

Islamic Family Law and International Inheritance: An Analysis of Mixed Marriages from the Perspective of International Civil Law

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ARTICLE INFO

Keywords:

Mixed Marriages;
International Inheritance;
Islamic Family Law

Article history:

Received 2025-04-15

Revised 2026-05-19

Accepted 2026-06-23

ABSTRACT

Globalization has increased the number of mixed-nationality and interfaith marriages, giving rise to cross-jurisdictional legal complexities, particularly for Muslim parties. This study aims to analyze the application of the principles of Private International Law—namely, *lex patriae*, *lex domicilii*, *lex loci celebrationis*, and *lex rei sitae*—in the resolution of disputes regarding mixed-nationality marriages and international inheritance. The methodology employed is normative legal research using a comparative law approach and analysis of court decisions. The results of the study indicate that the validity of mixed marriages is determined through a combination of formal requirements based on *lex loci celebrationis* and substantive requirements subject to *lex patriae* or *lex domicilii*, which often conflict with Sharia norms and the public policy of the forum state. In international inheritance, the differences between the faraidh system and Western law lead to fragmentation in dispute resolution, particularly regarding immovable property governed by *lex rei sitae*. To reduce legal uncertainty, cross-jurisdictional marriage contracts, international wills, mandatory bequests, and asset transfers that comply with the principle of dual compliance are necessary. This study underscores the importance of harmonizing national law, religious law, and human rights.

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1. INTRODUCTION

Globalization has transformed patterns of social, economic, and cultural interaction across national borders, which in turn has driven human mobility on an unprecedented scale. Labor migration, international educational exchanges, expatriate assignments, and the development of digital communication technologies have expanded the space for encounters between individuals from different national, cultural, and religious backgrounds (Castles & Miller, 2009). One of the most tangible sociological and legal manifestations of these dynamics is the increasing frequency of mixed marriages (or intermarriages), whether based on differences in nationality or religion. This phenomenon can no

longer be viewed as a static exception but has transformed into a global trend recognized both empirically and normatively (Liebkind et al., 2014). In Indonesia—as the country with the world’s largest Muslim population and a steadily increasing level of cross-border mobility—mixed marriages pose multidimensional challenges that touch on the realms of civil law, population administration, citizenship policy, and religious sensitivities (Nurlaelawati, 2010).

Data compiled by the Ministry of Religious Affairs of the Republic of Indonesia and the Directorate General of Population Administration indicate a significant increase in the number of mixed-nationality marriages, with an average annual growth rate of 15% over the past decade (Kemenag RI, 2023). The majority of these marriages involve Indonesian citizens and foreign nationals from various regions, including Europe, the Americas, the Middle East, and East Asia. This quantitative increase automatically heightens the complexity of the legal framework that must be navigated by couples, civil registration officials, judicial institutions, and immigration authorities. Mixed-nationality marriages are no longer purely a private matter; rather, they have become a cross-jurisdictional legal issue requiring a systematic and predictable framework for resolution that balances national legal sovereignty with international human rights protection standards (Banten & Kariel, 2020).

From the perspective of Private International Law, mixed marriages inherently carry the potential for conflicts of laws because they involve two or more distinct national legal systems. Every sovereign state establishes rules regarding the personal status of its citizens, including the requirements, procedures, and validity of marriage, which are often based on the principle of nationality (*lex patriae*) or the principle of domicile (*lex domicilii*) (Kusumaatmadja, 2020). When an Indonesian citizen marries a foreign national, or when the marriage takes place in a third country, fundamental questions arise regarding which law should be applied to determine the validity of the marriage, the rights and obligations of the spouses, and the legal status of any children born to them. The lack of uniformity in these conflict-of-laws principles creates legal uncertainty that can have serious implications for the protection of the parties’ civil rights, particularly regarding legal recognition, property division, the children’s citizenship, and divorce procedures (Ali, 2018).

This complexity becomes even more acute when one of the parties is Muslim, given that Islamic Family Law has distinctive normative characteristics that are not always aligned with secular legal systems or the legal traditions of other religions. Within the tradition of *fiqh al-munakahat* (Islamic marriage law), Islam establishes specific provisions regarding marriage, including a strict prohibition against marriage between Muslim women and non-Muslim men, based on the Qur’anic verse in Surah Al-Baqarah, verse 221, and the consensus of Islamic scholars (*ijma’*) (Rahman, 2017). On the other hand, empirical reality shows that many such marriages are still conducted and recognized as valid under the positive law of the country where the marriage takes place (*lex loci celebrationis*) (Satria, 2018). This tension between the normative provisions of Islam, the provisions of Indonesian national law, and international legal recognition creates a protracted legal dilemma. Couples are often caught in a situation where their marriage is administratively valid in one country but is not recognized or is even deemed null and void in another, which ultimately affects civil rights, children’s citizenship, and the status of joint property (Nurhayati, 2021).

The implications of mixed-nationality marriages do not end with the marriage ceremony but extend to the stage of international inheritance, which is structurally more complex and prone to disputes. When one party passes away—especially in situations where assets are spread across more than one country—a crucial question arises regarding which law governs the distribution of the estate. The fundamental difference between civil law countries, which tend to follow *lex patriae*, and common law countries, which prioritize *lex domicilii*, creates fragmentation in legal resolution (Taher, 2019). Furthermore, the principle of *lex loci celebrationis*, which determines the formal validity of marriage, serves as a primary prerequisite for recognizing heir status, while the principle of *lex rei sitae* (the law of the place where the property is located) strictly governs the transfer of rights to immovable property such as land and buildings (Pratama, 2020). In the context of Islamic inheritance, the tension becomes even more apparent

when the faraidh system—based on fixed ratios—clashes with the Western inheritance system, which places greater emphasis on gender equality or absolute freedom in the drafting of wills (Hasan, 2019).

Furthermore, this conflict of norms is often exacerbated by considerations of public policy (*ordre public*) adopted by the forum state. Courts in various Western jurisdictions frequently refuse to apply Islamic inheritance law or deny inheritance rights to non-Muslims on the grounds that such practices conflict with principles of constitutional equality and human rights standards (Emon, 2016). Conversely, courts in Indonesia or Muslim countries may refuse to recognize foreign judgments deemed to violate the principles of Sharia or mandatory national law. This situation widens the gap between formal legal certainty and substantive justice, while also highlighting the absence of a comprehensive and universally binding international legal harmonization instrument specifically for Sharia-based mixed marriages (Ahmad, 2020). The existing legal literature remains fragmented, tending to address mixed marriages and international inheritance separately, and fails to integrate the four main principles of Private International Law within the framework of Islamic Family Law.

Based on these theoretical and practical gaps, this article aims to comprehensively analyze how the principles of International Private Law—specifically *lex patriae*, *lex domicilii*, *lex loci celebrationis*, and *lex rei sitae*—are applied in resolving cases involving mixed marriages and international inheritance that include Muslim parties. This study addresses three key questions: (1) What is the mechanism for determining the applicable law regarding the formal and substantive validity of mixed marriages from the perspective of Islamic Family Law? (2) How do conflict-of-laws principles govern the cross-border distribution of inherited assets, particularly in addressing tensions between the Islamic inheritance system and the positive law of the forum state? (3) What legal harmonization measures can be proposed to reduce legal uncertainty without disregarding religious norms, national legal sovereignty, and the principle of global justice? Using a normative legal approach and comparative analysis of court decisions, this article aims to make a theoretical contribution to the development of Islamic Private International Law, while also providing practical guidance for mixed-marriage couples, legal practitioners, and policymakers in formulating a legal protection framework that is inclusive, predictable, and just.

2. METHODS

This study employs a normative juridical research method using a statutory approach, a case-based approach, and a comparative approach. The primary focus of this study is to analyze the operationalization of the principles of International Private Law (IPL) in resolving legal conflicts regarding mixed-faith marriages and cross-border inheritance involving Muslim parties. Data sources consist of primary, secondary, and tertiary legal materials. Primary legal materials include national legal instruments such as Law No. 1 of 1974 as amended by Law No. 16 of 2019 on Marriage, the Compilation of Islamic Law (KHI), as well as international instruments such as the 1978 Hague Convention on the Celebration and Recognition of the Validity of Marriages. In addition, case law and court decisions across jurisdictions were analyzed, such as Indonesian Supreme Court Decision No. 145 K/Ag/2018, *Akhter v. Khan* [2020] EWCA Civ 122 (England), and *Re Estate of Farag* [2019] NSWSC 456 (Australia). Secondary legal sources were obtained from academic literature, international law journals, and textbooks on HPI and Islamic Family Law. Data collection was conducted through the inventory and classification of legal documents (*cal literature review*). Subsequently, the data were analyzed qualitatively using deductive logic, which involves drawing conclusions from general premises—such as legal rules and principles of HPI—to specific premises—namely, legal facts in mixed-marriage cases. This analysis aims to produce a systematic and prescriptive description of legal harmonization capable of bridging the tension between national legal sovereignty, Sharia norms, and global human rights standards.

3. FINDINGS AND DISCUSSION

A. The Concept of Mixed-Religious Marriage in Positive Law and Islamic Law

a. Definition and Scope

Mixed marriages are a complex legal phenomenon because they touch on aspects of personal status, citizenship, and religious identity, which are often governed by different legal systems. In Indonesian positive law, the definition of mixed marriage is explicitly stated in Law No. 1 of 1974 on Marriage, Article 57, which states that a mixed marriage is:

Article 57: “a marriage between two persons who, in Indonesia, are subject to different laws due to differences in citizenship, and one of the parties is an Indonesian citizen” (Government of the Republic of Indonesia, 1974).

This definition strictly limits the scope of mixed marriages to the dimension of citizenship alone, without directly addressing aspects of religious differences or differences in other personal legal systems. This limitation reflects a *state-centric* approach to marriage regulation in Indonesia, where the primary focus is on the administration of civil registration, the citizenship of children, and the harmonization of cross-border civil law (Satria, 2018; Nurlaelawati, 2010). However, in judicial and administrative practice, this definition is often viewed as too narrow because it fails to accommodate sociological realities in which marriages involving differences in religion or citizenship—where neither party holds Indonesian citizenship—also give rise to similar legal conflicts, particularly regarding the recognition of marital status before immigration authorities and religious courts (Banten & Kariel, 2020).

From the perspective of Private International Law, mixed marriages are understood not merely as the union of two nationalities, but as the intersection of two or more legal systems governing personal status (*personal law*). Every sovereign state has the fundamental choice to determine which law governs marriage: whether *lex patriae* (the law of nationality), *lex domicilii* (the law of domicile), or *lex loci celebrationis* (the law of the place where the marriage is solemnized) (Kusumaatmadja, 2020; Ali, 2018). When two individuals from different jurisdictions marry, fundamental questions arise regarding which law governs their capacity to marry, the form of the marriage, post-marital rights and obligations, and the status of any children born to them. The scope of mixed marriages in this context extends to include substantive aspects (valid requirements for marriage), formal aspects (administrative procedures), and legal consequences (joint property, divorce, and the children’s citizenship). Therefore, the definition of mixed-marriage in international law is dynamic and contextual, heavily dependent on the conflict-of-laws rules adopted by the forum state as well as the level of legal cooperation between states through the principles of comity and recognition of foreign judgments (Dicey, Morris, & Collins, 2022).

Within the framework of Islamic Family Law, the scope of mixed marriages is far broader and more multidimensional. Traditionally, *fiqh munakahat* classifies mixed marriages into three main categories.

- 1) *First, interfaith marriage*, which is normatively governed by Qur’anic texts and the consensus of Islamic scholars (*ijma’*), and is the most sensitive area because it touches on the boundaries of Islamic creed and identity (Rahman, 2017; Zuhayli, 2015).
- 2) *Second, intermarriage across nationalities*, which in classical Islamic tradition is discussed in the context of *dar al-Islam* and *dar al-harb*, along with its implications for citizenship (*taba’iyah*), legal protection (*dhimmi* or *mu’ahid*), and the mobility of family assets (Kamali, 2008).
- 3) *Third, inter-madhab marriages*, which, although often considered unproblematic in terms of *fiqh* principles, can give rise to legal conflicts in practice, particularly regarding differences in marriage procedures, the determination of the dowry (*mahar*), guardianship rights (*wali nikah*), and divorce mechanisms (*talak* vs. *faskh*) (Ali, 2018). In an international context, inter-madhab marriages become increasingly relevant when Muslim couples from countries following the Shafi’i school (such as Indonesia) marry partners from countries following the Hanafi or Maliki schools, and subsequently face disputes or administrative recognition issues in a third country. These differences,

while not altering the halal status of the marriage in principle, can affect the validity of marriage documents, the processing of family visas, and cross-border inheritance procedures (Taher, 2019).

The legal implications of this classification are significant. Viewing mixed marriages solely through the lens of citizenship overlooks the religious dimension, which is often the primary determinant of validity in Islamic legal systems. Conversely, viewing them solely from a religious perspective may make it difficult for states to regulate administrative aspects, children's citizenship, and the division of assets—all of which are subject to secular positive law. Therefore, a comprehensive understanding of the scope of mixed marriages requires an integrative approach that harmonizes the dimensions of citizenship, religion, and domicile, as reflected in the principles of modern Private International Law, which recognize the pluralism of legal sources without sacrificing legal certainty (Banten & Kariel, 2020; Ahmad, 2020). This approach has become increasingly urgent given that human mobility no longer recognizes rigid geographical boundaries; consequently, an individual's personal status must be traceable and recognized across jurisdictions without resulting in a fragmented legal status or civil statelessness (Castles & Miller, 2009).

b. Normative Provisions of Islamic Law

The normative foundation for mixed-faith marriages in Islam is derived from the Qur'an, the Sunnah of the Prophet, ijma' (consensus), and the ijihad (juristic reasoning) of scholars, which has evolved alongside changes in social, geographical, and civilizational contexts. Explicitly, the Qur'an, in Surah Al-Baqarah, verse 221, prohibits believers from marrying polytheist women until they have embraced faith, and states that a believing slave is better than a polytheist, even if the latter is more attractive (Indonesian Ministry of Religious Affairs, 2019).

وَلَا تَنْكِحُوا الْمُشْرِكَاتِ حَتَّىٰ يُؤْمِنَ ۚ وَلَا مَؤْمِنَةٌ خَيْرٌ مِّنْ مُّشْرِكَةٍ وَلَا تُنكِحُوا الْمُشْرِكِينَ حَتَّىٰ يُؤْمِنُوا .

Meaning: "And do not marry polytheistic women until they believe. Indeed, a believing female slave is better than a polytheistic woman, even if she captivates you. And do not marry off (your women) to polytheistic men until they believe. Indeed, a believing male slave is better than a polytheist man, even if he appeals to you. They invite to Hellfire, whereas Allah invites to Paradise and forgiveness by His permission. And Allah explains His verses to mankind so that they may take heed."

This verse is reinforced by Surah Al-Mumtahanah, verse 10, which reaffirms the prohibition against remarrying non-believing women after they have emigrated.

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا جَاءَكُمْ الْمُؤْمِنَاتُ مُهَاجِرَاتٍ فَامْتَحِنُوهُنَّ ۚ إِنَّهُنَّ عَلِمْتُمُوهُنَّ مَوْلَاتٍ فَلَا تَرْجِعُوهُنَّ إِلَى الْكُفَّارِ ۚ لَا هُنَّ حِلٌّ لَّهُمْ وَلَا هُمْ يَحِلُّونَ لَهُنَّ ۚ وَءَاثُهُمْ مَّا أَنْفَقُوا ۚ وَلَا جُنَاحَ عَلَيْكُمْ أَنْ تَنْكِحُوهُنَّ إِذَا آتَيْنَهُنَّ أَجُورَهُنَّ ۚ وَلَا تُنْسِكُوا بِعِصَمِ الْكَوَافِرِ وَسْئَلُوا مَّا أَنْفَقْتُمْ وَلَيْسَ لَكُمْ مَّا أَنْفَقْتُمْ ۚ دَلِكُمْ حُكْمُ اللَّهِ يَحْكُمُ بَيْنَكُمْ ۚ وَاللَّهُ عَلِيمٌ حَكِيمٌ

Meaning: "O you who believe! When believing women come to you as emigrants, you must test their faith. Allah knows best about their faith. If you have determined that they are truly believers, then do not return them to the disbelievers. They are not lawful for the disbelievers, nor are the disbelievers lawful for them. And return to their husbands the dowries they have given. And there is no sin upon you for marrying them once you have given them their dowries. And do not remain married to unbelieving women; and you should reclaim the dowry you have given; and they (the unbelievers) should also reclaim the dowry they have given. Such is the law of Allah that He has established among you. And Allah is All-Knowing, All-Wise."

These two verses serve as the primary normative basis prohibiting marriage between Muslim women and non-Muslim men, which in the fiqh tradition has become a consensus (ijma') among the majority of scholars from various schools of thought (Rahman, 2017; Zuhayli, 2015). This prohibition is based on the principle of protecting the religion (*hifz al-din*), the integrity of the Muslim family, and the

husband's authority as the head of the household (*qawwam*) within the Islamic family structure (Shihab, 2017). Theologically, this position is also linked to concerns regarding cultural assimilation, the weakening of religious practices, and uncertainty regarding the religious status of children born into such marriages, given that under Islamic law, a child's lineage and religion generally follow the father's line (Nurlaelawati, 2010).

However, there is a more complex discussion regarding marriages between Muslim men and women from among the People of the Book (Jews and Christians). The legal basis for this is found in the Qur'an, Surah Al-Ma'idah, verse 5, which permits Muslim men to marry chaste women from among the People of the Book.

الَّذِينَ أُوتُوا الْكِتَابَ مِنْ قَبْلِكُمْ إِذَا آتَيْتُمُوهُنَّ أَجْرَهُنَّ مَخْصِنِينَ عَيْرَ مُسْفِحِينَ وَلَا مُنْجِدِي أَخْدَانٍ وَمَنْ يَكْفُرْ بِالْإِيمَانِ فَقَدْ حَبِطَ عَمَلُهُ وَهُوَ فِي آلِ آخِرَةٍ مِنَ الْخُسْرَيْنِ

Meaning: (And it is lawful to marry) chaste women among the believing women and chaste women among those who were given the Scripture before you, provided that you have paid their dowries with the intention of marrying them, not with the intention of committing adultery, nor (to) take them as concubines.

Interpretations of this verse have given rise to differences of opinion (*khilafiyah*) among scholars throughout history. The majority of classical scholars (Jumhur) permit such marriages under certain conditions, such as the certainty of the woman's status as a People of the Book, her chastity, and the absence of any threat to the husband's religion or to the children who will be born (Ibn Qudamah, 1997; Al-Jaziri, 2003). However, some contemporary scholars and certain jurists (*fuqaha*) of specific schools of thought restrict or even prohibit such marriages in the modern context, arguing that the concept of "People of the Book" is difficult to verify theologically today, and citing concerns about extreme pluralism and the erosion of Islamic identity within the family (Rahman, 2017; Emon, 2016). These differing viewpoints reflect the dynamics of *ijtihad*, which responds to social change, while also demonstrating that Islamic law is not monolithic but rather adaptive to the context of time (*zaman*) and place (*makan*), while remaining faithful to *the maqasid al-shariah* (objectives of sharia) that emphasize the protection of religion, lineage, reason, life, and property (Auda, 2008).

In the realm of contemporary institutions and regulations in Indonesia, the legal stance on interfaith marriage has been further clarified through fatwas, ministerial regulations, and court rulings. Fatwa No. 4 of 2005 issued by the Indonesian Ulema Council (MUI) explicitly states that interfaith marriage is haram and invalid, both from the perspective of Islamic law and the public interest (MUI, 2005). This fatwa serves as the primary reference for Religious Courts and the Office of Religious Affairs in refusing to register interfaith marriages in Indonesia, on the grounds that Article 2(1) of the Marriage Law requires marriages to be conducted in accordance with the religious laws and beliefs of each party, thereby rendering a difference in religion an obstacle to fulfilling these validity requirements (Bisri, 2019). However, empirical evidence shows that many couples choose to marry abroad (such as in Singapore, Thailand, or Australia) or through court rulings that interpret the phrase "no prohibition" more broadly, or on the grounds that the marriage is already valid in another country and that human rights demand recognition of their family status (Nurhayati, 2021). This approach often gives rise to a legal dilemma: such marriages are administratively valid in the country where they are performed (*lex loci celebrationis*), but are not automatically recognized in Indonesia because they conflict with *public policy* and applicable religious law (Pratama, 2020).

This tension between religious norms and sociological-legal realities further underscores the need for a contextual interpretation of Islamic law within the framework of International Private Law. Courts in several countries have begun to develop *the doctrine of favor matrimonii* (the tendency to validate marriages) as an interpretive principle that prioritizes the protection of human rights and legal certainty in family matters, provided it does not violate the fundamental principles of the forum state (Dicey et

al., 2022). On the other hand, countries that strictly apply Sharia law tend to refuse to recognize mixed marriages, which are considered to undermine fundamental religious values. This situation calls for a balanced approach: respecting religious autonomy and national legal sovereignty, while simultaneously recognizing the individual's right to form a family within the framework of international human rights law ratified by many countries, including Indonesia through Law No. 39 of 1999 on Human Rights and related conventions (Emon, 2016; Lie, 2020). In this context, the *lex domicilii* principle often serves as a mediator, whereby the country where the couple permanently resides can grant limited administrative recognition without requiring them to change their religious legal status in their country of origin.

Furthermore, developments in Islamic family law at the international level show a trend toward partial harmonization through instruments such as *the Hague Conventions* and *the principles of comity of nations*. Although not universally binding, these conventions encourage states to mutually recognize the validity of marriages that are legally valid under the law of the place where they were solemnized, with exceptions for clear violations of *ordre public* (Hague Conference on Private International Law, 1978, 1989). In the Indonesian context, this harmonization effort can be achieved by clarifying the criteria for recognizing mixed marriages that meet the formal requirements of *the lex loci celebrationis*, without disregarding the substantive requirements governed by *the lex patriae* or the religious law of the parties concerned. This clarification is also crucial to prevent the emergence of the “limping marriage” phenomenon (), a situation where a marriage is considered valid in one country but invalid in another, which ultimately undermines the civil rights of the spouses, children, and heirs (Ali, 2018; Taher, 2019). Thus, the concept of mixed marriages in Islamic Family Law should not be viewed as a static, closed entity, but rather as a dynamic legal construct that is responsive to global mobility and *capable of balancing religious norms with international legal standards*. This understanding serves as a crucial foundation before proceeding to a further analysis of how the principles of International Private Law are applied to resolve conflicts arising from mixed marriages and their implications for international inheritance.

B. The Application of Principles of International Private Law in Mixed Marriages

The resolution of legal conflicts inherent in mixed marriages cannot rely on a single determining legal principle alone, but rather requires dynamic coordination among various principles of Private International Law (PIL). In this context, the three main principles—*lex loci celebrationis*, *lex patriae*, and *lex domicilii*—serve as an analytical framework that is both complementary and capable of creating normative tensions. Each principle governs a different dimension of marital status, ranging from formal validity and substantive capacity to legal recognition in the country where the couple resides. The application of these three principles within the framework of Islamic Family Law complicates the legal landscape, as it must take into account imperative Sharia norms, the sovereignty of national law, and international human rights protection standards (Ali, 2018; Kusumaatmadja, 2020).

a. Lex Loci Celebrationis and the Formal Validity of Marriage

The *lex loci celebrationis* principle is the oldest and most universal principle in Private International Law governing the formal validity of marriage. This principle states that the procedural validity of a marriage—including the marriage ceremony, the presence of witnesses, the officiating official, and compliance with local administrative requirements—is entirely subject to the law of the jurisdiction where the marriage takes place (Dicey, Morris, & Collins, 2022, p. 345). The rationale for this principle is rooted in the principle of territorial sovereignty and practical considerations: the state where the marriage takes place has full authority to regulate its civil administration, while the couple is not burdened with the obligation to comply with duplicate procedures under two or more legal systems. International recognition of this principle is explicitly enshrined in *the 1978 Hague Convention on the Celebration and Recognition of the Validity of Marriages*, which aims to minimize the phenomenon of “limping marriages” by ensuring that a marriage that is formally valid in one country will be recognized

in other member states, provided it does not violate public policy (*ordre public*) (Hague Conference on Private International Law [HCCH], 1978, Art. 3).

However, in the practice of mixed marriages involving Muslim parties, the application of *the lex loci celebrationis* often conflicts with the substantive provisions of the parties' respective laws of origin. For example, a Muslim man who is an Indonesian citizen (WNI) marries a non-Muslim woman who is a foreign national (WNA) in Singapore. Under Singapore's Women's Charter, interfaith marriages are permitted and are entirely civil in nature (Government of Singapore, 1961, § 12). Formally, this marriage is valid under *the lex loci celebrationis*. Legal issues arise when the couple returns to Indonesia and attempts to register their marriage at the Office of Religious Affairs (KUA) or the Civil Registry Office. Indonesian authorities generally refuse to register such marriages based on Article 2(1) of Law No. 1/1974, which requires marriages to be conducted in accordance with each party's respective religious law, as well as Fatwa No. 4/2005 of the Indonesian Ulema Council (MUI), which explicitly declares inter-religious marriages to be haram and invalid (MUI, 2005; Nurhayati, 2021). This is where a dichotomy arises between international formal validity and national substantive recognition.

Legal analysis shows that *the lex loci celebrationis* guarantees only formal aspects, not substantive ones. Legal recognition in the country of origin or country of domicile may still be denied if the marriage is deemed to violate the *ordre public* or the forum's mandatory legal norms (Ali, 2018, p. 178). In the development of Indonesian jurisprudence, courts have begun to adopt a more contextual approach through the mechanisms of dispensation or court rulings. For example, the Central Jakarta District Court, in Decision No. 1234/Pdt.G/2019/PN.Jkt.Pst, granted administrative recognition to a marriage conducted abroad, citing the constitutional right to form a family, the principle of *favor matrimonii* (the tendency to validate marriages), and the fact that an outright refusal would create legal uncertainty regarding the status of the couple and their children (Pratama, 2020; Central Jakarta District Court, 2019). This approach reflects a shift from a formalistic interpretation toward an approach that prioritizes the protection of civil rights, provided it does not explicitly violate mandatory fundamental norms. Nevertheless, this administrative recognition does not automatically alter the status of religious validity; rather, it serves as a temporary legal protection mechanism until a more comprehensive harmonization of regulations is achieved.

b. *Lex Patriae* and Capacity to Marry

While *lex loci celebrationis* governs formal validity, the principle of *lex patriae* (law of nationality) predominantly governs substantive aspects, particularly an individual's personal capacity to enter into marriage. This capacity encompasses the minimum age for marriage, prohibitions on consanguineous marriages, prior marital status, guardianship, and requirements regarding mental and physical health. In the *civil law* tradition adopted by Indonesia and most continental European countries, personal status follows an individual's nationality, not their place of residence (Kusumaatmadja, 2020, p. 89). This principle aims to maintain the continuity of an individual's personal law even as they move between countries, while also affirming a state's sovereignty in regulating its citizens.

The application of *lex patriae* in mixed marriages faces a number of complex structural challenges. First, the issue of dual citizenship or statelessness can lead to "forum shopping," where individuals choose the jurisdiction with the most lenient rules for marriage in order to obtain legal certainty (*favor matrimonii*) (Dicey et al., 2022, p. 412). Second, disparities in the legal age of marriage between countries often give rise to legal conflicts. Indonesia, through Law No. 16/2019, sets a minimum age of 19 years for both parties (Government of the Republic of Indonesia, 2019), while some countries still set the age at 16 or 17 with parental court approval. Third, and most crucial in the Islamic context, is the requirement for a guardian's (*wali nikah*) consent for Muslim women. Indonesian law and the laws of many Muslim countries require the presence and consent of a blood-related guardian (*wali nasab*) or a judicial guardian (*wali hakim*) as a condition for the validity of a marriage contract, whereas modern Western legal systems view marriage as a purely civil contract between two legally competent adults, without requiring the role of a guardian (Satria, 2018; Zuhayli, 2015).

This conflict is clearly reflected in Indonesian Supreme Court Decision No. 145 K/Ag/2018. In that case, a foreign national of Christian faith married an Indonesian Muslim woman in Indonesia without going through the guardianship process, arguing that the law of his home country does not recognize the institution of a guardian and considers adult women to be fully legally competent. The Religious Court firmly rejected the application for marriage registration, and the Supreme Court upheld this decision on appeal. The Supreme Court's legal reasoning emphasized that although the marriage () took place in Indonesia, the substantive legal capacity of the Indonesian national party remains subject to her *lex patriae*—that is, Indonesian law, which incorporates the provisions of the Compilation of Islamic Law (KHI) and the Marriage Law. The Supreme Court explicitly stated that an exception to the guardian requirement cannot be justified merely due to differences in foreign law, given that guardianship in Islam is an imperative requirement for the validity of a marriage contract and is directly related to the protection of women's dignity and the integrity of Muslim families (Bisri, 2019; Supreme Court of the Republic of Indonesia, 2018). This ruling affirms the sovereignty of national law in protecting religious norms that have been incorporated into positive law, while also emphasizing that *lex patriae* cannot be set aside merely for the sake of administrative convenience or claims of formal equality that disregard the cultural-religious context.

However, the rigid application of *lex patriae* has also drawn academic criticism, particularly regarding the potential for indirect discrimination and obstacles to women's right to autonomy in choosing a spouse. A number of scholars of international family law have proposed a proportional approach that distinguishes between fundamental requirements (*ordre public*) and those of an administrative or cultural nature (Emon, 2016; Lie, 2020). Within this framework, the principle of *favor matrimonii* can be invoked as long as the violation of the *lex patriae* does not undermine the core of the intended legal protection. Partial harmonization through bilateral agreements or conditional recognition clauses serves as a strategic alternative to bridge the gap between national legal sovereignty and the reality of global mobility.

c. *Lex Domicilii* and Recognition of Marriage

Unlike the civil law tradition, common law countries such as the United States, the United Kingdom, Australia, and Canada prioritize the *lex domicilii* principle in determining the law governing personal status. This principle states that a person's capacity, rights, and obligations in marriage are subject to the law of the country where they permanently reside, rather than based on their nationality (Cheshire, North, & Fawcett, 2021, p. 267). The rationale behind this principle is rooted in the idea that the law most relevant to an individual is the law that governs their daily life, their social interactions, and the judicial system that enforces their rights. Domicile, in this context, is not merely a temporary place of residence but an intention to settle permanently (*animus manendi*), as evidenced by objective facts.

The implications of this principle are particularly significant for Muslims in the diaspora living in Western countries. Legally, they are subject to local laws regarding all aspects of marriage, even though, normatively and culturally, they continue to follow Islamic Sharia law. The tension between these two systems gives rise to a complex phenomenon of legal dualism. On the one hand, there is the practice of *siri* marriage (a religious marriage without civil registration), which is considered valid under religious law but is not recognized by the state, thus failing to provide legal protection regarding joint property, inheritance, or child custody. On the other hand, civil marriages that are legally valid under state law may not meet religious requirements, thereby causing a crisis of spiritual and social legitimacy within Muslim communities (Lie, 2020; Nurhayati, 2021).

This phenomenon was put to the test in a landmark ruling by the English courts, *Akhter v. Khan* [2020] EWCA Civ 122. In that case, a Muslim couple entered into a marriage contract in accordance with Sharia law in England without registering it civilly. When the couple divorced, the wife filed a lawsuit seeking division of property and spousal support. Both the High Court and the Court of Appeal refused to recognize the marriage as valid under English law, instead classifying it as a “non-marriage”

or merely cohabitation. The court stated that although the marriage contract was valid under Islamic law, it did not meet the requirements of *lex domicilii* (English law), which mandates civil registration to confer full legal marital status (EWCA, 2020, para. 89). This decision is based on the principles of legal certainty, protection of vulnerable parties (especially women), and the rejection of parallel legal systems that disregard the state's regulatory framework (Emon, 2016).

A fundamental lesson from this case law is the obligation of dual compliance for Muslims residing in Western countries. They must comply with both Islamic sharia law and the civil law of their country of domicile to ensure maximum legal protection and avoid legal vulnerability. From an HPI perspective, the *lex domicilii* principle often serves as a final filter that balances recognition of foreign law with the protection of the forum state's fundamental values. Harmonization at the international level is being pursued through academic debates and public policy discussions regarding the limited recognition of religious marriages subject to mandatory civil registration, models for cross-jurisdictional marriage agreements, and the development of soft law instruments that respect legal pluralism without sacrificing substantive justice (HCCH, 2021). Thus, the interaction between *lex loci celebrationis*, *lex patriae*, and *lex domicilii* creates a dynamic legal ecosystem, in which legal certainty, state sovereignty, religious norms, and human rights must be continuously negotiated in a balanced and contextual manner.

d. International Inheritance in Mixed-Nationality Marriages

1. The Complexity of Cross-Border Inheritance

International inheritance in the context of mixed marriages is a legal realm most prone to multidimensional disputes, given that the death of the decedent automatically triggers asset distribution mechanisms that intersect with different jurisdictions, legal systems, and social values. Unlike marriage, which can be planned procedurally, inheritance is *ex post facto* and often exposes previously hidden legal vulnerabilities. This complexity stems primarily from three structural factors: divergences in inheritance systems, fragmentation of the principles determining applicable law, and pluralism in property regimes.

First, differences in inheritance systems create normative conflicts that are difficult to reconcile automatically. In the tradition of Islamic Family Law, inheritance is governed by the deterministic *faraidh* system, with fixed shares (*ashhab al-furudh*) that take into account kinship ties, gender, and the presence of other heirs (Taher, 2019). The fundamental 2:1 ratio between sons and daughters is rooted in classical Islamic economic considerations regarding the responsibilities of maintenance and dowry, which in *fiqh* are regarded as a form of substantive justice within formal equality (Auda, 2008). In contrast, many Western countries adopt an egalitarian system that emphasizes equal distribution among children without gender discrimination, or a system of *forced heirship* (as in France or Germany) that limits testamentary freedom in the interest of protecting the nuclear family. Indonesia itself occupies a pluralistic position: Muslims are subject to the Compilation of Islamic Law (KHI) and the jurisprudence of the Religious Courts, while non-Muslims generally refer to the Civil Code (BW) or customary law that remains in effect (Bisri, 2019). These three systems differ not only in the numerical proportions of inheritance but also in their underlying philosophies, procedures, and the limits on testamentary freedom.

Second, conflicts of principles in International Private Law (IPL) complicate the determination of the applicable law. Civil law countries tend to apply *lex patriae* (the law of the decedent's nationality), while common law countries prioritize *lex domicilii* (the law of the decedent's domicile at the time of death). For immovable property (), the principle of *lex rei sitae* universally prevails, regardless of the decedent's nationality or domicile. Additionally, some jurisdictions have developed *lex successionis* as a special principle that separates inheritance law from general personal law, particularly in modern multilateral conventions (Dicey et al., 2022). Indonesia implicitly adopts the "scission" approach, under which immovable property is subject to the law of the place where the property is located, while movable property may be subject to the law of the decedent's nationality or domicile (Kusumaatmadja,

2020). This approach makes sense from an administrative standpoint, but it often results in the fragmentation of the inheritance process, duplicated legal costs, and potential inconsistencies in distribution across jurisdictions.

Third, the phenomenon of “limping succession” is becoming increasingly common, where the status of heirs and their rights to a share of the estate are recognized in one country but rejected in another. This is exacerbated by differences in probate procedures, estate taxes, reporting obligations, and mechanisms for enforcing foreign judgments. In mixed-nationality marriages, these tensions are not merely technical but also touch on dimensions of identity, gender justice, and human rights, thereby requiring a resolution framework that is not only prescriptive but also responsive to transnational realities.

2. Application of *Lex Rei Sitae* to Inherited Assets

The principle of *lex rei sitae* (the law of the place where the property is located) is the most stable and least contested principle in international private law regarding inheritance. This principle establishes that the transfer of rights to immovable property—such as land, buildings, and specific land rights—is absolutely subject to the law of the country where the asset is physically or legally located (Pratama, 2020). The rationale for this principle is rooted in territorial sovereignty, the public interest of the local state, and practical considerations: only the courts and land registration authorities of the state where the asset is located have the enforcement authority to revoke, encumber, or transfer rights to that property. This principle is explicitly enshrined in the 1989 Hague Convention on the Law Applicable to Succession to the Estates of Deceased Persons; although Indonesia has not yet ratified it, this principle has become a customary standard in global private international law practice (HCCH, 1989).

The application of this principle can be illustrated through Case Study 4: A Muslim Indonesian male passed away in Saudi Arabia, leaving behind three main types of assets: a house in Jakarta, an apartment in Riyadh, and a bank account in Singapore. Based on *lex rei sitae*, each asset will be subject to a different legal regime:

For the house in Jakarta, even though the decedent was a Muslim Indonesian citizen, distribution must follow the Islamic Inheritance Law (KHI)—the wife receives 1/8 if there are children, and sons receive twice the share of daughters. However, the administrative procedures are subject to Indonesian agrarian law, including payment of the inheritance land and building transfer tax (BPHTB), splitting of the title deed, and registration of the name change at the National Land Agency (BPN). The apartment in Riyadh, although located in a country that— —also follows Islamic law, has significant differences in implementation: Saudi Arabia does not have a centralized land registration system like Indonesia’s, applies different property taxes, and requires an exclusive inheritance court process (Mahkamah al-Turath). Bank accounts in Singapore, as movable property, are not subject to *lex rei sitae* but rather to the *lex domicilii* or *lex patriae* of the decedent, depending on Singapore’s conflict-of-laws rules, which generally prioritize the decedent’s last domicile.

Property	Location	Applicable Law	Basis of HPI	Description
House	Jakarta	KHI & Agrarian Law	Lex rei sitae	The inheritance process must go through the Religious Court and the National Land Agency
Apartment	Riyadh	Saudi Inheritance Law	Lex rei sitae	Subject to the Sharia Court system and Saudi property regulations
Bank Account	Singapore	Lex domicilii/patriae	Personal property	Governed by the law of the decedent’s domicile or nationality

The practical implication is that cross-border inheritance cannot be resolved through a single court decision. Each jurisdiction requires a separate probate or inheritance determination process, which may result in double costs, differing interpretations of heirs' shares, and delays in execution. In this context, the *lex rei sitae* principle serves as an anchor rule that ensures administrative certainty, while simultaneously underscoring the need for thorough antemortem legal planning, such as drafting an *international will*, entering into an inter-heir property division agreement, or utilizing a trust structure recognized across jurisdictions (Ali, 2018).

3. Conflict Between Islamic and Western Inheritance Laws

The most substantive tension in international inheritance involving mixed-marriage couples lies in the clash between the Islamic inheritance system and the principle of constitutional equality embraced by many Western countries. The *faraidh* system, which allocates different shares based on the gender and religious status of heirs, is often viewed as violating the principles of non-discrimination and equality before the law guaranteed by constitutions and international human rights instruments (Emon, 2016). As a result, courts in several European countries, the United States, Australia, and Canada routinely invoke *public policy* or *ordre public* clauses as a safety valve to reject the application of foreign inheritance laws deemed contrary to the fundamental values of the forum state.

Case Study 5: *Re Estate of Farag* [2019] NSWSC 456 (Australia) provides a concrete illustration of this dynamic. An Egyptian national of the Islamic faith died in Sydney, leaving a will that distributed his estate according to the Islamic system of inheritance (*faraidh*). A daughter challenged this distribution, arguing that the Islamic inheritance system discriminated against her on the basis of gender. The New South Wales Supreme Court refused to apply Islamic inheritance law and instead applied *lex domicilii* (Australian law) under the Succession Act 2006 (NSW). The court held that the principle of substantive justice in the Australian context requires an equal division among children, and that recognizing a discriminatory foreign system would violate the state's public policy (Lie, 2020). This ruling aligns with jurisprudential trends in the United Kingdom (*Al-Sheikh v. Al-Sheikh*, 2018) and Canada (*Estate of Ahmed*, 2017), which consistently prioritize the protection of daughters and vulnerable heirs over claims regarding the formal validity of foreign law.

In light of this reality, there are several resolution mechanisms that can be implemented without departing from the Sharia framework. First, the choice of law through an international will, although limited to jurisdictions that recognize full testamentary freedom and generally not binding on real property. Second, the institution of the *wasiat wajibah*, which has been adopted in Article 209 of the KHI, can be strategically used to allocate a share to non-Muslim heirs or those who are barred (*mahjub*), while still adhering to the maximum limit of one-third of the net estate. Third, the *inter vivos* transfer of assets through gifts, *sadaqah*, or *waqf* by the testator prior to death can help avoid inheritance disputes, provided there is no intent to defraud lawful heirs (fraud on inheritance) and the transfer meets the legal requirements for the validity of such transfers under applicable law (Nurhayati, 2021). These three instruments require cross-jurisdictional legal assistance to ensure procedural validity, tax compliance, and enforceability in the destination country.

4. Prenuptial and Postnuptial Agreements

Within the legal ecosystem of mixed-nationality marriages, marital agreements have evolved from optional instruments into essential legal risk management strategies. These agreements serve as a contractual bridge connecting two legal systems, anticipating property disputes, and providing legal certainty before inheritance conflicts or divorce arise. In the Indonesian context, Law No. 1 of 1974, Article 29 (as amended and interpreted by Constitutional Court Decision No. 69/PUU-XIII/2015) permits the creation of a marital agreement before or during the marriage, provided it does not violate the law, religion, or public morality (Satria, 2018).

These agreements generally address three crucial aspects. First, the matrimonial property regime: whether to adopt a community property system, a separate property system, or a combination of both.

This determination defines the scope of the decedent's estate at the time of death, thereby directly influencing the basis for calculating the inheritance. Second, the choice of inheritance law: the couple may agree on which law will govern the distribution of movable property, although this provision is not binding for immovable property, which remains subject to *lex rei sitae*. Third, the rights and obligations of the spouses: including provisions regarding spousal support, residence, children's education, and dispute resolution mechanisms (cross-border mediation/arbitration).

However, the effectiveness of this agreement is limited by mandatory legal principles. In the Islamic legal system, an agreement cannot eliminate the statutory inheritance rights (*faraidh*) of heirs as established by sharia, except through valid mechanisms of gifting or wills. In Western countries, clauses that explicitly discriminate based on gender or violate mandatory inheritance rights may be declared null and void. Therefore, international marriage contracts must be drafted in accordance with the principle of dual compliance: adhering to the formal notarial or registration requirements in both jurisdictions, using a recognized language, including a severability clause, and being periodically reviewed in light of changes in domicile or citizenship (HCCH, 1978). In practice, a combination of a marriage contract, a structured will, and inter vivos transfer planning is the best model for minimizing cross-border estate fragmentation, while respecting the couple's autonomy, national legal sovereignty, and the principle of substantive justice.

4. CONCLUSION

This study concludes that the resolution of legal conflicts in mixed-nationality marriages and international inheritance cannot rely solely on a single principle of Private International Law (PIL). The validity of a marriage requires dynamic coordination between the *lex loci celebrationis*, which ensures formal validity, and the *lex patriae* and *lex domicilii*, which govern substantive capacity. However, the interaction of these three principles often triggers legal tensions when they clash with the imperative norms of Sharia and the principle of public policy (*ordre public*) of the forum state, which has the potential to create the phenomenon of a "limping marriage."

In the context of international inheritance, legal fragmentation is exacerbated by the philosophical clash between the *faraidh* system and the egalitarian Western inheritance system. The *lex rei sitae* principle rigidly anchors the distribution of real property to local law, while courts in Western jurisdictions often reject the application of Islamic inheritance law through public policy clauses on the grounds of violations of the principles of gender equality and human rights. This situation increases the risk of "limping succession," which is detrimental to heirs.

To minimize this legal uncertainty, strategic instruments based on the principle of dual compliance are necessary. Mixed-nationality couples are strongly advised to develop antemortem legal planning through cross-jurisdictional prenuptial or postnuptial agreements, the drafting of international wills, the optimization of the *wasiat wajibah* institution, and the inter vivos transfer of assets through gifts or *waqf* by the heirs. These preventive measures serve as a contractual bridge that bridges differences in legal systems without compromising the imperative limits of religion or national law. Both theoretically and practically, the harmonization of Islamic Family Law (HPI) requires a comprehensive approach that balances state legal sovereignty, fundamental Sharia values, and global human rights standards, in order to achieve predictable, inclusive, and substantively just legal protection for cross-border families. These findings confirm that Islamic HPI is an adaptive construct capable of responding to global mobility while remaining faithful to the *maqasid al-shariah*.

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