



**RECONCILING PROGRESSIVE PERSONAL STATUS REGULATIONS
WITH DOMESTIC PUBLIC POLICY: AN INDONESIAN PARADIGM
FOR CROSS-BORDER ADOPTION INVOLVING TRANSGENDER
PARENTS**

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Abstract

Intercountry child adoption represents one of the most complex issues in private international law (PIL), characterized by jurisdictional conflicts, divergent substantive family law frameworks, and the imperative of protecting child welfare. This study evaluates the current legal framework governing intercountry adoption in Indonesia, juxtaposing it with Germany's progressive self-determination model for gender recognition (*Selbstbestimmungsgesetz* / SBGG 2024) and the international standards of the 1993 Hague Intercountry Adoption Convention. Utilizing a normative-doctrinal legal research methodology with statutory, comparative, and conceptual approaches, this paper analyzes the conflict of laws arising from a concrete case study involving a cross-border transgender couple.

The analysis demonstrates that Indonesia's reliance on its colonial legacy—specifically Articles 16, 17, and 18 of the *Algemene Bepalingen van Wetgeving* (AB)—alongside fragmented sectoral regulations, is no longer adequate to resolve modern, complex transnational family law disputes. By applying key PIL doctrines—such as characterization, *renvoi*, public policy (*ordre public*), and overriding mandatory rules (*lois de police*)—the study maps the legal impediments to recognizing foreign personal status changes and mixed-gender marriages of transgender individuals. While the Draft Private International Law Act (RUU HPI) offers transformative solutions through the introduction of the "habitual residence" principle, its status as *ius constituendum* limits its direct judicial application, requiring pragmatic judicial reasoning in the interim. Finally, the article outlines a structured legislative transition roadmap and discusses the broader implications for the harmonization of PIL within the ASEAN region.

Keywords: *Intercountry Adoption, RUU HPI, German Law, Transgender, Personal Status, Public Policy.*



A. INTRODUCTION

The currents of globalization, economic integration, and increased mobility of people across national borders have triggered a surge in highly dynamic international social and civil interactions. One tangible impact of this openness in international relations is the increasing frequency of the practice of inter-national adoption (intercountry adoption or international adoption).¹ Philosophically, adoption is a humanitarian legal act that aims to provide protection, care, and ensure the optimal growth and development of children in a loving family environment.² However, when the legal action involves foreign elements (foreign element), either because of differences in citizenship between the prospective adoptive parents (COTA) and the prospective adopted child (CAA) or because of differences in legal domicile, complex International Civil Law (ILC) problems immediately arise.

Until now, the Indonesian international civil law system remains based on provisions left over from the Dutch East Indies colonial era, as set out in Articles 16, 17, and 18. General Provisions of Legislation for the Dutch East Indies (AB). Article 16 AB adheres to the principle of nationality (law of the land), which stipulates that a person's personal status and legal authority remain with that citizen wherever they reside. However, in modern IPR practice, this classical approach, based on 19th-century statute theory, is considered outdated, rigid, and no longer adequate for addressing complex transnational family law cases³. On the other hand, national laws and regulations governing intercountry adoption are scattered and partial, such as Law Number 35 of 2014 concerning Child Protection, Government Regulation Number 54 of 2007 concerning the Implementation of Child Adoption, and Regulation of the Minister of Social Affairs Number

¹ El Sabarta Putra Nawu et al., "Review of International Civil Law on Child Adoption and Protection of Children's Rights Across Countries," Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory 3, no. 4 (October–December 2025): pp. 3087–3102, <https://shariajournal.com/index.php/III/EL/>.

² Syafira Aulia Zahra, "Legal Review of Child Adoption (Comparative Study Between Indonesian and Dutch Law)" (Scientific Journal, Faculty of Law, University of Mataram, 2019), [https://fh.unram.ac.id/wp-content/uploads/2019/09/SYAFIRAforeign citizens-AULIA-ZAHRA-D1A115280.pdf](https://fh.unram.ac.id/wp-content/uploads/2019/09/SYAFIRAforeign%20citizens-AULIA-ZAHRA-D1A115280.pdf)

³ National Legal Development Agency (BPHN), Foreword to the Academic Draft of the Bill on International Private Law (Continued) (Jakarta: Ministry of Law and Human Rights, 2020), [https://bphn.go.id/data/documents/na_ruu_ttg_hukum_perdata_internasional \(lanjutan\).pdf](https://bphn.go.id/data/documents/na_ruu_ttg_hukum_perdata_internasional_lanjutan).pdf).



110/HUK/2009 concerning Requirements for Child Adoption.⁴ This lack of coherence in the legal system has triggered a vacuum in the legal norms of relationships (connecting factors), which results in a lack of legal certainty and protection for Indonesian children adopted by foreign citizens.

The problematic nature of the IPR becomes even more acute when confronted with developments in family law in Western countries, such as Germany, which has been very progressive in recognizing the rights of transgender people and reconceptualizing the institution of marriage. Germany has legalized name and gender changes administratively through the *Self-Determination Act* (Self-Determination Act), which reformed the old transsexual regulations (*Transsexuals Act* - TSG).⁵ Through this regulation, German transgender citizens are fully recognized as legal subjects with their new identities, including the right to enter into civil marriages and adopt children.

In contrast to Germany, Indonesia strictly prohibits same-sex marriage and has no clear regulations regarding the adoption of children by transgender couples across borders. Conflict of substantive law and public order (*public policy exception*). This is clearly evident in disputes or applications for the adoption of Indonesian children by mixed-race couples, where one of the parties is a German citizen who is a transgender woman. This demands systematic and integrative reform of national and international civil law through the drafting of a new codification.⁶ Currently, the Government and the House of Representatives are discussing the Draft Law on Private International Law (RUU HPI), which is included in the 2026 Priority National Legislation Program.⁷ The existence of the HPI Bill is expected to be a regulatory bridge as well as a guideline for judges in determining jurisdiction and choice of law (*choice of law*) which is oriented towards

⁴ Roliana, "The Hague Convention 1993: Comparison and Impact of Ratification on Indonesian National Law," *Garuda - Garba Digital Reference*, accessed June 28, 2026, <https://garuda.kemdiktisaintek.go.id/documents/detail/4136306>.

⁵ Law on the Change of First Names and the Determination of Gender in Special Cases (Transsexuals Act - TSG) (Undang-undang tentang mengubah nama depan dan menentukan jenis kelamin dalam kasus-kasus khusus (UU Transeksual).

⁶ *Basic Law for the Federal Republic of Germany (Hukum Dasar Untuk Republik Federal Jerman)*.

⁷ Ivonne Wijaya & Steven Aristides Wijaya, "Draft Law on International Private Law Regulates Cross-Border Civil Relations in Indonesia," accessed June 28, 2026, <https://veritask.ai/id/artikel/rancangan-undang-undang-tentang-hukum-perdata-internasional-atur-hubungan-perdata-lintas-negara-di-indonesiaprotects>



the best interests of the child (*the best interests of the child*).

While scholarly literature on intercountry adoption and transgender rights has proliferated independently, Indonesian legal scholarship remains constrained by a notable academic gap. Existing studies predominantly focus on domestic administrative registration or child protection issues within standard heterosexual frameworks⁸. There is a pronounced scarcity of research integrating classical Private International Law (PIL) doctrines—such as characterization (*lex fori* vs. *lex causae*), evasion of law (*fraude à la loi*), and *renvoi*—with foreign personal status acquired through non-clinical, self-determined administrative processes like those recently enacted in Western Europe⁹. This paper establishes its novelty by formulating a balanced "Indonesian Paradigm" that reconciles universal human rights with national legal and moral sovereignty. It offers a novel theoretical contribution by reconstructing the public policy exception (*ordre public*) not merely as an absolute, passive mechanism of rejection, but as a "proportional filter" synthesized with the principle of the "best interests of the child". Consequently, the paper provides a dogmatic framework that illustrates how Indonesian courts can respond dynamically to modern transnational family dynamics without undermining the core constitutional and socio-cultural values of Pancasila and the 1945 Constitution of the Republic of Indonesia.

This legal research was conducted using a normative juridical method, which emphasizes library research to analyze the norms, principles, and doctrines of international civil law. The research approach used includes a statutory approach (*statute approach*) to national laws, the draft HPI Bill, and international conventions; comparative approach (*comparative approach*) to compare Indonesian and German adoption laws; and a case study approach (*case approach*) by analyzing in-depth concrete legal memorandums regarding adoption applications by mixed-race transgender couples of Indonesian citizens (WNI) and German citizens for their Indonesian children. Through this methodology, the research aims to provide academic and prescriptive

⁸ El Sabarta Putra Nawu, " Review of International Civil Law on Child Adoption and Protection of Children's Rights in Cross-Border," Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory Vol. 3, Nomor 4 (Oct-Dec, 2025): 3087-3102,, <https://shariajournal.com/index.php/IJJEL/article/download/1449/942/2665>.

⁹ Afifah Kusumadara, Indonesian Private International Law (Oxford: Hart Publishing, 2021), <https://www.bloomsbury.com/us/indonesian-private-international-law-9781509924332/>

contributions to an ideal regulatory model for intercountry child adoption that protects the nation's moral sovereignty while respecting the dynamics of international social interaction.

Legal Methodology and the Hierarchy of Legal Sources

To ensure rigorous and objective academic scrutiny, this study adopts a normative-doctrinal legal research methodology. Judicial reasoning employs a deductive syllogistic model, evaluating abstract legal norms before applying them to a concrete cross-border case study. The systematization of legal data is categorized based on the hierarchical authority of legal sources:

- **Primary Legal Sources:** Encompasses historically persistent colonial statutes still in force (Articles 16, 17, and 18 AB); Law No. 1 of 1974 on Marriage; Law No. 35 of 2014 on Child Protection; Government Regulation No. 54 of 2007 on the Implementation of Child Adoption; the most recent harmonized draft of the Indonesian Private International Law Bill (RUU HPI)¹⁰; Germany's Self-Determination Act (*Selbstbestimmungsgesetz* / SBGG 2024)¹¹; the UN Convention on the Rights of the Child 1989 (UNCRC)¹²; and the 1993 Hague Intercountry Adoption Convention¹³
- **Secondary Legal Sources:** Includes the Academic Draft (*Naskah Akademik*) of the RUU HPI compiled by the National Law Development Agency (BPHN)¹⁴, legislative records, domestic and foreign judicial precedents (including rulings of the German Federal Constitutional Court / *BVerfG* and the European Court of Human Rights / *ECtHR*)¹⁵, and

¹⁰ RUU HPI 2023: Panduan dan Ketentuan (Bahan Rapat Pleno Harmonisasi 3 Juli 2023)," Scribd, 3 Juli 2023, <https://id.scribd.com/document/815093027/RUU-HPI-Bahan-Rapat-Pleno-Harmonisasi-3-Juli-2023>

¹¹ German Embassy London, "Declarations under the Self-Determination Act (*Selbstbestimmungsgesetz*)," [uk.diplo.de](https://uk.diplo.de/uk-en/02/declarations-under-the-self-determination-act-2683156), diakses pada 19 Juli 2026, <https://uk.diplo.de/uk-en/02/declarations-under-the-self-determination-act-2683156>.

¹² Child Rights International Network (CRIN), "Article 21: Adoption," [archive.crin.org](https://archive.crin.org/en/home/rights/convention/articles/article-21-adoption.html), accessed 29 June 2026, <https://archive.crin.org/en/home/rights/convention/articles/article-21-adoption.html>.

¹³ U.S. Department of State, Bureau of Consular Affairs, "Hague Convention Text," [travel.state.gov](https://travel.state.gov/content/travel/en/Intercountry-Adoption/adopt_ref/hague-convention-text.html), accessed 29 June 2026, https://travel.state.gov/content/travel/en/Intercountry-Adoption/adopt_ref/hague-convention-text.html

¹⁴ Kementerian Hukum dan Hak Asasi Manusia, Badan Pembinaan Hukum Nasional, *Naskah Akademik Rancangan Undang-Undang tentang Hukum Perdata Internasional* (Jakarta: Badan Pembinaan Hukum Nasional, 2020), https://bphn.go.id/data/documents/naskah_akademik_ruu_hukum_perdata_internasional_2020_-final-update-.pdf.

¹⁵ Martyna Łaszewska-Hellriegel, "Gender Reassignment – the Right to Self-Determination – New Regulation in Germany," *Dyskurs Prawniczy i Administracyjny*, no. 4 (2024) 83, <https://www.dyskurs.inp.uz.zgora.pl/index.php/DPiA/pl/article/view/583/318>.

authoritative treatises on Private International Law.

- **Tertiary Legal Sources:** Legal dictionaries, encyclopedias, and bibliographies.

The interpretive legal methods applied to resolve normative conflicts include grammatical interpretation (interpreting the semantic limits of domestic and foreign statutes), systematic interpretation (harmonizing child protection laws with domestic marriage rules), teleological-sociological interpretation (assessing the substantive welfare of children), and futuristic-anticipatory interpretation (projecting the application of RUU HPI provisions to contemporary disputes). Employing the functional comparative law method, the study explores how divergent legal mechanisms in Indonesia and Germany seek to resolve identical social dilemmas regarding individual identity and family integrity.

B. DISCUSSION

1. Current Intercountry Adoption Law: Synergy of the Cumulation System, SEMA, and the 1993 Hague Convention Standardization

Theory of International Private Law, determination of applicable law (*choice of law*) regarding the legal conditions and consequences of inter-country child adoption, which can be resolved through five types of approaches or legal systems.¹⁶Each system has different legal implications for providing legal certainty and protecting children's human rights at the transnational level. A detailed comparison of the five choice-of-law systems is presented in the following table:

Table 1.
Analysis of the Choice of Law System in Private International Law

No	Choice of Law System	Legal Determination	Main Advantages ¹⁸	Main Weaknesses ¹⁹	Practical Application ²⁰
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¹⁶ Lubis, M. S. Y. (2022). *International Civil Law Textbook* (Vol. 1). umsu press.

¹⁸Ndoen, M. R., & Ingratubun, F. M. (2021). Legal Review of the Adoption of Indonesian Citizen Children by Foreign Citizens. *Paulus Law Journal*, 3(1), 39-49.

¹⁹Nabila, M. F., Hidayah, F. N., Herani, A. P., Prasetyo, Y. O., & Maharani, M. T. (2025). Procedures and Legal Consequences of Adopting a Child Whose Parents Are Not Clearly Known.*Multidisciplinary Journal of Academic Sciences*, 2(2), 257-265.

²⁰Azzahra, F., Septiani, A., Adhitama, A., & Febrianty, Y. (2025). Review of International Civil Law on Child Adoption and Protection of Children's Rights Across Countries.*Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory*, 3(4), 3087-3102.

		Mechanism¹⁷			
1	National Legal System for Adopted Children (<i>National Law Child</i>)	All legal conditions and consequences are subject exclusively to the adopted child's nationality law.	Ensuring alignment (<i>harmony</i>) with the basic protection of children in their country of origin.	There is a high risk of not being recognized by the adoptive parents' country of origin, triggering the child to lose custody abroad.	Used in countries that are very protective of their adopted citizens.
2	National Legal System for Adoptive Parents (<i>National Law Parent</i>)	All legal conditions and consequences are subject to the personal laws of the prospective adoptive parents.	Facilitate the integration of children in new countries and accelerate the acquisition of new citizenship.	Vulnerable to ignoring cultural rights and legal protection of children in their country of origin.	Adopted by international adoptive countries (<i>receiving states</i>).
3	Mixed System (<i>Mixed/Split System</i>)	The adoptive parents' law governs the conditions for adoption, while the child's law governs the legal consequences.	Respecting the personal legal competence of each party proportionally.	It can still trigger conflict if the resulting legal consequences are not recognized in the adoptive parents' country.	Used in several drafts of the European regional HPI codification.
4	Cumulation System (<i>Cumulative System</i>)	Combining the requirements of the national law of the child and the national law of the adoptive parents simultaneously.	Provides a double layer of protection and reduces the risk of rejection of the adoption's validity in both jurisdictions.	It is very rigid, complicates the bureaucratic process, and can invalidate an adoption if even one condition is contradicted.	The system is currently implemented de facto in Indonesia through PP 54/2007 and the Ministry of Social Affairs' recommendations.
5	Distribution	Separating	It is fairer	Requires strong	Legal academics

¹⁷Nugroho, B. A., Ngurah, I. G. A., & Said, Y. M. (2023). The legal consequences of mixed marriages on children's citizenship status from the perspective of international civil law.

	System (Distribution System)	conditions: COTA status is subject to the law of origin, while CAA status is subject to the law of the country of origin.	because it does not force foreign law to assess the civil competence of domestic legal subjects.	bilateral cooperation or international conventions to synchronize legal consequences.	often propose it as an ideal model for avoiding jurisdictional conflicts.
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In general, *Indonesia applies the Cumulation System when* adjudicating international adoption applications. The synergy of the current legal system is regulated by Government Regulation Number 54 of 2007 and Regulation of the Minister of Social Affairs Number 110/HUK/2009. Under these regulations, prospective foreign adoptive parents are required to fulfill all administrative and substantive requirements stipulated by Indonesian law. At the same time, Indonesian courts also require written permission or approval from the German government (a *marriage*, a *Certificate of no impediment to marriage*, or a transnational adoption consent document) confirming that the German government is willing to recognize and facilitate the entry of a legitimate adopted child under German jurisdiction.

In addition to government regulation, Indonesia's judicial instruments in addressing transnational adoption are guided by Supreme Court Circular Letter (SEMA) Number 6 of 1983 and SEMA Number 4 of 1989.²¹ The SEMA expressly prohibits the adoption of Indonesian children by foreign nationals through a notarial deed; international adoption is only legally valid if it is based on a District Court Decision in the area where the adopted child resides. This is an absolute preventative measure to stop the practice of child trafficking under the guise of adoption. When compared to international standards, Indonesia's current international adoption legal system still lags far behind. **The 1993 Hague Convention on the Protection of Children and Cooperation in Intercountry Adoption.**²² A substantive comparison between current

²¹Prastio, T. (2024). *Implementation of Supreme Court Circular Letter Number 1 of 2023 Concerning Procedures for Summons and Notifications by Registered Mail at the Metro Religious Court* (Doctoral dissertation, IAIN Metro).

²²Sahwahita, P. N., Delyananda, Z. R. A., Tanjung, S. B. J., Azzahra, E. A., Quratuainniza, H. S., & Ramadhani, D. A. (2026). Comparative Analysis of the Implementation of the Best Interests of the Child in the Adoption Process in Indonesia and Ireland. *ALADALAH: Journal of the Forum between Politics, Social, Law, and Humanities*, 4(1), 125-143. Compared with.

Indonesian positive law and the 1993 Hague Convention is presented in the following table:

Table 2.
Comparison of Indonesian Inter-Country Adoption Regulations vs. the 1993 Hague Convention

Regulatory Aspects	Indonesian Positive Law (PP 54/2007 & Permenos 110/2009) ²³	The Hague Convention 1993 ²⁴	Legal Implications for Indonesia
Implementing Authority	Implemented sectorally by the Ministry of Social Affairs with the assistance of the PIPA Team (Child Adoption Permit Consideration Team).	Requires the establishment of a Central Authority (CCA which is fully integrated).	There is an overlap in the administrative and supervisory functions of cross-border civil documents.
Residence Requirements	Foreign COTAs are required to reside in Indonesia for a minimum of 2 (two) years legally.	Based on the concept of everyday residence (<i>habitual residence</i>) without rigid year limits.	The 2-year limit in Indonesia often makes it difficult for foreign nationals who work on a nomadic basis.
Subsidiarity Principle	Placing adoption by foreign nationals as a last resort (<i>last resort</i>).	Prioritize foster families in the child's home country; intercountry adoption is a last resort after domestic efforts have failed.	While philosophically similar, Indonesia lacks a nationally integrated database of neglected children.
Legal Consequences	Resulting in the child holding dual citizenship, limited to the age of 18 (Law 12/2006).	Guarantees automatic recognition of child-adoptive parent	Adoptions in Indonesia are vulnerable to not being automatically

²³Tandilangi, I. (2022). *Legal Status of Adoption for Adoptive Parents Who Are Not Yet Married*(Doctoral dissertation, Hasanuddin University).

²⁴Roliana, "The Hague Convention 1993: Comparison and Impact of Ratification on Indonesian National Law,"*Garuda - Garba Digital Reference*, accessed June 28, 2026,<https://garuda.kemdiktisaintek.go.id/documents/detail/4136306>.



		relationships in all member states of the convention.	recognized in the COTA's country of origin if that country rejects the cumulative system.
Post-Adoption Supervision	Foreign adoptive parents are required to report to the local Indonesian Embassy at least once a year until the child is 18 years old.	Supervision is guaranteed to be reciprocal between the heads of the Central Authorities of the country of origin and the country of destination.	Indonesia's current post-adoption reporting mechanism is very weak and difficult to implement in practice.

Based on the comparison above, it is clear why Indonesia **has not yet ratified the 1993 Hague Convention**. The analysis shows that Indonesia is not yet capable, normatively and practically, of meeting the convention's institutional standards. The Hague Convention requires an integrated judicial system, social oversight, and the availability of a Central Authority with full authority to control the circulation of adoptions.²⁵

If Indonesia ratifies this convention without institutional readiness, it is feared that it could trigger new irregularities in the form of hidden child trafficking due to the inability of the domestic bureaucracy to verify foreign child trafficking agreements (COTAs). Therefore, the best short-term solution for Indonesia is to strengthen domestic policy and pursue the creation of a national codification law for the Human Rights Convention (HPI) that can adopt the substance of the protections of the 1993 Hague Convention without being rigidly bound to convention membership.

2. Juxtaposition and Comparative Justification: Choosing Germany as the Principal Comparator

The choice of the Federal Republic of Germany as the primary comparative jurisdiction is

²⁵Pattisina, A. G., & De Sousa, F. P. (2022). Legality of International Intervention Based on the Responsibility to Protect (R2P) Principle. *Journal of Legal Studies: ALETHEA*, 5(2), 129-150.

grounded in distinct legal and doctrinal rationales. Germany stands at the vanguard of global legal reform, shifting from a medical-judicial model of legal gender recognition to a pure self-determination model.²⁶ Following the full entry into force of the SBGG on November 1, 2024, Germany abolished all requirements of surgical intervention, hormonal therapy, or clinical psychiatric evaluations previously mandated under the Transsexuellengesetz (TSG).²⁷

This radical legislative shift creates an extreme legal contrast with Indonesia, which retains a highly traditional, heteronormative model requiring clinical-surgical evidence and a judicial decree for gender marker modifications1. In PIL, such a stark juxtaposition is essential to test the conceptual limits of the public policy defense (*ordre public*) when highly progressive and deeply conservative legal orders collide.

Table 3
Functional Comparison of Legal Gender Recognition and Family Rights

Regulatory Aspect	Germany	Indonesia
Primary Statutory Basis	SBGG (2024)	Law No. 24/2013 (Adminduk)
Modification Mechanism	Unilateral administrative declaration at Civil Registry (<i>Standesamt</i>)	Judicial petition at District Court
Medical / Surgical Requirements	None (pure self-determination)	Practically requires surgical sex reassignment evidence
Validity of Marriage	Valid as civil marriage (<i>Ehe für alle</i>)	Only valid if heterosexual and performed under religious law
Joint Adoption Rights	Fully recognized for married/civil partners	Strictly prohibited for same sex/transgender couples

²⁶ Selin Altay. Safety, Privacy, Self-ID - Völkerrechtsblog, <https://voelkerrechtsblog.org/safety-privacy-self-id/>
²⁷ Gender Reassignment – the Right to Self-Determination – New Regulation in Germany - Dyskurs Prawniczy i Administracyjny, <https://www.dyskurs.inp.uz.zgora.pl/index.php/DPiA/pl/article/view/583/318>



For Indonesia, this causes a severe "limping status" (status pincang) in cross-border situations²³. If a German citizen alters their gender marker unilaterally under the SBGG and enters into a mixed marriage with an Indonesian citizen abroad, the marriage is highly vulnerable to invalidation under the Indonesian *lex fori*. Because Indonesian law does not recognize administrative self-determination without local judicial verification and conformity with religious marriage laws, the individual's legal status remains pegged to their birth-assigned gender under Indonesian law¹. This classifies the union as an unrecognized same-sex marriage, thereby disqualifying the couple from joint adoption under PP 54/2007¹.

3. Reconceptualization of the Ideal Arrangement Model for Intercountry Child Adoption Based on the Projection of the HPI Bill and the Synergy of the 1993 Hague Convention

Discussions on the Draft Law on Private International Law (RUU HPI) have placed this codification as an urgent national legislative priority to fill the post-colonial legal vacuum. The RUU HPI is designed to provide legal certainty and protection for Indonesian citizens engaging in cross-border legal relations. ²⁸In the realm of inter-country adoption, the HPI Bill provides a very revolutionary and comprehensive reconceptualization, particularly in the chapters on Legal Subjects and Family Law. The first step in this reconceptualization is to redetermine the point of connection regarding the personal status of people in Article 13 of the HPI Bill. ²⁹Article 13 paragraph (1) emphasizes that a person's personal status is subject to national law based on the principle of citizenship (*law of the land*)³⁰. As a breakthrough in modern international civil law, Article 13 paragraph (2) stipulates that if a person's nationality cannot be determined (such as an abandoned child without the identity of their biological parents), then the person's personal status is determined based on the law of their place of habitual residence (*habitual residence*).³¹ Concept introduction, habitual residence. This ends the rigidity of the traditional Indonesian

²⁸Jamalum Sinambela, S. H. (2026). *Indonesian International Civil Law (Theory, Practice, and Reconstruction in Transnational Dynamics)* Introduction: Published by Raja *habitual residence*.

²⁹ Indonesia, *Draft Law (RUU) on International Private Law*, standalone manuscript, PDF file.

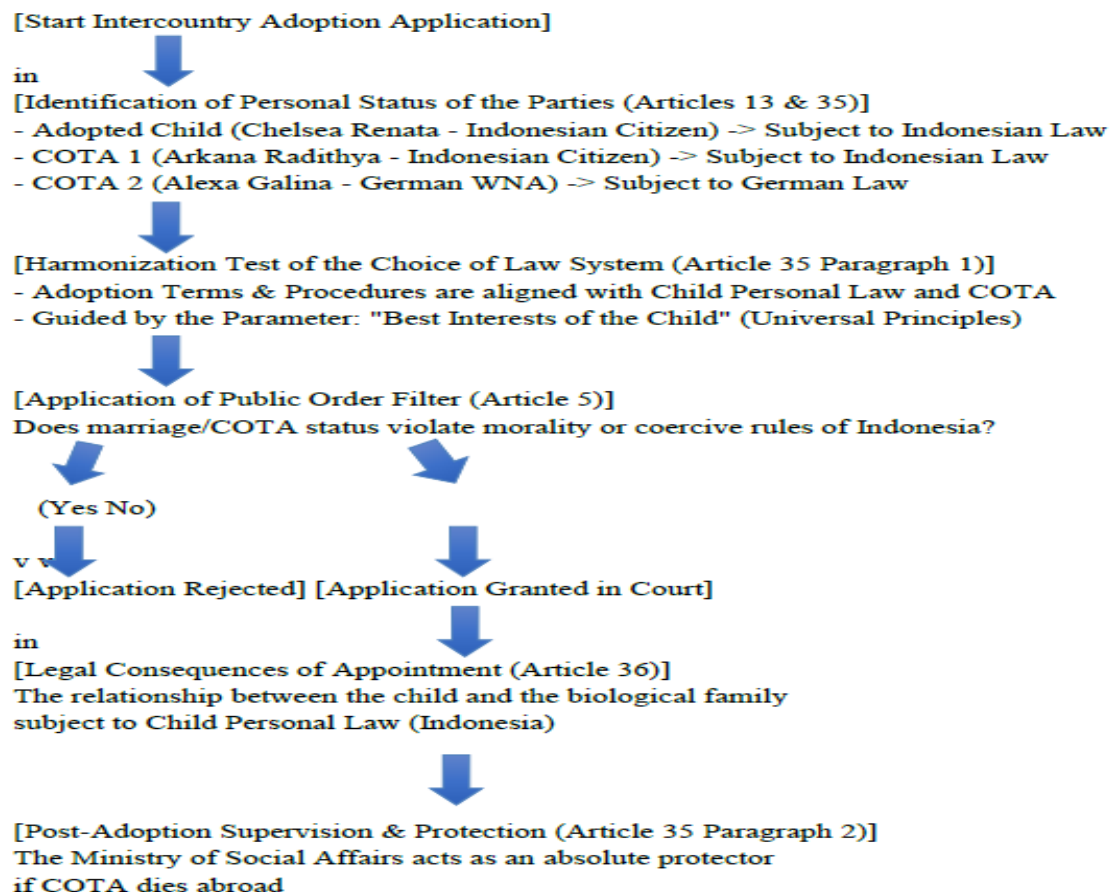
³⁰ Ibid.

³¹ Ibid.

population's administrative domicile. Daily residence is defined as the place where a person lives and has real and substantial emotional and social connections. For abandoned children, this principle guarantees legal protection, in which their personal status is recognized as subject to Indonesian law without the need to dispute their lineage of citizenship.

The HPI Bill specifically regulates inter-country adoption in Articles 35 and 36, which formulate the ideal regulatory model as follows:

Figure 1.
Logical Flow of Legal Choices for Intercountry Adoption Based on Articles 35 & 36 of the HPI Bill





Based on an analysis of Article 35 paragraph (1) of the HPI Bill, there has been a shift from a rigid pure cumulative system towards a more accommodating and dynamic choice of law system, namely, the Limited Distribution System, guided by the primary parameter of "the best interests of the child" (*the best interests of the child*).

The HPI Bill maintains Indonesia's national moral and legal sovereignty through **Article 5 concerning Public Order (Public Policy Exception)**³² Article 5 stipulates that Indonesian courts may refuse to enforce foreign law or rights that arise under foreign law if doing so would be contrary to the Compulsory Law Rules (*mandatory rules*), morality, or public order in Indonesia.

This is where the HPI Bill acts as an ideal regulatory model: it provides an elastic, logical, and structured HPI framework without undermining the principles of Indonesia's national legal sovereignty. Post-adoption legal consequences are also clearly regulated in Article 36 of the HPI Bill. The legal relationship of an adopted child with his or her biological family after adoption is subject to the child's personal status at the time of adoption (i.e., Indonesian Law). This provides legal certainty that inheritance rights to biological assets in Indonesia remain protected under Indonesian national civil law. In addition, Article 35 paragraph (2) provides a concrete solution to an emergency scenario, where if both adoptive parents die abroad (in Germany), the Indonesian Ministry of Social Affairs is legally appointed as guardian under Indonesian Law until the child finds a replacement parent.³³ This provision ensures that Indonesia does not lose its jurisdiction to protect its children wherever they are in the world.

4. Timeline for the Implementation of the HPI Bill and the Transition of Intercountry Adoption Law

The development of this ideal regulatory model cannot be realized instantly, but must go through a participatory national legislative stage (*meaningful participation*)³⁴ and systematically

³² Ibid.

³³ House of Representatives of the Republic of Indonesia (DPR RI), "International Civil Law Bill Strengthens Legal Certainty for Mixed Marriages and Cross-Border Disputes," accessed June 28, 2026, <https://www.dpr.go.id/kegiatan-dpr/berita/RUU-Hukum-Perdata-Internasional-Perkuat-Kepastian-Hukum-Perkawinan-Campuran-hingga-Sengketa-Lintas-Negara-66166>.

³⁴ Damanik, E. R., Farina, T., & Nugraha, S. (2025). The crisis of public participation in the formation of laws in Indonesia: Problems of constitutional rights and the neglect of people's aspirations. *Innovative: Journal Of Social Science Research*, 5(2), 2518-2540.

planned legal transition³⁵The discussion of the HPI Bill by the Special Committee (Pansus) of the Indonesian House of Representatives in 2026 has entered a crucial phase, where public aspiration gathering is being conducted at various leading universities, such as Gadjah Mada University (UGM), to refine the final draft before being brought to the Plenary Session.²⁸.

To describe the roadmap for the realization of the legislative process of the HPI Bill until the achievement of full effectiveness in the legal system of intercountry adoption in Indonesia, a timeline was drawn up (*realization timeline*) following:

Table 4
Timeline for the Implementation of the HPI Bill and the Transition of Intercountry Adoption Law

Phase	Execution time	Main Agenda and Achievement Targets	Juridical/Administrative Output
Phase I: Consolidation & Public	June - August 2026	Public aspirations gathering by the Special Committee of the Indonesian House of Representatives (DPR RI) on the HPI Bill through public discussions at the Regional Office of the Ministry of Law and Human Rights and at universities ²⁸ . Synchronization of material content on transnational family law disputes.	The refined Problem Inventory List (DIM) and the final synchronized draft of the HPI Bill ³⁰ .
Phase II: Legislative Enactment	September - November 2026	Level I discussions in Commission III/Special Committee of the Indonesian House of Representatives and level II decision-making in the Plenary Session of the	Enactment of the Law on International Civil Law (HPI Law) in the State Gazette of the Republic of Indonesia.

³⁵Kuasakata, "Central Java Ministry of Law and Human Rights Facilitates Public Discussion of the Indonesian House of Representatives Special Committee to Discuss the Draft Law on International Civil Law," accessed June 28, 2026, [https://kuasakata.com/read/berita/126373-kemenkum-jateng-konstruksi-diskusi-publik-pansus-dpr-ri-](https://kuasakata.com/read/berita/126373-kemenkum-jateng-konstruksi-diskusi-publik-pansus-dpr-ri-199)



		Indonesian House of Representatives, followed by ratification by the President of the Republic of Indonesia.	
Phase III: Transition & Regulation	December 2026 - December 2028	A two-year transition period for sectoral regulatory adjustments. Drafting of a Government Regulation (PP) on Procedures for Implementing Intercountry Adoption, aligned with the HPI Law.	The issuance of a new PP on the Implementation of Intercountry Adoption, which revokes PP 54/2007, as well as a new Regulation of the Minister of Social Affairs.
Phase IV: Institutional Synchronization	January 2027 - June 2028	Development of an integrated information system for registration of abandoned children between the Ministry of Social Affairs, the Directorate General of Civil Registration, and the Ministry of Foreign Affairs.	Establishment of a national digital database of the habitual residence of abandoned children that is safe from document falsification.
Phase V: Full Implementation	January 2029 and Beyond	Full operationalization of the new legal appointment system (Limited Distribution System) and public order filter by judges in courts.	Enforcement of legal certainty for intercountry adoption in line with the protection standards of the 1993 Hague Convention.

Through this roadmap, the legal transition from the outdated Articles 16, 17, and 18 AB to the modern HPI law can be implemented in a measured manner. The two-year transition period in Phase III is crucial for the Ministry of Social Affairs and the judiciary to reach a common understanding regarding the application of the "daily residence" criteria. *habitual residence*) and the interpretation of the "public order" exception so as not to trigger civil discrimination that violates the principle of the best interests of the child.



C. CLOSING

1. Conclusion

Based on the entire comparative and conceptual analysis description above, the conclusions of this study are formulated as follows:

- a. The legal status of transgender groups in Indonesia and Germany has very contrasting philosophical and juridical differences.⁴Indonesia recognizes individual-administrative gender reassignment through a court ruling under the Population Administration Law, but limits marriage and adoption rights based on the traditional heterosexual principle in the Marriage Law and Government Regulation 54/2007. In contrast, Germany recognizes transgender rights progressively and absolutely through the *Self-Determination Act*, which facilitates gender reassignment without a court hearing, as well as equalizing civil marriage rights and child adoption rights for gender minority couples.⁴This difference triggers conflicts over the qualifications of mixed marriages and international adoption in cross-border civil cases.
- b. The current legal system for intercountry adoption in Indonesia dates from 2009. This sector in 2009. This relies on a rigid Cumulation System under PP 54/2007 and Permensos 110/2009.¹This system complicates harmonization when COTA is subject to foreign national laws with differing principles. On the other hand, Indonesia is currently considered administratively and institutionally inadequate to ratify the 1993 Hague Convention due to the absence of a Central Authority (CTA).*Central Authority*) An integrated and robust post-adoption monitoring system.
- c. The Draft Law on Private International Law (RUU HPI) presents an ideal regulatory model for Indonesia's future by reconceptualizing the nexus between personal status and codifying transnational family law. The introduction of the principle of daily residence (*habitual residence*) in Article 13 provides rapid protection for neglected children³The synergy of Articles 35 and 36 of the HPI Bill harmoniously unifies national laws



concerning children and adoptive parents by prioritizing "the best interests of the child" as the highest guiding principle. Furthermore, Article 5 of the HPI Bill, concerning exceptions to public order, guarantees national moral and legal sovereignty against the intrusion of foreign laws that conflict with Indonesian morality.

2. Suggestion

To actualize the ideal regulatory model, several general and concrete recommendations are proposed:

- a. **Legislative Recommendations:** Urge the House of Representatives, together with the Government of the Republic of Indonesia, to expedite the special committee-level discussions and immediately ratify the International Civil Law Bill (HPI Bill) as national positive law during the 2026 Priority Prolegnas session. This codification step is urgently needed to replace the colonial provisions of AB (Articles 16, 17, 18), which are no longer relevant to global dynamics.
- b. **Judicial Recommendation:** The Supreme Court of the Republic of Indonesia needs to formulate special guidelines or Supreme Court Regulations (PERMA) which provide uniform interpretative parameters for district court judges regarding the application of the principle of public order (*public policy exception*). This is important so that judges have objective guidance in examining the validity of mixed marriages between transgender foreigners without negating human rights and prioritizing the best interests of the child.
- c. **Executive Recommendations:** The Ministry of Social Affairs of the Republic of Indonesia is advised to use the two-year transition period following the ratification of the HPI Bill to strengthen the institutional capacity of social workers in the regions, build an integrated database of abandoned children, and tighten post-adoption supervision (*post-adoption monitoring*) through closer cooperation with the Ministry of Foreign Affairs and Indonesian Embassies abroad. This institutional readiness is an absolute prerequisite before Indonesia decides to ratify the 1993 Hague Convention to realize comprehensive protection of Indonesian children's rights.



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