

DISCLAIMER: This document was produced in 2005 and is a summary of the laws of Indonesia that appertain to international parental child abduction, contact and relocation as they were at that time. **reunite** International Child Abduction Centre cannot vouch for the accuracy of this information for use in litigation and it is not intended to provide case specific advice.

INDONESIA

Overview

Indonesia is a former Dutch colony and the current legal system was shaped by this civil law influence to some extent. Sources of law include Dutch law, customary law (*adat*) and Islamic law. Although Indonesia has the largest Muslim population in the world Islam is not the official religion. However, Presidential Instruction No.1 of 1991 states the intention to propagate Islamic law through the implementation of a Marriage Law, Inheritance Law and Wakaf Law. The 1945 Constitution establishes five principles as the foundation of the State called the *Pancasila*. The first of these principles is the belief in one God. The Muslim majority follow Shafi jurisprudence and are subject to Islamic law in personal status matters. Hindus, Christians and Buddhists are recognised religious minorities.

Foreign Orders

Foreign orders are taken into consideration by the Indonesian courts with regard to custody disputes.

Court Structure

Four different court systems can be distinguished. First, there are courts of general civil and criminal jurisdiction. District Courts (*Pengadilan Negeri*) are the courts of first instance. Appeals from these courts come under the jurisdiction of the High Courts (*Pengadilan Tinggi*). Appeals from the High Courts come under the jurisdiction of the Supreme Court (*Mahkamah Agung*). Secondly, there are Religious Courts (*Pengadilan Agama*), under the Department of Religious Affairs. These courts apply Islamic law and have jurisdiction over disputes between Muslims in matters of marriage, divorce, custody and inheritance. The Religious Court is the court of first instance and the High Religious Court acts as a court of appeal. Thirdly

there is a system of Administrative Courts and fourthly a Military Court system.

A Commercial Court (*Pengadilan Niaga*) was established in 1998. Appeals from the Commercial Court proceed direct to the Supreme Court. In addition, a Constitutional Court (*Mahkamah Konstitusi*) was created in 2001.

Filiation

According to Articles 42-43 of the Marriage Law No.1 of 1974 a child born out of wedlock has a legal relationship with the mother only. However, a legitimate relationship between the child and the father may be established if the parents are subsequently married.

Custody

In Indonesian law the father is considered to be the head of the family, however both parents have the responsibility of raising the children. In the event of a divorce where both parents are Indonesian, any children under the age of twelve will be brought up in the custody of the mother while the father has the responsibility to maintain the children. Once a child has reached the age of twelve he or she is free to choose to remain with the mother or to go to the father in accordance with the Shafi School of Islamic law. Traditionally mothers have had a stronger role as carer due to the influence of Indonesia's historical matrilineal social structure. However, if the mother is not Indonesian it is hard for her to be awarded custody because of religious and cultural considerations. If the mother has converted to Islam it is still hard for her to be awarded custody. In *Totok V. Agusta* 1999 the wife, who had left Islam and returned to Christianity, was not given custody of her children, despite evidence of the husband's adultery and failure to maintain the family.¹

Article 49 of the Marriage Law states that the court can revoke custody if the custodian neglects the child.

Guardianship

If the father is unable to maintain his children, the responsibility then passes to the mother. Article 45 of the Marriage Act (1974) states that both parents are required to maintain and educate their children until the age of eighteen. In the event of divorce, including divorce between an Indonesian and non-Indonesian couple, the divorce itself does not undermine the responsibility of the father to provide for the maintenance of the child until the child marries, becomes self-sufficient, or reaches the age of 18. Article 47 of the Marriage Act No.1 of 1974 states that a child under the age of 18 years or one who has never been married shall be under the authority of his parents for as long as their authority as his guardians has not been revoked by a court. A parent or guardian represents the child in all legal actions both in and outside the courts.

Access

Access to the child for the non-custodial parent is not automatic and an order should be obtained before a divorce is finalised. In practise contact is hard to enforce.

Non-Muslim Family Law

The Marriage Ordinance for Indonesian Christians No. 74 of 1933 is applied to indigenous Christians. For Indonesians of Chinese origin the regulations of the Civil Code are applicable and for other Indonesians customary law is applicable. For Europeans and Indonesians of European descent the regulations of the Civil Code are applicable.

Nationality

Indonesian nationality is governed by Act no. 62 of 1958. Article 1b of this Act states that any person, who at the time of birth has a legally established relationship with the father who is an Indonesian national becomes an Indonesian national.

Leaving the Jurisdiction

According to the Immigration Act No.9 of 1992 there is no restriction on travel to or from Indonesia, unless a person is prohibited from free travel due to a criminal record, being an enemy of the state, or for reasons of public order or religious ethics.

International Law

Indonesia signed the UN Convention on the Rights of the Child in 1990. The Government of Indonesia declares that it will apply articles 1, 14, 16, 19, 21, 22 and 29 in conformity with its Constitution.

Parental Child Abduction

Parental child abduction is not a specific crime in Indonesia.

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ⁱ Badlishah, N., *Islamic Family Law and Justice for Muslim Women, Sisters in Islam*, Malaysia, 2003, P.57.