

# TELENISA STATISTICS & FINDINGS 2022



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#### SIS Forum (Malaysia) - Sisters In Islam

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

**T** +603 7960 3357 / 5121 / 6733

**E** sis@sistersinislam.org.my

**W** www.sistersinislam.org

#### Writer

Syafiqah Fikri Abazah

#### Reviewers

Rozana Isa, Ireeny Muzammel,  
Syarifatul Adibah, Fadhlul Adnin

#### Designer

Teddie Goh

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# Telenisa's Message in Conjunction with 20<sup>th</sup> Year Anniversary

by Shareena Mohd Sheriff

This year marks the 20th anniversary of Telenisa. Telenisa was established in 2003 to provide legal advisory service for women and men, to inform them on their legal rights under the Islamic Family Law and the Syariah Criminal Offences Law in Malaysia. Telenisa's mission is to deliver gender-sensitive and non-biased advice on related legal provisions, practices and expectations when a client has dealings with Shariah laws, courts and other institutions within the Shariah legal framework. Telenisa also seeks to build awareness and understanding of rights under the Shariah legal system. Telenisa was one of the first legal clinics that focused on Shariah Laws in Malaysia.

Telenisa clients are majority women, with an average distribution of 90% women and 10% men. We serve clients in all the States in the country including Sabah and Sarawak. Telenisa has served a total of **15,000 clients** over the course of 20 years. Clients reach us by telephone, Whatsapp, e-mail and social media. In an effort to expand Telenisa's reach to the public, in July 2008 Telenisa began a series of mobile clinics targeted to underprivileged communities. To date, Telenisa has conducted mobile clinics in Selangor, Kuala Lumpur,

Sabah, Melaka and now branching out to the Northern region i.e: Penang. Telenisa is also present on social media and often brings issues considered culturally controversial or taboo to the general public, recognizing that it is often this taboo that causes misinformation about our rights under the laws. These issues include nusyuz, marital rape, bodily autonomy and others.

The most common issues clients come to us are on rights related to divorce and ancillary issues such as child custody, division of matrimonial property, and child maintenance. Other issues include complaints about Syariah court system, Syarie lawyers, Syarie judges and Legal Aid Department.

Telenisa services are provided without charge and supervised by a legally qualified staff of Sisters in Islam, supported by chambering students in partnership with the Kuala Lumpur Bar and Selangor Bar Legal Aid Centres. Telenisa also has a panel of Shariah lawyers that we refer clients to where required. Telenisa often works with other organisations to provide services as may be required. For example, we often refer our

clients to organisations that provide counseling and shelter for domestic abuse survivors, mental health counselors, legal aid or even the police and other authorities. Often, clients come to us in a state of trauma, anxiety or depression. We take this seriously and we understand that the client requires advice and options on how to handle, resolve or recover from their current situation. Telenisa is customer-centric, thus the security, comfort and wellness of the client is our highest priority. Telenisa also provides limited financial support for the cost of court filings through our Nik Noriani Legal Aid Fund. This supports underprivileged women and eases the burden of the cost of divorce.

From 2016 onwards, Telenisa produced an annual publication of its statistics. These statistics provide a snapshot of the types of legal issues that are most prevalent for the year. There is also an analysis to show trends over a few years. These statistics have been critical in supporting advocacy for law reform in Shariah laws, or to bring awareness to issues women face within the Shariah system. Issues such as the injustices caused by gender-biased laws, the



complexity of the Shariah court system, delays in the court process, and experiences of clients with Shariah lawyers who conduct themselves unprofessionally are highlighted to the public in an effort to improve the system. From time to time, Sisters in Islam also conducts engagements with stakeholders in the Shariah legal system to discuss issues which were raised by Telenisa clients. The Telenisa Statistics booklets provide on-the-ground granular statistics of women's experiences. Besides the Department of Statistics Malaysia (DOSM) and the Syariah Judiciary Department Malaysia (JKSM) publishing annual statistics on the rates of Muslim marriage and divorce, there are no other statistics that we know of that publishes the kind of data that Telenisa provides.

Telenisa's operations were significantly affected during the pandemic and thus, had to revert to purely online communication. Nevertheless, Telenisa continued operations as we realized that the pandemic brought with it significant issues in the family. Some of the unique problems that were received during the pandemic are interruption of custodial arrangements as a result of the inability to be mobile, an inability for

some to receive child maintenance particularly where such payments are made in cash, a significant increase in domestic violence cases, a few cases of wives discovery of husband's polygamous marriage and so on.

During the pandemic, Telenisa also started a weekly online programme called Telenisa Tells. It was necessary for Telenisa to remain engaged with its clients and online awareness programmes were tailored to bring to the public the kind of issues that were arising during the pandemic. These online programmes were continued post-pandemic and to date, 40 sessions have been held covering issues such as Women's Rights During the Pandemic, Child Rights, Scam Polygamy, Wali (Guardianship), Period Poverty, Period Spotcheck, and Gender Equality.

Telenisa's future plans include piloting studies to better understand the needs of the B40 clients of Telenisa in their journey to obtain their rights from the Syariah Courts and to explore and document the necessary environment and eco-system that is required for couples who are separated or with the intention to divorce to have a more successful process at mediation

or before they go to the Syariah Courts. Lastly, Telenisa would like to extend our gratitude to our partners who have supported us over the years. These include Yayasan Sime Darby, Friedrich Naumann Foundation for Freedom Malaysia, the KL Bar and Selangor Bar Legal Aid Centres, our panel of lawyers and other organisations that have contributed to bringing justice and awareness to women's rights and issues in the Shariah legal system.





# Executive Director's Note

Assalamualaikum and salutations,

This year is a special year. The launch of Telenisa Statistics and Findings 2022 booklet is celebrated together with Telenisa's 20th anniversary. We at Sisters In Islam are proud to have twenty years of opportunity to serve Malaysian families where we provide legal advice on Islamic Family Law to women and men who need it.

In conjunction with Telenisa's 20th anniversary, on behalf of Sisters In Islam, I would like wish an immense gratitude to all parties who have been involved in providing financial support to Telenisa's services over the last 20 years, as well as those who have been instrumental in the preparation and publication of Telenisa Statistics and Findings 2022 booklet. The deepest thanks to the Australian High Commission, Canada Fund for Local Initiatives, Friedrich Naumann Foundation, Lee Foundation, Sigrid Rausing Trust, and most especially to Yayasan Sime Darby.

To the many individuals and Malaysians alike who have donated to Telenisa, Sisters In Islam send our grateful thanks to you. Telenisa could not have been successful without the support of Selangor's and Kuala Lumpur's Legal Aid Centres through their chambering internship programme, which have been actively partaking in various NGOs including Telenisa.

Throughout our twenty years of service, Telenisa has utilised a total funding of RM1.5 million to sustain its presence and smooth operations. Our service would not have been able to run for so long without the monetary

support, without the faith of chambering interns from various institutions in the country and abroad, and without the many individuals who have contributed their resources.

Telenisa was formed to provide assistance to those in need. In addition to that, Telenisa is also an advocacy channel in providing field data and personal experiences for policymakers. We share lived circumstances that have been affecting society, especially women, in claiming their rights in Syariah Court. Telenisa Statistics and Findings booklet has been published since 2016 and is now in its seventh year.

It is an achievement we take pride in. The availability of data and information give us a window into marriages of today, so we can better understand the many challenges spouses face. We now know the kind of matters needed to refine awareness, including the knowledge, the practice and the ideal fiscal life of a family to form spousal relationship that is equal, true and peaceful. It is important that the Islamic Family Law and the Syariah Court system be improved to ensure a process that is smooth, friendly and welcoming to those who have come to uphold their rights.

I would like to highlight three issues from our Statistics and Findings 2022 regarding Islamic Family Law that every interested party should take notice:

1

From a total of 431 clients, 99% of them approached Telenisa with no legal representation. A majority 81% of them required legal aid and legal advice from Telenisa. Up to 71% who contacted Telenisa were those of the B40 group (lower income tier with household earnings of not more than RM4,850 per month).

Thus, the formation of Syariah Legal Aid Centre (BAGUS) in 2022 is a most welcome addition that will assist women from the B40 group to find support directly from those who work in the field of Islamic Family Law.

There is a much-needed formation of a support counter at the Syariah Court, operated by trained officers to provide guidance to the general public in finalising the documents required for court. This is to ensure an experience that is friendly, comfortable and efficient to those who need to go through the procedures of Syariah Court.



2

The issue of maintenance got worse even towards the end of the Covid-19 pandemic. As much as 66% of Telenisa's clients inquired us about the procedures to make a maintenance claim. About 50% of maintenance cases were related to insufficient maintenance. The percentage of unemployed husbands has risen to 28% in 2022, compared to 10% in 2021. The percentage of wives not receiving maintenance has increased slightly from 1% in 2021 to 3% in 2022. Despite the tiny percentage, it nevertheless raises questions of how the wife and her family survive their daily lives even when basic needs are not met by the husband.

Unresolved maintenance issue will directly affect the family's economy and daily lives, including the social impact upon family members in making decisions that may exploit their hardship. A long-term study is urgently needed to observe the outcomes on families when there is insufficient maintenance. In addition to making policies for provisional support, there must be policies made for grassroots or community level that will release them from the shackles of social issues and economic hardship.

3

In 2022, child custody disputes fell to 0% from 1% in 2021, further plummeting from 52% in 2020. However, the issue of parental child abduction rose from 9% in 2020 to 29% in 2021, which slightly subsided to 24% in 2022. Data shows that parents are risking to take a more desperate approach, eventually engaging in the violation of rights and laws. The authorities should manage such phenomenon equipped with more awareness and wisdom about why parents make such decisions. There is a need to identify the most suitable actions to ensure the welfare of the child is protected. It is always the welfare and the rights of the child that will be affected in the long run.

Telenisa highlighted a new issue in 2022, which concerns the registration of a child's nationality tallying at 14% of cases. The issue of a child's nationality has risen to a boiling point. Telenisa supports all efforts to safeguard children who are born in Malaysia, and children who has one Malaysian parent no matter where they are born, to have a Malaysian citizen and thus all rights that a Malaysian has.

The Islamic Family Law (IFL) 1984 which was drafted and approved in said year was one of the best Islamic family laws in the world, at the time.

However, amendments to the Islamic Family Law in 1994 and 2005 had affected the protection to justice and welfare of wives and children. For example, Section 23(1) of Islamic Family Law (Federal Territory) Act 1984 and Islamic Family Law (State Of Selangor) Enactment were amended in 1994 to allow the registration of polygamous marriage without the permission of the Syariah Court, as well as the repeal of Section 23 (4)(e) that is the requirement to prove the proposed polygamous marriage does not directly or indirectly lower the standard of living enjoyed by the existing wife and dependents.

*Thank you.*

**ROZANA ISA**

*Executive Director, Sisters in Islam*

*22 July, 2023*

It is time for the Islamic Family Law to be reviewed again to include amendments that protect the rights of women and children. Despite the many challenges, Sisters In Islam remains committed to share and confer(delete) our data and information from Telenisa Statistics and Findings to religious authorities. The mission of Telenisa is unshakeable and we at Sisters In Islam will never give up, we will continue the struggle to improve and to uphold the rights of women and children.

I wish to express my utmost gratitude to all of my former and present colleagues at Telenisa for their tireless effort in ensuring a service that is smooth and determined. And to all of our kind readers, may your hopeful spirit grant Telenisa the longevity to perform ever successfully.

The background features a pattern of overlapping circles in shades of purple and white, creating a bokeh effect. A thick, dark purple wavy ribbon curves across the bottom of the image. A central purple rectangular box with a thin gold border contains the text.

# Our Clients

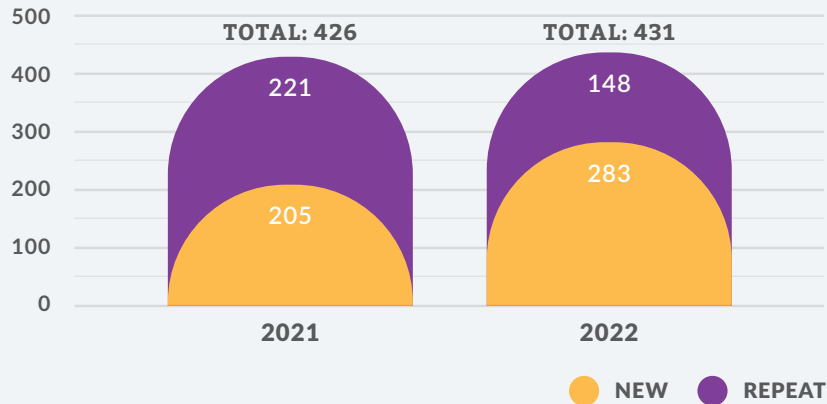


## CLIENT DEMOGRAPHICS

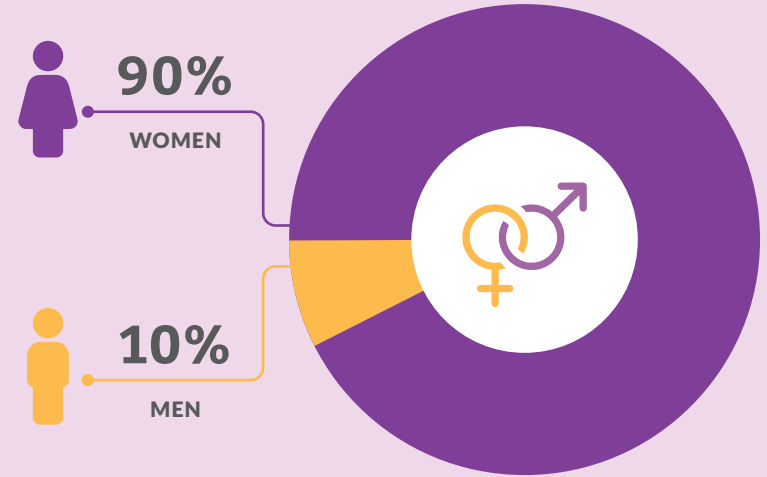
In 2022, Telenisa provided its services to a total of 431 clients. Of that sum, 148 of them were returning clients who sought our services once again. This is an increase from the total of 426 clients we had in 2021. Telenisa also received 283 new clients in 2022, more so than the previous year. This upward trend in securing clients proves that Telenisa is a relevant source to those who seek information and advice regarding Syariah Law.

TOTAL NUMBER OF CLIENTS  431

### New & Repeat Clients (2021 & 2022)



 MEN  WOMEN



### GENDER

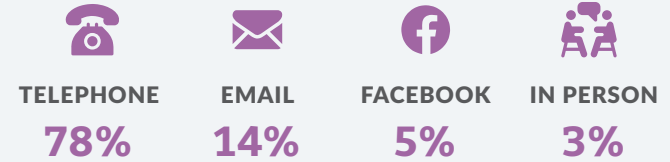
A majority of 387 (90%) clients were women, while only 44 (10%) of our clients were men.



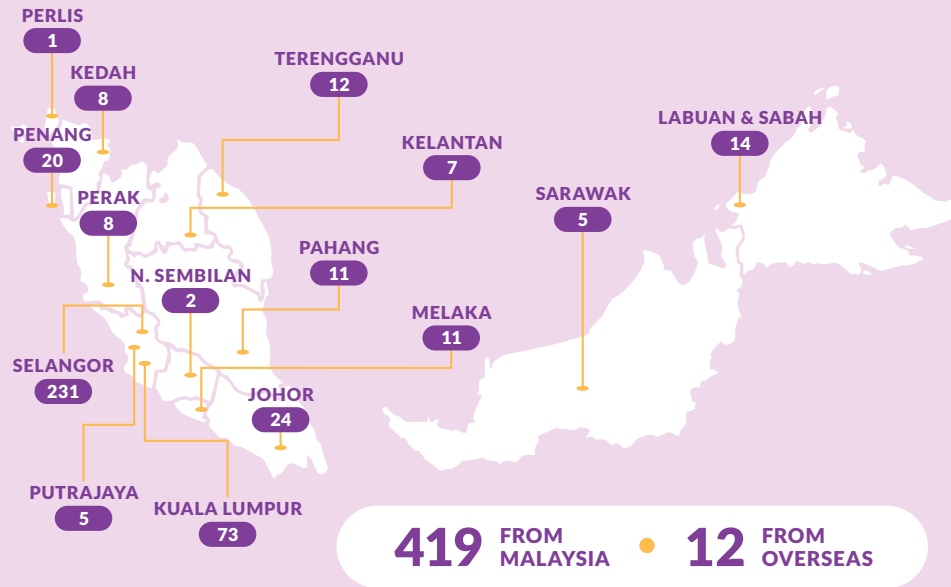
## METHOD OF COMMUNICATION

In 2022, a number of 335 (78%) clients contacted us via the telephone, particularly through voice calls and text messages on Whatsapp. A number of 60 (14%) clients communicated via email, 24 (5%) clients contacted us via Facebook, and the remaining 12 (3%) clients came to our office and met us in person.

## Method of Communication



## Client's Location (2020)



## LOCATION

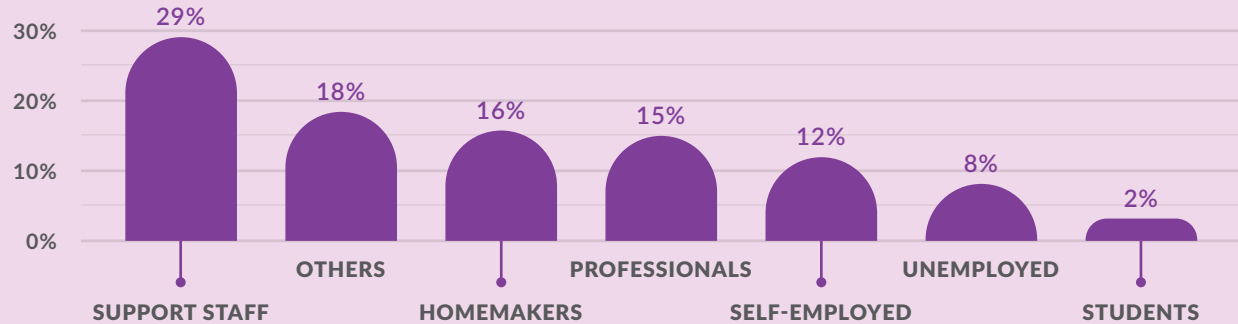
Location data that we have collected shows that 97% (419) of our clients resided in Malaysia. In contrast, some 3% (12) contacted us from abroad. The majority of our clients, 69% (296), were located in Klang Valley, in which 231 of them resided in Selangor, 73 clients resided in Kuala Lumpur, and only 5 clients resided in Putrajaya.

The remaining 31% (135) of our clients resided in other states across Malaysia, including those living abroad. Johor had 24 clients, Pulau Pinang with 20 clients and Terengganu had 12 clients. Pahang and Melaka had 11 clients respectively, while Kedah dan Perak each had 8 clients. A number of 7 clients resided in Kelantan, 2 clients from Negri Sembilan, while Perlis had 1 client. Telenisa also received inquiries from Sabah with 13 clients, Sarawak with 5 clients and Labuan with 1 client. The remaining 12 clients contacted us from abroad.

## OCCUPATION & HOUSEHOLD INCOME

Telenisa's clients worked in various sectors. A majority of 29%, out of 431 total clients, worked as support staff. Clients who worked in other sectors are tallied at 18%, followed by homemakers at 16% and professionals at 15%. Self-employed clients came in at 12%, those who were unemployed at 8% and students were as few as 2%.

### Occupation



According to our findings in 2022, 71% of our clients come from the B40 group (lower income tier), a decreasing percentage from 75% in 2021. The B40 group receives a total household income of not more than RM4,850 per month. As much as 26% of our clients brought home RM1,001.00 to RM2,500.00 per month, while another 25% made a monthly of RM2,500.01 to RM5,000.00, and a staggering 20% only made less than RM1,000.00 per month.

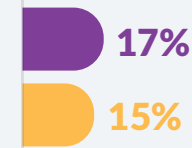


### Household Income Classification (2021-2022)

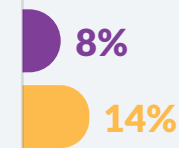
#### B40 (LOWER INCOME TIER)



#### M40 (MIDDLE INCOME TIER)



#### UNDISCLOSED



● 2021 ● 2022



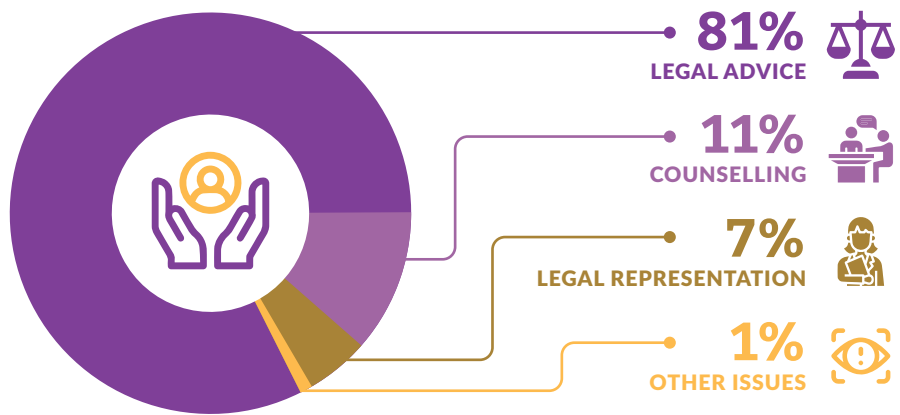
The M40 group sustains a slight decrease, from 17% in 2021 down to 15% in 2022. The M40 (middle income tier) receives a range of monthly income between RM4,851 to RM10,970. Within this group, 7% of our clients brought home RM5,001.00 to RM7,500.00 per month. Another 8% consisted of the upper-middle who made more than RM7,500.00 per month. A portion of 14% of our clients didn't disclose their household income.



## REQUESTED ASSISTANCE – ACCESS TO JUSTICE

As much as 81% of our clients had requested legal advice as assistance, whereas some 11% were seeking help on counselling. A fraction of 7% sought legal representation and only 1% were looking for other forms of assistance, a safe house for example.

### Requested Assistance



A majority of our clients (99%) had no legal representation and only 1% were represented by Syariah lawyers.

Our clients pursued to make claims that would help them carry on with their lives. Access to justice is readily available and can be attained. However, we need to advocate for various reform to ensure a legal process they need to overcome various challenges to ensure a legal process that is viable, and a trial that is fair and just.

Filing a claim requires a lot of resources that our clients may not have. It is a lengthy process that may not end as quick as expected and may take many years to resolve. This is the reason why many of our clients opted to represent themselves in Syariah Court, which is a valid legal route to proceed with. However, self-representation may contribute to unexpected complications due to the lack of experience and knowledge in the Syariah legal system and court procedures.

Telenisa recommends the following steps that would aid clients in managing complications and difficulties in the Syariah Court.

First, the Syariah Court should provide assistance to the public via an information and review counter that is run by trained court officials. This would resolve certain issues faced by the public regarding the filling in forms and the compiling of documents needed to file a case. This is because some of our clients have asked Telenisa to check their application and documentation before submitting them to the court. This is common with clients who represent themselves in court due to financial restraints.

Court officials may assist in reviewing the completed forms and the documents compiled by the public. Errors happen, especially when they attend a case hearing and the judge finds the forms incomplete or wrongly filled that would affect their case. Errors like these are costly because people who have no knowledge on how a court is run, would need to spend more money to start over the refiling process.

Other issues faced by the public include access to go to court for those live far away. They would need to take leave from work, mostly unpaid leave, to manage their case and to attend court.

These efforts would save time and cost not only of the public but also the Syariah Court. The court is able to hear a case more efficiently and effectively without adjourning a case simply due to refiling.

A service counter like this should be implemented in each state as each state is governed by the different nuances of Islamic Family Law and the varyingly different forms used by each Syariah Court.

Second, devote more effort to circulate awareness campaign that targets the general public about the court system. The public should know about the many initiatives carried out by the federal government, the state government and the Malaysian Syarie Lawyers Association (PGSM).

Each state has its own Syariah legal aid centre that provides legal advice and legal representation services, like the one provided by the Selangor Islamic Religious Council (MAIS). In 2022, the government established the BAGUS initiative to accelerate the Syariah Judiciary Department in resolving the many backlogged Syariah cases. Such effort and assistance have already been implemented for public convenience.

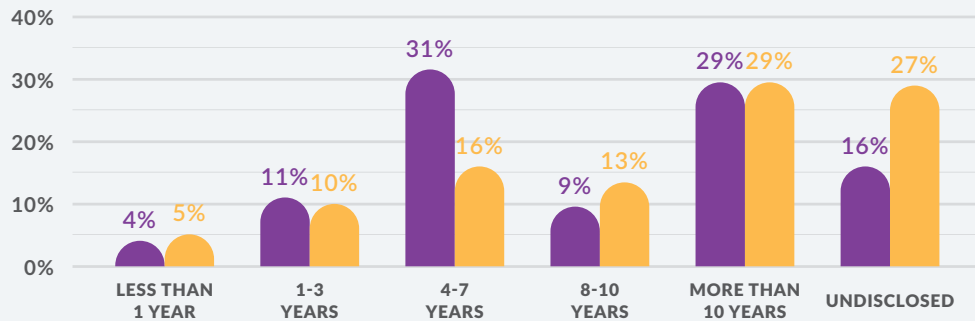
However, the level of awareness is very low even among Telenisa's clients who needed help in legal representation. Awareness campaign will give an advantage to agencies that provide legal advice and legal representation services. The agencies will be able to communicate directly with the public about the various problems they face in Syariah Court.



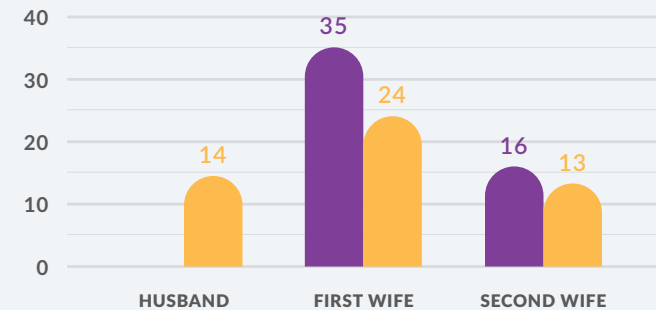
## STATUS & DURATION OF MARRIAGE

Telenisa has also collected various data on the status and duration of marriage of our clients in 2022. A majority 51% of our clients are divorced, followed by 19% who are going through the process of divorce. Another 16% of our clients are still married at the time and some 8% of our clients are separated. Other undefined statuses are recorded at 4%, while those who are not yet married came in at 2%.

### Duration of Marriage



### Involvement & Concerns About Polygamous Marriage



Up to 29% of our clients are married for more than 10 years, but a staggering 27% did not disclose the duration of their marriage. A number of 16% are married for 4-7 years, while another 13% are married between 8-10 years. Those who are married for 1-3 years stood at 10%, and those who are just married less than a year came in at 5%.

● 2021 ● 2022

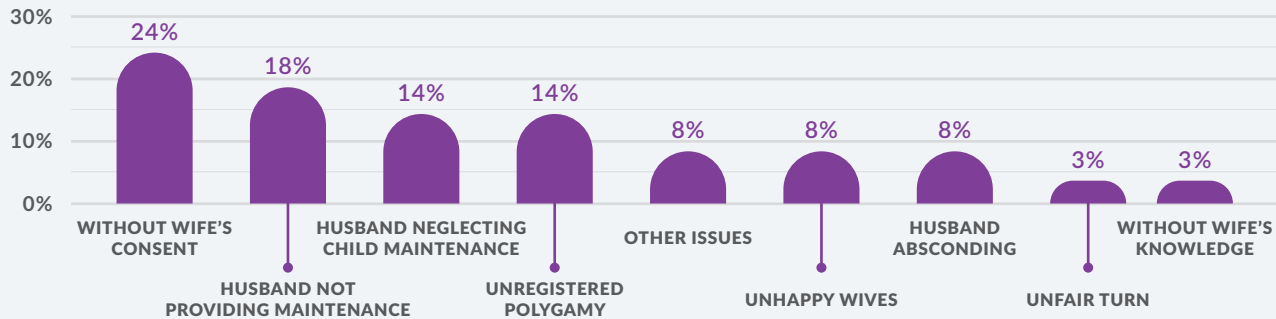
In 2022, a total of 51 (12%) clients had polygamous marriage. A portion of 24 (6%) clients held the status of the first wife, while 13 (3%) clients held the status of the second wife. As many as 14 (6%) clients who were husbands in polygamous marriage had contacted Telenisa, an amount that was not recorded in the previous year.

The data above shows that there is no increment from 2021, where we recorded the same amount of 51 (12%) clients who had polygamous marriage. In 2021, as many as 35 (8%) clients held the status of the first wife, while another 16 (4%) held the status of the second wife. No clients of third or fourth wife were recorded.

The chief concern raised by clients of polygamous marriages was the husband remarrying without the wife's consent, which was recorded at 24%. Husbands who failed to provide maintenance to their wives came in at 18%. Husbands who neglected child maintenance and polygamous marriages that were not registered were recorded at 14% respectively.

Wives who were unhappy with their arrangement, husbands who absconded and other issues stood at 8% each. Wives who had to endure unfair turn and treatment were recorded at 3%.

### Issues Concerning Polygamous Marriage (2022)

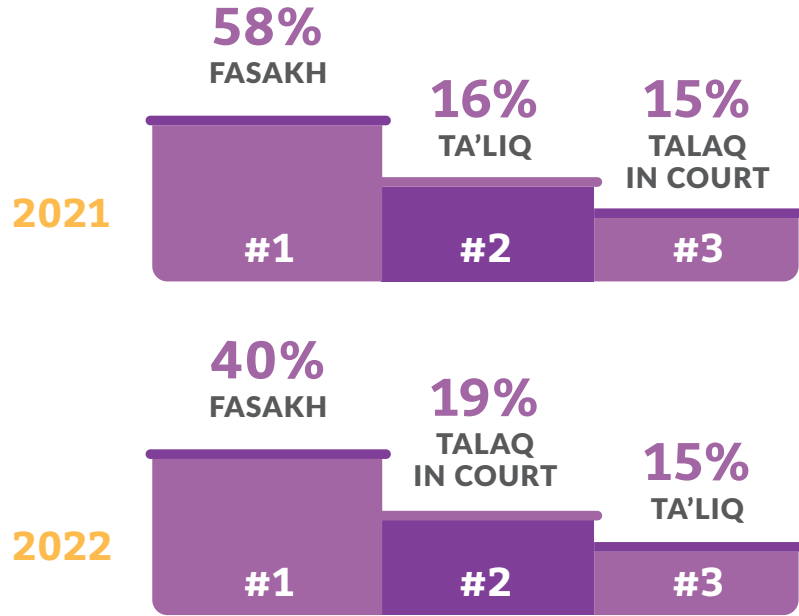




# The Rights of a Wife



## DIVORCE INQUIRIES & GROUNDS FOR DIVORCE



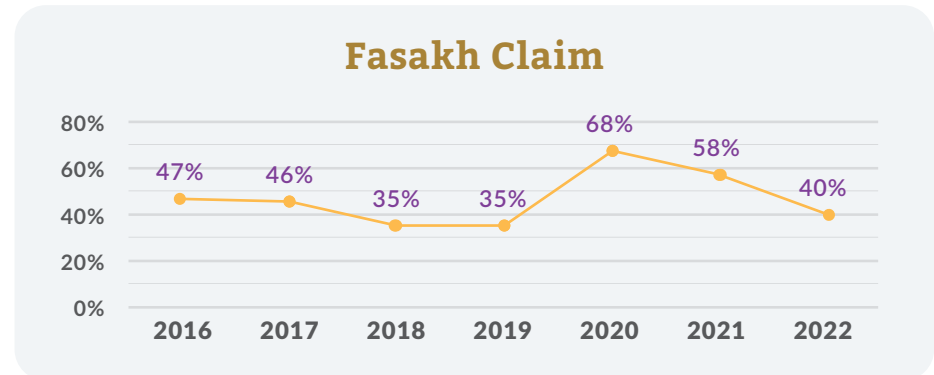
Fasakh, talaq and ta'liq were the three top inquiries relating to divorce in 2022. Inquiries regarding fasakh topped at 40%, a figure that reduced from 58% in 2021. Inquiries regarding talaq (in court) were recorded at 19%, while questions about ta'liq were recorded at 15%. The table above is a comparison between 2021 and 2022 for the three top inquiries regarding divorce.













## FASAKH CLAIM

Since 2016, fasakh remained as the most frequently asked inquiry regarding divorce. Fasakh is a method of divorce initiated by the wife, particularly when the husband refuses to grant divorce via talaq.

Section 53 of Islamic Family Law (State of Selangor) Enactment 2003 states that "A woman or man, as the case may be, married in accordance with Hukum Syarak shall be entitled to obtain an order for the dissolution of marriage or fasakh on any one or more of the following grounds".

This right is clearly defined. Almost all of the stated grounds provided in the enactment involve the husband's misconduct that contributes to neglect, mistreatment and cruelty to the wife. Fasakh is the last option for a wife, who is no longer able to continue living with her husband, to be free.



	2020	2021	2022
<b>TOP 1</b>	 DOMESTIC VIOLENCE <b>23%</b>	 COMMUNICATION BREAKDOWN <b>25%</b>	 COMMUNICATION BREAKDOWN <b>31%</b>
<b>TOP 2</b>	 HUSBAND NOT PROVIDING MAINTENANCE <b>18%</b>	 DOMESTIC VIOLENCE <b>23%</b>	 DOMESTIC VIOLENCE <b>15%</b>
<b>TOP 3</b>	 INFIDELITY <b>14%</b>	 HUSBAND NOT PROVIDING MAINTENANCE <b>20%</b>	 HUSBAND NOT PROVIDING MAINTENANCE <b>15%</b>
<b>TOP 4</b>	 FINANCIAL & POLYGAMY <b>10%</b>	 INFIDELITY <b>11%</b>	 INFIDELITY <b>13%</b>

Here, Telenisa has compared the top four grounds for divorce from 2020 until 2022.

Throughout 2022, communication breakdown is the most common ground for divorce at 31%. This may happen due to spouse's selfishness, lack of tolerance or lack of engagement that diminishes further the love and unity they once had.

This is followed by domestic violence at 15%, and it remains as one of the top four grounds for divorce since 2020. The third most common ground is the husband failing to provide maintenance at 15%, dropping from 18% in 2020. Infidelity continues to be a problem, noted at 13%, climbing slightly from 11% in 2021.



## ISSUES RELEVANT TO THE RIGHTS OF A WIFE

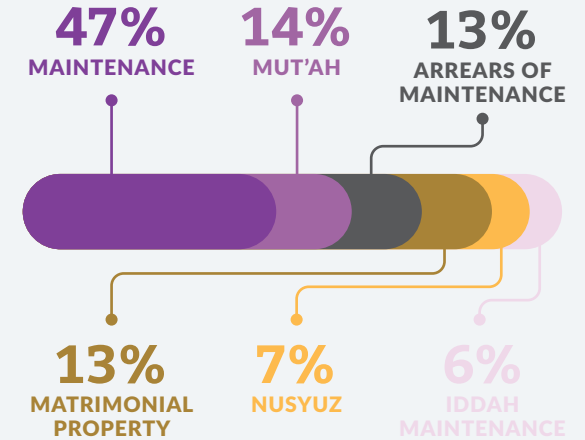
Inquiries regarding maintenance claim were the most frequently asked by our clients. A majority of 66% sought answers on how to make a claim for maintenance. From the amount above, 47% of them have never made or filed any claim for maintenance at Syariah Court. Another 13% of our clients inquired about the arrears of maintenance when the wife, who had obtained an order to receive maintenance by the court, did not receive any from the husband.

The remaining 6% inquired about iddah maintenance, a type of maintenance that must be paid to the former wife during the iddah period caused by divorce.

Another 14% wanted to know more about mut'ah. Other issues inquired were related to matrimonial property (13%) and nusyuz (7%). Nusyuz is commonly understood as a wife's disobedience or reluctance to a husband's request or order.

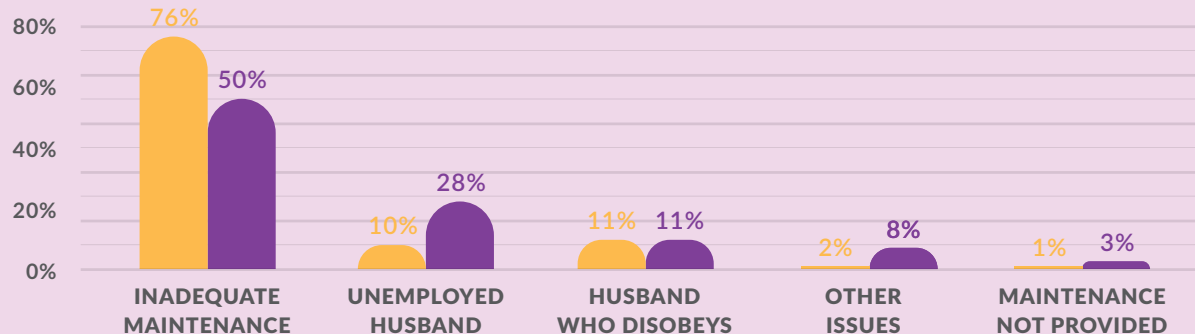


## Issues Affecting Wives



## Issues Relevant To A Wife's Maintenance

● 2021 ● 2022



The chart above exemplifies issues relating to maintenance that were plaguing our clients. Up to 50% of our clients revealed that their husbands did not provide enough maintenance, yet expecting the wives to manage the household with however little they were given.

The second issue, at 28%, was wives who had to manage husbands who stayed unemployed. When the husband brings nothing to the household, this may trigger financial difficulties for the entire family. Families may experience hardship in fulfilling basic needs such as food, utilities and house rent. Our clients who were not working had to withdraw their own savings to cover the household's daily expenses.

The third issue recorded, at 11%, was husbands violating court orders regarding the fulfilment of maintenance. Many husbands neglect to provide child support albeit ordered by the court.

The fourth issue, at 8%, were related to maintenance. As an example, there are cases where the husband only provides expenses once every three months. The husband knows that if he fails to pay maintenance for more than three consecutive months, the wife may apply for divorce. There are also situations where a client complained that her husband would pay utility bills only after receiving the final notice.

The final issue, at 3%, represented issues where the wife never received maintenance. In situations like this, the wife has to bear the household expenses such as house rent, utility bills, clothes and food, all on her own.

Maintenance is never limited to basic needs only. Islam also states that maintenance include the provision of education, medicine and personal care such as cosmetics and hygiene products.



## NUSYUZ

Nusyuz is a topic that is passionately discussed and often raises questions. What does nusyuz mean? Is nusyuz related to the misconduct of the wife only? What of the husband? What kind of conduct can be associated with nusyuz?

First, we need to understand the meaning of the word “nusyuz” itself. Nusyuz means to protest, oppose or rebel. Ibnu Muflih interprets nusyuz as a wife or a husband who dislikes their spouse, thus treating them with malice. This conduct includes one spouse who do not fulfil their obligations to the other spouse.

A husband may commit nusyuz if he fails to provide his wife with external support (material or monetary) and internal support (spiritual or sexual). A husband who abuses his wife, physically or emotionally, has also committed nusyuz. If the husband is polygamous, he commits nusyuz if he treats his wives unfairly.

## LAWS AND PROCEDURE IN CONVICTING NUSYUZ IN COURT

From a legal perspective, there are several issues that contribute to inconsistent judgements. Issues such as provisions relating to the sentencing of a wife's nusyuz in the enactment, court procedure that is unclear when claiming a wife has been nusyuz, and the heavy burden of proof towards a wife's nusyuz.

Section 60 of **Islamic Family Law (State of Selangor) Enactment 2003 (IFLSSE2003)** states the following on the power of the Court to order maintenance of wife, and the effect of nusyuz:

- (1) The court may, subject to Hukum Syarak, order a man to pay maintenance to his wife or former wife.
- (2) Subject to Hukum Syarak and confirmation by the Court, a wife shall not be entitled to maintenance when she is nusyuz or unreasonably refuses the lawful wishes or commands of her husband, that is to say, inter alia:
  - (a) when she withholds her association with her husband;
  - (b) when she leaves her husband's home against his will; or
  - (c) when she refuses to move with him to another home or place, without any valid reason according to Hukum Syarak.
- (3) As soon as the wife repents and obeys the lawful wishes and commands of the husband, she ceases to be nusyuz.



Section 60 of **IFLSSE2003** above clarifies the effect of nusyuz upon the wife, if convicted by the Syariah Court, may deny the wife her right to receive maintenance from the husband. The act of nusyuz is not limited to what is stated in paragraph (a), (b) and (c) of subsection (2) above, but also any conduct understood by Hukum Syarak that may appear to be nusyuz, can be applied for conviction by the Syariah Court.



These issues may deny the wife to her rightful maintenance, unless the wife repents and obeys her husband's wishes and commands that seem to be regarded as absolute.

According to subsection 60(1) of **IFLSSE2003**, the Syariah Court may not arbitrarily convict a wife of nusyuz unless a wife's maintenance claim has been filed, first and foremost, by said wife (Plaintiff) in the Syariah Court. Thus, the husband needs to obtain confirmation from the court. Until a declaration is made by the Syariah Court, the husband may not simply accuse his wife of nusyuz out of court. Legal proceedings to claim the wife as nusyuz will only take place if there is a claim made by the husband.

In court proceedings, the husband has to prove that the wife has left the house without reasons that do not conflict with Hukum Syarak. Not only that, the husband must also prove that he himself has fulfilled his responsibility of providing all necessary provisions that there is no reason for the wife to leave the house.

Only with indisputable testimony and evidence that is sufficient, that the court may convict the wife as nusyuz, subjected within a certain period. It is vital that the husband must present his evidence in court. In most cases for the conviction of nusyuz, the husband fails to provide enough evidence that he has fulfilled his responsibility while claiming his wife to be nusyuz.

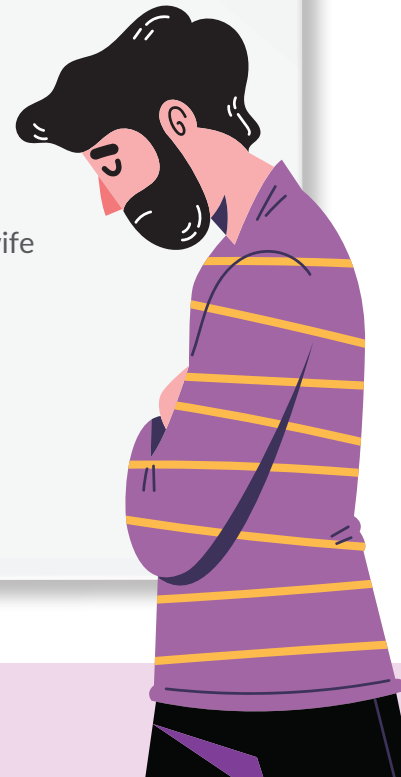
The case of Abdul Hanif v. Rabiah [JH (1997) JLD XI] was about a wife who left the house because of the action of her husband. Hanif had placed the family members of his first wife to be in the same house with Rabiah, the second wife. Rabiah used this situation as the reason for her to leave the house. As the second wife, Rabiah claimed fasakh. She also claimed that throughout the period she left the house, her husband failed to provide maintenance and provisions properly. Thus, the court ruled that even though the wife left the house, she was not nusyuz because the husband had failed to fulfil his responsibilities.

## CAN THE WIFE CLAIM NUSYUZ AGAINST THE HUSBAND?

### Nusyuz of a Husband

Nusyuz does not only fall upon the wife. The husband can also be convicted of nusyuz if there is neglect in fulfilling his responsibilities. The following conditions exemplify the nusyuz of a husband:

- (i) Nusyuz by speech;
  - (a) Ignoring his wife with no reasonable cause, such as refusing to communicate or communicating rudely.
  - (b) Being suspicious of his wife with no reasonable cause.
  - (c) Demanding his wife to act against Hukum Syarak.
- (ii) Nusyuz by deed;
  - (a) Neglecting intimate or sexual obligation towards the wife with no reasonable cause permitted by Hukum Syarak.
  - (b) Behaving violently towards the wife, such as beating.
  - (c) Not providing maintenance to the wife.
  - (d) Neglecting to provide shelter and safety.
  - (e) Neglecting to protect his wife's dignity.
  - (f) Treating his wives unfairly in a polygamy.



However, there is no punishment given to husbands who are nusyuz in Islamic Family Law.

A husband who is nusyuz brings harm to his wife and affects the unity of the family. Thus, the wife is allowed to claim divorce through fasakh and to also receive mut'ah, a reparation imbursement.

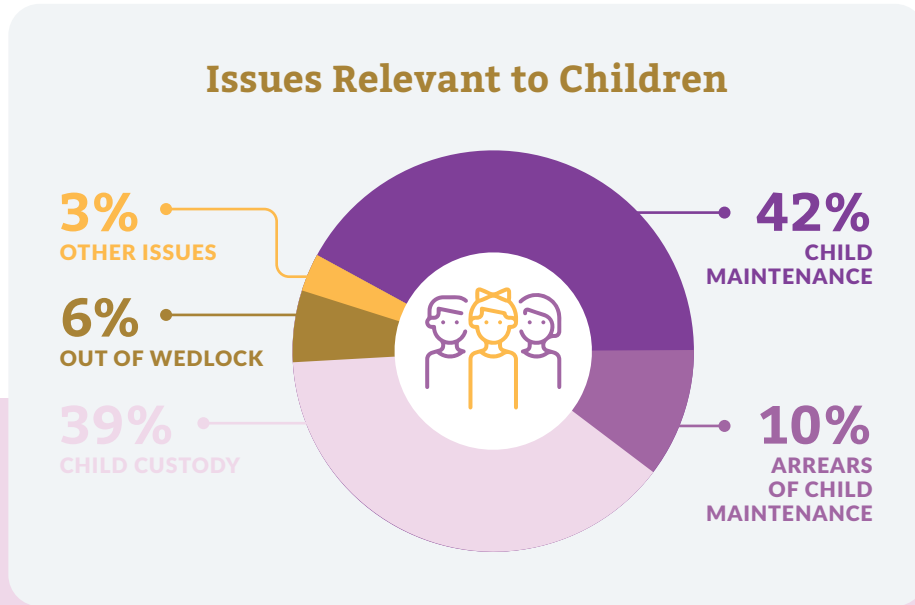
The conviction of nusyuz must be decided only by the court, and the husband may not arbitrarily claim nusyuz without evidence, this is to prevent mistreatment of the wife.

**FOOTNOTE:** Ahmad Dahalan, Nurul Wazeera (2011) *Pensabitan isteri nusyuz menurut undang-undang keluarga Islam : kajian di Wilayah Persekutuan Kuala Lumpur / Nurul Wazeera binti Ahmad Dahalan. Masters thesis, University of Malaya.*



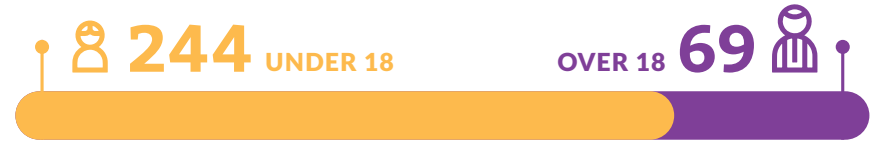
# The Rights of a Child

## ISSUES RELEVANT TO CHILDREN



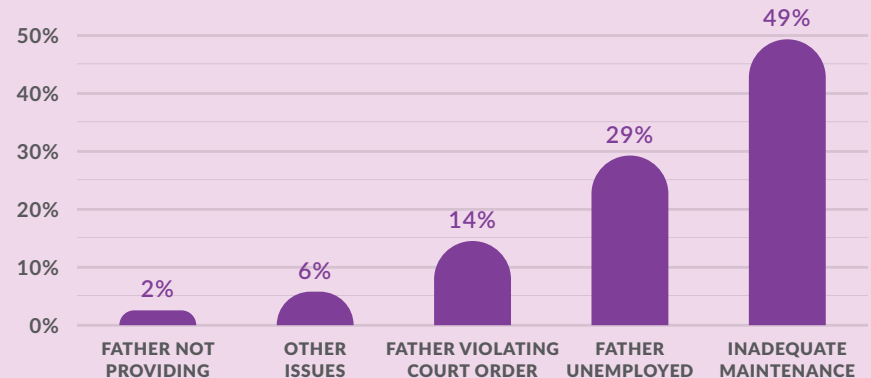
Throughout 2022, the lives of 311 children were affected due to parental issues that could not be resolved. From the total mentioned, 244 children were under the age of 18 and the remaining 69 children were over the age of 18.

## Age of Children Involved



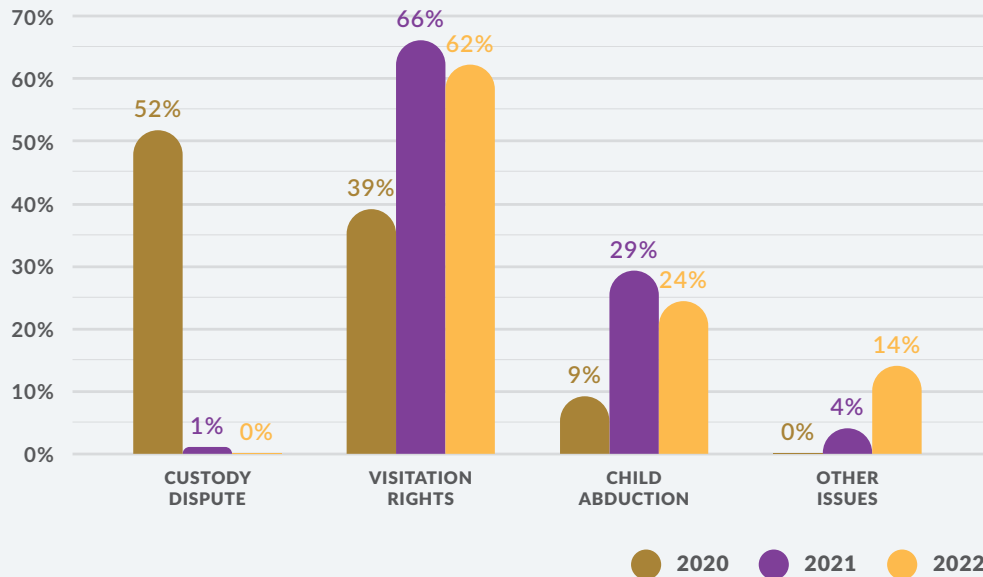
Up to 52% of our clients were struggling with issues relating to child maintenance. Another 39% had to face issues on child custody (hadhanah), while matters relating to children out of wedlock were recorded at 6%. Other issues, noted at 3%, were related to adoption and guardianship.

## Issues Relevant to Child Maintenance



There are various factors that contributed to issues relating to child maintenance. Among the main factors, at 49%, were fathers who failed to provide adequate child support, followed by fathers who were unemployed at 29%, and fathers who violated court orders at 14%. Other issues were recorded at 6%, while fathers who failed to provide any maintenance were noted at 2%.

### Issues Relevant to Child Custody (2020-2022)



For the past two years, matters on visitation rights have not changed much. In 2022, we found no client had cited issues relating to custody disputes. However, child abduction issues were recorded at 24%, a worrying indicator.

In 2022, as many as 14% of our clients raised a new concern related to child custody, the issue of registration and legitimacy of a child's nationality and how it would affect the parental claim to custody.





## PARENTAL CHILD ABDUCTION

Legislation regarding child abduction refers to the removal or retention of a child with the intention of separating the child from the mother, the father or the person who has custody of said child. Child abduction also refers to the abduction of a child to another country without the consent of the child's parents or guardian.

The phenomenon of parents abducting their own children into another country is increasing. There are several factors that may contribute to this issue:

- Domestic violence
- A parent's dissatisfaction with the court's decision
- The other parent threatens to run away with the child
- The ensuing response due to threats by the other parent
- The risk of abducting their own child may increase when there is a custody dispute
- The other country's custody order that is inconclusive

Under the Malaysian legislation, the two acts of law pertaining kidnapping can be found under the Penal Code (Act 574) and the Kidnapping Act 1961 (Act 365). Chapter XVI of the Penal Code refers to offenses affecting the human body, which also includes the offenses of

kidnapping and abduction. There are two types of kidnapping under the Penal Code:

**(i) Section 360: Kidnapping from Malaysia. Whoever conveys any person beyond the limits of Malaysia without the consent of that person, or of some person legally authorized to consent on behalf of that person.**

**(ii) Section 361: Kidnapping from lawful guardianship.**

Interpretation under the Kidnapping Act 1961 states that “wrongful restraint”, “wrongful confinement” and “abduction” shall have the meanings assigned to them in Sections 339, 340 and 362 respectively of the Penal Code (Act 574).

Kidnapping offense under the Penal Code clarifies as the offense of taking any person out of Malaysia's borders without the consent of that person, or of some person legally authorised to consent on behalf of that person.

For the offense of child abduction, it clarifies as the abduction of the child from the legal guardian of said child. If it can be proven that a child has been taken from his or her legal guardian or taken out of Malaysia from legal custody, then there is an offense of kidnapping a child under the Penal Code.

In addition to Kidnapping Act 1961, kidnapping is also clarified under the Penal Code, when there is an element of wrongful restraint or wrongful confinement to prevent any person from moving freely and rightfully.

Whereas according to Kidnapping Act 1961, abduction is further clarified under the Penal Code when it involves elements of coercion and deception. The abduction of a child by a parent may not necessarily involve the element of coercion, deception or violence. What may be involved is the indirect coercion due to the relationship between a child and a parent, where a child usually obeys a parent's orders. Abducting a child from its legal guardian is a serious offence. Thus, parental child abduction differs from kidnapping under the Penal Code and the Kidnapping Act 1961 due to the absence of criminal coercion. Sections 360 and 361 of the Penal Code (Act 574) is related to the abduction of a child committed by a parent who is not the legal guardian of said child.

Children know their parents very well. This is why parental child abduction differs from child abduction by persons other than parents, which

involves criminal coercion such as deception, extortion or threats to the child's safety.

If there is a possibility of a child being abducted by another parent, the custodial parent or the legal guardian should make a police report as soon as possible. The police will try to find and save the child, including apprehending the abductor.

Child abduction affects not only the other parent who is left behind, but mostly the child who is being taken away. The child has to sever contact with other family, friends and home environment. Sometimes, children are taken away to foreign places with cultural differences that are more difficult to accustom to.

Children abducted by their own parent are more likely to encounter various problems of economic, social, political and legal hardships. The child's life is akin to that of a refugee, the hardship of not receiving proper education because of the need to stay hidden.

They are forced into a new life in a new environment, especially when they are taken

away to a foreign country with its own challenges of cultural, religious and language barriers. This hardship may deeply traumatise the child.

The abducted children may suffer major psychological problems that are otherwise minimal if they are left to stay with the stable parent. This act of desperation only brings more harm than good to the child.

Separation anxiety and being disconnected from the other parent may leave a stain in the child's life. The other parent may also find themselves at a dead end, the frustration when there is no way to get their child back. Parental child abduction that extends beyond a country's border should be dealt with properly. Its impact burdens not only the abducted, but it also burdens the other parent who is suddenly left without the child.

It is time that this phenomenon of parental child abduction, especially the ones that cross borders, should face the appropriate legal action considering the many implications it may bring upon the family institution.

# How Can You Help?

CONTRIBUTIONS CAN BE CHANNELLED TO: SIS Forum (Malaysia) - 5641 8240 5457 (Maybank)

## Organisations That Help & Support Women

### Telenisa Helpline



012-812 3424

Free legal advice on Islamic Family Law & Syariah criminal offences

### Talian NUR

15999

Domestic violence, child abuse

### Sarawak Women for Women Society (SWWS)

082-368 853

Counselling and free legal advice

### All Women's Action Society (AWAM)

03-7877 4221

Counselling, sexual harassment and rape

### Sabah Women's Action Resource Group (SAWO)

088-269 291

Counselling and free legal advice

### Women's Aid Organisation (WAO)

03-3000 8858

Counselling and safe shelter for violence against women

### Women Centre for Change (WCC) Seberang Prai

04-398 8340

Counselling and free legal advice

### Perak Women for Women (PWW)

05-546 9715

Counselling

### Women Centre for Change (WCC) Penang

04-228 0342

Counselling and free legal advice

### Legal Aid Centre (Selangor)

03-5510 7007

Free legal representation

### Legal Aid Centre (Kuala Lumpur)

088-269 291

Counselling and free legal advice

### Legal Aid Department Malaysia

03-8885 1827  
(CIVIL)  
03-8885 1094  
(SYARIAH)

Free legal advice and free legal aid

## Sisters in Islam

### SIS FORUM - MALAYSIA (266561W)

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

T +603 7960 3357 / 5121 / 6733  
E sis@sistersinislam.org.my

W www.sistersinislam.org



@officialSIS



@SistersInIslam



@sistersinislam.my



SistersInIslamMYS



@Sistersinislam.my

## TELENISA

### TELENISA LEGAL CLINIC

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

T +6012 812 3424    
E telenisa@sistersinislam.org.my

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