

## Children Citizenship Status of Acehnese-Rohingya Mixed Marriage in Aceh: *Maqāsid Shari'ah* Perspective

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### Abstract

Citizenship status is important in mixed-country marriages. This research explores the important issue of citizenship in mixed marriages between Rohingya refugees and local Acehnese. The research aims to examine whether the citizenship status of the children of such marriages is based on the doctrine of revival or habitual residence. Using a literature review method with a descriptive qualitative approach, this research investigates the concepts and legal implications surrounding citizenship status in such marriages. The findings of this study reveal that the citizenship status of children born from Acehnese-Rohingya marriages follows habitual residence, even though their Rohingya parents adhere to the doctrine of revival. The legal status of these children is subject to the Indonesian marriage law system. This is in line with Jasser Auda's concept of *maqāsid shari'ah* because it prioritizes aspects of the benefit of these children. This research provides important insights into the issue of citizenship in Acehnese-Rohingya marriages and offers valuable meaning for understanding the dynamics of citizenship in these marriages.

**Keywords:** Acehnese; dual citizenship; habitual residence; *maqāsid shari'ah*; Rohingya

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Status kewarganegaraan merupakan hal yang penting dalam pernikahan campuran. Penelitian ini mengeksplorasi isu penting tentang kewarganegaraan dalam pernikahan campuran antara pengungsi Rohingya dan warga lokal Aceh. Penelitian ini bertujuan untuk menguji apakah status kewarganegaraan anak-anak dari pernikahan tersebut didasarkan pada *doctrine of revival* atau *habitual residence*. Dengan menggunakan metode literatur dan pendekatan kualitatif deskriptif, penelitian ini menyelidiki konsep-konsep dan implikasi hukum seputar status kewarganegaraan dalam pernikahan semacam itu. Temuan dari penelitian ini mengungkapkan bahwa status kewarganegaraan anak-anak yang lahir dari pernikahan Aceh-Rohingya mengikuti *habitual residence*, meskipun orang tua mereka yang berasal dari Rohingya menganut *doctrine of revival*. Status hukum anak-anak ini tunduk pada sistem hukum perkawinan Indonesia. Hal tersebut sejalan dengan konsep *maqāsid shari'ah* Jasser Auda karena mengedepankan aspek kemaslahatan bagi anak-anak tersebut. Penelitian ini memberikan wawasan penting mengenai isu kewarganegaraan dalam pernikahan Aceh-Rohingya, dan menawarkan implikasi yang berharga untuk memahami dinamika kewarganegaraan dalam pernikahan tersebut.

**Kata Kunci:** warga lokal Aceh; kewarganegaraan ganda; *habitual residence*; *maqāsid shari'ah*; Rohingya

## Introduction

Citizenship status is an important issue for humans, not only in European countries as contained in the Hague Convention regarding reform of international private law and also widely used by the European Commission but also in all countries, including Indonesia. In Europe, habitual residence is the basis for allocating jurisdiction to the courts of that state, especially in marriage and child custody cases. For example, it has been proposed by the European Commission as a replacement for domicile in the new convention on jurisdiction and enforcement of judgments in civil matters. Ordinary residence is also very important concerning taxation and social security issues. It is also used in the Immigration Act of 1971.<sup>1</sup>

In addition to its purpose in allocating jurisdiction, habitual residence is starting to be adopted as a connecting factor in the choice of law, for example, the Rome Convention on the Choice of Law in Contracts.<sup>2</sup> Humanitarian polemics that occur throughout the world are still happening to this day, this causes discomfort for the people affected by these problems, starting from those who try to seek protection from certain countries that are considered safe for them to flee to the polemics from their home countries. died down, people flocked to save themselves from the cruelty of humans towards each other. Migration that is encountered in large numbers is triggered by a country's domestic problems, therefore other countries are less sympathetic to this problem, but recently this problem has started to become a problem for several countries to the point that now the refugee problem has become a human problem that needs to be paid attention to by the world. This condition is worthy of being implemented by these people as asylum seekers and refugees.

Power seekers and refugees are classic problems of human civilization that arise out of fear of threats to their safety and even their lives. Threats can be caused by natural disasters or a lack of security in the area. Generally, their freedom and human rights are limited by their country of origin, so they decide to leave their country at any cost. Various forms of humanitarian discrimination

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<sup>1</sup> Koesmoyo Ponco Aji et al., 'Dual Citizenship in Indonesia from the Perspective of Dignified Justice and Sovereignty', *Law and Humanities Quarterly Reviews* 3, no. 1 (2024), <https://doi.org/10.31014/aior.1996.03.01.100>.

<sup>2</sup> J. M. Muslim, Nanda Humairatuzzahrah, and Suci Ratnawati, 'Habitual Residence on Children Victims of Divorce in Mixed Marriage: Masalah Mursalah Perspective', in *Proceedings of the 4th International Colloquium on Interdisciplinary Islamic Studies in Conjunction with the 1st International Conference on Education, Science, Technology, Indonesian and Islamic Studies, ICIIIS and ICESIIS 2021, 20-21 October 2021, Jambi* (EAI, 2022), <https://doi.org/10.4108/eai.20-10-2021.2316346>.

occurred in Myanmar, which was one of the aftermaths of the military events that occurred, where the military coup that occurred resulted in disruption of security stability and also gave rise to a crisis in Myanmar's democracy. One form of disruption to Myanmar's security stability is the Myanmar government's discriminatory treatment of the Rohingya group, where Myanmar's Rohingya Muslims are a community that has the fate of being isolated in their place of birth.

Several studies on mixed marriages have been carried out on several major themes, one of which is related to differences in citizenship, for example, the study carried out by Rumiati and Jayantiari related to fulfilling the education of Rohingya children.<sup>3</sup> Meanwhile, Puspitawati and Susanto's research is not on the theme of Rohingya children's education but on the rejection of other countries towards Rohingya refugees, whereas Indonesia does not.<sup>4</sup>

Research that is also relevant in the dimensions of this article is Smith and Williams's research that explores Indonesia's role, and considers Indonesia's approach from a real political perspective.<sup>5</sup> The most recent research related to Indonesia's foreign policy regarding the forced resettlement of Rohingya refugees analyzes and pays special attention to domestic calls from large Muslim organizations seeking to pressure the Indonesian government to be more proactive in the interests of Rohingya refugees.<sup>6</sup>

This study offers novelty, first, the problem of dual citizenship as a problem experienced by children of mixed marriages between Acehese and Rohingya is resolved by recognition of citizenship, Secondly, with the Islamic law approach in Jasser Auda's concept of *maqāsid shari'ah* to read *maqāsid* what must be done by the special country of Indonesia because the marriage took place in Indonesia and with Indonesian society.

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<sup>3</sup> I. Nyoman Prabu Buana Rumiarta and I. Gusti Agung Mas Rwa Jayantiari, 'Fulfilling Right to Education for Rohingya Refugee Children in Indonesia', *The Age of Human Rights Journal*, no. 21 (2023): e7659, <https://doi.org/10.17561/tahrj.v21.7659>.

<sup>4</sup> Dhiana Puspitawati and Fransiska Ayulistya Susanto, 'Protection People at Sea under International Law: How We Could Learn from Pushback Action to Boat People from Indonesia and Malaysia?', *Brawijaya Law Journal* 10, no. 2 (2023), <https://doi.org/10.21776/ub.blj.2023.010.02.02>.

<sup>5</sup> Claire Q. Smith and Susannah G. Williams, 'Why Indonesia Adopted "Quiet Diplomacy" over R2P in the Rohingya Crisis: The Roles of Islamic Humanitarianism, Civil-Military Relations, and ASEAN', *Global Responsibility to Protect* 13, no. 2-3 (2021): 158-85, <https://doi.org/10.1163/1875-984X-13020004>.

<sup>6</sup> Muh. Takdir and Surastini Fitriasih, 'Indonesia's Criminal Law Policy in Tackling Cyberbullying with a Restorative Justice Approach', *Legal Brief* 11, no. 6 (2023): 3650-58, <https://doi.org/10.35335/legal.v11i6.733>.

This study aims to review the application of the law to children resulting from mixed marriages that occur between Acehese residents who are considered unfair so that habitual residence could be a solution to the cases of these children. Apart from that, the concept of habitual residence provides a beneficial aspect for the children of mixed marriages, after they legalize their marriage. The consideration of *maqāṣid sharī'ah* offers the right thing for recognizing children resulting from mixed marriages and can be a solution to the dual citizenship that has occurred so far. Furthermore, based on Jasser Auda's concept of *maqāṣid sharī'ah*, the country of destination for the refugee/marriage partner of the immigrant in this context is Indonesia, in *maqāṣid sharī'ah* it can provide space and offer citizenship to provide protection and obligations towards immigrant children. The essence of *maqāṣid sharī'ah* is to provide solutions as part of the objectives of Islamic law, those are to protect religion, to protect the soul, to protect offspring, to protect the mind, and to protect property.<sup>7</sup>

### **Citizenship and Habitual Residence Regulations**

The problem of citizenship has re-emerged as an important issue, not only in the practical political problems of access to health care systems, educational institutions, and the welfare state but also in traditional theoretical debates in sociology regarding the conditions of social integration. and social solidarity. Citizenship as an institution is an integral part of the community. These sociological debates usually begin with an analysis of the conceptual framework of citizenship in the work of T. H. Marshall.<sup>8</sup>

A child's residence is very important in deciding whether a court has jurisdiction to make decisions affecting the child. Ordinary place of residence is also an expression used under the Hague Convention on the Civil Aspects of International Child Abduction.<sup>9</sup> The Hague Convention sets out procedures for dealing with situations where a child is unlawfully removed from a country. This

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<sup>7</sup> Jasser Auda, *Maqasid al-Shari'ah as Philosophy of Islamic Law: A Systems Approach* (Herndon: The International Institute of Islamic Thought, 2010).

<sup>8</sup> T. H. Marshall and Tom Bottomore, *Citizenship and Social Class* (Pluto Press, 2015), <https://doi.org/10.2307/j.ctt18mvns1>; Bryan S. Turner, 'Outline of a Theory of Citizenship', in *New Critical Writings in Political Sociology: Volume Two: Conventional and Contentious Politics*, 2017, <https://doi.org/10.4324/9781003023586-2>.

<sup>9</sup> Morgan McDonald, 'Home Sweet Home? Determining Habitual Residence within the Meaning of the Hague Convention', *Boston College Law Review* 59, no. 9 (2018), <https://lira.bc.edu/work/sc/51b01829-5c4f-4d07-8f1b-96c5a53e1d63>.

procedure prevents parties from choosing a court between states (or provinces) when resolving disputes. Findings regarding a child's residence can be important because they can determine whether a court in Ontario can assume jurisdiction to issue a parenting order.<sup>10</sup>

To become a habitual residence in England or Wales, people must be able to demonstrate that their center of interest is there. This is usually indicated by the main residence, what ties they have with the country, and perhaps where their children go to school, etc. There are no defining characteristics of usual residence but for most people, this is the country where they spend most of their time. Meanwhile, domicile is a more technical legal term. The home domicile is the country where their father was born. For example, if someone was born in the US but his father is British and lived most of his life in the UK, then his home domicile is England, and he can change his home domicile to his preferred domicile. To do this, he needs to move permanently to a country and sever all ties with his home domicile.<sup>11</sup>

As is the case in England regarding habitual residence, namely the mother has lived in England since 2015 and in April 2017, submitted an application to the High Court regarding the welfare of the child. The essence of the application is a statement that the child ordinarily resides in England and Wales. The mother also listed the following orders: an order to make the child a ward of the court; an order preventing the father from removing the child from his care or the jurisdiction of England and Wales; and an order preventing the father from pursuing any further proposals in Jordan.

As a consequence of the father's departure from Jordan, he did not spend time with the child, as ordered by a Jordanian court. The Jordanian court was told that the father had not made the ordered contact and the mother argued in a statement before the High Court, that this led the Jordanian court to decide that there was no requirement for further contact between the child and the father. The father has not had any contact with the child since the mother returned to England.<sup>12</sup>

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<sup>10</sup> Maja Stanivuković, 'Child's Habitual Residence in the Jurisprudence of the Court of Justice of the European Union', *Zbornik Radova Pravnog Fakulteta, Novi Sad* 55, no. 4 (2021): 709–35, <https://doi.org/10.5937/zrpfns55-34676>.

<sup>11</sup> Thalia Kruger, *Civil Jurisdiction Rules of the Eu and Their Impact on Third States* (Oxford: Oxford University Press, 2008), <https://doi.org/10.1093/oso/9780199228577.001.0001>.

<sup>12</sup> Radmila Dragišić, 'The Concept of Habitual Residence in Selected Sources of EU Private International Law and Jurisprudence of the Court of Justice of the European Union: Functional

The use of the connecting factor of the child's habitual residence within the Abduction Convention was originally designed to protect children from harm in cases of wrongful removal or retention by securing the prompt return of children to the State with which they had the strongest connection.<sup>13</sup> The idea is, that the child's habitual residence immediately before the abduction would provide the most appropriate forum for a custody hearing.<sup>14</sup> To determine the child's habitual residence the courts should give the concept of habitual residence an autonomous definition. There are three main approaches to interpreting the child's habitual residence for the Abduction Convention have been identified.<sup>15</sup> First, the intention of the person or persons exercising parental responsibility to determine the child's habitual residence. Second, the child is an autonomous individual and uses the child's connection with the country to determine the habitual residence. Third, the hybrid approach that compromises/combines the intent of the parent and the child, instead of focusing primarily on either parental intention or the child's acclimatization, looks to all relevant considerations arising from the facts of the case.<sup>16</sup>

In a study, it was stated that this theory, namely the habitual residence theory, provides an understanding related to that participating countries respect the child protection objectives in the Hague Convention by facilitating the return of eligible children to the country considered to be their place of residence immediately before their abduction or the result of a marriage with a citizen of another country. Determining which state the child normally resides in is very important. This is the jurisdiction to which the child is physically returned, and which will be the forum in which substantive child custody disputes are deemed most appropriate to be resolved. If substantive disputes

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Approach versus Strict Textualism', *Zbornik Radova Pravnog Fakulteta Nis* 61, no. 94 (2022): 137-51, <https://doi.org/10.5937/zrpfm1-37590>.

<sup>13</sup> Katarzyna Zombory, 'Protecting the Child's Best Interest in International Parental Abduction of Children: Mediation in the 1980 Hague Convention Cases', *Prawo w Działaniu* 54 (2023): 217-37, <https://doi.org/10.32041/pwd.5408>.

<sup>14</sup> Marijke Breuning and John Ishiyama, 'The Politics of Intercountry Adoption: Explaining Variation in the Legal Requirements of Sub-Saharan African Countries', *Perspectives on Politics* 7, no. 1 (2009): 89-101, <https://doi.org/10.1017/S1537592709090124>.

<sup>15</sup> Abdul Ghafur Hamid, 'Determination of a Child's Habitual Residence in International Child Abduction Cases: Charting the Way towards Harmonization', *IIUM Law Journal* 28, no. 2 (2020): 481-501, <https://doi.org/10.31436/iiumlj.v28i2.575>.

<sup>16</sup> Hon. James D. Garbolino, *The 1980 Hague Convention on the Civil Aspects of International Child Abduction: A Guide for Judge* (Washington D.C: Federal Judicial Center, 2015).

regarding the child's custody remain unresolved after discharge, it is this jurisdiction that shall be vested in the child and their primary caregiver.

The fundamental belief that early return is in the best interests of children is generally supported by controversial arguments. The assumption is that disputes regarding child care are best resolved in the jurisdiction where the child lived before they were born. The efficacy of the Hague Convention depends on the legitimacy of this idea. The Explanatory Report to the Convention explains that "the situation envisaged results from the use of force to establish artificial jurisdictional relations at the international level, intending to obtain custody of the child". Re-establishing "the status quo [in the child's usual residence] disturbed by unlawful acts" This Convention is a response to what is colloquially called the origin of citizenship in the habitual residence dimension of the child in the Rohingya family.<sup>17</sup>

### **Dual Citizenship Problem of Mix Marriage Children**

Based on data obtained from the Lhokseumawe City Population and Civil Registration Office, 30 mixed marriage couples married in Aceh. Of the 30 couples, 20 of them were Indonesian women married to foreigners (Rohingya), while only 5 couples were foreign women married to Indonesian men. This means that as many as 45% of mixed marriage perpetrators are Indonesian women. The results of this data are not much different from the results of the Indonesia-Mixcouple Club (Indo-MC) research through an online survey in 2020, of the 154 respondents who were caught, 75% of mixed marriage perpetrators were Indonesian women married to foreign men. The same thing was found at the Langsa civil registration office from 2022 to 2023 as 5 mixed marriages, 1.5% were Indonesian men married to foreign women.

If a girl with dual citizenship status wishes to marry, then the child is subject to the marriage requirements of which country, whether the marriage requirements according to Indonesian law as contained in the Indonesia Marriage Law. From a foreign country according to the dual citizenship he holds. Indeed, in international private law, dual citizenship is a problem that adheres

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<sup>17</sup> Lucas Andrés Pérez Martín, 'The Habitual Residence of the Spouses in European Matrimonial Property Crises, Episode 1: Even with Life between Several States, There Is Only One Habitual Residence', *Cuadernos de Derecho Transnacional* 14, no. 1 (2022): 422-43, <https://doi.org/10.20318/cdt.2022.6692>.

to the principle of nationality or citizenship in determining the law that applies to a person's status.<sup>18</sup>

Meanwhile, in the international civil law literature there are many opinions regarding the solution to the problem of dual citizenship faced by countries that adhere to the principle of nationality or citizenship to determine the law that applies to a person's status as follows: First, writers such as Van Brakel, Hijmans and Kosters agree with the use of "*Lex fori*", namely the law of the judge's forum where the case is submitted, because judges know their law better. Another opinion comes from Makarov and Murad Ferid as well as De Groot, according to them the use of "*Lex fori*" is preferred in the field of public law, and in the field of private international law they are more inclined to look for what is called effective nationality, so here the task the judge must find out about people who have dual citizenship, which citizenship is most effective or viable for the person concerned.<sup>19</sup>

The principle of effective nationality has been applied in the following case example: the Nottebohm case which was decided by the International Court of Justice on April 6, 1955. In this case, according to the opinion of the International Court of Justice, a person who has multi-nationality must take into account the elements that can determine what constitutes real and effective nationality, among other things, the place of residence of the person concerned, the center of his interests, his family relations, participation in the social life of the state or other words, the entire daily life of the person concerned must be taken into account in social reality.<sup>20</sup>

The Hoge Raad (Supreme Court of the Netherlands) decision dated December 9, 1965, known as the *noorse echtscheiding* case where the wife had dual citizenship, namely Norway and the Netherlands, applied Norwegian law which was the wife's effective nationality. This decision was inspired by the

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<sup>18</sup> Kementerian Luar Negeri Republik Indonesia, 'Perkawinan Campuran di Indonesia', Kedutaan Besar Republik Indonesia di Brussel Belgia, 2021, [https://www.kemlu.go.id/brussels/id/pages/pernikahan\\_di\\_indonesia/4426/etc-menu](https://www.kemlu.go.id/brussels/id/pages/pernikahan_di_indonesia/4426/etc-menu).

<sup>19</sup> S. Syafrizal, 'Akibat Hukum Perkawinan Campuran Antar Negara WNI dengan WNA terhadap Status Personal Anak', *Warta Dharmawangsa* 17, no. 3 (2023): 1069-80, <https://jurnal.dharmawangsa.ac.id/index.php/juwarta/article/view/3410>.

<sup>20</sup> John Collier and Vaughan Lowe, 'Statute of the International Court of Justice', in *The Settlement of Disputes In International Law* (Oxford: Oxford University Press, 1999), 346-58, <https://doi.org/10.1093/oso/9780198256694.005.0006>.



Nottembohm case which was decided by the International Court of Justice on April 6, 1965.<sup>21</sup>

Domicile law is used to determine the personal status of someone who has dual citizenship. In international civil law, a person's residence with an address in a city is not important, because the measure of domicile as a place of residence is the country where he is domiciled, based on the domicile of that country, the law of that country applies to his status. The law of domicile falls at the same time as one's citizenship. According to several authors such as Koster, Van Brakel, and Wollf, domicile which falls together with one's citizenship is considered clear evidence of the existence of effective nationality.<sup>22</sup>

If a child with dual citizenship wishes to marry in the territory of the Republic of Indonesia, he or she must fulfill the marriage requirements following applicable law in Indonesia, namely the UUP and its implementing regulations. In Indonesia, if someone wants to get married, their wishes must be notified to the registrar at the place where the marriage will take place according to their religion. Notification can be made verbally or in writing by the prospective bride or groom or their parents or representatives.

Notification regarding the implementation of the marriage must contain the name, element, age, religion or belief, occupation, and place of residence of the prospective bride and groom. To prove the age of the prospective bride and groom, it must be accompanied by a quote from the birth certificate or birth certificate, so this can be used as information about the age and origins of the prospective bride and groom. Apart from information about the prospective bride and groom, information about the parents is also required, namely about the parents' names, religion or belief, occupation, and/or place of residence of the prospective bride and groom's parents (Articles 4, 5, 6, Government Regulation No. 9 of 1975). If the prospective bride and groom live abroad, then there must be information from the Indonesian representative in the country of residence that the prospective bride and groom have no obstacles to getting married.

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<sup>21</sup> James Gerard Devaney, 'The Role of Precedent in the Jurisprudence of the International Court of Justice: A Constructive Interpretation', *Leiden Journal of International Law* 35, no. 3 (2022): 641-59, <https://doi.org/10.1017/S092215652200022X>.

<sup>22</sup> Andriyah Nurhidayati, Agus Sudargono, and Pranichayudha Rohsulina, 'Application of Snowball Throwing to Improve the Learning Outcomes of Social Science (IPS) Geography of Students in Grade VIII C Muhammadiyah 1 Junior High School Sukoharjo in the Academic Year 2017/2018', *Journal of Geography Science and Education* 1, no. 1 (2019): 1-15, <https://doi.org/10.32585/jgse.v1i1.269>.

Therefore, if a child with dual citizenship wants to marry in Indonesia, if he is domiciled or has a habitual residence in Indonesia then Indonesian law applies to him. However, if a child with dual citizenship has a habitual residence abroad, then the child is treated as a foreigner. In the understanding of international civil law, a person has a habitual residence, that is, the person resides in a country, this fact can be a house or a place of work in that country. However, because children who are immature or unmarried generally live with their parents in Indonesia, the child's habitual residence is in Indonesia.

The solution to the problem of the personal status of a child who has dual citizenship as a result of the enactment of the new citizenship law is in line with the opinions of Koster, Van Brakel, and Wolf, namely that for them the domicile law which falls at the same time as one of their citizenships is used. This is clear evidence of effective nationality as has been implemented in the cases of *Nottebohm* and *Noorse Echtscheiding* in the Netherlands.

### **Habitual Residence for Children in Acehese-Rohingya Mixed Marriage**

The concept of 'habitual residence' was not something new at the time the definition of a refugee was created, as the concept had been used as an international legal term since the late 19th century, most notably first described in the Hague Convention on Civil Procedure of 1896.<sup>23</sup> Although it does not provide a precise definition, in general, this definition is used as a special term by countries in national and international discourse, statutory regulations, and binding agreements to reflect a person's place of residence, with indications that are less strict than the common notion of domicile traditional law.<sup>24</sup>

The recent reconstruction of citizenship in Aceh, based on *shari'a* and ethno-religious nationalism, and the impact of this reconstruction on the rights of minorities in the province. As *shari'a* has become a cultural, social, political, and legal fact in Aceh, the province has gradually created its notion of civil ownership, which departs from national citizenship, defined by religion and protected by religious ethno-nationalism.<sup>25</sup>

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<sup>23</sup> Mercedes Sabido Rodríguez, 'Habitual Residence as a Forum for International Jurisdiction in Some Areas of International Family Law', *Cuadernos de Derecho Transnacional* 15, no. 2 (2023): 1324–42, <https://doi.org/10.20318/cdt.2023.8109>.

<sup>24</sup> James C. Hathaway and Michelle Foster, *The Law of Refugee Status* (Cambridge: Cambridge University Press, 2014), <https://doi.org/10.1017/CBO9780511998300>.

<sup>25</sup> Moch Nur Ichwan, Arskal Salim, and Eka Srimulyani, 'Islam and Dormant Citizenship: Soft Religious Ethno-Nationalism and Minorities in Aceh, Indonesia', *Islam and Christian-Muslim Relations* 31, no. 2 (2020): 215–40, <https://doi.org/10.1080/09596410.2020.1780407>.

The Hague Convention on the civil aspects of international child abduction (Hague Convention) protects children from unlawful removal or detention from their place of residence. Although it is one of the first elements that a petitioning parent must prove for the court to hear a case arising under the Hague Convention, usual residence is not defined in the text of the Hague Convention. The only guidance given in the Hague Convention is that the relevant point in time to be analyzed is immediately before the transfer or retention and that what must be proven is the child's habitual residence, not the residence of the parents. This course, presented by Valentina Shaknes and Justine Stringer of McLaughlin Stern, provides an in-depth explanation of how the court determines what constitutes a child's usual residence under the Hague Convention.<sup>26</sup>

Thus, in interpreting the term usual residence and deciding what is the appropriate standard for determining a child's residence, the jurisdiction must consider not only American court precedent but also the treatment of the Child Abduction Convention by other signatory countries.<sup>27</sup> There are only a few countries in the world that have separate provinces that have their laws, but it is important if someone is dealing with a country like Canada, which has different state and provincial laws, that he pays attention to Articles 31 and 32 of the Hague Convention 1980.<sup>28</sup>

This case also illustrates what factors a Judge will consider when considering where a child would normally reside at the wrongful retention date. In Scotland, since the 2015 Supreme Court case mentioned above, it has been extremely difficult for applicants in wrongful retention cases to prove their residence and it is therefore encouraging that the door is still open in Scotland to argue wrongful retention cases.<sup>29</sup> Rohingya citizens who married Indonesian citizens were not just 1 or 2 people but reached 248 Rohingya refugees who

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<sup>26</sup> Costanza Honorati, 'Protecting Mothers against Domestic Violence in the Context of International Child Abduction: Between Golan v Saada and Brussels II-Ter EU Regulation', *Laws* 12, no. 5 (2023): 79, <https://doi.org/10.3390/laws12050079>.

<sup>27</sup> Hamid, 'Determination of a Child's Habitual Residence in International Child Abduction Cases: Charting the Way towards Harmonization'.

<sup>28</sup> Putu Ayu Sriasih Wesna and Josephine Carene Andrea, 'Inheritance Rights to Freehold Land for Children with Dual Citizenship Outside of Mixed Marriage', *International Journal of Multidisciplinary Research and Analysis* 6, no. 7 (2023): 3373-81, <https://doi.org/10.47191/ijmra/v6-i7-68>.

<sup>29</sup> Deniz Karci Korfali and Deniz Şenol Sert, 'Türkiye'de Çifte Vatandaşlık-Entegrasyon İlişisini Tartışmak', *Uluslararası İlişkiler Dergisi* 16, no. 64 (2019): 93-106, <https://doi.org/10.33458/uidergisi.652960>.

were under the supervision of the Polonia class I immigration office married to Indonesian women. This practice is not prohibited, although the formal regulations are unclear.

Talking about the Rohingya ethnic group at this time, the Rohingya ethnic group is an ethnic group of concern, it could be said that this ethnic group no longer has the opportunity to access their most basic rights, namely the right to live because the existence of this ethnic group is the target of government assassination. The government's main motivation for suppressing the Rohingya Muslim ethnic group is to prevent the Rohingya Muslim ethnic group who have fled from returning to Burma-Myanmar. Despite the many rejections and various problems that arise due to the arrival of ethnic refugees.

The presence of Rohingya in several countries in Southeast Asia, as a result of the development of the migration security nexus theory originating from Europe, Indonesia is the only country that is willing to accept the arrival of Rohingya ethnic refugees amidst various bad perceptions of refugees as explained in the migration security nexus theory. Even though it was the only country that welcomed Rohingya refugees at that time, what was unique was that Indonesia had not yet ratified the 1951 convention on refugee status. Even though it has not yet ratified the convention, Indonesia also continues to implement the principles in refugee law, one of which is on humanitarian grounds, apart from that, Indonesia acts as a transit country for refugees before arriving at the refugee destination country.<sup>30</sup>

As additional data, the mass wedding at the Rohingya shelter in Blang Adoe Village, Kuta Makmur District, North Aceh, was led by the charismatic Acehese cleric, Abati Babah Buloh.<sup>31</sup>

The marriage certificate cannot be issued because it is a stateless person according to Article 12 of Government Regulation No. 9 of 1975. This data shows that the marriage process between the Acehese and Rohingya people has not been included in special registration as normal citizens can. Maybe this is an initial anticipation so that undesirable things don't happen to the Rohingya refugees and those who mix with the indigenous Acehese community.

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<sup>30</sup> Syarif Hidayattullah, 'Respon Negara terhadap Pencari Suaka di Indonesia (Studi Kasus Pengungsi Rohingya di Aceh Pasca Reformasi)', *Undergraduate Thesis* (Universitas Islam Negeri Prof. K.H. Saifuddin Zuhri Purwokerto, 2022).

<sup>31</sup> Masriadi, "Warga Rohingya Ikut Nikah Massal di Aceh," <https://megapolitan.kompas.com/read/2015/08/30/16305311/Warga.Rohingya.Ikut.Nikah.Massal.di.Aceh>.

Citizenship status is very important as the most important part of a sovereign state, which should be respected and appreciated by everyone the state is obliged to protect and guarantee a person's citizenship rights because citizenship status is one of the human rights because humans have basic rights and obligations as human, it is also possible that an Indonesian citizen will enter into a mixed marriage with a Rohingya refugee.

The lives of children from mixed marriages between Rohingya and Acehese are of great concern as their nationality cannot be determined like children from other marriages.<sup>32</sup> From the statement of a Rohingya resident who already has children, they also have difficulty thinking about their child's citizenship.<sup>33</sup> This anxiety arises when the child grows up and becomes an adult. There was one respondent among them who did not feel anxious because they had insider terms that could be processed easily in the future. The rest of them feel anxious when they start to grow up from starting school to going to college.<sup>34</sup>

After seeing the anxiety of people who marry in mixed marriages, the authors offer a law that they can apply to the lives of their children in the future by looking Indonesian Law at Article 62 of Law No. 1 of 1974 in conjunction with Law No. 16 of 2019 which states: in marriages resulting from mixed marriages, the position of children is regulated by Article 59 Paragraph (1) of this law and regarding the legal protection of children born from mixed marriages is only regulated in Law No. 23 of 2019. 2002 concerning child protection and Law No. 16 of 2006 concerning citizenship. Thus, the government should make special child protection regulations for children born from mixed marriages.

So everyone should have citizenship without exception. This is because citizenship is a right to obtain rights. This lack of citizenship can have bad consequences for someone who does not have it. Having citizenship is very important for someone to be able to participate fully in society and is a prerequisite for enjoying various kinds of human rights. Even though stateless means without states, this word refers to individuals who do not have citizenship. Citizenship itself is a legal bond between the state and individuals where there are elements of rights and obligations.

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<sup>32</sup> Statement of Nur Kolimal, Senowara, and Zuleikha in Masriadi's reportation, "Warga Rohingya Ikut Nikah Massal di Aceh".

<sup>33</sup> Statement of Kafayet Tullah, Omar Khaliq, and Hussain Ahmad in Masriadi's reportation.

<sup>34</sup> Statement of Umme Solema and Bibi Jan in Masriadi's reportation.

To obtain citizenship status, the Rohingya ethnic group is trying in various ways, one of which is through mixed marriages with citizens of countries where they have fled, including in Indonesia, especially the Aceh area. So there is hope that they can obtain clear citizenship status. Marriages between the Rohingya ethnic group and those in the Aceh region receive direct supervision from the immigration authorities because they are not considered to fulfill the requirements to carry out a legal marriage and they are only considered refugees who must be monitored. Even though some of the Rohingya have entered into marriage bonds with Indonesian citizens, this does not automatically mean that the Rohingya have Indonesian citizenship status even though the marriage bond includes a wife and children who must be protected by their husbands and parents.

Based on Law No. 12 of 2006 Chapter I Article 1 Paragraph 3, citizenship is a procedure for foreigners to obtain citizenship of the Republic of Indonesia through an application rather than through marriage. Based on the marriage status of a stateless person with an Indonesian citizen according to Article 2 Paragraph 2 of Law No. 16 of 2019 regarding amendments to Marriage Law No. 1 of 1974, marriage cannot be registered because it does not meet the requirements in Government Regulation No. 9 of 1974. 1975, including name, age, religion/belief, occupation, and place of residence. In this case, a stateless person does not have a clear place of residence so a marriage certificate cannot be issued following Article 12 of Government Regulation No. 9 of 1975. Based on this regulation, marriage alone cannot produce citizenship, nor can children born from a marriage that has two citizenships be categorized in their habitual residence.

What is experienced by marriages between Rohingya and Aceh is that it is difficult to obtain citizenship for their children because the Rohingya themselves do not know what nationality they are when they are in Indonesia, especially Aceh, what is their problem when they want to register themselves to apply for a Population Identification Card to the civil registry, they do not have complete data, the problem is That. The government's response regarding this marriage has not taken any further action because there are not many marriages between the Rohingya community and Acehnese people, and those who do marry have the status of unregistered marriages. If they were also solemnized at the Religious Court and their marriage was accepted by the judge, then this could be further researched.

From the data above, it can also be understood that what happened in the marriage between the Acehnese and Rohingya people, this marriage incident may have been because Rohingya refugees had been in Aceh for a long time,

with this long time providing space and social relations that occurred in between the people of Aceh themselves who are side by side with the Rohingya refugees and the Rohingya people who are dependent on the people of Aceh, especially since the same dimension of embracing Islam makes it easier to communicate and other social dimensions, the marriage that occurred between Umar Khaliq and Senowara was due to the frequent interaction between the two in social activities help each other in easing the activities of the Rohingya refugee community.<sup>35</sup>

The two of them then entered into a relationship of love in the name of religion by marrying privately with *sirri* marriage (unregistered marriage), and this also indirectly created problems in the context of citizenship, starting from what the marriage records were like and what the existing citizenship context was, and then what happened to the children who will be produced and which country they will become citizens of.

The case of the marriage carried out by Iman Husein and Somjida Begum,<sup>36</sup> also has the same background, that the social activities that took place between the Acehese community and the Rohingya community provided sufficient space, which then created a space for mutual love, and made them a family, with and still with a private marriage, because the status of the Rohingya community is still in the category of refugee community, not Indonesian citizens or citizens of Indonesia.

Likewise, with the next marriage case between Hussain Ahmad and Bibi Jan,<sup>37</sup> all the marriage cases in this study were indeed cases of underhanded marriages, this dimension was taken because the habits and conditions of the couples were still hindered by the citizenship context. that exists, this dimension is indeed a pebble related to the illegal marriages carried out by Acehese people with Rohingya refugees. Another dimension, for example, is the matter of religious culture and the condition of the existing religious community, both of these communities both adhere to the same Islamic religion. In the Indonesian context, Islamic law and positive law still go hand in hand and complement each other, even though in the context of meaningfulness and have different dimensions, this means that the Islamic law used by the Indonesian state, in this case, is called

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<sup>35</sup> Masriadi, 'Warga Rohingya Ikut Nikah Massal di Aceh'.

<sup>36</sup> Masriadi.

<sup>37</sup> Masriadi.

positive law, which provides a position of protection for women, in this case, if the victim from the Rohingya becomes an Indonesian citizen.

Islamic law that lives among Acehnese and Rohingya communities both adhere to one of the four schools of thought, where Imam Shāfi'i, Maliki, and Ḥanbali as well as Hanafis on the other hand do not impose an obligation to be recorded as long as there is a groom and a bride. there is a guardian, there are witnesses to the legal marriage being carried out, in fact in the Hanafi context there is no need for the presence of a marriage guardian, the dimensions of obedience and permissibility in each understanding of religion between the Acehnese people and the Rohingya community provide an opportunity for carrying out marriages, matters relating to children and so on. etc. which will have the impact that the habitual residence theory is not well understood by the two communities, both in the context of the Acehnese community and in the context of the spiritual refugee community on the other hand.

Marriage incidents between people of origin and immigrants in the sense of refugees do not only occur in Aceh, in other parts of the world this scheme and incident will always exist and occur, but this dimension can also occur if there are several important indicators. First, Acehnese and Rohingya, both have the same religious understanding and culture. Likewise, the inner bond between Muslims between the people of Aceh and the Rohingya refugees is the main trigger for the closeness and social intertwining that exists between the two. This closeness has become a natural thing in the Islamic context which is called *ukhuwwah Islāmiyyah* (a relationship of brotherhood between Muslims) of two different tribes. However, having the same religious culture is one of the strong elements in the occurrence of marriage between the people of Aceh and their spiritual refugee communities.

Second, the nature of the Acehnese nation which is open to people who have the same religion, the openness of Acehnese society automatically provides space for spiritual refugees to then enter the context of the structure of society and customs that exist amid Acehnese society itself, dimensions thick with customs and traditions and it can find two different ends of culture in one bond, providing a space for marriage between these communities.

Third, the people of Aceh and Rohingya maintain harmony with each other. The arrival of a new community in this context, Rohingya refugees, will leave a complicated social space in the future if there are no rules and procedures for communication and social relations between these two communities, a different dimension of communication. It's easy and exemplified by Arab merchants and Muslim immigrants in the past, it was a marriage between two communities, with



the existence of a marriage relationship between the two, a family and kinship relationship was automatically established between the two communities.

In this way, the merging of the traditional dimensions and differences that exist between the Rohingya community and the Acehese traditional community by becoming a complete family becomes a political relationship between the two movements and traditional ties. This dimension then becomes an interesting social issue in the context of the country if a marriage occurs and what happens to the condition of the children born to dual citizenship.

It is in this context that the Acehese and Indonesian governments immediately carried out data collection on marriages that occurred under the hands of the Acehese people and Rohingya refugees on the other hand. Indonesian society and citizens, this is an effort to protect children resulting from illegal marriages that occur between the Acehese community and the existing Rohingya community. Protection is provided because we know that the child's status will prove the citizenship of the mother and father. This dimension is indeed complicated but the right solution needs to be taken to immediately provide legal and legal regulations for Rohingya and Acehese people who carry out private marriages.

### **Habitual Residence for Children in Acehese-Rohingya Mixed Marriage in *Maqāsid Shari'ah* Perspective**

In this study, the Islamic law approach used is Jasser Auda's concept of *maqāsid shari'ah*,<sup>38</sup> with six features contained in Jasser Auda's concept of *maqāsid shari'ah*,<sup>39</sup> namely system theory, the concepts used in the systems theory approach are to look at the problem as a whole (wholeness) is always open to various possibilities for improvement and refinement (openness), interconnectedness between values (interrelated-hierarchy), involving various dimensions (multidimensionality) and prioritizing the main goal (purposefulness), with the six features being closely related, interpenetrating each other (semi-permeable) and relate to one another, thereby forming a whole system of

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<sup>38</sup> Muhammad Ali Murtadlo, 'Analisis Maqasid Syariah Jasser Auda terhadap Counter Legal Draft Kompilasi Hukum Islam', *al-Syakhsiyah: Journal of Law & Family Studies* 3, no. 2 (2021), <https://doi.org/10.21154/syakhsiyah.v3i2.3118>.

<sup>39</sup> Muhaimin Muhaimin and Abd Wahab, 'Futurologi Undang-Undang Pemilu di Indonesia Perspektif Maqāsid Shari'ah', *Islamica: Jurnal Studi Keislaman* 13, no. 2 (2019): 279-304, <https://doi.org/10.15642/islamica.2019.13.2.279-304>.

thinking. One of the bridges between systems theory and *maqāṣid* theory is system analysis with the feature intent (*maqāṣid*), this makes it clear that the effectiveness of a system is measured based on the level of achievement of its goals. So the effectiveness of Islamic law is judged based on the level of achievement of its *maqāṣid sharī'ah*.<sup>40</sup>

The explanation related to systems theory is: the first, the cognitive feature (*al-idrākiyyah*, cognition) proposes an Islamic legal system that separates revelation from cognition. This means that *fiqh* is shifted from the field of divine knowledge to the field of cognition understanding human ratios to divine knowledge. This clear distinction between sharia and *fiqh* has implications for the absence of practical *fiqh*<sup>41</sup> which is qualified or claimed as divine knowledge, this research provides an overview of the impact of international religious issues and tension on nationalism, citizenship, and human rights. The habitual residence of Rohingya's children dual citizenship in Aceh and *maqāṣid sharī'ah* approach, view that the position of the doctrine of revival in the sense of personal status return to their original domicile can not applied. Children born to Acehnese-Rohingya mixed marriage cannot be treated as ordinary residents, because there may be less of a chance in the future for Rohingya refugees to return to their country. According to international law, the Rohingya people have been expelled from various countries or it could be said lost their citizenship. They only have a country of origin, the Rohingya, but no citizenship status. The Indonesian government can make efforts to offer and then provide protection in the dimension of Islamic law, by transferring Rohingya citizenship into the context of Indonesian citizens.

Second, the comprehensive feature (*al-kulliyah*, wholeness), namely by correcting the weaknesses of classical *uṣul al-fiqh* which often uses a reductionist and atomistic approach. With this feature approach, the position of the doctrine of revival in the sense of personal status return to their original domicile can not applied. Children born to Acehnese-Rohingya mixed marriage cannot be treated as ordinary residents, because there may be less of a chance in the future for Rohingya refugees to return to their country. According to international law, the Rohingya people have been expelled from various countries or it could be said lost their citizenship. They only have a country of origin, the Rohingya, but no citizenship status. The Indonesian government by granting Indonesian citizenship so that then things and obligations can be protected by the Indonesian state, in this article the

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<sup>40</sup> Auda, *Maqasid al-Shari'ah as Philosophy of Islamic Law: A Systems Approach*.

<sup>41</sup> Auda.

essence of public Jurisprudence can be applied and protect children of mixed marriage families that occur between Rohingya immigrants and Indonesians.

Third, the openness feature (*infitāḥiyyah*, openness) functions to expand the reach of '*urf*' (customs).<sup>42</sup> This concept tries to open up space to acquire and provide protection for children of mixed marriages between Rohingya immigrants and Indonesian people by giving citizenship rights to these children. The doctrine of revival in the sense of personal status return to their original domicile can not applied. Children born to Acehese-Rohingya mixed marriage cannot be treated as ordinary residents, because there may be less of a chance in the future for Rohingya refugees to return to their country. According to international law, the Rohingya people have been expelled from various countries or it could be said lost their citizenship. They only have a country of origin, the Rohingya, but no citizenship status.

Fourth, the hierarchical features and interrelatedness (*al-ḥarakiyyah al-mu'tamadah al-tabādulliyah*, interrelated hierarchy).<sup>43</sup> This feature provides coverage and opens up the reach of *maqāṣid*. If traditional or classical *maqāṣid* is only particular, then this hierarchical feature is interrelated by providing a social and public dimension to contemporary *maqāṣid* theory, by providing legal space and protection by making them children of the married family between Rohingya immigrants and the Indonesian community, the rights and obligations are part of the state to protect their children. The doctrine of revival in the sense of personal status return to their original domicile can not applied. Children born to Acehese-Rohingya mixed marriage cannot be treated as ordinary residents, because there may be less of a chance in the future for Rohingya refugees to return to their country. According to international law, the Rohingya people have been expelled from various countries or it could be said lost their citizenship. They only have a country of origin, the Rohingya, but no citizenship status.

Fifth, the multi-dimensional features (*ta'addud al-ab'ād*)<sup>44</sup> try to deal with conflicting arguments by including *maqāṣid* as a new reading so children of Acehese-Rohingya mixed marriage in the Indonesian society quickly get legal protection with habitual residence. It is in line with *hifẓ al-nafs* feature in *maqāṣid sharī'ah*. The doctrine of revival in the sense of personal status return to their original domicile can not applied. Children born to Acehese-Rohingya

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<sup>42</sup> Auda.

<sup>43</sup> Auda.

<sup>44</sup> Auda.

mixed marriage cannot be treated as ordinary residents, because there may be less of a chance in the future for Rohingya refugees to return to their country to regain their citizenship. According to international law, the Rohingya people have been expelled from various countries or it could be said lost their citizenship. They only have a country of origin, the Rohingya, but no citizenship status. The six features of inclusion and (*al-maqṣūdiyyah*, purposefulness)<sup>45</sup> are protection for children of mixed marriages<sup>46</sup> between Rohingya immigrants and Indonesian society to obtain protection in the state and nation.

## Conclusion

The problem of dual citizenship status for children resulting from mixed marriages between Acehese and Rohingya who live in Aceh needs an appropriate solution. Habitual residence is a solution that is considered to provide a sense of justice for children resulting from mixed marriages. Habitual residence by subordinating the child's citizenship status has an impact on the validity of the legal status of citizenship and other legal implications. This is in line with *maqāṣid shari'ah* concept which emphasizes the importance of beneficial values for the children from the marriage.

Therefore, this study emphasizes the importance of emphasizing consideration of the benefit of children in determining the citizenship status of children from mixed marriages between Acehese and Rohingya residents in Aceh, so that children have a clear legal position.

## Author Contribution Statement

**Nurul Husna:** Conceptualization; Investigation; Methodology; Writing Original Draft; Data Curation; Formal Analysis; Resources; Validation; Writing, Review & Editing.

**M Khoirul Hadi al Asy Ari:** Writing, Review & Editing; Resources; Validation; Conceptualization; Formal Analysis; Data Curation.

**Sitti Suryani:** Project Administration; Formal Analysis; Validation, Data Curation.

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<sup>45</sup> Auda.

<sup>46</sup> Thandabantu Nhlapo, 'Customary Marriage: Missteps Threaten the Constitutional Ideal of Common Citizenship', *Journal of Southern African Studies* 47, no. 2 (2021): 273-89, <https://doi.org/10.1080/03057070.2021.1880750>.

**Anizar Anizar:** Project Administration; Formal Analysis; Data Curation; Funding Acquisition.

**Budi Juliandi:** Project Administration, Formal Analysis; Data Curation; Funding Acquisition.

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