

BUKTI KORESPONDENSI
ARTIKEL JURNAL NASIONAL TERAKREDITASI SINTA 2

Judul Artikel : Navigating Statelessness: Legal Consequences of Divorce in Mixed Marriages Involving Rohingya Refugees
Jurnal : Jurnal AKTA March 2026 | Vol. 13 No.1, p-ISSN: 2406-9426, e-ISSN: 2581-2114
<https://jurnal.unissula.ac.id/index.php/akta/article/view/50325>
Penulis : Elfirda Ade Putri, Windy Sri Wahyuni

Daftar Isi

No.	Perihal	Ket./Tanggal
1.	Bukti Submission	29 – 12 – 2025
2.	Manuscript awal yg disubmit	
3.	Email Notifikasi Submission	12 – 01 – 2026
4.	Email Notifikasi “Major Revision Required”	30 – 01 – 2026
5.	Bukti Review	12 – 02 – 2026
6.	Lampiran email no 5, “Respond to Editor/Reviewer”	
7.	- Respond to Lead Editors	
8.	- Respond to Editor-in-Chief Comments	
9.	- Respond to Associate Editors Comments	
10.	- Respond to Reviewer A	
11.	- Respond to Reviewer B	
12.	- Respond to Reviewer C	
13.	Bukti Letter of Acceptance	12 – 02 – 2026
14.	Bukti Editing	04 – 03 – 2026
15.	Manuscript published (https://jurnal.unissula.ac.id/index.php/akta/article/view/50325)	17 – 03 – 2026

jurnal.unissula.ac.id/index.php/akta/author/submission/50325

published by Master of Notarial Laws
Faculty of Law, Sultan Agung Islamic University, Indonesia

Decree NO 164/E/KPT/2021
Dated 27 December 2021

HOME ABOUT USER HOME SEARCH CURRENT ARCHIVES ANNOUNCEMENTS PUBLICATION ETHIC

Home > User > Author > Submissions > #50325 > Summary

#50325 Summary

SUMMARY REVIEW EDITING

Submission

Authors	Elfirda Ade Putri, Windy Sri Wahyuni
Title	Navigating Statelessness: Legal Consequences of Divorce in Mixed Marriages Involving Rohingya Refugees
Original file	50325-118364-1-5M.DOCX 2025-12-29
Supp. files	50325-118365-1-5P.DOCX 2025-12-29
Submitter	assalamualaikum elfirda ade putri
Date submitted	December 29, 2025 - 03:27 AM
Section	Articles
Editor	Nanang Darmadi
Author comments	selamat pagi bapak/ibu, berikut adalah artikel jurnal saya
Abstract Views	243

Status

Status	Published	Vol 13, No 1 (2026): March 2026
Initiated	2026-03-04	
Last modified	2026-05-06	

turnitin

jurnal.unissula.ac.id/index.php/akta/author/submission/50325

Status	Published	Vol 13, No 1 (2026): March 2026
Initiated	2026-03-04	
Last modified	2026-05-06	

Submission Metadata

Authors

Name	Elfirda Ade Putri
ORCID ID	https://orcid.org/0009-0003-7973-6669
URL	https://scholar.google.com/citations?user=F0k_bKoAAA&hl=id
Affiliation	Universitas Bhayangkara Jakarta raya
Country	Indonesia
Bio Statement	ACADEMICIAN
Principal contact for editorial correspondence.	
Name	Windy Sri Wahyuni
URL	https://scholar.google.com/citations?user=Z8ET2IkAAA&hl=id
Affiliation	Universitas Medan Area
Country	Indonesia
Bio Statement	ACADEMICIAN

Title and Abstract

Title	Navigating Statelessness: Legal Consequences of Divorce in Mixed Marriages Involving Rohingya Refugees
Abstract	<i>This study aimed to examine how Indonesian Private International Law (PIL) addresses the legal vacuum arising from the inapplicability of the nationality principle (lex patriae) in divorce proceedings involving mixed marriages between Indonesian citizens and stateless Rohingya refugees, and to analyze the legal consequences with respect to child custody, division of joint property, and children's citizenship status. The research method employed was normative juridical research, utilizing statutory, conceptual, and doctrinal approaches combined with grammatical, systematic, and teleological interpretive methods, as well as deductive legal reasoning. The novelty of this research lies in its systematic doctrinal construction of a conflict-</i>

turnitin

MY STAT

Visitors

152,088	397
13,737	327
12,015	289
1,130	278
1,105	240
791	222
603	208
471	

Pageviews: 481,302

00441328 View My Stats

This work is licensed under a Attribution-NonCommercial-NoDerivatives 4.0 International (CC BY-NC-ND 4.0).

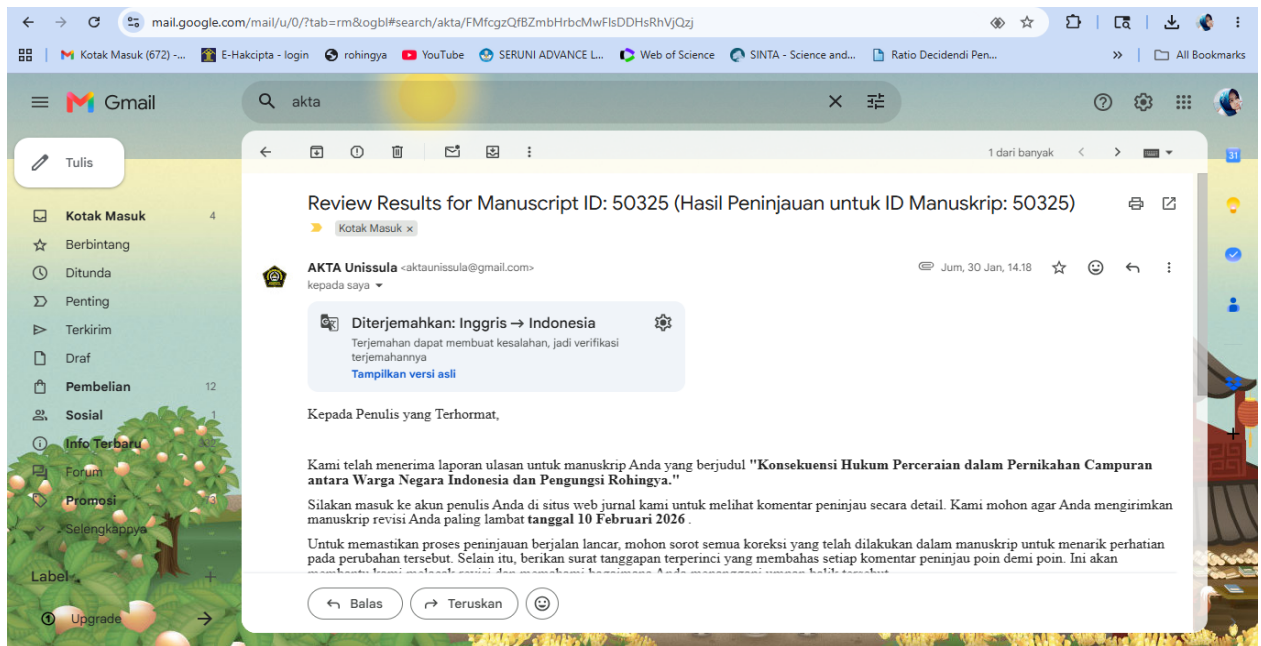
KEYWORDS

Agreement Authority
Certainty Consumer Court
Crime Criminal Deed Digital
Fiduciary Inheritance
Islamic Justice Land

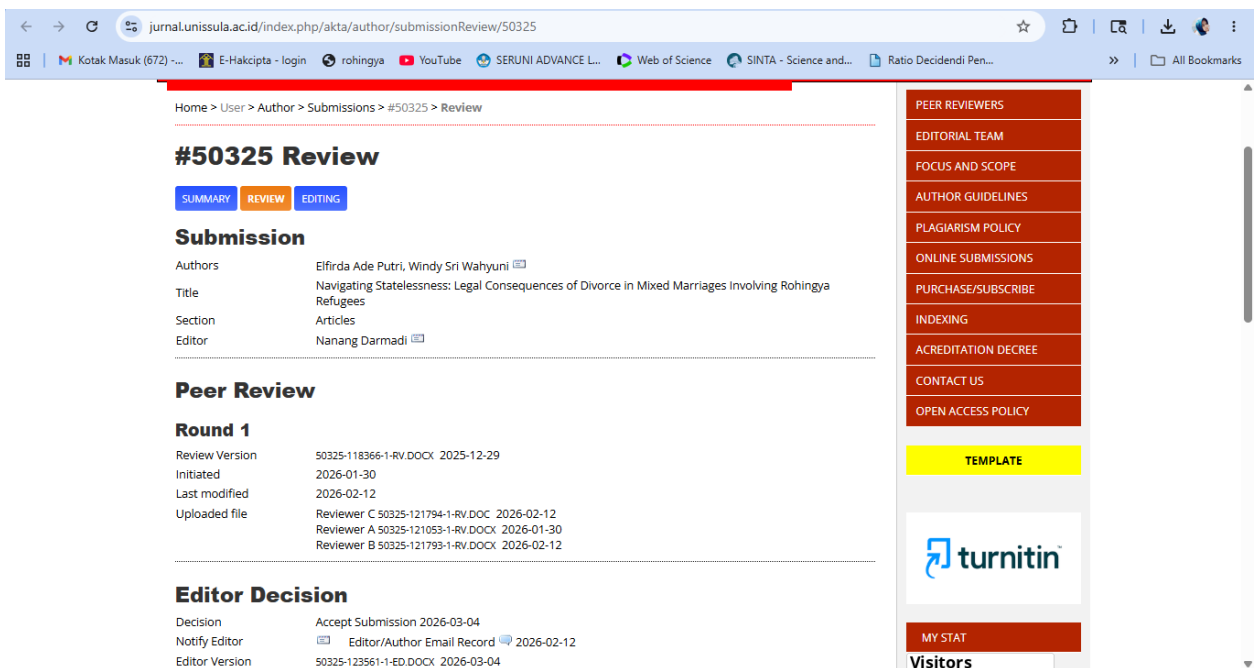
The screenshot shows a Gmail interface with a search bar containing "jurnal akta". The email is titled "Submission Confirmation: #50325" and is from "AKTA Unissula <aktaunissula@gmail.com>". The email content includes a translation tool overlay that says "Menerjemahkan...". The main text of the email reads: "Dear Author, Thank you for submitting the manuscript entitled, "Legal Consequences of Divorce in Mixed Marriages between Indonesian Citizens and Rohingya Refugees" to Jurnal Akta. With the online journal management system that we are using, you will be able to track its progress through the editorial process by logging in to the journal web site. Submission URL: <https://jurnal.unissula.ac.id/index.php/akta/login> Thus, please confirm that your manuscript is not currently being processed in any journal and has never been published before. We await your response as soon as possible." At the bottom, there are buttons for "Balas" (Reply) and "Teruskan" (Forward).

This screenshot shows the same Gmail email as above, but without the translation tool overlay. The email content is identical: "Dear Author, Thank you for submitting the manuscript entitled, "Legal Consequences of Divorce in Mixed Marriages between Indonesian Citizens and Rohingya Refugees" to Jurnal Akta. With the online journal management system that we are using, you will be able to track its progress through the editorial process by logging in to the journal web site. Submission URL: <https://jurnal.unissula.ac.id/index.php/akta/login> Thus, please confirm that your manuscript is not currently being processed in any journal and has never been published before. We await your response as soon as possible. Thank you Best Regards,". The buttons for "Balas" and "Teruskan" are also visible at the bottom.

4



5



6

REVIEWING FORM

Peer Reviewer

To:

Correspondence Author

* The all article in English Version

NO	CHAPTER	CONTENT	REVISION
1	Title	It should be taken from research findings, so that it is interesting to read.	The title may not include the name of the research location, it will be stated inside of content. The title is a maximum of 14 words , the title may not contain the name of the place, agency, name of the regulation. Alla that explanation will be explained inside of the content. Example: The Handling of Credit Problems in Bank Financial Restruction (9 words)
2	Abstract	Abstract contains little summary sequentially: Aims/purposes, research methods, novelty and conclusions, made between 200-300 words.	Example: This study aims to..... The research method was used The Novelty in this research is.....Based on the research concluded
3	Keyword	You can put 3-5 words in keywords Alphabetically use ;	Please make it one by one per word , no sentence or acronym. Example: Act; Legal; Management; Modern.
4	Introduction	The introduction should consisted the background and problem of the research (GAP).	Make sure you make it around 6-7 paragraphs as match and synchronous with the title and the discussion.
5	Research Methods	The formulation of the problem in this article is very strictly, so there is no gap between das sein and das sollen , please provide an analysis of certain legal theories depend on your research approach or methods.	The editorial was not in the form of a problem statement but was changed to the research objective, and became the last paragraph of the introduction, without numbering. Editor The formulation of the research objectives was synchronized with the abstract & conclusion. Please make it in one (1) paragraph. And make it in Past Tense Grammar,

			because already happened.
6	Result and Discussion	Pay attention to making paragraphs, don't have very long paragraphs and not many numbering. Better you use the picture or graphic or table it make your document more appropriate. Table in 9 size, all scape 1	If you can avoid the use of many bullet numbering, make possible editorials without bullet numbering, except for lists. For example, in the description of "There are several legislations in detail and divided from several changes from year to year which contain legal rules regarding, namely" can be made so that the statement does not need to make bullet numbering.
7	Conclusion	The section use title " Conclusion not Closing" and summarized into 1 paragraph.	The sharp and to do point conclusion is needed and you can put the suggestion descriptions inside conclusion or combined it in 1 paragraph.
8	References (APA STYLE)	Starting January 2025 all citations from other sources must be cited in bodynotes and use references wit APA style. Please, arrange from: Journals: Books: Internet: Regulation: Interview: Etc.	Please add more Journal References min. 15 sources in short of 10 years before. Example: Journal: And for journal (Victoria, et.al., 2020: 397-407). so the reference will be written → Victoria, Ong Argo. Ade Riusma Ariyana, Devina Arifani. 2020. Code of Ethics and Position of Notary in Indonesia. <i>Sultan Agung Notary Law Review</i> , Vol. 2 No. 4: p.397-407, Doi: 10.30659/sanlar.2.4.397-407, http://lppm-unissula.com/jurnal.unissula.ac.id/index.php/SANLaR/article/view/13536 Book:(Mustofa, 2021: 25). so the reference will be written → Mustofa, Muhammad. 2021. <i>Hukum Waris Islam</i> . Bandung: Multimedia Press. Etc. (Follow the TEMPLATE)

Legal Consequences of Divorce in Mixed Marriages between Indonesian Citizens and Rohingya Refugees

Abstract

This study examines the legal consequences of divorce in mixed marriages between Indonesian citizens and Rohingya refugees who are stateless. This stateless status invalidates the application of the principle of nationality (*lex patriae*) and creates a legal vacuum in international civil law. This study uses a normative legal method, where the main focus is to analyze and examine positive legal norms, legal principles, and relevant legal doctrines. This study finds that the principle of domicile (*lex domicilii*) and the doctrine of public policy (*public policy*) justify judges to apply Indonesian law (*lex fori*). As a result, the settlement of child custody, division of joint property, and confirmation of Indonesian citizenship for children are fully subject to national law. This study concludes that for Muslim couples, the Compilation of Islamic Law gives preference for custody of minors (who are not yet *mumayyiz*) to the mother. The status of the Rohingya father as a refugee does not automatically disqualify him, but the court will consider the stability and future security of the child within Indonesian jurisdiction as crucial factors. Regarding the division of joint property, Article 35 of the Marriage Law applies, which states that property acquired during marriage becomes joint property. As a result of divorce, the property must be divided equally between the two parties. The stateless status of the Rohingya does not reduce their right to half of the assets accumulated through joint efforts during the marriage. The key factor is proof of the acquisition of property during the marriage, not the legal status or citizenship of either spouse. The legal status and citizenship of the children are the most crucial legal consequences after divorce. An analysis of Law No. 12 of 2006 on Citizenship shows that Indonesian law explicitly adheres to the principle of *ius sanguinis*. Based on this principle, a child born to an Indonesian mother, even if the father is stateless, legally obtains Indonesian citizenship. This provision is designed preventively to avoid statelessness (*apatride*) in children, providing legal protection from birth.

Commented [U1]: The abstract is too long. Maximum 200 words, explaining the background of the research, the research methods used, and a discussion of the legal urgency discussed.

Introduction

Indonesia receives refugees every year, including refugees from the Rohingya ethnic group. By the end of 2023, the United Nations High Commissioner for Refugees (UNHCR) recorded 12,295 refugees in Indonesia, including 1,752 Rohingya refugees in Aceh and Sumatra since January 2023. Indonesia is not a signatory to the 1951 Refugee Convention and the 1967 Protocol Relating to the Status of Refugees, but Indonesia has nevertheless declared its willingness to serve as a transit country. This means that the Indonesian government allows refugees to stay temporarily in Indonesia for the purpose of relocation to a third country, which is the refugees' final destination. This policy is an effort to bridge the gap between formal regulatory limitations and the needs of refugees. (Rajagukguk & Allagan, 2025)

Commented [U2]: Provide at least 5 relevant keywords.

The Rohingya are a Muslim minority group that has historically resided in the Rakhine region of Myanmar. However, to date they are not recognized as one of the 135 official ethnic groups by the Myanmar government as listed in the 1982 Myanmar Citizenship Law. This provision effectively denies the Rohingya ethnic group citizenship status, categorizing them as stateless persons. This status deprives the Rohingya of access to basic rights as citizens, including the right to legal identity, education, health services, employment, and adequate legal protection.

Commented [U3]: Ensure the introduction contains the following structure: Background, Legal Problem, Research Urgency, Research Gap, State of the Art, Significance of the Research, and Research Objective in sequence.

- Adi, A., & Aris, S. (2025). Status Kewarganegaraan Bagi Anak (Intended Parents Embryo) Warga Negara Indonesia Menggunakan Mekanisme Gestational Surrogacy. *Jurist-Diction*, 8(1), 1–24. <https://doi.org/10.20473/jd.v8i1.66144>
- Harisha, N. D., Dewi, K. K., Oktafiani, H. R., & Sholikhah, N. (2025). Analisis Yuridis Tentang Kewarganegaraan Anak Hasil Perkawinan Campuran Menurut Hukum Internasional dan Hukum Nasional. *Amandemen: Jurnal Ilmu Pertahanan, Politik Dan Hukum Indonesia*, 2(4), 157–170. <https://doi.org/10.62383/amandemen.v2i4.1356>
- Kirana, M. L., Malinda, I. P., Yudhani, P. G., Laili, Z. S. S. B., & Nurvita, S. R. (2024). Analisis Hukum Perceraian Campuran Melalui Pendekatan Hukum Perdata Internasional di Indonesia. *Jurnal Hukum Progresif*, 7(12), 190–190.
- Malikah, R. K., & Astuti, P. (2025). Analisis Yuridis Tidak Terbuktinya Obstruction of Justice dalam Putusan Hasto Kristiyanto: Tinjauan Berdasarkan Asas Keadilan, Kepastian Hukum, dan Kemanfaatan. *Jurnal Locus: Penelitian & Pengabdian*.
- Manaroinsong, M., Mustika, F., & Ngion, C. (2025). Tinjauan Yuridis Undang-Undang Nomor 16 Tahun 2019 Tentang Perkawinan. *Journal of Artificial Intelligence and Digital Business (RIGGS)*, 4(3).
- Rajagukguk, C. R., & Allagan, T. M. P. (2025). Tinjauan Hukum Perdata Internasional atas Perkawinan Pengungsi Rohingya di Indonesia. *Veritas et Justitia*, 11(1), 129–129. <https://doi.org/10.25123/3g6myh92>
- Rumapea, K. N., Jumadiah, & Amita. (2025). Analisis Yuridis terhadap Perkawinan antara Pendatang Asing Ilegal Rohingya dengan Warga Negara Indonesia Berdasarkan Undang-undang Nomor 1 Tahun 1974 tentang Perkawinan. *Jurnal Ilmiah Mahasiswa Fakultas Hukum Universitas Malikussaleh*, 8(3). <https://journal.unpas.ac.id/index.php/transborders/art>
- Srikandi, D. A., Arini, Y., 'Atiqoh, D. Z., Hanisya, L., Ramadhan, S. D. N., & Hidayah, A. N. (2025). Perkawinan Campuran dalam Perspektif Hukum: Implikasi Yuridis terhadap Status Kewarganegaraan, Harta Bersama, dan Hak Waris. *Jurnal Hukum Progresif*, 8(6), 100–100.
- Sugeng. (2021). *Memahami Hukum Perdata Internasional Indonesia*. Kencana.
- Syuja', W. (2025). Child Custody in Divorce due to Religious Conversion: Judges' Tendencies and Litigants' Strategies. *Jurnal Transformatif (Islamic Studies)*, 2(2). <https://doi.org/10.23971/1f.10476>
- Wahyuni, S. (2014). Konsep Ketertiban Umum dalam Hukum Perdata Internasional: Perbandingan Beberapa Negara Civil Law dan Common Law. *Supremasi Hukum*, 3(1).

Marriage and family institutions are considered part of public policy that cannot be deviated from. Therefore, the application of Indonesian law is a necessity in order to protect the social, moral, and religious values that underpin society.

There is a strong synergy between the qualification process and the application of the public policy doctrine. Qualification based on *lex fori* has procedurally directed the dispute to Indonesian law. Furthermore, public order provides substantive justification that reinforces this decision. The combination of the two creates a solid legal argument, in which judges not only apply the law for practical reasons, but also because of their obligation to uphold the basic principles that are considered essential to the legal and social order in Indonesia.

The ultimate consequence of the interaction between qualifications and public policy is the affirmation that the law of the forum (*lex fori*) effectively becomes the law governing the dispute (*lex causae*). This means that all legal consequences of divorce, from child custody to the division of joint property, will be decided based on the Marriage Law and the Compilation of Islamic Law. This approach provides absolute legal certainty and enforceable solutions, while demonstrating the adaptive capacity of the Indonesian legal system in dealing with complex HPI disputes.

Conclusion

Divorce in mixed marriages between Indonesian citizens and Rohingya refugees creates legal problems due to statelessness, which invalidates the application of the principle of nationality (*lex patriae*). This study concludes that this legal vacuum is overcome through the application of an alternative connecting factor, namely the principle of domicile (*lex domicilii*), which is based on the actual place of residence of the parties in Indonesia. Predominantly, dispute resolution leads to the application of the law of the forum (*lex fori*), whereby Indonesian courts apply the Marriage Law. This decision is reinforced by the doctrine of public policy to protect national interests and ensure the necessary legal certainty.

The consequence of establishing Indonesian law as *lex causae* is that all legal consequences of divorce are governed by the Marriage Law and the Compilation of Islamic Law. Child custody is decided based on the principle of the best interests of the child, while the division of joint property is carried out fairly without discrimination based on the refugee status of the parties. Although these substantive rights are guaranteed *de jure*, this study also identifies potential challenges in *de facto* implementation for refugees due to limitations in legality and access, which require further attention in the execution of decisions.

The most fundamental legal implication is that the citizenship status of children born from these marriages is guaranteed. Based on Law No. 12 of 2006, children automatically obtain Indonesian citizenship through the principle of *ius sanguinis* from their Indonesian citizen parents. Divorce decrees and custody rulings do not affect the legal status of children that has been attached since birth. This finding confirms the protective function of national law in breaking the chain of statelessness across generations and ensuring children's full access to civil and social rights in Indonesia.

REFERENCES

Abbas, N. A. (2025, August 7). *Cinta Tanpa Batas Negara: Menyibak Dinamika Pemikahan Campuran dalam Hukum Indonesia*. MARI News.

Commented [U6]: Ensure that all sources cited in text are included in the reference list, and vice versa.

The role of Indonesian citizen parents becomes the legal anchor that determines the child's citizenship status. The Citizenship Law explicitly gives children the right to follow the citizenship status of their Indonesian citizen mother or father. A divorce decree will not revoke or change the legal status that has been attached to the child since birth. Thus, the stateless status of Rohingya fathers is not passed on to their children, who are automatically protected by Indonesian jurisdiction. This confirms the protective function of national legislation in mixed marriages.

The court's decision on child custody does not affect the child's citizenship status, but reinforces his legal protection. Even though custody was granted to the refugee father, the child remains an Indonesian citizen. In its considerations, the court will ensure that the best interests of the child, including the guarantee of his citizenship rights, are fulfilled. The decision actually serves as a legal instrument to confirm the child's legal identity before the state, separating them from the stateless legal status of their parents and ensuring their future within the framework of Indonesian law.

In this context, the issue of limited dual citizenship does not arise because the father is stateless. This simplifies the legal and administrative process, in which the child is solely recognized as an Indonesian citizen. The main focus after divorce is on complete civil registration. The birth certificate issued by the competent authority in Indonesia is authentic and definitive proof of the child's citizenship status. The divorce decree can be an important supporting document to strengthen the registration process and guarantee the child's civil rights.

The long-term implications of confirming Indonesian citizenship status for children are significant. These children will have full access to fundamental rights such as education, health services, property ownership, and political rights in the future, which their refugee parents cannot access. This result demonstrates the success of national law in breaking the chain of inheritance of statelessness across generations. The state, through its legal apparatus, effectively provides certainty and protection for children born to vulnerable mixed marriages.

The Role of Legal Qualifications and Public Order in the Settlement of Divorce Disputes in Indonesia

Legal qualification by judges (*lex fori*) is a crucial first step. Indonesian courts will interpret and categorize legal facts, such as marital status, divorce, and refugee status, based on their own legal system. This qualification process inherently directs dispute resolution within the national legal framework. By categorizing divorce as a personal status matter subject to its jurisdiction, the court lays the foundation for the application of the Marriage Law as the most relevant law for resolving the dispute.

The stateless status of Rohingya refugees is qualified by the court not as a legal vacuum, but as the status of foreigners residing in Indonesia. This qualification is important to avoid legal stagnation and connect these individuals to the Indonesian legal system through the point of domicile. Thus, despite not having citizenship, refugees are recognized as having civil rights and obligations that can be resolved before Indonesian courts, which further strengthens the application of the *lex domicilii* principle as a legal basis.

The doctrine of public policy serves as a fundamental defense mechanism for the Indonesian legal system. Judges will use this doctrine to reject the application of any foreign law—although in this case there is none—that conflicts with the basic principles of national marriage law.

procedures, child custody, and the division of joint property. Ultimately, this approach effectively closes the legal loophole caused by statelessness.

Legal Implications of Divorce on Child Custody and Division of Joint Property

With Indonesian law being established as *lex causae*, the legal implications of divorce on child custody and division of joint property will be fully regulated by the Marriage Law and the Compilation of Islamic Law. This decision provides clear legal certainty for both parties. The stateless status of Rohingya refugees does not negate their rights and obligations arising from marriage. The court will treat this dispute as a domestic divorce dispute, applying national legal norms to reach a fair decision.

In determining child custody, the judge will be guided by the principle of the best interests of the child. This principle requires the court to evaluate the parental capacity of each party without discrimination based on citizenship status. For Muslim couples, the Compilation of Islamic Law gives preference for custody of minors (who are not yet *mumayyiz*) to the mother. The Rohingya father's refugee status does not automatically disqualify him, but the court will consider the stability and future security of the child within Indonesian jurisdiction as crucial factors.

Regarding the division of joint property, Article 35 of the Marriage Law applies, which states that property acquired during marriage becomes joint property. As a result of divorce, the property must be divided equally between the two parties. The stateless status of the Rohingya does not reduce their right to half of the assets accumulated through joint efforts during the marriage. The key factor is proof of the acquisition of property during the marriage, not the legal status or citizenship of either spouse.

Although national law guarantees rights, its implementation presents significant challenges for Rohingya refugees. In custody disputes, limited mobility and the absence of valid identity documents can make it difficult to enforce court decisions. Similarly, in the division of property, refugees may find it difficult to prove their contribution if they work in the informal sector. The process of asset liquidation and transfer of ownership also becomes more complex due to their vulnerable legal status, creating a potential gap between *de jure* rights and *de facto* fulfillment.

The principle of public order once again plays a central role in protecting Indonesian citizens and children. Judges will ensure that decisions regarding custody and joint property do not harm their fundamental interests. For example, the court may impose certain conditions on refugee parents who are granted custody to ensure that the welfare and legal status of the child are not threatened. This priority in national law affirms the protective function of the state towards its citizens in disputes involving complex and sensitive foreign elements.

Legal Status and Citizenship of Children Born from Mixed Marriages After Divorce

The legal status and citizenship of children are the most crucial legal consequences of divorce. An analysis of Law No. 12 of 2006 on Citizenship shows that Indonesian law explicitly adheres to the principle of *ius sanguinis* (Adi & Aris, 2025). Based on this principle, children born to an Indonesian mother, even if their father is stateless, legally obtain Indonesian citizenship. This provision is designed preventively to avoid statelessness (*apatride*) in children, providing legal protection from birth.

Commented [U5]: Ensure that each subsection of results directly correlates with the legal issue form in the introduction.

The argument for the application of *lex fori* is reinforced by the doctrine of public policy. The results of the study show that the institutions of marriage and divorce are considered to concern the fundamental principles of Indonesian society. Therefore, judges have strong justification to reject the possibility of applying other laws (which in this case do not exist) and prioritize national law. This is done in order to protect the interests of Indonesian citizens involved and to ensure that the resulting decisions are in line with the fundamental values that apply in Indonesia.

In conclusion, the problem of determining the law applicable to Rohingya refugees due to their stateless status can be resolved through a combination of applying the principle of domicile and prioritizing *lex fori* based on the principle of public order. Although theoretically there is a vacuum due to the non-application of *lex patriae*, judicial practice will tend to apply Indonesian law in full. This finding confirms that the Indonesian legal system has internal mechanisms to guarantee access to justice and provide legal certainty for the parties involved, despite the complexity of unique foreign elements.

The Application of the Domicile Principle and Public Order as Alternative Points of Connection in Divorce

In the absence of *lex patriae*, the domicile principle (*lex domicilii*) emerges as the most logical and relevant alternative point of connection. Analysis shows that because the marriage was conducted and the couple lived together in Indonesia, the factual domicile of both parties is within the jurisdiction of Indonesian law. Although refugee status is often considered temporary, their *de facto* residence in a region provides a strong basis for the court to apply the law of that place of residence. Thus, Indonesian law is the law most closely related to this divorce dispute.

The application of the domicile principle inherently reinforces the use of the judge's law (*lex fori*). When a divorce suit is filed in an Indonesian court, which is the domicile of the parties, the judge will pragmatically tend to apply his own law. This choice is not only a matter of convenience, but also a solution to fill the legal vacuum caused by the stateless status of the Rohingya. By applying the Marriage Law and the Compilation of Islamic Law, the court can provide a clear and definite legal framework for resolving disputes without having to prove non-existent foreign laws.

The doctrine of public policy serves as the ultimate justification for judges to prioritize national law. The results of the study confirm that marriage and divorce institutions, along with their legal consequences, are considered to touch on the fundamental pillars of the legal and social systems in Indonesia. Therefore, the application of Indonesian law is a necessity to protect the interests of Indonesian citizens involved and to ensure that court decisions are in line with the values of justice, morality, and propriety embraced by Indonesian society.

Further analysis finds a strong synergy between the principle of domicile and the doctrine of public policy. The principle of domicile provides an objective basis that factually links disputes to Indonesian jurisdiction. Meanwhile, public policy provides an imperative subjective basis, which requires judges to uphold the basic principles of national law. The combination of these two instruments of International Civil Law creates a solid legal argument, which allows judges to legally apply Indonesian law in full in the settlement of this divorce dispute.

The practical consequence of applying the principles of domicile and public order is the creation of much-needed legal certainty. With Indonesian law established as *lex causae*, the entire process and legal consequences of divorce will be governed by the provisions of Law No. 1 of 1974 and the Compilation of Islamic Law. This provides clarity for both parties regarding divorce

factors. The main focus is on the principle of domicile (*lex domicilii*), analyzing how the factual domicile of refugees in Indonesia can be used as a legal basis. In addition, the dominant potential of the application of the law of the forum (*lex fori*) will also be analyzed, whereby Indonesian courts use their own laws based on considerations of public policy and to provide legal certainty.

The second focus of analysis is on the substantive legal consequences of divorce, which include child custody and the division of joint property. This study will examine how the provisions of the Marriage Law and the Compilation of Islamic Law are applied in these disputes. The analysis will consider the principle of the best interests of the child (Syuja', 2025) in determining custody rights, as well as how the legal status of refugees affects their rights to joint property acquired during marriage. This study will also highlight how the principle of public policy justifies judges prioritizing national law to protect the rights of Indonesian citizens.

The third analysis specifically highlights the implications of divorce on the legal status and citizenship of children born from these mixed marriages. The focus is on the interpretation of the provisions of Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia. The study will critically examine how Indonesian law prevents statelessness in children. This analysis will evaluate the legal mechanisms that ensure children obtain Indonesian citizenship from their Indonesian mother or father, as well as how court decisions on divorce and custody can reinforce the legal status of children in the eyes of national law.

Results and Discussion

The Problem of Determining the Applicable Law (Choice of Law) for Stateless Rohingya Refugees

The analysis shows that the main problem in determining the applicable law (choice of law) for this divorce stems from the stateless status of the Rohingya refugees. The principle of nationality (*lex patriae*), which is the primary connecting factor in Indonesian International Civil Law for personal status, cannot be automatically applied. The absence of a country of origin that recognizes the legal status of Rohingya refugees creates a significant legal vacuum, forcing judges to seek alternative connecting factors to resolve divorce disputes fairly and with legal certainty.

The failure to apply the principle of nationality shifts the focus of analysis to alternative connecting factors, particularly the principle of domicile (*lex domicilii*). Given that the marriage took place and the parties reside in Indonesia, their actual domicile is within the jurisdiction of Indonesian law. This finding indicates that domicile law, in this case Indonesian law, can be used as the legal basis for regulating divorce. However, the domicile status of refugees, which is often considered temporary, poses a challenge, even though their *de facto* permanent residence strengthens the argument for the application of Indonesian law.

Furthermore, the study found that the application of the law of the forum (*lex fori*) was the most dominant and pragmatic solution in this case. Indonesian courts, as the forum where divorce suits are filed, have a strong tendency to apply their own laws. This choice is based on considerations of judicial efficiency and legal certainty. Judges do not need to prove the content of foreign laws that do not exist, so the application of the Marriage Law and the Compilation of Islamic Law is the most logical solution to fill the existing legal vacuum.

Commented [U4]: Ensure that each subsection of results directly correlates with the legal issue form in the introduction.

The collection of secondary legal materials was also carried out using a literature study method that focused on searching for legal literature. The technique used was to identify and review textbooks, scientific journals, dissertations, and previous research results discussing international civil law, marriage law, and refugee status. The search was conducted through national and international scientific journal portals such as SINTA, Google Scholar, and HeinOnline using specific keywords. The aim was to obtain doctrines, theories, and views of legal experts that could provide in-depth explanations and a critical analytical framework for the primary legal materials that had been collected.

To supplement primary and secondary legal materials, tertiary legal materials were collected by examining legal dictionaries, encyclopedias, and bibliographies. This technique aimed to obtain a definitive understanding of complex legal terminology and to find clues about other relevant sources. In addition, news searches were conducted through credible mass media archives to obtain a contextual overview of the issue of mixed marriages involving Rohingya refugees in Indonesia. Although supplementary in nature, this contextual data is important for sharpening the analysis of the application of legal norms in specific social realities, without changing the normative nature of the research.

Legal Material Analysis Method

The analysis of legal materials in this study was conducted qualitatively using the method of legal interpretation. Primary legal materials, especially legislation, were analyzed using grammatical interpretation to understand the literal meaning of each article. Furthermore, systematic interpretation was used to connect one regulation with another within a coherent legal system. Finally, teleological interpretation is applied to explore the objectives and philosophy behind the formation of these legal norms, especially in the context of protecting Indonesian citizens and handling refugees. This interpretative approach is crucial to fill the legal vacuum that arises due to the statelessness of Rohingya refugees.

The next method of analysis is deductive legal reasoning based on the framework of International Civil Law (ICL) theory. The major premise in this analysis is the principles and general theories in ICL, such as the principle of domicile, the theory of qualification, and public order. The minor premise is the concrete case of mixed marriages and divorces between Indonesian citizens and stateless Rohingya refugees. Through a process of deduction, this study will draw logical conclusions about which law should apply (*lex causae*) and how the dispute should be resolved. This method allows for the construction of a systematic legal argument to address the issue of jurisdictional conflict.

The final stage of analysis is to synthesize and construct the law. After all legal materials have been interpreted and analyzed deductively, researchers will synthesize various findings from relevant legislation, doctrines, and legal theories. This process aims to build a complete and comprehensive legal argument. Through legal construction, this study will formulate prescriptive answers to the legal consequences of divorce, particularly regarding the determination of child custody, division of joint property, and the legal status of children born from the marriage, taking into account the principles of justice and legal certainty for all parties.

Focus on Legal Issues Analysis

The first analysis focuses on the issue of determining the applicable law (choice of law) to regulate divorce. Given that the principle of nationality (*lex patriae*) cannot be applied due to the stateless status of the Rohingya, this study will examine in depth the application of alternative connecting

concepts in International Civil Law, such as the principles of domicile, qualification, and public order, especially in the context of stateless refugee status. The case approach is also used illustratively to analyze how legal norms will be applied by judges in dealing with divorce disputes that contain complex foreign elements such as this.

The nature of this research is descriptive-analytical. Descriptively, this research aims to systematically and accurately describe the legal status of Rohingya refugees, the legal provisions governing mixed marriages in Indonesia, and the relevant principles of International Civil Law. This description forms the basis for the next stage. Analytically, this study will critically examine and analyze the legal issues that arise, particularly regarding the choice of law applicable to stateless individuals. The analysis focuses on how the theory of private international law can provide solutions to the legal implications of divorce in relation to child custody and joint property.

Sources of Legal Materials

The primary legal materials used in this study include binding legislation and regulations that have legal force. These include Law No. 1 of 1974 on Marriage (Manaroinsong et al., 2025) as amended by Law No. 16 of 2019, the Compilation of Islamic Law (KHI) for Muslim couples, and Law No. 12 of 2006 on Citizenship (Harisha et al., 2025). In addition, Presidential Regulation No. 125 of 2016 concerning the Handling of Refugees from Abroad is also a key reference. International conventions such as the 1951 Convention relating to the Status of Refugees (Rajagukguk & Allagan, 2025) and the 1954 Convention relating to the Status of Stateless Persons are analyzed as sources of international law.

Secondary legal materials serve to provide in-depth explanations and analyses of primary legal materials. These sources consist of various relevant legal literature, such as textbooks on International Civil Law, Marriage Law, and Refugee Law. Scientific legal journals, both national and international, which contain articles related to mixed marriages, stateless status, and cross-jurisdictional dispute resolution are also important sources. The doctrines or opinions of leading legal scholars published in various scientific works are used to strengthen the theoretical framework and analysis of legal issues examined in this study.

To supplement and support primary and secondary legal materials, this study also utilizes tertiary legal materials. These materials serve as guidelines and supplements, including legal dictionaries, legal encyclopedias, and legal article indexes that assist in searching for and understanding technical terminology. In addition, sources from online legal databases and library catalogs are also used to identify relevant literature. News from credible mass media is also used to a limited extent to obtain a contextual picture of the existence and social problems of Rohingya refugees in Indonesia related to the issue of marriage.

Techniques for Collecting Legal Materials

The technique of collecting primary legal materials in this study was carried out through document study or library research methods. This process included inventorying, identifying, and classifying relevant laws and regulations. The search was conducted systematically through official legal databases such as the Legal Documentation and Information Network (JDIH) and the national legislation portal to obtain authentic texts. The regulations collected included laws, presidential regulations, and international conventions. All primary legal materials obtained were then systematized based on their hierarchy and relevance to the legal issues under study to ensure the completeness of the normative data as the basis for the main analysis.

involving foreign elements. Mixed marriages between Indonesian citizens and Rohingya refugees inherently contain foreign elements, namely differences in citizenship status and legal jurisdiction. Therefore, the theory of ICL is relevant for analyzing and resolving legal issues arising from divorce in this context.

One of the determining points in HPI is the principle of nationality (*lex patriae*), which states that a person's personal status is determined by the law of their country of origin. However, the application of this principle becomes problematic in the case of Rohingya refugees who are stateless. The absence of a country of origin that recognizes them creates a legal vacuum. As a result, HPI theory must seek alternative points of reference such as the principle of domicile (*lex domicilii*) or the law of the place where the marriage was celebrated (*lex loci celebrationis*) to determine the law applicable to their divorce.

Furthermore, the qualification theory in HPI is used to interpret and categorize legal facts into a specific legal system. In this case, Indonesian courts must qualify the status of the marriage itself, the legal status of refugees, and the rights and obligations arising from divorce, such as child custody and division of joint property. Whether the qualification is based on the judge's law (*lex fori*) or on the legal system that is presumed to apply (*lex causae*) will greatly affect the legal consequences for both parties.

The theory of public policy also plays a crucial role. This theory gives judges the authority to deviate from or reject the application of foreign law if it conflicts with the fundamental principles of the national legal system. In the context of divorce, even if there are foreign elements involved, Indonesian judges will most likely prioritize the application of Indonesian law, particularly the Marriage Law and the Compilation of Islamic Law, in order to protect the interests of Indonesian citizens and ensure legal certainty in accordance with the fundamental values that apply in Indonesia.

Finally, this study will refer to the theory of choice of law, which allows parties in certain circumstances to choose the law that will govern their legal relationship. However, in the context of marriage and divorce, this autonomy is very limited. The analysis will focus on how Indonesian courts, in the absence of a valid choice of law by the parties and the complexity of refugee status, will ultimately determine the most relevant and fair law to resolve disputes over divorce, division of assets, and the legal status of children.

Research Methodology

Type of Research and Approach

This research is categorized as normative legal research or doctrinal legal research (Malikah & Astuti, 2025). This type of research was chosen because the main focus is to analyze and examine positive legal norms, legal principles, and legal doctrines relevant to divorce issues in mixed marriages between Indonesian citizens and Rohingya refugees. The research does not focus on collecting empirical data in the field, but rather on an in-depth literature study of primary and secondary legal materials. The aim is to find answers to legal loopholes and conflicts of norms arising from the stateless status of Rohingya refugees.

To address the legal issues raised, this study uses several approaches simultaneously. The statute approach is used to examine relevant regulations, such as the Marriage Law and the Compilation of Islamic Law. Furthermore, the conceptual approach is applied to understand key

(Rumapea et al., 2025)

The phenomenon of mixed marriages between Indonesian citizens and foreign nationals is increasing in line with high global mobility, including that involving refugees (Abbas, 2025). Mixed marriages between Indonesian citizens (WNI) and foreign nationals (WNA) result in two interrelated legal systems, and international civil law issues arise as a result of differences in nationality between the couple to be married. (Kirana et al., 2024)

Law No. 1 of 1974 on Marriage stipulates that a mixed marriage can only be considered valid if each party to the marriage fulfills the requirements specified by the laws of their respective countries. In this case, each prospective bride and groom must comply with the provisions of their own country's laws regarding eligibility and marriage requirements. In addition, if the mixed marriage is conducted within the jurisdiction of the Republic of Indonesia, its implementation must comply with the laws applicable in Indonesia. This is to ensure legal certainty, protection of the rights of the parties, and alignment with the principles of national law applicable in the Indonesian legal system. (Rumapea et al., 2025)

Specific cases of marriage between Indonesian citizens and Rohingya refugees present unique issues of international civil law, especially in the event of divorce. If divorce occurs in a mixed marriage, the legal issues that arise can be more complicated than in a divorce in a normal marriage (Srikandi et al., 2025). Divorce is when a marriage ends and the couple no longer lives together in a household. International civil law protects the rights of parties in divorce in mixed marriages. This includes the right to alimony, child custody, the right to divide joint property, property rights, and other rights related to divorce. In addition, international civil law encourages mediation and peaceful dispute resolution in mixed marriage divorces. If both parties want to reach a mutually beneficial agreement before formal legal proceedings, mediation may be a good option, and if the parties want legal certainty, arbitration or court proceedings may be the right choice. (Kirana et al., 2024)

The fundamental problem arises from the stateless status of the Rohingya, which directly invalidates the application of the principle of nationality (*lex patriae*) as the primary point of reference in determining personal status. This condition creates a legal vacuum regarding which law should be applied to regulate divorce and its legal consequences. This legal vacuum requires an in-depth analysis to find an alternative connecting factor that can provide legal certainty for the parties. Therefore, this study aims to analyze how instruments in the HPI, particularly the principle of domicile (*lex domicilii*), can be applied (Sugeng, 2021) and the doctrine of public policy (Wahyuni, 2014), can be used by Indonesian judges to resolve these divorce disputes. In the absence of the law of the refugee's country of origin, the court is faced with the choice of applying the law of the parties' place of residence or the law of the judge (*lex fori*), which in this context is Indonesian law.

Specifically, this study examines the legal implications of divorce, including the determination of child custody, division of joint property, and the legal status and citizenship of children born from the marriage. This analysis is crucial for formulating a legal construct that can protect the rights of Indonesian citizens and ensure the best interests of the child, especially to prevent the inheritance of statelessness. Through a normative legal approach, this study offers prescriptive answers to the legal complexities faced by the parties in these vulnerable mixed marriage disputes.

The main theoretical framework used in this study is the theory of International Private Law (IPL). This theory is a set of legal rules that serve to determine which law will be applied in a dispute

REVISION

Here is the table with the 5 general components for journal revision instructions by color, please follow the instruction carefully:

No.	General Revision Component	Brief Description	Example of Revision Action
1.	Title	"The title should reflect the research content and provide a comprehensive overview of the research gap, the proposed solution, and the key findings."	A comprehensive journal title is essential because it must function as an immediate summary and a compelling pitch for the research. It should clearly define the research gap (the problem being solved) to establish relevance, highlight the solution or methodology used to address that gap, and strongly hint at the most significant finding or contribution, thereby maximizing reader interest and signaling the paper's importance to the field.
2.	Structure and Organization	Relates to the overall flow, logical structure, consistency of sections (Abstract, Introduction, Methods, Results, Discussion, Conclusion), and adherence to the journal's template/format.	* Ensure abstract length/format is compliant. * Reorganize sub-sections for a more logical narrative flow. * Confirm all main sections are present and complete.
3.	Methods and Data Analysis	Covers the clarity of the research design, justification of methods, procedure details, instrument validity and reliability, and the appropriateness of the data analysis techniques and interpretation.	* Add detail regarding the sample and sampling technique. * Clarify the statistical analysis tools used. * Include a justification for why the specific method was chosen.
4.	Argument Strength and Findings	Focuses on the significance of the findings, the depth of the discussion, the linkage between results and existing theory/literature, and the clarity of the research contribution.	* Strengthen the discussion by linking findings to the latest literature. * Clarify the theoretical or practical implications of the results. * Ensure the conclusion directly addresses the research objectives.
5.	Literature	Concerns the	* Replace some older references with

	Review and References	relevance, currency, and quality of the sources cited. Also ensures all in-text citations match the reference list (and vice versa), and that the reference formatting is correct.	more current ones (last 5–10 years). * Correct the formatting of the reference list according to the journal's citation style (e.g., APA, Harvard). * Ensure no in-text citation is missing from the reference list.
6.	Language and Style	Emphasizes clarity, grammatical accuracy, word choice, spelling, and the proper formatting of tables and figures.	* Conduct thorough proofreading for grammar and spelling corrections. * Revise table and figure captions/titles to be self-explanatory and informative. * Maintain consistency of technical terms used throughout.



**RUMAH JURNAL FAKULTAS HUKUM (RJFHU)
UNIVERSITAS ISLAM SULTAN AGUNG (UNISSULA)**

Jl. Raya Kaligawe Km.4 Semarang 50112 Telp.(024) 6583584 (8 Sal) WA.+6281325424803
E-mail: rumahjurnalfh@unissula.ac.id web : <https://jurnal.unissula.ac.id>

RUMAH JURNAL FH UNISSULA

Rumah Naungan Jurnal Fakultas Hukum Terintegrasi & Profesional

Semarang, February 12, 2026

LETTER OF ACCEPTANCE (LOA)

No. 10/AKTA/II/2026

FROM:

JURNAL AKTA SINTA 2

TO:

Elfirda Ade Putri & Windy Sri Wahyuni

(Universitas Bhayangkara Jakarta Raya & Universitas Medan Area)

CONGRATULATION!

Title/Article:

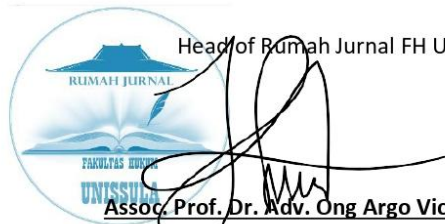
"Legal Consequences of Divorce in Mixed Marriages between Indonesian Citizens and Rohingya Refugees"

Hereby, we as the **JURNAL AKTA "SINTA 2"** management board convey that the document has undergone the OJS process from submission, review, revision and proof reading for Publishing (for March 2026 EDITION) with publication date duration since 1 March until 30 May 2026. Then the editor has agreed by doing the **ACCEPTANCE** and has sent it to the Copy Editing section for the template and galley process. With this letter, the author also agrees to all improvements and changes during the review process according to the rules in this journal.

Therefore, according to our journal management administrative procedures, the author **should give PAYMENT as publication fee** and report it to our journal finance officer at Faculty of Law UNISSULA Semarang.

Send Your Transfer Receipt to: WA. 081325424803/E-mail: akta@unissula.ac.id

Thank you for your cooperation.



Head of Rumah Jurnal FH UNISSULA,

**Assoc. Prof. Dr. Adv. Ong Argo Victoria, ANT III,
AWP, CSFT, S.Sy, S.Hum., BHS., S.Tr. Trans,**

M.H., M.Kn

NIDK : 8802111019

JURNAL AKTA

e-ISSN : 2581-2114 p-ISSN : 2406-9426
published by Master of Notarial Laws
Faculty of Law, Sultan Agung Islamic University, Indonesia

sinta²

Nationally Accredited Journal
Decree NO 164/E/KPT/2021
Dated 27 December 2021

Home > User > Author > Submissions > #50325 > Editing

#50325 Editing

SUMMARY REVIEW EDITING

Submission

Authors Elfirda Ade Putri, Windy Sri Wahyuni

Title Navigating Statelessness: Legal Consequences of Divorce in Mixed Marriages Involving Rohingya Refugees

Section Articles

Editor Nanang Darmadi

Copyediting

COPYEDIT INSTRUCTIONS

Copyeditor None

REVIEW METADATA	REQUEST	UNDERWAY	COMPLETE
1. Initial Copyedit File: None	—	—	—
2. Author Copyedit File: None <input type="button" value="Choose File"/> No file chosen <input type="button" value="Upload"/>	—	—	—
3. Final Copyedit File: None	—	—	—

PEER REVIEWERS
EDITORIAL TEAM
FOCUS AND SCOPE
AUTHOR GUIDELINES
PLAGIARISM POLICY
ONLINE SUBMISSIONS
PURCHASE/SUBSCRIBE
INDEXING
ACREDITATION DECREE
CONTACT US
OPEN ACCESS POLICY

TEMPLATE

turnitin

MY STAT

Legal Consequences of Divorce in Mixed Marriages between Indonesian Citizens and Rohingya Refugees

Elfirda Ade Putri ¹⁾ Windy Sri Wahyuni ²⁾

¹⁾ Ilmu Hukum, Fakultas Hukum, Universitas Bhayangkara Jakarta raya, Indonesia, E-mail: elfirdade.putri@gmail.com.

²⁾ Program Studi Ilmu Hukum, Fakultas Hukum, Universitas Medan Area, Indonesia, E-mail: windy@staff.uma.ac.id

Abstract. *Divorce in mixed marriages between Indonesian citizens and stateless Rohingya refugees raises complex questions within Private International Law, particularly concerning the determination of applicable law in the absence of nationality. The stateless status of Rohingya refugees renders the nationality principle (lex patriae) inapplicable, creating a normative gap in conflict-of-laws analysis. This study examines how Indonesian law addresses this gap and determines the legal consequences of such divorces. Using normative juridical research with statutory, conceptual, and case-based approaches, the study applies interpretative methods and deductive legal reasoning grounded in Private International Law theory. The findings reveal that the absence of nationality is resolved through the application of the domicile principle (lex domicilii), based on the factual residence of the parties in Indonesia. In practice, this approach converges with the application of lex fori, allowing Indonesian courts to apply the Marriage Law and the Compilation of Islamic Law, supported by the doctrine of public policy. Consequently, child custody is determined according to the best interests of the child, joint property is divided fairly, and children born from these marriages automatically acquire Indonesian citizenship under Law No. 12 of 2006 through the principle of ius sanguinis. While substantive rights are protected, practical enforcement challenges remain for refugees.*

Keywords: *Private International Law; statelessness; Rohingya refugees; lex domicilii; mixed marriage.*

1. Introduction

The increasing mobility of people across national borders has intensified complex legal interactions between individuals of different citizenship statuses. One of the most pressing contemporary legal challenges concerns mixed marriages involving stateless persons, particularly refugees. Globally, forced displacement has reached unprecedented levels, with millions of individuals lacking effective nationality protection. Statelessness not only deprives individuals of civil and political rights but also creates profound legal uncertainties in cross-border private relationships, especially in matters of marriage and divorce. (Amisena, 2016)

Indonesia represents a unique jurisdiction in this regard. Although it is not a signatory to the 1951 Refugee Convention and its 1967 Protocol, Indonesia consistently receives refugees and has declared its willingness to function as a transit country. As of the end of 2023, the United Nations High Commissioner for Refugees (UNHCR) recorded 12,295 refugees in Indonesia, including 1,752 Rohingya refugees arriving in Aceh and Sumatra since January 2023. This policy reflects Indonesia's humanitarian commitment despite the absence of a comprehensive domestic refugee law framework. However, the limited regulatory structure governing refugees generates legal complexities when refugees enter into private legal relationships with Indonesian citizens. (Rajagukguk & Allagan, 2025)

The Rohingya constitute a Muslim minority historically residing in Myanmar's Rakhine State. Under the 1982 Myanmar Citizenship Law, they are excluded from recognition as one of the 135 official ethnic groups, rendering them effectively stateless. This stateless status deprives them of legal identity and nationality based protection, including access to civil documentation and legal capacity recognition. When Rohingya refugees enter into mixed marriages with Indonesian citizens (Warga Negara Indonesia/WNI), the absence of nationality creates a fundamental challenge for International Private Law (IPL), particularly regarding personal status determination.

Mixed marriages between Indonesian citizens and foreign nationals have increased alongside globalization. Indonesian Marriage Law (Law No. 1 of 1974 as amended by Law No. 16 of 2019) stipulates that a mixed marriage is valid only if each party fulfills the legal requirements under their respective national laws. This reflects the traditional IPL connecting factor of **lex patriae** (law of nationality) in determining personal status. However, in the case of Rohingya refugees, the application of *lex patriae* becomes legally impossible due to the absence of recognized nationality. Consequently, a legal vacuum arises in determining which law governs divorce and its consequences.

The legal consequences of divorce in such mixed marriages are particularly complex. Divorce implicates issues of child custody, alimony, division of joint property, and the legal status and citizenship of children. In ordinary mixed marriages, these issues are resolved through established connecting factors such as nationality, domicile, or habitual residence. Yet, the stateless status of Rohingya refugees disrupts the traditional framework, forcing courts to seek alternative legal bases. This situation raises a fundamental doctrinal question: in the absence of nationality, which connecting factor should prevail in determining the applicable law?

Existing scholarship on mixed marriages in Indonesia primarily focuses on nationality conflicts between recognized sovereign states. Research discussing refugee marriages tends to emphasize humanitarian protection rather than private law consequences. Meanwhile, studies on statelessness generally concentrate on public international law and human rights dimensions. There remains a significant doctrinal gap concerning how Indonesian courts should resolve divorce disputes involving stateless refugees within the framework of International Private Law. This study addresses that gap by examining the legal consequences of divorce in mixed marriages between Indonesian citizens and Rohingya refugees.

The primary theoretical framework employed in this study is International Private Law (IPL). IPL provides mechanisms for determining the applicable law (choice of law), jurisdiction, and recognition of foreign elements in private disputes. Traditionally, the principle of nationality (*lex patriae*) governs personal status in Indonesian private international law practice. However, the absence of nationality in the Rohingya case necessitates consideration of alternative connecting factors, particularly **lex domicilii** (law of domicile), **lex loci celebrationis** (law of the place of marriage celebration), and **lex fori** (law of the forum). (Alsafy et al., 2025)

In addition, this study applies the **qualification theory** in IPL to analyze how Indonesian courts categorize refugee status, marital validity, and divorce consequences. Whether courts rely on *lex fori* or *lex causae* in qualifying legal relationships significantly affects outcomes regarding property division and custody rights. Furthermore, the **public policy doctrine (ordre public)** plays a decisive role, allowing judges to reject the application of foreign law that contradicts fundamental principles of Indonesian law. In the context of divorce involving Indonesian citizens, courts may prioritize national law particularly the Marriage Law and the Compilation of Islamic Law to safeguard legal certainty and protect vulnerable parties. (Kamilah, 2026)

This research also considers the limits of party autonomy under the **choice of law theory**, acknowledging that autonomy in marriage and divorce matters is generally restricted. In the absence of a valid choice of law and in light of statelessness, judicial determination becomes central in identifying the most appropriate and equitable applicable law. Through a normative legal research method employing statutory, conceptual, and doctrinal approaches, this study offers a prescriptive legal framework to resolve the legal vacuum created by statelessness. The contribution of this research lies in developing a coherent doctrinal construct within Indonesian International Private Law to address divorce disputes involving stateless refugees. By doing so, the study not only strengthens doctrinal clarity in Indonesian IPL but also provides practical guidance for judges in safeguarding the rights of Indonesian citizens and ensuring the best interests of children, particularly in preventing the intergenerational transmission of statelessness.

2. Research Methods

This study employs a normative legal research design grounded in doctrinal analysis, as the core issue concerns the determination of applicable law and the legal consequences of divorce in mixed marriages involving stateless Rohingya refugees. Normative research is appropriate because the problem examined relates to legal norms, principles, and doctrines within the framework of International Private Law (IPL), rather than empirical or sociological measurement. The research focuses on resolving the legal vacuum that arises due to the inapplicability of the principle of nationality (*lex patriae*) in cases involving stateless persons.

The study applies a statutory and conceptual approach. The statutory approach examines relevant Indonesian legislation, including Law No. 1 of 1974 on Marriage as amended by Law No. 16 of 2019, the Compilation of Islamic Law, Law No. 12 of 2006 on Citizenship, and regulatory instruments concerning refugees. These legal instruments are analyzed to identify the normative framework governing mixed marriages and divorce within the Indonesian legal system. The conceptual approach relies on doctrines and general principles of International Private Law, such as *lex patriae*, *lex domicilii*, *lex loci celebrationis*, *lex fori*, qualification theory, public policy (*ordre public*), and choice of law theory. This approach enables the clarification of connecting factors applicable in cases involving foreign elements, particularly where nationality cannot serve as the primary reference due to statelessness.

The analysis of legal materials is conducted qualitatively through methods of legal interpretation. Primary legal materials, especially statutory provisions, are examined using

grammatical interpretation to understand the literal meaning of relevant articles governing mixed marriages and divorce. Systematic interpretation is then applied to ensure coherence between related legal norms within the broader Indonesian legal system, particularly between marriage law, citizenship law, and principles of International Private Law. Teleological interpretation is further employed to explore the objectives and philosophical foundations underlying these legal norms, especially in safeguarding the rights of Indonesian citizens and addressing the vulnerable legal status of refugees. This interpretative framework is crucial in overcoming the normative gap created by the absence of nationality in the case of Rohingya refugees.

In addition to interpretative analysis, this study applies deductive legal reasoning within the theoretical framework of International Private Law. The major premise consists of general principles and doctrines of IPL, including the principle of domicile (*lex domicilii*), qualification theory, and the public policy doctrine. The minor premise concerns the concrete legal situation of divorce in mixed marriages between Indonesian citizens and stateless Rohingya refugees. Through a structured deductive process, the study formulates conclusions regarding the determination of the applicable law (*lex causae*), jurisdictional competence, and the appropriate resolution of disputes. This method enables the construction of a systematic legal argument capable of addressing conflicts of law arising from statelessness.

The final stage of analysis involves legal synthesis and construction. After interpreting statutory provisions and applying deductive reasoning, the research synthesizes relevant legislation, doctrinal insights, and theoretical frameworks to formulate a coherent prescriptive legal model. This construction aims to provide normative solutions to the legal consequences of divorce, particularly concerning the determination of child custody based on the best interests of the child, the division of joint marital property, and the legal status and citizenship of children born from the marriage. By integrating principles of justice, legal certainty, and protection of vulnerable parties, this study offers a doctrinal framework intended to guide judicial reasoning in resolving divorce disputes involving stateless refugees within the Indonesian legal system.

3. Results and Discussion

3.1. Resolution of the Choice-of-Law Problem in Divorce Involving Stateless Rohingya Refugees

The central juridical issue in divorce disputes involving mixed marriages between Indonesian citizens and Rohingya refugees lies in the determination of the applicable law (*lex causae*). The complexity of this issue stems directly from the stateless status of the Rohingya. In classical Indonesian Private International Law (PIL), personal status—including marriage and divorce—is traditionally governed by the principle of nationality (*lex patriae*). This principle assumes the existence of a recognized sovereign state capable of providing a personal legal system attached to the individual. However, in the case of Rohingya refugees, such an assumption collapses. Their exclusion under the 1982 Myanmar Citizenship Law results in the absence of recognized nationality, rendering *lex patriae* inapplicable. (Arief Wicaksana et al., 2024)

This inapplicability produces what may be described as a normative dislocation within Indonesian PIL. The traditional connecting factor fails, and with it, the standard methodological hierarchy of conflict-of-laws analysis becomes disrupted. The legal vacuum created is not merely theoretical; it carries immediate procedural consequences. Without a nationality-based legal system to refer to, Indonesian judges are confronted with the challenge of identifying an alternative connecting factor capable of ensuring legal certainty, fairness, and procedural efficiency.

The doctrinal shift from *lex patriae* to alternative connecting factors is not unprecedented in comparative PIL scholarship. Many jurisdictions recognize domicile or habitual residence as equally legitimate connecting factors, particularly in cases involving stateless persons or refugees. In this context, the principle of domicile (*lex domicilii*) emerges as the most logical substitute. Since the marriage was celebrated in Indonesia and the parties reside within Indonesian territory, the factual and legal nexus between the dispute and Indonesian jurisdiction is substantial. (Shoimah & Uyun, 2025)

Domicile in PIL functions as a territorial anchor. It links individuals to a legal order based on their center of life and social integration rather than formal nationality. In cases involving refugees, domicile assumes heightened importance because nationality is structurally absent. Although refugee residence in Indonesia may formally be characterized as temporary, the *de facto* permanence of residence often extending over several years creates sufficient factual stability to justify application of Indonesian law.

Nevertheless, the refugee status presents doctrinal nuance. Refugees are not immigrants with permanent residency permits; their legal stay is transitional pending third-country resettlement. Critics may argue that applying *lex domicilii* risks overextending domestic jurisdiction to individuals whose legal presence is provisional. However, PIL does not require permanent residence as an absolute condition for domicile; rather, it requires a factual center of life. Where the marital home, children's upbringing, and economic activities occur within Indonesia, the territorial link is sufficiently strong to legitimize Indonesian law as *lex causae*. (Salsabila Putri Nadira et al., 2025)

In practical judicial reasoning, however, the principle most frequently applied is *lex fori*—the law of the forum. Indonesian courts adjudicating divorce petitions naturally rely on national legislation, namely Law No. 1 of 1974 on Marriage and, where applicable, the Compilation of Islamic Law (KHI). The predominance of *lex fori* is grounded in pragmatic considerations: efficiency, accessibility of legal norms, and enforceability of judgments. Judges cannot be expected to apply a non-existent foreign law. Thus, the shift from *lex patriae* to *lex fori* is not merely pragmatic but structurally necessary.

The legitimacy of applying *lex fori* is further reinforced by the doctrine of public policy (*ordre public*). Marriage and divorce are institutions deeply embedded in national moral, social, and religious values. Indonesian law regards family law as part of public order, meaning that deviation from its fundamental principles is unacceptable. Even if a hypothetical foreign law were identifiable, it would likely be subordinated to Indonesian public policy standards. In the present context, where no applicable foreign law exists, the invocation of public policy strengthens the justification for applying domestic law comprehensively. (Alvandi et al., 2024)

The combination of *lex domicilii* and *lex fori* effectively fills the normative vacuum. Domicile provides an objective territorial connection, while *lex fori* ensures procedural coherence and enforceability. Public policy, in turn, offers normative justification. Through this tripartite reasoning, Indonesian courts maintain doctrinal consistency while adapting to the exceptional circumstance of statelessness.

This finding demonstrates that Indonesian PIL contains internal adaptive mechanisms. The inability to apply *lex patriae* does not paralyze the legal system. Instead, through doctrinal flexibility and hierarchical reasoning, the system redirects analysis toward domicile and forum law. Consequently, Indonesian law becomes both *lex fori* and *lex causae*, ensuring legal certainty without undermining theoretical integrity.

3.2. Legal Consequences of Divorce under Indonesian Law: Child Custody and Division of Joint Property.

Once Indonesian law is established as *lex causae*, the legal consequences of divorce must be analyzed under the framework of the Marriage Law and the Compilation of Islamic Law. The stateless status of the Rohingya spouse does not negate the validity of the marriage nor the rights and obligations arising therefrom. Indonesian courts will treat the dispute as substantively domestic, applying national legal norms to determine child custody and property division. (Antoni, 2025)

The determination of child custody is governed by the paramount principle of the best interests of the child. This principle is embedded in Indonesian law and reinforced by international child protection norms. In Muslim marriages, the Compilation of Islamic Law provides that custody of children who are not yet *mumayyiz* (under twelve years old) generally rests with the mother. However, this presumption is rebuttable and subject to judicial evaluation of parental capability.

The Rohingya father's stateless status does not automatically disqualify him from custody. Indonesian law does not condition parental rights on nationality. However, practical considerations inevitably influence judicial discretion. Refugee status may limit mobility, employment stability, and long-term residence certainty. Judges must assess whether such limitations affect the child's welfare. (Daming & Ernawati, 2024)

A critical issue arises where custody is granted to the refugee parent. Enforcement mechanisms may encounter obstacles due to limited documentation or residence instability. Indonesian courts must therefore ensure that custody orders incorporate safeguards—such as residence conditions or periodic supervision—to guarantee child welfare. The emphasis remains on stability, continuity of education, and access to health services.

Importantly, judicial reasoning must avoid discrimination. The stateless condition should not be equated with parental incapacity. Instead, courts must evaluate concrete caregiving ability, emotional bonds, and socio-economic capacity. In this regard, Indonesian law demonstrates a rights-based orientation that protects the child irrespective of parental nationality. Under Article 35 of the Marriage Law, property acquired during marriage constitutes joint property (*harta bersama*). Upon divorce, such property must be divided equally unless otherwise agreed. The nationality or statelessness of either spouse is legally irrelevant. The determining factor is the temporal acquisition of assets during the marriage. (Firdaus Kurniawan et al., 2024)

However, practical enforcement challenges arise. Refugees frequently work in informal sectors, making proof of financial contribution difficult. Courts must rely on equitable assessment rather than rigid evidentiary formalism. The doctrine of fairness (*keadilan*) becomes particularly significant in evaluating indirect contributions, such as domestic labor or caregiving. Asset liquidation may also pose administrative difficulties. Transfer of property titles requires valid identification documents. Stateless refugees often lack formal civil documentation, complicating ownership registration. Thus, while *de jure* rights are guaranteed, *de facto* realization may require administrative accommodation by relevant authorities.

Public policy considerations again operate to protect Indonesian citizens and children. Courts must ensure that property division does not undermine the economic security of dependents. In cases where refugee mobility is uncertain, judges may structure property settlements to prioritize stable asset allocation within Indonesian jurisdiction. Overall, Indonesian law provides a coherent framework for resolving custody and property disputes. The challenge lies not in doctrinal insufficiency but in practical enforcement. Nevertheless, the legal system's normative commitment to equality before the law ensures that statelessness does not extinguish marital rights.

3.3 Citizenship Status of Children and the Prevention of Intergenerational Statelessness

The most consequential issue concerns the citizenship status of children born from mixed marriages between Indonesian citizens and Rohingya refugees. Law No. 12 of 2006 on Citizenship adopts the principle of *ius sanguinis*. Children born to at least one Indonesian parent automatically acquire Indonesian citizenship. This provision serves a preventive function against statelessness.(Fachrina et al., 2024)

Where the mother is an Indonesian citizen, the child unequivocally obtains Indonesian nationality at birth, regardless of the father's stateless status. Even where the father is the Indonesian citizen, the same principle applies. Divorce does not alter citizenship acquired by operation of law. Thus, children are legally insulated from inheriting the stateless condition of their Rohingya parent.

Custody decisions do not affect nationality status. Even if custody is awarded to the refugee parent, the child remains under Indonesian jurisdiction. Courts must ensure that the child's civil registration is complete and that birth certificates accurately reflect citizenship status. Administrative coordination is crucial to prevent documentation gaps.

The absence of dual nationality simplifies the legal position. Since the Rohingya parent lacks nationality, no competing citizenship claim exists. The child is exclusively Indonesian. This clarity strengthens legal certainty and administrative efficiency. Long-term implications are significant. Indonesian citizenship grants access to education, healthcare, employment, and political participation. Through the Citizenship Law, the state effectively interrupts intergenerational statelessness. The protective orientation of national legislation demonstrates a commitment to human rights principles within the domestic framework.(Amisena, 2016)

The interaction between qualification (*lex fori*), domicile (*lex domicilii*), public policy (*ordre public*), and citizenship law reveals a coherent doctrinal architecture within Indonesian Private International Law. Although statelessness initially appears to create a legal vacuum, the system contains adaptive mechanisms capable of resolving conflict-of-laws dilemmas without sacrificing legal certainty or justice.

Through the combined application of domicile and forum law, Indonesian courts transform procedural jurisdiction into substantive applicability. Public policy legitimizes this transformation by grounding it in fundamental societal values. Meanwhile, citizenship law protects children from inheriting vulnerability.(Nirmala Suci Paramesti et al., 2025)

Thus, the Indonesian legal system demonstrates resilience and normative flexibility in addressing complex divorce disputes involving stateless Rohingya refugees. Rather than exposing systemic weakness, these cases highlight the adaptive capacity of national Private International Law to safeguard justice in situations marked by humanitarian complexity and jurisdictional uncertainty.

4. Conclusion

Divorce in mixed marriages between Indonesian citizens and stateless Rohingya refugees reveals the inapplicability of the nationality principle (*lex patriae*) in Private International Law due to the absence of citizenship, creating a normative gap in determining the applicable law. This study concludes that the gap is resolved through the substitution of nationality with the principle of domicile (*lex domicilii*), based on the factual residence of the parties in Indonesia, which in practice converges with the application of *lex fori*, allowing Indonesian courts to apply

the Marriage Law and the Compilation of Islamic Law. The use of Indonesian law as *lex causae* is further justified by the doctrine of public policy to ensure legal certainty and protect national interests. Consequently, child custody is determined according to the best interests of the child, joint property is divided fairly without discrimination based on refugee status, and children born from such marriages automatically obtain Indonesian citizenship under Law No. 12 of 2006 through the principle of *ius sanguinis*. Although substantive legal protection is guaranteed *de jure*, practical challenges in enforcement remain for refugees, highlighting the need for stronger administrative and institutional support to ensure effective access to justice.

5. References

- Alsafy, M. A. M., Abd-Elhafeez, H. H., Rashwan, A. M., Erasha, A., Ali, S., El-Gendy, S. A. A., Sathierbach, K., Petrovic, S., Schilbach, S., Mayo, D. J., Perriches, T., Rundlet, E. J. E. J. E. J., Jeon, Y. E., Collins, L. N. L. N., Huber, F. M. F. M., Lin, D. D. H. D. H., Paduch, M., Koide, A., Lu, V. T., ... Owlia, P. (2025). Dynamics Of Mixed Marriages: Analysis Of Legal Choices, Divorce Recognition, And Implications For Children's Status In Indonesia. *Frontiers In Veterinary Science*, 13(1), 1–16. <https://doi.org/10.1038/S41598-022-26846->
- Alvandi, A., Putri, N. A., Sadiyah, Y. Z., Yohanes, & Dienullah, M. D. (2024). Akibat Hukum Perceraian Dalam Perkawinan Campuran Antar Warga Negara. *Indonesian Journal Of Law And Justice*, 1(4), 11. <https://doi.org/10.47134/Ijlj.V1i4.2132>
- Amisena, M. E. C. (2016). Perlindungan Hukum Bagi Istri Warga Negara Indonesia (Wni) Terhadap Status Harta Bersama Dalam Perkawinan Campuran Terkait Pembagiannya Karena Perceraian. September, 1–51.
- Antoni, M. R. (2025). The Legal Nature Of Mixed Marriage Divorce Under Indonesian Law: Jurisdictional Authority Of The Religious Court In Transnational Marital Disputes. *Journal Of Court And Justice*, 4(4), 14–25. <https://doi.org/10.56943/Jcj.V4i4.859>
- Arief Wicaksana, A., Astutik, S., & Prawesthi, W. (2024). Legal Protection Of Custody Of Dual Citizenship Children After The Breakdown Of Marriage. *Awang Long Law Review*, 6(2), 411–416.
- Daming, S., & Ernawati, A. (2024). Perlindungan Hukum Bagi Anak Yang Lahir Dari Perkawinan Campuran Menurut Undang-Undang Nomor 16 Tahun 2019. *Yustisi: Jurnal Hukum & Islam*, 11(2), 1–30.
- Fachrina, Q., Setiawan, N. H., Elisabet, T., Agustin, A. A., & Wijaya, M. M. (2024). Implikasi Hukum Perdata Internasional Akibat Perceraian Pada Perkawinan Campuran. *Jurnal Pendidikan Tambusai*, 8(1), 4117–4128. <https://www.jptam.org/index.php/jptam/article/view/13021><https://www.jptam.org/index.php/jptam/article/download/13021/9976>
- Firdaus Kurniawan, J., Rato, D., & Ali, M. (2024). Mimbar Yustitia: Jurnal Hukum Dan Hak Asasi Manusia Mixed Marriage Law On Marital Property Due To Divorce. *Mimbar Yustitia*, 8(2), 111–123. <https://doi.org/10.52166/Mimbar.V7i2>
- Kamilah, A. (2026). Kewenangan Yuridik Perceraian Perkawinan Campuran Di Indonesia – Malaysia Dan Dampaknya Terhadap Anak Dan Harta. 1, 1–14.
- Nirmala Suci Paramesti, Afthina Aulya Fatma, & Rifa Ardian Fahreza. (2025). Harmonisasi Hukum Kewarganegaraan, Perkawinan Campuran, Dan Hak Waris: Perspektif Komparatif Hukum Perdata Dan Islam. *Majelis: Jurnal Hukum Indonesia*, 2(4), 53–65. <https://doi.org/10.62383/Majelis.V2i4.1194>
- Rajagukguk, C. R., & Allagan, T. M. P. (2025). Tinjauan Hukum Perdata Internasional Atas Perkawinan Pengungsi Rohingya Di Indonesia. *Veritas Et Justitia*, 11(1), 128–151. <https://doi.org/10.25123/3g6myh92>
- Salsabila Putri Nadira, Djanuardi Djanuardi, & Betty Rubiati. (2025). Analisis Yuridis Perceraian Perkawinan Campuran Akibat Kekerasan Yang Dilakukan Oleh Pihak Istri Ditinjau Dari Peraturan Perundang-Undangan Terkait. *Amandemen: Jurnal Ilmu Pertahanan, Politik Dan Hukum Indonesia*, 2(3), 152–163. <https://doi.org/10.62383/Amandemen.V2i3.1038>

Shoimah, S. N., & Uyun, F. R. (2025). Children Of Marriages Between Indonesian Citizens And Rohingya. *Al-Syakhsiyyah: Journal Of Law And Family Studies*, 7(1), 27–46. <https://doi.org/10.21154/Syakhsiyyah.V7i1.10373>

Navigating Statelessness: Legal Consequences of Divorce in Mixed Marriages Involving Rohingya Refugees

Elfirda Ade Putri¹⁾ & Windy Sri Wahyuni²⁾

¹⁾Faculty of Law, Universitas Bhayangkara Jakarta raya, Indonesia, E-mail: elfirdade.putri@gmail.com

²⁾Faculty of Law, Universitas Medan Area, Indonesia, E-mail: windy@staff.uma.ac.id

Abstract. *This study aimed to examine how Indonesian Private International Law (PIL) addresses the legal vacuum arising from the inapplicability of the nationality principle (lex patriae) in divorce proceedings involving mixed marriages between Indonesian citizens and stateless Rohingya refugees, and to analyze the legal consequences with respect to child custody, division of joint property, and children's citizenship status. The research method employed was normative juridical research, utilizing statutory, conceptual, and doctrinal approaches combined with grammatical, systematic, and teleological interpretive methods, as well as deductive legal reasoning. The novelty of this research lies in its systematic doctrinal construction of a conflict-of-laws framework applicable to stateless persons within Indonesian PIL, demonstrating how the convergence of lex domicilii, lex fori, and the public policy doctrine collectively resolves the normative gap produced by statelessness. Based on the findings, it can be concluded that the absence of nationality is resolved by substituting lex patriae with the domicile principle (lex domicilii), which in practice converges with lex fori, enabling Indonesian courts to apply the Marriage Law and the Compilation of Islamic Law as lex causae. Child custody is determined by the best interests of the child, joint marital property is divided equitably, and children born from such marriages automatically acquire Indonesian citizenship pursuant to the ius sanguinis principle under Law No. 12 of 2006. Despite substantive legal protection being guaranteed de jure, practical enforcement challenges persist, necessitating stronger administrative and institutional support for effective access to justice.*

Keywords: *International Law; Lex Domicilii; Mixed Marriage; Refugees.*

1. INTRODUCTION

The increasing mobility of people across national borders has intensified complex legal interactions between individuals of different citizenship statuses. One of the most pressing contemporary legal challenges concerns mixed marriages involving stateless persons, particularly refugees. Globally, forced displacement has reached unprecedented levels, with millions of individuals lacking effective nationality protection. Statelessness not only deprives individuals of civil and political rights but also generates profound legal uncertainties in cross-border private relationships, especially in matters of marriage and divorce (Amisena, 2016)

Indonesia represents a unique jurisdiction in this regard. Although it is not a signatory to the 1951 Refugee Convention and its 1967 Protocol, Indonesia consistently receives refugees and has declared its willingness to function as a transit country. As of the end of 2023, the United Nations High Commissioner for Refugees (UNHCR) recorded 12,295 refugees in Indonesia, including 1,752 Rohingya refugees arriving in Aceh and Sumatra since January 2023. This humanitarian commitment, however, operates without a comprehensive domestic refugee law framework, generating legal complexities when refugees enter into private legal relationships with Indonesian citizens (Rajagukguk & Allagan, 2025).

The Rohingya constitute a Muslim minority historically residing in Myanmar's Rakhine State. Under the 1982 Myanmar Citizenship Law, they are excluded from recognition as one of the 135 official ethnic groups, rendering them effectively stateless. This condition deprives them of legal identity and nationality-based protection, including access to civil documentation and legal capacity recognition. When Rohingya refugees enter into mixed marriages with Indonesian citizens (Warga Negara Indonesia/WNI), the absence of nationality creates a fundamental challenge for Private International Law (PIL), particularly concerning personal status determination. (Sari, 2024)

Mixed marriages between Indonesian citizens and foreign nationals have increased alongside globalization. Indonesian Marriage Law (Law No. 1 of 1974 as amended by Law No. 16 of 2019) stipulates that a mixed marriage is valid only if each party fulfills the legal requirements under their respective national laws (Kamilah, 2026), reflecting the traditional PIL connecting factor of *lex patriae* in determining personal status. However, in the case of Rohingya refugees, the application of *lex patriae* becomes legally impossible due to the absence of recognized nationality, giving rise to a legal vacuum in determining which law governs divorce and its consequences (Alsafy et al., 2025)

The legal consequences of divorce in such mixed marriages are particularly complex. Divorce implicates issues of child custody, alimony, division of joint property, and the legal status and citizenship of children. In ordinary mixed marriages, these issues are resolved through established connecting factors such as nationality, domicile, or habitual residence. Yet the stateless status of Rohingya refugees disrupts the traditional framework, compelling courts to seek alternative legal bases. This situation raises a fundamental doctrinal question: in the absence of nationality, which connecting factor should prevail in determining the applicable law?

Existing scholarship on mixed marriages in Indonesia primarily focuses on nationality conflicts between recognized sovereign states. Research discussing refugee marriages tends to emphasize humanitarian protection rather than private law consequences, while studies on statelessness generally concentrate on public international law and human rights dimensions. There remains a significant doctrinal gap concerning how Indonesian courts should resolve divorce disputes involving stateless refugees within the framework of PIL. This gap is further compounded by the limited judicial precedents and the absence of specific statutory provisions addressing refugee marital disputes in Indonesia.

2. RESEARCH METHODS

This study employed a normative legal research design grounded in doctrinal analysis, as the core issue concerned the determination of applicable law and the legal consequences of divorce in mixed marriages involving stateless Rohingya refugees. Normative research was appropriate because the problem examined related to legal

norms, principles, and doctrines within the framework of Private International Law, rather than empirical or sociological measurement. The study applied a statutory and conceptual approach. The statutory approach examined relevant Indonesian legislation, including Law No. 1 of 1974 on Marriage as amended by Law No. 16 of 2019, the Compilation of Islamic Law (KHI), Law No. 12 of 2006 on Citizenship, and regulatory instruments concerning refugees. These legal instruments were analyzed to identify the normative framework governing mixed marriages and divorce within the Indonesian legal system. The conceptual approach relied on doctrines and general principles of Private International Law, such as *lex patriae*, *lex domicilii*, *lex loci celebrationis*, *lex fori*, qualification theory, public policy (*ordre public*), and choice of law theory, enabling the clarification of connecting factors applicable in cases involving foreign elements where nationality cannot serve as the primary reference. Legal materials were analyzed qualitatively through methods of legal interpretation. Primary legal materials were examined using grammatical interpretation to understand the literal meaning of relevant articles governing mixed marriages and divorce. Systematic interpretation was then applied to ensure coherence between related legal norms within the broader Indonesian legal system, particularly between marriage law, citizenship law, and the principles of Private International Law. Teleological interpretation was further employed to explore the objectives and philosophical foundations underlying these norms, particularly in safeguarding the rights of Indonesian citizens and addressing the vulnerable legal status of refugees. In addition to interpretative analysis, this study applied deductive legal reasoning within the theoretical framework of Private International Law. The major premise consisted of general principles and doctrines of PIL, including the principle of domicile (*lex domicilii*), qualification theory, and the public policy doctrine. The minor premise concerned the concrete legal situation of divorce in mixed marriages between Indonesian citizens and stateless Rohingya refugees. Through a structured deductive process, conclusions were formulated regarding the determination of *lex causae*, jurisdictional competence, and the appropriate resolution of disputes. The final stage involved legal synthesis and construction, integrating statutory provisions, doctrinal insights, and theoretical frameworks to formulate a coherent prescriptive legal model addressing the normative gap produced by statelessness.

3. RESULTS AND DISCUSSION

3.1. Resolution of the Choice-of-Law Problem in Divorce Involving Stateless Rohingya Refugees

The central juridical issue in divorce disputes arising from mixed marriages between Indonesian citizens and Rohingya refugees lies in the determination of the applicable law (*lex causae*). The complexity of this issue stems directly from the stateless status of the Rohingya. In classical Indonesian Private International Law, personal status including marriage and divorce—is traditionally governed by the principle of nationality (*lex patriae*), which assumes the existence of a recognized sovereign state capable of providing a personal legal system attached to the individual. However, in the case of Rohingya refugees, such an assumption collapses entirely. Their exclusion under the 1982 Myanmar Citizenship Law results in the absence of recognized nationality, rendering *lex patriae* inapplicable and creating what may be described as a normative dislocation within Indonesian PIL (Arief Wicaksana et al., 2024)

The doctrinal shift from *lex patriae* to alternative connecting factors is not unprecedented in comparative PIL scholarship. Many jurisdictions recognize domicile or habitual

residence as equally legitimate connecting factors, particularly in cases involving stateless persons or refugees. In this context, the principle of domicile (*lex domicilii*) emerges as the most logical substitute. Since the marriage was celebrated in Indonesia and the parties reside within Indonesian territory, the factual and legal nexus between the dispute and Indonesian jurisdiction is substantial (Shoimah & Uyun, 2025). Domicile in PIL functions as a territorial anchor, linking individuals to a legal order based on their center of life and social integration rather than formal nationality. In cases involving refugees, domicile assumes heightened importance because nationality is structurally absent. Although refugee residence in Indonesia may formally be characterized as temporary, the *de facto* permanence often extending over several years creates sufficient factual stability to justify the application of Indonesian law.

It must be acknowledged, however, that refugee status presents doctrinal nuance. Refugees are not immigrants with permanent residency permits; their legal stay is transitional pending third-country resettlement. Critics may argue that applying *lex domicilii* risks overextending domestic jurisdiction to individuals whose legal presence is provisional. Yet PIL does not require permanent residence as an absolute condition for domicile; rather, it requires a factual center of life. Where the marital home, children's upbringing, and economic activities occur within Indonesia, the territorial link is sufficiently strong to legitimize Indonesian law as *lex causae* (Salsabila Putri Nadira et al., 2025).

In practical judicial reasoning, the principle most frequently applied is *lex fori* the law of the forum. Indonesian courts adjudicating divorce petitions naturally rely on national legislation, namely the Marriage Law and, where applicable, the Compilation of Islamic Law. The predominance of *lex fori* is grounded in pragmatic considerations: efficiency, accessibility of legal norms, and enforceability of judgments. Judges cannot be expected to apply a non-existent foreign law; thus, the shift from *lex patriae* to *lex fori* is not merely pragmatic but structurally necessary. (Guglielmi et al., 2021) The legitimacy of applying *lex fori* is further reinforced by the doctrine of public policy (*ordre public*), which regards marriage and divorce as institutions deeply embedded in national moral, social, and religious values. Even if a hypothetical foreign law were identifiable, it would likely be subordinated to Indonesian public policy standards (Alvandi et al., 2024).

The combination of *lex domicilii* and *lex fori* effectively fills the normative vacuum. Domicile provides an objective territorial connection, *lex fori* ensures procedural coherence and enforceability, and public policy offers normative justification. Through this tripartite reasoning, Indonesian courts maintain doctrinal consistency while adapting to the exceptional circumstance of statelessness. This finding demonstrates that Indonesian PIL contains internal adaptive mechanisms: the inability to apply *lex patriae* does not paralyze the legal system but instead, through doctrinal flexibility and hierarchical reasoning, redirects analysis toward domicile and forum law, ensuring legal

3.2. Legal Consequences of Divorce: Child Custody and Division of Joint Property.

Once Indonesian law is established as *lex causae*, the legal consequences of divorce must be analyzed under the framework of the Marriage Law and the Compilation of Islamic Law. The stateless status of the Rohingya spouse does not negate the validity of the marriage nor the rights and obligations arising therefrom. Indonesian courts treat

the dispute as substantively domestic, applying national legal norms to determine child custody and property division (Antoni, 2025).

The determination of child custody is governed by the paramount principle of the best interests of the child, embedded in Indonesian law and reinforced by international child protection norms. Under the Compilation of Islamic Law, custody of children who are not yet *mumayyiz* (under twelve years of age) generally rests with the mother, though this presumption is rebuttable and subject to judicial evaluation of parental capability. The Rohingya father's stateless status does not automatically disqualify him from custody; Indonesian law does not condition parental rights on nationality. However, practical considerations inevitably influence judicial discretion, as refugee status may limit mobility, employment stability, and long-term residence certainty (Daming & Ernawati, 2024). Courts must assess whether such limitations affect child welfare, and where custody is granted to the refugee parent, custody orders must incorporate safeguards such as residence conditions or periodic supervision—to guarantee child welfare. The emphasis must remain on stability, continuity of education, and access to health services, with judicial reasoning avoiding any discrimination that equates stateless condition with parental incapacity. (D'Silva, 2021)

Concerning the division of joint property, Article 35 of the Marriage Law provides that property acquired during marriage constitutes joint property (*harta bersama*), which upon divorce must be divided equally unless otherwise agreed. The nationality or statelessness of either spouse is legally irrelevant; the determining factor is the temporal acquisition of assets during the marriage (Firdaus Kurniawan et al., 2024). Nevertheless, practical enforcement challenges arise. Refugees frequently work in informal sectors, making proof of financial contribution difficult; courts must therefore rely on equitable assessment rather than rigid evidentiary formalism, with the doctrine of fairness (*keadilan*) assuming particular significance in evaluating indirect contributions such as domestic labor or caregiving. Asset liquidation may also pose administrative difficulties, as stateless refugees often lack formal civil documentation, complicating ownership registration. Thus, while *de jure* rights are guaranteed, *de facto* realization may require administrative accommodation by relevant authorities. Public policy considerations further operate to protect Indonesian citizens and children, ensuring that property division does not undermine the economic security of dependents.

3.3 Citizenship Status of Children and the Prevention of Intergenerational Statelessness

The most consequential issue concerns the citizenship status of children born from mixed marriages between Indonesian citizens and Rohingya refugees. Law No. 12 of 2006 on Citizenship adopts the principle of *ius sanguinis*, providing that children born to at least one Indonesian parent automatically acquire Indonesian citizenship. This provision serves a preventive function against statelessness (Fachrina et al., 2024). Where the mother is an Indonesian citizen, the child unequivocally obtains Indonesian nationality at birth regardless of the father's stateless status; where the father is the Indonesian citizen, the same principle applies. Divorce does not alter citizenship acquired by operation of law, meaning children are legally insulated from inheriting the stateless condition of their Rohingya parent. (Ansar et al., 2022)

Custody decisions do not affect nationality status; even if custody is awarded to the refugee parent, the child remains under Indonesian jurisdiction. Courts must ensure that

the child's civil registration is complete and that birth certificates accurately reflect citizenship status, as administrative coordination is crucial to prevent documentation gaps. The absence of dual nationality further simplifies the legal position: since the Rohingya parent lacks nationality, no competing citizenship claim exists, and the child is exclusively Indonesian. This clarity strengthens legal certainty and administrative efficiency. Through the Citizenship Law, the Indonesian state effectively interrupts intergenerational statelessness, granting access to education, healthcare, employment, and political participation, thereby demonstrating a commitment to human rights principles within the domestic framework (Amisena, 2016).

The interaction between qualification (*lex fori*), domicile (*lex domicilii*), public policy (*ordre public*), and citizenship law reveals a coherent doctrinal architecture within Indonesian Private International Law. Although statelessness initially appears to create a legal vacuum, the system contains adaptive mechanisms capable of resolving conflict-of-laws dilemmas without sacrificing legal certainty or justice. Through the combined application of domicile and forum law, Indonesian courts transform procedural jurisdiction into substantive applicability, with public policy legitimizing this transformation by grounding it in fundamental societal values, while citizenship law protects children from inheriting vulnerability. Thus, the Indonesian legal system demonstrates resilience and normative flexibility in addressing complex divorce disputes involving stateless Rohingya refugees, highlighting the adaptive capacity of national Private International Law to safeguard justice in situations marked by humanitarian complexity and jurisdictional uncertainty (Nirmala Suci Paramesti et al., 2025)

4. CONCLUSION

Divorce in mixed marriages between Indonesian citizens and stateless Rohingya refugees reveals the inapplicability of the nationality principle (*lex patriae*) in Private International Law due to the absence of citizenship, creating a normative gap in determining the applicable law. This study concludes that the gap is resolved through the substitution of nationality with the principle of domicile (*lex domicilii*) based on the factual residence of the parties in Indonesia, which in practice converges with *lex fori*, enabling Indonesian courts to apply the Marriage Law and the Compilation of Islamic Law as *lex causae*. The application of Indonesian law is further justified by the doctrine of public policy to ensure legal certainty and protect national interests. Consequently, child custody is determined according to the best interests of the child, joint marital property is divided fairly without discrimination based on refugee status, and children born from such marriages automatically acquire Indonesian citizenship under the *ius sanguinis* principle pursuant to Law No. 12 of 2006. The novelty of this study lies in its systematic doctrinal construction demonstrating how the convergence of *lex domicilii*, *lex fori*, and public policy effectively resolves the normative dislocation caused by statelessness, providing both theoretical clarity and practical judicial guidance. Although substantive legal protection is guaranteed *de jure*, practical challenges in enforcement remain, highlighting the need for stronger administrative and institutional support to ensure effective access to justice for all parties involved.

5. REFERENCES

Alsafy, M. A. M., Abd-Elhafeez, H. H., Rashwan, A. M., Erasha, A., Ali, S., El-Gendy, S. A. A., SaThierbach, K., Petrovic, S., Schilbach, S., Mayo, D. J., Perriches, T., Rundlet, E. J. E. J., Jeon, Y. E., Collins, L. N. L. N., Huber, F. M. F. M., Lin,

- D. D. H. D. H., Paduch, M., Koide, A., Lu, V. T., ... Owlia, P. (2025). Dynamics of Mixed Marriages: Analysis of Legal Choices, Divorce Recognition, and Implications For Children's Status in Indonesia. *Frontiers in Veterinary Science*, *13*(1), 1–16. <https://doi.org/10.1016/j.sjbs.2017.10.019>
- Alvandi, A., Putri, N. A., Sadiyah, Y. Z., Yohanes, & Dienullah, M. D. (2024). Akibat Hukum Perceraian dalam Perkawinan Campuran Antar Warga Negara. *Indonesian Journal of Law and Justice*, *1*(4), 11. <https://doi.org/10.47134/ijl.v1i4.2132>
- Amisena, M. E. C. (2016). *Perlindungan Hukum Bagi Istri Warga Negara Indonesia (Wni) Terhadap Status Harta Bersama Dalam Perkawinan Campuran Terkait Pembagiannya Karena Perceraian*. September, 1–51. File:///C:/Users/Hp/Downloads/15.+Draf+Jurnal+Sentri+--+Nonih(+Jig+3921)(2).pdf
- Ansar, A., Faisal, A., & Khaled, M. (2022). Claiming Space and Contesting Gendered Refugeehood in Exile Issues and Factors of Rohingya Refugee Women's Civic Engagement in Diaspora. *Iqas*, *53*(August 2017), 279–303. <https://www.fmreview.org/sites/fmr/files/FMRdownloads/en/statelessness/lewa.pdf>
- Antoni, M. R. (2025). the Legal Nature of Mixed Marriage Divorce Under Indonesian Law: Jurisdictional Authority of the Religious Court in Transnational Marital Disputes. *Journal of Court and Justice*, *4*(4), 14–25. <https://doi.org/10.56943/jcj.v4i4.859>
- Arief Wicaksana, A., Astutik, S., & Prawesthi, W. (2024). Legal Protection of Custody of Dual Citizenship Children After the Breakdown of Marriage. *Awang Long Law Review*, *6*(2), 411–416.
- D'Silva, R. I. (2021). Rohingya Refugees in South Asia: An Exploration of Social Borders and the Margins. *Borders in Globalization Review*, *3*(1), 35–45. <https://doi.org/10.18357/bigr31202120261>
- Daming, S., & Ernawati, A. (2024). Perlindungan Hukum Bagi Anak Yang Lahir Dari Perkawinan Campuran Menurut Undang-Undang Nomor 16 Tahun 2019. *YUSTISI: Jurnal Hukum & Islam*, *11*(2), 1–30.
- Fachrina, Q., Setiawan, N. H., Elisabet, T., Agustin, A. A., & Wijaya, M. M. (2024). Implikasi Hukum Perdata Internasional Akibat Perceraian pada Perkawinan Campuran. *Jurnal Pendidikan Tambusai*, *8*(1), 4117–4128. <https://www.jptam.org/index.php/jptam/article/view/13021> <https://www.jptam.org/index.php/jptam/article/download/13021/9976>
- Firdaus Kurniawan, J., Rato, D., & Ali, M. (2024). Mimbar Yustitia: Jurnal Hukum dan Hak Asasi Manusia Mixed Marriage Law On Marital Property Due To Divorce. *Mimbar Yustitia*, *8*(2), 111–123. <https://doi.org/10.52166/mimbar.v7i2>
- Guglielmi, S., Mitu, K., & Seager, J. (2021). 'I Just Keep Quiet': Addressing the Challenges of Married Rohingya Girls and Creating Opportunities for Change. *European Journal of Development Research*, *33*(5), 1232–1251. <https://doi.org/10.1057/s41287-021-00437-6>
- Kamilah, A. (2026). *Kewenangan Yuridik Perceraian Perkawinan Campuran di Indonesia – Malaysia dan Dampaknya terhadap Anak dan Harta*. *1*, 1–14.
- Nirmala Suci Paramesti, Afthina Aulya Fatma, & Rifa Ardian Fahreza. (2025). Harmonisasi Hukum Kewarganegaraan, Perkawinan Campuran, dan Hak Waris: Perspektif Komparatif Hukum Perdata dan Islam. *Majelis: Jurnal Hukum Indonesia*, *2*(4), 53–65. <https://doi.org/10.62383/majelis.v2i4.1194>
- Rajagukguk, C. R., & Allagan, T. M. P. (2025). Tinjauan Hukum Perdata Internasional Atas Perkawinan Pengungsi Rohingya Di Indonesia. *Veritas et Justitia*, *11*(1), 128–151. <https://doi.org/10.25123/3g6myh92>

- Salsabila Putri Nadira, Djanuardi Djanuardi, & Betty Rubiati. (2025). Analisis Yuridis Perceraian Perkawinan Campuran Akibat Kekerasan yang Dilakukan oleh Pihak Istri Ditinjau dari Peraturan Perundang-Undangan Terkait. *Amandemen: Jurnal Ilmu Pertahanan, Politik Dan Hukum Indonesia*, 2(3), 152–163. <https://doi.org/10.62383/amandemen.v2i3.1038>
- Sari, F. A. (2024). Marriage Rights of Rohingya Refugees in Indonesia: Legal Recognition and Challenges. *Indonesian Law Journal*, 17(1), 25–47. <https://doi.org/10.33331/ilj.v17i1.152>
- Shoimah, S. N., & Uyun, F. R. (2025). Children of Marriages Between Indonesian Citizens and Rohingya. *Al-Syakhsyiah: Journal of Law and Family Studies*, 7(1), 27–46. <https://doi.org/10.21154/syakhsyiah.v7i1.10373>