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Legal Aspects of Family Planning in Indonesia

The Committee on Legal Aspects
of the Indonesian Planned Parenthood Association



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FOREWORD

The Law and Population Programme takes pleasure presenting in this issue "The Legal Aspects of Family Planning in Indonesia," prepared by the Legal Committee of the Indonesian Planned Parenthood Association (IPPA).

In a circular entitled, "The Legal Approach to Family Planning," dated August 1970, the International Planned Parenthood Federation (IPPF) invited its members and affiliates throughout the world to consider the useful role which legal reforms can play in promoting family planning. It recommended, as the first step, a systematic compilation of laws bearing directly or indirectly on population and family planning.

Responding to this circular, the IPPA established a Legal Committee consisting of lawyers from the University of Indonesia Law Faculty, the Department of Justice and several public and private organizations, charged with the task of implementing the legal approach. Under the chairmanship of Mrs. Nani Soewondo, concurrently Vice Chairman of IPPA, the Committee developed and completed the present study, with the editorial assistance of Mr. Edmund Kellogg, Deputy Director of this Programme. Mrs. O. Djoewari, Secretary General of the IPPA, has kindly given permission to this Programme to publish the study as No. 4 of its Law and Population Monograph Series.

It is gratifying to note that the IPPA's contribution to the legal approach to family planning will not be confined to the present monograph. As the first recipient of a grant by the U.N. Fund for Population Activities to establish a full-fledged Law and Population Project (as part of a world-wide network) the IPPA is now embarking on a series of activities which will culminate in a proposal for systematic legal reforms in the field of population and family planning, based on the universally recognized principle that family planning is a basic human right. We wish the IPPA well in this noble endeavor.

Luke T. Lee

Director

COMMITTEE ON LEGAL ASPECTS OF FAMILY PLANNING

SET UP BY

THE INDONESIAN PLANNED PARENTHOOD ASSOCIATION (I.P.P.A.)

1. Mrs. Nani Soewondo, S.H. - Lawyer; First Vice Chairman of IPPA.
2. Mrs. Titi Sumbung, S.H. - Lawyer; Co-Chairman "Konggres Wanita Indonesia" (Federation of Women's Organizations in Indonesia).
3. Mrs. S. Hanifa, S.H. - Lawyer; Lecturer Law Faculty, University of Indonesia.
4. Mrs. Kosasih, S.H. - Lawyer; Co-Chairman Indonesian University Women Association.
5. Mr. Hardjito Notopuro, S.H. - Lawyer; Head of Research Division, Institute for development of National Law, Ministry of Justice.
6. Mrs. M. Hutasoit - Chairman of IPPA Team of Information Experts; Co-Chairman of "Konggres Wanita Indonesia."
7. Dra. Mrs. I. Soebagjo - Pharmacist; Pharmaceutical Factory BETA.
8. Mr. Mohamad Nuh Lubis, S.E. - Economist; Division Head for Statistics/Family Planning, National Institute for Occupational Health & Hygiene, Ministry of Manpower.
9. Dra. Mrs. Rosmalini Bahri Nurdin - Economist; Research & Evaluation Bureau, IPPA.
10. Dr. Muljo Hastrodipuro - M.D.; Ex-Deputy Secretary General of IPPA (Deceased February 1971).

Djakarta, September 1970 - September 1971.

LEGAL ASPECTS OF FAMILY PLANNING IN INDONESIA

TABLE OF CONTENTS

I.	INTRODUCTION.	1
A.	The Population Problem in Indonesia	1
B.	Government Policy on Family Planning	2
C.	Family Planning as a Basic Human Right	4
II.	LEGAL PROVISIONS RELATED TO FAMILY PLANNING	7
A.	Criminal Law	7
1.	Contraception	7
2.	Abortion	9
B.	Family Law	12
1.	Current Situation - Statutory and Customary Provisions	12
2.	Adat (Customary) Law and Public Outlook on Marriage	13
3.	The Islamic View on Marriage and Parenthood	14
4.	The Christian (Protestant) View	15
5.	The Christian (Roman Catholic) View	16
6.	Subjects for Discussion	18
7.	Proposals for Changing Public Opinion	22
C.	Tax Provisions	23
D.	Labor Law Provisions	24
1.	Provisions affecting the allocation & employment of labor	24
2.	Provisions relating to labor contracts and relations	25
3.	Provisions relating to protection of women and children	25
4.	Provisions concerning work safety	25
5.	Provisions relating to social benefits	26

	6. Other labor matters affecting family planning	26
	7. Provisions specially applicable to government employees	26
	8. Conclusions	28
E.	Pharmaceutical Provisions	28
III.	POPULATION AND FAMILY LIFE EDUCATION	30
IV.	CONCLUSIONS	32
V.	RECOMMENDATIONS	34

APPENDICES

- I. Excerpts From Draft Bill on "Abortion Based on Medical Indications"
- II. Excerpts From Draft Bill on "Basic Rules on Matrimony"
- III. Excerpts From The Draft Bill on "Basic Law on Social Welfare"

LEGAL ASPECTS OF FAMILY PLANNING

I. INTRODUCTION

A. The Population Problem in Indonesia

Separating the Pacific and the Indian Oceans, the Republic of Indonesia stretches across the equator between Asia and Australia. Five large land masses dominate the more than 3,000 islands making up the archipelago: Sumatra, Java, Kalimantan (Borneo), Sulawesi (Celebes), and West Irian (Western New Guinea).

Indonesia proclaimed its independence on August 17, 1945.

The religious breakdown of Indonesia's population is estimated as follows: Moslems - 85 percent; Protestants - 7 percent; Roman Catholics - 3 percent; Hindus and Buddhists - 2 percent; Others - 3 percent.

Efforts to reduce illiteracy in Indonesia are achieving results; according to the Census of 1930 only 6.4 percent of the population were literate, while according to the 1961 Census 31 percent were able to read and write. In 1970 it was estimated that about 50 percent of the population was literate.

Indonesia's population in 1970 was estimated at 118,000,000. The first national Census taken in 1961 recorded 97,018,829 inhabitants including about 700,000 residents in West Irian. Marked regional variations in population density occur. The central islands of Java, Madura and Bali, with less than 7 percent of the land area, contain two-thirds of the whole population. The outer islands, on the other hand, are sparsely populated. Thus, Kalimantan and West Irian, while comprising together more than half of the land area of the archipelago, contain only 4 and 1 percent of its population, respectively. During the nineteenth century Indonesia, Java in particular, experienced one of the most rapid population growth rates in the world. An estimate by Raffles in 1815 put Java's population at 4.6 million; a little more than one century later it was already in excess of 35 million. From 1930 on it continued to grow, reaching 41.7 million in 1961.

The 1961 Census recorded 25,978,966 women of reproductive age (between 15 and 45). Present fertility rates reflect the low (mean) ages at marriage, the high proportion of married women and the large cohort of individuals in the 5 - 9 age group at the time of the 1961 Census.

Reports on births and deaths are far too incomplete throughout Indonesia to compile accurate fertility and mortality rates for the country as a whole. Evidence from sample surveys and other estimates places the crude birth rate between 43 and 45 per thousand, with Java and Madura possibly showing a rate a few points lower than the outer islands.

Crude death rates, estimated to have been about 22 per thousand by 1960, are continuing a downward trend and are now believed to be 17 - 19 per thousand. While significant changes in fertility are unlikely in the next decade, it is highly probable that the mortality decline will continue, with a consequent rise in the rate of natural increase.

Demographers have made estimates of the rate of population growth ranging from 2.7 to 3 percent, with the frequently cited figure of 2.8 percent being used by planners in several ministries and planning groups.

Projections as to the future size of the population depend upon which of the estimates of the current birth rate is chosen, and upon subjective impressions also as to the rate of decline of the death rate. Various projections have been made based upon different assumptions regarding the speed at which the population figures will change.* The highest projection, which assumes a continued high birth rate and a slow mortality decline, would lead to a population of 158 million in 1980 representing 167 percent of the population in 1960. Lower projections anticipate a population of 150 million by 1980. Within the range of these alternative projections one can reasonably predict that Indonesia's population will double within 25 years. The result of the census held in September 1971 is not yet known.

Economic development from 1950 to 1970 has not kept pace with the rate of population growth. After a slight increase in the 1950's per capita income declined from 1950 to 1968. A frequently quoted figure places the current average per capita income in Indonesia at approximately US \$100.00 per annum. It is apparent that the increase in GNP is not paralleled by an increase in average per capita annual income because of a rapidly increasing population.

B. Government Policy on Family Planning

In 1953, a small group of concerned private citizens began to promote family planning in Indonesia, finally culminating in the organization of the Indonesian Planned Parenthood Association (IPPA) in 1957. The early efforts of this association were limited to providing information about the aims and purposes of family planning, inviting the opinions of religious leaders on the subject and offering services in a few clinics. The political climate at that time was hostile to the concept of family planning, with the result that the program developed as one that offered clinical services with a minimum of publicity. During these early years of the program the Pathfinder Fund gave assistance and helpful guidance. By 1963 seminars on family planning were conducted in 7 localities in Java and Bali; the Indonesian Planned Parenthood Association (IPPA) established 8 branches in Java, Sumatra and Bali, with the Central Office in Djakarta. Training opportunities in Indonesia and funds for attendance at international conferences were made available to physicians by the Population Council and by the International Planned Parenthood Federation (IPPF).

*The population figures originate from the Institute of Demography, University of Indonesia.

Following the change of government leadership after the abortive coup in September 1965, the family planning movement began to emerge from an atmosphere under which the subject had been almost taboo. In February 1967 the Indonesian Family Planning Association held its first National Congress on Family Planning with representatives from its own branches, Government officials and social leaders. From the speeches of the Minister of Health and the Minister for Manpower, the Governor of the Special Territory of Djakarta and the Secretary General of the New Order supported the concept of family planning. Most encouraging was the assurance of the Minister of State for the People's Welfare, that family planning would be included in the Government Program.

Subsequently the Indonesian Planned Parenthood Association became a member of the IPPF (Associate Member in 1967, full Member in 1969) and expanded its activities considerably.

Its program, which in 1967 had been supported almost entirely by funds generated by the sale of donated contraceptives and by contraceptive services, began to receive financial and technical aid from the International Planned Parenthood Federation and from the Ford Foundation. In May 1970 the Indonesian Planned Parenthood Association held its second National Congress in Jogjakarta, affirming its program, mainly in the fields of information, education and training. In September 1971, the IPPA had 145 branches and 8 Provincial Chapters.

During the last three years the concept of family planning has been increasingly accepted among social and governmental leaders, while the program itself has been spreading out over the whole area, particularly since the Address of State of President Suharto on August 16, 1967.

The long-range target of the National Family Planning program will be to bring about a reduction of the birth rate and a consequent lowering of the population growth rate in Indonesia. The short-term target over the next few years will be to build up the supporting infrastructure through the strengthening of clinic services, the training of personnel, and a large-scale information and education program.

Family Planning is an integral part of REPELITA, the Government's Five Year Development Plan. Referring to family planning the Plan addresses itself to two principal objectives:

1. To improve the health and welfare of mothers, children, the family and the nation.
2. To raise the level of the people's standard of living by decreasing the birth rate so that the population increase will not exceed the ability to increase the gross national product.

A fundamental operational decision, initiated by the voluntary association and adopted by the National Agency, was to utilize existing health facilities and health personnel in the development of the family planning service program. The four contraceptives employed in the national program are the IUD, oral contraceptives, condoms, and foam tablets.

Whereas a cafeteria approach is the declared policy, in practice, most physicians and clinic workers directly or indirectly advocate the use of the IUD or the pill.

Whereas the National Family Planning Program concentrates its efforts in Java, Madura and Bali, the IPPA activities also include the outer islands.

The family planning movement in Indonesia is currently passing through a transitional stage in which the program, previously almost entirely conducted by a group of volunteers working under severe governmental restrictions, has now been accepted as a program that is supported by the Government. The organizational pattern of the National Program has undergone some revision. In October 1968, the Minister of State for People's Welfare established the National Family Planning Institute as a semi-governmental body. It was superseded in June 1970 by the National Coordinating Body for Family Planning, a governmental body entrusted with the responsibility of carrying out the national program under the direct supervision of the President. Its major task is to coordinate, integrate and synchronize all activities connected with the program's operation.

C. Family Planning as a Basic Human Right

Family planning was originally regarded from the medical, biological, demographic and economic aspects, and later from the sociological, psychological, political, religious and other aspects. Only lately has there been a recognition that the legal aspect of Family Planning is of equal importance.

Law regulates all human relations in the community, and provides enforceable rules for the behavior of the people. Thus law can exercise its influence on people's behavior and on the conditions of the society. On the other hand, law reflects the social norms accepted by the community, and is therefore not something that is static, but is always changing and follows the conditions and demands of the time.

Two significant events calling attention to the need for a legal approach in the field of family planning were:

1. The "Declaration on Population" signed by 30 Heads of State* which states that family planning is a basic human right. At the commemoration of Human Rights Day on December 10, 1966, the United Nations issued the Declaration which includes, among others, the following statements:
 - a. that the population problem must be recognised as a principal element in long-range national planning if governments are to achieve their economic goals and fulfill the aspirations of their people;

*This Declaration was signed in 1966 by 12 Heads of State and in 1967 by 18 other Heads of State, including Indonesia.

- b. that the great majority of parents desire to have the knowledge and means to plan their families; and that the opportunity to decide the number and spacing of children is a basic human right;
 - c. that lasting and meaningful peace will depend, to a considerable measure, upon how the challenge of population growth is met;
 - d. that the objective of family planning is the enrichment of human life, not its restriction;
 - e. that family planning, by assuring greater opportunity to each person, frees man to attain his individual dignity and reach his full potential.
2. The resolution issued by the United Nations International Conference on Human Rights, held in Teheran in 1968 and attended by a representative of the Indonesian Government, once again assured that "couples have a basic human right to decide freely and responsibly the number and spacing of their children and a right to adequate education and information in this respect".

Secretary General of the United Nations, U Thant, once more stressed this as follows.

"Any choice and decision with regard to the size of the family must irrevocably rest with the family itself and cannot be made by anyone else. But this right of parents to free choice will remain illusory unless they are aware of the alternatives open to them. Hence the right of every family to information and to the availability of services in this field is increasingly considered a basic human right and an indispensable ingredient of human dignity."

Furthermore, the U.N. Commission on the Status of Women, established in 1946, has been working for equal rights for men and women in the political, civil, social, economic and education fields and was, in 1965, one of the first U.N. Bodies to endorse family planning. The Commission made a study of the problem of "Family Planning and its relation to the Status of Women", from the findings of which the following conclusions were drawn:

- a. a relationship exists between family size and maternal and child health and the serious problem of abortion;
- b. the lack of family planning has an effect on the status of women and on their capacity to participate in the community life and to contribute to national development;

- c. the rapid population growth has an effect on efforts to eradicate illiteracy and to create sufficient education and employment opportunities for young people to meet rising expectations.

In 1968, International Human Rights Year, the Commission on the Status of Women renewed efforts to advance human rights for women, including family planning, as part of the struggle to advance all human rights.

Acceptance of family planning as a human right in fact entails a legal responsibility upon the governments concerned to see to it that all laws and policies of the government in conflict with this right be amended, or abolished and replaced by new laws and policies that are in line with it. In practice, however, official recognition that family planning is a basic human right has seldom been followed by reforms to bring the existing laws in accordance with that recognition.

Within Indonesia there are still many legal provisions which, for the greater part, date back to the colonial period, and which presently hamper the implementation of the family planning program. It was this state of affairs that gave rise to the idea that more attention must be paid to the legal aspects of family planning. The first step is to obtain a complete picture of all the laws and regulations relevant to the question of family planning. These are spread over various legal fields such as the criminal law, the family law, the tax code, the labor law and so on. It is therefore necessary to compile all the types of legal provision, including both written and unwritten customary law, which may affect family planning, and, on the basis of this study and research, to develop concrete proposals as to which laws and regulations need to be amended and adjusted to bring them into compliance with the Government's policy regarding family planning.

It was in response to the request of the International Planned Parenthood Federation (IPPF) that it consider these legal aspects, that the Indonesian Planned Parenthood Association (IPPA) set up a Committee on the Legal Aspects of Family Planning in September 1970. This Committee has studied the laws and regulations related to family planning in the criminal code, family law, the tax code, labor law, pharmaceutical statutes relevant to contraceptives, and family life education. On the basis of this study, it has drawn up concrete proposals for the necessary reforms.

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II. LEGAL PROVISIONS RELATED TO FAMILY PLANNING

A. Criminal Law

1. Contraception

Article 283 (Chapter XIV of the Penal Code: Crimes against morals).

- a. Prohibits the dissemination of information on contraception as well as the permanent or temporary display and distribution of writings, photographs or articles which conflict with morality, or of instruments for contraception or abortion to a person known to be under 17 or who can properly be assumed not to have reached that age, provided that the contents of such writing, photograph, article or instrument are known to the offender. This statute calls for imprisonment for a maximum of nine months or a fine of up to six hundred rupiahs.
- b. Prohibits the reading aloud of the contents of a writing that is known to be in conflict with morality, in the presence of a person under age as provided in the above paragraph. A sentence similar to (a) above is called for.
- c. Prohibits the dissemination of information as well as the permanent or temporary display and distribution of a writing, photograph or article that violates morality, or an instrument for contraception or abortion, to a person under age as described in paragraph (a) above; and prohibits the reading aloud of a writing that violates morality in the presence of such a person under conditions where it could reasonably be assumed that the writing, photograph or article conflicts with morality or causes abortion. The statute calls for a sentence of imprisonment for a maximum of four months or detention for a maximum of three months or a fine up to six hundred rupiahs.

Article 283 bis. Provides that an offender, who, in the exercise of his profession, has been guilty of one of the crimes mentioned in Articles 282 and 283, and who commits a similar crime within two years after his first sentence, may have his right to exercise his profession revoked.

Article 534 (Chapter VI of the Penal Code: Violation of morals)
Prohibits the open display of a means of contraception; or the open and unsolicited distribution of such a means; or the oral or written assertion, without solicitation, that means or assistance for contraception can be provided. The statute calls for imprisonment for a maximum of two months or a fine of up to two hundred rupiahs.

Since the above articles prohibit dissemination of information on means for contraception, they undoubtedly hamper the implementation of the national program of family planning. Furthermore, Article 283 complicates the program of Family Life Education or Population Education, which, according to the plan, has been scheduled for children both in and outside classes.

The attention of the Minister of Justice and of the Attorney General has been drawn to Article 534 of the Penal Code. In 1968 the Attorney General orally affirmed that officers of services and organizations working with the Family Planning Program will not be prosecuted on the basis of aforementioned Article. Nevertheless it is considered urgent that the Government repeal Articles 283 and 534 as these provisions are clearly no longer in accord with the requirements of our time, nor with the Government policy in favor of family planning.

2. Abortion

Article 299 (Chapter XIV of the Penal Code: Crimes against morals)

- a. Prohibits the intentional medical treatment of women, or the procurement of such treatment, for the purpose, express or implied, of causing an abortion. The statute calls for imprisonment for a maximum of four years, or a fine of up to three thousand rupiahs.
- b. If the offender has acted for profit, or has committed this crime in the exercise of his regular profession or habitual activities, or is a physician, midwife or pharmacist, an additional amount of one third of the above sentence may be imposed.
- c. If the offender has committed the crime in the execution of his profession, he may have his right to the exercise of his profession revoked.

Article 535 (Chapter VI of the Penal Code: Violation of morals)

Prohibits the open display of a means for causing an abortion, or the open or unsolicited distribution of such a means, or the assertion that such means is available. The article calls for imprisonment for a maximum of three months or a fine of up to three hundred rupiahs.

Other articles related to abortion are found in Chapter XIX of the Penal Code (Crimes against human life). These include:

Article 346: A woman who purposely causes the abortion or death of her unborn child, or who procures someone else to do so, shall be imprisoned for up to four years.

Article 347:

- a. Prohibits the intentional procurement of the abortion or death of a woman's unborn child without her prior consent. The article calls for imprisonment for a maximum of twelve years.
- b. Should the above act cause the death of the woman, the offender shall be sentenced to imprisonment for a maximum of fifteen years.

Article 348:

- a. Prohibits the intentional procurement of the abortion or death of a woman's unborn child with her prior consent. The article calls for imprisonment for a maximum of five years and six months.
- b. Should the above act cause the death of the woman, the offender shall be sentenced to imprisonment for a maximum of seven years.

Article 349: If a physician, midwife or pharmacist assists in the crime described in Article 346, or is guilty of carrying out, or assisting in, the crime referred to in Articles 347 and 348, the sentence called for therein may be increased by an additional one third, while his or her right to exercise the profession in the course of which he or she has committed the crime may be revoked.

Article 350: A person sentenced for intentionally causing death or for one of the crimes referred to in Articles 344, 347 and 348, may have his right revoked as mentioned in Article 35, sections 1 through 5 of the Penal Code, (Which refer to the revocation of certain rights on the basis of a court sentence.)

Explanatory Notes on Abortion:

a) Definitions

Abortion: Abortion is the expulsion of a human fetus before it is viable.

Spontaneous abortion: Abortion occurring naturally without outside influence.

Induced abortion: (or abortus provocatus) Abortion brought about by intention. This can be subdivided into:

- i. Therapeutic abortion, abortion performed on medical grounds (e.g. because the pregnancy is endangering the life of the mother) or on other legally acceptable grounds.
- ii. Criminal abortion, abortion performed on grounds not accepted by law.

This paper is concerned with induced abortion since spontaneous abortion does not constitute a legal problem.

Whether or not a certain induced abortion is a criminal abortion, and therefore subject to prosecution will depend upon the regulations governing abortion in the area concerned.

* * * * *

b) Acceptable grounds or indications for abortion, found in the laws of other countries

- i. medical grounds, such as:
 - to save the woman's life;
 - to preserve the health of the woman;
 - to avert serious and permanent disturbances of the woman's health;
 - to prevent grave danger to the life or health of the woman;
 - to avert physical or mental disturbances to the woman or to one of the children in the family;
 - to prevent the birth of physically or mentally handicapped children.
- ii. socio-economic grounds, such as:
 - the existence of at least 3 children;
 - the existence of at least 5 children;
 - the sole responsibility of the mother for the maintenance of the family or children.
- iii humanitarian grounds, such as pregnancy caused by: rape (forced sexual intercourse or intercourse under threat of force); incest; or sexual intercourse with a girl under age.

- iv. eugenic reasons, such as serious diseases inheritable from either the father or mother.

* * * * *

C) Conclusions as to Abortion

Awareness of the problem of abortion in Indonesia was demonstrated on the occasion of a "Symposium on Abortion" held in Djakarta in December 1964 and organized by the Djakarta Branch of the IDI (The Indonesian Association of Physicians) and the Organization of Obstetricians and Gynecologists.

The Penal Code does not mention any reason for permitting induced abortion, even on medical grounds. Islamic law which normally prohibits abortion nevertheless allows it in cases of emergency to avert endangering the life of the woman. Although a physician performing an abortion on medical grounds to protect the life or to preserve the health of the woman will not be prosecuted; it is nevertheless desirable, as a practical matter, that statutory regulations be provided which will clearly define those cases where abortion is permissible.

It is concluded that the articles of the Indonesian Penal Code relating to abortion are no longer in accord with present-day requirements, in view of:

- i. the lack of any guarantee to the physician performing an abortion on medical grounds and to the woman in question that they will not be prosecuted.
- ii. the non-existence of any clearly defined medical and non-medical grounds for the legal performance of an abortion, in accordance with modern needs and the interests of women.
- iii. the incompleteness of the Department of Health's draft Bill on "Abortion based on medical indications" (Appendix I) which does not provide a breakdown of the medical grounds and does not cover non-medical grounds. (The draft bill has not yet been submitted to Parliament.)
- iv. the inadequacy of present family planning activities which should provide means for reducing the number of abortions.

Therefore the I.P.P.A. Committee on Legal Aspects of Family Planning would like to suggest amendments to the articles proposed by the Department of Health which would also contain the provision that abortus provocatus should be permitted on medical and other grounds.

B. Family Law

1. Current Situation - Statutory and Customary Provisions

The legal system currently in force for Family Law was inherited from the Dutch Colonial Administration under which citizens and laws are placed in different categories*. Different laws apply to each category of citizen as follows:

- a. Indigenous Indonesians The Adat (Customary) Law applies, except as in (b) below.
- b. Indigenous Indonesian Christians residing in Java, Minahasa and Ambon. The Marriage Ordinance for Indonesian Christians (HOCl) - Staatsblad 1933 No. 74 applies.
- c. Arabs and other foreigners of Asian origin, except Chinese The Customary laws of their own respective religions apply.
- d. Europeans and Chinese The Burgerlijk Wetboek (Civil Code) applies.

Thus persons of foreign origin, many of whom have become Indonesian citizens, are still subject to different and foreign laws. There is no uniform law applicable to all citizens of Indonesia, and only certain limited categories of inhabitants have a written marriage and family law applicable to them. After independence, other fields of law went through radical changes, designed to create a national law system based on the Pantjasila and the 1945 Constitution. This did not occur in Family Law.

However, the Indonesian Parliament is at present discussing two Bills on marriage, so far not agreed upon. One is on Basic Rules on Matrimony (App.II) and the other is on Marriage Regulations for Indonesian Moslems. Both Marriage Bills would regulate Family Law.

Article 1, Chapter I of the draft bill on the Basic Rules on Matrimony states that:

"Matrimony is a physical and spiritual union between a man and a woman with the aim of establishing a happy and enduring family."

The explanatory note states that this law on the Basic Rules on Matrimony is intended to establish uniformity, with certain limitations. Apart from this, however, the Marriage Bill gives full effect to the different religious laws in force for the respective religious groups.

*See Articles 163 and 131 I.S.

It is obvious that in Indonesia marriage is not regarded solely as a physical affair, but should also be based on the spiritual element. Physical relations alone are not sufficient, as explained in Article 1 of the Draft Clarification.

"Being a State based on Pantjasila, whereby the first sila (principle) is that of Belief in the One Omnipotent God, marriage is considered as having a very close relation with religion and consequently it not only has a physical meaning but also has an important spiritual role".

2. Adat (Customary) Law and Public Outlook on Marriage

The Customary Law on marriage, based on public attitudes, can briefly be summarized as follows:

- a. Marriage is based on natural law, and unites a man and a woman for life for the purposes of continuing the race.
- b. Marriage is meant to create a family and bring forth offspring/descendants. Production of offspring is at all times considered the greatest happiness in life. On the other hand, discontinuation of the line of descent is usually considered an uncommon situation and very disappointing. Some people take it as total disaster.
- c. In patrilineal "adat" communities it is obligatory to have male descendants. This means that although there are many children, the situation is still considered unsatisfactory if there is no boy among them. Although additional children may be born, if they continue to be girls, the mother will go on having children until a baby boy is born. (Batak, Bali, Lampung).
- d. Childless couples will usually adopt a child.
- e. In several communities childless couples are looked upon as being unhappy people; some consider such a state of affairs ill luck. If no birth occurs in a Balinese family the fault is taken to lie with the wife and belief has it that she will be condemned in the after life.
- f. There never has been the opinion that a large number of children can cause poverty, a decline in income, or misery for the family, i.e. ill health for the mother. Moreover every child is regarded as bringing its own luck. There is no understanding that, by limiting the size of the family, the mother will enjoy better health than the mother of many children.

- g. The outlook on marriage of adat societies is the hope of many children in a family without limitations. A large number of children will indicate a prosperous family (in its widest meaning and not only by its material aspects).
- h. The principal aim of every marriage is a big, healthy, prosperous, contented and proud family.
- i. All adat (customary) ceremonies, both before and after the marriage act, are meant and directed toward the above objectives. All symbols, means, decorations are symbols of fertility, welfare, contentment and of many children.
- j. Since marriage is believed to contain two elements, one physical and one spiritual, the relationship between man and wife calls not only for rights and obligations but also for a spiritual relationship - an unseen and mysterious relation of great spiritual value. This is esteemed and honored in Indonesian society and is manifested in the customary ceremonies which cannot easily be neglected no matter what religion is adhered to: Islam, Christianity or Hindu-Buddhist. It should furthermore be remembered that traditional ceremonies depict the cultural values of the Indonesian people, and the cultural wealth which characterizes a nation.

3. The Islamic View on Marriage and Parenthood

Seen from the aspect of the Islamic religion, the meaning and objectives of marriage are as follows:

- a. The religious goal of marriage is to obey God's command to beget descendents who will be legally accepted by society, and to establish a peaceful and orderly family.
- b. No religion whatever would permit a man and woman to live together out of wedlock as husband and wife.
- c. Marriage is a holy bond between man and woman designed to perpetuate the human race.
- d. Marriage is a command of Islam which prohibits a life of celibacy, as the Prophet Muhammed once asserted:
 "Take unto you a woman with many children and who has a wealth of compassion. And verily I am one of many believers among you at the Day of Reckoning".

On another occasion the Prophet said that:

"Whoever marries has perfected half of his religion."

- e. There is no fear of falling into poverty because of marriage, since the parties, by getting married while they are poor, will be blessed by Allah, who will provide for them - Allah, the Beneficent, the Knower of all things .
- f. Through his wife (wives) marriage brings children and grandchildren to a man, and brings him good luck.
- g. The birth of child into a family is God's will.
- h. The birth of a child is determined by God according to His will and His plan.

4. The Christian (Protestant) View

- a. Matrimony has been a commandment of God's ever since He created Man, male and female, husband and wife. Therefore, God has willed the institution of marriage to last forever.
- b. The form of Christian marriage is monogamous, that is that a husband shall have one wife at a time. The wife, on her part, also shall have one husband at a time. Polygamy and poliandry shall not be permitted.
- c. Marriage is for life, so that, in principle, divorce is not licit unless one of the partners dies.
- d. Marriage shall be based on mutual feelings of love and fidelity. Marriage based on love or passion alone has a weak foundation. It is love in the Biblical sense that contains the aspect of fidelity and may therefore be illustrated by the term "faithful love".
- e. Marriage is valid, according to the Protestant view, when it is legalized by Law, including Adat (customary law).
- f. The nuptial blessings are bestowed during the Church services after the marriage has been legalized by law. This means that the marriage needs no legal confirmation during church services. During the Church services which take place at the request of the pertinent party, the bridal couple is presented to God and His congregation and receives God's blessings for its new status as husband and wife.
- g. Marriage shall be permitted when both parties concerned have reached the minimum marriage age as determined by statute. This serves to prevent child marriage.

- h. Children conceived in marriage are accepted as blessings from God. This shall not be construed as meaning that if no children are conceived the marriage must be annulled. The size of the family is mainly the responsibility of the husband and wife in question while consideration shall be given to: rendering social services; a healthy and exemplary family life, and responsibility toward the children in the matters of education, health, morals, religion, character building and their future.

5. The Christian (Roman Catholic) View

- a. Matrimony^o is the commandment of God:

"So God created Man, male and female. And God blessed them and God said unto them, Be fruitful, and multiply, and replenish the earth, and subdue it." (Genesis I, 27-28)

- b. The object of matrimony: that husband and wife love each other, assist each other, and complement each other; that husband and wife collaborate with God in the generation and education of new lives.

- c. Such a noble task needs minute preparation: In the Encyclical letter "Casti Canubii" (On Marriage) Pope Pius XI writes:

"Of the first importance in the preparation for matrimony is the careful choice of a partner. On this, indeed, depends for the most part the happiness or unhappiness of a marriage, because each partner may be either a great help or else a great danger and hindrance to the other in leading a Christian married life."

- d. Husband and wife relations: Marriage is founded on love and can only be sustained by love. At the time of marriage this love, which is an unconditional prerequisite, is usually not yet perfect and must still be perfected.
- e. Upbringing of the child: To its parents a child is a great responsibility but it can also be a great blessing. Much will depend on the parents themselves whether a child later turns out to be a blessing and brings happiness to its parents, meaning that much depends on the way in which the child is educated.
- f. Family welfare: Family welfare will, as a matter of course, help promote the welfare of the State and the Church. The Church and the State, on the other hand, should help promote family welfare; the Church by its spiritual guidance and the State by its material assistance. However, in this matter too, it is husband and wife who are responsible in the first place for its maintenance.

- g. Regulation of birth: That I exist or that I live in this world today, not only depends on God's will but also on the intent of my parents. Parents help determine whether to have or not to have children. The physical as well as the mental characteristics of the child are also much affected by the physical and mental characteristics of its parents. The development of the child depends greatly on the type of education provided by its parents.
- h. The following should be taken into consideration in making regulation of birth an emphatically good aim:
- i. the interests and abilities of the parents themselves;
 - ii. the interests of the child(ren);
 - iii. the interests of society;
 - iv. the right to regulate birth lies with the parents themselves.
- i. Methods of regulating birth: Although the aim is truly a good one, this idea should not be interpreted to mean that all methods are licit. The Catholic teachings on this matter were again emphasized by Pope Paulus VI in his Encyclical Letter "Humanae Vitae" (On the Regulation of Birth), July 25, 1968, the synopsis of which is approximately as follows:

The following methods to regulate birth (birth control) are not licit:

- i. Interruption of the generative process (coitus interruptus);
- ii. Abortion (abortus);
- iii. Perpetual or temporary sterilization of husband or wife;
- iv. Every action which, either in anticipation of the conjugal act or in its accomplishment, or in the development of its natural consequences, proposes to render procreation impossible. (What is meant here is the use of contraceptives and medicine in order to prevent pregnancy.)

But the Church does not prohibit the employment of means or efforts that are necessary to cure diseases of the organism, even if a foreseen impediment to procreation should result therefrom, provided such impediment is not, for whatever motive, directly willed. The method considered licit to regulate birth is the recourse to the infecund periods of the wife.

- j. The policy adopted by the Congregation of Indonesian Bishops: At the working conference held on October 14-24, 1968, the Indonesian Bishops issued a practical guidance for the Catholic World in Indonesia from which we present several quotations:

"By determining a general guidance, it cannot be denied that a delicate situation actually exists in which husband and wife feel themselves hemmed in and incapable of following the directives of the Encyclical Letter Humanae Vitae. This

situation has arisen because, on the one hand, an extraordinary sacrifice is being demanded, while, on the other hand, it is not clear yet whether the principal values of marriage (covering conjugal love between husband and wife, the welfare of family life and the education of the children) will be guaranteed and safeguarded."

"In such a delicate situation husband and wife should humbly and confidently turn for advice to the priest who in the Encyclical has been invited to exercise patience and goodness like Christ Himself. In his capacity as their spiritual father and taking into consideration the socio-economic elements, in consultation with the physician and midwife in their knowledge and experience, together with the husband and wife, the priest, in full responsibility, will show the way so that husband and wife take, before God, the right decision by the voice of their own consciences."

6. Subjects for Discussion

a. Minimum age of marriage

The provision of a minimum age of marriage for men and women has a greatly limiting effect on the birth rate. The provision of a low minimum age would mean a longer reproductive period, making possible the birth of more children. Up to the present time, there is no written provision covering the minimum age of marriage for the Moslem majority of the Indonesian people. Generally, child-marriage or marriage at a very tender age (between 12 and 13) still occurs in small towns and villages. This results in a high birth rate, a high death rate at childbirth for both mothers and babies, and a high divorce rate.

For that part of the Indonesian population covered by the Civil Code, the minimum age of marriage has been set at 15 for women and 18 for men. (Article 29 of the Burgerlijk Wetboek; Article 4 (1) of the Marriage Ordinance for Indonesian Christians, (HOCl).

The same minimum ages (15 and 18) have also been suggested in Article 5 of the draft Bill on the Basic Rules on Matrimony (App.II) and in Article 3 of the Marriage Regulations for Indonesian Moslems. Deviations from this would only be possible with the dispensation of a Judge.

Since the family planning program has become a national program under direct supervision of the President and officially coordinated by the Government, there has been a tendency to increase the minimum marriage age. The truth of this can be concluded from the Recommendation of the Workshop on Laws Concerning Children and Youth, organized by the National Coordinating Body for Family and Child Welfare on the 12th - 13th of October 1970. This provides that:

"In the interest of family welfare, the Marriage Law should set the minimum age for women at 18 years and that for men at 20 years; if this change is not yet possible from a practical point of view, a beginning can be made by setting the minimum age for women at 16 and for men at 18. At least pregnancy before 18 years should be prevented."

In general, the minimum age is around 16 - 18 in other countries (Pakistan, America) but there are extreme cases of very high minimum age, for example the People's Republic of China - which has set the minimum age at 22 years for women and 26 years for men.

As Indonesia has not yet any written provisions concerning a minimum age of marriage for its Moslem Majority, the forthcoming Marriage Laws, which contain such a provision, will be a step forward despite the fact that the minimum ages stipulated therein are still low (15 for women and 18 for men.) These ages can gradually be stepped up in conformity with developments and with the acceptance of society, particularly in the villages, so as to prevent inconvenience in the community while, in the meantime, the law-enforcement apparatus will have been prepared to take the necessary steps against any violation of the provision.

b. Prohibition of marriage among close relatives

Since the family planning program is not merely aimed at reducing or limiting population growth but, of equal importance, at improving maternal and child welfare, the statutory provisions prohibiting marriage between a man and a woman of close blood relationship are also appropriate material for this compilation. Such prohibitions have the purpose of protecting the health of the unborn children.

"Close blood relationship" in general covers a marriage between a man and a woman who are related as follows:

- 1) relationship in a straight line upwards or downwards (between parents and children);
- 2) sideways (between brothers and sisters);
- 3) related by marriage (between in-laws);
- 4) relationship with the children and grandchildren of one's brothers/sisters.

Provisions prohibiting such marriages can be found in the following:

- 1) Articles 30 and 31 of the Burgerlijk Wetboek;
- 2) HOCI, Articles 5 and 6;
- 3) Articles 12, 13, and 14 of the draft Bill on Marriage Regulations for Indonesian Moslems

In practice, marriages between close relatives still occur, particularly in the regions where people still hold firmly to the adat (customary) law. The general motive for such marriages lies in the adat regulations pertaining to the ideal marriage, with the purpose of maintaining a pure family line and to keep the inheritance of property within the family.

c. Polygamy

The man with more than one wife at a time (polygamy) will have more opportunities to beget children. Therefore, provisions which, in practice, render polygamy easy, contradict the objectives of family planning.

In Indonesia where there is no national written Marriage Law yet in force for all citizens, it is the adat (customary) law of the pertinent region and the religious law which are followed. Most of the provisions in adat/religious law still permit polygamy. In isolated population groups which still adhere to animism it often enough happens that a man of high caste (aristocracy) has more than 5 wives.

With the acceptance of family planning as a national program, it is time to have a Marriage Law which is consistent with the Government policy based on monogamy. In addition to the above, polygamy is generally considered to be injurious to family welfare.

Written provisions currently in force and draft Bills regulating the number of wives in a marriage are as follows:

- i. Burgerlijk Wetboek, article 27, which requires monogamy;
- ii. HOCI, article 2, which requires monogamy;
- iii. The draft Bill on the Basic Rules on Matrimony, Article 3: In principle the system of monogamy is followed (paragraph 1). Deviation is only permitted if so allowed by the religious law (paragraph 2). (Thus the provision contained in paragraph 2 still opens the way to polygamy.)

iv. The draft Marriage Regulations for Indonesian Moslems (Part VI, Chapter I, Articles 17 to 21, inclusive, and Part III, Chapter II, Articles 27 to 29 inclusive: The number of wives permitted is a maximum of four and on specific conditions. In practice nowadays such conditions are often deviated from because of lack of control and insufficient measures against violation of Islamic Law. Moreover, the people lack the legal awareness to demand that which is rightfully theirs. A Marriage Law for Indonesian Moslems is therefore urgently called for, which will set limitations to polygamy and determine sentences to be meted out to violators.

d. Easy Divorce

Stipulations that make divorce easy will accelerate the marriage frequency and result in the birth of more children. As mentioned before, treatment as between different classes of citizens before the law is discriminatory. For Indonesians for whom the Civil Code is applicable and for indigenous Indonesian Christians there are clearly defined stipulations contained in the Burgerlijk Wetboek (Articles 199 to 249 inclusive of Chapter X) and in HOCI (Articles 51 to 67 inclusive of Chapter II.) In both cases divorce procedures and conditions are not easy as each divorce case has to be decided upon and the particular circumstances weighed in the Court. The conditions required in HOCI are somewhat easier than those in the Burgerlijk Wetboek as they include "continuous quarrels between man and wife" as one of the grounds for divorce.

Divorce practices existing among the Moslems are often interpreted as discriminating in their favor, for instance in regard to "talak" (repudiation). In this case it very often happens that a man may arbitrarily divorce his wife by way of repudiating her. A Marriage Law is therefore urgently needed which will clearly stipulate the conditions for a divorce and prevent easy and arbitrary divorces which are not conducive to the success of a national family planning program in Indonesia.

e. The status of women in the family

What is the position of the wife in making decisions concerning the family? Does the wife have a voice in making a decision or does the husband make the decision by himself without consulting his wife? The status of the wife in the family is a decisive factor in the results - successful or otherwise - of the family planning program, for it is the wife who, in the end, usually practices planned parenthood. As it

is the wife who faces the sufferings of childbirth and the daily hazards of a housewife, it is she who is primarily concerned in the realization of family planning.

The regulations describing the status of women/wives in Indonesia are (still) uncodified so that the answers to these questions will have to be looked for in the adat (customary) law or in the customs and traditions of the region involved. It can generally be said, however, that Indonesian women have a higher status and better position than women in other countries. Women/wives, particularly in the bigger cities, are always asked to participate in making family decisions or are at least asked for their views although in the last instance it is the husband, being the head of the family, who will make the decision.

As far as the Burgerlijk Wetboek is concerned, it can be concluded that the rights and freedoms of the women/wives are still limited to routine matters while in other matters the wife still has to obtain the help/permission from her husband (e.g. in the handling of the private property of the wife; in appearing before the Court in Civil cases and so forth (Articles 105, 108, 110 of the Burgerlijk Wetboek).

7. Proposals for Changing Public Opinion

Having studied the meaning and objectives of marriage, as understood from the point of view of the adat community in Indonesia, it has become clear that the primary obstacle lies in public understanding and attitudes. Thus the Government, in order to reduce the excessive rate of population growth by means of national program, must consider the following factors:

- a. Changing the way of thinking, or outlook on life, of the people about the meaning and aimed objectives of marriage;
- b. Such a change in the outlook of the people needs patience and evolutionary efforts;
- c. Systematic education is needed on the meaning of family life in accordance with the modern concept of nature and in line with the progress of technical advancement;

The Government should give to the Ministry of Education and Culture responsibility for introducing courses on family life, from the biological and other aspects, to school children;

- e. Information would be given regularly to the general public concerning the meaning and objectives of marriage, the holiness of sexual intercourse between two human beings, man and woman, and the rights and obligations that exist between man and wife;

- f. Apart from establishing family planning services through the existing clinics, it is necessary to intensify the training of personnel in order to communicate to the community the idea of family planning. Such personnel may be categorized in 3 (three) groups:
 - i. personnel to inform the general public
 - ii. personnel for schools, up to and including high school
 - iii. teaching personnel for universities and other academic institutions;
- g. Family planning should not be provided on a mandatory basis, (as carrying out an order on the ground that it has become Government policy), rather, it should be on a suggestive basis, providing proper and straightforward information. Material of a mandatory, threatening, cynical, or forceful nature should be avoided;
- h. It is necessary to terminate discussion on the Draft Bill on the Basic Rules on Matrimony and on Marriage for Indonesian Moslems, which have been debated for quite a while now in the House of Representatives. These are of utmost significance for the success of the National Program for Family Planning, as they contain provisions on conditions for marriage (minimum age, etc.) and divorce, on the rights and obligations of husband and wife, etc.

C. Tax Provisions

Nearly all countries in the world have a system of taxes based upon income which directly or indirectly influence the preferred family size through economic pressures. The same situation is found in Indonesia where those tax regulations which do affect family planning not only fail to exert their influence in favor of limiting family size, but may even run counter to some of the objectives of the program of the REPELITA (Five Year Development Plan).

The regulations on income taxes referred to are:

Article 3 (of Income Tax Ordinance of 1944)

The following shall not be considered as taxable income:

paragraph e: free nursing care and free use of medicine;

paragraph g: free food and board in boardinghouses/barracks for military personnel of the army, navy and air force;

Article 8, paragraph 3, sub paragraph b of the Income Tax Ordinance of 1944 allows the taxpayer to deduct from his income before taxation a fixed amount of exemption for each member of his family. The article, together with Article 7, para. 2 of the Directions of the Minister of Finance for its implementation (see Decision No. Ksp-40/MK/II/I/1970, "Directives on Reduction of Income Taxes, 1970") define the family as follows:

1. the taxpayer himself;
2. each legal wife;
3. every fully dependent blood relation and relation by marriage in a straight line from the taxpayer, including each adopted child, to a maximum of twelve persons (including the taxpayer and wife (wives)).

The IPPA committee on Legal Aspects of Family Planning would like to propose that the maximum number of exemptions be reduced so that deductions could only be made for one wife and for a maximum total of six persons per family.

D. Labor Law Provisions

The German sociologist Simmel was of the opinion that in a society, a man consciously bases his decision as to the number of children which he will have on his cash income and the use of money. If this is true, the laws and regulations concerning labor which can influence cash income and the use of money in a community will also influence the attitudes of that community on the question of whether or not to have children, to have many children or only a few.

Provisions relating to labor which have some connection with family planning include the following:

1. Provisions affecting the allocation and employment of labor:

- a. Article 1, P.M.P. No. 11/1959, on the transfer of labor from one area to another. Under this article the party requesting labor is obliged to issue a written statement setting forth the requirements and providing assurances concerning transportation, travel cost and accommodation for the newcomers (the labor force and their families).
- b. Article 2, P.M.P. No. 11/1959. This Article empowers the Ministry of Manpower to decide upon working terms, minimum labor conditions and the conditions for transporting the labor force and their families.

- c. Article 5, P.M.P. No. 11/1959 concerning travel cost etc. Under this Article, the cost of transfer of the labor force and their families will be borne entirely by the entrepreneur requesting such labor.

2. Provisions relating to labor contracts and relations:

- a. The Civil Code, Article 1601, p, paragraph 7, concerns the use of an allotted house or part of an allotted house, free medical treatment for the workers and their families, the services of one or more servants paid by the company, and other subsidies to cover the cost of such a household.
- b. The Civil Code, Article 1602, c, concerns the right to wages of a worker who is prevented from doing his job because of a special incident that is not his fault or because he has had to meet some obligation imposed on him by law or by the Government without financial compensation. (A special case is that of the worker's wife giving birth to a baby.)
- c. Articles 5 and 13 of the Aanvullende Plantersregeling regulating work contracts on estates. Under these Articles, it is the obligation of the entrepreneurs to provide appropriate hospital and medical treatment for workers who are ill or who have met with an accident. This obligation extends to the families of workers living on the estates, with the understanding they they can have no more than half of the medical costs paid back to them.
- d. Article 4, P.M.P. No. 9/1946 which covers the breaking of the labour contract and wages, "shake-hand" money, honoraria and other monetary compensation .

3. Provisions relating to protection of women and children:

- a. Article 2 of the Employment Law. This Article regulates and limits child labour and night labour by women. The regulations include the prohibition of the employment of children between 8 and 14.
- b. Article 13 of the Employment Law. This Article provides for a 1 1/2 months (or more) maternity leave before and after birth, depending on the terms of the physician's order.

4. Provisions concerning work safety.

This includes provisions regarding safety devices and the prevention of accidents.

5. Provisions relating to social benefits:

- a. Family allowance in case of the accidental death of a worker.
- b. Article 6 of the Schepelingen Ongevallen Regeling (Seamen's Accident Insurance) which provides a family allowance in case of the accidental death of a seaman.
- c. Articles in P.M.P. No. 5/1957 on:
 - Limitation on the number of relatives who may legally be included in the worker's family;
 - aid and allowances in case of illness, pregnancy, childbirth or death for the worker or his family;
 - free medical services in the form of consultation or examination at the clinic for pregnant female workers or fo. pregnant wives of workers;
 - free examination at childbirth for female workers and for workers wives and their babies at the clinic;
 - maternity allowance for female workers at the time of delivery.

6. Other labor matters affecting family planning:

- a. Workers' welfare activities which are the responsibility of the local administrator.
- b. Welfare activities both within and without a private enterprise such as: aiding in setting up boarding houses; workers' accommodation; guesthouses; workers' meeting halls; workers' sport facilities, creches and kindergartens, etc; advising on efforts to advance the welfare of the workers; and organizing lectures or courses on welfare.
- c. I.L.O. Convention No. 100 guaranteeing the principle of equal pay for equal work for male and female workers.

7. Provisions specially applicable to government employees:

- a. Law No. 18 of 1961 Chapter IV (on civil servants) Article 13, paragraph 1 providing salaries according to categories and on the basis of the responsibility and rank of the position concerned;

- b. Article 16, paragraph 1 of the same law, dealing with Government efforts to advance the welfare of civil servants, physically and spiritually;
- c. Article 17, paragraph 1 of the same law, providing for aid to civil servants and their families in times of illness or childbirth;
- d. Article 18, of the same law, dealing with the right to sick leave, maternity leave, and other holidays;
- e. Presidential Regulation No. 31 of 1954, State Gazette No. 567, Article 6, providing for continued pay on days the employee can not perform his job for certain reasons;
- f. Presidential Regulation No. 12 of 1967 concerning salaries of non-military civil servants;
- g. Article 9, paragraph 2 providing child allowances of 2 percent of the basic salary;
- h. Presidential Regulation No. 18 of 1967, Article 5, concerning improvement of pensions of ex-civil servants;
- i. Presidential Regulation No. 15 of 1964, Article 7, paragraph 1, concerning domestic business trips for civil servants;
- j. Presidential Regulation No. 53 of 1951, Article 1, concerning maternity leave.
- k. Presidential Regulation No. 51 of 1954, Article 3, para 2, concerning giving an allowance to the wife/family of a deceased civil servant.
- l. Presidential Regulation No. 11 of 1963, Article 6, paragraph 1, concerning the Welfare Funds for Civil Servants.
- m. Presidential Decision No. 272 of 1967 concerning distribution of the basic necessities of life for civil servants/the Armed Forces (mainly 10 kg. of rice for each member of the family).
- n. Presidential Decision No. 230 of 1968, Chapter II. See also Article 3, paragraphs 1 and 2, Article 6 paragraph 1; Article 8, paragraph 2.

8. Conclusions:

Since the working community forms the bulk of Indonesian society, changes in labor laws which affect the attitudes of this community are important. In particular, it is necessary to change the attitudes of the agricultural and estate communities which are self-sufficient and which consider the birth of another child as an additional source of manpower. Accordingly, the following proposals are made in support of an efficient family planning program:

- a. If salaries of civil servants are to be increased, it should not be on the basis of the size of the family, but on the basis of work performance.
- b. If family allowances are increased, the number of members of the family eligible to receive them should be cut down, e.g. to one wife and a maximum of 4 children.
- c. Compensation in cases of illness, pregnancy and childbirth should be given to a limited family size, e.g. to one wife and a maximum of 4 children.
- d. If the allocation of the basic necessities is to be increased (e.g. rice allocation for each member), the family members eligible to receive this should be limited to a maximum of one wife and 4 children.

E. Pharmaceutical Provisions

1. Situation Prior to June 1, 1971:

Under Postal Tariff 167 II (a) oral contraceptives were subject to a 40 percent duty as a "semi-essential" import. They were classified by the Minister of Health separately from "serums, vaccines, antibiotics" and "preparations having a therapeutic effect", and were treated as "nostrums" along with rejuvenation drugs and aphrodisiacs.

Under Postal Tariff 236, No. 2. condoms and diaphragms were classed as rubber goods for hygienic, sanitary and hydropathic purposes, and were subject to a 40 percent duty.

Preparations denoted as a gift, and samples, were duty-free.

2. Situation Since Decree of Minister of Finance, June 1, 1971:

In January 1971 a meeting was held by the pertinent Departments to discuss changes in the postal tariffs, import duties and

other levies. One of the results of those discussions was Decision No. Kep. 396/MK/III/7/71, issued on June 1, 1971 by the Minister of Finance. Under this decision the entire list covered under Postal Tariff 167 II (a) (including oral contraceptives) was exempted 100 percent from import duties and any other levy.

As a follow-up to this decision, the Director General of Pharmacy on June 9, 1971 forwarded his proposals to the Minister of Finance. These distinguished between oral contraceptives, which he recommended for exemption, and rejuvenation drugs, etc. They also recommended the fostering of the domestic assembly of contraceptives by permitting the free import of raw materials and packaging materials. The Central Association of Pharmaceutical Enterprises and the Pharmaceutical Union also agreed with the decision to permit free importation.

3. Comments and Proposals

- a. Postal tariff regulations can be changed according to the situation. The latest developments show that contraceptive drugs which were in the 40 percent duty list have now been classified as highly essential import goods, subject to 0 percent import duties.
- b. As the uncontrolled use of some of the drugs on Postal Tariffs 167 II (a) may endanger the user, serious thought should be given to controlling the distribution of these drugs to prevent their misuse.
- c. The quickest and most effective manner of obtaining a smooth flow of contraceptive goods is to bring all types of contraceptives in as gift parcels, which are subject to 0 percent import duties.
- d. The Indonesian Planned Parenthood Association should write the Minister of Finance (with copies to the Director General of Customs and the Director General for Pharmacy of the Health Department) as follows:
 - i. request an exemption from import duties of contraceptives other than oral contraceptives (which are exempted under amended Postal Tariff 167 II (a) such as contraceptives made of rubber (condoms, diaphragms) and I.U.D.'s;
 - ii. point out that rubber contraceptive devices now registered in Postal Tariff 236 No. 2, and thus subject

to 40 percent import duties, can be included under another tariff category, for example under Postal Tariff 848, on the grounds that these are medical supplies to help protect the mother's health and are therefore not subject to duty.

- iii. request that I.U.D.'s, which have not so far been registered under any tariff category, be put under any one of the tariff-free categories.

III. POPULATION AND FAMILY LIFE EDUCATION

Experience has shown that family planning efforts have not been fully effective, due to attitudes which have their roots in custom, habits and beliefs which are, in general, hostile to family planning. To change attitudes, especially the fixed attitudes of adults, is extremely difficult and requires perseverance and time. It has therefore been proposed that we instill an understanding of population factors and family planning at the school level so as to familiarize children at an early age with its name and objectives. In this way a positive attitude is established toward family planning.

This new idea is known as "Population Education." A seminar on Population Education was held at Tjiloto (W. Java) in October 1970 by the Ministry of Education and Culture, with Colombo Plan and UNESCO as sponsors. As a follow up of this seminar the Badan Pengembangan Pendidikan (Education Development Institute) has now set up a special unit to study and discuss the results of the seminar. This unit will draw up a plan, and organize steps, to include Population Education in school curricula and in extra-curricular activities. The first step would be the compilation of an instruction book for teachers and the provision of other directives on Population Education. Population Education will stress:

- a. Implications of population growth
- b. Understanding of human reproduction
- c. General health requirements and conditions with regard to giving birth (pregnancy and the act of delivery)
- d. The connection between small family size and family welfare
- e. The effect of fast population growth on the social and economic development of a country
- f. How to obtain acceptance and implementation of family planning.

Population Education will not be introduced as a special subject on the curriculum but will be integrated with existing subject matter which has some connection with this question; for example biology, history, civics, health, geography of modern science teaching.

Population Education has its objectives:

- a. The improvement of the health and welfare of mothers, children, the family and the nation.
- b. The improvement of living standards through reduction of the birth rate, so that population increase will not overtake the increase in total national income and weaken the ability to invest in development.

The younger generation will become accustomed to the idea that small-size families provides greater possibilities to achieve greater family and national welfare.

Population Education takes place both in and out of school. The in-school programs will start at Kindergarten and continue up to University level. The out-of-school programs will be directed at community leaders, married adults, young adults and drop-outs. Cooperation between the pertinent Departments is deemed most essential.

Family Life Education has now been started in certain schools and has also begun out of school. The objectives of Family Life Education are basically the same as those of Family Planning, but the method of presentation differs.

Since there is no education law as yet, it would be advisable to include Population and Family Life Education in the new Education Law now being drafted. To accelerate the introduction of Population Education, the I.P.P.A. (Indonesian Planned Parenthood Association) has taken the initiative of setting up pilot projects. As locations for the out-of-school programs, the I.P.P.A. has selected: Koran reading classes, neighbourhood meetings (arisan) and courses organized by women's associations. Some private schools will be selected for the in-school programs. The Indonesian Women's Congress (KOWANI) is arranging lectures by physicians on sex education for adults, starting with mothers and fathers, so that they can satisfactorily answer their children's questions and instill sufficient understanding and knowledge of the subject.

After reviewing those current laws and regulations in Indonesia, both written and unwritten, which have a connection with the implementation of the family planning program, several conclusions have been drawn, as follows.

- A. As to the written provisions, the statutory regulations directly related to family planning are few in number. These regulations are in general inherited from the Dutch colonial regime. They were needed at the time that they were taken over by the Indonesian Government, but they are not consistent with, and actually impede, the execution of the national family planning program.

Statutory regulations are to be found in:

1. Penal Code

These regulations still prohibit the offer and supply of contraceptive materials, the demonstration of methods for the prevention of pregnancy or assistance in so doing. Abortion is illegal, but in practice allowances are made on medical grounds.

2. Family Law

The only statutory regulations which exist are contained in the Burgerlijk Wetboek (Civil Code) and the Marriage Ordinance for Christian Indonesians (HOCI). They apply only to a small part of the Indonesian population while the majority of Indonesian citizens are still subject to their respective adat (customary)/religious laws. There are as yet no statutory regulations which guarantee the welfare of mother and child or which encourage and support the execution of family planning, such as regulations on a minimum age for marriage, the number of wives in marriage, divorce, etc.

3. Tax laws and regulations

The existing regulations do not encourage the taxpayer to limit his family or the number of his children. These regulations (contained in the Income Tax Ordinance of 1944) give tax exemption for each legal wife (up to 4 wives for those professing Islam) and for each blood relative and relative by marriage in a straight line from the taxpayer who has become his dependent and for each adopted child, with the understanding that the total size of his family does not exceed 10 persons, making the final total of twelve (12) exemptions.

4. Labor Laws:

The salary and social benefits of a worker or civil servant are in general not limited by the number of his children, resulting in a larger dependents' allowance for civil servants with large families. The same goes for regulations concerning transfer and discharge of civil servants, business trips, civil servants' social welfare benefits, medical treatment, pension rights, etc.

5. Pharmacological regulations:

Until recently the import of contraceptives was subjected to an import duty of 40 percent as they were classified as "nostrums" and belonged to the semi-essential (luxury) category. Since June 1, 1971, a regulation has been in force which exempts "oral contraceptives" from import duties on the ground that they have now become highly essential goods. However, condoms and diaphragms are still subjected to high import duties, and no provision has been made for I.U.D.'s.

- B. Unwritten regulations in the form of customary and religious laws and public opinion on family and marriage are still based on the philosophy that "lots of children means lots of luck"; the objective of marriage is continuation of the family line and the status of women in the family is still low in several areas. Such an outlook or tradition still strongly prevails in the Indonesian community, particularly in the rural territories and villages, making it difficult to implant the idea of limiting the size of the family.

V. RECOMMENDATIONS

- A. Mother and child welfare in general, and family planning in particular as a means to achieve family welfare, should be emphasized in the draft Social Welfare Law which has now reached the House of Representatives.
- B. Article 534 of the Penal Code which prohibits the supply of means and information for the prevention of pregnancy should be repealed immediately as contradictory to the Government policy on family planning.
- C. The regulations in the Penal Code prohibiting abortion should be limited to restricted grounds. (Discussion of this subject is awaiting the findings in the field of criminal law.)
- D. A Marriage Law should be adopted containing such provisions as:
 1. a minimum marriage age;
 2. prohibition of marriage between close relatives;
 3. monogamy to be the basis of marriage (limitation of polygamy);
 4. clearly defined and unbiased grounds for divorce .
- E. Exemption from import duties should be provided for contraceptives other than pills, such as condoms, diaphragms and IUDs, etc.
- F. Reduction of the number of dependent family members which are the basis for exemptions from income tax from 10 to 4 persons, as follows: a maximum of 12 to a minimum of 6 persons per family.
 1. the taxpayer himself;
 2. his legal wife;
 3. each blood relative or relative by marriage in a straight line from the taxpayer and each adopted child, not to exceed 6 persons, per family.
- G. Personnel regulations and social benefits for civil servants and their families need to be reviewed, bearing in mind the following:
 1. the salaries of civil servants should be increased on the basis of job performance and not on the size of the family;
 2. individual family allowances can be increased, but the number of family members eligible to receive them should be limited, for example, to one wife and 4 children only;

- ~~3. medical and maternity benefits should be given to a restricted number of family members, e.g. to one wife and a maximum of 4 children;~~
4. food allocations (including daily necessities) may be raised, e.g. rice allocations could be increased to 15 kg. a person, but the number of family members receiving this allocation should be limited to one wife and four children.

Steps must be taken to implant the idea of family planning in the community which still holds a traditional outlook on life, to change the attitude of the community toward the meaning of the family and the purpose of marriage; and to undertake a systematic and consistent education program, both in the schools and outside them, concerning a meaning of family life which is attuned to modern concepts and requirements. This will require:

1. that the Ministry of Education and Culture include instructions concerning both the biological and social aspects of family life (Family Life Education and Population Education) in the school curriculum;
2. that Population Education be integrated into one or more of the existing subjects of the curriculum, and not as a special topic;
3. that Population and Family Life Education be inserted in the Education Law at present being drafted;
4. that special information officers be entrusted with the task of disseminating the idea of family planning among the people, and that they receive special instruction for this purpose;
5. that information not be given in a mandatory or pressured manner, but rather be presented in a suggestive and encouraging way, supplemented by straight forward explanations;
6. that a full study of the principle and techniques of Population and Family Life Education be made, for the purpose of standardizing terminology.

APPENDIX I

EXCERPTS FROM DRAFT BILL ON "ABORTION BASED ON MEDICAL INDICATIONS"

(Drawn up by the Ministry of Health)

ARTICLE 1

(not substantive)

ARTICLE 2

The following new paragraphs are added to Article 350 of the Penal Code:

Article 350 a

The act or acts referred to in [here reference to Articles which define and prohibit abortions] shall not constitute a criminal event or act if caused or performed by a physician in a hospital, on medical grounds for the purpose of saving the pregnant woman while observing paragraphs b, c, and d below.

Article 350 b

In a Ministerial Decision the Minister of Health shall set forth:

1. The physicians who are authorized to perform such an abortion;
2. The hospital(s) where such abortions shall be permitted,
3. The types of physical and/or mental diseases accepted as medical grounds for such an act as mentioned in article 350 a.

Article 350 c.

1. The adequacy of the medical indications as a basis for the performance of the act as mentioned in Articles 350 a and 350 b shall be determined in consultation with at least one other physician.
2. Such an event or act can be caused or performed only after a written agreement has been obtained from the pregnant women concerned and from her husband. If said woman is unable to enter into an agreement because of disturbed physical and/or mental health, then the written agreement of the husband and of at least two close blood relatives of the woman in question shall be obtained.

Article 350 d.

All acts mentioned in Article 350 are prohibited unless performed under the conditions set forth in Articles 350 a, b, and c above.

ARTICLES 3 - 5

(not substantive)

APPENDIX II

EXCERPTS FROM DRAFT BILL NO. YEAR. . . .

BASIC RULES ON MATRIMONY

WITH THE BLESSINGS OF ALMIGHTY GOD
THE PRESIDENT OF THE REPUBLIC OF INDONESIA

Having considered:

- a.) That in accordance with the philosophic basis of the Pantjasila, it is necessary to enact a Law on Basic Rules on Matrimony, to be observed by all citizens, in addition to the specific Laws on Matrimony regulating marriage in accordance with the religion of each group;
- b.) That in accordance with the purpose of creating a unified national legal system, a Law on Basic Rules on Matrimony is needed;

Taking into account:

- 1.) Article 5, paragraph (1) and Article 29 of the Constitution of 1945;
- 2.) Decisions of the Provisional People's Congress No. XXVIII/MPRS/1966, Article 1, paragraph (3);

HAS DECIDED

To lay down: The Act on Basic Rules on Matrimony.

CHAPTER I
BASIS OF MATRIMONY

Article 1

Matrimony is a physical and spiritual union between a man and a woman with the aim of establishing a happy and enduring family.

Article 2

- 1.) A marriage is legitimate if performed in accordance with the rules prescribed by Law.
- 2.) A marriage is to be registered by a Registrar authorized to do so.
- 3.) The registration mentioned in paragraph 2 above is regulated by a specific Act.

Article 3

- 1.) Basically, matrimony is monogamous.
- 2.) Exceptions to paragraph i are permitted if they are valid under the Law regulating matrimony for the group concerned.

Article 4

A marriage shall be based on mutual agreement of both bride and bridegroom.

CHAPTER II
TERMS AND CONDITIONS OF MATRIMONY

Article 5

- 1.) Marriage is permitted only when the man has reached the age of 18 years and the woman the age of 15 years.
- 2.) In extra-ordinary cases an exception from paragraph 1) above may be obtained by dispensation from a judge, authorized to do so, or from an official designated by law.

Article 6

Marriage is prohibited between two persons who:

- 1.) are related to each other by blood in a straight line;
- 2.) are related to each other by blood in a branch line, viz. between brothers and sisters, between a person with his (her) parent's brother (sister);
- 3.) are related to each other in such a way as to make marriage between them impossible according to the Law regulating Matrimony for the group concerned.

Article 7

- 1.) Prohibition of a marriage by a custom which is not in accordance with the parental system is abolished.
- 2.) Prohibition of marriage based on differences of caste or "warna", clan or origin is abolished.

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CHAPTER V

RIGHTS AND DUTIES OF THE SPOUSES

Article 10

Both spouses have the sacred duty to establish a family as foundation of the social structure.

Article 11

- 1.) The rights and duties of the wife, within the family and in society, are equal to the rights and duties of the husband.
- 2.) Both parties have the right to take action before the law.
- 3.) The husband is the head of the family.

* * * * *

Article 14

- 1.) The husband is under obligation to protect his wife and to provide for all the needs of living in a household in accordance with his ability.
- 2.) Whenever the husband neglects his duties as mentioned in paragraph 1), the wife can prosecute him at law through an authorized judge.
- 3.) The wife is obliged to care for the household in the best manner possible.

CHAPTER VI

PROPERTY WITHIN MATRIMONY

Article 15

- 1.) Property acquired during matrimony is joint-property.
- 2.) Property brought into marriage by husband and wife respectively, as well as property acquired by each as a gift or by inheritance, remains under each respective ownership.

Article 16

- 1.) As regards the joint-property, both husband and wife can take legal action with regard to it with the agreement of both parties.
- 2.) Both husband and wife have full right to take action before the law with respect to their own property.

Article 17

In cases where marriage is dissolved through divorce, the joint property is divided in two equal parts between former husband and wife.

CHAPTER VII
DISSOLUTION OF MARRIAGE AND ITS CONSEQUENCES

* * * * *

Article 19

Consequences of the termination of a marriage through divorce are:

- 1.) a. The mother as well as the father continue to be under obligation to care for and educate the children, solely in the interest of children. Whenever differences arise as to the care of the children, the judge shall decide.
- b. The father is responsible for all necessary expenses for the care and education. Whenever the father fails to fulfil his obligations above mentioned, the judge can decide that the mother will share in the expenses.
- 2.) A judge, so authorized, can oblige the former husband to pay alimony to his former wife in accordance with his capabilities as long as she does not re-marry.

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CHAPTER IX
RIGHTS AND DUTIES OF PARENTS AND CHILD

Article 24

- 1.) Both parents are under obligation to care for and educate their children in the best manner possible.
- 2.) The duties of the parents mentioned in paragraph 1) remain until the child marries or can stand on its own feet; these duties remain also although the marriage between both parents has been dissolved.

Article 25

- 1.) The child is under obligation to respect its parents and obey their instructions.
- 2.) When the child reaches maturity, it is under obligation, in accordance with its capabilities, to provide for its parents and its family in a straight line upward, should they need assistance.

Article 27

- 1.) A child who has not yet reached maturity or is still single remains under the authority of the parents as long as this authority has not been withdrawn.
- 2.) The parents are responsible before the law for all the child's actions.
- 3.) The authority of the parents is executed by the father. If this authority has been withdrawn from the father, it is exercised by the mother.
- 4.) The term "authority of the parents" means the authority which is attached to the father or mother at the time of their marriage or after the marriage has been dissolved.

Article 28

Parents can neither transfer nor mortgage fixed assets which are owned by the dependent or unmarried child, except in cases where the interest of the child demands such action.

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EXCERPTS FROM DRAFT CLARIFICATION BILL NO. YEAR
ON BASIC RULES OF MATRIMONY

General:

* * * * *

2. In order to safeguard legal assurance and to improve peoples' welfare, rules on matrimony which for the most part is still in the form of unwritten law, should become written law and be codified.
3. In accordance with the Pantjasila which upholds religion and inspires the ideal of creating a national legal system, it is considered necessary to adopt a law concerning the Basic Rules of Matrimony which is intended to establish unity and homogeneity of the law, within certain limits which take fully into consideration the religious rules in force for each religious group.
4. In the Act on Basic Rules of Matrimony, fundamental principles concerning marriage are prescribed which are in accordance with the developments and requirements of contemporary conditions and which are not contradictory to the religious principles which are recognized in Indonesia. The execution of the Basic Law itself is covered in the various specific marriage rules of the respective religions, viz: the law on Matrimony for the Islamic group, the Law on Matrimony for the Christians/Protestants, the Law on Matrimony for the Catholic group, the Law on Matrimony for the Hindu-Buddhists, the Law on Matrimony for other religious groups and the Law on Mixed Marriages.
5. Important principles concerning: the basis and foundation of a marriage, the terms and conditions of marriage; the rights and duties of the spouses; the dissolution of a marriage and its consequences; the status of the child; and the rights and duties of parents and children, as well as tutelage should be established in order to protect the family which has been founded on the marriage, not only at the time of the marriage, but also within the wedlock and when there has been a divorce.

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Article by Article:

Chapter II, Terms and Conditions of Matrimony, Article 5

- 1.) To safeguard the health of the spouses and of their descendents, age-limits for marriages are established.
- 2.) Dispensation can be given based on the interest of the parties who are going to marry.

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Chapter V, Rights and Duties of the Spouses, Article 11

- 1.) In Indonesian society, which is based on the Panjasila and upholds basic human rights, the status of husband and wife must be based on the principle of equal rights and duties.

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Chapter VI, Property in Marriage, Article 15

- 2.) Gifts or inheritances received by either party either before or after wedlock remain in their respective ownership.

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APPENDIX III

EXCERPTS FROM THE DRAFT BILL

NO. . . . YEAR. . . .

BASIC LAW ON SOCIAL WELFARE

WITH THE BLESSINGS OF GOD,
THE PRESIDENT OF THE REPUBLIC OF INDONESIA

Having considered:

- a) That the goal of the struggle of the Indonesian people, which is the achievement of a just and prosperous Indonesian society, both materially and spiritually, based on the Pantjasila which upholds the status of man and fundamental human rights, can be achieved only when the level of welfare of society and of the state are all encompassing and spread over the whole country.
- b) that for these reasons social welfare is the concern of the society as a whole based on the principle of mutual cooperation.
- c) that activities in the field of social welfare should be undertaken within the framework, and as an integral part, of the activities of national development directed toward raising the standard of living of the people.
- d) that for these reasons a law should be formulated stipulating basic regulations on social welfare.

Taking into consideration:

- 1) Article 5(1), article 20, paragraph (1) and article 27 paragraph (2) of the constitution of 1945;
- 2) Decisions of the provisional peoples Congress No. VIII/MPRS/L966: With the approval of Parliament

HAS DECIDED

To lay down: The basic Law on Social Welfare.

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CHAPTER II

DUTIES AND EFFORTS OF THE GOVERNMENT

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Article 4

1.) Activities of the Government in the field of social welfare include:

c. Assistance in carrying the burden of the cost of living for the aged, namely for those who, because of their advanced age, do not have the means to pay for, or are not earning their basic daily needs. This is provided in the form of raw materials or medical care, either in their own homes or in resthouses or institutions which are maintained by the community or the Government.

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g. Assistance to indigent families by organizing workshops, Educational Institutions for women and Bureaus for family Consultation.

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International Advisory Committee on Population and Law

**The Programme is under the general supervision
of an International Advisory Committee on
Population and Law meeting annually in different
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