



NATIONAL CHAPTER  
BRUNEI DARUSSALAM

# THE BIG WRITE 2024/2025





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# GREETINGS

## from ALSA Brunei Darussalam



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I would like to begin by expressing my heartfelt gratitude to the Academic Activities Department, especially the Vice-President, for their invaluable initiative, "The Big Write." This open call offers our students an excellent opportunity to showcase their writing talents and share their perspectives on important topics. These articles are not just publications but a testament to the university's and law society's commitment to engaging students with complex legal issues that have real-world impact. The effort to tackle these nuanced issues reflects the intellectual curiosity, determination, and passion our students bring to their studies, elevating the conversation and enriching our academic community.

A special thank you goes to all the students who have dedicated their time, energy, and intellectual rigour to writing these articles. Your hard work contributes to this project and exemplifies the leadership, initiative, and academic excellence we aim to nurture in future legal professionals. Your participation strengthens both our academic community and the values that drive our university and law society forward. Together, we create a space where ideas flourish and develop, and I have no doubt that "The Big Write" will leave a lasting impact beyond our institution.

I also want to personally thank Rasyidah Khairol for her exceptional vision, leadership, and unwavering support in bringing this initiative to life. Your dedication to empowering students, fostering intellectual curiosity, and providing growth opportunities is deeply appreciated. Without your passion, "The Big Write" would not have taken shape as it has. Your continued guidance is integral to the success of this initiative, and I look forward to seeing its future evolution.

Finally, I invite you, the reader, to immerse yourself in the collection of articles we present. Each piece reflects the passion, dedication, and insightful perspectives of our students. I am confident you will find them not only thought-provoking but inspiring, as they explore important legal issues within our community.

Thank you again for your dedication and enthusiasm.  
With my deepest gratitude and respect,  
ALSA, Always Be One!

A handwritten signature in black ink, appearing to read "Aisyah". The signature is fluid and cursive, with a large initial 'A'.

Aisyah Razimi,  
President of ALSA Brunei Darussalam and the Law Students' Society



# GREETINGS

## from ALSA Brunei Darussalam



PAGE 04

It is with great pride and honor that I present to you the publication of The Big Write, a distinguished compilation of legal articles penned by the talented students of the Sultan Haji Hassanal Bolkiah Faculty of Law. As the Vice President of Academic Activities for the Asian Law Students' Association (ALSA) Brunei and Head of the Academic Activities Department for the Law Students' Society, I am delighted to see the culmination of hard work, intellectual curiosity, and scholarly pursuit embodied in this publication.

The Big Write is not just a collection of articles; it is a testament to the dedication and passion of our future legal professionals who are committed to the ongoing development of the legal landscape in Brunei and beyond. The diverse range of topics covered within these pages showcases the wide breadth of legal fields that our students have engaged with, reflecting their academic growth and their ability to analyze, critique, and contribute to contemporary legal discourse.

As we embark on the journey of shaping the next generation of legal minds, it is essential that we encourage our students to explore the depths of legal knowledge and to express their thoughts with clarity, precision, and conviction. This publication serves as a platform for them to demonstrate their academic achievements, as well as to engage with the broader community in meaningful and thought-provoking discussions on the pressing legal issues of our time.

I would like to take this opportunity to commend the authors for their insightful contributions and to extend my heartfelt thanks to everyone involved in making this publication a reality. Your hard work, enthusiasm, and commitment to the advancement of legal scholarship have resulted in a publication that I am sure will inspire both current and future generations of law students.

In closing, I encourage all readers to engage with these articles not only as academic works but also as reflections of the vibrant and evolving field of law. Let this publication serve as a reminder of the importance of legal education and the invaluable role that each of us plays in the pursuit of justice, fairness, and the rule of law.

A handwritten signature in black ink, appearing to read 'Rasyidah'.

Rasyidah Khairol,  
Vice-President of Academic Activities of ALSA Brunei Darussalam  
Head of Academic Activities Unit of the Law Students' Society



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# THE BIG WRITE

## GENDERED JUSTICE IN THE DIGITAL AGE: ADDRESSING JURISDICTIONAL CHALLENGES IN CYBERCRIME AGAINST WOMEN

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**WRITTEN BY: DAYANG BATRISYIA BINTI AWANG JUNAIDI**

It is my great pleasure to present my legal article, "*Gendered Justice in the Digital Age: Addressing Jurisdictional Challenges in Cybercrime Against Women.*" I chose to write this topic because cybercrime against women remains underdiscussed, despite being a critical issue in Brunei Darussalam that demands greater attention. Through this article, I hope to provide valuable insights and raise awareness about the challenges women face in the digital world.

I would also like to express my sincere gratitude to the Vice-President of Academic Activities of ALSA Brunei for organizing *The Big Write*. Not only did it give me the opportunity to explore my chosen topic, but it also provided participants with a platform to enhance their writing and research skills while deepening their legal knowledge.

Once again, I extend my heartfelt thanks to ALSA Brunei for making this publication possible.

ALSA, Always Be One!

**AUTHOR 1**



# INTRODUCTION



In the digital age, the internet has revolutionised various sectors such as governance, health care, and education, enhancing global connectivity and efficiency. However, alongside these advancements, cyberspace has also emerged as a new era of gender-based violence, significantly affecting women. Cyberviolence against women and girls (CVAWG) has become a pervasive issue, with research showing that a substantial proportion of women worldwide experience some form of cyberviolence. Although both men and women can be victims of cyberviolence, evidence shows that women are more at risk. World Health Organisation reported that one in ten women has been a victim of cyberviolence since the age of fifteen, highlighting the urgent need to address this critical issue.

This article will examine the multifaceted nature of CVAWG, exploring its various forms, analysing the underlying factors contributing to its prevalence, and investigating the challenges faced in effectively preventing and responding to these crimes. Through this analysis, the article seeks to contribute to the discourse on creating safer digital spaces for women globally.





# FORMS OF CYBERCRIME AGAINST WOMEN AND GIRLS

CVAWG encompasses various forms of violence perpetrated through Information and Communication Technologies (ICTs) that target women and girls based on their gender. These acts can have severe consequences, including job loss, social isolation, and psychological trauma.

**The significant forms of CVAWG include:**

## CYBERSTALKING

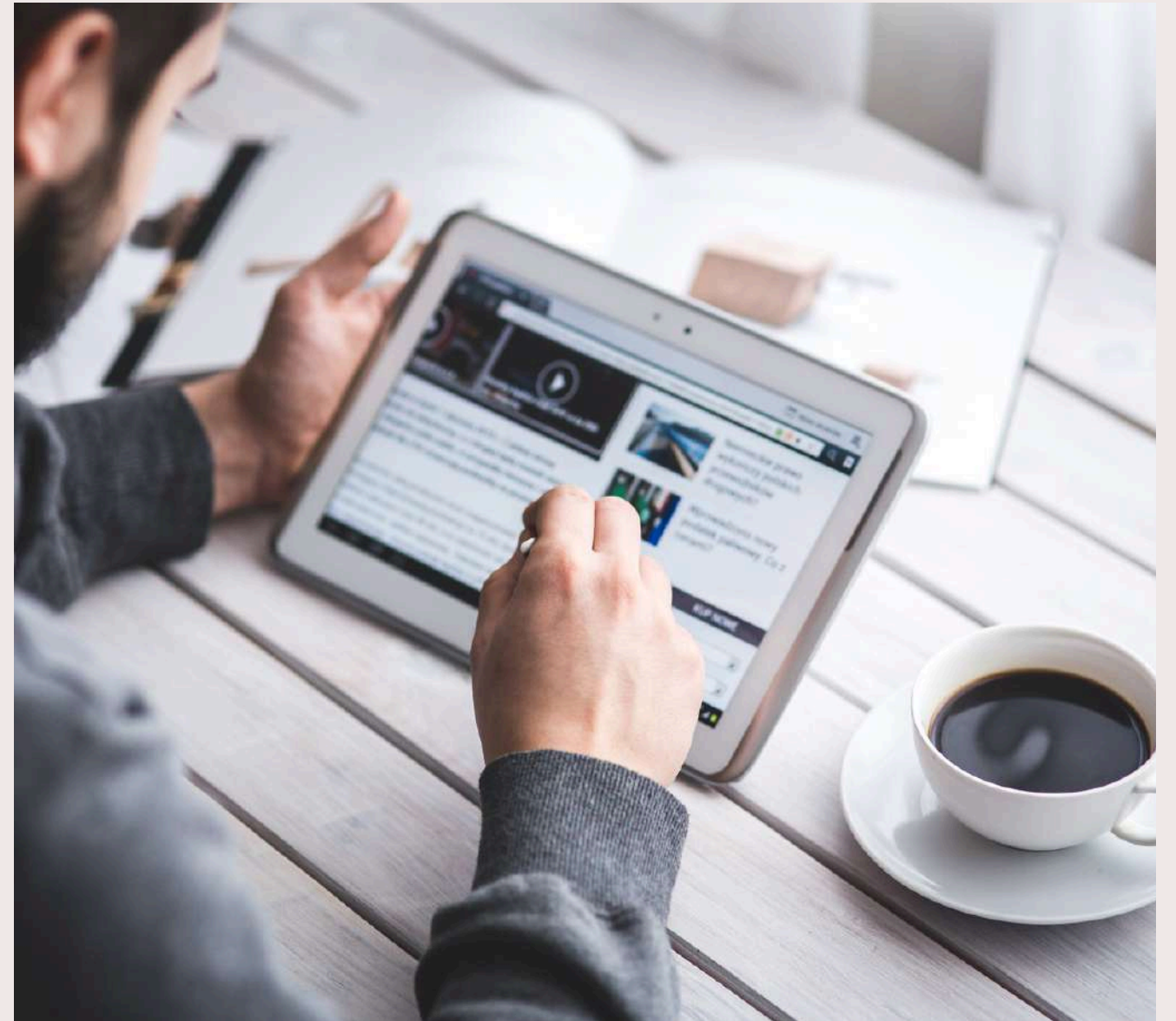
Persistent online harassment that creates fear and distress, with studies showing that women are mainly targeted. For instance, Duggan (2014) reported that 26% of women were cyberstalked while 7% were men.

## CYBER GROOMING

Manipulating young girls or vulnerable women online for exploitation through building deceptive relationships. Reportedly, the National Society for the Prevention of Cruelty to Children (NSPCC) found that 84% of cyber grooming victims were females aged between 12 and 15.

## REVENGE PORN

Non-consensual distribution of explicit materials to humiliate or control victims. According to Kitchen (2015), it is estimated that 60-70% of individuals affected by revenge porn are women, while CCRI (2014) found that 90% of victims were female.



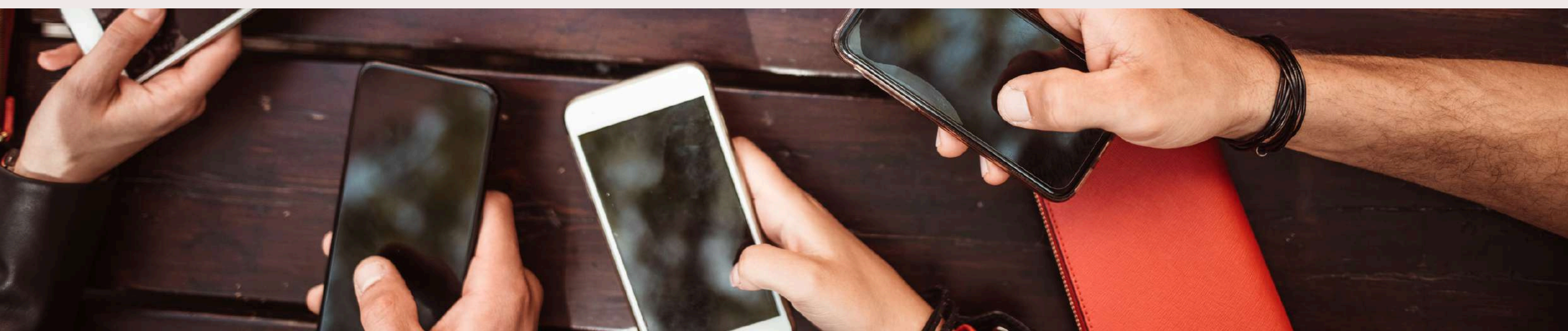
## CYBER BLACKMAIL

Extortion using intimate images or sensitive information often leaving victims emotionally and financially distressed. A survey by Cyber Civil Rights Initiative reported that 90% of revenge porn victims were women.

## DEEPAKE PORNOGRAPHY

Fabricated explicit videos or images used to harm women's reputations. According to Sensity AI, 96% of deepfake content available online features explicit material, and women are frequently the main victims of non-consensual manipulated videos.

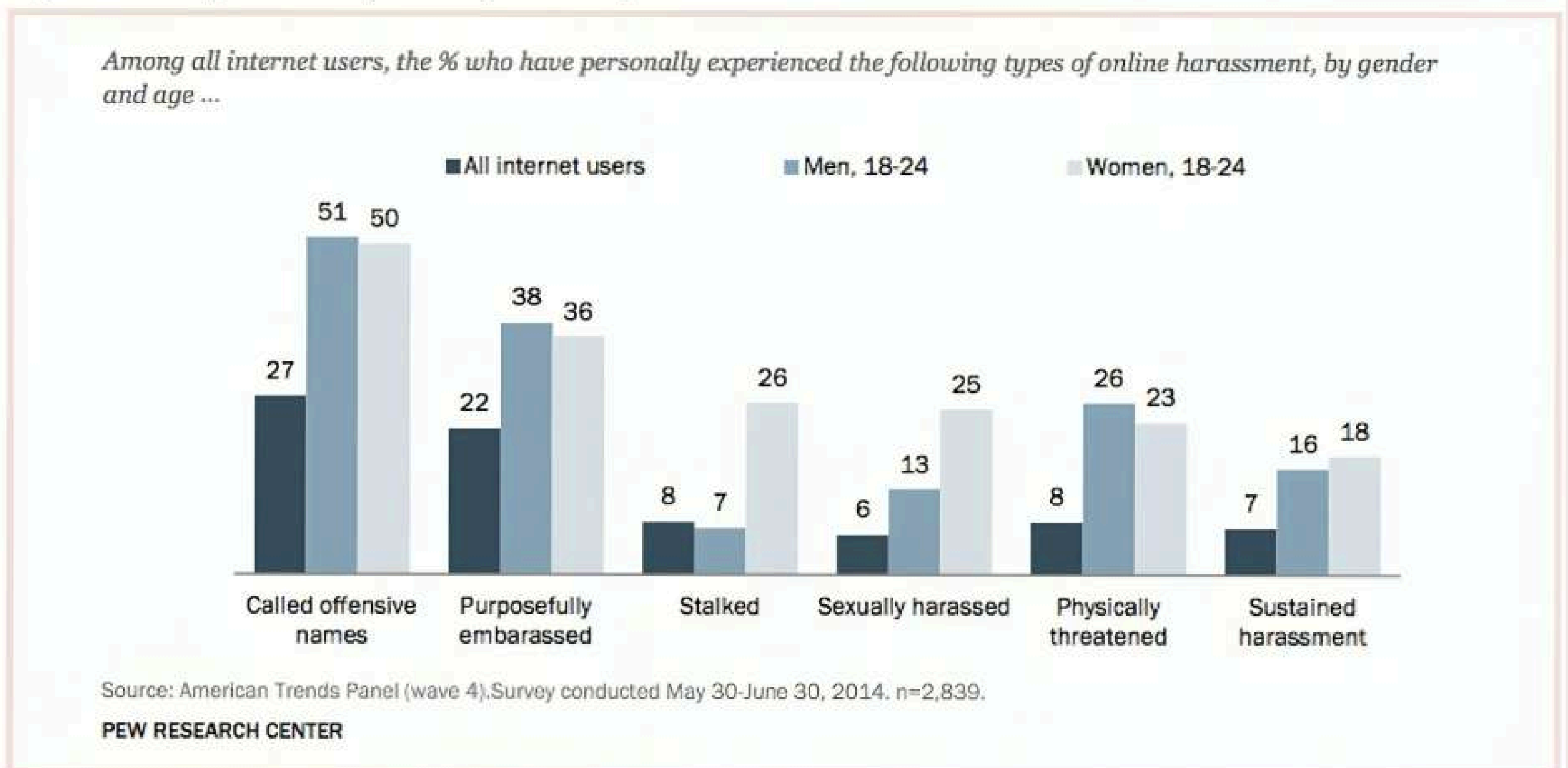
\*It is important to note that these are just some of the many types of CVAWG. Addressing these crimes requires implementing legal measures, enhanced digital literacy, and online safety initiatives.



# THE GENDERED NATURE OF CYBERSCAPE

Women are most likely to be targeted by cybercrimes, facing unique gender-based violence in the digital realm. Reportedly, the World Health Organisation proved that one in ten women experienced cyberviolence since the age of fifteen. These online spaces frequently mirror societal power structures, amplifying harmful gender norms and fostering environments where women are subjected to online violence. Such crimes can have significant social, psychological, and economic impacts on women’s lives.

**Figure 3: Young women experience particularly severe forms of online harassment**



Source: <https://www.womensaid.org.uk/information-support/what-is-domestic-abuse/onlinesafety/>

Furthermore, existing laws often fail to address the specific needs of female victims of cybercrime, particularly in cross-jurisdictional contexts where the perpetrators and victims may be in different regions with varying legal protections. Unequal access to and engagement with digital spaces exacerbates the risks they face online. These digital inequalities, deeply rooted in the broader social disparities, highlight the urgent need for frameworks that address the intersection of gender and digital inequality in combating cybercrime.

**Gender-based violence**  
more common than you think

In the European Union, since the age of 15:

- 1 in 3** women has experienced physical and/or sexual violence
- 1 in 2** women has experienced sexual harassment
- 1 in 20** women has been raped
- 1 in 5** women has experienced stalking
- 95%** of victims trafficked for sexual exploitation in the EU are women

Reference:  
<https://eige.europa.eu/gender-based-violence/what-is-gender-based-violence>

# INTERNATIONAL JURISDICTIONAL CHALLENGES IN CYBERCRIME AGAINST WOMEN

Prosecuting cybercrime against women is met with obstacles due to the complex jurisdictional issues. The transnational nature of cyberspace means that cybercriminals often operate across borders, creating challenges in determining which country's legal system has the authority to investigate and prosecute crimes. These jurisdictional challenges, particularly the differences in national laws, digital evidence handling, and international cooperation, complicate the pursuit of justice for women victims of cybercrime.

Jurisdiction in cybercrime cases is inherently complex given the borderless nature of cyberspace. Cybercrimes often involve perpetrators operating across borders, targeting victims in different countries, complicating the establishment of jurisdiction and consistent application of legal standards. This necessitates a re-evaluation of traditional jurisdictional principles. As Baxi (2020) notes, varying national laws and the absence of universal definitions for cybercrime offenses (Thakur, 2018) create significant enforcement gaps. In the case of *Microsoft Corp. v. United States (2018)*, the jurisdictional debate over accessing data stored in Ireland highlighted the procedural challenges of cross-border evidence collection and legal inconsistencies. Similarly, global disparities in cyber laws have hindered the prosecution of crimes such as revenge pornography, where delays in identifying perpetrators and obtaining evidence often exacerbate harm to victims. Addressing these challenges requires enhanced international cooperation and a concerted effort toward harmonizing legal standards and definitions of cyber offenses, as Thakur (2018) advocates.

Collecting digital evidence across jurisdictions presents significant procedural obstacles in cases involving women cyber-victims. Critical data often resides in foreign servers, subject to differing privacy laws and regulations. Accessing encrypted communications or data from a social media platform may require mutual legal assistance treaties (MLATs) or compliance with the host country's data access policies, significantly delaying investigations. For instance, the RAND Corporation discusses the technical and legal challenges law enforcement encounters when seeking access to data stored across borders, emphasizing that the locational uncertainty of data in the cloud can impede timely access to crucial evidence. This is especially problematic in time-sensitive cases, such as revenge pornography, where delays in evidence retrieval can harm victims. Additionally, emerging technologies like blockchain and decentralized platforms present new challenges for evidence collection, making it increasingly difficult to track and preserve critical digital evidence, thereby impeding justice for women affected by cybercrimes.

Existing international frameworks, such as the Budapest Convention on Cybercrime, promote cross-border cooperation but have limitations in addressing gender-specific cybercrimes. Many countries, including those where offenses occur, are not signatories, limiting the Convention's reach. Furthermore, its provisions may not provide sufficient protection for women victims of online gender-based violence, leaving crimes like doxing and online sexual exploitation inadequately addressed in cross-jurisdictional contexts. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) provides a framework for addressing gender-based violence, including online violence, within an international human rights context. However, the effective implementation of CEDAW in the context of cybercrime remains a challenge. These limitations hinder the effective protection of women's rights in the digital sphere.



# RECOMMENDATIONS

This section will address the jurisdictional challenges in prosecuting cybercrime against women requires a multi-pronged approach.

## 1 Strengthening International Cooperation

To begin with, strengthening international cooperation is a critical step. This can be achieved by developing a strong international treaty on cybercrime that explicitly addresses gender-based online violence, ensuring clear provisions for cross-border data sharing, mutual legal assistance, and extradition. Additionally, harmonizing legal definitions of cybercrimes, such as revenge pornography and cyberstalking, will facilitate consistent application of laws across jurisdictions, making it easier to prosecute offenders. Regional cooperation through cybersecurity alliances can enhance information sharing, resource sharing, and capacity building among member states, creating a united front against cyber criminals.

## 3 Prioritizing Victim-Centered Approaches

A victim-centered approach should be prioritized to provide comprehensive support for women affected by cybercrime. Access to counseling, legal aid, and technology assistance is vital for their recovery and justice. Empowering women victims by involving them in the justice process ensures their voices are heard and their needs are met, fostering a more inclusive legal system.

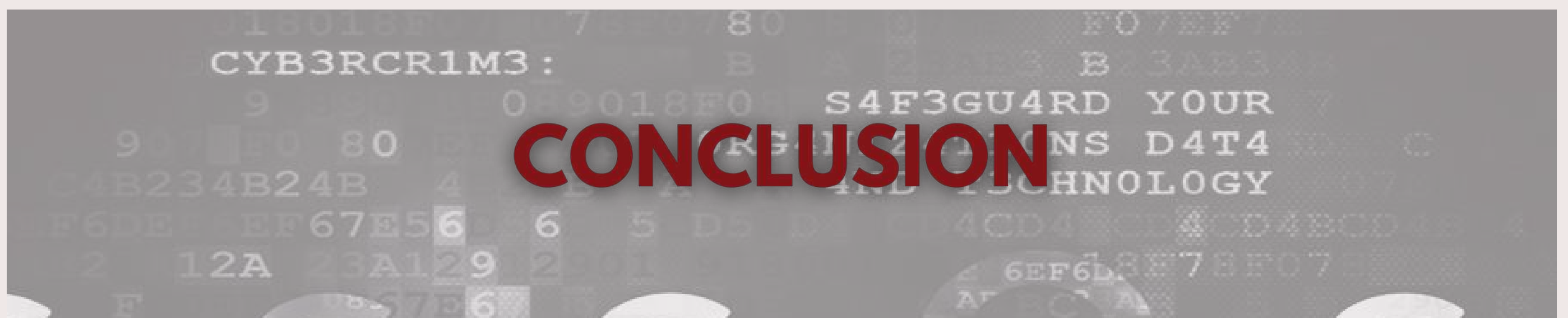


## 2 Addressing Digital Inequality

Addressing digital inequality is also paramount in protecting women from online harm. Bridging the digital divide through a digital literacy program will empower women with the knowledge and tools to navigate the digital landscape safely. Ensuring equitable access to technology and the internet is crucial to leveling the playing field and enabling all women to protect themselves from cyber threats.

## 4 Leveraging Technology

Leveraging technology offers significant potential in overcoming jurisdictional challenges. The development and use of secure data-sharing platforms and AI-powered tools can streamline cross-border investigations, making it easier to track and apprehend cybercriminals. By implementing these recommendations, the international community can create a more cohesive, effective response to the growing issue of cybercrime against women.



Cybercrime encompasses various online threats and attacks, each presenting unique challenges and implications. The intersection of technology and gender exposes women to distinct vulnerabilities, necessitating a critical examination of legal frameworks and jurisdictional practices. The current jurisdictional challenges impede the effective prosecution of these crimes, often leaving victims without sufficient legal protection or recourse. Addressing these challenges requires harmonising international cyber laws, boosting cross-border cooperation, and integrating gender-sensitive approaches. By implementing these strategies, legal systems can better protect women in cyberspace and ensure equitable justice in the digital era.



# THE BIG WRITE

# INTERNATIONAL ENFORCEMENT: A CALL FOR UNIFIED LEGAL ACTION TO CONFRONT CYBERCRIME ISSUES

**WRITTEN BY: AIMI ATIQAH BINTI ABDUL HAMID**

To begin with, I would like to express my heartfelt gratitude to ALSA 24/25 for granting me the privilege to actively participate and contribute my work specifically in the field of international law. With the platform provided by ALSA, I am able to delve deeply into the critical issue of cybercrime and engage in a comprehensive discourse.

As the world continues to maneuver through the phase of globalization, the rise of cybercrime has also become a pressing global issue. This article explores the expansive scope of cybercrime, highlighting its detrimental impacts on businesses, governments and individuals. Although efforts have been made to combat cybercrime at the national level, they have proven to be insufficient and ineffective. Given the inadequacy of current solutions and the inherent borderless nature of cybercrime, it demands immediate and decisive action on the international level.

This article also proposes viable strategies such as utilizing Mutual Legal Assistance Treaties (MLATs), enhancing the role of international law enforcement and introducing the universality principle jurisdiction; all of which are designed to overcome jurisdictional challenges and create a cohesive international framework for prosecuting cybercriminals.

As a final remark, I hope this article provides valuable insights, encourages readers to recognize the urgency of this issue, and prompts them to consider the critical role each of us plays in advocating for a safer and more secure digital world.

**AUTHOR 2**



# OVERVIEW OF CYBERCRIME

Did you know about the fact that every 39 seconds, cybercrime happens all around the world and it is reported to have increased dramatically up to 400% in March 2020 alone due to the COVID-19 pandemic? As the world continues to maneuver through the phase of globalization, it is inevitable that factors like technological advancement and development become very influential. While these breakthroughs might impose positive impacts on people as a whole, it also leads to nations being disclosed to new vulnerabilities, for instance security threats and individual's rights being infringed upon as time elapses. This is because technological advancement opens a pathway for criminals to commit crimes in a new manner where these advancements often provide opportunities and are used as a tool for criminals to engage in criminal activities covertly without being apprehended.



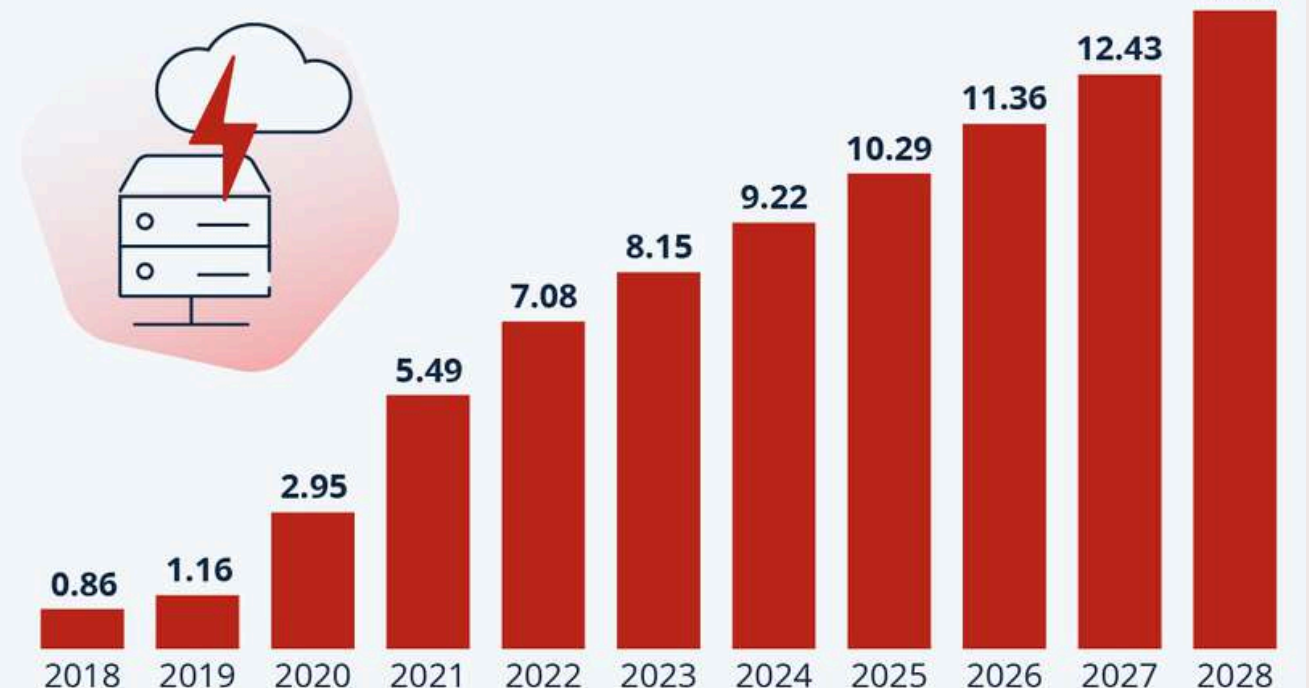
Thus, criminal activities in which computers or computer networks are a tool, a target, or a place of criminal activity and include everything from electronic cracking to denial of service attacks are broadly known as 'cybercrime'. Cybercrime is considered as an international crime due to its borderless nature.



For a more comprehensive understanding on cybercrime as an international crime, it is necessary to refer to an example. One of the infamous examples is the case of **Estonia v Russia**. In this case, Estonia was experiencing an uproar due to the decision by the government to remove the Bronze of Soldier statue which holds a significant symbol of sacrifice and liberation to the Russians within Estonia. This issue is further intensified due to cyberattack which were ensuing for 22 days attacking a number of critical infrastructure and essential sectors of a country. As a result, this imposed a security threat towards Estonia as it disrupted public services and caused material losses. From this case, it proves that cybercrime leads to international relationship damage especially if the perpetrator comes from another country and causes international order instability.

## Cybercrime Expected To Skyrocket

Estimated annual cost of cybercrime worldwide (in trillion U.S. dollars)



As of Sep. 2023. Data shown is using current exchange rates.  
Source: Statista Market Insights

However, it is important to note that cybercrime is wide and broad in scope, any illegal acts conducted through the use of sophisticated technology is also included and therefore, is not restricted solely to the above mentioned example.

# IMPACTS AND THE URGENCY TO COMBAT CYBERCRIME



There is an urgency for the need to prevent cybercrime from escalating in the near future. This is proven from the impacts it caused against businesses, governments and individuals. For instance, cybercrime could be in the form of cyberbullying with female teenagers becoming its majority victims. It is reported that an average of 66.66% female teenagers are bullied online and approximately 70% of the female teenagers are sexually solicited online. While in the business and financial sector, they are the most vulnerable to economic losses as cybercriminals infiltrate the company's security computers to gain information with regards to the company's financial report, making it more convenient to commit money laundering. Approximately 87.6% of the private companies become the victim of cyberattacks, highlighting the severe impact and the urgent need for immediate action. It is also undeniable that cybercrime threatens the government's security. Based on the previous cases, examples include cybercrime being conducted in the form of misguiding planes on flights by giving wrong signals and causing a country's military data to be retrieved and falling in the hands of enemies; all of which will result in chaos and uproar. As time elapses, cybercrime continues to grow and increases speedily due to its borderless nature and the absence of international legal instruments also contribute to its growth. Therefore, there is an urgent need for international cooperation to solve the issues of cybercrime effectively which will become rampant if it is left unresolved.

# STRATEGIES TO COMBAT CYBERCRIME AT INTERNATIONAL LEVEL

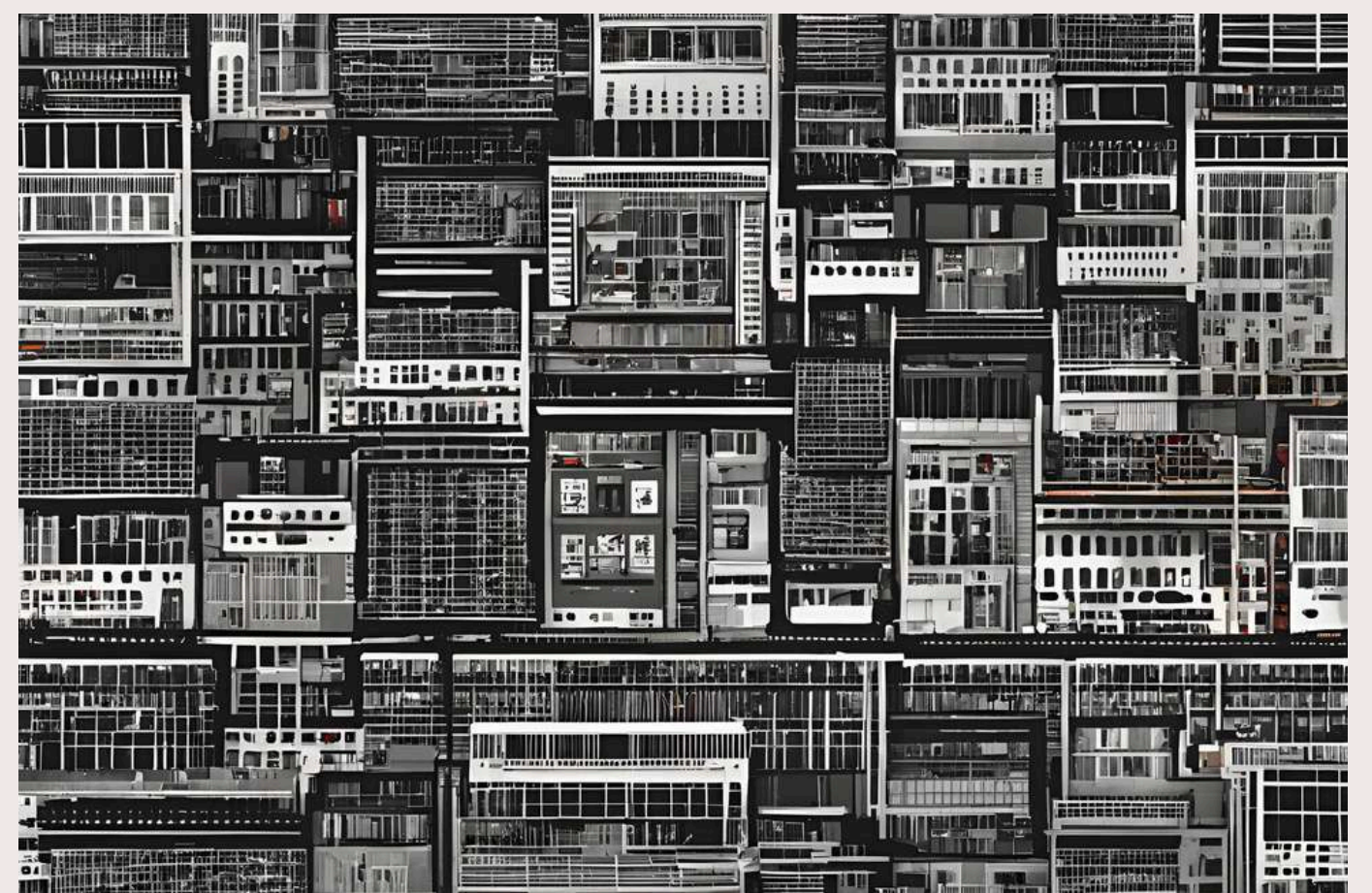
Preventing cybercrime at international level is the most suitable measure taken considering the nature of cybercrime being borderless. This is further supported by the fact that such crime is viewed as an 'international crime' as it falls within the purview of crimes against peace and security, as well as fundamental human values; the growth of which will undermine international order and the usual operation of international relations.

## Challenges In Implementing Previous Preventive Measures

However, it is a rather false claim to make that there is no effort being made at all in preventing such crimes from growing. There are some preventive measures in place but it is proved to be ineffective due to some issues. For instance, even if the investigators managed to locate the whereabouts of the perpetrator, taking them into custody and ensuring they faced the punishment becomes challenging due to jurisdictional issues. In a situation where the perpetrator is located in a foreign country, apprehending them becomes difficult especially if the foreign law enforcement are not willing to cooperate or lacks the technical capabilities to support the investigation. Furthermore, the lack of uniformity in criminal laws criminalizing such conduct complicates the prosecution of the perpetrators. Not to mention that the concept of territorial jurisdictions is ineffective due to the difficulty in determining the origin of the cyberattack as both the perpetrator and victims often come from different countries. Apart from that, perpetrators may also utilize computer systems in multiple countries during the attack, making it more difficult to trace them.

In response to this, improvements can be made to overcome these challenges which makes combating cybercrime almost impossible. However, what specific forms of international cooperation can be established?

## Enhancing International Preventive Measures For Greater Effectiveness



### Utilizing Mutual Legal Assistance Treaty (MLATs) and Utilizing the Role of International Police Force (Interpol)

In answering this question, one of the solutions is making use of Mutual Legal Assistance Treaty (MLATs) to facilitate the prosecution of the cybercriminals. This can be done in two forms; including accessing stored data and cooperation with the International Police Force.





## Utilizing Mutual Legal Assistance Treaty (MLATs) and Utilizing the Role of International Police Force (Interpol)

### Firstly,

Countries can collaborate to streamline the MLA process to keep pace with the rapidly evolving nature of cybercrime. So that in a situation where the data or evidence needed is located outside of a country's territory, it can provide ways to access data quickly. For instance, the only international treaty within the Council of Europe that contains provisions related to Mutual Legal Assistance in cybercrime cases is the Council of Europe (CoE) Convention on Cybercrime. In this convention, specific provisions also promote 'expedited' communication methods, the use of 24/7 networks and the sharing of real-time information.

Therefore, this form of mutual assistance aids in prosecuting the criminals particularly by facilitating the gathering of evidence needed for prosecution. This will also help to provide assistance to the International Police Force in coordinating international efforts to prevent cybercrime much more effectively, as the data and relevant information will be sent to them to locate the criminals.

### Then,

Making effective use of the International Police Force, or famously known as the 'Interpol' also helps to facilitate the prosecution effectively. This is because they usually cooperate with private partners to exchange information on threats and trends to facilitate police actions. In addition, the Interpol has also established two reliable platforms to assist cybercrime related communications among police all over the world, which is known as the Cybercrime Knowledge Exchange Workspace and Cybercrime Collaborative Platform Operation. With the existence of these facilities provided by Interpol, preventing cybercrime becomes much more effective as it strengthens international cooperation and information exchange between law enforcement agencies across the globe and allows police to align actions to address ongoing cyber threats. This ensures more integrated international effort to strive against cybercrime, instead of individual countries acting in isolation.

## Role Of International State Jurisdiction

### Implementing and Practising 'Universality Principle Jurisdiction'

In terms of jurisdiction, it is proven that territorial and nationality principle jurisdiction is ineffective. As the digital landscape is intangible in nature, perpetrators tend to exploit these gaps to conceal their identity and it is difficult to detect the origin of the cyberattacks. Therefore to solve this problem, universality principle jurisdiction is favoured to combat cybercrime. As cybercrime are considered as *delicta jure gentium* (crimes under international law), there exists a universal interest to repress this crime. This is known as the 'universality principle jurisdiction.' Under this jurisdiction, the perpetrators may be prosecuted and heard by any State, regardless of territorial or nationality link with the perpetrator or his victim. By virtue of Para 4 of the International Criminal Court Statute, it is provided that most serious crimes of concern to the international community as a whole must not go unpunished and their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation.

This principle is further highlighted in the case of ***Attorney General of the Government of Israel v Eichmann***

*"Such abhorrent crimes... are not crimes under Israel law alone. These crimes are grave offences against the law of nations itself (delicta jure gentium). The jurisdiction to try crimes under international law is universal."*

Although the scope of this jurisdiction principle mostly includes heinous crimes such as genocide, war crimes and torture, it is proposed that cybercrime should also be included under this jurisdiction as its commission may also lead to crimes against humanity such as child pornography. In Belgium and Germany, criminals are prosecuted under universal jurisdiction for committing cybercrime involving child pornography. On the other hand, countries like the Netherlands do not exercise universal jurisdiction over such crimes. Such disharmony makes it more challenging to prevent cybercrime. Due to this, it is suggested that the law of universal jurisdiction in relation to cybercrime shall be made coordinated between countries. This way, preventing cybercrime becomes more effective if any state is allowed to prosecute and hear the case once the perpetrator is found. Considering that finding the time and place of the attacks is hard, universality jurisdiction is an ideal jurisdiction.



### Extraditing Cybercriminals to the Requesting State

In a situation where the perpetrator is located in a foreign country, an extradition may be exercised to bring such person into the custody of the requesting country. Extradition in the context of international law means the act of depending on the cooperation of other states in order to surrender alleged criminals, who are or have fled abroad. This is one form of international judicial assistance. However, it is important to note that extradition requires the concept of double criminality where they require that cybercrime must be recognized as a criminal offense in both the jurisdiction of requesting and requested states. Hence, this is why having an updated and coordinated law is important to enable the extradition to take place.

This is closely related to the need of harmonizing substantive law for all countries. For instance, in the case of **Love Bug Virus**, it caused severe damages worldwide due to the hacking. The perpetrator is a Philippine citizen, which in the course of prosecution failed due to the lack of substantive law in the Philippines criminalizing such crime. In addition, the perpetrator could not be extradited to any requesting state as cybercrime was not considered as a crime under the Philippine laws; hence, failed to fulfill the principle of double criminality. Overall, this case emphasizes that without double criminality and harmonized laws, cybercrime sanctuaries are established where cybercriminals could not be prosecuted; therefore serving only as formalities.

## CONCLUSION

### Overall,

It is understood that cybercrime is borderless in nature and its commission grows rapidly as time progresses. While such crime increases speedily, the efforts to combat this crime on the other hand are moving at a slow progress. Taking into account that cybercrime is an international crime, efforts to prevent such crime should be made at international level.

Although there have been some preventive measures taken to deter cybercrime before, it has proved to be ineffective. In solving this issue, international cooperation is necessary to combat these crimes more effectively. International cooperation includes the use of Mutual Legal Assistance Treaty (MLATs) to facilitate accessing data located in foreign countries and utilizing the use of the International Police Force (Interpol) to enhance investigations and cooperation between police all over the globe. Apart from that, to address the jurisdictional issues, it is proposed that cybercrime be recognized as part of *delicta jure gentium*, so as to enable the implementation of universality principle jurisdiction over such crime. The prosecution of cybercriminals will become more effective using this principle of jurisdiction.

Extradition can also be exercised especially in a case where the criminals are located abroad; outside of the state or country seeking to take the criminals into custody. With the implementation of all of these solutions, combating cybercrime will become more effective.

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# THE BIG WRITE

## HOW DEFAMATION LAWS CAN BE REFORMED TO ADDRESS CHALLENGES POSED BY SOCIAL MEDIA

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**WRITTEN BY: HANA HAZIRAH BINTI ABDULLAH ABDUL AZIZ**

Ever heard of *The Boy Who Cried Wolf*? A story of a mischievous shepherd who repeatedly deceived his villagers with false alarm, only to be ignored when a real wolf appeared. This tale serves as a fitting analogy for a pressing modern issue, cyber defamation. Social media spreads both truth and misinformation, with false accusations harming reputations, careers, and mental well-being. While Brunei has defamation law, it struggles to address digital challenges, unlike countries with dedicated cyber defamation legislations.

I would like to express my sincere gratitude to the entire team of LAWSS and ALSA Brunei for the opportunity to participate in the *Big Write 2024/2025* and for selecting my article for publication. This allows me to share my thoughts and insights on the complexities of defamation laws in social media, while also refining my legal writing skills. Please enjoy and I hope the articles written by all writers are beneficial to the readers. A little advice to all of us, as per the old tale taught, think before you post.

**AUTHOR 3**



# THE BOY WHO CRIED WOLF



**T**he classic old story of *"The Boy Who Cried Wolf"* teaches an important lesson; dishonesty can harm both the speaker and the listener. In the story, a shepherd boy repeatedly lied to the villagers, claiming a wolf was attacking their sheep. Although his lies initially created chaos, the villagers soon stopped believing him. When a wolf finally did appear, his cries for help went ignored, leaving him and the flock unprotected.

This story reflects a common issue in today's digital age: defamation on social media. False statements or misinformation often spread rapidly without verification, causing serious harm to the victims and their reputation, mental health, and livelihood. However, the damage extends beyond the victim. When false statements are made with the intention to damage someone's reputation, the credibility of the person making those statements is also compromised. The public may lose trust in anything the person says in the future, creating lasting consequences for both parties. As a result, defamation requires serious attention and reform in the law to address the unique challenges presented by social media. Defamation involves making false statements or spreading false information with a third party, damaging the victim's reputation. This can take the form of written content or images, referred to as libel, or spoken words, referred to as slander. Regardless of the method, when such statements spread rapidly without proper verification, they can severely damage the victim's reputation.

Defamation involves making false statements or spreading false information with a third party, damaging the victim's reputation. This can take the form of written content or images, referred to as libel, or spoken words, referred to as slander. Regardless of the method, when such statements spread rapidly without proper verification, they can severely damage the victim's reputation.

# THE CONCEPT OF CYBER DEFAMATION

Cyber Defamation usually occurs on social media, where a person makes a false or damaging statement about another person or entity on the internet. Other words for Cyber Defamation may include “Online Defamation” or “Internet Defamation”. This may involve written posts, comments, videos, images or even fake reviews that harm the reputation of the individual or entity being targeted.

Cyber Defamation typically begins when a person posted or shared an information containing false and misguided content, either with malicious intent or due to negligence. Once the information is posted, it typically spreads so fast, which may cause the reader to fail to verify the sources.

People spread false information and misinformation on social media for many reasons, often aiming at celebrities, influencers, or other high-profile public figures. Posting false information about these individuals can severely damage their reputation.

A recent example of defamation occurred in September 2024 involving South Korean-American rapper-singer Jessi who faced false accusations of involvement in an assault. Misinformation circulated quickly on social media, leading to public outrage and damage to her reputation, which resulted in her agency terminating her contract. This aligns with the concept of defamation, where false statements lead to damage and harm to a person’s reputation, both personally and professionally



## THE IMPACT ON CYBER DEFAMATION

False statements circulating on the internet can significantly harm a victim’s reputation. This often happens because the public tends to believe and share such statements without verifying their accuracy, sometimes simply following a trending topic.

As a consequence, victims may face negative perceptions and exclusion. For example, in a workplace, colleagues may distance themselves, and employers might terminate the victim’s employment or remove them from company premises to safeguard the organisation’s reputation.

This results in both professional and personal damage to the victim. The effects are not limited to the victim alone; the credibility of the person spreading the false information is also at risk. When the statements are shown to be false, the public may begin to doubt the credibility of the author, questioning the truth of any future content they create. This mirrors the story of The Boy Who Cried Wolf, where dishonesty erodes the speaker’s trustworthiness in the end

In recent years, Brunei has seen a rise in cybercrime cases, with 834 reported in 2023 compared to 748 in 2022. This increase indicates that the country needs stricter penalties to deter further crimes.

However, Brunei lacks a specific legal framework addressing cybercrime comprehensively. Existing laws, such as the **Computer Misuse Act (2007)**, **Emergency (Copyright) Order (1999)**, and **Electronic Transaction Act (2008)**, provide limited provisions related to internet use but do not directly address issues like cyber defamation.

When it comes to defamation, **The Defamation Act, Chapter 192** regulates laws concerning libel and slander in Brunei. It defines defamation as any false or misleading statements made through broadcast, telecommunication, or publication by newspaper. This definition also extends to defamatory content shared on platforms like Instagram and Twitter.

Under **Section 500 of the Penal Code**, defamation is punishable by up to 5 years of imprisonment and a fine. However, this penalty has been criticised as insufficient, as offenders may repeat such behaviour even after serving their sentence, leaving victims of cyber defamation to suffer the lasting damage to their reputation.

## THE FRAMEWORK ON DEFAMATION IN CYBER IN BRUNEI



While the **Defamation Act** considers broadcast statements as permanent publications, defendants may argue their right to freedom of speech, complicating the victim's ability to prove the case. This imposes an additional burden on victims, who must establish their claims on the balance of probabilities.

Unlike Brunei, some countries have enacted comprehensive laws to address cybercrime, including defamation. For instance, although it was criticised by the media outlets due to freedom of speech,<sup>8</sup> Papua New Guinea's **Cybercrime Code Act (2016)** provides a detailed framework covering various cybercrime offences and their respective punishments.

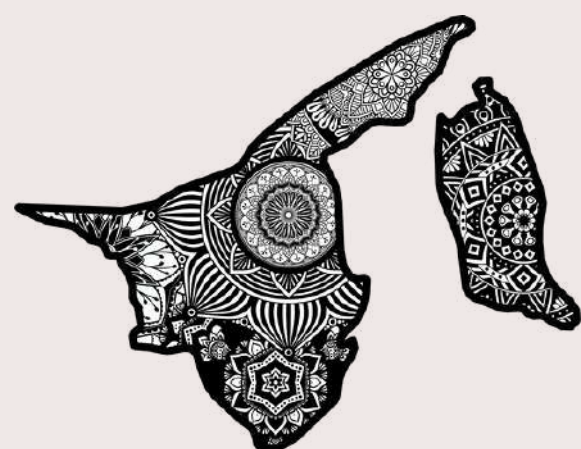


## IMPROVEMENTS ON DEFAMATION LAW ON SOCIAL MEDIA

In defamation cases, the burden of proof lies with the claimant, who must show in court that the defendant's statements contained false information and caused harm, particularly to their reputation and dignity. To mitigate the harm suffered by claimants and address the broader impacts on authors and the public, various reforms to defamation laws are necessary

Under **Section 500 of the Penal Code**, defamation is punishable by imprisonment and fines. However, these penalties may be insufficient, as offenders can continue engaging in harmful behaviour after serving their sentences. Authorities should consider implementing stricter sanctions, such as restricting the offender's ability to post on social media platforms. Furthermore, penalties should be progressive, with first-time offenders facing less severe punishments compared to repeat offenders, while ensuring that penalties escalate for repeated violations.

The rise in cybercrime underscores the need for dedicated legislation addressing online defamation. Authorities should establish specific laws to tackle cyber defamation, detailing its various forms and providing concrete examples to enhance public understanding. Alongside this, the penalties for cyber offences must be clearly outlined to ensure deterrence and promote accountability.



Reforms should also include clear guidelines distinguishing freedom of speech from defamation. Authorities must define what constitutes defamatory content to prevent misuse of these laws and to protect the rights of journalists and media outlets. By striking a balance between freedom of expression and safeguarding individuals from harm, these clarifications can help foster a more responsible use of social media

## CONCLUSION

Spreading false information can occur either verbally or in writing, but that does not mean it is acceptable or justifiable, especially when it is done with the intention to harm the victim's reputation and dignity. Cyber defamation differs from traditional defamation where cyber defamation occurs on social media, such as X or Instagram. While the latter occurs when an article is written in newspapers or magazines, as well as radio and television.

Although laws on defamation protect the people from being harmed, especially online, victims may encounter challenges due to time restrictions, as defamation claims must be filed within three years of the defamatory act. Collecting evidence can be particularly difficult if the content has been deleted, as strict legal procedures must be followed to present evidence in court.

It is crucial to establish clear rules and procedures specifically addressing cyberdefamation, alongside implementing strict penalties to deter such offences, not only against the same victim but others as well. However, a balance must be struck between protecting freedom of speech and addressing defamation.

For example, countries like the United States uphold the right to free expression,<sup>13</sup> allowing individuals to comment or share their opinions. Therefore, it is important for the public to differentiate between defamatory statements and freedom of speech. Moreover, it is the responsibility of the authorities to enact appropriate laws and regulations and ensure that these distinctions are clearly communicated to the public.



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# THE BIG WRITE

## FROM LAW TO ACTION: LEGAL APPROACHES TO COMBAT CHILD MARRIAGE IN INDONESIA

**WRITTEN BY: MUHAMMAD SHAFIQ BIN ISKANDAR**

First and foremost, I would like to extend my heartfelt gratitude to the organizers of BIG WRITE ALSA BRUNEI, particularly Academic activities unit for their dedication in creating this platform. Their efforts in fostering academic activities like this provide an invaluable opportunity for students and young legal minds to refine their writing skills, express their perspectives, and engage in meaningful discussions on pressing legal issues. BIG WRITE is not just simply an event; it is an opportunity for participants to explore important legal topics, develop critical thinking skills, and contribute to meaningful discourse.

I sincerely hope this initiative continues to grow, inspiring more individuals to engage in legal discussions and drive positive change. Through this article, I hope readers can gain valuable insights into the issue of child marriage in Indonesia, raising awareness about its legal and social implications. More importantly, I hope this discussion allows us to reflect on lessons beyond our own country, learning from global perspectives and best practices to ensure the protection of children's rights everywhere.

**AUTHOR 4**





## INTRODUCTION

Child marriage is a growing problem, often fueled by a lack of public awareness and understanding. This leads to serious harm for children, including health issues, reproductive problems, and exposure to domestic violence, as they are not ready for marriage. According to Fransiska Novita Eleanora and Andang Sari in their article *Pernikahan Anak Usia Dini Ditinjau Dari Perspektif Perlindungan Anak* (Progresif: Jurnal Hukum 14, no. 1, 2020), it is important for parents to consider the circumstances of marriage to protect children. Child marriage has increased in recent years due to social and economic pressures, as well as concerns for the safety of girls.

Countries adopt various legal approaches to child marriage. Some criminalize it, while others set a legal minimum age for marriage without banning it. In many cases, child marriage is governed by a combination of civil, criminal, and family laws, along with customary and religious laws that differ by region and are subject to interpretation by local authorities.



Laws alone are insufficient to eradicate child marriage. Effective measures to combat the practice must also include active participation from various sectors. Too often, governments rely solely on legal frameworks to address social issues without implementing the necessary policies and programs to drive social change and tackle the root causes of child marriage.



# DEFINITION OF CHILD MARRIAGE

Child marriage occurs when one or both spouses are under the age of 18, and it constitutes a violation of Article 16(2) of the Universal Declaration of Human Rights, which asserts that "Marriage shall be entered into only with the free and full consent of the intending spouses." Both the CEDAW and CRC Committees consider child marriage a form of forced marriage, as children, due to their age, inherently lack the capacity to provide full, free, and informed consent regarding the marriage or its timing.



## FACTORS CONTRIBUTING TO CHILD MARRIAGE IN INDONESIA

Child marriage in Indonesia has reached a critical juncture, posing a serious threat to the future of children and women across the country. The following section explores key factors contributing to the prevalence of child marriage in Indonesia. Among the most significant drivers are the challenging economic, social, and cultural conditions that underpin this practice.

Rural poverty in Indonesia continues to drive child marriage, as financially struggling families often marry off underage daughters to ease economic burdens. UNICEF (2017) links child marriage with rural living, poor housing, and low household expenditure, highlighting systemic poverty. Researchers argue that in impoverished communities, early marriage is seen as a way to transfer financial responsibility, offering short-term relief but perpetuating poverty across generations (Iustitiani & Ajisuksmo, 2018).

In rural areas of South Sulawesi and West Nusa Tenggara, Indonesia, girls have limited access to education and information, leaving them unaware of the consequences of early marriage. Once married, they often need their husband's permission to continue their education (Colfer et al., 2015). This lack of opportunity extends to their families, perpetuating a cycle of disempowerment. As a result, many girls view marriage, childbirth, and domestic duties as their primary roles, reinforcing generational limitations on their agency and opportunities (Pradipta, 2021)

## PREVALANCE OF CHILD MARRIAGE IN INDONESIA

According to KemenPPA (2021) and girlsnotbrides.org, 16% of girls in Indonesia are married before the age of 18, with 2% married before reaching 15. This issue also affects boys, as approximately 5% of Indonesian males enter marriage before the age of 18. Notably, 10.8% of all marriages in the country involve children (Ratnaningsih et al., 2022). Indonesia ranks eighth globally for the highest number of girls married before 18 and third in Southeast Asia, behind Laos and the Philippines (Rahiem, 2021; Yee, 2021)



# EFFECT OF CHILD MARRIAGE IN INDONESIA

Child marriage is not a sustainable solution to address economic or social challenges. In fact, this practice often exacerbates the problems, pushing children into more complex and long-lasting issues that hinder their growth, limit their opportunities, and perpetuate cycles of poverty and inequality.

Child marriage causes significant psychological trauma for young girls, leading to family separation and social isolation. The physical and emotional demands of childbearing can overwhelm them, making them more vulnerable to intimate partner violence and coerced sex. Prolonged exposure to these stressors can lead to mental health issues such as depression, anxiety, and panic attacks. At this stage, girls are unprepared for marriage and should prioritize personal growth and education.

UNICEF reports that girls under 15 are five times more likely to die during pregnancy and childbirth than women in their 20s, highlighting the serious health risks of child marriage. Married girls are also more vulnerable to sexually transmitted diseases, including HIV and HPV. According to the Indonesian Ministry of Health, the number of HIV/AIDS cases has risen significantly, with 65,826 people receiving ARV treatment in 2016.

## LEGAL FRAMEWORKS FOR ADDRESSING CHILD MARRIAGE

The Indonesian government has taken steps to protect underage girls from early marriage through amendments to the Marriage Act (1974). UNICEF has praised the 2019 amendment, which increased the minimum age for girls to marry with parental consent from 16 to 19 years, aligning it with the minimum age for boys. As per Article 7(1), marriage is permitted only if both parties have reached 19 years of age. Without parental consent, the legal age of marriage for both men and women is set at 21 years.

Despite legal reforms, child marriage rates remained at 8.64% nationwide between 2020 and 2023, indicating the need for stronger measures. In rural and marginalized areas, enforcement is hindered by limited resources, insufficient training, and weak institutional commitment. Corruption and leniency toward offenders further weaken efforts. Additionally, widespread ignorance of the law and the harmful effects of child marriage reduce its deterrent impact, allowing the practice to continue.



Source: <https://pursuit.unimelb.edu.au/articles/reversing-indonesia-s-child-marriage-laws>



source: <https://von.gov.ng/unicef-urges-kano-to-intensify-efforts-to-eradicate-polio/>

## RECOMMENDATIONS FOR COMBATING CHILD MARRIAGE IN INDONESIA

Eradicating child marriage demands more than legal reforms; it requires a holistic strategy that tackles its underlying causes and socio-economic drivers. The following are key recommendations for preventing child marriage in Indonesia.

Indonesia has launched several integrated programs, including Stranas PPA, RAN-PIJAR, and PAUD-HI, to support its goal of becoming a Child-Friendly Country (Idola) by 2030. These initiatives align with the government's vision of a "Child-Friendly Indonesia" and "Indonesia Emas" by 2024. Through cross-sector collaboration, they aim to significantly reduce child marriage rates, ensuring the well-being of children.

Promoting literacy, education, and access to information for families is key in preventing child marriage. Educated families are better able to support their children's education and development. As primary caregivers, families should carefully evaluate boarding schools or pesantren to ensure they meet their children's needs. Preventing child marriage requires a joint effort from the state and society, led by the Ministry of Women's Empowerment and Child Protection (KPPPA), based on the recognition that child marriage violates fundamental rights, including education, health, and protection from violence.



The prevention of child marriage is a shared commitment between the state and society, led by the Ministry of Women's Empowerment and Child Protection (KPPPA). This commitment is rooted in the understanding that child marriage infringes upon a child's fundamental rights, including the right to education, reproductive health, economic opportunities, protection from violence, and other social rights as outlined in the Constitution, the Child Rights Convention, and national laws. Launched in 2017 and relaunched on January 31, 2022, this collaborative effort involves 17 ministries and local government agencies, 65 civil society organizations, the Child Journalists Community, the business sector represented by the Association of Child-Friendly Companies (APSAI), and religious leaders from six faiths in Indonesia. The ongoing initiatives by KPPPA have contributed to a gradual reduction in child marriage practices in the country.



## CONCLUSION

The effectiveness of legal protections against child marriage in Indonesia largely depends on the rigorous enforcement and implementation of existing laws. While the country's legal framework includes important measures, such as the minimum marriage age set forth in the Marriage Act, which aligns with international human rights agreements like the ICESCR and CEDAW, and the Indonesian Child's Act, which holds parents accountable for preventing early marriages, these provisions alone are insufficient. The key shortcoming lies in the law's provision allowing parents to seek dispensation for underage marriage, effectively undermining efforts to combat child marriage. While the current legal framework demonstrates some promise, its impact is severely weakened by this loophole, necessitating further legal reforms to ensure stronger protection for children and a more effective response to child marriage in Indonesia.



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# THE BIG WRITE

## BALANCING TRADITIONS AND RIGHTS: LEGAL EFFORTS TO CRIMINALIZE CHILD MARRIAGES

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**WRITTEN BY: AMAL WARDINA ATHIRAH**

Amal Wardina Athirah, a final-year Year 5 student pursuing a Double Degree in Civil and Syariah Law, has always had a deep passion for reading and writing. With a keen eye on human rights issues and hopes of practicing law in the future, she actively engages in discussions on legal and societal matters. Having participated in many law events, she continues to use her writing as a platform to shed light on pressing legal and social issues.

Her article, *Balancing Traditions and Rights: Legal Efforts to Criminalize Child Marriage*, holds personal significance as she is deeply committed to advocating for the protection of children's rights and gender equality. Through a socio-legal approach, she explores how legal frameworks interact with deeply rooted traditions, religious perspectives, and economic factors that contribute to the persistence of child marriage. This discussion highlights the challenges, progress, and potential reforms needed to eradicate the practice and safeguard the future of vulnerable children.

**AUTHOR 5**







## INTRODUCTION

Child marriages, interpreted as a union between those that had not obtained the age of 18. Child marriages predominantly affect girls more than of boys. The practices of child marriage or underage marriage have a firm hold within cultural, religious, and socio economic traditions. Child marriages, though firmly embedded in traditions and cultures, have become a pressing concern for children’s rights, public health, and gender equality. Although there is more significant awareness of the issue of child marriages which indicates a stronger law on the issue, there has also been a constant battle to eradicate the matter. This article will thus focus on the criminalization of child marriages, emphasizing the socio-legal approach to explore how laws interact with and influence the cultural and social dynamics of the practice.

## LEGAL FRAMEWORKS AND ORGANIZATIONS THAT ADDRESS CHILD MARRIAGES

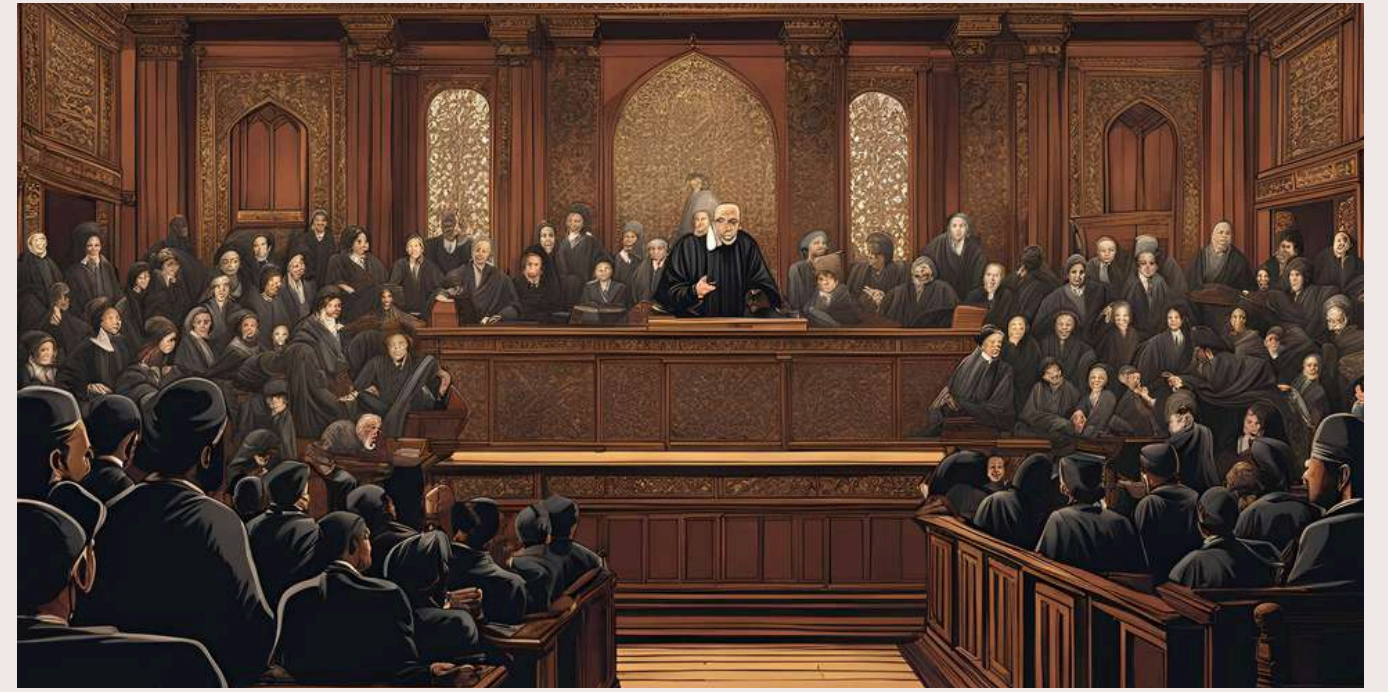
On a global scale, there are various international instruments have been made to tackle the issue of child marriages. The Universal Declaration of Human Rights has made child marriages a violation of human rights, as they contravene 1 Article 16 of the Universal Declaration of Human Rights, which states, “Marriage shall be entered into only with the free and full consent of the intending spouses.” This highlights the contradiction between marriage and consent, as in child marriages, a child's consent is neither legally recognized nor considered significant. Similarly, the Convention on the Rights of the Child (CRC) requires state parties to ensure the protection of children from harmful practices, including child marriages. These provisions reinforces the need to criminalize child marriages as a violation of fundamental human rights.



On the national level, in 3 Brunei Darussalam, child marriages are not recognized within the Marriage Act, which states the legal minimum age for marriage would be 18 years old. However there is an exception with the consent of the guardian or parent and further approval from the Registrar of Marriage. There is also an exception in sharia Law, in which 4 Brunei Darussalam’s Islamic Family Law Order allows for marriage under the age of 18, but it requires the consent of a wali (guardian) and approval from the Syariah Court.

Moreover, several organization such as United Nations Sustainable Development Goals partnered with United Nations International Childrens Emergency Fund (UNICEF), have made eradicating child marriages a goal to be reached by 2030. The organization recognizes that child marriages emerge from longstanding gender inequality, causing girls to be unfairly affected. UNICEF together with United Nation Population Fund (UNFPA), introduced the 5 Global Programme to End Child Marriage in 2016. Since then, The program has benefited over 21 million adolescent girls vulnerable to early marriage or already in such unions by offering life-skills training, comprehensive sexual education, and support to remain in school. However, progress in addressing this human rights violation is being undermined by challenges such as conflicts, climate-related disasters, and the enduring impacts of COVID-19.

# CULTURAL AND SOCIAL CHALLENGES TO LEGAL IMPLEMENTATION



Despite methods to minimize or eliminate child marriages by criminalizing the practice or setting global programmes, efforts are often met with challenges rooted in cultural and social aspects. Child marriage is also a direct cause of economic survival mixed with the deep cultural perceptions of protecting family honor. In many cultures, marriage at a young age is perceived as a way to secure economic stability or to protect family honor.

**This is predominantly seen in..**

**South Asia**

**Sub-Saharan Africa**

**West and Central Africa**

**certain Middle Eastern territories**

**In where in certain of the said countries there has been fluctuating rates in the occurrence of child marriages in comparison to the years before.**

Furthermore there is a social restraint to the criminalization of child marriages as religious interpretations may support the practice, complicating efforts to apply uniform legal standards. For instance, in societies where Syariah law governs personal status matters, exemptions for child marriages may be justified on religious grounds. The role of Syariah law would also implies that there are certain countries that would not implement a minimum legal age to marriage. <sup>7</sup> For example, in Saudi Arabia where there is no minimum legal age for marriage, young girls remain at risk of a victim to child marriages with no legal protection.

The socio-legal approach highlights the need to consider these factors. Laws should not only ban harmful practices but also tackle the social and economic issues that sustain them, such as poverty, lack of education, and gender inequality, which are key drivers of child marriages.



Education is a vital tool in reducing child marriages. Legal reforms must be accompanied by initiatives that educate communities about the adverse effects of child marriages on health, education, and overall societal development. Public awareness campaigns, such as those led by UNICEF and Girls Not Brides, have demonstrated success in changing perceptions and empowering communities to reject child marriages.

A factor that contributes to the matter of child marriages is the lack of sex education. Young girls often fall victim to child marriages in certain countries as a result of pregnancies, deriving from the neglect of safe sex practice due to the absence of sex education. The role of education therefore should include on sex education which plays a significant role.

**Furthermore,**

Integrating legal education into school curricula can help young people understand their rights and the protections afforded by the law. This approach aligns with the socio-legal perspective, as it empowers individuals to challenge harmful practices within their communities.

## CASE STUDY: SITI NUR ZUBAIDAH HUSSIN

Malaysia is known to have progressively implicate laws to eradicate child marriages. However certain states in Malaysia there is still a strong prevalence of religious and cultural beliefs on child marriages. The significant case that spark public outcry was that of Siti Nur Zubaidah Hussin, who was only 11 years old when her father arranged her marriage to a 41-year-old man from Kelantan in February 2010. Her father, Hussin Mat Salleh, followed a religious leader, Shamsuddin Che Derahman, also known as 'Sudin Ajaib,' who convinced him that such a marriage was acceptable. The girl, too young to understand or handle the responsibilities of marriage, became depressed. Siti was later found in a confused state at Masjid Al-Ikhwan in Batu Caves, Selangor, days after her husband had taken her away. The case was investigated under the Islamic Family Law Enactment 2002 (Kelantan), specifically sections on minimum marriage age, interference with marriage, and offences related to marriage solemnisation. Unfortunately, Siti's tragic experience is not the first, nor will it be the last in the country as in Malaysia most unwanted child or teenage pregnancy results to being forced to child marriages.

## BALANCING TRADITION AND RIGHTS

The criminalization of child marriages requires a delicate balance between respecting cultural traditions and upholding human rights. While it is essential to recognize the historical and cultural significance of certain practices, such recognition must not come at the expense of children's well-being. Laws should aim to protect minors without isolating communities, fostering dialogue and collaboration instead of resistance.



Source: <https://360info.org/its-time-for-muslims-to-protect-children-from-marriage/>

## RECOMMENDATION

## CONCLUSION

To effectively criminalize child marriages, it is essential to strengthen enforcement mechanisms, address socio-economic drivers like poverty, education, and gender equality, and engage community leaders to bridge cultural and legal gaps. By prioritizing children's rights in legal and social reforms, we can create a future where every child is free from the constraints of early marriage.



Source: <https://www.nbcnews.com/news/photo/child-marriage-continues-cycle-abuse-poverty-girls-over-50-countries-flna1c6408738>

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# THE BIG WRITE

## FROM INNOVATION TO INFRINGEMENT: NAVIGATING INTELLECTUAL PROPERTY RIGHTS FOR AI-GENERATED WORKS

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**WRITTEN BY: AHMAD ZAHID BORHAN**

I am honored to present my article, which delves into the uncharted territory of intellectual property rights for AI-generated works. Despite this topic not being part of my formal curriculum, my curiosity and passion for exploring new areas drove me to research and write about this pressing issue. The rise of artificial intelligence presents both opportunities and challenges, and I believe it is crucial to address the legal implications of AI innovation as this field continues to evolve.

I chose this topic because I enjoy stepping outside my comfort zone and embracing the chance to learn new concepts. The issue of AI and intellectual property is relatively new but incredibly significant in ensuring a balanced approach to innovation and regulation. I hope this article inspires meaningful discussions and contributes to a better understanding of the intersection between technology and law.

I would like to extend my heartfelt gratitude to ALSA Brunei for providing this incredible platform. Their unwavering dedication to nurturing legal talent has motivated me to contribute my time and creativity to their initiatives. Being part of ALSA Brunei has been a rewarding experience, and I am committed to continuing my support for their efforts to empower future legal professionals.

**AUTHOR 6**



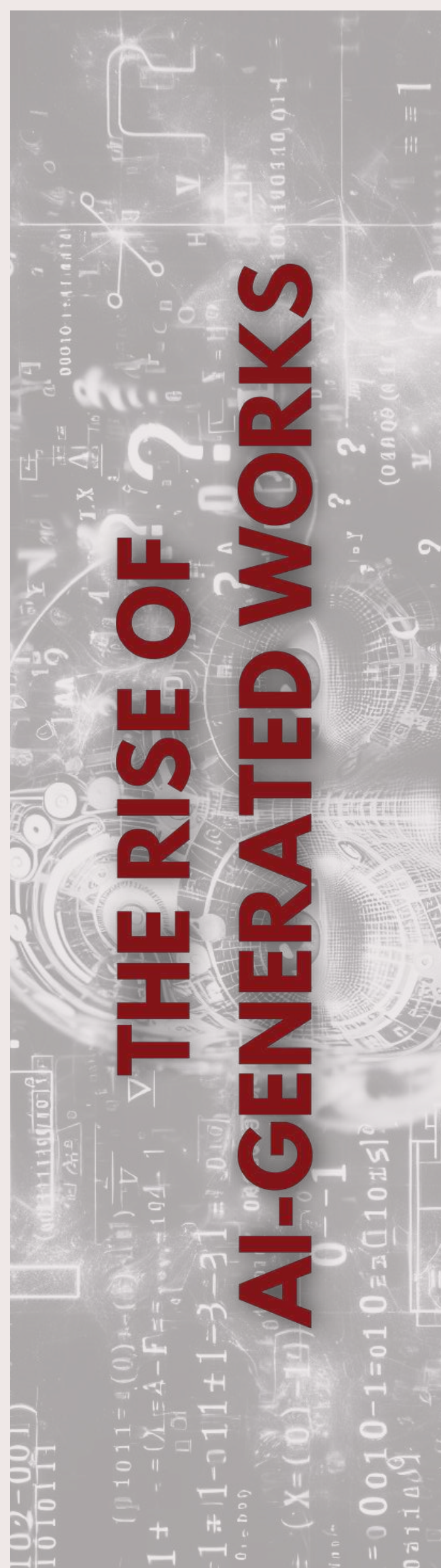
# INTRODUCTION



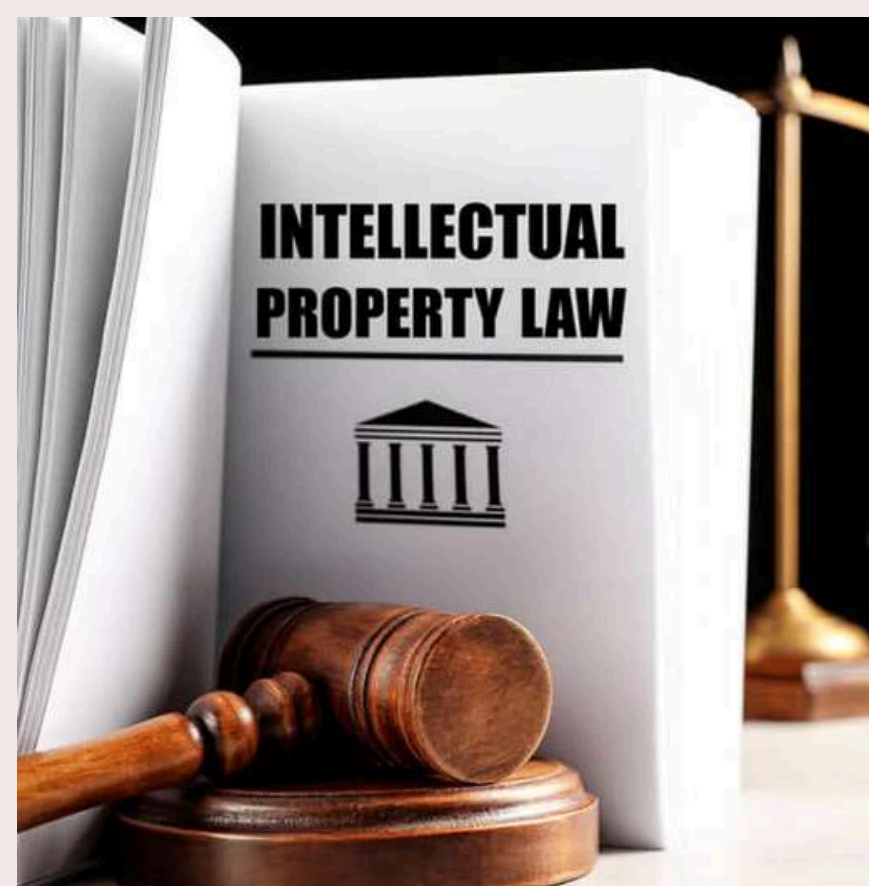
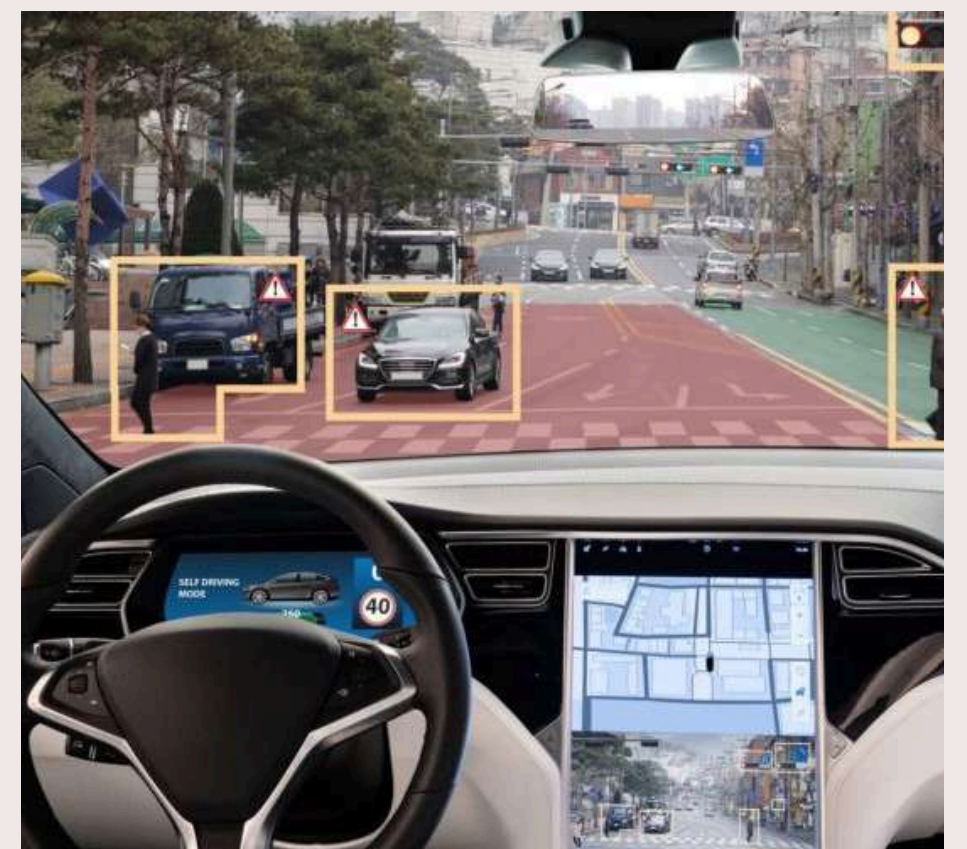
In an era of rapid technological advancements, intelligent machines are becoming increasingly capable of creating artistic works with minimal human input. This transformative power and the rise of AI-generated works have exposed critical gaps in current intellectual property (IP) laws, which were primarily designed to protect human creativity.

A notable case illustrating the complexity of IP ownership is *Naruto v Slater*, where a crested macaque named Naruto took a famous selfie. The ensuing legal battle raised a fundamental question about copyright ownership, whether the human who set up the camera or the monkey who pressed the shutter should hold the rights.

Similarly, cases like *Thaler v Vidal*, where AI-generated inventions were denied patent recognition due to the lack of human authorship, highlight the inadequacy of existing laws. As AI technologies continue to evolve, it's crucial to address the legal and ethical dilemmas they pose. Striking a balance between fostering AI innovation and safeguarding human intellectual property is essential for a fair and forward-looking IP framework.



Artificial Intelligence (AI) is reshaping industries by enabling machines to create art, music, and even complex inventions. Advanced algorithms trained on vast datasets can produce unique outputs based on user instructions. From natural language processing (NLP) and speech recognition to self-driving cars, AI-powered tools are revolutionizing fields such as healthcare, finance, and education, making processes faster, smarter, and more efficient.



When it comes to intellectual property (IP) and AI, two key aspects must be considered: the AI technology itself and the works it generates. The World Intellectual Property Organization (WIPO) defines IP as "creations of the mind," encompassing inventions, artistic works, software and brands. Traditional IP laws were designed to protect human creativity, granting authors, inventors, and businesses exclusive rights over their work.

However, the rise of AI blurs the line between human and machine creativity. What happens when AI does most of the work with little or no human involvement? Can something generated entirely or predominantly by a machine be eligible for copyright or patent protection? Generative AI tools can produce paintings, music and code that seem entirely original, raising significant questions about authorship and ownership.

As AI advances, critical questions arise: Who owns the rights to AI-generated content, the user, the developer, or the company that built the AI system? How do we ensure fairness for those investing time and resources into AI innovation? Clear answers to these questions are crucial for encouraging technological progress while maintaining fairness and balance in the creative and business world.

# LEGAL PERSPECTIVES ON AI-GENERATED WORKS

The rise of AI is sparking new debates in IP law, particularly regarding the protection of AI-generated works. Traditionally, IP laws have centered around human creativity, but AI complicates this framework by producing outputs with little to no human involvement. When this happens, neither copyright law or patent law can protect such creations as it is considered to be a public domain, in which it is free for anyone to use. Hence, you are not able to stop anyone else from copying and using such creations.

## COPYRIGHT

### Can AI-created works be copyrighted?

U.S. copyright law primarily depends on human authorship. The U.S. Copyright Office (USCO) has clarified this stance through several rulings. In the case of *Zarya of the Dawn*, a book featuring human-written content and AI-generated images, the USCO granted copyright protection only to the human-authored portions, rejecting the AI-generated images. The decision emphasized that copyright exists to protect human creativity, not machine-generated works. This approach was reinforced in *Thaler v USCO*, where the court upheld the USCO's view that purely AI-generated works do not meet the requirement of human creativity. However, the USCO has noted that works involving significant human input, such as selecting or arranging elements, may still qualify for protection.

## THE RISK OF COPYRIGHT INFRINGEMENT

### Posed by AI models

These systems are trained on vast datasets, often including copyrighted material. This reliance on existing content raises the potential for unauthorized derivative works. Past cases like *Perfect 10 v Smriti Tripathi* and *Authors Guild v Google* considered the indexing of copyrighted material as fair use. However, generative AI takes it further by directly creating new works based on copyrighted data. This difference has led to legal battles, such as the high-profile class action against Stability AI, MidJourney, and DeviantArt, where artists argue that AI models trained on their copyrighted works are producing infringing outputs. Plaintiffs advocate for a licensing system similar to those used in the music industry, ensuring that creators are compensated when their work is used for AI training.

## PATENT LAW

### Faces similar challenges,

The U.S. Patent and Trademark Office (USPTO) and courts have consistently denied patent applications listing AI systems as inventors.<sup>10</sup> Under current U.S. laws, only human beings can be recognized as inventors. Courts have upheld this interpretation, citing constitutional requirements that define inventors as human. Despite technological advancements, patent law has yet to accommodate the notion of machines contributing as inventors.

## ARTIFICIAL INTELLEGEANCE & INTELLECTUAL PROPERTY RIGHTS

Beyond the U.S., different jurisdictions have varying approaches to AI and IP rights. For example, the European Union explicitly defines designers as human or legal entities, excluding AI systems from claiming authorship.<sup>15</sup> While AI tools can assist in design, ownership remains with the human contributors. This reflects a broader global consensus that IP must ultimately originate from human creativity, reinforcing the idea that machines are tools rather than independent creators. As AI technology continues to evolve, the legal landscape must adapt accordingly. Clear guidelines are essential to protect human creators while encouraging innovation in a way that respects both technological progress and existing IP frameworks. Balancing these interests will be key to shaping a fair and forward-thinking approach to IP in the age of AI.

# THE FUTURE OF IP LAWS FOR AI



## Updating IP laws to recognize AI as a legitimate contributor,

in the creative and inventive process. For instance, in patent law, where inventors are traditionally defined as humans, new approaches could account for AI's role in generating inventions. A proposed solution is to introduce a system where AI systems are identified as inventors, with human creators or legal entities holding the patents. In the interim, a "proxy inventor" model could serve as a temporary solution, wherein a designated human acts on behalf of the AI. To reduce the risk of overlapping patents hindering innovation, this system would require detailed disclosure of the AI's contributions.

## Hybrid ownership models addressing the dual nature of AI as both a tool and a creator

Since AI outputs often result from a combination of human input, AI system functionality, and training data, shared ownership between developers, users, and creators could provide a more equitable framework. This approach would distribute both the rewards and responsibilities of ownership, offering a balanced solution to issues such as copyright infringement and licensing disputes.

In addition to patents and copyrights, the rise of AI-generated designs demands enhanced protection under design law. Design laws often fail to account for digital assets such as graphical user interfaces (GUIs), virtual reality elements, and 3D-printed objects. Expanding the legal definitions of "design" and "product" to include non-physical digital designs could close this gap. Moreover, harmonizing international design and trademark systems would prevent infringing digital designs from entering the market. An AI-driven prior art search system could also streamline the examination process, ensuring that only genuinely novel designs receive protection.

The rapid advancement of AI necessitates significant reforms in IP law to accommodate AI-generated works. Current frameworks were designed with human creators in mind, and while they have served well for decades, they are increasingly inadequate in addressing the complexities introduced by AI. To foster innovation while ensuring fairness, reforms are needed in areas such as ownership, inventorship, and the scope of protection.



## Regarding copyright, several models have been proposed to attribute ownership of AI-generated works:

**The Creator Model**, where rights belong entirely to the AI's creator.

**The Joint Model**, in which rights are shared between the AI system and its creator.

**The User Model**, which grants users copyright over the works they generate.

Among these, the Joint Model offers the most promising balance, recognizing the collaborative role of humans and AI in the creative process.

Given that AI operates in a global context, international cooperation is essential for consistency across jurisdictions. Without standardized frameworks, cross-border disputes could hinder innovation. Establishing global guidelines for AI-generated works would provide clarity for creators, users, and businesses alike.







## CONCLUSION

As AI continues to redefine the limits of creativity and innovation, the need for more flexible and forward-thinking intellectual property (IP) laws becomes increasingly critical. At the heart of this transformation lies a delicate balancing act, encouraging technological progress while ensuring that the rights of human creators remain protected. Navigating this evolving landscape requires thoughtful consideration of key questions surrounding authorship, ownership, and accountability. Policymakers have an opportunity to craft a legal framework that not only embraces the contributions of both humans and machines but also fosters a fair and equitable creative environment.

The intersection of AI and IP is both a challenge and an opportunity. On one hand, it opens new doors for unprecedented levels of creativity and problem-solving. On the other, it raises difficult questions about how to prevent misuse, ensure fair recognition, and protect original works. Moving forward, this complex issue will require cooperation across borders which includes governments, industries, and legal professionals must work together to create global standards. Only by engaging in meaningful dialogue and collaboration can we harness the immense potential of AI while preserving the integrity of intellectual property.



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# THE BIG WRITE

## VIEWS ON THE APPOINTMENT OF FEMALE SYARIAH JUDGES

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**WRITTEN BY: MUHAMMAD SYAZWAN NAZRI BIN  
A.HANNI/ZALANNI**

First and foremost, I would like to express my deepest gratitude to ALSA Brunei 24/25 for providing me with this invaluable opportunity to explore and contribute to the discourse on Islamic legal thought. Through endless opportunities given by ALSA Brunei and their support has been instrumental in allowing me to delve into this important subject. The appointment of female Syariah judges remains a subject of considerable debate among scholars and Muslim nations. This essay seeks to examine the differing perspectives on this issue by analyzing arguments both in favor of and against the appointment of women as Syariah judges. Drawing from classical and contemporary views, I aim to provide a comprehensive understanding of the interpretations of Quranic verses, Hadith, and historical precedents that have shaped this discussion.

Through this essay, I hope to critically assess the scholarly opinions surrounding this issue and offer insights into how different Muslim countries approach the matter. It is my aspiration that this writing will foster a deeper appreciation of the diversity of thought within Islamic jurisprudence and encourage further discussion on the evolving role of women in the Syariah judiciary system.

**AUTHOR >**



In general court, the appointment of Female judges, although was initially early were not really practiced was put into common practice, has now been a common practice to see females to be appointed in the position of Judges. In Syariah Court however, it remains to be an issue, as it collide with the textual Nas that against the appointment of women as leader. The majority founding Imam had disagree the appointment of female as leader or including judge position.

However, minority view of founding Imam, known scholars and contemporary views of Imam has the opposite view allowing the appointment of female leader or even as Syariah Judge. Muslim countries has their own standing on this matter relying the views of either one of the above. Hence, we will explore the views and arguments for those against and in favour of appointing female Syarie Judges according to the textual Nas. This will be followed with the standing took by the Muslim Countries.

This Article will explore and limit the scope the general debates on the issue of appointing female Syarie Judges in Syariah Court by the known Muslim Scholars. Purpose of the Article is to know the basis of arguments used by Muslim Scholars in their standing of the issue.

## VIEWS

### Against

The Mazhab or school of thought that ruled and was against the appointment of female syarie' judges could be seen centralizing their emphasize on the main condition of Judge should only be male. Three out of four Mazhab ruled the appointing female judges are prohibited and invalid, which the Mazhab that held this view are: Maliki, Syafie and Hanbali. Due to three of the Mazhab among the founding jurist agreed on this view, this could be seen Majority holding the view of ineligibility of appointing female judges.<sup>1</sup>

The argument these founding jurist in against the appointing of the female judges are due to verses in Holy Quran and Hadith:

### Al-Quran

#### In verse 34, an Nisa:2

*"Men are the caretakers of women, as men have been provisioned by Allah over women and tasked with supporting them financially. And righteous women are devoutly obedient and, when alone, protective of what Allah has entrusted them with".*

In this verse, according to Ma'arif Quran, despite it focus on Husband-and-Wife role in marriage, it could also be understood as men and women having their own roles, where men are supposed to be leader to women and having 'mental-physical excellences' which given by Allah SWT and 'not possible for the woman to acquire'. This could be interpreted further where Allah SWT 'elected men for this responsibility' are to take such authorities to lead the community while the women are not encouraged to work. This is due to Allah SWT has 'made some excel the others under his exclusive and consideration' and Allah has assigned such role to each gender for a reason.<sup>3</sup>

### Hadith

The Majority scholars based their argument based on the Hadith that prohibit the appointment of female judge, which was reported by Aby Bakra:

*During the battle of Al-Jamal, Allah benefited me with a Word (I heard from the Prophet). When the Prophet heard the news that the people of the Persia had made the daughter of Khosrau their Queen (ruler), he said, "Never will succeed such a nation as makes a woman their ruler."<sup>4</sup>  
(Sahih Bukhari)*



In the above, it could be interpreted the leader or any authoritative position should be taken by Male. This could be seen in how Prophethood chosen from male side only from Prophet Adam AS until Prophet Muhammad SAW.<sup>5</sup>

Hence, with the Nas evidences in both Quran and Hadith, supporting the non-appointment of woman in leadership position including position of judge are prohibited in accordance to Majority of Imams of Mazhab such as Imam Syafie', Imam Malik and Imam Hanbali agreed on prohibiting appointment of female judges or even as leader due to it is man that are elected to be leading and woman are not supposed to lead as it will bring no 'success' to the nation.

## In Favour

In this sub section, we would look into jurists views that allow the appointment of female syarie' judge or taking position of authority. This sub section would discuss by giving jurist views on the issue and, reply and argument based on the above 'Against' discussion on the issue which is based on the argument put forward by Dr Nik Noriani Nik Badlishah & Yasmin Masidi in their book 'Woman as judge'.

**Reply to the 'Against'** This part will argue based on jurist that were not in favour of the appointing female syarie' judges and in authoritative position. This will focus on the two evidences from Quran and Hadith that were used before;

### 1. Misinterpretation of Verse 34 of An Nisa

According to the above argument, majority Scholars of Mazhab emphasize the men should take the authoritative position and as leader. According to other scholars like in the Hanafi and other independent scholars would say the verse are referring to 'establish mutual responsibility' in context of marriage and within the specific area/context. In addition, 'responsibility' should not be taken as equal to being 'superior' to others.<sup>6</sup>

They also avoided from using the interpretation above as it will lead to in default would think that 'all men are superior to or are better than all women', which are against Islamic teaching where all Muslim are equal in social responsibility<sup>7</sup>, and are protectors to one another, this as per stated in Quran, **verse 71, at-Taubah:**

*"The believers, both men and women, are guardians of one another...."*<sup>8</sup>

This could be added that the jurists that are in favour of the allowing the appointment of female Syarie' judges, mostly are Scholars in Hanafi School used **verse 221, al-Baqarah** as their basis of argument:

*"... Women have rights similar to those of men equitably, although men have a degree 'of responsibility' above them. And Allah is Almighty, All-Wise."*<sup>9</sup>

According to Ibn Kathir translation of the above, although it is originally the verse are related to marriage issue, it is also could be said men and woman are 'equitable' in right and man have a degree of responsibility.

This also bring the explanation as similar to above that Islam does not say 'men are superior to women' in rights but 'men have a degree (of responsibility)' to care for the woman as in Verse 34 of an Nisa; 'Men are the caretakers of women'<sup>10</sup>.



Hence it should not be noted the Muslim men are higher in status compare to Muslim women due to Muslim men having 'extra responsibility' and will never bring meaning of 'superior' to other. This is due to Allah SWT view all Muslims regardless of gender as equal and are protectors to one another.

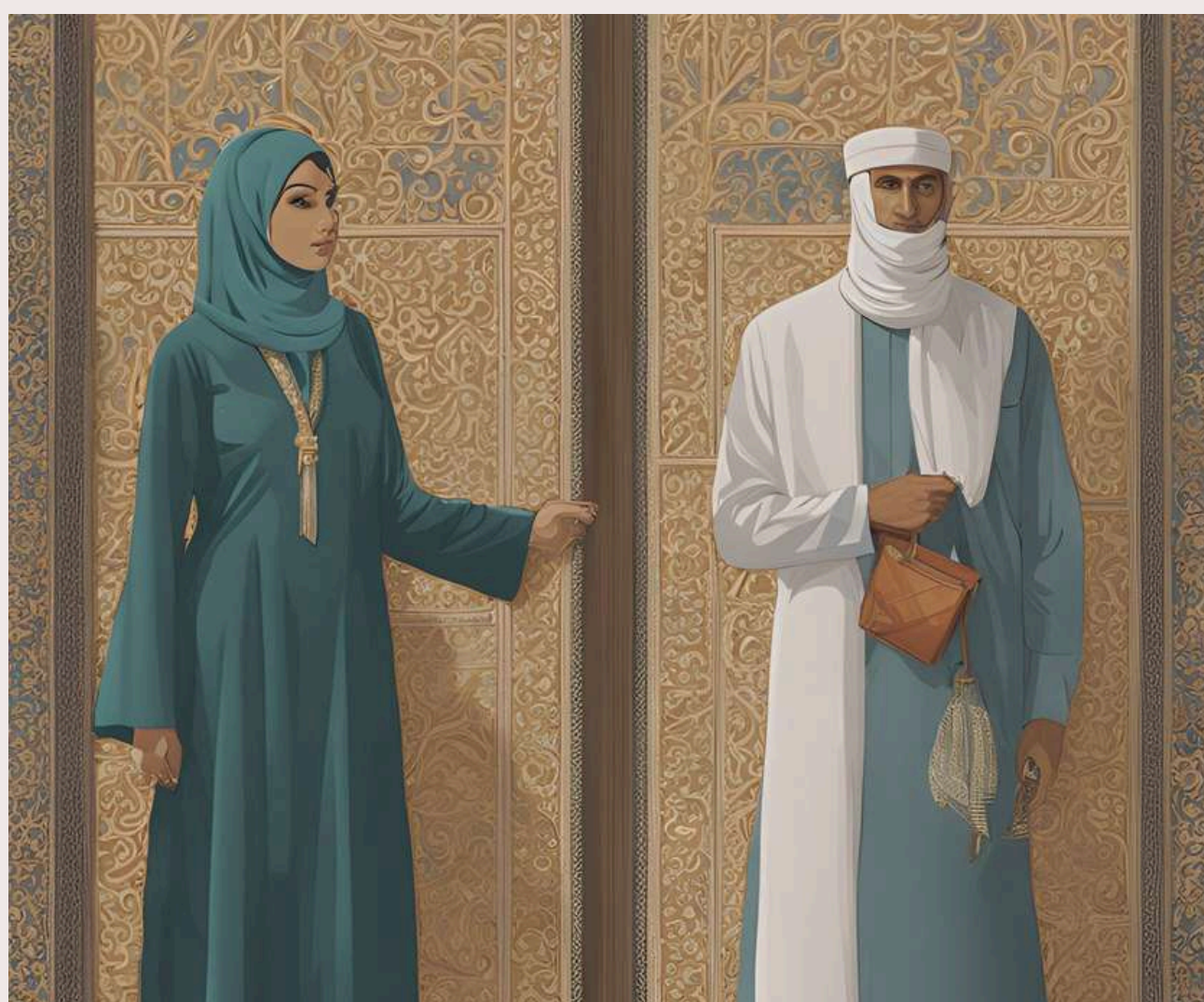
## 2. The Hadith was traditionally interpreted by the Jurist

According to scholars that in favour of women may be appointed as Judge had view the Hadith of the above as Ahad or isolated Hadith where narrators are less than 2 narrators. Despite the hadith that was classified as Sahih Bukhari, it was noted the Hadith that was narrated by Abu Bakra was Ahad. According to Principle of Islamic Jurisprudence, a Hadith that is classified as Ahad is not binding nor necessary to act upon it. In addition many modern commentators, would view the Hadith as 'Khabar' or even fake as how is it possible for the Hadith to exist when, Companions of Prophet PBUH had accepted Aishah's leadership during war of Jamal<sup>11</sup>.



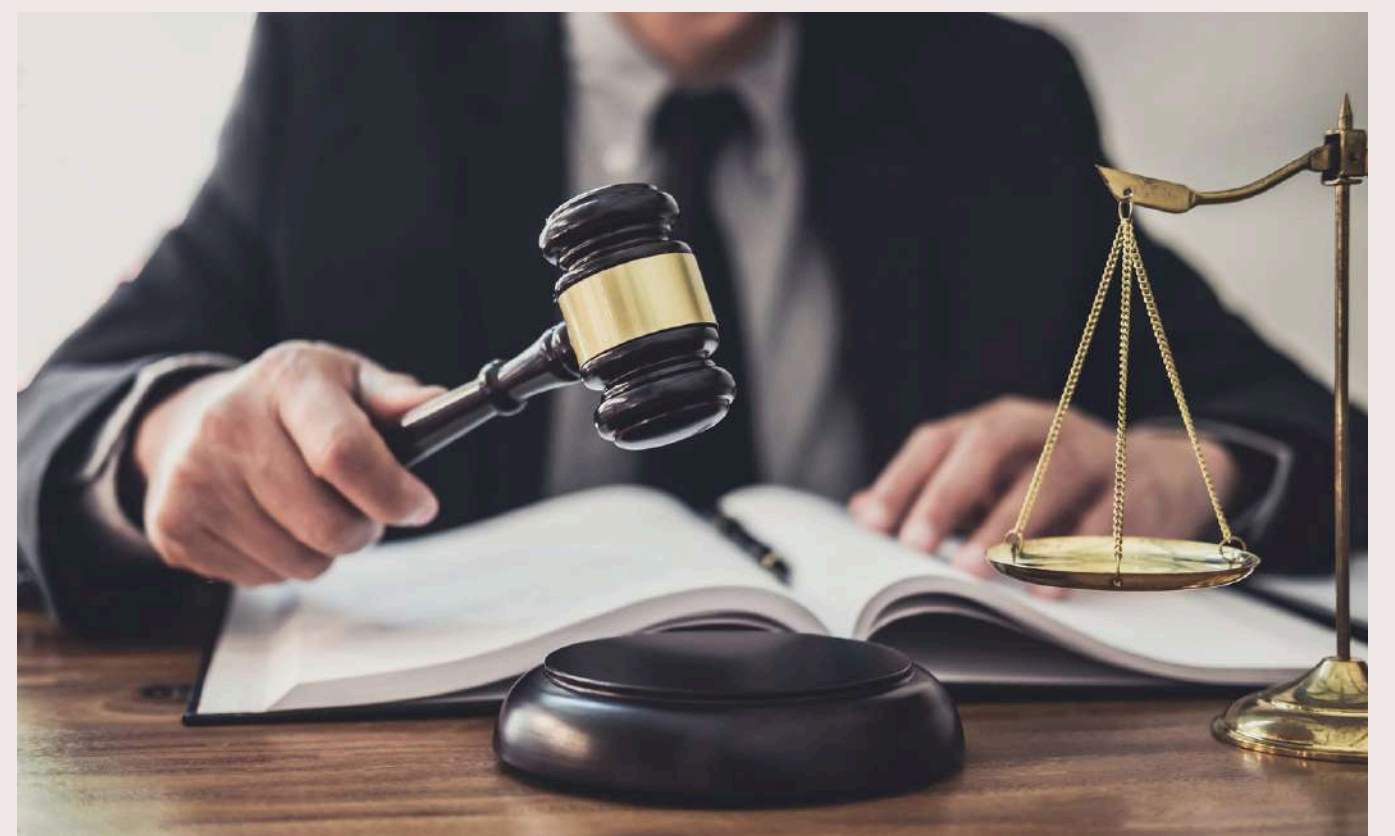
Furthermore, Prophet PBUH was also reported to allow Samra binti Nuhaik al-Asadiyah to become Muhtasibah in Mecca and was followed by Caliph Umar al-Khattab appointing al-Syifa abi Sulaiman as Muhtasibah in Souq of Medina. Position of Muhtasibah is regarded as Inspector supervising general behaviour and transaction and is regarded as judiciary position<sup>12</sup>.

Hence, scholars such as in Hanafi School regarded the Hadith of appointing woman in position of leader to lead to no success, are to be invalid to their nature and is opposite to practice of Prophet PBUH and Umar al Khatab in appointing female Muhtasibah.



## CONCLUSION

In conclusion, different Islamic scholars have differing views on the appointment of female Syariah judges, which are influenced by changing cultural demands and scriptural interpretations. Minority opinions, such as those of the Hanafi school and modern scholars, advocate for gender equality in roles and responsibilities, emphasizing mutual guardianship and equitable rights, while the majority of traditional jurists from the Maliki, Shafi'i, and Hanbali schools opposed the appointment of women as judges based on Quranic verses and Hadith emphasizing male leadership. The latter draw attention to historical instances where women were given judicial responsibilities as well as the contextual and possibly non-binding nature of the Hadith. This distinction highlights how Islamic jurisprudence may be tailored to different social settings, enabling Muslim nations to take stances consistent with their understanding of Shariah principles and contemporary needs.



With the arguments above, it is used by the Contemporary Muslim Scholars in applying it to give Fatwa in their respective countries, for example in Malaysia, majorities of States holding Fatwa enabling appointment of Female Syariah Judges in Syariah Court and, in Saudi Arabia and Iran holding the traditional jurist view of prohibiting appointment of Female Syariah Judges. With this Article also hopefully provides a better understanding on this issue.



# THE BIG WRITE

## THE ROLE OF SYARIAH LAW IN PROTECTING WOMEN'S RIGHTS IN EDUCATION, EMPLOYMENT AND LEGAL REPRESENTATION.

**WRITTEN BY: NURUL IFFATUN NAJWA BINTI HAJI HAMBRIN**

I would like to express my sincere gratitude to ALSA Brunei for giving me this wonderful opportunity for me to participate and contribute my thoughts in The Big Write with my article titled, “*The Role of Syariah Law in Protecting Women’s Rights in Education, Employment, and Legal Representation.*” It has been a privilege for me to engage in discussions surrounding the intersections of Syariah Law and women’s rights. The Big Write has allowed me to explore and share insights on an important subject that continues to shape legal and social landscapes. The opportunity to address such a significant and multifaceted topic has deeply enriched my understanding and furthered my commitment to advancing discussions on the intersection of law, rights, and gender equality. Through this article, I intend to inspire further discussion and reflection on how legal frameworks can better support gender equality and empower women in these critical areas. Besides, this article aim to provide a comprehensive analysis that not only highlights the importance of legal frameworks in protecting women but also encourages deeper reflection on how Syariah Laws can evolve to better support gender equality and justice.

Without the support and guidance of the ALSA community, I would not been able to contribute to this important endeavor and I would also like to express my big appreciation to the ALSA community through out the process which has been invaluable in shaping the depth and quality of my work. As a final remark, I hope that readers will find my article insightful and serve as a valuable resource as it aims to highlight the vital role Syariah law plays in safeguarding women’s rights in education, employment, and legal representation. By examining Syariah Law through this lens, I trust the article will contribute to ongoing discussions surrounding the advancement of women’s rights and their rightful place in a fair and equitable society.

With appreciation and a dedication to continue to improve in legal writing, Iffatun Najwa.

**AUTHOR 8**



# INTRODUCTION

Within muslim societies, a system of laws and jurisprudence that is correlated with Islam is referred to as Syariah Law or Islamic Law. In relation to women's rights, since the past years, the issue of women's rights in Islam has been a contentious area of discussions and intense debates both in the Muslim world and in the west due to wide variety of interpretations and practices across different countries and cultures which impacted the views of law and society towards women. Consequently, by virtue of the media and public discourse, harmful stereotypes and misrepresentations of women in Islam perpetuate misconceptions and myths about the religion's stance on women's rights. In reality, Islam came and elevated the status of women granting women rights, including the rights to obtain education, rights to work, participate in legal representation or engagement and so forth. Furthermore, besides in Syariah Law, a series of legislative measures have been implemented in Brunei Darussalam to uphold safeguard human rights, especially for women and children where there are several statutes that encompasses a wide array of protections and provisions for women as well. Therefore, in order to present what are the rights of women under Syariah Law, this article will focus on some points that highlight this aspect focusing on the role of Syariah Law in protecting the rights of women in education, work, and legal representation.



## WOMEN'S RIGHTS IN EDUCATION

Education in Islam is equally significant towards both men and women.

This is proven in the hadith narrated by Ibnu Majah, where The Holy Prophet (blessings and peace be upon him) said, "Acquisition of knowledge is binding on all Muslims (both men and women without any discrimination)." This clearly demonstrates that acquiring knowledge is mandatory for both women and men. The prophet even laid so much emphasis on the educational rights of women that he said a person who had two daughters and educated them properly, and they get married without any dent that person will be his companion in paradise. This is to ensure that adequate care and provision is made for women. This declaration was very clear and was largely implemented by Muslims throughout history. Since then, every Muslim woman has the right to go to secondary schools and universities in the present educational system. However, Muslim women are typically seen as victims of oppression, deprived of opportunities both educationally and professionally as a result of women in Afghanistan have been banned from attending university in Afghanistan since the Taliban took over on September 17 2024. Consequently leaving no rights for women to acquire education.

## WOMEN'S RIGHTS IN EMPLOYMENT

Women in Islam can engage in work while staying true to islamic principles and guidelines.

Women have economic rights as this has been enunciated in the Qur'an and the sunnah. This means that any jobs that a woman undertakes must be lawful within Syariah Law. For instance, apart from working as a dancer, a model, a prostitute to sell her femininity in order to make money, all other work and professions are lawful if Muslim women adhere to Islamic principles in respect of dress and modesty. Syariah Law also includes comprehensive guidelines for women in work business despite it is not being compulsory for women to work. In Employment Order 2009, contains provisions governing the employment and labour rights of women in Brunei Darussalam with recent amendments in 2011 introducing the Maternity Leave Regulation that extends paid maternity leave for women up to 105 days. This shows how women in employment sector may receive rights when they are unable to come to work. However, in some countries such as Afghanistan, careers such as in medicine were the last beacons of hope for professional advancement after the Taliban banned girls and women from studying beyond 6th grade. As of December 3, Afghan women can no longer work in midwifery, nursing, dentistry and lab sciences.





## WOMEN'S RIGHT IN LEGAL REPRESENTATION

**During the early years of Islam, women expressed their opinions freely and their advice was actively sought despite being never appointed as governors beforehand.**

Until today, Muslims who attempt to justify electing women leaders of Muslim countries are in open flagrancy of Islamic teachings while in order to continue to uphold this tradition, women are encouraged to actively participate in improving, serving, and leading the different aspects of the community. This shows the rights for women to participate in legal representation are more open. Besides, Muslim scholars or jurists differ in their opinions about giving women a position such as ministerhip, judgeship and leadership under Syariah. Consequently showing that there might be a limitation in terms of the rights of women in legal representation under Syariah Law. Some argued that women are not qualified to hold the post of a judge and to sentence the accused accordingly. According to Mazhab Hanafi, male is not an exclusive condition to hold the position of a judge. Basically pointing out that, Muslim women who are qualified are given rights to be involved in legal representations such as to hold the top positions in the judicial institution in the Islamic state. In addition, it is permissible for a woman to be

appointed as judge only in cases other than hudud and qisas as argued by the Hanafis. However other scholars that consist of Mazhab Syafi'i, Hanbali and Maliki do not support this view as they argued that women are not allowed to be appointed as a judge in any cases such as admissibility of women's testimony.

This statement is based on a quranic verse in Surah **An-Nisa** verse 34,

**“Men are protectors and maintainers of women, because Allah has given one more strength than the others and because they support them from their means.”**



This statement shows that there is no rights for women under Syariah Law in representing themselves in a legal community.

Based on the views of the above, clearly that there is no definite dalil or authority which forbids a woman to be a leader, which also shows that women have rights to attain legal professions. This is because there are a number of verses where Allah commands us to uphold justice without referring to a Muslim man or a Muslim woman.

In quranic verse, in Surah **An-Nisa** verse 58,

**“Allah both commands you to render back your trust to those to whom they are due, and when you judge between people that you judge with justice.”**



# ANALYSIS

The implementation of Syariah Law in Brunei Darussalam has a significant impact towards women especially when it is regarding protecting women's rights. This is done within a legal framework drawn from the Qur'an and the sunnah of the Prophet that emphasizes Islamic principles while providing certain protections and rights for women.

**The women's rights provisions under the Syariah are so comprehensive that the provisions first cover the general rights of human beings, making them equal before their creator, and these provisions even extend to non-Muslims who may be living within the Islamic state.**

This includes not only the rights in family matters and finance, but also the rights of women in education, work and employment as well as in legal representation. In Brunei's Syariah Penal Code, it has given that certain provisions are to be applied towards women to acquire legal protections that as a consequence, giving the rights for women although women's rights may not always be equal to those of men.



**CONCLUSION** In conclusion, under Syariah Law, the needs, conditions and status of a woman are considered in line with their rights. That is, aside from the general rights, women get their rights according to their status, or as the need arises, at times it depends on their conditions. Moreover, the efforts of women's rights activists, legal reforms and increased awareness may offer hope for a more inclusive and just society for women not just in Islamic countries but also throughout most countries.



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