

Access to Justice: Protecting Spousal Health from Sexually Transmitted Diseases Transmission within Marriage

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Abstract

This study explores how Indonesia's present regulatory framework navigates to protect spousal health from Sexually Transmitted Diseases (STDs) transmission within marriage. Employing a normative legal approach which combines statutory analysis and comparative methods. The analysis focuses on Indonesia's regulatory framework. Findings reveal that the current regulations including the Constitution 1945, Health Law, Marriage Law, Elimination of Domestic Violence Law, Criminal Code, various Regional Regulations and Regulation of The Minister of Health. These regulations provide limited coverage of instances where individuals jeopardise the health of others, particularly spouses, through the transmission of STDs. Comparative analysis of Singapore, Cambodia, Brunei Darussalam, and the United Kingdom demonstrate a common emphasis on informed consent and risk mitigation, often achieved through criminalization of non-disclosure of HIV status. However, the study acknowledges the limitations of such punitive approaches in achieving sustainable public health outcomes. The conclusion proposes moving beyond the current framework. It suggests leveraging the Health Law's framework for family health promotion and its association with disease control. This could involve establishing a regulatory system grounded in scientific research, prioritizing a consensual and holistic approach centred on comprehensive education and prevention programs. This approach recognizes STDs as a social issue requiring collective action, contrasting with the tendency in some neighbouring countries to view them solely as a medical concern. By addressing these legal gaps and fostering responsible sexual health practices within marriage, Indonesia can contribute to a healthier and more secure marital environment for its citizens.

Keywords: Comparative Law; Regulatory Framework; Spousal Health; STD Transmission.

1. INTRODUCTION

A common response to a question what the role of law is would be to maintain order, many have argued that possibly the primary function lies in the preservation of public order. This is achieved by establishing legal boundaries that define acceptable behaviour and prescribing sanction for breaches.¹ There are instances where the preservation of public order results in restricting civil liberties. The use of law to regulate human behaviour extends beyond criminal law. Areas of civil law also seek to do so, while criminal law punishes offenders,

¹ Martin Partington, *Introduction to the English Legal System. Vol. 2012–2013 edition*, (Oxford: Oxford University Press, 2012), 8.

civil law establishes a duty of care.² A rather different function of law, in which it interacts with and maintains the life of society include resolving social problems, regulating human relationships, and creating regulatory frameworks. Moreover, law roots firmly in the history of humankind, has undergone continuous evolution to address the ever-changing needs of societies.

The private sphere of family life is often presumed as to be beyond the law's power. Despite the fact family law functions as a comprehensive legal framework governing the formation, dissolution, and rights and responsibilities associated with family status — what it means legally to be a spouse, parent, child, sibling, or other kinship ties.³ Historically, in some countries and even in common law jurisdictions with a rich legal heritage, such as the United States and the United Kingdom assigned different rights and duties based on gender, creating an imbalance within families. Today, these practices are seen as relics of the past. A growing trend in family law emphasizes an egalitarian approach, where in a marriage or recognized union share equal rights and responsibilities by both of the parties.⁴ However, despite strides towards egalitarianism, vulnerabilities remain, particularly regarding basic spousal health rights which encompass sexual and reproductive health rights. A prime example is the risk of sexually transmitted diseases (STDs) within marriages characterized by gender inequality. These power imbalances can create situations where one spouse, lacking control due to hierarchical dynamics, making one spouse more susceptible to unknowingly exposed to STDs by the other.

Aside from their marital vows, married couple especially in Indonesia are surprisingly among the top three groups at risk of STDs.⁵ Another source indicates that 33% of human immunodeficiency viruses (HIV)-positive wives were infected by their husbands.⁶ Within the spectrum of STDs, HIV is just one of at least 35 identified pathogens.⁷ Furthermore, burden of STDs varies significantly at the individual level, depending on whether the infection is curable (chlamydia, gonorrhoea, syphilis, etc) or incurable (HIV, Hepatitis B and C, etc) which require lifelong management.⁸ The most serious health impacts occur later in life and are largely borne by women and infants⁹ as STDs can cause lower genital tract infection, adverse pregnancy outcomes, neonatal mortality and morbidity. These infections can have devastating physical, mental, and financial consequences.¹⁰ Therefore, STDs are posing a grave threat and deep sorrow to individuals' sexual and reproductive health.

Available legal discourse surrounding STDs often about protection for victims of sexual assault, healthcare workers, and the lawful practice of criminalizing STDs carriers as the epicentre. To the best of our knowledge, there are no recorded cases in Indonesia's court directories where a spouse has been charged or sued for STDs

² Partington, 20.

³ Jill Elaine Hasday, *Family Law Reimagined*, (Massachusetts: Harvard University Press, 2014), 1.

⁴ Brian Bix. *The Oxford Introductions to U.S. Law: Family Law*, (Oxford: Oxford University Press, 2013), 26-32.

⁵ Laporan Eksekutif Perkembangan Hiv Aids Dan Penyakit Infeksi Menular Seksual (PIMS) Triwulan I Tahun 2022, Accessed March 24, 2024, https://siha.kemkes.go.id/portal/files_upload/Laporan_TW_1_2022.pdf.

⁶ Siti Nadia Tarmizi, "Kasus HIV dan Sifilis Meningkatkan, Penularan Didominasi Ibu Rumah Tangga", Accessed April 2, 2024, <https://sehatnegeriku.kemkes.go.id/baca/rilis-media/20230508/5742944/kasus-hiv-dan-sifilis-meningkat-penularan-didominasi-ibu-rumah-tangga/>

⁷ King Holmes, et. al, *Sexually Transmitted Diseases 4th edition*, (New York: McGraw Hill, 2008), XVII-XXV.

⁸ Toni Haapa, et.al, "Experiences of living with a sexually transmitted disease: A Cross-Sectional Descriptive Survey", *Nordic Journal of Nursing Research* 39, no.2(2019):107-116, <https://doi.org/10.1177/2057158518805257>

⁹ Kamb, Mary L., and Patricia J. Garcia, 'Sexually transmitted infections', in *Oxford Textbook of Global Public Health*, 6 edn, Roger Detels, and others (Oxford: online edn, Oxford Academic, 2015), <https://doi.org/10.1093/med/9780199661756.003.0212>.

¹⁰ Michael Ray Garcia, Stephen W. Leslie, and Anton A. Wray, "Sexually Transmitted Infections" StatPearls Publishing, Accessed May 7, 2024, <https://www.ncbi.nlm.nih.gov/books/NBK560808>

transmission within marriage. From this emerging evidence presents a significant, yet underexplored, challenge to public health and individual well-being in Indonesia. Hence, by exploring the domain role of law through the lens of Indonesia's regulatory framework to protect spousal health from STDs transmission would be a relevant addition. To comprehensively addresses the existing gap, this study is employing normative legal approach that integrate statutory analysis and comparative methods. The basis analysis is descriptive qualitative methods supported by literature study of authoritative legal materials, textbooks, multi-discipline academic journals, institutional reports and databases.

The state-of-the-art aspect of this study involves comparing Indonesia's legal approach with that of its regional neighbours—Singapore (common law), Cambodia (civil law), and Brunei Darussalam (Islamic law)—as well as looking at United Kingdom, which also follows a common law system. Notably, these countries have regulations regarding STDs transmission particularly HIV under infectious disease acts. The anticipate outcome of this study include resolving legal issues pertaining to STDs and provide adequate regulatory framework which foster a more responsible and educated society about sexual and reproductive health, thereby ultimately promoting better sexual well-being for all.

2. ANALYSIS AND DISCUSSION

2.1 Indonesian Legal Landscape

A supportive legal framework is crucial considering the potential backlash against STDs transmission at any level and equally essential for individual and public health. Such a framework would promote prevention, reporting, and potential legal recourse for those affected. It is imperative that appropriate regulations are in place to ensure legal certainty.¹¹ In the distance, to develop a well-fitting legal framework for general course presents a significant challenge for lawmaker. Indonesia's unique circumstances such as vast archipelago, encompassing over 260 million people across more than 6,000 inhabited islands added to the complications.¹² The complexity is further compounded by a decentralized political system following the democratic reforms of 1998.¹³ Preliminary finding, Indonesian Law criminalized those who are having extra marital affair and prohibits sex between unmarried individual based on article 284 and 415 in criminal code (*Kitab Undang-Undang Hukum Pidana*), this remains valid. The new criminal code to be enacted in 2026, maintain the spirit through article 411 which further states: "*Setiap orang yang melakukan persetubuhan dengan orang yang bukan suami atau istrinya, dipidana karena perzinahan*"¹⁴ – in simplified manner, it translates to extramarital sexual intercourse recognized as adultery and carries a maximum penalty of one year imprisonment. This legal restriction has positive implication towards the spread of STDs and health concern, through limiting sexual partner as the diseases spread via sexual intercourse, and the risk of contracting an STD increases with multiple

11 Jovita Irawati and Steven Theonald P. Siahaan, "Legal Challenges Impeding the Development Of Local Wisdom-Based Wellness Tourism Potential," *Jurisdictie Jurnal Hukum Dan Syariah* 14, no. 2 (January 10, 2024), <https://doi.org/10.18860/j.v14i2.24002>.

12 Consulate General of the Republic of Indonesia in Vancouver, Canada, "Kementerian Luar Negeri Republik Indonesia, Accessed May 5, 2024, https://kemlu.go.id/vancouver/en/pages/indonesia_at_a_glance/2016/etc-menu. <https://doi.org/10.1080/26410397.2020.1785377>

13 Tim Lindsey dan Simon Butt, *Indonesian Laws and Lawmaking, Indonesian Law*, (Oxford: Oxford University Press, 2018), 38.

14 Law Number 1 of 2023 on the Criminal Code

sexual partners.¹⁵ However, it does not explicitly address other potential avenues of STDs transmission beyond extramarital affairs.

This section below examines the current regulations such as Marriage Law, Health Law, Elimination of Domestic Violence Law, Regional Regulations and Regulation of The Minister of Health frameworks in Indonesia to identify how current legal provisions navigate to protect spousal health from STDs transmission.

2.1.1 Marriage Law

Indonesia does not possess a unified family law act. Instead, family content dispersed in a wide range of regulations; in response to that this study selected *Undang-undang Nomor 1 Tahun 1974 tentang Perkawinan* (Marriage Law) as the primary guidance. The act applies universally to all Indonesian, eliminating the disparities and diverse married regulation found in the past.¹⁶ Referring to Article 1 of the Marriage Law, marriage is defined as sacred union between a man and a woman to form a happy and lasting family based on religious principles.¹⁷ This definition clearly outlines its subjects, the purpose of marriage, and the intersection between marriage and religion. The influence of religion is particularly evident in the wording of Article 2. Subsequently, Article 3 establish the principle of monogamy in marriage, although this principle is not absolute rigidity as stipulated in Article 3(2). Provisions related to marriage requirements are disclosed in Articles 6,7, and conversely, Article 8 outlines circumstances that prohibit marriage.

Dive in deeper, Chapter IV outlines the rights and obligations of spouses, emphasizing a foundation of equality and mutual support. In Article 31 of the Marriage Law guarantees both husband and wife equal rights and status within the marriage and society at large. Furthermore, each spouse retains the right to conduct legal actions independently. However, despite recognizing an egalitarian approach in marriage, the law also assigned duties and roles by gender. Such division of labour, where the law designates the husband as head of household and the wife as housewife¹⁸, creates an internal contradiction within the law itself and a condition where the legal definition of equality might not translate into real-world practice. Wives, designated as homemakers, may place themselves in a vulnerable position as they lack power in running matrimonial household or even negotiate their sexual and reproductive health due to the power imbalance within the marriage.¹⁹ This legal inconsistency, coupled with existing societal norms that might endorse sexual double standards²⁰, could further disadvantage women in protecting their sexual and reproductive health.

In summary, the 14 chapters of the Marriage Law primarily focuses on the formalities required for marriage formation, including prerequisites for a valid marriage, the general rights and obligations of spouses, and the legal implications of divorce. However, the

15 Brandon G Wagner, "Marriage, Cohabitation, and Sexual Exclusivity: Unpacking the Effect of Marriage", *Social Forces*, Vol. 97, No.3, March 2019, DOI: 10.1093/sf/soy082

16 Moch Isnaeni, *Hukum Perkawinan Indonesia*, (Bandung: PT Refika Aditama, 2016), 94.

17 Law Number 1 of 1974 on Marriage

18 Law Number 1 of 1974 on Marriage, Article 31(3).

19 Kgashane Johannes Malesa, "Married Men's Perceptions of Their Wives' Sexual and Reproductive Health Rights: A Study Conducted in the Rural Area of Waterberg District, Limpopo Province, South Africa", *Women's Reproductive Health* 9, (2022):143-160, <https://doi.org/10.1080/23293691.2021.2016136>

20 Leif Edward Ottesen Kennair, et.al, "Examining the Sexual Double Standards and Hypocrisy in Partner Suitability Appraisals Within a Norwegian Sample", *Evolutionary Psychology*, 21 (March 2023), <https://doi.org/10.1177/14747049231165687>

legislation notably overlooks a crucial aspect of marital success: the health of the spouses. Specifically, it lacks provisions to protect against STDs and to address broader health concerns within the marriage, revealing a significant gap in the law.

2.1.2 Health Law

Theoretically, the ultimate objective of public health law is to pursue the highest possible level physical and mental health of the population by legal power and the state's duty to identify, prevent and ameliorate risk.²¹ Perhaps not as obvious, why does the state have such enduring obligation? The answer lies in the very purpose of government as suggested by the social contract theory, that people form governments to give up some freedoms in exchange for their common defence, security, and welfare.²² In practice, public health law often encounters situations where individual rights conflict with public health interests²³ such as mandate vaccinations or detains individual who are threat to the public.²⁴ Nevertheless, the importance of individual well-being remains, particularly conditions that have spillover effects for the wider community, such as tuberculosis and STDs.²⁵

One way this commitment to public health is reflected in Indonesian law is through the right to health. As a state, Indonesia, through its constitution preserve such right. The Constitution of the Republic of Indonesia 1945 serves as a foundational document, reflecting the nation's highest hopes, values, and moral compass.²⁶ Article 28 H (1) guarantees that everyone has the right to live a prosperous life, to reside in and to have a good and healthy living environment, and access to health services.²⁷ This mandate later translates into numerous regulations and evolving into *Undang-Undang No 17 Tahun 2023 Tentang Kesehatan* (Health Law). This Health Law functions as a form of omnibus legislation, aiming to streamline and supersede the precedence laws. Due to its omnibus nature, it serves as a unified law, encompassing all health-related matters.²⁸

The Health Law provides general preventive legal safeguards in disease control. The law further outlines the rights and obligations of individuals within society as stipulated in Articles 4, 5, and 90. These articles explicitly define rights and obligations that can be leveraged to mitigate the risk of STDs transmission. Article 90 under communicable disease chapter establishes the crucial responsibility of individuals to prevent the further spread of disease through practicing clean and healthy living behaviours.²⁹ It currently lacks repressive measures to address situations where individuals fail to fulfil their obligations and infringe upon the health rights of others. While the law comprehensively

21 Lawrence O. Gostin and Lindsay F Wiley, "*Public Health Law: Power, Duty, Restraint*", (Berkeley: University of California Press, 2016), 4.

22 Benedict Sheehy and Ivana Damjonovic, "Social Contract," in: *Encyclopedia of Sustainable Management*, ed Samuel O. Idowu, (Springer, 2023), 2983-2984.

23 Adem Koyuncu, "In: Kirch, W. (eds) *Encyclopedia of Public Health*", (Dordrecht: Springer, 2008), 883.

24 Sally Kuykendall. *Encyclopedia of Public Health: Principles, People, and Programs [2 Volumes]*. Gale Virtual Reference Library. (California: Greenwood, 2018), 515

25 Lawrence O. Gostin, and Lindsay F Wiley, 13

26 Zurlfirman Zurlfirman and Ridho Syahputra Manurung, "Pembukaan UUD 1945 : Analisis Nilai Politik Dan Nilai Hukum Indonesia," *Jurnal Ius* 6, no. 1 (April 28, 2018): 72, <https://doi.org/10.29303/ius.v6i1.543>.

27 The 1945 Constitution of Republic of Indonesia, Article 28.

28 Cellia Cotan Cognard, Stephanie, Jonathan Tjenggoro and Alyssa Ghassani, *Reforming Indonesia's Healthcare System – Key Features of the Omnibus Health Bill*, Accessed May 10, 2024, <https://www.herbertsmithfreehills.com/notes/indonesia/2023-06/reforming-indonesias-healthcare-system-key-features-of-the-omnibus-health-bill>.

29 Law Number 17 of 2023 on Health, Article 90.

outlines individual rights and obligations toward health. Article 96 in Segment 13 of this law focuses on family health. Highlighting the connection between family health effort and the crucial role families play in shaping individuals' health behaviours and outcomes, ultimately achieving overall well-being. However, the article does not detail further how these efforts are to be implemented, though it offers a strong framework for addressing issues like sexually transmitted diseases (STDs) within marriage and perinatal transmission.

2.1.3 Elimination of Domestic Violence Law

Domestic abuse also called domestic violence or intimate partner violence is a complex issue characterized by diverse consequences and challenges. It is by no means political neutral. The naming and defining of domestic abuse profoundly influence how it is being recognized, measured and responded to. The outcome of this process varies between countries and the institution within them, according to range of ideological and pragmatic concern.³⁰ Indonesia's approach to addressing domestic violence is grounded in Law No. 23 of 2004 on the Elimination of Domestic Violence. (*Undang-Undang No 23 Tahun 2004 Tentang Penghapusan Kekerasan Dalam Rumah Tangga*), defining domestic violence as any act against a person, especially a woman, that results in physical, sexual, psychological suffering or distress, and/or household neglect, including threats to commit such acts, coercion, or deprivation of liberty, unlawfully, within the household.³¹ The definition of domestic violence cover a wide range of acts, however, the scope of domestic violence under Article 5 is limited to physical violence, psychological violence, sexual violence, and household neglect. While each violation of Article 5 is subject to criminal penalties of imprisonment and fines, a closer examination of Articles 6, 7, 8, and 9, which elaborate on each category of domestic violence, reveals no clear legal disposition for the act of transmitting diseases in the context of domestic violence.

The true extent of domestic violence is often obscured, much like an iceberg with only its tip visible. A host of factors contribute to the underreporting such as privacy, economic dependence, social stigma, and cultural norms prevent victims from reporting abuse.³² This allows the true impact of domestic violence to remain hidden. Domestic abuse poses a health problem stem from the host of adverse health-related consequences associated with that violence.³³ Beyond physical injuries and mental harm, domestic violence inflicts significant chronic illnesses, sexually transmitted infections, pregnancy complications, and much more. The impact of abuse on health is long lasting and cumulative over time. The more severe the abuse, the more destructive it is to a person's health.³⁴ The current law response to domestic abuse associated with criminal law

30 Oona Brooks-Hay, Michele Burman, and Clare McFeely. *Domestic Abuse: Contemporary Perspectives and Innovative Practices. Policy and Practice in Health and Social Care*. (Edinburgh: Liverpool University Press, 2018). 10

31 Law Number 23 of 2004 on The Elimination of Domestic Violence, Article 1.

32 Irma Suryani et al., "Reformulation of Bundo Kanduang's Role in Solving Domestic Violence Cases," *Jambura Law Review* 5, no. 2 (May 31, 2023): 199–219, <https://doi.org/10.33756/jlr.v5i2.19172>.

33 Anita Stubbs and Cassandra Szoeko, "The Effect of Intimate Partner Violence on the Physical Health and Health-Related Behaviors of Women: A Systematic Review of the Literature." *Trauma, Violence, & Abuse* 24, no. 4 (October 2022), <https://doi.org/10.1177/1524838020985541>

34 Leigh Goodmark. *Decriminalizing Domestic Violence: A Balanced Policy Approach to Intimate Partner Violence*. Gender and Justice. (California: University of California Press, 2018), 50-53

addresses only physical, psychological, sexual violence act, and household neglect act, overlooking the broader health and well-being implications for victims.

2.1.4 Regional Regulations and Regulation of The Minister of Health

To understand how the two regulations fit into Indonesia's hierarchy of legal instruments, a brief explanation of law making, and legal hierarchy is needed. The process of enacting legislation regulated under *Undang-Undang No 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan* and determined by the people through their representatives in the legislative body. The process begins with the proposal of draft bills by the House of Representatives (DPR), the President, or the Regional Representatives Council (DPD). These proposals are submitted to the Legislative Body for inclusion in the National Legislation Program (Prolegnas). The draft bills are then debated at two levels before being passed by the DPR and the President, and finally promulgated into law.³⁵ Article 7 of the Indonesian legal hierarchy³⁶ outlines the various types of commonly used laws based on their legal authority³⁷ include regional regulation. In terms of legal strength, the specific type of instrument in which a rule is placed matters little as long as lower-level regulations do not contradict those higher in the hierarchy.³⁸ Article 8 further details and acknowledges the existence of other regulations outside the hierarchy that also have binding legal strength, provided that such regulations are mandated by higher-level legislation. These other regulations include those issued by institutions and ministers, the exact position of such regulations in the hierarchy is left unclear.

In this study, 2 (two) regulations related to STDs particularly HIV were identified from different initiators. The first regulation, issued by the Ministry of Health, is the latest Regulation of the Minister of Health Number 23 of 2022 on the Prevention and Control of Human Immunodeficiency Virus, Acquired Immunodeficiency Syndrome, and Sexually Transmitted Infections (STIs). Inside this regulation outlines safety measures, target populations, strategies for combating STIs, and healthcare responses for infected individuals. The study reveals the exclusion of housewives from the defined categories of key, vulnerable, and special populations. Given their close relationships and potential exposure to STIs from partners, housewives constitute a high-risk group. Additionally, the regulation has yet to address the consequences of individuals jeopardizing the health of others. The second regulation originates at the provincial level. Importantly, not all provinces have enacted such laws. For instance, North Sumatra, Bengkulu and Papua have implemented specific regulations relating to HIV. (1) Regional Regulation of North Sumatra Province Number 3 of 2022 on the Prevention and Control of Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome, (2) Regional Regulation of Bengkulu Province Number 5 of 2017 on the Prevention and Control of HIV/AIDS in Bengkulu Province, (3) Regional Regulation of Papua Province Number

35 Dewan Perwakilan Rakyat Republik Indonesia, Infografis Proses Pembuatan UU di DPR-RI, Accessed May 30, 2024. <https://www.dpr.go.id/dokhumas/publication/Infografis-Proses-Pembuatan-UU-di-DPR-RI.pdf>

36 Law Number 12 of 2012 on the Formation of Legislative Regulations

37 Suwardi Sagama, "Reformulasi Hierarki Peraturan pada Pembentukan Peraturan Perundang-Undangan di Indonesia," *Volksgeist* 1, no. 2 (December 31, 2018): 185–97, <https://doi.org/10.24090/volksgeist.v1i2.1967>.

38 Mahy, Petra. "Indonesia's Omnibus Law on Job Creation: Legal Hierarchy and Responses to Judicial Review in the Labour Cluster of Amendments." *Asian Journal of Comparative Law* 17, no. 1 (2022): 51–75. <https://doi.org/10.1017/asjcl.2022.7>.

10 of 2021 on Amendments to Regional Regulation of Papua Province Number 8 of 2010 on the Prevention and Control of HIV and AIDS. As the term suggests, regional regulations are enacted within specific geographic areas. A common idea among these regulations is the criminalization of individuals who knowingly withhold their HIV-positive status from sexual partners and practising unsafe sex. However, the penalties vary across regions. Generally, punishments include imprisonment terms ranging from three to six months and fines up to 50 million rupiah.

2.2 Comparative Studies

In the realm of communicable diseases, laws are highly effective on promoting health ordinance designed to prevent disease.³⁹ The regulatory frameworks governing these efforts vary significantly across countries, reflecting each countries response to specific health care needs. This section is assessing the regulatory norms implemented in Singapore, Cambodia and Brunei Darussalam that provide legal protection against the spread of STDs specially HIV, along with their implementation and enforcement. HIV serves as an important consideration for two key reasons: (1) It represents one of the most serious public health problems the modern world faces⁴⁰ as it is sexually transmitted, similar to other STDs. (2) How regulatory frameworks navigate in combating HIV can provide valuable insight into the potential success of these same measures in tackling the transmission of other STDs. Furthermore, this selection considers the diversity of legal systems represented by these countries, which reflects the range of legal frameworks in Indonesia’s geographical region.

A common theme across Singapore, Cambodia, Brunei Darussalam regardless their respected legal system is emphasized on informed consent and risk mitigation. Individuals are bound by law to inform their potential sexual partner(s) about their HIV status, who must then voluntarily agree to accept the associated risk. Non-compliance may lead to criminalization and legal repercussion including fines, imprisonment, or both. The rationale is allowing individuals to make informed decisions about their health and reduce the risk of HIV transmission which reflect a balance between protecting public health and respecting individual rights. In addition, the common legal requirements between all three countries highlights the universal recognition of the ethical obligation for transparency in intimate relationship.

Table 1. Comparison Table

	Singapore	Cambodia	Brunei Darussalam
Law	Infectious Diseases Act 1976,	The National Assembly of Cambodia enacted the Law on the Prevention and Control of HIV/AIDS 2002	Infectious Diseases Act [Cap 204] 2010

39 Sally Kuykendall, 515

40 Don Eliseo Lucero-Prisno et al., “Top 10 public health challenges to track in 2023: Shifting focus beyond a global pandemic,” *Public Health Challenges* 2, no. 2 (May 2, 2023), <https://doi.org/10.1002/puh2.86>

Art	Art 23 : (1) A person who knows that he or she has HIV Infection must not engage in any sexual activity with another person unless, before the sexual activity takes place agreed to accept that risk (2) A person who does not know that he or she has HIV Infection, but who has reason to believe that he or she has, or has been exposed to a significant risk of contracting, HIV Infection must not engage in any sexual activity with another person unless	Article 18: Any practice or acts of those who are HIV positive, which have the intention to transmit HIV to other people, shall be strictly prohibited Article 50: Any person, who violates the Article 18 of this law, shall be punished to imprisonment for ten (10) to fifteen (15) years	Art 24 : (1) A person who knows that he has AIDS or HIV Infection shall not have sexual intercourse with another person unless, before the sexual intercourse takes place, the other person (2) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 2 years or both.
Imprisonment	≤ 10 years	10-15 years	≤ 2 years
Fines	≤ S\$50,000	-	≤ B\$10,000
Legal System	common law	civil law	common law with heavy Islamic law influences

Source: author's processed information

Under the current Infectious Diseases Act 1976, Singapore's approach to HIV transmission according to article 23(1) and (2) mandates that HIV- positive individuals / who has been exposed to a significant risk of contracting to disclose their status and obtaining consent from their potential sexual partner(s).⁴¹ Furthermore, anyone who violates this provision shall be guilty of an offense and, upon conviction, may be fined up to \$50,000, imprisoned for up to 10 years, or both.⁴² According to available data from court records, from 2017 to 2022, there were eight legal cases related to HIV transmission to partners brought to court. This indicates that the act continues to serve its purpose and remains relevant in today's evolving society, although there remains insufficient empirical evidence to establish that the Infectious Diseases Act is the primary factor in lowering HIV infection rates, owing to a scarcity of local research on the effectiveness of criminalizing non-disclosure of HIV status.⁴³

Similarly, Cambodia's Law despite the nation has suffered from a longstanding rule of law deficit, by all usual measures.⁴⁴ The country prioritized addressing HIV/AIDS through the enactment of the Law on the Prevention and Control of HIV/AIDS in 2002. The HIV prevalence⁴⁵ and incidence decreased remarkably from 4.41 % in 2006 to 1.8 %

41 Infectious Disease Act 1976

42 Infectious Disease Act 1976, Article 23(3)

43 Daryl Yang, "Is It Time to Decriminalise HIV Non-Disclosure in Singapore?", *Singapore Law Review*, Vol.10, 2018/19.

44 Randle C. DeFalco, "the Rule of Law Legacy of the Khmer Rouge Tribunal," *University of Pennsylvania Journal of International Law* 45 (2024): 549, <https://scholarship.law.upenn.edu/jil/vol45/iss3/1>.

45 the Incidence:Prevalence Ratio (IPR) serves as a key metric for gauging the effectiveness of intervention strategies. The IPR reflects the number of new infections occurring annually within a population relative to

in 2022.⁴⁶ Among the three, Cambodia stands out for its deterrent effect to those who fail to bind the law in following safety measure mandate by the article 18 in this act, and article 50 prescribing imprisonment for 10 to 15 years. Establishing a direct causal link between the law's implementation and the decrease requires further empirical research. Additionally, research by Andreas and Hanjo examining access to national legislation through the Official Legal Database Worldwide indicates that Cambodia falls below the minimum eligibility threshold.⁴⁷ This suggests that while Cambodia may provide open access to laws and regulations, the accessibility could be impeded by insufficient comprehensiveness, inadequate search tools, or both which then add the difficulties in measuring whether the law is being effectively implemented.

As the only absolute monarchy in the region, Brunei Darussalam's legal system presents a unique case. Rooted in common law due to its historical position as a British protectorate⁴⁸ paired with the nation ideology which has significant influence from Islamic law. Common law which regulates trade activities and Islamic law for disputes between individuals.⁴⁹ Under its Infectious Diseases Act 2010, which also mandates to disclose HIV status to potential sexual partners. Non-disclosure is criminalized based on article 24 (1) and article 24 (2) further details the violation of subsection (1) constitutes an offense. Upon conviction, the offender may be subject to a fine not exceeding B\$10,000, imprisonment for a term not exceeding two years, or both.⁵⁰ To the best of our knowledge no court decisions have been found that specifically address the transmission of HIV. However, cases involving other related offenses have been identified. While Brunei holds a consistent Incident Prevalence Ratio of 0.8% for HIV⁵¹, it's premature to link this success solely to the mandatory HIV disclosure law. The law's impact on social stigma and its potential to discourage HIV testing due to fear of prosecution remain unexplored.

In contrast to the United Kingdom, there is no specific legislation that explicitly mandates the disclosure of HIV status in sexual relationships. The legal framework governing the disclosure of HIV or STD status primarily hinges on the principle of fraudulent consent.⁵² Under common law, individuals who are aware of their HIV-positive status and engage in sexual activity without disclosing this information to their partner may face prosecution for offenses causing grievous bodily harm under Sections 18 and 20 of the Offences Against the Person Act 1861, with a maximum imprisonment term of five years. This legal stance has been clarified in notable judicial precedents, including *R v Dica* 2004 and *R v Konzani* 2005.⁵³ Despite the absence of specific punitive

the total number of individuals living with HIV in that same population in Peter D. Ghys et al., "Epidemiological metrics and benchmarks for a transition in the HIV epidemic," *PLoS Medicine* 15, no. 10 (October 25, 2018): e1002678, <https://doi.org/10.1371/journal.pmed.1002678>.

46 "UNAIDS DATA 2023," <https://www.unaids.org> (UNAIDS, 2023), Accessed May 27, 2024, https://www.unaids.org/sites/default/files/media_asset/data-book-2023_en.pdf, 25

47 Andreas Nishikawa-Pacher and Hanjo Hamann, "Is Every Law for Everyone? Assessing Access to National Legislation through Official Legal Databases around the World," *Oxford Journal of Legal Studies* 43, no. 2 (February 4, 2023): 298–321, <https://doi.org/10.1093/ojls/gqac032>.

48 "Library Guides: Southeast Asian Region Countries Law: Brunei Darussalam," Accessed May 15, 2024, <https://unimelb.libguides.com/c.php?g=930183&p=6721965>.

49 Council Of ASEAN Chief Justice, "OVERVIEW OF BRUNEI LEGAL SYSTEM," <https://cacj-ajp.org>, Accessed May 20, 2024, <https://cacj-ajp.org/brunei/legal-system/introduction-to-the-legal-system/overview>.

50 Infectious Diseases Act 2010

51 "UNAIDS DATA 2023," <https://www.unaids.org> (UNAIDS, 2023), Accessed May 27, 2024, https://www.unaids.org/sites/default/files/media_asset/data-book-2023_en.pdf, 22

52 Samantha Ryan and Matt Phillips, "HIV Disclosure—Professional Body Guidelines, the Law and the Boundaries of Medical Advice," *Medical Law Review* 29, no. 2 (May 1, 2021): <https://doi.org/10.1093/medlaw/fwab011>.

53 Vasilescum, "Dica, R. v [2004] EWCA Crim 1103 (05 May 2004)," n.d., <https://www.bailii.org/ew/cases/EWCA/Crim/2004/1103.html>.

legislation, the incidence of HIV in the United Kingdom has nearly halved over the past decade.⁵⁴ Rather than relying on targeted legal provisions, prevailing ethical guidelines and public health recommendations emphasize the importance of informed consent and seek to reduce and prevent the risk of HIV transmission through the use of confidential sexual health clinics.

While these laws have been established, there is limited empirical evidence directly correlating their enforcement with a decrease in HIV prevalence rates within the region. However, research conducted in the other side of the world mainly United States empirically shows the influence and awareness of HIV exposure laws on HIV-related sexual behaviours found little evidence of protective benefits of these laws.⁵⁵ HIV laws perpetuate stigma and negatively affect the mental health of individuals by criminalizing them and associating an HIV diagnosis with death sentences.⁵⁶ These laws disproportionately impact people of colour and economically marginalized communities and are outdated, failing to reflect current scientific evidence.⁵⁷ These documented negative consequences elsewhere raise serious concerns, considering the detrimental effects of HIV laws discussed above.

3. CONCLUSION

Indonesia faces a considerable challenge in safeguarding marital health due to gaps in its legal framework. These gaps limit access to justice, making it difficult for victims of STD transmission within marriage to seek legal recourse. Existing laws often lack specificity or enforcement mechanisms to address the transmission of STDs, particularly within marriage. Although regional regulations offer some measures, their implementation and enforcement vary widely across the nation. Meanwhile, the Health Law establishes a foundation for preventive measures in disease control and define individual rights and obligations regarding health, but it lacks in specific provisions addressing situations where individuals fail to fulfil their obligations and jeopardize the health rights of others, such as in cases of STDs transmission within marriage.

Comparative analysis of Singapore, Cambodia, and Brunei Darussalam demonstrated a common emphasis on informed consent and risk mitigation, often achieved through the criminalization of non-disclosure of HIV status. However, it also emphasised the limitations of punitive measures and criminalization in achieving meaningful public health outcomes, as evidenced by empirical studies from other jurisdictions that have already begun to enact similar approaches. In contrast, The United Kingdom, for instance, has significantly reduced HIV incidence without relying solely on punitive measures. Instead, a focus on informed consent, coupled with accessible sexual health services, has proven effective. This suggests that Indonesia could potentially benefit from a similar

⁵⁴ “HIV in the UK: towards zero HIV transmissions by 2030,” *GOV.UK*, Accessed July 26, 2024 <https://www.gov.uk/government/news/hiv-in-the-uk-towards-zero-hiv-transmissions-by-2030>.

⁵⁵ Dini Harsono et al., “Criminalization of HIV Exposure: A Review of Empirical Studies in the United States,” *AIDS and Behavior* 21, no. 1 (September 7, 2016): 27–50, <https://doi.org/10.1007/s10461-016-1540-5>.

⁵⁶ Aaron J. Siegler, Kelli A. Komro, and Alexander C. Wagenaar, “Law Everywhere: A Causal Framework for Law and Infectious Disease,” *Public Health Reports* 135, no. 1_suppl (July 1, 2020): 25S–31S, <https://doi.org/10.1177/0033354920912991>.

⁵⁷ Lennon-Dearing, Robin. “HIV Criminal Laws Are Legal Tools of Discrimination.” *Health & Social Work* 48, no. 2 (April 24, 2023): 149–51. doi:10.1093/hsw/hlad004.

approach that prioritizes education, prevention, and accessible healthcare over punitive laws. Article 96 of the Health Law presents a promising framework for addressing health issues within families, including STDs. This approach reflects an understanding of STDs as a social issue requiring collective action rather than to view them solely as a biological problem amenable to medical control. By leveraging this existing framework and incorporating specific guidelines for STDs prevention, education, and treatment, Indonesia can contribute to a healthier and more secure marital environment for its citizens.

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