

# Indonesia's Missing Millions: Erasing Discrimination in Birth Certification in Indonesia

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## Abstract

Indonesia's rate of birth registration is imprecisely measured but is low, especially among the poorer, rural, population. At the same time, the country has developed a system of population registration with wide, if not universal, coverage. In addition, under current regulations that link legal recognition of paternity to the existence of a legal marriage, many children can only receive a birth certificate with the name of the mother. Such a credential is widely seen as less than desirable, creating a situation where children are discriminated against on the basis of the marital status of their parents. The paper draws on the results of large-scale surveys that illustrate the difficulties that the "dual-track" registration system can create, especially for poor people.

Even before the proposal for the Sustainable Development Goals to include universal legal

identity and birth registration as global target 16.9, Indonesia had promulgated its own ambitious goals for birth registration. The paper builds on the recent landmark anti-discrimination decisions of the Constitutional Court, on initiatives to bring integrated and mobile legal services to villages, and on important measures taken to boost the rate of birth certification in Surakarta. It sets out and compares two approaches to increasing birth registration rates and the policies necessary to ensure that this can be done in a non-discriminatory way. The first involves the provision of integrated and mobile legal services, the second measures to strengthen birth registration through greater involvement of the health system. It finds that these are complementary, and that the second needs to be accompanied by further measures to implement the ruling of the Court requiring the admission of a wider range of evidence of paternity.

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The author would like to acknowledge the comments and suggestions made by a number of people including AIPJ colleagues in Jakarta, Santi Kusumaningrum, Co-Director of the Centre for Child Protection at the University of Indonesia (PUSKAPA UI), Nani Zulminarni, National Coordinator of PEKKA, Dr. Julian Kelly, Consultant Paediatrician, The Royal Children's Hospital Melbourne, and Konrad Muller. The views presented in this paper are those of the author, and do not necessarily reflect the views of the Australian Government, which has supported the Australia Indonesia Justice Program (AIPJ). Alan Gelb and colleagues at CGD including Anna Diofasi and Sneha Raghavan have provided a global perspective on many of the issues covered in the paper and been a constant source of probing questions and other invaluable contributions for which the author is most grateful.

Cate Sumner. 2015. "Indonesia's Missing Millions: Erasing Discrimination in Birth Certification in Indonesia." CGD Policy Paper 064. Washington DC: Center for Global Development.  
<http://www.cgdev.org/publication/indonesias-missing-millions-erasing-discrimination-birth-certification-indonesia>

CGD is grateful for contributions from the UK Department for International Development and the William and Flora Hewlett Foundation in support of this work.

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CGD Policy Paper 064  
June 2015

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## **Foreword by Alan Gelb**

With rates of birth registration uncertain but probably not much over 50% Indonesia represents a major challenge to the proposed global target of universal legal identity. It also faces the question of how to ensure that birth certificates are issued in a non-discriminatory manner conforming to the standards set out, for example, in the Convention on the Rights of the Child. This policy paper by Cate Sumner draws on extensive survey research on the associations between birth certification and a range of economic and social outcomes and on specific problems encountered by those without legal identity, and sets out policy options for reform. It is relevant to other countries seeking to boost birth registration as well as to transition towards the civil registration of a wider set of vital events. The paper was commissioned as part of CGD's program on identification for development.

## Introduction

As shown by the proposed Sustainable Development Goal (SDG) 16.9<sup>1</sup>, there is a growing awareness that legal identity, starting with birth registration, is a critical element in linking individuals to their parents and broader family networks and ensuring that they can benefit from a range of public services. Legal identity also plays an important role in enabling the state to plan for and deliver the services needed for each age group in society. Its intrinsic value in recognizing every individual's existence without discrimination is, however, often overlooked. This recognition is not always guaranteed: even when births are registered, birth certificates can be perceived to be of different "quality" and create a stigma for those holding documents perceived as lower quality. This, in turn, can affect the incentive for parents to register their children.

This paper considers these issues in the Indonesian context. Even before the proposals for the SDGs, Indonesia had promulgated its own ambitious goals for birth registration. The country has a well-developed system of population registration, the Family Card (Kartu Keluarga or KK) that dates back many years. This system informs the national civil administration database (SIAK), which is used for issuing the electronic ID card (or e-KTP) to all adults on reaching the age of 17. Both systems have high (though not complete) coverage, yet birth registration rates remain low, especially among the poor, as shown by large-scale surveys undertaken by PEKKA, a local CSO<sup>2</sup>. Why is this so? Why does it matter? What can be done to boost the rate of birth registration so that Indonesia will reach the SDG target of 100% birth registration by 2030?

This paper argues that Indonesia's registration and identity process has evolved into a "dual-track" model with adverse consequences, particularly for the poor. Law and practice have been inverted: in law birth registration should precede family card registration; in practice the order is reversed. This, coupled with the legal and administrative difficulties and costs involved in obtaining a "high quality" birth certificate that includes the names of both parents reduces the incentive to certify births with adverse consequences for the child that can extend into adulthood. While our focus is country-specific, the issues are common to other countries transitioning from models of birth registration that stress the marital status of the parents (with all of the rights and privileges that this entails) towards civil registration and the provision of birth certificates that aim to prevent discrimination among children irrespective of the marital status of the parents.

Part 1 examines the status of birth registration in Indonesia through the analytical lens of rights, data collection, and the impact on people's well-being and access to government services. In February 2014, the *Baseline Study on Legal Identity: Indonesia's Missing Millions*, the first study of its kind in Indonesia, revealed that between half and three-quarters of all poor

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<sup>1</sup> "By 2030 provide legal identity for all including birth registration"

<sup>2</sup> Pemberdayaan Perempuan Kepala Keluarga (PEKKA)/The Empowerment of Female Heads of Household NGO. Survey results published in June 2014 in: *Menguak Keberadaan dan Kehidupan Perempuan Kepala Keluarga* (SMERU and Seknas PEKKA) can be accessed at [pekka.or.id](http://pekka.or.id)

Indonesian children do not have birth certificates<sup>3</sup>, and that half of married couples lack marriage certificates. The Study also revealed the importance of legal marriage, both with respect to the legal rights of women and the ability of their children to obtain a birth certificate that identifies both the father and mother. This section distils key findings from the *Baseline Study*, including why having a birth certificate matters.

Part 2 focuses on the rapidly changing dynamic in Indonesia on matters pertaining to legal identity. Indonesia has announced ambitious targets in its National Development Plan, released in 2015, recognizing the provision of legal identity as the first among five basic services for the poor. The section reviews the judicial, legislative and policy changes that have been introduced in Indonesia in the last three years, as well as the leadership on identity issues displayed by the new President, Joko Widodo, when he was Mayor of Surakarta. While the recently introduced reforms help to increase access to birth registration, they do not eliminate the problem of discrimination in the perceived quality of the certificate. The Constitutional Court has made dramatic progress in this area. In two landmark decisions in 2012 and 2013 it upheld constitutional guarantees that provide every person with the rights to citizenship and to be free from discriminatory treatment. These progressive decisions open an important way forward for Indonesia to provide every child with a quality birth certificate that includes the four minimum elements contained in Article 7 of the Convention of the Rights of the Child (CRC)<sup>4</sup>.

Part 3 considers what is required for large-scale birth registration and how the costs can depend on the model chosen. The focus is on birth certificates, rather than the full range of legal identity documents – which would include marriage and divorce certificates, adoption/recognition and death certificates – although some of the approaches to facilitate the former also increase access to the other documents.

The paper concludes with recommendations that, if implemented, would have the greatest probability of success in providing all children born in Indonesia with a non-discriminatory, high-quality birth certificate. Streamlining the current system through providing integrated and mobile legal services is one option, but this, we argue, is not likely to be sufficient to facilitate universal birth certification. That requires an alternative approach that would build on the decisions of the Constitutional Court to broaden the range of documents that parents may use to evidence the fact that they are the mother or father of a child. The role of civil society and donors, including corporate and philanthropic donors, in supporting government efforts to achieve national birth certification is also canvassed in this section.

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<sup>3</sup> Sumner C. and Kusumaningrum S. *Baseline Study on legal identity: Indonesia's Missing Millions* (Baseline Study). DFAT, PEKKA and PUSKAPA UI (2014) <http://bit.ly/1eyBeLf> This study was supported by the Australian Government Aid Program and the research partners included the AIPJ Legal Identity Program, PEKKA, PUSKAPA UI and the Family Court of Australia.

<sup>4</sup> Article 7 (1) of the Convention on the Rights of the child: *The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.*

## Part I: Why Does It Matter If Children Have A Legal Identity?

In recent years, there has been a growing awareness of the value of a legal identity for an individual<sup>5</sup>. The Baseline Study on Legal Identity focussed on these issues in the Indonesian context and found that a legal identity is critical for three reasons: Rights, Data, and Impact, including access to government services.

### A Rights

Indonesia has ratified the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CRC) and other relevant Conventions.<sup>6</sup> In accordance with the CRC, it is required to ensure that every individual is registered at birth in a non-discriminatory manner, and has a name, a nationality and knowledge of their parents – in short, the right to an identity.<sup>7</sup> Ideal birth registration would therefore include all of these four elements and the child's birth certificate would provide evidence of them. Moreover, the CRC states that Indonesia, as a State Party, should take all measures to ensure that a child does not face discrimination based on the status of their parents, including their marital status.

The last element - of recognizing both parents - is problematic in the Indonesian context. In Indonesia, a marriage is considered valid if implemented in accordance with the religion or belief of the couple<sup>8</sup>. At the same time, the marriage law also requires that all marriages be registered at the civil registry; the couple will then receive a marriage certificate to evidence the registration. Under the Law on Population Administration, there are two ways that a father's name may be included on a child's birth certificate:

- I. The first and most common, is where the parents have registered their marriage and can produce a marriage certificate<sup>9</sup>.
- II. The second approach is a 3-step process that applies where a couple has a religious

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<sup>5</sup> UNICEF (2013), Every Child's Birth Right: Inequities and trends in birth registration, UNICEF, New York

PLAN International (2014), Birth Registration and Children's Rights: A Complex Story  
Debra Ladner, Erik G. Jensen and Samuel E. Saunders (2014). A Critical Assessment of Legal Identity: What It Promises and What It Delivers . Hague Journal on the Rule of Law, 6, pp 47-74

World Bank and WHO (2014) Global Civil Registration and Vital Statistics: Scaling Up Investment Plan 2015-2024.

Megan Brewer, Nicholas Menzies, and Jared Schott (2015) Making Identification Systems Work for the Bottom 40%, World Bank Just Development Policy Paper.

<sup>6</sup> These include the Convention on the Elimination of Discrimination against Women (CEDAW) and the Convention on the Rights of Persons with Disabilities (CRPD).

<sup>7</sup> Article 7 (1) of the Convention on the Rights of the child: *The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.* CRC, Article 2.2: *States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.*

<sup>8</sup> Article 2 of the Law on Marriage (1974): Article 2 (1).

<sup>9</sup> Presidential Regulation 25 of 2008 concerning Registration Requirements and Procedures for Population and Civil registration, Article 52

marriage that has not been registered:

- (i) the mother obtains a birth certificate for her child with only the mother's name on it,
- (ii) the father and mother lodge a letter of recognition/ Statutory Declaration with the civil registry stating that they are the father and mother of the child and they have a religious marriage. The civil registry issues the parents with a Recognition Certificate (Akta Pengakuan) and
- (iii) the civil registry then amends the birth certificate by making a side notation with the father's name<sup>10</sup>.

Anecdotal evidence suggests that the second option has, in practice, only been provided to non-Muslim couples although the Presidential Regulation that sets out the process does not limit its application to non-Muslim citizens (approximately 12% of the country's 240 million citizens)<sup>11</sup>. However, even in areas where there is a large non-Muslim population, such as NTT province, this option is not widely understood by either government officials or the public. As a result, a significant number of children whose parents are either unmarried or married according to religious or customary law will not have their father's name on their birth certificate – if they have one.<sup>12</sup>

By contrast, children whose parents are married under State Law, which requires that the marriage also conforms to religious law, will have both parents' names on their birth certificate. The Baseline Study found that among the poorest 30% of Indonesian households more than half of all couples (55%) do not have a marriage certificate and that 75% of these couples' children do not have birth certificates. Poverty not only increases the likelihood of a child not having a birth certificate in Indonesia, it also makes it more likely that the father's name is not included on their birth certificate. Currently, Indonesia's birth registration system discriminates against children based upon the marital status of their parents as, contrary to the CRC, the birth certificates received by children will look different based on the marital status of their parents.:

- children whose parents are married under State Law will have their father and mother's name on their birth certificate,
- children whose parents have a religious marriage and where the father formally recognises the child through the process mentioned in Point II above will have the

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<sup>10</sup> Presidential Regulation 25 of 2008 concerning Registration Requirements and Procedures for Population and Civil Registration, Article 91 and Law 24/2013 Revising Law on Population Administration (UU23/2006) There is nothing in the Indonesian laws that prevents the civil registry from issuing a new birth certificate rather than making a side notation. If the civil registry were to issue a new birth certificate then it would look the same as those birth certificates where the parents have a marriage certificate.

<sup>11</sup> Non-Muslim citizens who are Christian receive a marriage letter from the Church evidencing the date of marriage. However, in the same Statutory Declaration in which the man states that he is the father of the child he could also declare that he is married to the mother of the child through a religious marriage.

<sup>12</sup> The Birth Document (Surat Kenal Lahir) issued by the midwife/ hospital/ health centre at the time of a baby's birth records the names of the father and the mother but this is not a legal document of equivalent status to the birth certificate.

mother's name on their birth certificate and the father's name added as a side notation,

- children whose parents are unmarried, or where the parents have a religious marriage but the father has not provided a letter of recognition to civil registry staff, will only have the mother's name on their birth certificate,

These differences are not inconsequential. The Baseline Study found that most people do not favour having a birth certificate with only the mother's name recorded, although this is possible under Indonesian law<sup>13</sup>. Sixty four percent of those interviewed believed that a birth certificate with only the mother's name carried a stigma and that this was an undesirable registration outcome. Cultural norms therefore act as a strong disincentive for couples married under religious or cultural (adat) laws who have not registered their marriage to obtain a birth certificate for their child as the birth certificate will imply that the child is illegitimate as the father's name is not included. The same applies for unmarried yet co-habiting parents and single mothers who see no way to have paternity recognized.

## **B Data: Birth Registration, Other Forms of Identity and the Dual System**

**Birth Registration.** There is some uncertainty over the percentage of Indonesian children with birth certificates. One estimate from the Indonesian National Statistics Body (BPS) National Socio Economic Survey (SUSENAS 2012) is 71%, but this includes children whose families claimed that they had a birth certificate but could not show it. If these are excluded, the figure would drop to 53% of children with a birth certificate. Forty seven percent of Indonesian children aged below 17 years, or almost 40 million individuals, do not have birth certificates or are unable to produce them<sup>14</sup>. This may be a better estimate as the Baseline Study found that 73% of parents who said: "My child has a birth certificate and I cannot show it" had never obtained a birth certificate for their child. Data from the Ministry of Home Affairs suggests an even lower registration – that as many as 76% of children and youth aged 0 to 18 years lack birth certificates, or more than 50 million individuals<sup>15</sup>. Each year, a further 4.5 million babies are born in Indonesia. The challenge is therefore to: (a) respond to the existing numbers of people without legal identity documents; and (b) to pro-actively provide legal identity documents to new-borns and to children as they receive immunisations and later enrol at school.

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<sup>13</sup> Law on Population Administration (UU23/2006) and Child Protection Law (UU 23/2002)

<sup>14</sup> The current National Socio-Economic Survey (SUSENAS) uses a sampling methodology and asks parents of children between 0-17 years to select one of the following responses:

- I. My child has a birth certificate and I can show it
- II. My child has a birth certificate and I cannot show it
- III. My child does not have a birth certificate

A "Realistic" Assessment of the proportion of Indonesian children without birth certificates would combine answers from Questions II and III (47% of Indonesian children without birth certificates). An "Optimistic" Assessment of the proportion of Indonesian children without birth certificates would only include data from Questions III (29% of Indonesian children without birth certificates). One recommendation from the Baseline Study was that in future surveys SUSENAS present only two possible responses: "My child has a birth certificate and I can show it" and "My child does not have a birth certificate".

<sup>15</sup> Baseline Study on Legal Identity (2014), p45



Among those surveyed by the Baseline Study, the most frequently cited reasons for children not having a birth certificate were:

- (i) legal identity documents are too expensive to obtain (41%);
- (ii) the distance to civil registry offices is too far (15%);
- (iii) there is a lack of knowledge of how to obtain legal identity documents (12%); as well as
- (iv) the processes are too complicated (9%).

These responses are less surprising once it is recognized that in order to obtain a birth certificate with both parents' names on it, parents who do not have a marriage certificate need to interact with up to three agencies to: (i) legalise a former religious marriage before the Religious or General Courts<sup>16</sup>, (ii) obtain a marriage certificate at the KUA or civil registry; and (iii) obtain a birth certificate at the civil registry<sup>17</sup>. The study found that the complexity, time and cost of dealing with three agencies are beyond the capacity of many households, particularly the poor.

**Other Forms of Identity and the Dual System.** As noted above, legal identity documents in Indonesia can be divided into two categories: those that relate to citizenship and those that identify an individual for the purpose of administration. Only two documents can establish Indonesian citizenship - the birth certificate (issued by the Ministry of Home Affairs) and the passport (issued by the Ministry of Law and Human Rights) which requires a birth certificate<sup>18</sup>. The family card (KK) as well as the ID card (e-KTP) together with their unique population number (NIK) are used to provide administrative data on the population.

When a child is born the parents must therefore complete two bureaucratic processes involving medical documentation and at least village and district level government agencies to obtain the required supporting documentation. One is the process of obtaining a birth certificate that establishes the name, the citizenship of the child and the names of their parents, and the NIK number for the child that is issued at the time of obtaining the birth certificate. The other involves registering an addition to the family that is then entered into the family card, together with the NIK.

The rationale for this duplication of documentation for individuals and families is not clear. Part relates to history, and the introduction of the family card system as a means of documenting and monitoring the population at a time when the civil registry was less evolved than it is today. The fact that they are administered by two different departments in the Ministry of Home Affairs (although under the same Director-General) might also be a

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<sup>16</sup> Muslim citizens will legalise their marriage through a case brought before the Religious Courts and obtain a marriage certificate from the Office of Religious Affairs and non-Muslim couples will bring their marriage legalisation cases before the General Courts and obtain a marriage certificate from the Civil Registry .

<sup>17</sup> Baseline Study, Key Findings 5 and 27, pp14 and 17

<sup>18</sup> The core requirements for a passport are: (i) ID card, (ii) family card and (iii) at least one of: birth certificate, marriage certificate, baptismal letter or examination. As noted above, both the ID card and the family card have a birth certificate as a legal pre-requisite.

factor in perpetuating the distinction. Logically, birth registration should be the basis for registration of a new family member in the family card and the later issue of the e-ID card. In fact, Indonesian law stipulates that a birth certificate is a prerequisite for adding a newborn to the family card and for obtaining an e-ID card<sup>19</sup>. But this provision of the law is not implemented and the practice has been to reverse what is stated in the law. This has led to the primacy of the family card and ID cards for individuals over 17 years over birth registration. Nevertheless, the birth certificate provides the only document for the child as an individual (rather than as a member of the family or household that they reside in) that establishes their identity for the 17 years before they are able to obtain an ID card. This is of particular importance for children who do not live in a family or household.

### **C Impact and Access to Services: Findings from the Baseline Study**

Why does it matter whether children have a birth certificate? The Baseline Study explored how evidence of birth, of legal marriage and of divorce has a strong association with many social and economic matters – and probably impact - including on entitlement to moveable assets, access to financial services, inheritance rights, access to formal employment and access to other identity credentials such as being able to obtain a passport<sup>20</sup>. While there are differences by age and location, as well as by the socioeconomic status of the household, it is notable that there is no significant difference between girls and boys in the percentage having birth certificates. More details are in Annex 1.

**Education.** The Study found that many districts had passed regulations stating that a birth certificate was a mandatory prerequisite for student enrolment at all levels of education including early childhood education and special needs schools. Most of these schools, including in areas where district regulations exist, still accept students who can submit a form of identification that is an alternative to a birth certificate, such as a Birth Information Letter or a Family Card, but on a discretionary basis. The Study also found a number of examples of actual exclusion. For example, the only public special needs school in Medan requires all children attending to have a birth certificate. It therefore automatically excludes children with disabilities from poorer families who do not have these documents. Since resources are scarce and the number of children requiring places exceeds the number of places available, the school defaults to the formal regulatory requirements for attendance.

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<sup>19</sup> Peraturan Presiden No. 25/2008 Articles 12 and 15.

<sup>20</sup> Ch 3 of the Baseline Study and, see also [http://www.aipj.or.id/en/legal\\_identity/article/134](http://www.aipj.or.id/en/legal_identity/article/134) Ketua Kamar Peradilan Agama, Dr H. Andi Syamsu Alam, SH, MH: *Itsbat Nikah Melindungi Hak Isteri dan Anak* and Constitutional Court decisions No 46/PUU-VIII/2010 (decided in 2012)

Anecdotal evidence also suggests that children without a birth certificate are prevented from participating in extracurricular competitions at the District or Provincial level. While participation in competitions fosters a sense of achievement, losing a place on a team because of a lack of legal identity documents promotes a sense of exclusion.

These factors may contribute to the observed relationships between birth certification and educational attainment. Overall, among the poorest 30% of households 36% of women aged 19-29 with a birth certificate completed 12 years of education compared with only 10% of those without. The relationship between schooling and birth registration shows a similar pattern for men.

These findings suggest that, even among the poorest groups, parents who obtain a birth certificate for their children have a stronger level of awareness in making sure their children go to school and stay there, when compared to parents who do not register their children. The drivers for exclusion and lack of future opportunities are interlinked.

**Child Marriage.** Lack of a birth certificate is overwhelmingly correlated with child marriage in Indonesia. The Indonesian Marriage Law states that the minimum age for legal marriage for girls is 16, and for boys 19<sup>21</sup>. In the poorest 30% of households, 19% of girls were found to have married at 17 years or younger compared with only 2% of boys. Fully 95% of these child marriages involve girls who do not have a birth certificate and the Baseline Study found that almost none (0.3 percent) of these girls would complete 12 years of education. The link between child marriage and the age at which girls have their first child is well documented as are adverse health outcomes for girl-mothers and their children.

**Legal Protection.** A birth certificate is required in order for a child to be treated as a child rather than an adult in the criminal justice system. This involves considering alternatives to pre-trial detention, different treatment during the trial, as well as alternative sentencing options, if the child is proven guilty.

**Inheritance and other family law rights:** If a birth certificate includes both the father and mother's name the child benefits as the father is required to provide financially for their welfare, and the child will benefit from inheritance rights in relation to both the father and mother<sup>22</sup>. The inheritance portions vary depending on whether the child has a civil relationship with their father established through a Recognition Certificate or a Marriage Certificate.

**Employment.** A birth certificate is required by adults to become a civil servant or government employee both at the national or sub-national level, and is also mandatory for most formal and private sector employment. A birth certificate is listed as a requirement when applying for a passport and is generally required for persons seeking to work overseas

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<sup>21</sup> However, the Child Protection Law of Indonesia (Law 23 of 2002), which is enacted at a later date, confirms that the age of a child is under 18 years of age.

<sup>22</sup> KUHPerdata (Civil Code) Articles 280 and 328. Inheritance for non-Muslims is governed by the KUHPerdata (Civil Code) and for Muslims by the Marriage Law and the Kompilasi Hukum Islam (KHI)

as a migrant worker and for those who may wish to travel to perform the Hajj and fulfil other religious observances.

**Vulnerability to Corrupt Officials.** Running across all these areas is the uncertainty and corruption engendered by official discretion. Indonesia's formal legal identity requirements are complicated by inconsistent implementation. These discrepancies between what is stated in laws and regulations and what is actually done in practice disproportionately affects the poor and vulnerable sections of society, as they have fewer resources with which to counter claims by officials of what is required to obtain a service or benefit.

**The Intangible Value of Legal Identity.** In these and other ways possession of a birth certificate is important in Indonesia. Added to the practical aspects is an intangible element that national planners and economists cannot measure: what does it mean for an individual child to officially not exist in her or his country? Can this affect a school, family or individual's expectations of what they can achieve? Conversely, does the formal recognition of each child and adult in a society, through the provision by the state of a legal identity document to the individual, change their perception of what is possible? <sup>23</sup>

## **Part 2: Facilitating Birth Certification and Overcoming Discrimination**

### **Overcoming Discrimination in Access**

Indonesia is a complex polity where change occurs via a fluid dynamic of civil society advocacy, legislative reforms, executive and administrative policy reforms and judicial challenges before the Constitutional and other Courts. In recent years, rapid changes in the area of legal identity have engaged all of these avenues. The Indonesian government has set out to address many of the barriers related to cost, distance and knowledge identified in the Baseline Study. The scale and scope of the reforms introduced since 2012 are shown in Table 1.

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<sup>23</sup> Research on behavioural economics suggests that self-perceptions of identity can affect behaviour. For example, Hoff and Pandey find that making caste salient reduced performance on tests by up to 25%. Hoff K. and P. Pandey, 2012. "Making Up People: The Effect of Identity on Preferences and Performance in a Modernizing Society". World Bank Policy Research Working Paper 6223, October.

**Table 1: Reforms Relating to Legal identity**

<b>February 2012</b>	Constitutional Court ruling that Article 49(1) of the Marriage Act must now be construed as: A child born out of marriage has a civil legal relationship with the mother and her family, and the father and his family, provided that paternity can be proven by science and technology and/or another form of evidence that the father has a blood relationship with the child.
<b>April 2013</b>	Constitutional Court decision removes the requirement that a child over one year of age obtain a statement from the General Courts in order to obtain a birth certificate. This requirement was previously contained in Law 23 of 2006 concerning the Administration of Citizenship.
<b>December 2013</b>	Law 23 of 2006 revised and enacted as Law 24/ 2013. Removed fees for legal identity documents issued by the civil registry, placed the onus on the government to actively reach out into the community to register people and implement the 2013 Constitutional Court of Indonesia decision <sup>24</sup> .
<b>January 2014</b>	Supreme Court Chief Justice issues a Practice Direction [PERMA 1 of 2014 updating SEMA 10 of 2010] <sup>25</sup> clarifying 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.
<b>March 2014</b>	Chief Justice of the Supreme Court of Indonesia issues a further practice directive that simplifies how marriage legalisation cases can be heard through integrated and mobile services ( <i>SEMA 3/2014 Tentang Tata Cara Pelayanan dan Pemeriksaan Perkara Voluntair Itsbat Nikah dalam Pelayanan Terpadu</i> ).
<b>June 2014</b>	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 removes fees for providing marriage certificates to Muslim citizens when they register their marriage at the Office of Religious Affairs.
<b>August 2014</b>	Practice Direction issued by the Director General of Islamic Guidance in the Ministry of Religion, clarifying that marriage certificate will also be issued free of charge when they are provided at an integrated and mobile service at village level.

Reinforcing this momentum is the election of President Joko Widodo, (popularly known as Jokowi), who took office in late October 2014. In his previous role as Mayor of Surakarta, he

<sup>24</sup> Nevertheless, the full legal effect of these two Constitutional Court decisions is not clear in the revised Law 24/2013 amending the Law on Population Administration (2006) issued in December 2013. The publication of the implementing regulations for Law 24/2013 in 2015 will clarify whether law-makers have given effect to the two recent decisions of the Constitutional Court of Indonesia.

<sup>25</sup> Peraturan Mahkamah Agung RI Nomor 1 Tahun 2014 tentang Pedoman Layanan Hukum bagi Masyarakat Tidak Mampu di Pengadilan

personally championed the issue of birth certification and honoured his pledge that it would be provided free of charge in Surakarta<sup>26</sup>.

Jokowi introduced a number of far-reaching reforms that contributed to high rates of birth registration for children in Surakarta. These include:

- I. Formal cooperation agreements between the civil registry office and hospitals and birth centres under which hospital staff provide information to parents on how to obtain a birth certificate for their child and facilitate this process.
- II. Data entry versions of the national civil administration software (SIAK) in every hospital or birth centre for hospital staff to enter information on the births of children where the parents are Surakarta residents.
- III. Outreach services to schools to provide birth certificates to any children that did not obtain a birth certificate when they were born.
- IV. Office of Population and Civil registration that publishes on-line the procedures for obtaining a birth certificate and the number of each type of legal identity document issued in the previous year.
- V. A Child Incentive Card that is dependent on a child having a birth certificate that allows a child or their family to purchase at discounted rates goods and services relating to schooling, health, music or sporting pursuits.
- VI. A subsidised health insurance scheme costing 10 cents a year per person, under which children, after they turn one year of age, can only be included as a beneficiary of services if they have a birth certificate.

As a result of these changes, between 75% and 96%<sup>27</sup> of new-born babies in Surakarta received birth certificates in 2013 within 60 days of their birth – more than double the national average. While this is a predominantly urban area, it shows that rapid change is feasible when appropriate actions are taken. Points I-IV are included in the final section of this paper as changes that would make a significant contribution toward removing discrimination and increasing the number of Indonesian children with birth certificates. Points V, and more importantly VI, present interesting incentive-based approaches. However, at the national level in Indonesia the roll-out of the new health insurance programme is continuing to rely on a household based approach and the use of family cards as identification. This reinforces the point made earlier in relation to the primacy of the family card even though a birth certificate is a legal requirement to add a child to a family card.

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<sup>26</sup> <https://www.youtube.com/watch?v=I5aX7TwwgU>

<sup>27</sup> 7500 babies received a birth certificates within 60 days in Kota Surakarta

(<http://dispendukcapil.surakarta.go.id/20XIV/index.php/2014-05-21-04-43-06/2014-05-21-08-47-11/kepemilikan-dok/item/73-milik-akta>)

In 2013, Surakarta Dalam Angka (based on village office reporting) states that there were 7831 births recorded and data from health centres shows that 9932 births were recorded. If the number of births based on *Surakarta Dalam Angka* is used then 7500/7831=96% of newborn babies in Kota Surakarta receive a birth certificates within 60 days of their birth. If the Department of Health data from the health centres is used then 7500/9932=75% of newborn babies in Kota Surakarta receive a birth certificates within 60 days of their birth.

## Overcoming Discrimination in Birth Certification: the Constitutional Court.

As outlined in Table 1, the Constitutional Court of Indonesia recently played an important role in challenging accepted approaches to birth registration through a pair of landmark decisions in 2012 and 2013<sup>28</sup>. These recognize the importance of a child having a civil relationship with both their father and mother even if born outside of marriage, as well as the broader importance of a birth certificate for every citizen as a way of removing “an official state of nonexistence” that hampers the provision of constitutional guarantees to every citizen.

In 2012, the Constitutional Court ruled that the biological relationship between a child born out of marriage and his/her father - as proven by science and/or another form of evidence – is sufficient to establish a civil legal relationship between the two<sup>29</sup>. The Court also recognized the right of a child to legal protection independent of the parents’ marital status and noted that “the child born without a clear status in relation to their father often receives unfair treatment and faces stigma in society. The law must provide fair legal protection and certainty to the status of a child born and his/her inherent rights, including to a child for which the legitimacy of his/her parents’ marriage remains disputed<sup>30</sup>.” In its second landmark decision in 2013, the Court removed the requirement that a child over one year of age obtain a statement from the General Courts (Permohonan Penetapan Akta Kelahiran) in order to obtain a birth certificate.<sup>31</sup> In its judgment, the Court articulated that a birth certificate is vital as it confers a guarantee of protection and legal certainty in terms of a person’s rights as an individual and a citizen. It establishes a child’s legal connection to his/her family and helps shield children from exploitation and violence<sup>32</sup>.

In the absence of a marriage certificate, how then, can a father’s biological relationship with his child be legally recognized through “other evidence according to law<sup>33</sup>” For children whose parents have a religious marriage, this paper has already outlined above the process. For couples who are not married, in addition to DNA testing which is not feasible for the poorest households, Indonesian civil law provided for individuals to make binding legal statements in two ways, each conveying a differing degree of legal certainty:

- I. A document signed by the mother and father stating that they are the mother and father (signed Statutory Declaration).
- II. A document signed by the mother and father stating that they are the mother and father that is notarised.

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28 Constitutional Court decisions No 46/PUU-VIII/2010 (decided in 2012) and No 18/ PUU-XI/2013 (decided in 2013)

29 (Decision No 46/PUU-VIII/2010).

30 Ibid [3.13]

31 This requirement was previously contained in Law 23 of 2006 concerning Population Administration.

32 No 18/ PUU-XI/2013 [3.16]

33 “*Anak yang dilahirkan di luar perkawinan mempunyai hubungan perdata dengan ibunya dan keluarga ibunya serta dengan laki-laki sebagai ayahnya yang dapat dibuktikan berdasarkan ilmu pengetahuan dan teknologi dan/atau alat bukti lain menurut hukum mempunyai hubungan darah, termasuk hubungan perdata dengan keluarga ayahnya*”; (emphasis added) in Decision No 46/PUU-VIII/2010

Indonesia's Criminal Code stipulates penalties for making a false statement, including in relation to paternity<sup>34</sup>.

Information on the child's father is often included in formal documents such as the birth information letter and the application form to add a child to a family card even when no marriage certificate exists. This reflects the practical reality that the majority of couples in the poorest households do not have a marriage certificate. For these households, paying a notary to witness a Statutory Declaration is not feasible. More simple arrangements at the time of birth or at the time when birth registration takes place need to be considered that will allow a mother and father to state that they are the child's parents and for this to be included in a child's birth certificate.

Both private and public hospitals and health centres issue Maternal and Child Health Books including a Letter of Birth (Surat Kenal Lahir/ Keterangan Lahir) to pregnant women<sup>35</sup>. The Letter of Birth is signed by the birth attendant and contains information on the place and date of birth, the name of the mother and father, their ID card numbers, address, work and age. <sup>36</sup>. Following the 2012 decision of the Constitutional Court an additional document could be included in the Child and Maternal Health Book to provide for a standard Statutory Declaration in relation to the name of the father and the name of the mother that can be signed by both the mother and the father. This Statutory Declaration from the parents would constitute "another form of evidence that the father has a blood relationship with the child" and would allow the parents to obtain a birth certificate that includes both their names even in cases where they do not have a marriage certificate.

## **Part III: Remaining Challenges: Where to and How?**

### **The Momentum for Change**

In January 2015, the President signed Indonesia's Medium Term Development Plan that for the first time names legal identity as the first of five basic services deemed critical for supporting the poorest and most vulnerable members of Indonesian society<sup>37</sup>. A national target has been set that aims to increase possession of a birth certificate by the poorest 40% of Indonesian society to 77% by 2019.

This national dynamic is converging with regional and global moves toward providing all

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<sup>34</sup> Chapter XII of the Criminal Code (KUHP) on penalties for False Statements.

<sup>35</sup> Keputusan Menteri Kesehatan Republic Indonesia Nomor 284/Menkes/SK/III/ 2004 tentang Buku Kesehatan Ibu dan Anak (Decision of the Minister of Health No 284/Menkes/SK/III/ 2004 concerning the Child and Maternal Health Book (KIA) mandates that the responsibility for the possession and distribution of the KIA to all mothers is the responsibility of the central, provincial and district governments in accordance with the number of pregnant women in their area. The Child and Maternal Health Book must be provided free of charge to the poor.

<sup>36</sup> Child And Maternal Health Book (Buku Kesehatan Ibu dan Anak), Ministry of Health, Republic of Indonesia (2011), p22-23

<sup>37</sup> Republic of Indonesia, Medium-Term Development Plan 2015-2019, Book 1 (section 6-48, section 6-64) and section 5-10.



individuals with a legal identity focusing on birth certificates. In November 2014, Asia-Pacific Ministers declared the years 2015-2024 as the Civil Registration and Vital Statistics Decade for Asia and the Pacific and set three goals, including universal birth registration<sup>38</sup>. The Asia Pacific Framework evokes the principles of universality and non-discrimination embedded in the Universal Declaration of Human Rights as well as the Convention on the Rights of the Child to address the fundamental issue of discrimination in birth certificates and other legal identity documents<sup>39</sup>. The Asia-Pacific Ministerial Declaration reaffirms the minimum set of information required in line with Article 7 of the CRC should include the individual's name, sex, date and place of birth, and name of parent(s) where known<sup>40</sup>.

In September 2015, the UN General Assembly and world leaders will deliberate on the new development architecture to be known as the Sustainable Development Goals. The Open Working Group's proposal for Sustainable Development Goals (September 2014) provides a further opportunity for Indonesia to take up the global goal of ensuring that all persons have legal identity by 2030, including through birth registration<sup>41</sup>.

### **Addressing two key barriers**

**Solving the Paternity Issue.** A large population, varied polity and significant physical transportation hurdles mean that it is no surprise that children from poor families in remote areas of Indonesia do not have birth certificates. However, another basic impediment to equity is that the majority of poor couples do not have a marriage certificate. This precludes them from obtaining a non-discriminatory birth certificate for their child with both of their names listed as the parents of their child. With the impetus of the Medium Term Development Plan legal identity goal, an important policy discussion is now required in Indonesia that would clarify (i) how the existing child recognition arrangements can be applied to the children of couples who have a marriage that is valid according to the religion or belief of the couple under the Indonesian marriage law and (ii) what "other evidence" referred to in the 2012 Constitutional Court of Indonesia decision is acceptable for the father and mother's name to be included on a child's birth certificate where there is no marriage. This could also consider what strategies may be needed to raise awareness in the community for the need for legal marriage and how to simplify the process of providing legal identity services at village level.

These policy issues require careful consideration if the impact of Indonesia's Medium Term Development Plan aimed at providing 77% of the poorest members of Indonesian society

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<sup>38</sup> Goal 1: Universal civil registration of births, deaths and other vital events; Goal 2: All individuals are provided with legal documentation of civil registration of births, deaths and other vital events, as necessary, to claim identity, civil status and ensuing rights; Goal 3: Accurate, complete and timely vital statistics (including on causes of death) are produced based on registration records and are disseminated.

<sup>39</sup> [http://www.getinthepicture.org/docs/E\\_ESCAP\\_MCCRVS\\_PREP\\_WP.1\\_E.pdf](http://www.getinthepicture.org/docs/E_ESCAP_MCCRVS_PREP_WP.1_E.pdf) p3

<sup>40</sup> Ibid p 6

<sup>41</sup> United Nations. (2013): [A New Global Partnership: Report of the High-Level Panel of Eminent Persons on the Post-2015 Development Agenda](#). The initial formulation of the legal identity target that appeared in the Report of the High-Level Panel of Eminent Persons on the Post-2015 Development Agenda was a stronger formulation, as it stressed that there should be no costs associated with the provision of legal identity – a critical factor given that cost is considered the most significant barrier to obtaining legal identity by the poor.

with a birth certificate by 2019 is not to result in the majority of children in poor households facing discrimination in the type of birth certificate they receive based on the marital status of their parents. In order for the poor to want to obtain birth certificates for their children, the process and requirements must ensure that their poverty is not further manifested and compounded through the parents' lack of a formal marital status.

**Better Data on Birth Registration.** Standardising legal identity questions across Indonesia's survey instruments will also be critical. Importantly, in 2015, the Indonesian household survey that targets the poorest 40% of households (Pemutakhiran Basis Data Terpadu or Unified Data Base Updating, PBDT) has introduced questions on birth, marriage and divorce certificates for the first time. These legal identity document questions need to be consistent across the PBDT, the Census and quarterly SUSENAS household surveys. Recognising that many Indonesian citizens often confuse a birth certificate with a birth information letter it will be important for the survey officials to indicate if they have seen these documents<sup>42</sup>. These questions will provide greater clarity on the percentage of children in the poorest households that do not have birth certificates and how this may correlate with an inter-generational absence of legal identity documents, namely, with parents also lacking birth, marriage and, in some cases, divorce certificates.

SUSENAS data suggests that, whatever the exact level of registration, progress has been sluggish at best. From 2011-2013, there has been a 2% increase in the Realistic Assessment<sup>43</sup> of the proportion of Indonesian children (0-17) with birth certificates. At this rate, it would take another fifty years before the goal of every child having a birth certificate is met. The proportion of Indonesian children with birth certificates would also fall 20 percentage points short of the goal set in the Medium Term Development Plan, reaching only about 57% by 2019. Indonesia may wish to consider the policy and strategic benefits of re-focusing its goals to providing a non-discriminatory birth certificate to all children – a more achievable goal than providing a certificate to all citizens. One rationale is that it is possible to obtain an ID card at 17 years of age.

### **Pathways to Birth Certificates with Equity**

Indonesia has choices on how to rapidly increase the rate of birth certification. One approach is to deliver legal identity documents through Integrated and Mobile Services (IMS) at village level. This program has recently been developed to make legal services more accessible to the population. To date, 108 IMS clinics have been concluded, delivering some 4,000 registrations of marriage and 3,000 certifications of birth. This service overcomes the identified barriers to obtaining a legal identity document of cost, distance and complexity of dealing with multiple agencies. IMS clinics can be held anywhere, including

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<sup>42</sup> One recommendation from the Baseline Study was that in future surveys SUSENAS present only two possible responses: "My child has a birth certificate and I can show it" and "My child does not have a birth certificate"

<sup>43</sup> See footnote 13 for a definition of Realistic Assessment.

village meeting-houses and schools. They can circuit on a schedule that is sensitive to the volume of legal identity documents required in different locations.

Another approach – which could be implemented in parallel - would be to integrate the provision of legal identity documents into Child and Maternal Health and Immunization programs (CMH). This would build on the early engagement of mother and child with health services and would need to involve the enlistment of health and birth attendants as local partners of the civil registry. This has already been shown to be possible in the President’s home city of Surakarta where health facilities already transfer birth registration information to civil registries to facilitate birth certificates.

However, a third intervention is required in order to deliver the same quality of birth certificate to all Indonesian children without discrimination. For couples who are married according to their religion or belief this could be done through a more widespread implementation of the existing child recognition provisions in Indonesia’s laws. For couples that are not married, this could be done by changing the requirements for birth certificates set out in the Presidential Regulation to explicitly admit a wider range of evidence of paternity such as a Statutory Declaration in which the father and mother state that they are the parent’s of the child. The existing birth information letter or application form for a birth certificate would require minimal amendment to also allow parents to attest to the fact that they are the child’s parents in a legally binding manner. Such a change would bring the process into conformity with the 2012 decision of the Constitutional Court that found that the absence of a legally registered marriage was not sufficient grounds to deny the existence of a civil relationship between a child and their father if paternity could be demonstrated through scientific or other, legally-acceptable means.

**Costs and Benefits of the Approaches.** The IMS and CMH models are compared in Table 2. There is still some uncertainty over the financial costs of providing legal services at village level<sup>44</sup>. The costs associated with IMS include the costs to ascertain those individuals who need legal identity documents; providing legal identity services at the village level by up to three agencies, and following up to deliver legal identity documents if these cannot be completed on the day of service. Only one of the three agencies providing integrated and mobile services (the Religious Courts) has data on the annual budget for village based circuit services and the number of services provided. Based on four years of data, the cost is estimated at about USD15 per legal identity certificate or decision<sup>45</sup> and the same unit cost is assumed for each legal identity certificate or decision delivered through an IMS<sup>46</sup>. It should

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<sup>44</sup> The budget to enable government agencies to deliver legal identity services at village level rather than in district capitals has not been systematically allocated through national government budget processes. The revised law 24/2013 was passed into law on 24 December 2013 and the 2014 budget to implement the outreach services was not able to be allocated at national level until late in 2014.

<sup>45</sup> More work on costing is required and will be undertaken in more detail during 2015. In 2014, the Religious Courts heard 30,857 cases through a circuit court with a budget of Rp5.8Bn. USD15 per service is at the low end of the spectrum.

<sup>46</sup> In the recent law stating that the provision of marriage certificates in the Office of Religious Affairs would be free, a fee of Rp 600,000 or USD60 was set if the Office of Religious Affairs had to travel outside the office to issue a marriage certificate. (This is an individual service fee, rather than the circuit court service fee above of USD15 which assumes that more than one case will be heard at a mobile service and therefore that the cost per case will be less.) Where populations are sparse, the cost

be noted that in some districts NGOs, such as PEKKA, have taken on much of the burden of publicizing the services and helping applicants to navigate the complex forms required for each process and to obtain copies of documents as required.

If used exclusively to plug the birth registration gap, the IMS model would need to provide birth certificates to around half of the 4.5 million children born each year, as well as to legalize marriages for all parents having only a religious marriage. For these 2.25M children without birth certificates, it is assumed that 50% of their parents will not have a legal marriage (but will have a religious marriage), and that the number of couples requiring marriage registration services would therefore be at least 1.1M million. (This is an underestimate because we know that couples without marriage certificates are less likely to have already secured birth certificates for their children.) Since each family, on average, has two children, we can also assume that half of the children might have an older sibling without a birth certificate, raising the number of children obtaining birth certificates through IMS to 3.4 million<sup>47</sup>. Moving to complete birth registration would thus involve the provision of some 2.2 million marriage-related legal services<sup>48</sup> in addition to 3.4 million birth certificates. The annual financial cost of providing these birth and marriage certificates through integrated and mobile services is estimated to be in the order of \$84 million.

More problematic would be the human resources and logistical requirements for the Religious Courts. The number of marriage legalization cases decided in the Religious Courts has risen significantly from 11,500 cases in 2010 to almost 40,000 in 2014<sup>49</sup>. Implementing the IMS model on a nation-wide basis would require a huge increase in marriage legalization cases and a four-fold increase in the total number of cases heard by the Religious Courts. The cost estimates above do not allow for the needed increase in the staffing of the courts, as handling the small number of IMS cases to date has been possible within their existing staff capacity.

The cost of the CMS model can be estimated from the World Bank-WHO Costing for CRVS Scaling Up Plans in the 75 countries prioritized by the Commission on Information and Accountability<sup>50</sup>. Annex 2 develops estimates based on the model costing that take into account features of Indonesia, in particular its far-flung geographical dispersion and the isolation of many communities. This suggests 10-year investment costs of around USD340M (somewhat above the average for all countries considered in the study) which for the purpose of this costing is spread over the 10 years. There may also be some further start-up costs to provide village and health offices with the hardware required to transmit legal

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per legal identity service delivered increases. The costs above provide an estimated cost per legal identity service that is averaged across tens of thousands of services delivered.

<sup>47</sup> 3.4 million children obtaining birth certificates through an IMS includes 2.25 million children plus 50% of this number with an elder sibling (1.125M).

<sup>48</sup> 2.2 million marriage-related legal services includes 1.1 million marriage legalisation cases undertaken by the courts and 1.1 million marriage certificates provided by the Office of Religious Affairs or Civil Registry to the 1.1 million couples with a religious marriage that has not been registered.

<sup>49</sup> Infoperkara.badilag.net presents marriage legalisation cases decided by the Religious Courts in 2014 as 39,483 (viewed on 9 March, 2015).

<sup>50</sup> World Bank WHO (2014) Global Civil Registration and Vital Statistics, Scaling up Investment Plan 2015–2024, Chapter 4 and Annex 8

identity information through the SIAK interface as currently occurs in Surakarta. The cost for the CRVS system would then be around \$34 million per year<sup>51</sup>. This figure could be expected to be higher in the early years and then taper down. The budget includes funds for capacity building for the local officials but not the current costs of paying them for the extra work that would be involved in helping new parents to fill in forms and submit them. In the World Bank-WHO plans, additional recurrent costs average 53% investment costs across the ten year scaling up plan<sup>52</sup>.

Comparing the IMS and CMH models in Table 2, the former provides a complete package, increasing access to a wide range of legal services including the registration of marriages and divorces as well as births. There are therefore strong arguments for extending this approach. However, the IMS model will not be enough on its own to rapidly enable Indonesia to close the birth certification gap, because of its financial and human resource costs together with the huge overhang of non-registered marriages. Until this is eliminated, a high percentage of the annual flow of new births will require the registration of marriages – in some cases performed according to religious law many years previously – as well as the birth registrations themselves. The implication would be a dramatic and unprecedented escalation in the number of cases coming before the courts.

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<sup>51</sup> The systems as costed are also intended to deliver death certificates. This implies that the unit costs per birth certificate could be somewhat lower than estimated here.

<sup>52</sup> Ibid, Table 1 p64.

**Table 2: Comparison of Legal Identity Services Delivered through Integrated and Mobile Services or Child and Maternal Health Services**

Integrated and Mobile Services (IMS)- currently operating on a limited scale.	Child and Maternal Health (CMH) - operating in certain districts and cities such as Surakarta.
<p><b>Benefit:</b> Citizens receive services from up to three government agencies that can:(i) legalise a marriage (courts), (ii) provide a marriage certificate (Office of Religious Affairs or civil registry) and (iii) issue birth certificates (civil registry).</p>	<p><b>Benefit:</b> Parents receive advice and assistance to obtain birth certificates from health officers during pre and post natal health checks, including those related to the 10 immunisations received during the first year of life.</p>
<p><b>Benefit:</b> Children receive birth certificates with both the mother and father’s names as the religious marriage has been legalized by the courts and a marriage certificate issued..</p>	<p><b>Disadvantage:</b> Under current law, children will only receive a birth certificate with the father and mother’s name if the parents have a legal marriage certificate<sup>53</sup>. Requires a change in the requirements for birth certificates to provide uniform treatment of paternity where a father acknowledges their child.</p>
<p><b>Benefit:</b> Mother and children have greater legal protection</p>	<p><b>Disadvantage:</b> Legal certainty for both mother and children are reduced compared to the IMS model</p>
<p><b>Benefit:</b> Citizens in the village receive information on how legal identity documents may be obtained which may encourage others. The IMS can include a celebration for the children who are receiving birth certificates and their parents. This conveys a message that legal identity documents are not just a bureaucratic task but something to be valued and celebrated.</p>	<p><b>Benefit:</b> Families can complete a range of legal identity tasks at one step, including updating the family card, obtaining a birth certificate and a Unique Identity Number (NIK) for the new-born. As this model envisages local officials with computer or mobile connections with SIAK it can also facilitate the reporting of deaths.</p>
<p><b>Financial Cost:</b> Estimated at around \$84 million/year plus other recurrent costs to increase the capacity of the courts.</p>	<p><b>Financial Cost:</b> Estimated around \$34 million/year plus other recurrent payments, including to health workers and facilities for assistance with registration</p>
<p><b>Human Resource Cost:</b> Would increase the caseload of marriage legalisation cases from around 40,000 cases in 2014 to 1.1 million cases and increase the total number of cases brought to the Religious Courts to almost four times the number of cases decided in 2014 (430,000).</p>	<p><b>Human Resource Cost:</b> Assumes an increased role for health workers and village officials in assisting parents and transmitting data to SIAK. The budget includes capacity building for these officials on how to do this.</p>

<sup>53</sup> In practice, the recognition certificate followed by an amended birth certificate with the father’s name described earlier in this paper has only been undertaken for Indonesia’s non-Muslim population and is not a commonly utilised process even for non-Muslim citizens and their children.

The CMH model would therefore play an essential role in helping to close the registration gap as well as in strengthening civil registration in other dimensions, including the reporting of deaths. Its main shortcoming is that it fails to provide the full range of legal protections to mothers and children that would be assured by registered civil marriages. In addition, it would require the changes to Indonesian law and practice already canvassed in this paper through extending the existing recognition certificate to couples that have a religious marriage that is not registered and clarifying recognition by the father through a Statutory Declaration signed by the mother and father as “another form of evidence” that they are the father and mother of the child. The birth certificates of all children would then refer to the father and mother of a child (where these are known) and not their marital status.

Even with the CMH approach, there will be a continued need in Indonesia for integrated and mobile legal identity services to legalise marriages, provide marriage certificates and birth certificates. However, over the Asia-Pacific Decade of Civil Registration and Vital Statistics (2015-2024) it is expected that the level of awareness of the importance of obtaining a marriage certificate at the time of marriage will rise. Thus over 2015-2024, the resources directed to IMS could be expected to plateau and the demand for resources to support CMH increase.

Both models would be easier to implement if the Ministry of Home Affairs considered ways to streamline the requirements for birth certificates. Currently, there can be up to six documents that need to be produced. Some districts require photocopied and notarised copies of documents including the e-ID card but many documents such as the family card and marriage certificate are linked to the e-ID card in the SIAK database. As a large-scale rollout of the e-ID card has already occurred, the documentary requirements for those with the card could be much simpler and consist of the e-ID card number for the parents, the birth information letter and a Statutory Declaration or other document evidencing the father and the mother of the child. As in many countries around the world, this Statutory Declaration could be part of the birth certificate application form itself.

### **Partnerships to Support the Birth Certification Process**

The delivery of legal identity documents to individuals at village level works best if government and non-government actors co-ordinate their strategic interventions in four ways to:

- **Advocate** why legal identity is important
- **Communicate** information on how to obtain legal identity documents/ the numbers of individuals who need legal identity documents
- **Facilitate** legal identity integrated and mobile services
- **Illuminate** the number of individuals who receive legal identity documents and the impact that these documents have had on their lives.

**Government (both national and local)** has responsibility for the central role of collecting data on birth registration and other civil registration events, issuing birth certificates and other legal identity documents and coordinating the collection of this data with the relevant government agencies including health, population and civil registration, education and social protection agencies. Governments also have a responsibility to provide clear information to the public in different formats explaining the prerequisites and processes for obtaining legal identity documents, ideally linked to other frontline service delivery units like health and education.

**Civil Society Organisations (CSOs) and Disabled Persons Organisations (DPOs)** have played a critical role in documenting the legal identity needs of vulnerable groups and presenting this data to government for action. The Baseline Study was supported by data and research from two Indonesian CSOs: PEKKA (Pemberdayaan Perempuan Kepala Keluarga - Empowerment of Female Heads of Household NGO) and PUSKAPA UI (Pusat Kajian Perlindungan Anak Universitas Indonesia - Center on Child Protection University of Indonesia). CSOs are also able to advocate for policy changes and increased budget resources that will facilitate legal identity service delivery at village level. CSOs and DPOs play a critical role in evaluating the provision of services at village level, interviewing clients to see whether they received the services they needed and reporting on the quality of service.

**Donors** are able to support new ways of delivering legal identity services especially through innovation and piloting new approaches. Donors can also support government agencies and civil society by supplementing the funding required to collect data on legal identity needs (particularly the needs of vulnerable groups) and to deliver legal identity services at village level. This is particularly relevant in Indonesia where for the last decade Corporate Social Responsibility (CSR) activities for community benefit have been mandatory under national laws for State Owned Enterprises, foreign investors and limited liability companies operating in the field of natural resources<sup>54</sup>. Due to the size of their donations, the corporate and philanthropic sector can effectively raise awareness of the importance of complete and accurate data on legal identity in order that both government and private investments in the health and education sectors can be more rigorously evaluated (see Box 1 below on the Indonesia Health Fund).

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<sup>54</sup> See: Articles 2 (a) and 88 of Law No. 19 of 2003 concerning State Owned Enterprises and the Minister of State Owned Enterprises Regulation No. Per-05/MBU/2007 as amended lastly by the Minister of State Owned Enterprises Regulation No. PER-08/MBU/2013 dated 10 September 2013; Article 15 of Foreign Investment Law No. 25/2007; and Article 74 of Law No. 40 of 2007 on Limited Liability Companies, together with Government Regulation No. 47 of 2012 on Corporate Social Responsibility.



### **Box 1: Health impacts of legal identity and the Indonesia Health Fund**

In April 2014, eight Indonesian philanthropists contributed a total of \$40 million to the newly launched Indonesia Health Fund. This sum was matched by the Bill and Melinda Gates Foundation and, the resulting \$80 million Indonesia Health Fund became one of the largest philanthropies in Indonesia.<sup>55</sup> Three quarters of the funds will be spent to fight tuberculosis, malaria and AIDS and also to promote family planning. The remainder will go to fight polio on a global basis. Dr Tahir, founder of the Tahir Foundation, developed and coordinated the group model of philanthropy behind the Fund.

When asked what he saw as the biggest challenge as a philanthropist in Indonesia, Mr Gates remarked, *“Indonesia’s done quite a few things well, and yet the vaccination rate is not as high as it should be. It should be 95% and now it’s more like 65%.”*<sup>56</sup> The question that immediately arises is, “How do you know that you have counted everyone?” Visits to more remote Eastern provinces show that many individuals still lack a Unique Identity Number (NIK). In Indonesia, in the first year of every child’s life 10 vaccinations should be administered through at least six visits to a health clinic<sup>57</sup>. This provides six occasions at which it is possible to register children for both the birth certificate and the NIK and match that to immunisation records. In addition, the strong relationship between lack of birth certification and child marriage suggests its importance for the family planning goal.

## **IV. Concluding Remarks and Recommendations**

The following nine changes, if implemented, would make a significant contribution toward overcoming the identified barriers of cost, distance and complexity, as well as removing discrimination in birth registration:

- I. **Remove costs associated with obtaining legal identity documents** – whether these are fee or fines for late registration after the 60-day registration period.
- II. **Take services from District to Village level through integrated and mobile services where more than one agency provides services at the same time.**
  - a. Courts to legalise a religious marriage that has previously not been registered,
  - b. Office of Religious Affairs (KUA) or Civil Registry to provide the marriage certificate, and
  - c. Civil registry office to provide the birth certificates.

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<sup>55</sup> *Giving Model*”, Forbes Indonesia, May 2014, p38.

<sup>56</sup> Ibid p40

<sup>57</sup> Child And Maternal Health Book (*Buku Kesehatan Ibu dan Anak*), Ministry of Health, Republic of Indonesia (2011), p61

While supporting village based legal identity services is a primary responsibility of the government under Law 24/2013, the private sector and philanthropic groups have also supported this work in Indonesia<sup>58</sup>. These sectors could consider scaling up their investment to support results in their other philanthropic activities in health and education sectors.

- III. **Provide Non-Discriminatory birth certificates:** In the poorest households, the majority of couples do not have a registered marriage. For these couples including both of their names on their children's birth certificates requires a long and arduous process. A change to the existing legal provisions to allow for a simple way of listing both parents on the birth certificate irrespective of marital status is needed to reflect the non-discrimination articles in Indonesia's Constitution as well as the 2012 Constitutional Court decision. This could be achieved through minor amendments to the existing birth information letter or application form for a birth certificate to also allow parents to attest to the fact that they are the child's parents in a legally binding manner.
- IV. **Streamline the requirements for a birth certificate.** Indonesian citizens are still required to present up to six photocopied (and in some districts notarised) documents or forms to obtain a birth certificate for their child. Since 2011 and the introduction of the electronic ID card in Indonesia, this could be reduced to three documents including the (i) ID card numbers of the parents, (ii) the birth information letter from health officials and (iii) marriage certificate or recognition certificate or Statutory Declaration from the father and mother that they are the parents.
- V. **Greater collaboration between the Ministry of Health and the Ministry of Home Affairs at all levels of government is required** to facilitate the delivery of legal identity documents at village level. This should include:
  - a. Revising the Child and Maternal Health Book to have clear information on how parents obtain birth certificates for their children. This could include the recognition letter/ Statutory Declaration for the father and mother to sign as well as the birth information letter that is included.
  - b. Training health centre, birth centre and hospital staff to provide information and assist parents to obtain birth certificates for their children at the time of their birth or during the six immunisation visits during their first year.
- VI. **Adequate Budget for Village Based Service Delivery:** The Civil Registry Office requires an adequate budget for their staff across Indonesia to provide services at village level as mandated under UU 24/2013. The Office of Religious Affairs officials need the same budget to assist couples to obtain marriage certificates at integrated and mobile services. This budget needs to be allocated per district in the national level budget in the

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<sup>58</sup> A recent example is the work of the Provincial Bank of East Nusa Tenggara (Bank NTT) support for the delivery of legal identity documents through integrated and mobile services in the district of Belu in NTT. <http://www.metrotimor.com/pn-atambua-selenggarakan-sidang-keliling.php>.

same way that the Religious Courts have included a budget for circuit court services and, from 2016, for integrated and mobile services in the Supreme Court budget.

**VII. Support paralegal services that provide information to households** on the requirements for legal identity documents as well as other family and civil law cases. Mobile paralegal units and other legal advisory services supported by CSOs and University Legal Aid Clinics can provide information and assist families in remote locations to prepare the documentation required to obtain legal identity documents. Organisations like PEKKA in Indonesia have pioneered research, advocacy and assistance to families for their family law and legal identity cases.

**VIII. Greater data transparency for the public and between agencies on the number of births per district and the delivery of legal identity documents.** Over the last decade the Supreme Court of Indonesia has introduced high levels of transparency in the provision of information on the total number of marriage legalisation, divorce and other cases on a website showing this data by district, province and nationally and through Annual Reports, also available on the Supreme Court website<sup>59</sup>. At a national level, the Ministry of Home Affairs, Department of Population and Civil Registration, does not make publicly accessible its annual reports or the annual accountability reports (LAKIP) that are required of government agencies under the Law on Access to Information (Law No 14 of 2008). Similarly, Ministry of Health data at district, provincial and national levels on the number of live births each year is critical to an understanding of whether the number and percentage of children with birth certificates is increasing.

**IX. Facilitate the provision of birth certificates as part of Indonesia's social protection programmes including health insurance programmes.** If the goal set in Indonesia's Medium Term Development Plan of the majority of children in the poorest households having a birth certificate is to become a reality, social protection programmes need to reinforce why legal identity documents such as birth certificates are critical and facilitate parents to obtain them for their children.

In the same way that the physical infrastructure of roads and bridges brings markets and other opportunities to individuals in remote areas, legal identity documents can be seen as the pathway to individual rights and equitable participation in society. Indonesia's Constitution sets a high standard: *'Every child shall have the right to live, to grow and to develop, and shall have protection from violence and discrimination.'*<sup>60</sup>

In tackling legal identity in the Medium Term Development Plan, the Government of Indonesia has the opportunity to change the lives of Indonesia's missing millions in the five years to 2019. However, there are critical policy choices to be made. Legal identity

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<sup>59</sup> Case data available on [www.infoperkara.badilag.net](http://www.infoperkara.badilag.net) and Annual Reports available on [www.badilag.net](http://www.badilag.net) and [www.mahkamahagung.go.id](http://www.mahkamahagung.go.id)

<sup>60</sup> Constitution of the Republic of Indonesia: Article 28B(2)

documents can be dispensed in a way that reinforces the discrimination faced by the poor, and those whose parents do not have a legal marriage certificate, or new policies can emerge that underline the Government's commitment to provide every child with a birth certificate that presents the same information in a non-discriminatory manner.

## **Annex 1: AIPJ Baseline Study on Legal Identity: Indonesia's Missing Millions**

### **The Baseline Study Purpose and Methodology**

The Baseline Study was conducted during 2012-2013 by the Australia Indonesia Partnership for Justice (AIPJ) and represents a collaborative research effort combining data and analysis from a number of research studies and sources undertaken by AIPJ and a range of partner organisations, including the AIPJ Legal Identity Program, PEKKA, PUSKAPA UI and the Family Court of Australia.

The full Baseline Study can be downloaded at: <http://bit.ly/1eyBeLf>

### **Key Findings**

#### The Situation

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

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

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

- 2 The Baseline Study found that more than 70% of people who answered a SUSENAS survey question “have a birth certificate but cannot show it” actually never had a birth certificate. This would suggest that SUSENAS data underestimates the true number of children without birth certificates.

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

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

- 4 Poverty increases the likelihood of not having a birth certificate by between 142% and 210%, across all age groups.

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

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

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

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

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

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

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

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

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

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

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

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## The Impact

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

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

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

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

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

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

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

**16** The Baseline Study found that 16% of women aged 19-29<sup>61</sup> from poor households finish 12 years of education in Indonesia. 94% of these women are married at 18 years or older.

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

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

**19** The Baseline Study found that across the 17 provinces surveyed, and for women in the poorest 30% of households, only 5 in 10 women have a KTP: 17% of

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<sup>61</sup> Taking a snapshot of highest educational attainment for boys and girls aged between 19-29 shows a more accurate picture of current opportunities for girls and boys. When the population is enlarged to all men and women aged 19 years and over, the level of educational attainment diminishes considerably as the majority of the older population in Indonesia did not complete primary school.

women have a KTP in NTB and South Sulawesi, and 37% of women have a KTP in NTT. Women face barriers in exercising their political rights in part due to the difficulty in obtaining legal identity documents (such as a KTP) that are a prerequisite for enrolling to vote. The Baseline Study found that for women in NTB, NTT and South Sulawesi there is a significant correlation between having a birth certificate and also having a KTP. This suggests that in poorer regions women only have legal identity documents as adults if they also have a birth certificate.

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

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

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

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

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

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

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



## The Barriers

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- 24 Both SUSENAS and the Baseline Study confirmed that the main reasons for people not having legal identity documents such as a birth certificate or a marriage certificate is because (i) they are too expensive to obtain (41%); (ii) the distance to civil registry offices is too far (15%); and (iii) lack of knowledge on how to obtain legal identity documents (12%), as well as (iv) the processes being too complicated (9%).
- 25 Prior to Law 24/2013 concerning the revision of Law 23/2006 on Population Administration enacted in December 2013, the cost of a birth certificate (including fines) charged by the civil registry office could rise to 6 times the monthly income of a person living on the Indonesian poverty line.
- 26 A marriage legalisation case and a divorce case initiated by the wife in the Religious Courts can rise to between 1 to 10 times the monthly income of a person living on the Indonesian poverty line, depending upon how far the parties live from the court house.
- A divorce case initiated by the husband in the Religious Courts can rise to between 2 to 16 times the monthly income of a person living on the Indonesian poverty line, depending upon how far the parties live from the court house.
- 27 To obtain a birth certificate with both parents' names on it, will require parents to interact with up to three agencies to: (i) legalise a marriage before the Religious Courts; and/or (ii) obtain a marriage certificate at the KUA or civil registry; and/or (iii) obtain a birth certificate at the civil registry. The complexity, time and cost of dealing with three agencies will be beyond the capacity of many households, particularly the poor.
- 28 People living with a disability face additional barriers in travelling even short distances to obtain legal identity services. In some districts, there may no form of accessible transport that will allow people with a mobility disability to travel to district capitals. In addition, there is a lack of support services, such as qualified sign language interpreters to assist communication needs of people who are deaf as well as material in alternative formats (Braille, sign language videos, audio materials).
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- 29 **In 2011, the Ministry of Religion recorded 2,207,364 marriages in Indonesia. As less than 50% of Indonesian couples obtain a marriage certificate, it is estimated that each year over 2 million couples in Indonesia do not register their marriage. The hidden impact of unregistered marriage is that children from these marriages will be unable to obtain a birth certificate with both their father and mother's name.**
- 30 Divorce cases are the single largest group of cases in the Indonesian court system. 93% of the 430,000 cases received by the Religious Courts in 2013 were divorce and marriage legalisation cases. In 2013 there were 24,568 civil cases registered in the General Courts, 9866 (or 40%) of these civil cases were divorce cases.
- 69% of divorce cases in Indonesia are brought by women. In 90% of these cases, a woman's application for divorce is upheld by the Religious Courts.
- 31 Following the enactment of Law 24/2013 on 24 December 2013, there is no charge for marriage certificates issued by MoHA for non-Muslim citizens, whereas Muslim citizens will continue to be charged for obtaining a marriage certificate issued by MoRA. This violates the non-discrimination provision of the Indonesian Constitution as there is now different treatment for Indonesian citizens in obtaining a marriage certificate from the Government based upon their religion<sup>62</sup>.
- 32 Law 24 of 2013 on Population Administration provides that in cases where there is: (i) a religious marriage and (ii) the father signs a statutory declaration that he is the father of the child, the civil registry will issue a certificate evidencing this recognition by the father and mother that they are the parents of the child (kutipan akta pengakuan anak) (art 49). A child requires either a birth certificate or a statutory declaration in which the father states that he is the father of the child in order for the child to have a civil law relationship with the father and benefit from inheritance and other social relationships with the father.
- 33 Law 24 of 2013 on Population Administration provides that the GoI has an obligation to actively reach out into the community to register births, marriages, divorces and other legal identity events. The Supreme Court of Indonesia has already identified these budget resources at district level for General and Religious Courts to provide circuit court services.
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<sup>62</sup> Indonesian Constitution Article 28I (2) Every person shall have the right to be free from discriminatory treatment based upon any grounds whatsoever and shall have the right to protection from such discriminatory treatment. Since the Baseline Study was published, the Ministry of Religious Affairs has removed fees for issuing marriage certificates if obtained in their offices – see Table 1 on p11.

## System Response

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- 34 **The Supreme Court has pioneered high levels of transparency in the provision of information on the work of the Indonesian courts to the public. This has been achieved through the publication of an Annual Report since 2005 and on-line access to court case statistics and judgments.**
- Over the last decade the Religious Courts have developed electronic case management systems to gather data from the 359 Religious Courts and 29 High Religious Courts across Indonesia. There is a significant level of transparency in the Religious Courts with case data as well as information on the work of the courts now available to the public online through [www.badilag.net](http://www.badilag.net) and [www.infoperka.badilag.net](http://www.infoperka.badilag.net)
- The General Courts now have an electronic case management system to gather data from the 350 General Courts and 30 High Courts across Indonesia. This case management information can be seen in aggregate by Supreme Court staff (Badilum) but is not publicly accessible.
- 35 There is no publicly accessible data on civil registration that is published by the Ministry of Home Affairs for birth and marriage certificates. The Ministry of Religion publishes the total number of marriage registrations in its Annual Report but does not provide disaggregated data by District.
- 36 In 2010, clients who could not afford a lawyer were not able to access legal advisory services (Pos Pelayanan Hukum) in the Religious Courts. In 2012, over 55,000 justice seekers in the Religious Courts received free legal advice through an independent legal aid post based in a Religious Court. In 2014, the Supreme Court budget for these services will enable clients who are not able to afford a lawyer to access legal advisory services in 74 Religious Courts and 56 General Courts.
- 37 **In 2014, the budget provided through the Supreme Court state budget (DIPA) to the Religious Courts to waive court fees, hold circuit court and provide legal advisory services in court buildings, is 13 times the level it was in 2007.**
- However, the Religious Courts have not yet been able to deliver court fee waiver and circuit court services to the 14% of the community who represent the village-based population living below the Indonesian poverty line. In 2012, the Religious Courts heard 7% of its cases through a circuit court and 3% of all justice seekers were successful in obtaining a court fee waiver.
- 38 **The Chief Justice and leadership of the Supreme Court of Indonesia, as well as the High Court Chief Justices and the Chief Judges of the General and Religious Courts, have proved to be the key drivers for improving access to the courts in marriage legalisation and divorce cases for women, the poor and justice seekers living in remote areas.**
- Since 2009:
- the number of cases heard at a circuit court at village level has doubled. The Religious Courts heard more than 23,000 cases at circuit courts in 2012;
  - the number of marriage legalisation cases conducted in the 359 Religious Courts across the country has tripled. In 2013, the Religious Courts heard more than 35,000 marriage legalisation cases; and
  - the number of cases brought by the poor where the court fee is waived has quadrupled. The Religious Courts heard more than 12,000 court fee waiver cases in 2012.
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## Annex 2: Costing the CMH Model

This Table is based on the model published in the World Bank WHO (2014) Global Civil Registration and Vital Statistics, Scaling up Investment Plan 2015–2024, Chapter 4 and Annex 8 (Table 3).

Cost category	Main assumptions and cost per activity applied	Applied to Indonesia using population = 250M
Incremental Fixed/ capital costs		USD
Development of legal/ regulatory framework	Average cost of US\$250,000 for Bangladesh and Philippines, was used for the 73 countries	250,000
Comprehensive assessment	Average cost of US\$100,000 per country assumed for the comprehensive assessment for the 48 countries that are yet to undertake the assessment.	100,000
Infrastructure and equipment	US\$0.30 per capita was used for high and moderate investment need countries while US\$0.05 per capita was used for low investment need countries.	75,000,000
ICT ( technology costs)	US\$0.30 per capita was used for high and moderate investment need countries. US\$0.16 per capita was used for low investment need countries.	75,000,000
Digitization of existing registration records	US\$0.04 per capita	10,000,000
Development of operational guidelines and procedures	US\$0.02 per capita used for the 73 countries.	5,000,000
Incremental Variable/operating costs		
Capacity Building	High investment need countries— US\$0.29 per capita average across five countries; moderate investment need countries—US\$0.12 based on average from Bangladesh, Mozambique, and Kenya; low investment need countries based on Philippines US\$0.02.	72,500,000
IEC (Advocacy and communication campaigns)	IEC expected to be higher in the high investment need countries (US\$.20). For moderate and low investment need countries, US\$.052	50,000,000

	was used based on the average for Bangladesh, Mozambique, Kenya, and Philippines.	
Outreach activities to improve coverage	US\$0.02 per capita used for high and moderate investment need countries (average for Kenya and Philippines); US\$0.04 per capita was used for low investment need countries (higher rate takes into account the difficulty in reaching marginalized populations).	5,000,000
Data management	US\$0.05 per capita used for the 73 countries.	12,500,000
Maintenance of technology and other infrastructure	30 percent of technology cost was used based on the average proportion from the available country data (29%–40%).	22,500,000
System monitoring and enforcement costs	US\$0.05 per capita was used for the 73 countries.	12,500,000
TOTAL		340,350,000