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Access and Equity in Family Law and Civil Status Issues for the General Courts of Indonesia

One of the main critics that has long been addressed to the General courts is concerned with the services providing for just seekers, particularly on the cost of process and legal resolution. The General Courts have been included in the list of public institutions of Indonesia whom the majority of population gives very low level of confidence and trust.

This surely becomes a stumble block for the people whose cases need to be heard at the courts if they have insufficient financial resources. The courts may be accessible only for the people who have enough funds to resolve their cases, while the poor family may only submit to injustice treatment or resolving the cases outside the courts. This phenomenon may rise to two implications. First, people's trust to the general court will remain low, which finally leads to bad perception against the state in general. Second, the unofficial divorce resolution made outside the court will result in negative effect to the child status particularly on guardianship and legal certificate.

In terms of civil issues, divorces among non-Muslim people are commonly heard at general courts. Even though divorce cases among non-Muslim heard across 347 General Courts were only 3,692 or 2% compared to that of religious court in 2007, this figure is still significant in regards to access and equity provided for just seekers. The administrative procedure and legal decision are among others closely tied with awareness and knowledge of judges as well as economic sources of just seeker that will impact legal resolution.

Based on the previous research conducted on religious courts in 2007, there were 70,7% Women-headed Households in Indonesia (PEKKA) complaining with the high cost applied in the Religious courts. Such complexity is also undoubtedly found in general courts which not only proceed civil but also penal cases.

Poor services provided at general courts will also impede justice treatment for children who have lack such legal status as birth certificate. According to Unicef's Indonesia office estimation, children with legal identity (akta kelahiran or birth certificate) is around 30 to 40%. This even rises to less than 20% in poor provinces. In NTB (West Nusa Tenggara) and NTT (East Nusa Tenggara), children with legal status in 2005 were less than 10%. This figure, therefore, ranks Indonesia as the worse of 19 countries in providing legal status for children. In effect, children without legal status not only have no access to legal tribunal but also may face difficulties in accessing healthcare and education services. This is also prone for children against violence, exploitation and discrimination. Leaving children without legal status also violates article 27 and 28 of bill no 23/2002 on Children Protection that each child is to be given legal identity since its birth. Such obligation is to be exercised by the state.

Research Objective

On the basis of such problems elucidated, PPIM in cooperation with Indonesia-Australia Legal Development Facilities (IALDF) conducted a survey for court users. The survey is aimed to the following objectives:

1. Provide the general courts with empirical data both qualitative and quantitative accounts on the services provided for court users in the area of family law;
2. Ascertain whether there are sections of the community, particularly those living under the Indonesian poverty line, who are unable or unwilling to access the services of the General Courts and the reasons why;
3. Consider strategic policy responses (financial and organizational) that the Supreme Court (MA) may consider in order to provide universal access to the General Courts for people living below the poverty line or those who may live in locations far from the courts. The access and equity will consider these issues with a particular focus on family law cases and the provi-

- sion of *Penetapan Pengadilan Akta Kelahiran* (Court Decree of Birth Certificate) within the General Courts;
4. Identify how a lack of a birth certificate affects individual's access to broader public services such as education and health-care;
 5. Identify barriers, particularly the poor, to obtain a birth certificate (including in some circumstances on *Penetapan Pengadilan Akta Kelahiran* from the General Courts);
 6. Consider strategic policy responses that the Government of Indonesia may consider in order to provide all children in Indonesia with a birth certificate.

It should be explained here that access in this regard is defined as the extent to which general court users are aware of the existence and objectives of the general courts and the degree to which they are able to access the services provided family law civil status issues. It is therefore whether case process is dealt with simple, accessible and affordable. While equity means the extent to which the process undertaken is perceived to be fair, transparent and equitable. It also covers the fairness, timeliness, clearness and efficiency on the cases.

The subject area of the access and equity study in the General Courts will focus on family issues (divorce, child guardianship) and civil status issues (e.g. provision of letters to the Civil Registry authorizing the issuing of birth certificates in certain cases). The research may include the area of inheritance by disregarding the criminal issues filed at the courts.

Survey Methodology

Court user survey is the main component of this research of access and equity in general courts of Indonesia. This survey is directed to obtain the views of court users on the level of service provided to them during the hearing of their case. The respondents of this survey were 613, which were selected from the list of court clients who brought their family law cases before the General Courts in the 2008.

In regards to the survey respondents, 26 courts were chosen to be the basis of selection of 613 respondents. The 613 respondents were drawn from the list court users falling into the category of family cases, in proportion to the number of family cases registered in each

General Court in the year 2008. The selection of respondents in each court was made in reference to the following points: (1) the proportionate number between *penggugat* (respondents) and *tergugat* (dependents), each of which is 50%; and (2) the above number most likely points to the number of users according to their sexual status, male and female.

In reference to the aims of the research mentioned, the survey covered the questions as follows:

1. The level of court users' knowledge or perception of the General Courts which includes where and how this knowledge was obtained and the way it has influenced motivation to utilize the General Courts;
2. The obstacles or hardships that may be created as a result of fees and procedures established by the General Courts that may impact on access;
3. The extent of degree to which the responsiveness of General Courts personnel affects accessibility and quality of access;
4. The degree to which knowledge base of General Courts personnel affects levels of satisfaction with court events;
5. Level of confidence and trust in the General Court's processes by the court users;
6. Timeliness of the General Court processes;
7. Perceived capacity of the General Courts to enforce outcomes as perceived by the court users;
8. Parent perception and awareness on the necessity of having birth certificate;
9. The degree of services provided by the Population Office (Dinas Kependudukan) in issuing the birth certificate.

Management

In order to handle the project implementation, PPIM prepared a working team that coordinated the activities. The team of organizers consisted of two teams: (1) Central Organizing Team, which was responsible for the implementation of the whole project activities, and (2) Regional Organizing Team. The regional organizing teams have responsibilities of helping the central team in organizing the project implementation, which include: (a) following the training by the central team; (b) making network and [informal] communication with General Courts of provincial and district offices; (c)

recruiting and giving training for the enumerators to be sent to the targeted survey respondents; and (d) monitoring and evaluating the process of data gathering by the enumerators. To be included in this respect were enumerators. They were responsible for data gathering from the respondents targeted.

The result of the survey is still under the process of analysis, and will be presented later in the next edition of *Studia Islamika*.