



## Analysis of the Legal Consequences of Legalizing Polyandry Marriages in the Gorontalo Religious Court Area

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**Abstract** The purpose of this research is to find out the Legal Consequences of Legalizing Polyandry Marriages in the Gorontalo Religious Court Area. In this research, the author uses normative research method or normative juridical research. This normative research includes library research or document study, because the object studied is in the form of public official documents, namely official data from the Gorontalo Religious Court. The results of this study researchers found preliminary data in the Gorontalo Religious Court, there is 1 (one) case of Itsbat Nikah application which is contrary to Article 3 and Article 9 of Law Number 1 of 1974 jo. Law Number 16 of 2019 concerning Marriage, as well as Article 40 of the Compilation of Islamic Law (KHI) but by the panel of judges the case was granted and there was 1 (one) itsbat nikah case Number 255/Pdt.P/2022/PA.Gtlo with the same type of application case but there were differences in the judge's consideration in deciding the case with the ruling not accepted.

**Keywords:** Legal Consequences; Polyandrous Marriage; Religious Court

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## 1. Introduction

The regulation of marriage in Indonesia is determined in Article 1 of Law Number 1 of 1974 concerning Marriage, which states that marriage is "a physical and mental bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the Almighty God." Thus, marriage is a contract (bond with a promise) whose overall aspect is contained in the word *tajwiz* (*nikah*) and speech is a sacred ceremony.

A legal marriage is a marriage that is recognized as valid both religiously and juridically. Religiously valid means that the pillars and conditions for the implementation of a marriage have been fulfilled, while juridically valid is guided by Law Number 1 of 1974 jo. Law Number 16 of 2019 concerning Marriage Article 2 Paragraph (1) and Paragraph (2), which reads:<sup>1</sup>

- (1) Marriage is valid if performed according to the laws of each religion and belief.
- (2) Every marriage shall be recorded in accordance with the applicable laws and regulations.

The Compilation of Islamic Law Article 5 Paragraph (1) explains that in order to ensure marital order for the Islamic community, every marriage must be recorded, while Paragraph (2) explains that marriage registration is carried out by a Marriage Registration Officer. Marriages that are conducted without registration from the Marriage Registration Officer, then the marriage is not legally valid as stipulated in Article 6 Paragraph (2) of the Compilation of Islamic Law.

Article 2 Paragraph (2) of Law Number 1 of 1974 as amended by Law Number 16 of 2019 concerning Marriage states that "every marriage is recorded according to the applicable laws and regulations", Article 2 Paragraph (2) implicitly provides instructions that every marriage that is held and has fulfilled the conditions and pillars of marriage is obliged to register the marriage that is held at the authorized institution. This means that there should be no deliberate element of not registering the marriage. Although from a juridical point of view there is an explicit obligation and necessity to register the marriage that takes place, the implementation has not gone well. This is because in reality in the community there are still a number of cases where marriages are not registered. Thus the problems that arise in the field of marriage, especially unregistered marriages, become one of the duties and responsibilities of the Religious Court as an institution that carries out its duties and authority in the judicial field to provide solutions to the problems of unregistered marriages.<sup>2</sup>

Related to the above, the provisions of Article 7 of the Compilation of Islamic Law provide an opportunity for the legalization of marriages that have not been recorded by the Marriage Registrar, so that the party concerned can submit an application for

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<sup>1</sup> Anwar Rachman, Prawitra Thalib, and Saepudin Muhtar, *Hukum Perkawinan Indonesia Dalam Perspektif Hukum Perdata, Hukum Islam Dan Hukum Administrasi* (Prenada Media Group, 2020).

<sup>2</sup> Beni Ahmad Saebani, Syamsul Falah, and Maman Abd Djaliel, "Hukum Perdata Islam Di Indonesia," 2011.

Itsbat Nikah to the Religious Court. Because a juridically valid marriage can only be proven by a Marriage Certificate issued by the Office of Religious Affairs as stated in Article 7 of the Compilation of Islamic Law. Among them is Article 7 Paragraph (3) which reads that itsbat nikah which can be submitted to the Religious Court is limited to matters relating to:

- a. The existence of a marriage in the context of a divorce settlement
- b. Loss of marriage certificate
- c. There is doubt about the validity or otherwise of one of the conditions of marriage
- d. The existence of a marriage that occurred before the enactment of Law No. 1 of 1974 and
- e. Marriages conducted by those who do not have a marriage impediment according to Law Number 1 of 1974.

The phenomenon today is that there is a widespread occurrence in the community of married couples who marry secretly without registering their marriage at the KUA, then when pressed for legal certainty over their marriage and legal certainty about the status of their children, married couples who marry under the hand file a case for itsbat nikah at the Religious Court. Such cases are common. However, if the itsbat nikah is carried out in a situation where the wife is still bound to a legal husband and has a marriage book and has not divorced her legal husband, then remarries (polyandry) secretly with another man, this is an act that violates the law, both religious law and public law.

Polyandrous marriage is a marriage system that is prohibited in Indonesia, both according to state law, religion, and community norms. Factors causing polyandry can be caused by the wife's factor feeling that the livelihood provided by her husband is lacking so that she looks for another man who is more established, or lack of attention from the husband, husband and wife live far apart, lack of faith, and or the husband leaves the wife for a long time so that the wife commits polyandry even though she has not divorced her previous husband. If a wife commits polyandry, it will be difficult to find the nasab or lineage of the child she gave birth to, so that it will have an impact on guardianship when her daughter gets married or in terms of inheritance to a deceased husband.<sup>3</sup>

Therefore, a woman cannot remarry another man if she is still bound in a marriage. If a woman wants to remarry, she must end her marriage with her husband through divorce. Even after divorce, she must wait for the iddah (waiting period) to be completed before she can remarry another man.

The prohibition and prohibition of polyandry apart from religious provisions, is regulated in Article 40 Paragraph (a) KHI states that "a woman who is still in a marriage bond, it is unlawful to marry another man." Article 40 (a) and (b) KHI states

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<sup>3</sup> Panal Herbet Limbong, Syawal Amry Siregar, and Muhammad Yasid, "Pengaturan Hukum Dalam Pembagian Harta Bersama Perkawinan Menurut Hukum Perdata Yang Berlaku Saat Ini Di Indonesia," *Jurnal Retentum* 5, no. 2 (2023): 177-91.

that: "Marriage is prohibited between a man and a woman in certain circumstances: (a) because the woman concerned is still bound by one marriage with another man. (b) A woman who is still in the iddah period with another man. This kind of marriage, if it has been carried out, can be canceled based on Article 71 letters (b) and (c) KHI which reads: (b). the woman who is married is known to still be the wife of another man who is mafqud. (c). the woman who is married turns out to be still in iddah and another husband.

Marriage regulations are regulated in Article 3 of Law Number 1 of 1974 concerning marriage which clearly adheres to the principle of monogamy, which reads: "Basically in a marriage a man may only have one wife. A woman may only have one husband." The provisions of Article 3 of Law Number 1 of 1974 concerning Marriage are further emphasized in Article 9 which states that:

"A person who is still bound by the rope of marriage with another person cannot remarry except in the case as mentioned in Article 3 Paragraph (2)."<sup>4</sup>

Article 3 Paragraph (1) and Article 9 of Law No. 1/1974 on Marriage explicitly state that in principle in a marriage a man may only have one wife. A woman may only have one husband. This can be seen in Article 3 Paragraph (2), so it does not recognize the principle of polyandry for a wife. This means that a wife who still has a husband and is still legally bound by a valid marriage with her previous husband is not allowed to marry another man before the marriage is declared broken due to divorce by the court.

From a psychological perspective, polyandry is contrary to human nature and can even disturb the peace of the heart or soul. From a sociological perspective, polyandry can cause problems, both in the family and in society, and is even contrary to socio-cultural values. Furthermore, research has shown that women are more supportive of monogamy than men. The main wisdom of polyandrous marriages being prohibited is to maintain the purity of offspring, not to be mixed up, and the legal certainty of a child, because the child since being born even in certain circumstances even though still in the womb, has been positioned as a carrier of rights, so it needs to get protection and legal certainty. In addition, polyandry also has an impact, among others, the lack of harmony in household relationships, the psychological impact on children who have many fathers, getting ridiculed by the surrounding community, and not achieving the functions of the family that should be.

Islamic teachings strictly prohibit polyandrous marriages, as Allah Swt. says, in Qs. An-Nisa (4): 24 as follows:

تَّبِعُوا أَنْ ذَلِكُمْ وَرَاءَ مَا لَكُمْ وَاجِلًا ۖ عَلَيْكُمْ اللَّهُ كِتَابٌ ۖ أَيْمَانُكُمْ مَلَكْتُمْ مَا إِلَّا الْبَيْسَاءُ مِنْ وَأَلْمُحْصَنَاتُ

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<sup>4</sup> Saiful Millah and Asep Saepudin Jahar, *Dualisme Hukum Perkawinan Islam Di Indonesia: Fiqh Dan KHI*, vol. 253 (Amzah (Bumi Aksara), 2021).

عَلَيْكُمْ جُنَاحَ وَلَا ۖ فَرِيضَةً أُجْرَهُنَّ قَاتُوهُنَّ مِثْلَ مَا اسْتَمْتَعْتُمْ بِهِ اسْتَمْتَعْتُمْ بِمَا ۖ مُسَافِحِينَ غَيْرَ مُحْصِنِينَ بِأَمْوَالِكُمْ  
حَكِيمًا عَلِيمًا كَانَ اللَّهُ إِنَّ ۖ الْفَرِيضَةَ بَعْدَ مِنْ بِهِ تَرَاضَيْتُمْ فِيهَا

Translation:

And it is also forbidden for you to marry married women, except for slaves whom you own as His decree upon you, and it is lawful for you to seek wives with your wealth for marriage, not for adultery. So those wives among whom you have enjoyed yourselves, give them their dowries in full, as a duty; and there is no blame on you for what you have mutually consented to, after determining the dowry. Indeed, Allah is All-knowing and All-wise.

The existence of a prohibition for women to practice polyandry does not mean that polyandrous marriages do not exist or have never occurred, in fact many polyandrous acts are carried out by women who are legally still the wives of people, it's just that since polyandrous marriages are prohibited, many women who are still married are practicing polyandry in secret, this can be seen from the case of an application for itsbat nikah which was submitted and heard in an integrated manner at the Gorontalo Religious Court.<sup>5</sup>

The case of itsbat nikah which was heard in an integrated manner at the Gorontalo Religious Court in 2019, there was a polyandry itsbat nikah case where the Petitioners in their petition letter dated November 5, 2019 which was registered at the Registrar of the Gorontalo Religious Court on November 7, 2019 under case register Number 311/Pdt.P/2019/PA.Gtlo, with the following reasons:

On October 18, 2018 Applicant I married Applicant II in the presence of the Imam of Ayula Village, Tapa Subdistrict named IA with the marriage guardian of Applicant II's biological brother named AS while the witnesses to the marriage were ZD and SA, with a dowry in the form of a set of prayer tools.

At the time of marriage Applicant I was a widower of death divorce aged 26 years, while Applicant II was a widow aged 25 years. Between Applicant I and Applicant II there is no blood relationship and no inbreeding and fulfills the conditions and there are no restrictions to enter into marriage, both according to the provisions of Islamic law and applicable laws and regulations. In the marriage, Applicant I and Applicant II have lived in harmony as husband and wife but have not been blessed with children. Petitioner I and Petitioner II never received a Marriage Certificate Excerpt from the Marriage Registrar of the Sipatana Sub-District Religious Affairs Office after the Petitioners took care of it it turned out that the marriage of Petitioner I and Petitioner II was not recorded in the register of the Sipatana Sub-District Religious Affairs Office.

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<sup>5</sup> Wahyu Wibisana, "Pernikahan Dalam Islam," *Jurnal Pendidikan Agama Islam-Ta'lim* 14, no. 2 (2016): 185–93.

The Plaintiffs urgently needed the Stipulation of Marriage Validation of the Gorontalo Religious Court, for the purposes of legal certainty over the marriage of Plaintiff I and Plaintiff II and to take care of civil registration papers.<sup>6</sup>

At the hearing which was held in an integrated manner at IAIN Campus LP2M room Sultan Amai Gorontalo Gorontalo City and on the day of the hearing that has been set Applicant I and Applicant II present at the hearing.

Petitioner I and Petitioner II testified that Petitioner I was a deceased widower when he married Petitioner II, while Petitioner II was a living widow who had a marriage book, namely book No. 15/15/IV/2008 issued by the Religious Affairs Office of Bambala Mutu Subdistrict.

The judge in his consideration stated that the facts of the trial had revealed that Applicant I and Applicant II at the time of the marriage, Applicant I was a deceased widower while Applicant II was a living widow still bound by a previous marriage, this was known by 2 (two) witnesses, the witness also testified that as long as Applicant I and Applicant II were married, namely from October 18, 2018 until now no one has come to claim to be a wife or husband, even no party has filed an annulment of their second marriage.<sup>7</sup>

Furthermore, in his consideration, the judge stated that the court concluded that the application for isbat nikah submitted by Applicant I and Applicant II had fulfilled the elements of the material rules as mentioned above, thus petitum number 2 (two) in the application of Applicant I and Applicant II should be granted.

Referring to the description above, the application for marriage validation submitted by the Plaintiffs through the integrated itsbat nikah session was granted by the judge examining the case even though a woman who in this case is a reference for researchers in analyzing this legal issue is clearly a marriage that has not previously been declared terminated due to divorce by the court.<sup>8</sup>

Furthermore, there is an unacceptable itsbat nikah case, namely in itsbat nikah case Number 255/Pdt.P/2022/PA.Gtlo which contradicts case Number 311/Pdt.P/2019/PA.Gtlo which was granted by the judge, where in the consideration of case Number 255/Pdt.P/2022/PA.Gtlo, the judge stated that the current status of Applicant II is a divorcee from her first husband, but until now Applicant II has not been officially divorced from her first husband so she does not have a divorce certificate. And the actions of Applicant II are contrary to Article 40 of the Compilation of Islamic Law, which basically states that a man is prohibited from marrying a woman who is still

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<sup>6</sup> Ahyuni Yunus, *Hukum Perkawinan Dan Itsbat Nikah: Antara Perlindungan Dan Kepastian Hukum* (Humanities Genius, 2020).

<sup>7</sup> Farida Nurun Nazah and Husnia Husnia, "Kepastian Hukum Itsbat Nikah Dalam Hukum Perkawinan," *JHR (Jurnal Hukum Replik)* 6, no. 2 (2018): 241–63.

<sup>8</sup> Ayunda Nurul Afifatur Rizqiyah, "Peran Hukum Nasional Dan Hukum Islam Dalam Menyikapi Lahirnya Pemahaman Poliandri Sebagai Gerakan Feminisme Di Indonesia," *Jurnal Hukum Dan HAM Wara Sains* 1, no. 02 (2022): 160–68.

married to another man. Furthermore, the judge declared the petition of Applicant I and Applicant II unacceptable.

Based on the facts above, the researcher found preliminary data at the Gorontalo Religious Court, there is 1 (one) case of *Itsbat Nikah* application which is contrary to Article 3 and Article 9 of Law Number 1 of 1974 jo. Law Number 16 of 2019 concerning Marriage, as well as Article 40 of the Compilation of Islamic Law (KHI) but by the panel of judges the case was granted and there was 1 (one) *itsbat nikah* case Number 255/Pdt.P/2022/PA.Gtlo with the same type of application case but there were differences in the judge's consideration in deciding the case with the ruling not accepted.

## 2. Method

In this research, the author uses normative research method or normative juridical research.<sup>9</sup> This normative research includes library research or document study, because the object under study is in the form of official documents of a public nature, namely official data from the Gorontalo Religious Court.

## 3. Legal Consequences Of Polyandrous Marriage

Polyandrous marriage is a marriage system that is prohibited in Indonesia, both according to state law, religion, and norms in society. To clarify the legal consequences of a polyandrous marriage petition being granted and the legal consequences of a polyandrous marriage petition being denied, the legal consequences will be as follows:<sup>10</sup>

### 1. Legal consequences of a polyandrous marriage that is legalized / granted

Referring to the description above, the granting and legalization of polyandrous marriage as in case Number 311/Pdt.P/2019/PA.Gtlo will have the following legal consequences:

- 1) Providing certainty and protection of the legal status of marriage.  
Providing certainty and protection of the legal status of marriage. With the consideration of the judge who ordered to register the marriage of the Plaintiffs, it has fulfilled Article 2 Paragraph (2) of Law Number 1 Year 1974 which states that "every marriage is registered according to the applicable Law." This is also contained in the provisions of Article 28B paragraph (1) of the 1945 Constitution, which

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<sup>9</sup> Ishaq Ishaq, *Metode Penelitian Hukum Dan Penulisan Skripsi, Tesis, Serta Disertasi* (Alfabeta, 2017).

<sup>10</sup> Rafiqi Rafiqi and Arie Kartika, "Kepastian Hukum Perkawinan Poliandri Di Indonesia," *Jurnal Hukum In Concreto* 2, no. 1 (2023): 45-57.

states that "everyone has the right to form a family and continue their descendants through legal marriage".<sup>11</sup>

Juridically, by registering a marriage, their marriage can be protected and provide legal consequences and benefits, among others:

- a) Provides legal certainty to all parties, both husband and wife who have entered into marriage.
  - b) A husband cannot act arbitrarily towards his wife.
  - c) To be a guide for married couples in navigating life together, so as to achieve the aspired goal of marriage, namely domestic tranquility and happiness.
  - d) As a means for the government to create social order.
  - e) For administrative order in carrying out marriage.
  - f) It will be used as evidence to the surrounding community that he has legally carried out the marriage.
- 2) Providing certainty and protection of the legal status of children. With the granting of the marriage of the Plaintiffs, a child birth certificate can be recorded, thus providing a basis for recognition of the children who are born to be the legitimate children of a married couple, so that the child's lineage is clear to his parents, as mandated in Article 42 of Law Number 1 of 1974 concerning Marriage, which confirms that "a legitimate child is a child born in or as a result of a legal marriage". This is also in line with the intent of Article 28D(1) of the 1945 Constitution, which states that "every person has the right to recognition, guarantee of protection and certainty of a just law and equal treatment before the law."
- 3) Providing guarantees and protection of rights arising from marriage such as the right to joint property of husband and wife, the right to inheritance, the right to maintenance, the right to life, the right to obtain a birth certificate and so on.<sup>12</sup>

This is in line with the author's interview with the Deputy Clerk of the Gorontalo Religious Court Lawsuit An. Hj. Luthfiah, S.Ag., M.H said: If the petition for the validation of the marriage of the Plaintiffs is granted by the examining judge, the court will issue a determination of granted which implies that their marriage is legally recorded and valid according to state law.

From the description above, it is the author's opinion that with the granting of the application for the legalization of the polyandrous marriage of Applicant I and Applicant II, it will result in the legal status of the Plaintiffs' marriage which has been

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<sup>11</sup> Makmur Syarif, "POLIANDRI PADA MASYARAKAT: STUDI KASUS PENGADILAN AGAMA PARIAMAN," *Kafaah: Journal of Gender Studies* 6, no. 2 (2016): 179-200.

<sup>12</sup> Istiqomah Kurnia Istiqomah, "STATUS HUKUM ANAK DARI PERKAWINAN POLIANDRI DI KOTA BALIKPAPAN" (Universitas Balikpapan, 2020).



valid in the eyes of the law as husband and wife and children and has legality and legal certainty for the state and in society.

#### **4. Legal consequences of polyandrous marriages that are rejected / not legalized**

The legal consequences of a polyandrous marriage that is not legalized or rejected are as follows:

1. The marriage is considered invalid even though the marriage is carried out according to religion and belief, but in the eyes of the state the marriage is considered invalid if it has not been recorded by the Office of Religious Affairs or the Civil Registry Office or it is considered that there has never been a legal event called marriage.
2. Children only have a civil relationship with the mother and the mother's family. Children born outside of marriage or unregistered marriages, in addition to being considered illegitimate children, also only have a civil relationship with the mother or the mother's family, while the civil relationship with the father does not exist, as regulated in Article 42 and Article 43 of Law Number 1 Year 1974 concerning Marriage and Article 10 of the Compilation of Islamic Law which states that children born outside of a legal marriage only have a nasab relationship with the mother and her mother's family.
3. The child and his mother are not entitled to maintenance and inheritance as a further consequence of an unregistered marriage, neither the wife nor the children born from the marriage are entitled to claim maintenance or inheritance from the father.
4. Unclear Status of Children: If there are children born from an unrecognized polyandrous marriage, legal issues may arise regarding their status and rights, such as inheritance rights, child support, and custody.
5. No Legal Protection: Spouses in unrecognized polyandrous marriages may not get legal protections or rights that are usually given to spouses in legal marriages, such as economic rights, inheritance, and other rights.
6. Uncertainty of Legal Responsibilities: In a legal marriage, spouses have legal responsibilities to each other. If a polyandrous marriage is not recognized, there may be uncertainty about the legal responsibilities between the spouses.
7. Not Accepted in Society: While this effect is not a legal aspect, unrecognized polyandrous marriages may not be accepted in society at large, leading to social pressure and stigma.<sup>13</sup>

As an interview with a judge of the Gorontalo Religious Court An. Drs. Satrio A.M. Karim who stated that:

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<sup>13</sup> Lily Triyana, "Perlindungan Hukum Terhadap Anak Yang Lahir Atas Perkawinan Poliandri (Studi Putusan Nomor 434/Pdt. P/2020/PA. Smd)," in *Proceedings Borneo Islamic International Conference eISSN 2948-5045*, vol. 14, 2023, 291-98.

If the application for marriage validation is rejected, it will result in the legal status of their invalid marriage, and if a marriage has occurred, it can be canceled, besides that it will have legal consequences on the status of illegitimate children and can only be related to their mother and cannot inherit from their father.<sup>14</sup>

This is in line with the results of the study which state that the legal consequences obtained by the wife when the application for itsbat nikah is rejected by the judge are as follows:

- 1) In the eyes of state law is not considered a legal wife
- 2) The wife cannot claim the inheritance from the husband, if the husband has died and
- 3) The wife also has no right to joint property if there has been a separation, because the marriage that has been held by them is considered never to have occurred.

Meanwhile, the legal consequences obtained by children when the application for itsbat nikah is rejected are as follows:

- 1) The child is considered to be an illegitimate child,
- 2) Difficulty in obtaining a birth certificate,
- 3) The child only has a civil relationship with the mother and the mother's family,
- 4) The legal status of the child is unclear and
- 5) Children are not entitled as heirs.<sup>15</sup>

From the description above, the author draws the conclusion that the legal consequences of a polyandrous marriage that is not legalized or rejected will have legal consequences on an invalid marriage, besides that there is no legal legality of marriage and it is not recognized by the state, it will also have legal consequences on the legal status of children and joint income property, where the invalid wife and illegitimate child have no right to inherit from her husband and because the child is not related to his father, but only related to his mother and his mother's family.

## 5. Conclusion

The legal consequences of legalized polyandrous marriages are 1). Providing certainty and protection of the legal status of marriage. 2). Providing certainty and protection of the legal status of children. 3). provide guarantees and protection of rights arising from marriage such as joint property rights, inheritance rights and so on. Meanwhile, the legal consequences of the rejected application for the legalization of polyandrous marriage are: 1). Marriage is considered invalid. 2). The child only has a civil relationship with the mother and the mother's family. 3). The child and the mother are not entitled to maintenance and inheritance.

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<sup>14</sup> EVI KURNIAWATI, "PEMBAHASAN HUKUM TENTANG PEMBATALAN PERKAWINAN DENGAN ALASAN POLIANDRI (Studi Putusan Nomor: 619/Pdt. G/2005/PA. Jr)," n.d.

<sup>15</sup> Ratu Bulan Hendra, "PEMBATALAN PERKAWINAN POLIANDRI DALAM PERSPEKTIF HUKUM ISLAM DAN BERDASARKAN PUTUSAN NO. 1299/Pdt. G/2012/PA. SIT," 2021.

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