

Providing Justice to the Justice Seeker:

A Report on the Access and Equity Study in the Indonesian General and Religious Courts 2007–2009



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- ▶ IALDF



Foreword

Chief Justice of the Supreme Court of the Republic of Indonesia

Part of the mission of the Supreme Court is 'providing just legal services to justice seekers'. The Supreme Court and all the courts under its authority are required to provide the best possible service to justice seekers, both those who can afford it and those who cannot. This access and equity survey of the General Courts and Religious Courts, facilitated by the Indonesia Australia Legal Development Facility (IALDF) and funded by AusAID, is of great benefit and relevance to this mission.

The results of the survey show that there are still obstacles and weaknesses of access and equity in the provision of services by our District (General) Courts, particularly in divorce petition cases and applications for birth certificate decisions. This, in turn, suggests ups and downs in the credibility of District (General) Courts as manifested in how independent judges are and how they handle General Courts cases. To overcome these obstacles and weaknesses and improve judicial independence and quality it is hoped that the Supreme Court, and in particular the Directorate General of General Courts, can now work to improve court administration and provide solutions to technical problems as well as support the development of a sense of popular ownership of this judicial institution.

It is hoped that the findings of this study will be a valuable contribution to determining policy direction and designing programs to improve the quality of public service, public perceptions and the performance of our courts, particularly for members of the community living below the poverty line.

We would like to express our thanks to IALDF, AusAID, the Family Court of Australia, PPIM UIN Jakarta, PEKKA, SMERU Research Institute, the survey respondents and all other parties involved who helped to carry out this survey. We hope that this survey will encourage other surveys to be carried out, the outcomes of which can also support the improvement of court services in the future.



Dr. Harifin A Tumpa, SH. MH.

Chief Justice of the Supreme Court of the Republic of Indonesia

Jakarta, 14 October 2009

Foreword

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

This General Courts access and equity survey, facilitated by the Indonesia Australia Legal Development Facility (IALDF), is directly relevant to the General Courts strategic planning for the reform of client service delivery.

This AusAID-funded national level survey has resulted in findings that paint a picture of access and equity for justice seekers in the General Courts. The information in the survey findings demonstrates from the perspective of General Courts users both client service needs and satisfaction, and an expectation of affordable services, as well as public trust and confidence with regard to General Courts service delivery.

In addition, this survey also provides judges and court staff with sketches of court performance. It is hoped that these can be valuable contributions to the design of programs and policy will improve the quality of public service, public perceptions and court performance in general.

Finally, we would like to express our high appreciation of the efforts of IALDF, the Family Court of Australia, AusAID, PPIM UIN Jakarta, and all other parties who have helped in the carrying out this survey, allowing it to now be presented in this publication. It is hoped that in the future more activities with similar missions will be conducted and developed.



Cicut Sutiarto
Director General

Jakarta, 14 October 2009

Foreword

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

Bismillahirrahmanirrahim.

The Religious Courts as one of the institutions of judicial power in Indonesia experiences ebbs and flows in its development from time to time. In order to deliver excellent service to the public, particularly justice seekers, the Religious Courts therefore need to make continuous efforts to change and improve.

Significant change took place after Law No 7 of 1989 on the Religious Courts came into force. This was seen in, among other things, the granting of full independence to the Religious Courts to execute their own judgments without needing endorsement from District Courts, as had previously been the case.

The next, and no less important, development was the implementation of the ‘one roof’ judicial system under the Supreme Court, following the passing of Law No 35 of 1999 on the Amendment of Law No 14 of 1970 on Basic Provisions on Judicial Power, subsequently replaced by Law No 4 of 2004 on Judicial Powers. This system was implemented from 2004, when all court jurisdictions – from the General Courts to the Religious Courts, the military courts and the state administrative courts – came under the authority of the Supreme Court on a range of matters, including on technical judicial matters, organisation, administration and finance.

The Supreme Court is now preparing another blue print for the next 25 years of development (2010–2034). The blueprint is divided into five five-year ‘renstra’ or strategic plans as guidelines for the development of the Supreme Court and the courts below it. This blueprint was inspired by the grand ‘dream’ of the Supreme Court for the ‘Realisation of Judicial Institutions of Excellence in Indonesia’, a dream that then became its vision.

The Directorate General for the Religious Courts, as part of the Supreme Court, has a clear duty to create Religious Courts of excellence. Courts of excellence can be characterised as independent, modern, dignified, just and trusted by the public. This is in line with the terminology of ‘Court Excellence’ developed in the International Framework for Court Excellence.

One of the most important things to be done by the Supreme Court and the courts under it is to deliver the best possible services to the public, particularly justice seekers. To achieve this goal, effort, hard work and transparency are needed.

For these reasons, this survey, conducted under the auspices of the Memorandum of Understanding between the Supreme Court of the Republic of Indonesia and the Federal Court and the Family Court of Australia and facilitated by IALDF, has become very relevant and necessary for the improvement of services delivered by the courts. With this survey, the Religious Courts have become aware of the quality of services they have delivered and feedback from court users. The courts have become aware of problems faced by court users and their expectations, with regard to court fees, hearing process, time needed, place of hearing and other issues.

Whatever the results of this survey, the Religious Courts must accept them openly-heartedly in order to improve service delivery. It takes a wise person to accept the truth about him or herself, then fix the negative aspects and maintain and improve the positive ones.

Finally, on behalf of Directorate General for Religious Courts of the Supreme Court and all the Religious Courts of Indonesia, I wish to express my high appreciation and sincere thanks to all parties who conducted or were involved in this survey, including AusAID, the Indonesia Australia Legal Development Facility (IALDF), the Family Court of Australia (FCoA), Pusat Pengkajian Islam dan Masyarakat (PPIM) UIN Jakarta, SMERU, Pusat Studi Wanita (PSW) UIN Yogyakarta, Kelompok Perempuan Kepala Keluarga (PEKKA), and many others whose names I cannot mention individually here.

I am sure the findings of this survey will be of great benefit, and may Almighty God give us the strength to implement them in order that we can work towards better Religious Courts.



Wahyu Widiana
Director General

Jakarta, 14 October 2009

Key research findings

- 1** There is a high satisfaction rate amongst court clients of both the General and Religious Courts. 70% of clients said 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 courts.

- 2** Divorce cases now form the single largest group of cases in the Indonesian judicial system comprising 50% of all cases followed by criminal cases at 33%.

In 2008 divorce cases comprised 37% of all civil cases decided by the General Courts and 97% of all cases in the Religious Courts. The Religious Courts decide 98% and the General Courts 2% of all divorce cases in Indonesia. The result is that of all the Indonesian courts, the Religious Courts have the most significant direct engagement with Indonesian families.

- 3** Women bring twice as many divorce cases to the courts as men, and in nine out of ten cases they are successful.

In both the General and Religious Courts women initiate twice as many divorce cases as men, regardless of income level. In the Religious Courts nine out of ten requests for divorce are accepted and in the General Courts eight out of ten.

- 4** A central principle of justice is that it be universally accessible. Unfortunately the poorest sections of Indonesian society face significant barriers in bringing family law cases to the courts. Nine out of ten female heads of households living under the Indonesian poverty line surveyed were unable to access the Courts for their divorce cases. The main barriers are financial and relate to court fees and transportation costs to travel to the court.

14% of Indonesian people live under the Indonesian poverty line. The average total cost of a Religious Court case for survey respondents was Rp 789,666, almost four times the level of the Indonesian poverty line per capita per month. The average total cost of a General Court divorce case in 2008 was Rp 2,050,000 where the party did not use a lawyer (approximately ten times the level of the Indonesian poverty line) and Rp 10,350,000 where the party did use a lawyer (approximately 52 times the level of the Indonesian poverty line). This shows that a proportion of the poor in Indonesia are not able to bring their family law cases to the courts according to the requirements of Indonesian law.

Key research findings (continued)

- 5** 88% of PEKKA members (female heads of households) surveyed, living under or close to the Indonesian poverty line, would be more motivated to obtain a legal divorce if the court fees were waived.

Waiver of court fees (the Prodeo process) will greatly assist people living under the Indonesian poverty line as well as poor clients of the Indonesian courts who typically either go into debt or use several months of household income to bring a divorce case to the courts.

- 6** High transportation costs are a barrier to accessing the court especially for the rural poor who live a greater distance from the courts.

The cost of transportation to a court varies significantly depending upon whether a party lives in an urban environment close to the court or in a rural environment. 50% of court clients surveyed in 2007 and 2009 live within a 10 km radius of the General or Religious Court that heard their divorce case. The 600 PEKKA women interviewed lived in both urban and rural areas. Urban PEKKA members lived on average 13km from the court, at an average cost of Rp25,000 per return trip to the court. Rural PEKKA members lived on average 80km from the court, at an average cost of Rp92,000 per return trip to the court (close to half the monthly per capita income of a PEKKA member).

89% of PEKKA women would be more motivated to obtain a legal divorce if a circuit court was held in a nearby town.

- 7** Overestimation of the down-payment made to courts for divorce cases relative to the actual cost of the case is a disincentive to justice seekers bringing their cases to court, particularly the poor. Reimbursement of the down-payment made to courts is important for all clients, but particularly for the poor.

On average, clients in the six Religious Courts surveyed paid 24% more as a down-payment than the final cost of the case set out in the judgment. On average clients in the six General Courts surveyed paid 79% more as a down-payment than the final cost of a case as set out in the judgment. Greater transparency of court fees and the down-payments made to courts for divorce cases would assist in building public trust and confidence in the courts.

8 Clients want to receive a copy of the written court judgment on the day it is read out in court.

The final step in a divorce case is obtaining a copy of the court judgment and, in the Religious Courts, a divorce certificate evidencing the divorce. How quickly courts finalise the court judgment and issue the divorce certificate is of significant interest to court clients.

The practice of both the General and Religious Courts is to put the date of the final hearing on the written court judgment even though the judgment may not be available for several weeks, or indeed months, after the date of the final hearing. The majority of Indonesian General and Religious Courts therefore cannot currently accurately report on how long a divorce case takes from the date a party registers a case to the date the party receives a written judgment and divorce certificate. The focus group discussions show that many clients perceived that court delays in issuing either written court judgments or divorce certificates are strategies for soliciting bribes.

9 On average the Religious Courts surveyed had half the number of judges and court staff as General Courts (n=42 v n=80) but they heard on average 30% more cases (n=1489 v n=1152).

In order to meet the needs of all clients, including the poor, the Supreme Court of Indonesia should consider the allocation of judges and court staff in proportion to courts' actual caseload. This will require consideration of the relative durations of different types of cases and the number of court events requiring judicial and court staff resources.

10 A cycle of non-legal marriage and divorce exists for many PEKKA female heads of households living below the Indonesian poverty line. 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.

The lack of such an identity document affects both the children's inheritance rights and access to government services such as state education and health services. It also means that children of the poor in Indonesia are unable to exercise their basic human right to obtain an identity document as established under the Convention on the Rights of the Child.

Key research findings (continued)

- 11** Judges and court staff of the Indonesian courts and PEKKA female heads of households living under the Indonesian poverty line agree that divorce through the courts provides legal certainty instead of an uncertain marital status.

Without a legal divorce it is not possible to legally re-marry. Children from subsequent marriages will therefore not have their father's name on the birth certificate. A formal divorce through the Indonesian courts clarifies legal responsibilities for the care and financial support of both former spouses and children of the marriage.

- 12** Only 11% of Religious Court and 8% of General Court survey respondents chose to use the courts because it is a requirement of Indonesian law. 89% of Religious and 91% of General Court clients registered their cases in court because other non-court resolution mechanisms (family conciliation) had failed or because their partner had chosen to take the case to the courts.

Nine out of ten court survey respondents were ignorant of the Indonesian legal requirement to bring divorce cases to court.

It is important for the courts to provide guidance on which cases must be referred to the General and Religious Courts under Indonesian law as well as the benefits for individuals and families in having a legal divorce, child guardianship and property settlement cases resolved through the courts.

Key research findings: What court clients want

- 1 A clear, simple explanation of the court process in non-technical language.
 - ▶ To meet the needs of court clients with different educational levels information should be available in different formats: i.e. online, posters in court, brochures, touch-screen video or audio material.
- 2 Transparent presentation of (i) the court fee cost, (ii) the procedure for waiving the court fee where the party has difficulty meeting this cost due to poverty and (iii) the court fee down-payment/reimbursement of down-payment balance process.
- 3 The least number of visits to the court (court events) in order for the matter to be heard fairly.
- 4 A commitment that the court client's time will not be wasted on days when a court event is scheduled.
 - ▶ Clients wish to see a clear system for the scheduling of cases on the day e.g. an approximate time of hearing nominated on the summons document or provided to clients when they arrive on the morning of a hearing so that they are not required to wait at the court all day.
 - ▶ A deliberate strategy of non-appearance at court by the respondent should not prevent the case being heard as this raises the transportation and other costs for the applicant party.
- 5 For the case to be heard as quickly as possible from the date that a party registers the case until the date when the party receives a copy of the judgment and the divorce certificate.
- 6 To receive a copy of the judgment on the day that it is read out in court.



Chapter 1

Introduction to Access and Equity Research Methodology



Aims of research

The first access and equity study in family law and birth certificate cases was undertaken in Indonesia during 2007-2009. It had the following aims:

- (i) Provide the Supreme Court of Indonesia (Mahkamah Agung Republik Indonesia - MA) with empirical data on the quality of service provided to court users by the General and Religious Courts in the area of family law.
- (ii) Ascertain whether there are sections of the community, particularly those living under the Indonesian poverty line, who are unable or unwilling to access the services of the Religious and General Courts for their divorce and birth certificate cases and, if so, to identify the reasons why.
- (iii) Consider strategic policy responses (both financial and organisational) that the Supreme Court should consider in order to provide universal access to the Religious and General Courts for people living below the poverty line or in remote communities. The study considered these issues with a particular focus on divorce cases (in both Religious and General Courts) and the provision of birth certificate statements (*Penetapan Akta Kelahiran*) by the General Courts.

The 2007–2009 Access and Equity Study was conducted as a collaborative research project led by the Supreme Court of Indonesia and the AusAID-funded Indonesia Australia Legal Development Facility (IALDF) over 2007–2009. The research project involved the:

- ▶ Supreme Court of Indonesia (including General and Religious Courts and the Directorates-General that administratively support these two jurisdictions: Badilag and Badilum)
- ▶ IALDF staff
- ▶ Family Court of Australia
- ▶ PEKKA NGO for Indonesian female heads of households
- ▶ The PPIM (Centre for the study of Islam and Society) at the State Islamic University (UIN) Syarif Hidayatullah Jakarta
- ▶ SMERU Research Institute
- ▶ private and legal aid lawyers working in family law, and
- ▶ a number of individual researchers and gender specialists who contributed to the design and implementation of the Access and Equity Study.

This research has drawn upon information and data obtained in the 2007 access and equity study funded by IALDF. The report, *Providing Justice to the Justice Seeker: A Report on the Indonesian Religious Courts Access and Equity Study 2007*¹ provided information to the Supreme Court of Indonesia which, in response, increased the Religious Courts' budget by Rp23 billion (US\$ 2.3M) to waive court fees for the poor (Prodeo cases) and to hold more circuit courts. A further Rp12 billion (US\$1.2M) was granted in the 2009 APBN State Budget for the Religious Courts, despite an overall MA budget reduction due to the global financial crisis. This represents an average annual 18-fold increase over the last two years in the Religious Courts budget for Prodeo cases and circuit courts.²

¹ Sumner, C., (2008), *Providing Justice to the Justice Seeker: A Report on the Indonesian Religious Courts Access and Equity Study 2007*. Mahkamah Agung and AusAID.

² The Religious Court's budget to waive court fees and hold circuit courts was less than Rp1bn in 2007 and increased to Rp 24bn in 2008.

Data is currently being collected from 343 Religious Courts to measure how many poor people have benefited from better access to the Religious Courts through court fee waiver processes and more circuit courts as a result of this increase in funding. Based on projections from a 50% sample of Religious Courts it appears that there has been a 10-fold increase in poor people that will have had their court fees waived by the Religious Courts by the end of 2009. Similarly, it appears that there has been a 4-fold increase in the number of Religious Court clients that will have had their cases heard at a circuit court by the end of 2009.³

At the request of the Supreme Court, an expanded access and equity study was undertaken in 2009 that included the General Courts as well as the Religious Courts. This new study continued the strong collaboration with the Indonesian NGO PEKKA that was a feature of the first report.

In summary, this access and equity study has, over the last three years, surveyed approximately 2500 Indonesians to obtain their views on their family law cases and access to Indonesian Courts. A further 1163 divorce and birth certificate court files have been reviewed. 68 General and Religious Courts across 18 Indonesian provinces have been involved in the access and equity study.

Table 1

Courts included in the Access and Equity Study 2007-2009		
Province	Courts	
1	Aceh (NAD)	RC Lhoksukon
2	North Sumatra	GC Medan, RC Tebing Tinggi
3	West Sumatra	RC Bukit Tinggi
4	South Sumatra	GC RC Palembang, RC Kayu Agung
5	Riau	RC Rengat
6	DKI Jakarta	GC Central Jakarta, GC West Jakarta, GC South Jakarta, RC West Jakarta, RC South Jakarta
7	West Java	GC Bekasi, GC Cibinong, RC Subang, RC Cibadak, RC Cikarang, RC Tasikmalaya, RC Bogor, RC Cianjur
8	Central Java	GC Semarang, RC Banjarnegara, RC Kendal, RC Wonosobo, RC Pati, RC Boyolali, RC Banyumas, RC Semarang, RC Purwokerto,
9	East Java	GC Surabaya, GC Sidoarjo, GC Kab. Kediri, GC Blitar, GC Malang, GC Jember, RC Kab.Kediri, RC Tulungagung, RC Kab.Madiun, RC Gresik, RC Bondowoso, RC Trenggalek, RC Ngawi, RC Ponorogo, RC Kab. Malang, RC Malang (Kota)
10	Yogyakarta	GC Yogyakarta, GC Sleman, RC Yogyakarta, RC Sleman
11	East Kalimantan	RC Samarinda
12	South Kalimantan	RC Kandangan
13	West Kalimantan	GC Pontianak, RC Pontianak
14	North Sulawesi	GC Manado, GC Tondano, GC Bitung, RC Manado,
15	Central Sulawesi	GC Palu, GC Luwuk, GC Poso
16	South Sulawesi	RC Pangkep
17	NTB	RC Sumbawa Besar, RC Giri Menang
18	Bali	GC Denpasar, GC Gianyar, GC Tabanan, RC Denpasar

³ Data compiled from Badilag's SMS database with 170 Religious Courts (50%) reporting for 2009.

Figure 1

Indonesian provinces where Access and Equity Study conducted 2007-2009



- | | | | |
|----|--------------------------|----|--------------------|
| 01 | Nanggroe Aceh Darussalam | 18 | West Nusatenggara |
| 02 | North Sumatera | 19 | East Nusatenggara |
| 03 | Riau | 20 | West Kalimantan |
| 04 | Riau Archipelago | 21 | Central Kalimantan |
| 05 | West Sumatera | 22 | East Kalimantan |
| 06 | Jambi | 23 | South Kalimantan |
| 07 | Bengkulu | 24 | North Sulawesi |
| 08 | South Sumatera | 25 | Gorontalo |
| 09 | Bangka Belitung | 26 | West Sulawesi |
| 10 | Lampung | 27 | Central Sulawesi |
| 11 | Banten | 28 | South Sulawesi |
| 12 | Jakarta | 29 | Southeast Sulawesi |
| 13 | West Java | 30 | North Maluku |
| 14 | Central Java | 31 | Maluku |
| 15 | Yogyakarta | 32 | West Papua |
| 16 | East Java | 33 | East Papua |
| 17 | Bali | | |

Access and equity study methodology

The 2007–2009 access and equity study included four individual studies, as follows.

1 Court user surveys

- In 2007, 1040 clients from 35 Religious Courts whose cases were heard in 2006 were randomly selected to obtain their views on the level of service provided to them by the Religious Courts in 2006.
- In 2009, 613 clients from 25 General Courts whose cases were heard in 2008 were randomly selected to obtain their views on the level of service provided to them by the General Courts in 2008.

In order to ensure that the findings had national significance, 60 courts and 1653 parties from these two court jurisdictions were randomly sampled.⁴

⁴ The General Courts had less than 4500 divorce cases across more than 350 General Courts. The 25 General Courts were therefore randomly selected from 55 General Courts that had more than 50 divorce cases in 2008.

Table 2

Sampling methodology for court user survey		
	General Courts Survey	Religious Courts Survey
Sample	National	National
Method	Random Sampling	Random Sampling
Number of Respondents	613 (data valid for n=609) from 25 General Courts	1,042 (data valid for n=1,033) from 35 Religious Courts
Status of parties in their divorce case	Applicants (parties who brought the divorce case): 302=49.6% Respondents in the divorce case: 307=50.4%	Applicants (parties who brought the divorce case): 519=50.2% Respondents in the divorce case: 514=49.8%
Gender of survey respondents	Male 295 =48.1% Female 318=51.9%	Male 431=41.4% Female 611=58.6%
Margin of Error	+/- 4% with a level of confidence of 95%	+/- 3% with a level of confidence of 95%
Year Survey Undertaken	Survey undertaken in 2009 for parties with cases heard in the General Courts in 2008. ⁵	Survey undertaken in 2007 for parties with cases heard in the Religious Courts in 2006.

2 Legal profession survey

In 2009, 65 members of the legal profession were surveyed in Denpasar, Yogyakarta and Malang to obtain their views on the level of service provided by the General Courts, and in particular in the field of family law.

The members of the legal profession included individuals from private law firms, legal aid organisations, legal NGOs and university legal aid clinics who had experience in family law. Focus group discussions with the legal profession enabled information to be gathered about the level of service provided by the General Courts in family law matters. The focus group discussions also enabled the individuals to suggest ways in which the General Courts could improve services to the poor and those living in remote locations.

After the focus group discussion, a survey questionnaire was completed by each lawyer.

⁵ 89% of the General Court cases were heard in 2008, 7% of the cases were heard in 2007 and 4% in 2009.

3 Case file analysis

In 2009, a case file analysis was undertaken of 1163 court files from six General Courts and six Religious Courts to obtain the following data in relation to family law and birth certificate cases:

- (i) the number of court attendances by parties
- (ii) the time it takes to resolve a case, and
- (iii) court costs borne by the parties for the case.

The 12 courts selected for the case file analysis included 4 ‘high volume’ courts, defined as courts with more than 1000 total cases excluding traffic or summary cases; 4 ‘medium volume’ courts, defined as courts with between 500 and 1000 cases; and 4 ‘low volume’ courts, defined as courts with less than 500 cases. The following table shows (i) the 12 courts selected, (ii) the total number of divorce cases heard by these courts in 2008 and (iii) the percentage of divorce cases reviewed in the case file analysis.

51 birth certificate case files were reviewed in three of the six General Courts that were surveyed that had birth certificate cases lodged in 2008. These 51 case files represented 100% of the birth certificate cases files in the General Courts of Central Jakarta, Malang and Yogyakarta in 2008.

Table 3

Sampling Methodology for Case file analysis					
General Courts			Religious Courts		
	Number of divorce files reviewed of total divorce cases received in 2008	% of Divorce Case Files Heard in 2008 reviewed		Number of divorce files reviewed of total divorce cases received in 2008	% of Divorce Case Files Heard in 2008 reviewed
GC Bitung	48 of 48	100%	RC South Jakarta	239 of 1962	12%
GC Gianyar	23 of 40	58%	RC Kab Malang	443 of 4743	9%
GC Central Jakarta	78 of 125	62%	RC Manado	43 of 149	29%
GC Malang	62 of 69	90%	RC Pontianak	59 of 592	10%
GC Pontianak	40 of 44	91%	RC Yogyakarta	47 of 467	10%
GC Yogyakarta	50 of 50	100%	RC Denpasar	31 of 232	13%
Total	301 of 376 cases received in 2008	83% average survey sample of divorce case	Total	862 of 8145 cases	14% average survey sample of divorce case

4 Poverty and legal access survey (PEKKA survey)

In 2007 and 2009 a total of 750 female heads of households living below the poverty line were surveyed to see whether they were able to bring their divorce and birth certificate cases to the Courts and, if not, what barriers prevented them from doing so. These women belong to an NGO for female heads of household known as PEKKA, and were located across a range of provinces including NAD (Aceh), West Java, Central Java, West Kalimantan, and East Nusa Tenggara (NTT). The data presented in this report refers to the 600 female heads of household interviewed in 2009 from NAD (Aceh), West Java, West Kalimantan, and East Nusa Tenggara.

PEKKA is an Indonesian NGO established in 2001, that works with over 12,000 female heads of household through a network of 500 PEKKA groups dispersed across 330 villages in eight Indonesian Provinces - NAD, West Java, Central Java, West Kalimantan, West Nusa Tenggara, East Nusa Tenggara, North Maluku and Southeast Sulawesi.⁶ Approximately, 8 million households in Indonesia are headed by women, representing 14% of total households in the country⁷.

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 (i) may have experienced divorce; (ii) fall under the Indonesian poverty line; (iii) generally have not accessed the Courts to formalise their divorce; and (iv) as women, share the gender of the majority of applicants bringing cases before the 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 Courts would reflect barriers faced by other disadvantaged groups in Indonesia.

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

⁶ More information on PEKKA can be obtained from its English and Bahasa Indonesia websites at www.pekka.or.id

⁷ BPS Statistics Indonesia (2009), *Women and Men in Indonesia 2008* p19.

Why do courts conduct court user satisfaction surveys?

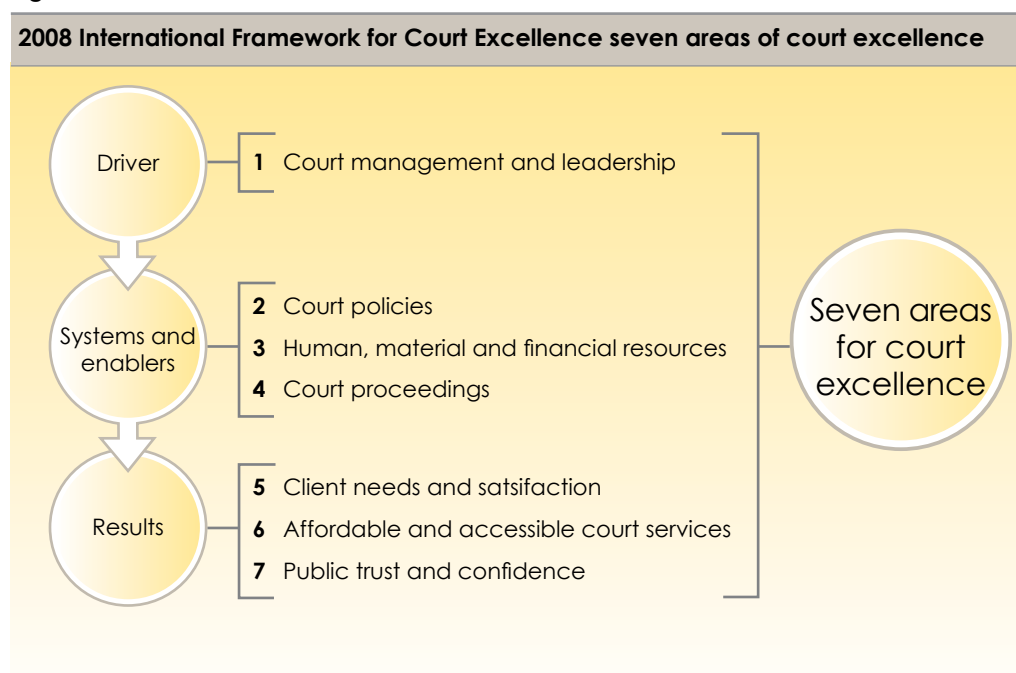
Excellent courts systematically evaluate the perceptions and needs of court users. The information will be used to improve the quality and processes provided by the courts.

Excellent court organisations systematically measure the level of public trust and confidence in the judiciary and court staff and compare the results with the public trust in other organisations.

Other measures of strong leadership include the 'openness' of the organisation and accountability. This means that courts regularly publish their performance results and provide information on the level of quality to the public.⁸

It is increasingly common for courts to conduct client satisfaction surveys so that they better understand the perceptions of court clients on the level of service provided to them and the areas that clients would like to see improved. The 2008 International Framework for Court Excellence identifies seven areas of court excellence set out in Figure 2 below.

Figure 2



A court user satisfaction survey provides a benchmark against which to measure future performance. In many countries public opinion of the court system is shaped by media coverage of a relatively small number of high profile cases. This can result in the public having a misinformed and often negative image of the courts and the judicial system as a whole.

In the 2009 court user satisfaction survey for the General Courts, court users on average rated the Indonesian justice system as a whole at 6 out of 10 whilst the average for the service they had just received in the General Courts was higher at 6.5 out of 10.

⁸ (2008) International Framework for Court Excellence, National Centre for State Courts, pp13 and 14.



Chapter 2

Introduction to the Family Law Jurisdiction of the General and Religious Courts



Jurisdiction for family law cases (legal basis)

General Courts

There are 352 first instance General Courts and 30 High Courts across Indonesia and these courts have jurisdiction over the following matters⁹:

1. civil cases (including divorce cases for non-Muslims, inheritance, land cases, contract and commercial cases), and
2. criminal cases.

The table below summarises cases decided by the General Courts in 2009 at first instance. In 2009, divorce cases comprised 3% of all General Court cases. However divorce cases represent 37% of all civil cases decided by the General Courts.¹⁰

Table 4

Cases Decided by the General Courts in 2009		
Case Type	First instance General Courts	% of total first instance civil cases
Divorce cases	5,285	37%
Other civil cases	8,974	63%
Civil matters (permohonan)	37,326	–
Criminal cases	151,169	–
Total	202,754	–

Religious Courts

There are 343 first instance Religious Courts¹¹ and 29 High Religious Courts across Indonesia. These courts have jurisdiction for Muslims in the following matters¹²:

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

⁹ General Courts acquired this jurisdiction pursuant to the Law on Judicial Power (2009) and Law on General Courts (Law No. 2 Year 1986 as amended by Law No. 8 Year 2004 and the Law on Judicial Power 2009).

¹⁰ Caseload data is taken from the Supreme Court annual report for 2009 and from subsequent data provided by the statistical units of the Directorates-General for the General Courts (Badilum) and Religious Courts (Badilag). The case numbers for the General Courts exclude summary or short cases (such as traffic fines) that are heard in an expedited way by the General Courts. Until the 2007 Annual Report of the Supreme Court, the number of General Court cases was obscured by several million summary traffic offences that are processed by the General Courts in an expedited way. These traffic and other summary cases are now presented separately in the Supreme Court Annual Report resulting in a clearer picture of the judicial workload of the General and Religious Courts.

¹¹ 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.

¹² Religious Courts acquired this jurisdiction pursuant to Law No.7 of 1989 and Law No.3 of 2006 on the Religious Judiciary.

The table below summarises cases decided by the Religious Courts in 2009 at both first instance and appeal levels.¹³

Table 5

Cases Decided by the Religious Courts in 2009				
Case Type	First Level Religious Court	% (of total first level)	Appeal Level/ High Religious Court	% (of first level decisions appealed)
Marriage	241745	98.25%	1633	0.67%
Inheritance	1015	0.41%	260	25.6%
Testament	4	0%	18	450%
Bequest	45	0.02%	12	26.6%
Property Donation (wakaf)	12	0.01%	7	58.3%
Alms (Shadaqah)	12	0.01%	0	0%
PSHP ¹⁴	1897	0.77%	0	0%
Syariah Economy	5	0%	1	20%
Other case	1301	0.53%	25	1.92%
Total cases decided	246036	100%	1956	0.79%
Cases rejected/ withdrawn	11762			
Total cases	257798			

The number of divorce cases heard by the Religious Courts has significantly increased in the past five years¹⁵ with a rise of 50% over the last three years alone. The General Courts have recorded a similar increase in divorce cases over the last 10 years. The Department of Religious Affairs attributes this increase to the fact that, ‘women have become smarter, more stable, better protected by laws, and more aware of their rights and gender equality.’¹⁶ This has contributed to an increasing proportion of the non-legal divorces now filtering into the Religious Courts.

¹³ Profil Peradilan Agama, Direktorat Jenderal Badan Peradilan Agama Tahun 2009 (from www.Badilag.net).

¹⁴ P3HP Permohonan Pertolongan Pembagian Harta Peninggalan – Request for Division of Deceased Estate.

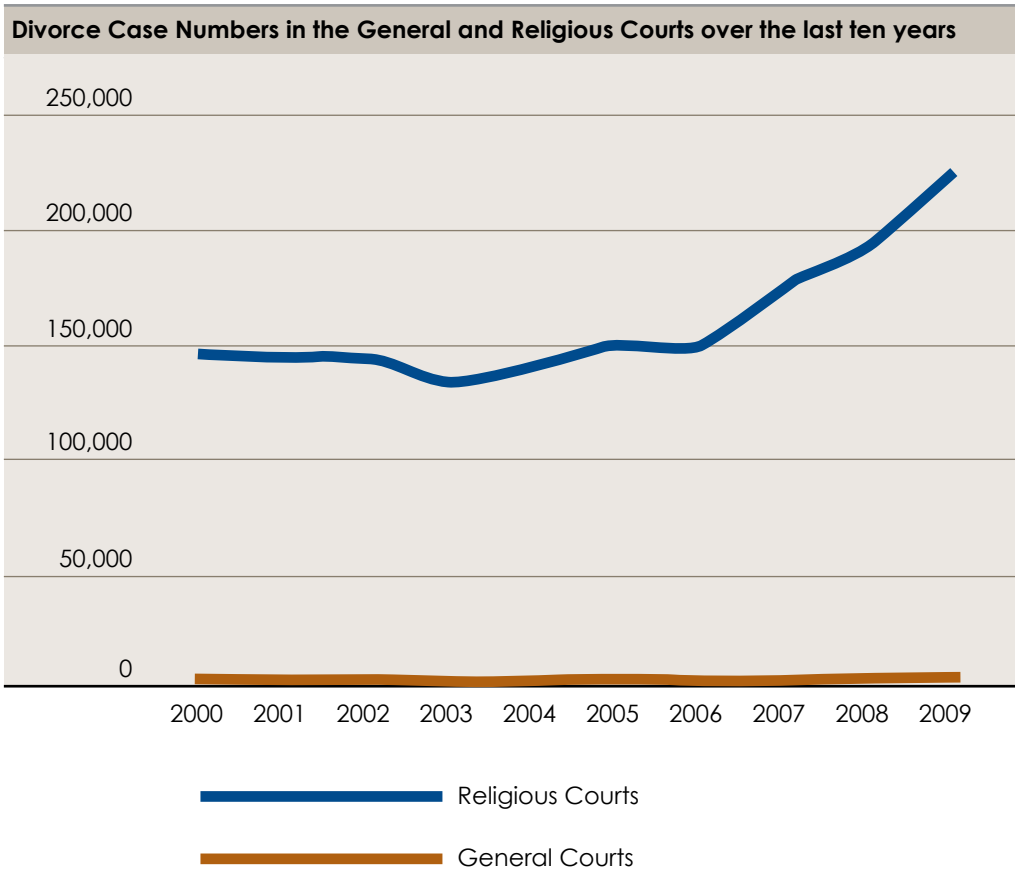
¹⁵ Himpunan Data Statistik Perkara di Lingkungan Peradilan Agama Seluruh Indonesia Tahun 2005, (2006) Mahkamah Agung, Direktorat Jenderal Badan Peradilan Agama, pp 3 and 269. Also E-profile documents for the Religious Courts for the years 2004, 2006 and 2007 available on the Badilag website www.badilag.net.

¹⁶ Nasaruddin Umar, Director-General for Islamic Public Guidance at the Department of Religious Affairs as reported in the Jakarta Post on 18 August 2009, “Divorce rate up 40 percent in five years”.

Table 6

Number of Divorce Cases Received in the General and Religious Courts over the last ten years		
Year	Religious Court Divorce Cases	General Court Divorce Cases
2000	145,609	3539
2001	144,912	3877
2002	143,890	3842
2003	133,306	3361
2004	141,240	2514
2005	150,395	2674
2006	148,890	2606
2007	175,088	3645
2008	193,189	4404
2009	223,371	5285

Figure 3



The importance of family law cases and birth certificate cases being heard in the courts

...the right to be recognised before the law' is one of the most central human rights. The state is thus under the obligation to give formal, legal recognition that a person exists. Legal Empowerment requires an affordable document with which the bearer can prove his or her identity. Without such proof of their legal identity the poor, in particular, are often excluded from the formal protections of the state legal system and as beneficiaries of public goods and services.¹⁷

Requirement of Indonesian Law

Indonesian law requires all divorces to be approved by the Religious Courts for Muslims and the General Courts for non-Muslims in order to be legally valid (Law No. 1 of 1974 concerning Marriage). It is therefore mandatory that divorce cases are brought before the Indonesian courts if the marriage is to be formally dissolved.

Access to justice for all

A principle of justice is that it be universal. If Indonesian law mandates that all divorces must be heard before Indonesian courts then all Indonesian citizens who divorce should be able to bring their cases to the court regardless of how rich or poor they are, how educated they are, or how far they live from a court.

Legal Certainty

Judges, court clients and members of the community who are too poor to bring their divorce cases to the courts, agree that divorce through the Indonesian courts provides legal certainty. A formal divorce through the courts also clarifies legal responsibilities for the care and financial support of former spouses and children from the marriage. Without a legal divorce it is not possible to legally remarry in Indonesia. This in turn has implications for obtaining birth certificates for children from subsequent marriages as the father's name cannot be put on the birth certificate without a legal marriage certificate.

Poverty alleviation

49% of Indonesian citizens live under US\$ (PPP) 2 per day with 14% of this group living on less than US\$0.66 per day.¹⁸ Households that have experienced the sudden loss of the head of household through death, divorce or abandonment often enter a downward spiral of poverty that can last for generations as children are withdrawn from school and prematurely placed into labour markets.¹⁹ Divorce through the courts has the potential to distribute household assets in a more equitable fashion and in a way that supports the parent who has day-to-day care for the children from the marriage (in most cases the mother).

¹⁷ 2008, *Making the Law Work for Everyone Volume 1, Report of the Commission on Legal Empowerment of the Poor*.

¹⁸ Bappenas UNDP (2007) *Report on the Achievement of Millennium Development Goals Indonesia 2007*, p 12 and *Profil Kemiskinan Di Indonesia Maret 2009*, Badan Pusat Statistik, Berita Resmi Statistik No. 43/07/Th. XII, 1 Juli 2009.

¹⁹ S Guggenheim, PEKKA Proposal.

Broader social and economic development programmes

Birth certificates are of critical importance for children in developing countries in terms of accessing a wide range of public services. UNICEF Indonesia currently estimates that 60% of children living in Indonesia are without a legal identity.²⁰ This increases to more than 80% in poor provinces. Increasingly the provision of public services, such as education and health, require children to have birth certificates. Without a birth certificate children may face difficulty in accessing these services. For example in recent years local government regulations have required parents to provide birth certificates for their children when enrolling them in school.

For women, men and children alike, evidence of legal marriage and divorce has a critical impact on many related areas of social and economic development, for example:

1. **Security** and proof of identity become critical issues in criminal assault/domestic violence and human trafficking cases.
2. **Land assets** and whether the title to matrimonial or jointly-owned land is in the name of the husband or wife or both can become a key determinant of individual wealth.
3. **Moveable assets** and the question of who controls moveable assets relates to the ability to generate income for the family or provide collateral for credit.
4. **Identity cards and family cards** can evidence poverty and guarantee access to subsidised health care, other government services and cash transfer schemes.
5. **Underage marriage contracts** become less common as a legal marriage with a party that is under-age requires a court to issue a judgment on the matter.
6. **Birth certificates are important in their own right** and because of the links between non-legal marriage and children being unable to obtain birth certificates.
7. **Inheritance rights for children** of non-legal marriages are problematic because of a lack of standing.
8. **Legal divorce provides a mechanism for former spouses to be responsible** for providing for the food, health and educational needs of the children of the marriage.
9. **Legal divorce provides a clear decision on child custody matters** and the arrangements for caring for children of a marriage once the marriage dissolves.

Legal process for marriage and divorce (including process for legalising marriage)

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,²¹ including the requirement that a marriage must be registered within 60 days 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 seek 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.

²⁰ UNICEF: Overview - Birth Registration for all, http://www.unicef.org/indonesia/protection_2931.html.

²¹ Article 40, Law 23 of 2006 on Administrasi Kependudukan.

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). 67% of divorce cases decided in 2009 by the Religious Courts were initiated by the wife.²²

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.²³ 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.²⁴ 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.²⁵ Both court clients and lawyers expressed the view that the extra step required for General Courts clients to take the judgment to the Civil Registry within 60 days means that in many cases the time period elapses and it becomes problematic to register the divorce at the Civil Registry.

In 2009, over 13,000 cases were received by the Religious Courts concerning marriage legalisation (itsbat nikah cases) in which the Religious Courts provide the applicant with a document evidencing an earlier marriage.²⁶ This document can then be used at the civil registry to obtain other documents, including birth certificates.

Legal process for obtaining a birth certificate

UNICEF Indonesia states that:

Approximately 60 per cent of Indonesian children under-five years of age do not have birth certificates and half are not registered anywhere. This represents one of the lowest birth registration levels of any country in the region.

*Birth registration is a fundamental human right and an essential means of protecting a child's right to their identity. Registering a birth serves as an effective civil mechanism that legally acknowledges a person's existence, enables a child to possess a birth certificate, establishes the child's family ties, and tracks life's major milestones from birth through marriage and death. Birth registration also helps governments to track their country's demographic statistics, health trends and differentials. Comprehensive data means more accurate planning and implementation of development policies and programs, particularly in the fields of health, education, housing, water, sanitation and employment...*²⁷

22 Badilag (2010) *E-profile for the Religious Courts 2009*. Of 223,371 divorce cases decided in 2009, 149,240 were initiated by women and 74,131 by men.

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

24 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).

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

26 Islamic Law Compilation Book 1 (concerning marriage), Article 7 and Law 23 of 2006 concerning Population Administration, Article 36.

27 UNICEF: Overview - Birth Registration for all, http://www.unicef.org/indonesia/protection_2931.html.

The law on Population Administration requires parents to obtain a birth certificate within 60 days of a child's birth. A civil registry will issue a birth certificate without charge to parents if they register their child's birth within 60 days. If the birth is not registered within one year from the child's date of birth, Law 23 of 2006 on Population Administration requires a birth certificate statement to be obtained from a General Court before the Civil Registry will issue a birth certificate.²⁸

Transition provisions were put in place by the Ministry of Home Affairs to delay the effect of certain provisions of Law 23 of 2006 as they apply to birth registration until December 2010.²⁹ In particular, the requirement of a General Court decision in order to obtain a birth certificate will not enter into force until 2011. The transition provisions were required in order to provide time to raise awareness of the provisions of the new law. However, it had also become clear that the requirement for a General Court decision would be a barrier to achieving the Government of Indonesia's Strategic Plan for Universal Birth Registration in Indonesia which aims for all births in Indonesia to be registered by 2011.³⁰

The Law on Population Administration³¹ provides for children to be issued with birth certificates even in cases where their parents do not have a marriage certificate. In these circumstances only the mother's name is recorded on the birth certificate. Cultural norms in Indonesia however act as a strong disincentive to obtaining a birth certificate for a child unless both parents' names appear on the birth certificate.

Prodeo (fee waiver) process under Indonesian law

Excellent courts are affordable and easily accessible for litigants. Court fees do not prevent members of the public from accessing the judicial process, cumbersome procedures and requirements do not drive up litigation expenses, and forms and comprehensible basic information about court processes are readily available at low or no cost.

Excellent courts limit financial barriers to the judicial process by setting fees at a reasonable level, permitting waiver of fees for persons who are indigent, and by working with relevant agencies and organisations to ensure that legal services are affordable and that legal assistance is available.³²

The Civil Procedure Code of Indonesia (*Kitab Undang-Undang Hukum Acara Perdata*) provides that a party wishing to bring a civil case may apply to the court to have court fees waived if the party is unable to pay (the Prodeo process). This process was confirmed by the Chief Justice of the Supreme Court of Indonesia in a recent Court Regulation in which it was stated that: 'Fees for prodeo cases at first instance, appeal and cassation levels including industrial relations disputes with a value below Rp. 150,000,000 will be borne by the State in accordance with existing laws and regulations.'³³

28 Law 23 of 2006 concerning the administration of population (tentang administrasi kependudukan).

29 Departemen Dalam Negeri, Letter dated 11 March 2009, Batas Waktu Pelaksanaan Program Dispensasi Pelayanan Pencatatan Kelahiran dalam Masa Transisi Berlakunya Undang-Undang Nomor 23 2006.

30 Departemen Dalam Negeri RI, Rencana Strategis 2011 Semua Anak Indonesia Tercatat Kelahirannya (Renstra 2011) 2008.

31 Law on Population Administration Article 52 (2).

32 (2008) International Framework for Court Excellence, National Centre for State Courts at p.16.

33 Peraturan Mahkamah Agung No 2 of 2009 Tentang Biaya Proses Penyelesaian Perkara dan Pengelolaannya pada Mahkamah Agung dan Badan Peradilan yang berada Dibawahnya. Article 2 (4): Biaya untuk penyelesaian perkara dengan acara prodeo pada tingkat pertama, banding dan kasasi serta perkara Perselisihan Hubungan Industrial yang nilai gugatannya dibawah Rp. 150.000.000,00 (seratus lima puluh juta rupiah) dibebankan kepada Negara sesuai dengan ketentuan peraturan perundang-undangan yang berlaku.

The party seeking to have the court fee waived will need to present a letter from the village head (the 'poverty letter', *surat keterangan tidak mampu – SKTM*) as evidence of the party's poverty. The court will register the case and the court receipt that is placed in the court file has a nil value.³⁴

The court will then require the applicant to attend a hearing before a panel of three judges to present evidence establishing their poverty. The judicial panel will issue a determination on whether to accept the case on a fee waiver basis after giving any other party to the case the opportunity to be heard on the issue. If the judicial panel rejects the fee waiver petition then the case will only proceed if the party pays the usual court fee down-payment for the case.

The Indonesian Statistics Agency (BPS) has developed national poverty indicators and in some areas between 20 and 50% of the population is considered to be living under the Indonesian poverty line. Each year BPS issues a document fixing the Indonesian poverty line and the percentage of the population in each province that falls under the Indonesian poverty line. In March 2009, 32.5 million Indonesian citizens (14% of the population) lived below the Indonesian poverty line, defined as Rp 222,123 for city areas and Rp 179,835 for rural areas (with an average poverty line for city and village as Rp 200,262 per person per month or USD0.66 per day). The percentage of Indonesian citizens living below the poverty line in the rural areas (17%) is significantly higher than for city dwellers (11%).

Of 33 Indonesian provinces, the table opposite shows those provinces where more than 20% of the rural population live under the Indonesian poverty line.³⁵

In addition to the national poverty line indicator, the US\$ 2 Purchasing Power Parity (PPP) per day per capita is also used as an indicator to measure poverty. According to this measure, the National Planning Development Agency (Bappenas – Badan Perencanaan Pembangunan Nasional) states that in 2006 around 49% of the population of Indonesia was living on less than US\$ 2 (PPP) a day.³⁶ If applied to the 14 poorest provinces shown in the table above, the majority of the provincial population would fall under the US\$2 (PPP) per day per capita poverty indicator.

In order to obtain evidence of poverty, men and women must approach the village leader for a letter certifying that they are in fact poor. In circumstances of wide-spread rural impoverishment village leaders may not understand that a high proportion of the villagers in their area are living under the Indonesian poverty line and therefore eligible for a poverty letter. Instead, as the test is a subjective test and based on the village leader's perception, they may only allocate a poverty letter to those who appear to be the poorest in their area.

³⁴ Herzien Inlandsch Reglement (HIR) Article 237.

³⁵ *Profil Kemiskinan Di Indonesia Maret 2009*, Badan Pusat Statistik, *Berita Resmi Statistik* No. 43/07/Th. XII, 1 Juli 2009.

³⁶ Bappenas UNDP (2007) Report on the Achievement of Millennium Development Goals Indonesia 2007, p 12.

Table 7

Percentage of Rural Population living under the Indonesian poverty line	
Province	% of rural population in each province under the Indonesian poverty line
Papua	47%
West Papua	45%
Maluku	34%
Gorontalo	33%
NTT	25%
Aceh (NAD)	24%
Jogjakarta	23%
South East Sulawesi (Tenggara)	23%
East Java	21%
Central Sulawesi	21%
Lampung	21%
Central Java	20%
Bengkulu	20%
NTB	20%

In summary, each time a court client is required to obtain a poverty letter or similar document at village level it involves:

- ▶ an extra step in the process of bringing a legal divorce case for one of the most disadvantaged groups, in itself a disincentive
- ▶ loss of time
- ▶ possible embarrassment at making the request to a local leader who may not agree with the person applying to the courts for a divorce case
- ▶ possible informal payment (bribe) to the village official that is difficult for those living under the Indonesian poverty line to make, and which is, in any case, contrary to the purpose of the court fee waiver process.

In the last ten years, programmes aimed at alleviating poverty have been introduced by the government. These provide free or subsidised rice (*Raskin*), free health care (*Jamkesmas*) and cash transfers (BLT) to the poor based on household income assessments. If a court client seeking Prodeo assistance is also a recipient of one of these government poverty alleviation programmes, it would give a judicial panel a reasonable indication that they were sufficiently poor to be a legitimate Prodeo recipient, without need of a poverty letter.



Chapter 3

Summary of Key Research Findings



1 High satisfaction rate amongst court users

There is a high satisfaction rate amongst court clients of both the General and Religious Courts. 70% of clients said 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.

When court clients are asked if they would return to the court in future if they had similar legal issues, 69% of General Court clients say they would return, as did 71% of Religious Court clients.

Figure 4

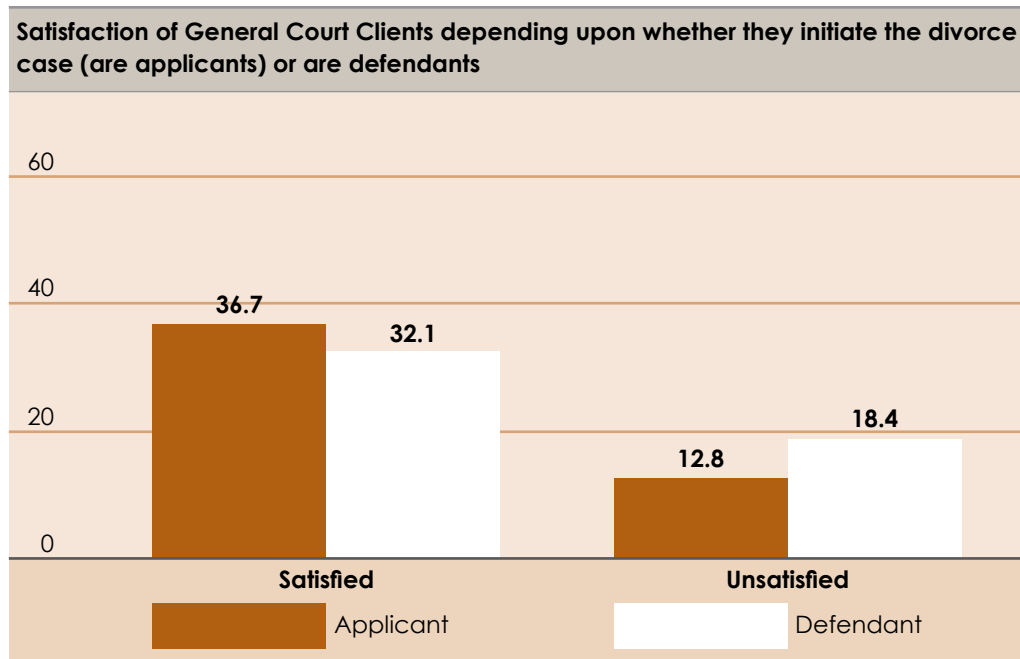
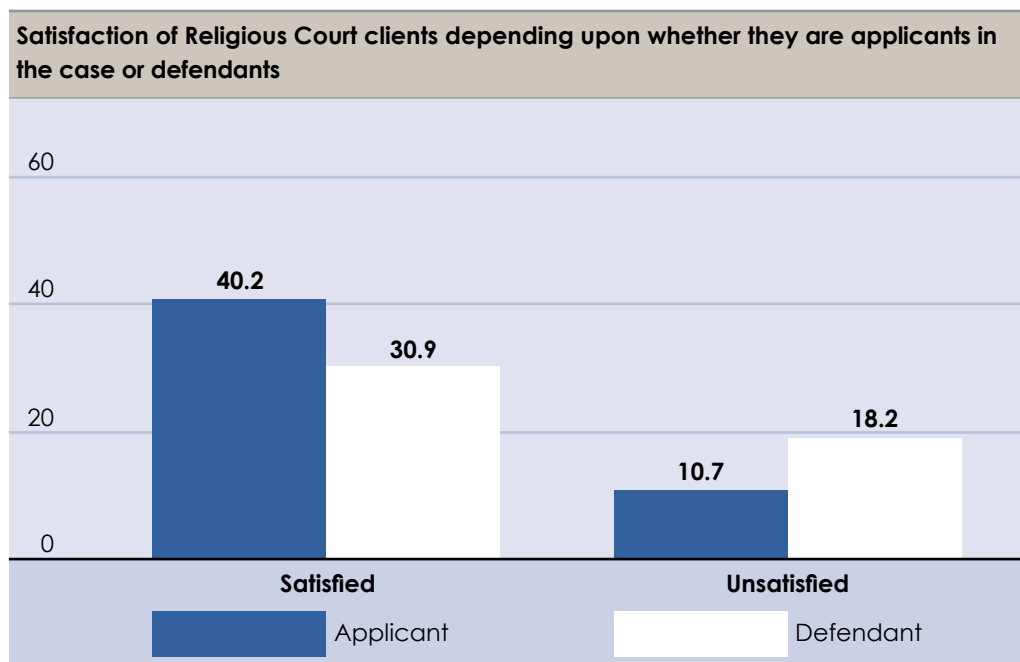


Figure 5



Clients of both the General and Religious Courts identified concerns with the following areas and felt there could be some improvement for clients:

- ▶ financial transparency
- ▶ information on court fee waiver for the poor
- ▶ delays in their case and in receiving the judgment, and
- ▶ clarity of court forms.

Table 8

Suggestions for improvements to the General Courts made by General Court survey respondents

The case cost should be reduced and managed transparently and fairly	13%
The general performance and client services of General Courts should be improved	16%
The court decision should be fair	14%
The case process should involve less delay and be easier to understand	20%

Figure 6

Results of Court User Surveys: Client Perceptions of levels of service provided by General and Religious Courts

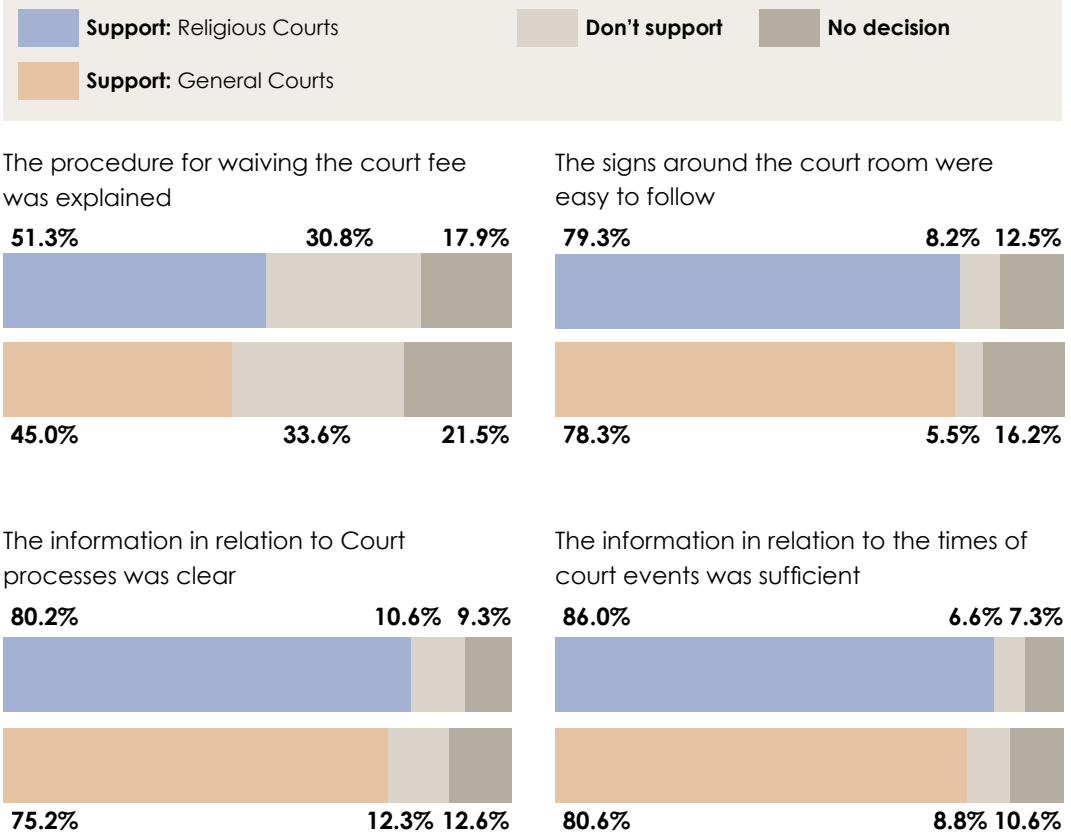
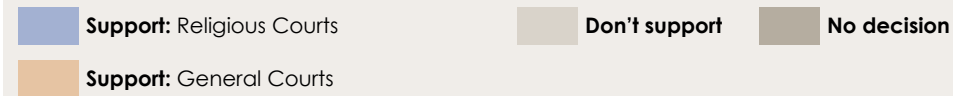
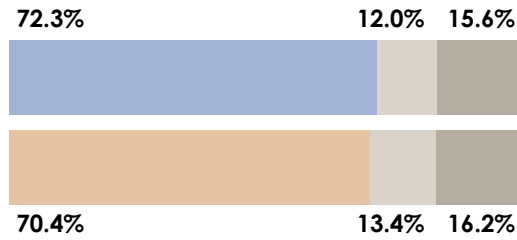


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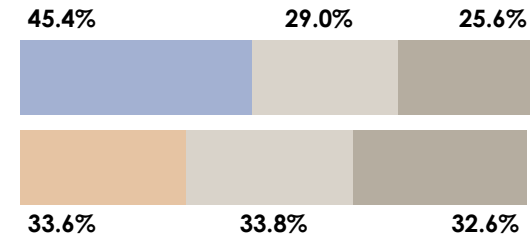
Results of Court User Surveys: Client Perceptions of levels of service provided by General and Religious Courts



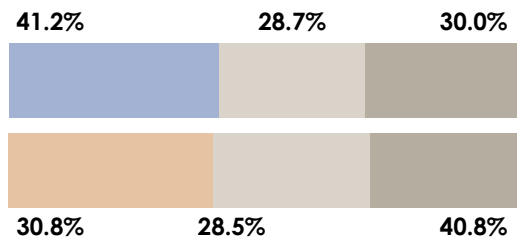
Staff were willing to explain court procedures



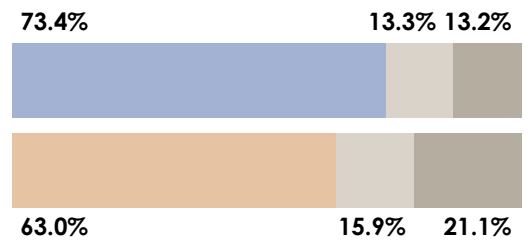
The court forms to complete were easily understood



The application form allowed me to put all the facts before the court



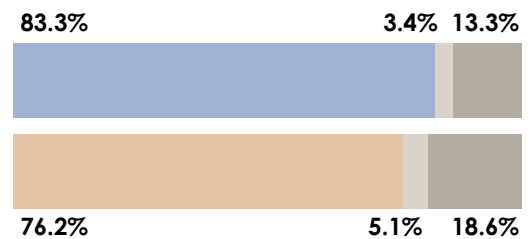
Staff were available to answer any questions



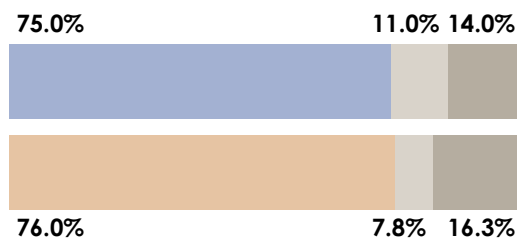
Staff treated court clients with respect at all times



The judges listened to what I had to say in the case hearing



The nature of the court proceedings is understandable



The court was fair and transparent

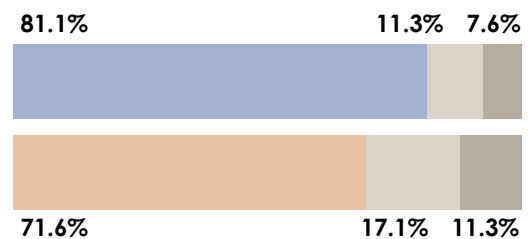
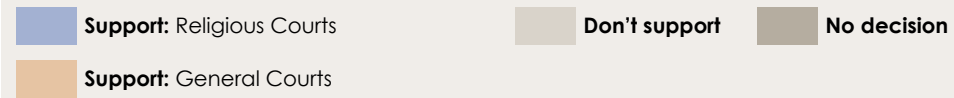


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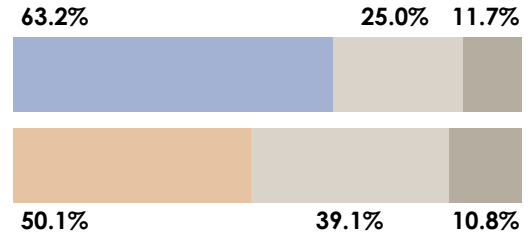
Results of Court User Surveys: Client Perceptions of levels of service provided by General and Religious Courts



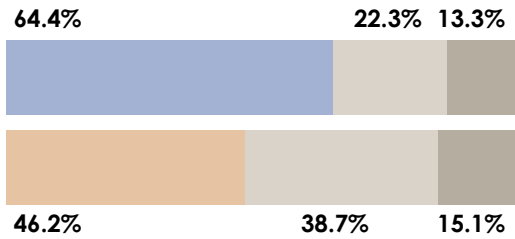
The court decision in my case was just



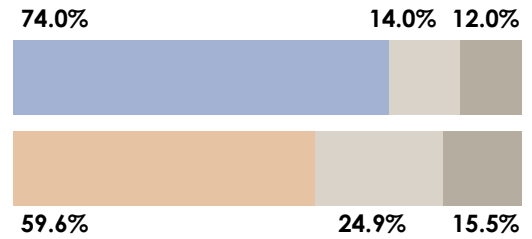
The court process was not stressful



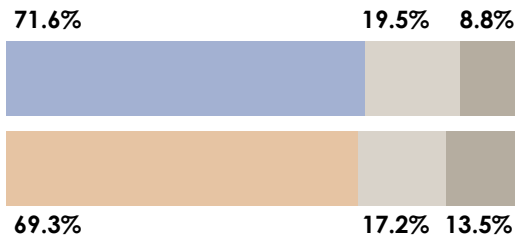
Not too many delays in getting my case heard



The case was heard quickly and efficiently



The court judgment was obtained not long after the hearing



2 Divorce cases now form the single largest group of cases in the Indonesian judicial system comprising 50% of all cases.

It is a significant, if little understood, fact that divorce cases now form the single largest group of cases in the Indonesian judicial system, comprising 50% of all cases followed by criminal cases (33% of cases).³⁷ The Religious Courts decide 98% and the General Courts 2% of all divorce cases in Indonesia, which means the Religious Courts now have a significant direct engagement with Indonesian families.

An examination of how divorce cases are handled in Indonesian Courts thus provides insights into how the judiciary is perceived to resolve the largest single block of cases in the country.

Table 9

Cases decided by first instance General and Religious Courts in 2009		
General Courts	202,754	44%
Religious Courts	257,798	56%
Total	460,552	100%

Table 10

Cases decided by first instance General and Religious Courts in 2009 (type)		
Divorce Cases (Religious Courts 98% & General Courts 2%)	228,656	50%
Criminal cases	151,169	33%
Other civil cases in the General Courts (gugatan + permohonan)	46,300	10%
Other civil cases in Religious Courts (gugatan + permohonan)	34,427	7%
Total	460,552	100%

Despite the fact that Indonesia's non-Muslim population (mainly comprising Christians, Hindus, Buddhists and Confucians) is approximately 15% of the total population, the General Courts only hear 2% of the total number of all divorces nationally in Indonesia. This low figure may be due to the lack of understanding about the importance of a legal marriage and the inability of non-Muslims to access the General Courts for their divorce cases.

The study further found that the divorce cases decided in the General Courts in 2009 represented 37% of all the civil cases decided in the General Courts. Accordingly, an analysis of court user perceptions of client services in divorce cases may have broader application to other civil cases in the General Courts.

³⁷ Caseload data is taken from the Supreme Court annual report for 2009 and from subsequent data provided by the statistical units of the Directorates-General for the General Courts (Badilum) and Religious Courts (Badilag). The case numbers for the General Courts exclude summary or short cases (such as traffic fines) that are heard in an expedited way by the General Courts.

3 Women bring twice as many divorce cases to the courts as men, and in nine out of ten cases they are successful.

In both the General and Religious Courts women initiate twice as many divorce cases as men, regardless of income level.

Nine out of ten divorce cases brought to the Religious Courts are accepted with only 3% of cases in the Religious Courts being rejected or not accepted by the court. Eight out of ten divorce cases brought to the General Courts are accepted, with only 4% of cases in the General Courts being rejected or not accepted by the court.

Table 11

	Granted	Case rejected	Case Not Accepted	Withdrawn by the Parties	Cases Not Finished	Lapsed	No answer
6 Religious Courts (RC)	89%	2%	1%	5%	0%	3%	1%
RC Denpasar	93.55%	0%	0%	3.23%	0%	3.23%	0%
RC South Jakarta	81.59%	2.09%	1.26%	7.95%	0%	6.69%	0%
RC Kab. Malang	93.23%	1.58%	0.23%	3.16%	0%	0%	2%
RC Manado	74.42%	2.33%	4.65%	13.95%	0%	4.65%	0%
RC Pontianak	88.14%	0%	0%	5.08%	0%	5.08%	2%
RC Yogyakarta	89.36%	0%	0%	6.38%	0%	0%	4%
6 General Courts (GC)	82%	1%	3%	9%	1%	2%	3%
GC Bitung	83.33%	2.08%	6.25%	6.25%	0%	2.08%	0%
GC Gianyar	86.96%	4.35%	0%	8.7%	0%	0%	0%
GC Central Jakarta	74.36%	1.28%	0%	11.54%	0%	2.56%	10%
GC Malang	87.10%	1.61%	3.23%	6.45%	1.61%	0%	0%
GC Pontianak	85.00%	0%	5%	5%	0%	5%	0%
GC Yogyakarta	80.00%	0%	4%	14%	2%	0%	0%

4 The poor cannot access the courts

A central principle of justice is that it be universally accessible. Unfortunately the poorest sections of Indonesian society face significant barriers in bringing family law cases to the Courts. Nine out of ten female heads of households living under the Indonesian poverty line surveyed were unable to access the Courts for their divorce cases. The main barriers are financial and relate to court fees and transportation costs to travel to the court.

14% of Indonesian people live under the Indonesian poverty line. The average total cost of a Religious Courts case for survey respondents was Rp 789,666 (this includes the court fee, transportation, and other costs) almost four times the level of the Indonesian poverty line per capita per month. The average total cost for the General Courts survey respondents who brought divorce cases in the General Courts in 2008 was Rp 2,050,000 in the cases where the party did not use a lawyer (approximately ten times the level of the Indonesian poverty line) and Rp 10,350,000 where the party did use a lawyer (approximately 52 times the level of the Indonesian poverty line). It is therefore clear that a proportion of the poor in Indonesia are not able to bring their family law cases to the Courts according to the requirements of Indonesian law, a conclusion that is supported by the fact that 86% of the PEKKA group surveyed did not bring their divorce cases to the Courts.

Of the 601 PEKKA members surveyed, 265 PEKKA divorces were recorded. However, only 38 cases were brought to the Indonesian courts. Of the 38 divorce cases brought to the court, two-thirds involved PEKKA members as the initiators or applicants in the case. Of the 17 PEKKA members who initiated a court case, and can remember what it cost, in 3 cases the court fee was waived and in the other 14 cases the average total cost for the divorce court case was Rp 1,065,500 (this includes the court fee, transportation, and other costs), over 5 times the average PEKKA income per capita per month.

The PEKKA data also reflects the national trend that it is women who are the applicants in two thirds of all divorce cases brought to the Indonesian courts.

79% of the Pekka members who brought their cases to the Religious Courts were satisfied or very satisfied with the level of service provided by the Indonesian courts. This is a higher overall level of satisfaction with the service provided in family law cases than that seen in the court client access and equity surveys referred to below.

Table 12

Data on the total number of divorces for PEKKA members and the number of legal divorces					
Region	Total Divorces	Total Legal Divorces through a Court	%	Applicant is:	
				Wife	Husband
Aceh (NAD)	45	12	26.67%	9	3
West Java	152	10	6.58%	6	4
West Kalimantan	56	15	26.79%	9	6
East Nusa Tenggara	12	1	8.33%	1	0
Total	265	38	14.34%	25	13

5 88% of PEKKA members (female heads of households) surveyed, living under or close to the Indonesian poverty line, would be more motivated to obtain a legal divorce if the court's fees were waived.

Waiver of court fees (the Prodeo process) will greatly assist people living under the Indonesian poverty line as well as poor clients of the Indonesian courts who typically either go into debt or use several months of household income to bring a divorce case to the courts.

Providing accurate legal information to female heads of households living in poverty is also a critical factor in raising the legal divorce rate amongst this group. The access and equity study found that Khader Hukum ('law cadres', PEKKA members trained to assist other members with legal issues) are the single greatest source of information available to PEKKA members regarding the Courts. 72% of PEKKA members say if they wanted to obtain information about court processes they would approach the Khader Hukum. Other sources that PEKKA members trusted to provide accurate information on court processes were:

- ▶ Village officials (aparat desa) 71%
- ▶ Court officials 60%
- ▶ Family 55%
- ▶ Other NGOs 52%

When PEKKA women were asked what was the best way to convey information about court processes, their preferences were as follows:

- ▶ Face to face discussions 96%
- ▶ Video/ film/ TV 32%
- ▶ Radio 27%
- ▶ Brochure/ leaflet 26%
- ▶ Written media (newspaper) 22%



6 High transportation costs are a barrier to accessing the courts especially for the rural poor who live a greater distance from the courts.

For the poor, the main barriers to accessing the courts are financial and relate to court fees and transportation costs to travel to the nearest court.

These problems are especially significant for the rural poor. 88% of PEKKA members would be more motivated to go to court for their divorce cases if the court was able to waive the court fee, and 89% of PEKKA members would be more motivated to go to court for their divorce cases if the court heard their case in a circuit court.

The cost of transportation to a court varies significantly depending upon whether a party lives in an urban environment close to the court, or in a rural environment. 50% of court clients surveyed in 2007 and 2009 live within a 10km radius of the General or Religious Court that heard their divorce case. The 600 PEKKA women interviewed lived in both urban and rural areas. Urban PEKKA members lived on average 13km from the court at a cost of Rp 25,000 per return trip to the court. However, rural PEKKA members lived on average 80km from the court, at a typical cost of Rp 92,000 per return trip to the court (close to half the monthly per capita income of a PEKKA member).



Table 13

Cost of a Divorce Case in both the General and Religious Courts for Urban and Rural Court users			
	Court Fee	Transportation Costs	Divorce Case Cost = Court Fee + Transportation Costs
Urban Religious Court user	Rp 350,000 (or USD 35)	Rp 25,000 x 5 trips to the court = RP 125,000 (or USD 12.50)	Rp 475,000 (or USD 48)
Urban General Court user	Rp 350,000 (or USD 35)	Rp 25,000 x 8 trips to the court = Rp 200,000 (or USD 20)	Rp 550,000 (or USD 55)
Rural Religious Court user (e.g. NTT)	Rp 350,000 (or USD 35)	Rp 100,000 x 5 trips to the court = Rp 500,000 (or USD 50)	Rp 850,000 (or USD 85)
Rural General Court user (e.g. NTT)	Rp 350,000 (or USD 35)	Rp 100,000 x 8 trips to the court = Rp 800,000 (or USD 80)	Rp 1,150,000 (or USD 115)

The cost of a divorce case in the Religious Courts (only court fee and the party's transportation costs) can therefore vary significantly, depending upon how far the party lives from the court. Divorce cases in the General Courts cost more, as there are on average three more court appearances per case. The further the parties to a divorce case live away from the court, the higher the transportation costs. In the NTT case given above, for example, transportation costs comprise as much as 70% of the cost of the case.



7 Transparency of court fees and overestimation of court fee down-payment.

Overestimation of the down-payment made to courts for divorce cases relative to the actual cost of the case is a disincentive to justice seekers bringing their cases to court, particularly the poor. Reimbursement of the down-payment made to courts is important for all clients, but particularly for the poor.

On average clients in the six Religious Courts surveyed paid 24% more as a down payment than the final cost of the case set out in the judgment. On average clients in the six General Courts surveyed paid 79% more as a down payment than the final cost of a case as set out in the judgment. Greater transparency of court fees and the down-payments made to courts for divorce cases would assist in building public trust and confidence in the courts.

Figure 7

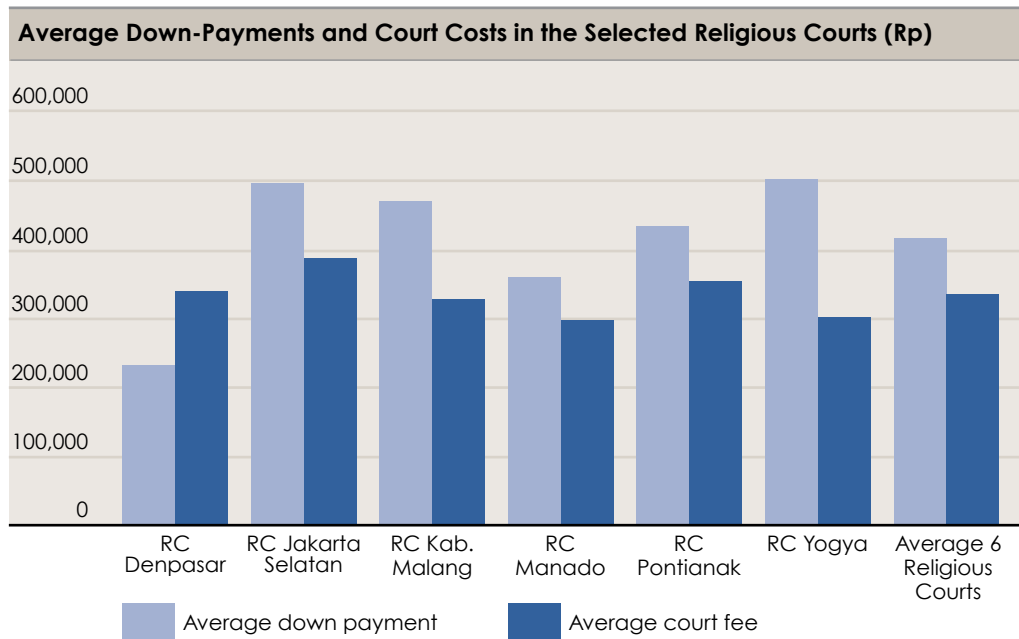
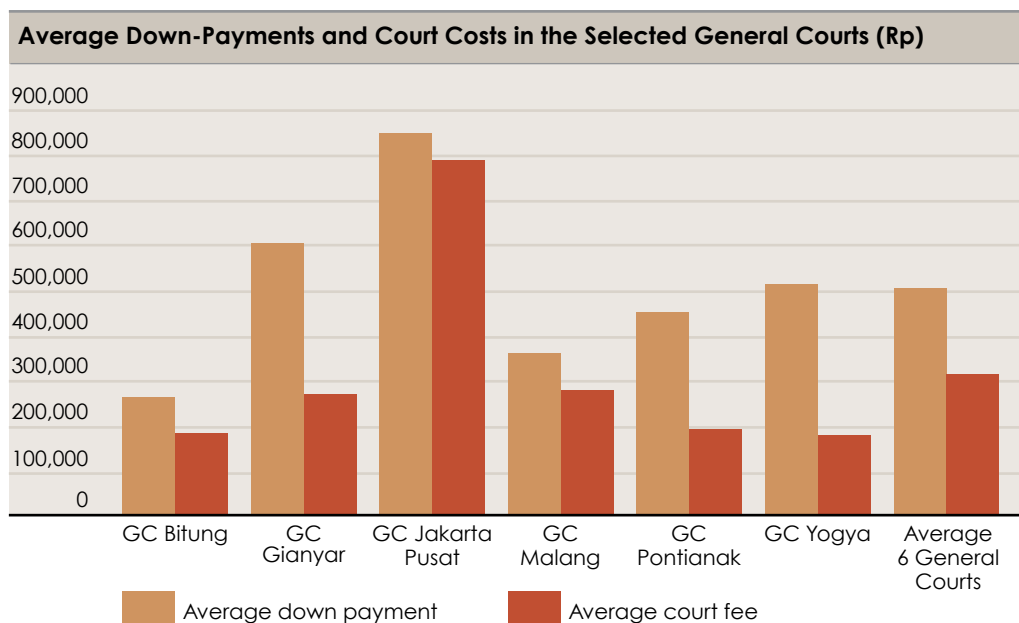


Figure 8



The average actual court cost was Rp 340,000, however the average down-payment sought in the General Courts surveyed was Rp 520,000 and Rp 420,000 in the Religious Courts surveyed. The courts determine the down-payment on court fees to be paid by the applicant party in civil cases. The largest part of the cost of the down-payment is the cost of summoning parties to the court hearings and these costs vary depending on how far from the court parties live. The applicant party may need to make an additional down-payment on court fees if the case costs more or if it costs less they will have the balance reimbursed at the end of the case.

Even if the balance of the down-payment is promptly returned by the court to the applicant party at the end of the court process, overestimation of the down-payment represents a significant amount of monthly household budgets., This has a serious impact on poor households, given that 49% of the population live on less than US(PPP)\$2 per capita per day.

Receipts

In answer to the survey question: ‘Did you receive a receipt for payments related to bringing a case in the Religious Court/ General Court?’ 80% of applicants before the Religious Courts received receipts for payments made to the court, as did 61% of applicants before the General Courts.³⁸

Down-payments on court fees paid by the applicant

49% of the General Court clients surveyed who were applicants in the case and paid the court fees themselves did not receive the balance of the down-payment at the end of the case. 18% did receive the balance of the down-payment and 15% said that there was no balance remaining from the down-payment at the end of the case. 19% of clients did not answer this question.

52% of General Court clients who were applicants and paid the court fees themselves did not receive a detailed breakdown of costs (paid from their down-payment) at the end of their case.³⁹



³⁸ Respondents to the case should not be making payments to the Court as the applicant party bears the cost of bringing the divorce case.

³⁹ The 2007 Religious Courts survey did not include questions relating to the last two points. The experience of conducting the first survey made clear that these were valuable questions and they were therefore included in the 2009 General Courts survey and the Poverty and Legal Access Survey.

8 Clients want to receive a copy of the written court judgment on the day it is read out in court.

How quickly courts finalise the court judgment and issue the divorce certificate (for Religious Court clients) after the final hearing is an area of significant concern to court clients.

The final step in a divorce case is obtaining a copy of the court judgment and, for Religious Court clients, a divorce certificate evidencing the divorce. From the focus group discussions, many clients perceived that Court delays in issuing either written court judgments or divorce certificates are strategies for soliciting bribes. 1200 Court files were reviewed in 12 Courts (4 high, 4 medium and 4 low volume courts) to determine how long a case took from the date of registration until the date of the judgment. Upon receiving the case file analysis findings, an issue emerged in both the General and Religious Courts regarding transparency related to the date of judgment. The case file analysis recorded, amongst other information the date: (i) of registration; (ii) of all court hearings; and (iii) of the court judgment. It had been expected that the date of the final hearing and the date of judgment would be different, with the date of judgment providing a reasonably accurate end date for proceedings. However, both the General and Religious Courts put the date of the final hearing on the judgment even though the written judgment might not be given to the parties for several weeks, or indeed months, after the date of final hearing.

As a result, the Supreme Court is not currently able to compile data on how long a divorce case takes at first instance from the date a party registers their application to the date the party receives a written court judgment and divorce certificate, despite the fact that divorce cases constitute 50% of all cases heard in Indonesian courts.

As the Religious Courts issue a divorce certificate once the divorce judgment is final and binding it is possible to measure the number of days from the date of registration until the date a divorce certificate is issued. This data is only available in selected Religious Courts participating in a pilot project to relay a back-up of all case management data onto a National Information Repository⁴⁰ in the Directorate General for the Religious Courts in Jakarta.

40 The aim of the National Information Repository (NIR) is to enhance nationwide court statistical reporting from 343 Religious Courts and 29 High Religious Courts covering the following data:

- a. Case information relating to numbers and types of cases, number of court events per case, average length of time of cases, total cost per case, total court fees collected;
- b. Disaggregated information on cases in which the applicants have been able to (i) access the court fee waiver (Prodeo) process due to their poverty and/or (ii) had a Religious Court hearing through at a circuit court outside the normal court building.
- c. Selected court financial information.

The NIR will also support the MA in implementing Supreme Court Regulation SK144 of 2007 on Transparency of Court Information. It is possible to do this with the Religious Courts as they have implemented essentially the same case management system in 75% of their first instance courts. Data can therefore be aggregated, and reports produced, centrally in Badilag from all courts participating in the National Information Repository.

Table 14

Number of days from case registration until the divorce certificate is issued in selected Religious Courts				
Religious Courts participating in the pilot National Information Repository (NIR)	Number of Valid Cases in National Information Repository reviewed	Average number of days from registration until the date of final hearing	Average number of days from the date of final hearing until the date of the divorce certificate	Total number of days from case registration until the divorce certificate is issued
RC PELAIHARI	114	60	39	99
RC BENGKULU	147	63	30	93
RC JAKARTA PUSAT	424	62	55	117
RC JAKARTA UTARA	18	71	31	102
RC JAKARTA BARAT	202	66	56	122
RC KENDAL	268	111	33	144
RC WONOSOBO	1253	95	47	142
RC WATES	254	103	35	138
RC WONOSARI	260	101	32	133
RC JOMBANG	1406	59	34	93
RC MALANG KAB. MALANG	4152	66	30	96
Average	-	78	38	116
Total	8498	-	-	-

The data below was collected from 1163 court files reviewed in 12 courts (four high, four medium and four low volume courts) to look at how long a case took from the date of registration until the date of final hearing.

Table 15

Case file analysis for divorce cases: Number of hearings and days from the date of case registration until the date of the final hearing				
	Maximum number of court hearings	Average number of court hearings	Maximum number of days from the date the case is registered to the date of final hearing	Average number of days from the date the case is registered to the date of final hearing
Religious Courts (RC)	20 sessions	3 sessions	393	83
General Courts (GC)	21 sessions	6 sessions	317	84
High Volume Courts	21 sessions	4 sessions	361	84
Medium Volume Courts	20 sessions	5 sessions	318	84
Low Volume Courts	15 sessions	4 sessions	292	78
RC Denpasar	8	3	292	85
RC South Jakarta	20	4	393	103
RC Kab. Malang	10	2	361	72
RC Manado	10	3	258	80
RC Pontianak	8	3	217	71
RC Yogyakarta	12	4	318	104
GC Bitung	15	6	199	76
GC Gianyar	15	5	192	72
GC Central Jakarta	11	5	317	90
GC Malang	21	7	313	92
GC Pontianak	20	8	260	83
GC Yogyakarta	17	7	230	79

9 Efficient allocation of judicial and court staff resources.

The most important resources of the courts are its personnel, the judges and court staff. Excellent courts use up-to-date information on the workload of judges and staff. Excellent courts apply and continue to improve objective workload models, which describe the relationship between court case categories and the average time needed by a judge and court staff to prepare and finalise a case. In combination with the anticipated number of incoming cases and pending cases, this information is used to predict the number of personnel needed.⁴¹

On average, the Religious Courts surveyed had half the number of judges and court staff as General Courts (n=42 v n=80) but they heard on average 30% more cases (n=1489 v n=1152).

In order to meet the needs of all clients, including the poor, the Supreme Court of Indonesia should consider the allocation of judges and court staff in proportion to courts' actual caseload. This will require consideration of the relative durations of different types of cases and the number of court events requiring judicial and court staff resources.

In 2009, a detailed analysis of the case load, numbers of judges and court staff of 12 courts was undertaken. The 12 courts were selected to include 4 high volume courts (defined as courts with more than 1000 total cases excluding traffic or summary cases); 4 medium volume courts (defined as courts with between 500 and 1000 cases), and 4 low volume courts (defined as courts with less than 500 cases).



⁴¹ (2008) International Framework for Court Excellence, National Centre for State Courts at p.15.

Table 16

Number of Judges, Court Staff and Cases in Selected General and Religious Courts				
	Judge	Court Staff	Total number of judges and court staff	Total number cases ⁴² entering court in 2008
Jakarta Pusat GC (High V)	23	119	142	3417
Jakarta Selatan RC (High V)	16	59	75	2240
Malang GC (High V)	12	69	81	1251
Malang Kab RC (High V)	11	28	39	5068
Yogya GC (Med V)	10	81	91	699
Yogya RC (Med V)	9	28	37	506
Pontianak GC (Med V)	9	54	63	983
Pontianak RC (Med V)	6	32	38	704
Gianyar GC (Low V)	10	49	59	285
Denpasar RC (Low V)	7	22	29	258
Bitung GC (Low V)	11	30	41	281
Manado RC (Low V)	5	29	34	158
Average RC	9	33	33	1489
Average GC	12.5	67	67	1152.7

- ▶ General Courts surveyed have 39% more judges than Religious Courts surveyed
- ▶ General Courts surveyed have 103% more court staff than Religious Courts surveyed
- ▶ General Courts surveyed received 77% of the cases received by the Religious Courts surveyed

In summary, the General Courts surveyed have 40% more judges and 103% more court staff than the Religious Courts but they have three quarters of the caseload. Certain criminal cases may take more judicial time to hear and determine than divorce cases. The General Courts also have a large number of traffic fines and other summary cases that are processed in an expedited fashion. Nevertheless, the current allocation of judicial and court staff resources sees the 11 judges in Malang Kabupaten Religious Court hearing 16 times the contested cases heard by the 10 judges in Gianyar General Court (n. = 1382 cases per judge v n.=86). The issue of aligning judicial and court staff resources to courts depending on their caseload will be an important element in improving client services, especially for the poor.

⁴² In this table, the number of cases includes civil matters involving only one party (permohonan) as well as contested cases involving two or more parties and criminal matters for General Courts.

Case Study

Malang Kabupaten Religious Court

Malang Kabupaten Religious Court was included in the case file analysis as it has the highest Religious Court case load and the second highest caseload of over 700 first instance courts in Indonesia. However this court is significantly under-resourced in terms of judges and court staff compared with other courts that hear a fraction of the caseload. The Deputy Chief Judge (acting as the Chief Judge) mentioned that the court stayed open much longer than normal hours to process the large number of cases that it received.

PA Malang Kabupaten has pioneered the use of IT systems to support its case management and is currently participating in the National Information Repository pilot project to ensure that its electronic court records are backed-up in Jakarta and will not be lost in case of a computer failure at the court. All client service desks, including the cashier, are computerised. However, the ability to manage the second largest court caseload in Indonesia depends very much on these IT systems being maintained and updated so that the system can work to support the limited number of human resources. Court staff indicated that better maintained computer resources were required given the high level of data entry at the court and the fact that the court now depended on IT systems for the court to run smoothly.

Consideration will need to be given to the number of court events requiring judicial and court staff resources if a case is to be handled in a manner considered to be best-practice from a client service perspective. Currently, RC Malang Kabupaten has an average of two hearings for a divorce case compared to an average of three hearings in other Religious Courts. However, it manages to dispose of its large number of cases on average in 96 days from the date a party files a case to the date they receive a divorce certificate. This is 10 days less than the average for the Religious Courts participating in the National Information Repository pilot project.



10 Cycle of non-legal marriage and divorce and lack of birth certificates for children.

A cycle of non-legal marriage and divorce exists for many PEKKA female heads of households living below the Indonesian poverty line. 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.

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 are unable to exercise their basic human right to obtain an identity document, established under the Convention on the Rights of the Child.

Birth certificates

56% of children of those PEKKA women surveyed did not have birth certificates. However, this rises dramatically to 87% of children of PEKKA members in Aceh. This figure reflects the UNICEF Indonesia estimate that:

Approximately 60 per cent of Indonesian children under-five years of age do not have birth certificates, and half are not registered anywhere. This represents one of the lowest birth registration levels of any country in the region. ⁴³

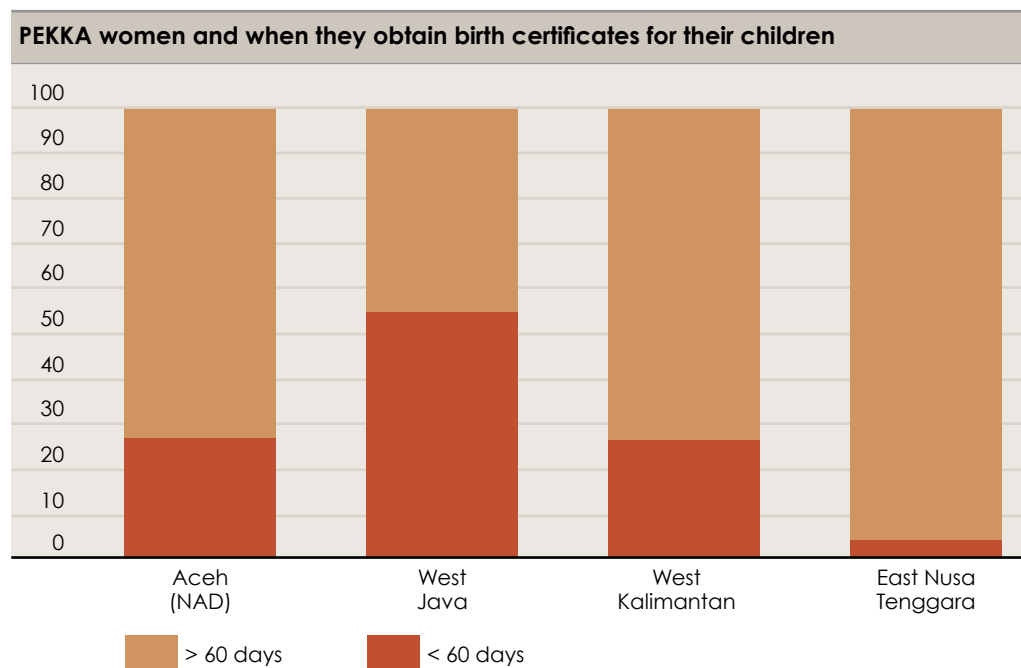
Table 17

Possession of birth certificates for children of PEKKA women					
Do you have a birth certificate for your children?	Aceh (NAD)	West Java	West Kalimantan	East Nusa Tenggara	Total Total
Yes	56	124	152	202	534
No	366	90	124	104	684
Total	422	214	276	306	1,218
% without a birth certificate	87%	42%	45%	34%	56%

43 UNICEF: Overview - Birth Registration for all, http://www.unicef.org/indonesia/protection_2931.html

The overwhelming majority of PEKKA members do not obtain a birth certificate for their children until after 60 days which means they have to pay a fee to obtain the birth certificate. If they seek a birth certificate later than one year from the birth of the child they face an arduous and expensive procedure before a General Court.

Figure 9



The two main reasons cited by PEKKA women as to why they did not obtain birth certificates for their children were (i) they did not realise the importance of a birth certificate; and (ii) they did not have money to pay the Civil Registry fee to obtain it. For those PEKKA members who obtained birth certificates for their children later than 60 days from the date of birth of their children they cited as the reason why they did so either or both of (i) a requirement related to their child's education or (ii) a government programme that assisted with the provision of birth certificates.

In Indonesia, many of the same barriers that stop poor people accessing the Religious Courts for legal divorce also prevent parents from obtaining birth certificates for their children:

- (i) The cost of a birth certificate charged by the Civil Registry if the birth certificate is not obtained within 60 days from the child's birth
- (ii) The fact that the Civil Registry has the power to impose a fine if parents do not obtain a birth certificate for their child within one year after its birth
- (iii) The cost of transportation from the village where the family lives to the district capital where the Civil Registry is located
- (iv) The wages foregone by spending a day or more travelling to the Civil Registry to obtain the birth certificate
- (v) Prevalence of illiteracy and lack of understanding of the process of obtaining a birth certificate or its importance for a child
- (vi) Parents lacking evidence of the birth of their child (required for birth registration) if the child is born at home without assistance from a hospital, health clinic or midwife
- (vii) The requirement to bring a case to the General Courts at a cost of Rp 400,000 (USD40) if the birth certificate is not obtained within one year.

In comparison, those survey respondents who obtained legal divorce certificates through the courts were more likely to have birth certificates for their children. 81% of Religious Court clients confirmed that their first child had a birth certificate and 97% of General Court clients confirmed that their first child had a birth certificate.

11 Divorce through the courts provides legal certainty

Judges and court staff of the Indonesian Courts and PEKKA female heads of households living under the Indonesian poverty line agree that divorce through the courts provides legal certainty instead of an uncertain marital status.

Without a legal divorce it is not possible to legally re-marry. Children from subsequent marriages will therefore not have their father's name on the birth certificate. A formal divorce through the Indonesian courts clarifies legal responsibilities for the care and financial support of both former spouses and children of the marriage.

12 Low understanding of legal requirements for divorce in Indonesia

Only 11% of Religious Court and 8% of General Court survey respondents chose to use the courts because it is a requirement of Indonesian law. 89% of Religious and 91% of General Court clients registered their cases in court because other non-court resolution mechanisms (family conciliation) had failed, or because their partner had chosen to take the case to the courts.

Nine out of ten court survey respondents did not consider the Indonesian legal requirement to bring divorce cases to court as the primary motivating factor for their case.

It is important for the courts to provide guidance on what cases must be referred to the General and Religious Courts under Indonesian law as well as the benefits for individuals and families in having a legal divorce, child guardianship and property settlement cases resolved through the courts.

Table 18

Reasons why General and Religious Court clients brought their cases to the courts		
	General Courts	Religious Courts
Not able to solve the problem among family members	61.3%	55.8%
To follow the pathway pursued by the wife/ husband	17.1%	10.0%
Belief that the courts would provide a resolution	9.1%	16.3%
To follow the legal procedure in Indonesia	8.1%	9.6%
To follow a friend or neighbour's suggestion	0.7%	6.0%
Don't Know	3.7%	2.2%



Chapter 4

Demographic Data from the Court Clients and PEKKA Survey Respondents



Income levels

The monthly per capita income of Religious Court clients is almost five times that of a person on the Indonesian poverty line and General Court clients' monthly per capita income is eight times that of someone living on the Indonesian poverty line.

Religious Court clients surveyed have an average per capita monthly income of Rp 956,500.⁴⁴ General Court clients have an average per capita monthly income of Rp 1,560,000.⁴⁵ By contrast the PEKKA group members' average per capita monthly income is Rp 207,000 (USD 20) or approximately that of the Indonesian poverty line. Therefore, the PEKKA members surveyed represent the poorest 14% of Indonesian society.⁴⁶

Table 19

Income distribution for the Religious Court clients surveyed			
Income in Rp.	Frequency In survey population	Percent %	Cumulative Percent %
<100,000	32	3.1%	3.1%
100,000–250,000	147	14.1%	17.2%
250,000–400,000	168	16.1%	33.3%
400,000–550,000	105	10.1%	43.4%
550,000–700,000	90	8.6%	52.0%
700,000–850,000	47	4.5%	56.5%
850,000–1.000.000	99	9.5%	66.6%
>1.000.000	167	16.0%	82.0%
Total	855	82.0%	
Answer not recorded	187	18.0%	
Total	1042	100.0%	100.0%

⁴⁴ Survey undertaken in 2007.

⁴⁵ Survey undertaken in 2009.

⁴⁶ Survey undertaken in 2009.

Table 20

Income distribution for the General Court clients surveyed					
Income in Rp		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Lowest–100,000	1	0.16	0.18	0.18
	100,000–250,000	14	2.29	2.51	2.70
	250,000–400,000	9	1.47	1.62	4.31
	400,000–550,000	23	3.75	4.13	8.441
	550,000–700,000	6	0.98	1.08	9.52
	700,000–850,000	22	3.59	3.95	13.46
	850,000–1,000,000	10	1.63	1.80	15.26
	1,000,000–1,500,000	85	13.87	15.26	30.52
	1,500,000–2,000,000	66	10.77	11.85	42.37
	2,000,000–2,500,000	86	14.03	15.44	57.81
	2,500,000–3,000,000	32	5.22	5.75	63.55
	3,000,000–3,500,000	49	7.99	8.80	72.35
	3,500,000–4,000,000	13	2.12	2.33	74.69
	4,000,000–4,500,000	19	3.10	3.41	78.10
	4,500,000–5,000,000	6	0.98	1.08	79.17
	5,000,000–highest	116	18.92	20.83	100
Total		557	90.8646	100.00	
Not recorded		56	9.1354		
Total		613	100		

Over a third of General Court clients surveyed (36%) had incomes over Rp 3 million per capita per month compared with only 3% of Religious Court clients surveyed.

43% of Religious Court clients surveyed had incomes of under Rp 550,000 per month whereas 8% of General Court clients surveyed had incomes under Rp 550,000 per capita per month. Given that both the General and Religious Court clients surveyed supported on average 3 dependents, Rp 550,000 per month approximates the Indonesian poverty line of Rp 200,000 per capita per month. Therefore, a significant percentage of Religious Courts clients (close to half) are living near the Indonesian poverty line. For these parties to bring their divorce case to court means they either go into or increase their level of, debt, or use several months of household income.

55% of the 601 PEKKA women interviewed for the access and equity study live below the national poverty line of Rp 200,262 per person per month.⁴⁷

Table 21

Percentage of PEKKA members living below the Indonesian poverty line					
National poverty line	Aceh (NAD)	West Java	West Kalimantan	East Nusa Tenggara	Total
Above poverty line	85	60	56	68	269
Below poverty line	79	55	99	99	332
% living below the national poverty line	48%	48%	64%	59%	55%
Total	164	115	155	167	601

The PEKKA members have primary economic responsibility for, on average, 3.6 people (including themselves). Some PEKKA members, however, have primary economic responsibility for up to 10 people in their household.

Educational background

Religious Court clients are 5 times and General Court clients are 6.5 times more likely to have an education level higher than primary school than the PEKKA group. This suggests that the poorly-educated are consistently unable to access the courts.

- ▶ 58% of the PEKKA members either never went to school or did not complete primary school. Only 28% of the PEKKA members completed primary school and only 7% completed junior high school.
- ▶ 32% of the Religious Court clients finished primary school only, 24% junior high school and 30% senior high school and a further 14% completed higher education.
- ▶ 6% of the General Court clients finished primary school only, 5% junior high school, 43% senior high school and a further 44% completed higher education.

Table 22

Level of Education of access and equity survey respondents				
	Never went to school/did not finish primary school/ finished primary school	Finished Junior high school	Finished Senior high school	Started and/or completed higher education
PEKKA	86%	7%	6%	1%
Religious Courts clients	32%	24%	30%	14%
General Courts clients	6%	6%	45%	43%

⁴⁷ Profil Kemiskinan Di Indonesia Maret 2009, Badan Pusat Statistik, Berita Resmi Statistik No. 43/07/Th. XII, 1 Juli 2009.

Legal status of marriage

Over 50% of the PEKKA group do not register their marriages formally. Nine out of ten of the Indonesian court clients surveyed do formally register their marriage.

It is important to raise awareness in the community that both the General and Religious Courts can provide documentation evidencing the existence of a marriage even after the marriage has been entered into.

- 97.1% of Religious Court clients confirmed that they had registered their marriage at the KUA. 93.4% of General Court clients confirmed that they had registered their marriage formally at the civil registry.
- The 601 PEKKA women surveyed had a total of 782 marriages between them, of which only 48% were legal marriages under Indonesian law. The PEKKA members from East Kalimantan had a significantly higher legal marriage rate of 71% despite having the highest percentage of its members living under the Indonesian poverty line. East Flores and West Java had the lowest levels of legal marriage, with approximately one third of their members having a legal marriage. This variation in the percentage of PEKKA members with a legal marriage may be due to West Kalimantan having the lowest average cost for obtaining a marriage certificate of Rp 23,000 and West Java having the highest average cost for obtaining a marriage certificate of Rp 86,000.
- The Government of Indonesia's Strategic Plan for Universal Birth Registration by 2011 includes in its primary program the goal of 'Exemption from Religious or General Court fees for obtaining documents evidencing the existence of a marriage (for both Muslims and non-Muslims).⁴⁸ The Government of Indonesia's Strategic Plan for Universal Birth Registration by 2011 should be strongly supported.

Table 23

Proportion of PEKKA marriages that are legal amongst survey respondents			
Region	Total marriage	Total legal marriage	% of marriages that are legal marriages
Aceh (NAD)	190	96	50.53%
West Java	236	81	34.32%
West Kalimantan	195	139	71.28%
East Nusa Tenggara	161	59	36.65%
Total	782	375	47.95%

⁴⁸ Relevant extracts from the Government of Indonesia's Strategic Plan for Universal Birth Registration by 2011 is attached at Annex 1.

Table 24

Average cost of a Marriage Certificate for PEKKA members			
Region	Total legal marriages	Average Marriage Certificate cost (Rp)	Maximum cost of a Marriage Certificate (Rp)
Aceh (NAD)	96	27,156.25	300000
West Java	81	86,061.73	600000
West Kalimantan	139	23,169.42	300000
East Nusa Tenggara	59	33,466.10	150000
Total	375	39,394.80	600000

Age of first marriage

Under Article 7 of the Indonesian Marriage Law No.1 of 1974, a marriage is permitted if the man is at least 19 years of age and the woman at least 16 years of age. For Religious Court clients, the average age of first marriage was 22 years and for General Court clients, the average age of first marriage was 25 years.

For the PEKKA group, the survey showed that the average age of first marriage across the four regions was 18 years. However, 27% of the PEKKA women surveyed were married under 16 years of age compared with only 4% of Religious Court clients and 0% of General Court clients that were surveyed.

As can be seen in the table below some of the PEKKA members surveyed were married as early as age nine. Underage marriage in most cases prevents girls from completing the national requirement of nine years of education as schools generally do not permit girls to continue their education once they are married.

Table 25

Age of first marriage for PEKKA members who were married under the age of 16					
Age of first marriage under 16	Aceh (NAD)	West Java	West Kalimantan	East Nusa Tenggara	Total
9	0	2	0	0	2
10	1	0	0	0	1
11	1	1	1	0	3
12	0	12	9	0	21
13	2	8	14	0	24
14	5	8	7	2	22
15	38	25	18	7	88
Total	47	56	49	9	161

Cost of a divorce case

The main costs of a divorce case brought before the courts in Indonesia may include the following elements:

- (i) Cost of the court fee
- (ii) Transportation cost for the party, multiplied by the number of times a party must travel to the court
- (iii) In a contested case, transportation costs for witnesses, multiplied by the number of times witnesses must travel to the court
- (iv) Cost of a lawyer, if used, and
- (v) Informal costs (bribes) paid to the court, if any.

In order to ascertain the total cost of bringing a divorce case to the courts data was obtained from the following sources:

Table 26

Methodology for ascertaining the total cost of bringing a divorce case to the courts

Costs	Information
Cost of the court fee.	<ul style="list-style-type: none"> ▶ Review of Court Files
Transportation cost for the party multiplied by the number of times a party must travel to the court.	<ul style="list-style-type: none"> ▶ Review of Court Files ▶ Court Client surveys 2007 and 2009 ▶ PEKKA survey (female heads of households living under the Indonesian poverty line)
In a contested case, transportation costs for witnesses multiplied by the number of times witnesses must travel to the court.	<ul style="list-style-type: none"> ▶ Court Client surveys 2007 and 2009
Cost of a lawyer, if used	<ul style="list-style-type: none"> ▶ Court Client surveys 2007 and 2009
Informal costs (bribes) requested by the court	<ul style="list-style-type: none"> ▶ Court Client surveys 2007 and 2009 ▶ Lawyer focus group discussions and survey

Of the 601 PEKKA members surveyed, 264 PEKKA divorces were recorded. However, only 38 cases were brought to the Indonesian courts. Of the 38 divorce cases brought to the court, two-thirds involved PEKKA members as the initiators or applicants in the case. Of the 17 PEKKA members who initiated a court case, and can remember what it cost, in three cases the court fee was waived and in the other 14 cases the average cost for the divorce court case was Rp 1,065,500, over 5 times the average PEKKA income per capita per month.

The average total cost of a Religious Court case for survey respondents was Rp 789,666 (this includes the court fee, transportation, and other costs) or almost 4 times the level of the Indonesian poverty line per capita per month.

The average total cost for the General Courts survey respondents who brought divorce cases in the General Courts in 2008 was Rp. 2,050,000 in the cases in where the party did not use a lawyer (or approximately ten times the level of the Indonesian poverty line) and Rp 10,350,000 where the party did use a lawyer (or approximately 52 times the level of the Indonesian poverty line).

Court Fee

From the case file analysis, the average court fee for a divorce case in either the Religious or General Courts was RP 350,000 (or USD 35).

From the Religious Courts survey it is not possible to obtain the client's view on how much they paid to the court for the case fee. However, in the General Courts survey, the average divorce case court fee paid to the court was reported as Rp1,545,000, significantly higher than the average court fee for a divorce case of Rp 350,000 according to the case file analysis. This suggests that informal payments are made by parties to the court, a matter mentioned by some court clients and lawyers during the access and equity study.

Transportation costs

Parties to a divorce case in the Religious Courts travel on average five times to the court for their case. Parties typically had three court hearings before a judicial panel. In addition they travelled to court to register the case at the beginning, and collect the divorce certificate at the end. This compares with parties to a divorce case in the General Courts who typically travelled eight times to the court for their case. Parties had six court hearings before a judicial panel in addition to two trips to the court at the beginning and the end of the case.

The cost of transportation to a court varies significantly depending upon whether a party lives in an urban environment close to the court, or in a rural environment. 50% of court clients surveyed in 2007 and 2009 live within a 10 km radius of the General or Religious Court that heard their divorce case. The 600 PEKKA women interviewed lived in both urban and rural areas. Urban PEKKA members lived on average 13km from the court, at a cost of RP25,000 per return trip to the court. However, rural PEKKA members lived on average 80km from the court, at a cost of Rp92,000 for each return trip to the court (close to half the monthly per capita income of a PEKKA member).

PERKARA-PERKARA YANG AKAN DISIDANGKAN						
No.	Tgl. Sidang	Nomor Perkara	Sidang Majelis	PP3/Sita	Keterangan	
1	22-6-2009	30 / pdt.G / 2009 / pn. mao	B, C, C ₂	D ₂	X	E
2	25-6-2009	85 / pdt.G / 2008 / pn. mao	B, C, C ₂	D ₂	X	E
3	25-6-2009	96 / pdt.G / 2009 / pn. mao	B, C, C ₂	D ₂	X	E
4	25-6-2009	126 / pdt.G / 2009 / pn. mao	B, C, C ₂	D ₂	X	E
5	25-6-2009	78 / pdt.G / 2009 / pn. mao	B, C, C ₂	D ₂	X	E
6	25-6-2009	76 / pdt.G / 2009 / pn. mao	B, C, C ₂	D ₂	X	E
7	25-6-2009	61 / pdt.G / 2009 / pn. mao	B, C, C ₂	D ₂	X	E
8	25-6-2009	88 / pdt.G / 2009 / pn. mao	B, C, C ₂	D ₂	X	E
9	24-6-2009	86 / pdt.G / 2009 / pn. mao	A, C ₂ , C ₃	D ₂	X	E
10	24-6-2009	122 / pdt.G / 2008 / pn. mao	A, C ₂ , C ₃	D ₂	X	E
11	24-6-2009	116 / pdt.G / 2008 / pn. mao	A, C ₂ , C ₃	D ₂	X	E
12	24-6-2009	58 / pdt.G / 2009 / pn. mao	B, C, C ₂	D ₂	X	E
13	24-6-2009	71 / pdt.G / 2009 / pn. mao	A, C ₂ , C ₃	D ₂	X	E
14	24-6-2009	93 / pdt.G / 2009 / pn. mao	A, C ₂ , C ₃	D ₂	X	E
15	-6-2009	/ pdt.G / 2009 / pn. mao	B, C, C ₂	D ₂	X	E
16	-6-2009	/ pdt.G / 2009 / pn. mao	A, C ₂ , C ₃	D ₂	X	E
	-6-2009	/ pdt.G / 2009 / pn. mao	A, C ₂ , C ₃	D ₂	X	E
	-6-2009	/ pdt.G / 2009 / pn. mao	A, B, C ₂	D ₂	X	E
	-6-2009	/ pdt.G / 2009 / pn. mao	A, G, C			

Manado,
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Cost of a lawyer

In the survey of Religious Court clients only 3% of clients used a lawyer to bring their case to the courts. By contrast, 20% of General Court clients surveyed used a lawyer to bring their case to the courts.

Table 27

Average cost of a lawyer in General and Religious Courts divorce cases						
	Total cost of case for applicants Religious Courts	Total cost of case for respondents Religious Courts	Average lawyer cost	Total cost of case for applicants General Courts	Total cost of case for respondents General Courts	Average lawyer cost
When lawyer used	3,009,875	2,235,714	_	10,369,859	10,460,357	_
When no Lawyer	823,047	528,384	_	2,304,639	1,173,641	_
Lawyer Cost	2,186,828	1,707,330	1,947,079	8,065,220	9,286,716	8,675,968

In the Religious Courts survey, the average cost for a lawyer was approximately Rp 2,000,000. In the General Courts survey, the average cost for a lawyer was approximately Rp 8,500,000.

Legal aid lawyers

During the focus group discussions with legal aid lawyers who assist with family law cases, they frequently commented that judges and court staff do not understand that they are providing free legal advice and representation to poor clients. Given the relatively large sums that lawyers receive for their services in family law cases, judges and court staff assume that legal aid lawyers are also paid these amounts by the justice seeker. Legal aid lawyers say that the court often will not waive the court fee for their clients even though they can prove their poverty and need to access the courts through the Prodeo process.

Only some legal aid institutions provide legal representation in court for poor people in family law cases, instead focusing their resources on criminal cases. In these circumstances it becomes more important that information on court procedures, including court fee waiver processes, be accessible to justice seekers both at court and at legal aid offices. Given the relatively low levels of education of some justice seekers it is important that this information also be made available as audio-visual material.

Witness costs

It is common for the party requesting a third party to be a witness in their divorce case to be required to pay for the witness's transportation costs to the court and food for the day.

From the Religious Courts survey it is not possible to obtain the client's view on how much they paid to their witnesses to come to court for the case. However, in the General Courts survey, the average cost for witnesses to appear in court was reported as Rp 438,400.

Cost of a birth certificate case

Only the General Courts hear birth certificate cases. Based on the case file analysis, the average court fee for a birth certificate case in the courts surveyed was Rp 400,000 (or USD 40). 90% of parties requesting a birth certificate in the General Courts travelled three times to the court for their case.

Parties typically had one court hearing before a single judge. In addition they travelled to court to register the case at the beginning and collect the copy of the judgment at the end.

Table 28

Average Cost of a birth certificate case in the General Courts			
	Court Fee	Transportation Costs	Birth certificate Case Cost = Court Fee + Transportation Costs
Urban General Court user	Rp 400,000 (or USD 40)	Rp 25,000 x 3 trips to the court = Rp 75,000 (or USD 7.50)	Rp 475,000 (or USD 48)
Rural General Court user (e.g. NTT)	Rp 400,000 (or USD 40)	Rp 100,000 x 3 trips to the court = Rp 300,000 (or USD 30)	Rp 700,000 (or USD 70)



Chapter 5

Strategic Response to the 2009 Access and Equity Survey



In August 2009, a series of Focus Group Discussions took place with judges and registrars coordinated by the Directorates-General for the General and Religious Courts. A summary of the recommendations drafted at these meetings is set out in Annex 2. The recommendations are incorporated in the table below.

Issues identified in the survey	Suggested strategies
<p>1 There is a high satisfaction rate amongst court clients in both the General and Religious Courts, with 70% of clients saying they would return to the court in future if they had similar legal issues.</p>	<p>Increase the awareness of judges, registrars and court staff on the areas identified in the client satisfaction survey where court clients are less satisfied with the level of client service:</p> <ul style="list-style-type: none"> ▶ Financial transparency ▶ Information on court fee waiver for the poor ▶ Delays in their case and in receiving the judgment ▶ Clarity of court forms.
<p>2 Access for the poor to Indonesian Courts in family law cases is very low.</p> <p>Waiver of court fees through the prodeo process will greatly assist both people living under the Indonesian poverty line, and poor clients of the Indonesian courts who either go into debt or use several months of household income to bring a divorce case to the courts.</p>	<p>Increase the awareness of judges, registrars and court staff about the funds available for court fee waiver for the poor. These fees need to be estimated and requested by each court on an annual basis through the state budget process (RKAKL).</p> <p>Increase the awareness of judges, registrars and court staff about the Government of Indonesia's national poverty line criteria and the percentage of the population within their province that falls under the Indonesian poverty line.</p> <p>Over time, the Indonesian poverty line should provide a benchmark for the percentage of total cases budgeted each year (through the RKAKL budget planning process) to be heard on a court fee waiver basis.</p> <p>If a court client is a recipient of a national government poverty alleviation programme (e.g. rice, health or cash transfer programmes) this should be considered as evidence of poverty for the purposes of a court fee waiver application.</p> <p>Increase awareness in the community of the court's ability to waive court fees in cases of poverty.</p> <p>The Supreme Court of Indonesia should consider publishing in its annual report the number of cases heard on a fee waiver basis.</p>

Issues identified in the survey	Suggested strategies
<p>3 Access to the court is limited for those living far from the Court due to poverty and the high cost of transportation relative to their income.</p>	<p>Increase the awareness of judges and registrars about the funds available for circuit courts for the poor and for those living far from the Indonesian courts. These funds need to be estimated and requested by each court on an annual basis through the state budget process (RKAKL).</p> <p>Increase awareness in the community of the court's ability to provide circuit courts.</p> <p>Consider ways for justice seekers to register their cases at a circuit court rather than having to travel significant distances to the District Court solely to register a case which will subsequently be heard on a circuit court.</p> <p>The Supreme Court of Indonesia may consider publishing in its Annual Report the number of cases heard on a circuit court basis.</p>
<p>4 There is a general lack of understanding of the role of legal aid lawyers in supporting poor people to bring their cases to court.</p>	<p>Increase awareness of judges and court staff (i) of the role of legal aid lawyers in providing free advice and representation in certain cases for poor people; and (ii) that clients of legal aid lawyers should be eligible to request a court fee waiver.</p> <p>Provide information on court procedures, including court fee waiver processes, at legal aid offices. Given relatively low levels of education of some justice seekers it is important that this information also be available as audio-visual material.</p>
<p>5 Overestimation of the down-payment made to courts for divorce cases relative to the actual cost of the case is a disincentive to justice seekers bringing their cases to court, particularly for the poor.</p> <p>Reimbursement of the balance of the down-payment made to courts is important for all clients, but particularly for the poor.</p> <p>Greater transparency of court fees and the down-payments made to courts for divorce cases would assist in building public trust and confidence in the courts.</p>	<p>A sign clearly visible in the court waiting area should advise court clients (i) of the basis for calculating the court fee down-payment; (ii) that they should receive a receipt for the initial down-payment of court fees; and (iii) that any balance from the down-payment will be returned to them at the end of the case.</p> <p>If the court has a website this information should also be available on the website.</p> <p>In order to assist in estimating the case down-payment so that it is relatively close to the average actual divorce case fee, the first instance courts, in consultation with High Courts, should examine average court fee down-payments made by applicants in divorce cases in 2009 and compare them with the average actual court fee recorded in the judgment in family law cases.</p>

Issues identified in the survey	Suggested strategies
<p>6 Clients want to receive a copy of the written court judgment on the day it is read out in court.</p>	<p>Both General and Religious Courts should have the court judgment completed, signed and ready to give to parties on the day it is read out in court. This will mean court clients do not need to return to the court to collect the judgment thereby saving time and transportation costs.</p> <p>Each court should display a sign to inform parties where they can collect a copy of the judgment and/or divorce certificate and that the parties are not required to pay any additional fees except those determined in the laws and regulations.</p> <p>For male divorce court clients, the Religious Courts should issue the divorce certificate on the same day the divorce statement is pronounced in court (<i>pengucapan ikrar talak</i>) and for female divorce court clients the divorce certificate should be issued at the latest seven days after the judgment becomes final and binding. This will enhance client services by minimising the number of trips that parties must make to the court.</p> <p>The Religious Courts currently print a divorce certificate and provide this to divorce clients as well as the written judgment. The Supreme Court may wish to consider providing the same service to General Court clients. This would save non-Muslim divorce court clients the cost and time of having to go to the civil registry to obtain a divorce certificate within 60 days of the court judgment being issued by the General Courts.</p>
<p>7 Both the General and Religious Courts put the date of the final hearing as the date of the judgment, despite the fact that the judgment may not be available to the court client for several weeks, or indeed months, after the date of final hearing.</p> <p>The Supreme Court is not currently able to compile data on how long a divorce case takes at first instance from the date a party registers a case to the date they receive a court judgment and divorce certificate, notwithstanding that divorce cases constitute 50% of all cases heard in Indonesian courts.</p>	<p>A judgment includes the date that it is read out in court. At the end of the judgment there should be another statement concerning (i) whether the judgment is final and binding; and (ii) the date on which a copy of the judgment was delivered to the party.</p> <p>The Supreme Court should continue to support the collection and publication of client service data by the two Directorates-General for the General and Religious Courts on key indicators so that it can report on (i) average duration of a case; (ii) costs to parties including both the down-payment and the final court fee cost; and (iii) the total number of court fee waiver and circuit court cases.</p>

- 8** A cycle of non-legal marriage and divorce exists for many PEKKA female heads of households living below the Indonesian poverty line. 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.
- If parents are unable to bring birth certificate cases to the General Courts their child's basic human right to a legal identity as well as access to a range of social services such as health and education will be denied or diminished.
- The Government of Indonesia has placed a high priority on every Indonesian child's birth being registered by 2011. The requirement in Law 23 of 2006 that parents must bring a birth certificate matter to the General Courts if they do not obtain a birth certificate for their child within one year from its birth is a significant disincentive for the poor and those living far from civil registries.

An information-raising campaign is needed for judges, registrars and court staff on the importance of birth certificates and the role of the General Courts in ensuring that every Indonesian child has a birth registration document.

The Supreme Court of Indonesia should support the Government of Indonesia's Strategic Plan (*Renstra*) for Universal Birth Registration in Indonesia which aims for all births in Indonesia to be registered by 2011 by (i) implementing the strategy outlined in the *Renstra* of waiving court fees in the Religious or General Courts for obtaining documents evidencing the celebration of a marriage/ marriage legalisation (for both Muslims and non-Muslims) and (ii) extending this court fee waiver to birth certificate cases brought to the General Courts if parents do not obtain a birth certificate for their child within one year of its birth.

Awareness should be raised in the community that both the General and Religious Courts can provide documentation evidencing the existence of a marriage even after the marriage has been entered into, which will allow both parent's names to then appear on a child's birth certificate.

Awareness should also be increased in the community of the court's ability to provide court fee waivers and circuit courts to hear marriage legalisation and birth certificates cases for the poor and those living in remote communities.

The requirement in Law 23 of 2006 for a birth certificate matter to be brought to the General Courts should be reconsidered to see if a non-judicial approach can be found, as this is a significant barrier to the poor and those living far from civil registries obtaining birth certificates for their children once one year elapses from their date of birth.

If a non-judicial approach cannot be found, and the transition provisions for Law 23 of 2006 elapse at the end of 2010, then the General Courts will need a significant increase in their court fee waiver budgets as the poor will not otherwise be able to register the birth of their children.

Issues identified in the survey	Suggested strategies
<p>9 On average the Religious Courts surveyed had half the number of judges and court staff as General courts (n=42 v n=80) but they heard on average 30% more cases (n=1489 v n=1152).</p>	<p>In order to meet the needs of all clients, including the poor, the Supreme Court of Indonesia should consider the reallocation of judges and court staff in proportion to the courts' actual caseload. This will require consideration of the relative durations of different types of cases, and the number of court events requiring judicial and court staff resources if a case is to be handled in a manner considered to be best-practice.</p> <p>To support enhanced client services, including the delivery of a copy of the judgment to parties at the final hearing, courts require effective working facilities, including appropriate IT resources to support their case and financial management systems.</p>
<p>10 Only 11% of Religious Court and 8% of General Court survey respondents chose to go to the Courts as a first option because the law made it mandatory to do so in divorce cases in Indonesia. 89% of Religious and 91% of General 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 courts.</p>	<p>The Government of Indonesia should raise awareness at village level of the importance of legal marriage and divorce both for the husband and wife and also for the children of these marriages.</p> <p>The Government of Indonesia's Strategic Plan to achieve birth registration for all Indonesian children will not achieve its goal unless the government also mounts an information campaign on the requirements concerning legal marriage and divorce to facilitate both parents' names being included in a child's birth certificate.</p> <p>Female heads of households living under the Indonesian poverty line overwhelmingly prefer to receive information on court processes through face-to-face discussions and meetings. Consideration should be given to the production of film and video material that could be used to provide information to justice seekers through village meetings.</p>



Annex 1

Extract from Government of Indonesia's
Strategic Plan for Universal Birth Registration
in Indonesia



Government of Indonesia's Strategic Plan for Universal Birth Registration in Indonesia (Renstra 2011)⁴⁹

Strategic Program Matrix:

No.	Objective	Activity	Timeframe	Implementing Agency	Output
10. Exemption from court fees in the Religious or General Courts for obtaining documents evidencing the celebration of a marriage (for both Muslims and non-Muslims).					
1	Greater access to documents evidencing the celebration of a marriage (for both Muslims and non-Muslims)	Taking an inventory of married couples who lack documents evidencing their marriages	2009–2010	District and municipal governments	Inventory of married couples who lack documents evidencing their marriages
		Fee reductions or exemptions for obtaining such documents (for both Muslims and non-Muslims)	2010–2011	District and municipal governments	Lower cost of obtaining documents evidencing marriage

⁴⁹ Chapter 3, D Program Strategies, Departemen Dalam Negeri RI, Rencana Strategis 2011 Semua Anak Indonesia Tercatat Kelahirannya (Renstra 2011) 2008.



Annex 2

Summary of Recommendations made by
General and Religious Courts Judges and
Registrars



Summary of recommendations drafted by participants at the Religious Courts meeting on 18 August and General Courts meeting on 19 August 2009⁵⁰

Key Issue 1

Equal access for the poor and those living in remote communities to the courts to have their divorce and birth certificate cases heard in courts as required by law.

Formulation

Definitions and Concepts

1. Prodeo cases are cases processed in court free of charge for people who are poor. The process costs for conducting the case are borne by the state through the state budget (DIPA) which is allocated at the working unit (satker) in each court. The purpose of the Prodeo cases is to assist poor people/communities who cannot otherwise afford to have access to justice.
2. The definition of poor is the condition of people who cannot afford to finance themselves in having a case heard in court, which should be evidenced by a letter concerning the poverty of the applicant from the head of the village and acknowledged by the head of the sub-district.
3. A circuit court is a hearing conducted outside the court building but still within the jurisdiction of the court. A circuit court is conducted to assist justice seekers who live in remote areas so they do not have to travel to the court building, thus ensuring easier access to justice.

Recommendations

1. The court must waive the court fee for poor people who apply for their case to be heard on a Prodeo basis. All process fees incurred in conjunction with the examination of Prodeo cases shall be borne by the state budget.
2. The Prodeo procedure should be made simpler for poor people in the divorce and birth certificate civil cases. Consideration should be given to a special desk in a court's civil registry to handle cases where a court fee waiver is requested by people who are not able to pay the court fees. (Chapter 7 Article 237 to 245 HIR Part VI – 273 to 281 RBG.)
3. There should be dissemination of information on court procedures in divorce and birth certificate cases as well as court fees and requests for court fee waiver in the form of brochures that are distributed to communities at the village level.
4. Courts can conduct circuit courts to improve access to justice for communities who live far from the court, in accordance with the applicable laws and regulations. All process fees incurred in conjunction with conducting circuit court shall be borne by the state budget.
5. Circuit courts should be made available as they provide an effective, efficient, simple, fast and inexpensive public service. Prior to circuit courts being held, the court can cooperate with the Regional Government to map the circuit court hearing places at the village office. A court can appoint a specific panel of judges for the circuit court that are periodically replaced every three or four months. For those District Courts that have a vast jurisdiction, a mapping of circuit court locations is needed. There should be at least one hearing place at a village office for four villages, in cooperation with the regional government.

⁵⁰ The original documents draft by Participants are: Rumusan Diskusi Tindak Lanjut Hasil Survey Akses Dan Kesetaraan Terhadap Hukum Keluarga Di Lingkungan Peradilan Agama available on the Badilag website at: www.badilag.net and Hasil Diskusi Kelompok 1, 2 dan 3 for the General Courts.

6. The Registrar/Secretary of a court has to properly plan the allocation of Prodeo and circuit court budget through the annual budget planning mechanisms (RKAKL).
7. Courts should report on the use of the allocated Prodeo and circuit court budget through the SMS/website based reporting system in addition to the mechanism regulated by Department of Finance.
8. For the socialisation of the information concerning Prodeo cases and circuit courts, each court should have a good public relations system by using the information technology facilities that it has, by publishing various kinds of brochures, leaflets and other printed materials.

Key Issue 2

Speed and ease of delivery of the divorce case judgment and divorce certificate to parties.

Recommendations from Religious Courts

1. Leaders of the Religious Court should create effective working conditions to ensure that a copy of the judgment can be delivered to the parties immediately after the judgment is read out.
2. On the day of the court hearing when the judgment is read out, the text of the judgment read out by the panel judge should be the final judgment document so that it can be delivered directly to the justice seekers. Therefore, the parties do not need to incur extra transportation cost to return to the court solely for the purpose of obtaining a copy of the judgment.
3. To support the acceleration of delivery of the copy of judgment, it is expected that the Chief Judge of the Appellate Religious Courts issue a circular letter concerning the issues stated in points (1) and (2) above.
4. To support the achievement of the target to deliver a copy of the judgment at the time the judgment is read out, an efficient ratio between the number of judges and court staff and the caseload of the court should be attained as well as effective working facilities, for instance the availability of computers and the SIADPA case management application.
5. To provide information on whether the judgment is final and binding there should be a statement at the end of the judgment:
 - a. The Judgment is Final and Binding / Not Yet Final and Binding
 - b. Copy of Judgment is delivered on the date of
6. The issuing of divorce certificates (*Akta Cerai*) is done according to the applicable law. In the petition based divorce brought by the wife (*cerai gugat*), the divorce certificate is issued at the latest seven days after the judgment is final and binding. For the request based divorce initiated by the husband (*cerai talak*), the divorce certificate is delivered on the day of pronouncement of talak declaration (*pengucapan ikrar talak*) by stating the date in accordance with the date of the stipulation for the pronouncement of talak declaration (*Penetapan ikrar talak dibacakan*).
7. In each Religious Court, there should be a sign to inform the parties where they can collect a copy of the judgment and/or divorce certificate and that the parties are not required to pay any additional fees except those transparently determined in the laws and regulations.

Recommendations from General Courts

In a divorce case, a copy of the judgment can be delivered directly to the parties, by way of the following procedures:

1. A hearing that is done in timely manner by the panel judge by providing an opportunity to the parties for making an amicable settlement and if the settlement can not be reached within 24 hours, then the hearing can directly be continued with the agenda of the answer (*Jawaban*), and the defendant can submit the answer within 24 hours;
2. Whereas the parties are given opportunities within 24 hours to answer orally or in written Reply (*Replik*) for the plaintiff and re-answer (*Duplik*) for the defendant;
3. Whereas for evidence (*Pembuktian*), the parties are given opportunities within 24 hours;

4. Whereas the parties are given the opportunity to submit a conclusion (*Kesimpulan*) within 24 hours;
5. Whereas before the pronouncement of the judgment (*Putusan*) by the panel judge, the substitute registrar should have finalised the minutes of hearing (*Berita Acara Sidang*);
6. Whereas the panel judge should have made judgment in a divorce case within the 6th (sixth) day of hearing;
7. Facilities, infrastructure and human resources are required to support the abovementioned efforts.

A copy of the judgment can directly be handed over to the parties, on the last day of hearing, in the case of (i) a divorce petition case (*Perkara Gugatan Perceraian*) and (ii) cases where one party requests a judgment on an issue such as a birth certificate case.

Whereas each judgment in a divorce case pronounced by the panel judge should truly be transparent and known by the community, and a copy of judgment directly handed to the parties by the registrar and/or the vice registrar.

Key Issue 3

Transparency of court fees and the reimbursement of the balance of the down-payment and reduction of case down payment.

Recommendations

1. The Court makes court fees transparent by utilising the information media that it has, for instance: information board, television media in the waiting room, publication of printed materials (brochures, pamphlet, leaflet), SMS Gateway services.
2. Courts that have a website are expected to provide a court fee transparency menu which contains materials, among others: Decree on case down payment for each level of court, lists of court radius, report on court fee accountability and list of types and tariffs of non tax state revenue related to the services provided by court registry and other important information.
3. Courts propose budget allocation for socialisation/publication of court fee through the annual state budget planning process (RKAKL).
4. Courts in cooperation with the regional government or other organisation should raise community understanding/ 'socialise' information on court fees.
5. For court fee transparency, the panel judge should make an order on the balance of the court fee down-payment remaining to be reimbursed to parties that appear in court. For those parties that have not taken the balance of the down-payment because they were not in court when the judgment was pronounced or for any other reason, the court should make a formal announcement letter and also announce it in the court's notice board.
6. For courts that have a website, the announcement should be published on its website.
7. Courts should have a counter for the reimbursement of the court fee down-payment and make a sign in the court building that can be easily seen by the public.
8. A sign prominently displayed in the court building should remind justice seekers to request a receipt for any payment made in the court building but especially for (i) the initial payment of the court fee down-payment and (ii) the reimbursement of the balance of the court fee down-payment.
9. The abovementioned reimbursements do not only apply to cases at first instance but also to the down payment of court fees at all court levels as recorded in the journal book (for Religious Courts: K1PA1G/P, K1PA2, K1PA3, K1PA4, K1PA5).
10. To re-evaluate/analyse those court fee down-payments which are high in order to see if it is possible for them to be lower. Typically, the formula for determining the down payment fee includes three summons for each party. In order to reduce the down-payment fee, the formula for determining the down payment fee should include one or two summons for each party.



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Indonesia Australia Legal Development Facility
October 2009



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