



PROOF OF BIRTH

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CHAPTER 11

Lessons from Indonesia's missing millions

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Indonesia has more children without a birth certificate than the entire population of Australia. Scale aside, there is much to be learnt from how Indonesia is grappling with the task of providing a legal identity to all its citizens. This chapter looks at:

- the key findings from Indonesia's first baseline study on legal identity (released in 2014 and supported by the Australia Indonesia Partnership for Justice);¹
- some of the key policy and regulatory changes that have been implemented since; and
- the key changes that would make the greatest difference to universal birth registration in Indonesia.

In January 2015, the President of Indonesia signed the Medium Term Development Plan that, for the first time, includes legal identity as one of five basic services that can help alleviate poverty, along with education, health, protection and infrastructure. The 2009 Castan Centre for Human Rights Law Symposium on Achieving Universal Birth Registration in Australia identified that significant disparities exist in Australia between the birth registration rates of Indigenous and non-Indigenous children.² In both Australia and Indonesia, whether or not children have their birth registered depends to a large extent upon the same factors: whether the child is living in an urban or remote setting, the economic resources of the household, and the parent's level of understanding of the process to obtain legal identity documents. The seven changes proposed for increased birth registration in Indonesia are capable of being adapted to the situation faced by Indigenous peoples in Australia.

What we know from the *Baseline Study on Legal Identity: Indonesia's Missing Millions*

In February 2014, the *Baseline Study on Legal Identity: Indonesia's Missing Millions* was published (the Report).³ The key findings of the Report include:

1. It is estimated that in 2012, 29% of Indonesian children aged 0–17 years, or more than 24 million individuals, did not have birth certificates.
2. This rises to 47%, or almost 40 million children, when children whose parents claim they have a

birth certificate but cannot produce it, are included.⁴

3. There are significant discrepancies between different data sources that track the number of people without birth certificates in Indonesia. Data from the Ministry of Home Affairs (MoHA) suggests that the figure for those lacking birth certificates could be as high as 76% of children and youth aged 0–18 years, or more than 50 million individuals.

The Baseline Study shows that in the poorest 30% of households, the majority of couples (55%) do not have a formal marriage certificate and 75% of their children do not have birth certificates; while for couples across all socio-demographic backgrounds, only 36% of couples do not have a marriage certificate. Transport costs, distance to government offices and a lack of understanding of the marriage registration process all contribute to whether couples obtain a marriage certificate, a document which, as discussed below, plays a vital role in the birth registration process. It is clear that poverty increases the likelihood that parents will not have a marriage certificate, and that their children will not have a birth certificate.

In Indonesia, the highest proportion of children without birth certificates are those under the age of one (51%). While there is no significant difference between girls and boys having birth certificates, perhaps not surprisingly, the number of children without a birth certificate in rural areas is double that of children in urban areas. Finally, children with parents/guardians who

have no apparent physical disability are five times more likely to have a birth certificate compared with children with parents who have apparent physical disabilities.

The Rights Framework for Legal Identity

Under the *Convention on the Rights of the Child* (CRC), a child shall be registered immediately after birth, have the right 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.⁵ The CRC also mandates that children should not be discriminated against on the basis of the status of their parents.⁶

The last element — knowing both parents — is particularly problematic in the Indonesian birth registration context. Under the *Law on Population Administration*, a marriage certificate is required before the father's name can be recorded on a child's birth certificate.⁷ This applies equally to the country's majority Muslim population (approximately 88% of the country's 240 million citizens) and the minority non-Muslim population. A significant number of children whose parents are either unmarried, or married according to religious or customary law, face discrimination due to the informal marital status of their parents, which means that they are not permitted to have their father's name on their birth certificate. By contrast, children whose parents are registered as married under State law will have both parents' names on their birth certificate. Thus, many children face stigma and discrimination because they

either don't have a birth certificate, or if they do, their father's name is not on it.⁸

In November 2014, Asia-Pacific Ministers declared 2015–2024 to be the Civil Registration and Vital Statistics Decade for Asia and the Pacific.⁹ The Declaration states that in order to mitigate risks of discrimination, legal documentation should contain only the minimum set of information required under the CRC: the individual's name, sex, date and place of birth, and name of parent(s) where known.¹⁰

What needs to happen for legal identity documents to be delivered at village level

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

1. *illuminate* the challenges faced by women, the poor and people living in remote areas in obtaining legal identity documents, and the impact that obtaining these documents has on their lives;
2. *advocate* why legal identity is important as a basic right and why governments should make budgetary allowances to support effective development planning;
3. *communicate* information: (a) to citizens on how to obtain legal identity documents, and (b) to government agencies on the numbers of individuals who need legal identity documents;

4. *facilitate*: (a) reform of the regulatory and policy framework to streamline and simplify the process of obtaining legal identity documents, (b) adequate budget allocations at national and district levels to support the integrated and mobile service delivery of legal identity documents at village level, (c) a legal umbrella that enables more coordinated service delivery by multiple government agencies, and (d) dialogues at national, regional and international levels on approaches to legal identity.

Integrated and mobile service delivery of legal identity documents will be most effective if this ILLUMINATE — ADVOCATE — COMMUNICATE — FACILITATE service loop brings in the key government agencies that deliver health, education and social protection services. In this way, obtaining legal identity documents for children and adults can be facilitated through activities that households would normally undertake, such as immunising a child or registering them at school. The known barriers of cost, distance and complexity are thereby removed, as these services are being conducted at the village level through facilities the family is already visiting for other purposes.

The key players

Governments (both at national and district levels) have responsibility for the central role of collecting data on birth registration and other civil registration events, such as 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, such as 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 the 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 in reporting on the quality of service. The Minimbah Project is an example of an Australian CSO that helps to facilitate Indigenous Australians register their births and obtain a birth certificate, as well as advocating strongly for policy changes and budgetary resources to

ensure universal free birth certificates for all Australians (see Chapter 6).

Philanthropic donors are able to support new ways of delivering legal identity services, especially through innovation and piloting new approaches. The philanthropic sector is also able to support government agencies and civil society by supplementing the funding required to collect data on the legal identity needs (particularly the legal identity needs of vulnerable groups) and to deliver legal identity services at village level. This is particularly relevant in Indonesia, where Corporate Social Responsibility Activities (CSR) for community benefit are mandatory under a number of national laws, including legislation covering foreign investors, state-owned enterprises and those limited liability companies that operate in the field of natural resources.¹¹

What are the seven key changes that would make the biggest difference?

Indonesian studies have confirmed that the main reasons people do not have legal identity documents, such as a birth certificate or a marriage certificate, are:

- they are too expensive to obtain (41%);
- the distance to civil registry offices is too far (15%);
- lack of knowledge on how to obtain legal identity documents (12%); and
- the processes are too complicated (9%).¹²

The solutions aimed at increasing the percentage of Indonesian children with birth certificates must therefore focus on:

1. Removing financial barriers associated with obtaining legal identity documents — whether these are the fee for obtaining a birth certificate or fines for late registration (that is, after the 60-day period).
2. Taking services from district to village level through integrated and mobile services where more than one agency provides services at the same time, notably:
 - a. courts to legalise a religious marriage that has previously not been registered;
 - b. the Office of Religious Affairs (KUA) to provide the marriage certificate; and
 - c. civil registry office to provide the birth certificates.
3. Removing discriminatory requirements for a birth certificate by revising the existing Presidential Decree. In the poorest households, the majority of couples do not have a registered marriage. International and regional agreements state that an official birth certificate should include, as a minimum, the individual's name, sex, date and place of birth, and the name of the parent(s), where known. To support Indonesian children having both their father and mother's name on their birth certificate, the requirements for a birth certificate should be revised to include a statutory declaration signed by the mother and father stating they are the parents, as an alternative

to producing a marriage certificate, where the parents do not have a registered marriage.

4. Greater collaboration between the Ministry of Health and the Ministry of Home Affairs at all levels of government is required to facilitate this assistance at village level. This should include:
 - a. revising the *Child and Maternal Health Book* to provide clear information to parents on how to obtain birth certificates;
 - b. training health centre, birth centre and hospital staff to provide information and facilitate parents to obtain birth certificates for their children at the time of their birth or during the six immunisation visits that occur in the child's first year; and
 - c. formalising collaboration between health and birth registration services and simplifying birth registration processes for the electronic transmission of data from health centres to civil registry offices.
5. An adequate budget for village-based service delivery: the Civil Registry Office requires an adequate budget for their staff across Indonesia in order to provide services at village level as mandated under revisions to the *Law on Population Administration*, made in 2013. The Office of Religious Affairs officials need the same budget to assist couples to obtain marriage certificates at integrated and mobile services. The

Indonesian courts have an annual budget allocation to enable the 350 Religious Courts to waive fees for the poor, provide village-based circuit court services and legal advice posts. In 2014, this budget is 13 times the level it was in 2007. Clear guidelines that specify that it is the responsibility of village leaders, under the new Village Law, to assist individuals to obtain legal identity documents, including a birth certificate, would also be an important step.

6. Supporting paralegal services that inform households about the requirements for legal identity documents. Mobile paralegal units and other legal advisory services supported by CSOs 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, and over the past three years have helped over 100,000 individuals to obtain legal identity documents, such as birth certificates. Establishing a Legal Identity Trust Fund that would support CSOs/DPOs to assist the poorest 40% of families to obtain legal identity documents could also be included in philanthropic programs directed at immunising children and eradicating diseases.¹³
7. Enhancing the transparency of legal identity data that is (a) accessible by the public and (b)

exchanged between agencies on the number of births per districts and the issuing of legal identity documents. Since 2006, the Supreme Court of Indonesia has provided information on the total number of marriage legalisation on its website, and through Annual Reports available on its website. 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 that are required of government agencies. As a result, aggregate national data on the number of legal identity documents issued each year in Indonesia is not publicly accessible.

In 2014, the world celebrated 25 years since the adoption of the UN Convention on the Rights of the Child at the General Assembly in New York. Twenty-five years after the Australian and Indonesian Governments undertook to respect the basic rights of children, both countries are yet to achieve universal birth registration or ensure that every child is provided with a birth certificate. For the most vulnerable children, Australia and Indonesia face similar challenges in how to provide all children with birth certificates. The ways to overcome birth registration disparities may also be surprisingly similar.

Endnotes

- 1 C Sumner & S Kusumaningrum, *Baseline Study on Legal Identity: Indonesia's missing millions*, DFAT, PEKKA and PUSKAPA, 2014. Retrieved from http://www.aipj.or.id/uploads/reports_publication/8_f_20140227-011003_FA_baseline_report_english.pdf

- 2 See <http://www.law.monash.edu.au/castancentre/public-events/events/2009/indigenous-birth-registration-symposium.html>
- 3 C Sumner & S Kusumaningrum, above n. 2.
- 4 SUSENAS is the Indonesian language acronym for the Indonesian Central Bureau of Statistics' National Socio-Economic Survey.
- 5 Article 7(1), *Convention on the Rights of the Child*.
- 6 *Convention on the Rights of the Child*, Article 2(2) provides that 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.
- 7 Presidential Regulation 25 of 2008 concerning Registration Requirements and Procedures for Population and Civil Registration, Article 52.
- 8 Indonesian Constitutional Court Decision No 46/PUU-VIII/2010 (decided in 2012).
- 9 Economic and Social Commission for Asia and the Pacific, Ministerial Conference on Civil Registration and Vital Statistics in Asia and the Pacific: The Conference adopted the Ministerial Declaration to 'Get Every One in the Picture' in Asia and the Pacific, and endorsed the Regional Action Framework on Civil Registration in Asia and the Pacific (E/ESCAP/MCCRVS/L.2).
- 10 *Ibid*, p. 12.
- 11 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.
- 12 SUSENAS, *op cit.*, 2012 report; and C Sumner & S Kusumaningrum, above n. 1.
- 13 The Unified Database contains social, economic and demographic data from 24.8 million households, or 96.7 million individuals, representing the 40% of Indonesian citizens having the lowest socio-economic levels.