

# Providing Justice to the Justice Seeker

A Report on the Indonesian Religious Courts  
Access and Equity Study – 2007

SUMMARY OF RESEARCH FINDINGS





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# Contents

<b>Foreword</b>	1
Key Research Findings	4
Key Recommendations for Religious Courts Reform	5
<b>Chapter 1 Background and Study Methodology</b>	6
Background	7
Is access to the Religious Courts important?	7
Jurisdiction of the Religious Courts	9
Access and equity study methodology	10
Why PEKKA was chosen as a sample group for the access and equity study	10
Study Coordinating Body	11
Timeline	11
<b>Chapter 2 Key Findings from the Access and Equity Study</b>	12
Income levels	13
Time	14
Cost	14
Distance from home to the Religious Courts	15
Educational background	15
Legal status of marriage	16
Legal status of divorce	16
Age of first marriage	16
Legal status of the children	16
Access and equity survey	17
Barriers to accessing the Religious Courts cited by the PEKKA group	21
The PEKKA group's level of awareness of the Religious Courts	21
The PEKKA group's views on ways to improve access to the Religious Courts	21
<b>Chapter 3 Key Research Findings</b>	22
Key research findings: detail	23
<b>Chapter 4 Next Steps</b>	26
Prodeo Budgets	27
Prodeo Procedure	27
Circuit Courts	27
Better information on court processes	28
Client Service Improvements	28
Providing Justice to the Justice Seeker	29
<b>Endnotes</b>	30
<b>Acknowledgements and Study Partners</b>	31





## Foreword

Chief Justice of the Supreme Court of the  
Republic of Indonesia

### *Bismillahirrahmanirrahim*

The problem of public access to courts is a matter of great importance. The Supreme Court of the Republic of Indonesia has made it part of its judicial reform agenda. In fact the adoption of Chief Justice's Decree Number 144/2007 has meant that efforts to increase access to the court, particularly access to information, have now become an obligation for all members of the Indonesian judiciary.

For these reasons, the National Survey on Religious Court Access and Equity conducted by the Indonesia-Australia Legal Development Facility (IALDF) is strongly supportive of the judicial reforms being implemented by the Supreme Court. The results of this survey are baseline data of great value for efforts to improve services provided by the Religious Courts in the future. The publication of this data is therefore a positive step, which we fully support.

The parties involved should see the information from this survey as reflecting the quality of services provided by the court. Positive results must be maintained and continually improved, while negative results must be responded to on a continuing basis through programs and policies.

Completion of this Religious Courts Access and Equity Survey is an integral part of the Memorandum of Understanding between the Federal Court of Australia and Family Court of Australia and the Supreme Court of the Republic of Indonesia, which is supported by funding from AusAID (the Australian Agency for International Development), and facilitated by IALDF. The Supreme Court therefore wishes to convey its highest appreciation to the Federal and Family Courts, AusAID, and LDF. I hope that activities with a similar mission will continue to be delivered into the future.

**Prof. Dr. H. BAGIR MANAN, SH, M.CL**  
Chief Justice of the Supreme Court of the Republic of Indonesia

Jakarta, 4 January 2008



# Foreword

## Director General of Religious Courts Supreme Court of the Republic of Indonesia

Law No. 3/2006 positions the Religious Courts as a judicial authority for Muslims seeking justice in the fields of marriage, wills, grant (hibah), gift (Waqaf), tithes and other charitable donations (*zakat, infaq*), alms (*shadaqah*), and the Syariah economy.<sup>1</sup> These courts have now become part of the national integrated judicial system.

According to the Chief Justice of the Supreme Court, the Religious Courts must strive to operate as a judicial body that does not merely apply laws, but also achieves the enforcement of law and shapes it so as to fulfill the needs of justice seekers, and the general public, which are constantly changing and developing. The Religious Courts must also be managed on the basis of the principles of transparency, responsibility, accountability, efficiency and effectiveness, which is in accordance with the basic principles of advanced and modern court administration. All of this results in the creation of 'court excellence'.

The recommendations found in the International Framework for Court Excellence (IFCE), particularly in the context of improving legal services, are of great relevance as reference points for policy development. IFCE identifies seven themes that can influence the creation of court excellence: court management and leadership; court policies; human, material and financial resources; court procedure; client needs and satisfaction; affordable and accessible court services; and public trust and confidence.

To obtain baseline data that provides a picture of service performance, of the kind that IFCE paradigm categorizes into these seven themes, proper research is required. Data resulting from such research can become very valuable information for policy formation.

In this context, the Religious Court Access and Equity Survey facilitated by the Indonesia Australia Legal Development Facility (IALDF) is of direct relevance to the need to identify a basic model for a strategic plan to reform the services of the Religious Courts.

This AusAID-sponsored survey was conducted on a national scale. With a total of 1040 respondents from across Indonesia selected by random sampling, the survey has produced findings that illustrate access and equity for justice seekers in the Religious Courts. Information found by this survey reveals both the needs and levels of satisfaction of both parties, and the expectation that service be accessible, as well as public trust and confidence in the services provided by the Religious Court from the perspective of court users.

This survey was also projected to a group categorized as 'would be (or possible) court users', that is Muslims with a case that falls under the jurisdiction of the Religious Courts, but who have not, in fact, brought their case to court. Through Focus Group Discussions (FGD) with these groups the *Survey Coordinating Body*<sup>2</sup> successfully obtained information on public expectations regarding the level of access to Religious Court services.

<sup>1</sup> This judicial power is administered by the Religious Courts and Appellate Religious Courts and, at its summit, by the Supreme Court as the highest State judicial authority.

The Religious Courts have the authority to examine, decide and settle cases at first instance between Muslims in the fields mentioned above. Appellate Religious Courts have the authority to examine cases which fall under their authority at the appeal level.

<sup>2</sup> This Coordinating Body included elements of the Religious Courts (Ditjen Badilag), IALDF, and PPIM UIN.

In addition, the survey was also directed towards Judges and staff of the Religious Courts, so that it could also provide a sketch of the actual performance of the Religious Courts.

At the conclusion of the research, a roundtable discussion forum was held, attended by the Survey Coordinating Body, the survey implementer, representatives of judicial and administrative staff from the Religious Courts, as well as some Non Governmental Organizations, such as PEKKA and the National Commission on Violence Against Women.

In line with the objective of the survey design, the results of this survey are expected to serve as baseline data for our efforts to improve the services of the Religious Courts. Indeed this expectation has already become a reality. As a direct result of this survey, the Directorate General of Religious Courts now has baseline data giving a picture of access, satisfaction with services, public trust in the Religious Courts and also an outline of the performance of officials of the Religious Courts. This information is very valuable for the development of programs and policies that can improve the quality of public services, public perceptions, and the performance of the Religious Courts in general.

The Directorate General of the Religious Courts is currently in the process of preparing several activities and coordinating with relevant parties to follow up this survey. Any weaknesses or deficiencies in the Religious Courts highlighted by this survey are expected to be swiftly overcome in a step-by-step manner and without undue delay.

In the context of transparency and accountability, as well as to obtain further input from the public at large, it is necessary that efforts taken by the Religious Courts, at the level of performance and user perceptions, need to be openly disseminated to the public. Therefore, the publication of this valuable survey has a very important role.

Finally, we would like to convey our gratitude to the Chief Justice of the Supreme Court of the Republic of Indonesia and other Supreme Court officials who have provided us with valuable guidance in the implementation of this survey. Also to the respondents, PPIM UIN Jakarta, PSW UIN Yogyakarta and everyone who has made the implementation of this survey and its follow-up discussions a success, we hereby convey our highest gratitude.

We also would like to convey our appreciation to IALDF, the Family Court of Australia, and AusAID. The involvement of these agencies in the implementation of this survey has been critical. We hope that activities with similar objectives can be conducted again in the future.

*Hanya kepada Tuhanlah, kita berserah diri.*



**Wahyu Widiana**  
Director General

Jakarta, 8 January 2008



## Key Research Findings

- ▶ There is a high satisfaction rate amongst Religious Court clients – with over 80% of applicants (and 70% overall) saying they would return to the court in future if they had similar legal issues.
- ▶ Divorce through the Religious Courts provides legal certainty instead of an uncertain legal status for both former spouses and children.
- ▶ However, the poorest sections of Indonesian society face significant barriers in bringing their family law cases to the Religious Courts.
- ▶ As a result, a cycle of non-legal marriage and divorce exists for many female heads of household living below the Indonesian poverty line. The failure to obtain legal documentation in relation to marriage and divorce is associated with 62% of children from these marriages not obtaining birth certificates.
- ▶ For the poor, the main barriers to accessing the Religious Courts are financial and relate to:
  - (i) court fees; and
  - (ii) transportation costs for travel to the court.
- ▶ Secondary barriers for the poor in accessing the Religious Courts relate to the provision of clear information to court clients who are illiterate.

## Key Recommendations for Religious Courts Reform

### 1 Prodeo Budgets

Increase the level of the Prodeo Budget for Religious Courts over 2008-2012 and develop data management systems to capture information on the number of applications for prodeo assistance.

### 2 Prodeo Procedure

- (i) Seek greater clarity for both judges and court users on the prodeo process;
- (ii) ensure more uniformity in the application of the Prodeo Procedure across courts in Indonesia; and
- (iii) ensure that the current two-step prodeo process does not create an additional burden for the poor in establishing their poverty prior to the hearing of their case.

### 3 Circuit Courts

- (i) Plan more Circuit Courts in large and/or poor provinces where the demand and need is greatest; and
- (ii) obtain an adequate annual budget to enable circuit Religious Courts to be held in areas of high demand.

### 4 Better information on court processes

Provide accurate and clear information to both court users and the broader community on the Religious Courts in non-legal language using:

- ▶ Written information;
- ▶ Internet based information;
- ▶ Audio-visual information; and
- ▶ Community consultations/courses.

### 5 Client Service Improvements

Review areas identified in the survey where clients indicated there was room for improvement in the level of service provided by the Religious Courts.

# Chapter 1

## Background and Study Methodology



## Background

In 2007, the Indonesian Australian Legal Development Facility, with the State Islamic Universities (UIN) in Jakarta and Yogyakarta, the PEKKA NGO<sup>1</sup> and the Family Court of Australia, worked with the Supreme Court of Indonesia (Mahkamah Agung) to undertake the first large-scale national access and equity study of the Religious Courts in Indonesia. The aim of the access and equity study was to assist the Religious Courts in developing an access and equity strategic plan based on the study findings that would:

- ▶ collect feedback from judges, court staff, court users and NGOs on perceptions of the quality of service provided by the Religious Courts to court users; and
- ▶ ascertain whether there are sections of the community who are unable to access the services of the Religious Courts, or choose not to, and, if so, the reasons why.

The access and equity study would provide the Religious Courts with empirical data on those areas where court users thought the court was providing a high level of service and those where improvements could be made. It would also provide the Religious Courts with a benchmark against which future client surveys could be measured in order to determine whether service standards within the Religious Courts had improved over time.

The ultimate aim is to document steps that the Religious Courts will take, so that they can:

- ▶ become more accessible for those groups that do not currently bring their cases to this court but have cases that fall within its jurisdiction; and
- ▶ provide a better level of service to those who do bring their cases to the court.

The Religious Courts, and the Supreme Court of Indonesia which supervises it, are to be commended for undertaking this study as it demonstrates both a willingness to listen to clients articulating what they like and dislike about courts and a desire to improve court services. Moreover, the publication of court survey results contributes to a court culture of accountability and will enhance the public's trust in judicial institutions.

## Is access to the Religious Courts important?

Many people, at some point in their lives, have family law concerns and they arise regardless of economic status or geographic location. For Indonesian Muslims, there is a legal requirement that these matters are dealt with exclusively by the Religious Courts. State law provides that a range of legal disputes involving Indonesian Muslims, including, in particular, inheritance, divorce and child guardianship issues, must be brought to the Religious Courts.<sup>2</sup> If marriages are not formally ended through divorce cases in the Religious Courts, then subsequent marriages cannot be legally registered with the KUA (Kantor Urusan Agama or the office of religious affairs at the district level). The legality of marriage and divorce affects the inheritance rights of children, as well as the legal responsibility for the financial care of former spouses and any children of the marriage. Divorce, like the death of a breadwinner, is thus often a tipping point for families living on the edge of the poverty line.



Conducting an access and equity study therefore allows an assessment of whether the Religious Courts are universally accessible to Indonesian Muslims, and specifically:

- whether the poor in Indonesia are able to access the Religious Courts in proportion to their numbers in society;
- whether the poor experience the same level of service from judges and court staff within the Religious Courts; and
- whether women are as satisfied as men with the level of service offered by judges and court staff within the Religious Courts.

Women form at least 60% of applicants before the Religious Courts. Through a relatively large-scale study of actual and potential Religious Court clients, such as the one undertaken, it is possible to obtain a picture of (i) the barriers faced by women in accessing the courts in relation to family law issues; and (ii) the experience of the Religious Courts of those women who are able to access the courts.

Women, for the most part, take primary day-to-day responsibility for the care of the children following the break-up of a marriage. Therefore, the economic and social wellbeing of the next generation often depends upon adequate and effective maintenance arrangements for children and former spouses being fixed at the time of divorce.

Family law is of universal importance to individuals, families and communities, because it directly affects the social and economic wellbeing of future generations. In countries where the law requires that all divorce, child guardianship and inheritance cases be heard by courts (the Religious Courts for Indonesian Muslims and the General Courts for Indonesia's non-Muslims), an underlying principle is that if all Indonesian Muslims bring their family law disputes to the Religious Courts, there will be economic and social outcomes that will be to the advantage of the children from the marriage, as well as for former spouses and the broader community. In Indonesia, where a significant proportion of society earns less than US\$1 a day, it becomes even more important to ensure that the economic welfare of children is equitably resolved in situations where parents divorce.



As this access and equity study reveals, the overwhelming majority of female heads of household who do not access the Religious Courts for their divorces are left with the sole economic responsibility for bringing up their children. This can, and does, have significant implications for whether the children are able to have a varied and nutritious diet, access adequate health services, and attend at least nine years of education: all important if these children are to move out of poverty. Effective family law systems aim to provide outcomes that reduce the incidence of children and former spouses living in poverty following divorce. Whether the poor are able to access formal family law systems in the first place is therefore a key element in determining whether such systems can contribute to the alleviation of poverty.

## Jurisdiction of the Religious Courts

The Religious Courts<sup>3</sup> have jurisdiction for Muslims in the following matters<sup>4</sup>:

- marriage/ divorce;
- inheritance, *wasiat* [wills and testaments], and *hibah* [charitable bequests], which are carried out in accordance with Islamic law;
- *wakaf* [charitable trusts] and *shadaqah* [other forms of alms];
- *infaq* and *zakat* [charitable donations/alms];
- syari'ah economy.

The table below summarises cases received by the Religious Courts in 2006 at both first instance and appeal levels: <sup>5</sup>

Kind of Case	First Level Religious Court	% (of total first level)	Appeal Level/ High Religious Court	% (of total appeal)
Divorce	178,913	98.8%	1,288	84.69%
Inheritance	1,311	0.72%	195	12.82%
Testament	22	0.01%	4	0.26%
Bequest	58	0.03%	16	1.05%
Property Donation (Wakaf)	21	0.01%	4	0.26%
Alms (Shadaqah)	2	0.01%	0	0%
P3HP <sup>6</sup>	318	0.18%	0	0%
Syariah Economy	0	0%	0	0%
Other	432	0.24%	14	0.92%
<b>Total Amount</b>	<b>181,077</b>	<b>100%</b>	<b>1,521</b>	<b>100%</b>

Cases that are appealed from the High Religious Court are heard by the Supreme Court of Indonesia. In 2006, there were 532 cases referred to the Supreme Court, 497 for Cassation and 35 for judicial review.





## Access and equity study methodology

The access and equity study involved three respondent groups:

- 1040 religious court clients were randomly selected in 35 urban and rural locations across Indonesia and were surveyed by the Centre for Islam and Society (PPIM), from the State Islamic University (UIN) Syarif Hidayatullah in Jakarta;
- 163 female heads of household living below the poverty line who are members of the Program for Women-Headed Households in Indonesia (the PEKKA group), living in Brebes, Cianjur and Lombok, participated in focus group discussions with IALDF's Lead Adviser - Judicial Reform and completed a survey document; and
- court staff from Religious Courts in Brebes, Cianjur and Lombok participated in focus group discussions with IALDF's Lead Adviser-Judicial Reform on issues of access to and equity before the Religious Courts.

## Why PEKKA was chosen as a sample group for the access and equity study

PEKKA is an Indonesian NGO, established in 1999, that works with over 7900 Female Heads of Household through a network of 330 PEKKA groups dispersed across 41 Kecamatan and 244 Districts in eight Indonesian Provinces - NAD, West Java, Central Java, West Kalimantan, West Nusa Tenggara, East Nusa Tenggara, North Maluku and Southeast Sulawesi.<sup>7</sup>

PEKKA members are heads of household as a result of being either widowed, divorced, abandoned, single or married but responsible for the household (due to their husbands being ill, or unable to work, or working overseas and not supporting the household financially).

The PEKKA membership therefore provided a survey population from which to draw conclusions as to the barriers faced by members of Indonesia's Muslim population who:

- may have experienced divorce;
- fall under the Indonesian poverty line;
- generally have not accessed the Religious Courts to formalise their divorce; and
- as women, share the gender of over 60% of all applicants bringing cases before the Religious Courts.

As PEKKA members experience a range of significant social and economic disadvantages, it was considered that identifying the barriers this group might face in accessing the Religious Courts would reflect barriers faced by other disadvantaged groups in Indonesia.

Similarly, if the Religious Courts could increase access for PEKKA members, then access to the Religious Courts would probably also increase for other disadvantaged groups.

## Study Coordinating Body

A Study Coordinating Body was formed which guided all aspects of the study including approving the final survey questionnaire; discussing the client survey selection and implementation methodology; and analysing the survey findings and reports. The Study Coordinating Body consisted of:

- Bapak Wahyu Widiana, Director-General for Religious Courts in the Supreme Court, Bapak Farid Ismail, Bapak Hidayatullah and other colleagues from the Supreme Court Directorate General for the Religious Courts (Badilag), including researchers;
- Dr Jajat Burhanudin, Director for the Centre for Islam and Society, UIN Jakarta;
- Ibu Siti Ruhaini Dzuhayatin, Director of the Women's Studies Centre, UIN Yogyakarta; and
- Cate Sumner, Lead Adviser-Judicial Reform, Indonesia Australia Legal Development Facility.

## Timeline

<b>November 2005</b>	Visit of Religious Courts to Family Court of Australia and development of the idea of an access and equity survey for the Religious Courts of Indonesia.
<b>September 2006</b>	Involvement of a consultant who had worked with the Family Court of Australia on its cultural diversity access and equity survey to work with the Religious Courts and IALDF on the design of an access and equity study relevant to the Indonesian family law context.
<b>October 2006 – January 2007</b>	Refinement and approval of Study Design and Consultation with Stakeholders.
<b>February – July 2007</b>	Design, Implementation and Analysis of the surveys undertaken by PPIM, UIN Jakarta and IALDF with the three respondent groups referred to above.
<b>August 2007</b>	Two-day Strategic planning discussion on survey findings involving the Supreme Court; the Religious Courts; the Family Court of Australia; survey implementers and partners; AusAID; and Bappenas.
<b>Final quarter of 2007 and 2008</b>	Implementation by the Religious Courts of a strategic response to the survey findings.



## Chapter 2

### Key Findings from the Access and Equity Study



## Income levels

- Religious Court clients have an average per capita monthly income of Rp 956,500. The average per capita monthly income of female court clients was 75% that of male court clients (Rp 834,912 per month compared to Rp 1,106,221 for men). Religious Court clients supported on average one other household member, giving a monthly per capita income within their household of Rp 442,780. Male Religious Court clients earn 32% more than female Religious Court clients and support approximately the same number of household members. 42% of Religious Court clients support only themselves.
- The PEKKA group members' average monthly income (which supports, on average, at least two other household members) is Rp 207,000, giving a monthly per capita income per household member of Rp 69,000.
- Therefore, the monthly per capita income of court clients is 6.4 times that of the PEKKA group surveyed.
- The monthly per capita income of Religious Courts clients is three times that of a person on the Indonesian poverty line, that is Rp 146,837 per person per month living in rural Indonesia, or Rp 187,942 per person per month living in urban Indonesia.<sup>8</sup> In March 2007, 37,170,000 poor people lived below this Indonesian poverty line or 16.58% of the Indonesian population.
- Figure 2.1 on page 14 shows the income distribution for the Religious Court clients surveyed.

*Religious Court clients' monthly per capita income is three times the Indonesian poverty line.*





Figure 2.1

Income in Rp.	Frequency In survey population	Percent %	Cumulative Percent %
<100,000	32	3.1%	3.7%
100,000-250,000	147	14.1%	20.9%
250,000-400,000	168	16.1%	40.6%
400,000-550,000	105	10.1%	52.9%
550,000-700,000	90	8.6%	63.4%
700,000-850,000	47	4.5%	68.9%
850,000-1.000.000	99	9.5%	80.5%
>1.000.000	167	16.0%	100.0%
Total	855	82.0%	
Answer not recorded	187	18.0%	
<b>Total</b>	<b>1042</b>	<b>100.0%</b>	

## Time

98% of the Religious Court clients interviewed for the access and equity survey were involved in divorce cases before the Religious Courts. On average, these clients' cases were finalised within three months and required the parties to travel to the Religious Courts on three occasions.

## Cost

The survey asked Religious Court clients what the total cost to manage the case in the Religious Courts was. The average total cost of a case for survey respondents was Rp 789,666 or over five times the level of the Indonesian poverty line per capita per month. This included court fees paid to the Religious Courts as well as payments to lawyers and third parties such as Pak Amil/ Pak Lebe (a person who informally undertakes work in relation to marriage issues but is not remunerated for this work by the KUA), and transportation and other costs.

## Distance from home to the Religious Courts

- The majority of Religious Court clients (43.3%) live less than 10 km from the nearest Religious Court, in contrast to PEKKA group members, who on average lived 20 km from the nearest Religious Court.
- For the PEKKA group the average cost to reach the nearest Religious Court would be Rp 17,853, or 26% of average per capita monthly household earnings for a return trip to the Religious Courts. By comparison, 99% of Religious Court clients pay less than Rp 15,000 for a return trip to the nearest Religious Court, that is, 3% of average monthly household earnings. Using the monthly per capita income of someone living on the Indonesian poverty line, the cost of a return trip of 20 km to the Religious Courts is equivalent to 12% of the total Indonesian poverty line amount per capita per month of Rp 146,837.

*Religious Court Clients live twice as close to the courts as the PEKKA group. The PEKKA group, if they were able to access the Religious Courts, would pay on average 26% of their average per capita monthly household earnings for a return trip to the Religious Courts, compared to 3% of average per capita monthly household earnings for Religious Court clients.*

## Educational background

- 39% of the PEKKA group have never attended school, while a further 43% have only an elementary school education and 2.5% consider themselves illiterate. Therefore, almost 85% of these women have either no education, or their education did not progress beyond elementary school.
- This compares with the Religious Court clients of whom only 32.3% had progressed no further than an elementary school education, with as many as 67.7% receiving a higher education.

*Religious Court clients are 4.5 times more likely to have an education level higher than elementary school than the PEKKA group.*



## Legal status of marriage

Over one third of the PEKKA group do not register their marriages with the KUA.

- For Religious Court clients, 97.1% confirmed that they had registered their marriage at the KUA.
- This compares with 63% of the PEKKA group that have registered their marriages at the KUA.

## Legal status of divorce

96% of divorces of the PEKKA group are not dealt with by the Religious Courts.

- Of the Religious Court clients, almost all (90.5%) have divorced once; 8.1% have divorced twice, and 1.4% have divorced three or more times.
- Of the 163 PEKKA members surveyed, 33% of the women stated that they had divorced once; 15% had divorced twice and 8% had divorced three or more times. However, of these 150 divorces experienced by 91 PEKKA women, only seven cases had been brought to the Religious Courts. Therefore, amongst the surveyed group of female heads of household living under the Indonesian poverty line, 96% of the PEKKA group are not bringing their divorce cases to the Religious Courts as required under Indonesian law. The reasons why these women are unable to access the Religious Courts are explained in more detail below but are principally barriers of a financial nature.

## Age of first marriage

Almost one third of the PEKKA group have under-age marriages.<sup>9</sup>

- For Religious Court clients, the average age of first marriage was 22 years.
- For the PEKKA group, the average age of first marriage across the three regions surveyed was 18.5 years.
- However, for the PEKKA group, as many of 30% of the women surveyed were married by the age of 15 years, compared with only 3.8% of Religious Court clients.

## Legal status of the children

Religious Courts clients are twice as likely to have identity documents for their children.

- With Religious Court clients, 80.8% of respondents confirmed their first child had a birth certificate.
- For the PEKKA group, only 38% of the respondents surveyed have birth certificates for their first child.



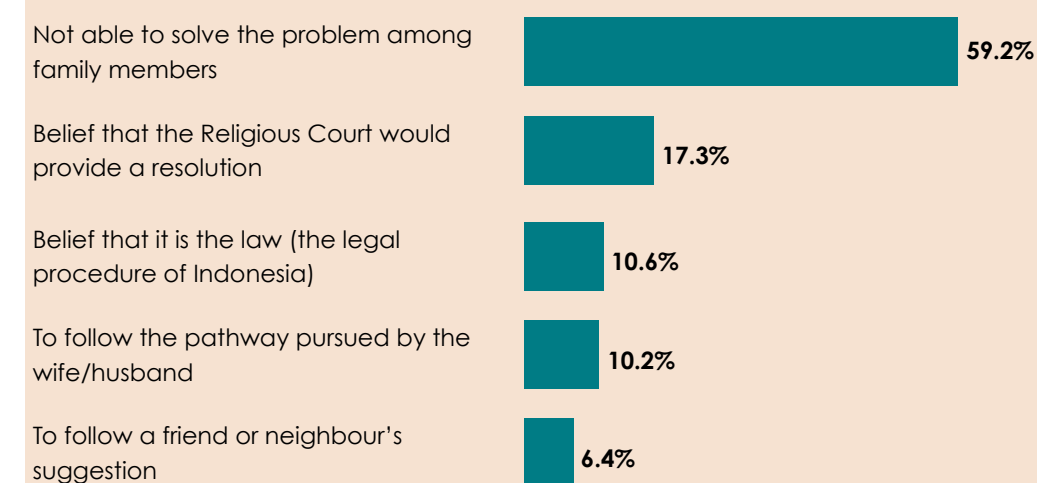
## Access and equity survey of Religious Court clients

When Religious Court clients were asked why they had taken their family law case to the Religious Courts:

- the largest group (59.2%) answered that it was because they had not been able to resolve the matter amongst family members;
- only 10.2% felt that it was because that was the law in Indonesia; and
- 17.3% answered that it was because they believed that the Religious Courts would be able to provide a resolution of their family law issue.

Therefore, due to a combination of ignorance of Indonesian law, a failure to see the benefits of bringing cases to the Religious Courts, and financial barriers, the current number of cases within the Religious Courts is less than the number of Indonesian Muslim divorces each year. This data will be important when the Religious Courts design future “socialisation” or information packages on the courts, as lawyers tend to assume that legal institutions such as courts will be used by citizens if that is the law of the country.

**Figure 2.2** Reasons why Religious Court clients brought their cases to the Religious Courts



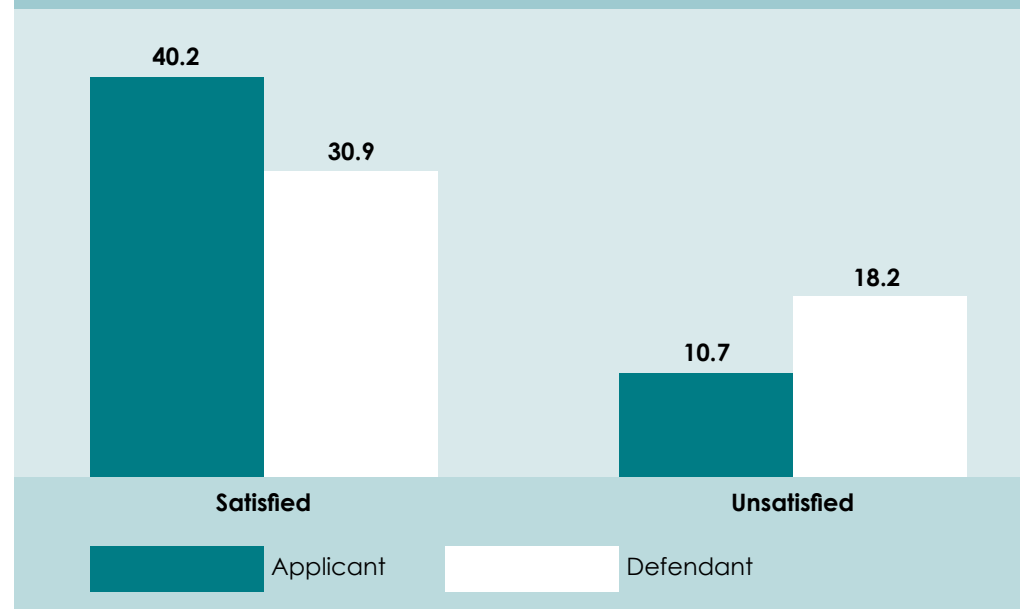
To the question of whether respondents would return to the Religious Courts if, in the future, they had a similar dispute, 71.1% said that they would return, and 28.9% said that they would not. The underlying assumption is that a client would come back to the Court if, considering all aspects of the court process, he or she were satisfied.

The chart below indicates that almost four-fifths of husbands and wives who initiated their divorce case in the Religious Courts (i.e. were applicants or plaintiffs in the case) would return to the Religious Courts if in the future they had a similar dispute. Perhaps unsurprisingly, the level of dissatisfaction with the Religious Courts is almost twice as high for parties responding to divorce cases brought by their former spouse.

*71% overall client satisfaction rate with the Religious Courts, with 79% of plaintiffs saying that they would return.*

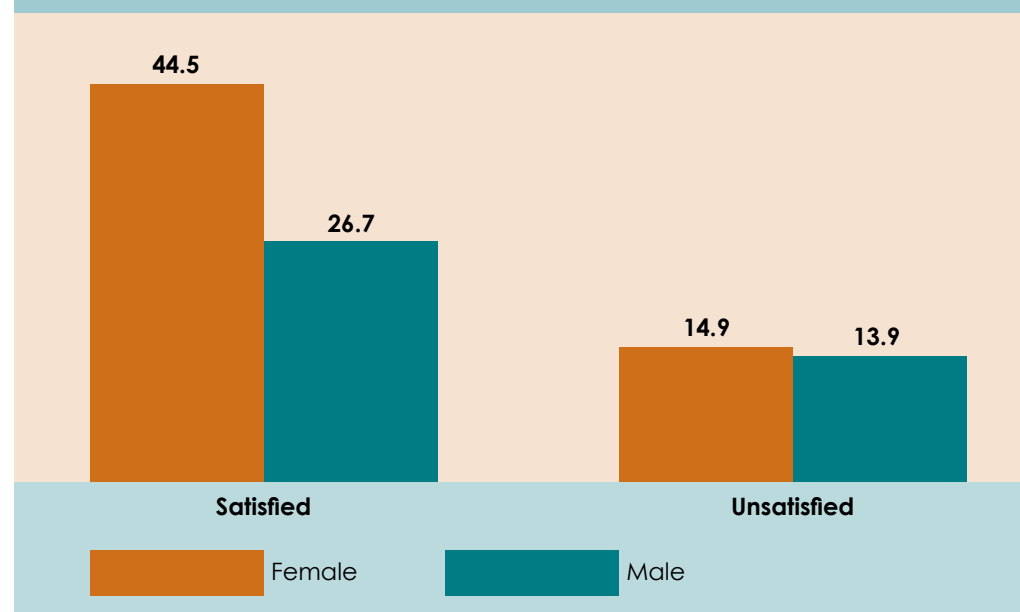


**Figure 2.3** Satisfaction of Religious Court clients depending upon whether they are applicants (plaintiffs) in the case or defendants

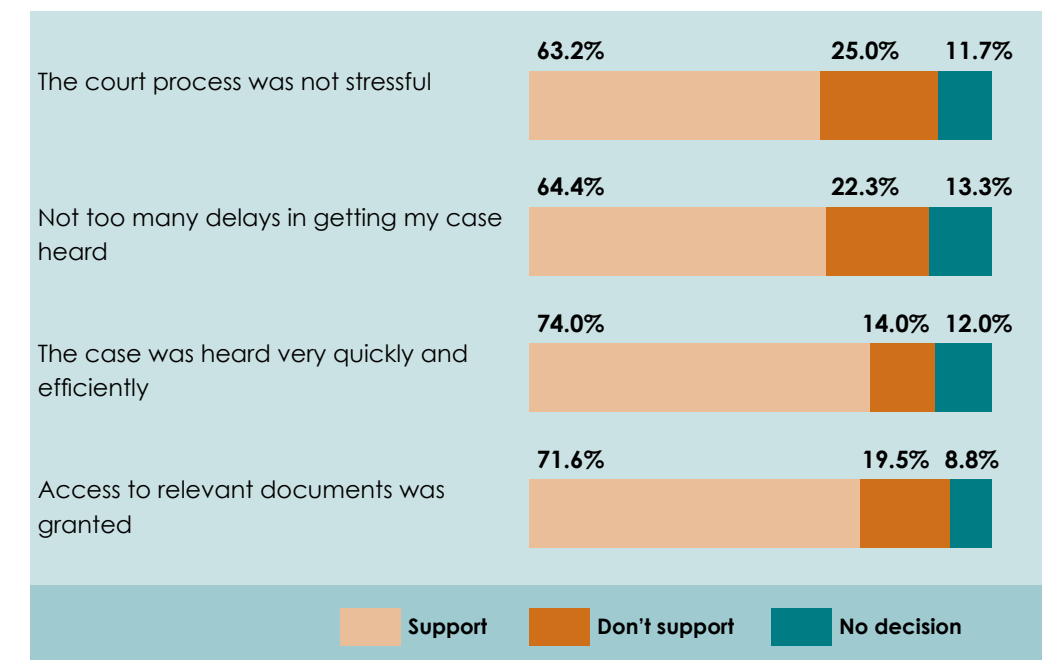
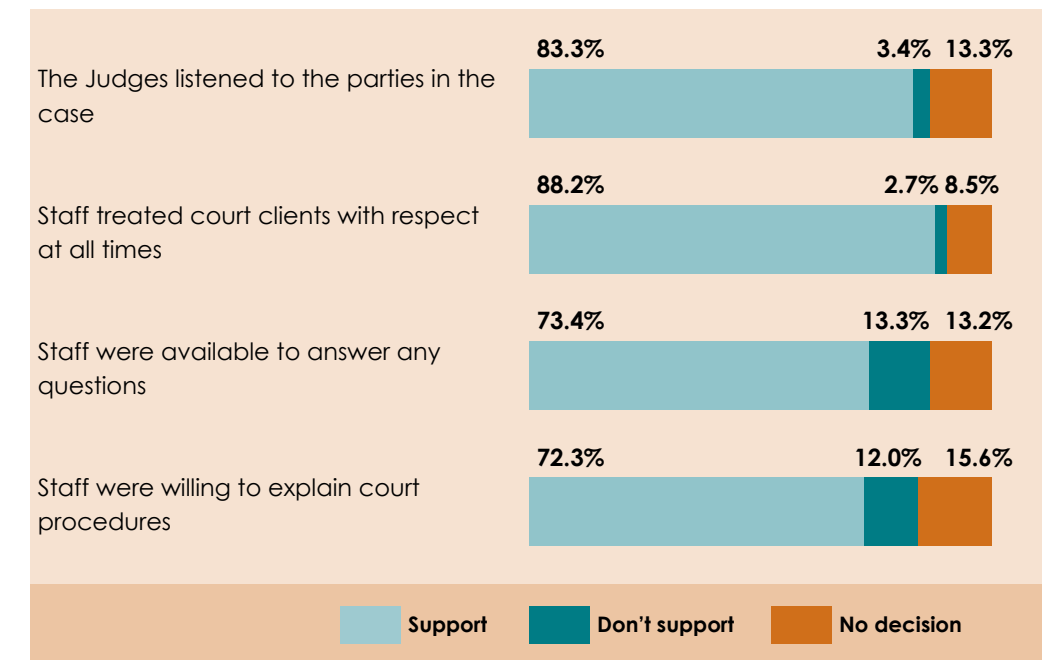


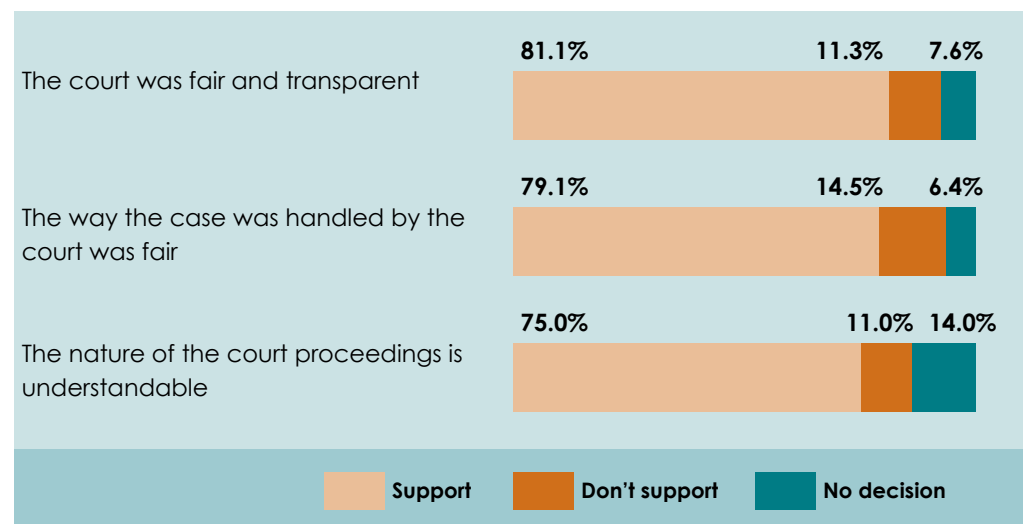
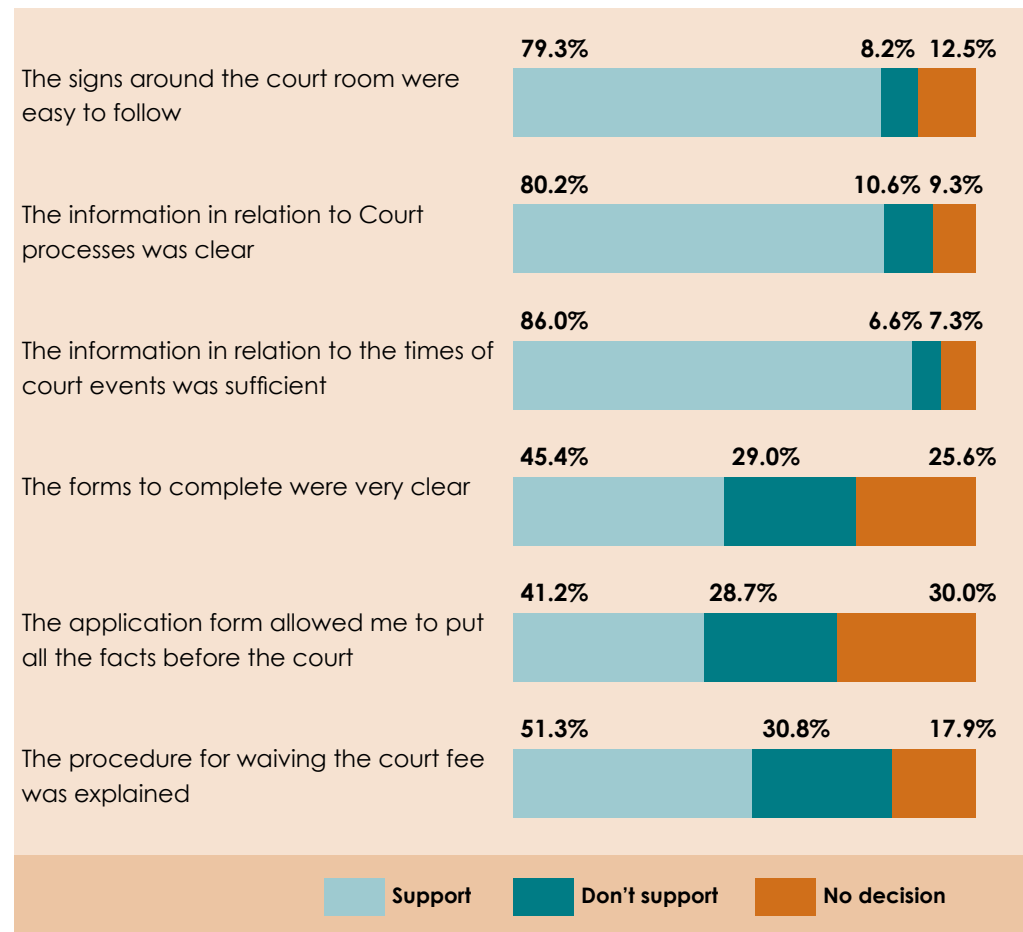
The chart below assesses whether men and women who are Religious Court clients have different perceptions of the level of service provided by the Religious Courts. It should be noted that women generally experience much higher levels of satisfaction with the service of the Religious Courts.

**Figure 2.4** Satisfaction of Religious Court clients depending upon whether they are men or women



The charts below present the findings from the access and equity survey in which Religious Court clients were asked for their views on procedural aspects of bringing their case before the Religious Courts.





The survey showed that clients have a very high satisfaction rate with the way they are treated by Religious Court judges and court staff, and the speed with which Religious Court proceedings are conducted. Between 79-86% of Religious Court clients consider that they have sufficient information on the times for court events and on court processes.

The survey data was disaggregated (i) by gender, and (ii) by both gender and poverty, to indicate answers from the 10% of survey respondents who stated that their monthly income was under the Indonesian poverty line of Rp 190,000 per month. This disaggregated data highlights the fact that clients were satisfied with the services of the Religious Courts regardless of whether they were rich or poor, male or female. It also shows, however, that women have a higher

opinion of the services of the Religious Courts than men, which perhaps reflects the fact that they initiate (are plaintiffs in) more Religious Court cases than men.

Three main areas were identified in the survey for improvement. These were:

- 29% of Religious Court clients surveyed thought that the court forms should be improved to increase the clarity and simplicity of court forms, while enabling the client to feel that they have placed all relevant facts before the court;
- 31% of Religious Court clients surveyed thought that there should be better processes/ documents for explaining the procedure for waiving court fees for the poor (prodeo process); and
- 23% of Religious Court clients who were plaintiffs said that they did not receive a receipt for payments made at the Religious Courts.<sup>10</sup>

## Barriers to accessing the Religious Courts cited by the PEKKA group

- 70.7% of the PEKKA group said that the Religious Court fees would mean that they would not be able to access the court.
- Only 25% of the PEKKA group said that they would not use the Religious Court because of family/community pressure.
- Less than 30% of the PEKKA group said that they would not use the Religious Court because of previous experiences they had heard about. This indicates that the overwhelming majority of the PEKKA group have heard good accounts in their communities of cases brought before the Religious Courts. This figure reflects the general satisfaction rate of 70% of Religious Court clients.

## The PEKKA group's level of awareness of the Religious Courts

- The Khader Hukum (PEKKA Members trained to assist other members with the legal issues) are the single greatest source of information to PEKKA members on the Religious Courts. 38.4% of PEKKA members say they know about the Religious Courts through the work of the Khader Hukum.

## The PEKKA group's views on ways to improve access to the Religious Courts

- 98.1% of the PEKKA group said that they would be more motivated to use the Court if court fees were waived.
- 97.2% of the PEKKA group said that they would be more motivated to use the Court if additional information were provided. (87.4% said that they would prefer information to be provided orally or in an information video or tape, in contrast to 42% who said they would prefer information to be provided in written form).
- 95.9% of the PEKKA group said that they would be more motivated to use the Court if "the judges visit us" through holding a circuit court in a nearby town.
- 91.2% of the PEKKA group said that they would be more motivated to use the Court if para-legal support was provided.



# Chapter 3

## Key Research Findings



### Key Research findings: detail

- ▶ **There is a high satisfaction rate amongst Religious Court clients, with over 80% of applicants (and 70% overall) saying they would return to the court in future if they had similar legal issues.** This figure is supported by the PEKKA group survey on community perceptions of the work of the Religious Courts. The disaggregated presentation of data highlights the fact that clients were satisfied with the services of the Religious Courts, regardless of whether they were rich or poor, male or female. The disaggregated data also shows that women have a higher opinion of the services of the Religious Courts than men, which perhaps reflects the fact that they initiate (are applicants or plaintiffs in) more cases before the Religious Courts than men.
- ▶ **Both the PEKKA group as well as judges and court staff of the Religious Courts agree that divorce through the Religious Courts provides legal certainty instead of an uncertain marital status.** A formal divorce through the Religious Courts also clarifies legal responsibilities for the care and financial support of children from the marriage and of former spouses.
- ▶ **However, the poorest sections of Indonesian society face significant barriers in bringing their family law cases to the Religious Courts. A central principle of justice is that it be universally accessible.** 17% of Indonesian people live under the Indonesian poverty line, that is Rp 146,837 per person per month living in rural Indonesia, or Rp 187,942 per person per month living in urban Indonesia. The average total cost of a case for survey respondents was Rp 789,666 or over five times the level of the Indonesian poverty line per capita per month. It is therefore clear that a proportion of the poor in Indonesia are not able to bring their family law cases to the Religious Courts according to the requirements of Indonesian law, a conclusion that is supported by the fact that 96% of the PEKKA group surveyed did not bring their divorce cases to the Religious Courts.
- ▶ **For the poor, the main barriers to accessing the Religious Courts are financial and relate to (i) court fees; and (ii) transportation costs to travel to the court.** 98.1% of the PEKKA group said that they would be more motivated to use the Religious Courts if court fees were waived, and 95.9% of the PEKKA group said that they would be more motivated to use the Religious Courts if “the judges visit us” through holding a circuit court in a nearby town.
- ▶ **Secondary barriers for the poor in accessing the Religious Courts relate to the ability to provide clear information to court clients that are illiterate.**
- ▶ **A cycle of non-legal marriage and divorce exists for many PEKKA female heads of household living below the Indonesian poverty line.** The failure to obtain legal documentation in relation to marriage and divorce is associated with 62% of children from these marriages not obtaining birth certificates. The lack of such an identity document affects both the children’s inheritance rights and access to government services such as state education. It also means that children of the poor in Indonesia lack the basic human right of an identity document as established under the Convention on the Rights of the Child.



- **Only 27% of Religious Court survey respondents chose to go to the Religious Courts as a first option because it was the law in Indonesia, or because they thought it would provide a resolution for their problem.** 75% of Religious Court clients were there because other non-court resolution mechanisms (family conciliation) had failed, or because their partner had chosen to take the case to the Religious Courts. When delivering information to the Indonesian public it will therefore be important for the Courts to provide guidance on what cases must be referred to the Religious Courts under Indonesian law and what benefits there are for individuals and families in having divorce and guardianship cases resolved through the courts.
- **Legal Empowerment Programmes, such as the Multi-Stakeholder Forum (MSF)<sup>11</sup>, educate women about key legal issues of concern to them, as well as administrative and formal justice processes and include them in local legal sector meetings.** These are invaluable in the way they empower women to access resources, services and opportunities otherwise unknown or inaccessible to them, and thus help them overcome barriers to Religious Courts access. Many PEKKA women, including the PEKKA paralegal staff, mentioned the fact that the MSF was of enormous assistance in obtaining information on how to proceed with different legal cases. As one PEKKA member who had successfully finalised a divorce case through the Religious Courts in 2007 said: “I had wanted a divorce several years ago but had not thought it possible until meeting a judge from the Religious Courts in the MSF, as I had no money.”





# Chapter 4

## Next Steps



A planning meeting was held in Jakarta in late August 2007 to begin a process for developing a strategic response to the study findings. Participants were drawn from the Supreme Court, the Religious Courts, the Family Court of Australia, Bappenas, PEKKA NGO, PPIM/ UIN Jakarta and the Women's Studies Centre (PSW) UIN Jogjakarta.

It was agreed that initial strategic responses should enable the Religious Courts to become (i) more accessible for groups who do not currently bring their family law cases to this court but come within its jurisdiction; and (ii) provide more equitable treatment to those who do bring their cases to the court. It was also agreed that this could be achieved through actions focused on the following five areas:

### 1 Prodeo Budgets

Increase the level of the Prodeo Budget for Religious Courts so that the percentage of prodeo filings (cases in which court fees are waived) accepted in the Religious Courts as a percentage of total case volume, increases in 5-7% increments from 2008-2012 up to 35% of total case volume in 2012. Develop data management systems to capture information on the number of applications for prodeo assistance made to Religious Courts each month and the number accepted. Approximately 17% of Indonesian society lives under the Indonesian poverty line. The access and equity study found that amongst the Religious Court clients surveyed average per capita income was three times that of the Indonesian poverty line income. Therefore, for the Religious Courts to become a court that is universally accessible to both rich and poor Muslims with family law matters, it will probably need to waive court fees (provide the prodeo process) for 35-50% of all plaintiffs in the Religious Courts.<sup>12</sup>

### 2 Prodeo Procedure

- ▶ Provide greater clarity for both judges and court users on the prodeo process;
- ▶ ensure more uniformity in the application of the Prodeo Procedure across courts in Indonesia; and
- ▶ take steps to ensure that the current two-step prodeo process does not create an additional burden for the poor in establishing poverty prior to the hearing of their case.

### 3 Circuit Courts

- ▶ Plan more Circuit Courts in large and/or poor provinces where the demand and need is greatest; and
- ▶ obtain an adequate annual budget to enable circuit Religious Courts to be held in areas of high demand.

## 4 Better information on court processes

Provide accurate and clear information to both court users and the broader community on the Religious Courts in non-legal language using a range of media including:

- ▶ written information;
- ▶ internet-based information;
- ▶ audio-visual information; and
- ▶ community consultations/ courses.

## 5 Client Service Improvements

Look at those areas identified in the survey where clients indicated there was room for improvement in the level of service provided by the Religious Courts.



The planning matrix below shows what steps have already been taken. Information on the strategic response will be periodically updated on the Religious Court website: [www.badilag.net](http://www.badilag.net)

## Providing Justice to the Justice Seeker

### Strategic Response to the 2007 Religious Courts' Access and Equity Study

<b>Outcome Objective</b> Disadvantaged groups better able to enforce their legal rights by increased access to the Religious Courts	
<b>Indicator</b>	<b>Strategic Response</b>
Increased percentage of prodeo filings (cases in which court fees are waived) accepted in the Religious Courts as a percentage of total case volume, in 5-7% increments from 2008-2012 up to 35% of total case volume in 2012.	An increase in the 2008 Supreme Court budget to enable all 343 Religious Courts to provide a court budget for prodeo cases (budgeted at 5-7% of the average number of cases heard in each court from 2004-2006).
The number of clients' cases heard during a circuit court increases in 2008.	An increase in the 2008 Supreme Court budget to provide a court budget for the holding of circuit courts to reduce the transportation costs for clients of the Religious Courts, especially the poor.
Information documents/guidelines developed during 2008 to provide clarity and ensure greater uniformity in the application of the prodeo procedure and other client service improvements identified in the survey.	Working group to be established by early 2008 to consider prodeo procedure, as well as areas where clients indicated in the survey that there was room for improvement in the level of service provided by the Religious Courts.
Socialisation/ Information on a range of court services provided to judges, court staff and potential court clients during 2008.	Providing accurate and clear information to both court users and the broader community on the Religious Courts in non-legal language using various media, including: <ul style="list-style-type: none"> <li>▶ written information;</li> <li>▶ internet-based information;</li> <li>▶ audio-visual information;</li> <li>▶ community consultations/ fora.</li> </ul>



## Endnotes

- 1 Program for Women-Headed Households in Indonesia (Program Pemberdayaan Kepala Keluarga Perempuan PEKKA)
- 2 Art.49 Law 7 of 1989.
- 3 In Nanggroe Aceh Darussalam Province, the Religious Courts are named Mahkamah Syar'iyah (Syar'iyah Courts) and are invested with jurisdiction pursuant to Law No 18 of 2001, Qanun No. 10 of 2002 and Presidential Decision 11/2003. The jurisdiction of the Mahkamah Syar'iyah in NAD province includes a number of criminal matters.
- 4 Religious Courts acquired this jurisdiction pursuant to Law No.7 of 1989 and Law No.3 of 2006 on the Religious Judiciary.
- 5 Profil Peradilan Agama, Direktorat Jenderal Badan Peradilan Agama Tahun 2006 p13.
- 6 P3HP Permohonan Pertolongan Pembagian Harta Peninggalan – Request for Division of Deceased Estate.
- 7 2005 PEKKA Annual Report p7. More information on PEKKA can be obtained from its English and Bahasa Indonesia websites at [www.pekka.or.id](http://www.pekka.or.id)
- 8 Badan Pusat Statistik (2007) Berita Resmi Statistik: TINGKAT KEMISKINAN DI INDONESIA TAHUN 2007, Vol. No. 38/07/Th. X, 2 Juli 2007
- 9 Under the Indonesian Marriage Law No.1 for 1974, article 7, a marriage is permitted if the man is at least 19 years of age and a woman at least 16 years of age.
- 10 This could be attributed to the Religious Courts issuing a receipt but providing it to a client's lawyer or Pak Amil/ Pak Lebe who accompany Religious Court clients in approximately 11.6% of cases or to those cases where Religious Court clients say they made an additional payment to the Religious Courts apart from the formal court fees.
- 11 A joint World Bank for the Poor (Women's Legal Empowerment Programme) and PEKKA initiative.
- 12 From July 2005 – June 2007, the Family Court of Australia waived case fees in approximately 44% of cases heard by the Court for parties who hold cards issued by the Australian Department of Social Security or who otherwise face financial hardship.

## Acknowledgements and Study Partners

This access and equity study was supported by the Indonesia Australia Legal Development Facility, a joint Indonesian and Australian Government initiative.

The research study has been a collaborative effort.

The original idea for the survey was developed during a visit in November 2005 to the Family Court of Australia by Bapak Wahyu Widiana, Director General for the Religious Courts in the MA, his colleagues from Badilag as well as judges and registrars from several Indonesian Religious Courts. This access and equity study could not have been undertaken without the leadership of Bapak Wahyu Widiana and his colleagues in Badilag and the support of all 38 Religious Courts that were involved in either the client survey or focus group discussions.

The survey of 1040 Religious Court clients was undertaken by the Centre for the Study of Islam and Society (PPIM) at UIN Jakarta. Dr Jajat Burhanudin, Director of the Centre, has been the guiding hand behind ensuring that the survey data was collected by over 105 researchers across 35 locations in Indonesia; and then entered and analysed in Jakarta. Pak Jajat was a member of the Study Coordinating Body, as was Ibu Siti Ruhaini Dzuhayatin, Director of the Women's Studies Centre, UIN Yogyakarta. Their contribution in guiding this study has been considerable.

The Family Court of Australia has supported the access and equity study through the interaction and engagement of judges, court administrators and staff, which takes place several times a year under the framework of an MOU Annex between the Supreme Court of Indonesia, the Federal Court of Australia and the Family Court of Australia. This engagement has allowed key access and equity study issues to be discussed by judicial colleagues on a Court-to-Court basis, which is invaluable when looking at critical issues of providing universal access to family courts in the Asia Pacific region. Maria Dimopoulos, a consultant to the Family Court of Australia in their own cultural diversity access and equity study, contributed to the design of the Religious Courts surveys and study methodology.

In this study, the issue of access to the Religious Courts, was also considered from the viewpoint of Indonesian female heads of household living below the Indonesian poverty line and the study is indebted to the readiness of the PEKKA NGO to participate. Ibu Nani Zulminarni, PEKKA's National Coordinator, Ibu Fitria Villa Sahara, PEKKA's Legal Empowerment Programme Coordinator, the field workers and members of PEKKA in Brebes, Cianjur and Lombok, have all contributed considerable time and thought toward the ultimate goal of this study: obtaining greater access to the Religious Courts and more equitable arrangements for children and spouses in cases of divorce. Ibu Dewi Novirianti, the then Coordinator of the Women's Legal Empowerment Programme, within the World Bank's Justice for the Poor Programme in Indonesia, provided critical insights and comments at the early stages of the design of the survey instruments.

This study could not have been undertaken without the considerable efforts of the dedicated IALDF team in Jakarta. The IALDF Team Leader, Stewart Fenwick, and Project Officer, Ibu Terria Lamsihar, have been instrumental to the completion of this study. Professor Tim Lindsey, IALDF Senior Technical Adviser, has provided generous editorial comments on previous drafts of this document, and, together with Julia Suryakusuma, assisted with the piloting of the first PEKKA survey and focus group discussions in Cianjur. Technical support has also been provided by Santi Nuri Dharmawan in compiling the PEKKA survey data and from Aprilda Fiona and Apsari Dewi with interpretation.

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December 2007



**Australia Indonesia Partnership**

Kemitraan Australia Indonesia



**PPIM**  
Pusat Pengkajian Islam dan Masyarakat  
Center for the Study of Islam and Society  
UIN Jakarta



**FAMILY COURT  
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A Report on the Indonesian Religious Courts  
Access and Equity Study – 2007

### SUMMARY OF RESEARCH FINDINGS



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