

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

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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.

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