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Access to Justice and the Right to a Legal identity for Indonesian Children

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I. Introduction

- The Chronology of Collaboration and Change
- Forging international peer-to-peer relations between the Family Court of Australia and the Supreme Court of Indonesia and Religious Courts
- Placing access to justice at the heart of national and global development initiatives.

This paper presents a somewhat unorthodox and, to many eyes, counter-intuitive story of improving women's access to family courts in Indonesia. Over a decade, the changes in women's access to the Religious Courts (the family courts for Muslim citizens in Indonesia) have been dramatic. A million more women have accessed the Religious Courts in Indonesia in the last decade than in the previous. However, this is not only a story about numbers of women and men able to access the services of the Religious Courts but, equally, about collaboration and the coalitions of reform that commenced a decade ago. The important results include greater access to legal identity documents such as marriage and birth certificates and a fledgling scholarship programme so that girls from female-headed households are now encouraged to complete 12 years of education and to contemplate tertiary or vocational studies.

This introduction outlines the chronology of collaboration as well as the key elements contributing to the policy and budget reforms that in turn have led to improvements in women's access to the Religious Courts in Indonesia. Part II then takes a closer look at what changed in Indonesia in terms of knowledge, transparency of budget and court data, and the impact of better funded justice and paralegal services for women, the poor and people living in remote areas. Part III moves from the big picture to individual stories and how women and girl's lives in the far eastern provinces of Indonesia have changed as a result of these new services. The paper then concludes by reflecting on why development programmes that focus on women's access to Family Courts can have a profound impact in areas such as universal birth registration and educational outcomes for girls and boys.

Forging international peer-to-peer relations between the Family Court of Australia and the Supreme Court of Indonesia and Religious Courts

The Family Court of Australia was the first foreign court to engage with the Religious Courts of Indonesia. The Honourable Diana Bryant AO, Chief Justice of the Family Court of Australia agreed in 2004 to commence a dialogue between judges and administrators of her court and those of the Religious Courts of Indonesia. In 2005, a Vice Chief Judge of one of the High Religious Courts, Bapak Suryadi, and the head of the agency administering the Religious Courts, Bapak Wahyu Widiani, led a group of 20 judges, registrars and court administration experts on a two week visit to the Family Court of Australia supported by the Australia Indonesia Legal Development Facility². From this initial exchange, many of the key themes of engagement over the next decade would emerge:

- Transparency of information through the Religious Courts website established in the months following the visit. A decade later this website provides real-time case data for the 359 Religious Courts and 29 High Religious Courts across Indonesia. The website also allows hundreds of Religious Courts across the country to contribute articles on what is happening in their court and their colleagues to post comments and ideas.
- Awareness that many clients of the Religious Courts face barriers in bringing their family law cases to court, particularly women, the poor and people living in remote areas.
- Importance of measuring client's satisfaction with the quality of service offered by the Religious Courts. These last two points lead the Religious Courts to undertake an access and equity research study in 2007 in collaboration with the Family Court of Australia and the PEKKA female-headed households CSO in Indonesia.

The dialogue and collaboration between the Family Court of Australia and the Religious Courts and Supreme Court of Indonesia continues to this day. It is led by the Chief Justices meeting each year to discuss the particular areas of judicial collaboration that are of most relevance to their courts. The engagement then takes place between judges, registrars, court staff and CSO officials working to support access to the courts in family law matters. Many of the profound changes that have occurred for women, the poor and people living in remote areas seeking to access the Religious Courts developed through the dialogue and the exchange of ideas with the Family Court of Australia and Indonesian CSO partners.

² The Australia Indonesia Legal Development Facility 2004-2009 was funded under the Australian Aid programme.

The Chronology of Collaboration and Change

Timeline	Chronology of Events
2004	First Family Court of Australia visit to Indonesia to commence collaboration with the Supreme Court and Religious Courts of Indonesia.
November 2005	Visit of Religious Courts judges and court administrators to the Family Court of Australia in Melbourne and Canberra. It was agreed to focus on access to quality family law services for women, the poor and people living in remote areas and on transparency of information on the work of the court.
2006	Religious Courts website launched. http://badilag.mahkamahagung.go.id/
2007	First research project commenced to assess what prevented women, the poor and people living in remote areas from accessing the Religious Courts for their family law matters, and what women who did access the Religious Courts thought of the service they received. Research partners: Supreme Court of Indonesia, Family Court of Australia, PEKKA women's CSO, Centre for the Study of Islam and Society at the State Islamic University (Jakarta) and AusAID/ DFAT.
February 2008	The Chief Justices of the Supreme Court of Indonesia and the Family Court of Australia launched the research findings: <i>Providing Justice to the Justice Seeker: A report on the Indonesian Religious Courts Access and Equity Study 2007</i> .
2008	Budget increases for the Religious Courts to extend court fee waiver and circuit court services for women, the poor and people living in remote areas funded through the Indonesian national budget.
July 2008	Memorandum of Understanding (MOU) on judicial cooperation signed between the Chief Justices of the Supreme Court of Indonesia, the Family Court of Australia and the Federal Court of Australia. The strategic direction of the MOU on judicial collaboration is renewed each year at annual meetings of the Chief Justices of the three courts.
2009	Second research project commences that includes the General Courts and Religious Courts on increasing access to the courts for family law cases, including the provision of marriage and birth certificates.
July 2010	The Deputy Chief Justice of the Supreme Court of Indonesia leads a delegation to Australia to observe how duty solicitor posts in Australian courts provide free legal advisory services and representation to court clients who come to the court on that day.

August 2010 Supreme Court of Indonesia issues a Practice Direction³ on a Guide for the provision of legal aid that includes the waiver of court fees for the poor, circuit courts to remote locations and free legal advisory services at court for women and men facing financial hardship.

The Chief Justice of the Supreme Court of Indonesia and Ibu Nani Zulminarni, head of the PEKKA women's CSO, launch the research publication on improving women's access to the Indonesian courts:

Access to Justice: Empowering Female Heads of Household in Indonesia (2010) AusAID and PEKKA
<http://www.familycourt.gov.au/wps/wcm/connect/FCOA/home/about/international/indonesia/>

October 2010 Publications launched by the Chief Justices of Indonesia and the Family Court of Australia:

Access to Justice: Empowering Female Heads of Household in Indonesia (2010) AusAID and PEKKA
<http://www.familycourt.gov.au/wps/wcm/connect/FCOA/home/about/international/indonesia/>

2011 UN Women highlight women's access to the Religious Courts in Indonesia in their 2011-2012 Progress of the World's Women Report: In Pursuit of Justice.

2012 World Bank World Development Report on Gender Equality and Development highlights the work of the Religious Courts in collaborating with the women's CSO PEKKA in Indonesia.

January 2014 Supreme Court Chief Justice clarifies⁴ how the courts will waive fees for the poor, hold circuit courts in remote areas and support court clients who cannot afford to pay for legal advisory services. The Supreme Court budget includes provision for these services.

February 2014 Publication on Indonesia's Missing Millions: AIPJ Baseline Study on Legal Identity launched

June 2014 Ministry of Religion removes fees for providing marriage certificates to Muslim citizens when they register their marriage at the Office of Religious Affairs⁵.

August 2014 Practice Direction issued by the Director General of Islamic Guidance in the Ministry of Religion, clarifying that a marriage certificate will also be issued free of charge when they are provided at an integrated and mobile service at

³ Chief Justice of the Supreme Court of Indonesia, Surat Edaran 10 Tahun 2010 tentang Pedoman Pemberian Bantuan Hukum.

⁴ Peraturan Mahkamah Agung RI Nomor 1 Tahun 2014 tentang Pedoman Layanan Hukum bagi Masyarakat Tidak Mampu di Pengadilan

⁵ Implementing Regulation 48 of 2014 amending Implementing Regulation 47 of 2004 related to tariffs and types of income in force in the Ministry of Religion.

	village level ⁶ .
January 2015	Presidential Regulation Number 2 Year 2015 on the Plan for National Medium Term Development (RPJMN) Years 2015 – 2019 includes a target for increasing the percentage of Indonesian children with a birth certificate.
August 2015	Supreme Court Chief Justice clarifies ⁷ how the courts will participate in integrated services together with the Office of Religious Affairs and the Civil Registry Office to legalise marriages and provide marriage and birth certificates through mobile services conducted at village level.
2014-2016	Australia Indonesia Partnership for Justice ⁸ collaborates with the Supreme Court to support the trial of integrated and mobile legal identity services in five provinces.
May 2016	Director General of the Religious Courts of Indonesia issues a Circular to all Religious Courts clarifying procedures for marriage legalisation case fees and costs of implementing integrated and mobile services together with officials from the Ministries of Religion and Home Affairs ⁹ .
July 2016	The World Bank publishes The Role of Identification in Ending Child Marriage: Identification for Development (ID4D) and highlights Indonesia's integrated and mobile services that starts with the courts' legalisation of a couple's marriage.
January 2017	The Religious Courts publicise the results of holding integrated and mobile services with the Ministry of Religion and Ministry of Home Affairs to provide legal identity documents in remote areas. In 2016: <ul style="list-style-type: none"> • 16 396 marriage legalisation [itsbat nikah] cases were heard by the Religious Courts at an integrated and mobile service representing 24% of the 67,584 marriage legalisation cases heard by Religious Courts in 2016 • 362 locations where these integrated and mobile services were provided • 32792 people assisted

⁶ Surat Edaran Direktorat Jenderal (Dirjen) Bimbingan Masyarakat (Bimas) Islam DJ.II/2/HM.01/1425/2014

⁷ Supreme Court Regulation Peraturan Mahkamah Agung (PERMA) No. 1/2015 on integrated and mobile services

⁸ The Australia Indonesia Partnership for Justice (2011-2016) was part of the Australian Government aid programme.

⁹ Surat Edaran Direktur Jenderal Badan Peradilan Agama tentang Biaya Perkara dan Biaya Operasional Pada Pelayanan Terpadu (9 Mei 2016)

Placing access to justice at the heart of national and global development initiatives.

Over the last decade, a greater importance has been placed on the civil registration of key events in a person's life – from birth to marriage, in some cases divorce, and death. In Indonesia, the Religious Courts, as the family law courts for Muslim citizens, play an important role in legalising a marriage valid under Islamic Law but where the husband and wife have not obtained a marriage certificate from the civil registry office. A marriage certificate is an important document for women, as it clearly evidences the date of the relationship, and also for the children from the marriage, as it allows them to obtain a birth certificate with both the father and the mother's name on it¹⁰.

2015 saw birth registration identified as a priority:

- **Nationally, when the Indonesian President signed the Medium Term Development Plan** that, for the first time, included legal identity as one of five basic services to be mobilised toward alleviating poverty.
- **Regionally, when Asia-Pacific Ministers met in Bangkok in November 2014 and signed a Declaration** to “Get every one in the picture in Asia and the Pacific” and declared 2015-2024 as the Asia Pacific Civil Registration and Vital Statistics Decade.
- **Globally, when the Sustainable Development Goals (SDGs)** were announced in September 2015 with a new Target 16.9: “States will by 2030 provide legal identity for all, including birth registration”.

However, one of the key barriers to children obtaining a birth certificate is that the parents do not have a marriage certificate¹¹. In fact, 76% of couples living in the poorest 40% of households do not have a marriage certificate¹². Somewhat contrary to popular notions of what a Family Court does, the fastest growing area of work of the Religious Courts of Indonesia over the last decade has been legalising existing marriages that are valid under religious law.

In Indonesia, and across the world, women initiate the majority of family law cases. They may do this to formalise their marriage or divorce, to seek custody of children

¹⁰ In 2016, the Minister for Home Affairs issued a regulation stating that a man and woman with a valid religious marriage could sign a Statutory Declaration stating that they were the child's parents and that the family card evidenced the religious marriage. However, many couples with a religious marriage whose family card does not evidence the fact that they are married under religious law will not be able to obtain a birth certificate for their children with both the father and mother's name on it.

¹¹ A comprehensive discussion of barriers to accessing birth certificates for Indonesian children can be found at: DFAT, PEKKA and PUSKAPA UI (2014) Sumner C and Kusumaningrum S, Baseline Study on legal identity: Indonesia's Missing Millions, Sumner C, Indonesia's Missing Millions: Erasing Discrimination in Birth Certification in Indonesia, Centre for Global Development (2015), Plan International (2016) Sumner, C, Birth Registration For All In Indonesia: A Roadmap for Cooperation

¹² BPS/ TNP2K Pemutakhiran Basis Data Terpadu 2015

and financial support to raise them, or to live free from violence within the home. Therefore, if national and international agencies wish to support women's access to the formal justice system, then supporting women's access to family courts is an important dimension. Choice, agency, living free from Intimate Partner Violence all require women to have the knowledge and ability to access the formal justice system. This paper explores the changes introduced by the Indonesian courts, as well as the paralegal programmes supported by CSOs like PEKKA, that have helped make women's access to the Family or Religious Courts in Indonesia an increasing reality.

Many of the innovations described in this paper that were developed by the Religious Courts to broaden access to their courts for women, the poor, and people living in remote areas, are now being adapted by other Ministries to address the fact that 32 million of Indonesia's 85 million children do not have a birth certificate¹³.

¹³ Circular Letter from the Minister of Home Affairs on Accelerating the publication of electronic ID cards and birth certificates (12 May 2016) and Central Statistics Agency SUSENAS survey

II. What changed – the big picture?

- Knowledge: Research Underpinning Policy and Budget Changes
- New and better funded legal and paralegal services for women, the poor and people living in remote areas
- Integrated and mobile services for marriage legalisation and legal identity documents

The first research collaboration between the Supreme Court of Indonesia, the Family Court of Australia and the Indonesian women’s empowerment organisation PEKKA was published in early 2008 and made the following key findings and recommendations:

Key Findings	Key Recommendations in response
<p>The poorest sections of Indonesian society are not bringing their family law cases to the Religious Courts in proportion to their numbers in Indonesian society.</p> <p>For example, 96% of the PEKKA group (female heads of households) surveyed did not bring their divorce cases to the Religious Courts.</p>	<p>Recommendation 1: Increase the level of the Prodeo Budget for Religious Courts so that the percentage of prodeo filings (cases in which court fees are waived) accepted in the Religious Courts as a percentage of total case volume, increases in 5-7% increments from 2008-2012 up to 35% of total case volume by the end of 2012. Develop data management systems to capture information on the number of applications for prodeo assistance made to Religious Courts each month and the number accepted.</p> <p>Recommendation 2: Provide greater clarity for both judges and court users on the court fee waiver process and take steps to ensure that the current two-step court fee waiver process does not create an additional burden for the poor in establishing poverty prior to the hearing of their case.</p>
<p>For the poor, the main barriers to accessing the Religious Courts are financial and relate to (i) court fees; and (ii) transportation costs to travel to the court. 98.1% of the PEKKA group said that they would be more motivated to use the Religious Courts if court fees</p>	<p>Recommendation 3: Plan more Circuit Courts in large and/or poor provinces where the demand and need is greatest.</p> <p>Obtain an adequate annual budget to enable circuit Religious Courts to be</p>

were waived, and 95.9% of the PEKKA group said that they would be more motivated to use the Religious Courts if “the judges visit us” through holding a circuit court in a nearby town. held in areas of high demand.

Secondary barriers for the poor in accessing the Religious Courts relate to the ability to provide clear information to court clients that are illiterate.

Recommendation 4: Provide accurate and clear information to both court users and the broader community on the Religious Courts in non-legal language using a range of media.

A cycle of non-legal marriage and divorce exists for many PEKKA female heads of household living below the Indonesian poverty line. The failure to obtain legal documentation in relation to marriage and divorce is associated with 62% of children from these marriages not obtaining birth certificates. It also means that children of the poor in Indonesia lack the basic human right of an identity document as established under the Convention on the Rights of the Child.

The four Recommendations above were designed to increase women’s access to the Religious Courts both to legalise existing marriages and to formalise divorces. In addition the final **Recommendation 5:** Client Service Improvements in the Religious Courts aimed to improve services in the three areas identified in the research related to:

Divorce through the Religious Courts provides legal certainty instead of an uncertain marital status. A formal divorce through the Religious Courts also clarifies legal responsibilities for the care and financial support of children from the marriage and of former spouses.

- Clarity of court forms,
- More information on how to seek a court fee waiver, and
- Transparency of court fees paid and reimbursement of any balance to the applicant.

Over the last 20 years, the number of people living under the Indonesian poverty line has dropped from almost 50 million Indonesian people to almost 28 million or from 24% to 11% of the population. However, the cost to bring a divorce case in the Religious Courts is approximately IDR 441,000¹⁴ or 122% of the

14 <http://pa-bandung.go.id/biaya-perkara>

monthly income of someone living on the Indonesian poverty line of Rp 361,990 (USD 27)¹⁵.

Approximately 40% of the Indonesian population remain vulnerable to falling into poverty, as their income hovers marginally above the national poverty line¹⁶.

As a result of the 2008 research recommendations identifying cost, distance and lack of knowledge as factors affecting women's access to the Religious Courts, changes to policies, budgets and services were introduced by the Supreme Court of Indonesia to make the Religious Courts more accessible for women, the poor and people living in remote areas.

Results 2007-2016

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- 1 The number of Religious Courts cases increased by 284,406 between 2007-2016.

In 2016, 289,460 Religious Courts clients were assisted by a court fee waiver, circuit court hearing or free legal advisory services showing that rising case numbers is in proportion to the access to justice services now provided by the Religious Courts.

- 2 Over the decade 2007-2016, the waiver of court fees in the Religious Courts for clients facing financial hardship increased from 325 documented cases in 2007 to 26,451 fee waiver cases in 2016.

In 2016, the court fee in a Religious Courts family law case was waived in 5% of the total of 501,490 cases received by the Religious Courts in 2016.

- 3 Over the decade 2007-2016, the number of clients assisted by the Religious Courts conducting circuit courts in remote locations increased from 3735 cases in 2007 to 67,986 cases in 2016.

This represents 14% of the total of 501,490 cases received by the Religious Courts in 2016 being heard on a circuit court.

- 4 In 2010, there were no free legal advisory services provided to clients of the Religious Courts. In 2016, 195,023 clients of the Religious Courts received free legal advisory services at 120 Religious Courts across Indonesia.

This represents clients being assisted with free legal information and advice in 39% of the total of 501,490 cases received by the Religious

¹⁵ PROFIL KEMISKINAN DI INDONESIA SEPTEMBER 2016, Badan Pusat Statistik, Berita Resmi Statistik No. 05/01/Th. XX, 3 Januari 2017

¹⁶ <https://www.worldbank.org/en/country/indonesia/overview>

Courts in 2016.

- 5 The Religious Courts had judges and registry staff circuiting to 370 remote locations and provided free independent legal advisory services in 120 courts in 2016.
- 6 The budget of the Supreme Court to support the waiver of court fees for the poor, circuit courts to remote areas and free legal advisory services in Religious Courts across Indonesia has increased 24 times from less than IDR 1 billion in 2007 to over IDR 24 billion in 2017.
- 7 In 2016, 24% of all marriage legalisation cases were heard at an integrated and mobile service in which the Ministry of Religion issued a marriage certificate and the civil registry office issued birth certificates for the children from these marriages.
- 8 The number of women accessing the Religious Courts over the last decade has more than doubled from 124,000 in 2007 to 288,000 in 2016.

Women's access to the Religious Courts in the decade 2007-2016 increased by 132% compared with 19% from 1999-2006.
- 9 The empowerment of female heads of household CSO PEKKA collaborated with the Religious Courts and civil registry office to assist over 125,000 women with marriage and divorce certificates and their children to obtain birth certificates.
- 10 In the decade from 2007- 2016, the fastest growing category of cases in the Religious Courts was the legalisation of marriages: increasing from 10,888 cases in 2007 to 67,584 marriage legalisation cases in 2016 and now representing 13% of all cases filed in Religious Courts in 2016.
- 11 In contrast to the increasing services provided by the Religious Courts, the number of marriage certificates issued by the Ministry of Religion from 1999-2016 has remained static at approximately 1.9 million marriage certificates each year representing a decline of 25% considering population increases over this period¹⁷.

¹⁷ Ministry of Religion data from 1999-2015 supplied by the Director Urusan Agama Islam dan Pembinaan Syariah. Population data from <https://www.worldbank.org/en/country/indonesia/overview>

New and better funded legal and paralegal services for women, the poor and people living in remote areas

One of the key findings from the initial research was that in addition to the distance to courts and the cost of court proceedings, a further barrier for the poor in accessing the Religious Courts related to the ability to provide clear information to court clients that are illiterate or have primary school education levels.

In the last 10 years two significant changes have occurred in Indonesia. The first was the policies and budgets introduced to have free legal advisory services at Religious Courts across Indonesia. The second relates to the rise of paralegal services offered by universities and CSOs such as the PEKKA women's empowerment CSO that train non-lawyers to assist with certain cases at village level.

Free legal advisory services at Religious Courts did not exist until 2011 when 69 Religious Courts provided space for independent legal aid providers to assist clients who brought their family law cases to court.

To enable this to happen the Chief Justice of the Supreme Court issued a Practice Direction in 2010¹⁸ that clarified for judges and court staff the procedures for conducting circuit courts, the waiver of court fees and the procurement and organization of legal advisory service posts in General and Religious Courts. The Supreme Court also arranged a budget for a certain number of Religious Courts to procure free legal advisory services for clients. In 2016, 120 Religious Courts received a budget for legal advisory services and more than 195,000 clients were assisted in that year.

At the same time, university legal aid clinics and CSOs began to train students and paralegals on how to provide assistance to clients of the Religious Courts in completing the court forms and having the required documents to lodge a case.

From 2010, the PEKKA CSO has enabled its paralegals to provide legal information and assistance in 20 provinces and have assisted over 125,000 individuals with their family law issues, in obtaining legal identity documents and in accessing certain social protection programmes.

PEKKA identified members of their organisation who wished to work as paralegals, then provided training for them on the skills and knowledge to provide assistance in family law and legal identity document cases. PEKKA, supported by the Australia Indonesia Partnership for Justice, covered the costs for the PEKKA paralegals to travel

¹⁸ Surat Edaran Mahkamah Agung (SEMA) Nomor 10 Tahun 2010 updated in 2014 by Peraturan Mahkamah Agung (PERMA) Nomor 1 Tahun 2014

to the clients' village and then to the cities where the courts, Office of Religious Affairs and civil registry are located.

PEKKA has trained 2700 paralegals over the last few years and approximately 50% of these PEKKA paralegals are actively involved in the work to assist individuals with their family law and legal identity matters.

Integrated and mobile services for marriage legalisation and legal identity documents

Since the access to justice research undertaken a decade ago, there has been an 18-fold increase in Religious Court cases heard by judges travelling from their courthouses to villages and hearing cases at what is known as a circuit court.

One of the more recent innovations has been for the Supreme Court to agree to work with the Ministry of Religion and Ministry of Home Affairs and offer integrated services for legal identity documents at village level, known as integrated and mobile services. The three agencies provide up to three services at the same location: starting with the Indonesian Courts which legalise a prior religious marriage, the Office of Religious Affairs which provides the marriage certificate, and the Civil Registry Office which provides birth certificates for the children from the marriage.

At a policy level this was brought into effect through Practice Directions of the Chief Justice of the Supreme Court of Indonesia in 2015 and the Director General of the Religious Courts in 2016¹⁹.

The increased budgets provided by the Supreme Court to the Religious Courts to waive court fees for the poor and hold circuits in remote areas were utilised for integrated and mobile services.

The experience of the Religious Courts in assisting tens of thousands of clients a year, the majority of them women, was used as the model to bring the Ministry of Religion and civil registry officials to the same services.

The valuable partnerships formed between the Supreme Court, the Religious Courts and the PEKKA women's empowerment CSO during the access to justice research allowed the PEKKA paralegals to assist by

- I. providing information to women at village level on why legalising their marital status as well as obtaining legal identity documents for themselves and their children is important,
- II. collecting data on individuals who have legal identity documents and those that do not,

¹⁹ Supreme Court Regulation Peraturan Mahkamah Agung (PERMA) No. 1/2015 on integrated and mobile services and Surat Edaran Direktur Jenderal Badan Peradilan Agama tentang Biaya Perkara dan Biaya Operasional Pada Pelayanan Terpadu (9 Mei 2016)

- III. facilitating the arrangements to hold integrated and mobile services at village level or in remote communities by providing information on the services and how to access them.

PEKKA has gained the trust of both the public and government officials as an institution that can be a partner in dealing with legal issues in the community.

16,396 couples (32,792 people) in 2016 had their marriage legalisation case heard by the Religious Courts at an integrated and mobile service held in 362 locations across Indonesia.

III. What changed – for people’s lives?

PEKKA was originally founded in response to the multi-faceted poverty women heads of household faced in Indonesia, particularly in conflict areas. Therefore PEKKA’s initial focus was on women’s economic empowerment. In 2006 PEKKA began to develop a legal empowerment program in response to the marriage and family issues faced by the PEKKA community. Domestic violence, marriages not recorded, polygamy, child marriage and lack of birth certificates for children were some of the legal issues faced by PEKKA members, all of which directly and indirectly impoverished them, making their day-to-day circumstances worse. PEKKA research has shown that more than 70% of PEKKA members who divorced experience domestic violence, more than half of PEKKA members have not registered their marriages and more than 75% of their children do not have birth certificates²⁰. The lack of birth certificates for children contributes to their limited access to education and an increase in the number of marriages of children, especially girls.

In 2014, PEKKA launched its legal aid clinics (KLIK) in which it provides legal advisory services to individuals at village level through two methods: (i) PEKKA paralegals and (ii) lawyers working for legal aid organisations with whom PEKKA collaborates. One week prior to the legal aid clinic, a PEKKA paralegal will visit the village and provide information to village officials and religious organizations on the services that will be offered the following week. Being a paralegal has also changed the lives of the female heads of household involved.

²⁰ PEKKA and SMERU (2014) Menguak Keberadaan Dan Kehidupan Perempuan Kepala Keluarga Laporan Hasil Sistem Pemantauan Kesejahteraan Berbasis Komunitas (SPKBK-PEKKA), DFAT, PEKKA and PUSKAPA UI (2014) Sumner C and Kusumaningrum S, Baseline Study on legal identity: Indonesia’s Missing Millions, AusAID and PEKKA (2010) Sumner C, Access to Justice: Empowering Female Heads of Household in Indonesia,

PEKKA paralegals at work

Thomas, aged two, arrives at the PEKKA mobile legal clinic (KLIK) being launched on the island of Adonara in NTT province to obtain his birth certificate. He arrives with Ina Theresa his grandmother and a member of the NTT PEKKA group. Thomas' mother died when giving birth to him and his father works in Batam and only returns periodically. Thomas lives with his grandmother and the PEKKA mobile legal clinic has already made Thomas' grandmother aware of the importance of a birth certificate for Thomas.

At the same time, Inaq Sinamah, 50 years of age, comes to the PEKKA mobile legal clinic in Gerung on the island of Lombok in NTB province to raise some issues. Ibu Inaq has already been divorced for 10 years but she does not yet have a divorce certificate. Her husband has remarried and has left Ibu Inaq with the four children. Now, the youngest child, aged 20, needs a birth certificate as a requirement for their job. Ibu Inaq hopes to obtain guidance from the PEKKA paralegal at the mobile legal clinic as to how her child can obtain the birth certificate they require and how she can formalise her marital status.

Ina Theresa and Inaq Sinamah represent thousands of female heads of household from poorer households who are now being assisted by PEKKA.

Rahmawati and Hanisa tell their stories as two PEKKA's paralegals. Like many paralegals their lives have been transformed from previously being considered a survivor of injustice to being an advocate on behalf of other people who are seeking justice.

Rahmawati, Paralegal Pekka dari Ile Boleng, Flores Timur, NTT:

I graduated from elementary school and worked as a weaver. After being trained as a Paralegal by Pekka in 2008 I often support victims of violence against women. I am proud that despite my educational limitations I am able to assist victims of domestic violence to go to the police station. When the police asked "Are you not afraid to defend women? All those imprisoned there take revenge on those who reported them ". I replied, "I am not afraid, because I did the right thing and do not want women to be oppressed".

Hanisa, Paralegal PEKKA dari Buton, Sulawesi Tenggara

Hanisa became pregnant to a man who was already married with two children. Hanisa married the man but after three months they divorced. Hanisa felt very low. She joined PEKKA and then trained to become a paralegal. At first Hanisa did not dare to speak in front of crowds but now is more bold, " I feel the benefits of participating in PEKKA activities. As a paralegal I have dealt with my own legal issues as well as helped others. I not only follow the process at the village level but right up to the level of the police and courts. It used to be unthinkable that I could ever speak with a judge like this."

From birth certificates to new educational opportunities

In 2016 PEKKA, with assistance from the World Congress on Family Law and Child Rights, launched a programme to assist eight girls from NTT and NTB provinces in eastern Indonesia in completing the final three years of high school or in obtaining a university degree or vocational college diploma. With the funds available, PEKKA decided to offer partial scholarships that cover approximately 50-60% of the cost of educational fees, books, transport and living costs. Four girls will be funded to complete their final three years of high school in NTT and NTB and four young women have funding to complete higher studies that include a teaching degree, health studies, tourism and economics and textiles.

One of the rationales for the scholarship programme was to highlight to the community in a very tangible way how birth certificates provide girls and boys with opportunities for higher study. Six of the eight girls were assisted by PEKKA paralegals in obtaining their birth certificates and in some cases the paralegals assisted the parents in legalising their marital status. All eight girls come from households where their mother or grandmother is the head of household due to the death or sickness of parents. Household income is very low. One mother of a scholarship recipient breaks rocks as her income and receives USD1.10 a day for her labours.

During 2016-2017, PEKKA established a selection process for the scholarships, a separate account to receive donations and now understands the true costs of education scholarships for the daughters of PEKKA members. While there are national scholarship processes the complexity of applying for them would be beyond the capacity of many PEKKA members. Now, PEKKA is preparing for the task of making the case inside Indonesia and abroad as to why funding paralegals to provide girls with birth certificates and then funding their final years of education is a valuable contribution to the girls themselves and, more broadly, to achieving the SDGs. PEKKA will also discuss possible funding with national and provincial scholarship sources.

In both NTT and NTB, there were more applicants than available scholarships. However, the words of the girls themselves demonstrate the impact of receiving these scholarships:

My feeling after receiving this scholarship? I am very grateful and happy to be able to go to college. This is one of my dreams as my family background would not be able to finance my studies.

My life previously only revolved around the home, no job or anything. And now I've become a college student with a scholarship. The more I think about the future it is so different to my previous life.

Things I would do to change my village, I would bring what I have learned during the lectures back home and apply them in my village. For example, I would like to build a network with village leaders to open a kind of playground to learn English and, in collaboration with the principals at the elementary schools, improve learning English in the village elementary schools.

What I wish to do to bring change to my village is to promote the importance of education, particularly for younger siblings and young people, and also improve health services for the community.

I can sense a change in my life after being awarded the scholarship, as the burden on my family is now lighter with the costs of transportation and books taken care of.

The feeling of being awarded a scholarship is feeling happy, happy and grateful that I can continue my schooling to a higher level.

IV. Reflections

The remarkable collaborations outlined in this paper may seem counter-intuitive:

- Why would the Australian Family Court seek to form a judicial collaboration with the Supreme Court and Religious Courts of Indonesia, and why does it continue to deliver outcomes for women's access to justice more than a decade later?
- Why would the Director-General of the agency managing over 300 Religious Courts in Indonesia agree to implement and publish results from client satisfaction surveys undertaken by university researchers?
- Why would the Religious Courts form a research collaboration with a women's empowerment CSO (PEKKA) that has lasted for over a decade and now involves PEKKA paralegals facilitating women's access to circuit courts in remote areas of Indonesia?

The individuals in the organisations that made this collaboration happen all brought the following qualities to the collaboration: leadership, innovation, inclusiveness and acceptance of a certain amount of risk and criticism.

With the benefit of more than a dozen years of collaboration on this family law and access to justice project in Indonesia, these concluding reflections are offered:

- Improving women's access to family law courts **transforms lives** through providing women with a legal basis to their marital status and marriage and divorce certificates that evidence this legal status.
- Only a fraction of cases of Intimate Partner Violence are recorded or resolved through formal legal channels. Access to family courts and family law remedies are often linked to choices women make for themselves and their children to **live free from family violence**.
- In Indonesia and globally, **women initiate the majority of family law cases**. Therefore, if national and international agencies wish to support women's

access to the formal justice system, supporting women's access to family courts is an important dimension.

- **Some things take longer to understand...** It has taken almost a decade to understand that an important reason why women in Indonesia access the Religious Courts is to legalise a marriage valid under Islamic law but for which the couple did not obtain a marriage certificate at the time they married. Women are doing this in order to obtain birth certificates for their children that include both the mother and father's names on it. The Religious Courts' commitment to transparency of case data shows that marriage legalisation cases are the fastest growing category of case and have increased six times over the last decade.
- **A legal marriage matters for women and their children in Indonesia.** The World Bank recently noted that: *Birth and marriage registration provide equally important foundations to end child marriage. A birth certificate constitutes undisputable proof of age and is an essential means to enforce minimum age of marriage laws. At the same time, registering marriages is just as important as it is through marriage registration that proof of age can be used to refuse registration of an underage marriage and to make a child marriage void. Without mandatory marriage registration, child marriages may simply go unnoticed²¹.*
- **Supporting Court-to-Court dialogue leads to lasting changes for women's access to justice.** The changes described in this paper resulted from an exchange of ideas between the Supreme Court of Indonesia, the Religious Courts and the Family Court of Australia and included Indonesian CSOs. Indonesia's court leadership then initiated changes to court policies, budgets and services that directly addressed the 2007 research recommendations and improved women's access to the Religious Courts.
- **Modest donor investments combined with strong national institutional ownership can lead to sustainable change.** 12 years of Court and CSO commitment to collaborative research and analysis of barriers to women's access to the courts has provided an evidence base for the recommendations proposed in 2007 and has then tracked subsequent changes over time. The Australian government aid programme supported this research collaboration. However, the budget changes introduced by the Supreme Court to fund court fee waiver, circuit courts and free legal advisory services in the Religious Courts amount to an increased level of funding of over USD 10 million²² to date that is funded by the Indonesian national budget and this national commitment will grow over time. The ownership by the Supreme Court can also be seen in the

²¹ World Bank (2016), Lucia Hanmer and Marina Elephante, *The Role of Identification in Ending Child Marriage*

²² In 2007, the Religious Courts budget for court fee waiver and circuit courts was less than IDR 1 billion (USD 75,000) and in 2017, the Religious Courts budget for court fee waiver, circuit courts and free legal advisory services (posbakum) was IDR 24.4 billion (USD1.8M).

prominence given to the access to justice reforms in its Annual Report – Access to Justice and Improved Public Service is the second theme addressed by the Chief Justice in recent Annual Reports²³. Between, 2015 and 2016, the Supreme Court doubled the budget allocated to the Religious Courts to hold circuit courts and provide free legal advisory services at court buildings from IDR12.7 billion in 2015 to IDR24.8 billion in 2016. As a result, in 2016, the Religious Court clients that were assisted more than doubled to almost 69,000 clients assisted through circuit courts and 195,000 clients assisted through free legal advisory posts or *Pos bantuan hukum* at Religious Courts.

- **Funding paralegal support for women at village level is critical.** The changes initiated by courts and national-level government agencies would not translate into changes for women in remote areas of Indonesia without the work of CSOs like PEKKA which has trained paralegals to advocate for change, as well as communicated information and facilitated services for women at village level. Sustainable funding for paralegal services remains more complex and warrants donors considering a trust-fund approach over the next phase of the Sustainable Development Goals (2015-2030). After a decade we know that it costs PEKKA:
 - USD 75 (IDR 1million) per month or USD 900 per year to have a paralegal working in the field.
 - USD 1200 for a partial²⁴ scholarship for one girl to complete the final three years of high school. This scholarship includes the paralegal costs to assist the girl's mother in legalising her marital status and obtaining birth certificates for the children of the family.
 - USD 1800 for a partial scholarship for one girl to complete a three or four-year university or vocational college education. This scholarship includes the paralegal costs to assist the girl's mother in legalising her marital status and obtaining birth certificates for the children of the family.

UNICEF's Indonesia Office, working with Statistics Indonesia, estimates that at least 1000 girls are married each day in Indonesia and finds a strong correlation between child marriage and lower levels of educational attainment, as well as later marital age and higher levels of educational attainment²⁵. Child marriage in Indonesia affects six times more girls than boys²⁶ and has devastating health impacts related to early pregnancies. This is why these scholarships have focussed on encouraging girls to complete 12 years of secondary education and contemplate university or vocational

²³ <http://www.pembaruanperadilan.net/v2/content/publikasi/LTMARI%20-%202016.pdf>

Mahkamah Agung RI Laporan Tahunan 2016 Bab li Akses Terhadap Keadilan Dan Peningkatan Pelayanan Publik

²⁵ https://www.unicef.org/indonesia/UNICEF_Indonesia_Child_Marriage_Reserach_Brief_.pdf

²⁶ Sumner C and Kusumaningrum S. DFAT, PEKKA, PUSKAPA UI (2014) Australia Indonesia Partnership for Justice Baseline Study on Legal Identity—Indonesia's Missing Millions <http://bit.ly/1eyBelF>

studies.

Change happens one girl at a time. Every girl that obtains a birth certificate and completes 12 years of education or fulfils a dream of university or vocational college education transforms her life and the lives of others. The 2013 World Congress on Family Law and Child Rights provided the seed funding to PEKKA to provide this opportunity to eight girls.

Can you help²⁷ make this a reality for more girls in Indonesia?

27 Please contribute through: <https://www.givenow.com.au/indigo> if you wish to make a donation that is tax deductible in Australia and mention you want to support the PEKKA project or directly to the PEKKA Indonesia dedicated bank account for scholarships and paralegal support for women and girls. Bank details can be found on www.pekka.or.id

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<http://www.cbm.org.au/news/article/remembering-elena-down#.WNSWdSN97fY>