
Courting Reform: Indonesia's Islamic Courts and Justice For The Poor¹

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Abstract:

This paper documents a judicial reform case study in the world's most populous Islamic country that has involved increasing access to the courts for disadvantaged groups. The process began with an Access and Equity Study in the area of family law conducted by the Religious Courts of Indonesia in partnership with the Family Court of Australia as well as Indonesian research institutes and an NGO for female heads of household. The key findings of that study showed that the 50% of Indonesia's citizens living below \$2 a day would face challenges in bringing their family law cases to the Religious Courts, something that is mandatory under Indonesian law. The paper documents the steps taken by the Religious Courts over the last five years to increase access to the courts for disadvantaged groups, principally women, the poor and those living in remote areas. It is estimated that 30-40,000 Indonesian citizens facing financial and other forms of disadvantage will access the Religious Courts for their family law cases during 2011 as a result of court fees being waived or a circuit court visiting their locality. The paper also highlights why legalising marriage and divorce and the provision of birth certificates (requiring a legal marriage certificate) are important for female heads of household and the families they support in terms of accessing broader public services, such as education and health.

Western perceptions of Islam in Indonesia are often dominated by images of radical minorities seeking a shari'ah state. In reality, mainstream Islamic institutions have played an important part in the post-Soeharto process of democratisation and law reform. This paper shows how Indonesia's Religious Courts (its family courts for Muslims) have been part of this. Long among the most liberal in the Muslim world, these Islamic courts have now embraced reform within a judicial system notorious for corruption and incompetence (Lev 1978; Lev 2008; Pompe 2005). In the last half decade, they have taken the lead in efforts to provide decisions that are more accessible, transparent and fair for women and the poor. They now stand as an example of how both Islamic institutions and courts can be part of Indonesia's broader *Reformasi* (Reformation) process.

This paper seeks to demonstrate that the new assertiveness of the Religious Courts does not suggest a growing conservative Islamisation of the Indonesian judicial system (in fact, quite the opposite). We argue instead that the Religious Courts and their reforms have come to play an important role in both Indonesia's judicial reform agenda and its broader development and poverty alleviation efforts.

Indonesia's courts for Muslims

The Islamic justice system in Indonesia today has three tiers. First instance *Pengadilan Agama* (Religious Courts) are located at the district/municipality (*kabupaten/kota*) level⁴ and there are 343 of these across Indonesia,⁵ including 19 in Aceh.⁶ At the provincial appeal level,⁷ *Pengadilan Tinggi Agama* (High Religious Courts) now total 29, including the

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⁴ Art. 4(1) of Law No. 7 of 1989 on Religious Justice.

⁵ These figures are drawn from Directorate-General of the Religious Courts (2008).

⁶ As a result of the creation of more regencies (*kabupaten*) and cities (*kota*) since decentralisation began a decade ago, there are now at least 75 regencies or cities without Religious Courts.

recently renamed *Mahkamah Syari'ah*⁸ (Shari'ah Court) in Banda Aceh.⁹ The last tier in the Islamic justice system is the *Mahkamah Agung* (Supreme Court), the national appeal court located in Jakarta.

The Religious Courts have exclusive jurisdiction¹⁰ over cases where the parties are Muslim¹¹ and involve the following issues.

- Marriage.¹² Marriage-related cases are understood as matters regulated by the Marriage Law No. 1 of 1974¹³ and they are overwhelmingly dominated by divorce. They also include other related matters, for example, applications for polygamy, division of property, child custody and guardianship, child maintenance, spousal maintenance, the legal status of children, marriage legalisation, and decisions relating to 'mixed marriages' between Indonesian and non-Indonesian citizens.¹⁴
- inheritance;¹⁵
- Muslim wills and testaments;¹⁶
- charitable bequests (*hibah*);¹⁷
- *wakaf*;¹⁸
- Islamic philanthropy—*zakat*,¹⁹ *infaq* and *sadaqah*;²⁰ and
- 'shari'ah economy' issues (*ekonomi syari'ah*).²¹

Despite their restricted jurisdiction the Religious Courts are among the busiest courts in Indonesia. In 2009, for example, litigants brought 257,798 cases to the Religious Courts, compared with 202,754 cases²² brought to the General Courts (*Pengadilan Umum*). The Religious Courts thus have 27% more cases than the General Courts, despite both the broad civil and criminal jurisdiction of the General Courts and the restricted jurisdiction of the Religious Courts. These figures will, of course, fluctuate from year to year but it seems likely that the Religious Courts will continue to have a trial caseload similar to that of the General Courts for the foreseeable future.

The size of the Religious Courts' caseload also reflects the fact that divorce cases now form the single largest group of cases in the Indonesian judicial system, comprising 50% of all cases, with criminal cases following at only 33%.²³ The domination of the Indonesian judicial system by divorce cases is even more striking in the context of civil litigation. In

⁷ Art. 4(2) of Law No. 7 of 1989 on Religious Justice. These appeals may be brought on wide-ranging grounds, pursuant to Arts. 6(2), 51(1), 6(1) of Law No. 7 of 1989. These provisions allow the High Religious Court to send the case back to the first instance Religious Court for further examination if it thinks necessary, uphold the original decision in full or in part, or quash the decision, re-decide the case itself and alter orders as it sees fit.

⁸ The terms used in Indonesia for the Arabic shari'ah vary greatly but the most common variant is syariah. Other variants include shariat, syariat, etc.

⁹ Law No.6 of 2005. For reasons of space, this paper does deal in detail with the Mahkamah Syari'ah system in Aceh, which is covered in more detail in Sumner and Lindsey (2010:6-8), and see references cited there.

¹⁰ Art. 6(1) of Law No. 7 of 1989 on Religious Justice.

¹¹ Arts. 1(1), 49(1) of Law No. 7 of 1989 on Religious Justice.

¹² Art. 49(a) of Law No. 7 of 1989 on Religious Justice, as amended by Art. 37 of Law No. 3 of 2006.

¹³ Elucidation to Art. 49(2) of Law No. 7 of 1989 on Religious Justice; and Elucidation to Art. 49(a) of Law No. 3 of 2006, Section 37.

¹⁴ For more complete descriptions of these areas of jurisdiction, see also the Elucidation to Art. 49(2) of Law No. 7 of 1989 on Religious Justice, and the Elucidation to Art. 49(a) of Law No. 3 of 2006, Section 37.

¹⁵ Art. 49(b) of Law No. 7 of 1989 on Religious Justice.

¹⁶ Art. 49(c) of Law No. 7 of 1989 on Religious Justice.

¹⁷ Art. 49(d) of Law No. 7 of 1989 on Religious Justice.

¹⁸ Art. 49(e) of Law No. 7 of 1989 on Religious Justice. *Wakaf* (Arabic *waqf*): the permanent dedication by a Muslim of property, usually land, for purposes recognised by Islamic law as pious, religious or charitable.

¹⁹ *Zakat*, charitable contribution required to be made by a Muslim in accordance with Islamic law.

²⁰ Art. 49(f), (g) and (h) of Law No. 7 of 1989 on Religious Justice. *Sadaqah* and *infaq* are forms of voluntary charity.

²¹ Art. 49(i) of Law No. 7 of 1989 on Religious Justice. The Elucidation (or explanatory memorandum) to Art. 37 of Law No. 3 of 2006 provides that this category includes Islamic banking, Islamic microfinance, Islamic insurance, Islamic contracts, Islamic securities, Islamic pawnbroking (*penggadaian*) and 'Islamic business'.

²² These data are taken from the Supreme Court annual report for 2009, and from subsequent data provided by the statistical units of the directorates-general for the General Courts (*Badilum*) and Religious Courts (*Badilag*). Our case numbers for the General Courts exclude summary or short cases (such as traffic fines) that are heard in an expedited way by the General Courts. Heard by only one judge, these are essentially bureaucratic proceedings rather than trials. They thus require a much lower commitment of time and resources. However, uncontested cases (*permohonan*) are included in the calculation of cases to enable a more direct comparison of the caseload between the General and Religious Courts, as both jurisdictions deal with this kind of case. Until the 2007 Annual Report of the Supreme Court, the number of General Court cases was obscured by several million summary traffic offences that are processed in an expedited way. Traffic and other summary cases are now presented separately in the Supreme Court annual report, resulting in a clearer picture of the judicial workloads of the General and Religious Courts.

²³ See Direktorat Jenderal Badan Peradilan Agama (2006:3, 269). See also e-profile documents for the Religious Courts for the years 2004, 2006 and 2007 available on the *Badilag* website, www.badilag.net.

2009, for example, there were approximately 310,000 civil cases or matters in the Religious and General Courts combined, of which approximately 230,000 were divorce cases. Divorce cases that year thus represented 74% of all civil cases heard in Indonesian Courts.

As mentioned, the Religious Courts hear divorces for Muslims. Non-Muslim divorces are heard by the General Courts. Of the total of divorces decided in Indonesia, the Religious Courts decide 98%, and the General Courts only 2%.²⁴ Accordingly, despite suffering decades of neglect by the Indonesian state (and even most foreign donors working in the legal sector),²⁵ the Religious Courts are today arguably the most active branch of the Indonesian judiciary. This means they are also the branch that has the broadest engagement with the Indonesian public and, in particular, Indonesian families.

In the district-level Religious Courts, the panels of three judges who hear cases generally apply the version of Islamic law embodied in the state-sanctioned *Kompilasi Hukum Islam* (Compilation of Islamic Law, Presidential Instruction No. 1 of 1991), issued by Soeharto as a 'guide' for Religious Court judges. The *Kompilasi* is narrow in scope, covering only marriage, inheritance and *wakaf*, and its provisions allow only a very restricted application of Islamic legal traditions. For nearly two decades, the Religious Court judges have relied heavily on the *Kompilasi* (together with the Law on Marriage No. 1 of 1974 and its implementing regulation, Government Regulation No. 9 of 1975) to deal with divorce, property division, spousal maintenance and child custody cases.

As indicated above, the Supreme Court is the final court of appeal on matters within the jurisdiction of the Religious Courts, as it is for most other branches of the Indonesian judicial system other than the Constitutional Court (*Mahkamah Konstitusi*). Cassation lies from the High Religious Courts to the Supreme Court²⁶ solely on grounds of error of law. Cassation decisions can be reviewed through a further *Peninjauan Kembali* (PK) or Reconsideration process, the final level of appeal in the Indonesian system. The Supreme Court is generally scrupulous in adhering strictly to its 'error of law' jurisdiction in dealing with cassation cases from the High Religious Courts. In 2009, only 703 of 257,000 cases heard by the Religious Courts were the subject of cassation, and just 88 reached PK review (Mahkamah Agung 2009:47).

Indonesian Religious Court judgments, like the procedures these courts follow, differ little from decisions of the secular courts. Both are influenced heavily by Continental European traditions of judicial decision-making. This is unsurprising given that the Religious Courts are supervised by the secular Supreme Court, which today almost never gives detailed attention to Islamic sources of law in its judgments, instead restricting itself to Indonesian state regulation. Further, the Religious Court has no express jurisdiction or power to decide matters according to Islamic legal tradition. It can only consider Islamic sources of law where given the opportunity to do so by national regulations. Even that is usually done obliquely, by reference to the second-hand (and now dated) distillation of state-sanctioned fiqh contained in the *Kompilasi*. Accordingly, even when the Religious Courts consider Islamic law, they are not authorised to use religious sources of law to contradict or set aside national (non-Islamic) law. The sources of law the Religious Courts rely upon are predominantly national legislation, with Islamic sources such as the Qur'an and *hadith* (traditions of the Prophet Muhammad) being referred to only sparingly and not to contravene the rules in the legislation.²⁷

Shari'ah in the Indonesian system of courts for Muslims is thus largely symbolic, at least as a formal source of law. With the exception of Aceh (where its jurisdiction as the Mahkamah Syari'ah is much wider), the Religious Courts' jurisdiction is limited by statute to only a few aspects of Islamic legal tradition. Even within these restricted areas the substantive law applied by the courts deviates so significantly from the orthodox schools as to sometimes make it questionable whether it is particularly Islamic at all.²⁸ Instead, the decisions of Religious Courts are often consistent with the sort of decisions that Indonesia's General Courts make in non-Muslim 'secular' divorces. They are generally of a kind that is usually immediately comprehensible and familiar to divorce court judges from other, purely secular judicial institutions.

²⁴ This is despite the fact that Indonesia's non-Muslim population (comprising Christians, Hindus, Buddhists and Confucians) is approximately 15% of the total population of 235 million.

²⁵ There have been very few attempts by development assistance programs to engage directly with the Religious Courts. As mentioned, the Family Court of Australia has a program of cooperation with the Religious Courts under a tripartite memorandum of understanding between the Family Court, the Federal Court of Australia and the Supreme Court of Indonesia. This cooperation was funded by AusAID and facilitated by successive AusAID legal sector facilities, the Indonesia Australia Legal Reform Program (LRP), and the Indonesia Australia Legal Development Facility (IALDF). The authors were involved with these facilities in different capacities (Sumner in IALDF, Lindsey in both).

²⁶ Art. 63 of Law No. 7 of 1989 on Religious Justice.

²⁷ This view is based on the authors' attendance at hundreds of hearings in Religious Courts across Indonesia over the last decade, and our reading of hundreds of judgments from different Religious Courts. For a different view, however, see Euis Nurlaelawati, (2010). Nurlaelawati sees the courts as increasingly more influenced by fiqh and less by the Kompilasi.

²⁸ For details of differences between Religious Court practice and traditional fiqh, see Sumner and Lindsey (2011:4-6).

Islamic courts in a dysfunctional judicial system

The significance of the Islamic courts system goes beyond the issue of secularism versus religion in Indonesia. The Indonesian judiciary as a whole has long had a reputation for corruption, institutional decay and low levels of competence. This view is shared by most Indonesians and has a large literature of its own.²⁹ It is sufficient here, however, just to repeat Daniel Lev's damning account of the state of the Indonesian courts when President Soeharto's resignation finally brought his New Order to an end in May 1998:

Indonesia stands out for the extent to which its state was reduced to institutional shambles over a period of forty years ... In mid-1998, when President Suharto resigned his office, not a single principal institution of the state remained reasonably healthy. Corruption, incompetence, mis-orientation, and organizational breakdown were characteristic. The courts, prosecution, and police were underfunded and self-funded. All had been subjugated by political authority since at least 1960 and allowed substantial leeway, within the terms of their subordination, to fend for themselves. Legal process had little integrity left, as was equally true of public policy. (2004: 2)

In the post-Soeharto era, some progress towards reform of the newly independent judiciary was made under the leadership of Chief Justice Bagir Manan (2001–2008). This was done pursuant to a series of impressive 'Judicial Reform Blueprints' developed by the *Mahkamah Agung* (Supreme Court) in conjunction with a leading law reform NGO led by young NGO lawyers and reform activists, *Lembaga Independensi Peradilan* (LeIP—Institute for Judicial Independence). Although these Blueprints are still yet to be fully implemented, they remain a key foundation for continuing judicial reform in Indonesia.³⁰

The national standing of the judiciary generally remains low, however. The Indonesian courts are still generally regarded with suspicion as incompetent and inefficient, or even as systemically dishonest and rent-seeking. It is therefore of great significance that the national Religious Court system is regarded by many Indonesians as one of the few exceptions to this. Surprisingly—given often-stated assumptions that Indonesia's courts comprise a 'mafia' of sorts—the Religious Courts are viewed as generally not corrupt and as providing good service to litigants. This perception has been consistent for most of the last decade. A survey in 2001 found, for example, that the Indonesian public regarded the Religious Courts as the most honest and effective government institution in the country (Asia Foundation and Neilsen 2001). They were rated more highly than the post-Soeharto democratic legislature (DPR),³¹ the executive, the police and all other courts and government-sponsored commissions, notwithstanding the poor facilities and low levels of funding then long associated with the Religious Courts. The 2001 survey found it 'particularly striking' that the Religious Courts rated highly for the criteria 'does its job well' and 'is trustworthy'.³²

In 2007 and 2009, the authors were involved in surveys of users of the Religious Courts as part of the Access and Equity Study of the General and Religious Courts funded by AusAID's Indonesia Australia Legal Development Facility (IALDF) (Sumner 2010).³³ The findings echoed many of the those from the 2001 study. It found, for example, that 83.3% of court users felt that the 'judges listened to them'; 88.2% felt that the staff treated them 'with respect at all times'; and that 73% felt that staff were available, and willing, to answer questions and explain procedures. Seventy-four per cent felt that their case had been heard 'quickly and efficiently' and, surprisingly, 63.2% reported that they had found the 'court process very relaxing'. Perhaps the most significant statistic was, however, the finding that 71.1% of the 1,000 court users surveyed would 'return to the Religious Courts' if they had a 'similar dispute in the future'. This is probably not simply because the jurisdiction of the court is mandatory for Muslims in family law matters. Many marriages and divorces are, in fact, conducted informally, outside the state system (Cammack, Young and Heaton 2000; O'Shaughnessy 2009: 67-9, 178; Nurmila 2008: 32). The mandatory nature of the divorce jurisdiction is therefore not decisive for many Indonesians. Accordingly, the willingness of many Indonesian Muslims to return to the Religious Courts can be read to an extent as a statement of choice and thus satisfaction with those courts—and perhaps also as a recognition of the importance of these courts as a means of accessing other state services, as we show later in this paper.

²⁹ A small selection from this literature includes Assegaf (2002); Butt (2007); Fenwick (2008); Goodpaster (2002); Indonesian Corruption Watch (2001); Lev (1978, 2005 and 2008).

³⁰ For more information on the early blueprints, see Assegaf, R (2007) For more recent blueprints, see <http://www.mahkamahagung.go.id/rnews.asp?bid=1712>.

³¹ *Dewan Perwakilan Rakyat*, People's Representative Assembly.

³² Specifically, it rated 22 for this criterion, while the General Courts rated 13.

³³ Conduct of research for this survey involved the Family Court of Australia, as well as a number of other institutions and individuals in Australia and Indonesia. These are listed in full in Sumner (2010).

The Religious Court is thus one of the most successful of Indonesia's troubled judicial institutions. This is ironic, as these courts have also historically been neglected by the state and regarded as having relatively lower institutional importance within the national judiciary than the General Courts. This now seems to be beginning to change, largely because of the transfer of supervisory and administrative authority over the General and Religious Courts from various Ministers to the Supreme Court. This was a result of the post-Soeharto 'One Roof' (*Satu Atap*) reforms, triggered by constitutional reforms that followed the collapse of the New Order regime. These included, in particular, the amendment of Article 24 of the Constitution to at last grant the judiciary formal institutional independence from the executive branch of government.³⁴

The 'One Roof' reforms were intended to deliver separation of powers (*trias politika*) in a newly democratising system, fashioning an independent judiciary by freeing the courts from the stifling control of the Ministry of Justice³⁵ and the Presidency - and, in the case of the Religious Courts, from the Ministry of Religious Affairs as well.³⁶ These reforms and, in particular, the One Roof Law (No. 35 of 1999), opened up new possibilities for the courts, enabling them to reconsider almost every aspect of their operations, including how they dealt with court users.

Indonesia's Religious Courts seized these opportunities with alacrity and have transformed themselves. They are now able to contribute in significant ways to improving access to justice and changing perceptions of judicial institutions in Indonesia as a whole. Because of their success in this, they have attracted significant additional support from the state, including greatly expanded funding. They are now seen as among the most open, clean and efficient of Indonesia's historically poorly regarded courts, and have made significant efforts to improve access to justice for poor and marginalised communities and, in particular, women.

Justice, development and the Religious Courts

In this section, we consider two major reform initiatives introduced by the Religious Courts over the past four years and their impact in relation to both the delivery of justice and poverty alleviation and development. A key step in the reform process was the large-scale Access and Equity Study of the General and Religious Courts, mentioned above, that sought feedback from Religious Court clients on their perceptions of the service provided by the courts. The results of this Study have led to greater efforts to increase access to the courts for women, the poor, and those living in remote locations across the Indonesian archipelago.

Religious Courts Access and Equity Study 2007–2009

The Access and Equity Study set out to determine how Indonesians felt they were treated by the courts responsible for their family law matters. The first such survey of any court in Indonesia, this collaborative research project was led by the Supreme Court of Indonesia and supported by the Family Court of Australia and the AusAID-funded Indonesia Australia Legal Development Facility (IALDF). It aimed to provide the Supreme Court of Indonesia with empirical data on the quality of service provided to court users in the area of family law by the two largest court jurisdictions in Indonesia - that is, the General and the Religious Courts.

The study considered the level of satisfaction of those who actually used the Indonesian courts for their family law matters. It also sought to ascertain whether there are sections of the community, particularly those living below the poverty line, who are unable or unwilling to access the services of the Religious and General Courts for their divorce and birth certificate cases, and, if so, to determine why. The study additionally sought to propose strategic policy responses (both financial and organizational) that the Supreme Court could consider in order to provide greater public access to the Religious and General Courts. Particular attention was paid to divorce cases (as all divorces must be decided by these courts) and the provision of birth certificate statements (*Penetapan Akta Kelahiran*) by the General Courts. Lastly, the study looked at how the lack of a birth certificate can affect an individual's access to broader public services, for example education or healthcare.

To achieve these research objectives it was necessary to look at the question of access and equity for family law cases in the Indonesian courts from four different perspectives: (i) clients accessing the courts were asked for their perceptions of the level of service received when bringing their cases to the court; (ii) members of the legal profession were asked for

³⁴ Art. 24 (as amended): "1. The judicial power is the independent power to maintain a system of courts with the objective of upholding law and justice. 2. The judicial power is exercised by a Supreme Court and the courts below it in the respective jurisdictions of general courts, religious courts, military courts, administrative courts and by a Constitutional Court."

³⁵ In fact, this Ministry's Indonesian name was, for many years, the Ministry for 'Judicial Affairs' (*Kehakiman*) rather than 'justice' (*Keadilan*).

³⁶ See Art. 24, 1945 Constitution; Law No. 35 of 1999 (the 'One Roof' Law); Law No. 5 of 2004 on the Supreme Court; and Law No. 3 of 2006 Amending the Law on Religious Justice No. 7 of 1987. On the constitutional amendment process and the creation of a separation of powers system, see Susanti (2002) and Lindsey (2002).

their perception of the level of service provided to their clients and themselves; (iii) case files kept by courts in family law cases were reviewed to gather data relating to key client service issues, such as the cost of court fees and the average number of times parties were required to come to court for their cases; and (iv) female heads of household in the PEKKA NGO (most of whom live below the Indonesian poverty line) were interviewed to test whether disadvantaged groups in Indonesia were able to access the courts for their family law and birth certificate cases.

From 2007-2009, the study surveyed approximately 2,500 Indonesians to obtain their views and perceptions about family law and access to Indonesian Courts, and reviewed and analysed 1,214 divorce and birth certificate court files. Sixty-eight General and Religious Courts across 18 provinces were involved. A summary of the survey methodology is set out in the chart below. (Full details of the survey methodology can be found in Sumner (2010) at Chapter 1).

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

The key findings of the study were as follows:

1. The poorest sections of Indonesian society face significant barriers in bringing their family law cases to the courts. Of the female heads of household living under the Indonesian poverty line surveyed, nine out of ten were unable to access the courts for their divorce cases, as required by Indonesian law. They reported the main barriers to access as financial, relating mainly to court fees and to the costs of travelling to court.
2. The average total cost of a Religious Court case among survey respondents was approximately Rp 800,000 (or almost four times the monthly per capita income of those living on or below the Indonesian poverty line: *Badan Pusat Statistik*, 2009).³⁷ In 2008, the average total cost of a divorce case in the General Court was approximately Rp 2 million, when a lawyer was not used (around ten times the monthly per capita income on the poverty line), and Rp 10 million when a lawyer was used (52 times the monthly per capita income on the poverty line).
3. Women bring twice as many divorce cases to the courts as do men. In nine out of ten cases they are successful.
4. Courts usually overestimate the down payment on costs made by clients in civil cases, such as divorce cases, relative to the actual cost of the case. This is a disincentive for justice seekers, particularly the poor. Reimbursement of the balance at the end of the case is important for clients, particularly the poor, but it does not

³⁷ The poverty line for urban dwellers is Rp 222,123 (US\$25). For those living in villages it is Rp 179,835 (US\$20). In March 2009, 32.5 million people or 14% of the Indonesian population lived below the Indonesian poverty line.

always happen. As surveyed, Religious Court users paid, on average, 24% more as a down-payment than the final cost of the case as set out in the judgment. It was 79% more in the General Courts.

5. A cycle of non-legal marriage and divorce exists for many PEKKA³⁸ female heads of household living below the poverty line. Failure to obtain legal documentation in relation to marriage and divorce is associated with 56% of children from these marriages not obtaining birth certificates.
6. For those Indonesians able to bring their family law cases to the courts, there is a high satisfaction rate among court clients. 71% of Religious Court clients and 69% of General Court clients said they would return to the court in future if they had similar family law issues.

Justice and development

The study's findings were significant not just because they provided insight into what Indonesians thought about their legal system. They also showed how seemingly mundane interactions between individuals and the legal system can have a critical impact on both development and poverty alleviation. This is particularly the case when it comes to legalising marriage and divorce and the provision of birth certificates.

In 2010, the Indonesian Central Bureau of Statistics (*Badan Pusat Statistik*, BPS) estimated that there were 65 million households in Indonesia, of which nine million (14%) were headed by women (BPS Statistics Indonesia 2009: 19).³⁹ In order to be able to access a range of government welfare services, female heads of household must demonstrate that they are, in fact, the head of their household to the local government officials who issue family cards verifying poverty, health cards, rice subsidies (*Raskin*),⁴⁰ and the government's 'direct cash assistance' payments (*Bantuan Langsung Tunai*, or BLT, often described as 'unconditional cash transfers'). Because the divorce certificate is widely used as basic evidence to obtain new identity cards (KTP, *Kartu Tanda Penduduk*) or family cards (KK, *Kartu Keluarga*) that prove the woman is now the head of her household, access to the Religious Courts is essential if the poor, and in particular poor women, are to access these services. The findings of the Access and Equity Study show that while 94% of surveyed female heads of household living below the Indonesian poverty line were able to access the *Raskin* rice subsidy, obtaining government cash transfer payments and health services was much more difficult.

These services are allocated on a quota basis across districts, with village officials having discretion to determine who among those satisfying the criteria should receive the benefits. The study shows that, on average, 33% of PEKKA members surveyed who lived below the Indonesian poverty line could not access the 2008 BLT cash transfer program. Similarly, 34% of surveyed female heads of household who lived below the Indonesian poverty line did not receive the card evidencing their entitlement to obtain free medical treatment under the *Jamkesmas*⁴¹ program. This reflects broader targeting problems in these programs, as well as the fact that most of the women heading these households were too poor to be able to access the Religious Courts. As a result, they were not formally divorced from their estranged (effectively former) husbands and were unable to assert their status as female heads of household for the purposes of these pro-poor programs.

A similar result was obtained in relation to the issuing of birth certificates. The study found that a cycle of non-legal marriage and divorce exists for many female heads of household living under the Indonesian poverty line. It showed that the failure to obtain legal documentation in relation to marriage and divorce is associated with 56% of the children of these marriages not obtaining birth certificates. This is broadly consistent with other surveys of this issue. UNICEF, for example, estimates that approximately 60% of Indonesian children under five years of age now lack birth certificates, with the rate over 80% in poor provinces.⁴² This represents one of the lowest birth registration levels of any country in the region.

Without birth certificates, individuals face major obstacles in doing everything from voting to applying for jobs, opening bank accounts or obtaining identity cards. Education is a good example of the problem. The government of Indonesia has mandated that all children should complete nine years of education.⁴³ Despite this, in 2008 only 72% of Indonesian children completed primary school and only 40% completed junior high school (thus achieving the mandatory nine years of education) (BPS-Susenas 2008). One reason for this is that in Indonesia birth certificates are increasingly required for children to be registered in public schools and to sit the national examinations. One of the findings of the Access and

³⁸ *Pemberdayaan Perempuan Kepala Keluarga* (PEKKA) is an NGO supporting the empowerment of female heads of household in Indonesia and was a partner in the Access and Equity Study.

³⁹ BPS defines the head of household as a person who is responsible for the daily needs of a household or the person who is considered the head of the household. A head of a household can be either a man or a woman who is single, married, divorced or widowed. It is likely that the number of female-headed households in Indonesia is underestimated.

⁴⁰ *Beras Miskin*, 'poor rice', the government rice subsidy programme.

⁴¹ *Jaminan Kesehatan Masyarakat*, state health insurance programme for the poor.

⁴² UNICEF, Overview – Birth Registration for all: http://www.unicef.org/indonesia/protection_2931.html.

⁴³ See Art. 6(1) of the Law on the National Education System No. 20 of 2003.

Equity Study is that completion of the mandatory nine years of education appears to be closely linked to whether a child has a birth certificate.

Access to the Religious Courts for women, the poor and those living in remote areas

The Access and Equity Study also provided new information to Bappenas (the Indonesian National Development Agency), the Ministry of Finance and the Supreme Court of Indonesia on the inability of the poor to access the courts. As a direct response to the findings, the Religious Courts' budget was increased by Rp 23 billion (approximately A\$3 million) in 2008. This was allocated to assist those living in rural and remote areas to access the courts for their family law cases by funding increases both in court fee waivers for the poor (so-called *prodeo* cases), as well as increases in the number of circuit courts that travelled to remote areas.⁴⁴ A further Rp 12 billion (A\$1.5 million) was granted to the Religious Courts in the 2009 State Budget for the same purposes, despite an overall Indonesian Supreme Court budget reduction due to the global financial crisis. This represents an 18-fold increase over two years in Religious Court budgets for court fee waiver cases and for circuit courts.

These budget increases were a necessary precondition for providing enhanced access to the Religious Courts for women, the poor and those living in remote locations. Court fees paid by clients of the Religious Courts are used mainly to cover the cost of summoning parties and witnesses to the proceedings and other court processing costs. The additional budget was therefore needed to cover these costs for poor clients whose fees had been waived, as well as to cover travel and other costs for relocating judges and court staff to remote areas to hear cases on circuit.

In order to assist the Director-General of the Religious Courts to monitor this significant new budget and the administration of the new fee waiver and circuit court systems that it supported, an SMS text message database was established in 2008 with AusAID support. SMS has the benefit of being both an inexpensive and appropriate technology for use across the country and it avoids some of the difficulties of Internet access in remote Indonesian provinces. Each of the 372 Religious Courts was asked to report by SMS each month on (i) the total budget received to support access to the courts for the poor; (ii) the number of court fee waiver cases heard; (iii) the number of circuit court cases heard; and (iv) the balance of funds remaining.⁴⁵ For the first time, Indonesian courts were able to report to Bappenas and the Ministry of Finance on how state budget funds were being used to provide increased access to courts for the poor.

Over the last three years, there has been a significant increase in the numbers of women, the poor and those living in remote areas able to access the Religious Courts. In the first seven months of 2011, over 6000 poor people were able to bring their cases to the Religious Courts as a result of their court fee being waived. Similarly, in the first seven months of 2011, almost 14,000 people living in remote areas were able to access the Religious Courts through circuit courts being held closer to their village.

In March 2011, 46 Religious Courts opened legal aid posts, in collaboration with legal aid institutes or university legal aid clinics, to enable duty lawyers to provide legal advice to court clients facing financial hardship. This is the first time the Religious Courts have received state funding to provide legal aid posts and duty lawyers in courts. In the first five months of their operation, over 16,00 individuals received legal aid advice in these 46 legal aid posts across Indonesia.

Figure 1: Number of people accessing the Religious Courts through court fee waiver, circuit courts and receiving free legal advice through legal aid posts in the Religious Courts⁴⁶

Year	Number of poor people accessing the Religious Courts through court fee waiver	Number of people in remote areas accessing courts through circuit courts.	Number of people receiving free legal advice through legal aid posts in the Religious Courts (only in 46 Religious Courts from 2011)
Baseline Year	325 (2007)	2189 (2006)	
2009	2700	10100	--
2010	4,906	13,011	--
2011 (to end of July)	6,243	13,860	16,390

⁴⁴ The Religious Courts' budget to waive court fees and hold circuit courts was less than Rp 1 billion in 2007 but increased to Rp 24 billion in 2008.

⁴⁵ The Religious Courts reported this data via SMS and it was then transmitted to a database that compiled reports for the Religious Court system as a whole. From 1 January 2011, the SMS data on access to the Religious Courts is available to the public at: <http://sms.mahkamahagung.go.id/index.php/main/index/1>

⁴⁶ Data from Widiana (2011a and 2011b). Data is also drawn from the Supreme Court SMS database.

Therefore, in the first half of 2011, over 20,000 people were able to access the Religious Courts either because the court waived the filing fee or because their case was heard in a circuit court near their village. From the Access and Equity Study, we know that court fees and transportation costs were significant barriers for female heads of household living on or near the Indonesian poverty line. In response, the Religious Courts across Indonesia have taken steps to increase access to the courts for disadvantaged groups. These policies aimed at increasing the ability of the poor to access the Religious Courts have coincided with a significant rise in the number of divorce cases heard by the Religious Courts in the last four years, as the following figures demonstrate.

Figure 2: Case Statistics of the Religious Courts over the last ten years

	Year	Balance from Previous Year	Received	Withdrawn	Decided	Balance Remaining
NO. TAHUN		SISA TH LALU	DITERIMA	DICABUT	DIPUTUS	SISA
1	2001	23.861	171.335	9.060	159.299	26.837
2	2002	26.837	166.488	9.198	157.331	26.796
3	2003	26.796	154.524	8.278	145.593	27.449
4	2004	27.449	165.266	8.759	154.331	29.625
5	2005	29.625	175.133	9.188	165.242	30.328
6	2006	30.328	181.077	9.512	167.807	34.086
7	2007	34.086	217.084	11.327	201.438	38.405
8	2008	38.405	245.023	13.132	223.999	46.297
9	2009	46.297	284.749	16.786	257.798	56.462
10	2010	56.462	320.768	18.760	295.548	62.922

In a recent presentation to all Religious Court Chief Judges, the Director-General of the Religious Courts, Drs Wahyu Widiana, noted that the number of cases being received by the Religious Courts had increased by 77% from 2006-2010, as set out in Fig. 2 above. (Widiana 2011: 4). Widiana credited this increase on two factors: a rise in legal awareness by the community and enhanced public trust and confidence in the Religious Courts. However, a third factor is represented by the 20,000 people identified in Figure 1 who accessed the court in the first half of 2011. Prior to 2006, they would have been prevented from doing so by the financial burden of court fees and transportation costs. Reforms initiated by the Religious Courts over the last 5 years and aimed at *keadilan untuk semua* (justice for all) will mean that between 30-40,000 Indonesian citizens facing financial and other forms of disadvantage will access the Religious Courts for their family law cases during 2011 who could not have done so in the past.

Through their circuit court program in remote areas and their *prodeo* fee waiver program, the Religious Courts have also helped to address the problem of birth registration. In 2009 and 2010, more than 13,000 marriage legalisation (*isbat nikah*) cases were filed with the Religious Courts. In these cases, the court provides the applicant with a document evidencing an earlier marriage. This document can then be used in a civil registry to obtain other important identity documents, including, for example, birth certificates naming both parents for children of the marriage. Without these documents, entire families remain unable to access the state system. In many cases, they are unable even to obtain the identity cards (KTP and KK) that are basic requisites for interaction with the state, for example, to enrol in schools or vote. Recent field work with the PEKKA NGO has found that in just 20 of Indonesia's 440 districts (regencies and cities), the female heads of household surveyed had approximately 2,000 marriage legalisation cases that needed to be brought to the Religious Courts if birth certificates were to be obtained for their children. However, to do so they would need support from the Religious Courts in the form of waiver of court fees. It would also be necessary for cases to be heard in circuit courts close to the often-remote villages where the female heads of household live. It seems likely that as processes of court reform make the Religious Courts more accessible to the public, so interest by the poor in legalising their personal status and that of their children will continue to drive significant increases in judicial workloads.

Next steps

Over the last three years, the access and equity reforms pioneered in the Religious Courts have led to significant increases in the number of poor people (and, in particular, poor women) able to access the Religious Courts. As mentioned, this has been achieved by waiving court fees and by holding more circuit courts in remote areas, thereby reducing transportation costs for poor people. The increased state budget committed over the next five years for these

activities will allow Badilag to build on these reforms. In 2010 Badilag will, for the first time, be responsible for reporting on whether access to justice targets set out in Indonesia's Medium-Term Development Plan 2010–2014 have been met, and whether the budget allocated to Indonesia's courts for these purposes has been properly used.

Indonesia's national poverty rate is 13% with some provinces experiencing rates of rural poverty as high as 46%. Moreover, the Indonesian poverty line is calculated at well under US\$1 per person per day, an extremely low level by international standards. There are many Indonesians earning more than US\$1 per day but still unable to properly support themselves or their families who are not caught by this measure of poverty.⁴⁷ If access to justice is to become a reality for all Indonesians regardless of their socio-economic background, then Badilag will need to spread the messages contained in Indonesia's national policy instruments on access to justice to almost 400 Religious Courts across the country. This is because statutes⁴⁸ were passed in 2009 requiring all General Courts and Religious Courts to provide a range of services to increase access to the courts for the poor and the marginalised. New legal aid services will include legal aid posts inside court buildings to provide legal advice and assistance to clients who cannot afford lawyers. This will have a profound impact on increasing the understanding of women, the poor and other marginalised groups about how to bring family law cases before the Religious Courts, and how to seek court fee waiver assistance in cases of poverty.

Conclusion: Policy implications

Poverty should be understood not only as economic incapacity, but also as the denial of basic rights fulfilment and an unequal ability to live with dignity. ... The National Strategy on Access to Justice examines how problems with the rule of law can contribute to the existence of poverty. The alleviation of poverty is acknowledged to require improvement of the legal system, both in the substantive law and in the institutions for legal enforcement and legal empowerment within the framework of democratic rule of law.

National Access to Justice Strategy (Bappenas 2009: 2–3).

The fall of Soeharto in 1998, and the strong push among legal reformers to establish an independent judicial system to check legal abuses of the kind routine over the three decades of his New Order, created an opportunity for the Religious Courts. Today, they are among the more efficient and well regarded of Indonesia's still controversial courts. They have become a model for other courts that have been slower to embrace the chance to rethink how Indonesian courts operate. Against expectations, the Religious Courts have emerged in the post-Soeharto period as leaders of reform in the Indonesian judicial system. Surveys consistently show that although court users and the public regard the courts in general with contempt, they are satisfied with the overall performance of the Religious Courts.

This is the key to understanding the post-Soeharto revival of the religious judiciary: it has generally not occurred by reference to the wider discourse on Islamic identity and the role of Islam in public and political life in Indonesia, but firmly within the bureaucratic structure of the *Reformasi* state, and embracing the state's official development agenda. Indeed, the religious judiciary has been far more concerned over the last half-decade with a broader social welfare agenda and, in particular, with access to justice for women and other marginalised groups than any other branch of the Indonesian courts. Assisting poor people legally to register births, marriages and divorces is an important step to establishing legal identity and thus creating greater social equity and enforcement of rights. The Religious Courts' impressive fee waiver and circuit court reforms will clearly directly benefit marginalised rural women. Moreover, the work of the Religious Courts to legalise previously unregistered marriages is a critical contribution to raising one of the lowest rates of birth registration in Asia. This is now recognised by the Directorate-General for the Religious Courts, which continues to push these initiatives, despite operating within the constraints of a complex, troubled and still-emerging newly independent judicial institution.

Women's agency and the role that it plays in their social and economic development and that of their families is well documented. What is not so well known is that in Indonesia legally documenting a woman's identity as head of her household can play a major role in her being able to access poverty alleviation programs (subsidised rice and cash transfers), free healthcare access, and access to free education programs for herself, her children and their extended family. In Indonesia, legal marriage and legal divorce are the building blocks of legal identity for children of these marriages. Cycles of illegal marriage, illegal divorce and lack of birth certificates feed social exclusion and deprivation. Assisting poor people to register births, marriages and divorces legally is thus an important step to establishing legal

⁴⁷ In 2010, the Indonesian poverty line was calculated as Rp 232 989 (USD25) per person per month for someone living in a city and Rp192 354 (USD21) per person per month for someone living in the country (BPS: 2010).

⁴⁸ Law No. 48 of 2009 on Judicial Authority, Arts. 56 and 57; Law No. 49 of 2009 on Amendment of Law No. 2 of 1986 on the General Courts (Art. 68); and Law No. 50 of 2009 on Amendment of Law No. 7 of 1989 on Religious Justice (Art. 60).

identity for all in Indonesia, and better enabling them to exercise rights. The Religious Courts have played a critical part in involving the judiciary in this process, taking a step towards countering its usual image as an inward-looking and rent-seeking institution.

The Religious Courts: Access to Justice and Development Policy Agendas

Since Indonesia's National Access to Justice Strategy was launched in May 2009, Indonesian policy, budget and legislative agendas have aligned to generate a renewed momentum in providing access to justice to disadvantaged groups. Recent reforms within the Religious Courts coincided with the development of a National Access to Justice Strategy that links access to justice with Indonesia's poverty alleviation programs and achievement of national development goals. This has raised the profile of the Religious Courts as an institution critical to broader Indonesian participation in pro-poor programs by reason of their work on personal status issues (especially legalising marriages and divorces and assisting in the provision of birth certificates for children).

Indonesia's Medium-Term Development Plan 2010–2014⁴⁹ also reflects these aspirations. As mentioned, it includes an allocation of approximately Rp 300 billion (approximately A\$40 million) to support access to the Indonesian courts for the poor, including court fee waiver, circuit courts and legal aid. Over a third of this budget is set aside for expenditure by the Religious Courts. For the first time, these funds will be disbursed through the Indonesian Supreme Court's directorates-general responsible for the four court jurisdictions. For the two largest court jurisdictions these directorates-general are, of course, Badilum (for the General Courts) and Badilag (for the Religious Courts).

In a similar vein, on 21 April 2010, President Susilo Bambang Yudhoyono issued Instruction No. 3 of 2010 concerning a Just Development Program, emphasising the importance of 'justice for all' in achieving Indonesia's broader poverty alleviation objectives, including the Millennium Development Goals. The Presidential Instruction states that the focus of the 'justice for all' program should be, first, justice for children and, secondly, justice for women. One of the programs outlined in the President's instruction therefore aims to increase legal access in family law cases for poor women and other marginalised groups, areas in which the Religious Courts have been particularly active and effective.

It is also significant that Indonesia's Medium-Term Development Plan 2010–2014 includes targets applicable to each court jurisdiction for the numbers of poor and marginalised people who should be given better access to the Indonesian courts through the waiver of court fees, circuit courts, the provision of legal information at legal aid posts within court buildings, and through the grant of aid for legal representation. In response to these provisions of the Development Plan, Bappenas is, as mentioned earlier, now developing a budget framework for the next five years to extend the reforms commenced in the Religious Courts to other Indonesian court jurisdictions. Its objective is to achieve similar levels of access to justice for poor and marginalised groups across the Indonesian court system to those recently pioneered by the Religious Courts.

The response from the Indonesian judiciary was quick and supportive of the broader Indonesian policy agendas on access to justice. In August 2010, the Chief Justice Harifin Tumpa of the Indonesian Supreme Court issued a practice direction⁵⁰ to the almost 800 courts across Indonesia supervised by his court elaborating how judges and staff should facilitate access to Indonesian courts, especially for the poor. This document marks a new phase of collaboration between the Indonesian courts and legal aid providers with the expansion of duty lawyers working in legal aid posts in courts in 2011. In October 2010, Chief Justice Tumpa launched the *Indonesian Supreme Court Blueprint for Reform 2010–2035*⁵¹ with access to justice now forming one of the key components of the Indonesian court reform roadmap for the coming decades.

As mentioned earlier, over 16,000 individuals received legal aid advice in 46 legal aid posts in Religious Courts across Indonesia over the first five months of their operation this year. The number of legal aid posts will rise as funding increases over the 2010–2014 medium-term budget cycle. In collaboration with NGOs, the Religious Courts have already demonstrated that increased funding for access to justice from the government of Indonesia translates into real benefits for court clients. The standards of service being set in the Religious Courts are now raising expectations that the General Courts will also demonstrate a willingness to deliver similar levels of service for women, the poor and those living in remote areas.

⁴⁹ Enacted by Presidential Regulation No. 5 of 2010, concerning the National Medium-Term Development Plan (RPJMN) 2010–2014.

⁵⁰ Supreme Court Circular Letter No. 10 of 2010 on Guidance for the Provision of Legal Aid.

⁵¹ <http://www.mahkamahagung.go.id/rnews.asp?bid=1712>.

From 2011, it will be possible for the first time to measure the level of client services delivered to disadvantaged groups by both the Religious and General Courts. The next five years of Indonesian court reform could therefore be a turning point in the way courts provide services to the Indonesian community, and thus how that community views the courts.

The Religious Courts and the international community

The Australian government has supported efforts to increase access and equity within the Religious Courts over the last five years. The Family Court of Australia⁵² has engaged with the Religious Courts on the core area of enhancing client service delivery with a particular emphasis on disadvantaged groups, at both judicial and senior court administrator levels. This emphasis on judicial cooperation has in recent years been formalised through a Memorandum of Understanding between the Indonesian Supreme Court, the Family Court of Australia and the Federal Court of Australia, as mentioned. While there had been a significant level of international aid to the Indonesian judicial sector before 2005, the Religious Courts had never before been approached to participate in their own right as a local institutional counterpart in a donor program. To the extent that the Religious Courts had been a beneficiary of international aid programs in the past, it was as one of the four main Indonesian court jurisdictions, without direct attention being paid to the core work of the Religious Courts. To a large extent, the General Courts, and the specialised jurisdictions supervised by the Supreme Court (the commercial and anti-corruption courts, for example) had been the central focus of donor-funded judicial reform programs. When the Family Court of Australia began to work with the Religious Courts on issues of client service and improving access to the courts, the Religious Courts embraced the opportunity to discuss these issues with an Australian court specialising in the area of family law. A dialogue between peers (judges, registrars and court administrators) commenced, focusing on their mutual aspiration to improve client service standards.

The Australian government has thus been an innovator through its role as the only donor working with the Religious Courts on its core family law jurisdiction. It has been repaid for its efforts in two key ways. First, there has been a significant impact in terms of an increase in the number of women, the poor and those living in remote areas now able to access the Religious Courts. Second, the Indonesian government's funding commitment for access to justice initiatives has leveraged the Australian government's initial modest donor investment by a factor of 70:1.⁵³ This commitment will be ongoing, and will provide support in five-year blocks according to the Indonesian government's Medium-Term Development Plan 2010–2014. Funding continuity in the early years of these important, new access to justice initiatives in Indonesia will prove vital as both courts and civil society adjust to new roles in providing access to justice for women, the poor and those living in remote areas.

The work of the Religious Courts over the last five years thus stands as a demonstration of the potential of Islamic institutions in Indonesia to act as positive agents for reform, development and social justice. It also shows their willingness to engage with government, civil society and non-Muslim foreign institutions to achieve these objectives. Finally, and perhaps most importantly, the support provided by Australian government institutions for courts to enhance access to justice for the poor and marginalised in the world's most populous Muslim society is a reminder to foreign donors that, contrary to common assumptions, Islamic institutions have great potential as effective partners in development assistance interventions.

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Bibliography

- Asia Foundation and A.C. Neilsen. *Survey Report on Citizen's Perceptions of The Indonesian Justice Sector: Preliminary Findings and Recommendations* Asia Foundation and A.C. Neilsen 2001: www.asiafoundation.org/pdf/IndoLaw.pdf.
- Asian Development Bank. *Access to Justice for the Urban Poor (RETA 6933)*. Final Report submitted by the Asia Foundation, unpublished paper on file with the authors 2009.
- . *Enhancing the Fight Against Poverty in Asia and the Pacific: The Poverty Reduction Strategy of the Asian Development Bank*. Asian Development Bank 2004.
- Assegaf, Rifqi S. 'Judicial Reform in Indonesia', 1998-2006, in *Reforming Laws and Institutions in Indonesia: An Assessment*, edited by Naoyuki Sakumoto and Hikmahanto Juwana. Ciba, Japan: Institute of Developing Economies (IDE) / Japan External Trade Organization (JETRO), 2007.
- Badan Pusat Statistik (BPS). *Profil Kemiskinan di Indonesia Maret 2010* No. 45/07/Th. XIII, 1 Juli 2010 Badan Pusat Statistik.
- Profil Kemiskinan di Indonesia Maret 2009*. Berita Resmi Statistik, 1 July 2009.
- . *Women and Men in Indonesia 2008*. Jakarta, BPS, 2009.

⁵² Supported by Australia Indonesia Partnership funding through the Australian Agency for International Development (AusAID).

⁵³ Funding for both the World Bank and AusAID pilot and research projects totalled less than half a million dollars. The Indonesian government committed funds in 2008–2009 for the religious courts, and for 2010–2014 period for both the general and religious courts, totaling Rp 335 billion (US\$37 million).

- Badilag (Badan Peradilan Agama, Mahkamah Agung). *Beberapa Informasi Tentang Peradilan Agama di Indonesia*. Jakarta, Badilag, 2007.
- . *E-profile for the Religious Courts 2009*. Jakarta, Badilag 2010.
- . *Populasi Perkara Indonesia*. Jakarta, Badilag No date.
- . *Profil Peradilan Agama*. Jakarta, Badilag 2008.
- . *Tempat-Tempat Pelaksanaan Sidang Keliling Tahun 2006*. Jakarta, Badilag 2006.
- Bappenas. *National Access to Justice Strategy*. Jakarta, Bappenas, 2009.
- Butt, Simon. 'The Constitutional Court's Decision in the Dispute between the Supreme Court and the Judicial Commission: Banishing Judicial Accountability?' In *Indonesia: Democracy and the Promise of Good Governance*, edited by R. H. McLeod and A. J. MacIntyre, pp 178-200. Singapore, Institute of Southeast Asian Studies, 2007.
- Cammack, M., Young, L. and Heaton, T. The State, Religion and the Family in Indonesia. In *Family, Religion and Social Change in Diverse Societies* edited by Sharon K. Houseknecht and Jerry G. Pankhurst, pp 175-204. New York, Oxford University Press, 2000.
- Commission on Legal Empowerment of the Poor and United Nations Development Programme. *Report of the Commission on Legal Empowerment of the Poor, Volume 1*. 2008.
- Direktorat Jenderal Badan Peradilan Agama. *Himpunan Data Statistik Perkara di Lingkungan Peradilan Agama Seluruh Indonesia Tahun 2005* Jakarta, Mahkamah Agung, Direktorat Jenderal Badan Agama, 2006.
- Feener, Michael *Muslim Legal Thought in Modern Indonesia* Cambridge, Cambridge University Press, 2007.
- Fenwick, Stewart. 'Measuring Up? Indonesia's Anti-Corruption Commission and the new corruption agenda', in *Indonesia: Law and Society*, edited by Tim Lindsey. Annandale NSW, Federation Press, 2008.
- Goodpaster, Gary. 'Reflections on Corruption in Indonesia, in *Corruption in Asia: Rethinking the governance paradigm*, edited by Tim Lindsey and Howard W. Dick, pp 87-108. Annandale NSW, Federation Press, 2002.
- Hartanto, Wendy *The 2010 Indonesia Population Census* Jakarta, Statistics Indonesia/ BPS, 2010.
- Hooker, M.B and Tim Lindsey. 'Public Faces of Shari'ah in Contemporary Indonesia: Towards a National Madhhab' *Studia Islamika* (10) 2003, pp 23-64.
- Indonesian Corruption Watch. *Menyingkap Tabir Mafia Peradilan (Hasil Monitoring Peradilan ICW)* Jakarta, Indonesian Corruption Watch 2001.
- Indrayana, Denny. *Indonesian Constitutional Reform 1999-2002: An Evaluation of Constitution-Making in Transition*. Jakarta, Kompas Book Publishing, 2008.
- Lev, Daniel S. 'Between State and Society: Professional Lawyers and Reform in Indonesia', in *Indonesia Law and Society*, edited by Tim Lindsey, pp 48-67. Leichhardt, NSW, The Federation Press, 2008.
- . Indonesia. In *The Encyclopedia of Islam*. edited by C.E.; Donzel Bosworth, Evan; Lewis, B. and Pellat, Ch. Leiden: E.J. Brill, 1986.
- . *Islamic Courts in Indonesia* Berkeley, University of California Press, 1972.
- . Judicial Authority and the Struggle for an Indonesian Rechtsstaat. *Law & Society Review* 13 1978, pp 37-71.
- . On the other hand. In *Fantasizing the Feminine in Indonesia*, edited by Laurie J Sears, pp 191-206. Durham and London, Duke University Press, 1996.
- Lindsey, Tim. 'Black Letter, Black Market and Bad Faith: Corruption and the Failure of Law Reform' in *Indonesia in Transition: Social Aspects of Reformasi and Crisis*, edited by Chris Manning and Peter van Dierman, pp 278-292. Singapore, CSEAS, 2000.
- . 'The Criminal State: Premanisme and the New Indonesia', in *Indonesia Toda*, edited by Grayson Lloyd and Shannon Smiths, pp 283-294. Singapore, ISEAS, 2001.
- . 'Indonesian Constitutional Reform: Muddling towards Democracy', *Singapore Journal of International and Comparative Law* 6 (1) 2002, pp 244-301.
- Mahkamah Agung. *Annual Report 2009*. Jakarta, Mahkamah Agung 2010.
- . *Laporan Tahunan 2007, Mahkamah Agung Republik Indonesia*. 2007: www.scribd.com/doc/5560883/Laporan-Tahunan-Mahkamah-Agung-RI-2007.
- Nurlaelawati, Euis *Modernisation, Tradition and Identity: The Kompilasi Hukum Islam and Legal Practice in the Indonesian Religious Courts* Amsterdam, Amsterdam University Press, 2010.
- Nurmila, Nina. *Women, Islam and Everyday Life: Renegotiating Polygamy in Indonesia*. London and New York, Routledge, 2008.
- O'Shaughnessy, Kate. *Gender, State and Social Power in Contemporary Indonesia: Divorce and Marriage Law*. London and New York, Routledge Curzon, 2009.
- Pompe, Sebastiaan. *The Indonesian Supreme Court: A Study of Institutional Collapse*. Ithaca NY, Southeast Asia Program, Cornell University, 2005.
- Sumner, Cate. *Access to justice: Empowering female heads of household in Indonesia*. PEKKA and AusAID 2010: www.pekka.or.id.

———. *Providing Justice to the Justice Seeker: A Report on the Indonesian Religious Courts Access and Equity Study - 2007: Summary of Research Findings*. Mahkamah Agung and AusAID (IALDF) 2008: www.ialdf.org/news/ProvidingJusticeFinalReport.pdf.

———. *Providing Justice to the Justice Seeker: A Report on the Indonesian Religious Courts Access and Equity Study – 2007-2009: Summary of Research Findings*. Jakarta, Mahkamah Agung and AusAID (IALDF) 2010.

Sumner, Cate and Tim Lindsey, *Courting Reform: Indonesia's Islamic Courts and Justice for the Poor*, Lowy Institute Paper No. 31, Sydney, Lowy Institute, 2010

Susanti, Bivitri. *Neo-liberalism and Its Resistance in Indonesia's Constitution Reform: 1999–2002*. 2002.

Widiana, Wahyu, *Access to Justice for the Poor: the Badilag Experience*, Paper presented at the IACA Asia Pacific regional Conference on access to justice held in Bogor Indonesia, March 2011.

———. *Pelaksanaan Program-Program Prioritas Reformasi Birokrasi di Lingkungan Peradilan Agama*, Paper presented at the National Judges Meeting on 22 September, 2011 (available on www.badilag.net)

