



UNIVERSITAS INDONESIA

**PERBANDINGAN PERATURAN PERKAWINAN MENGENAI
AKIBAT HUKUM TERJADINYA PERKAWINAN PADA
UMUMNYA MENURUT UNDANG-UNDANG NOMOR 1
TAHUN 1974 TENTANG PERKAWINAN DENGAN *WOMEN'S
CHARTER (AMENDMENT) ACT NO. 2 OF 2011* DAN
*ADMINISTRATION OF MUSLIM LAW ACT***

SKRIPSI

**NAMA : TATIANA NOVIANKA DEWI
NPM : 0806343355**

**UNIVERSITAS INDONESIA
FAKULTAS HUKUM
PROGRAM REGULER
DEPOK
JUNI 2012**



UNIVERSITAS INDONESIA

**PERBANDINGAN PERATURAN PERKAWINAN MENGENAI
AKIBAT HUKUM TERJADINYA PERKAWINAN PADA
UMUMNYA MENURUT UNDANG-UNDANG NOMOR 1
TAHUN 1974 TENTANG PERKAWINAN DENGAN *WOMEN'S
CHARTER (AMENDMENT) ACT NO. 2 OF 2011* DAN
*ADMINISTRATION OF MUSLIM LAW ACT***

SKRIPSI

Diajukan sebagai salah satu syarat untuk memenuhi gelar Sarjana Hukum

**NAMA : TATIANA NOVIANKA DEWI
NPM : 0806343355**

Program Kekhususan I

(Hukum Tentang Hubungan Antara Sesama Anggota Masyarakat)

**FAKULTAS HUKUM
PROGRAM STUDI ILMU HUKUM
DEPOK
JUNI 2012**

HALAMAN PERNYATAAN ORISINALITAS

Skripsi ini adalah hasil karya saya sendiri, dan semua sumber baik yang dikutip maupun dirujuk telah saya nyatakan dengan benar.

Nama : Tatiana Novianka Dewi

NPM : 0806343555

Tanda tangan :



Tanggal : 22 Juni 2012

HALAMAN PENGESAHAN

Skripsi yang diajukan oleh :
Nama : Tatiana Novianka Dewi
NPM : 0806343355
Program Studi : Ilmu Hukum
Judul : Perbandingan Peraturan Perkawinan Mengenai
Akibat Hukum Terjadinya Perkawinan Pada
Umumnya Menurut Undang-Undang Nomor 1
Tahun 1974 Tentang Perkawinan Dengan
Women's Charter (Amendment) Act No. 2 Of 2011
Dan *Administration Of Muslim Law Act*.

Telah berhasil dipertahankan di hadapan Dewan Penguji dan diterima sebagai bagian persyaratan yang diperlukan untuk memperoleh gelar Sarjana Hukum pada Program Studi Ilmu Hukum, Fakultas Hukum, Universitas Indonesia.

DEWAN PENGUJI

Pembimbing : Ibu Surini Ahlan Sjarif, S.H., M.H.
Pembimbing : Ibu Endah Hartati, S.H., M.H.
Penguji : Pak Suharnoko, S.H., M.LI.
Penguji : Pak Akhmad Budi Cahyono, S.H., M.H.
Penguji : Pak Abdul Salam, S.H., M.H.



Handwritten signatures of the examiners and supervisors, including the names of Ibu Surini Ahlan Sjarif, Ibu Endah Hartati, Pak Suharnoko, Pak Akhmad Budi Cahyono, and Pak Abdul Salam.

Ditetapkan di : Depok
Tanggal : 22 Juni 2012

KATA PENGANTAR

Puji dan syukur saya panjatkan ke hadirat Allah SWT, karena atas berkat dan rahmatnya saya dapat menyelesaikan skripsi ini. Saya menyadari bahwa tanpa bantuan dari berbagai pihak sangatlah sulit bagi saya untuk menyelesaikan skripsi ini. Oleh karena itu, saya mengucapkan terima kasih kepada :

- (1) Ibu Surini Ahlan Sjarif, S.H., M.H., selaku dosen pembimbing I yang senantiasa telah banyak meluangkan waktu dan tenaga dalam memberikan pengajaran serta masukan kepada penulis, sejak awal hingga akhir penulisan skripsi ini.
- (2) Ibu Endah Hartati, S.H., M.H., selaku dosen pembimbing II yang telah banyak memberi masukan dan menuntun penulis dalam menyusun penulisan skripsi ini.
- (3) Ibu Rouli Anita Valentina, S.H., LL.M, selaku pembimbing akademis yang senantiasa meluangkan waktunya dan memberikan motivasi selama empat tahun kegiatan perkuliahan penulis.
- (4) Bapak Hananto Widoyoko dan Ibu Yanti Rayana Dewi, orang tua yang selalu memberi dukungan dan semangat dikala suka dan duka penulis, senantiasa bersabar menghadapi segala jenis luapan emosi penulis. Kehadiran mereka membantu penulis menyelesaikan skripsi ini.
- (5) Taro Agustian Dewanta, adik satu-satunya yang selalu dan selamanya penulis sayangi, semoga kita berdua sama-sama sukses dengan pilihan hidup masing-masing.
- (6) Ashizawa Satoru, selaku kakek yang senantiasa percaya bahwa penulis akan bisa kembali berkunjung, senantiasa meluangkan waktu, tenaga, pikiran lahir batin dan segala kebaikan hatinya untuk penulis.
“本当にいろいろ有り難うございました。”
- (7) Teman-teman terdekat Eveline Huang, Amanah Rahmatika, Agung Sudrajat, Tiwie Wulandari, Desty Ratnasari, Sellya Utami Candrasari, Melati Asih Jaya, Firizky Ananda, Endah Dewi Purbasari, Liza Farihah, Najmu Laila, Kabul Sedy, Nanda Febriani, Ernis, Intan Permata Agustina, Verita Dewi, Faiza Bestari Nooranda, Ursula Vinessa, Jovita, Lusia Novita

Sari yang senantiasa mendengarkan keluh kesah penulis dan mengingatkan penulis untuk tetap fokus dan menyelesaikan skripsi, juga memberi banyak masukan dan bantuan selama proses penulisan skripsi.
“感謝の言葉もありません。”

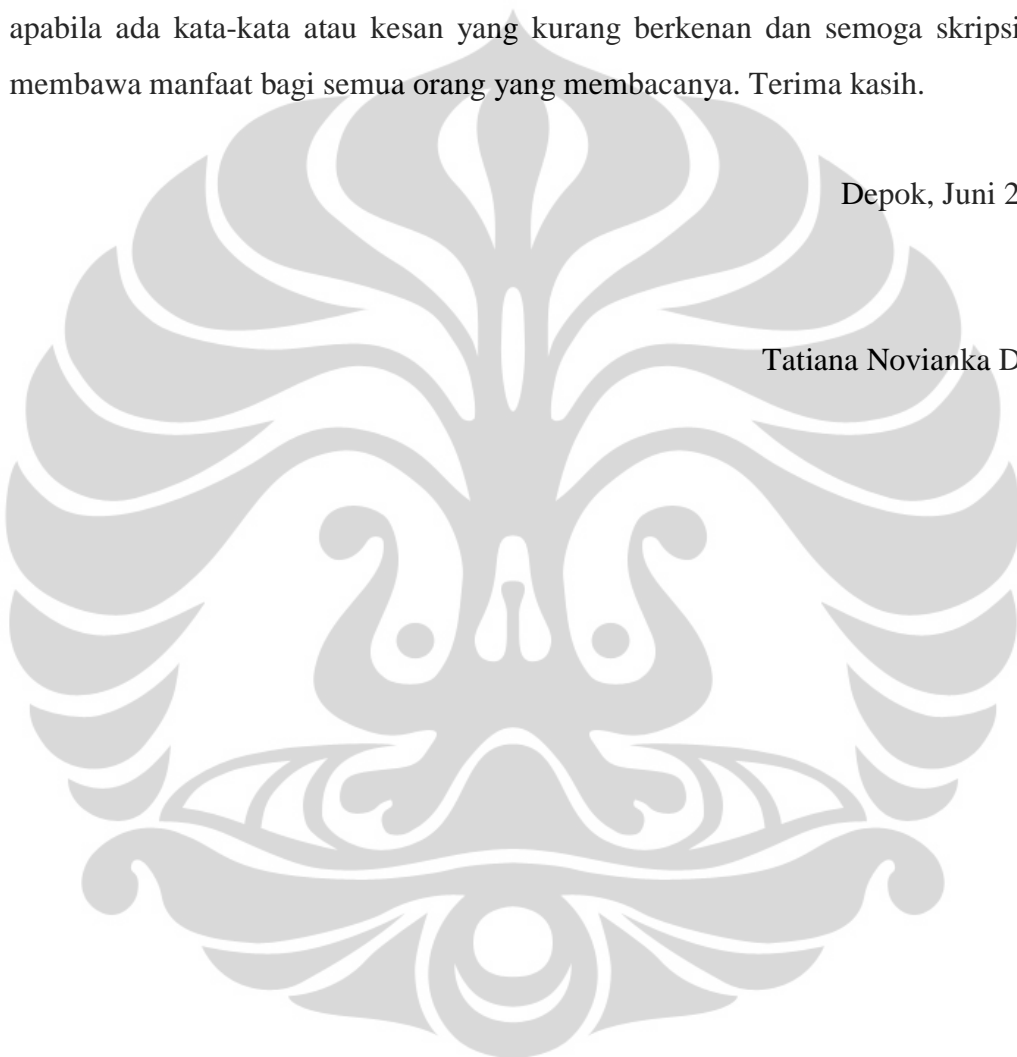
- (8) Teman-teman ‘*geng skripsi*’ angkatan FHUI 2008; Sherly Adella, Debora Napitupulu, Devina Puspitasari, Vita Anggraeny, Kartika Putri, Ihsan Baga, Ira Hapsari, Annisa Eva yang telah banyak berbagi suka duka juga stress bersama dengan penulis selama satu semester terakhir.
- (9) Arditama Nusantara Putera, *for what is worth and living with what you believe*. “恐れいます”
- (10) Yahdi M. Salampessy, Sisilia Nurmala Dewi, Mutia Harwati Lestari, Fadhil Arshandy, Elsa Marlina, Nadia Sekar, Bayu Baskoro, Hendarsono, terima kasih karena telah mencerahkan hari-hari penulis.
- (11) Sahabat-sahabat sejak kecil Florentine Arshellia, Michelle Gozal, Ryo Aditya, Eugene Ankie, Roy Valentino, Anastasia Satrio.
- (12) Teman-teman Leo Young Club yang tidak dapat disebutkan satu per satu atas pengertian dan kesabarannya.
- (13) SHINHWA (신화) Eric Mun, Shin Hyesung, Lee Minwoo, Andy Lee, Park Junjin, Kim Dongwan atas kejenuhan dan hiburan yang selalu diberikan kepada penulis di kala senang dan susah.
- (14) Park Yoochun, Kim Junsu, Kim Jaejoong, Yunho U-Know, Shim Changmin.
- (15) Johnnys Ent. atas kebaikan hati untuk selalu menghibur penulis sejak pertama mengenal kalian, Yamada Ryosuke, Fujigaya Taisuke, Kamenashi Kazuya, Matsumoto Jun, Kat-tun, Arashi, Kis-My-Ft2, HeySayJump, News.
- (16) Shinhwa Changjo, *the orange princesses around the world. We are family*.
- (17) Pak Jhon (PK I) atas segala dukungan, bantuan, dan kesabarannya.
- (18) Seluruh pegawai Barel I, II, III yang telah banyak membantu selama 4 tahun penulis berkuliah; dan

(19) Teman-teman yang tidak dapat penulis cantumkan satu per satu. Terima kasih.

Akhir kata saya menyadari bahwa masih banyak kekurangan yang terdapat dalam penulisan skripsi ini, oleh karena itu saya sangat mengharapkan kritik dan masukan yang membangun demi perbaikan di masa mendatang. Mohon maaf apabila ada kata-kata atau kesan yang kurang berkenan dan semoga skripsi ini membawa manfaat bagi semua orang yang membacanya. Terima kasih.

Depok, Juni 2012

Tatiana Novianka Dewi



**HALAMAN PERNYATAAN PERSETUJUAN PUBLIKASI
TUGAS AKHIR UNTUK KEPENTINGAN AKADEMIS**

Sebagai sivitas akademik Universitas Indonesia, saya yang bertanda tangan di bawah ini:

Nama : Tatiana Novianka

NPM : 0806343355

Program Studi : Ilmu Hukum

Fakultas : Hukum

Jenis karya : Skripsi

demikian demi pengembangan ilmu pengetahuan, menyetujui untuk memberikan kepada Universitas Indonesia **Hak Bebas Royalti Noneksklusif** (*Non-exclusive Royalty-Free Right*) atas karya ilmiah saya yang berjudul:

“Perbandingan Peraturan Perkawinan Mengenai Akibat Hukum Terjadinya Perkawinan Pada Umumnya Menurut Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Dengan *Women’s Charter (Amendment) Act No. 2 Of 2011 Dan Administration Of Muslim Law Act.*”

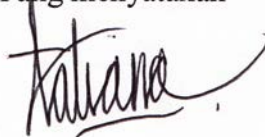
beserta perangkat yang ada (jika diperlukan). Dengan Hak Bebas Royalti Noneksklusif ini, maka Universitas Indonesia berhak menyimpan, mengalihmedia/format-kan, mengelola dalam bentuk pangkalan data (*database*), merawat dan mempublikasikan tugas akhir saya selama tetap mencantumkan nama saya sebagai penulis/pencipta dan sebagai pemilik Hak Cipta.

Demikian pernyataan ini saya buat dengan sebenarnya.

Dibuat di : Depok

Pada tanggal: 22 Juni 2012

Yang menyatakan



(Tatiana Novianka Dewi)

ABSTRAK

Nama : Tatiana Novianka Dewi
Program Studi : Ilmu Hukum
Judul : Perbandingan Peraturan Perkawinan Mengenai Akibat Hukum Terjadinya Perkawinan Pada Umumnya Menurut Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Dengan *Women's Charter (Amendment) Act No. 2 Of 2011* Dan *Administration Of Muslim Law Act*.

Skripsi ini membahas mengenai perbandingan peraturan hukum perkawinan mengenai akibat hukum terjadinya perkawinan pada umumnya menurut Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan dengan *Women's Charter (Amendment) Act No. 2 Of 2011* Dan *Administration Of Muslim Law Act*. Permasalahan ini ditinjau dari perbandingan hukum dengan metode penelitian yuridis normatif dan penulisan bersifat deskriptif. Data dalam penelitian ini diperoleh dari studi dokumen sebagai data utama dari penulisan kualitatif. Hasil penelitian memperlihatkan bahwa baik Indonesia maupun Singapura memiliki ciri khas dalam masing-masing peraturan hukumnya dan terdapat perbedaan maupun persamaan dalam peraturan perkawinan mengenai akibat hukum terjadinya perkawinan.

Kata kunci: hukum, perdata, perkawinan, keluarga, UU No. 1 Tahun 1974, Singapura

ABSTRACT

Name : Tatiana Novianka Dewi
Major : Law
Title : Comparative Studies in Marriage Law : The Legal Consequences of Marriage Between Marriage Act No. 1 of 1974 and *Women's Charter (Amendment) Act No. 2 Of 2011* and *Administration Of Muslim Law Act*

This thesis discusses the comparison of marriage laws regarding the legal consequences of marriage, according to Marriage Act No. 1 of 1974, Women's Charter (Amendment) Act No. 2 Of 2011 and Administration Of Muslim Law Act. With normative legal research methods and descriptive writing, the data in this study were obtained from documents study as the main data of qualitative writing. The result showed that both Indonesia and Singapore have their own distinctive characteristic and there are differences and similarities in the regulation of marriage on the legal consequences of marriage.

Keywords: law, privat, marriage, family, marriage act no. 1 of 1974, Singapore

DAFTAR ISI

HALAMAN JUDUL	i
HALAMAN PERNYATAAN ORISINALITAS	ii
HALAMAN PENGESAHAN	iii
KATA PENGANTAR	iv
HALAMAN PERNYATAAN PERSETUJUAN PUBLIKASI ILMIAH ..	vii
ABSTRAK	viii
DAFTAR ISI	ix
1. PENDAHULUAN	
1.1 Latar Belakang	1
1.2 Rumusan Masalah	10
1.3 Tujuan Penulisan	10
1.4 Kerangka Konseptual	10
1.5 Metode Penelitian	11
1.6 Sistematika Penulisan	13
2. HUKUM PERKAWINAN DAN AKIBAT HUKUM PERKAWINAN INDONESIA BERDASARKAN UNDNAG-UNDANG NOMOR 1 TAHUN 1974 TENTANG PERKAWINAN	
2.1 Pengertian Perkawinan	16
2.2 Syarat Perkawinan	20
2.2.1 Syarat Materiil	21
2.2.2 Syarat Formil	25
2.3 Pencatatan Perkawinan	26
2.4 Akibat Hukum Terjadinya Perkawinan	29
2.4.1 Akibat Hukum Terhadap Hubungan Suami Istri Itu Sendiri	29
2.4.2 Akibat Hukum Terhadap Hubungan Orang Tua dan Anak	31
2.4.2.1 Status Personal Anak	31
2.4.2.2 Hubungan Hukum Orang Tua Terhadap Anak ..	34
2.4.3 Akibat Hukum Terhadap Harta Perkawinan	37
3. HUKUM PERKAWINAN DAN AKIBAT HUKUM PERKAWINAN SINGAPURA BERDASARKAN <i>WOMEN'S CHARTER</i> DAN <i>ADMINISTRATION OF MUSLIM LAW ACT</i>	
3.1 Hukum Perkawinan Singapura	38
3.2 Women's Charter	41
3.2.1 Pengertian Perkawinan	41
3.2.2 Syarat Sah Perkawinan	42
3.2.3 Akibat Hukum Terjadinya Perkawinan	51
3.2.3.1 Akibat Hukum Terhadap Hubungan Suami Istri Itu	

Sendiri	51
3.2.3.2 Akibat Hukum Terhadap Hubungan Orang Tua dan Anak	54
3.2.3.3 Akibat Hukum Terhadap Harta Perkawinan	57
3.3 Administration of Muslim Law Act	59
3.3.1 Pengertian Perkawinan	60
3.3.2 Syarat Sah Perkawinan	63
3.3.3 Akibat Hukum Terjadinya Perkawinan	71
3.3.3.1 Akibat Hukum Terhadap Hubungan Suami Istri Itu Sendiri	72
3.3.3.2 Akibat Hukum Terhadap Hubungan Orang Tua dan Anak	75
3.3.3.3 Akibat Hukum Terhadap Anggota Keluarga dan Kerabat Dekat	79
3.3.3.4 Akibat Hukum Terhadap Harta Perkawinan	79
4. ANALISIS PERBANDINGAN PERATURAN HUKUM PERKAWINAN MENGENAI AKIBAT HUKUM TERJADINYA PERKAWINAN PADA UMUMNYA MENURUT UNDANG-UNDANG NOMOR 1 TAHUN 1974 TENTANG PERKAWINAN DAM WOMEN'S CHARTER (AMENDMENT) ACT NO. 2 OF 2011 DAN ADMINISTRATION OF MUSLIM LAW ACT	
4.1 Terhadap Hubungan Suami Istri	82
4.2 Terhadap Hubungan Hukum Antara Anak dan Orang Tua	89
4.3 Terhadap Harta Perkawinan.....	95
5. PENUTUP	
5.1 Kesimpulan.....	103
5.2 Saran	107
DAFTAR PUSTAKA	xi
LAMPIRAN	xvi



BAB I PENDAHULUAN

1.1. Latar Belakang

“I have always considered marriage as the most interesting event of one's life, the foundation of happiness or misery.”¹

Selama ada masyarakat, masyarakat besar maupun kecil, maka terdapat pula hukum di dalamnya. Sebagaimana Aristoteles mengatakan bahwa manusia adalah “zoon politicon”—makhluk sosial atau makhluk bermasyarakat—dan tercipta suatu hubungan antara satu dengan yang lain, maka manusia akan saling berinteraksi satu sama lain dan menciptakan suatu hubungan. Hubungan tersebut dapat tercipta karena setiap manusia adalah pendukung atau penyangga kepentingan. Kepentingan merupakan suatu tuntutan perorangan atau kelompok yang diharapkan untuk dipenuhi dan dengan adanya hubungan tersebut, maka timbulah hak dan kewajiban yang disebabkan karena kepentingan yang berbeda antara satu individu dengan individu lain yang tidak jarang akan saling berhadapan atau berlawanan, jika terjadi hal lebih buruk, akan menimbulkan pertentangan atau konflik. Adanya konflik tersebut menyebabkan diperlukannya suatu norma atau kaedah sosial yang akan menjadi pedoman, patokan atau ukuran untuk berperilaku dalam kehidupan bersama.²

Norma atau kaedah yang ada dalam masyarakat di sini kemudian berfungsi untuk mengatur dan melindungi kepentingan masing-masing agar tercipta masyarakat yang dapat hidup damai, aman, tenteram, adil, dan makmur. Norma atau kaedah sosial tersebut terdiri dari kaedah kepercayaan, kaedah kesusilaan dan kaedah sopan santun. Ketiga kaedah tersebut memberikan kewajiban bagi setiap manusia untuk mencapai suatu penyempurnaan sehingga setiap manusia dapat berkelakuan baik. Namun, dari ketiga kaedah tersebut, sanksi yang diberlakukan

¹ George Washington (Presiden Amerika Serikat pada tahun 1789-1797), dalam suratnya kepada Burwell Bassett, tertanggal 23 Mei 1785.

² Sudikno Mertokusumo, *Mengenal Hukum*, cet. 1, (Yogyakarta: Liberty, 2003), hlm. 2.

bukan merupakan sanksi hukuman. Sehingga diperlukanlah satu kaedah yang dapat memberikan perlindungan dengan tegas dan memberikan sanksi berupa hukuman apabila kaedah tersebut tidak dijalankan dengan semestinya. Kaedah yang dapat melindungi kepentingan manusia yang sudah mendapat perlindungan dari ketiga kaedah lainnya dan melindungi kepentingan-kepentingan manusia yang belum mendapatkan perlindungan dari ketiga kaedah lainnya adalah kaedah hukum.³

Kaedah hukum ditujukan kepada pelakunya yang kongkrit dan membebani manusia dengan kewajiban dan hak sehingga kaedah hukum itu bersifat normatif dan atributif. Keberadaan hukum menjadi penting mengingat keadaan kehidupan manusia pada masa kini, sadar atau tidak, manusia sebagai anggota masyarakat melakukan perbuatan hukum dan hubungan hukum, serta mengalami peristiwa hukum. Sebagai contoh adalah bagi janin dalam kandungan sudah dilindungi haknya dalam hal ayahnya meninggal dan ia mendapatkan harta warisan. Hal tersebut timbul karena ada perbuatan hukum dan hubungan hukum oleh orang lain yang berdampak pula pada kehidupan orang lain di sekitarnya. Oleh karena itu, dalam menjalankan kehidupan masyarakat dan bernegara diperlukan suatu sistem hukum yang berlaku dalam masyarakat tersebut sehingga kehidupan masyarakat dapat berlangsung damai dan sejahtera. Dengan berlakunya suatu sistem hukum dalam negara tersebut, maka kepentingan setiap manusia pun terlindungi, sehingga manusia dapat hidup dengan aman dan sejahtera.

Setiap negara memiliki sistem hukum yang berbeda-beda, hal ini disebabkan karena kebutuhan setiap masyarakatnya pun berbeda-beda, sebagaimana Rudolf Stammler berpendirian bahwa adanya kebenaran hukum itu selalu bergantung pada keadaan, waktu, dan tempat, yang didasari oleh suatu kenyataan bahwa adanya hukum adalah untuk memenuhi kebutuhan manusia dalam suatu masyarakat dan kebutuhan manusia dalam masyarakat yang satu tidak sama dengan yang lain.⁴ Selain itu, Prof. R. Subekti pun berpendapat bahwa hukum merupakan budaya suatu bangsa, sesuai dengan ciri atau sifat suatu

³ *Ibid.*, hlm. 12.

⁴ R. Soeroso, *Pengantar Ilmu Hukum*, cet. 2, (Jakarta: Sinar Grafika, 1993), hlm. 72.

budaya, maka akan memberikan ciri adanya perbedaan budaya antara satu bangsa dengan bangsa lainnya, di samping dapat ditemukan adanya unsur-unsur persamaan.⁵ Berbagai macam sistem hukum yang kita kenal dikelompokkan menjadi suatu kelompok keluarga hukum oleh para sarjana, antara lain oleh Rhene David, yakni :

1. Keluarga Hukum Romano Germania (Romawi Jerman);
2. Keluarga Hukum *Common Law*;
3. Keluarga Hukum Sosialis;
4. Keluarga Hukum Agama atau Kepercayaan dan Tradisi (Hukum Adat).⁶

Dalam kehidupan sosial manusia, perkawinan adalah hal lazim yang terjadi dalam suatu tahapan hidup di setiap kehidupan manusia dan dianggap merupakan suatu lembaga penting karena melalui perkawinan, individu-individu yang berasal dari pola hidup yang berlainan, karakter, sifat, tabiat, perilaku, kebiasaan, serta dua keluarga yang berbeda kemudian saling mengikatkan diri dalam suatu ikatan lahir dan batin antara seorang pria dan wanita sebagai suami istri, dengan tujuan membentuk keluarga bahagia sebagai sebuah komunitas terkecil dalam masyarakat. Sesuai dengan kodratnya, manusia yang pada dasarnya memiliki hasrat yang mendorong setiap individu untuk mencari pasangan hidupnya dan hidup berkelompok, membentuk suatu keluarga dengan cara melangsungkan perkawinan dan mengembangkan keturunan.

Perkawinan itu sendiri merupakan suatu peristiwa yang mengandung aspek-aspek agama, sosial, dan hukum. Agama secara garis besar memandang perkawinan sebagai suatu lembaga yang suci dimana suami istri dapat hidup tentram, saling mencintai, santun-menyantuni dan kasih mengasihi antara satu terhadap yang lain dengan tujuan mengembangkan keturunan. Dari aspek sosial, orang-orang yang telah berkeluarga dianggap telah memenuhi salah satu bagian

⁵ Wahyono Darmabrata, *Perbandingan Hukum Perdata*, cet. 4, (Jakarta: CV. Gitama Jaya, 2006), hlm. 100.

⁶ Dikemukakan oleh Rhene David dalam bukunya berjudul "Major Legal Systems in the World Today". Lihat : H.R. Sardjono dan Ny. Hj. Frieda Husni Hasbullah, *Bunga Rampai Perbandingan Hukum Perdata*, cet. 2, (Jakarta: IND-HILL-CO, 2003), hlm. 45.

syarat dari kehendak masyarakat, serta mempunyai kedudukan yang lebih tinggi dan lebih dihargai dari mereka yang belum menikah.⁷ Sementara itu, dari aspek hukum, perkawinan dapat dikatakan merupakan pertalian yang sah antara seorang laki-laki dan seorang perempuan yang hidup bersama (bersetubuh) dan yang tujuannya membentuk keluarga dan melanjutkan keturunan, serta mencegah perzinahan dan menjaga ketentraman jiwa atau batin.⁸ Pertalian atau perikatan ini dapat diartikan sebagai sebuah janji, dimana janji adalah suatu hal yang sangat penting dalam Hukum Perdata. Janji dianggap penting karena setiap orang yang mengadakan perjanjian sejak semula mengharapkan supaya janji itu tidak putus di tengah jalan. Jika janji tersebut pada akhirnya harus diputuskan atau terpaksa diputuskan, maka harus disebabkan oleh hal-hal yang dapat diterima oleh akal. Oleh karena hal ini berlaku pula dalam perkawinan, maka sebagaimana yang tercantum di dalam ketentuan undang-undang, sebuah perkawinan pun harus memiliki sebab-sebab yang masuk akal apabila perkawinan tersebut hendak berakhir.

Karena pentingnya lembaga perkawinan itu, maka masing-masing negara memiliki pengaturan yang meliputi berbagai segi mengenai perkawinan. Dalam hukum nasional Indonesia, hukum positif yang berlaku pada saat ini mengenai perkawinan diatur dalam Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan (selanjutnya disebut sebagai Undang-Undang Perkawinan) dan mendefinisikan Perkawinan sebagai *ikatan lahir batin antara seorang pria dengan seorang wanita sebagai suami isteri yang bertujuan membentuk keluarga atau rumah tangga yang bahagia dan kekal berdasarkan Ketuhanan Yang Maha Esa*⁹. Lebih lanjut, peraturan hukum mengenai perkawinan tidak saja hanya diatur dalam Undang-Undang Perkawinan, tetapi juga dalam Peraturan Pelaksanaannya, Peraturan Pemerintah Republik Indonesia Nomor 9 Tahun 1975 Tentang Pelaksanaan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan.

⁷ M. Idris Ramulyo, *Beberapa Masalah Tentang Hukum Acara Perdata Peradilan Agama*, cet. 2, (Jakarta: Ind-Hill. Co, 1991), hlm. 172-73.

⁸ Haji Abdullah Siddik, *Hukum Perkawinan Islam*, (Jakarta: Tintamas Indonesia, 1983), hlm. 25.

⁹ Indonesia (a). *Undang-Undang Tentang Perkawinan*, UU Nomor 1 Tahun 1974, LN Nomor 1, TLN Nomor 3019, Pasal 1.

Berlakunya Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan dan Peraturan Pelaksanaan Nomor 9 Tahun 1975 (yang selanjutnya akan disebut PP Perkawinan) memberikan dampak perubahan cukup besar dalam hukum perkawinan di Indonesia yang semula bersifat pluralistis. Pluralisme hukum perkawinan pada masa itu disebabkan karena adanya beberapa peraturan yang berbeda yang berlaku, sebagai akibat adanya penggolongan penduduk yang berlaku berdasarkan Pasal 163 I.S. jo. Pasal 131 I.S. yang secara singkat dapat diperinci sebagai berikut¹⁰:

- 1) Perkawinan bagi golongan Indonesia asli yang beragama Islam berlaku hukum agama yang telah diresipiir dalam hukum adat;
- 2) Bagi orang-orang Indonesia Asli lainnya berlaku hukum perkawinan adat;
- 3) Bagi orang Indonesia Asli yang beragama Kristen yang tinggal di Jawa, Minahasa, dan Ambon yang beragama Kristen berlaku HOCI (*Huwelijk Ordonantie Christen Indonesiers*) Staatsblaad 1933 No. 74;
- 4) Perkawinan bagi golongan Eropa dan Indonesia keturunan Eropa dan yang disamakan dinamakan dengan mereka berlaku hukum perkawinan yang diatur dalam KUHPerduta.
- 5) Perkawinan bagi golongan Timur Asing keturunan Tionghoa berlaku hukum perkawinan sebagaimana diatur di dalam *Burgerlijke Wetboek* (BW) atau yang biasa dikenal sebagai Kitab Undang-Undang Hukum Perdata (KUHPerduta), kecuali bagian kedua dan bagian ketiga titel IV Buku I, mengenai upacara-upacara yang mendahului perkawinan dan pencegahan perkawinan.
- 6) Perkawinan bagi golongan Timur Asing bukan Tionghoa berlaku hukum perkawinan adat yang mereka bawa dari negeri asalnya.
- 7) Dalam hal Perkawinan Campuran misalnya antara orang Indonesia asli kawin dengan seorang keturunan Tionghoa, maka dalam hal ini berlaku hukum perkawinan suami¹¹ .¹²

¹⁰ Sudarsono, *Hukum Perkawinan Nasional*, cet. 3, (Jakarta: PT. Rineka Cipta, 2005), hlm. 7.

¹¹ Ketentuan mengenai perkawinan campuran ini diatur dalam Staatsblad 1898 No. 158, Pasal 6 ayat (1) yang berbunyi : “Perkawinan campuran diatur menurut hukum sang suami, tetapi

Jika semula hukum perkawinan di Indonesia bersifat pluralistis karena memiliki beberapa sumber hukum seperti HOCI, hukum adat, dan Kitab Undang-Undang Hukum Perdata, maka Undang-Undang Perkawinan merupakan jawaban atas usaha unifikasi hukum dalam bidang hukum keluarga di sistem hukum nasional Indonesia dan dibuat untuk mewujudkan prinsip-prinsip yang terkandung dalam Pancasila dan Undang-Undang Dasar 1945 dengan menampung unsur-unsur dan ketentuan-ketentuan hukum agamanya serta kepercayaannya dari yang bersangkutan.¹³

Akan tetapi, perumusan Pasal 66 Undang-Undang Perkawinan menyiratkan bahwa Undang-Undang Perkawinan tidak menghapuskan secara keseluruhan peraturan perundang-undangan perkawinan Hindia-Belanda, dikarenakan ketentuan hukum yang dihapuskan hanyalah ketentuan hukum yang oleh karena telah ada dalam Undang-Undang Perkawinan, peraturan tersebut masalahnya telah diatur. Jadi, mengenai hal-hal yang belum diatur dalam Undang-Undang Perkawinan tersebut masih diberlakukan peraturan perundang-undangan yang lama. Hal ini menunjukkan bahwa tidak berarti semua peraturan perundang-undangan lama mengenai perkawinan hapus sama sekali.

Hal tersebut berbeda dengan Singapura yang mengatur hukum perkawinan dalam dua peraturan hukum, yakni *Women's Charter*¹⁴ dan *Administration of Muslim Law Act*. *Women's Charter* yang diberlakukan sejak tahun 1961 berisikan mengenai hukum keluarga secara keseluruhan yang mengatur warga negara Singapura non-Muslim, sementara itu *Administration of Muslim Law Act* yang

persetujuan para pihak selalu disyaratkan.” Lihat : Sudargo Gautama, *Pengantar Hukum Perdata Internasional*, (Bandung: Binacipta, 1987), hlm. 16.

¹² Wienarsih Imam Subekti dan Sri Soesilowati Mahdi, *Hukum Perorangan dan Kekeluargaan Perdata Barat*, (Jakarta: Gitama Jaya, 2005), hlm. 27.

¹³ Indonesia (a), *op.cit.*, Penjelasan Umum angka 3.

¹⁴ *Women's Charter* pertama kali diberlakukan pada tahun 1961 dan selama perkembangannya mengalami lima kali amandemen (amandemen terakhir pada tahun 2011) oleh Parlemen Singapura (Berdasarkan buletin dari Ministry of Community Development, Youth, and Sports of Singapore). Lihat : “Women (Celebrating Women) : The Women's Charter”, http://app1.mcys.gov.sg/Policies/WomenCelebrating_Women/TheWomensCharter.aspx, diakses pada tanggal 27 Februari 2012.

diberlakukan sejak tahun 1966 mengatur mengenai hukum keluarga bagi warga negara Singapura yang beragama Islam. Selain hal yang telah disebutkan di atas, perbedaan paling mendasar di antara Indonesia dan Singapura adalah sistem hukum yang dianut oleh masing-masing negara. Indonesia yang menganut sistem *Civil Law* memiliki perbedaan dengan Singapura yang menganut sistem *Common Law*, sehingga dapat dikatakan bahwa norma hukum Singapura yang mengatur perkawinan sangat berbeda dengan norma hukum yang mengatur mengenai perkawinan di Indonesia.

Dalam sistem *Common Law*, hukum dimaksudkan keberadaannya untuk mengakhiri atau mengatasi terjadinya benturan kepentingan (aspek *litigious*)¹⁵. Dalam hal ini, hakim memegang peranan penting di dalam menciptakan norma hukum yang berlaku bagi masyarakat sehingga sumber hukum yang utama dalam keluarga hukum ini adalah keputusan hakim atau yurisprudensi, yang kemudian dikembangkan oleh badan peradilan. Dalam keluarga hukum ini berlaku asas preseden yang berarti seorang hakim harus mengikuti keputusan hakim yang terdahulu.¹⁶

Sejarah menyatakan bahwa Singapura ditemukan oleh Sir Thomas Stamford Raffles dari British East India Company di tahun 1819 hingga kemerdekaannya dari Persekutuan Tanah Melayu (*Federation of Malaya*, yang pada tahun 1957 menjadi Malaysia¹⁷) menjadi negara independen di tahun 1965, perkembangan hukum Singapura berhubungan erat dengan Inggris. Undang-Undang tentang Penerapan Hukum Inggris (*The Application Of The English Law Act*) menetapkan bahwa *Common Law* Inggris (termasuk prinsip-prinsip dan aturan-aturan tentang keadilan), sepanjang masih menjadi bagian dari hukum Singapura sebelum 12

¹⁵ Wahyono Darmabrata, *Hukum Perdata Pembahasan Mengenai Asas-Asas Hukum Perdata*, (Jakarta: CV. Jaya Jakarta, 2005), hlm. 26.

¹⁶ *Ibid.*, hlm. 26-27.

¹⁷ Sepanjang tahun 1963-1965, Malaysia pada saat itu terdiri atas *Federation of Malaya*, Singapura, Sarawak, dan Borneo Utara (kemudian menjadi Sabah). Akan tetapi, perlu diingat bahwa semenjak ditandatanganinya *The Constitutional Agreement* pada tanggal 8 Mei 1958 di London, Parlemen Inggris mengesahkan Undang-Undang tentang Negara Singapura (*The State of Singapore Act*) pada tanggal 1 Agustus yang menandai transisi Singapura dari negara koloni menjadi negara yang mengatur dirinya sendiri pada tahun 1959. Oleh karena itu, tidak heran apabila sebelum merdeka, Singapura telah memiliki perangkat sistem hukumnya sendiri, seperti Mahkamah Agung Singapura. Lihat: Attorney-General, "Sistem Hukum Singapura", <http://www.singaporelaw.sg/content/LegalSystIndon.html>, diakses pada tanggal 16 Maret 2012.

November 1993, akan tetap menjadi bagian dari hukum Singapura. *Section 3* dari *The Application Of The English Law Act* menetapkan bahwa bagaimanapun *Common Law* akan tetap berlaku di Singapura sepanjang hal tersebut dapat diterapkan pada keadaan-keadaan di Singapura dan harus dimodifikasi jika keadaan khusus di Singapura mengharuskannya. Kemudian pada *Section 4*, dibaca bersamaan dengan *First Schedule*, menentukan pengundangan peraturan-peraturan Inggris (baik seluruhnya maupun sebagian), dengan modifikasi yang diperlukan, diberlakukan atau terus diberlakukan di Singapura. *Section 7* menetapkan berbagai perubahan pada undang-undang dalam negeri dengan memasukan peraturan hukum Inggris yang relevan.¹⁸ Hal ini menunjukkan bahwa seiring dengan perkembangannya, secara bertahap Singapura mengalami perkembangan sistem hukum yang disesuaikan dengan keadaan masyarakatnya.

Jika dilakukan perbandingan, maka akan sangat menarik membandingkan antara ketentuan-ketentuan hukum perkawinan dalam Undang-Undang Perkawinan dalam sistem hukum nasional Indonesia dengan sistem hukum nasional Singapura yang terdapat dalam *Women's Charter (Amendment) Act No. 2 of 2011* dan *Administration of Muslim Law Act*. Kedua peraturan hukum ini merupakan bagian dari Konstitusi Singapura yang masing-masing secara berurutan tertulis dalam Chapter 353 dan Chapter 12. *Women's Charter* merupakan suatu hasil unifikasi dalam bidang hukum keluarga bagi warganegara Singapura non-Muslim yang selama belum diberlakukannya *Women's Charter* pada tahun 1961, tunduk pada aturan hukum yang berbeda-beda¹⁹. Sebagaimana telah disampaikan oleh Leong Wai Kum dalam bukunya berjudul "Principles of Family Law in Singapore", sebelum diberlakukan *Women's Charter*, berlaku hukum keluarga adat masing-masing seperti *Chinese customary marriage law*, *The Hindu religious marriage law* (dan dengan berbagai variasinya berdasarkan sekte masing-masing seperti *The Sikh religious marriage*

¹⁸ *Ibid.*

¹⁹ Dikemukakan oleh Leong Wai Kum, seorang Professor di Fakultas Hukum di National University of Singapore, secara tegas dan berulang kali dalam bukunya berjudul "Principles of Family Law in Singapore". Lihat : Leong Wai Kum. *Principles of Family Law In Singapore*, ed. 3. (Singapore, Butterworths, 2005).

law), dan *The Jewish marriage law*. Diberlakukannya *Women's Charter* pada tahun 1961 kemudian menyatukan berbagai aturan hukum tersebut dan berlaku hanya kepada setiap warganegara Singapura yang non-Muslim.

Women's Charter bagi warga negara Singapura dianggap memberikan 'warna' baru dalam bidang hukum keluarga dikarenakan beberapa hal. Pertama, selain karena merupakan unifikasi hukum di bidang keluarga, aturan ini diberlakukan pada saat poligami merupakan hal umum yang terjadi meskipun para pihak bukan penganut agama Islam. Kedua, dalam *Women's Charter* diperkenalkan konsep perkawinan sebagai "the equal cooperative partnership of different kinds of efforts for the mutual well-being of the spouses". Hal ini menunjukkan bahwa *Women's Charter* mengandung persamaan hak antara wanita dan pria yang terikat dalam ikatan perkawinan dan untuk pertama kalinya dalam hukum nasional Singapura mengatur hal tersebut²⁰. Dalam rangka menegakan ketentuan hukum yang terdapat dalam *Women's Charter*, *Women's Charter* mengatur pula mengenai lembaga perkawinan bagi pasangan non-Muslim, yaitu Registrar of Marriages, dan juga kewenangan Pengadilan untuk memutus perkara perkawinan yang meliputi antara lain, adopsi dan perceraian.

Sementara itu, *Administration of Muslim Law Act* merupakan satu kesatuan hukum keluarga dalam sistem hukum nasional Singapura bersama dengan *Women's Charter*. *Administration of Muslim Law Act* mengatur mengenai hukum keluarga, termasuk di dalamnya hukum perkawinan, bagi penduduk Singapura yang sebagian besar beragama Islam. *Administration of Muslim Law Act* dalam Part II menyatakan bahwa Majelis Agama Islam ("Majlis Ugama Islam") merupakan lembaga yang bertugas untuk membantu Pemerintah Singapura dalam mengurus masalah penduduk Singapura yang beragama Islam. Selain itu, Part III memperlihatkan bahwa adanya pengadilan tersendiri bagi umat Muslim, yakni Pengadilan Syariah ("The Syariah Court"), yang berwenang menangani di antaranya adalah perkawinan bagi pasangan Muslim. Oleh karena itu, bermula dari permasalahan tersebut, penulis berpendapat bahwa aspek-aspek hukum mengenai perbedaan dan persamaan ketentuan hukum perkawinan terkait akibat

²⁰ "Women's Charter", <http://www.aware.org.sg/research-advocacy/womens-charter/>, diakses pada tanggal 3 Maret 2012.

perkawinan yang meliputi kedudukan suami-istri, kewajiban orangtua terhadap anak, dan harta benda perkawinan di Indonesia dan Singapura merupakan hal yang menarik untuk dibahas.

1.2. Perumusan Masalah

Sehubungan dengan latar belakang yang telah dijabarkan, maka pokok permasalahan yang akan diangkat dalam penelitian ini adalah :

- 1.2.1. Bagaimana ketentuan hukum mengenai akibat perkawinan berdasarkan Undang-Undang Nomor 1 Tahun 1974?
- 1.2.2. Bagaimana ketentuan mengenai akibat perkawinan berdasarkan *Women's Charter* dan *Administration of Muslim Law Act*?
- 1.2.3. Bagaimana perbedaan dan persamaan ketentuan hukum mengenai akibat perkawinan berdasarkan Undang-Undang Nomor 1 Tahun 1974 dengan *Women's Charter* dan *Administration of Muslim Law Act*?

1.3. Tujuan Penelitian

Adapun tujuan dari penelitian ini adalah :

1.3.1. Tujuan Umum

Secara umum, penelitian ini bertujuan untuk memberikan penjelasan mengenai akibat hukum terjadinya perkawinan pada umumnya di Indonesia menurut Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan dan di Singapura menurut *Women's Charter* dan *Administration of Muslim Law Act* demi kemajuan ilmu pengetahuan di bidang hukum perkawinan.

1.3.2. Tujuan Khusus

1. Untuk mengetahui pengaturan ketentuan hukum mengenai akibat perkawinan berdasarkan Undang-Undang Nomor 1 Tahun 1974.
2. Untuk mengetahui mengenai akibat perkawinan berdasarkan *Women's Charter* dan *Administration of Muslim Law Act*.
3. Untuk menemukan perbedaan dan persamaan ketentuan hukum perbedaan dan persamaan ketentuan hukum mengenai akibat

perkawinan berdasarkan Undang-Undang Nomor 1 Tahun 1974 dengan *Women's Charter* dan *Administration of Muslim Law Act*.

1.4. Kerangka Konseptual

Untuk lebih memahami istilah-istilah yang dipergunakan dalam penelitian ini diperlukan batasan operasional. Peristilahan yang digunakan dalam penelitian ini sebagai berikut:

1. Perkawinan adalah ikatan lahir batin antara seorang pria dengan seorang wanita sebagai suami isteri dengan tujuan membentuk keluarga (rumah tangga) yang bahagia dan kekal berdasarkan Ketuhanan Yang Maha Esa.²¹
2. Syarat materiil perkawinan adalah syarat yang mengenai pribadi calon suami-isteri yang akan melangsungkan perkawinan.²²
3. Syarat formil perkawinan adalah syarat mengenai formalitas-formalitas yang harus dipenuhi atau dilakukan pada saat sebelum perkawinan dan saat pelaksanaan perkawinan.²³
4. Perceraian adalah putusannya suatu perkawinan yang sah di depan hakim pengadilan berdasarkan syarat-syarat yang ditentukan Undang-Undang.²⁴
5. Anak adalah seseorang yang belum berusia 18 (delapan belas) tahun, termasuk anak yang masih dalam kandungan.²⁵
6. Orang tua adalah ayah dan/atau ibu kandung, atau ayah dan/atau ibu tiri, atau ayah dan/atau ibu angkat.²⁶

²¹ Indonesia (a). Pasal 1.

²² Wahyono Darmabrata. *Hukum Perkawinan Perdata: Syarat Sahnya Perkawinan, Hak dan Kewajiban Suami-Isteri, dan Harta Benda Perkawinan*, cet. 2. (Jakarta, Rizkita, 2009), hlm. 63.

²³ *Ibid.*, hlm. 64.

²⁴ Martiman Prodjohamidjojo, *Hukum Perkawinan Indonesia*, Cet. Kedua, (Jakarta: Indonesia Legal Center Publishing, 2007), hlm. 39.

²⁵ Indonesia (b). *Undang-Undang Tentang Perlindungan Anak*, UU Nomor 23 Tahun 2002, LN Nomor 109, TLN Nomor 4235, Pasal 1 angka 1.

²⁶ Indonesia (b). Pasal 1 angka 4.

7. Kekuasaan orang tua adalah kekuasaan yang dipegang oleh ayah dan ibu atas anak-anak yang belum dewasa dan belum menikah, untuk mendidik dan memelihara anak-anak yang masih di bawah umur tersebut.²⁷

1.5. Metode Penelitian

Pendekatan yang digunakan dalam penelitian ini adalah Pendekatan Perbandingan (*Comparative Approach*), yaitu membandingkan salah satu peraturan hukum dengan peraturan hukum lainnya yang sejenis dari sistem hukum yang berbeda. Melalui perbandingan tersebut dapat ditemukan unsur-unsur persamaan dan perbedaan dari kedua sistem hukum itu. Unsur-unsur dalam metode penelitian yang digunakan dalam penulisan skripsi ini adalah sebagai berikut :

- a. Bentuk Penelitian

Bentuk penelitian berupa Yuridis Normatif yang dilakukan terhadap norma hukum positif yang tertulis.²⁸

- b. Data

Bentuk penelitian yuridis normatif dibuktikan dengan penggunaan data sekunder, yaitu berupa studi dokumen/kepastakaan terhadap bahan hukum primer, bahan hukum sekunder, dan bahan hukum tersier.²⁹

- c. Bahan hukum

Sumber data hukum sekunder berupa pustaka hukum terbagi kepada, bahan hukum primer, bahan hukum sekunder, bahan hukum tersier. Bahan hukum primer adalah bahan hukum yang mempunyai kekuatan mengikat kepada masyarakat (peraturan perundang-undangan dan putusan pengadilan). Bahan hukum sekunder adalah bahan-bahan yang memberikan informasi atau hal-hal yang berkaitan dengan isi bahan

²⁷ Wahyono Darmabrata, *Asas-asas Hukum Orang dan Keluarga*, (Jakarta: Gitama Jaya, 2004), hlm. 73.

²⁸ Sri Mamudji, et. al., *Metode Penelitian dan Penulisan Hukum*, (Jakarta: Badan Penerbit Fakultas Hukum Universitas Indonesia), hlm 9-11

²⁹ *Ibid.*, hlm. 29-31

hukum primer serta implementasinya (buku dan artikel). Bahan hukum tersier adalah bahan-bahan yang memberikan petunjuk maupun penjelasan terhadap bahan hukum primer atau bahan hukum sekunder (ensiklopedia kamus hukum).³⁰

d. Alat pengumpulan data

Alat pengumpul data sekunder adalah dengan studi dokumen/kepustakaan.

e. Metode analisis

Pendekatan yang digunakan adalah pendekatan kualitatif dimana pendekatan kualitatif menghasilkan data deskriptif analitis, yaitu apa yang dinyatakan oleh sasaran penelitian yang bersangkutan secara tertulis atau lisan, dan perilaku nyata. Yang diteliti dan dipelajari adalah obyek penelitian secara utuh.³¹

f. Sifat penelitian

Penelitian ini bersifat penelitian deskriptif, yaitu memberikan gambaran umum tentang suatu gejala.

g. Tujuan penelitian

Dari segi tujuan, penelitian ini termasuk penelitian *fact finding* yang bermaksud menemukan fakta tentang suatu gejala yang diteliti.

h. Ilmu yang dipergunakan

Ilmu yang dipergunakan dalam penelitian ini adalah mono disipliner, yaitu penelitian yang menggunakan satu disiplin ilmu, yakni disiplin ilmu hukum.

1.6. Sistematika Penulisan

Agar mempermudah penulisan, adapun susunan sistematis dalam penulisan skripsi ini terbagi atas lima bab yang masing-masing berisi topik serta bahasan yang saling terkait antara satu dengan yang lainnya. Masing-masing bab tersebut adalah sebagai berikut :

BAB I : PENDAHULUAN

³⁰ *Ibid.*, hlm. 30-31.

³¹ *Ibid.*, hlm. 67.

Dalam bab ini berisi tentang penjelasan mengenai Latar Belakang, Perumusan Permasalahan, Tujuan Penelitian, Kerangka Konsepsional, Metode Penelitian, dan Sistematika Penelitian.

BAB II : HUKUM PERKAWINAN INDONESIA BERDASARKAN UNDANG-UNDANG NOMOR 1 TAHUN 1974 TENTANG PERKAWINAN

Dalam bab ini berisi tentang beberapa landasan teori yang menjelaskan mengenai pengertian perkawinan, syarat perkawinan, dan akibat terjadinya perkawinan menurut hukum nasional positif Indonesia, yaitu Undang-Undang No. 1 Tahun 1974 tentang Perkawinan.

BAB III : HUKUM PERKAWINAN SINGAPURA BERDASARKAN *WOMEN'S CHARTER* DAN *ADMINISTRATION OF MUSLIM LAW ACT*

Bab ini berisi tentang beberapa landasan teori yang menjelaskan mengenai pengertian perkawinan, syarat perkawinan, dan akibat perkawinan menurut hukum nasional positif Singapore, yaitu *Women's Charter (Amendment) Act No. 2 of 2011* dan *Administration of Muslim Law Act* yang masing-masing secara berurutan tertulis dalam Konstitusi Singapura dalam Chapter 353 dan Chapter 12.

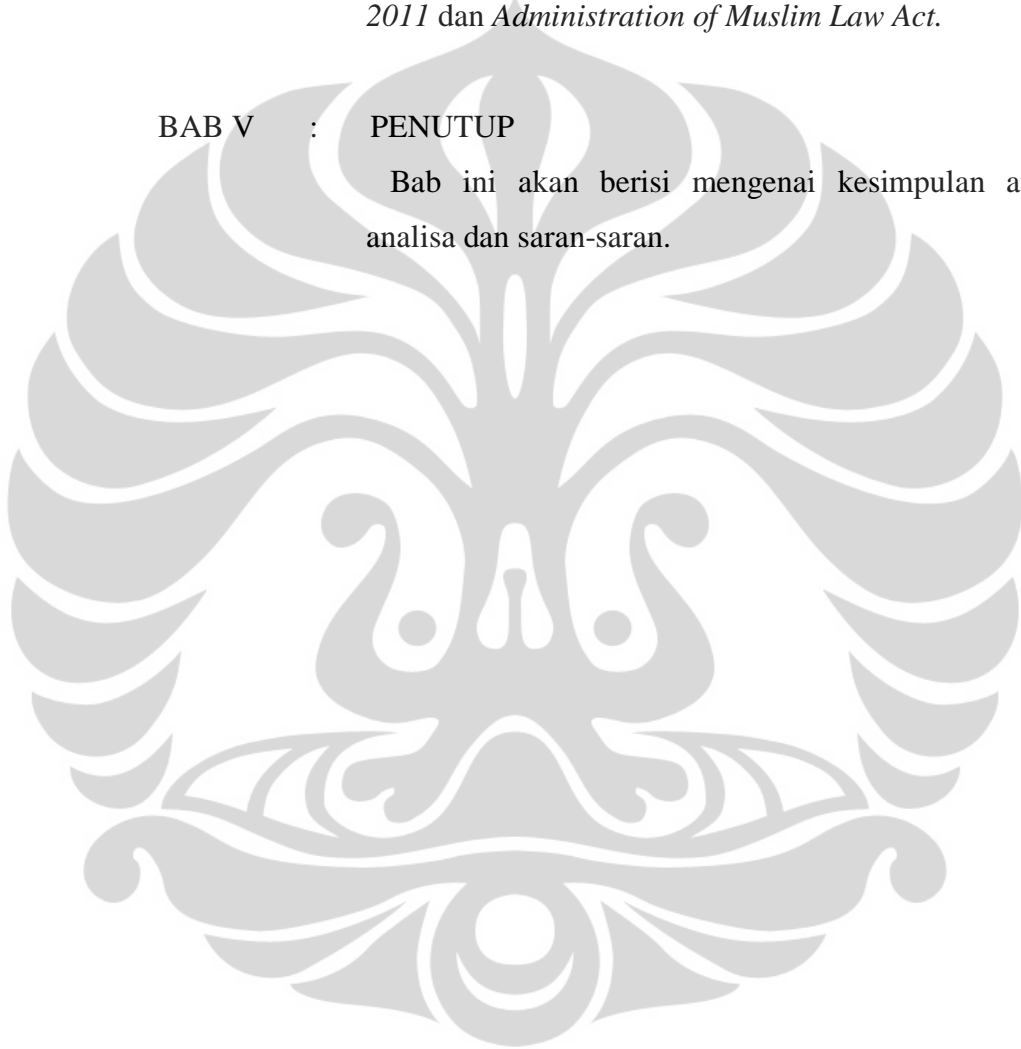
BAB IV : ANALISIS PERBANDINGAN PENGATURAN MENGENAI AKIBAT PERKAWINAN MENURUT UNDANG-UNDANG NOMOR 1 TAHUN 1974 TENTANG PERKAWINAN DAN *WOMEN'S*

*CHARTER DAN ADMINISTRATION OF MUSLIM
LAW ACT*

Bab ini membahas mengenai perbandingan akibat hukum terjadinya perkawinan antara Undang-Undang No. 1 Tahun 1974 tentang Perkawinan dengan *Women's Charter (Amendment) Act No. 2 of 2011* dan *Administration of Muslim Law Act*.

BAB V : PENUTUP

Bab ini akan berisi mengenai kesimpulan atas analisa dan saran-saran.



BAB II
HUKUM PERKAWINAN DAN AKIBAT HUKUM PERKAWINAN
INDONESIA BERDASARKAN UNDANG-UNDANG NOMOR 1 TAHUN
1974 TENTANG PERKAWINAN

2.1. Pengertian Perkawinan

UU Perkawinan mendefinisikan Perkawinan sebagai *ikatan lahir batin antara seorang pria dengan seorang wanita sebagai suami istri yang bertujuan membentuk keluarga atau rumah tangga yang bahagia dan kekal berdasarkan Ketuhanan Yang Maha Esa* yang terumuskan dalam Pasal 1. Apabila diperhatikan dari rumusan diatas dapat dikemukakan bahwa terdapat unsur-unsur suatu perkawinan³², yakni adalah sebagai berikut:

- a. Ikatan lahir dan batin;
- b. Ikatan antara seorang pria dengan seorang wanita sebagai suami istri;
- c. Bertujuan untuk membentuk keluarga (rumah tangga) yang kekal dan bahagia;
- d. Berdasarkan Ketuhanan Yang Maha Esa.

Ad. A. Ikatan lahir dan batin

Ikatan lahir merupakan ikatan yang terlihat yang mengungkapkan adanya hubungan hukum antara seorang pria dan seorang wanita untuk hidup bersama sebagai suami istri dalam suatu lembaga perkawinan. Ikatan lahir ini merupakan hubungan formal yang sifatnya nyata, baik bagi yang mengikatkan dirinya maupun bagi orang lain atau masyarakat.³³ Sementara itu, ikatan batin merupakan hubungan non-formal, yang dapat digambarkan sebagai suatu pertalian jiwa yang terjalin karena adanya kemauan yang sama dan ikhlas antara seorang pria dan seorang wanita untuk hidup bersama sebagai suami istri, atau yang dalam ketentuan UU Perkawinan disebut sebagai persetujuan para pihak sebagai simbol dari ikatan batin yang dimaksudkan dalam pengertian perkawinan. Dalam tahapan menjelang terjadinya perkawinan, ikatan batin diperlukan sebagai tahapan awal

³² Wienarsih Imam Subekti dan Sri Soesilowati Mahdi, *op.cit.*, hlm. 26.

³³ Wantjik Saleh, *Hukum Perkawinan Indonesia*, cet. 4, (Jakarta: Ghalia Indonesia, 1976), hlm. 14-15.

ditandai dengan adanya persetujuan dari calon mempelai, kemudian dilanjutkan dengan ikatan lahir saat perkawinan dilangsungkan. Adanya kedua ikatan ini menjadi salah satu unsur pengertian perkawinan memperlihatkan bahwa tujuan perkawinan tidak dapat dicapai hanya melalui aspek lahiriah saja, tetapi juga membutuhkan persatuan batin antara suami istri yang ditujukan untuk membina suatu keluarga atau rumah tangga yang kekal dan bahagia bagi keduanya, serta sesuai dengan kehendak Tuhan Yang Maha Esa.

Ad. B. Ikatan antara seorang pria dengan seorang wanita sebagai suami istri

Rumusan Pasal 1 UU Perkawinan menyatakan bahwa perkawinan berlangsung antara seorang pria dengan seorang wanita sebagai suami istri. Hal ini menunjukkan dua hal, yakni UU Perkawinan tidak mengenal perkawinan sesama jenis dan UU Perkawinan menganut asas monogami. Pasal 1 UU Perkawinan menyatakan dengan jelas jenis kelamin dari para pihak yang terikat dalam perkawinan, yaitu antara pria dan wanita, maka dengan demikian tidak dimungkinkan dilangsungkannya perkawinan sesama jenis di Indonesia (antara pria dengan pria atau wanita dengan wanita) disebabkan peraturan hukum nasional Indonesia (UU Perkawinan) tidak mengenal perkawinan sesama jenis. Di sisi lain, berkaitan dengan asas monogami yang dianut oleh UU Perkawinan, seorang suami diperbolehkan beristri lebih dari satu orang, hanya apabila hukum dan agamanya mengizinkan hal tersebut dengan memenuhi persyaratan tertentu dan diputuskan oleh Pengadilan.³⁴ Hal ini menunjukkan bahwa asas monogami yang dianut oleh UU Perkawinan tidaklah berlaku mutlak. Namun, perkawinan seorang suami dengan lebih dari seorang istri, meskipun hal itu dikehendaki oleh pihak-pihak yang bersangkutan, hanya dapat dilakukan apabila dipenuhi berbagai persyaratan tertentu dan diputuskan oleh Pengadilan.

Syarat-syarat yang dimaksud diatur dalam Pasal 4 dan Pasal 5 ayat (1) UU Perkawinan, yang secara singkat dapat dijabarkan sebagai berikut:

1. Pasal 4 ayat (1) : Apabila seorang suami akan beristri lebih dari seorang, maka diwajibkan mengajukan permohonan kepada Pengadilan di daerah tempat tinggalnya;

³⁴ Indonesia (a), *op.cit.*, Penjelasan Umum angka 4 butir c.

2. Pasal 4 ayat (2) : Pengadilan hanya memberikan izin kepada seorang suami yang akan beristri lebih dari seorang apabila:
 - a. Istri tidak dapat menjalankan kewajiban sebagai istri;
 - b. Istri mendapat cacat badan atau penyakit yang tidak dapat disembuhkan;
 - c. Istri tidak dapat melahirkan keturunan.;
3. Pasal 5 ayat (1) : Pengajuan permohonan kepada Pengadilan untuk mendapatkan izin yang dimaksud dalam Pasal 4 harus memenuhi ketentuan sebagai berikut :
 - a. Mendapatkan persetujuan dari istri-istri terdahulu;
 - b. Adanya kepastian bahwa suami mampu menjamin keperluan-keperluan hidup istri-istri dan anak-anak mereka;
 - c. Adanya jaminan bahwa suami akan berlaku adil terhadap istri-istri dan anak-anak mereka.

Ad. C. Bertujuan untuk membentuk keluarga (rumah tangga) yang kekal dan bahagia

Sejatinya, tujuan perkawinan untuk membentuk keluarga yang kekal dan bahagia akan tercapai apabila suami istri saling mencintai, menghormati, dan setia. Selain itu, sebuah keluarga inti minimal terdiri atas ayah, ibu, dan anak. Maka, kehadiran keturunan dalam perkawinan merupakan sebuah unsur yang diperlukan untuk mencapai tujuan perkawinan, yakni membentuk keluarga. Pihak suami istri tidak diperkenankan membatasi perkawinan mereka dengan mengadakan perjanjian perkawinan untuk tidak memiliki keturunan selama ikatan perkawinan berlangsung. Namun, apabila ketidakhadiran seorang anak disebabkan karena kemandulan, hal ini tidak membenarkan terjadinya perceraian untuk menikah dan memiliki anak atau menikah kembali saat perkawinan berlangsung.

Perkawinan dimaksudkan untuk berlangsung selamanya, seumur hidup, dan hanya terputus karena adanya kematian, maka UU Perkawinan menganut prinsip untuk mempersukar terjadinya perceraian yang diputuskan oleh

Pengadilan. Untuk memungkinkan perceraian, maka harus ada sebab-sebab tertentu yang masuk akal.

Ad. D. Berdasarkan Ketuhanan Yang Maha Esa

Sebagaimana Penjelasan Pasal 1 UU Perkawinan menyebutkan bahwa sebagai negara yang berdasarkan Pancasila, dimana sila yang pertama adalah Ketuhanan Yang Maha Esa, maka perkawinan mempunyai hubungan yang erat sekali dengan agama/kerohanian, sehingga perkawinan bukan saja mempunyai unsur lahir/jasmani, tetapi unsur batin/rohani juga mempunyai peranan yang penting. Hal ini menyiratkan arti bahwa norma hukum masing-masing agama dan kepercayaan harus dipertimbangkan saat hendak melangsungkan perkawinan. Unsur agama dan kepercayaan di dalam UU Perkawinan tersebut tercermin dalam :

1. Pasal 1 : *“Perkawinan ialah ikatan lahir bathin antara seorang pria dengan seorang wanita sebagai suami istri dengan tujuan membentuk keluarga (rumah tangga) yang bahagia dan kekal berdasarkan Ketuhanan Yang Maha Esa.”*
2. Pasal 2 ayat (1) : *“Perkawinan adalah sah, apabila dilakukan menurut hukum masing-masing agamanya dan kepercayaannya itu.”*
3. Pasal 8 huruf f : *“Perkawinan dilarang antara dua orang yang ... (f) mempunyai hubungan yang oleh agamanya atau peraturan lain yang berlaku, dilarang kawin.”*
4. Pasal 10 : *“Apabila suami dan istri yang telah cerai kawin lagi satu dengan yang lain dan bercerai lagi untuk kedua kalinya, maka diantara mereka tidak boleh dilangsungkan perkawinan lagi, sepanjang hukum masing-masing agamanya dan kepercayaannya itu dari yang bersangkutan tidak menentukan lain.”*
5. Pasal 29 ayat (2) : *“Perjanjian tersebut tidak dapat disahkan bilamana melanggar batas-batas hukum, agama dan kesusilaan.”*
6. Pasal 51 ayat (3) : *“Wali wajib mengurus anak yang dibawah penguasaannya dan harta bendanya sebaik-baiknya, dengan menghormati agama dan kepercayaan anak itu.”*

Selain unsur-unsur yang telah disebutkan di atas, Undang-Undang Perkawinan memiliki prinsip-prinsip lain yang terkandung dalam ketentuan-ketentuan hukum di dalamnya, yakni sebagai berikut:

- a. Di samping suatu perkawinan adalah sah jika dilakukan menurut hukum masing-masing agamanya dan kepercayaannya, tiap-tiap perkawinan harus dicatat menurut peraturan perundang-undangan yang berlaku. Pencatatan perkawinan merupakan hal yang sama pentingnya dengan peristiwa-peristiwa hukum lain dalam kehidupan seseorang, seperti kelahiran dan kematian yang perlu dinyatakan dalam surat-surat keterangan (suatu akte resmi yang juga dimuat dalam pencatatan).
- b. Kedua calon mempelai suami istri yang akan melangsungkan perkawinan harus telah masak jiwa raganya untuk dapat melangsungkan perkawinan, agar dapat mewujudkan tujuan perkawinan secara baik tanpa berakhir pada perceraian dan mendapat keturunan yang baik dan sehat. Oleh karenanya, untuk mencegah adanya perkawinan antara calon suami istri yang masih dibawah umur, Undang-Undang Perkawinan telah menetapkan batas usia minimal seseorang dapat melangsungkan perkawinan. Selain itu, perkawinan berkaitan erat dengan masalah kependudukan, dimana apabila batas umur ditetapkan lebih rendah atau berlangsungnya suatu perkawinan di usia dini, maka hal ini akan mengakibatkan laju kelahiran yang lebih tinggi.
- c. Hak dan kedudukan istri adalah seimbang dengan hak dan kedudukan suami baik dalam kehidupan rumah tangga, maupun dalam pergaulan masyarakat, dengan demikian segala sesuatu dalam keluarga dapat dirundingkan dan diputuskan bersama oleh suami-istri.

2.2. Syarat-Syarat Perkawinan

Suatu perkawinan yang dilangsungkan dianggap sah menurut hukum perkawinan nasional Indonesia apabila memenuhi syarat materiil dan syarat formil sebagaimana ketentuan-ketentuan persyaratan tersebut diatur dalam Undang-Undang Perkawinan.

2.2.1. Syarat Materiil

Syarat materiil merupakan syarat yang menyangkut diri pribadi calon suami istri. Syarat ini berlaku untuk semua perkawinan, yang mutlak harus dipenuhi oleh para pihak yang bersangkutan sebelum melangsungkan perkawinan. Sebagai konsekuensi dari tidak terpenuhinya syarat materiil ini, maka para pihak tidak dapat melangsungkan perkawinan. Lebih lanjut, syarat materiil terbagi atas syarat materiil umum (yang berlaku pada perkawinan pada umumnya) dan syarat materiil khusus (yang berlaku pada perkawinan tertentu). Ketentuan persyaratan sebagaimana yang dimaksud diatur dalam Bab II mengenai Syarat-Syarat Perkawinan, Pasal 6 - 12 Undang-Undang Perkawinan.

Syarat Materiil Umum

1. Adanya Persetujuan Kedua Calon Mempelai.

Pasal 6 ayat (1) Undang-Undang Perkawinan menyatakan: “Perkawinan harus didasarkan atas persetujuan kedua calon mempelai.”³⁵ Berikutnya pada penjelasan pasal yang bersangkutan disebutkan bahwa persetujuan dari kedua belah pihak calon mempelai diperlukan dalam rangka untuk mencapai tujuan perkawinan, yakni membentuk keluarga yang kekal dan bahagia, dan sesuai dengan hak asasi manusia.

2. Batas usia minimum bagi calon mempelai untuk melangsungkan perkawinan adalah; pria sudah mencapai 19 tahun dan calon mempelai wanita sudah mencapai 16 tahun.

Pasal 7 ayat (1) Undang-Undang Perkawinan menyatakan: “Perkawinan hanya boleh diizinkan jika pihak pria sudah mencapai umur 19 tahun dan pihak wanita sudah mencapai umur 16 tahun.”³⁶ Adanya ketentuan pembatasan umur minimum bagi calon mempelai dimaksudkan agar calon suami istri yang akan melangsungkan perkawinan sudah matang jiwa raganya, sehingga kemudian dapat membina rumah tangga dengan sebaik-baiknya serta mendapat keturunan

³⁵ Indonesia (a), *Ibid.*, Pasal 6 ayat (1).

³⁶ Indonesia (a), *Ibid.*, Pasal 7 ayat (1).

yang baik dan sehat. Selain itu, pembatasan umur minimum berkaitan erat dengan upaya untuk mengendalikan angka kelahiran yang semakin tinggi apabila perkawinan di usia muda semakin kerap terjadi. Penyimpangan terhadap ketentuan ini hanya dimungkinkan dengan meminta dispensasi kepada Pengadilan, atau pejabat lain yang ditunjuk oleh kedua orang tua pihak pria maupun pihak wanita.³⁷

3. *Tidak berada dalam ikatan perkawinan dengan pihak lain.*

Sebagaimana Undang-Undang Perkawinan pada prinsipnya menganut asas monogami meskipun tidak mutlak, Pasal 9 Undang-Undang Perkawinan merupakan cerminan dari prinsip yang dianut oleh Undang-Undang Perkawinan. Pasal 9 Undang-Undang Perkawinan menyatakan: “Seorang yang masih terikat tali perkawinan dengan orang lain tidak dapat kawin lagi, kecuali dalam hal yang tersebut pada Pasal 3 ayat (2) dan Pasal 4 Undang-Undang ini.”³⁸ Pengecualian yang dimaksud oleh Pasal 3 ayat (2) Undang-Undang Perkawinan adalah izin baru dapat diberikan oleh Pengadilan apabila dikehendaki oleh pihak-pihak yang bersangkutan yang dimaksudkan dalam Undang-Undang Perkawinan.

Sebagaimana yang dinyatakan dalam Penjelasan Umum Undang-Undang Perkawinan angka 4 butir c, poligami yang diperkenankan menurut Undang-Undang Perkawinan hanya diperuntukan bagi pihak-pihak yang berdasarkan hukum dan agama pihak yang bersangkutan mengizinkan seorang suami beristri lebih dari seorang.

4. *Berlaku waktu tunggu bagi pihak wanita yang putus perkawinan.*

Pemberlakuan waktu tunggu atau “iddah” dimaksudkan untuk menghindari terjadinya percampuran benih (*confusio sanguinis*). Berdasarkan Pasal 11 ayat (1) Undang-Undang Perkawinan, maka bagi pihak perempuan yang telah putus dari perkawinan sebelumnya tidak dapat langsung melangsungkan perkawinan,

³⁷ Indonesia (a), *Ibid.*, Pasal 7 ayat (2).

³⁸ Indonesia (a), *Ibid.*, Pasal 9.

kecuali telah melewati waktu tunggu. Pengaturan lebih lanjut mengenai waktu tunggu yang berlaku diatur dalam Pasal 39 PP Perkawinan, sebagai berikut³⁹:

- (1) Waktu tunggu bagi seorang janda sebagaimana dimaksud dalam Pasal 11 ayat (2) Undang-Undang Perkawinan ditentukan sebagai berikut:
 - a. Apabila perkawinan putus karena kematian, waktu tunggu ditetapkan 130 (seratus tiga puluh) hari;
 - b. Apabila perkawinan putus karena perceraian, waktu tunggu bagi yang masih berdatang bulan ditetapkan 3 (tiga) kali masa suci dengan sekurang-kurangnya 90 (sembilan puluh) hari dan bagi yang tidak berdatang bulan ditetapkan 90 (sembilan puluh) hari;
 - c. Apabila perkawinan putus sedangkan janda tersebut dalam keadaan hamil, waktu tunggu ditetapkan sampai melahirkan.
 - (2) Tidak ada waktu tunggu bagi janda yang putus perkawinan karena perceraian sedangkan antara janda tersebut dengan bekas suaminya belum pernah terjadi hubungan kelamin.
 - (3) Bagi perkawinan yang putus karena perceraian tenggang waktu tunggu dihitung sejak jatuhnya putusan Pengadilan yang mempunyai kekuatan hukum yang tetap sedangkan bagi perkawinan yang putus karena kematian tenggang waktu tunggu dihitung sejak kematian suami.
5. *Bagi suami istri yang telah bercerai lalu kawin lagi satu sama lain dan bercerai lagi untuk kedua kalinya, tidak boleh kawin ketiga kalinya, kecuali agama dan kepercayaan mereka tidak melarangnya.*

Pasal 10 Undang-Undang Perkawinan menyatakan : “Apabila suami dan istri yang telah cerai kawin lagi satu dengan yang lain dan bercerai lagi untuk kedua kalinya, maka diantara mereka tidak boleh dilangsungkan perkawinan lagi, sepanjang hukum masing-masing agama dan kepercayaan itu dari yang bersangkutan tidak menentukan lain.” Hal ini dimaksudkan agar suami-istri mempertimbangkan secara matang sebelum mengakhiri perkawinan melalui

³⁹ Indonesia (c), *Peraturan Pemerintah Tentang Pelaksanaan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan*, PP Nomor 9 Tahun 1975, LN Nomor 12, TLN Nomor 3050, Pasal 39.

perceraian, demi terbentuknya keluarga yang kekal, sebagaimana dijelaskan dalam Penjelasan Pasal 10 Undang-Undang Perkawinan.

Syarat Materiil Khusus

1. *Adanya izin kedua orang tua/wali bagi calon mempelai yang belum berusia 21 tahun.*

Pasal 6 ayat (2) disebutkan bahwa: “Untuk melangsungkan perkawinan seseorang yang belum mencapai 21 tahun harus mendapat izin kedua orang tua.” Izin diperlukan bagi calon mempelai yang belum berumur 21 tahun. Izin harus dibedakan dengan keharusan adanya wali nikah bagi mereka yang beragama Islam. Izin ini hanya diperlukan selama calon suami istri belum berumur 21 tahun, sedangkan wali nikah selamanya diperlukan bagi mempelai perempuan yang beragama Islam.⁴⁰

2. *Larangan perkawinan bagi calon mempelai yang memiliki hubungan darah, hubungan persusuan, dan oleh hukum agama dan kepercayaannya dilarang untuk kawin.*

Ketentuan lebih lanjut mengenai larangan perkawinan diatur dalam Pasal 8 Undang-Undang Perkawinan, yakni sebagai berikut:

- a. Hubungan darah dalam garis keturunan lurus ke bawah atau ke atas;
- b. Berhubungan darah dalam garis keturunan menyamping yaitu antara saudara, antara seorang dengan saudara orang tua, dan antara seorang dengan saudara neneknya;
- c. Berhubungan semenda, yaitu mertua, anak tiri, menantu dan ibu/bapak tiri;
- d. Berhubungan susuan, yaitu orang tua sesusuan, anak susuan, saudara susuan, dan bibi/paman susuan;
- e. Berhubungan saudara dengan istri atau sebagai bibi atau kemenakan dari istri, dalam hal seorang suami beristri lebih dari seorang;
- f. Mempunyai hubungan yang oleh agamanya atau peraturan lain yang berlaku dilarang kawin.

⁴⁰ Akhmad Budi Cahyono dan Surini Ahlan Sjarif, *Mengenal Hukum Perdata*, cet. 1, (Jakarta: CV. Gitama Jaya, 2008), hlm. 48.

2.2.2. Syarat Formil

Syarat formil merupakan syarat yang menyangkut formalitas atau prosedur yang harus diikuti oleh calon suami istri baik sebelum maupun sesudah melangsungkan perkawinan. Syarat formil ini berlaku bagi calon mempelai Muslim maupun Non-Muslim. Ketentuan persyaratan sebagaimana yang dimaksud diatur dalam Peraturan Pemerintah Tentang Pelaksanaan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Nomor 9 Tahun 1975.

Syarat Formil Sebelum Perkawinan Dilangsungkan, terdiri atas⁴¹ :

1. Pemberitahuan. Kedua mempelai memberitahu mengenai kehendak akan melangsungkan perkawinan kepada Pegawai Pencatat Nikah di tempat perkawinan tersebut akan dilangsungkan (Pegawai KUA bagi yang beragama Islam dan Pegawai Catatan Sipil bagi yang beragama Non-Islam) yang sekurang-kurangnya 10 hari kerja sebelum perkawinan dilangsungkan.

Dasar hukum : Pasal 3 ayat (1) dan ayat (2).

2. Pemberitahuan harus dilengkapi dengan surat-surat pembuktian yang diperlukan sesuai dengan syarat-syarat yang ditentukan oleh undang-undang untuk pelaksanaan perkawinan.

Dasar hukum : Pasal 6.

3. Pengumuman. Pejabat yang berwenang mengumumkan rencana perkawinan itu di tempat yang semestinya.

Dasar hukum : Pasal 9.

Syarat Formil Pada Saat Perkawinan Dilangsungkan, terdiri atas⁴² :

1. Pelaksanaan perkawinan baru dapat dilaksanakan setelah 10 hari terhitung dari tanggal pengumuman.

Dasar hukum : Pasal 10 ayat (1).

2. Perkawinan dilaksanakan menurut aturan atau tata cara agama kepercayaan yang dianut oleh mempelai.

⁴¹ *Ibid.*, hlm. 49.

⁴² *Ibid.*

Dasar hukum : Pasal 10 ayat (2).

3. Perkawinan dilangsungkan oleh atau dilakukan dihadapan pegawai pencatat nikah (Pegawai KUA bagi yang beragama Islam dan Pegawai Catatan Sipil bagi yang beragama Non-Muslim).

Dasar hukum : Pasal 10 ayat (3).

4. Perkawinan harus dihadiri oleh 2 (dua) orang saksi.

Dasar hukum : Pasal 10 ayat (3).

5. Setelah perkawinan selesai, maka mempelai, saksi, pegawai pencatat nikah, dan wali (bagi yang beragama Islam) melakukan penandatanganan akta perkawinan.

Dasar hukum : Pasal 11.

2.3. Pencatatan Perkawinan

Pencatatan perkawinan merupakan bagian dari syarat formil yang harus dipenuhi oleh pasangan suami istri yang telah melangsungkan perkawinan. Dalam hal ini, selain Peraturan Pemerintah Nomor 9 Tahun 1975, Undang-Undang Nomor 23 Tahun 2006 tentang Administrasi Kependudukan memiliki ketentuan hukum di dalamnya yang mengatur mengenai pencatatan perkawinan. Pencatatan perkawinan yang diatur dalam Undang-Undang Nomor 23 Tahun 2006 tidak hanya mengatur mengenai pencatatan perkawinan dalam negeri, tetapi juga pencatatan perkawinan atas perkawinan yang dilangsungkan di luar negeri.

Sejak diberlakukannya Undang-Undang Nomor 23 Tahun 2006, berdasarkan Pasal 106, ketentuan pencatatan perkawinan yang terdapat dalam berbagai peraturan hukum lama dinyatakan dicabut dan tidak berlaku. Adapun peraturan-peraturan hukum lama mengenai pencatatan perkawinan yang telah dicabut dan dinyatakan tidak berlaku adalah sebagai berikut :

- Buku Kesatu Bab Kedua Bagian Kedua dan Bab Ketiga Kitab Undang-Undang Hukum Perdata.
- Peraturan Pencatatan Sipil untuk Golongan Eropa (*Reglement op het Holden der Registers van den Burgerlyken Stand voor Europeanen, Staatsblad 1849: 25* sebagaimana telah diubah terakhir dengan *Staatsblad 1946: 1361*).

- Peraturan Pencatatan Sipil untuk Golongan Cina (*Bepalingen voor Geheel Indonesie Betreffende het Burgerlijken Handelsrecht van de Chinezean. Staatsblad 1917: 129 jo. Staatsblad 1939: 288* sebagaimana diubah terakhir dengan Staatsblad 1946: 136).
- Peraturan Pencatatan Sipil untuk Golongan Indonesia (*Reglement op het Holden van de Registres van de Burgerlijken Stand Door Eegnigle Groepen v.d nit tot de Onderhoringer van een Zelfbestuur, behoorende Ind. Bevolking van Java en Madura, Staatsblad 1920: 751 jo. Staatsblad 1927: 564*).
- Peraturan Pencatatan Sipil untuk Golongan Kristen Indonesia (*Huwelijksordonantie voor Christenen Indonesiers Java, Minahasa en Amboiena, Staatsblad 1933: 74 jo. Staatsblad 1936: 607* sebagaimana diubah terakhir dengan Staatsblad 1939: 288)
- Undang-Undang Nomor 4 Tahun 1961 tentang Perubahan atau Penambahan Nama Keluarga (LN Nomor 15, TLN Nomor 2154).

Sementara itu, suatu perkawinan berdasarkan hukum perkawinan Indonesia tidak hanya berlaku bagi perkawinan yang dilangsungkan di Indonesia, tetapi juga berlaku bagi warga negara Indonesia yang melangsungkan perkawinan di luar negeri berkenaan dengan berlakunya hukum nasional berdasarkan asas personalitas. Oleh karenanya, selain syarat materil yang harus dipenuhi oleh pasangan suami istri tersebut sebelum hendak melakukan perkawinan, syarat formil berupa prosedur juga harus dipenuhi. Akan tetapi, apabila perkawinan dilangsungkan di luar negeri dan karena adanya sebab-sebab tertentu yang menyulitkan pasangan tersebut untuk kembali ke Indonesia dalam rangka pemberitahuan kehendak untuk melangsungkan perkawinan dan pencatatan perkawinan untuk memenuhi syarat formil perkawinan, peraturan perundang-undangan telah mengakomodir kesulitan tersebut dengan mengeluarkan peraturan tersendiri bagi perkawinan yang dilangsungkan di luar negeri.

Menurut Peraturan Menteri Dalam Negeri Nomor 12 Tahun 2010 tentang Pedoman Pencatatan Perkawinan Dan Pelaporan Akta Yang Diterbitkan Oleh

Negara Lain, ruang lingkup dari pencatatan perkawinan dan pelaporan akta pencatatan sipil yang diterbitkan oleh negara lain meliputi :

- Perkawinan yang melampaui batas waktu⁴³;
- Perkawinan yang ditetapkan pengadilan;
- Perkawinan Warga Negara Asing; dan
- Akta yang diterbitkan oleh negara lain.

Sebagaimana Pasal 56 Undang-Undang Nomor 1 Tahun 1974 dan Pasal 37 Undang-Undang Nomor 23 Tahun 2006 menyatakan, perkawinan yang dilangsungkan oleh warga negara Indonesia atau salah satu pasangannya adalah warga negara asing yang dilaksanakan di luar negeri wajib dicatatkan pada instansi yang berwenang di negara setempat dan dilaporkan pada perwakilan Republik Indonesia. Selanjutnya, dalam waktu paling lambat 30 hari sejak yang bersangkutan kembali ke Indonesia, maka harus dilaporkan kepada Dinas Kependudukan dan Pencatatan Sipil sesuai dengan domisili yang bersangkutan. Ketentuan jangka waktu sebanyak 30 hari dalam Pasal 37 Undang-Undang Nomor 23 Tahun 2006 menggantikan ketentuan jangka waktu dalam Pasal 56 Undang-Undang Nomor 1 Tahun 1974 yakni 1 tahun.

Adapun persyaratan yang harus dipenuhi untuk pelaporan perkawinan yang dilaksanakan di luar negeri pada Dinas Kependudukan dan Pencatatan Sipil adalah sebagai berikut :

- Bukti pengesahan perkawinan di luar Indonesia;
- Kutipan Akte Kelahiran;
- Kartu Keluarga dan Kartu Tanda Penduduk;
- Kutipan Akte Perceraian atau Kutipan Akte Kematian Suami/Istri bagi mereka yang pernah melangsungkan perkawinan sebelumnya;
- Pasport kedua mempelai; dan
- Pasfoto berdampingan berukuran 4x6 sebanyak 4 lembar.

⁴³ Yang dimaksud dengan “pelaporan perkawinan melampaui batas waktu” adalah pelaporan perkawinan yang sah berdasarkan peraturan perundang-undangan yang melampaui 60 (enam puluh) hari sejak tanggal perkawinan. Lihat : Indonesia (d), *Peraturan Menteri Dalam Negeri Nomor 12 Tahun 2010 tentang Pedoman Pencatatan Perkawinan Dan Pelaporan Akta Yang Diterbitkan Oleh Negara Lain*, Permendagri Nomor 12 Tahun 2010, Pasal 2.

2.4. Akibat Hukum Terjadinya Perkawinan

Perkawinan merupakan suatu peristiwa hukum yang membentuk suatu hubungan hukum dan memberikan akibat hukum bagi para pihak yang terikat, yakni pihak suami, istri, anak, dan juga harta benda.

2.4.1. Akibat Hukum Terhadap Hubungan Suami Istri Itu Sendiri

Perkawinan membuat seorang laki-laki memperoleh hak dan kewajibannya sebagai seorang suami dalam keluarga tersebut dan juga bagi wanita yang mengikatkan diri dalam suatu perkawinan, maka wanita tersebut memperoleh hak dan kewajibannya sebagai seorang istri dalam keluarga tersebut.

Hak dan kewajiban antara suami istri tersebut diatur dalam Pasal 30-34 Undang-Undang Nomor 1 Tahun 1974⁴⁴ sebagai berikut :

1. *Menegakkan rumah tangga.*

Suami istri memikul kewajiban yang luhur untuk menegakkan rumah tangga yang menjadi sendi dasar dari susunan masyarakat, sesuai dengan tujuan perkawinan yang diatur dalam Pasal 1 Undang-Undang Nomor 1 Tahun 1974, guna tercapainya sebuah keluarga yang harmonis, sehingga tingkah laku suami istri tersebut dapat menjadi teladan bagi anak-anaknya dan masyarakat sekelilingnya.

Dasar hukum: Pasal 30 Undang-Undang Nomor 1 Tahun 1974.

2. *Hak dan kedudukan suami istri adalah seimbang dalam rumah tangga.*

Hak dan kedudukan suami istri yang seimbang ini berlaku dalam kehidupan rumah tangga dan pergaulan hidup bersama dalam masyarakat. Selain itu, baik suami maupun istri, kedua pihak sama-sama cakap dalam melakukan tindakan hukum sendiri, dan sebagai konsekuensinya dapat pula dimintai pertanggungjawaban terhadap rumah tangga dan keluarganya.

Dasar hukum : Pasal 31 ayat (1) dan ayat (2) Undang-Undang Nomor 1 Tahun 1974.

⁴⁴ Wienarsih Imam Subekti dan Sri Soesilowati Mahdi, *op.cit.*, hlm. 80.

3. *Suami sebagai kepala rumah tangga, istri adalah ibu rumah tangga.*

Meskipun hak dan kedudukan suami istri adalah seimbang, keduanya merupakan komponen yang sama pentingnya dalam menjalankan fungsi keluarga, dan oleh karenanya terdapat pembagian tugas antara suami istri sesuai kodratnya, dimana suami berperan sebagai kepala rumah tangga dan istri sebagai ibu rumah tangga.

Dasar hukum : Pasal 31 ayat (3) Undang-Undang Nomor 1 Tahun 1974.

4. *Suami istri harus mempunyai tempat tinggal (domisili).*

Suami istri harus tinggal bersama-sama dalam satu rumah, agar dapat membina anak-anak dan menghindari kemungkinan-kemungkinan yang membuat para pihak curiga sehingga menimbulkan keretakan keluarga. Penentuan tempat tinggal ini ditentukan oleh suami istri bersama sebagaimana diatur dalam Pasal 32 ayat (2) Undang-Undang Nomor 1 Tahun 1974.

Dasar hukum : Pasal 32 Undang-Undang Nomor 1 Tahun 1974.

5. *Saling mencintai, saling hormat-menghormati, setia, dan memberikan bantuan lahir batin yang satu kepada yang lain.*

Saling mencintai, menghormati, setia, dan bantuan lahir batin untuk pasangannya dibutuhkan guna menjamin keutuhan keluarga di dalam mendidik anak-anaknya.

Dasar hukum : Pasal 33 Undang-Undang Nomor 1 Tahun 1974.

6. *Suami wajib melindungi istri, istri wajib mengatur urusan rumah tangga.*

Pasal 34 Undang-Undang Nomor 1 Tahun 1974 menegaskan bahwa suami wajib melindungi istrinya dan memberikan segala sesuatu keperluan hidup berumah tangga sesuai dengan kemampuannya, sementara istri wajib mengatur urusan rumah tangga sebaik-baiknya. Kewajiban yang diharuskan undang-undang ini kepada suami istri memiliki makna agar suami istri selalu bertanggung jawab terhadap keperluan hidup keluarganya.

Dasar hukum : Pasal 34 Undang-Undang Nomor 1 Tahun 1974.

Baik hukum adat maupun hukum Islam menyebutkan hak dan kewajiban yang sama dengan apa yang disebutkan di atas. Hanya dalam hal suami sebagai kepala rumah tangga, hukum adat dan hukum Islam tidak mengatakannya secara tegas⁴⁵, sedangkan Undang-Undang Nomor 1 Tahun 1974 menyebutkan bahwa suami adalah kepala rumah tangga.⁴⁶

2.4.2. Akibat Hukum Terhadap Hubungan Orang Tua dan Anak

Undang-Undang Nomor 1 Tahun 1974 mengatur mengenai status personal anak dalam perkawinan dan hak kekuasaan orang tua atas anak sebagai akibat sebuah perkawinan dalam Pasal 42-49 Undang-Undang Nomor 1 Tahun 1974.

2.4.2.1. Status Personal Anak

Kedudukan seorang anak dalam perkawinan dapat dibagi dalam dua hal, yakni :

- a. Anak Sah; dan
- b. Anak Tidak Sah/Anak Luar Kawin.

Ad. A. Anak Sah

Anak yang sah adalah yang dilahirkan di dalam atau sebagai akibat perkawinan yang sah.⁴⁷ Jadi, menurut Pasal 42 Undang-Undang Nomor 1 Tahun 1974, anak sah adalah :

- Anak yang dilahirkan dalam perkawinan yang sah;
- Anak yang dilahirkan saat orang tuanya tidak lagi terikat dalam lembaga perkawinan. Syarat yang harus dipenuhi dalam hal ini adalah perkawinan yang berlangsung sebelumnya di antara ayah dan ibunya

⁴⁵ R. Wirjono Prodjodikoro, *Hukum Perkawinan di Indonesia*, cet. 6, (Bandung: Sumur, 1974), hlm. 67.

⁴⁶ Lili Rasjidi, *Hukum Perkawinan dan Perceraian di Malaysia dan Indonesia*, cet. 1, (Bandung: PT. Remaja Rosdakarya, 1991), hlm. 126.

⁴⁷ Indonesia (a), *op.cit.*, Pasal 42.

tersebut adalah sah. Oleh karena perkawinan tersebut adalah sah, maka meskipun anak tersebut lahir setelah putusnya perkawinan, anak yang dilahirkan tersebut merupakan anak sah.

Anak yang lahir dalam perkawinan yang sah baru dapat dianggap anak sah, terutama bagi pasangan yang beragama Islam, apabila dilahirkan dalam waktu enam bulan (177 hari) sejak perkawinan kedua orang tuanya dilangsungkan. Hal ini dikarenakan menurut pandangan agama Islam, bayi hidup di dalam kandungan selama enam bulan.

Syarat lain yang harus dipenuhi apabila kedua orang tuanya tidak lagi terikat dalam lembaga perkawinan adalah pada saat perceraian terjadi, istri masih mengandung dan melahirkan setelah terjadi perceraian, namun masih memiliki sisa waktu 40 hari setelah lahir sebelum masa iddah-nya selesai.

Mengenai sah tidaknya seorang anak, terdapat satu hal yang perlu diperhatikan, yakni bahwa Undang-Undang Nomor 1 Tahun 1974 memberikan kesempatan kepada sang suami untuk dapat menyangkal sahnya anak yang dilahirkan oleh istrinya apabila ia dapat membuktikan bahwa istrinya telah berzina dan anak itu akibat dari perzinaan tersebut, sebagaimana ketentuan ini diatur dalam Pasal 44 Undang-Undang Nomor 1 Tahun 1974.⁴⁸ Hal ini menunjukkan bahwa meskipun anak tersebut lahir di dalam perkawinan yang sah, tidak serta merta ia akan menjadi anak sah apabila sang suami kemudian menyangkalnya dan dapat membuktikan bahwa anak tersebut adalah sebagai akibat dari perzinaan yang dilakukan oleh ibunya.

Sementara itu, penyangkalan sang suami atas anak yang dilahirkan oleh istrinya berdasarkan Hukum Islam dilakukan dengan cara menyatakan sumpah *li'an* menurut Q.S. (24) ayat 6-10.

⁴⁸ Akan tetapi, pembuktian keabsahan seorang anak sebagai anak sah dapat dilakukan dengan akte yang dikeluarkan oleh Pejabat yang berwenang. Apabila akte kelahiran tersebut tidak ada, maka Pengadilan dapat mengeluarkan penetapan asal-usul anak setelah diadakan pemeriksaan yang teliti berdasarkan bukti-bukti yang memenuhi syarat, sebagaimana ketentuan pembuktian tersebut diatur dalam Pasal 55 Undang-Undang Nomor 1 Tahun 1974. Lihat: Indonesia (a), *Ibid.*, Pasal 55.

Ad. B. Anak Tidak Sah/ Anak Luar Kawin

Anak sah atau anak luar kawin adalah anak yang lahir dalam perkawinan tidak sah menurut hukum positif nasional Indonesia (yakni perkawinan yang memenuhi syarat materiil dan syarat formil suatu perkawinan dari peraturan hukum yang berlaku), atau sebagai akibat dari perkawinan tidak sah, atau lahir di luar perkawinan.

Berdasarkan Pasal 43 ayat (1) Undang-Undang Nomor 1 Tahun 1974, anak yang dilahirkan di luar perkawinan hanya mempunyai hubungan perdata dengan ibunya saja. Hubungan perdata dengan ayahnya baru dapat terjadi apabila ayahnya kemudian mengakui bahwa anak tersebut adalah anaknya.

Namun, Mahkamah Konstitusi melalui Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 tentang Pengujian Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan memutuskan bahwa anak yang dilahirkan di luar perkawinan tidak hanya mempunyai hubungan perdata dengan ibunya saja dan keluarga ibunya, tetapi juga dengan laki-laki sebagai ayahnya yang dapat dibuktikan berdasarkan ilmu pengetahuan dan teknologi dan/atau alat bukti lain menurut hukum mempunyai hubungan darah, termasuk hubungan perdata dengan keluarga ayahnya.⁴⁹

Perumusan pasal tersebut diperuntukkan untuk melindungi kepentingan anak dan memberikan makna bahwa kedua belah pihak sama-sama bertanggungjawab atas kehidupan anak tersebut. Ketentuan tersebut memberikan dampak terkait hak waris, akta kelahiran, dan kewajiban nafkah bagi pihak laki-laki yang menjadi ayahnya. Menurut Mahfud MD, Ketua Mahkamah Konstitusi, ketentuan hukum pada Pasal 43 ayat (1) memberikan kesempatan pada anak yang terlahir dari perzinahan dan memiliki ayah tidak bertanggung jawab untuk menuntut secara perdata

⁴⁹ Putusan Mahkamah Konstitusi pada uji materi Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan kemudian mengubah rumusan Pasal 43 ayat (1) yang sebelumnya berbunyi, “ Anak yang dilahirkan diluar perkawinan hanya mempunyai hubungan perdata dengan ibunya dan keluarga ibunya.”. Putusan ini mengubah Pasal 43 Undang-Undang Nomor 1 Tahun 1974. Lihat: Indonesia (a), *Ibid.*, Pasal 43 dan Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 tentang Pengujian Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan.

terhadap ayahnya, sebagaimana hal ini sejalan dengan Pasal 365 Kitab Undang Hukum Pidana yang berbunyi, "*Barang siapa yang melakukan perbuatan yang menimbulkan kerugian pada orang lain, bisa dituntut secara perdata.*"

Namun, sesuai dengan tata urutan perundang-undangan, ketentuan hukum dalam Undang-Undang baru dapat dinyatakan tidak berlaku lagi apabila terdapat peraturan perundang-undangan setingkat atau di atasnya yang menghapus atau mengubah ketentuan tersebut. Selain itu, putusan MK tidak menyatakan mengenai waktu keberlakuan perubahan ketentuan hukum tersebut, karenanya Pasal 43 Undang-Undang Nomor 1 Tahun 1974 dianggap masih berlaku.

Dengan adanya Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010, hubungan antara anak luar kawin dengan bapaknya adalah hubungan darah dalam artian biologis yang dikukuhkan oleh hukum dan menegaskan kembali kedudukan ibu dari anak luar kawin yang bersangkutan, serta menguatkan kedudukan ibu dalam memintakan pengakuan terhadap ayah biologis dari anak yang bersangkutan jika pihak ayah biologis tidak sukarela memberikan pengakuan terhadap anak luar kawin. Hubungan keperdataan dengan ayah dan keluarga ayahnya baru akan terjadi jika telah terjadi pengakuan oleh pihak sang ayah biologis sebagaimana hal ini diatur dalam Pasal 280 KUHPperdata.

2.4.2.2. Hubungan Hukum Orang Tua Terhadap Anak

Akibat dari perkawinan terhadap anak memunculkan adanya "Kekuasaan Orang Tua", dimana terdapat hak dan kewajiban orang tua terhadap anak-anaknya dalam keluarga. Selain dari hak dan kewajiban orang tua terhadap anak, Undang-Undang Nomor 1 Tahun 1974 mengatur pula mengenai hak dan kewajiban yang dimiliki seorang anak terhadap orang tuanya.

Hak dan Kewajiban Orang Tua

Di dalam Undang-Undang Nomor 1 Tahun 1974 terdapat empat pasal yang mengatur tentang kekuasaan orang tua, yaitu Pasal 45, 47, 48, 49. Dalam ketentuan-ketentuan tersebut disebutkan bahwa anak yang belum mencapai umur delapan belas tahun atau belum pernah melangsungkan perkawinan berada di bawah kekuasaan orang tuanya. Pembatasan umur ini secara tegas dinyatakan dalam Pasal 47 ayat (1) Undang-Undang Nomor 1 Tahun 1974. Oleh karena anak berada di bawah kekuasaan orang tua, maka orang tua mewakili anak tersebut mengenai perbuatan hukum di dalam dan di luar Pengadilan.

Kekuasaan orang tua mencakup segala perbuatan hukum, termasuk meliputi pribadi dan harta kekayaan, akan tetapi Undang-Undang Nomor 1 Tahun 1974 mengatur pembatasan sebagaimana hal tersebut dirumuskan dalam Pasal 48 Undang-Undang Nomor 1 Tahun 1974 yaitu :

“Orang tua tidak diperbolehkan memindahkan hak atau menggadaikan barang-barang tetap yang dimiliki anaknya yang belum berumur 18 (delapan belas) tahun atau belum melangsungkan perkawinan kecuali apabila kepentingan anak itu menghendaki demikian.”

Selain itu, Pasal 45 ayat (1) Undang-Undang Nomor 1 Tahun 1974 menegaskan bahwa orang tua memiliki kewajiban untuk memelihara dan mendidik anak-anak mereka sebaik-baiknya.

Pencabutan Kekuasaan Orang Tua

Salah seorang atau kedua orang tua dapat dicabut kekuasaannya terhadap seorang anak atau lebih untuk waktu tertentu. Pencabutan kekuasaan orang tua ini merupakan suatu upaya hukum untuk menghindari cara pengawasan orang tua yang tidak sesuai dalam penggunaan kekuasaan orang tuanya terhadap anak-anak mereka sehingga anak-anak dianggap akan lebih aman jika terlepas dari kekuasaan orang tuanya.

Pencabutan kekuasaan orang tua diatur dalam Pasal 49 Undang-Undang Nomor 1 Tahun 1974.

Pencabutan atas kekuasaan orang tua dapat dilakukan jika :

- a. Terdapat permintaan dari orang tua lain, keluarga anak dalam garis lurus ke atas, saudara kandung yang telah dewasa, atau pejabat yang berwenang;
- b. Orang tua melalaikan kewajibannya terhadap anaknya;
- c. Orang tua berkelakuan buruk sekali⁵⁰;
- d. Orang tua menderita penyakit yang sangat uzur atau pun penyakit syaraf; dan
- e. Orang tua bepergian untuk suatu jangka waktu yang tidak diketahui kapan kembalinya dan kepergiannya itu pun tanpa meninggalkan atau memberitahukan kemana tujuan kepergiannya itu⁵¹.

Permohonan pencabutan kekuasaan ini dapat dilakukan kepada pengadilan dimana orang tua dan anak tersebut bertempat tinggal. Meskipun kekuasaan orang tua dicabut, tidak berarti kewajiban orang tua untuk memberi nafkah atau pemeliharaan akan berhenti. Orang tua yang kekuasaannya dicabut masih tetap berkewajiban untuk memberi biaya pemeliharaan kepada anak tersebut. Mengenai jangka waktu pencabutan kekuasaan orang tua, kekuasaan orang tua dapat dicabut untuk sementara waktu atau mungkin juga untuk selamanya, bergantung pada ringan-beratnya kesalahan orang tua yang bersangkutan.

Kewajiban Anak Terhadap Orang Tua

Pasal 46 Undang-Undang Nomor 1 Tahun 1974 merumuskan kewajiban anak terhadap orang tua sebagai berikut :

- Anak wajib menghormati orang tua dan mentaati kehendak mereka yang baik; dan

⁵⁰ Indonesia (a), *op.cit.*, Pasal 49.

⁵¹ Wienarsih Imam Subekti dan Sri Soesilowati, *op.cit.*, hlm. 86.

- Jika anak telah dewasa, ia wajib memelihara menurut kemampuannya, orang tua dan keluarganya dalam garis lurus ke atas, bila mereka memerlukan bantuannya.

2.4.3. Akibat Hukum Terhadap Harta Perkawinan

Harta perkawinan merupakan harta benda yang diperoleh dari sebelum perkawinan maupun sepanjang perkawinan berlangsung. Ketentuan-ketentuan mengenai harta suami istri diatur dalam Pasal 35-37 Undang-Undang Nomor 1 Tahun 1974. Menurut ketentuan tersebut, harta benda perkawinan dibedakan menjadi harta bersama dan harta pribadi. Yang dimaksud dengan harta bersama adalah harta yang diperoleh selama perkawinan. Sementara itu, yang dimaksud dengan harta bawaan/pribadi adalah harta yang diperoleh sebelum perkawinan dan harta yang diperoleh sesudah perkawinan berupa hadiah atau warisan. Undang-Undang Nomor 1 Tahun 1974 pada dasarnya menganut asas percampuran harta, dimana harta yang diperoleh selama perkawinan secara otomatis mengalami percampuran harta menjadi harta bersama, kecuali diadakan perjanjian perkawinan mengenai pemisahan terhadap harta bersama.

Dalam kaitannya dengan harta pribadi, maka masing-masing pihak dapat bertindak sendiri terhadap harta benda tersebut. Hal ini berbeda dengan harta bersama, dimana dalam Pasal 36 ayat (1) Undang-Undang Nomor 1 Tahun 1974 dinyatakan bahwa mengenai harta bersama, suami istri dapat bertindak atas persetujuan kedua belah pihak. Artinya, suami istri dapat bertindak atas harta bersama setelah ada persetujuan dari istri, dan begitu pula sebaliknya, istri dapat bertindak atas harta bersama setelah ada persetujuan dari suami.

Apabila perkawinan putus karena perceraian, maka harta bersama diatur menurut hukumnya masing-masing sebagaimana ketentuan ini diatur dalam Pasal 37 Undang-Undang Nomor 1 Tahun 1974. Yang dimaksud dengan hukumnya masing-masing adalah hukum agama, hukum adat, atau hukum lainnya.

BAB III
HUKUM PERKAWINAN DAN AKIBAT HUKUM PERKAWINAN
SINGAPURA BERDASARKAN *WOMEN'S CHARTER* DAN
ADMINISTRATION OF MUSLIM LAW ACT

3.1. Hukum Perkawinan Singapura

Singapura merupakan sebuah negara yang terletak di Semenanjung Malaka, Asia. Singapura ditemukan oleh Sir Thomas Stamford Raffles dari British East India Company pada tahun 1819 dan berkembang sebagai suatu pos perdagangan Inggris di wilayah Asia Tenggara atas seizin Sultan Johor kala itu. Inggris kemudian menguasai Singapura secara penuh pada tahun 1824 (penegasan ini tertuang dalam Perjanjian Anglo-Belanda/*Anglo-Dutch Treaty* dan Perjanjian Penyerahan Kekuasaan/*Treaty of Cession*).

Pada perkembangannya, Inggris kemudian memasukan Singapura menjadi bagian dari *Straits Settlements* (daerah-daerah selat yang menjadi koloni Inggris) yang selanjutnya akan menjadi Koloni Kerajaan (*Crown Colony*) dan hal ini memberikan pengaruh pada perkembangan Singapura selanjutnya sebagai suatu negara mandiri kelak, salah satunya adalah dalam bidang hukum.

Perjanjian Konstitusional (*The Constitutional Agreement*) yang ditandatangani pada tanggal 8 Mei 1958 di London menandai proses awal transisi Singapura dari negara koloni menjadi negara independen pada tahun 1959. Perjanjian ini kemudian disahkan menjadi Undang-Undang Tentang Negara Singapura (*The State of Singapore Act*) pada tanggal 1 Agustus 1958.⁵²

Setelah Singapura mendeklarasikan kemerdekaan dari pendudukan Inggris pada tanggal 31 Agustus 1963, Singapura kemudian menggabungkan diri dengan Persekutuan Tanah Melayu (*Federation of Malaya*, yang pada tahun 1957 menjadi Malaysia) menjadi satu kesatuan persatuan. Akan tetapi, penggabungan ini tidak bertahan lama ketika pada tanggal 9 Agustus 1965 Singapura kemudian mendeklarasikan kemerdekaannya dari Malaysia.

⁵² Attorney-General, *loc.cit.*, <http://www.singaporelaw.sg/content/LegalSystIndon.html>, diakses pada tanggal 21 April 2012. Attorney-General, *loc.cit.*, <http://www.singaporelaw.sg/content/LegalSystIndon.html>, diakses pada tanggal 21 April 2012.

Sebagai sebuah negara yang merdeka, perkembangan hukum Singapura masih berkaitan erat dengan negara kolonialnya, Inggris. Sistem hukum Singapura memiliki akar hukum sistem *Common Law* Inggris⁵³, dimana pada awalnya masih mengadopsi secara mentah-mentah tradisi-tradisi hukum, kebiasaan-kebiasaan, kasus-kasus hukum, dan perundang-undangan menurut Hukum Inggris tanpa disesuaikan dengan keadaan negaranya. Dalam sistem *Common Law*, sumber hukum utama adalah yurisprudensi, dimana peran hakim dipandang penting karena memegang fungsi penting dalam merumuskan suatu hukum guna mencapai penyelesaian sengketa (*case law*). Norma hukum dirumuskan secara insidental kasuistis dan berdasarkan sengketa-sengketa yang diajukan ke badan peradilan.⁵⁴ Berdasarkan hal tersebut, maka sumber hukum pada keluarga hukum *Common Law*, secara berurutan sesuai dengan pentingnya peranan dalam proses penemuan hukum, adalah: *Jurisprudence*, *Statute*, *Customs*, *Legal Writing (Doctrine)*, dan *Reason*.⁵⁵ Namun, seiring dengan kemerdekaannya, sistem hukum Singapura mengalami penyesuaian dengan sistem hukum lokal.⁵⁶ Undang-Undang tentang Penerapan Hukum Inggris (*The Application of the English Law Act*⁵⁷) menetapkan bahwa sistem hukum *Common Law* Inggris, termasuk prinsip-prinsip dan aturan-aturan tentang keadilan sepanjang masih menjadi bagian dari hukum Singapura sebelum 12 November 1993, akan tetap menjadi bagian dari hukum Singapura.⁵⁸ Sebagian besar hukum di Singapura seperti hukum administrasi,

⁵³ Atau yang oleh Dr. Munir Fuady, S.H., LL.M., dinyatakan dapat disebut sebagai sistem hukum Anglo-Saxon. Negara-negara yang pernah dijajah atau dipengaruhi oleh Inggris (termasuk di dalamnya adalah Singapura), menganut sistem hukum Anglo-Saxon. Lihat: Munir Fuady, *Perbandingan Hukum Perdata*, (Jakarta: PT. Citra Aditya Bakti, 2005), cet. 1, hlm. 6.

⁵⁴ Wahyono Darmabrata (a), *op.cit.*, hlm. 164.

⁵⁵ Wahyono Darmabrata (a), *Ibid.*, hlm. 195.

⁵⁶ Attorney-General, *loc.cit.*, <http://www.singaporelaw.sg/content/LegalSystIndon.html>, diakses pada tanggal 21 April 2012.

⁵⁷ Sebelum diundangkannya *The Application of the English Law Act*, Piagam Keadilan Kedua (*The Second Charter of Justice*) menetapkan dasar hukum bagi penerimaan secara umum prinsip-prinsip dan aturan-aturan hukum Inggris (*common law and equity*) dan undang-undang Inggris pra-1826 di Singapura dengan syarat harus memperhatikan kecocokan dan modifikasi kebutuhan dalam negeri. Lihat : Wendy Chang Mun Lin, "Singapore Legal Systems In Singapore: Chapter 1 – Historical Overview", hlm. 3.

⁵⁸ Section 3 dari *The Application of the English Law Act* menetapkan bahwa bagaimanapun *common law* akan tetap berlaku di Singapura sepanjang hal tersebut dapat

hukum kontrak, hukum properti, perbuatan melawan hukum adalah berdasarkan yurisprudensi, meskipun saat ini beberapa aspek telah mengalami perkembangan menjadi hukum tersendiri. Akan tetapi, beberapa area hukum seperti hukum pidana, hukum perusahaan/bisnis, hukum keluarga, adalah hukum yang berhasil dituliskan sendiri menjadi sebuah statuta.

Sebelum *Women's Charter*⁵⁹ diundangkan pada tahun 1961, warga negara Singapura⁶⁰ tunduk pada hukum keluarga (termasuk dalamnya hukum perkawinan) yang berbeda-beda, seperti *Chinese customary marriage law*, *the Hindu religious marriage law* (dan dengan berbagai variasinya berdasarkan sekte masing-masing seperti *the Sikh religious marriage law*), *the Jewish marriage law*, dan *Muslim marriage law*.

Sesuai dengan perkembangan hukum yang terjadi di Singapura dan kebutuhan untuk adanya sebuah kesatuan hukum dalam hukum perkawinan Singapura, maka terbentuklah *Women's Charter* yang kemudian berlaku sebagai hukum keluarga bagi seluruh warga negara Singapura dan *permanent resident*⁶¹ di Singapura. Sebagaimana penerapan sistem hukum *Common Law* di Singapura harus mempertimbangkan kecocokan dalam penerapannya, dan apabila hukum yang berlaku memungkinkan terjadinya ketidakadilan atau pertentangan, maka hakim dapat menyesuaikan hukum umum perkawinan itu sampai batas yang menurut hakim tersebut dapat mencegah terjadinya pertentangan. Hal ini kemudian mendasari terbentuknya *Administration of Muslim Law Act* (AMLA) pada tahun 1966. AMLA merupakan hukum perkawinan yang digunakan dalam

diterapkan pada keadaan-keadaan di Singapura dan harus dimodifikasi jika keadaan khusus Singapura mengharuskannya. Lihat : <http://www.singaporelaw.sg/content/LegalSystIndon.html> diakses pada tanggal 21 April 2012.

⁵⁹ Chapter 353 of 2009, diamandemen terbaru oleh *Women's Charter (Amendment) Act. No. 2 of 2011* pada tanggal 1 Juni 2011

⁶⁰ Berdasarkan Sensus Penduduk tahun 1990, dari 2,7 juta penduduk, 78% adalah Chinese, 14% Melayu, 7% India, dan 1% adalah etnis campuran. Sebanyak 15% dari penduduk tersebut adalah Muslim, sementara 31% adalah pemeluk agama Buddha, 22% Taoisme, 13% Kristen, 4% Hindu, dan 14% tidak beragama. Lihat : Leong Wai Kum, "Singapore : Supporting Marriage Through Description As An Equal Partnership Of Efforts", *The International Survey of Family Law 2002 Edition*, (United Kingdom: Jordan Publishing Limited, 2002), hlm. 380.

⁶¹ Permanent resident adalah orang-orang yang bukan berkewarganegaraan Singapura, tetapi telah dikabulkan oleh Pemerintah Singapura untuk bertempat tinggal tetap di Singapura. Lihat : Departement of Statistic Singapore, *Glossary of Terms and Definition*, <http://www.singstat.gov.sg/pubn/popn/c2010sr3/glossary.pdf>, diakses 2 Mei 2012.

hukum Islam dan berlaku bagi pemeluk agama Islam, sedangkan *Women's Charter* menjadi berlaku hanya bagi pemeluk agama non-Islam.

3.2. Women's Charter

Perkawinan bagi pasangan non-Muslim di Singapura tunduk pada *Women's Charter* berdasarkan ketentuan hukum dalam Section 3 (1) dan (2) *Women's Charter* yang menyatakan bahwa *Women's Charter* berlaku bagi seluruh orang di Singapura dan setiap orang yang berdomisili di Singapura⁶². Secara garis besar, perkawinan yang tunduk pada *Women's Charter* dikenal sebagai perkawinan sipil. Dalam perkembangan sejarahnya, *Women's Charter* mengalami beberapa kali perubahan. Dalam *Women's Charter (Amendment) Act No. 2 of 2011*, sebagai aturan hukum terbaru, *Women's Charter* mengatur mengenai, antara lain : lembaga pengesahan perkawinan (Registrar of Marriage/ROM), pendaftaran perkawinan, syarat perkawinan.

3.2.1. Pengertian Perkawinan

Women's Charter memandang perkawinan sebagai suatu hubungan kerjasama dan usaha seimbang dalam rumah tangga (“equal partnership of efforts”) sebagaimana yang dirumuskan dalam Section 46, yang berbunyi sebagai berikut :

“Upon the solemnization of marriage, the husband and the wife shall be mutually bound to co-operate with each other in safeguarding the interest of the union and in caring and providing for the children.”

Perkawinan dimaksudkan untuk berlangsung dalam jangka waktu yang panjang dan melibatkan kesatuan emosi dan seksual diantara suami istri yang telah dewasa. Adanya intervensi pihak lain atas kesatuan emosi dan seksual antara suami istri memungkinkan salah satu pasangan yang dirugikan dapat mengajukan

⁶² Section 3 (1) : *Except as otherwise provided, this Act shall apply to all persons in Singapore and shall also apply to all persons domiciled in Singapore*

Section 3 (2) : *Parts II to IV, and Sections 181 and 182 shall not apply to any person who is married under, or to any marriage solemnized or registered under, the provisions of the Muslim law or of any written law in Singapore or in Malaysia providing for the registration of Muslim marriages.*

gugatan perceraian atas dasar perselingkuhan. Asas kerjasama dan usaha yang seimbang suami istri dalam rumah tangga ini terlihat pengaruh dalam hubungan hukum antara suami istri, hubungan hukum terhadap anak, dan harta benda perkawinan.

3.2.2. Syarat Sah Perkawinan

Syarat sahnya perkawinan dalam *Women's Charter* terbagi atas syarat materiil (“essential validity”) dan syarat formil (“formal validity”). Kedua syarat ini penting ada dalam sebuah perkawinan yang sah sebagaimana hal ini disinggung oleh Leong Wai Kum dalam bukunya berjudul “Principles of Family Law in Singapore” berkaitan dengan kasus *Moh Ah Kiu vs. Central Provident Fund Board*⁶³ pada tahun 1992 :

“a valid marriage is formed on the performance of the proper formalities required of solemnization by two parties who have legal capacity to marry each other.”

Leong Wai Kum berpendapat bahwa kasus *Moh Ah Kiu vs. Central Provident Fund Board* berguna untuk mengingatkan kembali para pihak mengenai poin paling dasar dalam perkawinan. Pada argumen yang disampaikan Moh Ah Kiu dalam kasusnya, ia menyatakan bahwa perkawinannya adalah sah, namun *High Court* menyatakan bahwa perkawinan tersebut tidak sah karena diselenggarakan dengan melibatkan pihak laki-laki sebagai mempelai yang tidak memenuhi kapasitas untuk menikah (“... as the male party lacked capacity to marry.”).

Selain itu, menurut Leong Wai Kum, putusan hakim dalam kasus *Lim Ying vs. Hiok Kian Ming Eric*⁶⁴ memaparkan mengenai persyaratan yang harus

⁶³ Dalam kasus *Moh Ah Kiu vs. Central Provident Fund Board* [1992] 2 S.L.R. 569, pihak laki-laki masih terikat dengan perkawinan sebelumnya. Hal ini menyalahi asas perkawinan monogami yang dianut dalam *Women's Charter*. Lihat : Leong Wai Kum (a), “Recent Developments in the Law of Marriage and Divorce”, *Singapore Academy of Law Journal*, (<http://heinonline.org/HOL/LandingPage?collection=journals&handle=hein.journals/saclj5&div=26&id=&page=>), diakses pada tanggal 24 April 2012.

⁶⁴ Pada kasus *Lim Ying vs. Hiok Kian Ming Eric* [1992] 1 S.L.R. 184, Eric Hiok telah menjalani operasi perubahan kelamin sebelum perkawinan (terlahir perempuan dan menjadi laki-

dipenuhi agar dianggap memenuhi kapasitas untuk melangsungkan perkawinan. Persyaratan tersebut meliputi perkawinan yang monogami, batasan usia minimum untuk melangsungkan perkawinan, larangan perkawinan karena hubungan darah kekerabatan dan semenda, serta keharusan para pasangan yang hendak melangsungkan perkawinan terdiri atas pria dan wanita.

Syarat Materiil

1. Perkawinan berlangsung antara pria dan wanita.

Pada dasarnya perkawinan yang disahkan di Singapura haruslah berlangsung antara pria dan wanita. Hukum perkawinan nasional Singapura tidak mengenal perkawinan sesama jenis. Hal ini ditegaskan dalam Section 12 *Women's Charter* menghindari terjadinya perkawinan sesama jenis. *Women's Charter* tidak memperlakukan mengenai calon mempelai yang telah mengalami operasi perubahan kelamin, selama para pihak yang akan melangsungkan perkawinan adalah pria dan wanita. Section 12 (2) mengatur syarat lebih lanjut bahwa identitas dari para pihak atau salah satu yang telah berganti kelamin haruslah sesuai dengan kartu identitas yang dikeluarkan oleh *National Registration Act (Cap. 201)* dan Registrar diharuskan untuk mengidentifikasi para pihak sesuai dengan identitas yang diberikan para pihak calon mempelai saat pendaftaran perkawinan.

2. Batas umur minimal untuk melangsungkan perkawinan bagi kedua mempelai adalah 18 (delapan belas) tahun.

Batasan usia minimum seseorang untuk melangsungkan perkawinan adalah 18 tahun. Section 9⁶⁵ menyebutkan dengan jelas bahwa perkawinan yang

laki pada saat perkawinan). Lim Ying (istri) baru mengetahui pada saat perkawinan dan kemudian memperkarakan hal ini dengan meminta Pengadilan untuk menyatakan perkawinan batal demi hukum, mengingat pula di antara keduanya belum pernah terjadi persetubuhan pada saat itu. Kasus ini kemudian menyebabkan munculnya kolom 'sex at birth' yang harus diisi dalam formulir pendaftaran perkawinan di Registrar of Marriage. Namun, semenjak diberlakukannya *Women's Charter (Amendment) Act No. 30 of 1996*, praktek ini telah berhenti dan diganti dengan ketentuan Section IIA yang menyatakan bahwa jenis kelamin yang dicantumkan adalah yang sesuai dengan kartu identitas pada saat melangsungkan perkawinan. ("sex refers to what is notified on a person's National Registration Identity Card at the time of the marriage.")

⁶⁵ Section 9 : "a marriage solemnized in Singapore or elsewhere between persons either of whom is below the age of 18 years shall be void unless the solemnization of the marriage was authorised by a special marriage licence by the Minister under Section 21."

berlangsung diantara para pihak dibawah usia 18 tahun harus ditolak, kecuali diizinkan oleh Menteri melalui *special marriage licence* (lembaga perkawinan khusus) sesuai dengan ketentuan Section 21. Akan tetapi, dalam *Women's Charter* terdapat batasan umur lain dimana seseorang yang belum berumur 21 tahun dianggap sebagai orang yang belum dewasa⁶⁶. Section 17 (2) butir a menyiratkan bahwa Singapura melalui *Women's Charter* menganjurkan agar perkawinan dilangsungkan setelah mencapai usia 21 tahun. Namun, *Women's Charter* memberikan kemungkinan dilangsungkannya perkawinan bagi seseorang yang belum berumur 21 tahun selama mendapatkan izin dari Menteri melalui *special marriage licence*.

Ketentuan dalam Section 17 (2) butir b menyatakan bahwa Registrar dilarang menerima pendaftaran perkawinan kecuali;

- a. Para pihak telah berusia 21 tahun atau lebih;
- b. Para pihak atau salah satu pihak pernah mengalami perceraian;
- c. Para pihak atau salah satu pihak pernah menikah dan pernikahan tersebut dinyatakan batal demi hukum;
- d. Salah satu pihak belum dewasa dan tidak pernah menikah sebelumnya⁶⁷, tetapi telah mendapatkan persetujuan oleh pihak yang berdasarkan *Second Schedule* memiliki wewenang untuk menyatakan persetujuan, atau telah mendapatkan izin dari Pengadilan berdasarkan Section 13.

Persetujuan dari orang tua atau wali sebagaimana yang disebutkan dalam Section 13 dan 17, serta Section 21, sebagai syarat untuk mendapatkan *marriage licence* dan *special marriage licence* tercantum dalam *Second Schedule*, yang berisi sebagai berikut :

Tabel 1 : *Consent Required To The Marriage Of A Minor*⁶⁸

⁶⁶ Section 2 : "minor means a person who is below the age of 21 years and how is not married or a widower or widow."

⁶⁷ Berdasarkan Section 13 (6), jika pihak yang belum dewasa pernah melangsungkan perkawinan sebelumnya, maka persetujuan dari orang tua/wali tidak diperlukan lagi.

⁶⁸ Singapura (a). *Women's Charter (Amendment) Act No. 2 of 2011*.

— Part 1 : Where The Minor Is Legitimate

	Circumstances	Person or persons whose consent is required
1.	Where both parents are living:	
	(a) If parents are living together	Both parents.
	(b) If parents are divorced or separated by order of court or by agreement	The parent to whom the custody of the minor is committed by order of any court or by agreement, or, if the custody of the minor is so committed to one parent during part of the year and to the other parent during the rest of the year → both parents.
	(c) If one parent has been deserted by the other	The parent who has been deserted.
	(d) If both parents have been deprived of custody of minor by order of court	The person to whose custody the minor is committed by order of court.
2.	Where one parent is dead :	
	(a) If there is no other guardian	The surviving parent.
	(b) If a guardian has been appointed by the deceased parent	The surviving parent and the guardian if acting jointly or the surviving parent or the guardian if the parent or guardian is the sole guardian of the minor.
3.	Where both parents are dead	The guardians or guardian appointed by the deceased parents or by the court under the <i>Guardianship of Infants Act (Cap. 122)</i> .

Tabel 2.

— *Part 2 : Where The Minor Is Illegitimate*

	Circumstances	Person or persons whose consent is required
1.	If the mother of the minor is alive	The mother or, if she has by order of court been deprived of the custody of the minor, the person to whom the custody of the minor has been committed by order of court.
2.	If the mother of the minor is dead	The guardian appointed by the mother, or by the court.

Tabel 3.

— *Part 3 : Where The Minor Is A Transferred Child*

	Circumstances	Person or persons whose consent is required
	If the father, mother, legal guardian or guardian of the transferred child is not available or does not give his consent	The person whose particulars are registered with the protector under the <i>Children and Young Persons Act (Cap. 38)</i> as the person who has the care, custody, or control of such tranferred child.

Berkaitan dengan kondisi dimana persetujuan sulit didapatkan⁶⁹ terkait kebutuhan atas *special marriage licence*, maka:

- Kebutuhan atas persetujuan tersebut dapat di-dispensasi apabila tidak ada orang lain lagi yang dapat memberikan persetujuannya;

⁶⁹ Sulit didapatkan dapat disebabkan karena kehilangan kontak untuk waktu yang lama, tidak dapat dijangkau/dihubungi, atau berada dalam pengampuan. Lihat: Singapura (a), *Ibid.*, Section 13 (2).

- Mengajukan permohonan agar *High Court* memberikan persetujuan dengan menganggap persetujuan tersebut akan berlaku sama dengan persetujuan yang diberikan oleh pihak-pihak dalam *Second Schedule*. Persetujuan dari *High Court* ini dapat berlaku pula apabila pihak yang berwenang (orang tua/wali) menolak memberikan persetujuan dan ketika mengajukan permohonan kepada *High Court*, disertai notifikasi yang menyertai penolakan dari pihak yang bersangkutan.

3. *Perkawinan monogami.*

Prinsip yang dianut oleh *Women's Charter* adalah perkawinan monogami, setiap orang laki-laki hanya boleh menikah dengan satu orang wanita, hanya satu kali dalam waktu yang bersamaan, begitu pula sebaliknya. Pengaturan mengenai asas monogami tertulis dalam Section 4. Dan dikarenakan maksud dari sebuah perkawinan adalah adanya suatu hubungan yang panjang, berlangsung lama, maka *Women's Charter* menyatakan bahwa putusnya perkawinan hanya dapat terjadi karena : kematian, perceraian karena putusan pengadilan, atau putusan pengadilan yang menyatakan perkawinan batal demi hukum. Untuk dapat terjadinya perceraian, maka diharuskan adanya alasan yang masuk akal, dan *Women's Charter* menyebutnya sebagai perilaku tidak masuk akal dalam sebuah perkawinan (“unreasonable behaviour of a spouse which violates the expectation”).

4. *Larangan perkawinan.*

Hubungan kekerabatan dalam perkawinan menjadi salah satu hal yang diatur oleh *Women's Charter*. Pengaturan hubungan kekerabatan yang tidak boleh dinikahi dalam *Women's Charter* sesungguhnya bertentangan dengan ketentuan beberapa suku, seperti orang India yang mengadopsi hukum agama Hindu, yang memperbolehkan bagi mereka untuk melakukan perkawinan antara paman dengan keponakan perempuannya⁷⁰. Larangan untuk menikahi kerabat yang masih memiliki hubungan darah atau semenda diatur dalam

⁷⁰ Leong Wai Kum (b), *Principles of Family Law in Singapore*. (Singapore: Butterworths, 2005), hlm. 295.

Section 10. Berdasarkan *First Schedule* dalam *Women's Charter*, pihak-pihak yang tidak boleh dinikahi oleh setiap orang di Singapura adalah sebagai berikut:

Tabel 4 : *Consent Required To The Marriage Of A Minor*⁷¹
 — *Kindred And Affinity Prohibited Degrees Of Relationship*

<i>Kindred or Consanguinity</i>	<i>Man cannot marry his</i>	<i>Woman cannot marry her</i>
Ascendants	Mother	Father
Ascendants' ascendants	Grandmother	Grandfather
Ascendants' ascendants' ascendants	Great grandmother	Great grandfather
Ascendants' siblings	Aunt	Uncle
Descendants	Daughter	Son
Descendants' descendants	Granddaughter	Grandson
Siblings	Sister	Brother
Siblings' descendants	Niece	Nephew
<i>Affinity</i>		
Spouse's ascendants	Mother-in-law	Father-in-law
Spouse ascendants' ascendants	Wife's grandmother	Husband's grandfather
Spouse's descendants	Step-daughter	Step-son
Spouse's descendants' descendants	Step-granddaughter	Step-grandson
Through own ascendants	Step-mother	Step-father
Through own descendants	Daughter-in-law	Son-in-law
Through descendants' descendants	Granddaughter-in-law	Grandson-in-law

⁷¹ *Ibid.*, hlm. 294.

Dalam tabel 2, terdapat 15 macam derajat keluarga yang tidak boleh dinikahi oleh pihak laki-laki dan pihak perempuan dikarenakan adanya hubungan darah kekerabatan dan semenda. Kolom pertama menjelaskan mengenai tingkatan hubungan darah kekerabatan dan semenda tersebut. Sementara itu, kolom kedua memaparkan mengenai pihak-pihak yang tidak boleh dinikahi oleh seorang pria dalam garis keturunan atas dan bawahnya, yaitu: ibu, nenek, ibu dari nenek, bibi, anak perempuannya, cucu perempuannya, saudara kandung perempuan, dan keponakan perempuan. Sedangkan dari pihak pasangan sang mempelai, maka laki-laki tersebut tidak boleh menikahi: ibu mertuanya, ibu tiri, nenek dari pasangannya, anak perempuan tiri, cucu perempuan tiri, menantu perempuan, dan cucu mantu perempuannya.

Di sisi lain, pada kolom ketiga dipaparkan mengenai pihak-pihak yang dilarang bagi seorang wanita untuk dinikahi berdasarkan garis keturunan atas dan bawahnya, yaitu: ayah, kakek, ayah dari kakek, paman, keponakan laki-laki, saudara kandung laki-laki, anak laki-laki, dan cucu laki-laki. Sedangkan dari pihak pasangan sang mempelai, maka perempuan tersebut tidak boleh menikahi: bapak mertua, ibu tiri, kakek dari suami, anak laki-laki tiri, cucu laki-laki tiri, menantu laki-laki, dan cucu mantu laki-laki.

5. *Adanya kesepakatan/persetujuan para pihak.*

Karena tujuan perkawinan adalah menjaga anak-anak dan merupakan sebuah hubungan yang berlangsung lama, maka dibutuhkan kesadaran masing-masing pihak atas tindakannya sebelum melangsungkan perkawinan. Perkawinan membutuhkan para pihak untuk saling menyatakan persetujuannya untuk dilangsungkannya perkawinan di antara mereka agar perkawinan dapat berhasil.

Syarat Formil

1. *Perkawinan harus didaftarkan.*

Berdasarkan ketentuan Section 22 (1)⁷², agar suatu perkawinan dapat disahkan, maka para pihak harus mendapatkan salah satu dari *marriage licence* yang dikeluarkan oleh Registrar atau *special marriage licence* yang dikeluarkan oleh Menteri. Ketentuan yang mengatur bahwa calon mempelai dapat memperoleh *marriage licence* atau *special marriage licence* diatur dalam Section 17 (*marriage licence*) dan Section 21 (*special marriage licence*).

Selain itu, Section 22 (2)⁷³ mengatur lebih lanjut bahwa perkawinan yang akan dilangsungkan harus disaksikan oleh dua orang saksi.

Pendaftaran perkawinan dapat dilakukan dengan melakukan langkah-langkah berikut:

- a. *Pemberitahuan ke Registrar of Marriages (ROM) atau melalui website ROM.*

Pemberitahuan ini dapat dilakukan oleh kedua calon mempelai atau salah satu, dan berhubung pada saat ini Registrar of Marriage dapat melayani pendaftaran secara *online*, maka pendaftaran tanggal perkawinan dapat cukup dilakukan dengan mengisi formulir secara *online* dan melengkapi dokumen yang dibutuhkan, serta mengirimkan kepada Registrar of Marriage.

Dasar hukum: Section 14 jo. Section 16 *Women's Charter (Amendment) Act No. 2 of 2011*.

- b. *Perkawinan yang didaftarkan harus dilangsungkan dalam kurun waktu 21 hari setelah pendaftaran dan kurang dari 3 bulan lamanya.*

Jika perkawinan dilangsungkan lewat dari 3 bulan, maka pendaftaran harus diulang kembali. Apabila tidak dilakukan, maka perkawinan menjadi tidak sah.

⁷² Section 22 (1) : "Every marriage solemnized in Singapore shall be void unless it is solemnized –

(a) On the authority of a valid marriage licence issued by the Registrar or a valid special marriage licence granted by the Minister; and

(b) By the Registrar or a person who has been granted a licence to solemnize marriages"

⁷³ Section 22 (2) : "Every marriage shall be solemnized in the presence of at least 2 credible witnesses."

Dasar hukum: Section 17 (1) *Women's Charter (Amendment) Act No. 2 of 2011*.

2. *Perkawinan harus dicatatkan.*

Section 25 menyatakan dengan tegas bahwa setiap perkawinan yang disahkan di Singapura untuk disahkan. Setelah perkawinan dilangsungkan, maka perkawinan harus dicatatkan di Registrar of Marriage, dimana Registrar berdasarkan Section 27 akan menyimpan semua catatan dan dokumen-dokumen perkawinan dalam *State Marriage Register*. Selesai menyelesaikan seluruh tahapan pencatatan, maka Registrar atau Deputi Registrar berdasarkan ketentuan Section 31 akan mengirimkan salinan akta nikah kepada pihak mempelai wanita.

3.2.3. Akibat Hukum Terjadinya Perkawinan

Perkawinan merupakan suatu peristiwa hukum yang membentuk suatu hubungan hukum dan memberikan akibat hukum bagi para pihak yang terikat, yakni pihak suami, istri, anak, dan juga harta benda. Ketentuan hukum mengenai akibat hukum terjadinya perkawinan terhadap hubungan suami istri, anak, dan harta benda, selain terdapat dalam *Women's Charter*, terdapat pula didalam peraturan lain seperti *Maintenance of Parents Act (Cap 167B)*, *Guardianship of Infants Act (Cap. 122)*, dan *Evidence Act (Cap. 97)* yang mengatur lebih lanjut secara teknis.

3.2.3.1. Akibat Hukum Terhadap Hubungan Suami Istri Itu Sendiri

Perkawinan membuat seorang laki-laki memperoleh hak dan kewajibannya sebagai seorang suami dalam keluarga tersebut dan juga bagi wanita yang mengikatkan diri dalam suatu perkawinan, maka wanita tersebut memperoleh hak dan kewajibannya sebagai seorang istri dalam keluarga tersebut.

Hak dan kewajiban antara suami istri tersebut diatur dalam Part VI Section 46-63⁷⁴ sebagai berikut :

1. *Bersama-sama menjaga keutuhan rumah tangga dan mengasuh anak-anak.*

Dasar hukum : Section 46 (1).

2. *Kedudukan suami istri adalah seimbang.*

Baik suami istri, masing-masing dapat melakukan perbuatan hukum sendiri. Ketentuan bahwa istri dapat bertindak hukum sendiri dipertegas dalam Section 46 (2), yang berbunyi :

“.. (2) The husband and the wife shall have the right separately to engage in any trade or profession or in social activities..”

Sebagai akibat dari kedudukan suami istri yang seimbang dan masing-masing dapat melakukan perbuatan hukum sendiri atas namanya, bentuk-bentuk perbuatan hukum yang dapat dilakukan oleh istri dirinci lebih lanjut dalam Section 51, berupa :

“Subject to the provision of this Act, a married woman shall—
(a) Be capable of acquiring, holding, and disposing of any property;
(b) Be capable of rendering herself, and being rendered, liable in respect of any tort, contract, debt, or obligations.
(c) Be capable of suing and being sued in her own name either in tort or in contract or otherwise and shall be entitled to all remedies and redress for all purposes; and
(d) Be subject to the law relating to bankruptcy and to the enforcement of judgements and orders.”

Seorang istri berhak untuk bertindak hukum atas namanya sendiri dalam melakukan perbuatan hukum seperti perjanjian dan kepemilikan

⁷⁴ Wienarsih Imam Subekti dan Sri Soesilowati Mahdi, *op.cit.*, hlm. 80.

properti⁷⁵, serta dapat dituntut apabila terjadi pelanggaran kontrak atau kepailitan sebagai konsekuensi dari perbuatan hukum yang dilakukannya sendiri.

Dasar hukum : Section 46 (2) jo. Section 51.

3. *Istri berhak untuk masih menggunakan nama keluarganya (surname).*

Dasar hukum : Section 46 (3).

4. *Suami istri memiliki hak yang sama dalam mengatur rumah tangga.*

Dasar hukum : Section 46 (4).

5. *Suami istri memiliki tempat tinggal.*

Dasar hukum : Section 47.

6. *Suami harus mengurus istri.*

Suami diharuskan oleh *Women's Charter* untuk mengurus istrinya. Apabila istri tidak diurus, maka istri dapat meminta putusan Pengadilan untuk mendapatkan uang pemeliharaan bulanan.

Dasar hukum : Section 69 (1).

7. *Istri dapat memberikan pinjaman kepada suami berupa aset properti dan atau uang.*

Dasar hukum : Section 53.

8. *Suami dapat memberikan hadiah kepada istri berupa aset properti, kendaraan, atau uang.*

Hal yang perlu diperhatikan adalah bahwa setelah suami memberikan hadiah kepada istrinya dengan maksud untuk membiarkan hadiah tersebut berada dalam penguasaan istri, maka tidak dibenarkan bagi suami untuk tetap memiliki penguasaan atas barang-barang tersebut setelah diberikan kepada istri.

⁷⁵ Ketentuan lebih lanjut mengenai kepemilikan istri atas suatu properti atas namanya sendiri diatur dalam Section 52. Lihat: Singapura (a), *op.cit.*, Section 52.

Dasar hukum : Section 55.

3.2.3.2. Akibat Hukum Terhadap Hubungan Orang Tua Dan Anak

Women's Charter mendefinisikan anak dalam perkawinan sebagai “any child of the husband and wife, and includes any adopted child and any other child (whether or not a child of the husband or of the wife) who was a member of the family of the husband and wife at the time when they ceased to live together or at the time immediately preceding the institution of the proceedings, whichever first occurred; and for the purposes of this definition, the parties to a purported marriage that is void shall be deemed to be husband and wife.”⁷⁶ Batas umur seseorang disebut sebagai anak dalam perkawinan adalah 21 tahun.

Women's Charter mengenal istilah anak sah dan anak tidak sah, tetapi tidak memiliki definisi tegas yang mengaturnya. Pengertian tersebut justru tertulis dalam peraturan hukum lain yang terkait, yaitu Evidence Act Section 114. Keabsahan anak dalam sistem hukum *common law* membutuhkan hubungan antara orang tua dan anak memenuhi kriteria-kriteria tertentu⁷⁷. Kriteria-kriteria yang dimaksud adalah :

- Anak tersebut lahir dalam perkawinan yang sah (termasuk perkawinan yang putus karena kematian atau perceraian⁷⁸);
- Anak dilahirkan di luar perkawinan⁷⁹, tapi telah berada dalam kandungan pada saat perceraian terjadi;

⁷⁶ Singapore (a), *Ibid.*, Section 92 jo. Section 122.

⁷⁷ Sebagaimana diungkapkan oleh Leong Wai Kum dalam artikelnya berjudul “The Next Fifty Years Of The Women's Charter—Ripples Of Change” yang dipaparkan oleh William Blackstone dalam bukunya berjudul “Commentaries on the Laws of England.”

⁷⁸ Apabila pada saat perceraian, anak tersebut belum lahir, maka setidaknya pada saat itu anak tersebut telah berada dalam kandungan. Lihat: Leong Wai Kum (c), “The Next Fifty Years Of The Women's Charter—Ripples Of Change”, *Singapore Journal of Legal Studies*, (2011, 152—177), hlm. 157.

⁷⁹ Batas waktu anak lahir di luar perceraian adalah 280 hari setelah dinyatakan perkawinan tersebut putus karena perceraian. Lihat : Singapura (a), Section 7 jo. Singapura (c), *Evidence Act*, Section 114.

- Anak tersebut dikandung saat kedua orang tua belum melangsungkan perkawinan, tetapi lahir pada saat orang tua telah berada dalam ikatan perkawinan yang sah.

Adanya ketentuan tersebut menyebabkan siapapun yang tidak memenuhi ketentuan tersebut dianggap sebagai anak tidak sah.

*The (English) Children Act 1989*⁸⁰ sebagai akar dari sistem hukum Singapura memandang bahwa kewajiban orang tua atas anak berarti segala hak, peran, kekuasaan dan kewajiban yang oleh hukum dimiliki orang tua atas anaknya dan terhadap harta benda yang dimiliki sang anak. Sebagai negara yang bersistem hukum Anglo-Saxon dimana Singapura berkaca padanya, maka hal ini pun berpengaruh terhadap ketentuan hukum mengenai anak di Singapura. Anak sebagai individu memiliki kepentingan yang berbeda dari orang tuanya dan memiliki hak untuk dilindungi. Hukum menghargai kekuasaan yang dimiliki orang tua atas anaknya yang secara alamiah dimiliki orang tua pada saat anak tersebut lahir ke dunia. Dengan hukum yang memandang bahwa suami istri dalam perkawinan memiliki hak dan kedudukan yang seimbang, maka suami istri pun sebagai orang tua memiliki hak dan kewajiban yang seimbang.

Kewajiban orang tua atas anak sebagai berikut :

1. *Orang tua wajib menjaga anak-anaknya.*

Kewajiban orang tua untuk menjaga anak-anaknya sebagaimana yang diatur dalam Section 68 tidak membedakan antara anak sah maupun anak tidak sah, serta berlaku bagi anak yang dalam pengasuhannya maupun saat berada di pengasuhan orang lain. Ketentuan hukum ini berlaku meskipun kedua orang tua berpisah dan anak berada di salah satu pasangan, atau anak tinggal bersama dengan orang lain, atau hanya terdapat salah satu keluarga. Namun, ketentuan ini tidak berlaku bagi orang tua yang bukan kandung dan berperan menjaga anak tersebut sebagai wali (“guardian”)⁸¹.

⁸⁰ *Section 3 (1) : “parental responsibility means all the rights, duties, powers, responsibilities, and authority which by law a parent of a child has in relation to the child and his property.”*

⁸¹ Leong Wai Kum (b), *op.cit.*, hlm. 860 jo. hlm. 532.

Apabila orang tua tidak mengurus anaknya yang tidak dapat mengurus dirinya sendiri, maka Pengadilan dapat memutuskan untuk meminta orang tua yang bersangkutan memberikan tunjangan setiap bulan⁸².

Jika terjadi perceraian, maka tidak berarti kewajiban orang tua atas anak telah berakhir. Ketentuan hukum dalam *Women's Charter* mewajibkan orang tua yang telah bercerai untuk mengurus anak hingga usia anak mencapai 21 tahun⁸³. Pengecualian terhadap kewajiban ini adalah:

- Ketidakmampuan secara mental dan atau fisik;
- Anak akan menjalani pengabdian nasional;
- Anak akan menjalani pelatihan berkaitan dengan pekerjaan;
- Kondisi khusus, selain yang disebutkan dalam Section 69 (5), yang dapat membenarkan tindakan Pengadilan untuk meminta orang tua tetap memiliki kewajiban atas anaknya.

Dasar hukum : Section 68 dan 69.

2. *Kewajiban menjaga anak yang dianggap sebagai anggota keluarga.*

Bentuk penjagaan yang dimaksud dapat berupa menyediakan akomodasi, pakaian, makanan, dan edukasi. Permohonan agar orang tua menjalankan kewajibannya apabila tidak dijalankan dapat dilakukan oleh pihak-pihak dalam Section 70 (3). Sebagai bentuk penggantian atas pengasuhan yang dilakukannya, orang tua yang mengasuh dapat mendapatkan ganti oleh ayah-ibu asli kelak dan dianggap sebagai hutang. Penggantian ini diatur oleh Section 70 (2).

Dasar hukum : Section 70.

3. *Orang tua berhak menentukan agama seorang anak.*

⁸² Singapura (a), Section 69 (2).

⁸³ Singapura (a), Section 69 (4), (5).

Batas umur seorang anak dapat ditentukan oleh orang tuanya mengenai kepercayaan agama diatur hingga anak tersebut berusia 18 tahun. Apabila anak telah berusia 18 tahun dan ingin merubah kepercayaan yang dianutnya, maka anak tersebut memiliki hak dan karenanya orang tua tidak dapat menghalangi.

Dasar hukum : *The Constitution of the Republic of Singapore, Article 16, Clause (4).*

4. *Orang tua memiliki hak untuk memberikan persetujuan pada perkawinan yang melibatkan anak di bawah umur.*

Section 9 menyebutkan bahwa bagi perkawinan yang melibatkan kedua calon mempelai atau salah satu mempelai adalah anak di bawah umur, maka harus memiliki izin dari pihak-pihak yang disebutkan dalam *Second Schedule* agar perkawinan tersebut dapat disahkan oleh Registrar. Pihak-pihak dalam *Second Schedule* tersebut meliputi orang tua sebagai pihak pertama yang dapat memberikan izin agar perkawinan tersebut berlangsung.

Dasar hukum: Section 9.

Sementara itu, dalam peraturan hukum lain yang berkaitan dengan *Women's Charter*, diatur mengenai kewajiban anak untuk menjaga orang tuanya, terlepas dari anak tersebut adalah anak adopsi atau pun anak tidak sah, anak diharuskan untuk mengurus kedua orang tuanya berdasarkan *Maintenance of Parents Act*.

3.2.3.3. Terhadap Harta Perkawinan

Women's Charter mendefinisikan secara tegas mengenai harta perkawinan dalam Section 112 (10) dan diperkuat melalui yurisprudensi sebagai salah satu sumber hukum. Adapun yang termasuk dalam harta benda perkawinan terbagi atas :

- Harta benda yang diperoleh sebelum perkawinan

- Harta benda diperoleh salah satu atau kedua pasangan sebelum perkawinan, tetapi dipergunakan oleh kedua pasangan dan atau bersama anak-anak pada saat perkawinan; dan
 - Harta benda yang diperoleh selama perkawinan oleh salah satu atau kedua pasangan, kemudian berkembang dalam pengurusan salah satu atau kedua pasangan
- Harta benda yang diperoleh sepanjang perkawinan berlangsung, kecuali yang diperoleh suami atau istri karena hibah atau warisan dan harta tersebut tidak berkembang dalam pengurusan salah satu atau kedua pasangan selama perkawinan.

Yurisprudensi dari putusan Pengadilan pada kasus *Shirley Koo vs. Kenneth Mok Kong Chua*, berkaitan dengan pendapat Hakim Thean J (“all assets.. acquired during the marriage are matrimonial assets⁸⁴”) mendukung pemahaman harta perkawinan tersebut.

Terkait dengan kedudukan dan hak yang seimbang antara suami istri dalam perkawinan, *Women’s Charter* telah menegaskan bahwa istri dapat melakukan perbuatan hukum seperti sebelum dirinya menikah dan di antara hak-haknya sebagai istri, Section 51-63 menyebutkan perbuatan-perbuatan hukum yang dapat dilakukannya atas harta pribadi miliknya baik diperoleh sebelum perkawinan maupun pada saat perkawinan.

Sebagaimana Section 46 (1) *Women’s Charter* menyatakan bahwa suami dan istri dalam perkawinan secara bersama-sama terikat untuk saling membantu dan bekerjasama dalam memelihara rumah tangga dan anak-anak, maka harta perkawinan yang diperoleh pada saat perkawinan menimbulkan baik suami maupun istri memiliki hak atas harta perkawinan tersebut. Namun, apabila terjadi perceraian, Pengadilan dalam memutuskan perkara pembagian harta benda perkawinan perlu

⁸⁴ Sebagaimana dipaparkan oleh Leong Wai Kum dalam artikelnya berjudul “Supporting Marriage Through Description As An Equal Partnership Of Efforts”, mengenai pendapat Thean J pada kasus *Shirley Koo vs. Kenneth Mok Kong Chua*. Lihat: Leong Wai Kum (d), “Supporting Marriage Through Description As An Equal Partnership Of Efforts”, *The International Survey of Family Law 2002 Edition*, (United Kingdom: Jordan Publishing Limited, 2002), hlm. 388.

mempertimbangkan beberapa hal sebagaimana diatur dalam Section 114 (1), yaitu⁸⁵ :

- Besaran kontribusi masing-masing pasangan dalam memperoleh, mengembangkan, dan menjaga harta benda perkawinan;
- Kebutuhan anak-anak dalam perkawinan;
- Besaran kontribusi masing-masing pasangan dalam memelihara, melindungi, dan menjaga rumah tangga; dan
- Segala perjanjian yang dibuat oleh masing-masing pasangan terkait harta benda.

3.3. Administration of Muslim Law Act

Perkawinan bagi calon mempelai beragama Islam tunduk pada Hukum Islam yang diatur dalam *Administration of Muslim Law Act (AMLA)* yang merupakan Chapter 3 dari Statuta Singapura berdasarkan Section 89 AMLA yang berbunyi sebagai berikut :

“The provision of this Part shall apply only to marriages, both of the parties to which profess the Muslim religion and which are solemnized in accordance with the Muslim law.”

Di Singapura, umat Muslim mempunyai kedudukan hukum yang unik mengingat umat Muslim dipandang memiliki kedudukan yang setara di hadapan hukum dan hak istimewa untuk menggunakan Hukum Islam pada persoalan hukum privat/perorangan, meskipun berdasarkan sensus penduduk tahun 2010 oleh Singapore Department of Statistical Release menyatakan hanya sekitar 15% penduduk Singapura adalah Muslim. Lebih lanjut, penggunaan Hukum Islam dapat berlaku secara otomatis meskipun mereka tidak memilih demikian⁸⁶. Ketentuan ini diatur dalam Pasal 12 ayat (1) Konstitusi Singapura.

⁸⁵ Lawhub LLC, “Division of the Matrimonial Assets”, <http://www.lawhub.com.sg/article/s/splitting-up-part-4-division-of-the-matrimonial-assets.html>, diakses pada tanggal 30 April 2012.

⁸⁶ Artikel asli berbunyi, “Among Singaporeans today, a Muslim is in a unique legal position. Whereas Muslims stand together with other Singaporeans under article 12 (1) of the

Secara tersirat, Hukum Islam yang digunakan dalam sistem hukum Singapura adalah Hukum Islam berdasarkan interpretasi dari Syafi'i. AMLA mengharuskan hakim dalam memutuskan suatu perkara berdasarkan pada hukum Islam dan modifikasi berdasarkan hukum kebiasaan Melayu (“...in accordance with Muslim law... and modified, where applicable, by Malay custom.”). Section 33 AMLA secara spesifik menyatakan bahwa interpretasi hukum Islam yang harus digunakan oleh hakim adalah berdasarkan Syafi'i/Shafi'i.

AMLA mengatur mengenai, antara lain : Majelis Agama Islam Singapura (“MUIS”), lembaga pengesahan perkawinan (Registrar of Muslim Marriage/ROMM) yang mengurus bidang hukum perkawinan Muslim, dan Pengadilan Syariah. Hal lain dalam hukum perkawinan yang tidak diatur dalam AMLA, berdasarkan pada Hukum Islam.

3.3.1. Pengertian Perkawinan

Agama Islam sangat menganjurkan perkawinan. Sikap ini terlihat dalam firman Allah dalam surat *ar-Radu* (13) ayat 38 dan *ar-Rum* (30) ayat 21 yang berbunyi sebagai berikut:

“Dan sesungguhnya kami telah mengutus para rasul sebelum kamu (Muhammad), dan Kami memberikan kepada mereka istri-istri dan keturunan.”

“Dan di antara tanda-tanda kekuasaan-Nya ialah Dia menciptakan untukmu istri-istri dari jenismu sendiri, supaya kamu cenderung dan merasa tentram kepadanya, dan dijadikan di antaramu rasa kasih dan sayang. Sesungguhnya pada yang demikian itu benar-benar terdapat tanda-tanda bagi kaum yang berpikir.”

Constitution of Singapore as being equal before the law, and thus come under the umbrella jurisdiction of the Supreme Court of Singapore, they also have the privilege of invoking Islamic law when it comes to some matters of personal law. Furthermore, for other matters of personal law, Islamic law may apply to them automatically even if they do not choose to invoke it.” Lihat: Ahmad Nizam bin Abbas, “The Islamic Legal System in Singapore”, *Pacific RIM Law & Policy Journal*, (Vol. 21 No. 1), hlm. 163.

Kata “kawin” menurut Hukum Islam sama dengan kata “nikah” atau “zawaj”. Nikah menurut Sya’ra adalah “akad (ijab qabul) antara wali calon isteri dan mempelai laki-laki dengan ucapan-ucapan tertentu dan memenuhi rukun dan syarannya.” Al-Quran menyebut perkawinan sebagai *mistaqan ghalizan* yang artinya perkawinan adalah perjanjian yang sangat kuat dan perlu dipertahankan kelanggengannya. Tujuan dari dianjurkannya perkawinan adalah :

- Melanjutkan keturunan yang merupakan sambungan hidup dan penyambung cita-cita, membentuk keluarga dan dari keluarga terbentuk-keluarga terbentuk umat, umat Islam.

Sumber: Surat *an-Nahl* (16) ayat 72, Surat *an-Nisaa* (4) ayat 1.

- Untuk menjaga diri dari perbuatan-perbuatan yang dilarang Allah mengerjakannya.

Sumber: Hadist H.R. Bukhari dan Muslim.

- Untuk menimbulkan rasa cinta antara suami dan istri, menimbulkan rasa kasih sayang antara orang tua dengan anak-anaknya dan adanya rasa kasih sayang antara sesama anggota keluarga.

Sumber: Surat *ar-Ruum* (30) ayat 21.

- Untuk menghormati sunnah Rasulullah s.a.w. Beliau mencela orang-orang yang berjanji akan puasa setiap hari, akan bangun dan beribadat setiap malam dan tidak akan kawin.

Sumber: Hadits H.R. Bukhori dan Muslim.

- Untuk membersihkan keturunan. Keturunan yang bersih, yang memiliki ayah yang jelas, kakek, dan sebagainya hanya dapat diperoleh dengan perkawinan.

Dasar hukum lain dalam Hukum Islam yang menganjurkan untuk terjadinya perkawinan adalah⁸⁷ :

1. Surat *an-Nisaa* (4) ayat 3.

⁸⁷ Zahri Hamid, *Pokok-Pokok Hukum Perkawinan Islam dan Undang-Undang Perkawinan di Indonesia*, cet. 1, (Jakarta: Binasipta, 1978), hlm. 2.

“Dan jika kamu tidak takut akan dapat berlaku adil terhadap (hak-hak) perempuan yang yatim (bilamana kamu mengawininya), maka kawinilah wanita-wanita (lain) yang kamu senangi: dua, tiga, atau empat. Kemudian jika kamu takut tidak akan berlaku adil, maka (kawinlah) seorang saja.”

2. Surat *an-Nur* (24) ayat 32.

“Dan kawinkanlah orang-orang yang sendirian di antara kamu, dan orang-orang yang layak (berkawin) dari hamba-hamba sahayamu yang perempuan. Jika mereka miskin, Allah akan memampukan mereka dengan kurnia-Nya. Dan Allah Maha Luas pemberian-Nya lagi Maha Mengetahui.”

Terdapat lima kategori status hukum berkaitan dengan perkawinan berdasarkan kondisi seseorang serta niat dan akibat-akibatnya, dikenal sebagai *al-ahkam al-khamsah* (hukum yang lima) yaitu:

1. Wajib.

Perkawinan adalah wajib hukumnya bagi seorang laki-laki yang mengkhawatirkan dirinya melakukan perbuatan (hubungan seksual) yang dilarang oleh Sya'ra jika dirinya tidak kawin, dan bagi seorang perempuan yang tidak dapat menghindarkan dirinya dari perbuatan orang jahat jika ia tidak kawin.

2. Sunnah.

Perkawinan adalah sunnah hukumnya bagi orang yang mempunyai kesanggupan untuk kawin dan sanggup memelihara diri dari kemungkinan melakukan perbuatan yang terlarang.

3. Mubah⁸⁸.

Perkawinan adalah mubah hukumnya bagi seorang laki-laki yang telah mempunyai hajat kawin, tetapi belum mampu mendirikan rumah tangga, bagi laki-laki yang belum

⁸⁸ Mubah adalah suatu perbuatan yang dibolehkan untuk dikerjakan, tetapi tidak diwajibkan dan tidak pula diharamkan.

mempunyai hajat kawin, tetapi sudah mampu mendirikan rumah tangga, dan bagi perempuan yang belum mempunyai hajat kawin.

4. Makruh.

Perkawinan adalah makruh hukumnya bagi orang yang tidak mempunyai kesanggupan untuk kawin (diperbolehkan untuk kawin, tetapi dikhawatirkan tidak dapat mencapai tujuan perkawinan).

5. Haram.

Perkawinan adalah haram hukumnya bagi orang-orang yang mempunyai kesanggupan untuk kawin, tetapi memberikan kekhawatiran kalau ia menikah akan menimbulkan kemadharatan terhadap pihak yang lain, seperti contohnya adalah orang gila, orang yang suka membunuh, atau mempunyai sifat-sifat yang dapat membahayakan pihak lain.

3.3.2. Syarat Sah Perkawinan

Menurut hukum Islam, perkawinan baru dapat dikatakan sah apabila memenuhi rukun dan syarat perkawinan. Rukun merupakan unsur pokok dan syarat merupakan unsur pelengkap. Rukun nikah haruslah terpenuhi dan apabila tidak terpenuhi, maka perkawinan tidak akan terjadi. Kriteria yang termasuk rukun nikah adalah sebagai berikut :

1. Calon mempelai adalah laki-laki dan perempuan.

Bagi kedua calon mempelai, terdapat syarat tersendiri yang harus dipenuhi, yaitu:

a. Syarat bagi calon mempelai pria

1. Beragama Islam;
2. Terang laki-lakinya;
3. Tidak mendapat paksaan;
4. Tidak beristri lebih dari empat;
5. Bukan mahramnya bakal istri;

6. Tidak mempunyai isteri yang haram dimadu dengan bakal isterinya;
7. Mengetahui bakal isterinya tidak haram dinikahi (tidak ada larangan perkawinan atas bakal isterinya);
8. Tidak sedang dalam ihram haji atau umroh.

b. Syarat bagi calon mempelai perempuan

1. Beragama Islam;
2. Terang perempuannya;
3. Telah memberi ijin kepada wali untuk menikahkannya;
4. Tidak bersuami;
5. Tidak dalam masa *'iddah*;
6. Bukan mahram bakal suami;
7. Belum pernah mendapatkan sumpah *li'an* oleh bakal suaminya;
8. Terang orangnya;
9. Tidak sedang dalam ihram haji atau umroh.

2. *Adanya wali bagi calon mempelai perempuan.*

Menurut mazhab Syafi'i berdasarkan hadits Rasul yang diriwayatkan Bukhari dan Muslim dari Siti Aisyah, Rasul pernah mengatakan bahwa tidak ada perkawinan tanpa adanya wali. Persyaratan yang harus dipenuhi agar seseorang dapat menjadi wali adalah :

- Beragama Islam jika calon mempelai perempuan beragama Islam;
- Laki-laki;
- Telah akil bhaligh;
- Berakal;
- Tidak sedang berihram haji/umroh;
- Tidak mahjur bissafah (dicabut hak kewaliannya);
- Tidak dipaksa;
- Tidak rusak pikirannya karena usia lanjut;
- Tidak fasiq.

Selain itu, terdapat berbagai kategori wali, yaitu :

a. Wali nasab

Wali nasab merupakan anggota keluarga laki-laki calon mempelai perempuan yang memiliki hubungan darah patrilineal dengan calon mempelai perempuan seperti, ayah, datuk, saudara laki-laki ayah, saudara laki-laki kandung mempelai perempuan.

b. Wali hakim

Wali hakim merupakan penguasa atau wakil penguasa yang berwenang dalam bidang perkawinan. Sebagai contoh adalah penghulu atau petugas lain dari Departemen Agama.

c. Hakam

Hakam merupakan seseorang yang masih termasuk anggota keluarga calon mempelai perempuan, tapi bukan wali nasab dan mempunyai pengetahuan agama sebagai wali yang cukup.

d. Muhakam

Muhakam merupakan laki-laki yang bukan keluarga calon mempelai perempuan dan bukan penguasa, tetapi mempunyai pengetahuan agama yang baik dan dapat menjadi wali perkawinan. Persyaratan yang harus dipenuhi adalah laki-laki tersebut adalah beragama Islam, telah akil baligh, berakal, laki-laki, adil, dan tidak sedang ihram haji atau umroh.

3. *Adanya saksi.*

Dalam perkawinan harus terdapat dua orang saksi laki-laki yang beragama Islam, telah akil baligh, berakhlak baik, tidak menjadi wali, berakal, dan adil. Jika tidak ada laki-laki, maka untuk satu orang laki-laki dapat digantikan dengan dua orang perempuan sebagai saksi.

4. *Ijab dan kabul.*

Ijab adalah pernyataan yang diucapkan oleh wali mempelai perempuan sebagai perwakilan. Ijab merupakan penegasan kehendak mengikatkan diri pihak mempelai perempuan dalam bentuk perkawinan. Sedangkan kabul adalah penegasan menerima pengikatan

diri sebagai suami istri yang dilakukan pihak mempelai laki-laki. Pengucapan ijab dan kabul tidak boleh mengalami jeda waktu diantaranya, tetapi harus segera dijawab dengan kabul setelah ijab diucapkan.

Selain harus memenuhi rukun yang telah disebutkan diatas, terdapat “perkawinan yang dilarang”, dimana suatu perkawinan harus menghindari larangan-larangan yang disebutkan dalam al-Quran. AMLA sebagai peraturan perkawinan bagi umat Muslim di Singapura pun memiliki ketentuan serupa mengenai larangan perkawinan, meskipun tidak semua dicantumkan. Ketentuan larangan perkawinan yang tidak dicantumkan dalam AMLA berarti harus mengikuti ketentuan larangan perkawinan di Hukum Islam. Larangan-larangan perkawinan tersebut adalah :

1. Surat *al-Baqarah* (2) ayat 221 dan surat *al-Mumtahanah* (60) ayat 10 tentang larangan perkawinan karena perbedaan agama.

Dalam ayat ini Allah melarang baik laki-laki maupun perempuan menikahi orang yang berbeda agama. Namun, terdapat pengecualian dimana ada kebolehan menikahi wanita mukminah dan wanita kitabi dalam surat *al-Maidah* (5) ayat 5. Yang dimaksud dengan wanita mukminah adalah perempuan beriman, beramal saleh, dan mengikuti ajaran yang dibawa oleh Nabi/Rasulnya sejak pertama hingga ummat Muhammad.⁸⁹ Sedangkan yang dimaksud dengan wanita kitabi adalah perempuan penganut Taurat atau Injil. Persyaratan yang harus dipenuhi apabila menikahi wanita kitabi adalah bahwa orang tua dari wanita kitabi tersebut haruslah *ahlul kitab* (Nasrani atau Yahudi).

2. Surat *al-Nisaa* (4) ayat 22, 23, 24 tentang larangan perkawinan karena hubungan darah, semenda, dan saudara sesusuan.

⁸⁹ Yeni Salma Barlinti, *Buku Ajar Hukum Perorangan dan Kekeluargaan Islam*, (Depok: Fakultas Hukum Universitas Indonesia, 2000), hlm. 76.

Agar seseorang menjadi saudara sesuan dan larangan menikahi saudara sesuan menjadi berlaku adalah harus terpenuhinya kriteria berikut:

- a. Umur anak pada waktu menyusui kurang dari dua tahun⁹⁰;
- b. Anak tersebut menyusui sampai lima kali kenyang dalam jangka waktu berlainan.

Tabel 5 : Wanita yang tidak bisa dinikahi karena hubungan darah, semenda, dan sesuan.

Perempuan yang tidak bisa dinikahi karena hubungan darah	Perempuan yang tidak bisa dinikahi karena hubungan semenda	Perempuan yang tidak bisa dinikahi karena hubungan sesuan
Ibu	Ibu istri (mertua perempuan)	Ibu susuan
Anak perempuan	Anak tiri	Anak susuan
Saudara perempuan	Menantu perempuan	Saudara perempuan susuan
Saudara perempuan ibu	Menikahi dua orang saudara sekaligus	Bibi susuan dari ayah
Saudara perempuan ayah		Bibi susuan dari ibu
Anak perempuan saudara laki-laki		Anak perempuan saudara laki-laki susuan
Anak perempuan saudara perempuan		Anak perempuan saudara perempuan susuan

Kolom pertama menjelaskan mengenai perempuan yang tidak bisa dinikahi seorang laki-laki karena adanya hubungan darah di antara mereka, yakni : Ibu, anak perempuan, saudara perempuan, saudara perempuan ibu, saudara perempuan ayah, anak perempuan

⁹⁰ Surat *al-Baqarah* (2) ayat 23.

saudara laki-laki, dan anak perempuan saudara perempuan. Sedangkan di kolom kedua dijelaskan mengenai perempuan yang tidak bisa dinikahi seorang laki-laki karena adanya hubungan semenda di antara mereka, yakni : Ibu istri (mertua perempuan), anak perempuan tiri, menantu perempuan, dan dua perempuan yang bersaudara sekaligus. Kolom ketiga menjelaskan mengenai perempuan yang tidak bisa dinikahi seorang laki-laki karena adanya hubungan susuan di antara mereka, yaitu : Ibu susuan, anak perempuan susuan, saudara perempuan susuan, bibi susuan dari ayah, bibi susuan dari ibu, anak perempuan saudara laki-laki susuan, anak perempuan saudara perempuan susuan.

3. Surat *an-Nur* (24) ayat 6 dan jo. Surat *an-Nur* (24) ayat 8 dan 9 tentang larangan perkawinan karena pertalian sumpah *li'an*.

Yang dimaksud dengan sumpah *li'an* adalah tuduhan dengan mengangkat sumpah jika seorang suami menuduh isterinya telah berzina, tetapi tidak dapat mengajukan empat orang saksi. Sumpah ini dilakukan sebanyak empat kali atas nama Allah dan sumpah kelima adalah laknat Allah atas dirinya, jika ia termasuk orang berdusta. Istri dapat membantah tuduhan *li'an* dengan menyatakan sumpah yang sama.

4. Surat *al-Baqarah* (2) ayat 230 dan Section 97 (1) c AMLA⁹¹ tentang larangan perkawinan karena pertalian talak tiga.

Mantan suami diharamkan mengawini kembali mantan istrinya yang telah dinyatakan thalak tiga, kecuali mantan istri telah menikah dengan laki-laki lain dan telah bercerai dari laki-laki tersebut.

⁹¹ Section 97 (1) c: "if the divorce was by 3 talak, she shall not be remarried to her previous husband, unless prior to the marriage she shall have been lawfully married to some other person and such marriage shall have been consummated and later lawfully dissolved."

5. Surat *an-Nisaa* (4) ayat 3 tentang larangan perkawinan lebih dari empat istri.

Seorang suami Muslim diperkenankan menikah dengan lebih dari seorang istri apabila ia merasa mampu untuk berbuat adil pada istri-istrinya, tetapi ia tidak dibenarkan melangsungkan perkawinan dengan calon isteri kelima dan seterusnya.

6. Section 97 (1) AMLA⁹² tentang larangan perkawinan karena calon mempelai berada dalam masa *'iddah*.

Menurut mazhab Syafi'i, perkawinan antara suami istri dimana istri masih berada dalam masa *'iddah*-nya, maka diantara keduanya harus terjadi perceraian dahulu dan kemudian istri melanjutkan masa *'iddah*-nya. Setelah istri menyelesaikan masa *'iddah*, maka laki-laki tersebut diperbolehkan untuk mengawini sang perempuan untuk kedua kalinya.

Sementara itu, syarat perkawinan menurut Hukum Islam yang berlaku di Singapura adalah sebagai berikut :

1. *Adanya persetujuan antara calon mempelai.*

Calon mempelai harus bebas dalam menyatakan persetujuannya untuk menikah tanpa adanya paksaan dari pihak lain. Persetujuan menyatakan kehendak ini hanya dapat dilakukan oleh orang yang sudah mampu berpikir, dewasa, atau akil baligh. Hal ini menunjukkan bahwa hukum perkawinan Islam menganut asas kedewasaan jasmani dan rohani dalam melangsungkan perkawinan. Keharusan adanya persetujuan dari para pihak terlihat dalam Hadits H.R. Bukhori dan Muslim yang menceritakan bahwa Rasulullah s.a.w. pernah membatalkan perkawinan karena ada pihak yang akan kawin tidak dimintakan persetujuannya lebih dahulu.

⁹² Section (97) a: "she shall not be married to any person other than husband from whom she was last divorced, at any time prior to the expiration of the period of *iddah*, which shall be calculated in accordance with the Muslim law."

2. *Mahar.*

Mahar merupakan kewajiban yang harus dibayarkan oleh calon mempelai laki-laki kepada calon mempelai perempuan. Pemberian mahar ini adalah wajib hukumnya dan diberikan pada waktu akad nikah dilangsungkan sebagai simbol pertanggungjawaban suami dengan sukarela mengorbankan hartanya untuk menafkahi istri demi memenuhi kebutuhan hidup sehari-hari sebagaimana Allah berfirman dalam surat *an-Nisaa* (4) ayat 4 dan 25. Mahar dapat berupa uang tunai ataupun berupa hadiah seperti emas, perak, tanah, mobil, atau apartemen. Mahar sepenuhnya dimiliki oleh mempelai perempuan, dan oleh sebab itu mempelai perempuan dapat meminta mahar sesuai yang diinginkannya. Di Singapura, penentuan mahar memiliki nilai minimum, yakni sebesar S\$100 tunai⁹³.

3. *Batas usia minimum untuk melangsungkan perkawinan.*

Meskipun di Singapura dianjurkan untuk menikah ketika telah mencapai usia 21 tahun, ketentuan dalam AMLA menentukan batas usia minimum untuk menikah adalah 18 tahun⁹⁴. Apabila usia kedua mempelai belum 18 tahun, maka perkawinan tidak akan disahkan oleh Registrar of Muslim Marriages. Di Singapura, bagi perempuan yang telah mencapai usia 21 tahun diwajibkan untuk membawa identitas diri, yaitu NRIC (*National Registration Identity Card*) untuk warga negara Singapura dan *Permanent Resident*, atau pasport bagi warga negara asing. Hal sama berlaku pula sebaliknya bagi mempelai laki-laki. Jika calon mempelai belum berumur 21 tahun, maka proses pengesahan perkawinan harus mendapat izin

⁹³ Registrar of Muslim Marriages, "Registry of Muslim Marriage", http://app.romm.gov.sg/internet/about_marriage/romm_eligibility.asp, diakses pada tanggal 29 April 2012.

⁹⁴ Section 96 (4) AMLA : "No marriage shall be solemnized under this Act if at the date of the marriage either party is below the age of 18 years."

dan dihadiri oleh orang tua atau wali dari pengantin pria disertai dengan tanda identitas diri mereka.

4. *Kadi atau Naib Kadi.*

Kadi atau Naib Kadi berperan sebagai orang yang mengesahkan atau penghulu. AMLA mengatur mengenai Kadi dan Naib Kadi dalam Section 91, 92, dan 93.

5. *Pendaftaran perkawinan.*

Kedua calon mempelai harus mendaftarkan perkawinan melalui website Registrar of Muslim Marriages atau di Registrar of Muslim Marriages. Calon mempelai harus menandatangani pernyataan dan aplikasi untuk prosedur perkawinan, serta membuat janji hari pengesahan perkawinan. Untuk calon mempelai yang berada di bawah usia 21 tahun diwajibkan untuk mengikuti *Young Couples Programme*, sebuah kursus perkawinan yang ditujukan bagi pasangan muda.

6. *Pencatatan perkawinan*⁹⁵.

Suami istri yang telah menikah diharuskan mencatatkan perkawinan pada Kadi atau Naib Kadi untuk dimintakan tanda tangan suami istri diatas surat nikah (*certificate of marriage*). Setelah penandatanganan, suami diharuskan membaca taklik sebagai syarat dan ketentuan perkawinan yang dapat diajukan oleh istri untuk menuntutnya ke Pengadilan Syariah apabila suami menyakitinya, atau tidak dinafkahi selama lebih dari 6 bulan berturut-turut sejumlah mahar yang diberikan, atau suami meninggal istri lebih dari 6 bulan.

3.3.3. Akibat Hukum Terjadinya Perkawinan

⁹⁵ Singapura (b), *Administration of Muslim Law Act (Chapter 3)*, Section 100.

Jika perkawinan telah dilangsungkan sesuai Hukum Islam dan AMLA, maka perkawinan telah dianggap sah menurut agama dan negara. Perkawinan yang sah kemudian menimbulkan suatu akibat hukum dalam hubungan suami istri, anak, dan harta benda.

3.3.3.1. Akibat Hukum Terhadap Hubungan Suami Istri Itu Sendiri

Hak dan kewajiban antara suami istri terdapat dalam surat *an-Nisaa* (4), sebagai berikut:

1. *Suami istri halal untuk saling bergaul dan menciptakan keturunan.*

Surat *an-Nisaa* (4) ayat 19 mengatur mengenai kewajiban suami untuk mempergauli istri menurut garis-garis hukum berdasarkan kecintaan yang tulus. Pengertian mempergauli istri meliputi pergaulan fisik seperti hubungan seksual dan pergaulan psikis yang berdasar kepada akhlak utama. Namun, dalam hal mempergauli istri, terdapat ketentuan yang melarang suami untuk menggauli istri di saat istri sedang masa haid sebagaimana yang dirumuskan dalam surat *al-Baqarah* (2) ayat 222, atau sikap lain seperti memaksa istri di saat sedang tidak sehat badan.

Sebagai timbal balik atas pertanggungjawaban suami terhadap dirinya, maka seorang istri diwajibkan mencintai suami dan menyediakan diri untuk menyenangkan suami. Namun, baik suami maupun istri keduanya sama-sama memiliki kewajiban menciptakan sistem bergaul dalam rumah tangga yang harmonis sebagaimana disebutkan dalam surat *ar-Ruum* (30) ayat 21.

2. *Saling menjaga rahasia masing-masing.*

Suami dan istri sama-sama berkewajiban menjaga rahasia-rahasia masing-masing, rahasia rumah tangganya. Menurut surat *al-Mukminun* (23) ayat 8, memelihara amanat adalah

termasuk tanda keimanan, dan bagi istri dijelaskan lebih lanjut dalam surat *an-Nisaa* (4) ayat 34 bahwa seorang istri yang memelihara dan memegang teguh rahasia suami dan rumah tangga adalah ciri istri yang shalihah. Istri diharuskan mampu menjaga rahasia suami dan rumah tangganya karena kepercayaan yang diberikan oleh suami kepada istrinya adalah amanat mulia bagi istri.

3. *Istri berhak atas nafkah dan suami berkewajiban untuk menafkahnya.*

Surat *at-Hthalaq* (65) ayat 7 dan Hadits Mu'awiyah al Qusyairy mengatur mengenai kewajiban suami memberikan nafkah kepada istri. Pemberian nafkah tersebut berupa pakaian, pangan, dan pengobatan kepada istri.

4. *Istri berhak atas tempat kediaman, baik mengikuti tempat tinggal suami atau tempat tinggal yang ditunjuk suami.*

Tempat tinggal merupakan bagian dari hak istri yang harus dipenuhi oleh suami sebagai kewajibannya. Surat *at-Hthalaq* (65) ayat 6 menegaskan bahwa suami wajib menyelenggarakan tempat tinggal bagi istri. Sedangkan istri akan tinggal pada tempat tinggal yang ditunjuk oleh suami atau mengikuti tempat tinggal suami. Jika suami telah menyediakan tempat tinggal yang pantas (memungkinkan terwujudnya stabilitas rumah tangga), maka istri wajib mengikuti.

5. *Istri mengurus dan mengatur rumah tangga dengan baik, termasuk memelihara dan mendidik anak.*

Mengatur rumah tangga dan mendidik anak merupakan kewajiban utama istri. Istri diharuskan mengurus rumah tangga sedemikian rupa sehingga suami tenang dan kerasan di rumah, serta memberikan kepuasan kepada suami.

6. *Suami harus menjaga, memelihara, dan melindungi istrinya.*

Hukum Islam memandang suami lebih tinggi satu derajat di atas istrinya disebabkan Islam menganggap bahwa suami adalah kepala keluarga dan pemimpin tertinggi bagi rumah tangganya⁹⁶. Hal ini berdampak pada tanggung jawab suami ke dalam dan ke luar atas keselamatan dan kesejahteraan rumah tangganya. Salah satu tanggung jawab ke dalamnya adalah seorang suami memiliki kewajiban untuk membimbing dan memimpin istrinya secara baik. Oleh karenanya, istri wajib mengakui dan menghormati kepemimpinan suami terhadap dirinya dan rumah tangga berdasarkan firman Allah surat *an-Nisaa* (4) ayat 34.

7. *Suami harus berlaku adil saat beristri lebih dari seorang.*

Berlaku adil merupakan persyaratan yang diharuskan pada saat seorang suami hendak beristri lebih dari seorang. Hal ini dinyatakan dalam surat *an-Nisaa* (4) ayat 3. Oleh karena itu, apabila suami telah menikah lagi atas seizin istri sebelumnya yang menjanjikan akan mendapat perlakuan adil, maka berlaku adil pada saat perkawinan poligami merupakan kewajiban suami.

8. *Suami berhak atas istri yang taat dan patuh.*

Kepatuhan istri terhadap suami menjadi tanda istri itu shalihah, sesuai dengan firman Allah dalam surat *an-Nisaa* (4) ayat 34 yang menyatakan bahwa istri shalihah adalah istri yang taat dan memelihara diri ketika ketiadaan suami.

9. *Suami istri bersama-sama mengikhlaskan hati untuk mengabdikan kepada Allah Subhanahu Wa Taala.*

⁹⁶ Surat *al-Baqarah* (2) ayat 228.

Surat *ad-Zdzariyat* (51) ayat 56 menegaskan bahwa diciptakannya jin dan manusia adalah semata-mata agar mengabdikan kepada Allah. Oleh karenanya, dalam menunaikan kewajiban rumah tangga, suami istri hendaknya selalu mendasarkan pada pengabdian kepada kehadiran Allah, memohon perlindungan dan pertolongan-Nya. Rasa mengabdikan kepada Allah merupakan landasan segala amal perbuatan.

10. *Suami istri bersama-sama memiliki kewajiban untuk memelihara dan menjaga diri dan anggota keluarga.*

Kewajiban bersama untuk memelihara dan menjaga diri dan anggota keluarga dimaksudkan untuk menghindari timbulnya sikap-sikap negatif yang kelak dapat menimbulkan siksa neraka bagi diri dan anggota keluarga. Kewajiban bersama ini diatur dalam surat *at-Tahrim* (66) ayat 6.

11. *Suami istri secara bersama-sama menyelesaikan permasalahan rumah tangga dengan sistem musyawarah untuk mufakat.*

Sistem musyawarah untuk mufakat diatur dalam surat *as-Ysyura* (42) ayat 37 dan surat *al-Imran* (3) ayat 159. Sistem musyawarah untuk mufakat wajib diterapkan dalam kehidupan rumah tangga dengan suami istri sebagai penanggungjawab, sebab kemufakatan akan menimbulkan rasa tanggungjawab bersama. Selain musyawarah untuk mufakat, dalam mengatasi persoalan masing-masing dan rumah tangga, suami istri wajib saling tolong-menolong dan bergotong-royong sebagaimana disuratkan dalam *al-Maidah* (5) ayat 2.

3.3.3.2. Akibat Hukum Terhadap Hubungan Orang Tua dan Anak

Menurut pandangan Islam, anak adalah ciptaan Allah seperti dalam firman Allah⁹⁷ yang dilahirkan oleh sepasang suami istri⁹⁸. Allah

⁹⁷ Surat *al-Haji* (22) ayat 5.

menciptakan manusia berpasang-pasangan (laki-laki dan perempuan) untuk bersatu dalam perkawinan sebagaimana dikatakan dalam surat *an-Najm* (53) ayat 45 dan *al-An'aam* (6) ayat 140. Dari perkawinan ini kemudian akan lahir anak laki-laki atau anak perempuan sebagai keturunan.

Dalam al-Quran dinyatakan bahwa orang tua wajib memelihara, mengasuh, mendidik dan menjaga, melindungi anak menurut kadar kemampuannya⁹⁸. Dipenuhinya kewajiban orang tua merupakan hak dari seorang anak. Menurut Whadah as-Zuhaili dalam karyanya “al-fiqh al-islami wa Adillatuhu” sebagaimana dikutip oleh Satria Effendi M. Zein dalam bukunya berjudul “Makna, Urgensi dan Kedudukan Nasab dalam Perspektif Hukum Keluarga Islam”, hak-hak tersebut adalah sebagai berikut :

1. Hak nasab.

Nasab dalam bahasa Arab berarti keturunan atau kerabat. Nasab adalah sebuah pengakuan sya'ra bagi hubungan seorang anak dengan garis keturunan ayahnya sehingga dengan itu anak tersebut menjadi salah seorang anggota keluarga dari garis mendasar, sebab empat hak selanjutnya sepanjang berhubungan dengan pihak ayah baru, akan mendapat pengakuan sah jika yang pertama telah mendapatkan pengakuan sah.

Nasab terbentuk atas dua hal, yaitu:

- a. Satu tali darah. Hubungan nasab didasarkan pada satu aliran darah. Allah berfirman sebagaimana yang tercatat dalam surat *al-Ahzab* melarang anak angkat menggunakan nama ayah angkatnya.
- b. Anak dilahirkan melalui perkawinan sah, atau fasid, atau senggama syubhat.
 - o Melalui perkawinan sah.

⁹⁸ Surat *an-Nisaa* (4) ayat 1.

⁹⁹ Surat *al-Baqarah* (2) ayat 233.

Wanita yang bersuami dengan akad nikah yang sah, saat melahirkan, anak akan dinasabkan kepada suaminya itu dengan memenuhi syarat berikut:

5. Anak dilahirkan setelah tidak kurang dari enam bulan berdasarkan surat *al-Ahqaaf* (46) ayat 15.
 6. Laki-laki yang menjadi suaminya telah akil baligh.
 7. Tidak terbukti suami istri belum pernah bertemu setelah menikah.
 8. Pihak suami tidak mengingkari bahwa anak itu adalah keturunannya. Jika suami menolak mengakui, maka harus atas dua syarat:
 - ❖ Suami melakukan sumpah *li'an*.
 - ❖ Sebelum melakukan penolakan, suami belum memberikan pengakuan bahwa anak tersebut adalah keturunannya.
- Nasab yang ditetapkan lewat nikah fasid.
Nikah fasid adalah akad nikah yang terdapat cacat pada syaratnya. Sebagai contoh adalah seseorang menikahi perempuan yang masih berada dalam masa 'iddah. Akan tetapi, hubungan suami istri telah dilakukan dan membuahkan keturunan. Keturunan tersebut akan tetap dinisbahkan secara sah kepada suami demi kemaslahatan anak.
- Nasab yang ditetapkan karena telah terjadi senggama syubhat.

Yang dimaksud dengan senggama syubhat adalah terjadinya hubungan seksual antara seorang laki-laki dengan seorang perempuan yang diyakini adalah istrinya, tetapi ternyata perempuan tersebut bukan istrinya. Kondisi lain yang termasuk kategori adalah ketika suami istri masih melakukan hubungan seksual di saat istri telah ditalak tiga oleh suami, tetapi

hubungan seksual tersebut sah karena istri masih dalam masa 'iddah.

2. Hak Radla'.

Hak Radla merupakan hak anak untuk mendapatkan pelayanan makan pokok dengan jalan menyusui pada ibunya sebagaimana diatur dalam surat *al-Baqarah* (2) ayat 233.

3. Hak Hadlanah.

Hak Hadlanah merupakan hak anak yang belum mampu mengurus dirinya untuk dijaga dan diasuh, atau dididik sejak lahir sampai mampu menjaga dan mengatur dirinya sendiri. Hadlanah dibebankan kepada kedua orang tuanya, terutama ibu.

4. Hak Walayah.

Hak Walayah merupakan pemeliharaan anak atas pendidikan yang diperolehnya pada saat hadlanah dengan memberikan pendidikan lebih lanjut dan bertanggung jawab atas kelangsungan anak tersebut hingga ia akil baligh, berakal, dan mampu hidup mandiri. Selain itu, orang tua berkewajiban memelihara harta benda anaknya dan mengatur pembelanjaan harta benda tersebut. Terakhir, kewajiban perwalian dalam perkawinan bagi anak perempuannya termasuk hak walayah seorang anak

5. Hak atas nafkah.

Sejak lahir, kebutuhan anak atas nafkah harus dipenuhi. Menurut para ahli fiqh, orang pertama yang bertanggung jawab atas nafkah anak adalah kerabat terdekat dalam garis nasab, yaitu ayah kandungnya.

Selain kewajiban orang tua atas anaknya, Hukum Islam mengatur dan mewajibkan pula adanya hak dan kewajiban anak terhadap orang tua. Menurut Hukum Islam, anak berkewajiban memberi nafkah bagi kedua

orang tuanya berdasarkan surat *al-Ankabut* (29) ayat 8 dan surat *Luqman* (31) ayat 14.

3.3.3.3. Akibat Hukum Terhadap Anggota Kerabat dan Keluarga

Dekat

Saat seseorang telah terikat dalam perkawinan, maka ia kemudian hidup dalam keluarga dan kerabatnya. Allah memerintahkan agar umat Muslim berbuat baik dimulai dari kerabat terdekat, dan oleh karena itu, muncul pula kewajiban untuk memperhatikan nasib sanak saudara yang menjadi bagian keluarga akibat terjadinya perkawinan. Dalam Hukum Islam, kewajiban terhadap sanak kerabat dan keluarga dekat diatur dalam surat *an-Nisaa* (4) ayat 36 jo. Surat *al-Isra* (17) ayat 26 jo. Surat *ar-Ruum* (30) ayat 38¹⁰⁰.

3.3.3.4. Akibat Hukum Terhadap Harta Perkawinan

Harta benda dalam hukum Islam dikenal dengan istilah *syirkah*. Pada dasarnya menurut hukum Islam, harta suami dan harta istri adalah terpisah. Al-Quran tidak mengatur mengenai harta bersama suami istri dalam perkawinan. Surat *an-Nisaa* (4) ayat 32 menegaskan bahwa "... bagi laki-laki ada harta kekayaan dari hasil usahanya sendiri dan bagi wanita ada harta kekayaan atas hasil usahanya sendiri." Penyebutan laki-laki dan wanita dalam hal ini tidak menggunakan kata suami dan istri. Asas pemisahan harta ini menimbulkan masing-masing pihak mempunyai hak atas hartanya secara penuh tanpa ada gangguan pihak lain.

Sayuti Thalib berpendapat bahwa harta suami istri dalam hukum Islam dapat dilihat dari tiga sudut pandang, yaitu :

1. Dari sudut pandang asal harta, yang terdiri atas tiga golongan :
 - a. Harta masing-masing suami istri yang telah dimilikinya sebelum mereka kawin, baik diperoleh karena mendapatkan warisan, hadiah, atau usaha lain yang dikenal sebagai harta bawaan;

¹⁰⁰ Surat *an-Nisaa* (4) ayat 36.

- b. Harta masing-masing suami istri yang diperoleh selama perkawinan, tetapi tidak diperoleh atas usahanya sendiri atau usaha bersama, namun berdasarkan warisan, wasiat, ataupun hibah masing-masing; dan
 - c. Harta yang diperoleh setelah mereka berada dalam hubungan perkawinan atas usaha mereka berdua atau salah satu pihak dari mereka yang dikenal sebagai harta pencaharian.
2. Dari sudut pandang penggunaan harta, harta dipergunakan untuk :
 - a. Pembiayaan rumah tangga, keluarga, dan pendidikan anak-anak; dan
 - b. Harta kekayaan lain.
 3. Dari sudut pandang hubungan harta perorangan dalam masyarakat, harta berwujud :
 - a. Harta milik bersama suami istri.

Meskipun al-Quran tidak menyebutkan mengenai adanya harta bersama, tetapi dimungkinkan adanya percampuran atas harta kekayaan suami istri. Harta yang dapat bercampur adalah harta yang dimiliki suami istri, baik berupa harta bawaan, harta yang diperoleh atas usaha masing-masing atau bersama-sama selama perkawinan, maupun harta yang diperoleh selama perkawinan seperti warisan, wasiat, atau hibah.

Terjadinya percampuran harta dapat dilakukan dengan cara :

- o Mengadakan perjanjian secara nyata-nyata tertulis atau diucapkan sebelum atau sesudah berlangsungnya akad nikah, baik untuk harta bawaan, harta yang diperoleh selama perkawinan, tetapi bukan atas usaha mereka sendiri, atau harta pencaharian.

- o Penetapan melalui peraturan perundang-undangan bahwa harta yang diperoleh atas usaha suami atau istri atau kedua-duanya selama perkawinan (harta pencaharian) adalah harta bersama.
- o Melihat kenyataan hidup pasangan suami istri. Cara ini khusus untuk harta yang diperoleh selama perkawinan dan menganggap terjadi pencampuran harta secara diam-diam apabila dalam kenyataannya mereka bersatu dalam membiayai hidup.
- b. Harta milik seseorang, tetapi terikat pada keluarga.
- c. Harta milik seseorang dan pemilikan itu disebutkan secara tegas oleh yang bersangkutan.

Selain yang telah diatur dalam Hukum Islam, ketentuan hukum terkait harta perkawinan dalam AMLA diatur dalam Section 124-125 yang menyatakan bahwa:

1. Masing-masing pihak (suami dan istri) dapat bertindak hukum atas harta perorangnya sendiri setelah menikah dan tidak dapat memiliki harta perorangan milik pasangannya. Dasar hukum : Section 124.
2. Harta benda yang dipergunakan untuk memenuhi kebutuhan rumah tangga adalah milik suami secara *prima facie* milik suami. Dasar hukum : Section 125.

Selanjutnya, Section 118-122 AMLA menerangkan mengenai ketentuan hukum yang berlaku berkaitan dengan kewenangan dan tanggung jawab istri atas hartanya dalam perkawinan, seperti kewenangan istri untuk membuat surat wasiat, kebolehan memiliki aset properti atas namanya yang diperoleh sebelum menikah untuk tetap menjadi miliknya selama perkawinan berlangsung, dan melakukan tindakan hukum seperti mengikat diri dalam kontrak. Selain itu, sebagai konsekuensi atas tindakan hukum yang dilakukan atas namanya sendiri, maka istri dapat menjadi subyek dari penegakan hukum apabila terjadi wanprestasi atau perbuatan melawan hukum yang berkaitan dengan dirinya sendiri.

BAB IV

ANALISIS PERBANDINGAN PERATURAN HUKUM PERKAWINAN MENGENAI AKIBAT HUKUM TERJADINYA PERKAWINAN PADA UMUMNYA MENURUT UNDANG-UNDANG NOMOR 1 TAHUN 1974 TENTANG PERKAWINAN DAN *WOMEN'S CHARTER (AMENDMENT) ACT NO. 2 OF 2011* SERTA *ADMINISTRATION OF MUSLIM LAW ACT*

4.1. Terhadap Hubungan Suami Istri.

Perbandingan peraturan hukum perkawinan mengenai akibat hukum terhadap hubungan suami istri itu sendiri menurut Undang-Undang Nomor 1 Tahun 1974, *Women's Charter*, dan *Administration of Muslim Law Act* meliputi kedudukan suami istri, hak dan kewajiban istri, hak dan kewajiban suami, yakni sebagai berikut :

Tabel 6.

Faktor Pembanding	Indonesia	Singapura	
	UU No. 1 Tahun 1974	Women's Charter (Amendment) Act No. 2 of 2011	Administration of Muslim Law Act
Kedudukan Suami Istri	Kedudukan suami istri adalah seimbang (Pasal 31 ayat (1)).	Kedudukan suami istri adalah seimbang (Section 46 (1) jo. 51).	Kedudukan suami lebih tinggi satu derajat dibandingkan istri (Q.S. (2) ayat 228).
Hak Istri	<ul style="list-style-type: none">- Dapat melakukan perbuatan hukum atas namanya sendiri (Pasal 31 ayat (2)).- Memiliki tempat tinggal (Pasal 32).- Dilindungi oleh suaminya (Pasal 34 ayat (1)).- Dipenuhi kebutuhan	<ul style="list-style-type: none">- Dapat melakukan perbuatan hukum atas namanya sendiri (Section 46 (2)). – Rincian di Section 51-63.- Menggunakan nama keluarganya sendiri (Section 46 (3)).- Memiliki hak sama	<ul style="list-style-type: none">- Mendapatkan nafkah dari suaminya (Q.S. (65) ayat 7 dan Hadits Mu'awiyah al-Qusyairy).- Mendapatkan tempat tinggal (Q.S. (65) ayat 1, 6, Q.S. (2) ayat 240, dan Q.S. (4) ayat 15).

	<p>nafkahnya oleh suami (Pasal 34 ayat (1)).</p> <ul style="list-style-type: none"> - Mendapatkan perlakuan adil apabila suami beristri lebih dari satu (berlaku untuk yang beragama Islam) (Pasal 5 ayat (1)). 	<p>dalam mengatur rumah tangga (Section 46 (4)).</p> <ul style="list-style-type: none"> - Memiliki tempat tinggal (Section 47). - Diurus oleh suami (Section 69 (1)). 	
Hak Suami	<ul style="list-style-type: none"> - Dapat melakukan perbuatan hukum atas namanya sendiri (Pasal 31 ayat (2)). 	<ul style="list-style-type: none"> - Dapat melakukan perbuatan hukum atas namanya sendiri (Section 46 (2)). - Memiliki hak sama dalam mengatur rumah tangga (Section 46 (4)). - Memiliki tempat tinggal (Section 47). - Memberikan hadiah kepada istri berupa aset properti atau uang (Section 55). 	<ul style="list-style-type: none"> - Dapat melakukan perbuatan hukum atas namanya sendiri (Section 123) - Mendapatkan istri yang taat dan patuh (Q.S. (4) ayat 34).
Kewajiban Istri	<ul style="list-style-type: none"> - Menjadi ibu rumah tangga (Pasal 31 ayat (3)). - Mencintai, menghormati, setia, dan memberikan bantuan lahir batin kepada suami (Pasal 33). - Mengatur rumah 	<ul style="list-style-type: none"> - Bersama suami menjaga keutuhan rumah tangga dan mengasuh anak (Section 46 (1)). 	<ul style="list-style-type: none"> - Mencintai suami dan menyediakan diri untuk menyenangkan suami (Q.S. (30) ayat 21). - Menjaga rahasia suami (Q.S. (23) ayat 8). - Mengurus dan mengatur rumah

	<p>tangga sebaik-baiknya (Pasal 34).</p>		<p>tangga dengan baik, termasuk memelihara dan mendidik anak.</p> <ul style="list-style-type: none"> - Mengikhlaskan hati untuk mengabdikan kepada Allah SWT dalam menunaikan kewajiban rumah tangga (Q.S. (51) ayat 56). - Bersama-sama memelihara dan menjaga diri dan anggota keluarga (Q.S. (66) ayat 6). - Menyelesaikan permasalahan rumah tangga dengan musyawarah mufakat (Q.S. (42) ayat 37 dan Q.S. (3) ayat 159).
<p>Kewajiban Suami</p>	<ul style="list-style-type: none"> - Menjadi kepala keluarga (Pasal 31 ayat (3)). - Menentukan tempat kediaman (Pasal 32 ayat (2)). - Mencintai, menghormati, setia, dan memberi bantuan lahir batin kepada istri (Pasal 33). - Melindungi istri (Pasal 34 ayat (1)). - Memberi nafkah pada 	<ul style="list-style-type: none"> - Bersama istri menjaga keutuhan rumah tangga dan mengurus anak (Section 46 (1)). - Mengurus istri (Section 69 (1)). 	<ul style="list-style-type: none"> - Mempergauli istri (Q.S. (4) ayat 19). - Menjaga rahasia istri (Q.S. (23) ayat 8). - Menafkahi istri (Q.S. (65) ayat 7). - Menentukan tempat kediaman (Q.S. (65) ayat 1, 6, Q.S. (2) ayat 240, dan Q.S. (4) ayat 15). - Menjaga, memelihara, dan melindungi istri (Q.S. (4) ayat 34).

	istri (Pasal 34 ayat (1)).		<ul style="list-style-type: none"> - Berlaku adil saat beristri lebih dari seorang (Q.S. (4) ayat 3). - Mengikhlaskan hati untuk mengabdikan kepada Allah SWT dalam menunaikan kewajiban rumah tangga (Q.S. (51) ayat 56). - Bersama-sama memelihara dan menjaga diri dan anggota keluarga (Q.S. (66) ayat 6). - Menyelesaikan permasalahan rumah tangga dengan musyawarah mufakat (Q.S (42) ayat 37 dan Q.S. (3) ayat 159).
--	----------------------------	--	--

Dari uraian tabel diatas, terlihat bahwa perbandingan pengaturan mengenai akibat hukum terjadinya perkawinan pada umumnya pada hubungan suami istri di Indonesia dan Singapura menurut Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan, *Women's Charter (Amendment) Act No. 2 of 2011*, dan AMLA adalah sebagai berikut :

Kedudukan Suami Istri

Kolom pertama perbandingan menunjukkan bahwa Undang-Undang Nomor 1 Tahun 1974 dan *Women's Charter* memiliki persamaan asas dalam memandang kedudukan suami istri dalam perkawinan sebagai sesuatu yang seimbang. Oleh karenanya, keduanya memiliki konsekuensi serupa dimana masing-masing pihak

dapat melakukan perbuatan hukum atas namanya sendiri. Perbedaan di antara keduanya terletak pada ketentuan hukum yang menyatakan keseimbangan kedudukan tersebut. Jika Undang-Undang Nomor 1 Tahun 1974 menyatakan secara tegas dalam Pasal 31 ayat (1), yang berbunyi sebagai berikut :

“Hak dan kedudukan istri adalah seimbang dengan hak dan kedudukan suami dalam kehidupan rumah tangga dan pergaulan hidup bersama dalam masyarakat”

maka, *Women’s Charter* menyatakannya dengan tersirat pada Section 46 ayat (1), (2), dan Section 51, yang berbunyi sebagai berikut :

“Upon the solemnization of marriage, the husband and the wife shall be mutually bound to co-operate with each other on safeguarding the interest of the union and in caring and providing for children” (Section 46 (1))

“The husband and the wife shall have the right separately to engage in any trade or profession or in social activities” (Section 46 (2))

“subject to the provision of this Act, a married woman shall—
(a) *Be capable of acquiring, holding, and disposing of, any property;*
(b) *Be capable of rendering herself, and being rendered, liable in respect of any tort, contract, debt, or obligations;*
(c) *Be capable of suing and being sued in her own name either in tort or in contract or otherwise and shall be entitled to all remedies and redress for all purposes; and*
(d) *Be subject to the law relating to bankruptcy and to the enforcement of judgements and orders,*
In all respects as if she were a feme sole” (Section 51)

Melihat pada Section 46 (2) yang menyatakan bahwa masing-masing dapat melakukan tindakan hukum atas namanya sendiri dan didukung oleh Section 51 bahwa seorang wanita yang telah menikah tetap dapat melakukan tindakan hukum dan bertanggung jawab atasnya seperti layaknya ia belum menikah, menyiratkan bahwa suami istri sama-sama cakap dalam melakukan tindakan hukum, dan Section 46 (1) menunjukkan bahwa suami istri terikat untuk bekerja sama dengan satu sama lain untuk melindungi dan menjaga keluarga.

AMLA yang mendasarkan substansinya pada Hukum Islam memiliki perbedaan signifikan dengan kedua peraturan sebelumnya, dimana Al-Quran menyebutkan secara tegas bahwa kedudukan suami lebih tinggi satu derajat dibandingkan istri melalui *al-Baqarah* (2) ayat 228.

Akan tetapi, dalam Hukum Islam, seorang istri yang telah bersuami tetap dapat melakukan tindakan hukum dalam masyarakat tanpa bantuan suaminya layaknya ia belum bersuami sebagaimana AMLA menegaskan kecakapan bertindak hukum ini dalam Section 118-122. Hal ini menunjukkan bahwa meskipun dalam hal kedudukan suami istri AMLA memiliki perbedaan dengan Undang-Undang Nomor 1 Tahun 1974 dan *Women's Charter*, tetapi ketiga peraturan ini sama-sama mengatur bahwa baik istri maupun suami sama-sama cakap hukum dalam perkawinan.

Hak Istri

Ketiga peraturan hukum ini memiliki persamaan dalam hal istri berhak untuk memperoleh tempat tinggal sebagaimana Undang-Undang Nomor 1 Tahun 1974 mengaturnya dalam Pasal 32, Section 47 *Women's Charter*, dan Al-Quran dalam Q.S. *at-Talaq* (65) ayat 1, 6, Q.S. *al-Baqarah* (2) ayat 240, dan Q.S. *an-Nisaa* (4) ayat 15.

Selain itu, sebagaimana hukum agama mempengaruhi pembentukan Undang-Undang Nomor 1 Tahun 1974 dan AMLA, di antaranya adalah Hukum Islam, Undang-Undang Nomor 1 Tahun 1974 dan AMLA memiliki persamaan dalam hal istri berhak untuk dinafkahi oleh suaminya. Perbedaannya di antara keduanya dalam hal ini terletak pada ada tidaknya ketentuan hukum yang menegaskan kembali. Undang-Undang Nomor 1 Tahun 1974 menegaskan

kembali hak istri untuk dinafkahi dalam Pasal 34 ayat (1), sementara AMLA tidak menegaskan kembali hal tersebut.

Di antara ketiga peraturan tersebut, terlihat bahwa Undang-Undang Nomor 1 Tahun 1974 memiliki beberapa persamaan dengan AMLA (Section 33) dikarenakan keduanya memiliki Hukum Islam sebagai asas yang menjiwai aturan hukum tersebut meskipun dalam hal Undang-Undang Nomor 1 Tahun 1974, Hukum Islam hanya merupakan salah satu hukum agama selain adanya hukum agama lain dan juga hukum adat yang berlaku. Sementara itu, *Women's Charter* justru memiliki beberapa aturan yang lebih spesifik yang membuatnya tampak berbeda dari dua peraturan yang ada, seperti hak istri untuk tetap menggunakan nama keluarganya.

Hak Suami

Undang-Undang Nomor 1 Tahun 1974 memberikan suami hak untuk melakukan perbuatan hukum atas namanya sendiri sebagai akibat dari kedudukan suami istri yang seimbang dalam perkawinan. Hal serupa dinyatakan oleh *Women's Charter* dalam Section 46 (2), sementara AMLA tidak menyatakan dengan tegas hal tersebut, namun tersirat dalam ketentuan hukum yang menyiratkan bahwa akibat dari perbuatan hukum yang dilakukan istri tidak dapat dikenakan pada suaminya jika berasal dari harta milik pribadi istri (Section 123 AMLA).

Kewajiban Istri

Meskipun Undang-Undang Nomor 1 Tahun 1974 menyatakan bahwa kedudukan suami istri adalah seimbang, secara kontras Undang-Undang Nomor 1 Tahun 1974 menyatakan bahwa kewajiban istri adalah sebagai ibu rumah tangga. Secara tidak langsung hal ini menunjukkan adanya pembagian peran tak seimbang merujuk pada peran suami sebagai kepala rumah tangga. Hal ini berbeda dengan *Women's Charter* yang tidak menyebutkan mengenai peran suami istri dalam pengelolaan rumah tangga seperti Undang-Undang Nomor 1 Tahun 1974 selain

peran suami istri untuk menjaga keutuhan rumah tangga dan membesarkan anak bersama-sama.

Dengan AMLA, Undang-Undang Nomor 1 Tahun 1974 justru memiliki persamaan dalam hal ini karena baik AMLA maupun Undang-Undang Nomor 1 Tahun 1974 terpengaruh oleh Hukum Islam yang kuat. Dibandingkan kedua peraturan lain, AMLA secara spesifik melalui Hukum Islam mengatur kewajiban istri terhadap suami, rumah tangga, dan anak, baik secara fisik maupun batiniah.

Kewajiban Suami

Undang-Undang Nomor 1 Tahun 1974 mengatur kewajiban suami dalam pemenuhan kebutuhan istri secara fisik seperti memberikan tempat tinggal dan secara emosi/perasaan melalui Pasal 33 yang mewajibkan suami istri untuk saling mencintai, menghormati, setia, dan member bantuan lahir batin kepada pasangannya. Dibandingkan dengan *Women's Charter*, Undang-Undang Nomor 1 Tahun 1974 mengatur secara lebih rinci mengenai kewajiban suami, akan tetapi AMLA memiliki aturan tentang kewajiban suami atas istri dan rumah tangga secara lebih spesifik dan merupakan yang paling rinci di antara keduanya.

4.2. Terhadap Hubungan Hukum Antara Anak dan Orang Tua.

Perbandingan peraturan hukum perkawinan mengenai akibat hukum terhadap hubungan suami istri itu sendiri menurut Undang-Undang Nomor 1 Tahun 1974, *Women's Charter*, dan *Administration of Muslim Law Act* meliputi definisi anak dalam perkawinan, kedudukan anak, hak dan kewajiban anak, hak dan kewajiban orang tua, yakni sebagai berikut :

Tabel 7.

Faktor Pembanding	Indonesia	Singapura	
	UU No. 1 Tahun 1974	Women's Charter (Amendment) Act No. 2 of 2011	Administration of Muslim Law Act
Definisi Anak dalam	Anak dalam perkawinan adalah anak yang lahir	Anak dalam perkawinan adalah	Tidak terdapat definisi mengenai anak dalam

Perkawinan	dari perkawinan yang sah, atau dilahirkan sebagai akibat dari perkawinan yang sah di antara kedua orang tuanya.	anak dari suami atau istri, termasuk anak adopsi atau anak lain (anak kandung atau bukan), yang pada saat perkawinan dilangsungkan telah menjadi bagian keluarga suami atau istri sebelumnya dan anak tersebut belum berusia 21 tahun.	AMLA. Hukum Islam menyatakan bahwa anak dalam perkawinan dilahirkan dari akad nikah yang sah.
Dasar Hukum	Pasal 42.	Section 92 jo. 121.	Q.S. (22) ayat 5 Q.S. (4) ayat 1 Q.S. (53) ayat 45 Q.S. (6) ayat 140
Kedudukan Anak	Kedudukan anak terbagi dua kategori, yaitu anak sah dan anak tidak sah/luar kawin.	Kedudukan anak terbagi dua kategori, yaitu anak sah dan anak tidak sah.	AMLA tidak mengenal kategori anak dalam perkawinan, tetapi Hukum Islam mengenal penggolongan anak sah dan anak tidak sah.
Dasar Hukum	Pasal 42-43.	Women's Charter, Section 68 Evidence Act, Section 114.	Q.S. (46) ayat 15
Hak Anak	<ul style="list-style-type: none"> - Mendapatkan pemeliharaan dan pendidikan (Pasal 45 ayat (1)). - Diwakili oleh orang tuanya berkaitan dengan perbuatan hukum di dalam dan di luar pengadilan 	<ul style="list-style-type: none"> - Mendapatkan pemeliharaan dari orang tuanya (Section 68). 	<ul style="list-style-type: none"> - Mendapatkan pelayanan makan pokok dengan jalan menyusu pada ibunya (Q.S. (2) ayat 233) → Hak Radla'. - Mendapatkan pemeliharaan oleh orang tuanya

	(Pasal 47 ayat (2)).		terutama ibu. → Hak Hadlanah. - Mendapatkan pendidikan. → Hak Walayah. - Pemenuhan kebutuhan atas nafkah. → Hak atas nafkah.
Hak Orang Tua	<ul style="list-style-type: none"> - Dihormati oleh anaknya (Pasal 46 ayat (1)). - Diurus oleh anak (Pasal 46 ayat (2)). - Persetujuan pada perkawinan yang melibatkan anak di bawah umur. 	<ul style="list-style-type: none"> - Menentukan agama seorang anak (Constitution of the Republic of Singapore, Article 16, Clause (4)). - Persetujuan pada perkawinan yang melibatkan anak di bawah umur (Section 9). - Diurus oleh anak (Maintenance of Parents Act). 	<ul style="list-style-type: none"> - Diurus oleh anak (Q.S. (29) ayat 8 dan Q.S. (31) ayat 14). - Persetujuan pada perkawinan yang melibatkan anak di bawah umur
Kewajiban Anak	<ul style="list-style-type: none"> - Menghormati orang tua dan mentaati kehendak mereka yang baik (Pasal 46 ayat (1)). - Memelihara orang tua dan keluarga dalam garis lurus ke atas menurut kemampuannya jika bantuannya dibutuhkan (Pasal 46 	<ul style="list-style-type: none"> - Memelihara orang tua menurut kemampuannya (Maintenance of Parents Act). 	<ul style="list-style-type: none"> - Memberi nafkah kepada orang tua (Q.S. (29) ayat 8 dan Q.S. (31) ayat 14).

	ayat (2)).		
Kewajiban Orang Tua	<ul style="list-style-type: none"> - Memelihara dan mendidik anak-anak mereka sebaik-baiknya (Pasal 45 ayat (1)). - Mengurus anaknya sepanjang berada di bawah kekuasaannya (Pasal 47 ayat (1)). - Mewakili anak berkaitan dengan perbuatan hukum di dalam dan di luar Pengadilan (Pasal 47 ayat (2)). - Tidak memindahkan hak atau menggadaikan barang-barang tetap yang dimiliki anaknya yang belum berumur 18 tahun atau belum kawin, kecuali kepentingan anak tersebut menghendaki demikian. 	<ul style="list-style-type: none"> - Memelihara dan menjaga anak-anaknya (Section 68-69) - Menjaga anak yang dianggap sebagai anggota keluarga (Section 70). 	<ul style="list-style-type: none"> - Memberikan makan pokok dengan jalan menyusui. → Kewajiban Radla' - Memelihara anak hingga mandiri. → Kewajiban Hadlanah. - Memberikan pendidikan. → Kewajiban Walayah. - Memberikan nafkah untuk memenuhi kebutuhan anak. → Kewajiban atas nafkah

Berdasarkan penjabaran yang telah diuraikan pada tabel diatas, perbandingan pengaturan akibat hukum terjadinya perkawinan pada hubungan hukum antara anak dan orang tua di Indonesia dan Singapura menurut Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan, *Women's Charter (Amendment) Act No. 2 of 2011*, dan AMLA adalah sebagai berikut :

Definisi Anak Dalam Perkawinan

Pemahaman mengenai pengertian anak dalam perkawinan yang hampir serupa terjadi di antara Undang-Undang Nomor 1 Tahun 1974 dan AMLA. Kedua peraturan ini sama-sama memandang anak dalam perkawinan sebagai anak yang lahir dari perkawinan yang sah. Akan tetapi, AMLA tidak menjelaskan lebih lanjut mengenai kondisi perkawinan kedua orang tua anak saat anak lahir. AMLA berfokus pada pemahaman bahwa anak dilahirkan sebagai akibat dari akad nikah yang sah. Sedangkan, Undang-Undang Nomor 1 Tahun 1974 menerangkan lebih lanjut bahwa selain lahir sebagai akibat dari perkawinan yang sah, anak dalam perkawinan adalah anak yang lahir dalam perkawinan.

Di satu sisi, *Women's Charter* memiliki lingkup lebih luas dalam memandang anak dalam perkawinan dengan mendefinisikan dalam Section 92 jo. 122, bahwa anak dalam perkawinan adalah anak dari suami atau istri, termasuk anak adopsi atau anak lain (anak kandung atau bukan), yang pada saat perkawinan dilangsungkan telah menjadi bagian keluarga bagi suami atau istri sebelumnya.

Kedudukan Anak

Pasal 42 Undang-Undang Nomor 1 Tahun 1974 memperlihatkan bahwa hukum perkawinan nasional Indonesia mengenal dua golongan anak yakni anak sah dan anak tidak sah. Pasal 43 pun menunjukkan konsekuensi yang dimiliki anak yang dilahirkan tidak sesuai dengan kondisi dalam Pasal 42. Kebalikan dengan Undang-Undang Nomor 1 Tahun 1974, *Women's Charter* tidak memiliki definisi tertulis atas penggolongan anak yang terbagi dalam anak sah dan anak tidak sah. Definisi ini justru tercantum dalam peraturan hukum terkait, yakni *Evidence Act* Section 114. Jika Pasal 42 mendefinisikan anak sah sebagai tolak ukur, Section 114 justru mendefinisikan anak tidak sah sebagai tolak ukur.

AMLA tidak mengenal penggolongan anak dalam perkawinan, tetapi Hukum Islam mengenal penggolongan anak dalam perkawinan terdiri atas anak sah dan anak tidak sah melalui tipe perkawinan sebagai berikut :

- Anak yang lahir dalam perkawinan sah;
- Anak yang lahir dalam perkawinan fasid;
- Anak yang lahir karena senggama syubhat; dan

- Anak yang lahir bukan dari hubungan intim antara suami dan istri sah.

Hak Anak

Berkaitan dengan hak yang dimiliki oleh seorang anak, ketiga peraturan hukum ini memiliki persamaan. Ketiganya memandang seorang anak berhak atas pemeliharaan oleh kedua orang tuanya, tidak hanya pemenuhan nafkah, tetapi juga pendidikan.

Hal yang membedakan diantara ketiganya adalah Undang-Undang Nomor 1 Tahun 1974 mengatur mengenai hak seorang anak untuk diwakili dalam hal perbuatan hukum di dalam dan di luar pengadilan, dan AMLA mengatur mengenai hak untuk mendapatkan makan pokok dengan jalan menyusu.

Kewajiban Anak

Persamaan lain yang dimiliki ketiga peraturan hukum ini adalah ketiga peraturan tersebut mewajibkan anak untuk mengurus/memelihara orang tua saat anak telah dapat mengurus dirinya sendiri. Perbedaan dari ketiganya dalam hal ini hanya terletak pada penyampaian ketentuan hukum tersebut. Jika Undang-Undang Nomor 1 Tahun 1974 dan *Women's Charter* sama-sama tidak menjelaskan bentuk pemeliharaan orang tua yang wajib dilakukan oleh anak, sebaliknya AMLA melalui Al-Quran Q.S. (29) ayat 8 dan Q.S. (31) ayat 14 menunjukkan bentuk pemeliharaan tersebut melalui pemberian nafkah oleh anak kepada orang tua.

Hak Orang Tua

Ketiga peraturan hukum mengatur bahwa orang tua berhak untuk diurus oleh anak. AMLA mengatur bahwa hak orang tua adalah untuk diurus oleh anak dengan mendapatkan pemberian nafkah oleh anak berdasarkan Al-Quran Q.S. (29) ayat 8 dan Q.S. (31) ayat 14. Hal serupa diatur oleh Undang-Undang Nomor 1 Tahun 1974, namun hukum perkawinan nasional Indonesia ini mengatur hal lainnya, yaitu hak untuk dihormati oleh anak (Pasal 46 ayat (1)).

Selain itu, ketiga peraturan tersebut menyebutkan bahwa orang tua memiliki hak untuk menyetujui atau tidak sebuah perkawinan yang melibatkan anak di bawah umur. Perbedaan signifikan terdapat dalam *Women's Charter*

dimana adanya hak bagi orang tua untuk menentukan agama seorang anak dalam keluarganya yang tercantum dalam Konstitusi Singapura.

Kewajiban Orang Tua

Berkaitan dengan kewajiban dari orang tua, ketiga peraturan hukum ini memiliki persamaan, dimana ketiganya mewajibkan orang tua untuk memelihara dan mendidik anak-anak mereka sebaik-baiknya.

Hal yang membedakan diantara ketiganya adalah Undang-Undang Nomor 1 Tahun 1974 mengatur mengenai kewajiban orang tua mewakili anak dalam hal perbuatan hukum di dalam dan di luar pengadilan, dan AMLA mengatur mengenai kewajiban ibu dalam memberikan makan pokok dengan jalan menyusu.

4.3. Terhadap Harta Perkawinan.

Perbandingan peraturan hukum perkawinan mengenai akibat hukum terhadap hubungan suami istri itu sendiri menurut Undang-Undang Nomor 1 Tahun 1974, *Women's Charter*, dan *Administration of Muslim Law Act* meliputi pengertian harta perkawinan, kelompok harta perkawinan, wewenang suami istri dalam harta perkawinan, dan penyimpangan untuk harta bersama dalam harta perkawinan yakni sebagai berikut :

Tabel 8.

Faktor Pembanding	Indonesia	Singapura	
	UU No. 1 Tahun 1974	Women's Charter (Amendment) Act No. 2 of 2011	Administration of Muslim Law Act
Definisi Harta Perkawinan	Harta perkawinan adalah harta benda yang diperoleh dari sebelum perkawinan dan sepanjang perkawinan berlangsung.	Harta perkawinan adalah segala aset yang sepanjang perkawinan berlangsung dan yang diperoleh sebelum perkawinan berlangsung dengan	Tidak terdapat definisi mengenai harta perkawinan dalam AMLA dan Hukum Islam.

		ketentuan yang; <ul style="list-style-type: none"> - dipergunakan oleh kedua pasangan dan atau bersama anak-anak pada saat perkawinan; atau - berkembang dalam pengurusan salah satu atau kedua pasangan selama perkawinan. 	
Dasar Hukum	Pasal 35	Section 112 (10)	--
Kelompok Harta Perkawinan	Harta perkawinan meliputi 2 kelompok harta, yakni sebagai berikut : <ol style="list-style-type: none"> 1. Harta Bersama. 2. Harta Bawaan (Pribadi); <ol style="list-style-type: none"> 2.1. Harta Bawaan Suami; 2.2. Harta Bawaan Istri 2.3. Harta Hibahan/Warisan Suami 2.4. Harta Hibahan/Warisan Istri 	Harta perkawinan meliputi 2 kelompok harta, yakni sebagai berikut : <ol style="list-style-type: none"> 1. Harta Bersama. 2. Harta Bawaan (Pribadi); <ol style="list-style-type: none"> 2.1. Harta Bawaan Suami; 2.2. Harta Bawaan Istri 2.3. Harta Hibahan/Warisan Suami 2.4. Harta Hibahan/Warisan Istri 	AMLA dan Hukum Islam tidak mengatur mengenai harta bersama dan harta bawaan ke dalam ikatan perkawinan, tetapi hanya menerangkan tentang adanya hak milik pria dan wanita.
Dasar Hukum	Pasal 35 – 36	Section 112 ayat (10)	Q.S (4) ayat 32 Q.S (42) ayat 38
Wewenang Suami Istri dalam Harta Perkawinan	- Terkait harta bawaan, masing-masing memiliki wewenang penuh.	- Terkait harta bawaan, masing-masing memiliki wewenang penuh.	- Terkait harta milik pribadi, masing-masing pihak memiliki wewenang

	- Terkait harta bersama, suami istri dapat bertindak atas harta bersama setelah ada persetujuan dari pasangan.	- Terkait harta bersama, suami istri dapat bertindak atas harta bersama setelah ada persetujuan dari pasangan.	penuh. - Jika terjadi percampuran harta, harta benda yang dipergunakan untuk memenuhi kebutuhan rumah tangga adalah milik suami secara <i>prima facie</i> .
Dasar Hukum	Pasal 35-36	Section 54	Section 125
Penyimpangan untuk Harta Bersama dalam Harta Perkawinan	Melalui perjanjian tertulis atas persetujuan bersama, para pihak sebelum menikah dapat memperjanjikan mengenai pemisahan harta agar tidak terjadi percampuran harta menjadi harta bersama.	Melalui perjanjian tertulis atas persetujuan bersama, para pihak sebelum menikah dapat memperjanjikan mengenai pemisahan harta agar tidak terjadi percampuran harta menjadi harta bersama.	- Atas persetujuan bersama melalui perjanjian secara nyata tertulis atau diucapkan sebelum atau sesudah berlangsungnya akad nikah, dapat mengadakan percampuran harta. - Melalui percampuran harta secara diam-diam berdasarkan kenyataan saat perkawinan, bahwa terjadi percampuran harta menjadi harta bersama atas harta yang diperoleh selama perkawinan.
Dasar Hukum	Pasal 29	Section 54	--

Berdasarkan tabel diatas, dapat dijabarkan mengenai perbandingan pengaturan akibat hukum terjadinya perkawinan terhadap harta perkawinan di Indonesia dan Singapura menurut Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan, *Women's Charter (Amendment) Act No. 2 of 2011*, dan AMLA.

Pengertian Harta Perkawinan

Harta perkawinan menurut Undang-Undang Nomor 1 Tahun 1974 adalah harta benda yang diperoleh dari sebelum perkawinan dan sepanjang perkawinan berlangsung. Pengertian “harta benda” dalam Pasal 35 Undang-Undang Nomor 1 Tahun 1974 sebagaimana yang disinggung oleh J. Satrio, S.H., dalam bukunya berjudul “Hukum Harta Perkawinan”, ditafsirkan sebagai *vermogen* atau harta kekayaan, karena di dalam harta kekayaan termasuk pula semua pasiva atau hutang-hutangnya. Sebagai konsekuensi, semua harta yang ada termasuk semua hutang-hutangnya, jika berasal dari harta suami atau istri sebelum perkawinan berlangsung, maka menjadi tanggung jawab pribadi suami atau istri tersebut. Sedangkan, semua harta yang ada, termasuk semua hutang-hutangnya, jika berasal dari harta yang diperoleh sepanjang perkawinan berlangsung, maka akan menjadi tanggung jawab bersama suami istri tersebut.

Sama halnya dengan Indonesia, *Women's Charter* menjelaskan pengertian mengenai harta perkawinan, dalam Section 112 (10) yang menyatakan harta perkawinan adalah segala aset yang diperoleh sebelum perkawinan dan sepanjang perkawinan berlangsung. Akan tetapi, terdapat perbedaan tipis antara *Women's Charter* dengan Undang-Undang Nomor 1 Tahun 1974 dimana *Women's Charter* menjelaskan lebih rinci lingkup batas suatu harta bawaan dapat menjadi harta bersama perkawinan jika memenuhi kondisi tertentu. Kondisi yang dimaksud adalah harta benda yang diperoleh salah satu atau kedua pasangan sebelum perkawinan tersebut dipergunakan oleh kedua pasangan dan atau bersama anak-anak pada saat perkawinan, misalnya untuk tempat tinggal bersama atau kendaraan yang digunakan bersama.

“In this section, “matrimonial asset” means— (a) any asset acquired before the marriage by one party or both parties to the marriage— (i)

*Ordinarily used or enjoyed by both parties or one or more of their children while the parties are residing together for shelter or transportation or for household, education, recreational, social or aesthetic purposes; or...*¹⁰⁴”

Selain itu, kondisi lain yang dapat menjadikan harta bawaan menjadi harta bersama adalah harta tersebut berkembang dalam pengurusan salah satu atau kedua pasangan selama perkawinan berlangsung.

*“In this section, “matrimonial asset” means— (a) any asset acquired before the marriage by one party or both parties to the marriage— (ii) ... which has been substantially improved during the marriage by the other party or by both parties to the marriage; and...”*¹⁰⁵

Berbeda dengan *Women’s Charter*, AMLA yang mendasarkan ketentuan hukumnya pada Hukum Islam tidak menyebutkan apapun mengenai harta perkawinan, baik harta bersama maupun harta bawaan dalam ikatan perkawinan.

Kelompok Harta Perkawinan

Secara khusus, melihat pada Pasal 35 Undang-Undang Nomor 1 Tahun 1974, di Indonesia terdapat dua kelompok harta perkawinan yang dikenal, yaitu harta bersama dan harta bawaan. Harta bersama, sebagaimana telah dijelaskan dalam bab sebelumnya, adalah harta yang diperoleh sepanjang perkawinan berlangsung. Sementara itu, yang dimaksud dengan harta bawaan terbagi atas harta bawaan suami, harta bawaan istri, harta bawaan karena hibah atau warisan milik suami, dan harta bawaan karena hibah atau warisan milik istri.

Tidak berbeda dengan Indonesia, berdasarkan Section 112 (10) *Women’s Charter* dapat ditemukan bahwa *Women’s Charter* mengenal dua kelompok harta perkawinan, yakni harta pribadi dan harta bersama. Yang dimaksud dengan harta bersama adalah harta benda yang secara alami diperoleh selama perkawinan

¹⁰⁴ Singapura (a). *Women’s Charter (Amendment) Act No. 2 of 2011*, Section 112 (10) a.

¹⁰⁵ *Ibid.*

berlangsung oleh salah satu atau kedua pasangan dan harta benda yang diperoleh sebelum perkawinan, tetapi dipergunakan untuk memenuhi kebutuhan rumah tangga, atau yang berkembang dalam pengurusan salah satu atau kedua pasangan selama perkawinan. Sedangkan harta bawaan adalah harta benda yang diperoleh sebelum perkawinan tetapi tidak dipergunakan untuk memenuhi kebutuhan keluarga, dan harta benda yang diperoleh masing-masing karena hibah atau warisan dan tidak berkembang sepanjang perkawinan berlangsung oleh pengurusan salah satu atau kedua pasangan.

Berbeda dengan Undang-Undang Nomor 1 Tahun 1974 dan *Women's Charter*, Hukum Islam yang menjadi jiwa dari AMLA, sama sekali tidak mengenal pengelompokan harta perkawinan. Hukum Islam hanya menerangkan mengenai harta kekayaan milik pria dan wanita diperoleh atas hasil usahanya sendiri dalam Q.S. (4) ayat 32. Akan tetapi, setiap masyarakat Islam memiliki hak otonomi secara “*syura bainahum*” untuk melakukan percampuran harta demi memenuhi kebutuhan rumah tangga jika dianggap perlu. Dalam Hukum Islam, meskipun Al-Quran tidak mengatur mengenai harta bersama, tidak berarti pula mengharamkan adanya harta bersama, dan Q.S. (42) ayat 38 menunjukkan kemungkinan untuk terjadinya percampuran harta.

Wewenang Suami Istri dalam Harta Perkawinan

Undang-Undang Nomor 1 Tahun 1974 mengatur bahwa atas harta bawaan (pribadi), masing-masing memiliki wewenang penuh (*beheer* maupun *beschikking*). Oleh karenanya, harta berupa pasiva maupun aktiva yang dimiliki masing-masing, menjadi tanggung jawab masing-masing. Hutang pribadi sebelum perkawinan maupun sepanjang perkawinan ditanggung dengan harta pribadinya. Ketentuan ini berlaku juga bagi pihak pasangan yang sebelum menikah merupakan orang-orang yang berada di bawah pengampuan. Meskipun pihak tersebut dalam melakukan tindakan hukum akan diwakili oleh orang tua, wali, atau kuratornya, harta bawaan (pribadi) miliknya tetap merupakan miliknya. Sementara itu, berkaitan dengan harta bersama, Undang-Undang Nomor 1 Tahun 1974 mengatur bahwa segala tindakan hukum yang dilakukan terhadap harta bersama harus mendapatkan persetujuan dari pasangannya.

Sedangkan, di sisi lain terdapat perbedaan cukup signifikan dengan pengaturan *Women's Charter* yang secara khusus mengatur tentang perbuatan hukum yang dapat dilakukan istri atas harta perkawinan dalam Section 51-63. Pengaturan ini sebenarnya termasuk dalam batang tubuh tentang hak dan kewajiban suami istri dan perbuatan hukum yang dapat dilakukan istri atas harta perkawinan merupakan salah satu hak istri dalam perkawinan.

Berbeda dari dua peraturan sebelumnya, AMLA tidak mengenal pengelompokan harta perkawinan. Oleh karenanya harta milik pribadi menjadi wewenang penuh dari masing-masing pihak yang memiliki. Sebagai penegasan, seperti halnya *Women's Charter*, AMLA secara spesifik memiliki beberapa aturan hukum tentang perbuatan hukum yang dapat dilakukan istri atas harta perkawinan sebagaimana tercantum dalam Section 118-125. Hal yang paling membedakan aturan hukum AMLA dibandingkan dua peraturan sebelumnya adalah klausul yang menyatakan bahwa harta benda yang dipergunakan untuk memenuhi kebutuhan rumah tangga adalah milik suami secara *prima facie* dalam Section 125.

Penyimpangan untuk Harta Bersama dalam Harta Perkawinan

Pasal 29 Undang-Undang Nomor 1 Tahun 1974 memberikan kesempatan kepada calon suami istri untuk memperjanjikan pemisahan harta agar tidak terjadi percampuran harta menjadi harta bersama melalui perjanjian perkawinan sebelum perkawinan dilangsungkan. Hal serupa diatur oleh *Women's Charter* dalam Section 54 yang menyatakan bahwa harta benda yang dipergunakan untuk rumah tangga, apabila tidak diatur sebaliknya dalam perjanjian, maka menjadi milik bersama.

Kebalikan dengan Undang-Undang Nomor 1 Tahun 1974, perjanjian yang terjadi di antara suami istri menurut Hukum Islam yang berlaku menurut AMLA berkaitan dengan harta perkawinan adalah apabila menginginkan terjadinya percampuran harta milik pribadi menjadi harta bersama. Percampuran harta dengan cara demikian dapat dilakukan secara tertulis atau diucapkan sebelum atau sesudah berlangsungnya akad nikah, atau melalui kenyataan menjalani hidup perkawinan sehari-hari. Jika dalam kenyataannya, suami istri menggunakan harta

milik pribadi untuk memenuhi kebutuhan rumah tangga bersama, maka dapat dianggap telah terjadi percampuran harta secara diam-diam.



BAB V

PENUTUP

5.1. Kesimpulan

Berdasarkan paparan dalam bab-bab sebelumnya dan perbandingan mengenai akibat hukum dari terjadinya perkawinan pada umumnya, penulis menarik kesimpulan bahwa :

1. Akibat hukum terjadinya perkawinan di Indonesia diatur dalam Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan yang meliputi :
 - a. Hubungan suami-istri, terdiri atas kedudukan suami istri dan hak dan kewajiban suami istri.
 - b. Hubungan orang tua dan anak, terdiri atas kedudukan anak, kekuasaan orang tua yang menimbulkan adanya hak dan kewajiban orang tua atas anak, dan hak dan kewajiban anak atas orang tua.
 - c. Harta perkawinan, terdiri atas pengertian harta perkawinan, pengelompokan harta perkawinan, wewenang suami istri dalam harta perkawinan, dan penyimpanan untuk harta bersama dalam harta perkawinan.

Meskipun begitu, terdapat ketentuan-ketentuan hukum lain di luar Undang-Undang Nomor 1 Tahun 1974 yang melengkapi peraturan mengenai akibat hukum terjadinya perkawinan dalam Undang-Undang Nomor 1 Tahun 1974, seperti contohnya adalah Kitab Undang-Undang Hukum Perdata.

2. Akibat hukum terjadinya perkawinan di Singapura diatur dalam *Women's Charter* yang berlaku bagi warga Singapura non-Muslim dan *Administration of Muslim Law Act* yang berlaku bagi warga Singapura beragama Islam. Berdasarkan *Women's Charter*, akibat hukum terjadinya perkawinan meliputi :
 - a. Hubungan suami-istri, terdiri atas kedudukan suami istri dan hak dan kewajiban suami istri.

- b. Hubungan orang tua dan anak, terdiri atas kedudukan anak, kekuasaan orang tua yang menimbulkan adanya hak dan kewajiban orang tua atas anak, dan hak dan kewajiban anak atas orang tua.
- c. Harta perkawinan, terdiri atas pengertian harta perkawinan, pengelompokan harta perkawinan, wewenang suami istri dalam harta perkawinan, dan penyimpanan untuk harta bersama dalam harta perkawinan.

Sementara itu, berdasarkan *Administration of Muslim Law Act*, akibat hukum terjadinya perkawinan bersifat lebih religius dan meliputi :

- a. Hubungan suami istri, terdiri atas kedudukan suami istri dan hak dan kewajiban suami istri yang bersifat kebendaan dan yang bersifat bukan kebendaan.
- b. Hubungan orang tua dan anak, kedudukan anak berdasarkan hubungan nasab, kewajiban orang tua, dan hak dan kewajiban anak atas orang tuanya.
- c. Hubungan dengan anggota keluarga lainnya (saudara).
- d. Harta perkawinan dipandang dari segi asal harta, segi penggunaan harta, segi hubungan harta perorangan dalam masyarakat, dan wewenang suami istri atas harta perkawinan.

Akan tetapi, sama halnya dengan Indonesia yang memiliki ketentuan hukum lain yang melengkapi Undang-Undang Nomor 1 Tahun 1974, Singapura pun memiliki ketentuan hukum lain di luar *Women's Charter* dan *Administration of Muslim Law Act* yang melengkapi peraturan mengenai akibat hukum terjadinya perkawinan, seperti pada *Article 16 The Constitution of the Republic of Singapore* dan *Maintenance of Parents Act*.

3. Persamaan dan perbedaan akibat hukum antara Undang-Undang Nomor 1 Tahun 1974 dengan *Women's Charter* dan *Administration of Muslim Law Act* adalah sebagai berikut :

Persamaan antara Undang-Undang Nomor 1 Tahun 1974 dengan *Women's Charter*

- Kedudukan suami istri yang seimbang

- Hak istri untuk mendapatkan tempat tinggal dan pemenuhan kebutuhan hidup oleh suami melalui nafkah
- Hak anak atas pemeliharaan oleh orang tua
- Hak orang tua untuk mendapatkan pemeliharaan dari anak
- Kewajiban orang tua memelihara dan mendidik anak
- Kewenangan suami istri atas harta perkawinan

Persamaan antara Undang-Undang Nomor 1 Tahun 1974 dengan *Administration of Muslim Law Act*

- Hak istri untuk mendapatkan tempat tinggal dan pemenuhan kebutuhan hidup oleh suami melalui nafkah
- Peran suami istri, suami sebagai kepala rumah tangga dan istri sebagai ibu rumah tangga
- Hak anak atas pemeliharaan oleh orang tua
- Kewajiban anak untuk memelihara orang tua
- Hak orang tua untuk mendapatkan pemeliharaan dari anak
- Kewajiban orang tua memelihara dan mendidik anak
- Kewenangan suami istri atas harta perkawinan

Perbedaan antara Undang-Undang Nomor 1 Tahun 1974 dengan *Administration of Muslim Law Act*

Faktor Pembeda	UU No. 1 Tahun 1974	<i>Women's Charter</i>
Hak Istri	Mengatur mengenai perlindungan terhadap istri oleh suami dan keharusan memperlakukan istri secara adil apabila beristrikan lebih dari satu	Tidak memiliki pengaturan mengenai perlindungan istri oleh suami dan keharusan memperlakukan istri secara adil apabila beristrikan lebih dari satu karena menganut asas monogami mutlak
Peran Suami Istri	Mengatur peran suami sebagai kepala rumah tangga, istri sebagai ibu	Tidak mengatur mengenai pembagian peran

	rumah tangga	
Cakupan Anak dalam Perkawinan	Akibat hukum terjadinya perkawinan berlaku pada anak dalam perkawinan yang sah, dan mengenal istilah anak tidak sah, tetapi tidak memberitahu batas usia anak	Cakupan akibat hukum terjadinya berlaku lebih luas pada anak dari suami/istri, termasuk anak adopsi, dan anak lain (kandung ataupun bukan), yang pada saat perkawinan dilangsungkan telah menjadi bagian keluarga istri/suami, dan belum berusia 21 tahun
Hak Orang Tua	Bersifat lebih umum	Meskipun tidak tercantum dalam Women's Charter, Konstitusi Singapura mengatur secara spesifik bahwa orang tua berhak menentukan agama anak pada permulaannya
Kewajiban Orang Tua	Tidak memiliki pengaturan yang menyatakan bahwa orang tua harus mengurus anak yang sudah dianggap sebagai anggota keluarganya	Memiliki pengaturan spesifik yang menyatakan bahwa orang tua diharuskan mengurus anak yang sudah dianggap sebagai anggota keluarganya
Faktor Pemandang	UU No. 1 Tahun 1974	<i>Administration of Muslim Law Act</i>
Kewajiban Suami Istri	Kewajiban suami istri bersifat umum. Undang-Undang Nomor 1 Tahun 1974 tidak berfokus pada kewajiban suami istri menurut Hukum Islam semata dan mengatur	Mendasarkan pada Hukum Islam mazhab Syafi'i, kewajiban suami dan istri bersifat lebih khusus, yakni religius dan mengatur secara detail

	secara lebih umum	
Hak Suami Istri	Menganut keseimbangan kedudukan suami istri, hak suami dan istri dianggap seimbang dan memiliki pengaturan bersifat umum	Menganut kedudukan suami lebih tinggi satu derajat dari istri, oleh karenanya hak suami satu tingkat lebih besar dari istri
Kewenangan atas Harta Perkawinan	Mengatur bahwa harta pribadi merupakan tanggung jawab masing-masing pihak, sementara atas harta bersama, tindakan hukum dapat dilakukan setelah mendapatkan persetujuan bersama	Karena tidak ada lembaga harta bersama, tetapi mengenal harta milik pribadi, jika terjadi pencampuran harta, kewenangan secara <i>prima facie</i> berada di tangan suami
Perjanjian Perkawinan	Merupakan salah satu upaya untuk mencegah terjadinya pencampuran harta menjadi harta bersama yang berpengaruh pada akibat hukum atas harta perkawinan	Merupakan salah satu upaya untuk menghasilkan pencampuran harta menjadi harta bersama yang berpengaruh pada akibat hukum atas harta perkawinan

5.2. Saran

Berdasarkan analisis yang telah penulis sampaikan di dalam bagian sebelumnya, penulis menyarankan dilakukannya revisi terhadap Undang-Undang Nomor 1 Tahun 1974 dalam hal:

1. Terkait akibat hukum pada Hubungan Suami Istri

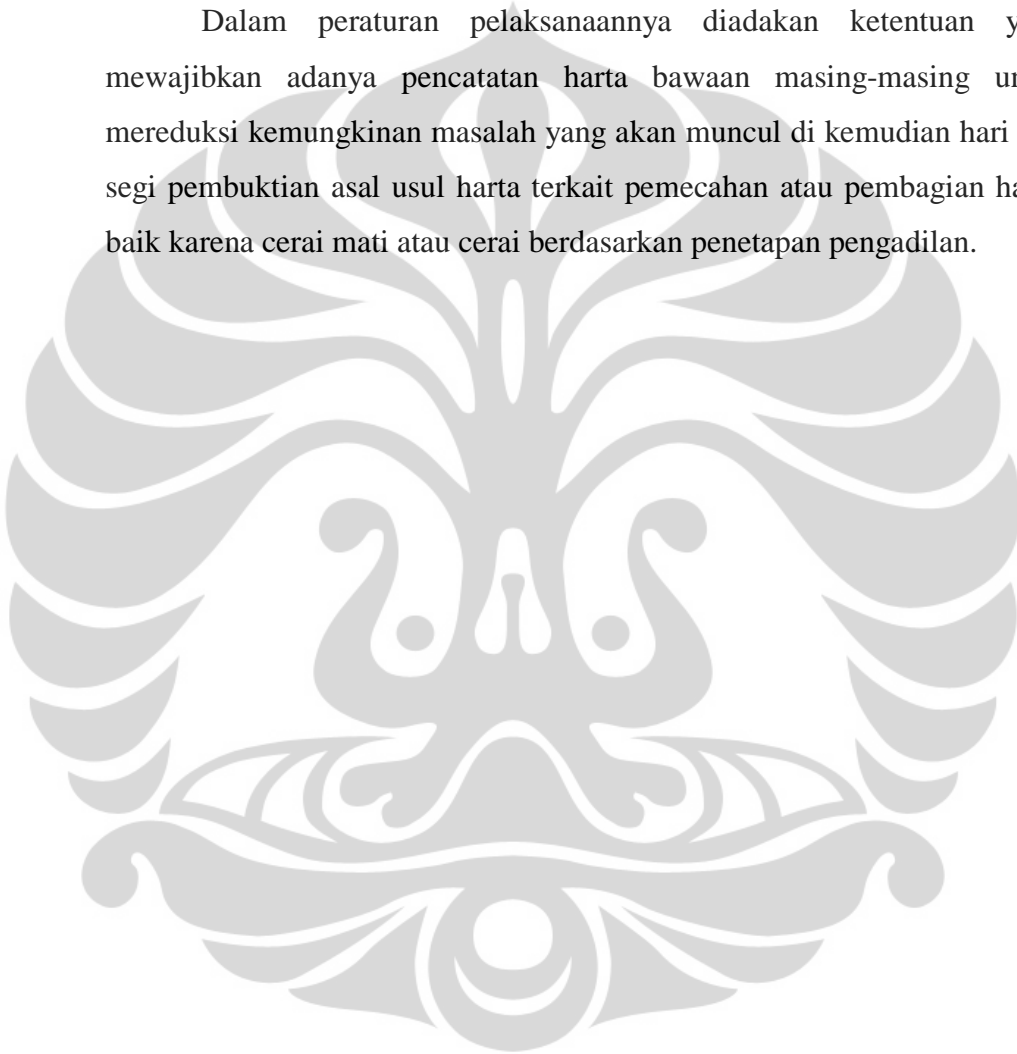
Apabila telah dinyatakan menganut asas keseimbangan kedudukan suami istri dalam perkawinan, maka Undang-Undang Nomor 1 Tahun 1974 sebaiknya tidak perlu lagi mengatur mengenai peran suami istri sebagai kepala dan ibu rumah tangga.

2. Terkait akibat hukum pada Hubungan Orang Tua dan Anak

Diperlukannya pencantuman batasan jumlah hari bilamana seorang anak dilahirkan di luar perkawinan atau dalam perkawinan, dapat dianggap sebagai anak sah, untuk memudahkan pembuktian dan memastikan akibat hukum yang berlaku bagi anak tersebut.

3. Terkait akibat hukum pada Harta Perkawinan

Dalam peraturan pelaksanaannya diadakan ketentuan yang mewajibkan adanya pencatatan harta bawaan masing-masing untuk mereduksi kemungkinan masalah yang akan muncul di kemudian hari dari segi pembuktian asal usul harta terkait pemecahan atau pembagian harta, baik karena cerai mati atau cerai berdasarkan penetapan pengadilan.



DAFTAR PUSTAKA

Buku

Barlinti, Yeni Salma. *Buku Ajar Hukum Perorangan dan Kekeluargaan Islam*. Depok: Fakultas Hukum Universitas Indonesia, 2000.

Cahyono, Akhmad Budi dan Surini Ahlan Sjarif. *Mengenal Hukum Perdata*. Jakarta: CV. Gitama Jaya, 2008.

Darmabrata, Wahyono. *Perbandingan Hukum Perdata*. Jakarta: CV. Gitama Jaya, 2006.

_____. *Hukum Perdata Pembahasan Mengenai Asas-Asas Hukum Perdata*. Jakarta: CV. Jaya Jakarta, 2005.

_____. *Hukum Perkawinan Perdata: Syarat Sahnya Perkawinan, Hak dan Kewajiban Suami-Isteri, dan Harta Benda Perkawinan*. Jakarta: Rizkita, 2009.

_____. *Asas-asas Hukum Orang dan Keluarga*. Jakarta: Gitama Jaya, 2004.

Fuady, Munir. *Perbandingan Hukum Perdata*. Jakarta: PT. Citra Aditya Bakti, 2005.

Gautama, Sudargo. *Pengantar Hukum Perdata Internasional*. Bandung: Binacipta, 1987.

Hamid, Zahri. *Pokok-Pokok Hukum Perkawinan Islam dan Undang-Undang Perkawinan di Indonesia*. Jakarta: Binacipta, 1978.

- Kum, Leong Wai. *Principles of Family Law In Singapore*. Singapore, Butterworths, 2005.
- Mamudji, Sri, et. al. *Metode Penelitian dan Penulisan Hukum*. Jakarta: Badan Penerbit Fakultas Hukum Universitas Indonesia, 2005.
- Mertokusumo, Sudikno. *Mengenal Hukum*. Yogyakarta: Liberty, 2003.
- Prodjodikoro, Wirjono. *Hukum Perkawinan di Indonesia*. Bandung: Sumur, 1974.
- Prodjohamidjojo, Martiman. *Hukum Perkawinan Indonesia*. Jakarta: Indonesia Legal Center Publishing, 2007.
- Ramulyo, M. Idris. *Beberapa Masalah Tentang Hukum Acara Perdata Peradilan Agama*. Jakarta: Ind-Hill. Co, 1991.
- Rasjidi, Lili. *Hukum Perkawinan dan Perceraian di Malaysia dan Indonesia*. Bandung: PT. Remaja Rosdakarya, 1991.
- Saleh, Wantjik. *Hukum Perkawinan Indonesia*. Jakarta: Ghalia Indonesia, 1976.
- Sardjono, H.R. dan Ny. Hj. Frieda Husni Hasbullah. *Bunga Rampai Perbandingan Hukum Perdata*. Jakarta: IND-HILL-CO, 2003.
- Siddik, Abdullah. *Hukum Perkawinan Islam*. Jakarta: Tintamas Indonesia, 1983.
- Subekti, Wienarsih Imam dan Sri Soesilowati Mahdi. *Hukum Perorangan dan Kekeluargaan Perdata Barat*. Jakarta: Gitama Jaya, 2005.
- Sudarsono. *Hukum Perkawinan Nasional*. Jakarta: PT. Rineka Cipta, 2005.
- Soeroso, R. *Pengantar Ilmu Hukum*. Jakarta: Sinar Grafika, 1993.

Peraturan Perundang-Undangan

Indonesia (a). *Undang-Undang Tentang Perkawinan*, UU Nomor 1 Tahun 1974.

Indonesia (b). *Undang-Undang Tentang Perlindungan Anak*, UU Nomor 23 Tahun 2002.

Indonesia (c). *Peraturan Pemerintah Tentang Pelaksanaan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan*, PP Nomor 9 Tahun 1975.

Indonesia (d). *Peraturan Menteri Dalam Negeri Nomor 12 Tahun 2010 tentang Pedoman Pencatatan Perkawinan Dan Pelaporan Akta Yang Diterbitkan Oleh Negara Lain*, Permendagri Nomor 12 Tahun 2010.

Indonesia (e). *Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 tentang Pengujian Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan*.

Indonesia (f). *Kitab Undang-Undang Hukum Perdata (Burgelijk Wetboek)*.

Indonesia (g). *Undang-Undang Tentang Administrasi Kependudukan*. UU Nomor 23 Tahun 2006.

Singapura (a). *Women's Charter (Amendment) Act No. 2 of 2011*.

Singapura (b). *Administration of Muslim Law Act*.

Singapura (c). *Evidence Act*.

Singapura (d). *Maintenance of Parents Act*.

Jurnal Ilmiah

Abbas, Ahmad Nizam. “The Islamic Legal System in Singapore”, *Pacific RIM Law & Policy Journal*, (Vol. 21 No. 1).

Kum, Leong Wai. “The Next Fifty Years Of The Women’s Charter—Ripples Of Change”, *Singapore Journal of Legal Studies*, (2011, 152—177).

_____, “Singapore : Supporting Marriage Through Description As An Equal Partnership Of Efforts”, *The International Survey of Family Law 2002 Edition*, (United Kingdom: Jordan Publishing Limited, 2002).

Sumber Elektronik

“Concept of Marriage in Islam”, <http://www.islamawareness.net/Marriage/marriage.html> diakses pada tanggal 16 Juni 2012

“Recent Developments in the Law of Marriage and Divorce”, *Singapore Academy of Law Journal*, (<http://heinonline.org/HOL/LandingPage?collection=journals&handle=hein.journals/saclj5&div=26&id=&page=>) diunduh pada tanggal 24 April 2012.

“Registry of Muslim Marriage”, http://app.romm.gov.sg/internet/aboutmarriage/romm_eligibility.asp, diunduh pada tanggal 29 April 2012.

“Sistem Hukum Singapura”, <http://www.singaporelaw.sg/content/LegalSystIndon.html> diunduh pada tanggal 16 Maret 2012.

“Women (Celebrating Women) : The Women’s Charter”, <http://app1.mcys.gov.sg/Policies/WomenCelebratingWomen/TheWomensCharter.aspx> diunduh pada tanggal 27 Februari 2012.

“Women’s Charter”, <http://www.aware.org.sg/research-advocacy/womenscharter/>, diakses pada tanggal 3 Maret 2012.

“Division of the Matrimonial Assets”, <http://www.lawhub.com.sg/articles/splitting-up-part-4-division-of-the-matrimonial-assets.html> diunduh pada tanggal 30 April 2012.



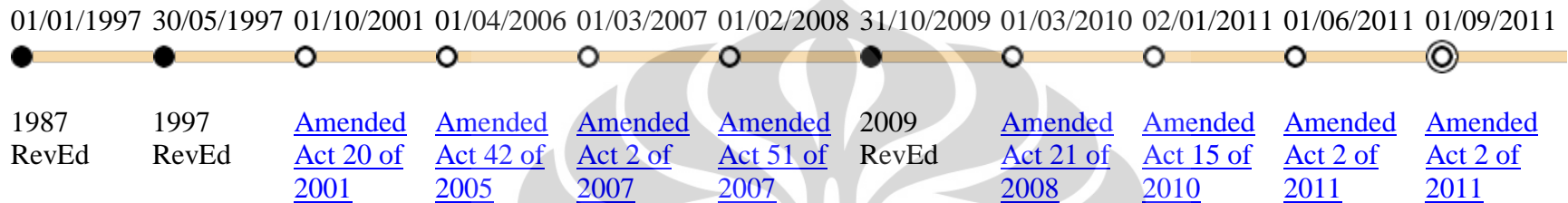
DAFTAR LAMPIRAN

Lampiran 1 *Women's Charter (Amendment) Act No. 2 Of 2011*

Lampiran 2 *Administration Of Muslim Law Act*



On 17/07/2012, you requested for the version in force on 17/07/2012 incorporating all amendments published on or before 17/07/2012. The closest version currently available is that of 01/09/2011.



A horizontal timeline with a yellow bar and black dots representing dates. Below the bar, the corresponding legislative acts are listed. The date 01/09/2011 is highlighted with a larger circle.

Date	Legislation
01/01/1987	1987 RevEd
30/05/1997	1997 RevEd
01/10/2001	Amended Act 20 of 2001
01/04/2006	Amended Act 42 of 2005
01/03/2007	Amended Act 2 of 2007
01/02/2008	Amended Act 51 of 2007
31/10/2009	2009 RevEd
01/03/2010	Amended Act 21 of 2008
02/01/2011	Amended Act 15 of 2010
01/06/2011	Amended Act 2 of 2011
01/09/2011	Amended Act 2 of 2011

**WOMEN'S CHARTER
(CHAPTER 353)**

(Original Enactment: Ordinance 18 of 1961)

**REVISED EDITION 2009
(31st October 2009)**

An Act to provide for monogamous marriages and for the solemnization and registration of such marriages; to amend and consolidate the law relating to divorce, the rights and duties of married persons, the protection of family, the maintenance of wives and children and the punishment of offences against women and girls; and to provide for matters incidental thereto.

[15th September 1961]

PART I

PRELIMINARY

Short title

1. This Act may be cited as the Women's Charter.

Interpretation

2. In this Act, unless the context otherwise requires —

“brothel” means any place occupied or used by any 2 or more women or girls whether at the same time or at different times for the purpose of prostitution;

“club” means any place which is used by an association of 2 or more persons for any purpose or object;

“Conciliation Officer” means a Conciliation Officer appointed under [section 48](#);

“Deputy Registrar” means a Deputy Registrar of Marriages appointed under [section 26](#);

“Director” means the Director of Social Welfare appointed under section 3(1) of the [Children and Young Persons Act \(Cap. 38\)](#) and includes any person who is authorised by him to perform any of the duties or exercise any of the powers of the Director under this Act;

“married woman” means a woman validly married under any law, religion, custom or usage;

“minor” means a person who is below the age of 21 years and who is not married or a widower or widow;

“occupier” of a place means the tenant, sub-tenant or lessee thereof or any person in charge of the place, whether or not he is in actual occupation and whether he has or does not have powers to let or sub-let;

“owner” of a place means a person who, for the time being, has power or authority to let, hire, sell or convey the place to another person, or who receives the rent of the place whether on his own account or as an agent or a trustee for any other person;

“place” means any building, house, office, flat, room or cubicle or any part thereof, and any open or enclosed space and includes a ship, boat or any vessel, whether afloat or not, and any vehicle;

“place of assignation” means any place where communication is established with any woman or girl, either directly or through an intermediary, for any immoral purpose;

“place of public resort” means any place to which the public for the time being has access;

“place of safety” means any place of safety established under [section 177](#);

“prostitution” means the act of a female offering her body for sexual penetration for hire, whether in money or in kind;

“register of marriages” means the State Marriage Register kept under this Act;

“Registrar” means the Registrar of Marriages appointed under [section 26](#) and includes an Assistant Registrar of Marriages;

“sexual penetration” means the penetration of the vagina, anus or mouth of a woman or girl by a man’s penis, or the sexual penetration of the vagina or anus of a woman or girl by a part of another person’s body (other than the penis) or by anything else;

“solemnization”, with its grammatical variations and cognate expressions, includes the contracting of a marriage or effecting a marriage in accordance with the law, religion, custom or usage of the parties or any of the parties thereto.

[9/67; 14/69; 30/96; 20/2001; 51/2007]

Application

3.

—(1) Except as otherwise provided, this Act shall apply to all persons in Singapore and shall also apply to all persons domiciled in Singapore.

[26/80]

(2) [Parts II](#) to [VI](#) and [Part X](#) and [sections 181](#) and [182](#) shall not apply to any person who is married under, or to any marriage solemnized or registered under, the provisions of the Muslim law or of any written law in Singapore or in Malaysia providing for the registration of Muslim marriages.

[9/67]

(3) Notwithstanding [subsection \(2\)](#), [sections 4](#), [5](#) and [6](#) shall apply to any person who contracts or purports to contract any such marriage during the subsistence of a marriage registered or deemed to be registered under the provisions of this Act or which was contracted under a law providing that or in contemplation of which the marriage is monogamous.

[9/67]

(4) No marriage between persons who are Muslims shall be solemnized or registered under this Act.

[9/67]

(5) For the purposes of this Act, a person who is a citizen of Singapore shall be deemed, until the contrary is proved, to be domiciled in Singapore.

PART II

MONOGAMOUS MARRIAGES

Disability to contract marriages

4.

—(1) Every person who on 15th September 1961 is lawfully married under any law, religion, custom or usage to one or more spouses shall be incapable during the continuance of that marriage or marriages of contracting a valid marriage under any law, religion, custom or usage with any person other than such spouse or spouses.

[9/67]

(2) Every person who on 15th September 1961 is lawfully married under any law, religion, custom or usage to one or more spouses and who subsequently ceases to be married to that spouse or all the spouses shall, if he thereafter marries again, be incapable during the continuance of that marriage of contracting a valid marriage with any other person under any law, religion, custom or usage.

[9/67]

(3) Every person who on 15th September 1961 is unmarried and who after that date marries under any law, religion, custom or usage shall be incapable during the continuance of that marriage of contracting a valid marriage with any other person under any law, religion, custom or usage.

[9/67]

(4) Nothing in this section shall affect the operation of [Part III](#) in relation to marriages solemnized in Singapore after 15th September 1961.

[9/67]

Void marriages

5.

—(1) Every marriage contracted in Singapore or elsewhere in contravention of [section 4](#) shall be void.

[9/67; 26/80]

(2) If any male person lawfully married under any law, religion, custom or usage shall, during the continuance of that marriage, contract a union with a woman, that woman shall have no right of succession or inheritance on the death intestate of such male person.

[9/67]

(3) Nothing in this section shall affect the liability of any person to pay such maintenance as may be directed to be paid by him under any written law.

Offence

6. Any person lawfully married under any law, religion, custom or usage who during the continuance of that marriage purports to contract a marriage in Singapore or elsewhere under any law, religion, custom or usage in contravention of [section 4](#) shall be deemed to commit the offence of marrying again during the lifetime of the husband or wife, as the case may be, within the meaning of section 494 of the [Penal Code \(Cap. 224\)](#).

[26/80]

Continuance of marriage

7. Every marriage solemnized in Singapore after 15th September 1961, other than a marriage which is void under the provisions of this Act, shall continue until dissolved —

(a)

by the death of one of the parties;

(b)

by order of a court of competent jurisdiction; or

(c)

by a declaration made by a court of competent jurisdiction that the marriage is null and void.

[9/67]

PART III

SOLEMNIZATION OF MARRIAGES

Persons by whom marriages may be solemnized

8.

—(1) A marriage may be solemnized by the Registrar or any other person to whom a licence to solemnize marriages under this section has been granted by the Minister.

(2) The Minister may grant a licence to any suitable person to solemnize marriages in Singapore.

Avoidance of marriages where either party is under minimum age for marriage

9. A marriage solemnized in Singapore or elsewhere between persons either of whom is below the age of 18 years shall be void unless the solemnization of the marriage was authorised by a special marriage licence granted by the Minister under [section 21](#).

[26/80]

Marriages within prohibited degrees

10.

—(1) A marriage solemnized in Singapore or elsewhere between a man and any of the persons mentioned in the first column of [the First Schedule](#), or between a woman and any of the persons mentioned in the second column of that Schedule, shall be void.

[9/67; 26/80]

(2) Notwithstanding [subsection \(1\)](#) and [the First Schedule](#), the Minister may, in his discretion, grant a licence under this section for a marriage to be solemnized, notwithstanding the kindred or affinity of the parties, if the Minister is satisfied that the marriage is valid under the law, religion, custom or usage which would have been applicable to the parties thereto if this Act had not been enacted.

[9/67; 30/96]

(3) A marriage solemnized under such a licence shall be valid.

[9/67; 30/96]

Avoidance of marriages by subsisting prior marriage

11. A marriage solemnized in Singapore or elsewhere between persons either of whom, at the date of the marriage, is married under any law, religion, custom or usage to any other person shall be void.

[26/80]

Avoidance of marriages between persons of same sex

12.

—(1) A marriage solemnized in Singapore or elsewhere between persons who, at the date of the marriage, are not respectively male and female shall be void.

[30/96]

(2) It is hereby declared that, subject to [sections 5, 9, 10, 11](#) and [22](#), a marriage solemnized in Singapore or elsewhere between a person who has undergone a sex re-assignment procedure and any person of the opposite sex is and shall be deemed always to have been a valid marriage.

[30/96]

(3) For the purpose of this section —

(a)

the sex of any party to a marriage as stated at the time of the marriage in his or her identity card issued under the [National Registration Act \(Cap. 201\)](#) shall be prima facie evidence of the sex of the party; and

(b)

a person who has undergone a sex re-assignment procedure shall be identified as being of the sex to which the person has been re-assigned.

[30/96]

(4) Nothing in [subsection \(2\)](#) shall validate any such marriage which had been declared by the High Court before 1st May 1997 to be null and void on the ground that the parties were of the same sex.

[30/96]

Consents

13.

—(1) Subject to this section, a marriage licence under [section 17](#) or a special marriage licence under [section 21](#) for the marriage of a minor shall not be issued or granted without the consent of a person mentioned in [the Second Schedule](#) who is authorised to give such consent.

[26/80]

(2) If the Registrar or, in the case of a proposed marriage by special marriage licence, the Minister is satisfied that the consent of any person whose consent is so required cannot be obtained by reason of absence or inaccessibility or by reason of his being under any disability —

(a)

the necessity for the consent of that person shall be dispensed with, if there is any other person whose consent is also required; and

(b)

if the consent of no other person is required, the Registrar or the Minister may dispense with the necessity of obtaining any consent, or the High Court may, on application being made, consent to the marriage, and the consent of the High Court so given shall have the same effect as if it had been given by the person whose consent cannot be so obtained.

[26/80]

(3) If any person whose consent is required refuses his consent, the High Court may, on application being made, consent to the marriage, and the consent of the High Court so given shall have the same effect as if it had been given by the person whose consent is so refused.

(4) An application to the High Court under this section shall be made to a judge in chambers.

(5) When an application is made to the High Court in consequence of a refusal to give consent, notice of the application shall be served upon the person who refused to give consent.

(6) Notwithstanding anything to the contrary in this Part, consent to the marriage of a minor shall not be necessary if the minor has been previously married.

(7) There shall be no appeal from an order of a judge under this section.

Notice of marriage

14. Whenever any persons desire to marry in Singapore, one of the parties to the intended marriage shall sign and give to the Registrar a notice in the prescribed form.

[9/67]

Signature on notice by person unable to write or to understand English language

15. If the person giving the notice under [section 14](#) is unable to write or is insufficiently acquainted with the English language, or both, then it shall be sufficient if he places his mark or cross thereon in the presence of some literate person who shall attest the same, which attestation shall be in the prescribed form.

Notice to be filed and published

16.

—(1) Upon receipt of a notice under [section 14](#), the Registrar shall cause the notice to be filed serially by electronic media or other means.

[30/96]

(2) The Registrar shall also cause a computer print-out or summary of all notices filed during the day to be displayed in an electronic terminal in a conspicuous place in his office and shall keep the same so displayed until he issues a marriage licence under [section 17](#), or until 3 months have elapsed.

[30/96]

Registrar to issue marriage licence on proof of conditions by statutory declaration

17.

—(1) The Registrar shall, at any time after the expiration of 21 days and before the expiration of 3 months from the date of the notice and upon payment of the prescribed fee, issue a marriage licence in the prescribed form.

[26/80]

(2) The Registrar shall not issue a marriage licence until he has been satisfied by statutory declaration made by each of the parties to the proposed marriage —

(a)

that, where any party to the intended marriage is not a citizen or permanent resident of Singapore, at least one of the parties has been physically present in Singapore for a period of at least 15 days preceding the date of the notice;

[2/2011 wef 01/06/2011]

(b)

that —

(i)

each of the parties is 21 years of age or above, or, if not, is divorced or is a widower or widow or has had his or her previous marriage declared null and void, as the case may be; or

(ii)

if either party is a minor who has not been previously married — the consent of the appropriate person mentioned in [the Second Schedule](#) has been given in writing, or has been dispensed with, or the consent of the High Court has been given in accordance with [section 13](#);

(c)

that neither party is below the age of 18 years;

(d)

that there is no lawful impediment to the marriage;

[2/2011 wef 01/09/2011]

(e)

that neither of the parties to the intended marriage is married under any law, religion, custom or usage to any person other than the person with whom such marriage is proposed to be contracted; and

[2/2011 wef 01/09/2011]

(f)

that, where any party to the intended marriage is a person to whom [section 17A](#) applies, both parties have attended and completed a marriage preparation programme.

[9/67; 26/80]

[2/2011 wef 01/09/2011]

(2A) Where one of the parties to the proposed marriage has been previously married but is divorced, the Registrar shall not issue a marriage licence unless that party also states, in the statutory declaration referred to in [subsection \(2\)](#), whether he owes any arrears in respect of any maintenance which is payable under a maintenance order.

[2/2011 wef 01/09/2011]

(2B) The statutory declaration referred to in [subsection \(2\)](#) shall be made by each party to the proposed marriage in the presence of the other party.

[2/2011 wef 01/09/2011]

(3) If any party giving a notice of marriage or making a statutory declaration does not understand the English language, the Registrar shall, before issuing the marriage licence, ascertain whether that party is cognizant of the purport of the notice or declaration and, if not, shall interpret or cause to be interpreted the notice or declaration to that party into some language which he understands.

[26/80]

(4) In this section —

“maintenance order” means —

(a)

an order for the payment of a monthly allowance made or deemed to be made by a court under [Part VIII](#);

(b)

an order for the payment of periodical sums by way of maintenance or alimony to a wife or for the benefit of any child under [Part X](#);

(c)

an order for maintenance made by the Syariah Court under the [Administration of Muslim Law Act \(Cap. 3\)](#); or

(d)

a maintenance order as defined in section 2 of the [Maintenance Orders \(Facilities for Enforcement\) Act \(Cap. 168\)](#) or section 2 of the [Maintenance Orders \(Reciprocal Enforcement\) Act \(Cap. 169\)](#);

“marriage preparation programme” has the same meaning as in [section 17A\(3\)](#);

“permanent resident of Singapore” means a person who holds an entry permit under section 10 of the [Immigration Act \(Cap. 133\)](#) or a re-entry permit under section 11 of that Act.

[2/2011 wef 01/09/2011]

Marriage preparation programme

17A.

—(1) This section shall apply to a person within the class of persons prescribed by the Minister as persons who must attend a marriage preparation programme.

[2/2011 wef 01/09/2011]

(2) A person to whom this section applies shall not be issued with a marriage licence under [section 17](#) or a special marriage licence under [section 21](#) unless the person satisfies the Registrar or the Minister, as the case may be, that the person, together with the other party to the proposed marriage, have attended and completed a marriage preparation programme.

[2/2011 wef 01/09/2011]

(3) In this section and [section 21](#), “marriage preparation programme” means a marriage preparation programme which satisfies the description specified in the rules made under [section 180](#).

[2/2011 wef 01/09/2011]

Marriage to take place within 3 months

18. If the marriage does not take place within 3 months after the date of the notice, the notice and all proceedings consequent thereupon shall be void, and fresh notice shall be given before the parties can lawfully marry.

Caveat

19.

—(1) Any person may, on payment of the prescribed fee, enter a caveat with the Registrar against the issue of a licence for the marriage of any person named in the caveat and notice of whose intended marriage has been given to the Registrar.

[26/80]

(2) A caveat entered under this section shall contain the name and place of residence of the person entering the caveat and the grounds of objection upon which the caveat is founded and shall be signed by the person entering the caveat.

Proceedings if caveat entered

20.

—(1) If a caveat is entered in accordance with [section 19](#), the Registrar shall not issue a licence for the marriage against which the caveat has been entered unless —

(a)

after examining into the matter of the said objection, the Registrar is satisfied that it ought not to obstruct the issue of the licence for the marriage; or

(b)

the caveat is withdrawn by the person who entered it.

[26/80]

(2) In cases of doubt, it shall be lawful for the Registrar to refer the matter of any caveat referred to in [subsection \(1\)](#) to the High Court which shall decide upon the same.

(3) Where the Registrar has refused to issue the marriage licence, the person applying for the same shall have a right of appeal to the High Court which shall thereupon either confirm the refusal or direct the issue of the marriage licence.

[26/80]

(4) The High Court may examine the allegations contained in the caveat in a summary way and may hear evidence in support of and in opposition to the objection.

(5) The proceedings under this section shall be before a judge in chambers.

(6) There shall be no appeal from a decision of a judge under this section.

(7) If the Registrar or the High Court declares the grounds of objection to be frivolous and such as ought not to obstruct the issue of the marriage licence, the person entering the caveat shall be liable for the costs of all proceedings relating thereto and for damages to be recovered by suit by the party against whose marriage the caveat was entered.

[26/80]

Special marriage licence

21.

—(1) The Minister may, if he thinks fit, dispense with the giving of notice and with the issue of a marriage licence, and may grant a special marriage licence in the prescribed form authorising the solemnization of a marriage between the parties named —

(a)

upon proof being made to him by statutory declaration —

(i)

that there is no lawful impediment to the proposed marriage; and

(ii)

where any party to the proposed marriage is a person to whom [section 17A](#) applies, that both parties to the proposed marriage have attended and completed a marriage preparation programme;

(b)

where one party to the proposed marriage has been previously married but is divorced, upon a statutory declaration being furnished by the party as to whether that party owes any arrears in respect of any maintenance which is payable under a maintenance order; and

(c)

upon his being satisfied that the necessary consent, if any, to the marriage has been obtained, or that the consent has been dispensed with or given under [section 13](#).

[2/2011 wef 01/09/2011]

(2) The Minister may, in his discretion, grant a special marriage licence under this section authorising the solemnization of a marriage although any party to the marriage is below the age of 18 years.

[26/80]

(3) If the marriage authorised by a special marriage licence under this section is not solemnized within one month from the date of the licence, the licence shall become void.

[26/80]

(4) The Minister may delegate his powers under this section to any person, subject to such conditions as he may think fit to impose.

(5) In this section, “maintenance order” has the same meaning as in [section 17\(4\)](#).

[2/2011 wef 01/09/2011]

Requirements for valid marriage

22.

—(1) Every marriage solemnized in Singapore shall be void unless it is solemnized —

(a)

on the authority of a valid marriage licence issued by the Registrar or a valid special marriage licence granted by the Minister; and

(b)

by the Registrar or a person who has been granted a licence to solemnize marriages.

[26/80]

(2) Every marriage shall be solemnized in the presence of at least 2 credible witnesses.

(3) No marriage shall be solemnized unless the person solemnizing the marriage is satisfied that both the parties to the marriage freely consent to the marriage.

Solemnization of marriages

23. A marriage solemnized by the Registrar or any person licensed to solemnize marriages may be solemnized according to such form and ceremony as the Registrar or the person solemnizing the marriage sees fit to adopt and in some part of the ceremony he shall request each of the parties to the marriage to declare that he or she is willing to take the other party as his or her wedded wife or husband, as the case may be.

[26/80]

Religious ceremony

24.

—(1) If the parties to any marriage contracted and solemnized under this Act or under any previous written law relating to Christian or civil marriages shall desire to add to the marriage so contracted and solemnized the religious ceremony ordained or used by the church or temple of which the parties or one of them are members or is a member, it shall be competent for them to present themselves for that purpose to a clergyman, minister or priest of such church or temple, having given notice to that clergyman, minister or priest of their intention to do so; and that clergyman, minister or priest, upon the production of a certified copy of the certificate of the marriage, may, if he sees fit, read or celebrate the marriage service of the church or temple to which he belongs.

(2) Nothing in the reading or celebration of such service under [subsection \(1\)](#) shall be held to supersede or invalidate any marriage so previously contracted and solemnized, nor shall such reading or celebration be entered as a marriage in any register of marriages kept according to the provisions of this Act.

(3) Where a person is under expectation of death and desires to have a religious ceremony of marriage between himself and any person performed, it shall be lawful for the clergyman, minister or priest of the church or temple to which he belongs to read or celebrate the marriage service of that church or temple.

(4) The reading or celebration of such service under [subsection \(3\)](#) shall not be deemed to be a solemnization of marriage for the purposes of this Act and shall not be entered as a marriage in any register of marriages kept according to the provisions of this Act.

PART IV

REGISTRATION

Registration of marriages

25. Every marriage solemnized in Singapore after 15th September 1961 shall be registered in accordance with the provisions of this Part.

Appointment of Registrar, Assistant Registrars and Deputy Registrars

26.

—(1) The Minister may appoint any public officer either by name or office to be the Registrar of Marriages or an Assistant Registrar of Marriages for the purposes of this Act.

(2) The Minister may appoint by name or office such number of Deputy Registrars as may be necessary for the purposes of this Act.

(3) The Minister may appoint by name or office such other officers as may be necessary for carrying this Part into effect.

(4) The Registrar and every Assistant Registrar and Deputy Registrar appointed under this section shall be deemed to be public servants within the meaning of the [Penal Code \(Cap. 224\)](#).

Books and registers

27.

—(1) The Registrar shall keep a State Marriage Register as prescribed by this Act.

[30/96]

(2) The Registrar shall cause all certificates of marriage issued under this Act to be bound together to form a State Marriage Register.

Registration of marriage solemnized by Registrar

28.

—(1) Every marriage solemnized by the Registrar shall immediately after the solemnization thereof be registered by the Registrar in the certificate of marriage.

[30/96]

(2) The entry of such marriage in the certificate of marriage shall —

(a)

be signed by the Registrar solemnizing the marriage, and by the persons married; and

(b)

be attested by 2 credible witnesses, other than the Registrar solemnizing the marriage, present at the solemnization.

[30/96]

Registration of marriage not solemnized by Registrar

29.

—(1) The parties to a marriage which is not solemnized by the Registrar shall —

(a)

appear before a Deputy Registrar within one month of the marriage;

(b)

produce to the Deputy Registrar such evidence of the marriage either oral or documentary as the Deputy Registrar may require;

(c)

furnish such particulars as may be required by the Deputy Registrar for the due registration of the marriage; and

(d)

apply in the prescribed form for the registration of the marriage to be effected.

[9/67]

(2) The Deputy Registrar shall register a marriage by entering the particulars thereof in a certificate of marriage.

[30/96]

(3) The entry of the marriage in the certificate of marriage shall —

(a)

be signed by the Deputy Registrar who made the entry and the parties to the marriage; and

(b)

be attested by 2 credible witnesses present at the solemnization of the marriage.

[30/96]

(4) The Deputy Registrar registering the marriage shall send the certificate of marriage within 3 days of the registration of the marriage to the Registrar.

[14/69]

Registration where parties have not appeared within prescribed time

30. Where the parties to a marriage have not appeared before a Deputy Registrar within the time prescribed by [section 29](#), the marriage may, with the consent in writing of the Registrar, be registered by a Deputy Registrar on payment of such penalty as may be prescribed.

[9/67]

Copy of entry to be given

31. On the completion of the registration of any marriage, the Registrar or the Deputy Registrar shall deliver to the bride a copy of the certificate of marriage duly signed and sealed with his seal of office.

Unlawful registers

32. No person other than the Registrar or a Deputy Registrar shall —

(a)

keep any book being or purporting to be a register kept in accordance with the provisions of this Act; or

(b)

issue to any person any document being or purporting to be a copy of a certificate of a marriage or a certificate of a marriage registered by the Registrar or a Deputy Registrar.

Legal effect of registration

33. Nothing in this Act shall be construed to render valid or invalid merely by reason of its having been or not having been registered any marriage which otherwise is invalid or valid.

PART V

PENALTIES AND MISCELLANEOUS PROVISIONS RELATING TO SOLEMNIZATION AND REGISTRATION OF MARRIAGES

Omission to appear before Deputy Registrar within prescribed time

34.

—(1) Any person who, being required by [section 29](#) to appear before a Deputy Registrar, fails to do so within the prescribed time shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding 12 months or to both.

[26/80]

(2) The Registrar may, in his discretion, compound any such offence by collecting from the person reasonably suspected of having committed the same a sum not exceeding \$400.

[26/80]

Contravention of [section 32](#)

35. Any person who contravenes [section 32](#) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a second or subsequent conviction, to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 2 years or to both.

Interference with marriage

36. Any person who uses any force or threat —

(a)

to compel a person to marry against his will; or

(b)

to prevent a person who has attained the age of 21 years from contracting a valid marriage, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$3,000 or to imprisonment for a term not exceeding 3 years or to both.

False oath, etc., for procuring marriage

37. Any person who for the purpose of procuring any marriage under this Act intentionally makes any false declaration or signs any false notice or certificate required by this Act shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$3,000 or to imprisonment for a term not exceeding 3 years or to both.

False allegation in caveat

38.

—(1) Any person who enters a caveat against the issue by the Registrar of a marriage licence and makes any false representation in or in support of the caveat knowing or believing such representation to be false or not having reason to believe it to be true shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$3,000 or to imprisonment for a term not exceeding 3 years or to both.

(2) Any person who enters a caveat against the issue of a marriage licence and pretends or falsely represents himself to be a person whose consent to the marriage is required by law knowing or believing such pretence or representation to be false or not believing it to be true shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$3,000 or to imprisonment for a term not exceeding 3 years or to both.

Unauthorised solemnization of marriage

39. Any person who, not being authorised thereto under this Act, solemnizes or purports to solemnize any marriage shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding 10 years and shall also be liable to a fine not exceeding \$15,000.

[9/67]

Offences relating to solemnization of marriages

40.

—(1) Any person who knowingly and contrary to this Act solemnizes or purports to solemnize or officiates at a marriage —

(a)

without first receiving a marriage licence or a special marriage licence;

(b)

otherwise than in the presence of at least 2 credible witnesses other than the person solemnizing the marriage; or

(c)

after the expiration of 3 months from the date of the notice of marriage given under [section 14](#), shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding 3 years and shall also be liable to a fine not exceeding \$5,000.

[9/67; 26/80]

(2) The Registrar or any Assistant Registrar who knowingly and contrary to this Act issues any marriage licence —

(a)

without publishing the notice of marriage as required by [section 16](#);

(b)

when a caveat has been entered under [section 19](#) without having first complied with [section 20](#); or

(c)

contrary to [section 17](#),

shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding 3 years and shall also be liable to a fine not exceeding \$5,000.

[26/80]

(3) Any person who marries or purports to marry or goes through a form of marriage with any person contrary to any of the provisions of [Part III](#) shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding 3 years and shall also be liable to a fine not exceeding \$5,000.

[9/67]

Destroying or falsifying register of marriages

41. Any person who by himself or another —

(a)

wilfully destroys or causes damage to any register of marriages or any certificate in that register or any part thereof or any authenticated extract therefrom;

(b)

falsely makes or counterfeits any part of such register or certificate; or

(c)

wilfully inserts any false entry in any register or certificate or authenticated extract, shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding 7 years and shall also be liable to a fine not exceeding \$10,000.

Consent for prosecution

42. No prosecution for any offence punishable under this Part shall be instituted except with the consent of the Public Prosecutor.

[9/67]

[15/2010 wef 02/01/2011]

Correction of errors

43.

—(1) If the Registrar is satisfied by statutory declaration or otherwise that any entry relating to a marriage is erroneous in form or substance, he may, in the presence of the persons married, or, if they are absent, in the presence of 2 credible witnesses, correct the error by ruling through any entry in the certificate of marriage which is erroneous and making the correct entry therein.

[30/96]

(2) The Registrar or the Deputy Registrar shall sign and date the correction made in the certificate of marriage.

[30/96]

(3) Every entry made under [subsection \(1\)](#) shall be attested by the witnesses in whose presence it was made.

Inspection and search

44.

—(1) Every marriage register and index kept by the Registrar under the provisions of this Act shall be open to inspection upon payment of the prescribed fee by any person applying to inspect the same.

(2) The Registrar shall upon payment of the prescribed fee furnish to any person requiring the same a copy of any entry certified under his hand and seal of office.

Proof

45. Every marriage register kept by the Registrar or a Deputy Registrar under the provisions of this Act and any copy of any entry therein certified under his hand and seal of office to be a true copy or extract shall be prima facie evidence in all courts and tribunals in Singapore of the dates and acts contained or set out in such marriage register, copy or extract.

PART VI

RIGHTS AND DUTIES OF HUSBAND AND WIFE

Rights and duties

46.

—(1) Upon the solemnization of marriage, the husband and the wife shall be mutually bound to co-operate with each other in safeguarding the interests of the union and in caring and providing for the children.

(2) The husband and the wife shall have the right separately to engage in any trade or profession or in social activities.

(3) The wife shall have the right to use her own surname and name separately.

(4) The husband and the wife shall have equal rights in the running of the matrimonial household.

Abolition of wife's dependent domicile

47.

—(1) Subject to [subsection \(2\)](#), the domicile of a married woman as at any time on or after 1st June 1981 shall, instead of being the same as her husband's by virtue only of marriage, be ascertained by reference to the same factors as in the case of any other individual capable of having an independent domicile.

[26/80]

(2) Where immediately before 1st June 1981 a woman was married and then had her husband's domicile by dependence, she is to be treated as retaining that domicile (as a domicile of choice, if it is not also her domicile of origin) unless it is changed by acquisition or revival of another domicile either on or after that date.

[26/80]

Conciliation Officers

48.

—(1) The Minister may appoint such public officers as he thinks fit to be Conciliation Officers for the purposes of this Act and shall from time to time publish in the *Gazette* the names of the officers so appointed.

(2) Where there are differences between the parties to a marriage, the parties or either of them may refer the differences to a Conciliation Officer for his advice and assistance.

(3) A Conciliation Officer may by notice in writing require any party to a marriage to attend before him at any reasonable time and at any convenient place for the purposes of settling differences between the parties to the marriage and such person shall be legally bound to attend as required and to answer any questions relating to those differences, truthfully and to the best of his ability.

[26/80]

Duty of judge to consider possibility of reconciliation

49.

—(1) A court before which —

(a)

proceedings for divorce or judicial separation;

(b)

proceedings, instituted by a party to a subsisting marriage, under [section 59](#), [65](#), [66](#) or [69](#), are being heard shall consider, from time to time, the possibility of a reconciliation of the parties.

[30/96]

(2) If, during such proceedings, it appears to the judge from the nature of the case, the evidence in the proceedings or the attitude of the parties that there is a reasonable possibility of a reconciliation of the parties, the judge may do all or any of the following:

(a)

adjourn the proceedings to give the parties the opportunity to consider a reconciliation or to enable anything to be done in accordance with [paragraph \(b\)](#) or [\(c\)](#);

(b)

with the consent of the parties, interview them in chambers, with or without their solicitors, as the judge thinks proper, to assist in a possible reconciliation; and

(c)

nominate a Conciliation Officer or some other suitable person or organisation to assist in considering a possible reconciliation.

[30/96]

(3) If, not less than 14 days after an adjournment under [subsection \(2\)](#), either of the parties requests that the hearing be proceeded with, the judge shall resume the hearing, or arrangements shall be made for the proceedings to be dealt with by another judge, as the case requires, as soon as practicable.

[30/96]

(4) Where a judge has acted as conciliator under [subsection \(2\)\(b\)](#) but the attempt to effect a reconciliation has failed, the judge shall not, except at the request of the parties to the proceedings, continue to hear the proceedings, or determine the proceedings, and, in the absence of such a request, arrangements shall be made for the proceedings to be dealt with by another judge.

[30/96]

(5) Evidence of anything said, or of any admission made, in the course of an endeavour to effect a reconciliation under this section shall not be admissible in any court.

[30/96]

Court may refer parties for mediation or to attend counselling

50.

—(1) A court before which any proceedings under this Act (other than proceedings under [section 104](#)) are being heard may give consideration to the possibility of a harmonious resolution of the matter and for this purpose may, with the consent of the parties, refer the parties for mediation by such person as the parties may agree or, failing such agreement, as the court may appoint.

[30/96]

(2) A court before which any proceedings under this Act (other than proceedings under [section 65](#) or [66](#)) are being heard may, if it considers that it is in the interests of the parties or their children to do so, at any stage in the proceedings direct or advise either or both of the parties or their children to attend counselling provided by such person as the Minister may approve or as the court may direct.

[30/96]

(3) Failure to comply with any direction or advice referred to in [subsection \(2\)](#) does not constitute a contempt of court.

[30/96]

(3A) A court before which any proceedings under [Part X](#) are being heard shall, where the proceedings involve such classes of persons (being persons who have children to the marriage) as may be prescribed by the Minister, do either or both of the following:

(a)

order the parties to attend mediation conducted by such person as the court may appoint;

(b)

order the parties or their children or both, at any stage in the proceedings, to attend counselling provided by such person as the Minister may approve or as the court may direct.

[\[2/2011 wef 01/06/2011\]](#)

(3B) Notwithstanding [subsection \(3A\)](#), the court may, in any case where it considers that it may not be in the interests of the parties or their children to attend mediation or counselling, as the case may be, dispense with an order requiring such mediation or counselling.

[\[2/2011 wef 01/06/2011\]](#)

(3C) Where the court has made an order under [subsection \(3A\)](#), the parties concerned shall comply with it.

[\[2/2011 wef 01/06/2011\]](#)

(3D) Where a person fails to comply with any direction or advice given by the court under [subsection \(2\)](#) in any proceedings under [Part X](#) or any order made by a court under [subsection \(3A\)](#), the court may make such further orders as it thinks fit.

[\[2/2011 wef 01/06/2011\]](#)

(3E) Without prejudice to the generality of [subsection \(3D\)](#), the further orders that may be made by a court under that subsection shall include the following orders:

(a)

an order that proceedings shall be stayed until the parties have attended such mediation or counselling as may be specified in any advice or direction made by the court under [subsection \(2\)](#) or an order made by the court under [subsection \(3A\)](#); and

(b)

such order as to costs as the court thinks appropriate against the party who fails to comply with any advice or direction made by the court under [subsection \(2\)](#) or an order made by the court under [subsection \(3A\)](#).

[\[2/2011 wef 01/06/2011\]](#)

(4) Evidence of anything said, or of any admission made, in the course of any mediation or any counselling under this section shall not be admissible in any court.

[30/96]

Capacity of married women

51. Subject to the provisions of this Act, a married woman shall —

(a)

be capable of acquiring, holding and disposing of, any property;

(b)

be capable of rendering herself, and being rendered, liable in respect of any tort, contract, debt or obligation;

(c) be capable of suing and being sued in her own name either in tort or in contract or otherwise and shall be entitled to all remedies and redress for all purposes; and

(d) be subject to the law relating to bankruptcy and to the enforcement of judgments and orders, in all respects as if she were a feme sole.

[9/67]

Property of woman to be held by her as feme sole

52.

—(1) Subject to the provisions of this Act, all property which —

(a) immediately before 15th September 1961 was the property (including the separate property) of a married woman or held for her separate use in equity;

(b) belongs at the time of her marriage to a woman married after 15th September 1961; or

(c) after 15th September 1961 is acquired by or devolves upon a married woman, shall belong to her in all respects as if she were a feme sole and may be disposed of accordingly.

(2) Nothing in [subsection \(1\)](#) shall —

(a) be construed as affecting adversely the right of any married woman to any property which she had immediately before 15th September 1961; or

(b) interfere with or render inoperative any valid restriction upon anticipation or alienation attached to the enjoyment of any property by virtue of any provision contained in any written law in force immediately before 15th September 1961, or in any instrument executed before that date.

(3) Any instrument executed on or after 15th September 1961 shall, in so far as it purports to attach to the enjoyment of any property by a woman any restriction upon anticipation or alienation which could not have been attached to the enjoyment of that property by a man, be void.

(4) For the purposes of this section relating to restrictions upon anticipation or alienation —

(a)

an instrument attaching such a restriction as aforesaid, executed on or after 15th September 1961, in pursuance of an obligation imposed before that date to attach such a restriction, shall be deemed to have been executed before that date;

(b)

a provision contained in an instrument made in exercise of a special power of appointment shall be deemed to be contained in that instrument only and not in the instrument by which the power was created; and

(c)

the will of any testator who dies after 15th September 1961, shall (notwithstanding the actual date of the execution thereof) be deemed to have been executed after that date.

Loans by wife to husband

53. Any money or other estate of the wife, lent or entrusted by her to her husband for the purpose of any trade or business carried on by him or otherwise, shall be treated as assets of her husband's estate in the case of his bankruptcy under reservation of the wife's claim to a dividend as a creditor for the amount or value of such money or other estate after, but not before all claims of the other creditors of the husband for valuable consideration in money or money's worth have been satisfied.

Money and property derived from housekeeping allowance

54. If any question arises as to the right of a husband or wife to money derived from any allowance made by the husband for the expenses of the matrimonial home or for similar purposes, or to any property acquired out of that money, the money or property shall, in the absence of any agreement between them to the contrary, be treated as belonging to the husband and the wife in equal shares.

[9/67]

Gifts by husband to wife

55.

—(1) Nothing in this Part shall give validity, as against creditors of the husband, to any gift by a husband to his wife of any property which, after such gift, continues to be in the order and disposition or reputed ownership of the husband, or to any deposit or other investment of moneys of the husband made by or in the name of his wife in fraud of his creditors.

(2) Any money deposited or invested in the manner referred to in [subsection \(1\)](#) may be followed as if this Act had not been passed.

Remedies of married woman for protection and security of property

56.

—(1) Every married woman shall have in her own name against all persons whomsoever, including her husband, the same civil remedies and also, subject as regards her husband to [subsection \(3\)](#), the same remedies and redress by way of criminal proceedings for the protection and security of her own property as if that property belonged to her as a feme sole.

[9/67]

(2) In any charge or other proceeding under this section, it shall be sufficient to allege that property to be her property.

(3) No criminal proceedings shall be taken against a husband or wife while they are living together as to or concerning any property claimed by her or him respectively nor while they are living apart as to or concerning any act done by the husband or wife while they were living together concerning property claimed by the wife or husband respectively unless that property has been wrongly taken by the husband or wife when leaving or deserting or about to leave or desert the wife or husband respectively.

[9/67]

(4) In any action or proceeding by a woman or by a next friend on her behalf, the court before which that action or proceeding is pending shall have jurisdiction by judgment or order to order payment of the costs of the opposite party out of property which is subject to a restraint on anticipation, and may enforce such payment by the appointment of a receiver and the sale of the property or otherwise as is just.

Wife's antenuptial debts and liabilities

57.

—(1) A woman after her marriage shall continue to be liable for all debts contracted and all contracts entered into or wrongs committed by her before her marriage, including any sums for which she is liable as a contributory, either before or after she has been placed on the list of contributories under and by virtue of the [Companies Act \(Cap. 50\)](#).

[9/67]

(2) A woman referred to in [subsection \(1\)](#) may be sued for any such debt and for any liability in damages or otherwise under any such contract or in respect of any such wrong.

Actions in tort between husband and wife

58.

—(1) Subject to this section, each of the parties to a marriage shall have the like right of action in tort against the other as if they were not married.

[9/67]

(2) Where an action in tort is brought by one of the parties to a marriage against the other during the subsistence of the marriage, the court may stay the action if it appears —

(a)

that no substantial benefit would accrue to either party from the continuation of the proceedings; or

(b)

that the question or questions in issue could more conveniently be disposed of on an application made under [section 59](#).

[9/67]

(3) Without prejudice to [subsection \(2\)\(b\)](#), the court may, in such an action, either exercise any power which could be exercised on an application under [section 59](#), or give such directions as it thinks fit for the disposal under that section of any question arising in the proceedings.

[9/67]

Questions between husband and wife as to property to be decided in summary way

59.

—(1) In any question between husband and wife as to the title to or possession of property, either party may apply by summons or otherwise in a summary way to any Judge of the High Court, and the Judge may make such order with respect to the property in dispute and as to the costs of and consequent on the application as he thinks fit, or may direct the application to stand over, and any inquiry touching the matters in question to be made in such manner as he thinks fit.

[16/93]

(2) Any order made under this section shall be subject to appeal in the same way as an order made by the same Judge in an action pending in the High Court.

(3) The Judge may, if either party so requires, hear any such application in his chambers.

(4) An application may be made under this section by either of the parties to a marriage notwithstanding that their marriage has been dissolved or annulled so long as the application is made within the period of 3 years beginning with the date on which the marriage was dissolved or annulled.

(5) References in this section to a husband or a wife shall be construed accordingly.

[26/80]

Married woman as an executrix or trustee

60. A married woman who is an executrix or administratrix, alone or jointly with any other person or persons, of the estate of any deceased person, or a trustee alone or jointly as aforesaid of property subject to any trust, may sue or be sued, and may transfer or join in transferring any movable or immovable property belonging to the estate or trust without her husband as if she were a feme sole.

Saving of existing settlements and power to make future settlements

61.

—(1) Nothing in this Part shall interfere with or affect any settlement or agreement for a settlement made or to be made, whether before or after marriage, respecting the property of any married woman, or shall interfere with or render inoperative any restriction

against anticipation at present attached or to be hereafter attached to the enjoyment of any property or income by a woman under any settlement, agreement for a settlement, will or other instrument.

(2) No restriction against anticipation contained in any settlement or agreement for a settlement of a woman's own property, to be made or entered into by herself, shall have any validity against debts contracted by her before marriage, and no settlement or agreement for a settlement shall have any greater force or validity against creditors of that woman than a like settlement or agreement for a settlement made or entered into by a man would have against his creditors.

Legal representative of married woman

62. For the purposes of this Part, the legal personal representative of any married woman shall, in respect of her estate, have the same rights and liabilities as she would have, and be subject to the same jurisdiction as she would be, if she were living.

[9/67]

Liability for breach of trust

63. The provisions of this Part as to liabilities of married women shall extend to all liabilities by reason of any breach of trust or devastavit committed by any married woman being a trustee or an executrix or administratrix either before or after her marriage, and her husband shall not be subject to those liabilities unless he has acted or intermeddled in the trust or administration.

PART VII

PROTECTION OF FAMILY

Interpretation of this Part

64. In this Part, unless the context otherwise requires —

“applicant” means the person who applies for a protection order or, where the application is made by a person referred to in [section 65\(10\)](#), the child or incapacitated person on whose behalf the application is made;

“court” means a District Court or a Magistrate's Court;

“expedited order” means an order made under [section 66\(1\)](#);

“family member”, in relation to a person, means —

(a)

a spouse or former spouse of the person;

(b)

a child of the person, including an adopted child and a step-child;

(c)

a father or mother of the person;

(d)

a father-in-law or mother-in-law of the person;

(e)

a brother or sister of the person; or

(f)

any other relative of the person or an incapacitated person who in the opinion of the court should, in the circumstances, in either case be regarded as a member of the family of the person;

“family violence” means the commission of any of the following acts:

(a)

wilfully or knowingly placing, or attempting to place, a family member in fear of hurt;

(b)

causing hurt to a family member by such act which is known or ought to have been known would result in hurt;

(c)

wrongfully confining or restraining a family member against his will; or

(d)

causing continual harassment with intent to cause or knowing that it is likely to cause anguish to a family member, but does not include any force lawfully used in self-defence, or by way of correction towards a child below 21 years of age;

“hurt” means bodily pain, disease or infirmity;

“incapacitated person” means a person who is wholly or partially incapacitated or infirm, by reason of physical or mental disability or ill-health or old age;

“protected person” means a person who is protected under a protection order;

“protection order” means an order made under [section 65](#);

“relative” includes a person who is related through marriage or adoption;

“shared residence” means the premises at which the parties are, or have been, living together as members of the same household.

[30/96]

Protection order

65.

—(1) The court may, upon satisfaction on a balance of probabilities that family violence has been committed or is likely to be committed against a family member and that it is necessary for the protection of the family member, make a protection order restraining the person against whom the order is made from using family violence against the family member.

[30/96]

(2) An application for a protection order may be made by the family member concerned or any person referred to in [subsection \(10\)](#).
[30/96]

(3) A protection order may be made subject to such exceptions or conditions as may be specified in the order and for such term as may be specified.

[30/96]

(4) The court, in making a protection order, may include a provision that the person against whom the order is made may not incite or assist any other person to commit family violence against the protected person.

[30/96]

(5) A protection order may, where the court is satisfied on a balance of probabilities that it is necessary for the protection or personal safety of the applicant, provide for such orders as the court thinks fit having regard to all the circumstances of the case, including any one or more of the following orders:

(a)

the granting of the right of exclusive occupation to any protected person of the shared residence or a specified part of the shared residence by excluding the person against whom the order is made from the shared residence or specified part thereof, regardless of whether the shared residence is solely owned or leased by the person against whom the order is made or jointly owned or leased by the parties;

(b)

referring the person against whom the order is made or the protected person or both or their children to attend counselling provided by such body as the Minister may approve or as the court may direct; and

(c)

the giving of any such direction as is necessary for and incidental to the proper carrying into effect of any order made under this section.

[30/96]

(6) Except so far as the exercise by the person against whom a protection order is made of a right to the shared residence is suspended or restricted, or prohibited or restrained, by virtue of an order made under [subsection \(5\)](#), such order shall not affect any title or interest that the person against whom the order is made or any other person might have in the residence.

[30/96]

(7) Where a person against whom a protection order or an expedited order has been made contravenes the order, the court may, in addition to any penalty provided for under [subsection \(8\)](#), make, as the case may be, any one or more of the orders under [subsection \(5\)](#), to commence from such date as is specified in such new order.

[30/96]

(8) Any person who wilfully contravenes a protection order or an expedited order or an order made by virtue of [subsection \(5\)](#), except an order made by virtue of [subsection \(5\)\(b\)](#), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 6 months or to both and, in the case of a second or subsequent conviction, to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both.

[30/96]

(9) Any failure to comply with an order made by virtue of [subsection \(5\)\(b\)](#) shall be punishable as a contempt of court.

[30/96]

(10) In the case of a child below the age of 21 years or an incapacitated person, an application under this section or [section 66](#) may be made by a guardian or relative or person responsible for the care of the child or incapacitated person, as the case may be, or by any person appointed by the Minister.

[30/96]

(11) An offence under [subsection \(8\)](#) shall be deemed to be a seizable offence within the meaning of the Criminal Procedure Code (Cap. 68).

[30/96]

Expedited order

66.

—(1) Where, upon an application for a protection order under [section 65](#), the court is satisfied that there is imminent danger of family violence being committed against the applicant, the court may make the protection order notwithstanding —

(a)

that the summons has not been served on the respondent or has not been served on the respondent within a reasonable time before the hearing of the application; or

(b)

that the summons requires the respondent to appear at some time or place.

[30/96]

(2) An expedited order shall not take effect until the date on which notice of the making of the order is served on the respondent in such manner as may be prescribed or, if the court has specified a later date as the date on which the order is to take effect, that later date, and an expedited order shall cease to have effect on whichever of the following dates occurs first:

(a)

the date of the expiration of a period of 28 days beginning with the date of the making of the order; or

(b)

the date of commencement of the hearing of the application for an order under this section.

[30/96]

(3) Notwithstanding [subsection \(2\)](#), the court may extend the duration of the expedited order.

[30/96]

Supplementary provisions with respect to orders under [sections 65](#) and [66](#)

67.

—(1) The court shall, on an application made by the applicant or the person against whom a protection order or an expedited order is made, have power by order to vary, suspend or revoke such order.

[30/96]

(2) [Rules of Court](#) may be made for the purpose of giving effect to [sections 65](#) and [66](#) and any such Rules may, in particular, make provision for the hearing without delay of any application for an order under [section 65\(5\)\(a\)](#).

[30/96]

(3) The expiry by virtue of [section 66\(2\)](#) of an expedited order shall not prejudice the making of a further expedited order under that section.

[30/96]

PART VIII

MAINTENANCE OF WIFE AND CHILDREN

Duty of parents to maintain children

68. Except where an agreement or order of court otherwise provides, it shall be the duty of a parent to maintain or contribute to the maintenance of his or her children, whether they are in his or her custody or the custody of any other person, and whether they are legitimate or illegitimate, either by providing them with such accommodation, clothing, food and education as may be reasonable having regard to his or her means and station in life or by paying the cost thereof.

[30/96]

Court may order maintenance of wife and children

69.

—(1) Any married woman whose husband neglects or refuses to provide her reasonable maintenance may apply to a District Court or a Magistrate's Court and that Court may, on due proof thereof, order the husband to pay a monthly allowance or a lump sum for her maintenance.

[30/96]

(2) A District Court or a Magistrate's Court may, on due proof that a parent has neglected or refused to provide reasonable maintenance for his child who is unable to maintain himself, order that parent to pay a monthly allowance or a lump sum for the maintenance of that child.

[30/96]

(3) An application for the maintenance of a child under [subsection \(2\)](#) may be made by —

(a)

any person who is a guardian or has the actual custody of the child;

(b)

where the child has attained the age of 21 years, by the child himself;

(c)

where the child is below the age of 21 years, any of his siblings who has attained the age of 21 years; or

(d)

any person appointed by the Minister.

[30/96]

(4) The court, when ordering maintenance for a wife or child under this section, shall have regard to all the circumstances of the case including the following matters:

(a)

the financial needs of the wife or child;

(b)

the income, earning capacity (if any), property and other financial resources of the wife or child;

(c)

any physical or mental disability of the wife or child;

(d)

the age of each party to the marriage and the duration of the marriage;

(e)

the contributions made by each of the parties to the marriage to the welfare of the family, including any contribution made by looking after the home or caring for the family;

(f)

the standard of living enjoyed by the wife or child before the husband or parent, as the case may be, neglected or refused to provide reasonable maintenance for the wife or child;

(g) in the case of a child, the manner in which he was being, and in which the parties to the marriage expected him to be, educated or trained; and

(h) the conduct of each of the parties to the marriage, if the conduct is such that it would in the opinion of the court be inequitable to disregard it.

[30/96]

(5) The court shall not make an order under [subsection \(2\)](#) for the benefit of a child who has attained the age of 21 years or for a period that extends beyond the day on which the child will attain that age unless the court is satisfied that the provision of the maintenance is necessary because —

(a) of a mental or physical disability of the child;

(b) the child is or will be serving full-time national service;

(c) the child is or will be or (if an order were made under [subsection \(2\)](#)) would be receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not while in gainful employment; or

(d) special circumstances, other than those stated in [paragraphs \(a\), \(b\) and \(c\)](#), exist which justify the making of the order.

[30/96]

(6) An order under [subsection \(2\)](#) ceases to be in force on the day on which the child attains the age of 21 years unless the order is expressed to continue in force for a period ending after that day.

[30/96]

(7) An order under [subsection \(2\)](#) may direct payment to the person having custody or care and control of the child or the trustees of the child.

[30/96]

(8) When ordering the payment of maintenance under this section or at any time after the making of the order, the court may, if it considers just, order the person liable to pay the maintenance to secure the whole or any part of it by vesting any property belonging to the person in trustees upon trust to pay the maintenance or any part of it out of the income from the property, and subject thereto, in trust for the settlor.

[30/96]

(9) The court shall have the powers conferred by [section 85](#) in respect of proceedings relating to maintenance under this section.

[30/96]

Duty to maintain child accepted as member of family

70.

—(1) Where a person has accepted a child who is not his child as a member of his family, it shall be his duty to maintain that child while he remains a child, so far as the father or the mother of the child fails to do so, and the court may make such orders as may be necessary to ensure the welfare of the child.

[26/80]

(2) The duty imposed by [subsection \(1\)](#) shall cease if the child is taken away by his father or mother.

[26/80]

(3) Any sums expended by a person maintaining that child shall be recoverable as a debt from the father or mother of the child.

[26/80]

(4) An application for an order under [subsection \(1\)](#) may be made by —

(a)

any person who is a guardian or has the actual custody of the child;

(b)

where the child has attained the age of 21 years, the child himself;

(c)

where the child is below the age of 21 years, any of his siblings who has attained the age of 21 years; or

(d)

any person appointed by the Minister.

[30/96]

(5) Subsections (4) to (9) of [section 69](#) shall apply, with the necessary modifications, to the making of an order under this section.

[30/96]

Enforcement of maintenance order

71.

—(1) If any person fails to make one or more payments required to be made under a maintenance order, the court which made the order may do all or any of the following:

(a)

for every breach of the order by warrant direct the amount due to be levied in the manner by law provided for levying fines imposed by a Magistrate's Court;

(b)

sentence him to imprisonment for a term not exceeding one month for each month's allowance remaining unpaid;

[2/2011 wef 01/06/2011]

(c)

make a garnishee order in accordance with the rules made under this Act;

[2/2011 wef 01/06/2011]

[30/96]

(d)

order the person to furnish security against any future default in maintenance payments by means of a banker's guarantee which —

(i)

shall be valid for such period (not exceeding 3 years) as the court may determine, starting from the date the order for security is made; and

(ii)

shall be for an amount not exceeding 3 months of maintenance payable under the maintenance order;

[2/2011 wef 01/06/2011]

(e)

if the court considers it in the interests of the parties in the maintenance proceedings or their children to do so, order the person to undergo financial counselling or such other similar or related programme as the court may direct;

[2/2011 wef 01/06/2011]

(f)

make a community service order requiring the person to perform any unpaid community service for up to 40 hours under the supervision of a community service officer.

[2/2011 wef 01/06/2011]

(2) A sentence of imprisonment ordered under [subsection \(1\)\(b\)](#) shall not affect or diminish the obligation of the person against whom the maintenance order is made to make the payment or payments under the maintenance order which he has failed to make, except that the court may, if it thinks fit, reduce the amount of any such payments.

[30/96]

(2A) The court may make an order under [subsection \(1\)\(d\), \(e\) or \(f\)](#) notwithstanding that any arrears of maintenance which gave rise to the proceedings in which the order is made have been paid up in part or in whole by the time the order is made.

[\[2/2011 wef 01/06/2011\]](#)

(2B) If a person fails to make one or more payments payable under a maintenance order and an order is made by the court under [subsection \(1\)](#) stating the amount of arrears, any of the following persons may lodge a report to a designated credit bureau regarding the unpaid arrears stated on the order of court:

(a)

the person to or for whom the maintenance is payable;

(b)

the caregiver of such person; or

(c)

an authorised representative of such person.

[\[2/2011 wef 01/06/2011\]](#)

(2C) The designated credit bureau may, on receipt of the report referred to in [subsection \(2B\)](#), provide the information, either on its own or consolidated with other information pertaining to the credit payment history of the maintenance defaulter, to the members of the credit bureau.

[\[2/2011 wef 01/06/2011\]](#)

(2D) In this section, “designated credit bureau” means an entity that —

(a)

collects and maintains information about the credit payment history of a person and provides such information to its members for the purpose of enabling its members to assess the creditworthiness of a person; and

(b)

has been designated by the Minister as a credit bureau for the purposes of receiving a report lodged under [subsection \(2B\)](#).

[\[2/2011 wef 01/06/2011\]](#)

(2E) For the avoidance of doubt, a community service order made by the court under [subsection \(1\)\(f\)](#) shall be deemed not to be a community service order made under the [Criminal Procedure Code 2010 \(Act 15 of 2010\)](#) and sections 346 to 352 of [that Act](#) shall not, except as may be provided in this section, apply to a community service order made under [subsection \(1\)\(f\)](#).

[\[2/2011 wef 01/06/2011\]](#)

(2F) An order made by the court under [subsection \(1\)](#) shall state the name, Singapore identity card number, contact number and address of the person who has defaulted on any maintenance payment and the complainant, except where the court determines it would be inappropriate to do so in any particular case.

[\[2/2011 wef 01/06/2011\]](#)

(3) A maintenance order made by the High Court may be enforced by a District Court in accordance with [subsection \(1\)](#) as if that order had been made by the District Court, except that a District Court shall have no power to vary an order of the High Court.

[26/80]

Banker's guarantee

71A.

—(1) Where a person has been ordered by the court under [section 71\(1\)\(d\)](#) to furnish a banker's guarantee, he shall hand the original banker's guarantee to the person to whom maintenance is owed (referred to in this section as a "maintenance claimant") within one month from the date of the order.

[\[2/2011 wef 01/06/2011\]](#)

(2) Where —

(a)

a maintenance claimant makes a demand on the banker's guarantee and no maintenance arrears is owing to the claimant at the time of the demand; or

(b)

the amount paid out under a banker's guarantee to the maintenance claimant exceeds the actual amount of maintenance arrears owing to the maintenance claimant at the time the maintenance claimant's demand was made on the banker's guarantee, such amount as is payable or paid that is in excess of the amount of maintenance arrears owing (referred to in this section as "the excess") shall be set off against the amount of any maintenance which becomes payable by the maintenance defaulter to the maintenance claimant at any time on or after the date of the demand on the banker's guarantee (referred to in this section as "future maintenance liability").

[\[2/2011 wef 01/06/2011\]](#)

(3) Where there is no future maintenance liability against which the excess may be offset, the maintenance claimant who made the demand on the banker's guarantee giving rise to that excess shall, upon demand by the maintenance defaulter, refund the excess to the maintenance defaulter.

[\[2/2011 wef 01/06/2011\]](#)

(4) Where a refund is not made as required under [subsection \(3\)](#), the maintenance defaulter may recover the amount due to him under that subsection from the person liable to make the refund as if the amount were a civil debt due to the maintenance defaulter.

[\[2/2011 wef 01/06/2011\]](#)

Financial counselling

71B. Where a court has made an order under [section 71\(1\)\(e\)](#) requiring a maintenance defaulter to attend financial counselling or any other related programme but the maintenance defaulter fails to comply with the order, any of the following persons may make a complaint to the court regarding such non-compliance:

(a)

the person who is to have provided the financial counselling or conducted such related programme ordered by the court;

(b)

the Director, where the court has ordered a maintenance defaulter to attend financial counselling or such related programme under the direction or supervision of the Director.

[\[2/2011 wef 01/06/2011\]](#)

Community service orders

71C.

—(1) A court shall not make a community service order under [section 71\(1\)\(f\)](#) against a maintenance defaulter unless the court is satisfied that suitable arrangements can be made for him to perform community service under such an order.

[\[2/2011 wef 01/06/2011\]](#)

(2) Notwithstanding that a community service order has been made under [subsection \(1\)](#), the court may, upon an application by a community service officer and upon being satisfied that the maintenance defaulter concerned is medically unfit to comply with the community service order, rescind the order.

[\[2/2011 wef 01/06/2011\]](#)

(3) The Minister may —

(a)

appoint any person to be a community service officer for the purposes of this section;

(b)

prescribe the duration within which community service to be performed under a community service order shall be completed; and

(c)

make rules, not inconsistent with the provisions of this Part, to make further provisions for the manner in which a community service order may be performed, including the imposition of additional requirements and the service of any instructions or notice on a maintenance defaulter in respect of whom such an order has been made.

[2/2011 wef 01/06/2011]

Rescission and variation of order

72.

—(1) On the application of any person receiving or ordered to pay a monthly allowance under this Part and on proof of a change in the circumstances of that person, his wife or child, or for other good cause being shown to the satisfaction of the court, the court by which the order was made may rescind the order or may vary it as it thinks fit.

(2) Without prejudice to the extent of the discretion conferred upon the court by [subsection \(1\)](#), the court may, in considering any application made under this section, take into consideration any change in the general cost of living which may have occurred between the date of the making of the order sought to be varied and the date of the hearing of the application.

Power of court to vary agreement for maintenance of child

73. The court may, at any time and from time to time, vary the terms of any agreement relating to the maintenance of a child, whether made before or after 1st June 1981, notwithstanding any provision to the contrary in that agreement, where it is satisfied that it is reasonable and for the welfare of the child to do so.

[30/96]

Application of [section 121](#)

74. [Section 121](#) shall apply, with the necessary modifications, to any order for the payment of maintenance under this Part.

[30/96]

Application of Act to orders made under repealed Minor Offences Ordinance, etc.

75.

—(1) All orders made under section 37 of the repealed Minor Offences Ordinance (Cap. 24, 1936 Ed.) or under section 2 of the repealed Married Women and Children (Maintenance) Ordinance (Cap. 44, 1955 Ed.) and in force on 15th September 1961 shall be deemed to have been made under this Part by a District Court or a Magistrate's Court, as the case may be, and the provisions of this Part shall apply to the same accordingly.

(2) Upon an application to vary any order made under section 37 of the repealed Minor Offences Ordinance (Cap. 24, 1936 Ed.) or under section 2 of the repealed Married Women and Children (Maintenance) Ordinance (Cap. 44, 1955 Ed.), the court may make under section 72 any order which it could have made upon an application under section 69 or under section 2 of the repealed Married Women and Children (Maintenance) Ordinance.

Power of District Court or Magistrate's Court to refuse order where High Court proceedings more convenient

76.

—(1) If in the opinion of the District Court or the Magistrate's Court the matters in question between the parties or any of them would be more conveniently dealt with by the High Court, the District Court or the Magistrate's Court may refuse to make an order and in that case there shall be no appeal from its decision.

(2) The High Court or a Judge thereof shall have power, by order in any proceedings in the High Court relating to or comprising the same subject-matter as the application refused or any part thereof under [subsection \(1\)](#), to direct the District Court or the Magistrate's Court to rehear or determine the same.

Appeal

77.

—(1) Subject to the provisions of this Part and [Part VII](#), an appeal shall lie from any order or the refusal of any order by a District Court or a Magistrate's Court under this Part and [Part VII](#) to the High Court exercising appellate civil jurisdiction under the provisions of the Supreme Court of Judicature Act (Cap. 322).

[30/96]

(2) All appeals brought under this section shall be by way of rehearing and the High Court shall have the like powers and jurisdiction on the hearing of such appeals as the Court of Appeal has on the hearing of appeals from the High Court under the Supreme Court of Judicature Act.

[26/80]

(3) No appeal made under the provisions of this Part and [Part VII](#) from any order shall operate as a stay of such order unless the High Court or the District Court or the Magistrate's Court so directs.

[26/80; 30/96]

Powers of High Court

78. The High Court shall have the jurisdiction and powers which belong to and are exercisable by a District Court or a Magistrate's Court under this Part.

Procedure

79.

—(1) Except as otherwise provided in the rules made under [subsection \(1A\)](#), all applications to a District Court or a Magistrate's Court under this Part and [Part VII](#) shall be made and heard in the same manner and in accordance with the same procedure as applications for summonses are made and heard by the District Court or the Magistrate's Court under the provisions of the Criminal

Procedure Code (Cap. 68) and an application under this Part and [Part VII](#) shall be deemed to be a complaint for the purposes of that Code.

[\[2/2011 wef 01/06/2011\]](#)

[30/96]

(1A) The committee constituted under [section 139](#) may make rules fixing and regulating the practice and procedure of any part of the proceedings under this Part as it deems fit.

[\[2/2011 wef 01/06/2011\]](#)

(2) The [Rules of Court](#) for the time being in force made under the provisions of the Supreme Court of Judicature Act (Cap. 322) and applicable to appeals from District Courts brought under [section 21](#) of that Act shall apply to all appeals brought under [section 77](#).

(3) Where an appeal is so brought from a Magistrate's Court, the [Rules of Court](#) shall be construed and applied as far as necessary as if references to a District Court were references to a Magistrate's Court and references to a District Judge were references to a Magistrate.

(4) A court before which any application under this Part or [Part VII](#) is heard may make such order as to costs as it thinks fit.

[30/96]

Service of summons

79A.

—(1) Notwithstanding anything in the [Criminal Procedure Code 2010 \(Act 15 of 2010\)](#), a summons issued against a person by a District Court or Family Court under this Part (except an application made under [section 69](#) or [70](#)) may be served on the person concerned —

(a)

by delivering it to the person personally;

[\[2/2011 wef 01/06/2011\]](#)

(b)

by addressing it to the person and delivering it to an adult person who is a member of the family at the last known address of the place of residence of that person;

[\[2/2011 wef 01/06/2011\]](#)

(c)

by addressing it to the person and delivering it to an adult person apparently employed at the last known address of the place of business of that person;

[\[2/2011 wef 01/06/2011\]](#)

(d)

by sending it by pre-paid registered post to the last known address of the place of residence or business of the person;

[\[2/2011 wef 01/06/2011\]](#)

(e)

by leaving a copy of the summons at the last known address of the place of residence or business of the person in an envelope addressed to him; and

[\[2/2011 wef 01/06/2011\]](#)

(f)

where the person's last known address of the place of residence or business cannot be ascertained with reasonable diligence, by publishing a copy of the summons in the *Gazette*.

[\[2/2011 wef 01/06/2011\]](#)

(2) Any summons sent by pre-paid registered post to any person in accordance with subsection (1)(d) shall be deemed to be duly served on the person to whom the summons is addressed at the time when the summons would in the ordinary course of post be delivered.

[\[2/2011 wef 01/06/2011\]](#)

(3) In proving service by pre-paid registered post, it shall be sufficient to prove that the cover containing the summons was properly addressed, stamped and posted by pre-paid registered post.

[\[2/2011 wef 01/06/2011\]](#)

PART IX

ENFORCEMENT OF MAINTENANCE ORDERS

Interpretation of this Part

80. In this Part, unless the context otherwise requires —

“court” includes the Syariah Court constituted under the provisions of the [Administration of Muslim Law Act \(Cap. 3\)](#);

“defendant”, in relation to a maintenance order or a related attachment of earnings order, means the person liable to make payments under the maintenance order;

“earnings”, in relation to a defendant, means any sums payable to him —

(a)

by way of wages or salary, including any fees, bonus, commission, overtime pay or other emoluments payable in addition to wages or salary by the person paying the wages or salary or payable under a contract of service;

(b)

by way of pension, including an annuity in respect of past services, whether or not the services were rendered to the person paying the annuity, and including periodical payments by way of compensation for the loss, abolition or relinquishment, or any diminution in the emoluments, of any office or employment;

(c)

if the defendant is a self-employed person, by way of payments received from self-employment;

“employer” means a person by whom, as a principal and not as an employee or agent, earnings fall to be paid to a defendant, and references to payment of earnings shall be construed accordingly;

“maintenance order” means —

(a)

an order for the payment of a monthly allowance made or deemed to be made by a court under [Part VIII](#);

(b)

an order for the payment of periodical sums by way of maintenance or alimony to a wife or for the benefit of any child under [Part X](#);

(c)

an order for maintenance made by the Syariah Court under the [Administration of Muslim Law Act \(Cap. 3\)](#);

(d)

an order for maintenance made under the [Maintenance of Parents Act \(Cap. 167B\)](#); and

(e)

a maintenance order registered or confirmed by the court under the Maintenance Orders (Facilities for [Enforcement](#)) Act (Cap. 168).¹
[14/69; 30/96]

¹ This Act, which was formerly known as the Reciprocal Enforcement of Maintenance Orders Act (Cap. 26, 1970 Ed.), will be repealed upon the commencement of section 19(1) of the Maintenance Orders (Reciprocal Enforcement) Act (Cap. 169).

Power of court to make attachment of earnings order

81.

—(1) A court may, when ordering the payment of maintenance under [Part VIII](#) or at any time thereafter, if the court considers just, make an attachment of earnings order to secure payment of the maintenance.

[30/96]

(2) A District Court may make an attachment of earnings order to secure payments the defendant is required to make under a maintenance order made by the High Court.

[26/80]

Service of attachment of earnings order

81A.

—(1) Notwithstanding anything in the [Criminal Procedure Code 2010 \(Act 15 of 2010\)](#), an attachment of earnings order made by a court may be served on the person to whom the order is directed by pre-paid registered post at the last known address of his place of residence or business (including the registered address of his place of business).

[\[2/2011 wef 01/06/2011\]](#)

(2) Any attachment of earnings order sent by pre-paid registered post to any person in accordance with [subsection \(1\)](#) shall be deemed to be duly served on the person to whom the order is directed at the time when the order would in the ordinary course of post be delivered.

[\[2/2011 wef 01/06/2011\]](#)

(3) In proving service by pre-paid registered post, it shall be sufficient to prove that the cover containing the attachment of earnings order was properly addressed, stamped and posted by pre-paid registered post.

[\[2/2011 wef 01/06/2011\]](#)

Nature of attachment of earnings order

82.

—(1) An attachment of earnings order shall require the person to whom the order in question is directed, being a person appearing to the court to be the defendant's employer, to make out of the earnings falling to be paid to the defendant payments in satisfaction of the order.

(2) The amount to be prescribed in an attachment of earnings order shall be such sum as to the court seems reasonable after taking into account the resources and needs of the defendant and the needs of persons for whom he must or reasonably should provide.

(3) An attachment of earnings order shall contain, so far as they are known to the court making the order, such particulars as may be prescribed for the purpose of enabling the defendant to be identified by the person to whom the order is directed.

(4) An attachment of earnings order or any variation thereof shall not come into force until the expiration of 7 days from the date when a copy of the order is served on the person to whom the order is directed.

(5) An attachment of earnings order shall designate the officer to whom the payments under the order are to be made.

Effect of attachment of earnings order

83.

—(1) When an attachment of earnings order is made, all other proceedings for the enforcement of the related maintenance order begun before the making of the attachment of earnings order shall be suspended.

(2) The court by which an attachment of earnings order has been made may, if it thinks fit, on the application of the defendant or a person entitled to receive payments under the related maintenance order, make an order discharging or varying the attachment of earnings order.

(3) An attachment of earnings order shall cease to have effect —

(a)

upon the issue of a warrant directing that the amount due under the related maintenance order shall be levied in the manner provided by law for levying fines;

(b)

upon the making of an order sentencing the defendant to imprisonment for failure to comply with the related maintenance order;

(c)

upon the making of a garnishee order under [section 71\(1\)\(c\)](#); and

(d)

upon the rescission of the related maintenance order.

[30/96]

(4) Where an attachment of earnings order ceases to have effect under [subsection \(3\)](#), the court making the order shall give notice of the cessation to the person to whom the order was directed.

Duty of defendant and employer to comply with attachment of earnings order

84.

—(1) A person to whom an attachment of earnings order is directed shall, notwithstanding anything in any other written law but subject to the provisions of this Part, comply with the order or, if the order is subsequently varied under [section 83](#), with the order as so varied.

(2) Where, on any occasion on which earnings fall to be paid to a defendant, there are in force 2 or more attachment of earnings orders relating to those earnings, then, for the purpose of complying with this Part, the employer shall —

(a)

deal with those orders according to the respective dates on which they came into force disregarding any later order until all earlier orders have been dealt with; and

(b)

deal with any later order as if the earnings to which it relates were the residue of the defendant's earnings after the making of any payment under this Part in pursuance of any earlier order.

(3) An employer who, in pursuance of an attachment of earnings order, makes a payment under this Part shall give to the defendant a statement in writing specifying the amount of that payment.

(4) A person to whom an attachment of earnings order is directed who, at the time when a copy of the order is served on him, has on no occasion during the period of one month immediately preceding that time been the defendant's employer shall forthwith give notice in writing to that effect in the prescribed form to the court which made the order.

Additional powers of court in attachment of earnings order proceedings

85.

—(1) Where proceedings relating to an attachment of earnings order are brought in any court, the court may, either before or at the hearing —

(a)

order the defendant to give to the court, within such period as may be specified by the order, a statement signed by him of —

(i)

the name and address of his employer, or of each of his employers if he has more than one;

(ii)

such particulars as to the defendant's earnings as may be so specified; and

(iii)

such prescribed particulars as may be so specified for the purpose of enabling the defendant to be identified by any employer of his;

[\[2/2011 wef 01/06/2011\]](#)

(b)

order any person appearing to the court to be an employer of the defendant to give to the court, within such period as may be specified by the order, a statement signed by him or on his behalf of such particulars as may be specified by the order of all earnings of the defendant which fell to be paid by that person during such period as may be so specified; and

[\[2/2011 wef 01/06/2011\]](#)

(c)

order the Central Provident Fund Board to furnish a statement to the person who took out the proceedings stating the following information, if such information is available to the Board based on records kept by the Board:

(i)

the name and address of the defendant's employer or employers or, if the defendant is unemployed, the defendant's last known employer or employers in the 12 months immediately preceding the date of the order; and

(ii)

the contributions, if any, made by the defendant or his employer to the defendant's Central Provident Fund account in the 12 months immediately preceding the date of the order.

[\[2/2011 wef 01/06/2011\]](#)

(2) A document purporting to be such a statement as is mentioned in [subsection \(1\)](#) shall, in any such proceedings as are so mentioned, be received in evidence and be deemed to be such a statement without further proof unless the contrary is shown.

(3) In this section, "employer" has the same meaning as in [section 2\(1\)](#) of the [Central Provident Fund Act \(Cap. 36\)](#).

[\[2/2011 wef 01/06/2011\]](#)

Obligation of defendant and employer to notify changes of employment and earnings

86. While an attachment of earnings order is in force —

(a)

the defendant shall from time to time notify in writing the court which made the order of every occasion on which he leaves any employment, or becomes employed or re-employed, not later (in each case) than 7 days from the date on which he did so;

(b)

the defendant shall, on any occasion when he becomes employed or re-employed, include in his notification under [paragraph \(a\)](#) particulars of his earnings and anticipated earnings from the relevant employment; and

(c)

any person who becomes the defendant's employer and knows that the order is in force and by what court it was made shall, within 7 days of his becoming the defendant's employer or of acquiring that knowledge (whichever is the later), notify that court in writing that he is the defendant's employer, and include in his notification a statement of the defendant's earnings and anticipated earnings.

[\[26/80\]](#)

Power of court to determine what are earnings

87.

—(1) The court by which an attachment of earnings order has been made shall, on the application of the person to whom the order is directed or of the defendant or of the person in whose favour the order was made, determine whether payments to the defendant of a particular class or description specified by the application are earnings for the purposes of that order; and the person to whom the order is directed shall be entitled to give effect to any determination for the time being in force under this subsection.

(2) A person to whom an attachment of earnings order is directed who makes an application under [subsection \(1\)](#) shall not incur any liability for failing to comply with the order as regards any payments of the class or description specified by the application which are made by him to the defendant while the application, or any appeal in consequence thereof, is pending.

(3) [Subsection \(2\)](#) shall not apply as regards such payments if that person subsequently withdraws the application or, as the case may be, abandons the appeal.

Payment of money under attachment of earnings order

88.

—(1) The court to whom an employer pays any sum in pursuance of an attachment of earnings order shall pay that sum to the person entitled to receive payments under the related maintenance order as is specified by the attachment of earnings order.

(2) Any sums received by virtue of an attachment of earnings order by the court shall be deemed to be payments made by the defendant, so as to discharge first any sums for the time being due and unpaid under the related maintenance order (a sum due at an earlier date being discharged before a sum due at a later date) and secondly any costs incurred in proceedings relating to the maintenance order which were payable by the defendant when the attachment of earnings order was made or last varied.

Earnings paid by Government or out of Consolidated Fund

89.

—(1) In relation to earnings falling to be paid by the Government or out of the Consolidated Fund, the earnings shall be treated as falling to be paid by the chief officer for the time being of the department, office or other body concerned.

(2) If any question arises, in connection with any proceedings relating to an attachment of earnings order, as to what department, office or other body is concerned for the purposes of this section, or as to who for those purposes is the chief officer thereof, that question shall be referred to and determined by the Minister for Finance but that Minister shall not be under any obligation to consider a reference under this subsection unless it is made by a court.

(3) A document purporting to set out a determination of the Minister for Finance under [subsection \(2\)](#) and to be signed by an official of the Ministry of Finance shall, in any such proceedings as are mentioned in that subsection, be admissible in evidence and deemed to contain an accurate statement of such a determination unless the contrary is shown.

Costs of proceedings

90. A court before which proceedings relating to an attachment of earnings order are brought may make such order as to costs as it thinks fit.

[30/96]

Penalties for non-compliance with attachment of earnings order and for giving false notice or statement

91.

—(1) Any person who —

(a)

fails to comply with [section 84\(1\)](#) or [\(4\)](#) or [section 86](#), or an order of a court under [section 85\(1\)](#);

(b) gives such a notice as is mentioned in [section 84\(4\)](#) or a statement in pursuance of an order of a court under [section 85\(1\)](#), which notice or statement he knows to be false in a material particular; or

(c) recklessly gives such a notice or statement which is false in a material particular, shall, subject to [subsection \(2\)](#), be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 12 months or to both.

[30/96]

(2) It shall be a defence for a person charged with failing to comply with [section 84\(1\)](#) to prove that he took all reasonable steps to comply with the attachment of earnings order to which the failure relates.

PART X

Chapter 1 —

DIVORCE

Interpretation of this Part

92. In this Part, unless the context otherwise requires —

“child of the marriage” means any child of the husband and wife, and includes any adopted child and any other child (whether or not a child of the husband or of the wife) who was a member of the family of the husband and wife at the time when they ceased to live together or at the time immediately preceding the institution of the proceedings, whichever first occurred; and for the purposes of this definition, the parties to a purported marriage that is void shall be deemed to be husband and wife;

“court” means the High Court or a Judge thereof;

“desertion” implies an abandonment against the wish of the person charging it;

“judgment of judicial separation” includes a decree of judicial separation granted in proceedings for judicial separation commenced before 1st April 2006;

“writ” means a writ of summons for divorce, presumption of death and divorce, judicial separation, nullity of marriage or rescission of a judgment of judicial separation, as the case may be.

[42/2005]

Jurisdiction of court in matrimonial proceedings

93.

—(1) Subject to [subsection \(2\)](#), the court shall have jurisdiction to hear proceedings for divorce, presumption of death and divorce, judicial separation or nullity of marriage only if either of the parties to the marriage is —

(a)
domiciled in Singapore at the time of the commencement of the proceedings; or

(b)
habitually resident in Singapore for a period of 3 years immediately preceding the commencement of the proceedings.

[42/2005]

(2) In proceedings for nullity of marriage on the ground that the marriage is void or voidable, the court may, notwithstanding that the requirements in [subsection \(1\)](#) are not fulfilled, grant the relief sought where both parties to the marriage reside in Singapore at the time of the commencement of the proceedings.

[42/2005]

(3) For the purposes of proceedings for nullity of marriage, “marriage” includes a marriage which is not valid by virtue of any of the provisions of this Act.

[42/2005]

Restriction on filing of writ for divorce during first 3 years of marriage

94.

—(1) No writ for divorce shall be filed in the court unless at the date of the filing of the writ 3 years have passed since the date of the marriage.

[42/2005]

(2) The court may, upon application being made in accordance with the [Rules of Court](#), allow a writ to be filed before 3 years have passed on the ground that the case is one of exceptional hardship suffered by the plaintiff or of exceptional depravity on the part of the defendant, but if it appears to the court at the hearing of the proceedings that the plaintiff obtained leave to file the writ by any misrepresentation or concealment of the nature of the case, the court may, if it grants an interim judgment, do so subject to the condition that no application to make the judgment final shall be made until after the expiration of 3 years from the date of the marriage, or may dismiss the proceedings without prejudice to any proceedings which may be brought after the expiration of the said 3 years upon the same, or substantially the same, facts as those proved in support of the proceedings so dismissed.

[42/2005]

(3) In determining any application under this section for leave to file a writ before the expiration of 3 years from the date of the marriage, the court shall have regard to the interest of any child of the marriage and to the question whether there is reasonable probability of a reconciliation between the parties before the expiration of the said 3 years.

[42/2005]

(4) The court may, before determining an application under this section, refer the differences between the parties to a Conciliation Officer so that a reconciliation between the parties might be effected.

[42/2005]

(5) Nothing in this section shall be deemed to prohibit the filing of a writ based upon matters which have occurred before the expiration of 3 years from the date of the marriage.

[42/2005]

Irretrievable breakdown of marriage to be sole ground for divorce

95.

—(1) Either party to a marriage may file a writ for divorce on the ground that the marriage has irretrievably broken down.

[42/2005]

(2) The court hearing such proceedings shall, so far as it reasonably can, inquire into the facts alleged as causing or leading to the breakdown of the marriage and, if satisfied that the circumstances make it just and reasonable to do so, grant a judgment for its dissolution.

[42/2005]

(3) The court hearing any proceedings for divorce shall not hold the marriage to have broken down irretrievably unless the plaintiff satisfies the court of one or more of the following facts:

(a)

that the defendant has committed adultery and the plaintiff finds it intolerable to live with the defendant;

(b)

that the defendant has behaved in such a way that the plaintiff cannot reasonably be expected to live with the defendant;

(c)

that the defendant has deserted the plaintiff for a continuous period of at least 2 years immediately preceding the filing of the writ;

(d)

that the parties to the marriage have lived apart for a continuous period of at least 3 years immediately preceding the filing of the writ and the defendant consents to a judgment being granted;

(e)

that the parties to the marriage have lived apart for a continuous period of at least 4 years immediately preceding the filing of the writ.

[42/2005]

(4) In considering whether it would be just and reasonable to grant a judgment, the court shall consider all the circumstances, including the conduct of the parties and how the interests of any child or children of the marriage or of either party may be affected if

the marriage is dissolved, and it may make an interim judgment subject to such terms and conditions as the court may think fit to attach; but if it should appear to the court that in all the circumstances it would be wrong to dissolve the marriage, the court shall dismiss the proceedings.

[42/2005]

(5) Where the parties to the marriage have lived with each other for any period or periods after it became known to the plaintiff that the defendant had, since the celebration of the marriage, committed adultery, then —

(a)

if the length of that period or of those periods together was 6 months or less, their living with each other during that period or those periods shall be disregarded in determining for the purposes of [subsection \(3\)\(a\)](#) whether the plaintiff finds it intolerable to live with the defendant; but

(b)

if the length of that period or of those periods together exceeded 6 months, the plaintiff shall not be entitled to rely on that adultery for the purposes of [subsection \(3\)\(a\)](#).

[42/2005]

(6) Where the plaintiff alleges that the defendant has behaved in such a way that the plaintiff cannot reasonably be expected to live with him, but the parties to the marriage have lived with each other for a period or periods after the date of the occurrence of the final incident relied on by the plaintiff and held by the court to support his allegation, that fact shall be disregarded in determining for the purposes of [subsection \(3\)\(b\)](#) whether the plaintiff cannot reasonably be expected to live with the defendant if the length of that period or of those periods together was 6 months or less.

[42/2005]

(7) In considering for the purposes of [subsection \(3\)](#) whether the period for which the defendant has deserted the plaintiff or the period for which the parties to a marriage have lived apart has been continuous, no account shall be taken of any one period (not exceeding 6 months) or of any 2 or more periods (not exceeding 6 months in all) during which the parties resumed living with each other, but no period during which the parties lived with each other shall count as part of the period of desertion or of the period for which the parties to the marriage lived apart, as the case may be.

[42/2005]

(8) References in this section to the parties to a marriage living with each other shall be construed as references to their living with each other in the same household.

[42/2005]

Rules to provide for agreements to be referred to court

96. Provision may be made by [Rules of Court](#) for enabling the parties to a marriage, or either of them, on application made either before or after the filing of the writ for divorce, to refer to the court any agreement or arrangement made or proposed to be made between them, being an agreement or arrangement which relates to, arises out of, or is connected with, the proceedings for divorce which are contemplated or, as the case may be, have begun, and for enabling the court to express an opinion, should the court think it desirable to do so, as to the reasonableness of the agreement or arrangement and to give such directions, if any, in the matter as the court thinks fit.

[42/2005]

Intervention of Attorney-General

97.

—(1) In the case of any proceedings for divorce —

(a)

the court may, if it thinks fit, direct all necessary papers to be sent to the Attorney-General and he may argue before the court any question in relation to the matter which the court considers it necessary or expedient to be fully argued; and

(b)

any person may, at any time during the progress of the proceedings or before the interim judgment is made final, give information to the Attorney-General on any matter material to the due decision of the case, and the Attorney-General may thereupon take such steps as he considers necessary or expedient.

[42/2005]

(2) If the Attorney-General intervenes or shows cause against an interim judgment in any proceedings for divorce, the court may order one or more of the parties to the proceedings to pay the costs of the Attorney-General.

[42/2005]

Relief for defendant in divorce proceedings

98. If in any proceedings for divorce the defendant alleges and proves any such fact as is mentioned in [section 95\(3\)](#) (treating the defendant as the plaintiff and the plaintiff as the defendant for the purposes of that subsection), the court may give to the defendant the relief to which he would be entitled if he had filed a writ seeking that relief.

[42/2005]

Interim judgment and proceedings thereafter

99.

—(1) Every judgment of divorce shall in the first instance be an interim judgment and shall not be made final before the expiration of 3 months from its grant unless the court by general or special order from time to time fixes a shorter period.

[42/2005]

(2) Where a judgment of divorce has been granted but not made final, then without prejudice to [section 97](#), any person may show cause why the judgment should not be made final by reason of the material facts not having been brought before the court, and in such a case the court may —

(a)

notwithstanding [subsection \(1\)](#), make the judgment final;

(b)

rescind the interim judgment;

(c)

require further inquiry; or

(d)

otherwise deal with the case as it thinks fit.

[42/2005]

(3) Where an interim judgment of divorce has been granted and no application for it to be made final has been made by the party to whom it was granted, then, at any time after the expiration of 3 months from the earliest date on which that party could have made such an application, the party against whom it was granted may make an application to the court and on that application the court may —

(a)

notwithstanding [subsection \(1\)](#), make the judgment final;

(b)

rescind the interim judgment;

(c)

require further inquiry; or

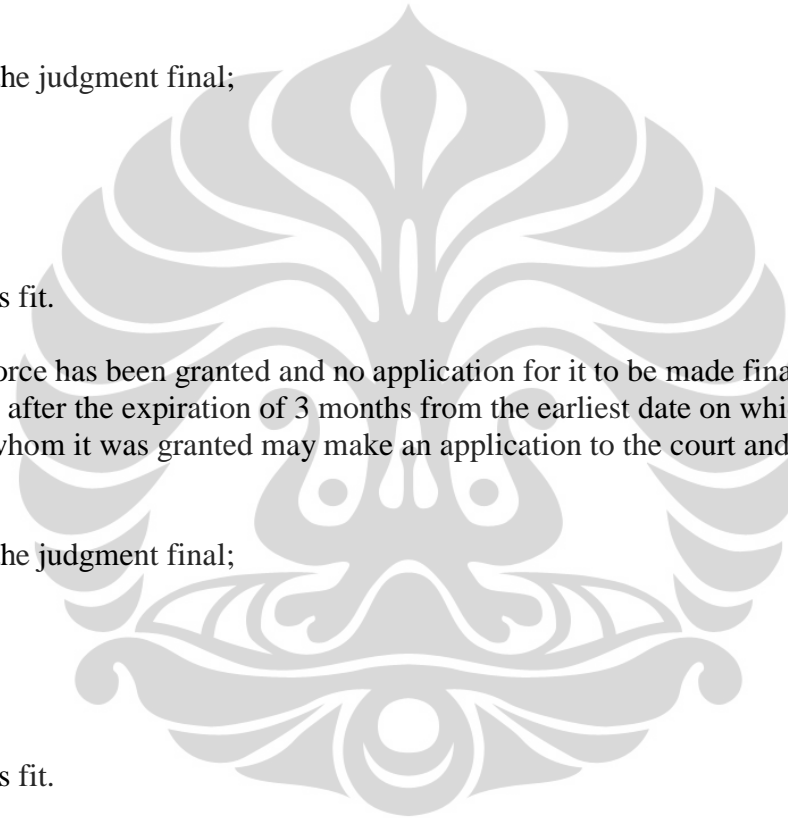
(d)

otherwise deal with the case as it thinks fit.

[42/2005]

Proceedings for interim judgment of presumption of death and divorce

100.



—(1) Any married person who alleges that reasonable grounds exist for supposing that the other party to the marriage is dead may file a writ to have it presumed that the other party is dead and to have the marriage dissolved, and the court, if satisfied that such reasonable grounds exist, may make an interim judgment of presumption of death and of divorce.

[42/2005]

(2) In any such proceedings, the fact that for a period of 7 years or more the other party to the marriage has been continually absent from the plaintiff, and the plaintiff has no reason to believe that the other party has been living within that time, shall be evidence that he or she is dead until the contrary is proved.

[42/2005]

(3) [Section 99](#) shall apply to a writ and a judgment under this section as it applies to a writ for divorce and a judgment of divorce, respectively.

[42/2005]

Chapter 2 —

JUDICIAL SEPARATION

Judicial separation

101.

—(1) A writ for judicial separation may be filed in court by either party to a marriage on the ground and circumstances set out in [section 95\(3\)](#), and that section shall, with the necessary modifications, apply in relation to such a writ as it applies in relation to a writ for divorce.

[42/2005]

(2) Where a court grants a judgment of judicial separation, it shall no longer be obligatory for the plaintiff to cohabit with the defendant.

[42/2005]

(3) The court may, on an application by writ of the spouse against whom a judgment of judicial separation has been made and on being satisfied that the allegations in the writ are true, rescind the judgment at any time on the ground that it was obtained in the absence of the plaintiff or, if desertion was the ground of the judgment, that there was reasonable cause for the alleged desertion.

[42/2005]

Judicial separation no bar to writ for divorce

102.

—(1) A person shall not be prevented from filing a writ for divorce, or the court from pronouncing a judgment of divorce, by reason only that the plaintiff or defendant has at any time been granted a judicial separation upon the same or substantially the same facts as those proved in support of the writ for divorce.

[42/2005]

(2) On any such writ for divorce, the court may treat the judgment of judicial separation as sufficient proof of the adultery, desertion or other ground on which it was granted, but the court shall not grant a judgment of divorce without receiving evidence from the plaintiff.

[42/2005]

(3) For the purposes of any such writ for divorce, a period of desertion immediately preceding the institution of proceedings for a judgment of judicial separation shall, if the parties have not resumed cohabitation and the judgment has been continuously in force since it was granted, be deemed immediately to precede the filing of the writ for divorce.

[42/2005]

Judicially separated spouses not entitled to claim in intestacy of each other

103. If, while a judgment of judicial separation is in force and the separation is continuing, either of the parties whose marriage is the subject of the judgment dies intestate after 1st June 1981, all or any of his or her movable or immovable property shall devolve as if the other party to the marriage had been then dead.

[42/2005]

Chapter 3 —

NULLITY OF MARRIAGE

Writ for nullity of marriage

104. Any husband or wife may file a writ claiming for a judgment of nullity in respect of his or her marriage.

[42/2005]

Grounds on which marriage is void

105. A marriage which takes place after 1st June 1981 shall be void on the following grounds only:

(a)

that it is not a valid marriage by virtue of [sections 3\(4\), 5, 9, 10, 11, 12](#) and [22](#); or

(b)

where the marriage was celebrated outside Singapore, that the marriage is invalid —

(i)

for lack of capacity; or

(ii)

by the law of the place in which it was celebrated.

[42/2005]

Grounds on which marriage is voidable

106. A marriage which takes place after 1st June 1981 shall be voidable on the following grounds only:

(a)

that the marriage has not been consummated owing to the incapacity of either party to consummate it;

(b)

that the marriage has not been consummated owing to the wilful refusal of the defendant to consummate it;

(c)

that either party to the marriage did not validly consent to it, whether in consequence of duress, mistake, mental disorder or otherwise;

[\[21/2008 wef 01/03/2010\]](#)

(d)

that at the time of the marriage either party, though capable of giving a valid consent, was suffering (whether continuously or intermittently) from mental disorder within the meaning of the Mental Health (Care and Treatment) Act 2008 of such a kind or to such an extent as to be unfit for marriage;

[\[21/2008 wef 01/03/2010\]](#)

(e)

that at the time of the marriage the defendant was suffering from venereal disease in a communicable form;

(f)

that at the time of the marriage the defendant was pregnant by some person other than the plaintiff.

[42/2005]

Bars to relief where marriage is voidable

107.

—(1) The court shall not, in proceedings instituted after 1st June 1981, grant a judgment of nullity on the ground that a marriage is voidable (whether the marriage took place before or after that date) if the defendant satisfies the court that —

(a)

the plaintiff, with knowledge that it was open to him to have the marriage avoided, so conducted himself in relation to the defendant as to lead the defendant reasonably to believe that he would not seek to do so; and

(b)

it would be unjust to the defendant to grant the judgment.

[42/2005]

(2) Without prejudice to [subsection \(1\)](#), the court shall not grant a judgment of nullity on the grounds mentioned in [section 106\(c\)](#), [\(d\)](#), [\(e\)](#) or [\(f\)](#) unless it is satisfied that proceedings were instituted within 3 years from the date of the marriage.

[42/2005]

(3) Without prejudice to [subsections \(1\)](#) and [\(2\)](#), the court shall not grant a judgment of nullity on the grounds mentioned in [section 106\(e\)](#) or [\(f\)](#) unless it is satisfied that the plaintiff was, at the time of the marriage, ignorant of the facts alleged.

[42/2005]

(4) [Subsection \(1\)](#) replaces, in relation to the grounds mentioned in [section 106](#), any rule of law whereby a judgment may be refused by reason of approbation, ratification or lack of sincerity on the part of the plaintiff or on similar grounds.

[42/2005]

Marriage governed by foreign law

108. Where, apart from this Act, any matter affecting the validity of a marriage would fall to be determined (in accordance with the rules of private international law) by reference to the law of a country outside Singapore, nothing in [section 105](#), [106](#) or [107](#) shall —

(a)

preclude the determination of the matter as aforesaid; or

(b)

require the application to the marriage of the grounds or bars to relief mentioned in those sections except so far as are applicable in accordance with those rules.

[42/2005]

Application of [sections 97](#) and [99](#) to nullity proceedings

109. [Sections 97](#) and [99](#) shall apply in relation to proceedings for nullity of marriage as if for any reference in those sections to divorce there were substituted a reference to nullity of marriage.

[42/2005]

Effect of judgment of nullity in case of voidable marriage

110.

—(1) If the court finds that the plaintiff's case has been proved, it shall grant a judgment of nullity.

[42/2005]

(2) A judgment of nullity granted after 1st June 1981 on the ground that a marriage is voidable shall operate to annul the marriage only as respects any time after the judgment has been made final, and the marriage shall, notwithstanding the judgment, be treated as if it had existed up to that time.

[42/2005]

Legitimacy of children of annulled marriages

111.

—(1) Where a marriage is annulled, any child who would have been the legitimate child of the parties to the marriage if it had been dissolved, instead of being annulled, at the date of the judgment shall be deemed to be their legitimate child, notwithstanding the annulment.

[42/2005]

(2) The child of a void marriage born on or after 2nd May 1975 shall be deemed to be the legitimate child of his parents if, at the date of such void marriage, both or either of the parties reasonably believed that the marriage was valid.

[42/2005]

Chapter 4 —

FINANCIAL PROVISIONS CONSEQUENT ON MATRIMONIAL PROCEEDINGS

Power of court to order division of matrimonial assets

112.

—(1) The court shall have power, when granting or subsequent to the grant of a judgment of divorce, judicial separation or nullity of marriage, to order the division between the parties of any matrimonial asset or the sale of any such asset and the division between the parties of the proceeds of the sale of any such asset in such proportions as the court thinks just and equitable.

[42/2005]

(2) It shall be the duty of the court in deciding whether to exercise its powers under [subsection \(1\)](#) and, if so, in what manner, to have regard to all the circumstances of the case, including the following matters:

(a)

the extent of the contributions made by each party in money, property or work towards acquiring, improving or maintaining the matrimonial assets;

(b)

any debt owing or obligation incurred or undertaken by either party for their joint benefit or for the benefit of any child of the marriage;

(c)

the needs of the children (if any) of the marriage;

(d)

the extent of the contributions made by each party to the welfare of the family, including looking after the home or caring for the family or any aged or infirm relative or dependant of either party;

(e)

any agreement between the parties with respect to the ownership and division of the matrimonial assets made in contemplation of divorce;

(f)

any period of rent-free occupation or other benefit enjoyed by one party in the matrimonial home to the exclusion of the other party;

(g)

the giving of assistance or support by one party to the other party (whether or not of a material kind), including the giving of assistance or support which aids the other party in the carrying on of his or her occupation or business; and

(h)

the matters referred to in [section 114\(1\)](#) so far as they are relevant.

[42/2005]

(3) The court may make all such other orders and give such directions as may be necessary or expedient to give effect to any order made under this section.

[42/2005]

(4) The court may, at any time it thinks fit, extend, vary, revoke or discharge any order made under this section, and may vary any term or condition upon or subject to which any such order has been made.

[42/2005]

(5) In particular, but without limiting the generality of [subsections \(3\)](#) and [\(4\)](#), the court may make any one or more of the following orders:

(a)

an order for the sale of any matrimonial asset or any part thereof, and for the division, vesting or settlement of the proceeds;

(b)

an order vesting any matrimonial asset owned by both parties jointly in both the parties in common in such shares as the court considers just and equitable;

(c)

an order vesting any matrimonial asset or any part thereof in either party;

(d)

an order for any matrimonial asset, or the sale proceeds thereof, to be vested in any person (including either party) to be held on trust for such period and on such terms as may be specified in the order;

(e)

an order postponing the sale or vesting of any share in any matrimonial asset, or any part of such share, until such future date or until the occurrence of such future event or until the fulfilment of such condition as may be specified in the order;

(f)

an order granting to either party, for such period and on such terms as the court thinks fit, the right personally to occupy the matrimonial home to the exclusion of the other party; and

(g)

an order for the payment of a sum of money by one party to the other party.

[42/2005]

(6) Where under any order made under this section one party is or may become liable to pay to the other party a sum of money, the court may direct that it shall be paid either in one sum or in instalments, and either with or without security, and otherwise in such manner and subject to such conditions (including a condition requiring the payment of interest) as the court thinks fit.

[42/2005]

(7) Where, pursuant to this section, the court makes an order for the sale of any matrimonial asset and for the division, application or settlement of the proceeds, the court may appoint a person to sell the asset and divide, apply or settle the proceeds accordingly; and the execution of any instrument by the person so appointed shall have the same force and validity as if it had been executed by the person in whom the asset is vested.

[42/2005]

(8) Any order under this section may be made upon such terms and subject to such conditions (if any) as the court thinks fit.

[42/2005]

(9) Where the court, by any order under this section, appoints a person (including the Registrar or other officer of the court) to act as a trustee or to sell any matrimonial asset and to divide, apply and settle the proceeds thereof, the court may make provision in that order for the payment of remuneration to that person and for the reimbursement of his costs and expenses.

[42/2005]

(10) In this section, “matrimonial asset” means —

(a)

any asset acquired before the marriage by one party or both parties to the marriage —

(i) ordinarily used or enjoyed by both parties or one or more of their children while the parties are residing together for shelter or transportation or for household, education, recreational, social or aesthetic purposes; or

(ii) which has been substantially improved during the marriage by the other party or by both parties to the marriage; and

(b) any other asset of any nature acquired during the marriage by one party or both parties to the marriage, but does not include any asset (not being a matrimonial home) that has been acquired by one party at any time by gift or inheritance and that has not been substantially improved during the marriage by the other party or by both parties to the marriage.

[42/2005]

Power of court to order maintenance

113. The court may order a man to pay maintenance to his wife or former wife —

(a) during the course of any matrimonial proceedings; or

(b) when granting or subsequent to the grant of a judgment of divorce, judicial separation or nullity of marriage.

[42/2005]

Assessment of maintenance

114.

—(1) In determining the amount of any maintenance to be paid by a man to his wife or former wife, the court shall have regard to all the circumstances of the case including the following matters:

(a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future;

(b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;

(c) the standard of living enjoyed by the family before the breakdown of the marriage;

(d)

the age of each party to the marriage and the duration of the marriage;

(e)

any physical or mental disability of either of the parties to the marriage;

(f)

the contributions made by each of the parties to the marriage to the welfare of the family, including any contribution made by looking after the home or caring for the family; and

(g)

in the case of proceedings for divorce or nullity of marriage, the value to either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage that party will lose the chance of acquiring.

[42/2005]

(2) In exercising its powers under this section, the court shall endeavour so to place the parties, so far as it is practicable and, having regard to their conduct, just to do so, in the financial position in which they would have been if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards the other.

[42/2005]

Power of court to order security for maintenance

115.

—(1) A maintenance order may provide for the payment of a lump sum or such periodical payment as the court may determine.

[42/2005]

(2) The court may, in its discretion, when awarding maintenance, order the person liable to pay such maintenance to secure the whole or any part of it by vesting any property in trustees upon trust to pay the maintenance or part thereof out of the income from that property and, subject thereto, in trust for the settlor.

[42/2005]

Compounding of maintenance

116. An agreement for the payment, in money or other property, of a capital sum in settlement of all future claims to maintenance, shall not be effective until it has been approved, or approved subject to conditions, by the court, but when so approved shall be a good defence to any claim for maintenance.

[42/2005]

Duration of orders for maintenance

117. Except where an order for maintenance is expressed to be for any shorter period or where any such order has been rescinded, an order for maintenance shall expire —

(a)

if the maintenance was unsecured, on the death of the husband or of the wife, whichever is the earlier, or upon the remarriage of the wife;

(b)

if the maintenance was secured, on the death of the wife or upon the remarriage of the wife.

[42/2005]

Power of court to vary orders for maintenance

118. The court may at any time vary or rescind any subsisting order for maintenance, whether secured or unsecured, on the application of the person in whose favour or of the person against whom the order was made, or, in respect of secured maintenance, of the legal personal representatives of the latter, where it is satisfied that the order was based on any misrepresentation or mistake of fact or where there has been any material change in the circumstances.

[42/2005]

Power of court to vary agreements for maintenance

119. Subject to [section 116](#), the court may at any time and from time to time vary the terms of any agreement as to maintenance made between husband and wife, whether made before or after 1st June 1981, where it is satisfied that there has been any material change in the circumstances and notwithstanding any provision to the contrary in any such agreement.

[42/2005]

Maintenance payable under order of court to be inalienable

120. Maintenance payable to any person under any order of court shall not be assignable or transferable or liable to be attached, sequestered or levied upon for, or in respect of, any debt or claim whatsoever.

[42/2005]

Recovery of arrears of maintenance

121.

—(1) Subject to [subsection \(3\)](#), arrears of unsecured maintenance, whether payable by arrangement or under an order of court, shall be recoverable as a debt from the defaulter and, where they accrued due before the making of a bankruptcy order against the defaulter, shall be provable in his bankruptcy and, where they accrued due before his death, shall be a debt due from his estate.

[42/2005]

(2) Subject to [subsection \(3\)](#), arrears of unsecured maintenance which accrued due before the death of the person entitled thereto shall be recoverable as a debt by the legal personal representatives of such person.

[42/2005]

(3) No amount owing as maintenance shall be recoverable in any suit if it accrued due more than 3 years before the institution of the suit unless the court, under special circumstances, otherwise allows.

[42/2005]

Chapter 4A —

Financial relief consequential on foreign matrimonial proceedings

Interpretation and application of this Chapter

121A.

—(1) In this Chapter, unless the context otherwise requires —

“applicant” means the person who applies for an order for financial relief;

“country” includes a territory;

“judicial or other proceedings” includes acts which constitute the means by which a divorce, an annulment of marriage or a legal separation may be obtained in a country and which are done in compliance with the law of that country;

“matrimonial asset” has the same meaning as in [section 112\(10\)](#);

“order for financial relief” means an order made under [section 121G](#) of a description referred to in that section.

[2/2011 wef 01/06/2011]

(2) This Chapter shall only apply to proceedings, decrees, orders or judgments commenced, made or given, as the case may be, on or after the date of commencement of section 12 of the Women’s Charter (Amendment) Act 2011.

[2/2011 wef 01/06/2011]

Applications for financial relief after overseas divorce, etc.

121B. Where —

(a)

a marriage has been dissolved or annulled, or the parties to a marriage have been legally separated, by means of judicial or other proceedings in a foreign country; and

(b)

the divorce, annulment or judicial separation is entitled to be recognised as valid in Singapore under Singapore law, either party to the marriage may apply to the court in the manner prescribed in the rules made by the committee constituted under [section 139](#) for an order for financial relief under this Chapter.

[2/2011 wef 01/06/2011]

Jurisdiction of court

121C. The court shall have jurisdiction to hear an application for an order for financial relief only if —

(a)

one of the parties to the marriage was domiciled in Singapore on the date of the application for leave under [section 121D](#) or was so domiciled on the date on which the divorce, annulment or judicial separation obtained in a foreign country took effect in that country; or

[\[2/2011 wef 01/06/2011\]](#)

(b)

one of the parties to the marriage was habitually resident in Singapore for a continuous period of one year immediately preceding the date of the application for leave under [section 121D](#) or was so resident for a continuous period of one year immediately preceding the date on which the divorce, annulment or judicial separation obtained in a foreign country took effect in that country.

[\[2/2011 wef 01/06/2011\]](#)

Leave of court required for applications for financial relief

121D.

—(1) No application for an order for financial relief shall be made unless the leave of the court has been obtained in accordance with the rules made by the committee constituted under [section 139](#).

[\[2/2011 wef 01/06/2011\]](#)

(2) The court shall not grant leave unless it considers that there is substantial ground for the making of an application for such an order.

[\[2/2011 wef 01/06/2011\]](#)

(3) The court may grant leave under this section notwithstanding that an order has been made by a court of competent jurisdiction in a foreign country requiring the other party to the marriage to make any payment or transfer any matrimonial asset to the applicant or a child of the marriage.

[\[2/2011 wef 01/06/2011\]](#)

(4) Leave under this section may be granted subject to such conditions as the court thinks fit.

[\[2/2011 wef 01/06/2011\]](#)

Interim orders for financial provision

121E.

—(1) Where leave is granted under [section 121D](#) and it appears to the court that the applicant or any child of the marriage is in immediate financial need, the court may make an interim order for —

(a)

a man to make financial provision for his wife or former wife, as the case may be, or any child of the marriage; or

(b)

a parent to make financial provision for any child of the marriage.

[2/2011 wef 01/06/2011]

(2) An interim order under [subsection \(1\)](#) may be made for such term, being a term beginning not earlier than the date of the grant of leave and ending with the date of the determination of the application for an order for financial relief, as the court thinks reasonable.

[2/2011 wef 01/06/2011]

(3) An interim order under [subsection \(1\)](#) may be made subject to such conditions as the court thinks fit.

[2/2011 wef 01/06/2011]

Duty of court to consider whether Singapore is appropriate forum for application

121F.

—(1) Before making an order for financial relief, the court shall consider whether in all the circumstances of the case, it would be appropriate for such an order to be made by a court in Singapore, and if the court is not satisfied that it would be appropriate, the court shall dismiss the application.

[2/2011 wef 01/06/2011]

(2) The court shall, in particular, have regard to the following matters:

(a)

the connection which the parties to the marriage have with Singapore;

(b)

the connection which those parties have with the country in which the marriage was dissolved or annulled or in which judicial separation was obtained;

(c)

the connection which those parties have with any other foreign country;

(d)

any financial benefit which the applicant or a child of the marriage has received, or is likely to receive, in consequence of the divorce, annulment or judicial separation, by virtue of any agreement or the operation of the law of a foreign country;

(e)

in a case where an order has been made by a court of competent jurisdiction in a foreign country requiring the other party to the marriage to make any payment or transfer any property for the benefit of the applicant or a child of the marriage, the financial relief given by the order and the extent to which the order has been complied with or is likely to be complied with;

(f)

any right which the applicant has, or has had, to apply for financial relief from the other party to the marriage under the law of any foreign country, and if the applicant has omitted to exercise that right, the reason for that omission;

(g)

the availability in Singapore of any matrimonial asset in respect of which an order made under [section 121G](#) in favour of the applicant could be made;

(h)

the extent to which any order made under [section 121G](#) is likely to be enforceable; and

(i)

the length of time which has elapsed since the date of the divorce, annulment or judicial separation.

[2/2011 wef 01/06/2011]

Orders for financial relief

121G.

—(1) On an application by a party to a marriage for an order for financial relief, the court may make any one or more of the orders which it could have made under [section 112](#), [113](#) or [127\(1\)](#) in the like manner as if a decree of divorce, nullity or judicial separation in respect of the marriage had been granted in Singapore.

[2/2011 wef 01/06/2011]

(2) [Sections 112\(2\)](#) to [\(10\)](#), [114](#) to [121](#) and [127\(2\)](#) shall apply, with the necessary modifications, and as appropriate, to an order made under [subsection \(1\)](#).

[2/2011 wef 01/06/2011]

(3) Upon the court making a secured order under [subsection \(1\)](#) or at any time thereafter, the court may make any order which the court could have made if the secured order had been made under [section 112](#), [115](#) or [127](#).

[2/2011 wef 01/06/2011]

Chapter 5 —

WELFARE OF CHILDREN

Meaning of “child”

122. In this Chapter, wherever the context so requires, “child” means a child of the marriage as defined in [section 92](#) but who is below the age of 21 years.

[42/2005]

Arrangements for welfare of children

123.

—(1) Subject to this section, the court shall not make final any judgment of divorce or nullity of marriage or grant a judgment of judicial separation unless the court is satisfied as respects every child —

(a)

that arrangements have been made for the welfare of the child and that those arrangements are satisfactory or are the best that can be devised in the circumstances; or

(b)

that it is impracticable for the party or parties appearing before the court to make any such arrangements.

[42/2005]

(2) The court may, if it thinks fit, proceed without observing the requirements of [subsection \(1\)](#) if —

(a)

it appears that there are circumstances making it desirable that the interim judgment be made final or, as the case may be, that the judgment of judicial separation should be granted without delay; and

(b)

the court has obtained a satisfactory undertaking from either or both of the parties to bring the question of the arrangements for the child before the court within a specified time.

[42/2005]

(3) In this section and [section 124](#), “welfare”, in relation to a child, includes the custody and education of the child and financial provision for him.

[42/2005]

Custody of children

124. In any proceedings for divorce, judicial separation or nullity of marriage, the court may, at any stage of the proceedings, or after a final judgment has been granted, make such orders as it thinks fit with respect to the welfare of any child and may vary or discharge the said orders, and may, if it thinks fit, direct that proceedings be commenced for placing the child under the protection of the court.

[42/2005]

Paramount consideration to be welfare of child

125.

—(1) The court may at any time by order place a child in the custody of his or her father or his or her mother or (where there are exceptional circumstances making it undesirable that the child be entrusted to either parent) of any other relative of the child or of any organisation or association the objects of which include child welfare, or of any other suitable person.

[42/2005]

(2) In deciding in whose custody a child should be placed, the paramount consideration shall be the welfare of the child and subject to this, the court shall have regard —

(a)

to the wishes of the parents of the child; and

(b)

to the wishes of the child, where he or she is of an age to express an independent opinion.

[42/2005]

Orders subject to conditions

126.

—(1) An order for custody may be made subject to such conditions as the court may think fit to impose and, subject to such conditions, if any, as may from time to time apply, shall entitle the person given custody to decide all questions relating to the upbringing and education of the child.

[42/2005]

(2) Without prejudice to the generality of [subsection \(1\)](#), an order for custody may —

(a)

contain conditions as to the place where the child is to reside, as to the manner of his or her education and as to the religion in which he or she is to be brought up;

(b)

provide for the child to be temporarily in the care and control of some person other than the person given custody;

(c)

provide for the child to visit a parent deprived of custody, or any member of the family of a parent who is dead or has been deprived of custody, at such times and for such periods as the court may consider reasonable;

(d)

give a parent deprived of custody or any member of the family of a parent who is dead or has been deprived of custody the right of access to the child at such times and with such frequency as the court may consider reasonable; or

(e)

prohibit the person given custody from taking the child out of Singapore.

[42/2005]

(3) Notwithstanding [subsection \(1\)](#) but subject to any condition imposed under [subsection \(2\)\(e\)](#), where an order for custody is in force, no person shall take the child who is the subject of the custody order out of Singapore except with the written consent of both parents or the leave of the court.

[42/2005]

(4) [Subsection \(3\)](#) does not prevent the taking out of Singapore for a period of less than one month of the child by the person given custody of the child or by any other person who has the written consent of the person given custody of the child to take the child out of Singapore.

[42/2005]

(5) Any person who contravenes [subsection \(3\)](#) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both.

[42/2005]

Power of court to order maintenance for children

127.

—(1) During the pendency of any matrimonial proceedings or when granting or at any time subsequent to the grant of a judgment of divorce, judicial separation or nullity of marriage, the court may order a parent to pay maintenance for the benefit of his child in such manner as the court thinks fit.

[42/2005]

(2) The provisions of [Parts VIII](#) and [IX](#) shall apply, with the necessary modifications, to an application for maintenance and a maintenance order made under [subsection \(1\)](#).

[42/2005]

Power of court to vary order for custody

128. The court may at any time vary or rescind any order for the custody of a child on the application of any interested person, where it is satisfied that the order was based on any misrepresentation or mistake of fact or where there has been any material change in the circumstances.

[42/2005]

Power of court to vary agreement for custody

129. The court may, at any time and from time to time, vary the terms of any agreement relating to the custody of a child, whether made before or after 1st June 1981, notwithstanding any provision to the contrary in that agreement, where it is satisfied that it is reasonable and for the welfare of the child to do so.

[42/2005]

Court to have regard to advice of welfare officers, etc.

130. When considering any question relating to the custody of any child, the court shall, whenever it is practicable, have regard to the advice of a person, whether or not a public officer, who is trained or experienced in child welfare but shall not be bound to follow such advice.

[[2/2011 wef 01/06/2011](#)]\]

[42/2005]

Power of court to restrain taking of child out of Singapore

131.

—(1) The court may, on the application of the father or mother of a child —

(a)

where any matrimonial proceedings are pending; or

(b)

where, under any agreement or order of court, one parent has custody of the child to the exclusion of the other, issue an injunction restraining the other parent from taking the child out of Singapore or may give leave for such child to be taken out of Singapore either unconditionally or subject to such conditions or such undertaking as the court may think fit.

[42/2005]

(2) The court may, on the application of any interested person, issue an injunction restraining any person, other than a person having custody of a child, from taking the child out of Singapore.

[42/2005]

(3) Failure to comply with an order made under this section shall be punishable as a contempt of court.

[42/2005]

Power of court to set aside and prevent dispositions intended to defeat claims to maintenance

132.

—(1) Where —

(a)

any matrimonial proceedings are pending;

(b)

an order has been made under [section 112](#) and has not been complied with;

(c)

an order for maintenance has been made under [section 113](#) or [127](#) and has not been rescinded;

[2/2011 wef 01/06/2011]

(d)

maintenance is payable under any agreement to or for the benefit of a wife or former wife or child; or

(e)

an order has been made under [section 121E](#) or [121G](#) and has not been rescinded or complied with,

[2/2011 wef 01/06/2011]

the court shall have power on application —

(i)

if it is satisfied that any disposition of property has been made by the husband or former husband or parent of the person by or on whose behalf the application is made, within the preceding 3 years, with the object on the part of the person making the disposition of reducing his or her means to pay maintenance or of depriving his wife or former wife of any rights in relation to that property, to set aside the disposition; and

(ii)

if it is satisfied that any disposition of property is intended to be made with any such object, to grant an injunction preventing that disposition.

[42/2005]

(2) In this section —

“disposition” includes a sale, gift, lease, mortgage or any other transaction whereby ownership or possession of the property is transferred or encumbered but does not include a disposition made for money or money’s worth to or in favour of a person acting in good faith and in ignorance of the object with which the disposition is made;

“property” means property of any nature, movable or immovable, and includes money.

[42/2005]

Chapter 6 —

GENERAL PROVISIONS

Procedure

133. Subject to the provisions of this Part, all proceedings under this Part shall be regulated by the [Rules of Court](#).

[42/2005]

Evidence

134.

—(1) In proceedings under this Part, the parties and the husbands and wives of such parties shall be competent and compellable to give evidence.

[42/2005]

(2) No witness whether a party to the proceedings or not shall be liable to be asked or bound to answer any question tending to show that he or she has been guilty of adultery unless such witness has already given evidence in the same proceedings in disproof of his or her alleged adultery.

[42/2005]

Sittings in camera

135. The whole or any part of any proceedings under this Part may be heard, if the court thinks fit, in camera.

[42/2005]

Power to rescind interim judgment in certain cases

136. Where the court on granting a judgment of divorce held that the only fact mentioned in [section 95\(3\)](#) on which the plaintiff was entitled to rely in support of his writ was that mentioned in [section 95\(3\)\(d\)](#), the court may, on an application made by the defendant at any time before the judgment is made final, rescind the judgment if it is satisfied that the plaintiff misled the defendant (whether intentionally or unintentionally) about any matter which the defendant took into account in deciding to consent to the grant of a judgment.

[42/2005]

Appeals

137.

—(1) All judgments and orders made by the court in proceedings under this Part shall be enforced, and may be appealed from, as if they were judgments or orders made by the court in the exercise of its original civil jurisdiction.

[42/2005]

(2) There shall be no appeal on the subject of costs only.

[42/2005]

Power to allow intervention on terms

138. In any case in which any person is alleged to have committed adultery with any party to any proceedings under this Part, or in which the court considers, in the interest of any person not already a party to the proceedings, that that person should be made a party to the proceedings, the court may, if it thinks fit, allow that person to intervene upon such terms, if any, as the court thinks just.

[42/2005]

Power to make rules

139.

—(1) A committee constituted by the following persons may make rules to fix and regulate the fees and costs payable upon all proceedings under this Part, and also such rules concerning the practice and procedure under this Part as they consider expedient:

(a)

the Chief Justice;

(b)

a Judge of the Supreme Court to be appointed by the Chief Justice for such period as he may specify in writing;

(c)

a District Judge to be appointed by the Chief Justice for such period as he may specify in writing; and

(d)

2 practising advocates and solicitors to be appointed by the Chief Justice for such period as he may specify in writing.

[42/2005; 2/2007]

(2) Rules made under [subsection \(1\)](#) may prescribe the forms to be used in proceedings under this Part.

[42/2005]

(3) All such rules shall be presented to Parliament as soon as possible after publication in the *Gazette*.

[42/2005]

PART XI

OFFENCES AGAINST WOMEN AND GIRLS

Offences relating to prostitution

140.

—(1) Any person who —

(a)

sells, lets for hire or otherwise disposes of or buys or hires or otherwise obtains possession of any woman or girl with intent that she shall be employed or used for the purpose of prostitution either within or without Singapore, or knowing or having reason to believe that she will be so employed or used;

(b)

procures any woman or girl to have either within or without Singapore carnal connection except by way of marriage with any male person or for the purpose of prostitution either within or without Singapore;

(c)

by threats or intimidation procures any woman or girl to have carnal connection except by way of marriage with any male person either within or without Singapore;

(d)

brings into Singapore, receives or harbours any woman or girl knowing or having reason to believe that she has been procured for the purpose of having carnal connection except by way of marriage with any male person or for the purpose of prostitution either within or without Singapore and with intent to aid such purpose;

(e)

knowing or having reason to believe that any woman or girl has been procured by threats or intimidation for the purpose of having carnal connection except by way of marriage with any male person, either within or without Singapore, receives or harbours her with intent to aid such purpose;

(f)

knowing or having reason to believe that any woman or girl has been brought into Singapore in breach of [section 142](#) or has been sold or purchased in breach of [paragraph \(a\)](#) receives or harbours her with intent that she may be employed or used for the purpose of prostitution either within or without Singapore;

(g)

detains any woman or girl against her will on any premises with the intention that she shall have carnal connection except by way of marriage with any male person, or detains any woman or girl against her will in a brothel;

(h)

detains any woman or girl in any place against her will with intent that she may be employed or used for the purpose of prostitution or for any unlawful or immoral purpose;

(i)

has carnal connection with any girl below the age of 16 years except by way of marriage; or

(j)

attempts to do any act in contravention of this section,

shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding 5 years and shall also be liable to a fine not exceeding \$10,000.

[26/80]

(2) Any male person who is convicted of a second or subsequent offence under [subsection \(1\)\(a\)](#), [\(b\)](#), [\(c\)](#), [\(d\)](#), [\(e\)](#) or [\(f\)](#) shall, in addition to any term of imprisonment awarded in respect of such offence, be liable to caning.

[26/80]

(3) For the purposes of this section, it shall be presumed until the contrary is proved that —

(a)

a person who takes or causes to be taken into a brothel any woman or girl has disposed of her with the intent or knowledge mentioned in [subsection \(1\)\(a\)](#);

(b)

a person who receives any woman or girl into a brothel has obtained possession of her with the intent or knowledge mentioned in [subsection \(1\)\(a\)](#);

(c)

a person has detained a woman or girl in any brothel or place against her will if, with intent to compel or induce her to remain therein, that person —

(i)

withholds from that woman or girl any wearing apparel or any other property belonging to her or any wearing apparel commonly or last used by her;

(ii)

where wearing apparel or any other property has been lent or hired out or supplied to that woman or girl, threatens her with legal proceedings if she takes away such wearing apparel or property; or

(iii)

threatens that woman or girl with legal proceedings for the recovery of any debt or alleged debt or uses any other threat whatsoever.

(4) Subject to [subsection \(5\)](#) and notwithstanding anything in section 79 of the [Penal Code \(Cap. 224\)](#), a reasonable mistake as to the age of a girl shall not be a defence to a charge of an offence under [subsection \(1\)\(i\)](#).

[51/2007]

(5) In the case of a man who at the time of the alleged offence was below the age of 21 years, the presence of a reasonable mistaken belief that the girl was of or above the age of 16 years shall be a valid defence to a charge of an offence under [subsection \(1\)\(i\)](#), provided that at the time of the offence, he has not previously been charged in court for an offence under [subsection \(1\)\(i\)](#), or section 376A, 376B, 376C or 376E of the [Penal Code](#), or section 7 of the Children and Young Persons Act (Cap. 38).

[51/2007]

Traffic in women and girls

141.

—(1) Any person who buys, sells, procures, traffics in, or brings into or takes out of Singapore for the purpose of such traffic, and whether or not for the purpose of present or subsequent prostitution, any woman or girl, shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding 5 years and shall also be liable to a fine not exceeding \$10,000.

(2) No person shall be charged with an offence under this section if he satisfies the Director that the woman or girl brought into or taken out of Singapore by him or intended to be brought into or taken out of Singapore by him was so brought into or taken out of Singapore or is intended to be so brought into or taken out of Singapore for the purpose of her marriage or adoption and that such marriage or adoption can be solemnized or made and has been or will be solemnized or made under the laws and customs for the time being in force in Singapore.

Importation of woman or girl by false pretences

142. Any person who by or under false pretence, false representation or fraudulent or deceitful means made or used either within or without Singapore brings into, or takes out of, or assists in bringing into, or assists in taking out of, Singapore any woman or girl —

(a)

with intent that she shall be employed or used for the purpose of prostitution either within or without Singapore;

(b)

knowing or having reason to believe that she will be so employed or used; or

(c)

whether or not for the purpose of present or future prostitution, shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding 5 years and shall also be liable to a fine not exceeding \$10,000.

[26/80]

Permitting girl below the age of 16 to use premises for sexual penetration

143. Any person who is the owner or occupier of any premises, or who has, or acts or assists in, the management or control of any premises, induces or knowingly permits a girl below the age of 16 years to resort to or be on those premises for the purpose of engaging in sexual penetration except by way of marriage with any male person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 3 years or to both.

[26/80; 51/2007]

Permitting mental defective to use premises for sexual penetration

144.

—(1) Subject to [subsection \(2\)](#), any person who is the owner or occupier of any premises or who has, or acts or assists in, the management or control of any premises, induces or knowingly permits a woman who is a mental defective to resort to or be on those

premises for the purpose of engaging in sexual penetration except by way of marriage with any male person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 3 years or to both.

[26/80; 51/2007]

(2) A person shall not be guilty of an offence under this section because he induces or knowingly permits a mental defective to resort to or be on any premises for the purpose mentioned, if he does not know and has no reason to suspect her to be a mental defective.

[26/80]

Causing or encouraging prostitution of, sexual penetration with, or indecent assault on, girl below the age of 16

145.

—(1) Any person who causes or encourages the prostitution of, or the commission of unlawful sexual penetration of or an indecent assault on, a girl below the age of 16 years for whom he is responsible shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 3 years or to both.

[26/80; 51/2007]

(2) Where a girl has become a prostitute, or has engaged in unlawful sexual penetration, or has been indecently assaulted, a person shall be deemed for the purposes of this section to have caused or encouraged it, if he knowingly allowed her to consort with or to enter or continue in the employment of, any prostitute or person of known immoral character.

[26/80; 51/2007]

(3) The persons who are to be treated for the purposes of this section as responsible for a girl are (subject to [subsection \(4\)](#)) —

(a)

any person who is her parent or legal guardian;

(b)

any person who has actual possession or control of her, or to whose charge she has been committed by her parent or legal guardian or by a person having the custody of her; and

(c)

any other person who has the custody, charge or care of her.

[26/80]

(4) In [subsection \(3\)](#) —

“legal guardian”, in relation to any girl, means any person who is for the time being her guardian, having been appointed according to law by deed or will or by order of a court of competent jurisdiction;

“parent”, in relation to any girl, does not include a person deprived of the custody of her by order of a court of competent jurisdiction but (subject to that), in the case of a girl who has been adopted under the [Adoption of Children Act \(Cap. 4\)](#), or any enactment thereby repealed, means her adopters and, in the case of a girl who is illegitimate (and has not been so adopted), means her mother and any person who has been adjudged to be her putative father.

[26/80]

(5) If, on a charge of an offence against a girl under this section, the girl appears to the court to have been below the age of 16 years at the time of the offence charged, she shall be presumed for the purposes of this section to have been so, unless the contrary is proved.

[26/80]

Persons living on or trading in prostitution

146.

—(1) Any person who knowingly lives wholly or in part on the earnings of the prostitution of another person shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding 5 years and shall also be liable to a fine not exceeding \$10,000.

(2) Any male person who is convicted of a second or subsequent offence under this section shall, in addition to any term of imprisonment imposed in respect of such offence, be liable to caning.

(3) Where any person is proved to live with or be habitually in the company of any prostitute or is proved to have exercised control, direction or influence over the movements of any prostitute in such a manner as to show that the person is aiding, abetting or compelling her prostitution with any other person or generally, the person shall, in the absence of proof to the contrary, be deemed to be knowingly living on the earnings of prostitution.

Suppression of places of assignation

147.

—(1) Any person who keeps, manages or assists in the management of a place of assignation shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$3,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a second or subsequent conviction, to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 5 years or to both.

(2) Any person who keeps, manages or assists in the management of a club or a place of public resort which is used as a place of assignation shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 5 years or to both and, in the case of a second or subsequent conviction, to a fine not exceeding \$15,000 or to imprisonment for a term not exceeding 10 years or to both.

Suppression of brothels

148.

—(1) Any person who keeps, manages or assists in the management of a brothel shall be guilty of an offence under this section.

(2) Any person who is the tenant, lessee, occupier or person in charge of any place which is used as a brothel shall, unless he proves that he has no knowledge that the place is used as a brothel, be guilty of an offence under this section.

(3) Any person who being the tenant, lessee, occupier or person in charge of any place lets such place or any part thereof shall, notwithstanding such letting, be guilty of an offence under [subsection \(2\)](#) if the place or any part thereof is used as a brothel, unless he proves that he has no knowledge that the place or any part thereof is used as a brothel.

(4) Any person who being the owner of any place or the agent of that owner lets the same or any part thereof with the knowledge that the place or some part thereof is to be used as a brothel or is wilfully a party to the continued use of the place or any part thereof as a brothel shall, notwithstanding such letting, be guilty of an offence under this section.

(5) Any person who is guilty of an offence under this section shall be liable on conviction to a fine not exceeding \$3,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a second or subsequent conviction, to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 5 years or to both.

(6) In any proceedings under this Part, any evidence given by any police officer not below the rank of sergeant that any place has been used as a brothel or a place of assignation shall, until the contrary is proved, be deemed to be sufficient evidence of the fact.

[26/80]

Notice to owner and occupier

149.

—(1) Where the Director has reason to believe that a place is being used as a brothel or as a place of assignation, he may serve or cause to be served a notice in the prescribed form on the owner of the place, as well as the occupier thereof.

(2) If the owner or occupier is not otherwise known, service shall be made on the person inscribed in the books kept under any written law for the time being in force as the owner or occupier of the place; and if the name of the owner or occupier is not inscribed in those books or if the name of the owner or occupier cannot by the exercise of due diligence be found, then the notice may be served by affixing it to the principal outer door or upon the outside of any door or window or any conspicuous part of the place.

(3) Every occupier receiving a notice under this section shall forthwith inform the owner or the person from whom he rents the place of the fact of receipt of the notice who shall in like manner inform the owner or the person from whom he rents the place and so on till the notice is brought to the knowledge of the owner, each tenant being responsible for bringing the notice to the knowledge of his immediate lessor.

(4) Any occupier who refuses or omits to inform the owner or the person from whom he rents the premises that a notice under this section has been received shall be liable to prosecution under section 225C of the [Penal Code \(Cap. 224\)](#).

(5) If, in proceedings under this Part, it is proved that the notice under [subsection \(1\)](#) has been served on the owner or occupier of a place, it shall be presumed that the place is so kept, managed or used to the knowledge or with the permission of the owner or occupier of the place.

Determination of tenancy of places on conviction for permitting use as brothel, etc.

150.

—(1) Upon the conviction of the occupier of any place for any offence under [section 147](#) or [148](#) in respect of the place, the owner of the place shall within one month require the person so convicted to deliver up possession of the place to the owner, and in the event of the person so convicted failing within one month of being so required to deliver up possession as aforesaid, the owner of the place shall be entitled to determine the lease or contract of tenancy but without prejudice to the rights or remedies of any party to the lease or contract accrued before the date of such determination.

(2) Where the owner of any place has determined the lease or contract of tenancy in accordance with [subsection \(1\)](#) and the occupier has not delivered up possession of the place after such determination, a Magistrate's Court may, on the application of the owner, make a summary order for the delivery of possession of the place to the owner.

(3) If the occupier disobeys any order made by a Magistrate's Court under [subsection \(2\)](#), he shall be liable to the penalty prescribed in that behalf in section 188 of the [Penal Code \(Cap. 224\)](#).

Demolition of structural contrivances for facilitating the running of a place of assignation or of a brothel

151. Whenever it appears to a court, upon the trial of any offence under [section 147](#) or [148](#), that the place in or in respect of which the offence is alleged to have been committed is a place of assignation or a brothel, and that the same is fitted or provided with any means or contrivances such as staircases, doors and partitions, ladders, planks, platforms, posts, palings, fences, locks, bars, bolts or any other things which appear to it to have been specially erected or constructed for the purpose of facilitating the carrying on of a place of assignation or of a brothel at the place, the court shall order the demolition of such means or contrivances.

Authority of courts to issue arrest and search warrants

152. If any court has reason to believe that any place is used by a woman or girl for the purpose of prostitution and that any other person residing in or frequenting the house is living wholly or in part on the immoral earnings of that woman or girl, the court may issue a warrant authorising the Director or any public officer nominated by the Minister or any police officer not below the rank of sergeant to enter and search the place and to arrest such person.

[21/73]

Trials in camera in certain cases

153.

—(1) When any person is charged with or convicted of having committed any offence under this Part, or of having committed or attempted to commit or attempted to cause the commission of any offence under section 354, 354A, 375, 376, 376A, 376B, 376C, 376D, 376E, 376F, 376G or 377B of the [Penal Code](#) in respect of any woman or girl, the court conducting a preliminary inquiry into, or trying the offence, or hearing any appeal or special case or any point reserved by a Judge of the High Court in relation to the offence, may order that all proceedings before it shall be dealt with in camera.

[51/2007]

(2) Whenever any such order is made, the court shall not be deemed an open court, and the court shall order that no person shall have access to or be or remain in the court except such persons as are necessary for the purpose of the proceedings.

(3) The court shall order proceedings before it to be dealt with in camera in any case where the girl in respect of whom an offence referred to in [subsection \(1\)](#) is alleged to have been committed has not attained the age of 16 years.

[51/2007]

(4) No newspaper report of any proceedings under this Part in any court shall reveal —

(a)

the name or address or include any particulars given in the proceedings calculated to lead to the identification; or

(b)

the name or address of any witness, or the particulars of any evidence given by the witness in the proceedings, which may lead to the identification,

of any woman or girl in respect of whom the offence is alleged to have been committed nor shall any picture be published in any newspaper as being or including the picture of the woman or girl or witness.

[26/80]

(5) Any person who publishes any matter in contravention of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 3 years or to both.

Trial of offences

154.

—(1) All offences under this Part shall be triable by a District Court.

[15/2010 wef 02/01/2011]

(2) No prosecution shall be instituted in respect of any such offence without the consent of the Director or the Public Prosecutor or his deputy.

[15/2010 wef 02/01/2011]

(3) Any District Court may, notwithstanding anything in the Criminal Procedure Code (Cap. 68), impose the full punishment prescribed by this Part in respect of any offence.

(4) Prosecutions in respect of offences committed under this Part may, with the authorisation of the Public Prosecutor, be conducted by the Director or any officer of the Ministry of Community Development, Youth and Sports authorised in writing in that behalf by the Director.

[\[15/2010 wef 02/01/2011\]](#)

[14/69]

Detention pending judicial proceedings

155.

—(1) Any court inquiring into or trying an offence punishable under this Part or under section 309, 312, 313, 317, 354, 370, 371, 372, 373, 373A, 375, 376, 376A, 376B, 376C, 376D, 376E, 376F, 376G or 377B of the [Penal Code \(Cap. 224\)](#) or defined in section 321, 322, 339, 340, 350, 351, 360, 361 or 362 of the [Penal Code](#) may order any woman or girl in respect of whom the offence is alleged to have been committed to be detained temporarily until the determination of the proceedings against the person accused.

[51/2007]

(2) Where an order is made under [subsection \(1\)](#), the Director shall receive such woman or girl and shall put her in a place of safety and shall there detain her until the determination of the proceedings.

(3) Notwithstanding the determination of the proceedings against the accused person, the Director may, by warrant under his hand, order the detention in a place of safety of any woman or girl referred to in this section whom he considers is in need of protection, and thereupon such arrangements shall be made for her welfare as the Director considers necessary.

(4) In exercising his powers under [subsection \(3\)](#), the Director shall not contravene [section 161](#).

Director may examine women and girls and person in charge of them

156.

—(1) If the Director has reasonable cause to believe that —

(a)

any woman or girl has been brought into Singapore either after having been purchased or by fraud, misrepresentation or any false pretence whether or not for the purpose of prostitution or of being sent from Singapore;

(b)

the custody of any woman or girl has been acquired either after having been purchased or by fraud, misrepresentation or any false pretence whether or not for the purpose of prostitution or of being sent from Singapore;

(c)

any woman or girl has been purchased either within or without Singapore for the purpose of being used, trained or disposed of as a prostitute; or

(d)

any woman or girl is being detained against her will for the purpose of prostitution or of being sent from Singapore for immoral purposes,

the Director, or any person authorised in that behalf by him in writing, may require the woman or girl and any person who appears to have the custody or control of her to appear before him at any reasonable time and at any convenient place.

(2) The Director may examine the woman or girl as to her reasons for entering or being in Singapore and may examine the person respecting the woman or girl, and the woman or girl and the person shall be legally bound to answer such questions truthfully to the best of their ability.

(3) The Director may also require any person in whose custody or under whose control the woman or girl appears to be to furnish him with copies of her and the person's photograph and to furnish security to the satisfaction of the Director that she will not leave Singapore without the previous consent in writing of the Director and will not be trained or disposed of as a prostitute or for immoral purposes and will not, whether by way of adoption, marriage or otherwise, be transferred to the care and custody of any other person without the previous consent in writing of the Director and that she will be produced before the Director whenever he requires it.

(4) In default of such photographs and security being given, the Director may by warrant under his hand order the woman or girl to be removed to a place of safety and there detained until she can be returned to the place from where she was brought or until other proper provision can be made for her welfare.

(5) Where the Director has reason to believe that the woman or girl may be sent from Singapore, he may issue an order for her to be detained in a place of safety until the determination of any inquiry or until after such arrangement has been made for her welfare as the Director considers necessary.

Inspection

157.

—(1) The Director or any officer generally or specially authorised in that behalf in writing by the Director may at any time visit and inspect the place where any woman or girl in respect of whom security has been furnished under [section 156](#) lives or is believed to live or to be.

(2) The Director or any authorised officer may inquire into the condition and circumstances of the woman or girl and for the purposes of the inquiry the Director or officer may require any person to answer any question he may think proper to ask.

(3) Any person who —

(a)

obstructs or hinders or attempts to obstruct or hinder the Director or any authorised officer in the exercise of the powers conferred by this section; or

(b)

refuses to answer to the best of his knowledge and belief any question which he is legally bound to answer and which is asked of him by any officer appointed or authorised under this Part,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$500 or to imprisonment for a term not exceeding 6 months or to both.

Security on departure of woman or girl from Singapore

158.

—(1) Whenever the Director is of opinion that it is in the interests of any woman or girl as is referred to in [section 156](#) that she should be permitted to leave Singapore, the Director may grant permission upon being supplied with such photographs of the woman or girl as he may require and upon security being given to his satisfaction that the person in whose custody or control she appears to be will bring her before such public officer within such period and at such destination as may be specified in the bond.

(2) The giving of such further security shall not relieve any person who furnished the security required by [section 156](#) from any obligation under the conditions of the bond entered into under that section, other than the condition relating to departure from Singapore, unless the public officer in the territory where such woman or girl then resides obtains fresh security conditioned in the manner specified in that section.

(3) A certificate under the hand of the public officer referred to in [subsection \(1\)](#) that such woman or girl has not been brought before him shall in any legal proceedings be conclusive evidence to that effect, unless the court requires that officer to be called as a witness.

Woman or girl below the age of 21 trained or used for immoral purposes, etc.

159.

—(1) If the Director has reasonable cause to believe that any woman or girl below the age of 21 years is being trained or used for immoral purposes or lives in or frequents any brothel or is habitually in the company of prostitutes or brothel keepers or procuresses or persons employed or living in brothels or persons directly interested in the business carried on in brothels or by prostitutes, the Director may, by warrant under his hand, order the woman or girl to be removed to a place of safety and there temporarily detained until an inquiry has been held by him.

(2) If the Director after holding such inquiry is satisfied that the woman or girl comes within [subsection \(1\)](#), he may, by warrant under his hand, order her to be detained in a place of safety.

Director may order detention of woman or girl in certain cases

160.

—(1) Any woman or girl —

(a)

whose lawful guardian requests the Director in writing to detain her in a place of safety;

(b)

whom the Director considers is in need of protection and whose lawful guardian cannot be found;

(c)

whom the Director believes to have been ill-treated and is in need of protection; or

(d)

whom the Director considers to be in moral danger,

may, by warrant under the hand of the Director, be ordered to be removed to a place of safety and there detained until he has held an inquiry as to the circumstances of her case.

(2) Every such inquiry shall be completed within a period of one month from the date of the woman's or girl's admission into the place of safety.

(3) If, after holding such inquiry, the Director is satisfied that the woman or girl is in need of protection, the Director may by warrant under his hand order that the woman or girl be detained in a place of safety for such period as he may determine.

[26/80]

(4) Where a girl has been detained in a place of safety at the request of her lawful guardian, she may be so detained for such period as the Director has determined is necessary for her rehabilitation notwithstanding any request made by her lawful guardian for her early release.

[26/80]

Period of detention of woman or girl in place of safety

161. A woman or girl shall not be detained under this Part, except for the purpose of an inquiry, after such arrangements have been made for her welfare as the Director considers necessary or after she attains the age of 21 years or marries.

Marriage not to be contracted without consent of Director

162. No woman or girl detained under the provisions of this Part or in respect of whom security has been furnished under [section 156\(3\)](#) shall contract any form of marriage without the previous consent in writing of the Director.

[14/69]

Women and girls in urgent need of refuge

163.

—(1) Any woman or girl may on her own application be received by the Director into a place of safety if the Director is satisfied that the woman or girl is in urgent need of refuge.

(2) Where the situation warrants it, the person in charge of any place of safety may receive into that place of safety any woman or girl who makes an application to her.

(3) Where the person in charge of a place of safety receives any woman or girl into that place of safety in accordance with [subsection \(2\)](#), she shall, within 48 hours of the admission of the woman or girl, produce her before the Director with a full report of the circumstances.

Transfer of women or girls from one place of safety to another place of safety within Singapore

164.

—(1) Whenever an order has been made under [section 155\(3\)](#), [156](#), [159](#) or [160](#) for the detention of a woman or girl in a place of safety and it appears to the Director to be expedient in the interests of the woman or girl that she should be transferred from such place of safety to another place of safety within Singapore, it shall be lawful for the Director to issue an order that she shall be so transferred.

(2) No woman or girl admitted into a place of safety in Singapore on the request in writing of her lawful guardian under [section 160\(1\)\(a\)](#) shall be so transferred from such place of safety except with the approval in writing of her lawful guardian.

Removal of women or girls to Malaysia, Brunei Darussalam or Hong Kong by order of Minister

165.

—(1) Whenever an order has been made under [section 155\(3\)](#), [156](#), [159](#) or [160](#) for the detention of a woman or girl in a place of safety and it appears to the Minister to be expedient in the interests of the woman or girl that she should be removed from such place of safety and transferred to a place of safety established in Malaysia, Brunei Darussalam or Hong Kong under the provisions of any law for the time being in force in Malaysia, Brunei Darussalam or Hong Kong, as the case may be, for the protection of women and girls, it shall be lawful for the Minister to issue an order that she shall be removed to such place of safety established in Malaysia, Brunei Darussalam or Hong Kong.

(2) No woman or girl admitted into a place of safety in Singapore on the request in writing of her lawful guardian under [section 160\(1\)\(a\)](#) shall be so removed from such place of safety except with the approval in writing of her lawful guardian.

(3) The order for removal under this section shall be addressed to the person in charge of the place of safety in which the woman or girl is detained and shall direct such person to deliver her to the person mentioned in that order for removal at such place in Malaysia, Brunei Darussalam or Hong Kong and in such manner as may be specified in that order for the purpose of transfer as aforesaid; and the woman or girl shall be delivered up and shall be transferred accordingly.

(4) The Minister may direct that any condition, not inconsistent with the provisions of this Part, which may be prescribed by the provisions of any law for the time being in force in Malaysia, Brunei Darussalam or Hong Kong for the reception of women and girls from Singapore into Malaysia, Brunei Darussalam or Hong Kong, and the detention therein of such women and girls shall be observed.

(5) Any woman or girl removed under this Part to a place of safety in Malaysia, Brunei Darussalam or Hong Kong may, if she so desires, on being discharged from such place of safety, be returned to Singapore.

Appeal

166. An appeal shall lie from any order made by the Director under this Part to the Minister whose decision shall be final and shall not be questioned in any court.

Women and girls may be received into and detained in Singapore

167.

—(1) Whenever the government of Malaysia, Brunei Darussalam or Hong Kong makes a representation to the Minister that it is expedient that any woman or girl whose detention in a place of safety has been ordered by the authority empowered by the law of such territory should be removed to Singapore for detention in a place of safety within Singapore, and satisfies the Minister that provision will be made for the payment of all expenses that may be incurred in the reception, maintenance and detention of, or otherwise in relation to, the woman or girl, the Minister, if it appears to him that there is sufficient accommodation for the woman or girl in a place of safety within Singapore, may by warrant under his hand in the prescribed form direct the woman or girl, when brought into Singapore, to be received therein and conveyed to a place of safety specified in such warrant and to be there detained until discharged in due course of law or until further order.

(2) The representation mentioned in [subsection \(1\)](#) shall be delivered under the hand of the Minister or the officer for the time being charged with the responsibility for making such a representation on behalf of the government concerned.

(3) Every warrant purporting to be issued in pursuance of this Part and to be under the hand of the Minister shall be received in evidence in every court without further proof and shall be evidence of the facts therein stated, and all acts done in pursuance of that warrant shall be deemed to have been authorised by law.

Women and girls so received to be subject to local law

168. Any woman or girl received into Singapore under [section 167](#) shall be dealt with in Singapore in like manner as if her detention in a place of safety had been ordered by the Director by warrant under his hand, and shall be subject to all laws and regulations in force in Singapore.

Women and girls detained to be subject to rules

169.

—(1) Every woman or girl detained under this Part shall be subject to such rules as are prescribed.
(2) Every woman or girl detained or ordered to be detained under this Part who leaves any place in which she is detained otherwise than in accordance with such rules may be arrested and taken back to such place by any police officer or by any officer duly authorised thereto either specially or generally by the Director.

(3) Any person who —

(a)

induces or assists any woman or girl detained under this Part to leave or escape from the place in which she is detained; or

(b)

receives or harbours such woman or girl knowing or having reason to believe that she has escaped from a place of safety, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding 6 months or to both.

[26/80]

Director may cause persons to be photographed

170.

—(1) Whenever the Director, after inquiry, has reason to believe that a breach of any of the provisions of this Part is about to be or has been committed by any person, the Director may direct that the person be photographed, and his finger impressions taken.

(2) The person so directed shall submit to be photographed and to have his finger impressions taken at such time and place and in such manner as the Director may think fit and in default of so doing shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$500 or to imprisonment for a term not exceeding 6 months or to both.

(3) Any person whose finger impressions and photograph have been taken under [subsection \(1\)](#) may apply on the expiry of 5 years from the date when such finger impressions and photograph were taken for the return of such finger impressions and photograph and the Director shall, unless the person has in such period of 5 years been convicted of any offence under this Part, deliver to the person the sheet upon which his finger impressions have been made together with the negative and all copies of any photograph taken of him, or, if no such application is received within 3 months from the period specified in this subsection, shall destroy such sheet and every such negative and photograph.

Power to summon and examine persons in certain circumstances

171.

—(1) The Director may summon any person who he has reason to believe can give any information —

(a)

regarding any woman or girl in respect of whom he has reasonable cause to believe that an offence under this Part is or may be committed or who he has reasonable cause to believe is or may be liable to be dealt with under [section 156](#), [159](#) or [160](#); or

(b)

regarding any place which he has reasonable cause to believe is being used as a brothel, a place of assignation or for the purpose of prostitution.

(2) The person so summoned shall attend at the time and place specified in the summons and shall produce all documents in his custody, possession or control relating to the woman or girl or place, as the case may be, and shall answer truthfully all questions which the Director may put to him respecting the woman or girl or place or in any way relating to the matter being inquired into, and where the inquiry relates to any woman or girl, the person shall also, if so required by the Director, produce the woman or girl, unless the person is able to satisfy the Director that he is unable to do so.

(3) The Director shall be deemed to be a public servant within the meaning of the [Penal Code \(Cap. 224\)](#) and may administer oaths to and examine on oath any person summoned before him for the purposes of this Part.

(4) Any person summoned who fails to attend at the time and place specified in the summons or to do any of the other acts referred to in [subsection \(2\)](#) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$500 or to imprisonment for a term not exceeding 6 months or to both.

(5) The Director shall not be compellable in any judicial proceedings to answer any questions as to the grounds of his decision or belief in any case dealt with by him under this Part or as to anything which came to his knowledge in any inquiry made by him as Director.

(6) The Director may, during or after such inquiry as is referred to in [subsection \(2\)](#), arrest or cause to be arrested any person whom he has reasonable cause to believe to be liable to prosecution for any offence under this Part committed in respect of the woman or girl or place, and may seize and detain any article, book, document or account which he may have reason to believe to relate to such offence.

Record of evidence

172. The Director shall, at any inquiry held by him, take down and record the evidence taken by him upon such inquiry and of his decision thereon and shall furnish to the High Court a copy of such notes of evidence when called upon to do so by order of a Judge of the High Court suppressing in such copy the name of any person from whom information has been derived if he thinks it expedient to do so.

Power of search

173.

—(1) The Director, or any person being either a person employed in the Ministry of Community Development, Youth and Sports, or a police officer not below the rank of sergeant or an officer of the Immigration and Checkpoints Authority, and being generally or specially authorised for that purpose in writing by the Director, may enter, and for that purpose use force if necessary, and search —

(a)

any place where the Director, person or officer has reasonable cause to believe that an offence under this Part has been or is being committed; and

(b)

any person in that place,

and may remove any woman or girl who is or may be liable to be dealt with under [section 156](#), [159](#) or [160](#) to a place of safety to be there detained until her case is inquired into, except that no woman shall be searched other than by a woman.

[14/69; 21/73]

(2) Any person who refuses to be searched or refuses the Director, person or officer access to such place or otherwise obstructs or hinders him in effecting an entrance to such place or in removing any such woman or girl shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding 12 months or to both.

Power of arrest and seizure

174.

—(1) The Director, or any person being either a person employed in the Ministry of Community Development, Youth and Sports, or a police officer not below the rank of sergeant or an officer of the Immigration and Checkpoints Authority, and being generally or specially authorised for that purpose in writing by the Director, may arrest or cause to be arrested any person reasonably believed to be liable to prosecution for an offence under [section 140](#), [141](#), [142](#), [143](#), [144](#), [145](#), [146](#), [147](#) or [148](#) and may seize, and for that purpose use force if necessary, and detain any article, book, document or account which he may have reason to believe to relate to such offence.

[14/69; 21/73]

(2) Where any person is arrested by the Director or any person mentioned in [subsection \(1\)](#), the Director or person making the arrest shall comply with [sections 68](#) and [85](#) of the Criminal Procedure Code 2010 as if he were a police officer.

[15/2010 wef 02/01/2011]

(3) Any person who obstructs or hinders the Director or any person mentioned in [subsection \(1\)](#) in the arrest of any such suspected person or in the seizure or detention of any such article, book, document or account shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding 12 months or to both.

Presumption arising out of warrants

175.

—(1) Every warrant or summons purporting to be issued in pursuance of this Part and to be under the hand and seal of the Director shall be received in evidence in any court without further proof and shall be prima facie evidence of the facts therein stated.

(2) All acts done in pursuance of such warrant or summons shall be deemed to have been authorised by law.

Appointment of officers

176. The Minister may, by notification in the *Gazette*, appoint such officers as he may think fit for the purposes of this Part and may by that notification confer upon those officers all or any of the powers conferred and duties imposed upon the Director by this Part.

Minister may establish places of safety

177. The Minister may, by order published in the *Gazette*, establish such places of safety as may be necessary for the purposes of this Part.

Boards of Visitors

178.

—(1) The Minister may, by notification in the *Gazette*, appoint for every place of safety a Board of Visitors to advise and make recommendations to the Director on such matters as he may refer to it.

(2) A Board of Visitors may be appointed for one or more places of safety as the Minister thinks fit.

(3) A Board of Visitors shall consist of such number of persons as the Minister may determine.

[30/96]

(4) Every person appointed under [subsection \(1\)](#) may enter at reasonable times any place of safety and make such inquiry or examination therein as appears to him necessary and shall also make such report as the Minister may require.

[30/96]

(5) Notwithstanding [subsection \(1\)](#), the Minister may direct a Board of Visitors —

(a)

to visit any place which is established for the purposes of care and reception of women and girls and which is not a place of safety; and

(b)

to make such inquiry or examination therein as appears to the Board necessary and also to make such report as the Minister may require.

[30/96]

(6) Any person who refuses admittance to any place of safety or any place referred to in [subsection \(5\)](#) to any member of a Board of Visitors, the Director or any officer deputed by the Director for the purpose or who offers any hindrance or obstruction to any such

persons after his identity is reasonably established shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000.

[30/96]

Discharge Committees

179.

—(1) The Minister may appoint for every place of safety a Discharge Committee which shall advise and make recommendations to the Director on the discharge and aftercare of women and girls in such place of safety.

(2) A Discharge Committee may be appointed in respect of one or more places of safety as the Minister thinks fit.

(3) A Discharge Committee shall consist of such number of persons as the Minister may determine.

[30/96]

(4) The Discharge Committee shall review all cases of women and girls when they have been detained for 6 months, and may, after such review, recommend to the Director that any woman or girl shall be discharged or released on licence.

[9/67; 14/69; 26/80]

(5) The Director, on the advice of the Discharge Committee, shall have power to order the discharge or the release on licence of any woman or girl who has been detained in a place of safety for 6 months and on such conditions as may be stated by him in that order.

[26/80]

(6) Any woman or girl released from a place of safety on licence by order of the Director, who breaks the conditions of her licence, shall be brought before the Director, who shall have power to order the return of the woman or girl to the place of safety from which she was released, to be detained there for such further period as the Director considers necessary, except where the woman or girl concerned, by reason of any act or omission committed while on licence, renders herself liable to prosecution for any offence, in which case she shall be brought before the appropriate court.

[26/80]

PART XII

MISCELLANEOUS

Rules

180.

—(1) Subject to [section 139](#), the Minister may make rules generally for carrying out the provisions of this Act and, in particular, may make rules providing for —

(a)

the forms to be used for the purposes of this Act;

- (b) the practice and procedure for the keeping of registers of marriages and certificates of marriage;
- (c) the supply and custody of registers and certificates;
- (d) the preparation and submission of returns under this Act;
- (e) the making of searches and the giving of certified copies;
- (f) the care, detention, discipline, discharge and aftercare, temporary absence, maintenance, and education of women and girls detained under [Part XI](#);
- (g) the manner and conditions in and under which the powers conferred by [Part XI](#) shall be exercised by the persons on whom such powers are conferred;
- (h) the composition, duties, functions and procedure of Boards of Visitors and Discharge Committees;
- (i) the procedure for appeals to the Minister; and
- (j) matters required to be prescribed under this Act.

[30/96]

(2) All rules made under this Act shall be presented to Parliament as soon as possible after publication in the *Gazette* and if a resolution is passed pursuant to a motion notice whereof has been given for a sitting day not later than the first available sitting day of Parliament next after the expiry of one month from the date when such rules are so presented annulling the rules or any part thereof as from a specified date, the rules or such part thereof, as the case may be, shall thereupon become void as from that date but without prejudice to the validity of anything previously done thereunder or to the making of new rules.

[9/67]

(3) Any person who contravenes any rules made under this Act shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$500 or to imprisonment for a term not exceeding 6 months or to both.

Marriages solemnized before 15th September 1961 deemed to be registered under this Act

181.

—(1) Nothing in this Act shall affect the validity of any marriage solemnized under any law, religion, custom or usage prior to 15th September 1961.

[9/67]

(2) Such marriages, if valid under the law, religion, custom or usage under which they were solemnized, shall be deemed to be registered under the provisions of this Act.

(3) Every such marriage, unless void under the law, religion, custom or usage under which it was solemnized, shall continue until dissolved —

(a)

by the death of one of the parties;

(b)

by order of a court of competent jurisdiction; or

(c)

by a declaration made by a court of competent jurisdiction that the marriage is null and void.

[9/67]

Voluntary registration of marriages solemnized under religion or custom

182.

—(1) Notwithstanding [section 181](#), the parties to a marriage which has been solemnized under any law, religion, custom or usage may, if the marriage has not been registered, apply to the Registrar in the prescribed form for the registration of the marriage.

[9/67]

(2) The Registrar may require the parties to the marriage to appear before him and to produce such evidence of the marriage, either oral or documentary, as he may require, and to furnish such other particulars as may be required by him.

[9/67]

(3) The Registrar may, on being satisfied of the truth of the statements contained in the application, register the marriage by entering the particulars thereof in the certificate of marriage.

[9/67; 30/96]

(4) The entry of the marriage in the certificate of marriage shall be signed by the Registrar and the parties to the marriage.

[9/67; 30/96]

(5) The Registrar shall not register a marriage under this section if he is satisfied that the marriage is void under the provisions of this Act.

[9/67]

Recognition of marriages contracted in Embassies, etc., in Singapore

183.

—(1) Nothing in this Act shall prevent the solemnization in Singapore of a marriage in any foreign Embassy, High Commission or Consulate in Singapore.

[26/80]

(2) A marriage contracted in any foreign Embassy, High Commission or Consulate in Singapore shall be recognised as valid for all purposes of the law of Singapore if all the following requirements are satisfied:

(a)

it was contracted in a form required or permitted by the law of the country whose Embassy, High Commission or Consulate it is, or in a form permitted under this Act;

(b)

each of the parties had, at the time of the marriage, capacity to marry under the law of the country of his or her domicile or under the law of the country of the intended domicile of the parties after marriage; and

(c)

in the case where either of the parties is a citizen of or is domiciled in Singapore, both parties had capacity to marry under this Act.

[26/80]

Validity of customary marriages contracted on or after 15th September 1961 and before 2nd June 1967

184.

—(1) For the avoidance of doubt, it is hereby declared that every marriage contracted or effected on or after 15th September 1961 and before 2nd June 1967 in accordance with the law, religion, custom or usage of the parties or any of the parties thereto shall be valid if the marriage is not contracted or effected in contravention of [sections 4](#) and [10](#).

[8/75]

(2) This section shall not apply to any such marriage which has been declared to be null and void by an order of the High Court prior to 2nd May 1975.

[9/67]

Saving for petitions presented before 1st June 1981

185.

—(1) The Women’s Charter (Amendment) Act 1980 (Act 26 of 1980) (including the repeals and amendments made by it) shall not have effect in relation to any petition for divorce or judicial separation, for a decree of nullity or for a decree of presumption of death and dissolution of the marriage presented before 1st June 1981.

(2) Without prejudice to any provision of this Act, neither collusion nor any other conduct on the part of the petitioner which has at any time been a bar to relief in matrimonial proceedings shall constitute a bar to the grant of a decree nisi of divorce, a decree of judicial separation, a decree of nullity or a decree of presumption of death and dissolution of the marriage, whether the marriage took place, or the proceedings were instituted, before or after 1st June 1981, and the court shall not be required to dismiss an application for a decree nisi of divorce to be made absolute on the ground of collusion between the parties in connection with the presentation or prosecution of the petition for divorce or the obtaining of the decree nisi or on the ground of any conduct on the part of the petitioner. Savings for proceedings before 1st May 1997

186.

—(1) Nothing in [section 12](#) shall affect any proceedings under the Women’s Charter commenced before 1st May 1997 or any decree, order or judgment made or given (whether before or after that date) in any such proceedings.

(2) Nothing in [Part VII](#) shall affect proceedings instituted under the repealed sections 68 and 69 of the Women’s Charter (Cap. 353, 1985 Ed.) before 1st May 1997 and those sections in force immediately before that date shall continue to apply to the proceedings as if the Women’s Charter (Amendment) Act 1996 (Act 30 of 1996) had not been enacted.

(3) [Section 112](#) shall not apply to the hearing of any proceedings which has begun before 1st May 1997 under the repealed section 106 of the Women’s Charter (Cap. 353, 1985 Ed.) in force immediately before that date and the repealed [section 106](#) shall continue to apply to that hearing as if the Women’s Charter (Amendment) Act 1996 (Act 30 of 1996) had not been enacted.

(4) Nothing in this section shall be taken as prejudicing section 16 of the [Interpretation Act \(Cap. 1\)](#).

FIRST SCHEDULE

[Section 10](#)

Kindred and Affinity Prohibited Degrees of Relationship

Mother.

Daughter.

Father’s mother.

Mother’s mother.

Son’s daughter.

Father.

Son.

Father’s father.

Mother’s father.

Son’s son.

Daughter's daughter.

Sister.

Wife's mother.

Wife's daughter.

Father's wife.

Son's wife.

Father's father's wife.

Mother's father's wife.

Wife's father's mother.

Wife's mother's mother.

Wife's son's daughter.

Wife's daughter's daughter.

Son's son's wife.

Daughter's son's wife.

Father's sister.

Mother's sister.

Brother's daughter.

Sister's daughter.

[9/67]

SECOND SCHEDULE

[Sections 13](#) and [17](#)

Consents Required to the Marriage of A Minor

Daughter's son.

Brother.

Husband's father.

Husband's son.

Mother's husband.

Daughter's husband.

Father's mother's husband.

Mother's mother's husband.

Husband's father's father.

Husband's mother's father.

Husband's son's son.

Husband's daughter's son.

Son's daughter's husband.

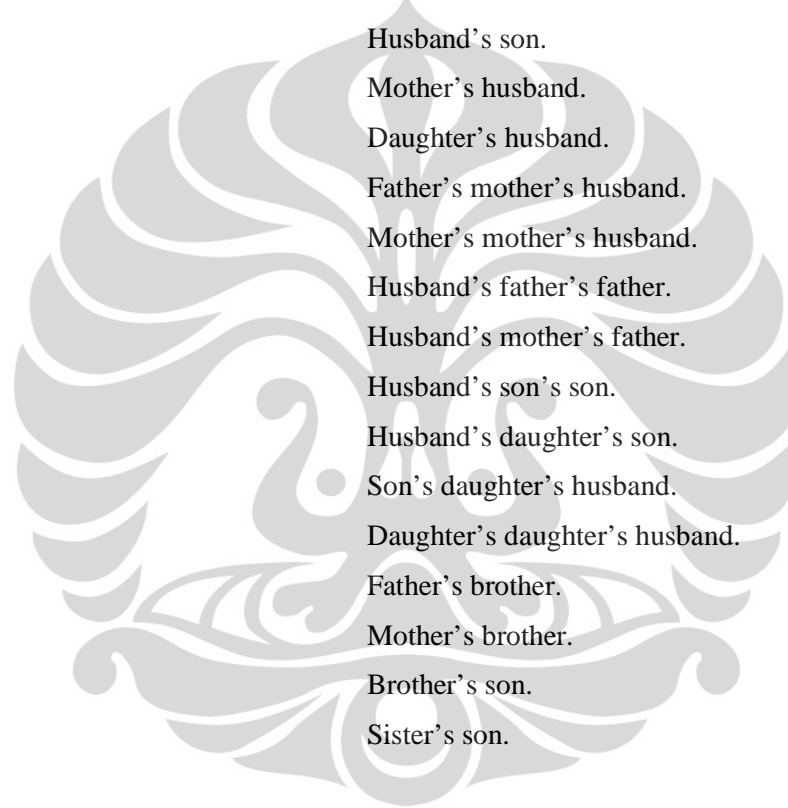
Daughter's daughter's husband.

Father's brother.

Mother's brother.

Brother's son.

Sister's son.



PART I —
WHERE THE MINOR IS LEGITIMATE

Circumstances

Person or persons whose consent is required

1.
Where both parents are living:
 - (a)
if parents living together: both parents;
 - (b)
if parents are divorced or separated by order of court or by agreement: the parent to whom the custody of the minor is committed by order of any court or by the agreement, or, if the custody of the minor is so committed to one parent during part of the year and to the other parent during the rest of the year, both parents;
 - (c)
if one parent has been deserted by the other: the parent who has been deserted;
 - (d)
if both parents have been deprived of custody of minor by order of court: the person to whose custody the minor is committed by order of court.
2.
Where one parent is dead:
 - (a)
if there is no other guardian: the surviving parent;
 - (b)
if a guardian has been appointed by the deceased parent: the surviving parent and the guardian if acting jointly, or the surviving parent or the guardian if the parent or guardian is the sole guardian of the minor.
3.
Where both parents are dead: the guardians or guardian appointed by the deceased parents or by the court under the [Guardianship of Infants Act \(Cap. 122\)](#).

PART II —
WHERE THE MINOR IS ILLEGITIMATE

Circumstances

1.
If the mother of the minor is alive:
2.
If the mother of the minor is dead:

Person whose consent is required

the mother or, if she has by order of court been deprived of the custody of the minor, the person to whom the custody of the minor has been committed by order of court.

the guardian appointed by the mother, or by the court.

PART III —
WHERE THE MINOR IS A TRANSFERRED CHILD

Circumstances

If the father, mother, legal guardian or guardian of the transferred child is not available or does not give his consent:

[26/80]

LEGISLATIVE HISTORY

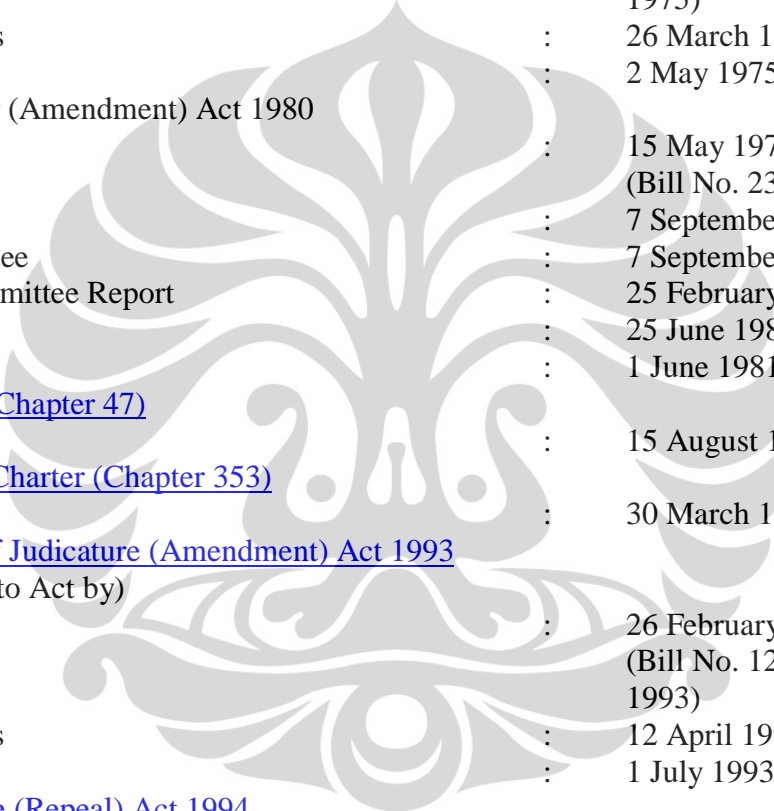
Women's Charter
(CHAPTER 353)

This Legislative History is provided for the convenience of users of the [Women's Charter](#). It is not part of this Charter.

1. Ordinance 18 of 1961—Women's Charter 1961

Date of First Reading	:	22 February 1961 (Bill No. 126/61 published on 3 March 1961)
Date of Second Reading	:	22 March 1961
Date Committed to Select Committee	:	22 March 1961
Date of Presentation of Select Committee Report	:	28 April 1961 (L.A. 10 of 1961)
Date of Third Reading	:	24 May 1961

	Date of commencement	:	15 September 1961
2.	1987 Revised Edition—Women’s Charter		
	Date of operation	:	15 September 1961
3.	Act 9 of 1967—Women’s Charter (Amendment) Act 1967		
	Date of First Reading	:	26 October 1966 (Bill No. 46/66 published on 8 November 1966)
	Date of Second Reading	:	5 December 1966
	Date Committed to Select Committee	:	5 December 1966
	Date of Presentation of Select Committee Report	:	21 March 1967 (Parl 7 of 1967)
	Date of Third Reading	:	24 May 1967
	Date of commencement	:	2 June 1967
4.	Act 14 of 1969—Statute Law Revision Act 1969		
	Date of First Reading	:	15 October 1969 (Bill No. 22/69 published on 20 October 1969)
	Date of Second and Third Readings	:	22 December 1969
	Date of commencement	:	2 January 1970
5.	1970 Revised Edition (Cap. 47)—Women’s Charter (Chapter 47)		
	Date of operation	:	1 March 1971
6.	Act 21 of 1973—Statutes of the Republic of Singapore (Miscellaneous Amendments) Act 1973		
	Date of First Reading	:	7 March 1973 (Bill No. 16/73 published on 9 March 1973)
	Date of Second and Third Readings	:	20 March 1973
	Date of commencement	:	6 April 1973
7.	Act 34 of 1973—Statutes of the Republic of Singapore (Miscellaneous Amendments) (No. 3) Act 1973		
	Date of First Reading	:	11 July 1973 (Bill No. 27/73 published on 14 July 1973)
	Date of Second and Third Readings	:	25 July 1973
	Date of commencement	:	24 August 1973

- 
8. Act 8 of 1975—Women’s Charter (Amendment) Act 1975
 Date of First Reading : 25 February 1975
 (Bill No. 10/75 published on 28 February 1975)
 Date of Second and Third Readings : 26 March 1975
 Date of commencement : 2 May 1975
9. Act 26 of 1980—Women’s Charter (Amendment) Act 1980
 Date of First Reading : 15 May 1979
 (Bill No. 23/79 published on 18 May 1979)
 Date of Second Reading : 7 September 1979
 Date Committed to Select Committee : 7 September 1979
 Date of Presentation of Select Committee Report : 25 February 1980 (Parl 1 of 1980)
 Date of Third Reading : 25 June 1980
 Date of commencement : 1 June 1981
10. [Reprint 1981—Women’s Charter \(Chapter 47\)](#)
 Date of operation : 15 August 1981
11. 1985 Revised Edition—[Women’s Charter \(Chapter 353\)](#)
 Date of operation : 30 March 1987
12. [Act 16 of 1993—Supreme Court of Judicature \(Amendment\) Act 1993](#)
 (Consequential amendments made to Act by)
 Date of First Reading : 26 February 1993
 (Bill No. 12/93 published on 27 February 1993)
 Date of Second and Third Readings : 12 April 1993
 Date of commencement : 1 July 1993
13. [Act 2 of 1994—Judicial Committee \(Repeal\) Act 1994](#)
 (Consequential amendments made to Act by)
 Date of First Reading : 17 January 1994
 (Bill No. 2/94 published on 18 January 1994)

- Date of Second and Third Readings : 23 February 1994
Date of commencement : 8 April 1994
14. [Act 30 of 1996—Women’s Charter \(Amendment\) Act 1996](#)
Date of First Reading : 18 January 1996
(Bill No. 5/96 published on 19 January 1996)
Date of Second Reading : 2 May 1996
Date Committed to Select Committee : 2 May 1996
Date of Presentation of Select Committee Report : 15 August 1996 (Parl 3 of 1996)
Date of Third Reading : 27 August 1996
Date of commencement : 1 May 1997
15. [1997 Revised Edition—Women’s Charter \(Chapter 353\)](#)
Date of operation : 30 May 1997
16. [Act 20 of 2001—Children and Young Persons \(Amendment\) Act 2001](#)
(Consequential amendments made to Act by)
Date of First Reading : 22 February 2001
(Bill No. 12/2001 published on 23 February 2001)
Date of Second and Third Readings : 20 April 2001
Date of commencement : 1 October 2001
17. [Act 42 of 2005—Statutes \(Miscellaneous Amendments\) \(No. 2\) Act 2005](#)
Date of First Reading : 17 October 2005
(Bill No. 30/2005 published on 18 October 2005)
Date of Second and Third Readings : 21 November 2005
Date of commencement : 1 April 2006 (item (36) in the First Schedule
— Amendment of Women’s Charter)
18. [Act 2 of 2007—Statutes \(Miscellaneous Amendments\) Act 2007](#)
Date of First Reading : 8 November 2006
(Bill No. 14/2006 published on 9 November

		2006)
	Date of Second and Third Readings	: 22 January 2007
	Date of commencement	: 1 March 2007 (section 18 — Amendment of Women’s Charter)
19.	Act 51 of 2007—Penal Code (Amendment) Act 2007 (Consequential amendments made to Act by)	
	Date of First Reading	: 17 September 2007 (Bill No. 38/2007 published on 18 September 2007)
	Date of Second and Third Readings	: 23 October 2007
	Date of commencement	: 1 February 2008
20.	2009 Revised Edition —Women’s Charter	
	Date of operation	: 31 October 2009
21.	Act 21 of 2008—Mental Health (Care and Treatment) Act 2008	
	Date of First Reading	: 21 July 2008 (Bill No. 11/2008 published on 31 October 2008)
	Date of Second and Third Readings	: 16 September 2008
	Date of commencement	: 1 March 2010
22.	Act 15 of 2010—Criminal Procedure Code 2010	
	Date of First Reading	: 26 April 2010 (Bill No. 11/2010 published on 25 June 2010)
	Date of Second and Third Readings	: 19 May 2010
	Date of commencement	: 2 January 2011
23.	Act 2 of 2011—Women’s Charter (Amendment) Act 2011	
	Date of First Reading	: 22 November 2010 (Bill No. 34/2010 published on 22 November 2010)
	Date of Second and Third Readings	: 10 January 2011

Dates of commencement : 1 June 2011 (Section 2(a), 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 and 15 — Amendment of Women's Charter)
1 September 2011 (Section 2(b), (c), (d) and (e), 3 and 4 — Amendment of Women's Charter)

Disclaimer : I do not own this. Contents and credits goes Attorney-General's of Singapore.

Source : Attorney-General's Chamber of Singapore. Below is the link.

<http://statutes.agc.gov.sg/aol/search/display/view.w3p?page=0;query=CompId%3A61deee43-1e42-490f-a5ae-33054850e926;rec=0;resUrl=http%3A%2F%2Fstatutes.agc.gov.sg%2Faol%2Fbrowse%2FtitleResults.w3p%3Bletter%3DW%3Btype%3DactsAll;whole=yes>

On 17/07/2012, you requested for the version in force on 17/07/2012 incorporating all amendments published on or before 17/07/2012. The closest version currently available is that of 02/01/2011.

A horizontal timeline with a gold line and black dots representing amendment dates. The dates are: 30/03/1987, 30/03/1987, 01/08/1999, 15/12/2004, 01/07/2005, 01/01/2006, 19/03/2007, 02/01/2009, 01/03/2009, 01/09/2009, 31/10/2009, and 02/01/2011. Below the timeline, corresponding amendment details are listed: 1985 RevEd, 1985 RevEd, 1999 RevEd, Amended Act 45 of 2004, Amended Act 42 of 2005, Amended Act 42 of 2005, Amended Act 35 of 2005, Amended Act 29 of 2008, Amended Act 3 of 2009, Amended Act 3 of 2009, 2009 RevEd, and Amended Act 15 of 2010.

30/03/1987	30/03/1987	01/08/1999	15/12/2004	01/07/2005	01/01/2006	19/03/2007	02/01/2009	01/03/2009	01/09/2009	31/10/2009	02/01/2011
1985 RevEd	1985 RevEd	1999 RevEd	Amended Act 45 of 2004	Amended Act 42 of 2005	Amended Act 42 of 2005	Amended Act 35 of 2005	Amended Act 29 of 2008	Amended Act 3 of 2009	Amended Act 3 of 2009	2009 RevEd	Amended Act 15 of 2010

Administration of Muslim Law Act (CHAPTER 3)

(Original Enactment: Act 27 of 1966)

REVISED EDITION 2009
(31st October 2009)

An Act relating to Muslims and to make provision for regulating Muslim religious affairs and to constitute a council to advise on matters relating to the Muslim religion in Singapore and a Syariah Court.

[1st July 1968]

PART I

Preliminary

Short title

1. This Act may be cited as the Administration of Muslim Law Act.

Interpretation

¹2. In this Act, unless the context otherwise requires —

“Appeal Board” means an Appeal Board constituted under [section 55](#);

“court” means a court of competent jurisdiction, other than the Syariah Court;

“daerah masjid” means the area prescribed by the Majlis in accordance with [section 83](#) within which a mosque is situated;

“emas kahwin” means the obligatory marriage-payment due under the Muslim law by the husband to the wife at the time the marriage is solemnized, whether paid in cash or in kind, or payable as a debt with or without security;

“fitrah” means the amount of rice or its equivalent value in money payable under the Muslim law annually by a Muslim during the month of Ramadan to be used for religious or charitable purposes recognised by the Muslim law;

“Fund” means the General Endowment Fund established under [section 57](#);

“Haj” means a pilgrimage in accordance with the Muslim law;

“halal”, in relation to any product, service or activity, means the requirements of the Muslim law are complied with in the production, processing, marketing, display or carrying out, as the case may be, of that product, service or activity;

“halal certificate”, in relation to any product, service or activity, means a certificate to the effect that the requirements of the Muslim law are complied with in the production, processing, marketing, display or carrying out, as the case may be, of that product, service or activity;

“iddah” means the period within which a divorced woman or a widow is forbidden by the Muslim law to remarry;

“janda” means a female who has been married and whose marriage has been terminated by divorce or the death of her husband;

“jawatankuasa daerah” means a committee of a daerah masjid appointed under rules made under [section 86\(1\)](#);

“Kadi” means a Kadi appointed under [section 91](#);

“Legal Committee” means the Legal Committee of the Majlis appointed under [section 31](#);

“Majlis” means the Majlis Ugama Islam, Singapura, constituted and continued under [section 3](#);

“mosque” means a building dedicated and used for the purpose of holding the Friday congregational prayers and other ceremonies connected with the Muslim religion;

“Mosque Building and Mendaki Fund” means the Mosque Building and Mendaki Fund established under [section 76](#);

“Mufti” means the person appointed to be the Mufti of Singapore under [section 30](#);

“Muslim” means a person who professes the religion of Islam;

“mutawalli” means a person appointed to manage a wakaf or mosque and includes a trustee;

“Naib Kadi” means a Naib or an Assistant Kadi appointed under [section 91](#);

“nazar” means an expressed vow to do any act or to dedicate property for any purpose allowed by the Muslim law;

“nazar am” means a nazar intended wholly or in part for the benefit of the Muslim community generally or part thereof, as opposed to an individual or individuals;

“pegawai masjid” means a trustee, mutawalli, Imam, Khatib, Bilal and Noja, if any, for the time being of a mosque;

“President” means the President of the Majlis;

“product” includes food and foodstuffs;

“Register of Divorces” means the Register of Divorces kept by the Syariah Court under [section 100](#);

“Register of Marriages” means the Register of Marriages kept by the Registrar under [section 100](#);

“Register of Revocation of Divorces” means the Register of Revocation of Divorces kept by the Registrar under [section 100](#);

“Registrar” means the person appointed as Registrar of Muslim Marriages under [section 90](#);

“specified halal certification mark” means any certification mark specified under [section 88A\(4\)](#);

“wakaf” means the permanent dedication by a Muslim of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable;

“wakaf `am” means a dedication in perpetuity of the capital and income of property for pious, religious or charitable purposes recognised by the Muslim law and the property so dedicated;

“wakaf khas” means a dedication in perpetuity of the capital of property for pious, religious or charitable purposes recognised by the Muslim law, the income of the property being paid to persons or for purposes specified in the wakaf, and the property so dedicated;

“wali” means the lawful guardian according to the Muslim law for purposes of marriage of a woman who is to be married;

“Yayasan Mendaki” means the company limited by guarantee which is incorporated under the [Companies Act \(Cap. 50\)](#) under the name of Yayasan Mendaki;

“zakat” means the charitable contribution required to be made by a Muslim in accordance with the Muslim law.

[34/73; 31/75; 31/84; 14/90; 20/99]

¹ This section will be amended as set out in section 2 of the Administration of Muslim Law (Amendment) Act 2005 (Act 35 of 2005) when that section is brought into operation.

PART II

MAJLIS UGAMA ISLAM

Establishment and functions of Majlis

3.

—(1) As from 1st August 1999, the Majlis Ugama Islam, Singapura, shall continue in existence.

(2) It shall be the function and duty of the Majlis —

(a)

to advise the President of Singapore in matters relating to the Muslim religion in Singapore;

(b)

to administer matters relating to the Muslim religion and Muslims in Singapore including any matter relating to the Haj or halal certification;

(c)

to administer all Muslim endowments and funds vested in it under any written law or trust;

(d)

to administer the collection of zakat and fitrah and other charitable contributions for the support and promotion of the Muslim religion or for the benefit of Muslims in accordance with this Act;

(e)

to administer all mosques and Muslim religious schools in Singapore; and

(f)

to carry out such other functions and duties as are conferred upon the Majlis by or under this Act or any other written law.

[20/99]

Majlis to be a corporation

4.

—(1) The Majlis shall be a body corporate under the name of Majlis Ugama Islam, Singapura having perpetual succession and a corporate seal.

(2) The seal of the Majlis may from time to time be broken, changed, altered and made anew as to the Majlis seems fit.

Powers of Majlis

5.

—(1) The Majlis may sue and be sued in its corporate name.

(2) The Majlis may —

(a)

enter into contracts;

(b)

acquire, purchase, take, hold and enjoy movable and immovable property of every description;

(c)

erect any building on any property vested in, belonging to or acquired by the Majlis;

(d)

subject to any written law affecting the same, convey, assign, surrender and yield up, charge, mortgage, demise, reassign, transfer or otherwise dispose of, or deal with, any movable or immovable property vested in the Majlis upon such terms as to the Majlis seems fit and in accordance with the Muslim law;

(e)

whether by itself or in association with any other person or organisation, provide to any person or organisation in Singapore or elsewhere consultancy, technical, managerial or other services or products in any area in which the Majlis has skill or experience; and

(f)

charge fees or commissions for any service or product provided by the Majlis.

[14/90; 29/2008]

(3) The Majlis shall have power to act as an executor of a will or as an administrator of the estate of a deceased Muslim or as a trustee of any trust.

(4) The Majlis may, with the approval of the Minister, form or participate in the formation of any company, or enter into any joint venture or partnership, to carry out any of the purposes of this Act.

[20/99]

(5) The Majlis may do such other acts as appear to the Majlis to be incidental or necessary to the discharge of its functions and duties under this Act.

[20/99]

Devolution of rights, powers, duties, liabilities and property of Board under Muslim and Hindu Endowments Ordinance

6.

—(1) All rights, powers, duties and liabilities which were, immediately before 1st July 1968, vested in or imposed on the Board established by the Muslim and Hindu Endowments Ordinance (Cap. 271, 1955 Ed.), in respect of endowments in land or money given or to be given for the support of any mosque, school or other Muslim pious, religious, charitable or beneficial purposes shall, on 1st July 1968, be vested in or imposed on the Majlis, except in so far as may be repugnant to the provisions of this Act.

(2) All property, movable or immovable, which was, immediately before 1st July 1968, vested in the Board established under the Muslim and Hindu Endowments Ordinance for purposes relating to the Muslim religion or on trust for religious or charitable purposes for the benefit of persons professing the Muslim religion shall, on 1st July 1968, without any conveyance, assignment or transfer whatever, vest in the Majlis for the like title, estate or interest and in the like tenure and for the like purposes as the same was vested or held immediately before 1st July 1968.

Membership

7.

—(1) The Majlis shall consist of —

(a)

a President to be appointed by the President of Singapore;

²(b)

a Vice-President, if one has been so appointed under [subsection \(6\)](#);

² [Paragraph \(b\)](#) of [subsection \(1\)](#) will be amended as set out in section 3(a) of the Administration of Muslim Law (Amendment) Act 2005 (Act 35 of 2005) when that section is brought into operation.

(c)

the Mufti;

(d)

not more than 7 members to be appointed by the President of Singapore on the recommendation of the Minister; and

(e)

not less than 7 members to be appointed by the President of Singapore, from a list of nominees to be submitted by the President.

[14/90; 35/2005]

(2) The list of nominees to be submitted by the President to the President of Singapore under [subsection \(1\)\(e\)](#) shall consist of persons nominated by such Muslim societies as are prescribed for the purpose by the Majlis.

(3) Subject to the provisions of this Act and unless the contrary intention appears in the instrument of appointment, the appointment of members of the Majlis, other than the Mufti, shall be for a period of 3 years from the date thereof.

(4) The members of the Majlis shall be eligible for reappointment.

(5) No person shall be appointed a member of the Majlis unless he is a citizen of Singapore above the age of 25 years and is a Muslim.

³(6) The President of Singapore may appoint a Vice-President of the Majlis to assist the President in the discharge of his functions and duties under this Act.

[14/90]

³ This subsection will be amended as set out in section 3(c) of the Administration of Muslim Law (Amendment) Act 2005 (Act 35 of 2005) when that section is brought into operation.

(7) If the President dies or has his appointment revoked or otherwise vacates his office before the expiry of the term for which he has been appointed, a temporary President may be appointed by the President of Singapore for such period as the President of Singapore may determine to carry out the functions and duties of the President.

[20/99]

Chief Executive

⁴**7A.**

—(1) The Majlis may, with the approval of the Minister, appoint a Chief Executive on such terms and conditions as the Majlis may determine.

(2) The Chief Executive shall —

(a)

be known by such designation as the Majlis may determine;

(b)

be responsible to the Majlis for the proper administration and management of the functions and affairs of the Majlis in accordance with the policies laid down by the Majlis; and

(c)

not be removed from office without the consent of the Minister.

(3) In the event of the temporary absence or incapacity of the Chief Executive, the Majlis may, with the approval of the Minister, appoint a person to act temporarily on his behalf.

[35/2005]

⁴ [Section 7A](#) will be inserted when section 4 of the Administration of Muslim Law (Amendment) Act 2005 (Act 35 of 2005) is brought into operation.

Secretary

8.

- (1) The Secretary of the Majlis shall be a Muslim public officer and shall be appointed by the Minister.
(2) The Secretary shall be entitled to attend all meetings of the Majlis but shall not have the right to vote.
(3) In the event of the temporary absence or incapacity of the Secretary, the Minister may appoint a person to act temporarily on his behalf.
[35/2005]

Determination of appointment

9. Without prejudice to [sections 7\(3\), 10](#) and [11](#), the appointment of any member of the Majlis shall determine —

(a)

upon his death;

(b)

if, by writing addressed to the President of Singapore through the Secretary, he resigns such appointment; or

(c)

if he is absent from Singapore, without written permission from the President on behalf of the President of Singapore, for a period exceeding 3 months.

Cancellation of appointment

10. The President of Singapore may cancel the appointment of any member of the Majlis —

(a)

if his conduct, whether in connection with the duties of such appointment or otherwise, is in the opinion of the President of Singapore such as to bring discredit upon the Majlis;

(b)

if for any reason he becomes unable to carry out the duties of his appointment properly;

(c)

if he, without due cause to be approved by the President, absents himself from 3 successive meetings of the Majlis; or

(d)

if the President of Singapore considers it desirable in the public interest to cancel the appointment.

Temporary appointment

11.

—(1) In the event of the temporary absence or incapacity of any member of the Majlis, the President of Singapore may appoint a person to act temporarily on his behalf.

[35/2005]

(2) Such temporary appointment shall determine when the substantive member gives notice to the President of the Majelis of the resumption of his duties as a member of the Majelis.

Appointments to be notified

12. All appointments made under this Part shall be notified in the *Gazette*.

Stranger at meeting

13.

—(1) The President may invite to any meeting of the Majelis any person who is not a member of the Majelis if the business before the meeting renders the presence of such person desirable.

(2) Any person so invited shall be entitled to take part in the proceedings of the Majelis, but shall not have the right to vote.

Chairman

14.

—(1) The President shall preside at all meetings of the Majelis.

(2) In the absence of the President, the Majelis may elect any other member to act as chairman.

Quorum

15.

—(1) No business, with the exception of adjournment, shall be transacted and no resolution or action of the Majelis shall be valid unless at least one-third of the members is present at the meeting.

(2) The Majelis may, subject to [subsection \(1\)](#), act notwithstanding any vacancy in its membership.

Corporate seal

16.

—(1) The corporate seal of the Majelis shall not be used except in pursuance of a resolution of the Majelis.

(2) The corporate seal of the Majelis shall be affixed in the presence of the Secretary and 2 members of the Majelis who shall sign as witnesses.

(3) The following documents shall be executed under the corporate seal of the Majelis:

(a)

documents requiring registration under any written law;

(b)

documents authorising any person to act for any particular purposes on behalf of the Majlis; and

(c)

such other documents or classes of documents as the Minister may from time to time direct.

Conduct of business

17.

—(1) Subject to this Act, all business of the Majlis shall be conducted at a meeting thereof regularly convened and by resolution of the majority of those present and entitled to vote.

(2) A resolution in writing signed by all members of the Majlis shall, unless in any special case or class of cases the President of Singapore shall otherwise direct, have the same effect as a resolution duly passed under [subsection \(1\)](#).

Summoning meeting

18.

—(1) All meetings of the Majlis shall be summoned by the Secretary.

(2) The President may at any time direct the Secretary to summon a meeting.

(3) Any 4 members of the Majlis may at any time in writing require the Secretary to summon a meeting of the Majlis, but shall upon doing so inform the Secretary of the purpose for which they desire the meeting to be so summoned.

(4) The Secretary shall within 7 days of receipt of a direction or requisition under [subsection \(2\)](#) or [\(3\)](#) summon a meeting.

(5) At least 7 days' notice in writing shall be given of any meeting except that in an emergency the President may direct that notice be dispensed with.

(6) Any such notice may be sent by post addressed to a member at his last known place of residence and shall be deemed to have been served in the due course of post.

(7) No notice of meeting shall be necessary in the case of any member for the time being out of Singapore.

Powers of President

19.

—(1) The President shall have general control of all deliberations and proceedings of the Majlis.

(2) The President shall not absent himself from Singapore for more than the specified days without the prior permission of the Minister.

[35/2005]

(3) In [subsection \(2\)](#), “specified days” means such number of days as the Minister may, by notification in the *Gazette*, specify.

[35/2005]

Duties and powers of Secretary

20. Subject to such directions as may be given to him by the President, the Secretary shall —

(a)

have charge of all correspondence and documents of the Majlis, including all books of account thereof and all title deeds and securities;

(b)

be generally responsible for the proper collection of, accounting for and disposal of all funds of the Majlis; and

(c)

in all other respects, carry out such duties as may be imposed upon him by this Act or allotted to him by direction of the President.

Minutes

21.

—(1) The Secretary shall keep minutes of all meetings of the Majlis in the national language and in English.

(2) At every meeting, the minutes of the previous meeting shall be read and confirmed, subject to any amendment which may be required.

(3) Such minutes shall be entered in the minute book of the Majlis and shall include a full record of every resolution of the Majlis.

(4) A copy of the minutes shall be sent to the President of Singapore.

Order of business and voting

22.

—(1) The chairman shall determine the order of business at any meeting.

(2) The chairman may decide in what order members may address the meeting and may at any time require any member to cease addressing the meeting.

(3) The chairman shall be entitled to vote and, if upon any resolution there is an equality of votes, the chairman shall have a casting vote.

(4) The proceedings of the Majlis shall be conducted in the national language or in English.

Certified copy of resolution

23.

—(1) A copy of any resolution certified by the Secretary to be a true copy of the resolution shall be sufficient evidence thereof.

(2) All courts shall take notice of the signature of the Secretary.

Appearance by Majlis, etc.

24.

—(1) The Majlis may appear in any court by its President or Secretary or by any person appointed for the purpose either generally or in any particular case under the seal of the Majlis.

[29/2008]

(2) Notwithstanding any written law to the contrary, where the Mufti has been summoned to attend before any court to give an opinion or evidence relating to Muslim law, the Mufti may, if he considers that the circumstances of the case do not require him to appear in court in person, certify his opinion to the court or appoint any person to appear in court on his behalf, unless the court subsequently directs otherwise.

[29/2008]

Acting in emergency

⁵**25.**

—(1) In any case of emergency the President may, after consultation with the Mufti and the Secretary, do or direct to be done on behalf of the Majlis any act or thing which might lawfully be done by resolution of the Majlis.

(2) In any such case, a meeting of the Majlis shall be called within one week thereafter for the purpose of ratifying and confirming the action taken and, if the Majlis shall decline to ratify and confirm the same, the Minister may give such directions thereon as he thinks fit.

[35/2005]

⁵ This subsection will be amended as set out in section 8(a) of the Administration of Muslim Law (Amendment) Act 2005 (Act 35 of 2005) when that section is brought into operation.

Delegation of powers

26.

—(1) The Majlis may, subject to such conditions and restrictions as the Majlis may impose, delegate to any member or committee of the Majlis or any person all or any of its functions and powers vested by or under this Act or any other written law, not being judicial or quasi-judicial powers.

[20/99]

(2) Any function or power delegated under [subsection \(1\)](#) may be performed or exercised by such member, committee or person in the name and on behalf of the Majlis.

[20/99]

(3) It shall be the duty of every member, committee or person to whom any power of the Majlis has been delegated to inform the Majlis of all acts and things done by him or it in pursuance of the delegation.

[20/99]

(4) The Majlis may continue to exercise a power conferred on it or perform a function under this Act or any other written law notwithstanding the delegation of such power or function under this section.

[20/99]

(5) For the purposes of this section, the powers conferred on the Majlis by [sections 32](#) and [33](#) shall be deemed to be quasi-judicial.

[20/99]

Secrecy

27.

—(1) The proceedings of the Majlis shall be secret.

(2) No member or servant of the Majlis shall disclose or divulge to any person, other than the President of Singapore or the Minister or any member of the Majlis, any matter which has arisen at any meeting unless he is expressly authorised to do so.

Public servant

28. The members of the Majlis shall be deemed to be public servants for the purposes of the [Penal Code \(Cap. 224\)](#).

Majlis may prescribe own procedure

29.

—(1) The Majlis may, subject to the provisions of this Act, determine all questions relating to its own procedure and practice.

(2) All communications from the Majlis to the President of Singapore shall be forwarded through the Minister.

Appointment of Mufti

30.

—(1) The President of Singapore may, after consultation with the Majlis, appoint a fit and proper person to be the Mufti of Singapore.

(2) Such appointment shall be notified in the *Gazette*.

(3) The Mufti shall be ex-officio a member of the Majlis.

Legal Committee

31.

—(1) There shall be a Legal Committee of the Majlis, consisting of —

(a)

the Mufti;

(b)

2 other fit and proper members of the Majlis; and

(c)

not more than 2 other fit and proper Muslims who are not members of the Majlis.

(2) The members of the Legal Committee, other than the Mufti, shall be appointed by the President of Singapore on the advice of the Majlis for such period as he thinks fit.

(3) A notification of every such appointment shall be published in the *Gazette*.

(4) The Mufti shall be chairman of the Legal Committee.

(5) The President of Singapore may appoint another person recommended by the Majlis to be the chairman of the Legal Committee in the absence of the Mufti or if the Mufti is unable to act for any reason.

[29/2008]

(6) The chairman and 2 other members of the Legal Committee, one of whom shall not be a member of the Majlis, shall form a quorum.

(7) Subject to the provisions of this Act, the Legal Committee may regulate its own procedure.

(8) The members of the Legal Committee shall be deemed to be public servants for the purposes of the [Penal Code \(Cap. 224\)](#).

Ruling of Legal Committee (Fatwa)

32.

—(1) Any person may, by letter addressed to the Secretary, request the Majlis to issue a fatwa or ruling on any point of the Muslim law.

(2) On receiving any such request, the Secretary shall forthwith submit the same to the chairman of the Legal Committee.

(3) The Legal Committee shall consider every such request and shall, unless in its opinion the question referred is frivolous or for other good reason ought not to be answered, prepare a draft ruling thereon.

(4) If such draft ruling is unanimously approved by the Legal Committee or those members thereof present and entitled to vote, the chairman shall on behalf and in the name of the Majlis forthwith issue a ruling in accordance therewith.

(5) If in any such case the Legal Committee is not unanimous, the question shall be referred to the Majlis, which shall in like manner issue its ruling in accordance with the opinion of the majority of its members.

(6) The Majlis may at any time of its own motion make and publish any such ruling or determination.

(7) If in any court any question of the Muslim law falls for decision, and such court requests the opinion of the Majlis on the question, the question shall be referred to the Legal Committee which shall, for and on behalf and in the name of the Majlis, give its opinion thereon in accordance with the opinion of the majority of its members, and certify such opinion to the requesting court.

(8) For the purposes of [subsection \(7\)](#), “court” includes the Syariah Court constituted under this Act.

Authorities to be followed

33.

—(1) Subject to this section, the Majlis and the Legal Committee in issuing any ruling shall ordinarily follow the tenets of the Shafi'i school of law.

(2) If the Majlis or the Legal Committee considers that the following of the tenets of the Shafi'i school of law will be opposed to the public interest, the Majlis may follow the tenets of any of the other accepted schools of Muslim law as may be considered appropriate, but in any such ruling the provisions and principles to be followed shall be set out in full detail and with all necessary explanations.

(3) In any case where the ruling or opinion of the Majlis or the Legal Committee is requested in relation to the tenets of a particular school of Muslim law, the Majlis or the Legal Committee shall give its ruling or opinion in accordance with the tenets of that particular school of Muslim law.

PART III

THE SYARIAH COURT

Constitution of Syariah Court

34. The President of Singapore may by notification in the *Gazette* constitute a Syariah Court for Singapore (referred to in this Part as the Court).

Appointment of presidents and ad-hoc presidents

34A.

—(1) The President of Singapore may appoint one or more presidents of the Court and may designate one of the presidents to be the senior president of the Court.

[20/99]

(2) Every proceeding in the Court and all business arising thereout shall, except as otherwise provided by any written law, be heard and disposed of before a president of the Court.

[20/99]

(3) The distribution of business among the presidents of the Court shall be made in accordance with such directions, which may be of a general or a particular nature, as may be given by the senior president of the Court.

[20/99]

(4) In order to facilitate the disposal of business in the Court, the President of Singapore may appoint one or more ad-hoc presidents of the Court for such period or periods as the President thinks fit.

[20/99]

(5) An ad-hoc president may, in such case as the senior president of the Court may specify, exercise all the powers and perform the functions of a president of the Court.

[20/99]

(6) Anything done by an ad-hoc president acting in accordance with the terms of his appointment shall have the same validity and effect as if done by a president of the Court.

[20/99]

(7) The senior president of the Court may from time to time issue such directions relating to the practice of the Court as he thinks fit.

[20/99]

Appointment of registrar and deputy registrar

34B.

—(1) The President of Singapore may appoint a registrar and a deputy registrar of the Court.

[20/99; 29/2008]

(2) The registrar of the Court shall have such powers and duties as may be prescribed under this Act.

[20/99]

(3) Subject to this Act, the powers and duties of the registrar of the Court may be exercised by the deputy registrar of the Court.

[29/2008]

Jurisdiction

35.

—(1) The Court shall have jurisdiction throughout Singapore.

[20/99]

(2) The Court shall have jurisdiction to hear and determine all actions and proceedings in which all the parties are Muslims or where the parties were married under the provisions of the Muslim law and which involve disputes relating to —

(a)

marriage;

(b)

divorces known in the Muslim law as fasakh, cerai taklik, khuluk and talak;

(c)

betrothal, nullity of marriage or judicial separation;

(d)

the disposition or division of property on divorce or nullification of marriage; or

(e)

the payment of emas kahwin, marriage expenses (hantaran belanja), maintenance and consolatory gifts or mutaah.

[20/99; 29/2008]

(3) In all questions regarding betrothal, marriage, dissolution of marriage, including talak, cerai taklik, khuluk and fasakh, nullity of marriage or judicial separation, the appointment of hakam, the disposition or division of property on divorce or nullification of marriage, the payment of emas kahwin, marriage expenses (hantaran belanja) and consolatory gifts or mutaah and the payment of maintenance on divorce, the rule of decision where the parties are Muslims or were married under the provisions of the Muslim law shall, subject to the provisions of this Act, be the Muslim law, as varied where applicable by Malay custom.

[20/99; 29/2008]

Leave to commence or to continue civil proceedings involving disposition or division of property on divorce or custody of children

35A.

—(1) Any person who, on or after the commencement of proceedings for divorce in the Court or after the making of a decree or order for divorce by the Court or on or after the registration of a divorce under [section 102](#), intends to commence civil proceedings in any court involving any matter relating to the disposition or division of property on divorce or custody of any child where the parties are Muslims or were married under the provisions of the Muslim law, shall apply to the Court for leave to commence the civil proceedings.

[20/99]

(2) Where proceedings for divorce are commenced in the Court or a decree or order for divorce is made by the Court or a divorce is registered under [section 102](#) after civil proceedings between the same parties are commenced in any court involving any matter relating to the custody of any child, any party who intends to continue the civil proceedings shall apply to the Court for leave to continue the civil proceedings.

[20/99]

(3) The Court shall not grant leave to commence the civil proceedings under [subsection \(1\)](#) or to continue the civil proceedings under [subsection \(2\)](#) unless the Court is satisfied that every party who will be affected by such leave has been notified of the application at least 7 days before the grant of such leave.

[20/99]

(4) The Court shall, if it grants the application for leave under [subsection \(1\)](#) or [\(2\)](#), issue a commencement certificate or a continuation certificate, respectively, to the applicant —

(a)

not later than 21 days after granting such leave; or

(b)

where an appeal against the grant of such leave has been made under [section 55](#), when the decision of the Court to grant such leave has been confirmed on appeal or the appeal has been discontinued.

[20/99]

(5) This section shall not apply if the parties to the civil proceedings —

(a)

mentioned in [subsection \(1\)](#) consent to the commencement of the civil proceedings, or mentioned in [subsection \(2\)](#) consent to the continuation of the civil proceedings; and

(b)

mentioned in [subsection \(1\)](#) or [\(2\)](#) have obtained a certificate of attendance issued under [subsection \(7\)](#).

[20/99]

(6) Parties mentioned in [subsection \(1\)](#) or [\(2\)](#) shall, before commencing or continuing (as the case may be) the civil proceedings by consent, attend counselling provided by such person as the Court may appoint.

[20/99]

(7) The Court shall, after any party has been counselled under [subsection \(6\)](#), issue a certificate of attendance to that party.

[20/99]

(8) For the purposes of this section, any reference to the registration of a divorce, or to a divorce that is registered, under [section 102](#) shall be construed as a reference to the registration of a divorce or to a divorce that is registered under that section before 1st March 2009.

[29/2008]

Stay of proceedings involving certain matters

36.

—(1) The Court shall stay proceedings before it —

(a)

involving any matter in respect of which it has issued a certificate under [section 35A\(4\)](#), upon issuing the certificate;

(b)

involving any matter relating to maintenance of any wife during the subsistence of the marriage, if it comes to the knowledge of the Court that civil proceedings relating to maintenance of the wife have been commenced in any court between the same parties before, on or after the commencement of the proceedings before it;

(c)

involving any matter relating to the maintenance of any child of the parties, if it comes to the knowledge of the Court that civil proceedings relating to the maintenance of the child have been commenced in any court between the same parties before, on or after the commencement of the proceedings before it;

(d)

to which [section 35A\(1\)](#) would apply apart from [section 35A\(5\)](#), if it comes to the knowledge of the Court that civil proceedings involving the same matter between the same parties have been commenced in any court by the consent of the parties; or

(e)

to which [section 35A\(2\)](#) would apply apart from [section 35A\(5\)](#), if it comes to the knowledge of the Court that civil proceedings involving the same matter between the same parties have been continued in any court by the consent of the parties.

[20/99]

(2) Where leave granted by the Court under [section 35A](#) is reversed on appeal under [section 55](#), the Court may restore any proceedings which have been stayed under [subsection \(1\)\(a\)](#).

[20/99]

(3) Nothing in this section shall prevent the Court from exercising its powers under [sections 51\(2\)](#) and [52\(1\), \(2\)](#) and [\(3\)\(a\)](#) and [\(b\)](#).

[20/99]

Seal of Court

37.

—(1) The Court shall have and use such seal or stamp as the Minister shall approve.

(2) Every summons and other process of the Court shall issue under the seal of the Court and the signature of the registrar thereof.

[20/99]

Language and record

38.

—(1) The languages of the Court shall be the national language and English.

- (2) All documents and written proceedings may be written or typewritten in the national language (Jawi or Rumi script).
- (3) The Court shall keep and maintain full and proper records of all proceedings therein and full and proper accounts of all financial transactions of the Court.

Representation

39. Every party to any proceedings shall appear in person or by advocate and solicitor or by an agent, generally or specially authorised to do so by the Court.

Issue of warrant in lieu of or in addition to summons

40. The Court may, in any case in which it or a Kadi or Naib Kadi is empowered to issue a summons for the appearance of any person, issue, after recording its reasons in writing, a warrant for his arrest if —

(a)

either before the issue of the summons or after the issue of the summons but before the time fixed for his appearance the Court has reason to believe that he has absconded or will not obey the summons; or

(b)

if at the time fixed for his appearance he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure.

Reciprocal arrangements with States of Malaysia

41.

—(1) Where under the provisions of any law in force in any of the States of Malaysia a Kadi has issued a summons requiring any person to appear before any Muslim religious court in any of the States of Malaysia, and such person is or is believed to be in Singapore, any president of the Court may endorse the summons with his name, and such summons may then be served on such person as if it were a summons issued by the Court under the provisions of this Act.

[20/99]

(2) Where under the provisions of any law in force in any of the States of Malaysia a summons issued by the Court or a Kadi in Singapore has been endorsed by a Kadi in such State and served on the person summoned, such summons shall for the purposes of this Act be deemed to have been as validly served as if such service had been effected in Singapore.

(3) For the purposes of this section, Kadi includes a Chief Kadi, a Kadi Besar, an Assistant Kadi or a Naib Kadi.

Evidence

42.

—(1) The Court shall have regard to the law of evidence for the time being in force in Singapore, and shall be guided by the principles thereof, but shall not be obliged to apply the same strictly.

(2) The Court may administer oaths and affirmations.

(3) Evidence shall ordinarily be given on oath in a form binding upon Muslims, but the Court may on special grounds dispense with an oath and take evidence on affirmation. Such affirmation shall be in accordance with the [Oaths and Declarations Act \(Cap. 211\)](#).

(4) Whether on oath or on affirmation a witness shall be bound to state the truth.

(5) If in the opinion of the Court any witness has wilfully given false evidence in any proceedings, the Court may report the matter to the Public Prosecutor.

Powers of Court

43. The Court shall have the following powers:

(a)

to procure and receive all such evidence, written or oral, and to examine all such persons as witnesses as the Court may think it necessary or desirable to procure or examine;

(b)

to require the evidence, whether written or oral, of any witness to be made on oath or affirmation or by statutory declaration;

(c)

to summon any person to attend before the Court or to give evidence or produce any document or other thing in his possession and to examine him as a witness or require him to produce any document or other thing in his possession;

(d)

to issue a warrant of arrest to compel the attendance of any person who, after being summoned to attend, fails to do so and who does not excuse such failure to the satisfaction of the Court and to order him to pay all costs which may have been occasioned in compelling his attendance or by reason of his refusal to obey the summons; and

(e)

to exercise the powers of a Magistrate's Court for the purpose of giving effect to a warrant of arrest or an order of imprisonment and of a court under Division 1 of Part XXI of the [Criminal Procedure Code 2010](#).

[15/2010 wef 02/01/2011]

Adjournment

44.

—(1) The Court may for sufficient reason adjourn any proceeding from time to time and from place to place.

(2) Subject to [subsection \(1\)](#), proceedings in the Court shall be held in the court house of the Court.

Time

45. The Court may fix, and may at any time extend or abridge, the time for doing any act or thing, and in default of compliance with any order so made may proceed as if the party in default had not appeared.

Court to be open

46.

—(1) Every trial or hearing in Court shall be held in public.

(2) The Court may, if it thinks fit, order the whole or any part of any proceeding before it to be heard in camera.

Divorce at wife's request

47.

—(1) A married woman may apply to the Court for a divorce in accordance with the Muslim law.

(2) In any such case, the Court shall summon the husband before the Court and enquire whether he consents to the divorce.

(3) If the husband so consents, the Court shall cause the husband to pronounce a divorce and on payment of the prescribed fees cause the divorce to be registered.

(4) If the husband does not agree to divorce the wife, but the parties agree to a divorce by redemption (khuluk), the Court may assess the amount of payment to be made by the wife in accordance with the status and means of the parties and shall thereupon cause the husband to pronounce a divorce by redemption and, on payment of the amount so assessed and the prescribed fees, cause the divorce to be registered.

(5) If the husband does not agree to a divorce by khuluk, the Court or the registrar of the Court may appoint a hakam in accordance with [section 50](#).

[29/2008]

(6) For the purposes of this section and [sections 48](#) and [49](#), “married woman” includes a woman against whom a talak has been pronounced by her husband.

[20/99]

Cerai taklik

48.

—(1) A married woman may, if entitled in accordance with the Muslim law to a divorce in pursuance of the terms of a written taklik made at or after her marriage, apply to the Court to declare that such divorce has taken place.

(2) The Court shall —

(a)

examine the written taklik and make such enquiry as appears necessary into the validity of the divorce;

(b)

if satisfied that the divorce is valid in accordance with the Muslim law, confirm the divorce; and

(c)

upon payment of the prescribed fees, cause the divorce to be registered.

Fasakh

49.

—(1) A married woman shall be entitled to apply to the Court for and obtain a decree of fasakh on any one or more of the following grounds:

(a)

that the husband has neglected or failed to provide for her maintenance for a period of 3 months;

(b)

that the husband has been sentenced to imprisonment for a period of 3 years or upwards and such sentence has become final;

(c)

that the husband has failed to perform, without reasonable cause, his marital obligations for a period of one year;

(d)

that the husband was impotent at the time of the marriage and continues to be so;

(e)

that the husband is insane or is suffering from some chronic disease the cure of which would be lengthy or impossible and which is such as to make the continuance of the marriage relationship injurious to her;

(f)

that the husband treats her with cruelty, that is to say —

(i)

habitually assaults her or makes her life miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment;

(ii)

associates with women of ill repute or leads an infamous life;

(iii)

attempts to force her to lead an immoral life;

(iv)

obstructs her in the observance of her religious profession or practice;

(v)

lives and cohabits with another woman who is not his wife; or

(vi)

if he has more wives than one, does not treat her equitably in accordance with the requirements of the Muslim law;

(g)

on any other ground which is recognised as valid for the dissolution of marriage by fasakh under the Muslim law.

(2) Before passing a decree on ground (d) of [subsection \(1\)](#), the Court shall, on application by the husband, make an order requiring the husband to satisfy the Court within a period of one year from the date of the order that he has ceased to be impotent and if the husband so satisfies the Court within such period no decree shall be passed on that ground.

(3) Upon receiving such application the Court shall cause a summons to be served upon the husband of the woman.

(4) The Court shall then record the sworn statement of the woman and at least 2 witnesses and may then, if satisfied that the woman is entitled to a decree of fasakh in accordance with [subsection \(1\)](#), make a decree of fasakh accordingly.

(5) The Court making an order or decree under this section shall immediately cause such order or decree to be registered.

(6) The register shall be signed by the registrar of the Court, by the woman who obtains the order or decree, and at least 2 witnesses whose evidence has been taken by the Court.

(7) [Subsections \(1\)\(g\), \(3\) to \(6\)](#) shall apply, with the necessary modifications, to a married man as they apply to a married woman.

[20/99]

Appointment of hakam

50.

—(1) Before the making of an order or decree for talak, fasakh, cerai taklik or khuluk, the Court or the registrar of the Court may appoint in accordance with the Muslim law 2 arbitrators, or hakam, to act for the husband and wife respectively.

[29/2008]

(2) In making such appointment, the Court or the registrar of the Court, as the case may be, shall where possible give preference to close relatives of the parties having knowledge of the circumstances of the case.

[29/2008]

(3) The Court or the registrar of the Court may give directions to the hakam as to the conduct of the arbitration and they shall conduct it in accordance with such directions and according to the Muslim law.

[29/2008]

(4) If the hakam are unable to agree, or if the Court or the registrar of the Court is not satisfied with the conduct of the arbitration, the Court or the registrar may remove the hakam and appoint other hakam in their place.

[29/2008]

(5) The hakam shall endeavour to effect a reconciliation between the parties and shall report the result of their arbitration to the Court.

(6) The hakam shall endeavour to obtain from their respective principals full authority, and may, if their authority extends so far, decree a divorce, and shall in such event report the same to the Court for registration.

(7) If the hakam are of opinion that the parties should be divorced but are unable for any reason to decree a divorce, the Court or the registrar of the Court shall appoint other hakam and shall confer on them authority to effect a divorce and the hakam, if they do so, shall report the same to the Court for registration.

[29/2008]

Maintenance of wife

51.

—(1) A married woman may, by application to the Court, obtain an order against her husband for the payment from time to time of her maintenance and the provision of necessary clothing and suitable lodging in accordance with the Muslim law.

(2) A woman who has been divorced may, by application to the Court, obtain an order against her former husband for the payment from time to time of her maintenance and the provision of necessary clothing and suitable lodging for the period of her iddah.

(3) A woman who has been divorced and who is not or has ceased to be entitled to an order for maintenance under [subsection \(2\)](#) may apply to the Court and the Court may, if satisfied that it is just and proper to do so in view of all the circumstances of the case, make an order against the former husband for the payment by him of such sums for such period as the Court considers fit.

(4) The Court may vary or rescind any order made under this section on the application of the person in whose favour or against whom the order was made where it is satisfied that the order was based on any misrepresentation or mistake of fact or where there has been any material change in the circumstances, or for other good cause being shown to the satisfaction of the Court.

[20/99; 29/2008]

(5) Any person who fails to comply with an order of the Court made under this section shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding 6 months.

[20/99]

Provisions consequent on matrimonial proceedings

52.

—(1) The Court shall have power to inquire into and adjudicate upon claims by married women or women who have been divorced for payment of her *emas kahwin* and marriage expenses (*hantaran belanja*).

[29/2008]

(2) A woman who has been divorced by her husband may apply to the Court for a consolatory gift or *mutaah* and the Court may, after hearing the parties, order payment of such sum as may be just and in accordance with the Muslim law.

(3) The Court may, at any stage of the proceedings for divorce or nullity of marriage or after making a decree or order for divorce or nullity of marriage, or after any divorce has been registered under [section 102](#) before 1st March 2009, on the application of any party, make such orders as it thinks fit with respect to —

(a)

the payment of *emas kahwin* and marriage expenses (*hantaran belanja*) to the wife;

(b)

the payment of a consolatory gift or *mutaah* to the wife;

(c)

the custody, maintenance and education of the minor children of the parties; and

(d)

the disposition or division of property on divorce or nullification of marriage.

[20/99; 29/2008]

(4) The Court may make all such other orders and give such directions as may be necessary or expedient to give effect to any order made under this section.

[20/99]

(5) Any order under this section may be made upon such terms and subject to such conditions, if any, as the Court thinks fit.

[20/99]

(6) The Court may, on the application of any interested person, vary or rescind any order made under this section where it is satisfied that the order was based on any misrepresentation or mistake of fact or where there has been any material change in the circumstances, or for other good cause being shown to the satisfaction of the Court.

[20/99; 29/2008]

(7) In making any order under [subsection \(3\)\(d\)](#), the Court shall have power to order the disposition or division between the parties of any property or the sale of any such property and the division between the parties of the proceeds of such sale in such proportions as the Court thinks just and equitable.

[20/99]

(8) It shall be the duty of the Court in deciding whether to exercise its powers under [subsection \(7\)](#) and, if so, in what manner, to have regard to all the circumstances of the case, including the following matters:

(a)

the extent of the contributions made by each party in money, property or work towards acquiring, improving or maintaining the property;

(b)

any debt owing or obligation incurred or undertaken by either party for their joint benefit or for the benefit of any child of the marriage;

(c)

the needs of the children, if any, of the marriage;

(d)

the extent of the contributions made by each party to the welfare of the family, including looking after the home or caring for the family or any aged or infirm relative or dependant of either party;

(e)

any agreement between the parties with respect to the ownership and division of the property made in contemplation of divorce;

(f)

any period of rent-free occupation or other benefit enjoyed by one party in the matrimonial home to the exclusion of the other party;

(g)

the giving of assistance or support by one party to the other party (whether or not of a material kind), including the giving of assistance or support which aids the other party in the carrying on of his or her occupation or business;

(h)

the income, earning capacity, property and other financial resources which each of the parties has or is likely to have in the foreseeable future;

(i)

the financial needs, obligations and responsibilities which each of the parties has or is likely to have in the foreseeable future;

(j)

the standard of living enjoyed by the family before the breakdown of the marriage;

(k)

the age of each party and the duration of the marriage;

(l)

any physical or mental disability of either of the parties; and

(m)

the value to either of the parties of any benefit (such as a pension) which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.

[20/99]

(9) For the purposes of [subsection \(7\)](#), the Court may in particular, but without limiting the generality of [subsections \(4\)](#), [\(5\)](#) and [\(6\)](#), make any one or more of the following orders:

(a)

an order for the sale of any property or any part thereof, and for the division, vesting or settlement of the proceeds;

(b)

an order vesting any property owned by both parties jointly in both the parties in common in such shares as the Court considers just and equitable;

(c)

an order vesting any property or any part thereof in either party;

(d)

an order for any property, or the sale proceeds thereof, to be vested in any person (including either party) to be held on trust for such period and on such terms as may be specified in the order;

(e)

an order postponing the sale or vesting of any share in any property, or any part of such share, until such future date or until the occurrence of such future event or until the fulfilment of such condition as may be specified in the order;

(f)

an order granting to either party, for such period and on such terms as the Court thinks fit, the right personally to occupy the matrimonial home to the exclusion of the other party;

(g)

an order for the payment of a sum of money by one party to the other party.

[20/99]

(10) Where, under any order made under this section, one party is or may become liable to pay to the other party a sum of money, the Court may direct that the money shall be paid either in one sum or in instalments, and either with or without security, and otherwise in such manner and subject to such conditions as the Court thinks fit.

[20/99]

(11) Where, pursuant to this section, the Court makes an order for the sale of any property and for the division, application or settlement of the proceeds, the Court may appoint a person to sell the property and divide, apply or settle the proceeds accordingly; and the execution of any instrument by the person so appointed shall have the same force and validity as if it had been executed by the person in whom the asset is vested.

[20/99]

(12) Where the Court, by any order under this section, appoints a person (including the registrar or other officer of the Court) to act as a trustee or to sell any property and to divide, apply and settle the proceeds thereof, the Court may make provision in that order for the payment of remuneration to that person and for the reimbursement of his costs and expenses.

[20/99]

(13) Any person who fails to comply with an order of the Court made under this section shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding 6 months.

[20/99]

(14) For the purposes of this section, “property” means —

(a)

any asset acquired before the marriage by one party or both parties to the marriage which has been substantially improved during the marriage by the other party or by both parties to the marriage; and

(b)

any other asset of any nature acquired during the marriage by one party or both parties to the marriage, but does not include any asset (not being a matrimonial home) that has been acquired by one party at any time by gift or inheritance and that has not been substantially improved during the marriage by the other party or by both parties to the marriage.

[20/99]

Enforcement of order

53.

—(1) Where the Court has made any of the following orders, whether before, on or after 1st March 2009, such order may be treated as a maintenance order made by a District Court under the Women's Charter (Cap. 353), including a maintenance order for the purposes of Part IX of the Women's Charter, solely for the purpose of the enforcement of that order by the District Court:

(a)

an order for the payment of maintenance under [section 51\(1\), \(2\) or \(3\)](#);

(b)

an order for the payment of a consolatory gift or mutaah under [section 52\(2\) or \(3\)\(b\)](#);

(c)

an order for the maintenance of a minor child under [section 52\(3\)\(c\)](#).

[29/2008]

(2) Where the Court has made any of the following orders, whether before, on or after 1st March 2009, such order may be treated as an order made by a District Court solely for the purpose of the enforcement of that order by the District Court:

(a)

an order for the payment of emas kahwin and marriage expenses (hantaran belanja) under [section 52\(1\) or \(3\)\(a\)](#);

(b)

an order for the custody of a minor child under [section 52\(3\)\(c\)](#);

(c)

an order for the disposition or division of property under [section 52\(3\)\(d\)](#).

[29/2008]

(3) For the purposes of [subsection \(1\)](#), the provisions of the Women's Charter (Cap. 353) shall apply, with the necessary modifications, to the enforcement of any order of the Court referred to in that subsection by the District Court.

[29/2008]

(4) A District Court shall have jurisdiction to enforce any order in accordance with this section regardless of the monetary amount involved.

[20/99; 29/2008]

(5) In enforcing a custody order under [subsection \(2\)](#), a District Court may exercise the powers conferred on the High Court by [section 14 of the Guardianship of Infants Act \(Cap. 122\)](#) except that the reference to the sheriff in that section shall be read as a reference to a bailiff for the purposes of this subsection.

[20/99; 29/2008]

(6) Where, on or after the commencement of proceedings in a District Court for the enforcement of an order made by the Syariah Court pursuant to [subsection \(1\)](#) or [\(2\)](#), a party aggrieved by that order has made any application under [section 55](#) or commenced any proceedings in any court affecting that order, the District Court may, on its own motion or on the application of any party, stay the proceedings for the enforcement of that order on such terms as it thinks fit.

[29/2008]

Execution of deed or indorsement of negotiable instrument

53A.

—(1) If a judgment or an order of the Court is for the execution of a deed, or signing of a document, or for the indorsement of a negotiable instrument, and the party ordered to execute, sign or indorse such instrument is absent, or neglects or refuses to do so, any party interested in having the same executed, signed or indorsed, may prepare a deed, a document or an indorsement of the instrument in accordance with the terms of the judgment or order, and tender the same to the Court for execution upon the proper stamp, if any is required by law.

[20/99]

(2) The signature thereof by the registrar or any president of the Court shall have the same effect as the execution, signing or indorsement thereof by the party ordered to execute.

[20/99]

(3) Nothing in this section shall be taken to abridge the powers of a court under [section 53](#).

[20/99]

(4) This section and [sections 51\(4\)](#) and [\(5\)](#), [52\(6\)](#) and [\(13\)](#) and [53](#) shall also apply to any judgment or order of the Court made before 1st August 1999.

[20/99]

Costs

53B. The Court may, in its discretion, order any party to pay any costs of any proceedings under this Part, including travelling and subsistence expenses of the parties and witnesses, and shall itself assess the amount of any costs so ordered to be paid.

[20/99]

Presumption of death

54.

—(1) If the husband of any married woman has died or is believed to have died or has not been heard of over a prolonged period, in such circumstances that he might for the purpose of enabling his wife to remarry be presumed in accordance with the Muslim law to be dead, but a death certificate cannot be obtained, the Court may on the application of the wife and after such inquiry as may be proper issue in accordance with the Muslim law a certificate of presumption of the death of the husband and thereafter the wife shall be at liberty to remarry.

(2) Such certificate shall be deemed to be a certificate of the death of the husband within the meaning of [section 97\(1\)\(b\)\(i\)](#).

Appeal

55.

—(1) An appeal shall lie to an Appeal Board constituted under this section from any decision of the Court —

(a)

by any person aggrieved by the decision if the amount in issue on appeal is not less than \$450;

(b)

in all cases involving any decision as to personal status, by any person aggrieved by the decision;

(c)

in all cases relating to maintenance, by any person aggrieved by the decision;

(d)

in all cases relating to custody of minor children, by any person aggrieved by the decision;

(e)

in all cases relating to the disposition or division of property on divorce or nullification of marriage, by any party aggrieved by the decision;

(f)

to grant or refuse leave to commence or to continue civil proceedings under [section 35A](#), by the other party in the civil proceedings; or

(g)

in any other case, with the leave of the Appeal Board.

[20/99]

(2) No appeal under [subsection \(1\)\(a\)](#), [\(b\)](#), [\(c\)](#), [\(d\)](#) or [\(e\)](#) shall lie against a decision of the Court by consent except with the leave of the Appeal Board.

[20/99]

(3) The President of Singapore acting on the advice of the Majlis shall, at least once in every 2 years, nominate at least 7 Muslims to form a panel of persons from among whom an Appeal Board of 3 may be constituted from time to time by the President of the Majlis.

[20/99]

(4) On any person appealing against a decision of the Court or applying for leave to appeal in accordance with [subsection \(1\)](#) or [\(2\)](#), the President shall select 3 persons to form an Appeal Board to hear such appeal or application for leave to appeal and shall nominate one of such persons to preside over the Appeal Board.

[20/99]

(5) On any appeal, an Appeal Board may confirm, reverse or vary the decision of the Court, exercise any such powers as the Court could have exercised, make such order as the Court ought to have made or order a retrial, or award costs if it thinks fit.

[20/99]

Revision

56.

—(1) The President of Singapore may in his discretion call for the record of any proceedings before the Court, the Registrar, Kadi or Naib Kadi and may refer such record to the Majlis for its consideration.

(2) The Majlis may after considering the matter recommend that the decision of the Court, the Registrar, Kadi or Naib Kadi, as the case may be, be reversed, altered or modified and the President of Singapore may thereupon order such decision to be reversed, altered or modified.

(3) Every decision when so altered or modified shall in its altered or modified form be held to be valid in all respects as if made by the Court, the Registrar, Kadi or Naib Kadi whose decision has been revised.

Decision of Court and Appeal Board to be final

56A. Subject to the provisions of this Act, any decision of the Court or the Appeal Board shall be final and conclusive, and no decision or order of the Court or the Appeal Board shall be challenged, appealed against, reviewed, quashed or called into question in any court and shall not be subject to any Quashing Order, Prohibiting Order, Mandatory Order or injunction in any court on any account.

[20/99; 42/2005]

Protection of members of Court or Appeal Board, etc.

56B.

—(1) A member of the Court or an Appeal Board, or the registrar or deputy registrar of the Court, shall not be liable to be sued for any act done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction, if he at the time in good faith believed himself to have jurisdiction to do or order the act complained of.

[20/99; 29/2008]

(2) No officer of the Court or any other person expressly authorised by the Court charged with the duty of executing any writ, summons, warrant, order, notice or other mandatory process of the Court shall be liable to be sued for the execution of or attempting to execute the writ, summons, warrant, order, notice or other mandatory process, or in respect of any damage caused to any property in effecting or attempting to effect execution, unless he knowingly acted in excess of the authority conferred upon him by the writ, summons, warrant, order, notice or other mandatory process.

[20/99]

(3) The officer or other person referred to in [subsection \(2\)](#) shall not be deemed to have acted knowingly in excess of his authority merely by reason of the existence of a dispute as to the ownership of any property seized under any writ or order of execution.

[20/99]

PART IV

FINANCIAL PROVISIONS

General Endowment Fund

57.

—(1) A fund to be known as the General Endowment Fund is hereby established.

(2) Except as otherwise provided under the provisions of this Act, the Fund shall consist of all money and property, movable or immovable, which by the Muslim law or under the provisions of this Act or rules made under [subsection \(6\)](#) accrues or is contributed by any person to the Fund.

(3) All money and property in the Fund shall be vested in the Majlis which shall administer all such money and property in accordance with the rules made under this Act.

(4) Any investments of assets and funds vested in the Majlis may be sold, realised and disposed of.

(5) The Majlis may invest any money in the Fund in accordance with the standard investment power of statutory bodies as defined in [section 33A of the Interpretation Act \(Cap. 1\)](#).

[45/2004]

(6) Subject to the provisions of this Act, the Majlis, with the approval of the Minister, may make rules for the collection, administration and distribution of all property of the Fund.

Wakaf or nazar am

58.

—(1) Where, after 1st July 1968, any Muslim person dies in such circumstances that, under the provisions of the Muslim law, his property would vest in, or become payable to, the Baitulmal, the property of that person, in pursuance of such provisions, shall vest in and become payable to the Majlis and form part of the Fund.

(2) Notwithstanding any provision to the contrary in any written law or in any instrument or declaration creating, governing or affecting the same, the Majlis shall administer all wakaf, whether wakaf ‘am or wakaf khas, all nazar am, and all trusts of every description creating any charitable trust for the support and promotion of the Muslim religion or for the benefit of Muslims in accordance with the Muslim law to the extent of any property affected thereby and situate in Singapore.

(3) [Section 23 of the Civil Law Act \(Cap. 43\)](#) shall not apply to Muslims who die intestate.

(4) The trustees of the wakaf or nazar am appointed under the instrument creating, governing or affecting the same shall, subject to the provisions of this Act, manage the wakaf or nazar am but the Majlis shall have power to appoint mutawallis, and for such purpose to remove any existing trustees, where it appears to the Majlis that —

(a)

any wakaf or nazar am has been mismanaged;

(b)

there are no trustees appointed to the management of the wakaf or nazar am; or

(c)

it would be otherwise to the advantage of the wakaf or nazar am to appoint a mutawalli.

(5) The Majlis may at any time remove any mutawalli appointed by it and appoint another in his place.

Vesting of wakaf and nazar am in Majlis

59. All property subject to [section 58](#) shall if situate in Singapore vest in the Majlis, without any conveyance, assignment or transfer whatever, for the purpose of the Baitulmal, wakaf or nazar am affecting the same.

Restriction on creation of Muslim charitable trust

60.

—(1) Whether or not made by way of will or death-bed gift, no wakaf or nazar made after 1st July 1968 and involving more than one-third of the property of the person making the same shall be valid in respect of the excess beyond such one-third.

(2) Every wakaf khas or nazar made after 1st July 1968 shall be null and void unless —

(a)

the President shall have expressly sanctioned and validated or ratified the same in writing in accordance with the Muslim law; or

(b)

it was made during a serious illness from which the maker subsequently died and was made in writing by an instrument executed by him and witnessed by 2 adult Muslims one of whom shall be a Kadi or Naib Kadi.

(3) If no Kadi or Naib Kadi is available as described in [subsection \(2\)\(b\)](#), any other adult Muslim who would not have been entitled to any beneficial interests in the maker's estate had the maker died intestate shall be a competent witness.

(4) This section shall not operate to render valid any will, death-bed gift, wakaf or nazar which is invalid under the provisions of the Muslim law or of any written law.

Income of wakaf or nazar

61.

—(1) The income of a wakaf or nazar shall be applied in accordance with the lawful provisions set out in the instrument or declaration creating, governing or affecting the wakaf or nazar.

(2) Where there is no specific provision in such instrument or declaration for the expenditure of the wakaf or nazar, the income shall be paid to and form part of the Fund.

Property and assets of wakaf or nazar am

62.

—(1) Subject to this section, the property and assets affected by any lawful wakaf or nazar am shall not form part of the Fund, but shall be applied in pursuance of such wakaf or nazar am and held as segregated funds.

(2) If from lapse of time or change of circumstances it is no longer possible beneficially to carry out the exact provisions of any wakaf or nazar am, the Majlis shall prepare a scheme for the application of the property and assets affected thereby in a manner as closely as may be analogous to that required by the terms of such wakaf or nazar am and shall apply the same accordingly.

(3) The Majlis may, with the approval in writing of the Minister, direct that the property and assets mentioned in [subsection \(2\)](#) shall be added to and form part of the Fund.

(4) If the terms of any wakaf or nazar am are such that no method of application of the property and assets affected thereby is specified, or it is uncertain in what manner the same should be applied, the Majlis may direct that the property and assets shall be added to and form part of the Fund.

(5) All instruments creating, evidencing or affecting any wakaf or nazar am, together with any documents of title or other securities relating thereto, shall be held and retained by the Majlis.

Construction of instrument

63.

—(1) Where any question arises as to the validity of a Muslim charitable trust or as to the meaning or effect of any instrument or declaration creating or affecting any Muslim charitable trust, such question shall be determined in accordance with the provisions of the Muslim law.

(2) If in the opinion of the Majlis the meaning or effect of any instrument or declaration creating or affecting any wakaf or nazar is obscure or uncertain, the Majlis may refer the same to the court for construction of the instrument or declaration, and shall act in accordance with the construction so given by the court.

(3) The court in construing the instrument or declaration shall do so in accordance with the provisions of the Muslim law and shall be at liberty to accept as proof of the Muslim law any definite statement on the Muslim law made in any of the books referred to in [section 114](#).

Registration of wakafs

64.

—(1) Every wakaf, whether created before or after 1st July 1968, shall be registered at the office of the Majlis.

[20/99]

(2) Application for registration shall be made by the mutawalli of the wakaf.

[20/99]

(3) An application for registration shall be made in such form and manner as the Majlis may require and shall contain the following particulars:

(a)

a description of the wakaf properties sufficient for the identification of the properties;

(b)

the gross annual income from the wakaf properties;

(c)

the amount of rates and taxes annually payable in respect of the wakaf properties;

(d)

an estimate of the expenses annually incurred in the realisation to the income of the wakaf properties;

(e)

the amount set apart under the wakaf for —

(i)

the salary of the mutawalli and allowances to the individuals;

(ii)

purely religious purposes;

(iii)

charitable purposes; and

(iv)

pious and any other purposes; and

(f)

any other particulars required by the Majlis.

[20/99]

(4) Every application shall be accompanied by a copy of the wakaf deed, or if no such deed has been executed or a copy thereof cannot be obtained, shall contain full particulars, as far as they are known to the applicant, of the origin, nature and objects of the wakaf.

[20/99]

(5) The Majlis may require the applicant to supply any further particulars or information that the Majlis may consider necessary.

[20/99]

(6) On receipt of an application for registration, the Majlis may, before the registration of the wakaf, make such inquiries as it thinks fit in respect of the genuineness and validity of the application and correctness of any particulars in the application.

[20/99]

(7) When an application is made by any person other than the person managing the wakaf property, the Majlis shall, before registering the wakaf, give notice of the application to the person managing the wakaf property and shall hear him if he desires to be heard.

[20/99]

(8) In the case of wakafs created before 1st August 1999, every application for registration shall be made within 6 months from that date; and in the case of wakafs created after that date, within 6 months from the date of the creation of the wakaf.

[20/99]

(9) The Majlis shall maintain a register of wakafs in such manner as the Majlis may think fit, including in electronic form in a computer, in which shall be entered such particulars as the Majlis may from time to time determine.

[20/99]

(10) The Majlis may itself cause a wakaf to be registered or may at any time amend the register of wakafs.

[20/99]

(11) Any mutawalli of a wakaf who fails to —

(a)

apply for the registration of the wakaf;

(b)

furnish statements of particulars as required under this section;

(c)

supply information or particulars as required by the Majlis;

(d)

allow inspection of wakaf properties, accounts, records or deeds and documents relating to the wakaf;

(e)

deliver possession of any wakaf property, if ordered by the Majlis;

(f)

carry out the directions of the Majlis; or

(g)

do any other act which he is lawfully required to do by or under this section,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$50 for every day or part thereof during which the offence continues after conviction.

[20/99]

(12) The Majlis may, with the approval of the Minister, make rules to provide —

(a)

for the preparation of annual statements of accounts, reports and returns by the mutawallis of wakafs and for their submission to the Majlis;

(b)

for the payment of fees for the inspection of, and extraction from, the register of wakafs; and

(c)

generally for giving full effect to or for carrying out the purposes of this section.

[20/99]

Estimates

65.

—(1) The Majlis shall prepare and submit to the Minister not later than 31st October in each year estimates of all income and expenditure of the Majlis, including therein estimates of all property receivable and disposable in kind, in respect of the ensuing year.

[14/90; 20/99]

(2) The Minister may approve such estimates or may direct that they be amended.

(3) Upon such approval or amendment the estimates shall be published in the *Gazette*.

(4) The Majlis may at any time submit to the Minister supplementary estimates of expenditure in respect of the current year, or, at any time prior to 31st March in any year, in respect of the preceding year, and such estimates may be approved or amended, and shall be published in like manner as the annual estimates.

[14/90; 20/99]

⁶(5) No money shall be expended, or property disposed of in kind, except in accordance with such estimates and upon a voucher signed by the President, the Vice-President or by any member of the Majlis nominated by the President.

[14/90]

⁶ This subsection will be amended as set out in section 9 of the Administration of Muslim Law (Amendment) Act 2005 (Act 35 of 2005) when that section is brought into operation.

Expenses of Majlis

66. All costs, charges and expenses of administering the property and assets vested in the Majlis, including the cost of maintenance and repair of any immovable property, shall be paid out of the property and assets of the Fund.

Bankers

67. The Majlis shall appoint bankers to be approved by the Minister and may operate such account or accounts as may seem proper.
[20/99]

Collection of zakat and fitrah

68.

—(1) The Majlis shall have power to collect zakat and fitrah payable in Singapore in accordance with the Muslim law.

(2) The power under [subsection \(1\)](#) shall not be exercised by the Majlis until a resolution to that effect has been passed by the Majlis and approved by the President of Singapore.

(3) On the publication in the *Gazette* of the resolution referred to in [subsection \(2\)](#) and subject to the provisions of the Muslim law, it shall be obligatory on all Muslims in Singapore to pay zakat and fitrah in accordance with the provisions of this Act.

(4) Subject to the provisions of this Act, any zakat or fitrah collected shall be disposed of by the Majlis in accordance with the Muslim law.

Rules

69.

—(1) The Majlis, with the approval of the Minister, may make rules for and regulate all matters in connection with the collection, administration and distribution of zakat and fitrah.

(2) Without prejudice to the generality of [subsection \(1\)](#), the Majlis may, with the approval of the Minister, make rules —

(a)

to prescribe from time to time the amount of zakat and fitrah to be paid by all Muslims in Singapore;

(b)

to provide for the method by which zakat and fitrah shall be collected;

(c)

for the appointment of agents and officers for the collection of zakat and fitrah; and

(d)

to provide penalties for the collection or payment of zakat and fitrah by or to unauthorised persons.

Appeal

70.

—(1) Any person may make objection to the Majlis against any demand for payment by him of zakat and fitrah.

(2) The Majlis shall consider such objection and may order that such person shall pay the amount of zakat and fitrah demanded from him, or such lesser amount as to the Majlis shall seem proper or may order that such person shall not be liable in any one or more years to pay zakat and fitrah or either.

Charitable collection

71.

—(1) The Majlis may collect, or may grant licences to any person or body of persons, authorising him or them to collect moneys or other contributions for any charitable purpose for the support and promotion of the Muslim religion or for the benefit of Muslims in accordance with the Muslim law, and may by any such licence impose such terms as it may think fit.

(2) It shall be deemed to be a term of every such licence that the grantee thereof and every other person authorised thereby to collect moneys or other contributions shall —

(a)

issue in respect of every sum so collected a serially numbered receipt in the prescribed form;

(b)

keep true and full accounts of all sums so collected and of the disposal thereof with all proper vouchers;

(c)

produce on demand the counterfoils of such receipts and all such accounts and vouchers for inspection and audit by the Majlis; and

(d)

apply and dispose of all sums so collected in accordance with the terms of such licence or, if no method of disposal thereof be thereby expressly authorised, pay and account for the same to the Majlis.

(3) Moneys collected in pursuance of this section may be applied for a specific purpose if the Majlis shall so direct, but shall, in default of any such direction, be added to and form part of the Fund.

(4) No person shall make or take part in any collection of money for any purpose mentioned in this section except with the express authority of the Majlis or by virtue and in pursuance of a licence granted under [subsection \(1\)](#).

Financial provisions with respect to Majlis

72. The financial provisions set out in [the First Schedule](#) shall apply to the Majlis.

[14/90]

Financial provisions with respect to trust, wakaf, nazar and mosque

73. The financial provisions set out in [the Second Schedule](#) shall apply to all mosques and all properties, investments and assets vested in the Majlis subject to any trust, wakaf or nazar which do not form part of the Fund.

[20/99]

Annual report

73A. The Majlis shall, as soon as practicable after the end of each financial year, submit to the Minister an annual report on the activities of the Majlis during the preceding financial year.

[20/99]

PART V

MOSQUES AND RELIGIOUS SCHOOLS

Majlis to administer mosques

74.

—(1) Notwithstanding any provision to the contrary in any written instrument, the Majlis shall administer all mosques in Singapore.

(2) Every mosque, together with any immovable property on which it stands or which is appurtenant thereto and used for the purposes thereof, other than State land, shall without any conveyance, assignment or transfer whatever vest in the Majlis for the purposes of this Act.

(3) The trustees of any mosque under any written instrument shall, subject to the provisions of this Act, manage the mosque, but the Majlis shall have power to appoint a mutawalli and for such purpose to remove any existing trustee where it appears to the Majlis that —

(a)

the mosque has been mismanaged;

(b)

there is no trustee appointed for the management of the mosque; or

(c)

it would be otherwise to the advantage of the mosque to appoint a mutawalli.

(4) The Majlis may at any time remove any mutawalli appointed by it and appoint another in his place.

Restriction of new mosque

75.

—(1) No person shall erect any mosque, or dedicate or otherwise apply any existing building as or for the purposes of a mosque, without the permission in writing of the Majlis.

(2) Such permission shall in no case be given unless the site of the proposed new mosque has been or will, prior to the erection or dedication thereof, be made a wakaf.

Establishment of Mosque Building and Mendaki Fund

76.

—(1) There shall be established a fund to be called the Mosque Building and Mendaki Fund into which shall be paid all contributions authorised under this Act.

[31/75; 31/84]

(2) All moneys in the Mosque Building and Mendaki Fund shall be vested in the Majlis which shall administer such moneys in accordance with the provisions of this Act and any rules made under [section 81](#).

[31/75; 31/84; 29/2008]

(3) The Majlis may appoint such agents and officers as may be necessary for the collection of contributions to the Mosque Building and Mendaki Fund.

[31/75; 31/84]

Application of Mosque Building and Mendaki Fund

77.

—(1) The moneys in the Mosque Building and Mendaki Fund shall be used —

(a)

for the purpose of building mosques in Singapore and for purposes connected therewith, including such extension, alteration, reconstruction or restoration of any existing mosque or any part thereof and such other building works as the Majlis may approve;

(b)

for the payment of contributions to Yayasan Mendaki;

(c)

for the funding of religious education in Singapore, subject to such directions as the Minister may specify from time to time; and

(d)

for the payment of expenses incurred in maintaining and administering that Fund.

[31/75; 31/84; 29/2008]

(2) The Majlis shall as soon as practicable pay to Yayasan Mendaki the net amount of the contributions received for the purpose of Yayasan Mendaki, after taking into account the appropriate expenses referred to in [subsection \(1\)\(d\)](#).

[31/84; 29/2008]

Contributions to Mosque Building and Mendaki Fund

78.

—(1) Subject to the provisions of this Act and any rules made under [section 81](#), every employer of a Muslim employee shall pay to the Mosque Building and Mendaki Fund monthly in respect of each Muslim employee contributions as set out in [the Third Schedule](#).

[31/75; 31/84; 14/90]

(2) Notwithstanding the provisions of any written law or any contract to the contrary, an employer shall be entitled to recover from the monthly wages of a Muslim employee any contributions paid to the Mosque Building and Mendaki Fund on behalf of the employee.

[31/75; 31/84]

(3) Any employer who fails to pay the contributions referred to in [subsection \(1\)](#) within such time as may be prescribed shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$500.

[31/75; 31/84]

(4) An employer who has recovered any amount from the monthly wages of an employee in accordance with [subsection \(2\)](#) and fails to pay such contributions to the Mosque Building and Mendaki Fund within such time as may be prescribed shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000.

[31/75; 31/84]

(5) The Minister may, from time to time, by notification in the *Gazette*, vary the amount of contributions payable by an employer in respect of each Muslim employee and may prescribe different amounts of contributions payable by the employer in respect of different classes of Muslim employees.

[31/75]

(6) Without prejudice to [subsections \(1\)](#) and [\(2\)](#) —

(a)

an employee may at any time contribute voluntarily to the Mosque Building and Mendaki Fund a sum in addition to that referred to in [subsection \(1\)](#) as payable by his employer; or

(b)

an employee who desires to have contributions in excess of the amount deducted from his monthly wages by his employer may give to his employer written notice to that effect and thereafter, so long as he is employed by the employer, the employer shall make such deduction

from his wages for each month until such time, not being less than 6 months from the date of giving such notice, as he gives further written notice to his employer of his desire to cease to have such excess monthly contributions deducted from his wages.

[31/75; 31/84]

(7) The employer shall pay the amount of excess deductions under [subsection \(6\)](#) to the Mosque Building and Mendaki Fund in addition to the appropriate monthly contributions.

[31/75; 31/84]

(8) Any contribution recoverable from the wages of an employee in accordance with [subsection \(1\)](#) shall be recovered by the employer from the wages in respect of which such contribution is payable at the time of payment of those wages or within such time as may be prescribed and not otherwise.

[31/75; 31/84]

(9) Any excess contributions paid into the Mosque Building and Mendaki Fund under [subsection \(7\)](#) shall, unless the employee making the contribution otherwise indicates, be deemed to be for the purpose of building mosques.

[31/84]

Muslim employee may decide not to pay contributions

79.

—(1) A Muslim employee who does not wish his employer to pay contributions to the Mosque Building and Mendaki Fund on his behalf may exercise an option in such form as the Majlis may require for his employer not to pay contributions to the Mosque Building and Mendaki Fund on his behalf during any period not exceeding 12 months.

[31/75; 31/84]

(2) Where a Muslim employee has made an option under [subsection \(1\)](#), the Majlis shall issue him with a certificate to that effect.

[31/75]

(3) The employee shall forthwith notify his employer to that effect and thereupon the employer shall cease to be liable to contribute to the Mosque Building and Mendaki Fund under [section 78](#) in respect of that employee for such period the certificate is in force.

[31/75; 31/84]

(4) Where an employee has exercised an option under [subsection \(1\)](#), his employer shall, on the expiry of the period for which the option is in force, be liable to pay contributions to the Mosque Building and Mendaki Fund in respect of that employee unless that employee again exercises an option for his employer not to pay contributions to the Mosque Building and Mendaki Fund on his behalf for a further period of time not exceeding 12 months.

[31/75; 31/84]

Contributions from other persons

80.

—(1) Notwithstanding [section 78](#), the Majlis may receive contributions to the Mosque Building and Mendaki Fund from any Muslim person.

[31/75; 31/84]

(2) Nothing in this Act shall be construed as precluding the Majlis from receiving contributions to the Mosque Building and Mendaki Fund from any person who is not of the Muslim faith.

[31/75; 31/84]

Power to make rules

81.

—(1) The Majlis may, with the approval of the Minister, make such rules as are necessary or expedient for the purpose of carrying out the provisions of this Act relating to the Mosque Building and Mendaki Fund.

[31/75; 31/84]

(2) Without prejudice to the generality of [subsection \(1\)](#), such rules may —

(a)

provide for the manner of payment and collection of contributions to the Mosque Building and Mendaki Fund and any matters incidental thereto;

(b)

exempt employers from paying contributions to the Mosque Building and Mendaki Fund in respect of such categories of Muslim employees as the Majlis may determine;

(c)

provide for the return of contributions or any part of such contributions paid in error;

(d)

provide for the payment of contributions or any part of such contributions omitted to be paid in error;

(e)

provide for the keeping of books, accounts or records by employers;

(f)

prescribe the evidence to be produced and the person, officer or authority to whom such evidence is to be produced for the purposes of this Part;

(g)

prescribe the procedure to be followed when contributions are paid into the Mosque Building and Mendaki Fund;

(h)

provide, in cases where an employee is employed concurrently by 2 or more employers, the extent of the obligation of such employers as to payment of contributions to the Mosque Building and Mendaki Fund;

(i)

prescribe the procedure to be followed when voluntary contributions are paid to the Mosque Building and Mendaki Fund;

(ia)

prescribe the manner in which the moneys in the Mosque Building and Mendaki Fund may be applied for or in respect of the purposes specified in [section 77\(1\)](#), and generally for the administration of such moneys;

(j)

prescribe the returns to be made and the forms and registers to be used in the carrying out of the provisions of this Part; and

(k)

prescribe anything which under this Part may be prescribed by the Majlis.

[31/75; 31/84; 29/2008]

Repair

82.

—(1) It shall be the duty of the trustees of a mosque to ensure that the mosque is kept in a proper state of repair and that the mosque and the compounds thereof are maintained in a proper state of cleanliness.

(2) The Majlis may raise and apply, or authorise the raising and application by the trustees of, special funds for the purpose of such repairs and maintenance, or may authorise the payment of the cost of such repairs and maintenance from the Fund.

(3) It shall be the duty of the trustees promptly to inform the Majlis of any want of repair of the mosque, and to effect or supervise any repairs as agent for and on behalf of the Majlis.

(4) No material alteration to the structure of any mosque shall be made without the permission in writing of the Majlis.

(5) The Majlis may direct the trustees to keep any mosque for which they are responsible in a proper state of repair.

Boundary of daerah masjid

83.

- (1) The Majlis shall have the power at any time to determine the boundaries of any daerah masjid and to amend or alter such boundaries.
- (2) Any dispute as to the boundaries of a daerah masjid shall be referred to the Legal Committee for its opinion.

Register of pegawai masjid

84.

- (1) The Majlis shall maintain a register showing the pegawai masjid of every mosque in Singapore.
- (2) It shall be the duty of every mutawalli promptly to inform the Majlis of any vacancy or change in the pegawai masjid relating to his mosque.

Appointment of pegawai masjid

85.

- (1) It shall be the duty of the Legal Committee, upon learning of any vacancy or impending vacancy in the office of Imam in any mosque in Singapore, to make enquiry for possible candidates for such appointment, and, after due examination of the qualifications of such possible candidates, to submit a list of suitable candidates to the Majlis.
- (2) The Majlis shall, after considering the list submitted by the Legal Committee and after such enquiries as it thinks fit, appoint an Imam to fill the vacancy.
- (3) The mutawalli of a mosque may appoint the Khatib, Bilal or Noja of the mosque.
- (4) The pegawai masjid of a mosque shall be deemed to be public servants for the purposes of the [Penal Code \(Cap. 224\)](#).

Rules for appointment of jawatankuasa daerah

86.

- (1) The Majlis may make rules for —
 - (a) the appointment of a jawatankuasa daerah;
 - (b) prescribing the manner in which the members of a jawatankuasa daerah shall be appointed; and
 - (c) prescribing the duties and functions of a jawatankuasa daerah.
- (2) The jawatankuasa daerah in conjunction with the local pegawai masjid shall —
 - (a)

be responsible for the proper conduct and good order of the mosque and all Muslim burial grounds within their daerah masjid; and
(b)

give due and prompt information to the Majlis of all matters arising in the daerah masjid and requiring the attention of the Majlis.

Religious school

87.

—(1) The control of Muslim religious schools shall be vested in the Majlis.

(2) The Majlis shall have power to register and to control the conduct of Muslim religious schools and to approve the curricula of instruction in such schools.

(3) The Majlis shall have power to control the establishment of any private Muslim religious school and to refuse permission for any such school to be established and to approve any regulations made by any person in charge of such school for its administration.

(4) The Majlis shall have power to authorise any public officer to inspect any Muslim religious school in order to satisfy himself that all the requirements of the Majlis are being complied with.

(5) The Majlis shall have power to order any person employed or to be employed as a teacher at any private religious school to submit to a test conducted by a board appointed by the Majlis.

(6) If any person fails to pass the test referred to in [subsection \(5\)](#), the Majlis shall have power to forbid his employment as a teacher at the school.

(7) The Majlis shall have power to order the closure of any religious school which the board may consider unsatisfactory.

(8) An appeal shall lie from any act, order or direction of the Majlis under this section to the Minister.

(9) The Majlis may, with the approval of the Minister, make rules for carrying out the purposes of this section.

[20/99]

Grant to religious school

88. Any grant made by the Government to Muslim religious schools shall be administered by the Majlis in accordance with rules made by the Majlis and approved by the Minister responsible for education.

PART VA

HALAL AND HAJ MATTERS

Halal certificates

88A.

—(1) The Majlis may issue halal certificates in relation to any product, service or activity and regulate the holders of such certificates to ensure that the requirements of the Muslim law are complied with in the production, processing, marketing or display of that product, the provision of that service or the carrying out of that activity.

[20/99]

(2) An application for a halal certificate shall be in such form as the Majlis may require.

[20/99]

(3) The Majlis may, in issuing a halal certificate, impose such condition as it thinks fit and may at any time vary, remove or add to such condition.

[20/99]

(4) The Majlis may, by notification in the *Gazette*, specify any certification mark of the Majlis for use in relation to any product, service or activity in respect of which it has issued a halal certificate under [subsection \(1\)](#).

[20/99]

(5) Any person who, without the approval of the Majlis —

(a)

issues a halal certificate in relation to any product, service or activity; or

(b)

uses any specified halal certification mark or any colourable imitation thereof,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 12 months or to both.

[20/99]

(6) The Majlis may, in granting approval to any person to issue any halal certificate or to use any specified halal certification mark, impose such condition as it thinks fit and may at any time vary, remove or add to such condition.

[20/99]

(7) The Majlis may revoke or suspend its approval granted to any person to issue any halal certificate or to use any specified halal certification mark if that person fails to comply with any condition imposed under [subsection \(6\)](#).

[20/99]

(8) Any person aggrieved by any decision of the Majlis made under this section may appeal to the Minister whose decision shall be final.

[20/99]

Regulation of Haj services and goods

88B. The Majlis may regulate any person providing goods or services for the purposes of the Haj —

(a)

to ensure that the requirements of the Muslim law are complied with in relation to the provision of those goods or services;

(b)

to safeguard the safety and welfare of persons to whom those goods or services are provided; and

(c)

to promote the proper administration of any matter relating to the Haj.

[20/99]

Rules to regulate halal and Haj matters

88C.

—(1) The Majlis may, with the approval of the Minister, make rules for carrying out the purposes and provisions of this Part.

[20/99]

(2) Without prejudice to the generality of [subsection \(1\)](#), the Majlis may, with the approval of the Minister, make rules for or in respect of the following matters:

(a)

to regulate the use and issue of halal certificates and the use of specified halal certification marks;

(b)

to require travel agents to obtain the approval of the Majlis to provide goods or services for the purposes of the Haj and to provide for the withdrawal of such approval in certain circumstances;

(c)

to require travel agents providing goods or services for the purposes of the Haj to maintain accounts for clients' money received in respect of those goods or services and to regulate the particulars, report and other information to be kept and furnished in relation to such accounts;

(d)

to regulate the number of persons to whom travel agents may provide goods or services for the purposes of the Haj;

(e)

to provide that any contravention of any of such rules shall be an offence punishable with a fine not exceeding \$10,000 or with imprisonment for a term not exceeding 12 months or with both; and

(f)
to prescribe fees and charges for the purposes of this Part.

[20/99]

(3) For the purposes of this section, “travel agent” means a person who holds a licence granted under the [Travel Agents Act \(Cap. 334\)](#).

[20/99]

Offences by bodies corporate, etc.

88D.

—(1) Where an offence under this Part or the rules made thereunder committed by a body corporate is proved —

(a)

to have been committed with the consent or connivance of an officer; or

(b)

to be attributable to any neglect on his part,

the officer as well as the body corporate shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

[29/2008]

(2) Where the affairs of a body corporate are managed by its members, [subsection \(1\)](#) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

[29/2008]

(3) Where an offence under this Part or the rules made thereunder committed by a partnership is proved —

(a)

to have been committed with the consent or connivance of a partner; or

(b)

to be attributable to any neglect on his part,

the partner as well as the partnership shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

[29/2008]

(4) Where an offence under this Part or the rules made thereunder committed by an unincorporated association (other than a partnership) is proved —

(a)

to have been committed with the consent or connivance of an officer of the unincorporated association or a member of its governing body;
or

(b)

to be attributable to any neglect on the part of such officer or member, the officer or member as well as the unincorporated association shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

[29/2008]

(5) In this section —

“body corporate” includes a limited liability partnership which has the same meaning as in [section 2\(1\) of the Limited Liability Partnerships Act \(Cap. 163A\)](#);

“officer” —

(a)

in relation to a body corporate, means any director, partner, member of the committee of management, chief executive, manager, secretary or other similar officer of the body corporate and includes any person purporting to act in any such capacity; or

(b)

in relation to an unincorporated association (other than a partnership), means the president, the secretary, or any member of the committee of the unincorporated association, or any person holding a position analogous to that of president, secretary or member of a committee and includes any person purporting to act in any such capacity;

“partner” includes any person purporting to act as a partner.

[29/2008]

(6) The Majlis may, with the approval of the Minister, make rules to provide for the application of any provision of this section, with such modifications as may be appropriate, to any body corporate or unincorporated association formed or recognised under the law of a territory outside Singapore.

[29/2008]

Composition of offences

88E.

—(1) The Majlis may, in its discretion, compound any offence under this Part or the rules made thereunder which is prescribed as a compoundable offence by collecting from a person reasonably suspected of having committed the offence a sum not exceeding —

(a)

one half of the amount of the maximum fine that is prescribed for the offence; or

(b)

\$2,000,

whichever is the lower.

[29/2008]

(2) On payment of such sum of money, no further proceedings shall be taken against that person in respect of the offence.

[29/2008]

(3) The Majlis may, with the approval of the Minister, make rules to prescribe the offences which may be compounded.

[29/2008]

(4) All sums collected under this section shall be paid to the Majlis.

[29/2008]

PART VI

MARRIAGE AND DIVORCE

Application

89. The provisions of this Part shall apply only to marriages, both of the parties to which profess the Muslim religion and which are solemnized in accordance with the Muslim law.

[29/2008]

Appointment of Registrar of Muslim Marriages

90.

—(1) The President of Singapore may appoint either by name or office any male Muslim of good character and position and of suitable attainments to be the Registrar of Muslim Marriages.

(2) The appointment shall be notified in the *Gazette*.

(3) The President of Singapore may at any time by notification in the *Gazette* cancel the appointment.

Appointment of Kadis and Naib Kadis

91.

—(1) Subject to [section 146](#), the President of Singapore may appoint suitable male Muslims of good character and position and of suitable attainments to be Kadis or Naib Kadis.

(2) The President of Singapore may appoint 2 or more Kadis or Naib Kadis for the same district or place.

[14/90]

(3) The letter of appointment shall —

(a)

be in such form as the President of Singapore directs;

(b)

be signed by the President of Singapore;

(c)

state either —

(i)

that the person named therein is appointed to be a Kadi or Naib Kadi for a particular district or place, of which the limits shall be strictly defined; or

(ii)

that the person named therein is appointed to be a Kadi or Naib Kadi for particular schools of law (Mazhabs); and

(d)

state the period the person named therein is appointed to be a Naib Kadi.

[14/90]

(4) The appointment of a Kadi or Naib Kadi shall be notified in the *Gazette*.

(5) The President of Singapore may at any time at his pleasure by notification in the *Gazette* cancel such appointment.

(6) In the event of a Kadi or Naib Kadi temporarily leaving Singapore or being temporarily incapacitated from performing the duties of his office, the President of Singapore may appoint a suitable person to officiate in his appointment.

(7) The jurisdiction, authority and powers of any Kadi or Naib Kadi shall be such as are conferred by this Act.

(8) The President of Singapore may, by the terms of the letter of appointment of any Kadi or Naib Kadi, restrict the exercise of any powers which would otherwise be conferred on the Kadi or Naib Kadi by this Act.

Deputy Registrars of Muslim Marriages

92.

—(1) Every Kadi and Naib Kadi —

(a)

shall be a Deputy Registrar of Muslim Marriages; and

(b)

shall use a seal bearing such inscription in the Malay language as the Registrar approves.

(2) In the event of a Kadi or Naib Kadi leaving the district within which he is appointed to act, or ceasing to hold his appointment, or dying, his books and seals of office shall forthwith be returned to, or taken possession of by, the Registrar.

Registers

93. Every Kadi and Naib Kadi shall keep such books and registers as are prescribed.

Betrothal

94.

—(1) If any person shall, either orally or in writing, and either personally or through an intermediary, have entered into a contract of betrothal in accordance with the Muslim law, and shall subsequently refuse without lawful reason to marry the other party to such contract, such other party being willing to perform the same, the party in default shall be liable —

(a)

to pay to the other party the sum which it is agreed in the contract by which the marriage was arranged is to be paid by the party in breach of the contract; and

(b)

if a male, to pay as damages the amount expended in good faith in preparation for the marriage, or if a female, to return the betrothal gifts, if any, or the value thereof and to pay as damages the amount expended in good faith in preparation for the marriage.

(2) The payments and return of gifts mentioned in [subsection \(1\)](#) may be recovered by action in the Syariah Court.

Solemnization of marriage

95.

—(1) Subject to the provisions of this Act, it shall be lawful for the wali of the woman to be wedded to solemnize the marriage according to the Muslim law.

(2) Subject to the provisions of this Act, any Kadi or Naib Kadi may at the request of the wali of the woman to be wedded perform the marriage ceremony, but before solemnizing such marriage he shall make full inquiry in order to satisfy himself that there is no lawful obstacle according to the Muslim law or this Act to the marriage and shall not perform the ceremony until he is so satisfied.

(3) Where there is no wali of the woman to be wedded or where a wali shall, on grounds which a Kadi does not consider satisfactory, refuse his consent to the marriage, the marriage may be solemnized by the Kadi, but before solemnizing such marriage the Kadi shall make inquiry as prescribed in [subsection \(2\)](#).

(4) For the purpose of any inquiry, a Kadi or Naib Kadi may issue a summons requiring any person to appear before him to give evidence or to produce a document.

Restriction on solemnization of marriage

96.

—(1) No marriage shall be solemnized under this Act unless all the conditions necessary for the validity thereof, in accordance with the Muslim law and the provisions of this Act, are satisfied.

(2) No marriage shall be solemnized under this Act if the man to be wedded is married to any person other than the other party to the intended marriage, except —

(a)

by a Kadi; or

(b)

with the written consent of a Kadi, by the wali of the woman to be wedded.

(3) Before solemnizing a marriage or giving his written consent to the solemnization of a marriage under [subsection \(2\)](#), the Kadi shall satisfy himself after inquiry that there is no lawful obstacle according to the Muslim law or this Act to such marriage.

⁷(4) No marriage shall be solemnized under this Act if at the date of the marriage either party is below the age of 18 years.

[29/2008]

⁷ Section 19 of the Administration of Muslim Law (Amendment) Act 2008 (Act 29 of 2008) substituted “16 years” with “18 years” in [section 96\(4\)](#) and (5) of this Act with effect from 1st March 2009. Section 33 of the Administration of Muslim Law (Amendment) Act 2008 provides that nothing in section 19 of the Administration of Muslim Law (Amendment) Act 2008 shall affect the validity of any marriage solemnized under this Act before 1st March 2009.

⁸(5) Notwithstanding [subsection \(4\)](#), a Kadi may in special circumstances solemnize the marriage of a girl who is below the age of 18 years but has attained the age of puberty.

[29/2008]

⁸ Section 19 of the Administration of Muslim Law (Amendment) Act 2008 (Act 29 of 2008) substituted “16 years” with “18 years” in section 96(4) and (5) of this Act with effect from 1st March 2009. Section 33 of the Administration of Muslim Law (Amendment) Act 2008

provides that nothing in section 19 of the Administration of Muslim Law (Amendment) Act 2008 shall affect the validity of any marriage solemnized under this Act before 1st March 2009.

Marriage of janda

97.

—(1) Where the woman to be wedded is a janda —

(a)

she shall not be married to any person other than the husband from whom she was last divorced, at any time prior to the expiration of the period of iddah, which shall be calculated in accordance with the Muslim law;

(b)

she shall not be married unless she shall previously have produced —

(i)

a certificate of the death of her late husband;

(ii)

a certificate of divorce lawfully issued under the law for the time being in force;

(iii)

a certified copy of the entry relating to such divorce in the appropriate register of divorces; or

(iv)

a certificate, which may upon her application be granted after inquiry by the Syariah Court, to the effect that she is a janda; and

(c)

if the divorce was by 3 talak, she shall not be remarried to her previous husband, unless prior to the marriage she shall have been lawfully married to some other person and such marriage shall have been consummated and later lawfully dissolved.

(2) The Syariah Court may, if it is satisfied that there has been any collusion between the previous husband and the other person to whom the woman was married after the 3 talak, annul the remarriage with the previous husband referred to in [subsection \(1\)\(c\)](#).

Place of marriage

98. *[Repealed by Act 29 of 2008]*

Copy of certificate to be sent to Registrar

99. Every Kadi and Naib Kadi shall, within one week of the registration of a marriage or revocation of divorce, send a copy of the certificate of marriage or revocation of divorce, as the case may be, to the Registrar.

[14/90]

Registers of Marriages, Divorces and Revocation of Divorces

100.

—(1) The Registrar shall cause —

(a)

the copies of the certificates of marriage sent to him to be bound in a Register of Marriages; and

(b)

the copies of the certificates of revocation of divorce sent to him to be bound in a Register of Revocation of Divorces.

[14/90]

(2) The Registrar shall keep an index of each of the Registers of Marriages and Revocation of Divorces kept by him.

[14/90]

(3) Any president of the Syariah Court shall cause the copies of the certificates of divorce issued by that Court to be bound in a Register of Divorces.

[29/2008]

(4) Any president of the Syariah Court shall keep an index of the Register of Divorces kept by him.

[14/90; 20/99]

Cancellation or rectification of entry in register or certificate, etc.

101.

—(1) If it shall appear that any entry in any Register of Marriages or Register of Revocation of Divorces kept or a certificate of marriage or certificate of revocation of divorce issued under this Act has been made or issued in error or contains any error that might be corrected, the Registrar or any person affected by such error may apply to the Syariah Court for the cancellation of the certificate or rectification of such entry.

[14/90]

(2) If it shall appear that any entry in the Register of Divorces or a certificate of divorce issued under this Act has been made or issued in error or contains any error that might be corrected, any person affected by such error may apply to the Syariah Court for the cancellation of the certificate or rectification of such entry.

[14/90]

(3) The Syariah Court may, after such inquiry as it thinks proper, order the cancellation of the certificate or rectification of the entry accordingly.

[14/90]

(4) If it appears that any decree or order of the Syariah Court under this Act has been made or issued in error or contains any error that might be corrected, the Court may, on its own motion or upon the application of any person affected by such error, order the rectification of such error.

[29/2008]

(5) Any person may be ordered to surrender any document to the Registrar or any president of the Syariah Court for cancellation or rectification in consequence of any such order.

[14/90; 20/99]

(6) If the Registrar is satisfied by statutory declaration or otherwise that any certificate of marriage or certificate of revocation of divorce contains any clerical or typographical error, he may, in the presence of the persons named in the certificate, or, if they are absent, in the presence of 2 credible witnesses, rectify such certificate.

[14/90]

(7) The Registrar shall sign and date any correction made in the certificate of marriage or the certificate of revocation of divorce and in the relevant Register of Marriages or Register of Revocation of Divorces, as the case may be.

[14/90]

(8) Every rectification made under [subsection \(6\)](#) shall be attested by the witnesses in whose presence it was made.

[14/90]

Registration of marriage, divorce or revocation of divorce compulsory

102.

—(1) Nothing in this section shall be construed as preventing a Kadi or Naib Kadi, at his option, from solemnizing and registering a marriage at his house or office or at the house of the parties or one of the parties thereto.

(2) In the case of every marriage or revocation of divorce effected in Singapore and which has not been registered in accordance with [subsection \(1\)](#), the husband and wife shall —

(a)

attend personally within 7 days of the marriage or revocation of divorce at the office of a Kadi;

(b)

furnish such particulars as are required by the Kadi for the due registration of such marriage or revocation of divorce; and

(c)

apply in the prescribed form for the registration of such marriage or revocation of divorce.

[29/2008]

(3) A Kadi shall not register any revocation of divorce unless he is satisfied after inquiry that the parties have consented to the registration thereof.

[29/2008]

(4) Where, on an application for the registration of a revocation of divorce, the Kadi is not satisfied that both the parties have consented to the registration thereof, the Kadi shall refer the application to the Syariah Court and the Syariah Court may make such decree or order as is lawful under the Muslim law.

[29/2008]

(5) In the case of every divorce effected in Singapore, the husband and wife shall attend personally at the Syariah Court within 7 days of the divorce, or such extended time as the Syariah Court thinks fit, and —

(a)

furnish such particulars as are required by the Syariah Court; and

(b)

apply in the prescribed form for a decree or order for divorce.

[29/2008]

Signing of register and inquiry by Kadi

103.

—(1) Where a marriage has been solemnized by a Kadi or Naib Kadi, the Kadi or Naib Kadi shall register the marriage by entering the particulars thereof in the register of marriages and also in the certificate of marriage attached to the register.

(2) Subject to [section 102](#), a Kadi may, at any time within 7 days of a marriage which has not already been registered under [subsection \(1\)](#) or of a revocation of divorce, register the marriage or revocation of divorce by entering the particulars thereof in the appropriate register and also in the certificate of marriage or certificate of revocation of divorce (as the case may be) attached to the register.

[29/2008]

(3) The entry shall be signed by the Kadi or Naib Kadi and by such of the parties and by such number of witnesses as are prescribed.

(4) Before making any entry, the Kadi or Naib Kadi shall make such inquiries as he considers necessary to satisfy himself as to the validity of the marriage or revocation of divorce.

[29/2008]

(5) For the purpose of such inquiries, the Kadi or Naib Kadi may issue a summons requiring any person to appear before him to give evidence or to produce any document.

(6) Every person so summoned shall be legally bound to comply with such summons.

Refusal to register marriage or revocation of divorce

104.

—(1) Every Kadi or Naib Kadi who refuses to register a marriage and every Kadi who refuses to register a revocation of divorce shall record his reasons for such refusal in a book to be kept for that purpose.

[29/2008]

(2) The Kadi or Naib Kadi shall forthwith inform the Registrar and all other Kadis and Naib Kadis in Singapore in the prescribed form of his decision.

(3) Upon payment of the prescribed fee, the Kadi or Naib Kadi shall give a copy of his reasons for refusal to the applicant for registration.

105. An appeal from the decision of a Kadi or Naib Kadi under this Act shall lie to an Appeal Board constituted under [section 55](#) and that section shall apply, with the necessary modifications, to an appeal from the decision of a Kadi or Naib Kadi as they apply to an appeal from a decision of the Syariah Court.

Where Appeal Board orders registration

106.

—(1) If the Appeal Board on appeal orders the marriage or revocation of divorce to be registered, the necessary entries shall as soon as possible be made by the Kadi or Naib Kadi.

[29/2008]

(2) An entry shall be made in the register showing that the marriage or revocation of divorce was registered by order of the Appeal Board on appeal, and shall be signed by the person making the entry.

[29/2008]

Extended time for registration of marriage or revocation of divorce

107. Any marriage or revocation of divorce which has not been registered within the time prescribed by [section 102](#) may, with the consent in writing of the Registrar, and subject to [section 102\(3\)](#) and [\(4\)](#) be registered by a Kadi within 3 months from the date of such marriage or revocation of divorce.

[29/2008]

Copy of entry to be given to parties

108. On the completion of the registration of any marriage or revocation of divorce, the Kadi or Naib Kadi, as the case may be, shall give to each of the parties a copy of the certificate of marriage or certificate of revocation of divorce duly signed and sealed with his seal of office.

[29/2008]

Legal effect of registration of marriage, divorce or revocation of divorce

109. Nothing in this Act shall be construed to render valid or invalid merely by reason of its having been or not having been registered any Muslim marriage, divorce or revocation of divorce which otherwise is invalid or valid.

PART VII

PROPERTY

Saving of distribution of Muslim estate by will

110. Nothing in this Act shall be held to prevent any Muslim person directing by his or her will that his or her estate and effects shall be distributed according to the Muslim law.

Disposition by will, etc., to be in accordance with Muslim law

111.

—(1) Notwithstanding anything in the provisions of the English law or in any other written law, no Muslim domiciled in Singapore shall, after 1st July 1968, dispose of his property by will, or by any nomination under [section 49M\(2\) of the Insurance Act \(Cap. 142\)](#), except in accordance with the provisions of and subject to the restrictions imposed by the school of Muslim law professed by him.

[3/2009]

(2) Nothing in this section shall affect —

(a)

the provisions of the [Wills Act \(Cap. 352\)](#), other than [section 3](#) thereof;

(aa)

the provisions of the [Insurance Act](#), other than sections 49M and [61](#) thereof;

(b)
the provisions of the [Probate and Administration Act \(Cap. 251\)](#); or

(c)
the will of a Muslim dying before 1st July 1968.

[3/2009]

Distribution of Muslim estate to be according to Muslim law

112.

—(1) In the case of any Muslim person domiciled in Singapore dying intestate, the estate and effects shall be distributed according to the Muslim law as modified, where applicable, by Malay custom.

(2) This section shall apply in cases where a person dies partly intestate as well as in cases where he dies wholly intestate.

(3) In the case of a Malay dying intestate, the court may make an order for the division of the harta sepencarian or jointly acquired property in such proportions as to the court seems fit.

Application for probate and letters of administration

113. In all applications for probate or letters of administration the affidavit supporting the application shall, in the case of a deceased Muslim, state the school of law (Mazhab) which the deceased professed in addition to the particulars required by any other written law.

[42/2005]

Proof of Muslim law

114.

—(1) In deciding questions of succession and inheritance in the Muslim law, the court shall be at liberty to accept as proof of the Muslim law any definite statement on the Muslim law made in all or any of the following books:

(a)

The English translation of the *Quaran*, by A. Yusuf Ali or Marmaduke Pickthall;

(b)

Mohammedan Law, by Syed Ameer Ali;

(c)

Minhaj et Talibin by Nawawi, translated by E. C. Howard from the French translation of Van den Berg;

(d)

Digest of Moohummudan Law, by Neil B. E. Baillie;

(e)

Anglo-Muhammadan Law, by Sir Roland Knyvet Wilson, 6th Edition Revised by A. Yusuf Ali;

(f)

Outlines of Muhammadan Law, by A. A. Fyzee;

(g)

Muhammadan Law, by F. B. Tyabji.

(2) The Minister may on the advice of the Majlis by notification in the *Gazette* vary or add to the list of books set out in [subsection \(1\)](#).

Inheritance certificate

115.

—(1) If, in the course of any proceedings relating to the administration or distribution of the estate of a deceased person whose estate is to be distributed according to the Muslim law, any court or authority shall be under the duty of determining the persons entitled to share in such estate or the shares to which such persons are respectively entitled, the Syariah Court may, on a request by the court or authority or on the application of any person claiming to be a beneficiary and on payment of the prescribed fee, certify upon any set of facts found by such court or authority or on any hypothetical set of facts its opinion as to the persons who are, assuming such facts, whether as found or hypothetical, entitled to share in such estate and as to the shares to which they are respectively entitled.

(2) The Syariah Court may, before certifying its opinion, require to hear the parties on any question of law, but shall not hear evidence or make findings on any question of fact.

(3) In any case of special difficulty, the Syariah Court may refer the question to the Legal Committee for its opinion and shall, if such opinion be given, certify in accordance therewith.

Administration of husband's estate

116. In granting letters of administration to the estate of a Muslim dying intestate and leaving a widow or widows, the court may if it thinks fit grant letters of administration to any other next-of-kin or person entitled to the estate of the deceased under the Muslim law, either to the exclusion of the widow or widows, or jointly with such widow or widows, or any one or more of such widows.

Administration of wife's estate

117.

—(1) When any woman, being the wife of a Muslim, dies intestate leaving property of her own and leaving male children above the age of 21 years —

(a)

such male children shall be entitled to a grant of letters of administration to her estate and effects in preference to her husband;

(b)

the husband shall be entitled next after such male children;

(c)

after such male children and the husband, the daughters, father, mother, brothers, sisters, uncles, aunts, nephews and nieces of the intestate shall be entitled in the order above set out; and

(d)

failing all the above, the next nearest of kin according to the Muslim law shall be entitled.

(2) Preference shall be given to male over female relationship of the same degree in the above cases.

(3) The children of the husband by other wives shall not —

(a)

be considered as next-of-kin to the deceased intestate wife; and

(b)

by reason of such relationship, be entitled to a grant of letters of administration to her estate and effects.

(4) Nothing in this section shall affect the power given to the court by [section 18\(4\)\(d\) of the Probate and Administration Act \(Cap. 251\)](#).

Will of married woman

118. Subject to [section 111](#), Muslim married women may, with or without the concurrence of their husbands, by will dispose of their own property.

Property at marriage

119.

—(1) All the property belonging to a woman on her marriage, whether movable or immovable and however acquired, shall after marriage to a Muslim husband continue, in the absence of special written contract to the contrary, to be her own property.

(2) She may dispose of the same by deed or otherwise, with or without the concurrence of her husband.

Property of Muslim married woman

120.

—(1) The following shall be deemed to be the property of a Muslim married woman:

(a)

wages and earnings acquired or gained by her during marriage in any employment, occupation or trade carried on by her and not by her husband;

(b)

any money or other property acquired by her during marriage through the exercise of any skill or by way of inheritance, legacy, gift, purchase or otherwise; and

(c)

all savings from, and investments of, such wages, earnings and property.

(2) Her receipt alone shall be a good discharge for such wages, earnings and property.

(3) She may dispose of the same by deed or otherwise and without the concurrence of her husband.

Right to sue and liability to be sued

121. A Muslim married woman —

(a)

may maintain a suit in her own name for the recovery of property of any description which is her own property;

(b)

shall have in her own name the same remedies, both civil and criminal, against all persons for the protection and security of such property as if she were unmarried; and

(c)

shall be liable to such suits, processes and orders in respect of such property as she would be liable to if she were unmarried.

Liability on her own contract

122.

—(1) If a Muslim married woman possesses property, and if any person enters into a contract with her with reference to such property or on the faith that her obligation arising out of the contract will be satisfied out of her own property, that person shall be entitled to sue her and to the extent of her own property to recover against her whatever the person might have recovered in such suit if she had been unmarried at the date of the contract and remained unmarried at the execution of the decree.

(2) The husband shall not, in the absence of special stipulations whereby he has made himself responsible as surety, guarantor, joint contractor or otherwise, be liable to be sued on such contract.

(3) Nothing in this section shall annul or abridge the liability of a Muslim husband for debts contracted by his wife's agency, express or implied.

(4) Such liability shall be measured according to the law for the time being in force in Singapore.

Antenuptial debt

123. A Muslim husband shall not by reason only of his marriage be liable for the debt of his wife contracted before marriage, but the wife shall be liable to be sued for and shall to the extent of her own property be liable to satisfy such debt as if she were unmarried.

Effect of marriage on property

124. No Muslim person shall, by any marriage contracted in accordance with the provisions of the Muslim law, acquire any interest in the property of the person whom he or she marries nor become incapable of doing any act in respect of his or her own property which he or she could have done if unmarried.

Household property

125. When a Muslim husband and his wife or wives live together in the same house, the household goods, vehicles and household property of every description of the husband and wife or wives, except the paraphernalia of the wife or wives, shall be held prima facie to belong to the husband in any question between the husband and his creditors.

PART VIII

CONVERSIONS

Register of converts

126. The Majlis shall maintain a register of the names of all persons converted to the Muslim religion within Singapore, together with such particulars in respect of their conversion as may be prescribed by rule.

Control of conversion

127. No person shall be converted to the Muslim religion otherwise than in accordance with the Muslim law and the provisions of this Act.

Report of conversion

128. Any Muslim who converts any person to the Muslim religion shall forthwith report such conversion to the Majlis with all the necessary particulars.

PART IX

OFFENCES

This Part to apply only to Muslims

129. Subject to this Act, this Part shall only apply to Muslims.

Omission to register within prescribed time

130.

—(1) Any person who, being required by this Act to effect the registration of any marriage or revocation of divorce, omits to do so within the prescribed time shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$500.

[29/2008]

(2) Any person who contravenes [section 102\(5\)](#) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$500.

[29/2008]

Omitting to hand over book or seal or being in possession thereof without lawful excuse

131. Any person who —

(a)

refuses or omits to hand over any book or seal of office to the Registrar as required by this Act; or

(b)

is found in possession of a book or seal of office without lawful excuse after the book or seal of office ought to have been made over to or taken possession of by the Registrar,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$500 or to imprisonment for a term not exceeding 6 months or to both.

Unlawful register

132. Any person other than the Registrar, any president of the Syariah Court, a Kadi or a Naib Kadi who —

(a)

keeps any book being or purporting to be a register of Muslim marriages, divorces or revocation of divorce; or

(b)

issues to any person any document being or purporting to be a certificate of marriage, divorce or revocation of divorce,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$500 or to imprisonment for a term not exceeding 6 months or to both.

[29/2008]

Unlawful solemnization of marriage or registration of marriage, divorce or revocation of divorce

133. Any person who —

(a)

solemnizes or purports to solemnize any marriage between Muslims; or

(b)

registers any marriage, divorce or revocation of divorce effected between Muslims, in contravention of the provisions of this Act, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$500 or to imprisonment for a term not exceeding 6 months or to both.

Cohabitation outside marriage

134.

—(1) Any man who cohabits and lives with a woman, whether a Muslim or not, to whom he is not lawfully married, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$500 or to imprisonment for a term not exceeding 6 months or to both.

(2) Any woman who cohabits and lives with a man, whether a Muslim or not, to whom she is not lawfully married, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$500 or to imprisonment for a term not exceeding 6 months or to both.

(3) The court may, instead of sentencing a woman under [subsection \(2\)](#), order that she be detained in a place of safety established under any written law for such period not exceeding 12 months as it may determine.

Enticing unmarried woman from wali

135. Any person who takes or entices any unmarried woman out of the keeping of the wali of the unmarried woman without the consent of the wali shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding 3 years and shall also be liable to a fine.

Permission to leave Singapore

136. *[Repealed by Act 35 of 2005]*

Non-payment of zakat or fitrah

137.

—(1) Whoever, being liable to pay any zakat and having failed to procure, in accordance with [section 70](#), the cancellation or modification of such liability, refuses or wilfully fails to pay the same, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$500 or to imprisonment for a term not exceeding 6 months or to both.

(2) Whoever, being liable to pay any fitrah and having failed to procure, in accordance with [section 70](#), the cancellation or modification of such liability, refuses or wilfully fails to pay the same, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50 or to imprisonment for a term not exceeding one month or to both.

(3) A conviction under this section shall not operate to extinguish the debt.

(4) Any zakat or fitrah due by any person or the value of the same may be recovered as if the value thereof were recoverable as a fine imposed under the provisions of this Act.

Neglect or failure to report conversion

138. Whoever, being under a duty to report to the Majlis a conversion to the Muslim religion under the provisions of this Act, wilfully neglects or fails to do so shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$500 or to imprisonment for a term not exceeding 6 months or to both.

False doctrine

139.

—(1) Whoever shall teach or publicly expound any doctrine or perform any ceremony or act relating to the Muslim religion in any manner contrary to the Muslim law shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 12 months or to both.

[20/99]

(2) In any prosecution for an offence under this section, where evidence is given by the President that any doctrine, ceremony or act is contrary to the Muslim law, the court shall presume that such doctrine, ceremony or act is contrary to the Muslim law.

Abetment

140. Any person who attempts to commit, or abets the commission of, any offence under this Act shall be punishable with the same punishment as if he had committed the offence.

PART X

MISCELLANEOUS

Registrar, Kadi and Naib Kadi to be public servants

141.

—(1) Every Registrar, Kadi and Naib Kadi shall be a public servant within the meaning of the [Penal Code \(Cap. 224\)](#).

(2) All proceedings before the Syariah Court or before the Registrar or a Kadi or Naib Kadi under this Act shall be deemed to be judicial proceedings within the meaning of Chapter XI of the [Penal Code](#).

Witness

142.

—(1) Every Kadi or Naib Kadi shall have power to issue a notice or a summons to any person to appear before him and to give evidence or to produce any document in his possession.

(2) Every person to whom a notice or a summons is sent or served under this section shall be legally bound to comply therewith.

(3) Every Kadi and Naib Kadi may examine on oath any person who has appeared before him in compliance with a notice or summons.

Inspection and search

143.

—(1) The Register of Marriages, Register of Divorces and Register of Revocation of Divorces, and the general index of each of those Registers shall be open to inspection by any person upon payment of the prescribed fee.

[14/90]

(2) The Registrar or any president of the Syariah Court, as the case may be, shall, upon payment of the prescribed fee, furnish any person requiring the same a copy of any entry in any of the Registers certified under his signature and seal of office.

[14/90; 20/99]

Proof

144. The Register of Marriages, Register of Divorces and Register of Revocation of Divorces and any copy of any entry therein, certified under the hand and seal of the Registrar or any president of the Syariah Court, as the case may be, to be a true copy or extract, shall be prima facie evidence in all courts and tribunals in Singapore of the dates and acts contained or set out in each of those Registers, copy or extract.

[14/90; 20/99]

Rules

145.

—(1) The President of Singapore may make such rules as seem to him necessary or expedient for the purpose of carrying out the provisions of this Act.

(2) Without prejudice to the generality of [subsection \(1\)](#), the power to make rules shall include —

(a)

regulating and prescribing the procedure and practice of the Syariah Court and the Appeal Board, including the manner of service of summons;

(b)

prescribing what part of the business which may be transacted and of the jurisdiction and powers which may be exercised by a president of the Syariah Court may be transacted or exercised by the registrar of the Syariah Court (including provisions for and concerning appeals from decisions of the registrar of the Syariah Court); and

(c)

prescribing the fees to be charged by the Syariah Court, the Appeal Board, and by the Registrar, Kadis and Naib Kadis and the incidence and application of such fees.

[20/99]

Delegation

146. The President of Singapore may delegate the exercise of all or any of the powers vested in him by this Act to the Minister or the President.

[35/2005]

FIRST SCHEDULE

[Section 72](#)

Financial Provisions With Respect to Majlis

1. The Majlis shall keep proper accounts and records of its transactions and affairs and shall do all things necessary to ensure that all payments out of its moneys are properly authorised and correctly made and that adequate control is maintained over the assets of, or in the custody of, the Majlis and over the expenditure incurred by the Majlis.
2. The Majlis shall, as soon as practicable after the close of each financial year, prepare and submit financial statements in respect of that year to the auditor of the Majlis.
3. The accounts of the Majlis shall be audited by the Auditor-General or such other auditor as may be appointed annually by the Minister in consultation with the Auditor-General.
4. A person shall not be qualified for appointment as an auditor under [paragraph 3](#) unless he is a public accountant who is registered or deemed to be registered under the [Accountants Act \(Cap. 2\)](#).
5. The remuneration of the auditor shall be paid out of the funds of the Majlis.
6. The auditor or any person authorised by him shall be entitled at all reasonable times to full and free access to all accounting and other records relating, directly or indirectly, to the financial transactions of the Majlis and may make copies of or extracts from any such accounting and other records.
7. The auditor shall in his report state —
 - (a) whether the financial statements show fairly the financial transactions and the state of affairs of the Majlis;
 - (b)

whether proper accounting and other records have been kept, including records of all assets of the Majlis whether purchased, donated or otherwise;

(c)

whether the receipts, expenditure, and investment of moneys and the acquisition and disposal of assets by the Majlis during the financial year were in accordance with the provisions of this Act; and

(d)

such other matters arising from the audit as he considers necessary.

8. The auditor shall, as soon as practicable after the accounts have been submitted for audit, send a report of his audit to the Majlis. He shall also submit such periodical and special reports to the Minister and to the Majlis as may appear to him to be necessary or as the Minister or the Majlis may require.

9. The auditor or any person authorised by him may require any person to furnish him with such information in the possession of that person or to which that person has access as the auditor considers necessary for the purposes of his functions under this Act.

10. Any person who fails, without reasonable excuse, to comply with any requirement of the auditor under [paragraph 9](#) or who otherwise hinders, obstructs or delays the auditor in the performance of his duties or the exercise of his powers shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000.

⁹11. The Majlis shall, as soon as the financial statements have been audited in accordance with the provisions of this Act, send to the Minister a copy of the audited financial statements, signed by the President or Vice-President, together with a copy of the auditor's report.

⁹ This paragraph will be amended as set out in section 12 of the Administration of Muslim Law (Amendment) Act 2005 (Act 35 of 2005) when that section is brought into operation.

12. Where the Auditor-General is not the auditor of the Majlis, a copy of the audited financial statements and any report made by the auditor shall be forwarded to the Auditor-General at the same time they are submitted to the Majlis.

13. The Minister shall as soon as practicable cause a copy of the annual report, the audited financial statements and the auditor's report to be presented to Parliament.

14. The financial year of the Majlis shall begin on 1st January and end on 31st December in each year.

15. This Schedule shall apply to the accounts of the General Endowment Fund, the Mosque Building and Mendaki Fund and such other accounts as the Minister may, by notification in the *Gazette*, specify.

[14/90; 20/99; 29/2008]

SECOND SCHEDULE

Section 73

Financial Provisions With Respect to Trust, Wakaf, Nazar and Mosque

1. The trustees, mutawallis or management board of any trust, wakaf, nazar or mosque to which this Schedule applies, as the case may be, shall —

(a)

keep or cause to be kept proper accounts and records of its transactions and affairs; and

(b)

after the close of each financial year prepare financial statements in respect of the trust, wakaf, nazar or mosque for that year.

2. The financial statements in respect of a mosque shall, as soon as possible after the close of each financial year but not later than 6 months after the close of the financial year, be submitted to a meeting of the Majlis.

3. The financial statements in respect of a trust, wakaf or nazar shall, as soon as possible after the close of each financial year but not later than 3 months after the close of the financial year, be submitted to a meeting of the Majlis.

4. Subject to [paragraph 4A](#), the financial statements shall, before their submission to the Majlis under [paragraph 2](#) or 3, be audited by an auditor to be appointed by the Majlis and approved by the Minister.

4A. The Minister may, in his discretion, exempt any trustee, mutawalli or management board of any trust, wakaf, nazar or mosque to which this Schedule applies, or any class thereof, from [paragraph 4](#) by notice in writing subject to such terms or conditions as the Minister may think fit to impose.

4B. An exemption under [paragraph 4A](#) need not be published in the *Gazette*, and may be withdrawn at any time by the Minister by notice in writing.

4C. A person shall not be qualified for appointment as an auditor under [paragraph 4](#) unless he is a public accountant who is registered or deemed to be registered under the [Accountants Act \(Cap. 2\)](#).

5. The remuneration of the auditor shall be paid out of the funds of the trust, wakaf, nazar or mosque, as the case may be.

6. The Majlis and the auditor or their authorised representatives shall be entitled at all reasonable times to full and free access to all accounting and other records relating, directly or indirectly, to the financial transactions of the trust, wakaf, nazar or mosque, as the case may be, and may make copies of or extracts from any such accounting and other records.

7. The auditor shall in his report state —

(a)

whether the financial statements show fairly the financial transactions and the state of affairs of the trust, wakaf, nazar or mosque, as the case may be;

(b)

whether proper accounting and other records have been kept, including records of all assets of the trust, wakaf, nazar or mosque, as the case may be, whether purchased, donated or otherwise;

(c)

whether the receipts, expenditure and investment of moneys and the acquisition and disposal of assets by the trust, wakaf, nazar or mosque, as the case may be, during the financial year were in accordance with the provisions of this Act; and

(d)

such other matters arising from the audit as he considers necessary.

8. The Majlis and the auditor or their authorised representatives may require any person to furnish them with such information in the possession of that person or to which that person has access as the Majlis or the auditor considers necessary for the purposes of their functions under this Act.

9. Any person who fails, without reasonable excuse, to comply with any requirement of the Majlis or the auditor under [paragraph 8](#) or who otherwise hinders, obstructs or delays the Majlis or the auditor in the performance of their duties or the exercise of their powers shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000.

10. The Secretary of the Majlis shall, within one month after the meeting of the Majlis referred to in [paragraph 2](#) or 3, submit a copy of the financial statements, together with a copy of the auditor's report (where applicable), to the Minister; and in the case of any mosque, the Majlis shall also cause a copy of the same to be exhibited at the mosque.

11. The financial year of any trust, wakaf, nazar or mosque to which this Schedule applies shall begin on 1st January and end on 31st December in each year.

[20/99; 29/2008]

THIRD SCHEDULE

[Section 78\(1\)](#)

Contributions to Mosque Building and Mendaki Fund

Total amount of employee's wages for the calendar month

Amount of contributions payable for the calendar month

(1) Less than \$1,001

\$2

(2) \$1,001 or more but less than \$2,001	\$3.50
(3) \$2,001 or more but less than \$3,001	\$5
(4) \$3,001 or more but less than \$4,001	\$12.50
(5) \$4,001 or more	\$16.

[S 2/2009]

LEGISLATIVE HISTORY

Administration of Muslim Law Act (CHAPTER 3)

This Legislative History is provided for the convenience of users of the [Administration of Muslim Law Act](#). It is not part of this Act.

- Act 27 of 1966—Administration of Muslim Law Act 1966¹⁰
 - ¹⁰ This Act re-enacted certain provisions of the Muslim Ordinance 1957.
 - Date of First Reading : 13 December 1965
(Bill No. 61/65 published on 18 December 1965)
 - Date of Second Reading : 30 December 1965
 - Date Committed to Select Committee : 30 December 1965
 - Date of Presentation of Select Committee Report : 31 May 1966 (Parl. 3 of 1966)
 - Date of Third Reading : 17 August 1966
 - Date of commencement : 1 July 1968 (except sections 81 and 82)
 - 1970 Revised Edition (Cap. 42)—Administration of Muslim Law Act (Chapter 42)
 - Date of operation : 1 March 1971
 - Act 34 of 1973—Statutes of the Republic of Singapore (Miscellaneous Amendments) (No. 3) Act 1973
(Consequential amendments made to Act by)
 - Date of First Reading : 11 July 1973
(Bill No. 27/73 published on 14 July 1973)

	Date of Second and Third Readings	:	25 July 1973
	Date of commencement	:	24 August 1973
4.	Act 31 of 1975—Administration of Muslim Law (Amendment) Act 1975		
	Date of First Reading	:	29 July 1975 (Bill No. 31/75 published on 1 August 1975)
	Date of Second and Third Readings	:	19 August 1975
	Date of commencement	:	1 October 1975
5.	G. N. No. S 156/1977		
	Date of commencement	:	Date not available
6.	Act 31 of 1984—Administration of Muslim Law (Amendment) Act 1984		
	Date of First Reading	:	24 July 1984 (Bill No. 26/84 published on 3 August 1984)
	Date of Second and Third Readings	:	24 August 1984
	Date of commencement	:	1 October 1984
7.	1985 Revised Edition—Administration of Muslim Law Act (Chapter 3)		
	Date of operation	:	30 March 1987
8.	1985 Revised Edition—Administration of Muslim Law Act		
	Date of operation	:	30 March 1987
9.	G. N. No. S 68/1990		
	Date of commencement	:	Date not available
10.	Act 14 of 1990—Administration of Muslim Law (Amendment) Act 1990		
	Date of First Reading	:	11 June 1990 (Bill No. 13/90 published on 15 June 1990)
	Date of Second and Third Readings	:	18 July 1990
	Date of commencement	:	1 October 1990
11.	G. N. No. S 234/1991		
	Date of commencement	:	Date not available
12.	G. N. No. S 457/1995		

- Date of commencement : Date not available
13. [Act 20 of 1999—Administration of Muslim Law \(Amendment\) Act 1999](#)
- Date of First Reading : 20 April 1998
(Bill No. 18/98 published on 21 April 1998)
- Date of Second Reading : 30 June 1998
- Date Committed to Select Committee : 30 June 1998
- Date of Presentation of Select Committee Report : 10 February 1999 (Parl. 1 of 1999)
- Date of Third Reading : 15 April 1999
- Date of commencement : 1 August 1999
14. [1999 Revised Edition—Administration of Muslim Law Act \(Chapter 3\)](#)
- Date of operation : 1 August 1999
15. [Act 45 of 2004—Trustees \(Amendment\) Act 2004](#)
(Consequential amendments made to Act by)
- Date of First Reading : 21 September 2004
(Bill No. 43/2004 published on 22 September 2004)
- Date of Second and Third Readings : 19 October 2004
- Date of commencement : 15 December 2004
16. [G. N. No. S 409/2005—Administration of Muslim Law Act \(Variation of Schedule\) Notification 2005](#)
- Date of commencement : 1 July 2005
17. [Act 35 of 2005—Administration of Muslim Law \(Amendment\) Act 2005](#)
- Date of First Reading : 15 August 2005
(Bill No. 22/2005 published on 16 August 2005)
- Date of Second and Third Readings : 18 October 2005
- Date of commencement : 19 March 2007 (except sections 2, 3(a) and (c), 4, 8(a), 9 and 12)
18. [Act 42 of 2005—Statutes \(Miscellaneous Amendments\) \(No. 2\) Act 2005](#)

- (Consequential amendments made to Act by)
- Date of First Reading : 17 October 2005
(Bill No. 30/2005 published on 18 October 2005)
- Date of Second and Third Readings : 21 November 2005
- Date of commencement : 1 January 2006 (Item (1) of the First Schedule and item (1) of the Fourth Schedule — Amendment of Administration of Muslim Law Act)
19. [Act 29 of 2008—Administration of Muslim Law \(Amendment\) Act 2008](#)
- Date of First Reading : 15 September 2008
(Bill No. 24/2008 published on 16 September 2008)
- Date of Second and Third Readings : 17 November 2008
- Date of commencement : 2 January 2009 (except sections 5 to 13, 17, 19 and 21 to 33)
20. [G. N. No. S 2/2009—Administration of Muslim Law Act \(Variation of Schedule\) Notification 2009](#)
- Date of commencement : 1 March 2009
21. [Act 3 of 2009—Insurance \(Amendment\) Act 2009](#)
(Consequential amendments made to Act by)
- Date of First Reading : 20 October 2008
(Bill No. 28/2008 published on 20 October 2008)
- Date of Second and Third Readings : 19 January 2009
- Date of commencement : 1 September 2009 (section 8)
22. [2009 Revised Edition—Administration of Muslim Law Act](#)
- Date of operation : 31 October 2009
23. [Act 15 of 2010—Criminal Procedure Code 2010](#)

Date of First Reading	:	26 April 2010 (Bill No. 11/2010)
Date of Second Reading	:	Date not available.
Date of Third Reading	:	Date not available.
Date of commencement	:	2 January 2011

COMPARATIVE TABLE

Administration of Muslim Law Act (CHAPTER 3)

The following provisions in the 1999 Revised Edition of the Administration of Muslim Law Act have been renumbered by the Law Revision Commissioners in this 2009 Revised Edition.

This Comparative Table is provided for the convenience of users. It is not part of the Administration of Muslim Law Act.

2009 Ed.	1999 Ed.
—	98 [<i>Repealed by Act 29/2008</i>]
99	99 —(1)
—	(2) [<i>Deleted by Act 29/2008</i>]
—	(3) [<i>Deleted by Act 29/2008</i>]
—	(4) [<i>Deleted by Act 29/2008</i>]
101 —(1) to (3)	101 —(1) to (3)
(4)	(3A)
(5)	(4)

(6)	(5)
(7)	(6)
(8)	(7)
102 —(1) to (5)	102 —(1) to (5)
—	(6) [<i>Deleted by Act 29/2008</i>]
—	136 [<i>Repealed by Act 35/2005</i>]

COMPARATIVE TABLE

Administration of Muslim Law Act (CHAPTER 3)

The following provisions in the 1985 Revised Edition of the Administration of Muslim Law Act were renumbered by the Law Revision Commissioners in the 1999 Revised Edition.

This Comparative Table is provided for the convenience of users. It is not part of the Administration of Muslim Law Act.

1999 Ed.	1985 Ed.
4 —(1) and (2)	4
11 —(1) and (2)	11
21 —(1) and (2)	21 —(1)
(3)	(2)
(4)	(3)

1999 Ed.	1985 Ed.
23 —(1) and (2)	23 —(1)
25 —(2)	Proviso to 25
26 —(2)	26 —(3)
(3)	(4)
(4)	(5)
(5)	(2)
27 —(1) and (2)	27
30 —(1) and (2)	30 —(1)
(3)	(2)
31 —(2) and (3)	31 —(2)
(4) and (5)	(3)
(6)	(4)
(7)	(5)
(8)	(6)
32 —(1) and (2)	32 —(1)
(3), (4) and (5)	(2)
(6)	(3)
(7)	(4)
(8)	(5)

1999 Ed.**1985 Ed.****32—(2)**Proviso to **33—(1)**

(3)

(2)

36**35B****37****36****38****37****39****38****42—(2), (3) and (4)****42—(2)**

(5)

(3)

44—(1) and (2)**44****46—(2)**Proviso to **46****47—(2) and (3)****47—(2)**

(4)

(3)

(5)

(4)

(6)

(5)

49—(2)Proviso to **49—(1)**

(3)

(2)

(4)

(3)

(5)

(4)

(6)

(5)

1999 Ed.**1985 Ed.**

(7)	(6)
50 —(1) and (2)	50 —(1)
(3) and (4)	(2)
(5)	(3)
(6)	(4)
(7)	(5)
54 —(1) and (2)	54
55 —(3)	55 —(4)
(4)	(5)
(5)	(6)
(6)	(7)
57 —(1) and (2)	57 —(1)
(3)	(2)
(4) and (5)	Proviso to (2)
(6)	(3)
60 —(3)	Proviso to 60 —(2)
(4)	(3)
62 —(3)	Proviso to 62 —(2)
(4)	(3)

1999 Ed.**1985 Ed.**

(5)	(4)
64	66
65 —(1), (2) and (3)	67 —(1)
(4)	(2)
(5)	(3)
66	68
67	69
68 —(2)	Proviso to 70 —(1)
(3)	(2)
(4)	(3)
69	71
70 —(1) and (2)	72
71	73
72	73A
73	65
73A	64
74 —(1) and (2)	74 —(1)
(3)	(2)
(4)	(3)

1999 Ed.**1985 Ed.****78**—(6) and (7)**78**—(6) (*b*)

(8)

(7)

(9)

(8)

79—(2) and (3)**79**—(2)

(4)

(3)

81—(1) and (2)**81****82**—(4) and (5)**82**—(4)**83**—(1) and (2)**83****84**—(1) and (2)**84****87**—(1) and (2)**87**—(1)

(3)

(2)

(4)

(3)

(5) and (6)

(4)

(7)

(5)

(8)

(6)

(9)

(7)

91—(8)Proviso to **91**—(7)**94**—(1) and (2)**94****96**—(5)Proviso to **96**—(4)

1999 Ed.	1985 Ed.
97—(1) and (2)	97
98—(1) and (2)	98
136—(1) and (2)	136—(1)
(3)	(2)
(4)	(3)
Second Schedule	Third Schedule
Third Schedule	Second Schedule

Disclaimer : I do not own this. Contents and credits goes Attorney-General's of Singapore.

Source : Attorney-General's Chamber of Singapore. Below is the link.

<http://statutes.agc.gov.sg/aol/search/display/view.w3p?page=0;query=CompId%3A6d9fc9f9-4d18-47bf-a448-8f3c652d8c7d;rec=0;resUrl=http%3A%2F%2Fstatutes.agc.gov.sg%2Faol%2Fbrowse%2FtitleResults.w3p%3Bletter%3DA%3Btype%3DactsAll;whole=yes>