

MARRIAGE RIGHTS OF ROHINGYA REFUGEES IN INDONESIA: LEGAL RECOGNITION AND CHALLENGES

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ABSTRACT

The UN Refugee Agency (UNHCR) reports that the number of Rohingya refugees who have come to Indonesia since November 2023 has reached 1,200 people. The arrival of Rohingya refugees to Indonesia is a serious problem that highlights humanitarian and international legal challenges. This often occurs as part of forced migration resulting from conflict, violence and human rights violations in their countries of origin, particularly in Myanmar. On May 17, 2024, two Rohingya ethnic refugee couples who were in the West Aceh Regent's Office Complex refugee camp, Meulaboh got married. However, there are no provisions in the Indonesian state that regulate the marriage of Rohingya immigrant couples. In detail, the right to marriage is a human right that cannot be separated from humans themselves, including when they are in refugee camps, but marriage registration and documents must be the main point when they get married in another country, especially in a transit country like Indonesia. The aim of this research is to investigate the legal framework that regulates marriage rights for Rohingya refugees in Indonesia. It covers existing laws and policies and evaluates the extent to which the legal framework recognizes their marriage rights and the factors that constitute the legal challenges faced by Rohingya refugees in obtaining legal recognition of their marriages in Indonesia.

Keywords : immigrants, refugees, Rohingya

A. Introduction

The Rohingya are an ethnic minority group whose majority live in the state of Rakhine (formerly known as Arakan) in Myanmar.¹ They are an ethnic group that speaks the Rohingya language, a language originating from the Indo-Aryan language family, and is predominantly Sunni Muslim. The Rohingya have long lived in the region, but their citizenship status has been a source of conflict and oppression in Myanmar. The Myanmar government has refused to recognize them as citizens and considers them illegal immigrants from Bangladesh, even though many of them have lived in the region for centuries.²

1 M. Angela Merici Siba and Anggi Nurul Qomari'ah, "Human Rights Violations in the Rohingya Conflict Human Rights Violations on Rohingya Conflict," *Journal of Islamic World and Politics* 2, no. 2 (2018): 367–385.

2 David Fernando, Razico P Putra, and Satria Yulanda, "Collaboration between the Directorate General of

The Rohingya have faced systemic discrimination, restrictions on basic rights, and violence at the hands of the Myanmar military.³In recent years, a series of violence caused by the military and Buddhist extremist groups have forced thousands of Rohingya to flee to neighboring countries, especially Bangladesh, as well as other countries in Southeast Asia including Indonesia, Malaysia and Thailand.⁴

In June 2012, Thein Sein, who at that time served as president of Myanmar, chose to deport the Rohingya ethnic group and collect them in shelters. As a result of this incident, 140 thousand people were displaced and 800 people were stateless, 3 thousand buildings were damaged, and almost 60 thousand people were left homeless. The Rohingya ethnic group was forced to leave Myanmar and flee to various nearby countries such as Indonesia, Malaysia, etc.

The definition of a refugee according to experts, especially in the context of international law, refers to the definition given in the 1951 Refugee Convention and the 1967 Additional Protocol. According to the convention, a refugee is someone who “is outside their country of origin because of fear of being persecuted because of their race, religion or nationality.”, a particular social group, or political opinion” and are unable or unwilling to return to their country of origin due to fear of such circumstances. Article 14 of the Universal Declaration of Human Rights of 1948, which recognizes a person’s right to seek asylum from persecution in another country, the UN Convention Relating to the Status of Refugees, adopted in 1951, is at the heart of international refugee protection today. This Convention entered into force on 22 April 1954, and underwent only one amendment in the form of the 1967 Protocol, which removed the geographical and time limitations of the 1951 Convention (2) This Convention The 1951 Convention, as a post-Second World War instrument, was originally limited in scope to people fleeing events occurring before 1 January 1951 and in Europe The 1967 Protocol removed these limitations and thus gave universal scope to the Convention. Since then, this system has been complemented by refugee and subsidiary protection regimes in several regions, as well as by the progressive development of international human rights law.

The 1951 Convention consolidated previous international instruments relating to refugees and provided the most comprehensive codification of refugee rights at an international level.⁵Experts in law, policy, and human rights also often develop a broader

Immigration and UNHCR (United Nations High Commissioner for Refugees),” *Research Science Journal* 11, no. 1 (2021): 57–63.

- 3 cnnindonesia.com, “In the aftermath of the Rohingya Problem, Myanmar Bans Workers from Going to Malaysia,” *Cnnindonesia.Com*, last modified 2016, accessed May 10, 2024, <https://www.cnnindonesia.com/internasional/20161207140732-106-177946/buntut-Myanmar-Rohingya-problem-forbids-workers-to-Malaysia>.
- 4 Rahayu Rahayu, Kholis Roisah, and Peni Susetyorini, “Protection of the Human Rights of Refugees and Asylum Seekers in Indonesia,” *Legal Issues* 49, no. 2 (2020): 202–212.
- 5 M Nurhadi, “Rohingya Refugees Act Up, Making Local Residents Confused,” *Suara.Com*, last modified 2023, accessed May 9, 2024, <https://www.Suara.com/news/2023/11/17/171630/pengungsi-Rohingya-acting->

understanding of refugees, including people fleeing armed conflict, political violence, or conditions that threaten their lives and safety in their countries of origin. This definition includes people who have experienced war, natural disasters, ethnic discrimination, human rights violations, and similar situations that have made them refugees.

In practice, the definition of a refugee can also vary by country or context, depending on the national or regional legal framework governing the status and protection of refugees. However, the bottom line is that refugees are people who need international protection due to circumstances that force them to leave their country of origin and cannot return there for certain reasons recognized by international law. Refugees are individuals or groups of individuals who, due to genuine anxiety based on persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, are outside their country of citizenship and cannot, or because of such anxiety, cannot want to avail himself of the protection of that country, or a person who is stateless and is outside the country where he previously had his habitual residence, as a result of the events included, is unable, or because of such concerns, is unwilling to return to that country.⁶

The poor conditions and human rights violations experienced by the Rohingya have attracted global attention and raised international concern, with humanitarian and human rights organizations, including the United Nations, condemning the treatment they have experienced and calling for their protection and a just resolution of the conflict. UNHCR is an abbreviation for United Nations High Commissioner for Refugees. It is the United Nations agency responsible for protecting and assisting refugees around the world. UNHCR was founded in 1950 and operates in more than 130 countries.

UNHCR's main tasks include protection with provide legal and physical protection to refugees, including preventing deportation or unlawful detention, and ensuring that their human rights are respected. Aid with providing basic assistance such as food, shelter, and clothing to refugees in need. Resolution with helping refugees to find a sustainable solution to their situation, which may include voluntary return to the country of origin, local integration in the host country, or resettlement in a third country. Advocacy with fighting for refugee rights at the national and international level, as well as increasing public awareness about the issues faced by refugees. Coordination work with governments, international agencies, NGOs and other organizations to provide an effective response to refugee situations.⁷

In the context of Rohingya refugees in Indonesia, UNHCR can play a role in providing direct assistance to refugees, fighting for their rights before the Indonesian government, and coordinating with other institutions to improve the response to the crisis. Legal Basis for

up-makes-local-residents-embarrassed.

6 Rahayu, Roisah, and Susetyorini, "Protection of the Human Rights of Refugees and Asylum Seekers in Indonesia."

7 Okeri Ngutjinazo, "UN: There are Over 82 Million Refugees Worldwide, Over 40 Percent of them are Children," *Dw.Com*, last modified 2021, accessed May 9, 2024, <https://www.dw.com/id/report-unhcrmention-0Aover-82-million-refugees-across-the-world-end-2020/a-57948449>.

Refugees in Indonesia. Indonesia has positive law that regulates the handling of refugees from abroad. According to Article 3 of Presidential Decree 125/2016, handling refugees takes into account generally accepted international provisions and is in accordance with statutory provisions. Then, the handling of refugees is coordinated by the Minister of Political, Legal and Security Affairs, which is carried out in the framework of policy formulation, including discovery, accommodation, security and immigration control.⁸

Apart from that, Indonesia also has provisions governing the provision of asylum and refugees. Article 26 of Law 37/1999 states that granting asylum to foreigners is carried out in accordance with national laws and regulations and taking into account international laws, customs and practices. Even though Indonesia has positive law regarding refugees, based on the UNHCR website, Indonesia is not yet a party to the 1951 Convention and the 1967 Protocol.⁹ Meanwhile, if we refer to policies in Indonesia with Law Number 1 of 1974 is a law known as the Law on Marriage in Indonesia. This law is a legal regulation that regulates all aspects related to marriage in Indonesia, including the terms of marriage, marriage procedures, rights and obligations of husband and wife, division of joint property, divorce, as well as matters related to the status of children resulting from marriage.¹⁰ The Aceh Regional Office of the Ministry of Religion confirmed that there are a number of conditions that must be met by foreign citizens, including Rohingya refugees, who wish to get married. They are asked to obey the rules that apply in Indonesia.¹¹

But with Article 56 paragraph (2) of Law Number 1 of 1974 concerning Marriage which reads, "Marriages outside the territory of the Republic of Indonesia are valid and recognized under Indonesian law, then the proof of marriage from abroad must be registered at the Population and Civil Service. Civil Registry where husband and wife live."

The next law that explains this is Article 37 paragraph (4) Law Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Population Administration which reads "*Registration of marriages as intended in paragraph (1) and paragraph (2) reported by the person concerned to the Implementing Agency at their place of residence no later than 30 (thirty) days after the person concerned returns to Indonesia.*" As well as in Article 73 of Presidential Decree 25/2008 which reads "Indonesian citizens as intended in Article 70 and Article 71 after returning to Indonesia report to the Implementing Agency or UPTD Implementing Agency at their place of domicile by bringing proof of reporting/

8 Scholastica G. Maing and M. Elfan Kaukab, "Australia's Foreign Policy Dilemma in Handling Refugees and Asylum Seekers," *UNSIQ Journal of Research and Community Service* 8, no. 1 (2021): 28–39.

9 Sun Park, "The Ambivalence in the Ambiguity of UNESCO's Cultural Policy Remit: A Structural Description of the Common Heritage of Mankind in the Cultural Diversity Convention," *International Journal of Cultural Policy* 00, no. 00 (2022): 1–15, <https://doi.org/10.1080/10286632.2022.2107637>.

10 Dyah Ayu Putri and Muhaimin Zulhair Achsin, "The Role of the United Nations High Commissioner for Refugees (UNHCR) in Handling Overseas Refugees in Indonesia in 2016-2022," *Hasanuddin Journal of International Affairs* 3, no. 2 (2023): 82–101.

11 Fernando, Putra, and Yulanda, "Collaboration between the Directorate General of Immigration and UNHCR (United Nations High Commissioner for Refugees)."

registration of marriage abroad and a Deed Excerpt Marriage.”

Therefore, this research will analyze the existence of marriage rights for refugees in Indonesia and their relation to the issue of citizens’ rights to children born in Indonesia, including the challenges. The aim of this research is to obtain comprehensive recommendations on the issue of marriage rights for refugees in Indonesia, especially from an academic perspective.

B. Research Method

This legal research uses an empirical-qualitative approach. The empirical-qualitative approach in legal research aims to analyze and evaluate law based on applicable legal principles, norms and regulations, including identification of legal problems, and also interview several informant Rohingya Refugees,¹² collection of legal material, legal analysis, evaluation and interpretation and drawing conclusions.¹³ Legal analysis of legal regulations and principles is a systematic process for understanding, evaluating, and interpreting legal regulations and related legal principles in the context of certain problems or topics.¹⁴

Systematically, the rules used in this research are Law Number 1 of 1974 concerning Marriage, as secondary material in this research. As well as several relevant literature specifically in the field of marriage law in Indonesia. As well as other sources considered to support this research.

C. Discussions

1. The laws and regulations in force in Indonesia regulate marriages

Article 28E paragraph (1) of the 1945 Constitution. Marriage is related to social order. “*Marriage must be of the same religion, because with that there is no coercion on one another to practice the other religion,*”.

Explained Neng at the Plenary Session chaired by Chief Constitutional Justice Anwar Usman accompanied by eight constitutional judges. The Marriage Law is an embodiment of the Indonesian state as a legal state as stated in Article 1 paragraph (3) of the 1945 Constitution and a state based on the belief in One Almighty God as contained in Article 29 paragraph (1) of the 1945 Constitution. Therefore, in the lives of Indonesian people, it is mandatory to implement Islamic law for Muslims, Christian law for Christians, and Hindu

12 Rik B. Braams et al., “Legitimizing Transformative Government: Aligning Essential Government Tasks from Transition Literature with Normative Arguments about Legitimacy from Public Administration Traditions,” *Environmental Innovation and Societal Transitions* 39 (2021): 191–205, <https://doi.org/10.1016/j.eist.2021.04.004>.

13 Uggul Ansari Setia Negara, “Normative Legal Research in Indonesia: Its Origin and Approaches,” *Audito Comparative Law Journal* 4, no. 1 (2023): 1–9.

14 Nasir Muhammad, *Qualitative Research Methods, Procedures and Techniques*, 2020.

law for Hindus. To implement the Shari'a, the mediation of state power is needed. So, in the Marriage Law the legal basis used is none other than Article 29 of the 1945 Constitution, so that every article contained in a norm must be taken into account and must not conflict with the provisions of Article 29 of the 1945 Constitution. This means that all provisions (including marriage) must be in accordance with Article 29 of the 1945 Constitution which is an absolute requirement.¹⁵

According to M. Yahya Harahap's view, several principles are quite principled in the law marriage is the first accommodating all the realities that live in Indonesian society today. Second, in accordance with the demands of the times. Third the aim of marriage is to form an eternally happy family. Law Number 1 of 1974 is a law known as the Law on Marriage in Indonesia. This law is a legal regulation that regulates all aspects related to marriage in Indonesia, including the terms of marriage, marriage procedures, rights and obligations of husband and wife, division of joint property, divorce, as well as matters related to the status of children resulting from marriage.

Several points regulated in Law Number 1 of 1974 concerning Marriage in Indonesia include marriage requirements. This law stipulates conditions that must be met by prospective brides and grooms, such as age limit, parental consent if necessary, and the absence of a valid previous marriage. Then marriage procedures, this law also regulates the procedures that must be followed in carrying out a marriage in Indonesia, including registering the marriage at the civil registry office. Rights and Obligations of Husband and Wife. This law determines the rights and obligations of both parties, both husband and wife, in a marriage. And divorce, this law also regulates divorce procedures in Indonesia, including the conditions for divorce and the rights of the divorcing parties. Status of Children, this law regulates the status of children born from marriage, including regarding the determination of father and mother and the rights of children in terms of inheritance and care.

The Law on Marriage has undergone several changes since its enactment, including adjustments to social and cultural developments, as well as compliance with human rights. The Compilation of Islamic Law (KHI) is a collection of legal regulations that regulate various aspects of Muslim life in Indonesia. KHI is an effort to compile and integrate various provisions of Islamic law that exist in various sources of traditional Islamic law, such as the *Al-Quran*, *Hadith*, *ijtihad ulama*, and *fatwas*, into one systematic and structured unit. KHI was first published in 1991 as an attempt to simplify, classify and reorganize Islamic law in Indonesia. The main objective of KHI is to create legal certainty in the religious and social life practices of Muslims in Indonesia, as well as to facilitate the application of Islamic law in accordance with the diverse context and conditions of Indonesian society.

KHI covers various aspects of Islamic law, including marriage, family, inheritance, waqf, zakat and sharia criminal law. This document also includes provisions regarding

15 *Law Number 39 of 1999 concerning Human Rights*, nd

Islamic institutions, such as mosques, Islamic educational institutions, and religious social institutions. KHI is not a single document, but is a series of legal regulations that are related to each other. This consists of various legal regulations issued by the Indonesian government, such as Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage, Law Number 7 of 1989 concerning Sharia Crime, and various other statutory regulations relating to Islamic law.¹⁶

The Compilation of Islamic Law provides a clear legal framework for the practice of Muslim life in Indonesia, while taking into account the state legal principles of Pancasila and religious freedom guaranteed by the Indonesian constitution. In the legal sense, a compilation is nothing other than a legal book or collection of books containing descriptions or certain legal materials, legal opinions or legal rules. The meaning is indeed different from codification, but the compilation in this sense is also a legal book. The Compilation of Indonesian Islamic Law which was established in 1991 does not explicitly state what the meaning of compilation and compilation of Islamic law is. From the history of its compilation, there is no evidence of any controversial ideas regarding what was meant by the compilation. Thus, the compiler of the compilation does not strictly adhere to one understanding regarding what he is making, but this fact does not seem to invite reactions from any party.

The basics of marriage are in accordance with Chapter II "*Basics of Marriage*" of the Compilation of Islamic Law (KHI). Section 2 Marriage according to Islamic law is a marriage, namely a very strong contract or *mitssaqaan ghalidzan* to obey God's commands and carry them out is worship. Article Marriage aims to realize life in a household that is *sakinah, mawaddah, and rahmah*. Article 4 Marriage is valid if it is carried out according to Islamic law in accordance with article 2 paragraph (1) of Law no. 1 of 1974 concerning Marriage. Article 5 (i) To ensure orderly marriage for Islamic society every marriage must be noted. (2) Registration of marriage is in paragraph (1), carried out by a Marriage Registrar Officer as regulated in the Law No. 22 of 1946 in conjunction with Law no. 32 1954. Article 6 (1) To fulfill the provisions in article 5, each The marriage must take place in the presence of under the supervision of Marriage Registrar Officers. (2) Marriages carried out outside supervision. There are no Marriage Registrar employees legal force. Article 7 (1) Marriage can only be proven by a Marriage Certificate made by the Registrar's Officer Marry. (2) In the event that the marriage cannot be proven with a Marriage Certificate, an *itsbat* can be submitted the marriage was at the Religious Court. (3) marriage certificate which can be submitted to the Court Religion is limited to matters relating to like as There is a marriage within the framework divorce settlement. Loss of Marriage Certificate. There is doubt about whether it is valid or not part of the conditions of marriage. There was a marriage that

16 *Law Number 1 of 1974 concerning Marriage* (Addition to the State Gazette of the Republic of Indonesia Number 3019, 1974).

occurred before the enactment of Law no. 1 Year 1974 and marriages entered into by those who do not have marriage obstacles according to Law no. 1 1974 (4) Those who have the right to apply for its bat marriage means husband or wife, their children, marriage guardian and interested parties with that marriage.

Article 8 Dissolution of marriage other than divorce can only result in death proven by a divorce decree in the form of a decision Religious Courts either take the form of a decision divorce, vow of divorce, khuluk or decision of taklik divorce. Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage: This law is the latest revision of Law Number 1 of 1974 and introduces several important changes in marriage regulations in Indonesia, including regulations regarding minimum age for marriage, protection of women's rights in marriage, and divorce procedures.

Law Number 1 of 1974 concerning Marriage is the law that regulates marriage in Indonesia. The history of the formation of this law can be understood in the context of political, social and legal changes in Indonesia at that time. This law was created during the New Order government under President Soeharto. At that time, the government had a very large role in regulating social life, including in matters of marriage. Law Number 1 of 1974 aims to unify various marriage rules and practices that differ throughout Indonesia. This is important considering that Indonesia is a country with great cultural and religious diversity.

One important aspect of this law is the regulation of interfaith marriages. This law requires couples who wish to marry to have the same religion. Law Number 1 of 1974 also regulates various other aspects of marriage, including requirements for the validity of a marriage, the rights and obligations of husband and wife, marriage annulment, divorce, and so on. Since its enactment in 1974, the Law on Marriage has undergone several changes and amendments to adapt to current developments and societal demands. One example of significant change is the Constitutional Court's decision to allow interfaith marriages in 2018, which changed several articles in this law. Thus, Law Number 1 of 1974 concerning Marriage has a long and important history in regulating the institution of marriage in Indonesia, and reflects the social, cultural and political dynamics of its time.

Several decisions of the Constitutional Court of the Republic of Indonesia (MKRI) also have a significant impact on marriage law in Indonesia. Representatives of the Constitutional Court of the Republic of Indonesia (*Perwakilan Mahkamah Konstitusi Republik Indonesia*) also have a significant impact on marriage law in Indonesia. Aceh, as a province with a majority Muslim population in Indonesia, has become a place of refuge for several Rohingya refugees. The government and people of Aceh have shown solidarity and concern for the fate of the Rohingya, providing humanitarian assistance and shelter for refugees.

Although many Acehnese show a friendly attitude towards the Rohingya, there is also the potential for tension between Rohingya groups and local communities. Factors such as competition over resources, fear of cultural and religious influences, and economic uncertainty can all fuel conflict between these groups. It is important for the Indonesian

government, especially at the provincial and local levels, to ensure that social integration between the Rohingya and the people of Aceh runs smoothly. This involves providing adequate humanitarian assistance, efforts to promote dialogue between groups, as well as creating economic opportunities for all parties to reduce tensions. A long-term solution to this conflict involves continued efforts to address its root causes in Myanmar, such as the need to recognize the rights of the Rohingya people and an inclusive political settlement in the country.

The conflict between Rohingya and local residents in Aceh reflects complex challenges involving social, economic, political and religious issues. Resolving this conflict requires joint efforts from the government, local communities and other relevant parties to ensure peace and justice for all parties involved.

The Constitutional Court of the Republic of Indonesia (MKRI) in 2017 issued an important decision regarding the minimum age limit for marriage. The decision is regarding a judicial review of Article 7 paragraph (1) of Law Number 1 of 1974 concerning Marriage which regulates the minimum age for marriage.

Through this decision, the Constitutional Court stated that the minimum age for marriage is 19 years for both men and women. This decision was established to protect children's rights and provide better protection for children from early marriage. Prior to this decision, Law Number 1 of 1974 only stated that the minimum age for marriage was 16 years for men and 16 years for women, with parental or court approval. This MKRI decision changes this provision and confirms that the minimum age limit for marriage is 19 years for both men and women, without requiring parental or court approval.

The Constitutional Court (MK) confirmed the decision to review Article 43 paragraph (1) of the Marriage Law, which states that illegitimate children not only have a legal relationship with their mother, but also have a legal relationship with their biological father, only to protect the innocent status of illegitimate children. The position of illegitimate children is a problem that needs serious attention, considering that the impact of this problem is not only related to legal issues from the aspect that accompanies it, but also raises social problems that can disrupt the survival of children born from an illegitimate relationships. as an individual who has a great responsibility in shouldering the future of the nation. Government regulations governing the implementation of Law Number 1 of 1974, including regarding marriage administration, division of joint assets, and divorce procedures.

Several provinces or districts/cities in Indonesia also have regional regulations relating to marriage, especially those relating to the administration of marriage and the division of joint property. Regional regulations (Perda) in Aceh Province relating to marriage generally include provisions that regulate various aspects of marriage in accordance with Islamic sharia principles that apply in Aceh. However, because Aceh has special autonomy in the field of Islamic law, these regulations may differ from regulations in other provinces in Indonesia. Some Aceh regional regulations relating to marriage include:

Aceh Qanun Number 6 of 2014 concerning Marriage: This Qanun regulates various aspects of marriage according to Islamic sharia law that applies in Aceh. Included in this regulation are marriage conditions, marriage procedures, rights and obligations of husband and wife, division of joint property, and other provisions relating to the institution of marriage.

Aceh Qanun Number 8 of 2014 concerning the Implementation of Marriage Registration: This Qanun regulates marriage registration procedures in Aceh, including administrative requirements that must be fulfilled by couples getting married, registration procedures, and the division of authority between the district/city government and the religious affairs office.

Aceh Qanun Number 10 of 2018 concerning Child Protection. Although not specifically about marriage, this qanun regulates the protection of children, including efforts to prohibit the marriage of underage children in accordance with sharia principles that apply in Aceh.

Apart from these qanuns, there are still other regional regulations in Aceh relating to marriage, especially those related to the implementation of Islamic law in the province. It is important to note that Aceh has special authority in regulating Islamic law in its territory, so regulations in Aceh may differ from regulations in other provinces in Indonesia.

Customary law and religious law, especially Islam, Christianity, Catholicism, Hinduism and Buddhism, are in accordance with the religion adhered to by each couple getting married. Because the Rohingya refugees are Muslims. Islamic religious law regarding marriage is regulated in the Al-Quran, Hadith, as well as the *ijtihad* (legal thinking) of *ulama*.

The Koran is the basic basis of Islamic law regarding marriage. The following verses are: Al-Quran Surah Annisa verse 1 Meaning:

“O all humans, fear your Lord who created you from one person, and from him Allah created his wife, and from the two of them Allah created many men and women. . And, fear Allah, in whose name you ask each other, and (maintain) friendly relations Indeed, Allah always watches over you and watches over you.”

Al-Quran Surah An Nuur verse 31 means:

“And, marry those who are alone among you, those who are worthy (to marry) from your male servants and your female servants. If they are poor, Allah will enable them with His grace, And, Allah is All-Encompassing (His Gifts) and All-Knowing.”

Al-Quran Surah Ar Ruum verse 21 means:

“And, among the signs of His power is that He created for you wives of your own kind, so that you will be inclined and feel at ease with them and He will make among you a feelings of love and affection. Verily, In that there are indeed signs for a person who thinks.”

Al-Quran Surah An Nahl verse 72 means:

“Allah made for you wives from your own kind and made for you from your wives, children and grandchildren, and gave you sustenance from the good things. So, why do they believe in falsehood and deny the favors of Allah.”

Hadith In the hadith or sunnah there are several things that form the basis of marriage law, namely

“Women are married for four things, namely because of their wealth, their offspring, their beauty, and because of their religion. So, get a woman who is religious and you will be lucky.” (HR Bukhari and Muslim).

“But I pray, sleep, fast, break the fast, and marry women. Whoever hates my sunnah, he is not among my ummah.” (HR Bukhari and Muslim).

“If someone marries, then he has perfected half of his religion. Therefore, fear Allah for the other half.” (HR Baihaqi).

The following are some of the main principles in Islamic religious law regarding marriage: Marriage Requirements. Islamic law sets several requirements that must be met for a marriage to be valid. These requirements include agreement (*ijab qabul*) from both parties, the guardian (female representative) for the prospective bride, as well as witnesses present at the marriage contract. Agreement and Consent. Marriage in Islam is based on agreement and consent of both parties who are getting married. Both the groom and the bride must agree to the marriage voluntarily. Dowry is a right owned by the prospective bride which must be given by the prospective groom at the time of marriage. The dowry can be in the form of property, money, or something that has value.

Conditions for Validity of Marriage. Islamic law sets several conditions that must be met for a marriage to be considered valid. One of them is the provisions regarding the legal guardian for the prospective bride, as well as provisions regarding the absence of obstacles that prohibit marriage (*‘ain, ‘udl, terms* and *rukhsah*). Rights and Obligations of Husband and Wife Islamic law regulates the rights and obligations of husband and wife in marriage. This includes the husband’s obligation to provide support and protection to his wife, as well as the wife’s right to be provided for, cared for and treated fairly by her husband. Divorce Process. Islamic law also regulates divorce procedures (*talak*) and the rights that both parties have in the event of a divorce. This includes procedures for recording divorce and dividing joint assets after divorce. Marriages between Indonesian citizens (WNI) and foreigners are often referred to as mixed marriages, and the rules are regulated in article 57 of Law No.1 of 1974.

According to Jumhur Ulama, there are five pillars of marriage and each pillar has certain conditions. Namely: Prospective husband, provided that: Muslim religion, Man, Obviously the person, Can give consent, There are no obstacles to marriage. Prospective wife, provided that: Muslim religion, Woman, Obviously the person, Can be asked for approval. There are no obstacles to marriage. Marriage guardian, with the following conditions: Man, Mature, Has guardianship rights. There are no guardianship obstacles, Marriage witness, provided that: Minimum two men, Present at the wedding ceremony Can understand the meaning of the contract Islam Mature. Consent Qabul, with the following conditions: There is a statement of marriage from the guardian, There is a statement of acceptance from the prospective groom, Use the words marriage, *tazwij*, or translations of these two words, Between consent and qabul are continuous, The meaning between consent and qabul is

clear, People who are involved in *ijab* and *qabul* are not in *ihram* for *Hajj* or *Umrah*, The *Ijan* and *Qabul* assembly must be attended by a minimum of four people, namely candidates the bride or her representative, the bride's guardian and two witnesses.

Documents Required to Marry a Foreigner: To arrange a marriage with a foreigner, there are several documents that must be prepared, including: Documents for foreigners: Certificate of No Impediment (CNI), also known as a single letter, which states eligibility for marriage and intention to marry an Indonesian citizen. This letter is issued by the competent authority in the country of origin, such as the embassy. Photocopy of identity card from the country of origin of the prospective husband/wife. Photocopy of birth certificate. Passport photocopy. Certificate of freedom to marry. Divorce certificate if ever married. Death certificate of spouse if deceased. Current domicile certificate. 4 pieces of 2x3 size photos and 4 pieces of 4x6 size photos. If the wedding takes place at the KUA, you must attach a certificate of conversion to Islam if you were previously non-Muslim.

Requirements for Obtaining CNI from the Embassy:

1. Latest birth certificate. Photocopy of country of origin identity card. Passport photocopy. Proof of residence or domicile letter. If you don't have one, it could be a photocopy of a telephone or electricity bill. All documents must be translated into Indonesian by a sworn translator, and then legalized by the Foreigner's Embassy in Indonesia.
2. Documents for Indonesian citizens: Cover letter from RT/RW stating that there are no obstacles to holding the wedding. Forms N1, N2, and N4 from sub-districts and sub-districts. Form N3, specifically for those getting married at KUA or a bridal agreement letter signed by both bride and groom. Photocopy of KTP and birth certificate. Data of the prospective bride and groom's parents. Photocopy of Family Card. Parents' marriage certificate if you are the first child. Data of two wedding witnesses and photocopies of their identities. 4 pieces of 2x3 size photos and 4 pieces of 4x6 photos. Latest PBB payment proof book. Pre-nuptial agreement.

Apart from that, there are also document requirements for Indonesian citizens required by foreign embassies, such as: Photocopy of birth certificate and original. Photocopy of KTP. N1, N2 and N4 letters from the sub-district which need to be photocopied. Photocopy of prenuptial agreement if available.

Before posting all documents, it is recommended to make copies of all documents, as the Embassy will not return original documents. The requirements for marriage abroad that need to be completed are reporting of marriages, both within and outside the country, which is an obligation. The completeness files are as follows: Marriage Certificate or marriage certificate from the country of origin which has been translated into Indonesian, and has been superlegalized by the local Indonesian Representative. Marriage Certificate from the Indonesian Embassy in that country. Photocopy of birth certificate of husband and wife. Photocopy of KTP and Family Card. Photocopy of husband's passport. Side-by-side

photograph measuring 4×6 with a red background.¹⁷

1. Legal challenges faced and inhibiting factors faced by Rohingya refugees in complying with marriage regulations in Indonesia

The Aceh Regional Office of the Ministry of Religion confirmed that there are a number of conditions that must be met by foreign citizens, including Rohingya refugees, who wish to get married. They are asked to obey and obey the rules that apply in Indonesia. Includes passport, unmarried certificate from the country of origin and marriage registration from the religious affairs office for those who are Muslim. Head of the Religious Affairs Office (KUA) of Johan Pahlawan Subdistrict, West Aceh Regency, Marhaschedule described that the marriage of two ethnic Rohingya couples in a temporary shelter at the West Aceh Regent's was an illegal act and did not comply with the rules and applicable laws in Indonesia.

The marriage of two ethnic Rohingya couples, namely Zainal Tullah and Azizah, and Zahed Huseen and Rufias, was allegedly carried out not in accordance with the marriage procedures normally regulated in Islamic teachings, and the wedding was led by Jabir as a Muslim ustadz among the Rohingya.¹⁸ Marriages between Rohingya ethnic residents in West Aceh have become a matter of public discussion because they are said to violate the Marriage Law. Muhammadiyah asked the government to coordinate with the United Nations High Commissioner for Refugees (UNHCR). Marriages carried out in the jurisdiction of the Republic of Indonesia must follow the laws in force in Indonesia. In Islam, a marriage is said to be valid if it fulfills 5 conditions, namely the bride and groom, the bride's guardian, witnesses of two men or four women, thanks (dowry), and consent.

Head of the West Aceh Regency Ministry of Religion Office, Abrar Zym in Meulaboh, said:

"that so far the West Aceh Ministry of Religion has not known about the marriage."

So, he said:

"information about Rohingya ethnic marriages must be investigated further."

Abu Ahmad is one of the Rohingya refugees who married an Indonesian citizen in Bandar Lampung in 2010. At least four of the 248 Rohingya refugees who are under the supervision of the Polonia Class I Immigration Office are married to Indonesian women. This practice is not prohibited, although the formal regulations are unclear.

Head of the West Aceh Ministry of Religion (Kemenag) Office, Abrar Zym, said that the marriage of a Rohingya couple in a refugee camp in the city of Meulaboh was not under the authority of the Religious Affairs Office (KUA).

Marriages of foreign citizens are clearly not within the purview of the Office of Religious

17 Karen Zivi, "Performing the Nation: Contesting Same-Sex Marriage Rights in the United States," *Journal of Human Rights* 13, no. 3 (2014): 290–306. Supreme Court decisions, and changes in federal and state law suggest that the United States is witnessing a support for lesbian, gay, bisexual, and transgender (LGBT

18 Rahayu Rahayu, Kholis Roisah, and Peni Susetyorini, "Protection of the Human Rights of Refugees and Asylum Seekers in Indonesia," *Legal Issues* 49, no. 2 (2020): 202–212.

Affairs (KUA) under the Indonesian Ministry of Religion. The Marriage Law clearly only applies to Indonesian citizens, when a Rohingya citizen gets married, then it returns to the Rohingya regulations. Even though the wedding was held in Indonesian territory. Religiously, we return to their religious beliefs and customs. In the future, there needs to be a synergy between the Ministry of Law and Human Rights, the Ministry of Foreign Affairs, the DPR and the Ministry of Home Affairs to provide certainty of citizenship status for foreigners living as refugees in the territory of the Republic of Indonesia (Ace Hasan Syadzily, Deputy Chair of Commission VIII DPR RI).

He also said that this marriage was not regulated in Law Number 1 of 1974 concerning Marriage. In the marriage law, the government has clearly regulated the rules for marriage between foreign citizens and Indonesian citizens (WNI). Meanwhile, there are no regulations regarding marriage between foreigners and foreigners.

Another example of a case regarding mixed marriages carried out in Indonesia, marriages carried out by Indonesian citizens and foreigners from New Zealand were carried out under Islamic law. Previously, New Zealand foreigners had converted to the prospective bride's religion, namely Islam. Based on the provisions of Article 2 of the Marriage Law, this marriage is valid because it has been carried out according to the laws of each religion and belief which is then registered with the local Religious Affairs Office (KUA).

Mixed marriage is one aspect that is included in the scope of International Private Law. Private International Law is a branch of law that regulates the legal consequences of civil relations between individuals who have ties to more than one state jurisdiction. Mixed marriages occur when two individuals from different countries or having different nationalities marry. Questions about which laws should be applied to regulate marriage, including formal requirements for marriage, the rights and obligations of husband and wife, and separation of assets. International recognition of the status of mixed marriages, whether as valid or invalid, as well as termination or divorce.

Citizenship of spouses and children may be affected by the nationality laws in force in the country where they were born, the nationality laws of their parents, as well as other relevant provisions. If a couple has different nationalities, the citizenship status of their children may be determined by the nationality laws of the respective countries where the parents have citizenship. Some countries may use the *jus soli* principle (citizenship is determined by place of birth), while others use the *jus sanguinis* principle (citizenship is determined by the nationality of the parents).

If a international marriage occurs, where one partner has a different nationality to the country in which they are married, then the citizenship status of their children can become complex. Countries have different laws in this regard, and there may be specific regulations governing the citizenship status of children in the context of cross-border marriages. Some countries may grant automatic citizenship to children born to parents who are citizens of their country, regardless of the child's place of birth. However, there are also countries that

require special measures, such as registration or an application for citizenship, to grant citizenship status to children born to their citizen parents outside the territory of that country.

In some countries, children born to couples with different nationalities may be eligible to have dual citizenship, that is, the citizenship of both parents. However, there are countries that do not recognize dual citizenship and may require children to choose one citizenship when they reach a certain age.

It is important to note that citizenship rules can vary between countries, and citizenship can have significant implications regarding rights, obligations, and other entitlements. Therefore, if there is any question about citizenship status, it is important to consult a legal expert or competent authority in the relevant country. The principle of reciprocity in recognizing the validity of mixed marriages refers to the principle that a country will recognize the validity of a mixed marriage if the country of origin of one of the partners also recognizes the marriage. In other words, the state will give recognition to mixed marriages as long as the country also gives the same treatment to mixed marriages from other countries. This principle arises from the need for mutual respect for the legal sovereignty of states in cases of mixed marriages. If a country recognizes mixed marriages from country A, then country A is expected to provide the same recognition to mixed marriages from the country that provides such recognition. This creates a fair and balanced framework for the international recognition of mixed marriages.

However, it is important to remember that the principle of reciprocity is not always applied automatically or universally. There are various factors that can influence whether a country will apply the principle of reciprocity in recognizing mixed marriages, including domestic legal policies, diplomatic relations between the countries concerned, as well as broader international legal principles.

In practice, countries often enter into bilateral or multilateral agreements that regulate the issue of recognizing mixed marriages, including provisions regarding the principle of reciprocity. This aims to create a clear and reliable framework for the recognition of mixed marriages, which takes into account the interests and legal sovereignty of all parties involved. Issues related to citizenship for spouses and their children, including their rights to citizenship of different countries. In the event of a divorce, questions arise about the laws applicable to divorce, asset rights, and support obligations between spouses who come from different countries. Children's rights and parental obligations, including custody and determining where to live for children if the marriage ends.

Private International Law (HPI) regulates cross-border marriages, including marriages between WNA (Foreign Citizens) and WNI (Indonesian Citizens). Private International Law attempts to resolve legal conflicts arising from cross-border civil relations by providing rules to determine applicable law and regulate the recognition and enforcement of inter-state court decisions. This is important to ensure legal certainty and protection of individual rights in civil relations that cross national borders. Rohingya refugees may face serious economic

hardship, so complying with legal regulations could be an additional challenge for them, especially if it requires additional costs. The economic condition of Rohingya refugees in Indonesia is often fragile and unstable. Efforts are needed from governments, humanitarian organizations, and the international community to increase their access to employment, education, social services, and financial support, and to improve their legal status so that they can become economically more independent. Due to their refugee status and legal limitations in working in Indonesia, many Rohingya refugees are forced to work in the informal sector or even face difficulty finding work at all. This limits their income and hinders their ability to meet basic needs.

Language and culture are important factors in understanding and complying with legal regulations. Rohingya refugees may face communication and understanding barriers due to language and cultural differences with the local Indonesian community. Language and cultural differences between the Rohingya and Indonesian communities cover various aspects, which can affect social interaction, understanding and integration between the two groups.

The main language used by the Rohingya people is Rohingya, which is a language that comes from the Indo-Aryan language family and has influences from languages in the surrounding region. In Indonesia, the official language is Indonesian, which comes from the Austronesian language family and has characteristics that differ significantly from Rohingya.

The majority of the Rohingya people adhere to Islam, while in Indonesia, the majority of the population is Muslim too, but there are various other religious beliefs such as Christianity, Hinduism, Buddhism and traditional beliefs. The Rohingya people have distinctive traditions and customs, including weddings, religious rituals and cultural festivals. Indonesian culture is also rich with various traditions and customs from the various tribes and ethnicities within it.

Although there are differences in language and culture, it is important to remember that each individual and group has significant internal diversity, and there are also many similarities and common ground between the Rohingya people and Indonesian society. Open communication, mutual understanding, and respect for differences can help strengthen relations between the two groups.

International Convention on the Elimination of All Forms of Racial Discrimination. that the Universal Declaration of Human Rights states that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth in it, without distinction of any kind, in particular race or color. or country of origin, Considering that all human beings are equal before the law and have the right to equal legal protection against all forms of discrimination and against all incitement to discrimination, Considering that the United Nations has condemned colonialism and all practices of segregation and discrimination related to it, in whatever form and wherever they exist.

Article 1 International Convention on the Elimination of All Forms of Racial Discrimination. In this Convention, the term “racial discrimination” means any distinction, exclusion, limitation or preference based on race, color, descent or national or ethnic origin which has the aim or effect of eliminating or reducing the recognition, enjoyment or exercise, on an equal basis, of any human rights and fundamental freedoms in the political, economic, social, cultural or other areas of public life. This Convention does not apply to distinctions, exceptions, limitations or preferences made by a State Party to this Convention between citizens and non-citizens. No provisions of this Convention shall be construed to affect the legal provisions of States Parties concerning nationality, naturalization, provided that such provisions do not discriminate against any particular nationality.

The principle of non-refoulement is a principle that prohibits the expulsion or refusal to return a person to a country where he or she may be subjected to torture, inhuman or degrading treatment, or other serious harm. This principle is part of international human rights law, especially in relation to refugee protection. The principle of non-refoulement has a strong legal basis in various international instruments, including:

1. UN Convention on the Status of Refugees 1951 and Additional Protocol 1967: Article 33 of the Refugee Convention states that “No one shall be expelled or refused return, by any means whatever, to the borders of any State where he may face threats to his life or freedom because of race, religion, nationality, social group, or political opinion.”
2. UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Article 3 of the Convention prohibits the extradition, surrender or transfer of a person to a country where he or she may face the threat of torture.
3. UN Agreement on the Elimination of All Forms of Racial Discrimination: Article 3 of this Agreement prohibits member states from expelling or refusing to return their own citizens, as well as persons from certain ethnic groups, to countries where they may face torture or inhumane treatment.

The principle of non-refoulement is an important pillar in the protection of human rights, especially for those who experience threatening situations in their home countries and seek protection in other countries. States have an obligation to respect and implement this principle in accordance with their obligations under international law.

Uncertainty regarding the legal status of Rohingya refugees. As they do not have a clear legal status in Indonesia, they may find it difficult to comply with legal regulations with confidence. Many Rohingya refugees have experienced trauma and psychological difficulties as a result of their experiences in Myanmar and during their migration process. This can interfere with their ability to focus and comply with legal regulations. Overcoming these factors requires a holistic approach, which includes economic assistance, legal and cultural education, psychological support, as well as efforts to ensure clear legal status for Rohingya refugees in Indonesia.

“The Indonesian government must prioritize considerations of national interests. Apart from that, there must be a firm attitude regarding limiting the number of refugees accommodated and the period of temporary stay.” (Hikmahanto Juwana, Professor of International Law, University of Indonesia). Considerations of national interests regarding Rohingya refugees can involve various complex and sensitive factors. A country may have national security concerns regarding the presence of Rohingya refugees. This could include concerns about potential infiltration by extremist groups or cross-border crime involving refugees.

The presence of large numbers of Rohingya refugees can affect social and political stability in a country. This can include tensions between local communities and refugees, competition over resources, and political reactions from communities. Rohingya refugees can have an economic impact, both positively and negatively, depending on various factors such as their involvement in the labor market, consumption, and investments they may bring with them.

A country’s decision regarding Rohingya refugees can also affect its diplomatic relations with other countries, especially with countries where the refugees come from or countries that provide international assistance. States have a responsibility to comply with their obligations under international law, including the 1951 Refugee Convention and the 1967 Additional Protocol. This includes providing protection to people who meet the criteria for refugees and ensuring that they are not arbitrarily expelled or persecuted.

The conflict between Rohingya and local residents in Aceh can be a very sensitive topic. This conflict may be related to social, economic, political and religious issues. The Rohingya are a Muslim ethnic minority group who predominantly live in Rakhine state, Myanmar. They have experienced systematic discrimination and violence by the Myanmar government and the Buddhist majority. As a result, many Rohingya fled Myanmar, seeking refuge in neighboring countries such as Bangladesh, Malaysia and Indonesia.

In dealing with the Rohingya refugee problem, a country often must weigh security, political, economic and humanitarian considerations simultaneously. A balanced approach based on the principles of human rights and justice can help countries address these challenges in a way that best suits their national interests. PAHAM FH Unpad itself gave four special appeals through a press release for handling Rohingya refugees in the future. First, academics are asked not to express opinions without a solid scientific basis. Erroneous opinions from academics can greatly influence public opinion. Second, the various government parties and international organizations involved must be more responsive in handling the arrival of Rohingya refugees. There needs to be an effort to bridge constructive dialogue with local residents to avoid rejection.

Third, PAHAM FH Unpad also demands that the Indonesian Government prioritize a humanitarian approach in maritime patrols against Rohingya boats. Emergency relief measures such as withdrawing them to Indonesian land areas must be taken if necessary.

Finally, PAHAM FH Unpad asked the Indonesian Government to immediately cooperate with related countries, especially Bangladesh and Malaysia for comprehensive joint handling.

D. Closing

The applicable laws and regulations governing the marriage of foreign nationals in this discussion are Rohingya ethnic refugees depending on the provisions in these laws which may differ depending on the legal status of foreigners and Indonesian citizens, as well as applicable bilateral or multilateral agreements. between Indonesia and the foreigner's country of origin. The relevant laws in Myanmar are Family Law, Religious Law and Government Regulations. However, the political and social situation in Myanmar can influence the implementation and enforcement of the law, including in the context of marriage. In addition, the controversial human rights situation in the country, including in particular the treatment of the Rohingya minority, has raised international attention to the protection of their rights, including marriage rights.

The legal basis for the laws and regulations of the Republic of Indonesia (RI) regarding marriage between WNA (Foreign Citizens) and WNI (Indonesian Citizens) is Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019 concerning Amendments Law Number 1 of 1974 concerning Marriage. The legal basis also includes various derivative regulations, including government regulations and regional regulations which may regulate further administrative procedures. General procedures for registering marriages between foreigners and Indonesian citizens in Indonesia:

1. Document Requirements
2. Registration at the Religious Affairs Office (KUA)
3. Verification and Announcement Process
4. Marriage Registration

The marriage of Rohingya ethnic refugees as foreign citizens (WNA) with Indonesian citizens has faced several obstacles in complying with marriage regulations in Indonesia. The administrative process for marriage registration in Indonesia involves strict document requirements. Rohingya refugees as foreigners may face difficulties in fulfilling the necessary document requirements, especially if they do not have complete or valid identity documents. Rohingya refugees may not have clear legal status in Indonesia. They may be in refugee or immigrant status without a valid residence permit. This can complicate the marriage registration process because foreigners who marry Indonesian citizens must fulfill the legal requirements in force in Indonesia, including having a valid residence permit.

Legal protection of marriage rights for Rohingya refugees as foreigners could also be an issue. They may need to be guaranteed adequate legal protection, including property rights and other family rights, especially in the event of divorce or separation. Legal and Policy Uncertainty: Unstable political and legal conditions in Myanmar and Indonesia, as well as legal uncertainty regarding the status and rights of Rohingya refugees, may create

additional obstacles to complying with Indonesia's marriage regulations.

Legal uncertainty is a complex and challenging situation, but with a careful approach, accurate information, and assistance from relevant parties, individuals involved can better navigate these obstacles. There are several suggestions from the author as follows:

1. Communicating with relevant authorities, such as the Office of Religious Affairs (KUA), Immigration Department, or relevant legal aid institutions, can help in understanding the marriage registration process and obtaining more accurate information.
2. Consider Legal Alternatives: If there is significant legal uncertainty or obstacles that are difficult to overcome, consider other legal alternatives that may be available. This could include seeking alternative marriage pathways, applying for special protection for refugees, or seeking assistance from humanitarian or diplomatic organizations.

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