

Children's right to identity in Indonesia

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1 Creation of identity

Birth registration:

- The Indonesian government has made considerable progress in legal reforms to protect children's rights. This includes the national strategy on civil registration aiming for complete coverage of legal identity for Indonesia's population.¹
- Presidential Regulation No. 62 of 2019 initiated the National Strategy to Accelerate Population Administration for the Development of Vital Statistics (*Stranas AKPSH*), focusing on strengthening population administration, civil registration, vital statistics² and establishing a complete legal identity for the population, with a special emphasis on children from birth.³
- The Indonesian government had a target to increase registration rates to 85% by the end of 2019, achieving a rate of 86% for children with birth certificates.⁴ Its current goal has been to achieve a national target of 100% birth certificate ownership by 2024.⁵ By 2023, 20.68% under four years and 10.71% of under 18 in rural areas still lacked birth certificates.⁶
- The initial stage in the birth registration process takes place at the local Office of Civil Registration (referred to as *Kantor Catatan Sipil* or *Kantor Urusan Agama* for Muslim births), located in the area where the birth occurred and to be completed within a 14-day timeframe from the date of birth.⁷
- However, enhancing civil registration and vital statistics in Indonesia is challenged by issues such as incompatible population data collection, a significant portion of residents lacking a National Identity Number (NIK), difficulties in reaching remote and vulnerable populations, and incomplete integration of population administration services across sectors.⁸
- Children in rural areas are less likely to have one compared to urban areas. The likelihood of registration is also higher for children from wealthier households compared to those from poorer households.⁹ In response to these challenges, *Stranas AKPSH* places its emphasis on offering assistance and services to vulnerable populations, including victims of natural and social disasters, abandoned people, remote communities, indigenous people, people from border areas, children living outside of family care, children of Indonesian migrant workers or from families of refugees or asylum seekers.¹⁰
- One of the barriers to obtaining a complete birth certificate is also the failure to register parents' marriage. According to a local contact, whilst all births can be registered regardless of any circumstances, the main issue associated with the lack of marriage registration is that the name of the father cannot be written on the birth certificate. This can be rectified later by submitting a marriage certificate, which allows for the father's name to be added or changed on the birth certificate. Increasing awareness and participation in registering marriages is seen as beneficial in increasing birth registration.¹¹ New regulations issued in 2021 by the Ministry of Home Affairs aim to provide more flexibility in the birth registration process, especially for children born outside of registered marriages.

- In Indonesia, a notable initiative to improve birth registration practices involves collaboration between government agencies and social workers. This effort focuses on providing birth certificates to children in vulnerable communities, who often face challenges in obtaining these crucial documents. The initiative addresses low awareness among parents and local authorities, and factors exacerbated by poverty.¹²
- Indeed, social workers play a key role in educating parents about the legal necessity of birth registration and helping with the documentation process. The new regulations introduced in 2021 have also increased flexibility in the birth registration process, especially for children born in non-traditional circumstances, aiding in the national goal of achieving 100% birth certificate ownership by 2024.¹³

Potential considerations:

- **What efforts are being foreseen to reach those children still without a birth certificates and to register those most vulnerable to under-registration?**
- **What measures are being taken in practice to ensure that children in certain circumstances are not being discriminated against in birth registration?**

2 Modification of identity

Prevention of family separation and alternative care:

- Indonesia has implemented programmes to prevent family separation, emphasising early detection and referral mechanisms. Community hubs are set up to raise awareness about norms that promote family separation and provide family support services, such as access to social assistance programmes and training in parenting skills.¹⁴
- Family support groups aim to improve communication between family members and provide a platform for discussing sensitive subjects, such as relationships and reproductive health, as well as prevent gender violence. They are part of broader efforts to address societal challenges and promote a more open and supportive family environment.¹⁵
- Little information is available on what efforts Indonesia has in place to ensure that children separated from their families can maintain contact and/or benefit from re-integration efforts when in their best interests.
- Approximately 2.2 million Indonesian children do not live with either parent.¹⁶ A government regulation passed in 2017 aims to support over 500,000 children living in institutions to reintegrate into family-based care.¹⁷ Indonesia's approach to formal alternative care is facing challenges due to decentralisation, impacting the protection of children's right to identity. Decentralisation has altered the dynamics between central and local governments and social workers, affecting how local governments implement central policies aimed at reducing dependence on residential-based care.¹⁸



Adoption:

- In Indonesia, adoptions are governed by specific legal provisions aimed at safeguarding the best interests of the adopted child. These provisions are outlined in Articles 39 - 41 of Law No. 23 of 2002 concerning Child Protection,¹⁹ as amended by Law No. 35 of 2014.
- Indonesian adoption law, as amended by the above-mentioned Law in 2014, has placed significant emphasis on religious compatibility, allowing for continuity in religious identity,²⁰ and on considering adoption by foreign citizens as a measure of last resort. The preferred course of action is domestic adoption whenever feasible, with the goal of maintaining family and cultural connections within the country.²¹

Surrogacy:

- In Indonesia, surrogacy practices, including the resort to anonymous donors, are not legally recognised or regulated. As a result, the legal status of children born through surrogacy and the preservation of information about the intending parents or donors remains unclear and unregulated.²² It appears that surrogacy in Indonesia is nonetheless practiced secretly, often via family connections according to media.²³ Under current Indonesian law, the uterus cannot be classified as an object for contractual purposes.²⁴ A proposal for 'uterus leasing' is being considered as a way to legally frame surrogacy agreements. Indonesian law only recognises children born within a legal marriage, leaving children born from surrogacy legally tied to the surrogate mother.²⁵

Potential considerations:

- *What additional efforts are being implemented to further prevent family separation and promote family reintegration, whilst also offering appropriate family-based alternative care?*
- *How is children's original identity protected when adopted?*
- *Despite being unregulated under Indonesian law, surrogacy appears to occur nonetheless; how are these children's genetic, gestational and biological origins being safeguarded?*

3

Falsification of identity

Child marriage:

- Child marriage imposes a new civil status upon the child, resulting in the falsification of their true identity. Approximately 11.2% of women aged 20–24 in Indonesia were married before the age of 18, with higher prevalence in rural areas and among girls from economically disadvantaged backgrounds.²⁶ Child marriage in Indonesia has seen a decrease of 3.5 percentage points in the past 10 years, with ongoing efforts to further reduce this rate.²⁷
- The 2019-amended Marriage Law increased the age of marriage from 16 to 19 years (similar with the boys) and a process has been defined to obtain marriage dispensation for marriages below 19 years.²⁸

Human trafficking and exploitation:

- Child trafficking separates the child from their family and jeopardises the right to identity in family relations. The 2007 anti-trafficking law criminalises labour and some sex trafficking forms, with penalties ranging from three to 15 years of imprisonment.²⁹ In addition, Presidential Regulation No. 69 Tahun was enacted in 2008 to address human trafficking, playing a significant role in combating this issue, especially when associated with identity falsification.³⁰ Human trafficking cases have risen nevertheless, with 256 cases reported in 2021, including child exploitation.³¹

Intercountry adoption:

- While intercountry adoption is legal in Indonesia, the country is not a party to the 1993 HCCH Adoption Convention.³² Recent cases, including a Dutch adoption scandal³³ and an Australian woman's alleged illegal adoption of Indonesian children,³⁴ have highlighted challenges in regulating adoption practices and preventing illegal adoptions.

Potential considerations:

- *Are further legal amendments to the legal and enforcement framework foreseen to combat early marriage, human trafficking, illegal adoptions and surrogacy?*
- *What further measures are planned to ensure that the new legislation on marriage is duly implemented and to thereby prevent child and early marriages?*
- *What measures is the government planning to undertake to ensure that intercountry adoptions and surrogacy practices comply with national, international and ethical standards and to respond to practices of irregular adoptions in the past?*
- *Is the country planning to become a Contracting Party to the 1993 HCCH Adoption Convention?*

4

Preservation of identity and access to origins

Birth registration:

- The pandemic has accelerated the use of technology in civil registration services, integrating health registration with other services. Indeed, according to a local contact, the partnership between civil registration and health service providers is being promoted to ensure that newborns are directly registered. While digitalisation is the way forward, this mechanism remains relevant. However, not all residents have internet access or the skills to use online services, and this change may not necessarily speed up birth certificate acquisition, particularly among vulnerable groups.³⁵

Adoption:

- Adoptive parents must inform the child about their origins and biological parents, considering the child's readiness. Adoption must be recorded on the child's birth certificate without losing their initial identity. If the child's background is unknown, a birth certificate is created based on available information. As mentioned above, the law also emphasises that adoptive parents must have the same religion as the child, and adoption by foreigners is considered a last resort. These measures are taken to protect the child's rights and preserve their identity.³⁶



Potential considerations:

- Whilst the digitalisation of birth registration may contribute to high rates of registration, how are the protection of children's data and their access to these services safeguarded?
- It is welcomed that Indonesia protects the rights of adoptees to information about their origins, including their biological parents. How are they supported in accessing this information and in accessing psychosocial counselling?

5

Restoration of identity

- It is not clear from publicly available information what efforts are made to restore children's identities in case of ART, surrogacy, illicit adoptions and early marriage. Indeed, according to a local contact, this remains quite generic under the Child Protection Law, as it states that if a child's birth process is unknown and their parents are not known or acknowledged, a birth certificate for the child can be created based on the information provided by the person who found the child. This process is typically accompanied by inspection reports from the police to verify the circumstances surrounding the child's discovery and ensure the accuracy of the information provided for the birth certificate.

Potential consideration:

- How has the country ensured that children's identity, including family relations, are indeed being traced and duly recorded? What efforts are undertaken to provide them with their full identity?

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