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#### Cover Photo:

Cate Sumner. Students at Madrasah Tsanawiyah Swasta, MPI Bagan Asahan, Tanjung Balai, North Sumatra. In 2013, 88% of students at this school did not have birth certificates.



Australia Indonesia  
Partnership for Justice



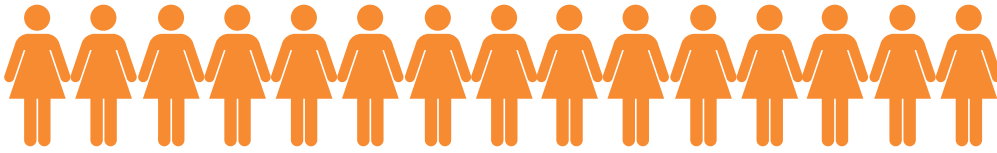
PUSAT KAJIAN  
PERLINDUNGAN ANAK  
CENTER ON CHILD PROTECTION



FAMILY COURT OF AUSTRALIA

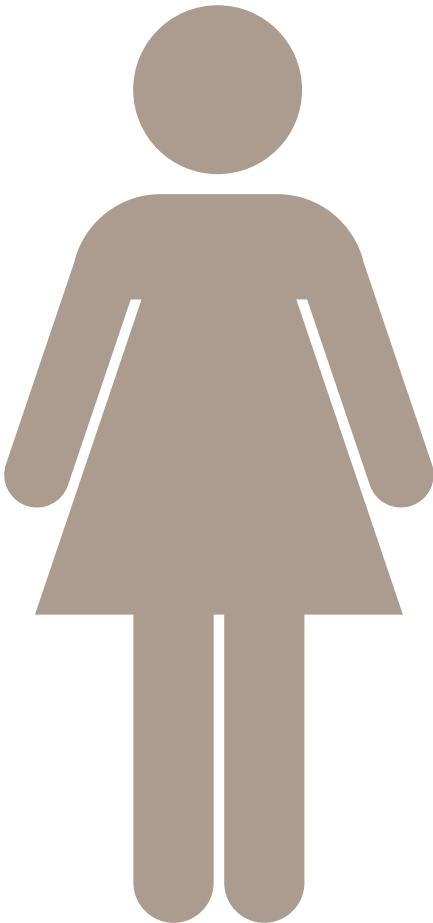
# AIPJ BASELINE STUDY ON LEGAL IDENTITY INDONESIA'S MISSING MILLIONS





100 girls

- Living in households with an income in the bottom 30% in their province.
- 26 girls have a birth certificate before they turn one year of age.
- 43 girls have a birth certificate before they turn 18 years of age.
- 25 girls are married at 18 years or younger. 24 of these 25 girls do not have a birth certificate. Schools discourage married girls from continuing their mandatory 12 years of education. Almost none (3/1000) of these girls will complete 12 years of education.
- 19 girls are married at 17 years of age or younger. 18 of these 19 girls do not have a birth certificate. Almost none (1/1000) of these girls will complete 12 years of education.
- 13 girls are married at 16 years of age or younger. 12 of these 13 girls do not have a birth certificate. Almost none (1/1000) of these girls will complete 12 years of education.
- 9 girls are married at 15 years of age or younger. None have a birth certificate. Only 3 of these girls will have a marriage certificate. None of these girls will complete 12 years of education.



The majority of couples (55%) do not obtain a marriage certificate from the civil registry or KUA. 75% of children from these couples do not have a birth certificate. Children can only obtain a birth certificate with both parents' names on it if a valid marriage certificate is presented to the civil registry office.

- 16 women aged 19-29<sup>1</sup> finish 12 years of education in Indonesia. Only 1 of the 16 will have married under the age of 18 years.
- Only 10% of women aged 19-29 without a birth certificate have completed 12 years of education. 36% of women aged 19-29 who have a birth certificate have completed 12 years of education.
- 62 women aged 19-29 have not progressed beyond primary school.

**Parents who do not have birth certificates are three times more likely to have children who do not have birth certificates, demonstrating that a lack of legal identity is passed along generations.**

Source: PEKKA household survey 2012

<sup>1</sup> Taking a snapshot of highest educational attainment for boys and girls aged between 19-29 shows a more accurate picture of current opportunities for girls and boys. When the population is enlarged to all men and women aged 19 years and over, the level of educational attainment diminishes considerably as the majority of the older population in Indonesia did not complete primary school.

# 100 boys



Living in households with an income in the bottom 30% in their province. ■

32 boys have a birth certificate before they turn one year of age. ■

42 boys have a birth certificate before they turn 18 years of age. ■

4 boys are married at 18 years or younger. ■

2 boys are married at 17 years of age or younger. ■

1 boy is married at 16 years of age or younger. ■

No boys are married at 15 years of age or younger. ■

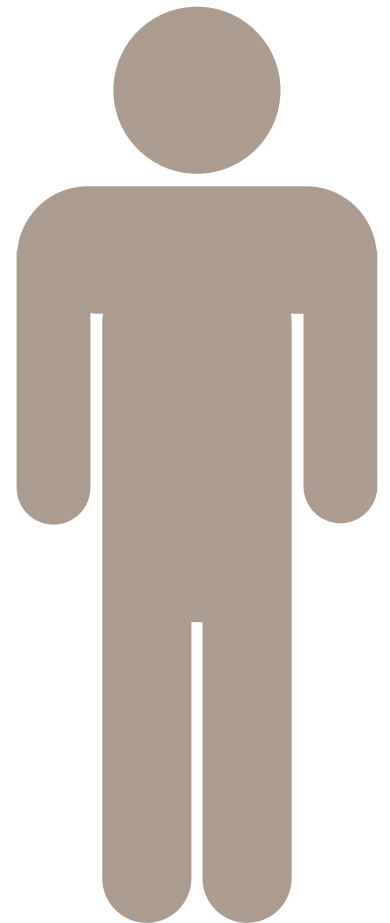
The Convention on the Rights of the Child (signed by Indonesia in 1990) states that every individual under the age of 18 is a child. The earlier Indonesian Marriage Law (UU1/1975) states that the legal age for marriage is 19 for men and 16 for girls.

15 men aged 19-29 finish 12 years of education in Indonesia. None of these men will be married at 18 years or younger. ■

Only 9% of men aged 19-29 without a birth certificate have completed 12 years of education. 33% of men aged 19-29 who have a birth certificate have completed 12 years of education. ■

65 men aged 19-29 have not progressed beyond primary school. ■

**Children with parents or guardians that have no apparent disability are five times more likely to have a birth certificate compared to children with parents who have apparent physical disabilities.**



### **Proposed Goal 10:**

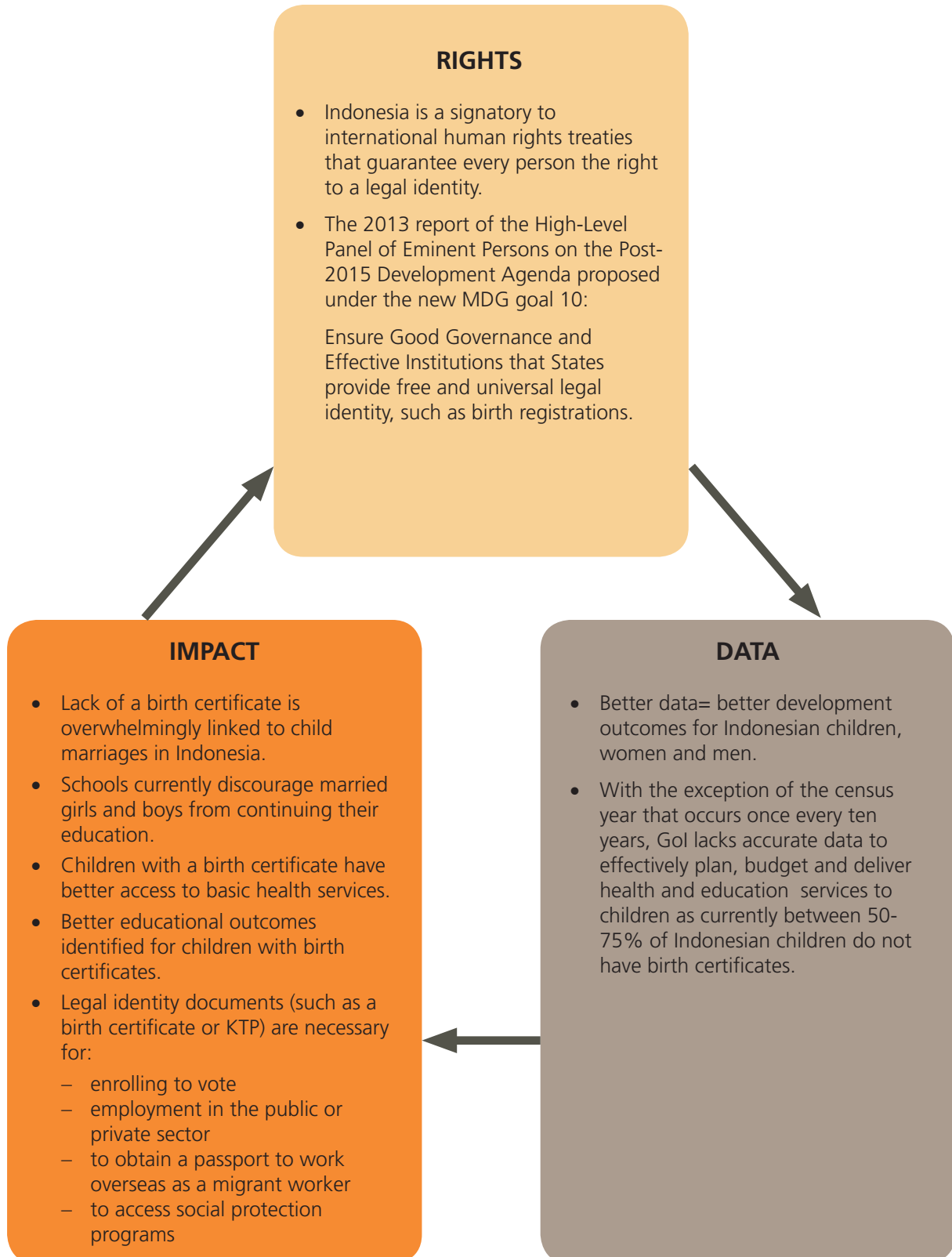
### **ENSURE GOOD GOVERNANCE AND EFFECTIVE INSTITUTIONS**

### **Provide free and universal legal identity, such as birth registrations**

“Government is responsible for maintaining many of society’s central institutions. One of the most basic institutional responsibilities is providing legal identity. Every year, about 50 million births are not registered anywhere, so these children do not have a legal identity. That condemns them to anonymity, and often to being marginalized, because simple activities – from opening a bank account to attending a good school – often require a legal identity.”

From the Report of the High-Level Panel of Eminent Persons on the Post-2015 Development Agenda (2013). The three Co-Chairs of the High-Level Panel of Eminent Persons on the Post-2015 Development Agenda are Dr Susilo Bambang Yudhoyono, President of Indonesia; Ellen Johnson Sirleaf, President of Liberia; and David Cameron MP, Prime Minister of the United Kingdom.

# Three reasons why legal identity is critical to Indonesia's development



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# Foreword from Deputy Minister for National Development Planning (Politics, Law, Defence and Security)



REPUBLIK INDONESIA

KEMENTERIAN PERENCANAAN PEMBANGUNAN NASIONAL/  
BADAN PERENCANAAN PEMBANGUNAN NASIONAL

*Assalamualaikum Warrahmatullah Wabarakatuh,*  
Peace be upon us all

It is with great pleasure that I welcome the completion of the report entitled *AIPJ Baseline Study on Legal Identity: Indonesia's Missing Millions* conducted between 2012-2013. Access to legal identity is critical to provide better legal certainty for the community, particularly those who are poor and marginalized. During the last decade, Indonesia made substantial progress in its development, particularly in political, economic, social, cultural areas and in the development of human resources. Various growth indicators and the achievement of Millennium Development Goals have shown that Indonesia is on the right track. The world's recognition of Indonesia's role can be seen in the nomination of the Indonesian President as one of the co-chairs of the high-level panel responsible for the development of the post-2015 Millennium Development Goals. One recommendation made by this high-level panel is the inclusion of the goal "to ensure good governance and effective institutions". An indicator for this goal entails bringing justice in the form of the provision of "free and universal legal identity such as birth registrations".

In the National Access to Justice Strategy which was launched in 2009, the Government of Indonesia recognized that access to justice and fulfilment of human rights are significant factors in accelerating efforts to bring welfare to the people. Recognizing an increasingly fast-moving development agenda, in 2013, the Government of Indonesia updated its national strategy with a greater focus on the importance of providing legal identity for the community. Considering this, I also highly support the inclusion of "improved access to legal identity" as one of the development priorities in the 2015-2019 National Medium Term Development Plan.

However, we are aware that poverty in Indonesia remains a key challenge to the realisation of a just and prosperous society. Effort needs to be made, not only to make sure that the basic needs of the poor can be fulfilled to help them gradually move out of poverty, but also to prevent those who are vulnerable from falling below the poverty line. To achieve this, a comprehensive, well-targeted and accurately measured poverty strategy and programs need to be in place.

The role of development planning should be based on data and evidence and focus on the balance between economic growth and the provision of adequate public services. I am convinced that comprehensive and accurate population and demographic data will contribute significantly to the planning process as well as to the improvement of development effectiveness in terms of outcomes.

One challenge that we still face is that many Indonesians live without any legal identity. For many, key life events, such as birth, marriage and death are not registered or accurately recorded. Legal identity not only constitutes a basic right for every individual, it is also a requirement to access many basic services such as education and social protection. Without legal identity many basic services cannot be accessed.

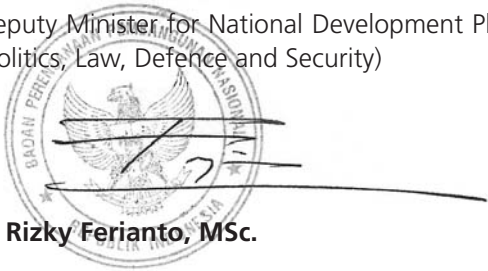
The findings from this Baseline Study demonstrate that girls in particular face the impact of a lack of legal identity, ranging from the risk of being married as a child before adulthood to the risk of being unable to continue education. Also, the study indicates that children, women, people with special needs, and those who are poor are especially disadvantaged and face considerable barriers in obtaining legal identity documents, such as birth, marriage or divorce certificates.

In relation to this study, I would like to express my utmost appreciation to the Indonesian Chief Justice, the Minister of Home Affairs, and the Minister of Religious Affairs for their support in the implementation of this study, as well as other programs that have been implemented to improve the community's access to legal identity documents. However, I would like to reiterate the importance of implementing programs in an integrated and cross sectoral manner, putting aside our sectoral ego, to ensure quick and effective achievement of the legal identity program's goals. Many of the key issues regarding the situation, constraints and impact of a lack of legal identity can only be addressed by strong coordination among related agencies.

On behalf of the Indonesian Government, we once again welcome the launching of the Baseline Study on Legal Identity. I am convinced that this report will provide us with a basis for the development of the future national planning and development strategy and focus. Also, on this occasion I wish to extend our utmost appreciation to the Australian Embassy who have provided their assistance under the Australian Indonesian Partnership for Justice Program (AIPJ). I hope that the recommendations that emerge in this study can be immediately followed up. Thank you.

*Wassalamualaikum Warrahmatullah Wabarakatuh,*

Deputy Minister for National Development Planning  
(Politics, Law, Defence and Security)



**Ir. Rizky Ferianto, MSc.**

## Acknowledgments

The Australia Indonesia Partnership for Justice (AIPJ) has collaborated with a range of government and civil society partners to research, analyse and present the Key Findings and Recommendations contained in this Baseline Study on Legal Identity.

One of the aims of this report is to stimulate discussion and advocacy toward a more inclusive system of civil registration that will provide key legal identity documents to Indonesian citizens in a straightforward, integrated and inexpensive manner.

AIPJ would like to express its gratitude and deepest appreciation to the organisations and individuals who have helped support the publication of this report. The Baseline Study on Legal Identity is the result of a collaboration between Indonesian and Australian organisations and individuals who have supported the planning and design, field research, data analysis and report writing.

In particular, AIPJ would like to thank the Minister for National Development Planning and Bappenas staff who have provided support and guidance in the development of this report. AIPJ also extends its sincere thanks to the leadership of the Supreme Court of Indonesia, the Ministry of Home Affairs and Ministry of Religious Affairs, in particular to the Directors General of Badilum, Badilag, Islamic Guidance, Population and Civil Registration, and to all staff from these agencies at national, provincial and district level who have supported this research but are too numerous to mention individually.

AIPJ has worked in 20 districts across five provinces in the development of this Baseline Study on Legal Identity and will continue to work in these areas in the coming years to support initiatives that increase access to legal identity documents for women who are poor, vulnerable children and people with a disability. To the local governments in the five provinces and 20 districts, the government offices, courts, university legal aid clinics, CSOs and DPOs, non-governmental organizations that have provided assistance during the Baseline Study, we say thank you.

Two Indonesian civil society organisations have been critical to the development of this research: PEKKA (Pemberdayaan Perempuan Kepala Keluarga Empowerment of Female Heads of Household NGO) and PUSKAPA UI (Pusat Kajian Perlindungan Anak Universitas Indonesia - Center on Child Protection University of Indonesia). This Baseline Study reflects extensive field research, analysis, consultation, discussions and recommendations that have been developed in consultation with PEKKA and PUSKAPA UI as well the government partners already referred to. In addition, AIPJ would also like to thank the Chief Justice of the Family Court of Australia for the support of her court in assisting with key data analysis of the PEKKA 2012 household survey.

AIPJ is an Australian Aid initiative supported by the Australian government. AIPJ would like to thank the Australian government officers in Jakarta and Canberra who have provided ideas and comments toward this Baseline Study.

The AIPJ Team Leader, Deputy Team Leader and many AIPJ colleagues have provided extensive assistance to make this Baseline Study possible.

Finally, we thank the hundreds of thousands of Indonesian citizens who participated in the PEKKA and PUSKAPA field research surveys. This Baseline Study on Legal Identity is dedicated to them and the hope that the right to a legal identity may become a reality for all Indonesians – for all children, women, men, including people living with a disability.

**AIPJ Legal Identity Program Team.**

## List of Abbreviations

AIPJ	Kemitraan Indonesia- Australia untuk Keadilan/ <i>Australia-Indonesia Partnership for Justice</i>
ASKESKIN	Asuransi Kesehatan untuk Masyarakat Miskin/ <i>Health Insurance for the Poor</i>
BADILAG	Badan Peradilan Agama/ <i>Directorate General for Religious Court</i>
BADILUM	Badan Peradilan Umum/ <i>Directorate General for General Court</i>
BAPPEDA	Badan Perencanaan Pembangunan Daerah/ <i>Provincial or District Development Planning Body</i>
BAPPENAS	Badan Perencanaan Pembangunan Nasional/ <i>Ministry of Development Planning/National Development Planning Body</i>
BIMAS	Bimbingan Masyarakat/ <i>Authority for Community Guidance</i>
BKLHK	Biro Konsultasi dan Layanan Hukum Keluarga/ <i>Bureau for Legal Consultation and Services for Families</i>
BLT/BALSEM	Bantuan Langsung Tunai/Bantuan Langsung Sementara/ <i>Government (Temporary) Unconditional Cash Transfer Program</i>
BPJS Kesehatan	Badan Penyelenggara Jaminan Sosial Kesehatan/ <i>Implementation Body for Universal Health Coverage</i>
BPS	Badan Pusat Statistik/ <i>Indonesian Central Body of Statistics</i>
CAPIL	Catatan Sipil/ <i>Civil Registry</i>
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CBO	Community Based Organization
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of the Persons with Disabilities
CSO	Lembaga Masyarakat Sipil/ <i>Civil Society Organization</i>
CTS	Case Tracking System (for General Courts)
Desa	Village
DIPA	Daftar Isian Pelaksanaan Anggaran/ <i>State Budget Detailed Allocation for Implementation</i>

DPO	Disabled People Organization
FGD	Focus Group Discussions
Gol	Government of Indonesia
ICCPR	International Covenant on Civil and Political Rights
JABAR	Jawa Barat/ <i>West Java</i>
Jamkesmas	Jaminan Kesehatan Masyarakat/ <i>Government Health Coverage for the Poor</i>
Jamkesda	Jaminan Kesehatan Daerah/ <i>Government Health Coverage for the Poor</i>
Kabupaten	District
Kecamatan	Subdistrict
KEMENAG/MoRA	Kementerian Agama/ <i>Ministry of Religious Affairs</i>
KEMENKES/MoH	Kementerian Kesehatan/ <i>Ministry of Health</i>
KEMENDAGRI/ MoHA	Kementerian Dalam Negeri/ <i>Ministry of Home Affairs</i>
KEMENDIKBUD/ MoEC	Kementerian Pendidikan dan Kebudayaan/ <i>Ministry of National Education and Culture</i>
KEMENKUMHAM/ MoJHR	Kementerian Hukum dan HAM/ <i>Ministry of Justice and Human Rights</i>
KEMENSOS/MoSA	Kementerian Sosial/ <i>Ministry of Social Affairs</i>
KK	Kartu Keluarga/ <i>Family Card</i>
KTP	Kartu Tanda Penduduk / <i>Citizen's Identity Card</i>
KPS	Kartu Perlindungan Sosial/ <i>Social Protection Card</i>
KUA	Kantor Urusan Agama/ <i>Office of Religious Affairs (District and Sub District Level)</i>
LKSA	Lembaga Kesejahteraan Sosial Anak/ <i>Child Welfare Organization</i>
LSM/NGO	Lembaga Swadaya Masyarakat/ <i>Nongovernmental Organization</i>
MA	Mahkamah Agung/ <i>Supreme Court</i>

MDG	Millenium Development Goal
NIK	Nomor Induk Kependudukan/ <i>Single Identification Number</i>
NTB	Nusa Tenggara Barat/ <i>West Nusa Tenggara</i>
NTT	Nusa Tenggara Timur/ <i>East Nusa Tenggara</i>
PA	Pengadilan Agama/ <i>Religious Court (District)</i>
PAUD	Pengembangan Anak Usia Dini/ <i>Early Childhood Development</i>
PCA	Principle Components Analysis
PEKKA	Pemberdayaan Perempuan Kepala Keluarga/ <i>The Empowerment of Female Heads of Household NGO</i>
PEMDA	Pemerintah Daerah/ <i>Provincial Government</i>
PERMA	Peraturan Mahkamah Agung/ <i>Supreme Court Regulation</i>
PKH	Program Keluarga Harapan/ <i>Government Conditional Cash Transfer Program</i>
PKSA	Program Kesejahteraan Sosial Anak/ <i>Welfare Coverage for Child Protection</i>
PMT	Proxy Means Testing
PN	Pengadilan Negeri/ <i>District Court</i>
POLRI	Kepolisian Negara Republik Indonesia/ <i>Indonesia National Police Force</i>
POSYANKUM	Pos Pelayanan Hukum/ <i>Legal Advisory Services Posts in Courts</i>
PPLS	Pendataan Program Perlindungan Sosial/ <i>Social Protection Program Data</i>
PRM	Participatory Ranking Methodology
PT	Pengadilan Tinggi/ <i>High Court (Appeal)</i>
PTA	Pengadilan Tinggi Agama/ <i>Religious High Court (Appeal)</i>
PUSKAPA	Pusat Kajian Perlindungan Anak/ <i>Center on Child Protection</i>
PUSKESMAS	Pusat Kesehatan Masyarakat/ <i>Community Health Centre</i>
PUSTU	Puskesmas Pembantu/ <i>Village Health Clinic under PUSKESMAS</i>
PNPM GSC	Program Nasional Pemberdayaan Masyarakat Generasi Sehat dan Cerdas/ <i>Government Community-Driven Development Program (focusing on support to improve maternal and child health and universal education)</i>



RASKIN	Beras untuk Orang Miskin/ <i>Government Rice Subsidy for the Poor</i>
SBKRI	Surat Bukti Kewarganegaraan RI / Letter of Indonesian Citizenship
SBN	Surat Balik Nama/ <i>Name Change Letter</i>
SD	Sekolah Dasar/ <i>Primary School</i>
SEMA	Surat Edaran Makamah Agung/ <i>Supreme Court Circular Letter</i>
SIADPA Plus	Case management system (Religious Courts)
SIAK	Sistem Informasi Administrasi Kependudukan/ MoHa online population administration system
SIMKAH	Sistem Informasi Manajemen Nikah / MoRA online marriage registration system
SKL	Surat Keterangan Lahir/ <i>Birth Information Letter</i>
SKTM	Surat Keterangan Tidak Mampu/ <i>Letter evidencing poverty for the Poor</i>
SLB	Sekolah Luar Biasa/ <i>Special Needs School (Primary level)</i>
SLBP	Sekolah Luar Biasa/ <i>Special Needs School (Junior Secondary level)</i>
SMP	Sekolah Menengah Pertama/ <i>Junior Secondary School</i>
SMA	Sekolah Menengah Atas/ <i>Senior Secondary School</i>
SPKBK PEKKA	Sistem Pemantauan Kesejahteraan Berbasis Komunitas (PEKKA Survey)
SULSEL	Sulawesi Selatan/ <i>South Sulawesi</i>
SUMUT	Sumatra Utara/ <i>North Sumatra</i>
SUSENAS	Survei Sosial Ekonomi Nasional/ <i>National Socioeconomy Survey</i>
TNI	Tentara Nasional Indonesia/ <i>Indonesia National Army Force</i>
TNP2K	Tim Nasional Percepatan Penanggulangan Kemiskinan/ <i>Gol National Team for Accelerating Poverty Reduction</i>
UNICEF	United Nations Children's Fund



# Executive Summary



## The Baseline Study Purpose and Methodology

The Baseline Study was conducted during 2012-2013 by the Australia Indonesia Partnership for Justice (AIPJ) and represents a collaborative research effort combining data and analysis from a number of research studies and sources undertaken by AIPJ and a range of partner organisations. It aims to:

- present information on the extent to which having a birth certificate is critical to the welfare and social development of children in Indonesia
- present information on the extent to which marriage and divorce certificates and other legal identity documents are critical to the welfare and social development of women in Indonesia
- describe the challenges faced by citizens, especially women living in poverty, vulnerable children and people with disability, in obtaining a birth, marriage or divorce certificate in Indonesia
- propose strategic policy and operational responses to overcome the identified barriers to obtaining a birth, marriage or divorce certificate in Indonesia.

The Baseline Study was undertaken in collaboration with:

- The Supreme Court of Indonesia, including District and High Courts
- The Ministry of Home Affairs (MoHA), including district and provincial offices
- The Ministry of Religion (MoRA), including district and provincial offices
- The Ministry of Development Planning (BAPPENAS) and local planning bodies (BAPPEDAs)
- The University of Indonesia Centre on Child Protection (Pusat Kajian Perlindungan Anak UI or PUSKAPA)
- The Empowerment of Female Heads of Household NGO (Pemberdayaan Perempuan Kepala Keluarga or PEKKA)

The Baseline Study comprises the compilation and analysis of data from the following sources and studies:

- Household Survey of over 320,000 individuals undertaken by PEKKA in 17 provinces
- Cross-sectional quantitative study in West Java, NTB and NTT and qualitative study in West Java, NTB, NTT, South Sulawesi and North Sumatra undertaken by PUSKAPA
- Analysis of data from the Indonesian Central Bureau of Statistics' National Socio-Economic Survey (SUSENAS)
- Analysis of data on legal identity services, including data from the Supreme Court of Indonesia and the Directorate General responsible for the Religious Courts (Badilag) and for the General Courts (Badilum), and data from MoHA and MoRA at national level as well as offices in 20 districts in West Java, NTB, NTT, South Sulawesi and North Sumatra
- In-depth interviews with key stakeholders who are either policy makers or service providers in 5 provinces (West Java, NTB, NTT, South Sulawesi and North Sumatra) and 20 districts that were conducted by the AIPJ Legal Identity Program and PUSKAPA

## Who has what Legal Identity documents?

Despite the Indonesian Government's policy of Universal Birth Registration (*Rencana Strategis Semua Anak Indonesia Tercatat Kelahirannya pada 2011*), levels of legal identity possession among women and children, especially the most vulnerable, remain low. The Baseline Study found that a number of factors influence whether children, women and men have legal identity documents. These factors include poverty, whether people live in urban or rural locations, whether a parent lives with a disability and whether parents and grandparents have legal identity documents.

**Poverty:** In the poorest 30% of Indonesian households:

- 71% of children under 1 year of age do not have a birth certificate,
- 58% of children aged 1-17 years of age do not have a birth certificate, and
- 88% of adults 18 years and over do not have a birth certificate.

The Baseline Study found that living in a household in the poorest quartile increases the chance of not having a birth certificate by a factor of 9 in NTT and by more than a factor of 7 in West Java.

**Rural/Urban:** The number of children without a birth certificate in rural areas is double that of children in urban areas.

**Disability:** Children with parents/guardians that have no apparent physical disability are 5 times more likely to have a birth certificate, when compared to children with parents who have apparent physical disabilities.

**Intergenerational acquisition of legal identity documents:** If at least one of the parents has a birth certificate, then a child has a 4.5 times greater chance of having a birth certificate than do children whose parents lack a birth certificate. However, children are 13.5 times more likely to have a birth certificate if one parent and at least one grandparent have a birth certificate, when compared to families where neither parents nor grandparents have a birth certificate.

Less than half of marriages are registered and 76% of women in the poorest households cannot access the courts to obtain the required divorce decision and divorce certificate, mainly due to court fee and transportation costs. The Baseline Study found that, in the poorest 30% of households, the failure to

obtain legal documentation relating to marriage and divorce is associated with 75% of children from those marriages not obtaining birth certificates.

The figures presented in the Baseline Study most probably underestimate the actual data as they do not capture individuals who were born and live in remote or state border areas, those who are on the move or migrating, those living without permanent shelter, or street children and children in institutions.

## Lack of Reliable, Publicly Accessible and Disaggregated Data on Legal Identity Documents

The Baseline Study found large discrepancies between different data sources on the numbers of people without birth certificates. SUSENAS 2012 estimates that 29% of Indonesian children aged 0-17 years, or more than 24 million individuals, do not have birth certificates. Yet data from the Ministry of Home Affairs (MoHA) suggests that as many as 76% of children and youth aged 0-18 years lack birth certificates, or more than 50 million individuals. MoHA calculates this figure based on population registration and verification data that is used as the basis to produce the Single Identification Number (NIK) for each Indonesian citizen. The Baseline Study also found that a comparison of the number of live births and an estimate of birth certificate ownership shows a significant gap. In some districts this was as high as 90% of new born babies whose births were unregistered a year later. This demonstrates the broken link that currently exists between health institutions who issue notification of births (*Surat Keterangan Lahir*) and the civil registrars who record, issue and maintain legal documents proving the identity of all individuals.

### National Data: Some Improvement and Existing Limitations

1. The Supreme Court of Indonesia has open and transparent systems for recording the number of marriage legalisation and divorce cases that each Religious and General Court receives and decides. This data is now available on the Internet and is updated daily. National, provincial and district data is publicly accessible. MoHA and MoRA currently do not make publicly available reliable data on the provision of legal identity documents at national, provincial and district levels.
2. Despite certain limitations, SUSENAS provides one of the most reliable statistical sources on socio-economic and demographic data, including on birth certificate ownership. Currently SUSENAS asks respondents whether 0-17 year olds in the family: (i) have a birth certificate and can show it, (ii) have a birth certificate but cannot show it, and (iii) do not have a birth certificate. The Baseline Study found that 73% of people who chose option (ii) actually never had a birth certificate. It is therefore recommended that the second option, "have a birth certificate but cannot show it", be removed to provide a more accurate estimation on the number of children who have a birth certificate and the number who do not.
3. Indonesia does not currently capture and analyse data on the relationship between poverty, disability and access to legal identity documents. Questions on these issues should be included in the regular national data collection system, including SUSENAS, the census and PPLS. Further research is required to identify the extent to which children with disability may experience lower rates of birth certificate ownership.

## Impact of not having legal identity documents

The Baseline Study presents strong correlations between better development outcomes for girls and women and the possession of legal identity documents. For individuals living in households with an

income in the bottom 30% in their province, the Baseline Study found that:

- Overwhelmingly, girls do not marry underage if they have a birth certificate. 19% of girls are married at 17 years of age or younger. 95% of these girls do not have a birth certificate. Almost none (1/1000) of these girls will complete 12 years of education. Only 2% of boys are married at 17 years of age or younger
- 16% of women aged 19-29 finish 12 years of education in Indonesia. 94% of girls who completed 12 years of education have not married before they reach the age of 18
- Only 10% of women aged 19-29 without a birth certificate have completed 12 years of education, whereas 36% of women aged 19-29, who have a birth certificate, have completed 12 years of education
- Only 9% of men aged 19-29 without a birth certificate have completed 12 years of education whereas 33% of men aged 19-29, who have a birth certificate, have completed 12 years of education
- 25% of girls are married at 18 years or younger compared with 4% of boys. Almost none (3/1000) of these girls will complete 12 years of education. As schools generally refuse to allow married girls and boys to continue their education this means that a quarter of girls from poor backgrounds are being excluded from achieving the universal 12 years of education that was introduced as Indonesian Government policy in 2013
- 9% of girls are married at 15 years of age or younger. None of those surveyed have a birth certificate. None of these girls will complete 12 years of education. The Baseline Study found no boys married at 15 years of age or younger
- Children with birth certificates and mothers with marriage certificates appear to have better access to basic health and nutritional services. Children with a birth certificate are 68% more likely to access a health clinic.

Lack of a birth certificate may impede children's progress to upper levels of education, particularly junior secondary school. SUSENAS 2012 finds that a child with a birth certificate is 54% more likely to attend junior secondary school and 89% more likely to attend senior secondary school. SUSENAS 2012 shows that the proportion of children without a birth certificate is highest amongst children who drop out of school (47%), followed by those who never attended school (30%). This SUSENAS data correlates with the PEKKA survey data presented in this Baseline Study and summarised in the Table: 100 Girls and 100 boys.

The Baseline Study also found a number of examples of exclusion from services or benefits based on people not having legal identity documents:

- The only public special needs school in Medan requires all children attending to have a birth certificate. This excludes children with disability from poorer families who cannot obtain these documents
- The new health insurance program, *Jaminan Kesehatan Nasional (JKN)* through *Badan Penyelenggara Jaminan Sosial (BPJS)*, requires the head of household to produce their family card (KK) stating that they are the head of household and listing dependent children. Women who are heads of their families and households will therefore need a divorce certificate to evidence their status
- The recent distribution of over 15 million social protection cards (KPS) to the poorest 25% of households by the government of Indonesia in 2013, shows that 86% of these cards went to male heads of household. The PEKKA household survey presented in this Baseline Study shows that in the poorest 30% of households, (i) 34% of families are headed by women but (ii) only 24% of women who give their status as divorced have a divorce certificate and can therefore obtain a family card which shows that they are the head of the family unit. As a result, the majority of

female heads of families lack documentary evidence (in the form of the social protection card) that their household is included in the poorest 30% of Indonesian households. This means they need to expend time and money to obtain other evidence of their poverty status such as *Surat Keterangan Tidak Mampu* (SKTM) in order to obtain free or subsidised services.

Evidence of birth, of legal marriage and of divorce, has a critical impact on many related social and economic matters, including entitlement to moveable assets, access to financial services, inheritance rights, access to formal employment and access to other identity rights such as being able to obtain a passport.

It is not clear why these strong correlations exist between better development outcomes for girls and women and the possession of legal identity documents. However some of the possible factors include:

1. **Legal identity documents are a prerequisite for accessing other government public services (direct causal link).** The Baseline Study found that while provincial and district laws stated that these legal identities documents were a prerequisite, for the most part, they were not. However, a number of examples were identified during the Baseline Study where exclusion from services did in fact occur because people did not have legal identity documents.
2. Households that obtain legal identity documents for their children and other household members are able to **access information and advisory services from civil society organisations that explain** to them (i) why legal identity documents are important for individuals,, as well as (ii) how to access a broad range of social assistance programs including government scholarship programs that support their children to receive 12 years of education.
3. Households that can navigate the complexity of obtaining legal identity documents from up to three different government agencies **in the process acquire knowledge, confidence and skills that subsequently opens up access to education and other services** for their children and other household members.

More research needs to be undertaken to understand why these strong correlations occur between the possession of legal identity documents and better development outcomes, particularly for girls. Further research would also be valuable on the extent to which causal links occur and the impact of (i) social networks, (ii) clustered information sharing, (iii) the role of poverty and disability status on whether individuals from poor and vulnerable household do obtain legal identity documents as well as (iv) the impact of belonging to certain cultural and religious groups.

## Barriers to obtaining legal identity documents

The cost of obtaining a birth or marriage certificate is cited as the main reason why children and couples from poor households do not have legal identity documents, followed by the service provider being too far away, and then lack of knowledge on how to obtain legal identity documents. More detailed considerations are enumerated below:

### **Cost, including:**

- for the legal identity documents themselves
- to process the court cases that are a prerequisite to obtaining certain legal identity documents. (A marriage legalisation case before the courts is, for example, required in order to obtain a marriage certificate)
- transport costs to district and subdistrict offices. Transport costs may be higher for people with a mobility disability for whom mainstream public transport may be inaccessible as they may have

to pay for a taxi or private vehicle

- the cost of obtaining a birth certificate can be up to five times the average monthly income of an individual living on, or below, the Indonesian poverty line
- a marriage legalisation case and a divorce case initiated by the wife can rise up to 10 times the monthly income of a person living on the Indonesian poverty line (Rp 253,273 per person per month), depending upon how far the parties live from the court house.

**Distance, including:**

- the time and difficulty of travelling to district or subdistrict capitals to obtain legal identity documents from relevant government agencies. The Baseline Study found that it can take up to 8 hours for a person to travel to and from the nearest civil registry office and that several trips may be required to obtain legal identity documents
- people living with a disability face additional barriers in travelling even short distances to obtain legal identity services. In some districts, there may not be any form of accessible transport that will allow people with a mobility disability to travel to district capitals.

**Complexity of the process to obtain legal identity documents:**

- people need to interact with up to 3 different government and judicial agencies to obtain legal identity documents. These interactions are made even more difficult for people with disability due to a lack of human and information resources, such as interpreters for people who are deaf or information available in Braille
- in order to obtain a birth certificate with both the father and mother's names on it, the parents must present their marriage certificate to the civil registry. As more than half of marriages in Indonesia are not registered, this constitutes a major barrier to half of all Indonesian children receiving a birth certificate that has the father's name on it
- the Baseline Study found that 64% of survey respondents either agreed or strongly agreed that a birth certificate with only the mother's name conveys a negative connotation. The Constitutional Court of Indonesia, in a 2012 decision No 46/PUU-VIII/2010, indicated that a child should have a civil relationship with both the father and the mother, where a blood relationship can be evidenced, as this has far-reaching inheritance and social implications for the child.

Distance and complexity of the process are reasons why many people resort to the assistance of "middlemen" in obtaining legal identity documents, which in turn increases the cost. All these barriers are exacerbated for the poor, for families headed by women, for people living in rural/remote areas, for people with disability, and for vulnerable adults and children, including those from certain cultural or religious groups.

## Communicating why legal identity documents support better development outcomes

During 2013, there have been a number of changes that simplify the process for obtaining legal identity documents due to a successful challenge before the Constitutional Court that was later embodied in legislative changes passed by the Indonesian Parliament in December 2013. However these legislative changes will be meaningless unless there is:

1. A campaign to raise community awareness of the importance and benefits of legal identity documents including the following benefits for girls and women:



- overwhelmingly, girls with birth certificates do not experience child marriages. The social, educational, health and development benefits of girls marrying at 18 years of age, or older, need to be clearly communicated to communities
  - for children with a disability, not having a birth certificate can lead to exclusion not only from mainstream/inclusive schools but also from state special needs schools;
  - provincial and local government legislation as well as school directives state that a birth certificate is required to enrol a child at school
  - women who are separated from their husband need a divorce certificate to subsequently obtain a family card stating that they are a head of household. This family card is often required to access public services for themselves and their children.
2. More support provided by government officials from a range of agencies to ensure that children obtain a birth certificate as early as possible and do not become invisible to the state until they obtain an identity card (KTP) at 17 years of age. International research clearly shows that early intervention is important to support children from disadvantaged and vulnerable households. This includes access to preschool education and effective early childhood immunisations and health checks.
  3. Greater collaboration between a range of government agencies and CSOs/ DPOs to help obtain birth certificates for children (and where necessary marriage certificates for their parents) could include support being provided by (i) midwives/healthcare officials involved in the delivery of the baby, (ii) teachers involved in early childhood education programs (PAUD), (iii) teachers at primary school (iv) CSOs/ DPOs working to increase the knowledge and understanding of people with a disability about their rights and responsibilities to register children at birth, and (v) facilitators involved in the village-based social development programs such as PNPM Generasi that work with out-of-school children, children and adults with disability and other vulnerable groups.

## Indonesian Poverty Indices – The Unified Database – The poorest 40%

While the percentage of the population living under the Indonesian poverty line has fallen to 11% nationally (and to 14% for the rural population of Indonesia), close to 40% of the population live so close to the poverty line that even relatively small shocks can be enough to push such vulnerable households into poverty. Government agencies should focus on delivering services that are free and accessible for this 40% of the population. In some districts, highly vulnerable households account for more than 70% of the population. The Government of Indonesia's National Team for Accelerating Poverty Reduction (TNP2K) launched the Unified Database for the Social Protection Program in 2012 with the main source of the data drawn from surveys conducted by the Indonesian Central Bureau of Statistics (BPS) during July - December 2011 (PPLS 2011). This Unified Database is an electronic data system that contains social, economic and demographic data from 24.8 million households, or 96.7 million individuals, representing the 40% of Indonesian citizens having the lowest socio-economic levels. The Baseline Study recommends that both the Indonesian judiciary and government agencies use the Unified Database as one of the sources of data for waiving court and service fees for the poorest and most vulnerable of households.

## Civil society engagement with the Indonesian Courts over the last 5 years demonstrates an ability to improve access to services for the poor

The Baseline Study highlights the example of the Indonesian Supreme Court and the CSO PEKKA who have worked since 2006 on research and community awareness raising that has led to a number of policy changes being introduced from 2008 onwards.

The leadership of the Supreme Court of Indonesia has shown over the last 5 years that it is possible to dramatically improve the delivery of justice to women, the poor and people living in remote locations. This is particularly important as legal identity cases, such as divorce and marriage legalization, are the single largest group of cases in the Indonesian court system<sup>2</sup>. Since 2009:

- the number of marriage legalisation cases conducted in the 359 Religious Courts across the country has tripled. In 2013, the Religious Courts heard more than 35,000 marriage legalisation cases
- the number of cases heard at a circuit court at village level have doubled. The Religious Courts heard more than 23,000 cases at circuit courts in 2012
- the number of cases brought by the poor where the court fee is waived has quadrupled. The Religious Courts heard more than 12,000 court fee waiver cases in 2012.

In the Religious Courts, these changes have seen women particularly benefit from the waiver of court fees. In 2013, women were granted a court fee waiver in 87% of the divorce cases in which a Religious Court provided a court fee waiver. As women are the applicant party in 69% of divorce cases, this demonstrates that the Religious Courts are recognising that women are financially disadvantaged when a marriage breaks up and are allocating a significant proportion of the court fee waiver budget for cases brought by women.

These significant access to justice changes have occurred over a period of five years - a relatively short period of time. What is equally impressive is that these results have been documented in a transparent fashion by the Supreme Court and the agencies responsible for administering the 709 Religious and General Courts (Badilag and Badilum) across Indonesia. Results are available by district on websites supported by the courts: [infoperkara.badilag.net](http://infoperkara.badilag.net) for the Religious Courts and the CTS data system for the General Courts. In addition, the Religious Courts Agency has fostered a collegiate approach to delivering justice to the poor through its website that links almost 400 courts and creates a forum for the daily exchange of information between these courts. Over 4400 stories written by Religious Courts across Indonesia were published on [www.badilag.net](http://www.badilag.net) in 2013.

The Religious Courts addressed each of the barriers faced by vulnerable groups in obtaining legal identity documents in the following ways:

- waiving fees to address the cost barrier
- delivering mobile services to women, to the poor, and to people living in remote locations
- working with civil society organizations and local government to address the complexity of the procedures by providing justice seekers with information and assistances to link the demand for legal identity services with agencies that can supply these services.

This represents an Indonesian example of delivering improved services for vulnerable groups that can be replicated by other Government agencies.

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2 2013 data obtained from CTS and Infoperkara (excludes summary and traffic cases).

## Key Messages

- 1. Guaranteeing people's access to legal identity is not only essential in order to comply with human rights principles, but it is also a fundamental aspect of good governance and inclusive development.** Indonesia has ratified the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CRC), the Convention on the Elimination of Discrimination against Women (CEDAW) and the Convention on the Rights of Persons with Disabilities (CRPD), and is required to fulfil its treaty obligations to ensure that every individual is registered at birth, given citizenship and a birth certificate acknowledging their identity in a non-discriminatory manner.

Governments require accurate population data in order to more effectively plan, finance and manage the delivery of public services for their citizens. It is therefore imperative for Indonesia's human development that the Indonesian Government implements a system that counts and records every birth. According to the latest census in 2010, the Indonesian population consists of 237,641,326 individuals with more than 82.5 million below the age of 18. The goal must be a standardized and publicly accessible mechanism through which all individuals are registered and provided with a legal proof of identity, including birth, marriage and, where couples separate, divorce certificates.

In March 2013, the Report of the High-Level Panel of Eminent Persons on the Post-2015 Development Agenda proposed under the new MDG goal 10 (Ensure Good Governance and Effective Institutions) that States provide free and universal legal identity, such as birth registrations. If the proposed goal is adopted it will contribute to the more accurate measurement of progress toward the whole MDG agenda, as evidence suggests that the members of the population least likely to be included in population data are those living in the most remote areas or facing the greatest levels of disadvantage including children and people with a disability. These populations are the ones that most need to be counted for the integrity of the MDG agenda.

- 2. Birth, marriage and divorce certificates play a critical role for the poor and the marginalized, for women and children, and for people with disabilities, accessing education, health services, social assistance programs and legal protection.** The Baseline Study shows that the main barriers to people obtaining legal identity documents are the cost of services, the distance to the nearest services, and the lack of knowledge on how to access those services. In addition, there is a direct link between parents not having marriage certificates and children without birth certificates. These challenges do not exist in a vacuum but should be considered in the context of existing religious and cultural norms as well as national and subnational laws. Multi-year, multi-sector efforts are required to effect significant change.

The complexity of fulfilling every person's right to legal identity requires engagement with other key dimensions of access to justice, namely: a) legal empowerment and access to legal aid, including the work of paralegals and social workers that connect individuals with legal identity services and other support services, such as qualified sign language interpreters to assist communication needs of people who are deaf as well as material in alternative formats (Braille, sign language videos); b) the removal of discriminatory requirements for certain groups in relation to legal identity; c) transparent, affordable and accountable courts and civil registration services; d) acceleration of mobile services to better reach the most vulnerable as well as more integrated services to streamline and simplify procedures; and e) improvement of government capacity to produce reliable and publicly accessible data on legal identity services, population data and demographic information.

**3. Legal identity goes beyond providing people with a piece of paper. Birth, marriage and divorce certificates are a critical part of a modern civil registration and statistics system.** The Constitutional Court of Indonesia has stated in a decision in 2013 No 18/ PUU-XI/2013 that “a person without a birth certificates does not exist in a legal sense in a state”. An unregistered child is in an official state of non-existence. Legal identity is fundamental to counting the number of individuals every government should be accountable to - in terms of delivering health, education, social services and legal protection. This includes counting individuals with a disability, which is critical to informing the evidence base for policy and programming decision making about public services to respond better to their needs and provide for their rights. It is recommended that the Government of Indonesia move from ad-hoc, infrequent and expensive program-based surveys to a serious investment in a reliable and publically accessible civil registration system to support the delivery of government services and to measure progress toward broader development goals.

## Structure of the Report

Chapter 1 explores the aims of the Baseline Study and the methodology for the research components included in this Baseline Study.

Chapter 2 explores the percentage of women, men and children able to obtain birth certificates, marriage certificates, and in some circumstances, divorce certificates. It also looks at the link between poverty, disability, age and location in terms of accessing legal identity documents.

Chapter 3 explores the impact of having a legal identity in terms of access to education, health, social assistance, and legal protection.

Chapter 4 looks at how citizens obtain birth certificates, marriage certificates, and in some circumstances, divorce certificates, and the role of government and judicial agencies in delivering these legal identity documents to citizens. This chapter also presents the barriers that prevent children, women and men, including people with disability, from obtaining these legal identity documents.

Chapter 5 looks at how the three judicial and government agencies involved in the provision of birth, marriage and divorce certificates collect and analyse data in relation to their work across Indonesia’s 33 provinces. This chapter also explores recent developments aimed at reducing fees, providing mobile and integrated services as well as legal advisory services to citizens seeking legal identity documents.

Chapter 6 summarises Key Findings and Recommendations.



# PENGADILAN AGAMA TANJUNGBALAI

## PANJAR BIAYA PERKARA PENGADILAN AGAMA TANJUNGBALAI

NO	URAIAN	JUMLAH	KETERANGAN
I.	<b>PANJAR BIAYA PERKARA TINGKAT PERTAMA</b>		
1.	Biaya Pendaftaran	Rp. 30,000	
2.	Biaya ATK Perkara	Rp. 50,000	
3.	Panggilan	Rp. ....	
4.	Biaya Redaksi	Rp. 5,000	Sesuai Dengan Radius
5.	Materai	Rp. 6,000	
II.	<b>PANJAR BIAYA PERKARA TINGKAT BANDING</b>		
1.	Biaya Pendaftaran	Rp. 50,000	
2.	Hak Redaksi	Rp. ....	
3.	Biaya Pemberitahuan	Rp. ....	Sesuai Dengan Radius
4.	Biaya Penyampalan Memori Banding	Rp. ....	Sesuai Dengan Radius
5.	Biaya Penyampalan Kontra Memori Banding	Rp. ....	Sesuai Dengan Radius
6.	Biaya Pemberitahuan Inzage	Rp. ....	Sesuai Dengan Radius
7.	Biaya Pengiriman Berkas	Rp. ....	Sesuai Kebutuhan
8.	Biaya Foto Copy	Rp. ....	Sesuai Kebutuhan
9.	Biaya Pemberitahuan Isi Putusan Banding	Rp. ....	Sesuai Dengan Radius
10.	Biaya Banding	Rp. 150,000	
III.	<b>PANJAR BIAYA PERKARA TINGKAT KASASI</b>		
1.	Biaya Pendaftaran	Rp. 50,000	
2.	Hak Redaksi	Rp. ....	
3.	Biaya Pemberitahuan Kasasi	Rp. ....	Sesuai Dengan Radius
4.	Biaya Penyampalan Memori Kasasi	Rp. ....	Sesuai Dengan Radius
5.	Biaya Penyampalan Kontra Memori Kasasi	Rp. ....	Sesuai Dengan Radius
6.	Biaya Pemberitahuan Inzage	Rp. ....	Sesuai Dengan Radius
7.	Biaya Pengiriman Berkas	Rp. ....	Sesuai Dengan Radius
8.	Biaya Foto Copy	Rp. ....	Sesuai Kebutuhan
9.	Biaya Pemberitahuan Isi Putusan Kasasi	Rp. ....	Sesuai Kebutuhan
10.	Biaya Kasasi	Rp. 500,000	
IV.	<b>PANJAR BIAYA PERKARA TINGKAT PENINDAHAN KEMBALI</b>		
1.	Biaya Pendaftaran	Rp. 200,000	
2.	Hak Redaksi	Rp. 5,000	
3.	Biaya Pemberitahuan PK	Rp. ....	Sesuai Dengan Radius
4.	Biaya Penyampalan Jawaban	Rp. ....	Sesuai Dengan Radius
5.	Biaya Pengiriman Berkas	Rp. ....	Sesuai Kebutuhan
6.	Biaya Foto Copy	Rp. ....	Sesuai Kebutuhan
7.	Biaya Pemberitahuan Isi Putusan PK	Rp. ....	Sesuai Dengan Radius
	Biaya Penitahuan Kembali ( PK )	Rp. 2,500,000	



# Key Findings



## The Situation

**1 There are significant discrepancies between different data sources on the numbers of people without birth certificates in Indonesia.**

SUSENAS 2012 estimates that 29% of Indonesian children aged 0-17 years, or more than 24 million individuals, do not have birth certificates. This rises to 47%, or almost 40 million children, when children are included whose parents claim they have a birth certificate but cannot produce the document.

Data from the Ministry of Home Affairs (MoHA) suggests that the figures for those lacking birth certificates is as high as 76% of children and youth aged 0-18 years, or more than 50 million individuals.

**2 The Baseline Study found that more than 73% of people who answered a SUSENAS survey question “have a birth certificate but cannot show it” actually never had a birth certificate. This would suggest that SUSENAS data underestimates the true number of children without birth certificates.**

Currently SUSENAS asks respondents whether 0-17 year olds in the family: (i) have a birth certificate and can show it, (ii) have a birth certificate but cannot show it, and (iii) do not have a birth certificate.

3 **Indonesia has national laws, as well as international treaty obligations, in relation to the provision of legal identity documents to its citizens but does not collect data on birth, marriage and divorce certificates in its census and SUSENAS or PPLS survey instruments.**

4 **Poverty increases the likelihood of not having a birth certificate across all age groups.**

The Baseline Study shows that in the poorest 30% of Indonesian households:

- 71% of children under 1 year of age do not have a birth certificate,
- 58% of children aged 1-17 years of age do not have a birth certificate, and
- 88% of adults 18 years and over do not have a birth certificate.

5 **The Baseline Study shows that in the poorest 30% of households the majority of couples (55%) do not have a marriage certificate and 75% of their children do not have a birth certificate.**

6 **The Baseline Study shows that, in the poorest 30% of households, only 24% of female heads of household who gave their status as divorced in the survey have a divorce certificate.** Without a legal divorce, women and men cannot marry legally, nor can their children obtain birth certificates, with both their father and mother's name.

7 **There is no significant difference between girls and boys having birth certificates.**

8 **The number of children without a birth certificate in rural areas is double that of children in urban areas.**

9 **The highest proportion of children without birth certificates is amongst those under one year of age (51%). This is an important finding because obtaining a birth certificate for children over one year of age becomes more complicated.**

10 **Parents who do not have birth certificates are three times more likely to have children who do not have birth certificates demonstrating that a lack of legal identity is passed across generations within families.**

Children are 13.5 times more likely to have a birth certificate if one parent and at least one grandparent have a birth certificate when compared to families where neither parents nor grandparents have a birth certificate.

11 **Children with parents/guardians that have no apparent physical disability are 5 times more likely to have a birth certificate compared with children with parents that have apparent physical disabilities.**

Indonesia does not currently capture and analyse data on the relationship between poverty, disability and access to legal identity documents.



## The Impact

12 **Lack of a birth certificate is overwhelmingly linked to child marriages in Indonesia.** 9 of every 10 child marriages involves girls and boys who do not have a birth certificate. This rises to almost 100% for the poorest 30% of households.

13 **The Baseline Study found that 9% of girls from the poorest 30% of households married under the age of 16. None of these girls has a birth certificate. None of these girls will complete 12 years of education.**

The Baseline Study found no boys married under the age of 16.

14 **Girls are 6 times more likely than boys to be married by the age of 18 years.** The Baseline Study shows that for the poorest 30% of households, 25% of girls will be married by the age of 18 years compared to only 4% of boys. Almost none (3/1000) of these girls who marry under by the age of 18 years will complete 12 years of education.

Schools currently discourage married girls and boys from continuing their education. This has implications for one quarter of all girls being able to complete the universal 12 years of education that became a Gol policy in 2013.

15 **Analysis of SUSENAS data and the Baseline Study confirms the correlation between having a birth certificate and the prevalence of children completing the 12 years of education that the Gol enshrined in its universal education policy released in 2013.**

The Baseline Study found that only 10% of women aged 19-29 without a birth certificate have completed 12 years of education, whereas 36% of women aged 19-29 who have a birth certificate have completed 12 years of education. Similar figures are obtained for men aged 19-29.

16 **The Baseline Study found that 16% of women aged 19-29<sup>3</sup> from poor households finish 12 years of education in Indonesia. 94% of these women are married at 18 years or older.**

17 **A birth certificate is a legal document, evidencing the age of the person, and should assist in the prevention of child labour, child trafficking, and children being treated as adults in the criminal justice system.**

18 **The Baseline Study finds that children with a birth certificate have better access to basic health services. At the same time, mothers whose children have a birth certificate also have better access to health services.**

19 The Baseline Study found that across the 17 provinces surveyed, and for women in the poorest 30% of households, only 5 in 10 women have an ID card (KTP). 17% of women have a KTP in NTB and South Sulawesi, and 37% of women have a KTP in NTT. Women face barriers in exercising their political rights in part due to the difficulty in obtaining legal identity documents (such as a KTP) that are a prerequisite for enrolling to vote. The Baseline Study found that women in NTB, NTT and South Sulawesi who have a birth certificate are 2-3 times more likely to also have a KTP.

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3 Taking a snapshot of highest educational attainment for boys and girls aged between 19-29 shows a more accurate picture of current opportunities for girls and boys. When the population is enlarged to all men and women aged 19 years and over, the level of educational attainment diminishes considerably as the majority of the older population in Indonesia did not complete primary school.

20 **The Baseline Study found that a birth certificate is required by adults to become a civil servant or government employee both at the national and the subnational level and is also mandatory for most formal and private sector employment.**

A birth certificate must be produced when applying for a passport. Therefore, a birth certificate is required for all persons seeking to work overseas as a migrant worker and for those who may wish to travel to perform the Hajj and complete other religious observances.

21 **The Baseline Study found that women in non-polygamous marriages were statistically 3 times more likely to have a marriage certificate, as compared to non-first wives in polygamous relationships where the marriage has not been registered.** Most children from polygamous marriages cannot have a birth certificate with both parents' names, as their parents will not have registered their marriage.

22 The Baseline Study found that across the 17 provinces surveyed and in the poorest 30% of households, 90% of female heads of household are able to access the subsidised rice program (Raskin), 52% health insurance programs, and 41% the 2009 cash transfer program.

23 **The majority of female heads of families lack documentary evidence (in the form of the social protection card) that their household is included in the poorest 25% of Indonesian households.**

The Baseline Study found that across the 17 provinces surveyed and in the poorest 30% of households, (i) 34% of families are headed by women but (ii) only 24% of women who give their status as divorced have a divorce certificate and therefore can obtain a family card which shows that they are the head of the family unit.

This lack of a social protection card (KPS) has an impact on the ease with which female heads of families can obtain government services at no cost – such as the waiver of court fees in marriage legalisation and divorce cases brought before the Indonesian courts.



## The Barriers

- 24 **Both SUSENAS and the Baseline Study confirmed that the main reasons for people not having legal identity documents such as a birth certificate or a marriage certificate is because (i) they are too expensive to obtain (41%); (ii) the distance to civil registry offices is too far (15%); and (iii) lack of knowledge on how to obtain legal identity documents (12%), as well as (iv) the processes being too complicated (9%).**
- 25 Prior to Law 24/2013 concerning the revision of Law 23/2006 on Population Administration enacted in December 2013, the cost of a birth certificate (including fines) charged by the civil registry office could rise to 6 times the monthly income of a person living on the Indonesian poverty line.
- 26 A marriage legalisation case and a divorce case initiated by the wife in the Religious Courts can rise to between 1 to 10 times the monthly income of a person living on the Indonesian poverty line, depending upon how far the parties live from the court house.
- A divorce case initiated by the husband in the Religious Courts can rise to between 2 to 16 times the monthly income of a person living on the Indonesian poverty line, depending upon how far the parties live from the court house.
- 27 To obtain a birth certificate with both parents' names on it, will require parents to interact with up to three agencies to: (i) legalise a marriage before the Religious Courts; and/or (ii) obtain a marriage certificate at the KUA or civil registry; and/or (iii) obtain a birth certificate at the civil registry. The complexity, time and cost of dealing with three agencies will be beyond the capacity of many households, particularly the poor.
- 28 People living with a disability face additional barriers in travelling even short distances to obtain legal identity services. In some districts, there may be no form of accessible transport that will allow people with a mobility disability to travel to district capitals. In addition, there is a lack of support services, such as qualified sign language interpreters to assist with the communication needs of people who are deaf as well as material in alternative formats (Braille, sign language videos, audio materials).



## Legal Identity Processes

29 **In 2011, the Ministry of Religion recorded 2,207,364 marriages in Indonesia. As less than 50% of Indonesian couples obtain a marriage certificate, it is estimated that each year over 2 million couples in Indonesia do not register their marriage.** The hidden impact of unregistered marriage is that children from these marriages will be unable to obtain a birth certificate with both their father and mother's name.

30 **Divorce cases are the single largest group of cases in the Indonesian court system.** 93% of the 430,000 cases received by the Religious Courts in 2013 were divorce and marriage legalisation cases. In 2013 there were 24,568 civil cases registered in the General Courts, 9866 (or 40%) of these civil cases were divorce cases.

**69% of divorce cases in Indonesia are brought by women.** In 95% of these cases, a woman's application for divorce is upheld by the Religious Courts.

31 **Following the enactment of Law 24/2013 on 24 December 2013, there is no charge for marriage certificates issued by MoHA for non-Muslim citizens, whereas Muslim citizens will continue to be charged for obtaining a marriage certificate issued by MoRA.** This violates the non-discrimination provision of the Indonesian Constitution as there is now different treatment for Indonesian citizens in obtaining a marriage certificate from the Government based upon their religion<sup>4</sup>.

32 Law 24 of 2013 on Population Administration provides that in cases where there is: (i) a religious marriage and (ii) the father signs a statutory declaration that he is the father of the child, the civil registry will issue a certificate evidencing this recognition by the father and mother that they are the parents of the child (kutipan akta pengakuan anak) (art 49). A child requires either a birth certificate or a statutory declaration in which the father states that he is the father of the child in order for the child to have a civil law relationship with the father.

33 **Law 24 of 2013 on Population Administration provides that the Gol has an obligation to actively reach out into the community to register births, marriages, divorces and other legal identity events.** The Supreme Court of Indonesia has already identified these budget resources at district level for General and Religious Courts to provide circuit court services.

4 Indonesian Constitution Article 28I (2) Every person shall have the right to be free from discriminatory treatment based upon any grounds whatsoever and shall have the right to protection from such discriminatory treatment.

# System Response

**34 The Supreme Court has pioneered high levels of transparency in the provision of information on the work of the Indonesian courts to the public. This has been achieved through the publication of an Annual Report since 2005 and on-line access to court case statistics and judgments.**

Over the last decade the Religious Courts have developed electronic case management systems to gather data from the 359 Religious Courts and 29 High Religious Courts across Indonesia. There is a significant level of transparency in the Religious Courts with case data as well as information on the work of the courts now available to the public online through [www.badilag.net](http://www.badilag.net) and [www.infoperkara.badilag.net](http://www.infoperkara.badilag.net)

The General Courts now have an electronic case management system to gather data from the 350 General Courts and 30 High Courts across Indonesia. This case management information can be seen in aggregate by Supreme Court staff (Badilum) but is not publicly accessible.

**35 There is no publicly accessible data on civil registration that is published by the Ministry of Home Affairs for birth and marriage certificates. The Ministry of Religion publishes the total number of marriage registrations in its Annual Report but does not provide disaggregated data by District.**

**36 In 2010, clients who could not afford a lawyer were not able to access legal advisory services (Pos Pelayanan Hukum) in the Religious Courts. In 2012, over 55,000 justice seekers in the Religious Courts received free legal advice through an independent legal aid post based in a Religious Court.** In 2014, the Supreme Court budget for these services will enable clients who are not able to afford a lawyer to access legal advisory services in 74 Religious Courts and 56 General Courts.

**37 In 2014, the budget provided through the Supreme Court state budget (DIPA) to the Religious Courts to waive court fees, hold circuit court and provide legal advisory services in court buildings, is 13 times the level it was in 2007.**

However, the Religious Courts have not yet been able to deliver court fee waiver and circuit court services to the 14% of the community who represent the village-based population living below the Indonesian poverty line. In 2012, the Religious Courts heard 7% of its cases through a circuit court and 3% of all justice seekers were successful in obtaining a court fee waiver.

**38 The Chief Justice and leadership of the Supreme Court of Indonesia, as well as the High Court Chief Justices and the Chief Judges of the General and Religious Courts, have proved to be the key drivers for improving access to the courts in marriage legalisation and divorce cases for women, the poor and justice seekers living in remote areas.**

Since 2009:

- the number of cases heard at a circuit court at village level has doubled. The Religious Courts heard more than 23,000 cases at circuit courts in 2012
- the number of marriage legalisation cases conducted in the 359 Religious Courts across the country has tripled. In 2013, the Religious Courts heard more than 35,000 marriage legalisation cases
- the number of cases brought by the poor where the court fee is waived has quadrupled. The Religious Courts heard more than 12,000 court fee waiver cases in 2012.



# Chapter 1

## Introduction to the Baseline Study on Legal Identity



*“Government is responsible for maintaining many of society’s central institutions. One of the most basic institutional responsibilities is providing legal identity. Every year, about 50 million births are not registered anywhere, so these children do not have a legal identity. That condemns them to anonymity, and often to being marginalized, because simple activities – from opening a bank account to attending a good school – often require a legal identity.”<sup>5</sup>*

Globally, almost half of children are unregistered<sup>6</sup>, leading to a phenomenon that has been dubbed “the scandal of invisibility”<sup>7</sup>. A birth certificate represents legal proof of identity whereby a child is recognized legally by the State. Without legal identity documents, which contain a child’s name, birth date, parents’ names and location of birth, children are legally “invisible”<sup>8</sup>.

This Baseline Study was conducted in 2012-2013 and represents an initial analysis of the impact and the reasons why between one half and three quarters of all Indonesian children do not have birth certificates, and over half of couples lack a marriage certificate. The timing of the Baseline Study coincided with a number of developments related to legal identity both internationally and within Indonesia. These include:

5 United Nations. (2013). A New Global Partnership: Report of the High-Level Panel of Eminent Persons on the Post-2015 Development Agenda (2013).

6 <http://www.who.int/mediacentre/factsheets/fs324/en/>

7 Setel, 2007. A scandal of invisibility – making everyone count by counting everyone.

8 Ibid.

**In March 2013**, the Report of the High-Level Panel of Eminent Persons on the Post-2015 Development Agenda proposed under the new MDG goal 10: Ensure Good Governance and Effective Institutions that States provide free and universal legal identity, such as birth registrations. If the proposed goal is adopted it will contribute to the more accurate measurement of progress toward the whole MDG agenda, as evidence suggests that the members of the population least likely to be included in population data are those living in the most remote areas or facing the greatest levels of disadvantage including children and people with disability. These populations are the ones that most need to be counted for the integrity of the MDG agenda.

**In April 2013**, the Constitutional Court issued a decision that removed the requirement that a child over one year of age obtain a statement from the General Courts (Permohonan Penetapan Akta Kelahiran) in order to obtain a birth certificate. This requirement was previously contained in Law 23 of 2006 concerning the Administration of Citizenship. The Constitutional Court decision emphasized that a person without a birth certificate does not exist, in any legal sense, within the state, and that a birth certificate is vital as it provides a guarantee of protection and legal certainty for a person's rights as an individual and a citizen.

**In December 2013**, key articles in the Law on Population Administration 23/2006 were revised and issued as Law Number 24 Year 2013. The notable amendments included:

1. It provides a legislative basis for the Constitutional Court decisions (i) of 2012 to ensure that a child has a civil relationship with both the father and the mother in cases where a religious marriage has taken place that has not been legally registered and (ii) of 2013 to remove the requirement for a General Court case to obtain a birth certificate for children over 1 year of age<sup>9</sup>. In particular, there will be a new requirement replacing the requirement for a marriage certificate for couples where (i) they have a religious marriage but have not obtained a marriage certificate and (ii) the father acknowledges his child in a statutory declaration<sup>10</sup> (surat pengakuan anak oleh ayah). These requirements will be elaborated in the Implementing Regulations for the new Law 24 of 2013 that must enter into force by 24 December 2014.
2. The government now has an obligation to actively reach out into the community to register people<sup>11</sup>.
3. Civil registration is now free of charge irrespective of the time of registration. Fees and fines for late registration will no longer be applied by civil registry officials once the implementing regulations come into force<sup>12</sup>.
4. There is a criminal sanction for collecting any kind of fees<sup>13</sup>.
5. Registration can be done in the place of residence (domicile)<sup>14</sup>.

The registration of every child's birth is essential if a state is to adequately plan and budget for social development programs, including delivering the health and education services that meet the needs of citizens. The lack of investment in civil registration systems, particularly in low and middle income countries has been considered "the single most critical development failure over the past 30 years".<sup>15</sup> Data presented in the Baseline Study suggests that between one half and three quarters of all Indonesian

<sup>9</sup> Law Number 24 Year 2013 concerning the revision of Law 23/ 2006, Art 32

<sup>10</sup> Ibid, Article 49

<sup>11</sup> Ibid, Preamble.

<sup>12</sup> Ibid, Art 79A and in the Elucidation of Article 27

<sup>13</sup> Ibid, Art 95B

<sup>14</sup> Ibid, Art 102 point b

<sup>15</sup> AbouZahr et al., (2007). The way forward. *Lancet*, 370; 1791Setel, P.W., et al. (2007) A scandal of invisibility: making everyone count by counting everyone.



children do not have a birth certificate as their birth was not registered in the district where they were born. This means that, with the exception of the census year that occurs once every 10 years, the Indonesian government lacks accurate data to support planning and budgeting for the health, education and social service needs of children under the age of 18.

The Baseline Study shows that children from the poorest households are less likely to have birth certificates despite the need for this group to be more visible in government data for better targeting of services. The Indonesian Government is investing in electronic ID cards for citizens aged 17 years and over. However, the opportunities for children to move out of poverty are increased when investments are made in early childhood health and education programs, particularly for the poorest households.

Article 7 of the Convention on the Rights of the Child affirms specifically that states must protect “the right of a child to a legally registered name, officially recognized by the government”. The Baseline Study explores how legal registration not only allows for access to basic rights but also serves to protect children at risk.

It can be seen that a negative cycle arises in which being poor increases the likelihood of not having a legal identity and not having a legal identity in turn limits the capacity to escape poverty in the future. This Baseline Study aims to stimulate policy discussion and analysis on how to ensure universal access to legal identity documents for Indonesian children, women and men.

## Timeline of Key Events on Legal Identity

<b>1990</b>	Indonesia ratifies the Convention of the Rights of the Child through Keppres 36/1990.
<b>2002</b>	Law 23/ 2002 Child Protection Law
<b>2006</b>	Law 23/ 2006 on Population Administration
<b>2008</b>	National Strategy on Universal Birth Registration – goal that every child will have a birth certificate by 2011
<b>2009</b>	Indonesian National Access to Justice Strategy
<b>2011</b>	Social Protection Program Data Collection (Pendataan Program Perlindungan Sosial- PPLS) and consolidation of this data in the Unified Database for Social Protection Programs.
<b>2012</b>	The Constitutional Court of Indonesia ruled that Article 49(1) of the Marriage Act must now be construed as : A child born out of marriage has a civil legal relationship with the mother and her family, and the father and his family [provided that paternity] can be proven by science and technology and/ or another form of legally-recognised evidence that the father has a blood relationship with the child (Decision No 46/PUU-VIII/2010).
<b>March 2013</b>	The Report of the High-Level Panel of Eminent Persons on the Post-2015 Development Agenda proposed under the new MDG goal 10: Ensure Good Governance and Effective Institutions that States provide free and universal legal identity, such as birth registrations.

**April 2013**

The Constitutional Court issued a decision that removed the requirement that a child over one year of age obtain a statement from the General Courts (Permohonan Penetapan Akta Kelahiran) in order to obtain a birth certificate. This requirement was previously contained in Law 23 of 2006 concerning the Administration of Citizenship (Decision No 18/ PUU-XI/2013).

**December 2013**

Law 23 of 2006 was revised and the revision are enacted as Law 24/2013 with the changes outlined above.

**January 2014**

The Supreme Court Chief Justice issued a Practice Direction [PERMA 1 of 2014 updating SEMA 10 of 2010]<sup>16</sup> clarifying how the courts will waive fees for the poor, hold circuit courts in remote areas and support court clients who do not have access to legal information to obtain legal advisory services in courts across Indonesia. The 2014 Supreme Court budget included provision for these services.

## Key Definitions

**Legal Identity** in this report refers to legal proof of identity of an individual which focuses on three kinds of documents: Birth Certificate, Marriage Certificate and Divorce Certificate.

**A Birth Certificate** in Indonesia is issued by a Civil Registrar under Law Number 23 Year 2006 on Population Administration. It is a legal document proving the birth, the citizenship and the identity of an individual based on the registration of birth.

**A Marriage Certificate** in Indonesia is issued by two authorities: the Religious Affairs Office for Muslims and the Civil Registrar for Non-Muslims. It is a legal document proving the marital status of a couple based on the registration of marriage under Law Number 1 Year 1974 on Marriage and Law Number 23 Year 2006 on Population Administration.

**Divorce Certificates** in Indonesia are issued by two sets of authorities: a Religious Court for Muslims and a General Court and Civil Registrar for Non-Muslims. The Population Administration Law requires that a divorce be registered within 60 days from the date the divorce judgment was final and binding<sup>17</sup>. A party to a divorce in the General Courts must bring a copy of the divorce judgment to the Civil Registry so that it can be noted on the Divorce Register and a divorce certificate issued. The Religious Courts, however, print and issue divorce certificates once the divorce judgment has become final and binding<sup>18</sup>.

## Purpose of the Baseline Study

The Baseline Study was conducted during 2012-2013 by the Australia Indonesia Partnership for Justice (AIPJ) and represents a collaborative research effort combining data and analysis from a number of research studies and sources undertaken by AIPJ and a range of partner organisations. It aims to:

<sup>16</sup> Peraturan Mahkamah Agung RI Nomor 1 Tahun 2014 tentang Pedoman Layanan Hukum bagi Masyarakat Tidak Mampu di Pengadilan

<sup>17</sup> Article 40, Law 23 of 2006 on Population Administration.

<sup>18</sup> A decision is final and binding 14 days after it has been read out in court before both parties. If both parties are not present in court, then the decision becomes final and binding 14 days after it has been delivered to the parties (Law 7/1989, article 54 and HIR articles 128 and 129 (2)). If respondent party cannot be found, the court sends the decision to the Head of District (Bupati/ Walikota) to publish in his/her office. HIR article 390 (3).

- present information on the extent to which having a birth certificate is critical to the welfare and social development of children in Indonesia
- present information on the extent to which marriage and divorce certificates and other legal identity documents are critical to the welfare and social development of women in Indonesia
- describe the challenges faced by citizens, especially women living in poverty, vulnerable children and people with disability, in obtaining a birth, marriage or divorce certificate in Indonesia
- propose strategic policy responses to overcome the identified barriers to obtaining a birth, marriage or divorce certificate in Indonesia.

The Baseline Study was undertaken in collaboration with:

- The Supreme Court of Indonesia, including District and High Courts
- The Ministry of Home Affairs (MoHA), including district and provincial offices
- The Ministry of Religion (MoRA), including district and provincial offices
- The Ministry of Planning (BAPPENAS), the local planning body (BAPPEDA) and local governments
- The University of Indonesia Centre on Child Protection (Pusat Kajian Perlindungan Anak UI or PUSKAPA)
- The Empowerment of Female Heads of Household NGO (Pemberdayaan Perempuan Kepala Keluarga or PEKKA).

## Methodology

The Baseline Study compiles and analyses data from the following sources and studies:

- A household survey of over 320,000 individuals undertaken by PEKKA in 17 provinces
- A cross-sectional quantitative study in West Java, NTB and NTT and a qualitative study in West Java, NTB, NTT, South Sulawesi and North Sumatra undertaken by PUSKAPA
- SUSENAS data
- Data on legal identity services, including data from the Supreme Court of Indonesia and the Directorate General responsible for the Religious Courts (Badilag) and for the General Courts (Badilum), and data from MoHA and MoRA at the national level, as well as offices in 20 districts in West Java, NTB, NTT, South Sulawesi and North Sumatra
- In-depth interviews with key stakeholders who are either policy makers or service providers in 5 provinces (West Java, NTB, NTT, South Sulawesi and North Sumatra) and 20 districts. These were conducted by the AIPJ Legal Identity Program and PUSKAPA and involved:
  - High Courts (Pengadilan Tinggi Umum and Pengadilan Tinggi Agama)
  - District Courts (Pengadilan Negeri and Pengadilan Agama)
  - Provincial and District Offices of Population Administration and Civil Registration (Dinas Kependudukan dan Catatan Sipil)
  - Provincial and District Offices of Education (Dinas Pendidikan)
  - Provincial and District Offices of Health (Dinas Kesehatan)
  - Provincial and District Offices of Social Affairs (Dinas Sosial)
  - Provincial and District Offices of Justice and Human Rights (Kanwil Kumham)
  - Provincial and District Offices of Religious Affairs (Kanwil Agama and Kantor Urusan Agama)
  - Provincial and District Offices of Statistics (BPS Daerah)
  - Local civil society organisations, CSOs, CBOs, Forums/Networks
  - Local Universities
  - Visits to (i) primary schools, (ii) Special Needs Schools (Sekolah luar biasa) and (iii) health clinics (puskesmas) in each district.

A mixed-methods research approach was adopted that included quantitative tools (household surveys by PUSKAPA and PEKKA, health care and school administrative data) and qualitative methods (Focus Group Discussions/FGDs, face-to-face interviews and group discussions with key stakeholders) as well as secondary data analysis of SUSENAS and legal identity services data.

## Field Work by PEKKA (2012)

During March-June 2012, PEKKA conducted a community based survey (Sistem Pemantauan Kesejahteraan Berbasis Komunitas SPKKB)<sup>19</sup>. The survey aimed (i) to obtain comprehensive data on family welfare and a selection of gender related indicators, and (ii) to build the skills and experience of PEKKA cadres and staff to collect, analyse, and then use this data. In order to enable comparison with other national data sets, such as the Survei Sosial Ekonomi Nasional (National Social Economy Survey, Susenas), and the Pendataan Program Perlindungan Sosial (Social Protection Program Survey, PPLS), the SPKKB used as its starting point the same basic national data collection survey format. This was then modified with key additions being the inclusion of additional categories and information relating to a person's marital status<sup>20</sup> and legal identity.

The final SPKKB questionnaire included seven sections: I. Characteristics of the head and members of the family; II. Poverty alleviation, including sub sections on family income, consumption, food security, and access to government and social assistance programs; III. Family health, including health seeking behaviours, maternal and child health, mortality, and environmental conditions; IV. Economy, including housing conditions, assets, and savings and loans; V. Safety, specifically experience of crime and violence; VI. Technology, information and communications; and VII. Gender, which included questions about men's and women's participation in community activities, roles in decision making, violence within the home, polygamy, and attitudes toward women's leadership.

Another key difference between SPKKB and government initiated surveys is that it was a family based survey, rather than household based. A family unit is defined in Law No.52/2009, as consisting of a husband and wife; husband, wife, and children; father and child; or mother and child. In reality, many versions of a family unit can be found – a widow living alone, grandparents with their grandchildren, with or without the intermediary generation, or indeed child only households. PEKKA supplemented the existing definition to include groups or units, which internally have the autonomy to manage the resources and decision-making for that unit. PEKKA found households to consist of up to nine types of families. The family unit approach is an attempt to capture the actual number of female-headed families, their characteristics, and experience of poverty. PEKKA's twelve years of working in the field have highlighted the multiple situations of women headed families – women who become family heads through divorce from their husbands, or are widowed, but also those whose husbands are elsewhere, incapacitated, or otherwise do not support the family. This role then, often unofficially, falls on the female, and PEKKA wanted to make this more visible.

**Sampling:** SPKKB used purposeful site selection. Because the data is also intended to serve as baseline information in some areas, and to inform analysis of ongoing programs in others, all of the areas visited are those in which PEKKA works currently or plans to in the future. PEKKA employed a census method in those areas, meaning that all families were surveyed. This resulted in a very large dataset, covering 321,487 individuals in 89,960 families. Summary data on the survey locations is set out in Table 1 below.

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19 Zulminarni N, Nila Warda, Lockley, A, (2013) SPKKB Methodology, note on file.

20 PPLS 2011, as per previous BPS data forms, includes only four categories: not yet married, married, divorced, widowed. SPKKB included seven categories – married was divided into married but living together, married but not living in the same house, married but the husband or wife has deserted, and de facto marriage. This aimed to enable more accurate capturing of the range of domestic situations, particularly those that underpin a woman's official or unofficial status as the head of family. The individual data section also included questions on legal status of marriage and divorce, cause of divorce, and age at first marriage.

**Table 1.1:  
Locations  
and  
population  
size in  
SPKBK  
survey  
sample**

Province (17 in total)	Kabupaten (19 in total)	Kecamatan (35 in total, including 111 villages)	Number of families surveyed			Number of individuals in surveyed families		
			Female headed	Male headed	Total	Females	Males	Total
Aceh	Aceh Barat Daya	Tangan Tangan, Kuala Batee	879	3,240	4,119	7,552	7,557	15,109
	Aceh Timur	Idi Rayeuk	452	1,658	2,110	4,260	4,247	8,507
West Java	Cianjur	Pacet	1,313	7,422	8,735	15,255	16,902	32,157
	Sukabumi	Cibadak	1,262	5,899	7,161	12,333	12,840	25,173
Central Java	Brebes	Larangan	1,746	10,396	12,142	19,560	19,782	39,342
North Sumatra	Asahan	Tanjung Balai, Air Joman	545	3,878	4,423	9,174	9,794	18,968
East Java DI Yogyakarta	Bangkalan	Tanah Merah	523	1,800	2,323	4,142	3,976	8,118
	Bantul	Pleret	690	3,640	4,330	6,473	6,615	13,088
North Sulawesi	Bolaang Mongondow	Lolak	168	1,233	1,401	2,397	2,526	4,923
South Sulawesi	Bone	Awang Pone, Tenete Riatang Timur	549	1,766	2,315	4,362	3,952	8,314
Sulawesi Tenggara	Buton	Batauga, Sampolawa, Pasarwajo, Walowa, Siontapina	881	4,297	5,178	10,526	11,013	21,539
NTT	Flores Timur	Larantuka, Demong, Pagong, Kelubagolit, Adonara, Witihama, Ile Boleng	1,877	4,741	6,618	12,481	11,532	24,013
North Maluku	Halmahera Utara	Galela Selatan, Galela Induk	281	1,651	1,932	3,805	3,856	7,661
South Kalimantan	Hulu Sungai Utara	Sungai Pandan	364	1,022	1,386	2,304	2,181	4,485
West Kalimantan	Kubu Raya	Sei Raya	915	7,243	8,158	14,788	15,497	30,285
NTB	Lombok Barat	Gerung	1,769	7,138	8,907	14,039	13,825	27,864
South Sumatra	Ogan Komerling Ilir	Sirah Pulau Padang	229	1,319	1,548	2,591	2,644	5,235
West Sumatra	Sijunjung	Kamang Baru	174	1,011	1,185	2,241	2,351	4,592
Banten	Tangerang	Kemiri	1,027	4,962	5,989	10,927	11,187	22,114
Total			15,644	74,316	89,960	159,210	162,277	321,487

**Data analysis:** After the data had been compiled and cleaned, data analysts from the SMERU Institute performed a principle components analysis (PCA) to rank the families into ten poverty deciles, although subsequent analysis was done on a quintile (twenty-percent band) basis. PCA seeks to identify and weight the groups of indicators which most distinguish between the well-being of families in a particular area. A group of these indicators may include information about property ownership, family structure, and socio-economic factors such as education and employment. Given the socio-economic diversity across Indonesia, the ability of each indicator, or groups of indicators, to capture variations in welfare will also differ between regions. Therefore, this method was applied to the smallest area unit, that is, the village level. In Chapter 2 of this Baseline Study, data drawn from the PEKKA SPKBK survey is presented for (i) all individuals in the survey, and (ii) individuals in the poorest 3 deciles.

Statistical analysis to identify family (or household) welfare is challenging. In Indonesia, proxy means testing (PMT) is often used for this purpose. PMT, usually applied to household units, estimates household consumption based on multiple dimensions of poverty including education, household demographics, occupation, housing characteristics, and assets. In contrast, PCA compares the relative socio-economic conditions of households or families with the average socio-economic conditions in that particular area. PCA was selected for welfare ranking for SPKBK because it is more sensitive to family characteristics, such as the means of obtaining food, and is more locally specific.

PEKKA has collaborated with a number of organisations and individuals to interpret and analyse the results and to develop practical policy recommendations. The data presented in this Baseline Study has been analysed and presented with assistance from the AIPJ Legal Identity Program and the Family Court of Australia.

## Field Work by PUSKAPA (2013)

**Household Survey:** PUSKAPA used a cross-sectional study design, with an interviewer-administered household survey as the primary quantitative tool. The baseline household survey was conducted in June-July 2013. The household surveys gathered information on biological children under 18 years of age living in and out of the household and non-biological children living in the household. Heads-of-household aged 16 years and older, with at least one child were considered eligible and invited to participate in the study. The survey preferred female heads-of-household whenever possible. The household survey elicited information on: I. socio-demographics and socioeconomic status; II. access to social services; III. education and health care services; IV whether household members had birth, marriage and, in some cases, divorce certificates V. barriers experienced by household members in obtaining birth, marriage and divorce certificates; VI. disabilities; VII. child health outcomes (e.g., child mortality); and VIII. knowledge and perceptions surrounding legal identity documents.



**Table 1.2:**  
Randomly  
selected  
intervention-  
and non-  
intervention  
sites for  
West Java,  
East Nusa  
Tenggara  
(NTT) and  
West Nusa  
Tenggara  
(NTB)

Province	District	Subdistrict	Village	Intervention/ non-intervention site
West Java	Cianjur	Cilaku	Rahong	Intervention
	Cianjur	Leles	Pusakasiri	Intervention
	Bogor	Parung	Waru	Intervention
	Bogor	Parung Panjang	Kabasiran	Intervention
	Garut	Banjarwangi	Wangunjaya	Intervention
	Garut	Kadungora	Cisaat	Intervention
	Sukabumi	Simpenau	Kertajaya	Intervention
	Sukabumi	Warung Kiara	Tarisi	Intervention
	Purwakarta	Maniis	Sinargalih	Non-intervention
	Purwakarta	Pondohsalam	Salam Mulya	Non-intervention
	Karawang	Cilamaya Wetan	Muara	Non-intervention
	Karawang	Telukjambe Barat	Margamulya	Non-intervention
	Bandung Barat	Sindankerta	Sindangkerta	Non-intervention
	Bandung Barat	Cipatat	Sumurbandung	Non-intervention
Nusa Tenggara Timur (NTT)	Sumba Barat Daya	Wewewa Selatan	Delo	Intervention
	Sumba Barat Daya	Wewewa Barat	Wali Ate	Intervention
	Belu	Atambua Selatan	Fatukbot	Intervention
	Belu	Tasifeto Barat	Lookeu	Intervention
	Manggarai Timur	Kota Komba	Lembur	Intervention
	Manggarai Timur	Lamba Leda	Compang Mekar	Intervention
	Timor Tengah Utara	Naibenu	Benus	Intervention
	Timor Tengah Utara	Insana Barat	Letneo	Intervention
	Timor Tengah Selatan	Amantun Utara	Tauanas	Non-intervention
	Timor Tengah Selatan	Boking	Sabun	Non-intervention
	Sumba Tengah	Umbu Ratu Nggay Barat	Umbu Kawolu	Non-intervention
	Sumba Tengah	Katiku Tana	Umbu Riri	Non-intervention
	Nagekeo	Aesensa Selatan	Langedhawe	Non-intervention
Nagekeo	Aesesa	Ngegedhawe	Non-intervention	
Nusa Tenggara Barat (NTB)	Lombok Utara	Gangga	Sambik Bangkol	Intervention
	Lombok Utara	Tanjung	Medana	Intervention
	Lombok Barat	Lembar	Sekotong Timur	Intervention
	Lombok Barat	Kediri	Kediri	Intervention
	Dompu	Pekat	Nangamiro	Intervention
	Dompu	Pajo	Jambu	Intervention
	Bima	Parado	Lere	Intervention
	Bima	Sanggar	Boro	Intervention
	Lombok Timur	Sikur	Kotaraja	Non-intervention
	Lombok Timur	Sakar	Sakra Selatan	Non-intervention
	Sumbawa	Plampang	Sepayung	Non-intervention
Sumbawa	Moyohilir	Moyo Mekar	Non-intervention	

PUSKAPA also collected data from schools on whether students had a birth certificate. Within each intervention district, gender-specific data on birth certificates and letter of birth recognition (surat kenal lahir) were collected from one primary, one secondary and one special needs school. In the primary school (SD) and special needs schools (SLB), legal identity data were collected for students in grades 1 and 6, and in secondary school (SMP), legal identity data were collected for students in grades 7 and 9.

In addition, the Baseline Study also compared the number of live births in 2011 (from PemDa on-line data) in the 20 districts selected by AIPJ and compared this with the SUSENAS estimation of 0 to 1 year olds with a birth certificate in 2012.

To understand the socioeconomic status of the sample population, respondents were categorized into quartiles of wealth based on the items they owned (e.g., household items, livestock, transportation, water sources). Because the baseline survey sampled exclusively in low-income areas, all of the respondents would be considered poor compared with the general population.

**Sampling:** In each village, Google Earth was used to select the enumeration area and the household survey location. Each village was subdivided into four approximately equal sized quarters with one area randomly selected for sampling. The number of households within each quarter was estimated by counting rooftops and further subdivisions performed until an area with approximately 30-100 houses was identified.

**Qualitative Method:** To understand the extent to which birth certificate ownership affects children, PUSKAPA also used the following research methods:

1. Qualitative Focus Group Discussions (FGDs) with Children: FGDs with children aged 12-16 years old were conducted separately with in-school and out-of-school groups of children in one of the villages in 3 selected provinces for the household survey in both intervention and non-intervention districts. Children with disabilities were included in the in-school focus groups.
2. Qualitative FGDs and Participatory Ranking Methodology (PRM) Groups with Adults: To complement qualitative FGDs with children and triangulate quantitative data, qualitative FGDs with parents and in-depth interviews (adults aged 16+, with at least one child) were conducted in 3 selected provinces.
3. Participatory Ranking Methodology<sup>21</sup>: To understand perceived barriers to obtaining birth certificate ownership and outcomes of lack of ownership, researchers used the Participatory Ranking Methodology (PRM). This method allows a group to negotiate a consensus ranking of nominal themes in terms of importance in response to one key question.
4. Cognitive Interviewing<sup>22</sup>: Researchers used Cognitive Interviewing to determine if disability was a rare event among respondents, if questions assessing disability were difficult for respondents to interpret or understand, or if societal factors affected respondent's admission of disability. These included: 1) comprehension of question meaning and the interpretation of the terms 'disabled' and 'function', 2) recall of information and ways the respondent remembered certain answers, and 3) influential cultural or social perceptions associated with disability.

**Data analysis:** Analysis of the household data began with looking at frequencies, percentages, means and medians of all variables. Principal component analysis (PCA) was used to create categories for socioeconomic status, based on the types of items people owned in their homes (e.g., tvs, stoves, livestock, vehicles). PUSKAPA used multivariable multi-level regression analysis and Generalized Estimating Equations to account for clustering of children within households to find associations between birth certificates, possible outcomes and possible barriers. Analysis of all FGDs and PRM began by producing

21 Ager, Alastair et al. *Rapid Appraisal in Humanitarian Emergencies Using Participatory Ranking Methodology (PRM)*. Program on Forced Migration and Health, Columbia University Mailman School of Public Health, 2011

22 Willis, Gordon B. *Cognitive Interviewing: A "How To" Guide*. Research Triangle Institute, 1999



group verbatim transcripts. Data were coded to emergent themes related to the study's research question and existing literature, and analyzed in comparison with the quantitative findings. Coded themes, concepts and quotes were primarily used to support, explain or challenge findings found through the study's quantitative methods.

## Analysis of SUSENAS data and Legal Identity Service Data (2010- 2013)

The AIPJ Legal Identity Program and PUSKAPA have analysed a number of data sources to present a baseline assessment of:

- national data that is publicly available on the provision of legal identity documents to Indonesian citizens
- legal identity data in 20 districts gathered during the Baseline Study
- whether legal identity data in Indonesia presents information on legal identity in relation to (i) gender, (ii) disability status, (iii) poverty status and (iv) urban/rural location of Indonesian citizens.

## Field Work by AIPJ Legal Identity Program and PUSKAPA (2013)

During 2013, the AIPJ Legal Identity Program and PUSKAPA conducted hundreds of Interviews with legal identity service providers and policy makers at national level, provincial level (West Java, NTB, NTT, South Sulawesi and North Sumatra) and district level (20 districts across the 5 provinces). Key stakeholders included:

- The Ministry for Home Affairs (MOHA) and the network of civil registries at district and subdistrict level, as the primary agency responsible for registering births for all Indonesian citizens and marriages and divorces (for non-Muslim Indonesian citizens)
- The Supreme Court, particularly through collaboration with the General and Religious Courts that (i) hear cases that in turn facilitate the registration of births, marriages and divorces and (ii) support affordable and accessible services for women and children, the poor and vulnerable (including people with disabilities) or those living in remote areas in the form of fee waivers, circuit courts and duty station lawyers
- The Ministry of Religion (MoRA) and the network of Religious Affairs Offices at district and subdistrict level, as the primary agency responsible for registering marriages for all Indonesia's Muslim citizens
- The Ministry of Planning (Bappenas) that oversees the planning and budgeting processes of the sectoral ministries, including the monitoring and evaluation of their programs. The following planning sectors in Bappenas all have programs linked to legal identity: Justice and Human Rights, Population, Women's Empowerment and Child Protection, Local Autonomy, and Welfare and Social Protection
- Health, Education and Social Assistance Programs and the related Ministries (Ministry of Health/MOH, Ministry of Education/MONE and Ministry of Social Affairs/MOSA) that collect data (now or in the future) on whether women and/or children have documented legal identity and facilitates beneficiaries to access basic services (such as PNPM Generasi, PKH, PKSA and a number of school-based programs and interventions)
- Numerous non-state actors, including CSOs, DPOs and paralegal workers that provide assistance in delivering birth certificates, marriage and divorce certificates to Indonesian citizens
- Provincial and district leaders across Indonesia who have trialed approaches to providing a birth certificate to all citizens in their locality.

**KITA SUKSESKAN PELAYANAN TERPADU**  
**ISBAT NIKAH, PENCATATAN NIKAH DAN PENCATATAN KELAHIRAN**  
**BEKERJA SAMA DENGAN**  
**PENGADILAN AGAMA GIRI MENANG, KEMENTERIAN AGAMA KABUPATEN LOMBOK BARU**  
**DAN DINAS DUKCAPIL KABUPATEN LOMBOK BARAT**



## Chapter 2

# Legal Identity Documents: Who Has What?



*This section explores the percentage of women, men and children able to obtain birth certificates, marriage certificates, and in some circumstances, divorce certificates. It also looks at the link between poverty, disability, age and location in terms of accessing legal identity documents. The ability of a parent or grandparent to obtain a birth certificate is also explored in terms of its impact on the inter-generational acquisition of legal identity documents. As explained in the previous chapter, the main data sources for this chapter will include the national data prepared by the Indonesian statistics agency (BPS) (including Susenas data), the PEKKA data set from 17 provinces and AIPJI PUSKAPA's Baseline Research focused on the five provinces of North Sumatra, West Java, South Sulawesi, NTB and NTT. Analysis of data on legal identity services from the Ministry of Home Affairs (MoHA) is also included.*

### Defining Poor households

In 2013, the Indonesian statistics agency, BPS, found that 11% of the population, or 28 million people, lived below the Indonesian poverty line of Rp 271,626 (US\$27) per person per month. For the rural or village based population of Indonesia 14% of the population live below the Indonesian poverty line of Rp 253,273 (US\$25) per person per month.

The percentage of the Indonesian population living below the poverty line has fallen to half the level reached in 1999 (23.4%). However, as a recent World Bank publication stated:

Declining poverty, however, partially masks a high degree of vulnerability: much of Indonesia's population is clustered just above the 2011 poverty line of Rp 233,000 per month (about US\$ 27 at 2011 nominal exchange rates). Around 24 percent of Indonesians live below the official near-poor line of 1.2 times the poverty line while 38 percent of the population lives below 1.5 times the poverty line and is almost equally vulnerable. Even relatively small shocks to these vulnerable households can be enough to push them into poverty<sup>23</sup>.

In 2011, the Indonesian data collection system for targeting social protection programs (Pendataan Program Perlindungan Sosial or PPLS) identified 23.4 million children living in the poorest 40% of households

In two of the five AIPJ focus provinces the percentage of the population living below the village-based Indonesian poverty line is higher than the national average (see Table 2.1 below)<sup>24</sup>.

Table 2.1: Percentage of the population living below the village-based Indonesian poverty line	Percentage of the population living below the village-based Indonesian poverty line.	
National	14.3%	
North Sumatra	10%	
West Java	11.6%	
South Sulawesi	12%	
NTB	16%	
NTT	22%	

The Government of Indonesia's National Team for Accelerating Poverty Reduction (TNP2K) launched the Unified Database for the Social Protection Program in 2008 and updated it in 2011. The Unified Database is an electronic data system that contains social, economic and demographic data from approximately 24 million households, or 96 million individuals, representing the 40% of Indonesian citizens with the lowest socio-economic levels. The Government focuses its poverty alleviation policies on this poorest 40% of the Indonesian population.

In this Chapter, data from the PEKKA survey is also presented for the poorest 40% of households for each province where the survey was conducted.

## BIRTH CERTIFICATES

### National Data – An overview

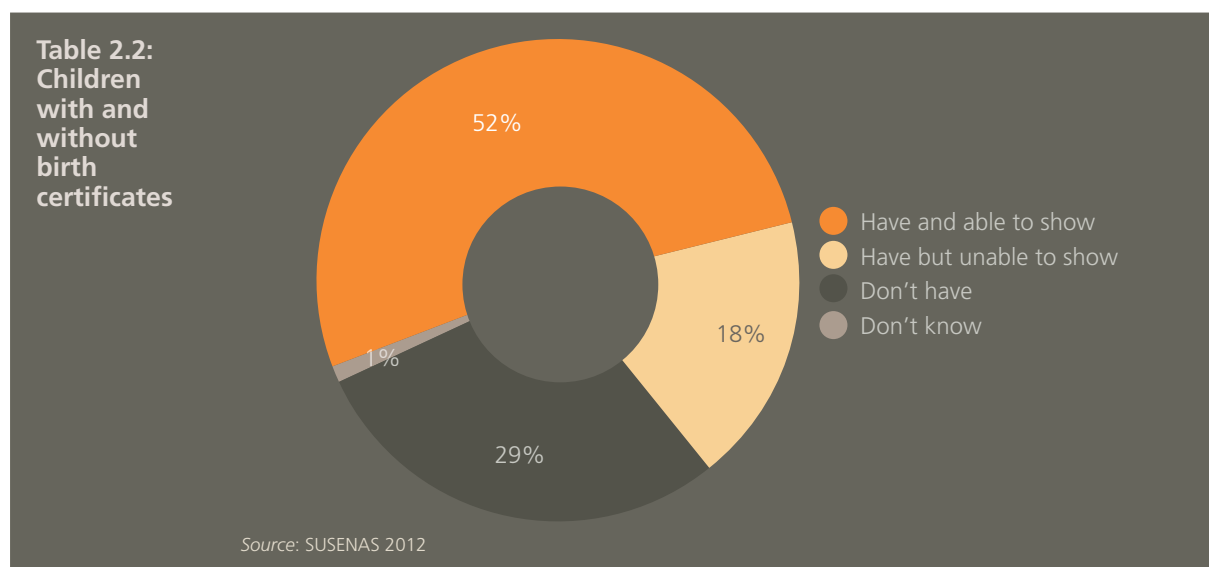
Despite the Government of Indonesia's policy of achieving Universal Birth Registration by 2011<sup>25</sup>, levels of legal identity ownership in the form of a birth certificate remain very low. Data from the 2012 Susenas study indicate that 29% of Indonesian children, or more than 24 million individuals, do not have birth

<sup>23</sup> World Bank (2012), *Protecting Poor and Vulnerable Households*, p12.

<sup>24</sup> Berita Resmi Statistik: Badan Pusat Statistik. No. 47/07/Th.XVI, Juli 2013, PROFIL KEMISKINAN DI INDONESIA MARET 2013, p8

<sup>25</sup> "Rencana Strategis Semua Anak Indonesia Tercatat Kelahirannya pada 2011", issued by the Government of Indonesia in 2008.

certificates<sup>26</sup>. This rises to almost 40 million children or 47%, when children are included whose parents claim they have a birth certificate but cannot produce the document.



Currently SUSENAS asks respondents whether 0-17 year olds in the family: (i) have a birth certificate and can show it, (ii) have a birth certificate but cannot show it, and (iii) do not have a birth certificate. In the Baseline Study, more than 73 % of the respondents surveyed who answered they “have a birth certificate but cannot show it” admitted that they never had one when further asked why they were unable to show it. It is recommended that the second option, “have a birth certificate but cannot show it”, be removed to provide a more accurate estimation of the number of children who have a birth certificate and the number who do not.

In two of the 5 AIPJ focus provinces (NTT and North Sumatra), 51% or more than half of all children do not have a birth certificate.

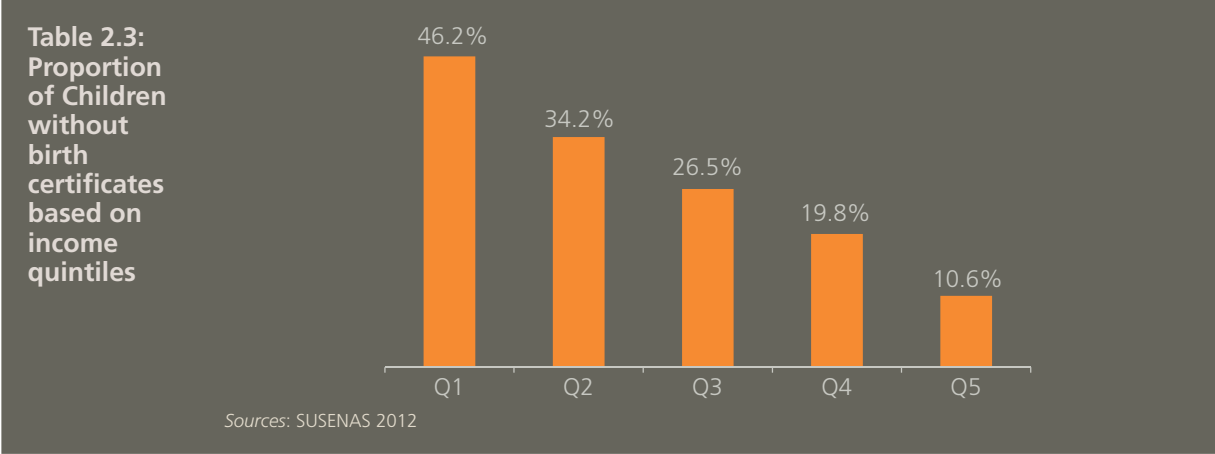
Data from the Ministry of Home Affairs suggests that as many as 76% of children and youth aged 0-18 years do not have birth certificates. MOHA calculates this figure based on the population information data registered on SIAK (Sistem Informasi Administrasi Kependudukan/Population Administration Information System) in 2010.

The goal must be 1) a standardized and publicly accessible mechanism through which all individuals are registered and provided with legal proof of identity, especially a birth, and a marriage or divorce certificate, combined with 2) an investment in a reliable and publicly accessible civil registration system, to support the delivery of government services and to measure progress toward broader development goals.

There is no significant difference between girls and boys having birth certificates. However being from a poor family is an important determinant of whether or not a child has a birth certificate. The baseline survey found that living in a household in the poorest quartile increases the chance of not having a birth certificate by a factor of 9 in NTT province and by a factor of more than 7 in West Java province. SUSENAS 2012 shows that the highest proportion of children without a birth certificates come from the poorest households. 62.5% of children without birth certificates live in the poorest 40% in the country, followed

26 SUSENAS 2012

by 18.5%, 12.9% and 6% respectively in the third, fourth and the richest quintile. After calculating the proportion of children in each socioeconomic category, 46% of children in the poorest families and 34.2% children in the second quintile do not have a birth certificate, compared to 10.6% in the richest quintile as shown in Table 2.3.



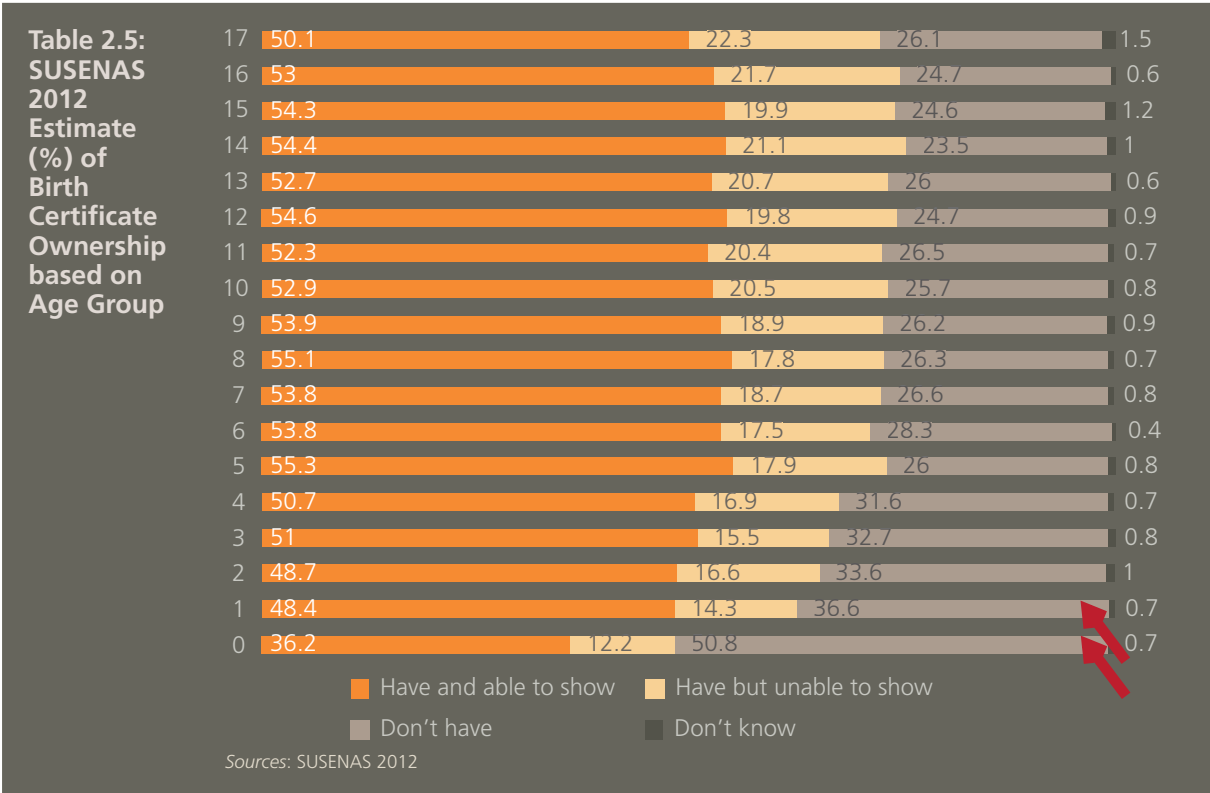
SUSENAS 2012 shows that the number of children without a birth certificate in rural areas is double that of children in urban areas. Table 2.4 shows the percentage of children without birth certificates in rural and urban areas nationally and in the five provinces included in the AIPJ Baseline Study.

**Table 2.4: Percentage of Children Without Birth Certificates in Rural and Urban Areas**

Province	Percentage of Children Without Birth Certificate Based on Areas	
	Urban	Rural
National	17%	36.5%
West Java	23%	40%
NTB	28%	54%
NTT	21%	57%
North Sumatra	42%	61%
South Sulawesi	14%	31%

According to SUSENAS 2012, the highest proportion of children without birth certificates are under one year of age. Table 2.5 shows that over half of children under one year of age do not have a birth certificate (50.8%). This is important as obtaining a birth certificate for children over one year of age becomes more complicated as parents must obtain the approval of the head of the civil registration office<sup>27</sup> to register their child’s birth after 60 days. The Baseline Study found that almost a quarter of children (24%) did not have a letter acknowledging a child’s birth issued by birth attendants or a health officer (Surat Kenal Lahir), which is a prerequisite for obtaining a birth certificate.

27 Law 24/ 2013 concerning the revision of Law 23/2006 on Population Administration, Articles 27 and 32.



The Baseline Study also compared the number of live births in 2011 in the 20 districts listed in Table 2.6 and compared this with the SUSENAS estimation of 0 to 1 year olds with a birth certificate in 2012. The Baseline Study found that in 10 of 17 districts where data was available, less than 50% of children aged 0-1 had birth certificates.



**Table 2.6:**  
Percentage of 0-1 year olds with a birth certificate compared with the number of live births in the previous year

Districts	2011	2012		Percentage of 0-1 year olds with a birth certificate compared with the number of live births in the previous year
	Number of live births in 2011	SUSENAS estimation of 0 to 1 year olds with a birth certificate in 2012	SUSENAS estimation of 0 to 1 year olds without a birth certificate in 2012	
<b>North Sumatra</b>				
Mandailing Natal	n/a	3 858	11 603	n/a
Asahan	n/a	9 597	12 363	n/a
Langkat	20 447	11 303	25 556	55%
Humbang Hasundutan	n/a	1 772	6 432	n/a
<b>West Java</b>				
Kab Bogor	112 378	52 650	133 855	47%
Sukabumi	52 370	33 165	75 428	63%
Cianjur	50 480	35 928	53 278	71%
Garut	56 727	43 461	68 114	77%
<b>West Nusa Tenggara</b>				
Lombok Barat	13 252	7 080	12 547	53%
Dompu	5 064	1 745	8 519	34%
Bima	10 094	1 103	13 908	11%
Lombok Utara	4 643	2 859	5 545	62%
<b>East Nusa Tenggara</b>				
Timor Tengah Utara	5 444	0	7 693	0%
Belu	7 701	549	17 910	7%
Sumba Barat Daya	5 226	638	13 299	12%
Manggarai Timur	5 080	1 208	9 451	24%
<b>South Sulawesi</b>				
Bulukumba	6 974	2 657	7 393	38%
Jeneponto	6 538	1 119	10 946	17%
Bone	13 190	5 505	7 242	42%
Wajo	7 459	5 436	5 956	73%

\* Number of live births is obtained from PEMDA's health data available online



Parents having a marriage certificate was found to be an important determinant of a child's access to a birth certificate. Children were almost twice as likely to have a birth certificate if the head of household had a marriage certificate. Older children also had higher odds of having a birth certificate.<sup>28</sup>

There is a strong link between birth certificate ownership in parents and grandparents and birth certificate ownership in children. Parents who do not have birth certificates are 3 times more likely to have children who do not have birth certificates demonstrating that a lack of legal identity is intergenerational within families.

If one parent has a birth certificate, a child has a 4.5 times greater likelihood of having a birth certificate than a child whose parents do not have a birth certificate.

The generational relationship of birth certificate ownership is not just seen between parents and children, but also with grandparents. Children are 13.5 times more likely to have a birth certificate if both a parent and at least one grandparent have a birth certificate when compared to families where both a parent and grandparent do not have a birth certificate. The baseline survey's intergenerational analysis reveal that having a parent with a birth certificate strongly predicts birth certificate ownership in children. These findings suggest that birth registration programs should target adults of all ages, in addition to children, to successfully increase overall birth certificate ownership, as well as to support the creation of a societal expectation that all family members - children, parents, and grandparents - should have access to birth certificates.

More research is needed to understand the relationship between disability and birth certificate ownership. Children with parents or guardians that have no apparent physical disability are 5 times more likely to have a birth certificate compared with children with parents that have apparent physical disabilities.

## **PEKKA Survey and the impact that poverty has on women, men and children's access to legal identity documents.**

Results from the PEKKA household survey are presented in detail below as they convey the impact that poverty has on the access of women, men and children to legal identity documents. The PEKKA survey, undertaken in 2012, included 320,000 individuals in almost 90,000 households. The PEKKA data set is presented below for households representing the poorest 30% in the province and for all households. The results for the entire PEKKA survey population confirm the SUSNENAS data presented above.

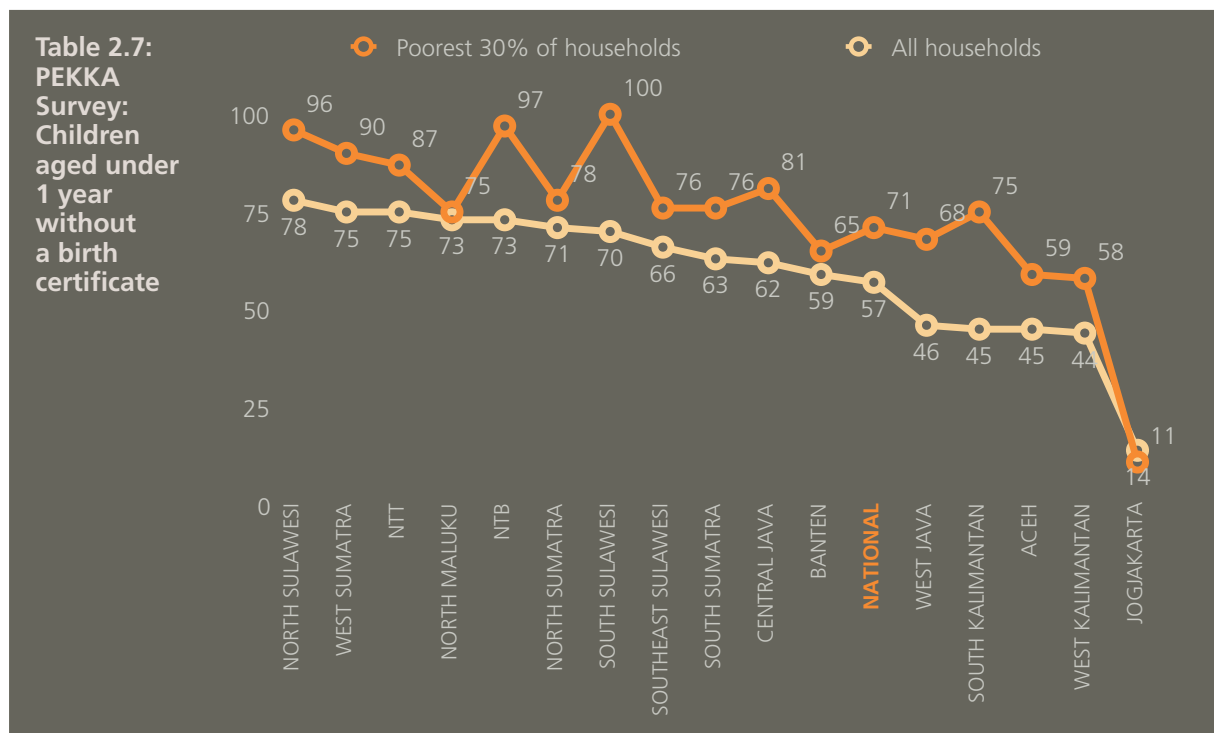
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28 Correlating with the PEKKA household survey mentioned below.

## BIRTH CERTIFICATES - CHILDREN UNDER 1 YEAR OF AGE

**PEKKA Survey – Poorest 30% of households:** In the poorest 30% of households 71% of children under 1 year of age do not have a birth certificate. In NTB, Sumatra Utara and Sulawesi Selatan, 9 in 10 children under one year of age residing in poor households do not have a birth certificate. This compares with 9 out of 10 of children in Jogjakarta who have a birth certificate.

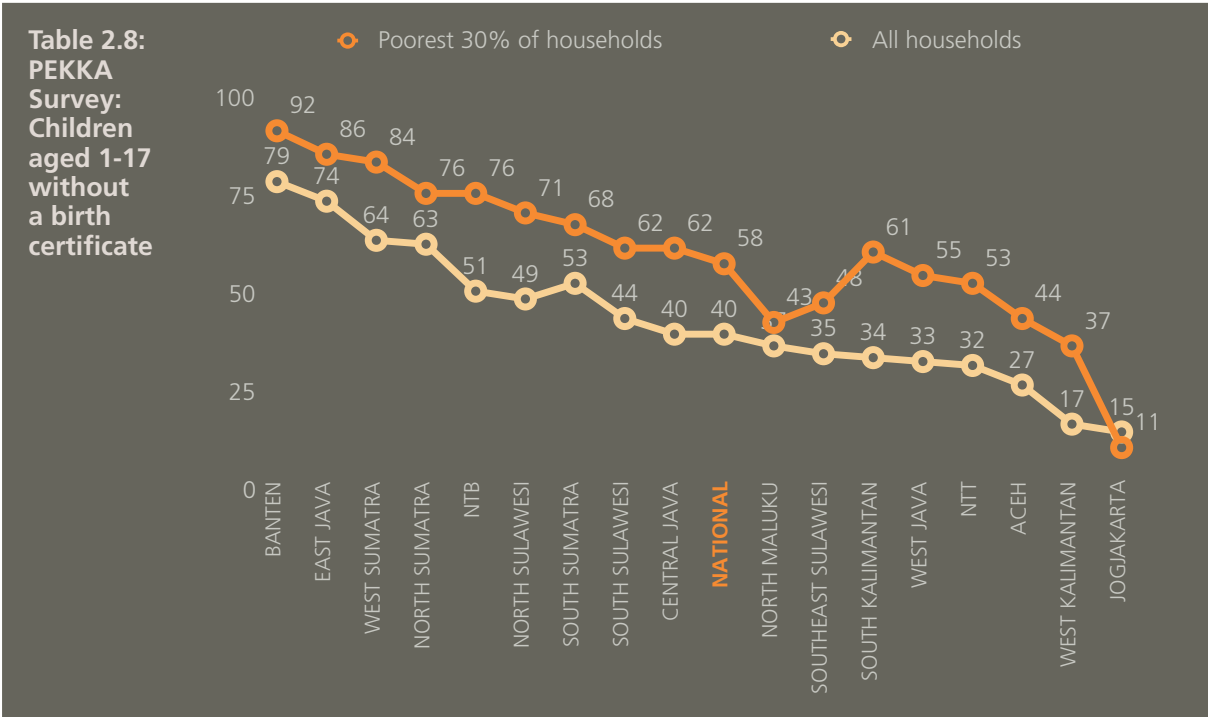
**PEKKA Survey – All households:** In the 2012 PEKKA household survey, 57% of the 4220 children under 1 year of age included in the survey do not have a birth certificate. However in NTT and NTB, 75% and 73% respectively of children under one year of age do not have a birth certificate. In Jogjakarta, 86% of children under one year of age have a birth certificate.



## BIRTH CERTIFICATES - CHILDREN AGED 1 -17 YEARS

**PEKKA Survey – Poorest 30% of households:** In the poorest 30% of households 58% of children aged 1-17 years of age do not have a birth certificate. In Banten, East Java, North and West Sumatra, and NTB more than 75% of children aged 1-17 years of age do not have a birth certificate. In comparison, Aceh, West Kalimantan and Jogjakarta all have more than half of children with birth certificates.

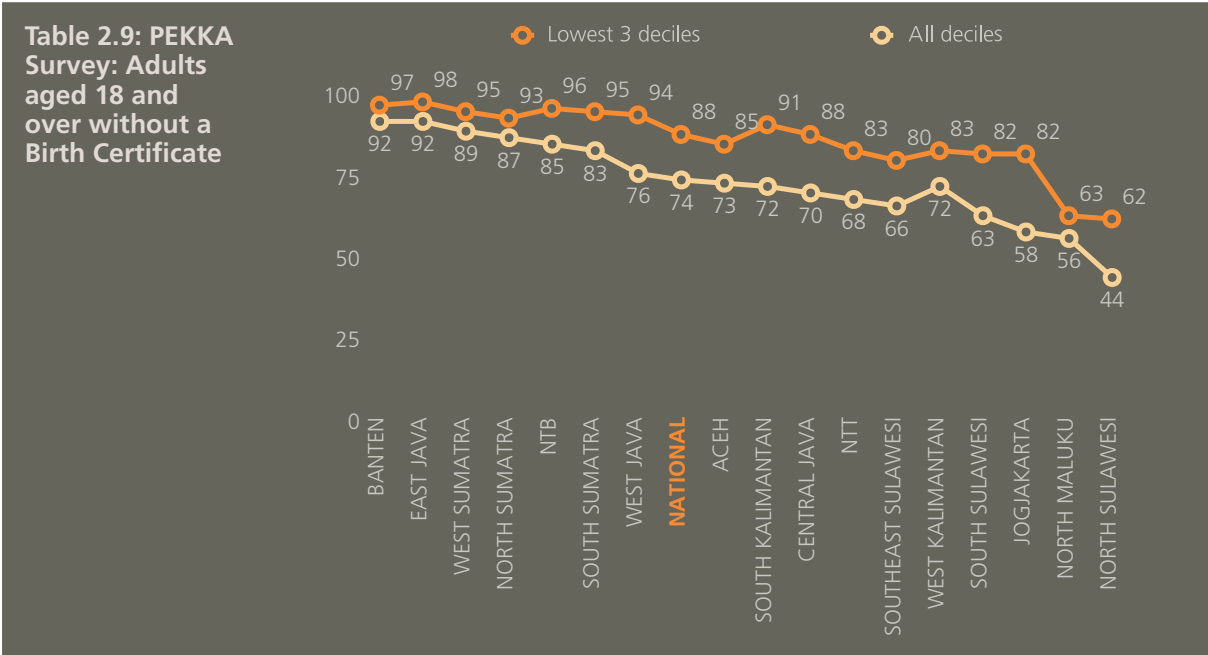
**PEKKA Survey – All households:** 40% of the 109,000 children aged 1-17 years of age included in the survey do not have a birth certificate. This ranges from 79% of children in Banten to 11% of children in Jogjakarta without birth certificates.



**BIRTH CERTIFICATES - ADULTS 18 YEARS and over**

**PEKKA Survey – Poorest 30% of households:** In the poorest 30% of households 88% of adults 18 years and over do not have a birth certificate.

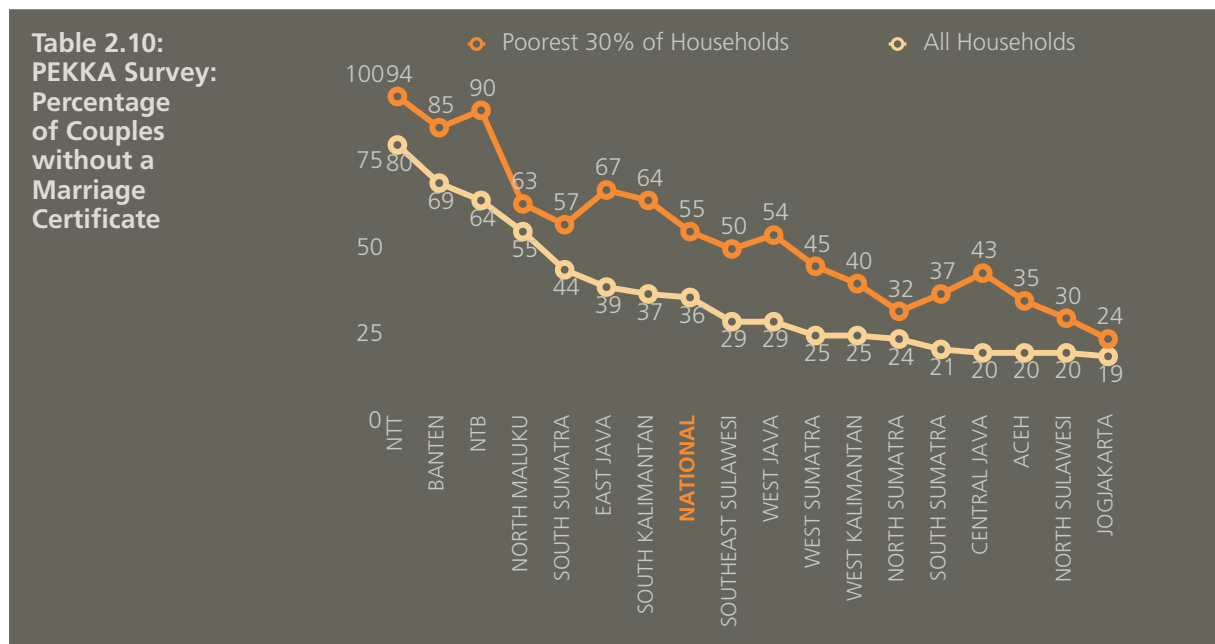
**PEKKA Survey – All households:** In the 2012 PEKKA household survey, 74% of the 206,900 adults 18 years and over included in the survey do not have a birth certificate.



## MARRIAGE CERTIFICATES

**PEKKA Survey – Poorest 30% of households:** In the poorest 30% of households 55% of all couples do not have a marriage certificate. 75% of children from these couples do not have a birth certificate. In NTT and NTB, only 1 in every 10 couples had a marriage certificate compared with Jogjakarta, where 8 in every 10 couples have a marriage certificate.

**PEKKA Survey – All households:** Across the 17 provinces, 36% of the 89,000 couples in the PEKKA survey do not have a marriage certificate. In NTT, only 20% of couples have a marriage certificate while in Jogjakarta 81% of couples have a marriage certificate.

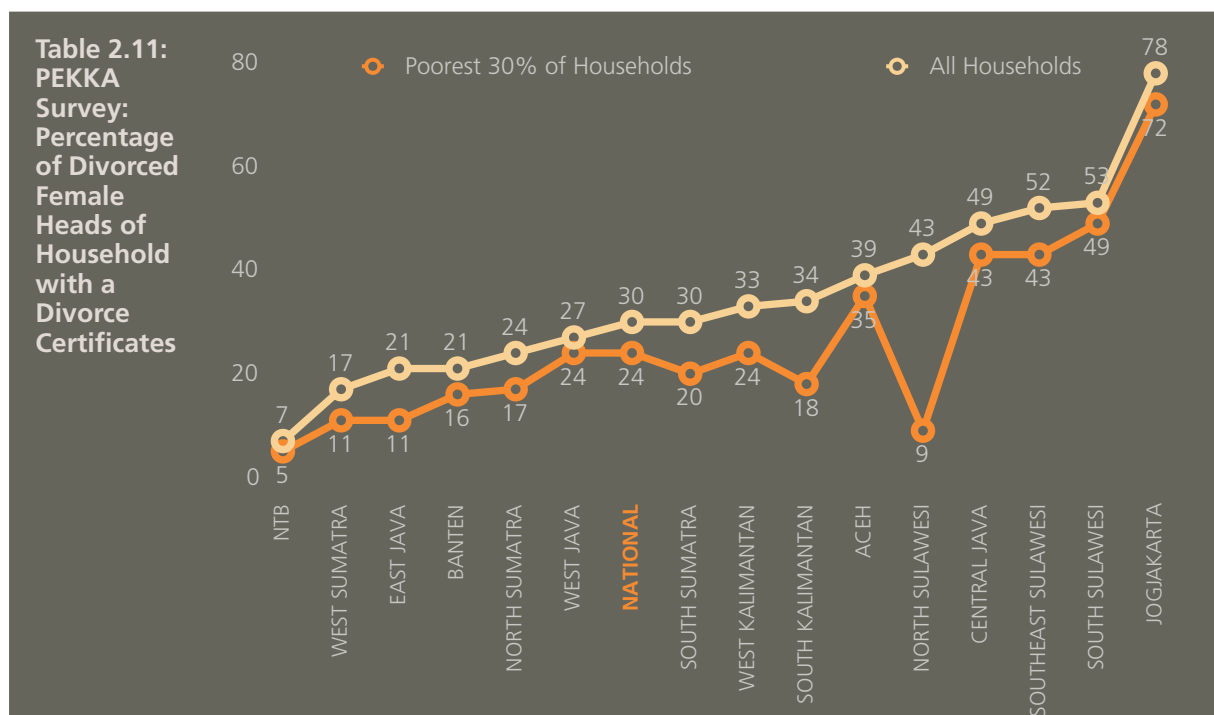


## DIVORCE CERTIFICATES

Under Indonesian law, if a couple does not obtain a divorce certificate then subsequent marriages are not legal and a marriage certificate cannot be issued. A marriage certificate is required if a child is to obtain a birth certificate with both parents' names.

**PEKKA Survey – Poorest 30% of households:** Across the 17 provinces and in the poorest households, only one in four (24%) female heads of household who gave their status as divorced actually had a divorce certificate. This compares with only 5% of divorced women having a divorce certificate in NTB and 72% of divorced women in Jogjakarta.

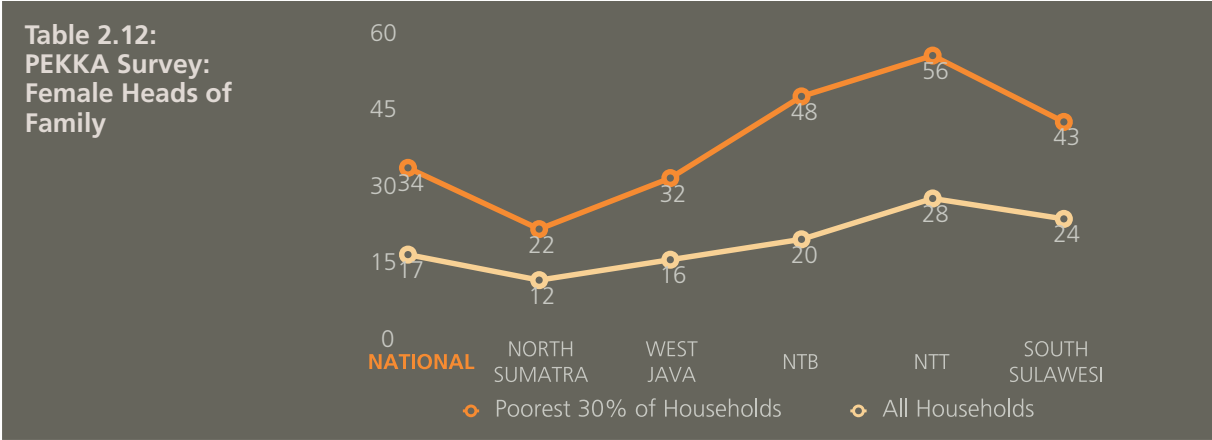
**PEKKA Survey – All households:** Across the 17 provinces, of the 3270 female heads of household who gave their status as divorced in the PEKKA survey only 30% had a divorce certificate. This fell to only 7% in NTB, while in DI Jogjakarta it increased to 78% of divorced female heads of household having a divorce certificate.



It is important to learn from the experience of those provinces that have an exceptionally high proportion of their population with birth, marriage and divorce certificates. In DI Jogjakarta, 9 out of 10 children have birth certificates and there is almost no difference between the total population surveyed in Jogjakarta and that of the poorest 30% of households. In the poorest households in Jogjakarta, 7 out of 10 couples have a marriage certificate and 7 out of 10 divorced women have divorce certificates.

These exceptional results are almost reversed in the poorest provinces in eastern Indonesia where there are different cultural norms in relation to marriage, a higher proportion of the rural population living on or below the Indonesian poverty line, and much greater distances for the population to travel to district capitals where they can receive legal identity documents.

Information and documentation evidencing the right to access social protection programs on behalf of a household is often presumed to be the responsibility of the head of household. In Indonesia, 86% of households are headed by men. The recent distribution of over 15 million social protection cards (KPS) to the poorest 30% of households by the government of Indonesia in 2013, shows that 86% of these cards went to male heads of household rather than being distributed to both male and female adults. The PEKKA household survey data shows that in the poorest 30% of households, (i) 34% of families are headed by women but (ii) only 24% of women who give their status as divorced have a divorce certificate and can therefore obtain a family card which shows that they are the head of the family unit. As a result, the majority of female heads of families lack documentary evidence (in the form of the social protection card) that their family is included in the poorest 30% of Indonesian households. This lack of a social protection card has an impact on female heads of families being able to obtain government services at no cost – such as the waiver of court fees in marriage legalisation and divorce cases brought before Indonesian courts.



Poverty increases the likelihood of not having a birth, a marriage or a divorce certificate. Chronically high levels of children without birth certificates and parents without marriage certificates cannot be addressed unless programs are targeted at the poorest 30 to 40% of the Indonesian population.



# INDONESIAN CHILDREN WITHOUT BIRTH CERTIFICATES:

## How many are there?

**29%** or more than **24 million** children

**47%** or almost **40 million** children  
when children are included whose parents claim they have a birth  
certificate but cannot produce the document.  
(SUSENAS 2012)

**76%** of children and youth aged 0-18 years,  
or more than **50 million** individuals  
(Ministry of Home Affairs)





## Chapter 3

# The Impact of Legal Identity: Does It Matter?



Guaranteeing people's access to legal identity is not only essential in order to comply with human rights principles, but is also a fundamental aspect of good governance and inclusive development. Indonesia has ratified the International Covenant on the Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CRC), the Convention on the Elimination of Discrimination against Women (CEDAW) and the Convention on the Rights of Persons with Disabilities (CPRD), and is required to fulfil its treaty obligations to ensure that every individual is registered at birth, given citizenship and a birth certificate acknowledging their identity in a non-discriminatory manner.

Governments require accurate population data in order to more effectively plan, finance and manage the delivery of public services for their citizens. It is therefore imperative for Indonesia's human development that the Indonesian Government implements a system that counts and records every birth. According to the latest census in 2010, the Indonesian population consists of 237,641,326 individuals with more than 82.5 million below the age of 18. The goal must be a standardized and publicly accessible mechanism through which all individuals are registered and provided with a legal proof of identity, especially birth, marriage, and where couples separate, a divorce certificate.

This chapter explores the impact of having a legal identity in terms of access to education, health, social assistance, and legal protection.

## The Birth Certificate and Access to Education

SUSENAS 2012 suggests that the lack of a birth certificate may impede a child's access to education and/or ability to stay in school. It reveals that the proportion of children without a birth certificate is highest amongst children who drop out of school (47%), followed by those who never attended school (30%). Only 23% of children currently at school do not have a birth certificate. A regression analysis of the SUSENAS data shows that whether or not a child has a birth certificate may be associated with the child's progress to higher levels of education, particularly from primary school to junior secondary school (SMP). In the school age group, the likelihood of a child attending school increases 68%, if he/she has a birth certificate. When school age cohorts<sup>29</sup> are assessed, the likelihood of a child attending primary school only increases 1.4% if he/she has a birth certificate. However, the likelihood of a child attending junior secondary school increases by 54% if a child has a birth certificate and by 89% for senior secondary school.

The Baseline Study found that only 10% of women aged 19-29 without a birth certificate have completed 12 years of education, whereas 36% of women aged 19-29 who have a birth certificate had completed 12 years of education. Only 9% of men aged 19-29 without a birth certificate have completed 12 years of education, whereas 33% of men aged 19-29 who have a birth certificate had completed 12 years of education.

The underlying reasons behind the failure to enrol in school remain statistically unclear. Although 74% of children who have never attended school do not have a birth certificate, very few respondents report not having a birth certificate as the reason for his/her child not attending school (0.8%), or having been enrolled previously but not currently (2%). Therefore, lacking a birth certificate has prevented these children from attending school in some cases, and in other cases it has not. This suggests that many parents have never attempted to enrol their children in school, and/or that a birth certificate was not required for enrolment and that children have not attended for other reasons. It is clear, however, that the population of children without a birth certificate is the same population as those children who do not attend school.

In addition, these findings suggest that parents who obtained birth certificate for their children have a stronger level of awareness in making sure their children go to school and stay there, when compared to parents who do not see the importance of legal identity.

In the field, the Baseline Study finds that education policy can influence whether school students have a birth certificate. In the 20 districts that were selected as AIPJ priority areas, the study visited a number of primary schools and junior secondary schools and found that in almost all schools a birth certificate was a mandatory prerequisite for student enrolment. Surprisingly, this is also applied in special needs schools (SLB), where demand for places is higher than the number of places offered. Five out of 20 districts have a district level regulation stating this requirement, while in most other districts the requirement for a birth certificate is a school-based policy in the principal's directives. Most of these schools, including in areas where district regulations exist, still accept students who can submit a form of identification that is an alternative to a birth certificate, such as a Surat Keterangan Lahir/SKL (Birth Information Letter) or Kartu Keluarga/KK (Family Card). From the Baseline Study, nearly half (46%) of school-aged children were required to show their birth certificate for school-related purposes, including school enrolment.

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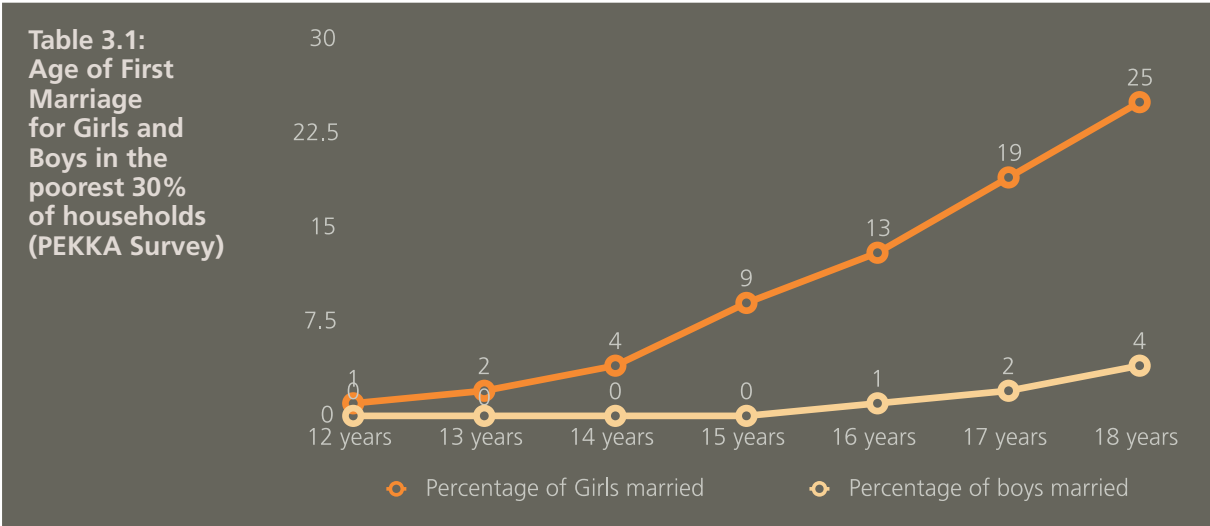
29 SD 7-12 SMP 13-15 SMA 16-18, but only counting 7-17 year olds.

A birth certificate is also frequently mentioned as a requirement for the national exam at the end of grade 6. This explains why more 6th graders have birth certificates compared to 1st graders in all schools visited by the Baseline Study research team. The implementation of this policy, however, remains discretionary. Many school officials said that they would also accept a family card (KK) or a letter of Birth (SKL) when a birth certificate is not available. School enrolment and the Grade 6 national examinations are both points where it is possible to determine whether a child has a birth certificate, and whether their parents have a marriage certificate. Where families do not have these legal identity documents, schools can facilitate the relevant agencies in providing marriage certificates to parents (where a previous religious marriage has taken place) and birth certificates to their children. The Baseline Study did not see evidence of institutional collaboration between schools and the civil registry offices to encourage access to legal identity documents.

Through interviews with parents, the Baseline Study found that a birth certificate is also required when children are participating in extracurricular competitions, usually when the events are held at District or Provincial level. Although anecdotal, this indicates that the lack of a birth certificate prevents children from furthering their participation in both academic and non-academic activities. Participation in competitions fosters a sense of achievement in contrast to the sense of exclusion that may come from losing a place on a team because of a lack of legal identity documents.

### The Birth Certificate and Protection Rights

Lack of a birth certificate is overwhelmingly linked to child marriage in Indonesia. In the poorest 30% of households, 25% of girls are married at 18 years or younger. 95% of these child marriages involve girls who do not have a birth certificate. The Indonesian Marriage Law states that the minimum age for legal marriage for girls is 16 years of age, and for boys 19 years of age. However, the Child Protection Law of Indonesia (Law 23 of 2002), which is enacted at a later date, confirms that the age of a child is under 18 years of age. The majority of child marriages in Indonesia involve girls as can be seen in Table 3.1:



In 2013, the Gol announced its universal 12 year education policy. Schools currently discourage married girls and boys from continuing their education. This has implications for one quarter of all girls being able to complete the universal 12 years of education.

The Baseline Study found that 16% of women aged 19-29<sup>30</sup> from poor households finish 12 years of education in Indonesia. 94% of these women are married at 18 years or older. With Indonesia's new education policy of a universal 12 years of education, Ministries responsible for education (MoEC and MORA) should consider how to encourage girls and boys (married or unmarried) to complete 12 years of education.

A birth certificate is also a legal document evidencing the age of the person and should assist in the prevention of child labour, child trafficking and children being treated as adults in the criminal justice system. The latest global report launched by UNICEF<sup>31</sup> confirms this correlation based on stories and case studies from around the globe.

Forging legal identity documents is a common feature of trafficking cases, including falsifying a child's age in travel documents such as a passport.<sup>32</sup> In November 2013, media attention focussed on the case of Wilfrida<sup>33</sup>, an Indonesian migrant worker, who was put on trial for murder in Malaysia and faced the death penalty. It was then proven that Wilfrida was four years younger than the age stated in her passport. After presenting her birth certificate, Wilfrida was then put on trial as a minor. The US Government's Trafficking in Person Report 2013 (Indonesia section) confirms that the expanded use of biometric travel documents (which requires a birth certificate to be submitted) has made false travel documents more expensive and difficult to produce.

## The Birth Certificate and Access to Health

The Baseline Study finds that having a birth certificate was associated with a higher likelihood of having accessed healthcare in the past 60 days in NTB and NTT, suggesting that the population of children without a birth certificate correlates with children who have less access to health services. In NTB, children with a birth certificate were 75% more likely to access health services, as compared to children without a birth certificate. In NTT, children were 68% more likely to have accessed health services. Across all three provinces, the majority of children (61%) had accessed health care services in the past 60 days, with NTB having the largest percentage (68%) followed by West Java (64%) and NTT (53%). The overwhelming majority of children were seen at a Pusat Kesehatan Masyarakat (Puskemas) or Puskesmas outreach facility (59%), and most went for treatment of an illness (56%) or for an immunization (31%).<sup>34</sup> Other health services sought were those of a midwife (23%), or a doctor at a hospital (12%). Very few respondents visited a doctor in private practice (3%) or a traditional healer (2%).

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30 Taking a snapshot of highest educational attainment for boys and girls aged between 19-29 shows a more accurate picture of current opportunities for girls and boys. When the population is enlarged to all men and women aged 19 years and over, the level of educational attainment diminishes considerably as the majority of the older population in Indonesia did not complete primary school.

31 UNICEF (2013), *Every Child's Birth Right: Inequities and trends in birth registration*, UNICEF, New York, p.6.

32 ICMC Indonesia & ACILS (2006), *Ketika Mereka Dijual: Perdagangan Perempuan dan Anak di 15 Propinsi di Indonesia*, ICMC & ACILS, Jakarta, p.73, 140, 222, 387, 417.

33 Jakarta Post 18 November, 2013, "Proof that Wilfrida was Underage may save her life". <http://www.thejakartapost.com/news/2013/11/18/proof-wilfrida-was-underage-may-save-her-life.html>

34 Puskesmas are government-mandated community health centers that provide comprehensive health services generally servicing a subdistrict or part of a subdistrict (depending on the population density). Puskesmas services are often supported by a network of outreach services including: Pustu, also known as Puskesmas Pembantu (Assistant Puskesmas) which are smaller and provide less comprehensive services; and Pusling which is short for Puskesmas Keliling the provide mobile services by motorbike. Finally, Puskesmas are also supported by Village Midwives Clinics (BDD).



The Baseline Study shows that policies targeting healthcare should be focused on Puskesmas and Puskesmas outreach programs, as they are the most commonly used. Simultaneously, the data supports the minimal importance of traditional healers.

The Baseline Study finds that women with a marriage certificate were more likely to access prenatal care, a service shown to link both mothers and new born babies with the formal health system and, at the same time, to increase the child's likelihood of having a birth certificate. Respondents with a marriage certificate are more likely to access prenatal care, and thereby enter the formal health care system with consequent health benefits for both mother and child. For every child under 5 years of age, each survey respondent was asked whether the mother received prenatal care during the pregnancy. The percentage of women with a marriage certificate who accessed prenatal care was highest in NTB (97%), followed by West Java (96.5%) and NTT (90%). Children of mothers that received prenatal care were 2.5 times more likely to have a birth certificate than those whose mothers did not receive prenatal care.

Women with a marriage certificate were nearly twice as likely to receive postnatal care as were those without a marriage certificate. In addition, children of mothers who receive postnatal care are much more likely to have a birth certificate. In total, 84% of mothers reportedly received postnatal care, with the highest percentage in NTB (95.3%) followed by West Java (90%) and NTT (70%). The strongest association, however, was between postnatal care and a child's possession of a birth certificate. Children whose mother received postnatal care were 3.7 times more likely to have a birth certificate than those whose mothers did not receive postnatal care. This suggests the presence of a virtuous information cycle involving mothers that supports both the acquisition of legal identity documents and postnatal healthcare.

It is clear that the period before and after a child's birth represents the critical first opportunity when the number of children with a birth certificate can be increased. This is supported by the finding that mothers who received prenatal and postnatal care were also much more likely to have a birth certificate for their children. Improving access to prenatal and postnatal care may represent an important avenue to increase the number of children with birth certificates.

The Baseline Study also found that children who have an immunization card were almost twice as likely to have a birth certificate than children without an immunization card. Despite the limitations in measuring this association, this finding suggests that children who have a birth certificate also receive basic immunization services, or visa versa. Child and maternal health checks and immunizations should be another point at which health care workers can assess whether a child has received a birth certificate, and, if not, notify the civil registry office to facilitate an outreach service to the family.

## The Birth Certificate and Access to Other Legal Identity Documents

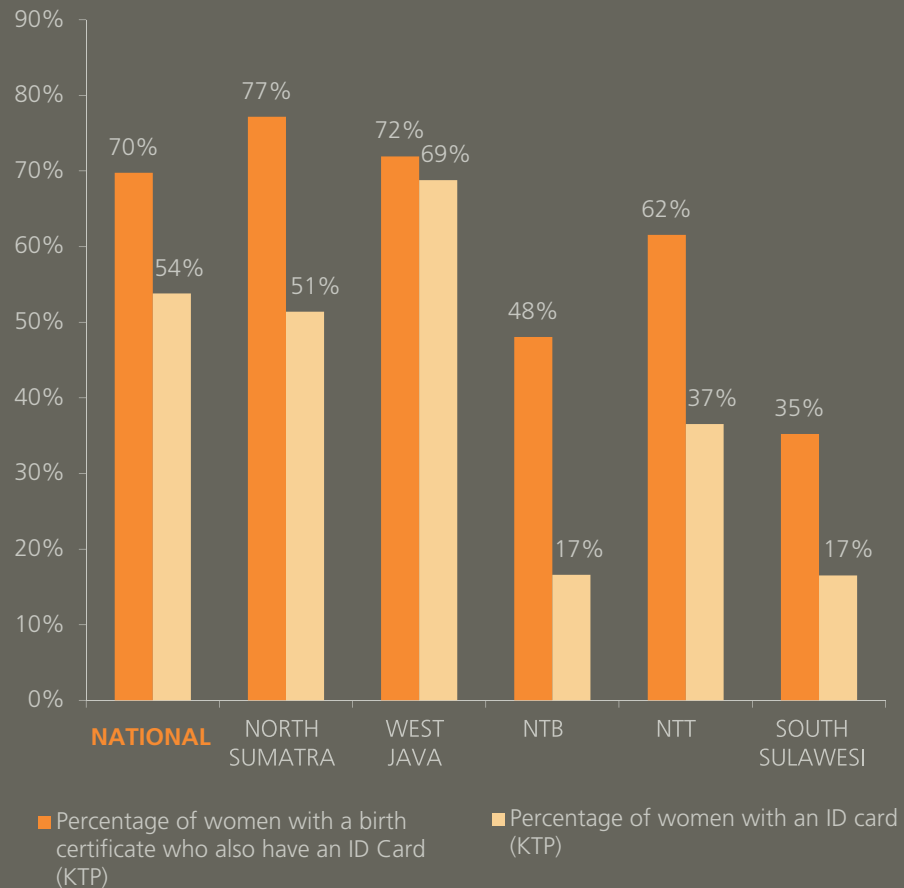
From the Baseline Study, only 17% of respondents had been asked to show their legal identity documents within the past two years, whether it be a marriage certificate or a birth certificate. This indicates that people are using other means of identification for administrative purposes. The most common reason respondents were asked to show their birth certificates was for educational purposes (19%), followed by for employment or job applications (2%). The most frequent reason for showing marriage certificates was to obtain a birth certificate for their children. The infrequency with which parents/guardians have been asked to show these documents may reduce the incentive for parents actively to seek birth certificates for their children.

The Baseline Study found that across the 17 provinces surveyed, and for women in the poorest 30% of households, only 5 in 10 women have an ID card (KTP). 17% of women have a KTP in NTB and South Sulawesi, and 37% of women have a KTP in NTT. Women face barriers in exercising their political rights in part due to the difficulty in obtaining legal identity documents (such as a KTP) that are a prerequisite for enrolling to vote. The Baseline Study found that women in NTB, NTT and South Sulawesi who have a birth certificate are 2-3 times more likely to also have a KTP. As mentioned in the Executive Summary, it is not clear why these strong correlations exist in some provinces between having legal identity documents and accessing other rights, benefits and programs. However, some possible factors include:

1. Legal identity documents are a prerequisite for accessing other government public services (direct causal link). The Baseline Study found that while provincial and district laws stated that these legal identities documents were a prerequisite, for the most part, they were not. However, a number of examples were identified during the Baseline Study where exclusion from services did in fact occur because people did not have legal identity documents.
2. Households that obtain legal identity documents for their children and other household members are able to access information and advisory services from civil society organisations that explain to them (i) why legal identity documents are important for individuals, as well as (ii) how to access a broad range of social assistance programs including ID cards for women.
3. Households that can navigate the complexity of obtaining legal identity documents from up to three different government agencies in the process acquire knowledge, confidence and skills that subsequently enable them to access ID cards.



**Table 3.2:**  
Percentage of women with a birth certificate who also have an ID Card (KTP)



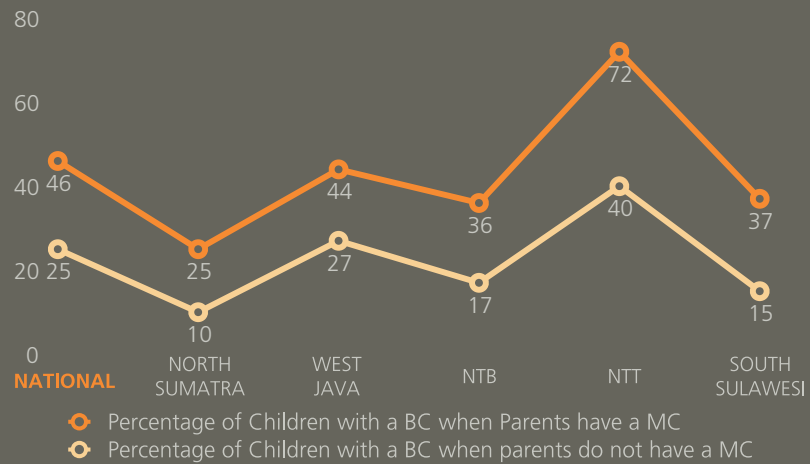
## The Birth Certificate and Employment Opportunities

From the Baseline Study interviews, a birth certificate is required by adults when they apply to become a civil servant or government employee both at the national and the subnational level. A birth certificate is also mandatory for most formal and private sector employment. In addition, a birth certificate must be produced when applying for a passport. Therefore, a birth certificate is required for all persons seeking to work overseas as a migrant worker and those who may wish to travel to perform the Hajj and complete other religious observances.

## Marriage and Divorce Certificates

The PEKKA survey shows that in poor households, the majority of couples (55%) do not have a marriage certificate and 75% of their children do not have birth certificates. In NTT and NTB, only 6% and 10% of couples in poor households have a marriage certificate. Poverty increases the likelihood of not having a marriage certificate. Table 3.3 shows that children whose parents have a marriage certificate are twice as likely to have a birth certificate when compared to children whose parents do not. A cycle of non-legal marriage and divorce exists for many living in the poorest 30% of households. The failure to obtain to obtain legal documentation in relation to marriage and divorce is associated with a high percentage of children not having birth certificates.

**Table 3.3:**  
PEKKA Survey:  
Links between  
Parents' marriage  
certificate  
(MC) and birth  
certificates  
(BC) for their  
children in the  
poorest 30%  
of households

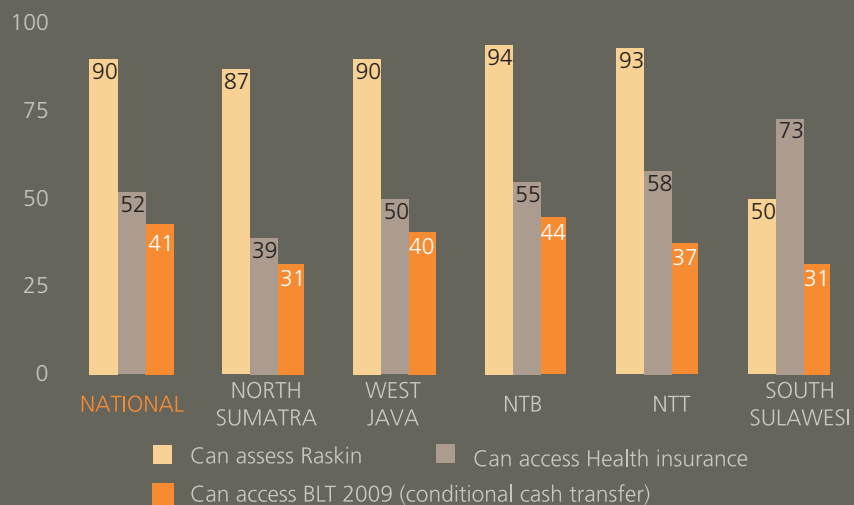


## The Marriage Certificate and Access to Social Assistance

The new health insurance program, Jaminan Kesehatan Nasional (JKN) implemented through Badan Penyelenggara Jaminan Sosial (BPJS), requires the head of household to produce their family card (KK) stating that they are the head of household and listing dependent children. Women who are heads of their families and households will therefore need a divorce certificate to evidence their status. In 2013, the Social Protection Card (KPS) was only provided to the head of household. The Baseline Study found that in poor households only 24% of female heads of household, who gave their status as divorced in the Baseline Study, had a divorce certificate. Women will need to provide a divorce certificate in order to evidence that they are the head of a household in order to obtain a KPS.

The Baseline Study found that across the 17 provinces, and in the poorest 30% of households, 90% of female heads of household are able to access the rice subsidy (Raskin), 52% health insurance programs, and 41% the 2009 cash transfer program (see Table 3.4 below). In NTB, the Baseline Study found that women who have a marriage certificate have a 74% higher likelihood of accessing health insurance services such as Jamkesmas, Jamkesda or Askeskin. In the same province, women who can present a marriage certificate have a 84% higher likelihood of accessing the rice subsidy assistance (Raskin).

**Table 3.4:**  
PEKKA  
Survey:  
Female Heads  
of Household  
and access to  
rice subsidy,  
health  
insurance and  
unconditional  
cash transfer  
in the  
poorest 30%  
households





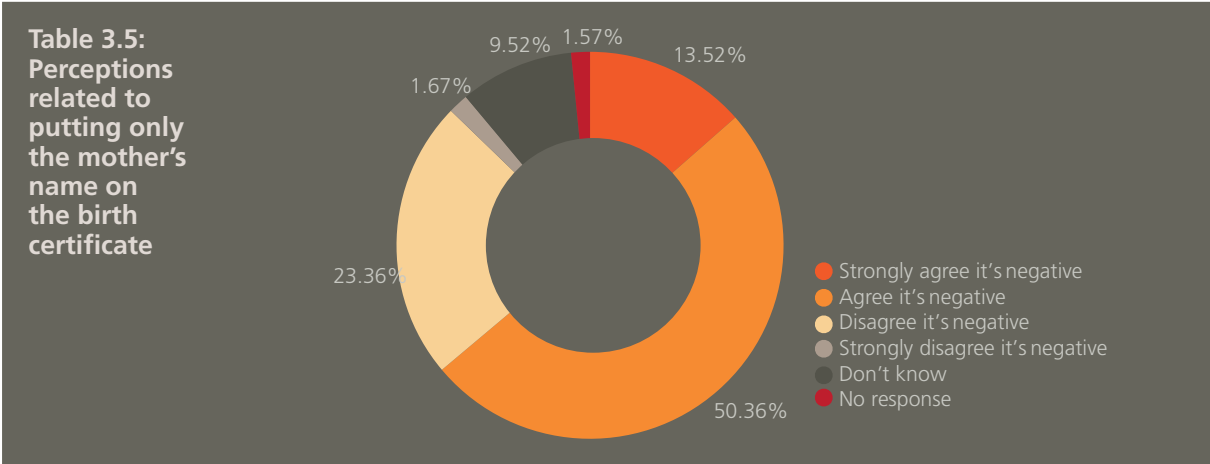
# The Marriage Certificate and Polygamous Marriage

The Baseline Study found that women in non-polygamous marriages were statistically 3 times more likely to have a marriage certificate compared to non-first wives in polygamous marriages that were unregistered. Non-first wives in polygamous marriages were found to be less likely to have marriage certificates, compared to first wives and wives in non-polygamous marriages. Of the total respondents in the baseline survey, 10% were currently in polygamous marriages, and among those respondents, 26% were the first wives. Among women in polygamous marriages, first wives were more than 4 times more likely to have a marriage certificate than non-first wives in polygamous marriages that were unregistered. These findings confirm the qualitative evidence from scoping interviews, and suggest that women in polygamous marriages that are unregistered, particularly non-first wives may face challenges in obtaining marriage certificates.

This finding supports other research<sup>35</sup> that indicates that despite the legal obligation to register polygamous marriages, many couples do not comply. Previous research suggests this may in part be due to of a lack of knowledge regarding registration.<sup>36</sup> Children from most polygamous marriages cannot have a birth certificate with both parents’ names, as their parents will not have registered their marriage. Government agencies in collaboration with CSOs should raise awareness of the fact that in Indonesia women do not have adequate protection of their civil and human rights unless they have a marriage that is registered under Indonesian law.

## Children Having a Birth Certificate with Only the Mother’s Name

The Baseline Study found that most people do not favor having a birth certificate with only the mother’s name recorded for their child. The majority of people interviewed in the Baseline Study thought that a birth certificate with only the mother’s name carried a negative stigma (64%). It appears that cultural norms and cultural stigma surrounding single parenthood in Indonesia may act as a strong disincentive against single mothers or unmarried parents obtaining a birth certificate for their child.



35 Sulistyowati Irianto et al (2011) Fenomena Pernikahan Siri: Kajian terhadap Akses Perempuan kepada Hukum dan Keadilan. Jakarta: FHUI. Huis, SC van (2010) ‘Rethinking the Implementation of Child Support Decisions: Post-Divorce Rights and Access to the Islamic Court in Cianjur, Indonesia’, 15 Law, Social Justice and Global Development Journal (LGD).

36 Van Huis and Wirastri, Muslim Marriage Registration in Indonesia: Revised Marriage Registration Laws Cannot Overcome Compliance Flaw, Australian Journal of Asian Law, 2012, Vol 13, no 1, Article 5: 1-17.

**Box 3.1: For women, men and children alike, evidence of legal marriage and divorce has a critical impact on many areas of social and economic development, including:**

- security and proof of identity are often critical issues in criminal assault/domestic violence and human trafficking cases
- the question of whether the title to both matrimonial or jointly-owned land is in the name of the husband or the wife or both can become a key determinant of individual wealth
- the question of who controls moveable assets affects the ability to generate income for the family and to provide collateral for credit
- identity cards and family cards can be used to evidence poverty and obtain access to subsidised health care, other government services and cash transfer schemes
- underage marriage contracts become less common, as a legal marriage with a party that is underage requires a court to issue a judgment on the matter
- marriage certificates are a prerequisite for children being able to obtain birth certificates with both parents' names
- inheritance rights for children of non-legal marriages are problematic
- legal divorce provides a mechanism for former spouses to be responsible for providing for the children of the marriage
- legal divorce provides a clear decision on child custody arrangements.



## IN THE POOREST 30% OF HOUSEHOLDS...

**55%** of couples don't have a marriage certificate  
**75%** of their children do not have birthday certificates

In NTT and NTB only **6%** and **10%** of couples in the poorest  
**30%** of households have a marriage certificate

A marriage certificate is required for a child to obtain a birth certificate with both their mother and father's names on it.









# Chapter 4

## How Citizens Obtain Legal Identity Documents and the Barriers Faced by Many



*This chapter looks at how citizens obtain birth certificates, marriage certificates, and in some circumstances, divorce certificates, and the role of government and judicial agencies in delivering these legal identity documents to citizens. It also presents the barriers that prevent the majority of children, women and men from poor households and those facing other forms of disadvantage from obtaining these legal identity documents.*

### How Citizens Obtain a Birth Certificate

Birth certificates		
Who Provides	Where	How Much
		
Office of Population and Civil Registration	District Offices	Free (from December 2013)
		

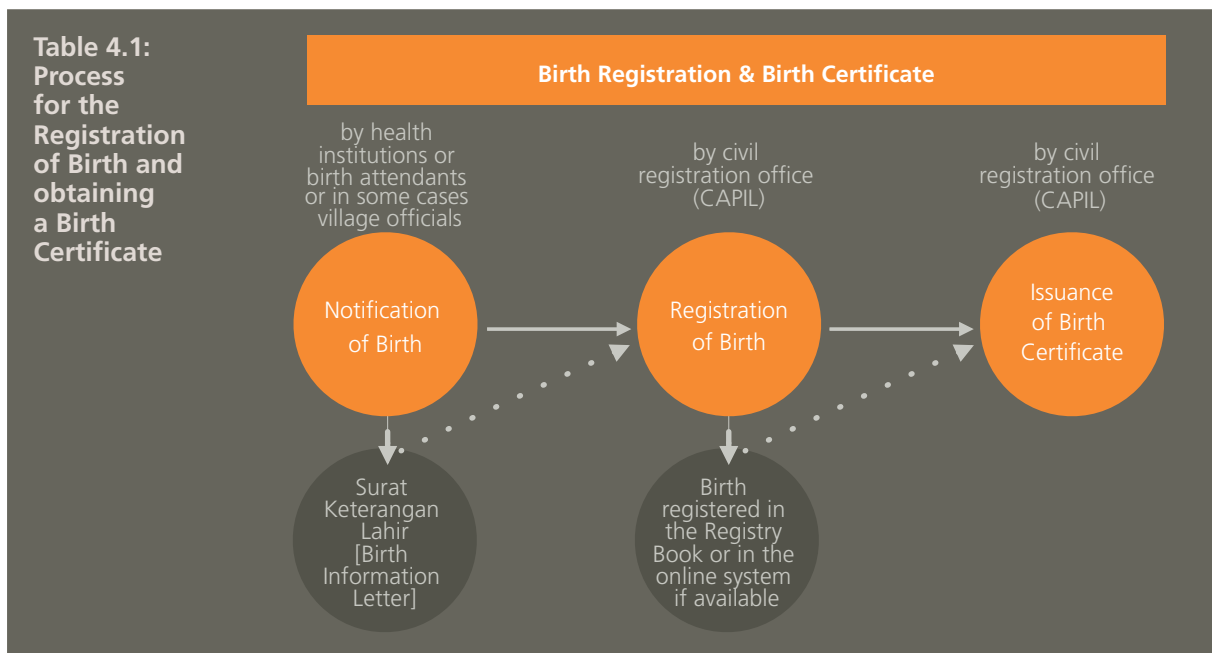
## Who is responsible?

In each district the Office of Population and Civil Registration is responsible for providing birth certificates<sup>37</sup>.

## Where to go?

In Indonesia birth registration and the provision of birth certificates is administered by the Population and Civil Registry Office at district level and, in some areas, subdistrict level<sup>38</sup>.

The process is set out in Table 4.1:



## What is Required?

The following documents are required in order to obtain a birth certificate for a child with both parents' names:

1. a birth information letter from the doctor / hospital/ midwife / birth attendant (surat keterangan lahir)
2. the name and identity for the birth witness
3. a family card for the parents
4. an ID card for the parents
5. a photocopy of the parents' Marriage Certificate (Following the enactment of Law 24 of 2013, there will possibly be a new requirement instead of a marriage certificate for couples where (i)

<sup>37</sup> Permendagri No 68 tahun 2012, pada bagian Cakupan Penebitan Kutipan Akta Kelahiran birth certificates provided based upon a standard operational procedure.

<sup>38</sup> Peraturan Pemerintah Republik Indonesia Nomor 37 Tahun 2007 Tentang Pelaksanaan Undang-Undang Nomor 23 Tahun 2006 Tentang Administrasi Kependudukan, Article 19.

they have a religious marriage but have not obtained a marriage certificate and (ii) the father acknowledges his child in a statutory declaration<sup>39</sup> (surat pengakuan anak oleh ayah). These requirements will become clearer and be elaborated in the Implementing Regulations for the new Law 24 of 2013

6. for children whose parents and origins are unknown, a statement from the police is required
7. a completed form requesting a birth certificate<sup>40</sup>.

## How Much?

Prior to the revision of UU 23 of 2006 in November 2013, the cost of a birth certificate (including fines) could rise to six times the average monthly income of an individual living on the Indonesian poverty line. The Child Protection Law Number 23 Year 2002 guarantees children's right to a free birth certificate. The subsequent Population Administration Law Number 23 Year 2006 stipulated that a free birth certificate could only be obtained within 60 days after the child's birth. In December 2013, a revision to Law 23 of 2006 abolished all registration fees that had been applied by provincial or district governments. Prior to the revision of the law, in 14 of the 20 districts where the research was conducted, the civil registry fined parties who sought to obtain a birth certificate after 60 days from the individual's date of birth.

In the baseline survey, the cost for obtaining a birth certificate varied between provinces from 23% to almost 6 times the average monthly income of families living in poverty in Indonesia.

Name of District	Cost of Birth Certificate		
	Under 60 days	60 days to 1 year	Over 1 year
Wajo	No charge	Rp.20,000 (Perda No. 39 Tahun 2011 pasal 105 ayat 2)	Rp.20,000 (Perda No. 39 Tahun 2011 pasal 105 ayat 2)
Bulukumba	No charge	Rp.50,000 (Perda No. 1 Tahun 2013 pasal 81 ayat 2)	Rp.50,000 (Perda No. 1 Tahun 2013 pasal 81 ayat 2)
Bone	No charge	Rp.100,000 (not yet implemented)	Rp.100,000 (not yet implemented)
Jenepono	No charge	No charge	No charge
Garut	No charge	Maximum Rp.1,000,000 (not yet implemented)	Maximum Rp.1,000,000 (not yet implemented)
Cianjur	No charge	Maximum Rp.50,000 (Perda No. 10Tahun 2010 Pasal 86 ayat 2)	Maximum Rp.50,000 (Not regulated in Perda)
Bogor	No charge	Maximum Rp.50,000 (Perda No. 09Tahun 2009 Pasal 115 ayat 2)	Maximum Rp.50,000 (Perda No. 09Tahun 2009 Pasal 115 ayat 2)
Sukabumi	No charge	Rp.25,000 (Perda No. 7Tahun 2013)	Rp.25,000 (Perda No. 7Tahun 2013)
Lombok Utara	No charge	No charge	No charge
Dompu	No charge	No charge	No charge
Bima	No charge	Rp.50,000 (Perda No. 1Tahun 2011 Pasal 77 ayat 3)	Rp.50,000 (Perda No. 1Tahun 2011 Pasal 77 ayat 3)
Lombok Barat	No charge	No charge	No charge






<sup>39</sup> Ibid, Article 49

<sup>40</sup> Presidential Regulation 25 of 2008 concerning Registration Requirements and Procedures for Population and Civil registration, Article 52

**Table 4.2:**  
List of Fines  
Applied  
by the 20  
AIPJ Pilot  
Districts  
(PUSKAPA  
Survey)

Name of District	Cost of Birth Certificate		
	Under 60 days	60 days to 1 year	Over 1 year
Timor Tengah Utara	No charge	Rp.20,000 (Peraturan Bupati TTU No. 3 Tahun 2013)	1-5 yo Rp.30,000 5-10 yo Rp.40,000 10-15 yo Rp.50,000 15-20 yo Rp.75,000 >20 yo Rp.100,000 (Peraturan Bupati TTU No. 3 Tahun 2013)
Belu	No charge	1 <sup>st</sup> -2 <sup>nd</sup> child: Rp.10,000 3 <sup>rd</sup> child onwards: Rp.15,000 (Perda No. 11 Tahun 2006)	No charge
Sumba Barat Daya	No charge	Rp.15,000 (Perda No. 20 Tahun 2008)	Rp.15,000 (Perda No. 20 Tahun 2008)
Manggarai Timur	No charge	Rp.50,000 (Perda No 1 Tahun 2012)	Rp.50,000 (Perda No 1 Tahun 2012)
Asahan	No charge	Rp.25,000 (Perda No. 05Tahun 2009 Pasal 91 ayat 5)	Rp.25,000 (Perda No. 05Tahun 2009 Pasal 91 ayat 5)
Humbang Hasundutan	No charge	No charge	No charge
Langkat	Rp.15,000 (Perda 03Tahun 2009 Pasal 90)	Rp.5,000 (Perda 03Tahun 2009)	Rp.5,000 (Perda 03Tahun 2009)
Mandailing Natal	No information	No information	No information

## How Citizens Obtain a Marriage Certificate

Marriage certificates			
	Who Provides	Where	How Much
			
Muslim citizens	Office of Religious Affairs	Subdistrict Offices	Rp 30,000
			
Non-Muslim citizens	Office of Population and Civil Registration	District offices	Free (from December 2013)
			



## Who and Where

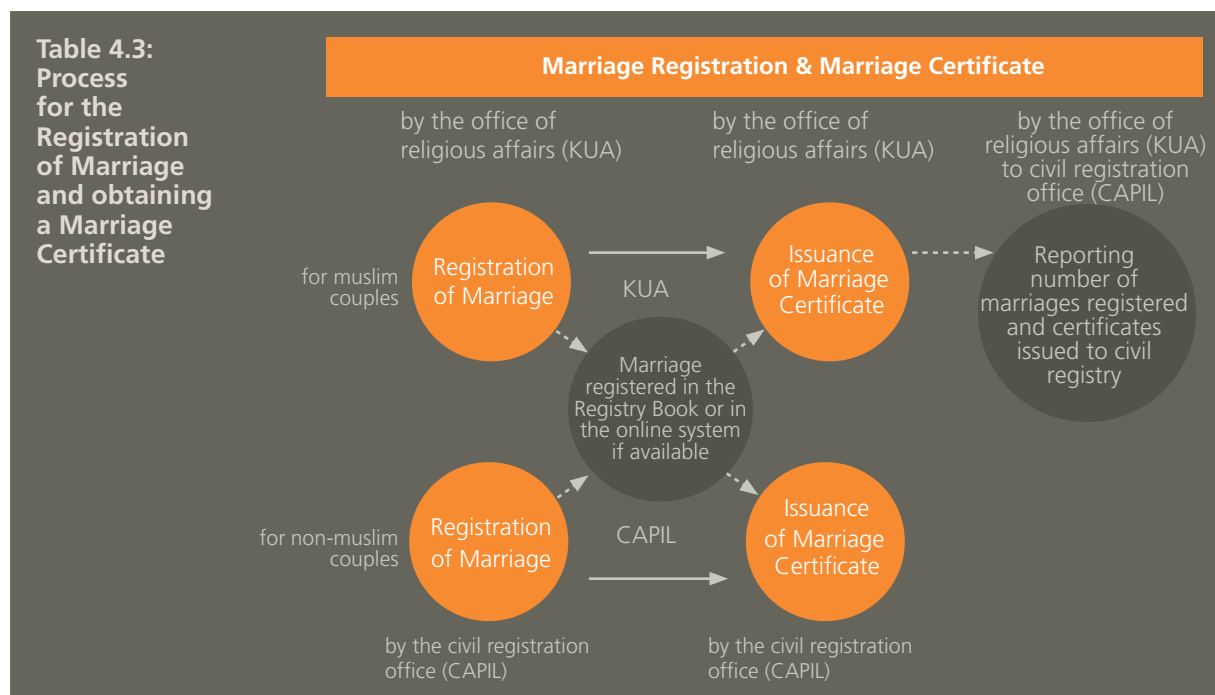
In Indonesia marriage registration and the provision of a marriage certificate is administered by two different agencies depending on the religion of the Indonesian citizen:

- non-Muslim Indonesian citizens can obtain a marriage certificate at the Population and Civil Registry Office at district level
- Muslim Indonesian citizens can obtain a marriage certificate at the Religious Affairs Office at subdistrict level.

A marriage in Indonesia is legal if it is undertaken in accordance with the requirements set out in the Marriage Law 1974. It must also be registered in accordance with the provisions of the Population Administration Law, including the requirement that a marriage must be registered within 60 days<sup>41</sup> with the Office of Religious Affairs (KUA – Kantor Urusan Agama) for Muslims and the civil registry for non-Muslims. At the time of the formal registration of a marriage with the KUA or civil registry, both husband and wife receive a marriage book or extract (kutipan akta perkawinan). This documentation is necessary if the couple later seeks a birth certificate for their children that will have both their names listed as parents, as well as if they later seek to obtain a legal divorce.

If a couple does not register their marriage within 60 days, they must first obtain a decision from a court (penetapan pengadilan<sup>42</sup>).

In 2013, over 35,000 marriage legalisation cases were received by the Religious Courts and over 1300 cases by the General Courts, in these cases the Courts provided the applicant with a document evidencing an earlier marriage<sup>43</sup>. This document can then be used at the civil registry to obtain other legal identity documents, including marriage and birth certificates. The process is set out in Table 4.3:



41 Ibid Article 34

42 Ibid Article 36

43 Infoperkara.badilag.net and Badilum CTS extract on 21 November 2013.

## What's Required

For non-Muslim Indonesian citizens, the following requirements must be completed in order to obtain a marriage certificate from the Population and Civil Registry Office<sup>44</sup>:

- a certificate of marriage from religious leaders / pastors
- an identity card for both the husband and wife
- photos of both the husband and wife
- a Birth Certificate for both the husband and wife
- a passport for a husband or wife who is a foreign national

For Muslim Indonesian citizens, the following requirements must be completed in order to obtain a marriage certificate from the Office of Religious Affairs<sup>45</sup>:

- a reference letter for getting married from the head of village/neighborhood
- a copy of the birth certificate or birth letter (surat kenal lahir), or a letter from the head of village / neighborhood or others, stating the place of birth of the couple
- approval / consent from the couple
- a reference letter regarding the couple's parents (mother and father) from the head of village / relevant officials
- a written permit from the parents or guardian if the couple has not reached 21 years of age
- a written permit from the Court, if both parents or guardian (as stated above) are not available
- a dispensation from the Court for the future husband who has not reached the age of 19, and for the future wife who has not reached the age of 16
- a written permit from their superior / unit if the couple are military (TNI) or police (POLRI) officers;
- a copy of the talak registration book / divorce registration book (kutipan buku pendaftaran talak/ buku pendaftaran cerai) for couples who were divorced before Law No. 7 of 1989 regarding the Religious Court was enacted
- a death certificate or a letter affirming the death of the husband/wife made by the head of village, neighborhood or relevant official for the widower/widow
- a written permit from the embassy / consulate for foreign citizens.

## How Much

Following the revision of Law 23 on Population Registration in December 2013, there is no charge for any civil registration event conducted by the Ministry of Home Affairs. This includes the registration of marriages for non-Muslim Indonesian citizens.

However, the Ministry of Religion charges Rp. 30,000 to register the marriages of Indonesia's Muslim citizens<sup>46</sup>. This anomaly, would now appear to violate the non-discrimination provision of the Indonesian Constitution<sup>47</sup> that states: Every person shall have the right to be free from discriminatory treatment based upon any grounds whatsoever and shall have the right to protection from such discriminatory treatment.

While the fee set by MoRA for registering a marriage is Rp 30,000, the baseline survey encountered a range of fees that are generally known as "bedolan" that are charged by the KUA for attending a

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44 Ibid Article 68

45 Minister of Religion Regulation No 11 of 2007 on Marriage Registration, Article 5

46 PP 51 of 2000 concerning Tariff on Non-Tax State Revenues Applicable in the Department of Religion

47 Indonesian Constitution Article 28I (2)







marriage ceremony outside the KUA offices. One example in West Java set the fee for a couple obtaining a marriage book at Rp.70,000. Law. 20 of 2001 on the Eradication of Corruption intended to make gratuities like bedolan illegal and was confirmed in a decision of the Minister for Religion from 2007<sup>48</sup>. The Ministerial Decision no. 104 of 2007 means that no additional levy or charge should be set by a Governor or Regent beyond the standard service charge of IDR 30,000.

MoRA may wish to consider adopting the same approach as MoHA and waive all fees related to the provision of marriage certificates to avoid there being no charge for marriage certificates issued by MoHA for non-Muslim citizens and a charge for marriage certificate issued by MoRA for Muslim citizens. It is important that any disincentive for Muslim Indonesian citizens to register their marriages be removed as a marriage certificate provides legal protection for women and children<sup>49</sup>.

### Provision to waive the fee for a marriage certificate for those living in poor households

The Department of Religion issued an instruction in 2008 to the head of each Religious Affairs Office throughout Indonesia indicating that the fee to register a marriage may be waived upon production of a letter evidencing poverty (SKTM) from the head of the village<sup>50</sup>. However, the ability of the KUA to waive the fee for the marriage certificate is not widely known by individuals facing poverty.

### How Citizens Obtain a Divorce Certificate

Divorce certificates		
Who Provides	Where	How Much
 Religious Courts	 Court Houses in district capitals plus circuit courts to remote areas	 Court fee varies depending upon how far the person lives from the court: Rp 341,000 – Rp 2,591,000
 General Courts	 Court Houses in district capitals	 Court fee varies depending upon how far the person lives from the court

48 KMA no. 104 of 2007 regarding the revocation of IMA No. 2 of 2004

49 See [http://www.aipj.or.id/en/legal\\_identity/article/134](http://www.aipj.or.id/en/legal_identity/article/134) Ketua Kamar Peradilan Agama, Dr H. Andi Syamsu Alam, SH, MH: Itsbat Nikah Melindungi Hak Isteri dan Anak

50 Departemen Agama R.I. Instruksi Menteri Agama Nomor DJ.II/ HK.00/074/2008 dated 24 January 2008.

## Who

The Religious Courts hear two types of divorce cases, each with different requirements. The first is a divorce initiated by the husband (cerai talak) and the second is a divorce initiated by the wife (cerai gugat). Over two thirds (69%) of all of the divorce cases received by the Religious Courts in 2013 were initiated by the wife and 95% of these divorce applications brought by the wife were approved by the Religious Courts<sup>51</sup>.

The General Courts hear one type of divorce case that does not distinguish between whether the husband or the wife initiates the case.

The Population Administration Law further requires that a divorce be registered within 60 days from the date that the divorce judgment is final and binding<sup>52</sup>. A party to a divorce in the General Courts must bring a copy of the divorce judgment to the Civil Registry so that it can be noted on the Divorce Register and a divorce certificate issued. The Religious Courts, however, print and issue divorce certificates once the divorce judgment has become final and binding<sup>53</sup>. The Registrar of the Religious Courts conveys a copy of the court judgment to the Civil Registry within 30 days of it becoming final and binding<sup>54</sup>. The extra step requiring that General Court clients take the judgment to the Civil Registry within 60 days means that in many cases the time period lapses and it becomes problematic to register the divorce at the Civil Registry.

## Where

The General and Religious Courts are located in district capitals. The Supreme Court of Indonesia has recognised that poorer households, particularly those living in remote areas of the district, will experience difficulty in accessing the courts. Supreme Court practice direction PERMA 1 of 2014 concerning legal services at court for disadvantaged persons<sup>55</sup>, outlines how courts may provide services by travelling on circuit to the more remote locations in the district where they exercise jurisdiction. From 2009-2012, the Religious Courts have doubled the number of cases heard at a circuit court at village level, hearing more than 23,000 cases at circuit courts in 2012. The process is set out in Table 4.4:

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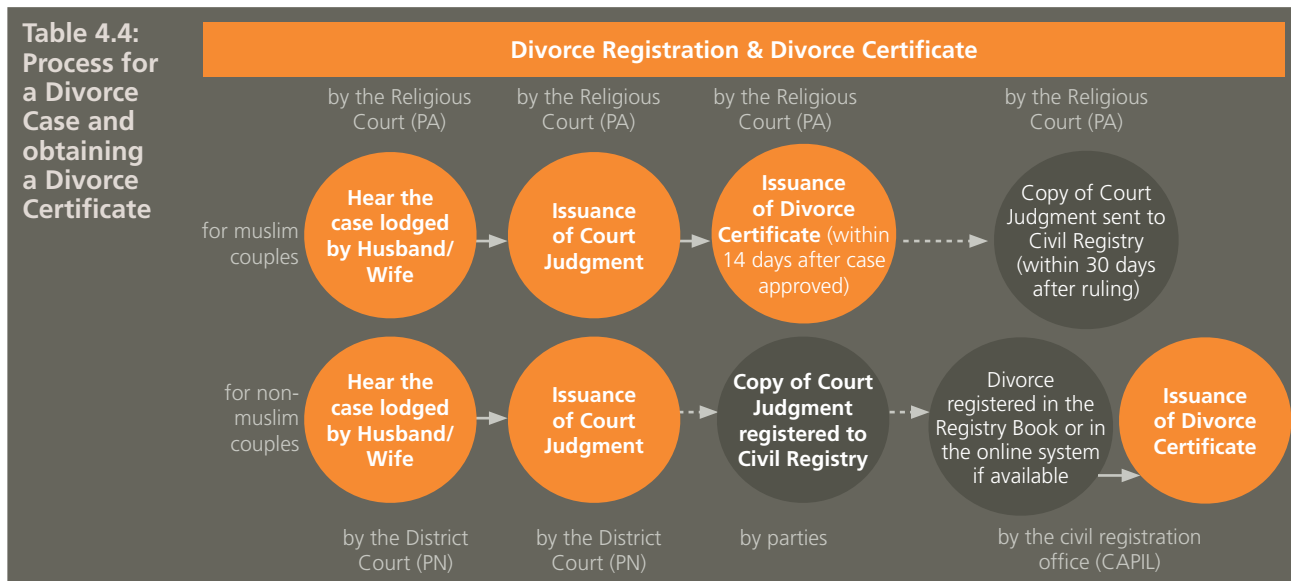
51 Badilag data: LAPORAN TENTANG PERKARA YANG DITERIMA DAN DIPUTUS - L1PA.8 for 2013

52 Article 40, Law 23 of 2006 on Administrasi Kependudukan.

53 A decision is final and binding 14 days after it has been read out in court before both parties. If both parties are not present in court, then the decision becomes final and binding 14 days after it has been delivered to the parties (Law 7/1989, article 54 and HIR articles 128 and 129 (2)). If respondent party cannot be found, the court sends the decision to the Head of District (Bupati/Walikota) to publish in his/her office. HIR article 390 (3).

54 Undang-Undang no.7 1989 concerning the Religious Courts, Article 84 .

55 Supreme Court Regulation 1 of 2014 concerning Legal Services for Disadvantaged Groups (Peraturan Mahkamah Agung RI Nomor 1 Tahun 2014 tentang Pedoman Layanan Hukum bagi Masyarakat Tidak Mampu di Pengadilan) and its predecessor Supreme Court Practice Direction 10 of 2010 concerning the Provision of Legal Aid (SEMA 10 of 2010)



## What is Required

When initiating a divorce case, the following papers and witnesses form the evidential base for the case. In addition to these documents and witnesses, the party initiating the divorce case will lodge a divorce application at the court and pay the court fee.

### The Religious Courts (for divorce cases brought by the wife):

- An original Marriage Book
- An original Identity Card
- Original Birth certificates of children (if there are children)
- Documents attesting ownership of property acquired during the marriage
- At least two adult witnesses who may be family or neighbours. However, witnesses must have direct knowledge of the events contributing to the divorce case.

### The General Courts:

- An original marriage certificate from the Civil Registry Office
- An original identity card
- Original birth certificates for any children
- Other documents that support the reasons for the divorce set out in the divorce application
- At least two adult witnesses who may be family or neighbours. However, witnesses must have direct knowledge of the events contributing to the divorce case.

## How Much

As can be seen from Table 4.5 below, the cost of a court case has a base component and then an amount for summoning the parties to court. The summons' costs are calculated based on how far the person lives from the court-house and are many times the base court fee. 5 sets of summons fees are required for a marriage legalisation case as well as for a divorce case initiated by a wife<sup>56</sup>. 8 sets of summons fees are required for a divorce case initiated by the husband<sup>57</sup>.

<sup>56</sup> The formula used by the court is 2 summons fees for the applicant and 3 summons fees for the respondent = 5 summons.

<sup>57</sup> The formula used by the court is 3 summons fees for the applicant and 4 summons fees for the respondent and 1 summons to read the ikrar talak in court = 8 summons.

Table 4.5: Costs for marriage legalisation and divorce cases case in the Religious Courts in the 5 Baseline Survey Provinces	Base Fee (Rp)	Lowest Summons cost (Rp)	Highest Summons cost (Rp)	Total cost range
	Marriage legalisation case Religious Courts and Divorce case (initiated by the wife)	91 000	50 000 x 5 = 250 000	500 000 x 5 = 2 500 000
Divorce case (initiated by the husband)	91 000	50 000 x 8 = 400 000	500 000 x 8 = 4 000 000	491 000 – 4 091 000

A marriage legalisation case and divorce case initiated by the wife can rise to between 1 to 10 times the monthly income of a person living on the Indonesian poverty line (Rp 253,273 per person per month), depending upon how far the parties live from the court house.

A divorce case initiated by the husband can rise to between 2 to 16 times the monthly income of a person living on the Indonesian poverty line, depending upon how far the parties live from the court house.

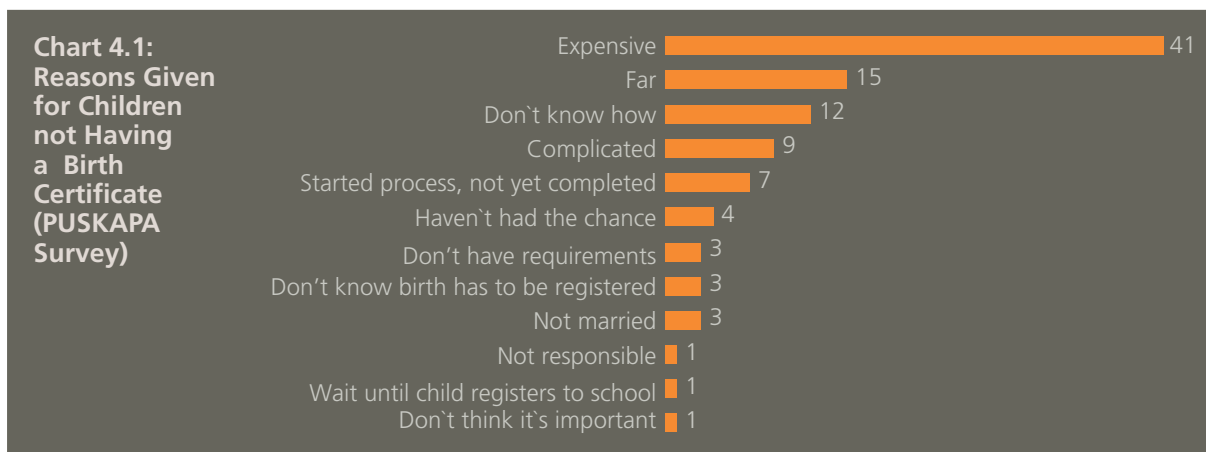
The PEKKA household survey shows that in poor households only 24% of female heads of household, who gave their status as divorced in the survey, actually have a divorce certificate.

When half of the Indonesian population lives on less than \$2 a day<sup>58</sup>, the cost of marriage legalisation and divorce cases remains beyond the reach of many Indonesian citizens, unless the courts continue their access to justice reforms aimed at waiving the court fee, at hearing cases on circuit in remote locations, and at providing legal advisory services to clients in the court.

## Barriers to Obtaining Legal identity documents

Both the Baseline Study as well as SUSENAS 2012 show that cost is the main barrier for people accessing legal identity documents. In SUSENAS, 38.4% of Indonesians said that a birth certificate is expensive and therefore they cannot afford them for their children, while another 13% said they do not know how to obtain one. In the PUSKAPA baseline survey, the reasons for not having birth certificates across the sample varied, though cost was the most common reason that heads of household gave for not registering their child's birth. When heads of household were asked why they had not obtained birth certificates for their children, 41% responded that cost was a barrier, 15% explained that the civil registry office was too far to travel to obtain one, almost 12% said they did not know how to obtain legal identity documents, and another 9% that the process was too complicated.

<sup>58</sup> World Bank (2012), *Protecting Poor and Vulnerable Households* P13.



Interestingly, most respondents who had applied for a birth certificate also identified cost, distance and complex processes as barriers they were facing. The barrier mentioned most frequently differed by province: respondents from West Java cited cost as the principal barrier, respondents from NTT cited distance, and respondents from NTB said that the process was too complicated.

The costs and the distance to the nearest service providers were consistently the reasons most cited by female heads of household for not having a marriage certificate or a divorce certificate. The PEKKA 2012 survey shows that in poor households the majority of couples (55%) do not have a marriage certificate. In the 2007 and 2009 PEKKA surveys, nine out of ten PEKKA heads of household surveyed were unable to access the courts for their divorce cases or to legalize their marriage that had not originally been registered. The study found that court fees and transportation costs to the nearest court were perceived as the overwhelming barriers to accessing the courts<sup>59</sup>. In the PUSKAPA survey, distance and complicated procedures were listed as the two most common reasons for married people not having a marriage certificate.

## The Distance

The further respondents lived from district capitals, the more time consuming and costly was it to travel to civil registry offices. Many respondents lived far from legal identity services, with the average distance to the nearest civil registration office being 26 kilometres away. The maximum distance to an office providing legal identity documents in West Java was 18 km, while in NTB and NTT it was 200 km. However, distance alone does not accurately convey the time, difficulty and cost of travelling to obtain legal identity services. Travelling from remote areas to district civil registry offices often imposes financial, cultural, physical, and sometimes psychological, barriers for individuals. Financial barriers can include the transportation cost of travelling from a remote area to an urban centre for the number of times required to obtain the legal identity document, as well as the income foregone when travelling. Physical barriers include inhospitable terrain, uncertain or irregular boat transportation, as well as security problems in certain areas en route to the court. Cultural and/or psychological barriers often prevent women and children from travelling from their village to an urban centre to register and have a case heard in a formal court.

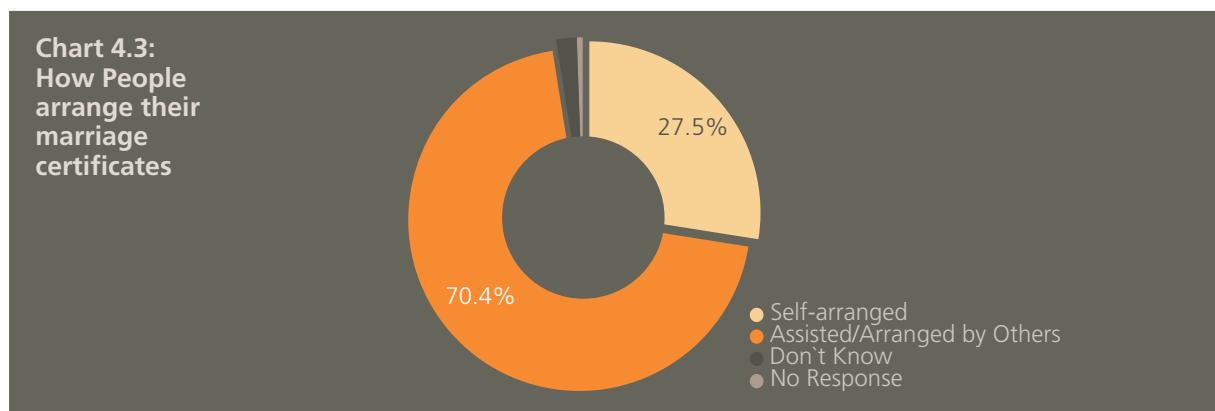
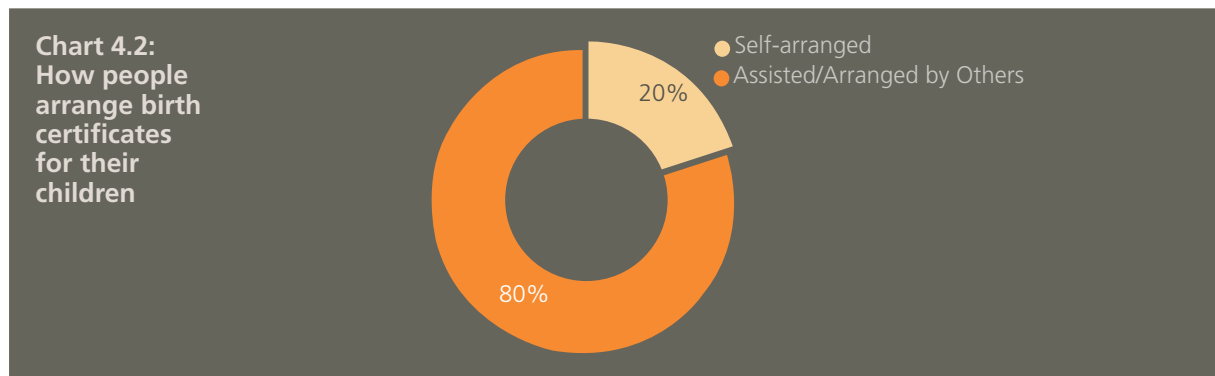
People with a disability face additional barriers in travelling even short distances to obtain legal identity services. Transport costs may be higher for people with a mobility disability for whom mainstream public transport may be inaccessible as they may have to pay for a taxi or private vehicle. In some districts, there

<sup>59</sup> Sumner C, *Access to Justice: Empowering Female Heads of Household in Indonesia* (2010) AusAID and PEKKA and Sumner C, *Providing Justice to the Justice Seeker: A report on the Indonesian Religious Courts Access and Equity Study 2007* (2008) AusAID and the Mahkamah Agung

may not be any form of accessible transport that will allow people with a mobility disability to travel to district capitals.

### The Lack of Knowledge and the Use of Middlemen

Field observations suggest that the procedure to obtain legal identity documents may be complicated, implemented inconsistently across provinces as well as time-consuming. The Baseline Study found that if a mother, who has not registered her own marriage, wishes to obtain a birth certificate for her children with both parents’ names entered onto it, then she will need to engage with three agencies: (i) the courts for the hearing of the marriage legalization case, (ii) the Religious Affairs Office (KUA) or civil registry office for the provision of a marriage certificate, and (iii) the civil registry office for the provision of a birth certificate. Each of these steps may take several days to obtain one or more legal identity documents. Lack of knowledge of the procedures, as well as the time and costs taken to process such documents at up to three different agencies, explains why the majority (80%) of Baseline Study respondents used “middlemen” to obtain a birth certificate, while more than 70% used “middlemen” to obtain a marriage certificate.



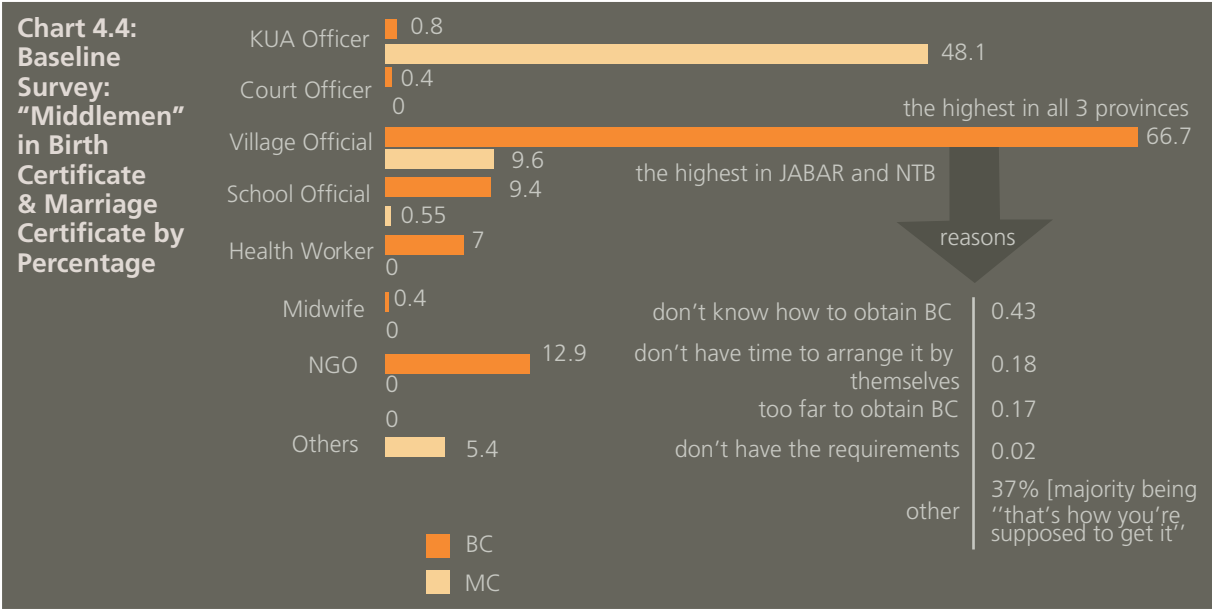
The cost of using a middleman varied widely across the sample, but was generally found to add to the cost of the birth certificate or marriage certificate. The range was Rp 25,000 to 120,000 (approximately \$2.5-12) for a birth certificate. For arranging marriage certificates, the range was Rp 50,000 to 300,000 (approximately \$5-30). The average costs varied by province, with an overall trend emerging that the use of a middleman increased the cost of documents significantly.

The Baseline Study identified a variety of “middlemen”. Village officials were the most common (67%) for birth certificates and Religious Affairs Office (KUA) personnel (48%) for marriage certificates for Muslim



individuals. Christian respondents in NTT stated that their Church/Parish officials (13%) assisted them in obtaining their marriage certificate. The Baseline Study could not confirm whether the additional costs for birth and marriage certificates were payments to middlemen or a reimbursement for transport and other costs they incurred.

The reasons cited by respondents for using middlemen to obtain a birth certificate were that they did not know the procedure for obtaining these documents, they did not have time to arrange one themselves as well as the distance to the civil registry offices. For a marriage certificate the reasons were similar. However, a significant proportion of survey respondents stated that they thought using middlemen was a standard procedure.



Interestingly, of the respondents who processed their child's birth certificate within 60 days of birth, most claimed they processed it themselves without the help of a middleman.

### Information on the Process to Obtain Legal Identity Documents

The Baseline Study researchers found that there was little information on the birth registration process available that was publicly accessible. Many of the local regulations addressing the birth registration application process did not provide clear, step-by-step instructions, but only contained information on fees and financial sanctions. The Baseline Study found that in many cases, the lack of information on the process of obtaining legal identity documents becomes an opportunity for middlemen to offer their services or assistance.

The Baseline Study study found a small percentage of survey respondents (4%) who thought that legal identity documents were unnecessary or not important, signalling a need to educate the population on the importance of birth certificates and how to obtain these documents for their children. During 2013, there have been a number of changes that simplify the process for obtaining legal identity documents due to a successful challenge before the Constitutional Court that was later embodied in legislative changes passed by the Indonesian Parliament in December 2013. However these legislative changes will be meaningless unless there is a campaign to raise community awareness of the importance and benefits of legal identity documents including the following benefits for girls and women:

- overwhelmingly, girls with birth certificates do not experience child marriages. The social, educational, health and development benefits of girls marrying at 18 years of age, or older, need to be clearly communicated to communities
- for children with a disability, not having a birth certificate can lead to exclusion not only from mainstream/inclusive schools but also from state special needs schools;
- provincial and local government legislation as well as school directives state that a birth certificate is required to enrol a child at school
- women who are separated from their husband need a divorce certificate to subsequently obtain a family card stating that they are a head of household. This family card is often required to access public services for themselves and their children.

### Further Research on Barriers to obtaining Legal Identity Documents

The Baseline Study identified a number of areas where religious, political and cultural issues affected a person's ability to obtain legal identity documents. These included:

- Individuals who are born to parents observing a faith outside the six official religions recognized by Indonesia. These individuals are unlikely to have their births registered as their parents do not have the legal identity documents required in order to obtain a birth certificate for their children such as identity and family cards
- In Flores, many couples live together and have children, but their marriages are not fully recognized as legitimate by their tradition, and therefore cannot be legally registered, until the man fulfils his dowry obligations. This dowry and the whole ceremony can be very expensive, as the man must present livestock to his wife's family that can cost hundreds of million rupiah
- Prior to 1999, Indonesians of Chinese background were issued a birth certificate where they were identified as a foreign citizen ("warga negara cina") if their parents had not obtained a Surat Balik Nama (SBN) to become an Indonesian citizen and a Surat Bukti Keluarganegaraan RI (SBKRI). Law 24 of 2013 revising Law 23 of 2006 on Population Administration means that there will now be no cost for these Indonesian citizens to obtain a new birth certificate that identifies them as an Indonesian citizen and not as a foreign citizen.

The Baseline Study recommends that further research be conducted to develop strategies that would support universal provision of legal identity documents for these individuals.

**PENCATATAN SIPIL**  
**KOTAMADYA DAERAH TINGKAT II SURABAYA**  
 (- WARGA NEGARA CINA -)  
**KUTIPAN**  
**AKTE KELAHIRAN**

## REASONS CITED FOR NOT HAVING LEGAL IDENTITY DOCUMENTS:

Too expensive **41%**

Legal Identity services too far away **15%**

Don't know how to obtain legal identity documents **12%**

The process is too complicated **9%**

**If parents don't have a marriage certificate** they need to interact with **three different agencies** to get a birth certificate that shows both parent's names:

1. Courts to legalise the marriage
2. Office of Religious Affairs or Civil Registry to issue the marriage certificate
3. Civil Registry to issue the birth certificate



## Chapter 5

# Governmental and Judicial Agencies: Systems and Processes



*This section looks at how three judicial and government agencies involved in the provision of birth, marriage and divorce certificates collect and analyse data in relation to their work across the 34 provinces of Indonesia. More recently, some of these agencies have begun to publish on the Internet comprehensive data relating to their work. This new level of transparency contributes to increased public trust and confidence in those judicial and government agencies that are documenting their annual performance. It has also fostered greater collaboration with grassroots organisations to raise awareness of the importance of legal identity documents for women, men and children. This section also explores recent developments aimed at reducing fees, providing mobile and integrated services as well as legal advisory services to citizens seeking legal identity documents.*

### Overview of Marriage and Divorce Trends 2007 - 2013

Table 5.1 below provides an overview of the numbers and trends in marriages registered with MoRA and MoHA as well as marriage legalisation and divorce cases brought before the courts between 2007 and 2013. Some key trends are:

- there has been a slight increase in marriage registration with MoRA (2%)
- the number of divorce cases heard by the courts has doubled
- the number of marriage legalisation cases by the courts cases has tripled
- there is no publicly available data on the number of marriages registered by MoHA over this period.

**Table 5.1:**  
**Legal marriages and divorces in Indonesia 2007-2013<sup>60</sup>**

	2007	2010	2011	2012	2013	Increase
Marriages (Registered at MoRA)	No public data available	2 162 155	2 207 364	No public data available	No public data available	2%
Marriages (Registered at MoHA)	No public data available.	No public data available.	No public data available.	No public data available.	No public data available.	
Divorce cases initiated by husband (Religious Courts )	72 759	94 099	99 599	104 985	112 073	54%
Divorce cases initiated by Wife (Religious Courts )	124 079	190 280	215 368	233 159	251 517	103%
Divorce cases decided (Religious Courts) <sup>61</sup>	175 713	251 208	276 692	304 395	343 062	95%
Marriage legalisation cases decided in the Religious Courts		11 540*	21 515	25 332	35 060	204%
Divorce cases registered (General Courts)	3645	7134	8372	8563	9866	171%
Divorce cases decided (General Courts)		6218	6933	6813	5054	-19%
Divorce Cases Decided (all citizens)	175 713	257 426	283 625	311 208	348 116	98%

\* Data is from 2009

60 Data sources: Religious Courts (infoperkara.badilag.net), General Courts (CTS database officers in Badilum, Supreme Court), MoRA (Annual Report), MoHA (no public data source)

61 During 2010-2012, women initiated 68%/ 69%/ 70% of the divorce cases in the Religious Courts.

# Data Collection, Analysis and Public Reporting

## Supreme Court

Under the leadership of Prof. H. Bagir Manan, SH, M. CL, former Chief Justice of the Supreme Court of the Republic of Indonesia, the first Supreme Court annual report was presented on 14 April 2005<sup>62</sup>. Thereafter, annual reports<sup>63</sup> have been issued on the work of the Supreme Court and the jurisdictions that it administers<sup>64</sup>.

## Religious Courts

The Religious Courts have compiled an annual report on statistics related to their work since 2000<sup>65</sup>. In 2006, the Religious Courts annual report became available online.

In 2008, the Supreme Court issued a Practice Direction SEMA 09/ 2008 on Reporting the Acceptance and Usage of Case fees by Courts <sup>66</sup>. In 2009, the Religious Courts began collecting data on court fee waiver, circuit courts as well as court fees through what was called the SMS Gateway. The SMS Gateway allowed Religious Courts to enter data using a mobile phone that would populate a database that could be accessed by the courts and public through the Internet. This had the advantage of Badilag receiving information from hundreds of Religious Courts within a relatively short period of time, especially from courts that did not have Internet access. However, over time, the complexity and quantity of data proved to be beyond that which could easily be transmitted over a mobile phone.

More recently, information from the case management system of the Religious Courts (SIADPA Plus) is being automatically uploaded to a public access Internet database: <http://Infoperkara.badilag.net> During 2013, Badilag has monitored the accuracy of the electronic case management system and compared this with the manual case management system. With over 400,000 cases a year, there is no statistically significant difference between the two systems and from 1 January 2014, the electronic data system will be the only case management system used by the Religious Courts.

[Infoperkara.badilag.net](http://Infoperkara.badilag.net) allows searches to be made for the whole Religious Court jurisdiction or by the individual court. Data can be analysed by month or for a whole year and by case type.

## General Courts

The Supreme Court division agency responsible for the administration of the General Courts<sup>67</sup>, Badilum, has produced an annual report since 2007 that is available on the Badilum website: <http://www.badilum.info> In recent years, the Case Tracking System (CTS) for the General Courts has been rolled out to all 350

62 Supreme Court of the Republic of Indonesia, 2004 Annual Accountability Report on the Performance of the Judicial Branch

63 Supreme Court of the Republic of Indonesia, (2006-2012) Annual Reports, available at [www.mahkamahagung.or.id](http://www.mahkamahagung.or.id)

64 As the annual reports of the Supreme Court are issued in February each year, the data is often not complete and so there can be discrepancies with other data sources that have a longer preparation time prior to publication.

65 Over the last 14 years, these reports have appeared each year under the title: Himpunan Statistik Perkara di Lingkungan Peradilan Agama Seluruh Indonesia, Direktorat Jenderal Badan Peradilan Agama

66 Supreme Courts' Circular No.9 of 2008 on Reporting Court Fees and Court Incomes (SEMA 09/2008) Tentang Pelaporan Penerimaan dan Penggunaan Biaya Perkara Pada Pengadilan, Mahkamah Agung. In February 2010, Badilag issued a Circular on Reporting Costs via the SMS Gateway for Case Fees, Case Prodeo and Circuit Courts.

67 Badilum implements its role and functions based on a Decision Letter of the Secretary of the Supreme Court No: MA/SEK/07/III/2006 13 March 2006 concerning organisation and work procedures of the Supreme Court Secretariat.

General Courts. Most General Courts present information on their websites on the cases being received and finalised through the CTS. However, it is not currently possible for the public to access national, provincial and district level summary case data for the General Courts.

The General Courts may wish to consider placing national, provincial and district level summary case data from the CTS case management information on-line so that it is publicly accessible in the same way that Religious Courts information is made available through [www.infoperkara.badilag.net](http://www.infoperkara.badilag.net)

The following information on marriage legalisation and divorce cases from the 20 districts included in the Baseline Study was obtained from the General and Religious Courts using the Case Tracking System (CTS) for the General Courts and [www.infoperkara.badilag.net](http://www.infoperkara.badilag.net) for the Religious Courts.

**Table 5.2: Total marriage legalisation and divorce cases from the 20 districts included in the Baseline Study**

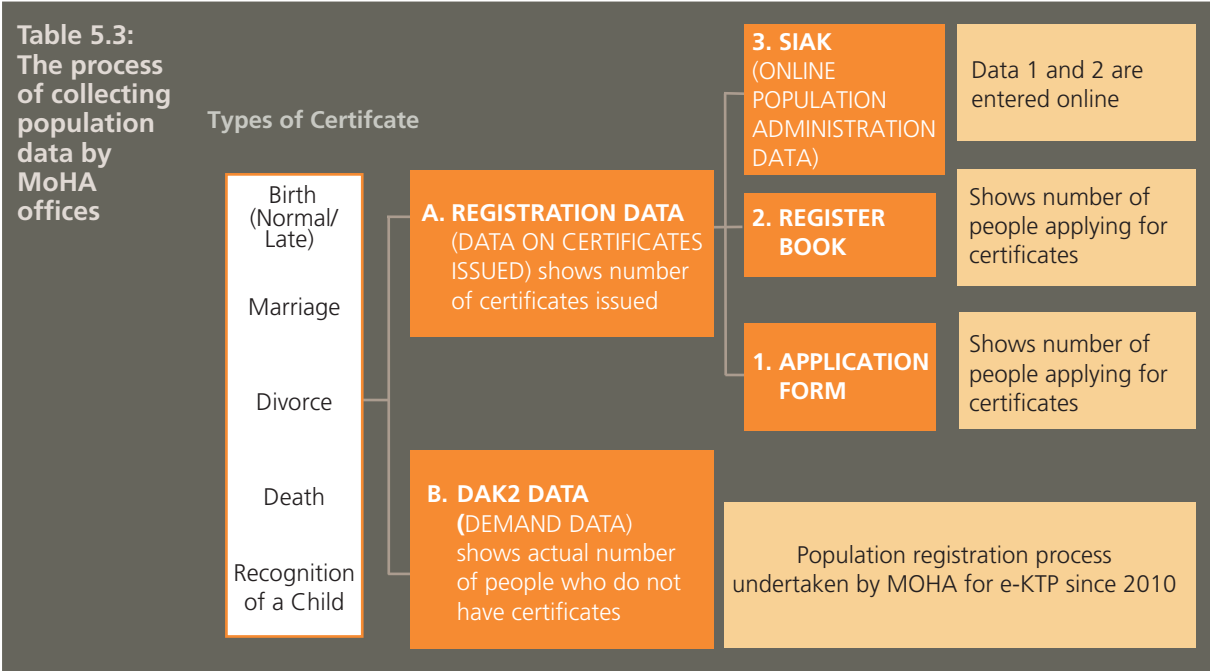
Province	Religious Court	Number of marriage legalisation cases	Number of divorce cases	General Court	Number of marriage legalisation cases decided	Number of divorce cases decided	
NTT	PA Kefamenanu	12	7	PN. Kefamenanu	3	2	
	PA Waikabubak	1	16	PN. Waikabubak	0	1	
	PA Atambua	0	11	PN. Atambua	0	5	
	PA Ruteng	66	21	PN. Ruteng	0	3	
West Java	PA Cibinong	596	2363	PN. Cibinong	6	45	
	PA Sukabumi	51	579	PN. Sukabumi	1	9	
	PA Garut	105	2322	PN. Garut	0	3	
	PA Cianjur	692	1541	PN. Cianjur	0	7	
North Sumatra	PA Kisaran	205	692	PN. Kisaran	4	11	
	PA Stabat	32	922	PN. Stabat	49	4	
	PA Panyabungan	54	304	PN. Mandailing Natal	1	0	
	PA Tarutung	0	12	PN. Tarutung	2	11	
NTB	PA Giri Menang	2057	313	PN. Mataram	5	55	
	PA Dompu	3	670	PN. Dompu	0	0	
	PA Bima	63	1405	PN. Bima	0	0	
South Sulawesi	PA Watampone	368	1116	PN. Watampone	0	0	
	PA Jeneponto	20	200	PN. Jeneponto	0	0	
	PA Sengkang	51	925	PN. Sengkang	0	0	
	PA Bulukumba	35	665	PN. Bulukumba	0	0	
		4411	14084			71	156

## MOHA information

The Population Administration Law was passed in 2006, and in 2008 the Ministry of Home Affairs issued Ministerial Decree Number 68 (2008) on the Reporting Mechanism and Implementation of Population Administration. This system provides a mechanism of recording and reporting civil registration data,



both online (electronically) and offline (a manual register book). The interrelation between these two mechanisms is set out in Table 5.3.



The MoHA online data Administration system (Sistem Informasi Administrasi Kependudukan or SIAK) aims to:

- improve the quality of service in Population and Civil Registration
- provide data and information both nationally and locally concerning the results of population and civil registration that is accurate, complete, current and easily accessible
- realize the systematic exchange of data through a single system while ensuring confidentiality<sup>68</sup>.

The SIAK database aims to operate at:

- Central Government level (Directorate General)
- Provincial Government level (in the work unit responsible for Population Administration)
- District level (Population and Civil Registration Department)<sup>69</sup>.

SIAK, for civil registration purposes, is not working yet in all districts. In Districts where the civil registry does have SIAK installed, data can be collected on (i) the number of citizens that have a birth certificate and (ii) the number of birth certificates issued each year by the civil registries. Estimates of the number and percentage of the population that have a birth certificate is also collected by the Indonesian statistics agency (BPS) through its regular survey process (SUSENAS).

As part of the baseline research, data was collected from 20 districts across five provinces on the number of birth certificates issued by civil registries in 2010, 2011, 2012 and is set out in table 5.4 below. The following key points emerge from analysing this data:

68 PP 37 of 2007 concerning the Implementation of Law 23 of 2006 on population administration, Article 70

69 Ibid Article 76

1. Civil registries in three of the 20 districts (Asahan, Bima and Dompu) either would not or could not produce data on the number of birth certificates issued during 2010, 2011 and 2012.
2. Civil registries in three other of the 20 districts either would not or could not produce disaggregated data that shows the number of birth certificates provided to children under 60 days and under one year of age.
3. Six of the 17 civil registries dramatically increased the provision of birth certificates between 2010 and 2012: Humbang Hasundutan (1091%), Sumba Barat Daya (448%), Bulukumba (350%), Bone (324%), Mandailing Natal (291%), Langkat (266%).
4. The remaining 11 of the 17 civil registries issued fewer birth certificates to children in 2012 than they did in 2010.



**Table 5.4:**  
Number of Birth certificates provided by civil registries in 20 districts from 2010-2012

District	2010			2011			2012			Total				
	< 60 days	> 60 days	Total	< 60 days	> 60 days	Total	< 60 days	> 60 days	Total					
Jenepono	201	5711	5912	162	2328	2490	435	762	1197	-80%	↘			
Bulukumba	19	16059	16192	13	36441	36526	446	4922	51323	56691	250%	↑		
Bone	1465	6599	14061	1730	6003	30767	1865	5998	37639	45502	224%	↑		
Wajo	1502	28250	35180	766	12670	1201	2172	6750	19152	28074	-20%	↓		
4 Districts South Sulawesi	3187	17250	71.345	2671	2.1073	68409	4918	18432	108114	131.464	84%			
Timor Tengah Utara (TTU)			3324			14614				430	-87%	↘		
Belu	367	6081	6448	378	6035	6413	335	5705	6040	6040	-6%	↘		
Manggarai Timur			5584	319	1327	37103	173	454	627	627	-89%	↘		
Sumba Barat Daya	52	4322	4374	72	8240	8312	66	19535	19601	19601	348%	↑		
4 districts NIT	419	10403	0	19.730	769	15602	35457	66.442	0	26.698	35%			
Langkat	1745	2540	5838	10123	2068	47644	52919	7635	7013	12310	26958	166%	↑	
Mandailing Natal	600	1520	2427	4547	650	2900	4400	7950	728	3471	9041	13240	191%	↑
Humbug Hasundutan Asahan			1705			6599				18595	991%	↑		
4 districts North Sumatra	2345	4060	8265	16.375	2718	6107	52044	67.468	8363	10484	21351	58.793	259%	
Lombok Barat	1666	2413	24650	28729	1888	2887	31500	36275	2284	6703	179	9166	-68%	↘
Lombok Utara	609	1540	20620	22769	740	1940	15967	18647	732	1438	58	2228	-90%	↘
Dompu Bima														
4 Districts NTB	2275	3953	45270	51.498	2628	4827	47467	54.922	3016	8141	237	11.394	-78%	
Bogor			141500			175550	28202	12053	695	40950	40950	40950	-71%	↘
Cianjur			108809			138216				31146	31146	31146	-71%	↘
Garut	6558	59212	0	65770	17260	134841	0	152101	22168	21319	1555	45042	-32%	↘
Sukabumi	6031	11352	28391	45774	5500	37831	154619	197950	13700	24200	577	38477	-16%	↘
4 Districts West Java	12589	70564	28391	361.853	22760	172672	154619	663.817	64070	57572	2827	155.615	-57%	

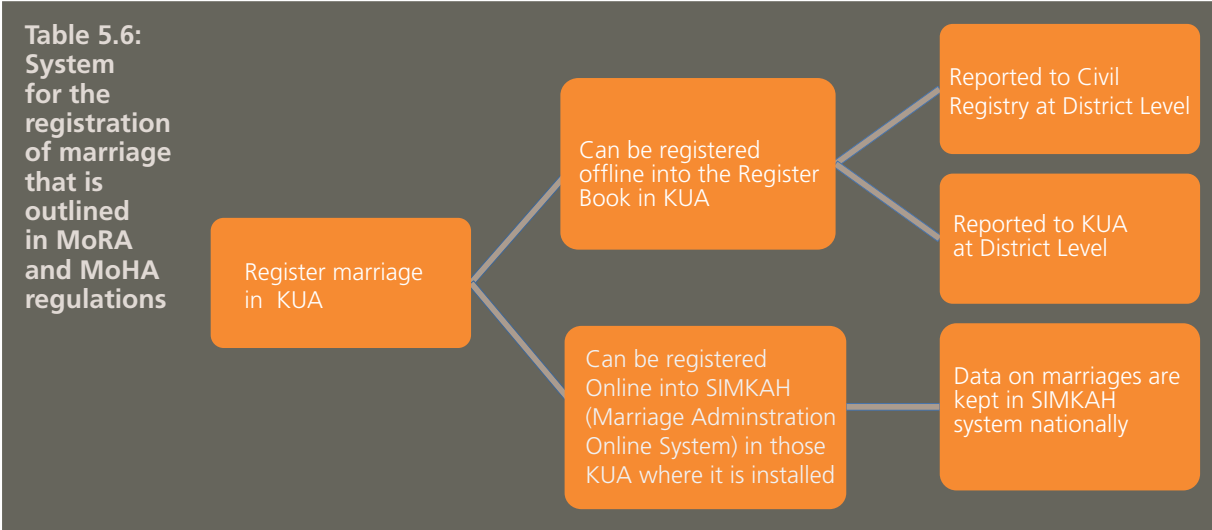
## MORA information

As part of the baseline research, data was collected from 20 districts across five provinces on the number of marriage certificates issued by the Religious Affairs Office (KUA) in 2010, 2011, and 2012, and is set out in table 5.5 below. The following key points emerge from analysing this data:

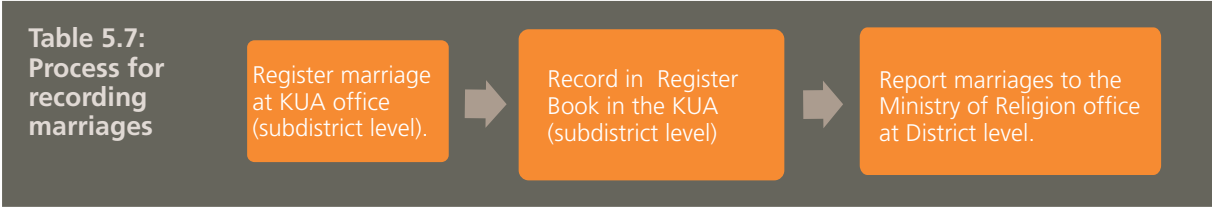
1. Religious Affairs Offices in five of the 20 districts (25%) either would not or could not produce data on the number of marriage certificates issued during 2010, 2011 and 2012. Three of the five Religious Affairs Offices that could not produce data were located in NTB and two in NTT.
2. There has been a 3% increase in the number of marriage certificates issued over 2010 to 2012 in the 20 districts by the Religious Affairs Offices.

District	Total Marriages			Change 2010 to 2012	
	2010	2011	2012		
<b>Jabar</b>					
Kab. Bogor	47612	50259	52447	10%	↑
Kab. Sukabumi	33353	32516	30675	-8%	↓
Garut	32146	32241	32818	2%	↑
Cianjur	28028	29071	31131	11%	↑
<b>Total</b>	<b>141139</b>	<b>144087</b>	<b>147071</b>	<b>4%</b>	<b>↑</b>
<b>Sumatra Utara</b>					
Asahan	10009	7489	7521	-25%	↓
Langkat	10557	11404	11309	7%	↑
Humbang Hasundutan	19	38	37	95%	↑
Mandailing Natal	3883	4900	4634	19%	↑
<b>Total</b>	<b>24468</b>	<b>23831</b>	<b>23501</b>	<b>-4%</b>	<b>↓</b>
<b>NTB</b>					
Lombok Utara	Data is included with data from Lombok Barat				
Lombok Barat					
Bima	5500	5838	4706	-14%	↓
Dompu					
<b>Total</b>	<b>5500</b>	<b>5838</b>	<b>4706</b>	<b>-14%</b>	<b>↓</b>
<b>NTT</b>					
Belu	81	61	72	-11%	↓
TTU	29	21	33	14%	↑
SBD					
Manggarai Timur					
<b>Total</b>	<b>110</b>	<b>82</b>	<b>105</b>	<b>-5%</b>	<b>↓</b>
<b>Sulawesi Selatan</b>					
Jeneponto	4108	4436	4249	3%	↑
Bulukumba	3982	4142	4089	3%	↑
Bone	7388	7863	8597	16%	↑
Wajo	4973	4871	5368	8%	↑
<b>Total</b>	<b>20451</b>	<b>21312</b>	<b>22303</b>	<b>9%</b>	<b>↑</b>

In 2010, the Ministry of Religion implemented an on-line information system for marriage registration (SIMKAH) for use in all Religious Affairs Offices (KUA) across Indonesia<sup>70</sup>. The system for the registration of marriage that is outlined in MoRA and MoHA regulations is set out in Table 5.6.



However, the system of reporting and recording marriage events that was reported in the 20 districts during the Baseline Study is as set out in Table 5.7.



In practice, in the 20 districts where the AIPJ baseline Study was undertaken, Muslim marriages are not recorded with the population and civil registry office as stipulated under Indonesian law<sup>71</sup>. In North Lombok and West Lombok, the KUA offices mentioned that they sometimes faced a shortage in the supply of marriage certificates (buku nikah), either due to a delay in shipping the marriage certificates, or that there were more marriages registered than marriage certificates supplied. The Baseline Study found that the KUA report on the total number of marriages and do not present disaggregated data for polygamous or child marriages. The data is important as the Baseline Study shows that the majority of women and girls who enter polygamous or child marriages do not have a marriage certificate and consequently their children do not obtain birth certificates.

70 Peraturan Menteri Agama no. 477 tahun 2004 and later through Peraturan Menteri Agama no. 11 tahun 2007. Keputusan Ditjen Bimas NO. DJ.II/ 369 tahun 2013 tentang penerapan Sistem informasi Manajemen Nikah (SIMKAH) pada KUA Kecamatan.

71 Law no. 11, 2007, article 26, para 4. (Undang-undang no. 11, Tahun 2007, pasal 26, ayat 4)

## Recent developments in the Religious and General Courts supporting greater access to the courts

### Research

Since 2007, the Religious Courts have worked with PEKKA and the Family Court of Australia, supported by successive Australian Government Law and Justice Programs, to identify barriers for women who are poor accessing the courts for their marriage legalisation and divorce cases. The research reports were published in both English and Bahasa Indonesia and were widely circulated and discussed within Indonesia<sup>72</sup>.

Some key findings from the research were:

- 9 out of every 10 female heads of household surveyed living under the Indonesian poverty line were unable to access the courts for their divorce cases. The main barriers were financial, relating to court fees and transportation costs to travel to the court
- 9 out of every 10 female heads of household would be more motivated to obtain a legal divorce if the court fees were waived
- 9 out of every 10 female heads of household would be more motivated to obtain a legal divorce if a circuit court were held in a nearby town
- The failure to obtain legal documentation in relation to marriage and divorce is associated with 56% of children from these marriages not obtaining birth certificates<sup>73</sup> (The Baseline Study confirms this earlier finding as 40% of all Indonesian children rising to 60% of children from poor households do not have a birth certificate).

### Policy response

The policy response developed by the Supreme Court (Badilag) was designed to address each of the barriers identified in the research conducted during 2006-2010:

- Increased Budget: From 2008 onwards, the Religious Courts have sought and received an increased budget for both circuit courts and the waiver of court fees for the poor, through the Supreme Court state budget (DIPA) as shown in Table 5.8. In 2014, the budget received by the Religious Courts to waive court fees, hold circuit courts and provide legal advisory services in court buildings, is 13 times what it was in 2007
- Supreme Court Practice Direction SEMA 10/2010: This Practice Direction clarified for judges and court staff the procedures for conducting circuit courts, the waiver of court fees and organization of community services posts in General and Religious Courts (Posyankum or, formerly, Posbakum)
- Collaboration between Badilag/ Religious Courts and CSOs: Since the publication of the initial research in 2008, PEKKA and the Religious Courts have worked closely to estimate the demand for marriage legalisation cases as well as to support services that improve access to the courts for women, the poor and people living in remote areas such as circuit courts and the waiver of court fees

72 Sumner C, 'Providing Justice to the Justice Seeker: A report on the Indonesian Religious Courts Access and Equity Study 2007 (2008) AusAID and the Mahkamah Agung, Sumner C, Providing Justice to the Justice Seeker: A report on the Access and Equity Study in the Indonesian General and Religious Courts 2007-2009 (2010) AusAID and the Mahkamah Agung and Sumner C, Access to Justice: Empowering Female Heads of Household in Indonesia (2010) AusAID and PEKKA

73 Sumner C, 'Providing Justice to the Justice Seeker: A report on the Indonesian Religious Courts Access and Equity Study 2007 (2008) AusAID and the Mahkamah Agung

- Collaboration between Religious Courts, CSOs and Local Government: CSOs, including PEKKA, have worked with the Local Government to seek additional funding to support the Religious Courts holding circuit courts in remote areas and the waiver of court fees for the poor.

**Table 5.8:**  
Budget increases  
in the Religious  
Courts for court  
fee waiver,  
circuit court and  
posbakum 2007-  
2014<sup>74</sup>

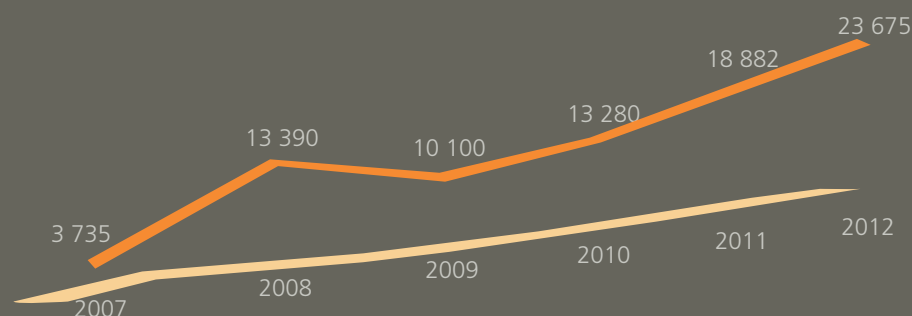
Year	Court fee waiver budget	Circuit court budget	Legal Advisory Services budget	Total (Rp.)
2007				Less than 1 Billion
2011	3.5	4.2	4.2	11.9 Billion
2012 <sup>75</sup>	3.2	4.4	4.2	11.8 Billion
2013	3	5.3	0	8.3 Billion
2014	3.1	6.2	4.3	13.6 Billion

### Impact of Policy Reforms 2007-2013

The policy reforms introduced by the Supreme Court, have had a significant impact on the ability of women, the poor and those living in remote areas to access the Religious Courts for their legal identity cases. Since 2009, the Religious Courts have:

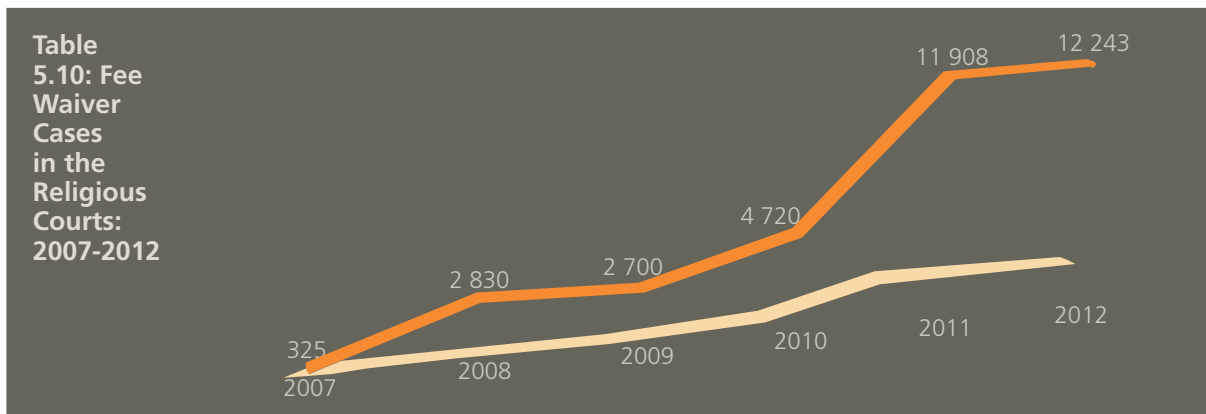
- doubled the number of cases heard at a circuit court at village level, hearing more than 23,000 cases at circuit courts in 2012 (see Table 5.9)
- tripled the number of marriage legalisation cases conducted in the 359 Religious Courts across the country)
- quadrupled the number of cases brought by the poor in which the court fee is waived, hearing more than 12,000 court fee waiver cases in 2012 (see Table 5.10).

**Table 5.9:**  
Circuit  
Court  
Cases  
in the  
Religious  
Courts:  
2007-2012



<sup>74</sup> Badilag budget documents provided to AIPJ Baseline Report authors.

<sup>75</sup> In 2011 and 2012, court fee waiver, circuit court and legal advisory services at court were identified as one budget activity under Legal Aid (Bantuan hukum). In 2013 and 2014, the court fee waiver and circuit court budget came under the activity related to improving the management of the Religious Courts (peningkatan manajemen peradilan agama). In 2007, there was no budget for legal advisory services in the Religious Courts. In 2007 there were only 325 court fee waiver cases compared with more than 12,000 court fee waiver cases in 2012. These were known as prodeo murni cases with the court not having any budget to handle these cases. The only real budget allocation was for circuit court cases and this has been estimated at less than 1 Billion Rp.



The Supreme Court of Indonesia's research and policy reform process, including the Religious Courts' collaboration with CSOs, was highlighted in a number of international publications<sup>76</sup>. The inaugural Progress of the World's Women report produced by UN Women included the Religious Courts/ PEKKA CSO collaboration as a case study. The 2012 World Development Report on Gender Equality and Development included several references to the Indonesian Supreme Court and the access to justice initiatives being implemented in the Religious Courts.

The Chief Justice and leadership of the Supreme Court of Indonesia, as well as High Court Chief Justices and Chief Judges of Religious Courts, have proved to be the key drivers for improving access to the courts in marriage legalisation and divorce cases for women, the poor and justice seekers living in remote areas. As Table 5.11 shows, while the provision of court fee waiver and circuit courts have risen significantly across the Religious Courts, some individual court performances have been far above this level.

- The chart below shows that the number of marriage legalisation cases in PA Giri Menang, NTB, has risen by a factor of 230 in the 6 years since the initial Religious Courts research was published in 2007. This significant rise in marriage legalisation cases has been facilitated by applicants in these cases benefiting from a waiver of their court fee (in 951 of 1312 cases decided in PA Giri Menang in 2012 the applicant received a court fee waiver)
- In PA Kisaran, the number of cases decided by the court almost doubled between 2011 and 2012 from 711 to 1365 cases. 500 of these cases decided in 2012 were heard at a circuit court supported by local government funding. In 2013, the number of marriage legalisation cases dropped to 212 cases as funding to cover the demand for these cases was not obtained from the Supreme Court or local government.

In comparison, some courts have registered almost no change in services to women, the poor and justice seekers living in remote areas.

<sup>76</sup> UN Women, (2011) 2011-2012 Progress of the World's Women: In Pursuit of Justice, World Bank (2011), 2012 World Development Report, Gender Equality and Development, Sumner C and Lindsey T, Courting Reform: Indonesia's Islamic Courts and Access to Justice for the Poor (2010), Lowy Institute for International Policy



**Table 5.11:  
Marriage  
Legalization  
Cases Decided  
2007-2013**

	National	PA Kisaran North Sumatra	PA Cibinong, West Java	PA Watampone South Sulawesi	PA Giri Menang NTB	All PA NTT
2007	10890	11	152	42	13	0
2010		10	398	87	68	9
2011	25256	2	612	67	647	90
2012	25973	610	684	87	933	48
2013	35060	212	585	456	3000	126
Increase	x3 times	x19 times	x4 times	x11 times	x230 times	x126 times

### However, more needs to be done...

The access to justice policy reforms introduced by the Supreme Court since 2010 have had a significant impact on the ability of women, the poor and people living in remote areas to access the courts. In the Religious Courts, these changes have seen women benefit from the waiver of court fees. In 2013, women were granted a court fee waiver in 87% of the divorce cases in which a Religious Court provided a court fee waiver. As women are the applicant party in 69% of divorce cases, this demonstrates that the Religious Courts are recognising that women are financially disadvantaged when a marriage breaks up and are allocating a significant proportion of the court fee waiver budget for cases brought by women. In 2013, the Religious Courts allocated their court fee waiver budget as follows:

- 53% divorce cases (87% of these fee waiver cases were provided to women applicants)
- 44% marriage legalisation cases
- 2% other cases<sup>77</sup>.

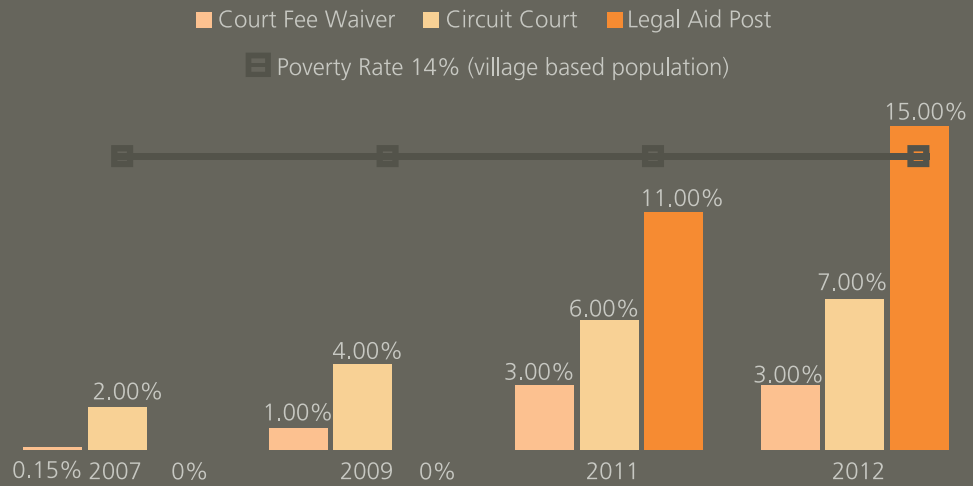
The Religious Courts have not yet been able to deliver court fee waiver and circuit court services to the 14% of the community who represent the village-based population living below the Indonesian poverty line. In 2012, the Religious Courts heard 7% of its cases through a circuit court and 3% of all justice seekers were successful in obtaining a court fee waiver. However, in the second year of independent legal advisory services being provided through the Religious Courts (pos pelayanan hukum/ posyankum), 15% of all justice seekers were able to receive free legal advice in relation to the preparation of their case.

In 2013, some courts have benefited from legal advisory services being provided by university legal aid clinics. An example is the Biro Konsultasi dan Layanan Hukum Keluarga (BKLHK)/Klinik Hukum FSH UIN Bandung that has assisted with over 2200 cases in 2013 representing over 60% of the cases received by PA Sumedang in 2013<sup>78</sup>.

<sup>77</sup> <http://infoperkara.badilag.net> and Badilag

<sup>78</sup> Data from BHLKH UIN Bandung and Inforperkara.badilag.net

**Table 5.12:**  
Percentage of justice seekers that receive court fee waiver, circuit court or legal advisory services at a Religious Courts from 2007-2012.



## 2013 Policy Reforms

### Constitutional Court Decision No 18/ PUU-XI/2013:

On 30 April 2013, the Constitutional Court issued a decision that removed the requirement that a child over one year of age obtain a statement from the General Courts (Permohonan Penetapan Akta Kelahiran) in order to obtain a birth certificate. This requirement was previously contained in Law 23 of 2006 concerning the Administration of Citizenship. Several critical issues were raised in the Constitutional Court decision:

1. The importance of a birth certificate as a legal document evidencing a person's connection with their family, the civil responsibilities of parents to their child, including inheritance rights<sup>79</sup>;
2. That a person without a birth certificate does not exist in a legal sense in a state. This results in a child not having their name recorded. The most extreme results can be the manipulation of a child's identity leading to child exploitation, child trafficking, child labour and violence involving children<sup>80</sup>;
3. That a birth certificate is vital as it confers a guarantee of protection and legal certainty in terms of a person's rights as an individual and a citizen<sup>81</sup>;
4. The burden for a person in bringing a case to court in terms of cost, distance travelled and the complexity of bringing a case, for members of the general public.<sup>82</sup>

<sup>79</sup> [3.16], para 2, Constitutional Court decision No 18/ PUU-XI/2013

<sup>80</sup> *ibid*

<sup>81</sup> [3.16], para 4, *ibid*

<sup>82</sup> [3.18], para 2, *ibid*.

## Revision of SEMA 10 of 2010/ PERMA 1 of 2014<sup>83</sup>:

In January 2014, the Chief Justice of the Supreme Court of Indonesia issued a Practice Direction related to legal services provided to disadvantaged groups when they seek to bring a case to Court. PERMA 1 simplifies the mechanisms through which court fees can be waived, circuit courts conducted across the country in order to bring courts closer to women, the poor and people living in remote areas as well as outlining how courts can provide space within the court building for independent legal aid organisations to provide legal advisory services for those court clients who do not have knowledge of legal matters.

## Policy Initiatives Underway

**Agreement to provide Integrated and Mobile Services between 3 Agencies:** The Director-General of the Religious Courts (Supreme Court), the Director General of Bimas Islam (Ministry of Religion) and the Director General of Population and Civil Registration (Ministry of Home Affairs) have provided agreement in principle for their agencies to collaborate on the provision of Integrated and Mobile Services. The goal is for the three agencies to jointly arrange visits to provide up to three legal identity services at the same time: (i) the hearing of marriage legalisation cases (Religious Courts), (ii) the provision of marriage certificates (KUA) and (iii) the provision of birth certificates (civil registry office). A number of these integrated and mobile services are already taking place across Indonesia<sup>84</sup>.

**SEMA on circuit court services for marriage legalisation:** Work is underway in the Supreme Court of Indonesia on a draft Practice Direction in relation to improving the delivery of marriage legalisation services through circuit courts. The draft Practice Direction aims to provide for (i) collective summons in which one summons fee applies in relation to a group of individuals who wish to have a marriage legalisation case heard during a circuit court, (ii) one judge (instead of a panel of three judges) hearing marriage legalisation cases on circuit courts, and (iii) marriage legalisation cases brought by both husband and wife being finalised at the time of hearing, for simple cases (volunter). This last initiative supports the 3 Agency Agreement on integrated and mobile services as it then allows the KUA to immediately issue a marriage certificate.

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83 Supreme Court's Regulation No. 1 of 2014 on Legal Service for the Poor (Peraturan Mahkamah Agung RI no.1 Tahun 2014 tentang Pedoman Layanan Hukum bagi Masyarakat Tidak Mampu di Pengadilan)

84 See articles from December 2013 on the AIPJ legal identity and Badilag websites [www.aipj.or.id](http://www.aipj.or.id) and [www.badilag.net](http://www.badilag.net)



## Chapter 6

# Conclusion: Key Findings and Recommendations



### The Situation

1 **There are significant discrepancies between different data sources on the numbers of people without birth certificates in Indonesia.**

SUSENAS 2012 estimates that 29% of Indonesian children aged 0-17 years, or more than 24 million individuals, do not have birth certificates. This rises to 47%, or almost 40 million children, when children are included whose parents claim they have a birth certificate but cannot produce the document.

Data from the Ministry of Home Affairs (MoHA) suggests that the figures for those lacking birth certificates is as high as 76% of children and youth aged 0-18 years, or more than 50 million individuals.

**Recommendation:** The Baseline Study endorses the recommendation of the Committee reviewing Indonesia's compliance with its obligations under the Convention on the Rights of the Child, to the effect that [Indonesia] implement a comprehensive strategy to achieve 100 per cent birth registration by 2015 including taking concrete measures to increase the low rate of birth registration<sup>85</sup>.

**Recommendation:** The Government of Indonesia move toward a 1) a simple and accessible mechanism through which all individuals are registered and provided with legal proof of identity, especially a birth, and a marriage or divorce certificate, combined with 2) an investment in a reliable and publicly accessible civil registration system so as to better support the delivery of government services and to measure progress toward broader development goals.

<sup>85</sup> Committee on the Rights of the Child thirty-fifth session (2004) CRC/C/15/Add.223 Consideration of Reports Submitted by States Parties Under Article 44 of the Convention, Concluding Observations: Indonesia, p7.

- 2 **The Baseline Study found that more than 73% of people who answered a SUSENAS survey question “have a birth certificate but cannot show it” actually never had a birth certificate. This would suggest that SUSENAS data underestimates the true number of children without birth certificates.**

Currently SUSENAS asks respondents whether 0-17 year olds in the family: (i) have a birth certificate and can show it, (ii) have a birth certificate but cannot show it, and (iii) do not have a birth certificate.

**Recommendation:** The second option, “have a birth certificate but cannot show it”, be removed from the SUSENAS survey to provide a more accurate estimate of the number of children who have a birth certificate and the number who do not.

- 3 **Indonesia has national laws, as well as international treaty obligations, in relation to the provision of legal identity documents to its citizens but does not collect data on birth, marriage and divorce certificates in its census, SUSENAS or PPLS survey instruments.**

**Recommendation:** Questions relating to legal identity documents, including birth, marriage and divorce certificates should be included in the national census SUSENAS and PPLS survey instruments.

- 4 **Poverty increases the likelihood of not having a birth certificate across all age groups.**

The Baseline Study shows that in the poorest 30% of Indonesian households:

- 71% of children under 1 year of age do not have a birth certificate
- 58% of children aged 1-17 years of age do not have a birth certificate
- 88% of adults 18 years and over do not have a birth certificate.

**Recommendation:** Programs should be targeted at the poorest 30 to 40% of the population if the problem of chronically high levels of children without birth certificates and parents without marriage certificates is to be addressed. Free, mobile and integrated services<sup>86</sup> that provide parents with a marriage certificate (and in some cases a divorce certificate) and children with birth certificates, and which can deliver legal identity services to the poorest households in villages and remote areas of Indonesia are needed in order to target the poorest 30 to 40% of the Indonesian population.

- 5 **The Baseline Study shows that in the poorest 30% of households the majority of couples (55%) do not have a marriage certificate and 75% of their children do not have a birth certificate.**

**Recommendation:** Government agencies in collaboration with CSOs should raise awareness of the fact that married women do not have their civil and human rights adequately protected unless they are in a marriage that is registered under Indonesian law.

- 6 **The Baseline Study shows that, in the poorest 30% of households, only 24% of female heads of household who gave their status as divorced in the survey have a divorce certificate.** Without a legal divorce, women and men cannot marry legally, nor can their children obtain birth certificates, with both their father and mother’s name.

**Recommendation:** See Recommendation 4 above.

- 7 **There is no significant difference between girls and boys having birth certificates.**

86 “Mobile services” is used to describe services provided at village level instead of in government offices and court rooms located at district level. “Integrated services” is used to describe a case where two or more agencies provide services together on the same day at village level.

**8 The number of children without a birth certificate in rural areas is double that of children in urban areas.**

**Recommendation:** See Recommendation 4 above

**9 The highest proportion of children without birth certificates is amongst those under one year of age (51%). This is an important finding because obtaining a birth certificate for children over one year of age becomes more complicated.**

**Recommendation:** Information on how to obtain legal identity documents, either at no or little cost for those facing economic hardship, should be communicated through midwives, birth attendants, and local health centres providing pre-and postnatal care for mother and child, as the most direct way of ensuring that parents receive information and assistance to obtain a birth certificate for the child within one year. Greater collaboration between the Ministry of Health and the Ministry of Home Affairs at all levels of government is required to facilitate this assistance at village level.

**10 Parents who do not have birth certificates are three times more likely to have children who do not have birth certificates demonstrating that a lack of legal identity is passed across generations within families.**

Children are 13.5 times more likely to have a birth certificate if one parent and at least one grandparent have a birth certificate when compared to families where neither parents nor grandparents have a birth certificate.

**Recommendation:** Birth registration programs should target adults of all ages in addition to children to successfully increase overall birth certificate ownership, as well as support the creation of a societal expectation that all family members - children, parents, and grandparents - should have birth certificates.

**11 Children with parents/guardians that have no apparent physical disability are 5 times more likely to have a birth certificate compared with children with parents that have apparent physical disabilities.**

Indonesia does not currently capture and analyse data on the relationship between poverty, disability and access to legal identity documents.

**Recommendation:** More research is needed to understand the relationship between disability and birth certificate ownership. BPS (SUSENAS and Census) and TNP2K surveys of poor and vulnerable households should include questions relating to disability as well as birth certificates in order to assess whether children in families with parents that have apparent physical disabilities are less likely to have a birth certificate.

**Recommendation:** Further research should also be encouraged to identify the extent to which children with disability may experience lower rates of birth certificate ownership.

## The Impact

- 12 **Lack of a birth certificate is overwhelmingly linked to child marriages in Indonesia.** 9 of every 10 child marriages involves girls and boys who do not have a birth certificate. This rises to almost 100% for the poorest 30% of households.

**Recommendation:** The Baseline Study endorses the recommendation of the United Nations Committee on the Elimination of Discrimination against Women, which has recommended that Indonesia “review, within a clear timeframe, the provisions of the Marriage Law of 1974 .....to set the minimum age of marriage for women and men at 18 years,<sup>87</sup>”

- 13 **The Baseline Study found that 9% of girls from the poorest 30% of households married under the age of 16. None of these girls has a birth certificate. None of these girls will complete 12 years of education.**

The Baseline Study found no boys married under the age of 16.

**Recommendation:** See recommendation 12.

- 14 **Girls are 6 times more likely than boys to be married by the age of 18 years.** The Baseline Study shows that for the poorest 30% of households, 25% of girls will be married by the age of 18 years compared to only 4% of boys. None of these girls who marry under the age of 18 years will complete 12 years of education.

Schools currently discourage married girls and boys from continuing their education. This has implications for one quarter of all girls being able to complete the universal 12 years of education that became a Gol policy in 2013.

**Recommendation:** With Indonesia's new education policy of a universal 12 years of education, Ministries responsible for education (MoEC and MORA) should consider how to encourage girls and boys (married or unmarried) to complete 12 years of education.

**Recommendation:** Government agencies in collaboration with CSOs should undertake awareness-raising activities throughout Indonesia on the negative effects of child marriages for girls.

87 Committee on the Elimination of Discrimination against Women fifty-second session (2012) , Concluding observations of the Committee on the Elimination of Discrimination against Women: Indonesia, p14.



15 **Analysis of SUSENAS data and the Baseline Study confirms the correlation between having a birth certificate and the prevalence of children completing the 12 years of education that the Gol enshrined in its universal education policy released in 2013.**

The Baseline Study found that only 10% of women aged 19-29 without a birth certificate have completed 12 years of education, whereas 36% of women aged 19-29 who have a birth certificate have completed 12 years of education. Similar figures are obtained for men aged 19-29.

**Recommendation:** All schools should (i) determine whether a child has a birth certificate and whether their parents have a marriage certificate and, (ii) facilitate collaboration with a range of government agencies to obtain birth certificates for children (and where necessary marriage certificates for their parents) through the provision of integrated legal identity services.

16 **The Baseline Study found that 16% of women aged 19-29<sup>88</sup> from poor households finish 12 years of education in Indonesia. 94% of these women are married at 18 years or older.**

**Recommendation:** See Recommendation 12 above.

17 **A birth certificate is a legal document, evidencing the age of the person, and should assist in the prevention of child labour, child trafficking, and children being treated as adults in the criminal justice system.**

**Recommendation:** There should be increased collaboration between a range of government agencies so as to provide birth certificates for children and, where necessary, marriage certificates for their parents, including through: (i) midwives/healthcare officials involved in the delivery of the baby, (ii) teachers involved in early childhood education programs (PAUD), (iii) teachers at primary school, (iv) facilitators involved in the village-based social development programs such as PNPM Generasi that work with out-of-school children, children and adults with disability and other vulnerable groups and (v) officials involved with children in orphanages and detention centres.

18 **The Baseline Study finds that children with a birth certificate have better access to basic health services. At the same time, mothers whose children have a birth certificate also have better access to health services.**

**Recommendation:** Inter-agency collaboration between the local offices of the Ministry of Health and the civil registry should be strengthened to ensure that any health worker assisting with the birth of a child provides adequate information to (i) parents on how to obtain a birth certificate for their child; and (ii) the civil registry to follow up with an outreach service if the parents have not sought a birth certificate for their child within 60 days of birth.

88 Taking a snapshot of highest educational attainment for boys and girls aged between 19-29 shows a more accurate picture of current opportunities for girls and boys. When the population is enlarged to all men and women aged 19 years and over, the level of educational attainment diminishes considerably as the majority of the older population in Indonesia did not complete primary school.

- 19 **The Baseline Study found that across the 17 provinces surveyed, and for women in the poorest 30% of households, only 5 in 10 women have a KTP: 17% of women have a KTP in NTB and South Sulawesi, and 37% of women have a KTP in NTT. Women face barriers in exercising their political rights in part due to the difficulty in obtaining legal identity documents (such as a KTP) that are a prerequisite for enrolling to vote.**

The Baseline Study found that for women in NTB, NTT and South Sulawesi there is a significant correlation between having a birth certificate and also having a KTP. This suggests that in poorer regions women only have legal identity documents as adults if they also have a birth certificate.

**Recommendation:** See Recommendation under points 4 and 10.

- 20 **The Baseline Study found that a birth certificate is required by adults to become a civil servant or government employee both at the national and the subnational level and is also mandatory for most formal and private sector employment.**

A birth certificate must be produced when applying for a passport. Therefore, a birth certificate is required for all persons seeking to work overseas as a migrant worker and for those who may wish to travel to perform the Hajj and complete other religious observances.

**Recommendation:** See recommendation 10.

- 21 **The Baseline Study found that women in non-polygamous marriages were statistically 3 times more likely to have a marriage certificate, as compared to non-first wives in polygamous relationships where the marriage has not been registered.** Most children from polygamous marriages cannot have a birth certificate with both parents' names, as their parents will not have registered their marriage.

**Recommendation:** See recommendation 5.

- 22 **The Baseline Study found that across the 17 provinces surveyed and in the poorest 30% of households, 90% of female heads of household are able to access the subsidised rice program (Raskin), 52% health insurance programs, and 41% the 2009 cash transfer program.**

See **Recommendations** under points 4, 5 and 17.

- 23 **The majority of female heads of families lack documentary evidence (in the form of the social protection card) that their household is included in the poorest 25% of Indonesian households.**

The Baseline Study found that across the 17 provinces surveyed and in the poorest 30% of households, (i) 34% of families are headed by women but (ii) only 24% of women who give their status as divorced have a divorce certificate and therefore can obtain a family card which shows that they are the head of the family unit.

This lack of a social protection card (KPS) has an impact on the ease with which female heads of families can obtain government services at no cost – such as the waiver of court fees in marriage legalisation and divorce cases brought before the Indonesian courts.

**Recommendation:** Gol to consider providing the social protection card to adult women in a household in order that they may have documentary evidence that they are part of a household that is included in the poorest 25% of Indonesian households.

## The Barriers

- 24 Both SUSENAS and the Baseline Study confirmed that the main reasons for people not having legal identity documents such as a birth certificate or a marriage certificate is because (i) they are too expensive to obtain (41%); (ii) the distance to civil registry offices is too far (15%); and (iii) lack of knowledge on how to obtain legal identity documents (12%), as well as (iv) the processes being too complicated (9%).**

**Recommendation:** See Recommendation under Point 4, 25, 26 and 27.

- 25 Prior to Law 24/2013 concerning the revision of Law 23/2006 on Population Administration enacted in December 2013, the cost of a birth certificate (including fines) charged by the civil registry office could rise to 6 times the monthly income of a person living on the Indonesian poverty line.**

**Recommendation:** MoHA must raise awareness amongst its officials, as well as amongst the community more generally, that there are no longer any fees or fines related to the provision of any legal identity documents through civil registry offices.

- 26 A marriage legalisation case and a divorce case initiated by the wife in the Religious Courts can rise to between 1 to 10 times the monthly income of a person living on the Indonesian poverty line, depending upon how far the parties live from the court house.**

A divorce case initiated by the husband in the Religious Courts can rise to between 2 to 16 times the monthly income of a person living on the Indonesian poverty line, depending upon how far the parties live from the court house.

**Recommendation:** The Supreme Court of Indonesia should continue to support and ensure an adequate budget for integrated services and access to justice reforms that facilitate women, the poor, and people living in remote communities in accessing the courts to legalise their marriages and to bring divorce cases.

**Recommendation:** The Baseline Study recommends that the Supreme Court consider adopting a practice direction that provides for collective summons in marriage legalisation cases as this will significantly reduce the cost of these cases for applicants living far from the court.

- 27 To obtain a birth certificate with both parents' names on it, will require parents to interact with up to three agencies to: (i) legalise a marriage before the Religious Courts; and/or (ii) obtain a marriage certificate at the KUA or civil registry; and/or (iii) obtain a birth certificate at the civil registry. The complexity, time and cost of dealing with three agencies will be beyond the capacity of many households, particularly the poor.**

**Recommendation:** Government agencies responsible for legal identity documents should provide information to the public on how they will collaborate to deliver integrated and mobile services. This information should also be available in accessible formats for people living with a disability. Integrated services occur where two or more agencies deliver legal identity services at the same time in the same place, thereby reducing both the cost and the effort required to obtain birth and marriage certificates. In addition, information and support that assists the most vulnerable in navigating their way through Court and Civil Registration processes are also important, especially given the low levels of education among people who do not have legal identity documents.

28 **People living with a disability face additional barriers in travelling even short distances to obtain legal identity services. In some districts, there may no form of accessible transport that will allow people with a mobility disability to travel to district capitals.** In addition, there is a lack of support services, such as qualified sign language interpreters to assist with the communication needs of people who are deaf as well as material in alternative formats (Braille, sign language videos, audio materials).

**Recommendation:** See Recommendation under Point 25 and 27.

## Legal Identity Processes

29 **In 2011, the Ministry of Religion recorded 2,207,364 marriages in Indonesia. As less than 50% of Indonesian couples obtain a marriage certificate, it is estimated that each year over 2 million couples in Indonesia do not register their marriage.** The hidden impact of unregistered marriage is that children from these marriages will be unable to obtain a birth certificate with both their father and mother's name.

**Recommendation:** MoRA should engage with a variety of CSOs, and community and religious leaders at village level, in order to increase the percentage of couples with marriage certificates.

30 **Divorce cases are the single largest group of cases in the Indonesian court system.** 93% of the 430,000 cases received by the Religious Courts in 2013 were divorce and marriage legalisation cases. In 2013 there were 24,568 civil cases registered in the General Courts, 9866 (or 40%) of these civil cases were divorce cases.

**69% of divorce cases in Indonesia are brought by women.** In 95% of these cases, a woman's application for divorce is upheld by the Religious Courts.

**Recommendation:** The Supreme Court of Indonesia should continue its access to justice reforms that facilitate women, the poor, and people living in remote communities to access the courts to legalise their marriages and bring divorce cases.

31 **Following the enactment of Law 24/2013 on 24 December 2013, there is no charge for marriage certificates issued by MoHA for non-Muslim citizens, whereas Muslim citizens will continue to be charged for obtaining a marriage certificate issued by MoRA.** This violates the non-discrimination provision of the Indonesian Constitution as there is now different treatment for Indonesian citizens in obtaining a marriage certificate from the Government based upon their religion<sup>89</sup>.

**Recommendation:** MoRA should consider adopting the same approach as MoHA and waive all fees related to the provision of marriage certificates to avoid the situation where there is no charge for marriage certificates issued by MoHA for non-Muslim citizens but a charge for marriage certificates issued by MoRA for Muslim citizens.

<sup>89</sup> Indonesian Constitution Article 28I (2) Every person shall have the right to be free from discriminatory treatment based upon any grounds whatsoever and shall have the right to protection from such discriminatory treatment.

- 32 **Law 24 of 2013 on Population Administration provides that in cases where there is: (i) a religious marriage and (ii) the father signs a statutory declaration that he is the father of the child, the civil registry will issue a certificate evidencing this recognition by the father and mother that they are the parents of the child (kutipan akta pengakuan anak) (art 49).** A child requires either a birth certificate or a statutory declaration in which the father states that he is the father of the child in order for the child to have a civil law relationship with the father and benefit from inheritance and other social relationships with the father.

**Recommendation:** When MoHA drafts the implementing regulations for Law 24 of 2013 (Art 49) on Population Administration, it will be important to clarify that the child may also obtain a birth certificate in which it states who the mother and father are.

- 33 **Law 24 of 2013 on the revision of Law 23 of 2006 on Population Administration provides that the GoI has an obligation to actively reach out into the community to register births, marriages, divorces and other legal identity events.** The Supreme Court of Indonesia has already identified these budget resources at district level for General and Religious Courts to provide circuit court services.

**Recommendation:** MoHA (in collaboration with district level government) and MoRA will need to provide adequate budget resources for civil registry offices and religious affairs offices to provide mobile and integrated legal identity services at schools, health clinics and at other village locations.



# System Response

34 **The Supreme Court has pioneered high levels of transparency in the provision of information on the work of the Indonesian courts to the public. This has been achieved through the publication of an Annual Report since 2005 and on-line access to court case statistics and judgments.**

Over the last decade the Religious Courts have developed electronic case management systems to gather data from the 359 Religious Courts and 29 High Religious Courts across Indonesia. There is a significant level of transparency in the Religious Courts with case data as well as information on the work of the courts now available to the public online through [www.badilag.net](http://www.badilag.net) and [www.infoperkara.badilag.net](http://www.infoperkara.badilag.net)

The General Courts now have an electronic case management system to gather data from the 350 General Courts and 30 High Courts across Indonesia. This case management information can be seen in aggregate by Supreme Court staff (Badilum) but is not publicly accessible.

**Recommendation:** The General Courts may wish to consider placing national, provincial and district level summary case data from the CTS case management information on-line so that it is publicly accessible in the same way that summary Religious Courts information is made available through [www.infoperkara.badilag.net](http://www.infoperkara.badilag.net)

35 **There is no publicly accessible data on civil registration that is published by the Ministry of Home Affairs for birth and marriage certificates. The Ministry of Religion publishes the total number of marriage registrations in its Annual Report but does not provide disaggregated data by District.**

**Recommendation:** In line with the Law on Access to Information (Law No 14 of 2008), MoHA and MoRA should publish an annual performance or accountability report summarising the public services provided during the previous year. This annual report will ideally provide information disaggregated by the age, gender and disability status of the person receiving the legal identity document as well as provide this information by district.

36 **In 2010, clients who could not afford a lawyer were not able to access legal advisory services (Pos Pelayanan Hukum) in court buildings. In 2012, over 55,000 justice seekers in the Religious Courts received free legal advice through an independent legal aid post based in a Religious Court. In 2014, the Supreme Court budget for these services will enable clients who are not able to afford a lawyer to access legal advisory services in 74 Religious Courts and 56 General Courts.**

**Recommendation:** Courts that do not have a legal advisory services post funded in this way should consider collaborating with university legal aid clinics.

- 37 **In 2014, the budget provided through the Supreme Court state budget (DIPA) to the Religious Courts to waive court fees, hold circuit court and provide legal advisory services in court buildings, is 13 times the level it was in 2007.**

However, the Religious Courts have not yet been able to deliver court fee waiver and circuit court services to the 14% of the community who represent the village-based population living below the Indonesian poverty line. In 2012, the Religious Courts heard 7% of its cases through a circuit court and 3% of all justice seekers were successful in obtaining a court fee waiver.

**Recommendation:** The Supreme Court should endeavour to continue to increase the budget provided to Religious Courts intended to expand access to justice services such as the waiver of court fees and the provision of circuit court and legal advisory services in court buildings (pos pelayanan hukum), in line with the needs of the community. The Supreme Court should also continue to work with CSOs to provide information on the demand by the community for the court fee waiver and circuit court services.

- 38 **The Chief Justice and leadership of the Supreme Court of Indonesia, as well as the High Court Chief Justices and the Chief Judges of the General and Religious Courts, have proved to be the key drivers for improving access to the courts in marriage legalisation and divorce cases for women, the poor and justice seekers living in remote areas.**

Since 2009:

- the number of cases heard at a circuit court at village level has doubled. The Religious Courts heard more than 23,000 cases at circuit courts in 2012
- the number of marriage legalisation cases conducted in the 359 Religious Courts across the country has tripled. In 2013, the Religious Courts heard more than 35,000 marriage legalisation cases
- the number of cases brought by the poor where the court fee is waived has quadrupled. The Religious Courts heard more than 12,000 court fee waiver cases in 2012.

**Recommendation:** The Supreme Court should use the Unified Database as one of the sources of data for waiving court and service fees for the poorest and most vulnerable of households.

## References

- Ager, A., Stark, L., Sparling, T., & Ager, W. (2011). Rapid Appraisal in Humanitarian Emergencies Using Participatory Ranking Methodology (PRM). Program on Forced Migration and Health, Columbia University Mailman School of Public Health
- Badan Peradilan Agama Mahkamah Agung RI (2000-2013). Himpunan Statistik Perkara di Lingkungan Peradilan Agama Seluruh Indonesia. Diterbitkan setiap tahun/Issued each year
- Berita Resmi Statistik: Badan Pusat Statistik. No. 47/07/Th. XVI, 1 Juli 2013, Profil Kemiskinan di Indonesia Maret 2013
- Committee on the Elimination of Discrimination against Women. (2012). Concluding observations of the Committee on the Elimination of Discrimination against Women. Committee on the Elimination of Discrimination against Women fifty-second session
- Committee on the Rights of the Child. (2004). Consideration of Reports Submitted by States Parties Under Article 44 of the Convention, Concluding Observations: Indonesia. Committee on the Rights of the Child thirty-fifth session
- ICMC Indonesia, & ACILS. (2006). Ketika Mereka Dijual: Perdagangan Perempuan dan Anak di 15 Propinsi di Indonesia. Jakarta
- Huis, van. S., & Wirastri. (2012/13 no. 1). Muslim Marriage Registration in Indonesia: Revised Marriage Registration Laws Cannot Overcome Compliance Flaw. *Australian Journal of Asian Law*, Article 5: 1-17
- Huis, van. S.C. (2010/15). Rethinking the Implementation of Child Support Decisions: Post-Divorce Rights and Access to the Islamic Court in Cianjur, Indonesia. *Law, Social Justice and Global Development Journal (LGD)*
- Kementrian Agama RI (2012). Laporan Akuntabilitas Kementerian Agama RI
- Lockley, A., Warda, N., & Zulminarni, N. (2013). SPKBK Methodology
- Mahkamah Agung Republik Indonesia (2004 dan tahun-tahun berikutnya/2004 and each year afterwards). Laporan Tahunan Mahkamah Agung RI
- Mediacentre factsheets. (n.d). Retrieved from WHO World Health Organization: <http://www.who.int/mediacentre.factsheets/fs324/en/>
- Proof that Wilfrida was Underage may save her life. (2013, November 18). Retrieved 2013, from Jakarta Post: <http://www.thejakartapost.com/news/2013/11/18/proof-wilfrida-was-underage-may-save-her-life.html>
- Sulistiyowati, I., et. al (2011). Fenomena Pernikahan Siri: Kajian terhadap Akses Perempuan kepada Hukum dan Keadilan. Jakarta: FHUI
- Setel, P. W., Macfarlane, S. B., Szreter, S., Mikkelsen, L., Jha, P., Stout, S., (2007). A Scandal of Invisibility: Making Everyone Count by Counting Everyone. Monitoring of Vital Events (MoVE) Writing Group
- Sumner, C. (2010). Access to justice: Empowering Female Heads of Households in Indonesia. PEKKA and AusAID



Sumner, C., & Lindsey, T. (2010). Court Reform: Indonesia's Islamic Courts and Access to Justice for the Poor. The Lowy Institute

Sumner, C. (2008). Providing Justice to the Justice Seeker: a Report on the Indonesian Religious Courts Access and Equity Study 2007. Jakarta, Mahkamah Agung and AusAID

UNICEF. (2013). Every Child's Birth Right: Inequities and Trends in Birth Registration. New York: UNICEF

UN Women. (2011). 2011-2012 Progress of the World's Women: In Pursuit of Justice. UN Women

United Nations. (2013). A New Global Partnership: Report of the High-Level Panel of Eminent Persons on the Post-2015 Development Agenda. United Nations

Willis, G. B. (1999). Cognitive Interviewing: A "How To" Guide. Research Triangle Institute

World Bank. (2011). 2012 World Development Report, Gender Equality and Development. World Bank

World Bank. (2012). Protecting the Poor and Vulnerable Households in Indonesia. World Bank Indonesia, Jakarta

## Legislation

*Republik Indonesia/Republic of Indonesia*

Undang-Undang Dasar Negara Republik Indonesia 1945. [Constitution of the Republic of Indonesia].

Putusan Mahkamah Konstitusi No. 18/PUU-IX/2013. [Constitutional Court Decision No 18/ PUU-XI/2013].

Undang-Undang Nomor 7 Tahun 1989 tentang Peradilan Agama. [Law No. 7 of 1989 on Religious Courts].

Undang-Undang Nomor 23 Tahun 2006 tentang Administrasi Kependudukan. [Law No. 23 of 2006 on Population Administration].

Undang-Undang Nomor 24 Tahun 2013 tentang Perubahan atas Undang-Undang Nomor 23 tahun 2006 tentang Administrasi Kependudukan. [Law No. 24 of 2013 on the Revision of Law No. 23 of 2006 on Population Administration].

Peraturan Pemerintah Nomor 51 tahun 2000 tentang Tarif atas Jasa Penerimaan Negara Bukan Pajak yang Berlaku Pada Departemen Agama. [Government Regulation No. 51 of 2000 on Tariffs on Non Tax Revenue Services Applied to Department of Religious Affairs].

Peraturan Pemerintah Nomor 37 tahun 2007 tentang Pelaksanaan Undang-Undang Nomor 23 tahun 2006 tentang Administrasi Kependudukan. [Government Regulation No. 37 of 2007 on the Implementation of Law No. 23 of 2006 on Population Administration Law].

Peraturan Presiden Nomor 25 tahun 2008 tentang Persyaratan dan Tata Cara Pendaftaran Penduduk dan Pencatatan Sipil. [Presidential Regulation No. 25 of 2008 on the Registration Requirements and Procedures for Population and Civil Registration].

Peraturan Mahkamah Agung Nomor 1 tahun 2014 tentang Layanan Hukum bagi Masyarakat Tidak Mampu di Pengadilan. [Supreme Court's Regulation No. 1 of 2014 on Legal Service for the Poor].

Peraturan Menteri Agama Nomor 11 Tahun 2007 tentang Pencatatan Nikah. [Ministry of Religious Affairs Regulation No. 11 of 2007 on Marriage Registration].

Peraturan Menteri Dalam Negeri Nomor 68 tahun 2012 tentang Tata Cara Pelaporan Penyelenggaraan Administrasi Kependudukan. [Ministry of Home Affairs Regulation Number 68 of 2012 on the Reporting Procedures in Administering Population].

Keputusan Menteri Agama Nomor 104 tahun 2007 tentang Pencabutan Instruksi Menteri Agama Nomor 2 Tahun 2004 Tentang Peningkatan Pelayanan Pernikahan Pada Kantor Urusan Agama Kecamatan. [Ministry of Religious Affairs Decree No. 104 of 2007 on the Revocation of Ministry of Religious Affairs' Instruction No. 2 of 2004].

Instruksi Menteri Agama Nomor DJ.II/ HK.00/074/2008 Tahun 2008. [Ministry of Religious Affairs Instruction No. DJ.II/ HK.00/074/2008 of 2008].

Keputusan Direktur Jenderal Bimbingan Masyarakat Islam No. DJ.II/369 tahun 2013 tentang Penerapan Sistem Informasi Manajemen Nikah (SIMKAH) pada Kantor Urusan Agama Kecamatan. [Director General of Islamic Community Guidance's Decree No. DJ.II/369 of 2013 on the Application of Marriage Management Information System (SIMKAH) at the Religious Affairs' District Office].

Surat Edaran Mahkamah Agung Nomor 9 tahun 2008 tentang Pelaporan Penerimaan dan Penggunaan Biaya Perkara Pada Pengadilan. [Supreme Courts' Circular No. 9 of 2008 on Reporting Court Fees and Court Incomes].

Surat Edaran Mahkamah Agung Nomor 10 tahun 2010 tentang Pedoman Pemberian Bantuan Hukum. [Supreme Court's Circular No. 10 of 2010 on the Legal Aid Provision Guidelines].

#### *Dokumen Pemerintah/Governmental Document*

Pemerintah Indonesia [Government of Indonesia]. 2008. Rencana Strategis Semua Anak Indonesia Tercatat Kelahirannya pada 2011 [Strategic Plan in Registering All Children in Indonesia by 2011].

#### **Websites**

[www.aipj.or.id](http://www.aipj.or.id)

[www.badilag.net](http://www.badilag.net)

[www.infoperkara.badilag.net](http://www.infoperkara.badilag.net)

[www.mahkamahagung.or.id](http://www.mahkamahagung.or.id)



