director General

Procedure for Legal Aid

1. **Applicant to register** - Applicant to fill up the means test and statutory declaration forms.
2. **Means test conducted** - Interview conducted to identify issues, remedies and needs of applicant.
3. **Application processed (not more than 3 days)** - If the application is approved, legal aid terms will be offered.
4. **Applicant to pay a registration fee of RM10.00 and a contribution (if applicable) if he accepts the terms** - Legal aid granted.
5. **Brief opened and registered** - Brief filed into court

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

W sistersinislam.org

How To Reach TELENISA ?



@telenisa.sis



@telenisa_sis

OPERATING HOURS

Tuesday • Wednesday • Thursday

10.00 a.m - 5.00 p.m

1.00 p.m - 2.00 p.m (Lunch break)

T (603) 7960 8802

E telenisa.sis@gmail.com

SERVICES PROVIDED

- Free legal advice on Islamic Family Law & Islamic Criminal Law
- Sharia lawyer search service
- Dr Nik Noriani Nik Badli Shah Legal Aid Fund - Limited financial assistance for filing case fees in Syariah Court

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