



THE DISTRICT COURT'S APPROACH IN INTERFAITH MARRIAGE INVOLVING MUSLIMS IN INDONESIA

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ABSTRACT

Indonesia recognizes six official religions, namely Islam, Protestantism, Catholicism, Hinduism, Buddhism and Confucianism with Islam as the majority religion of the people. The diversity of religion has caused the occurrence of interfaith marriages involving Muslims. The Islamic teaching clearly prohibits such interfaith marriages would pronounce the marriages as void. Unfortunately, national legal position of the marriage is ambiguous since the national law does not prohibit nor allow such marriage in clear terms. Article 2 (1) of Law No. 1 of 1974 on Marriage merely states that a marriage is legal if it is carried out according to the law of each religion and belief of the spouse. Therefore, this study is conducted to analyze the judicial approach by the District Court on two recent cases in determining the validity of interfaith marriage. This study applied doctrinal research to collect of primary and secondary data from statutes, case and other related sources. This research found that the decisions made by the District Court were based on the discretion of the judges. One decision legalized the interfaith marriage based on judicial precedent and national legislation while another decision held that such marriage was void based on the Islamic law teachings.

Keywords: Family Law, Interfaith Marriage, District Court, Indonesia

Abstrak

Indonesia mengakui enam agama resmi, yaitu Islam, Protestan, Katolik, Hindu, Budha, dan Konghucu dengan Islam sebagai mayoritas agama penduduknya. Keberagaman agama di Indonesia menyebabkan terjadinya perkawinan beda agama yang melibatkan beberapa umat Islam. Ajaran Islam jelas melarang perkawinan beda agama serta menyatakan perkawinan itu batal. Sayangnya, kedudukan hukum nasional dari perkawinan itu ambigu karena hukum nasional tidak melarang atau mengizinkan perkawinan semacam itu secara jelas. Pasal 2 ayat 1 Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan hanya menyatakan bahwa perkawinan adalah sah jika dilakukan menurut hukum masing-masing agama dan kepercayaan pasangan. Oleh karena itu, penelitian ini dilakukan untuk menganalisis pendekatan yuridis Pengadilan Negeri terhadap dua kasus terakhir dalam menentukan sah

tidaknya perkawinan beda agama. Penelitian ini menerapkan penelitian doktrinal untuk mengumpulkan data primer dan sekunder dari undang-undang, kasus dan sumber terkait lainnya. Penelitian ini menemukan bahwa putusan yang diambil oleh Pengadilan Negeri didasarkan pada diskresi hakim. Satu keputusan mengesahkan pernikahan beda agama berdasarkan preseden peradilan dan undang-undang nasional sementara keputusan lain menyatakan bahwa pernikahan tersebut batal berdasarkan ajaran hukum Islam.

Kata Kunci: Hukum Keluarga, Perkawinan Beda Agama, Pengadilan Negeri, Indonesia

INTRODUCTION

Indonesia was born in 1945 with a centralized unitary state based on the Constitution of 1945 and headed by a President. Indonesia's proclaimer of independence, Soekarno, decided that the archipelago would be unified as the Unitary State of the Republic of Indonesia under the first principle of the nation's philosophy of *Pancasila*, that is "Belief in the one and only God"¹. Based on its high plurality in cultures, ethnics, tribes and religions, the country recognizes six official religions comprising of Islam, Protestantism, Catholicism, Hinduism, Buddhism and Confucianism.² It is estimated that in 2020 there are 229 million Muslims in Indonesia with a percentage of 87.2% of Indonesia's population from 263 million or about 13% of the world's Muslim population.³ The diversity in religion increases the tendency of interfaith marriage which is simply called "mix marriage" or "interreligious marriage". Dictionary Online⁴ defines it as "a marriage between persons of different racial, ethnic or religious groups", in addition "religious intermarriage as it reflects interaction in an open society as a gauge of changing social structures and norms".⁵ Before knowing the meaning of interfaith marriage, in general according to the Oxford Dictionary Law,⁶ marriage is a relationship between husband and wife, a civil or religious ceremony that gives rise to the status of husband and wife and can give rise to legal aspects of it. status. While the explanation from the Black's Law Dictionary⁷ states that marriages carried out with different beliefs or religions are mixed marriages. In addition, in Indonesia, mixed marriages are only limited to marriages

¹ Fathol Hedi, Abdul Ghofur Anshori and Harun Harun, 'Legal Policy of Interfaith Marriage in Indonesia' (2017) 3 Hasanuddin Law Review 263 <<http://pasca.unhas.ac.id/ojs/index.php/halrev/article/view/1297>>.

² Indonesia Investment, 'Religion in Indonesia' <<https://www.indonesia-investments.com/culture/religion/item69>> accessed 26 June 2021.

³ IB Times, 'Muslim Population Data 2020: Indonesia's Largest in the World' (2020) <<https://ibtimes.id/data-populasi-penduduk-muslim-2020-indonesia-terbesar-di-dunia/>> accessed 30 June 2021.

⁴ Dictionary.com, 'Mixed Marriage' (2021) <<https://www.dictionary.com/browse/mixed-marriage>> accessed 24 September 2021.

⁵ Encyclopedia.com, 'Interfaith Marriage' (2019) <<https://www.encyclopedia.com/reference/encyclopedias-almanacs-transcripts-and-maps/interfaith-marriage>> accessed 24 September 2021.

⁶ Oxford Dictionaries, *Oxford Dictionary of Law* (Elizabeth A Martin Jonathan Law ed, 7th Ed, Oxford University Press 2009).

⁷ Bryan A Garner, *Black's Law Dictionary* (10th ed, Thomson Reuters 2014).

carried out with husbands and wives of different nationalities. Literally, interfaith marriage is something related to religious differences, and marriage is a relationship that has been brought into marriage between two people. This research focuses on marriage entered into between spouses of different religions.

One of the requirements for a marriage to be carried out is religious similarity for the prospective married couples.⁸ Basically, all the above mentioned six religions prohibit interfaith marriage and if it is allowed by a particular religion, it has to fulfil strict conditions.⁹ In terms of law, Article 2 of Law No. 1 of 1974 on Marriage states that "A marriage is legal if it is carried out according to the law of each religion and belief of the spouse. Every marriage is recorded according to the applicable laws and regulations".¹⁰ The provision has raised inter-religious issue in Indonesia.¹¹ It can be literally understood that plurality of marriages exists to accommodate the numerous religious laws in Indonesia and each marriage must be performed according to religious rules of each of the spouse.¹² Hence, with the diversity of ethnicities and religions in Indonesia, it is necessary to highlight the legal regulations governing interfaith marriages that are currently polemic.

In Indonesia, the legal regulations for interfaith marriages cannot be placed on general marriage regulations because there is no explicit regulation. In the last decade, the rise of religious conservatives in Indonesia has made religious adherents conservative and led to debates including interfaith marriages.¹³ According to Suhargon and Anggeraini,¹⁴ interfaith marriages can be legalized by virtue of Article 35 (a) of Law No 23 of 2006 updated to Law No 24 of 2013 about Population Administration by conducting such marriages with court decisions based on the judicial precedent. Interfaith marriage spouses whose marriage has been refused from registration by the Civil Registry Office may file the case to the District Court which is conferred with jurisdiction to

⁸ Muhammad Amin Suma, *Kawin Beda Agama Di Indonesia: Telaah Syariah Dan Qanuniah* (I, Lentera Hati Group 2015) <https://books.google.com.my/books?id=n29MDAAAQBAJ&dq=Kawin+beda+agama+di+Indonesia:+telaah+syariah+dan+qanuniah&hl=ms&source=gbs_navlinks_s>. accessed 30 September 2021.

⁹ Setyowati, 'Legal Aspects of Interfaith Marriage in Indonesia' (2019) 19 *International Journal of Business, Economics and Law* 142 <<https://www.ijbel.com/previous-issues/august-2019/vol-19-august-2019-issue-5/>>. accessed 23 September 2021.

¹⁰ People's Representative Council of Indonesia, 'About DPR' (2019) <<https://www.dpr.go.id/tentang/tugas-wewenang>> accessed 5 July 2021.

¹¹ Arzia Tivany Wargadireja, 'How To Marry Somebody of a Different Religion In Indonesia' (2018) <<https://www.vice.com/en/article/d34k5x/how-to-marry-somebody-of-a-different-religion-in-indonesia>> accessed 1 May 2021.

¹² Sri Wahyuni, *Nikah Beda Agama: Kenapa Ke Luar Negeri?* (Iqbal Dawami ed, I, Pustaka Alvabet 2016) <https://books.google.com.my/books?id=uZ3fDQAAQBAJ&dq=Nikah+Beda+Agama:+Kenapa+ke+Luar+Negeri%3F&hl=ms&source=gbs_navlinks_s>. accessed 5 May 2021.

¹³ Rosdalina Bukido and others, 'Negotiating Love and Faith: Interfaith Marriage in Manado, Indonesia' (2021) 6 *Wawasan: Jurnal Ilmiah Agama dan Sosial Budaya* 67 <<https://journal.uinsgd.ac.id/index.php/jw/article/view/11299>>. Accessed 22 January 2022.

¹⁴ Rahmat Suhargon and Faulia Anggeraini, 'The Juridical Review of Law Number 1 of Year 1974 on Marriage and the Compilation of Islamic Law Concerning Status of Different Religious Wedding Abroad' (2021) 10 *Legal Brief* 192 <<http://www.legal.isha.or.id/index.php/legal/article/view/51>>.

hear family matters under Law No. 23 of 2006. Hence, this research is conducted to critically analyze the justifications of the District Court decisions in interfaith marriage cases in Indonesia and to examine to what extent the court may uphold justice when applied to cases.

DISCUSSION

A. INTERFAITH MARRIAGE UNDER ADMINISTRATIVE REGULATIONS

Administrative regulation in Indonesia observes Dutch law which unites the nation's administrative regulation with constitutional law since its colonization in 1900s. In 1946 Indonesia separated administrative regulations from constitutional regulations and developed them according to the demands of the Indonesian people.¹⁵ Sources of administrative law in Indonesia consist of two parts, namely the aspirations of the people submitted by the Dewan Perwakilan Rakyat and the laws resulting from material legal sources issued by legislator like the Constitution of 1945, MPR Decree, Law, Presidential Decree, Government Regulation, Other implementing regulations, Convention and Tract.¹⁶ Administrative law in Indonesia is public law as it deals with the relationship between individual and government within the scope of national, community and state.¹⁷ In 2014, Indonesia approved the Law No 30 of 2014 on Government Administration which is a step in the reformation of public administration in the form of responsibility of Indonesian state to ensure the administration and public services are fast, convenient and inexpensive.¹⁸ This is a concrete effort made by the state to guarantee services and administrative development to create good governance. On the other side, in order to control the administrative sanctions by the state, Indonesia has established a court known as the State Administrative Court or *Peradilan Tata Usaha Negara* (PTUN) in 1991. The administrative court is one of the pathways for justice seekers whose interests are harmed due to the violations of legal provisions by the state administrative agency or officials.¹⁹

¹⁵ M Rakhmat, *Administrative Law of Indonesia* (1st Ed, LoGoZ Publishing 2014) <<http://www.jurnal.unma.ac.id/index.php/RBJ/article/viewFile/531/495>>. Accessed 22 January 2022.

¹⁶ Henri, 'Sources Constitution Law of Indonesia' (2018) <<https://butew.com/2018/05/24/sumber-sumber-hukum-tata-negara-indonesia/>> accessed 22 January 2022.

¹⁷ Anonymous, 'The Position of State Administrative Law in the Indonesian Legal System' (2017) <<http://suduthukum.com/2017/06/kedudukan-hukum-administrasi-negara.html>> accessed 9 July 2021.

¹⁸ Kementerian Hukum dan Ham Indonesia, 'Articles of State Administrative Law' (2014) <http://ditjenpp.kemenkumham.go.id/index.php?option=com_content&view=article&id=2942:undang-undang-administrasi-pemerintahan-terhadap-peradilan-tata-usaha-negara&catid=103&Itemid=184> accessed 9 July 2021.

¹⁹ PTUN Denpasar, 'Existence of State Judicial Administration (Administrative Court) in Making a Good Governance' (2019) <<https://www.ptun-denpasar.go.id/artikel/baca/4>> accessed 9 July 2021.

In practice, the participation of the state in people's lives has made the function of the state officer becomes wider. This is due to the involvement of administrative law in its implementation, the existence of modern legal state concept that pays attention to the interests of all the people, and the administration of state which harmonizes the concept of the law with a focus on public service delivery.²⁰ Public concerns nowadays are closely related to the government administration services.

B. INTERFAITH MARRIAGE REGULATIONS IN INDONESIA

In Indonesia, the legal rules regarding interfaith marriages from philosophical approach are contrary to the marriage culture and Islam, and it is against the Muslim belief with a broad point of view in determining legal marriages in Indonesia Law No. 1 of 1974 on Marriage.²¹ Furthermore, according to Nugraheni,²² who discussed the implementation of interfaith marriage and the status of it from the positive law and Islam perspectives in Indonesia, Article 56 of the above legislation is often used as the legal basis for legalization of interfaith marriages in Indonesia. However, since this regulation is not clear and every religion in Indonesia does not allow interfaith marriages, most marriages are carried out abroad. These regulations are often used as authoritative source to allow interfaith marriages. According to Aini,²³ commented that another regulation namely, Law No. 23 of 2006 on Population Administration also opens the opportunity for interfaith marriages in Indonesia, thus giving rise to more impact on the household harmony due to the marriage. Besides that, Law No. 39 of 1999 on Human Rights is also used to legalize the interfaith marriages based on the freedom or the right to religion principle which is guaranteed as an acknowledgment and respect for the basic rights and freedoms of the people in Indonesia.²⁴

All the above regulations confer discretionary power to the judge in deciding the legality of interfaith marriage. Jurisprudence or doctrine of judicial precedent is a previous judge's decision that is often followed and used as the basis for a decision by a judge on the same issue and becomes

²⁰ Ariza Umami, 'Dispensasi Nikah Terkait Dimensi Perizinan Dalam Perspektif Negara Hukum', *Perizinan di Era Citizen Friendly* (Universitas Muhammadiyah Surakarta 2017) <<http://hdl.handle.net/11617/9422>>.

²¹ Hedi, Anshori and Harun (n 1).

²² Prasasti Dyah Nugraheni, 'The Implementation of Marriage Different Religion and Their Due To the Law of the Religion of Marriage Status' (2019) 4 *Law and Justice* 68 <<https://doi.org/10.23917/laj.v4i2.8015>>. accessed 9 July 2021.

²³ Fakhurrazi M Yunus Zahratul Aini, 'Perkawinan Beda Agama Dalam Undang-Undang Nomor 23 Tahun 2006 Tentang Administrasi Kependudukan (Tinjauan Hukum Islam)' (2018) 20 *Media Syari'ah* <<http://103.107.187.25/index.php/medsyar/article/view/6512>>. accessed 9 July 2021.

²⁴ Syamsul Arifin, *Attitudes to Human Rights and Freedom of Religion or Belief in Indonesia* (1st edn, Kanisius 2010) <<https://www.jus.uio.no/smr/english/about/programmes/oslocoalition/docs/oc-indonesia.pdf>>.

a reference or legal basis for judges in courts subordinate to the Supreme Court.²⁵ In interfaith marriage issue, the Supreme Court normally supports the pluralism between religious communities in Indonesia and these decisions are followed by the subordinate courts including the District Courts as the legal basis to fill the legal vacuum.²⁶ Nonetheless, in delivering decision, judges normally did not make specific discussions nor detailed explanation on the law or principles governing the interfaith marriage. The above situation results in a legal vacuum where many couples of interfaith marriages run into support.²⁷

C. THE DISTRICT COURT'S APPROACH IN DETERMINING LEGALITY OF INTERFAITH MARRIAGE

Recent cases relating to interfaith marriage decided by the District Court within 5 years back are found in two decisions only. Comparative analysis of these two cases reveals contradicting decisions with different basis of decision. The details of the analysis are as follows:

1. District Court Case registered No 209/Pdt.P/2020/PN.Kds

In a case decided by the District Court in Kudus District, Central Java Province in 2020 registered No 209/Pdt.P/2020/PN.Kds, the petitioner, a Buddha woman named Kiswati, had applied to legalize her marriage with a Muslim man named Aris Kuncoro. Previously, the male had a problem with the administration at the Civil Registration Office because of his religious status. The Office recommended him to get a court decision as an alternative to the written law relating to the regulation of Article 35 (a) on Law No 23 of 2006 on Population Administration to continue the marriage registration due to the marriage of different religion. The petitioner is instructed to submit an application to the Kudus District Court.

The judge of the District Court heard the case and decided that the interfaith marriage was valid based on the judicial precedent of the Supreme Court Decision No. 1400K/Pdt/1986 dated 20 January 1986, in line with Law No 23 of 2006 updated to Law No 24 of 2013 about Population Administration which empowers the courts to legalize such marriage. The 1986 case becomes the legal basis for the independence or discretionary power of the judges in deciding interfaith marriage cases. The judge's approach in this case showed that he granted the application and gave permission

²⁵ Adi Rizka Permana, 'Peranan Yurisprudensi Dalam Membangun Hukum Nasional Di Indonesia' (2021) 2 *Khazanah Multidisiplin* 70 <<https://journal.uinsgd.ac.id/index.php/kl/article/view/13166>>. accessed 12 July 2021.

²⁶ Ali Sahban Nasution, 'Analisis Yurisprudensi Mahkamah Agung No. 46/Pdt. P/2016/Pn. Skt. Tentang Pengabulan Permohonan Nikah Beda Agama Di Tinjau Dari Pendapat Fuqaha Klasik Dan Kontemporer' (UIN Raden Intan Lampung, 2020) <http://repository.radenintan.ac.id/9927/1/SKRIPSI_PERPUS.pdf>. accessed 12 July 2021.

²⁷ Wargadireja (n 11).

to the Civil Registration Office to carry out interfaith marriage registration in accordance with the formal requirements or administration of marriage provided.

The legal reasoning of the judge in applying the above Supreme Court Decision No 1400K/Pdt/1986 and Law No 1 of 1947 on Marriage is that both authorities did not contain provisions prohibiting interfaith marriages. In fact, it is in accordance with Article 27 of the 1945 Constitution that all citizens have the human right to marry fellow citizens even though they are of different religions. Furthermore, based on the Supreme Court's decision, the judge, considering that both petitioner and her partner still want to hold tightly to their respective religions and wish to get married, had made legal declaration that it is not bound by the rule of law because of the legal vacuum in the regulations.

According to Huzaini,²⁸ in his article commented on this issue that since Indonesia is a country that observes the European Continental legal system, the granting of legitimacy may be referred to the jurisprudence or previous decisions of judges, making previous decisions not only the binding force but also having persuasive precedent. Hence, it makes the judge's determination in court subject to change at any time without a clear legal basis for regulating the administrative aspects of interfaith marriages.

2. District Court Case registered No 71/Pdt.P/2017/PN.Bla

In another case at the District Court in Blora District, Central Java Province in 2017 case registered No 71/Pdt.P/2017/PN.Bla., the petitioner who was a Muslim woman named Neneng Oktara B.A. had applied for interfaith marriage with a non-Muslim of Christian man named Yafet Arianto. In this case, both parties' determination to perform interfaith marriage had been approved by their parents and family members. The application was made based on the legal basis of Article 2 (2) of Law No 1 of 1974 on Marriage whereby the marriage registration other than Islam has to be carried out by marriage registration officers at the civil registry office.

Among the grounds that were considered by the judge before deciding the case was the religious teachings of both parties, namely the Islam and Christianity. Based on the religion of Islam, the judge relied on surah Al-Baqarah verse 221 and Article 44 of the Compilation of Islamic Law whereby both authorities lay down that a Muslim female is prohibited from marrying a non-Muslim male. Similarly, the Christianity perspective by a witness at trial, Yanto Pandiangan as a Pastor on GBI Arumdaluh Church, Blora District informed that in principle, interfaith marriages in Christianity

²⁸ Moh Dani Pratama Huzaini, 'Who Says Jurisprudence Is Not Important For Indonesian Judges' (2018) <<https://www.hukumonline.com/berita/baca/lt5a6e915942ed2/siapa-bilang-yurisprudensi-tak-penting-bagi-hakim-indonesia/?page=1>> accessed 30 June 2021.

are prohibited and the attributes that reflect Islamic religious identity must be removed to legalize the marriage in Church. Hence, the judge viewed that according to Article 2 (1) on Law No 1 of 1974 on Marriage, the interfaith marriage could not be performed as it was not allowed by the religion of both parties.

Based on this case, the researcher observed that in terms of judge's precedence based on Article 3 (1) Law No 49 of 2009 on Judicial Authority, in the context of realizing an independent judicial power, it is mandatory for the judges to always maintain the independence of the judiciary in carrying out their duties and functions. The independence of judiciary may come from the belief of judges who act independently. According to M Ridho,²⁹ the *conviction intime* or judges' belief can be interpreted as using logical reasons to judge with specific limits and supported by clear juridical arguments.

According to Cahaya³⁰ in his article elaborate on this point explained that the *Fuqaha* (Muslim scholars) agreed that the marriage of a Muslim woman with a non-Muslim man, either *Ahlul Kitab* or non-Muslim is not valid because it is feared that there will be violations of the ethics of the Islamic faith. Besides that, most of the Muslims in Indonesia who are following Mazhab Syafi'i believe that it is forbidden to marry people who are Jews and Christians after the Qur'an was revealed because they do not include the Jews and Christians who are within the category of *Ahlul Kitab* anymore.

Furthermore, Indonesia is a country with a high plurality. Islamic law is not fully applied to positive law, with selective acceptance to create legal stability.³¹ The implementation of Islamic jurisprudence becomes the legal basis for the determination of the above case. According to Rohayana and Muhtarom,³² *fiqh* or Islamic jurisprudence has been used to solve problems related to the law in adherents of the Islamic religion in Indonesia to find solutions to the problems and not to challenge the basics of Islamic law.

CONCLUSION

Religious diversity has caused the occurrence of interfaith marriages throughout Indonesia. Law Number 1 of 1974 on Marriage and Law No 23 of 2006 updated Law No 24 of 2013 on

²⁹ Muhammad Ridho, 'Judges' Independence and Confidence in the Judicial Process as an Effort to Become Ideal and Professional Judges' (*Pengadilan Agama Purwodadi*, 2021) <https://pa-purwodadi.go.id/index.php/26-halaman-depan/artikel/359-kemandirian-dan-keyakinan-hakim-pada-proses-peradilan-sebagai-upaya-menjadi-hakim-ideal-dan-profesional#_ftn6> accessed 22 September 2021.

³⁰ Nur Cahaya, 'Perkawinan Beda Agama Dalam Perspektif Hukum Islam' (2019) 18 *Hukum Islam* 141 <<http://ejournal.uin-suska.ac.id/index.php/hukumislam/article/view/4973/3899>>.

³¹ Mohdar Yanlua, 'Prospective Islamic Law in Indonesia' (2015) 3 *Journal of Humanity* 92460 <<http://dx.doi.org/10.14724/jh.v3i1.25>>. accessed 22 September 2021.

³² Ade Dedi Rohayana and Ali Muhtarom, 'Islamic Jurisprudence Implementation in Indonesia: Perspective of the Objectives of Islamic Law' (2021) 21 *Global Jurist* 403 <<https://www.degruyter.com/document/doi/10.1515/gj-2020-0078/html>>. accessed 22 September 2021.

Population Administration are ambiguous since the provisions do not spell out the law in clear terms to regulate interfaith marriage. Interfaith marriage has become a never-ending issue since it is not explicitly allowed nor prohibited by Indonesian law or statute. The problem worsens when the judicial decisions appear contradicting to each other and the judges are given discretionary power to decide on the legality of such marriage.

The study analyzes the practice of the court which is recognized as one of the methods to accept or reject interfaith marriages from recent cases registered in the District Court in Indonesia. The essential thing to be carried out as a lesson and reference is that the legal vacuum that occurs in interfaith marriage had open the door for the judges to use the legal basis of jurisprudence with different stipulations, namely the regulated Muslim reference (al-Qur'an) and the witness on trial. In fact, the legal vacuum in regulating interfaith marriages has created a new path with the judge's decision to determine the validity of the marriage. This uncertainty in the law may lead to injustice in the society due to the inconsistency of the acceptance and rejection of interfaith marriage cases in Indonesia. Thus, the best suggestion is for the vague laws to be amended for the sake of justice for all. Even though the uncertainty gives wisdom to the judges and support their discretionary powers, social harmony should be a priority and religious teachings should be upheld in all times.

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Aini FMYZ, 'Perkawinan Beda Agama Dalam Undang-Undang Nomor 23 Tahun 2006 Tentang Administrasi Kependudukan (Tinjauan Hukum Islam)' (2018) 20 Media Syari'ah

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