

# RELIGIOUS COURTS: Improving Women's Access to Justice in Indonesia

Religious courts in Indonesia preside over family law cases such as inheritance, marriage, divorce, child support, and child custody. Gender bias has been a significant challenge to the principles of fairness and justice that religious courts in Indonesia are meant to uphold. In recent years, there has been a growing movement led by religious court judges intent on improving gender equality. The Asia Foundation is responding to this demand through partnerships with state and civil society actors to provide religious judges with the knowledge and resources they need to ensure gender equality in their court decisions.



Cases brought before religious courts in Indonesia are fraught with legal and social ambiguities, making them among the most complex cases within the legal system. Moreover, decisions have direct effects on personal and familial relationships. With over 200,000 cases tried in religious courts each year, few branches of the Indonesian legal system affect the lives of Indonesians as directly and broadly. The following are common examples of gender bias in religious court decisions:

- Women survivors of domestic violence are denied their right to divorce and instructed to reconcile with their husbands.
- Women who initiate divorce are not granted any property or financial compensation and lose child custody.
- Women are awarded inadequate alimony payments in cases of divorce.
- Charges of marital rape are dismissed.

## THE ASIA FOUNDATION'S RELIGIOUS COURTS PROGRAM

The Foundation works with the Supreme Court and religious courts in 14 of Indonesia's 32 provinces to build the skills and experience of religious court judges to address gender bias in family law cases. The efforts of the last four years have seen the development, field testing, and refinement of a Gender Sensitivity Training Program for religious court judges that has been adopted by the Supreme Court, and made available on its website.

Champions within the Supreme Court's Training Unit for Religious Courts are now working to secure funds from the State budget to scale-up the Gender Training Program, which has already reached 10 percent of all Indonesian judges with the Foundation's support. Uniquely, the Foundation's programs have been utilized by the Shari'a Court system of Aceh—which due to Aceh's special autonomy status also holds jurisdiction for criminal law cases—and in 2010, training has reached 96 percent of judges practicing in Aceh.

Currently, gender training materials are being further expanded to equip judges with the skills to effectively mediate equitable outcomes between male and female disputants. Recent legislation now requires judges to mediate family law cases before they are brought to trial, and as such mediation is a new skill that religious court judges must develop. At this time, the Gender Training Program stands ready for national scale-up, with the potential to influence more just outcomes for the tens of thousands of Indonesian women annually seeking justice through religious courts.

### ENGAGING NATIONAL EXPERTISE

The Asia Foundation's work with the religious courts is one aspect of an integrated approach to justice sector programming that fosters linkages and collaboration among the Supreme Court, Attorney General's Office, police, and Department of Corrections, as they are inter-connected with each playing an integral role in delivering justice to the Indonesian people. Thus, this approach focuses not only on purely legal dimensions of the Courts, but also seeks to improve court administration and efficiency, reduce pressures on the appeal courts, and enhance public respect for the rule of law, thereby significantly improving Indonesian women's access to justice.

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*“The Supreme Court Training Center trains 300 participants annually on procedural and material law, but there is no training program on the many other skills judges need to adequately fulfill their roles. The gender-sensitivity training provided by The Asia Foundation helps to fill this gap, and is valuable and useful to judges in the religious courts, improving their ability to adjudicate on family law issues.”*

—Drs. H. Wahyu Widiana, MA, Director General of Religious Courts

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The Foundation's long-term presence and credibility in Indonesia enables the religious courts program to engage highly respected resource people from the judicial system, government, and civil society. Trainers and presenters have included the Chief Justice of the Aceh Shari'a Court, representatives from the Indonesian Supreme Court, Heads of the Religious Courts, Heads of the Marriage Registrars



office, and senior staff from the Ministry for Women's Empowerment. Islamic scholars from respected institutions such as the State Islamic University, senior religious court judges, and experts from civil society groups are also involved in delivering the program. The high level political support provided by these people, together with the public esteem in which they are held, provides the program with strong legitimacy that has encouraged high levels of participation by judges.

### EQUIPPING JUDGES WITH PRACTICAL TOOLS FOR GENDER JUSTICE

A single document, the Compilation of Islamic Law, serves as the primary reference on religious law in Indonesia today. As Indonesia's legal system is based on the continental European tradition of civil law, courts interpret and apply legislation to individual cases, with judges actively directing lines of inquiry and directly questioning parties and witnesses. Judges are expected to rely on their own deductive reasoning and have considerable discretion in their rulings. The Foundation's assistance is therefore designed to strengthen judges' legal reasoning skills—such as critical thinking and decisionmaking by analogy—when interpreting Islamic law to take into account the social, economic, and political context of women and families in Indonesia.

The gender equity training is competency-based, and tailored to meet the specific needs and challenges faced by religious court judges, court personnel, and marriage registrars in family law cases. Materials are used in an interactive and practice-based format, providing judges with the opportunity to learn from one another, to analyze cases and testimonials drawn from family court cases in their own region, and to discuss the challenges they face in their courtrooms. During training, judges also discuss the difference in processes and outcomes when cases are determined with and without the

application of gender-equity principles. Four content areas are covered through the training:

1. Gender sensitivity;
2. Legal reasoning;
3. Gender justice related to key family court issues including marriage, domestic violence, divorce, alimony, polygamy, and inheritance; and
4. Mediation skills.

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*“Prior to the gender trainings, gender was a foreign concept to judges in the religious court—to me as well. Now understanding has increased and has resulted in fairer outcomes for women in child maintenance and divorce cases. Gender...now is understood as a useful tool of analysis for judges to use in handling and determining cases, and an important part of family welfare and community welfare...Now that I have taken the training I am much more aware of the rights of women and children—the others in the training felt the same.”*

—Ibu Lily Ahmad Religious Court Judge, Bantul District

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## **RESPONDING TO EMERGING NEEDS: MEDIATION TRAINING**

Recent changes to Indonesian law now require judges to mediate family law cases before they are brought to trial. The Foundation developed a skills training program in mediation to respond to the specific needs identified by judges to enable them to more effectively manage this new component of their work. The Foundation’s pilot mediation program in the provinces of Banten and Aceh is equipping judges with the skills to effectively mediate equitable outcomes between male and female disputants. As judges across the country face the burden of mediating cases without the requisite skills, their demand for mediation training has increased. The Supreme Court’s Directorate General of Religious Courts Body has pledged support for the Foundation to scale up its mediation training program nationwide.

## **INSTALLING INCENTIVES FOR GENDER EQUITY**

Research conducted by the Foundation and its partners has informed the development of performance criteria to evaluate judges in their application of gender equity principles in



religious court cases. The performance criteria have been endorsed by the Directorate General of Religious Courts, and have the potential for incorporation into the annual performance reviews of judges across the country.

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*“The material discussed in the workshops is extremely relevant to the daily tasks of judges in the religious courts. Each court in Yogyakarta faces approximately 80 cases a month. The judges use the information gained in the workshop during trials, this makes the trial process more efficient as judges have a resource to draw upon when making decisions.*

—Drs. H. Muh. Hasan Muhamad: Head of the Yogyakarta High Religious Court

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## **PROMOTING BEST PRACTICES AND PUBLIC PARTICIPATION**

The Foundation has distilled “best practices” and “lessons learned” that are being used to inform the design of expanded equity-based judicial education programs, as well as informing public debate, government policy, and advocacy efforts by civil society.

An important part of reform in the religious court system is facilitating knowledge sharing through public seminars on topics such as the jurisdiction of Shari’a courts in Aceh among representatives from local governments, the Ministry of Religious Affairs, the Shari’a Courts, the Islamic Shari’a Service, universities, and NGOs that work in family assistance. In addition to testimonies from gender training participants, seminars have also engaged Supreme Court judges, the Director General of the Religious Courts, and the State Ministry for Women’s Empowerment on gender issues in religious courts.

## ABOUT THE ASIA FOUNDATION

The Asia Foundation is a private, non-profit, non-governmental organization. It is funded by contributions from corporations, foundations, individuals, and governmental organizations in the U.S., Europe, Canada, Australia, and Asia, and an annual appropriation from the U.S. Congress. Through its programs, the Foundation builds leadership, improves policies, and strengthens institutions to foster greater openness and shared prosperity in the Asia-Pacific region.

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The Ministry of Religious Affairs  
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