

Research Article

FIRST TRAVEL FRAUD CASE AND THE LEGAL PROTECTION FOR THE VICTIMS

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Fraud committed by PT. First Travel has at least harmed prospective Hajj and Umrah pilgrims as many as 35,000 people, of which the material loss in this case is 500 billion. This is also suspected by the lack of strict regulations made by the state through Law No. 13 of 2008 concerning the implementation of Hajj and Umrah. However, until now the protection for the loss of first travel victims has not been completed, the decision of the Depok District Court with case number 83/Pid.B/2018/PN.Dpk which led to an appeal with case number 3096/K/PID.SUS/2018 decided on January 31, 2019. All assets seized were in accordance with the Decree of the Minister of Justice of the Republic of Indonesia Number M.04.PR.07.03 of 1985 concerning the organization and working procedures of RUTAN and RUPBASAN. This paper is intended to analyze the protection for the victims on the fraud case on PT First Travel Fraud case.

Keywords: *Fraud; Consumer Protection; Victim Protection*

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I. INTRODUCTION

Hajj is a religious tradition for Muslims around the world, including in the Republic of Indonesia, in which there are more than 80% of Muslims who every year always send very large numbers of pilgrims to Saudi Arabia. This then also brings industry to the world of travel business with a religious theme in Indonesia. This worship involves so many roles from various business components, especially Transportation, Hotel Accommodation and Catering.¹ In data released by the government of Saudi Arabia to the public it is said that the Government of Saudi Arabia has issued a total of 669 thousand worship travel visas for citizens of the republic of Indonesia. However, recently there are many travel agents who are growing more rapidly in the digital era who benefit from advertising in digital media that spreads very quickly. This pilgrimage is also carried out on the basis of several elements which are the main objectives of the pilgrimage and umrah, namely:

1. Carrying out the pilgrimage, the law is an obligation for all Muslims around the world and can only be carried out during the Hajj season.
2. Hajj and Umrah are a type of worship that differs in their implementation and the time in which they are performed.
3. The pilgrimage is an obligatory worship, but there are other acts of worship that can be done during the pilgrimage, namely, pilgrimages that are sunnah.²

This also happened to the travel agency, one of the travel agents who also opened Hajj and Umrah travel services which were growing so rapidly. The author remembers very well where the First Travel office was which was close to the writer's school when he was in junior high school. The author is a witness to how this company is growing so rapidly. Every time I come home from school in the afternoon, the author always sees a line of luxury cars parked in front of the company's office which is currently found guilty to the level of the Supreme Court.

The fraud committed by PT. Fisrt Travel has harmed at least 35,000 prospective Hajj and Umrah pilgrims, of which the material loss in this case is 500 billion. This is also suspected by the lack of strict regulations made by the state through Law No. 13 of 2008 concerning the implementation of Hajj and Umrah. In Law Number 13 of 2008 the organizers of the first travel have violated the existing provisions regarding the authority and abuse of the rights of the hajj and umrah travel bureaus. First Travel in such a situation can only send some of the congregation, namely 14,000 pilgrims, far below what it should be,

¹ Abdul Aziz dan Kustini, *Ibadah Haji Dalam Sorotan Publik*, Jakarta: Puslitbang Kehidupan Keagamaan, 2007, p. 22

² Ahmad Abd Majdi, 1993. *Seluk Beluk Ibadah Haji Dan Umroh*. Surabaya, Mutiara Ilmu, p. 13

where there are still tens of thousands of pilgrims who are still not registered in this fraud case. The Honorary Council of the Association for the Organization of Hajj and Umrah of the Republic of Indonesia confirmed that Fisrt Travel is implementing the Ponzi system.³

Until now the protection for the loss of first travel victims has not been completed, the decision of the Depok District Court with case number 83/Pid.B/2018/PN.Dpk which led to an appeal level with case number 3096/K/PID.SUS/2018 which was decided in January 31, 2019. All assets seized are in accordance with the Decree of the Minister of Justice of the Republic of Indonesia Number M.04.PR.07.03 of 1985 concerning the organization and working procedures of Rutan and RUPBASAN.

Therefore, this research is intended to analyze concerning how is the process and development of the first travel case, what are the legal aspects of protecting victims of fraud in the case of first travel, and why are there still many first travel congregants who have not received the compensation they should have.

II. CRIME AND FRAUD

Etymologically, crime is an evil act or act, where an act is considered a crime based on the nature of the act, where the act is detrimental to society or individuals both materially and immaterially. Juridically, according to Bonger defines that, crime is an anti-social act and the act is faced with a conscious challenge from the state in the form of giving suffering or punishment and other actions.

In criminology, crime is a science that studies the causes of crime, its consequences and how to overcome them. And sociologically, crime is an act that harms or violates the norms or rules that apply in society, these norms are also divided into various types including legal, religious, customary, and social norms.⁴ According to a criminologist, Moeliono defines crime as an act of violating legal norms that can be interpreted or should be interpreted by the community as an act that harms and irritates the community.⁵

Simecca and Lee present three perspectives on the relationship between law and social organization on the one hand and three paradigms on the study of crime. The perspective in question is a consensus, pluralist, and conflict perspective or is seen as a balance that moves from

³ Rajamuddin, A. (2014). Tinjauan Kriminologi terhadap Timbulnya Kejahatan yang Diakibatkan oleh Pengaruh Minuman Keras di Kota Makasar. *Al-Daulah* 3(2)

⁴ Zulfa, E. A., & Santoso, T. (2001). *Kriminologi. Asas-Asas Hukum Pidana dan Kriminologi serta Perkembangannya Dewasa ini*, Universitas Gajah Mada, Yogyakarta, 23-27.

⁵ Romli Atmasasita, *Teori dan Kapita Selekta Kriminologi*, Refika Aditama, Bandung, 2013, p. 41

Hafizh Siraji

conservative to liberal and finally to a radical perspective. Meanwhile, the three paradigms are the positivist, interactionist, and socialist paradigms. The three perspectives and paradigms are closely related to each other.⁶

The phenomenon of crime is an eternal problem in human life, because crime develops in line with the development of the level of human civilization. From the sociological aspect, crime is one type of social phenomenon, which relates to individuals or society. Many paradigms exist to explain the existence of evil. According to Muhammad in criminology, crime is a pattern of behavior that harms the community (in other words there are victims) and a pattern of behavior that gets social reactions from the community.⁷

Herman Mennheim, considers the formulation of the law on crime as an act that can be punished by showing:

- a. The term crime should be used in technical language only in relation to conduct that is legally a crime
- b. If it is fully proven that it is a crime, regardless of whether or not it is actually being punished through criminal justice, or whether it is handled by other law enforcement tools or not.
- c. The decision or other available alternatives will be used depending on the considerations in the individual case
- d. Criminology is not limited in the scope of scientific investigation, only to behavior that is legally a crime in a country at a certain time and criminology is free to use its own classification.⁸

In recent years, crime prevention efforts have often focused on eliminating the high rate of offenders or dangerous offenders so that they are not free to prey on law-abiding citizens.⁹

In its development, criminology has produced many different theories. This is because in addition to different perspectives in studying crime, it is also because the methods or conditions in which the theory appears are different. These differences in theory will continue to develop in parallel with the dynamic level of community development. The following will briefly explain some criminological theories about the causes of crime, namely:¹⁰

1. *Differential Association Theory*

Differential association which seeks to answer why there are individuals who approve of unlawful acts in society. According to this

⁶ Hardianto D dan Nurul Q, "Penerapan Teori Teori Kriminologi dalam Penanggulangan Kejahatan", *Pandecta*, 13(1), Juni 2018, p.. 11

⁷ Erniwati, "Kejahatan Kekerasan Dalam Perspektif Kriminologi", *Mizani*, 25(2), Agustus 2015, p. 104

⁸ M. Kemal Dermawan, "Pencegahan Kejahatan: Dari Sebab Sebab Kejahatan Menuju Pada Konteks Kejahatan", *Jurnal Kriminologi Indonesia*, 1(3), Juni 2001, p. 34

⁹ Romli Atmasasmita, *Definisi Kriminologi*, Tarsito, Bandung, 2005, p. 43

¹⁰ Romli Atmasasmita. *Op. Cit.* pp, 23-24

theory, criminal behavior is the same as non-criminal behavior that is obtained through the learning process.

There are two versions of differential association theory, namely those proposed in 1939 and 1947. The first version contained in the third edition of the book *Principles of Criminology* refers to systematic criminal behavior, and focuses on cultural conflict and social disorganization and differential association. But in the end he no longer focused his attention on systematic criminal behavior, but he limited his description to a discussion of cultural conflict. The second version put forward in 1947 has made the following nine statements:

- a. Criminal behavior is studied
- b. Criminal behavior is learned in interaction with other people through a communication process
- c. An important part of studying criminal behavior occurs in intimate groups
- d. Studying criminal behavior, including techniques for committing crimes and the motivations/motivations or justifications
- e. This particular impulse is learned through appreciation of the rules of law, liking or disliking
- f. A person becomes delinquent because of his appreciation of the laws and regulations, prefers to violate than obey them
- g. This differential association varies with frequency, duration, priority and intensity
- h. The process of studying criminal behavior through association with criminal and anti-criminal patterns involves all the mechanisms that apply in every learning process
- i. Even though criminal behavior is a reflection of general needs and values, criminal behavior cannot be explained through these general needs and values because non-criminal behavior is also a reflection of general needs and the same values.¹¹

Based on the description of the Differential Association theory above, it can be concluded that, even though criminal behavior is a reflection of general needs and values, but criminal behavior cannot be explained through general needs and values. non-crime is also a reflection of common needs and of the same values.

2. *Conflict Theory*

Conflict theory is more about the law-making process. The struggle for power is a picture of human existence. It is in the sense of a power struggle that various interest groups try to control actions and enforce the law.

According to the consensus model, members of society generally agree on what is right and what is wrong, and that the essence of law is

¹¹ Stuart H. Traub dan Craig B. Little, *Theories of Deviance*, F. E. Peacock Publisher to Inc, New York, p. 334

Hafizh Siraji

the codification of these agreed social values. The conflict model, on the other hand, questions not only the process by which a person becomes a criminal, but also about who in society has the power to make and enforce laws.

The interaction between various groups in society shows that conflict is a normal social process of groups due to the existence of interests or conflicts of interest between different groups. The group seeks to defend and fight among its members while the conflict model questions not only the process by which people become criminals but also about the class in which society has the power to make laws.

According to Austin T. Vold, interest group competition influences regulators for the benefit of their group. This can be referred to as a reflection of class conflict on the political process regarding law making, law breaking and law enforcement.¹²

Based on this theory, it can be concluded that crime can be seen as an orientation to the reality of social classes (stratification in society). Groups that have more upper stratification will fight with lower stratification in protecting their interests.

3. *Anomie Theory*

Durkheim's concept of anomie (anomie theory) belongs to the group of under-control theories. Sociologists look at this event further and take meaning from it as evidence or indication that there is a close relationship between the structure of society and individual behavior deviations.

What attracts the attention of Durkheim's concept of anomie is the use of the concept further to explain behavioral deviations caused by economic conditions in society. Brilliantly, this concept has been further developed by Merton (1938) against behavioral deviations that occur in American society. Merton explained that society (America, pen.) has institutionalized an aspiration to pursue success as much as possible which is generally measured by the wealth of a person. To achieve this success, society has determined certain recognized and justified ways that one must take. However, in reality not everyone achieves the intended goal through justified means. Therefore, there are individuals who try to achieve these goals through ways that violate the law.¹³

4. *Labeling Theory*

This theory has a different orientation about crime with other theories. This difference in orientation can be seen from other theoretical approaches that emphasize statistical, pathological, or relative views. Becker thinks that this approach is unfair and unrealistic. He saw that crime often rests on the eye of the observer because members of different

¹² Romli Atmasasmita. *Op. Cit.* p, 35

¹³ *Ibid.*, pp. 43-45.

groups have different concepts of what is good and proper in a given situation.

This theory views criminals as individuals who previously had evil status as a gift from the criminal justice system and the wider community, not as evil people who were involved in wrongful acts.

The labeling theory approach can be divided into two parts. First, the question of how and why to get a stamp or label. Second, the effect of labeling on behavioral deviations.

The second labeling problem (labeling effect) is how labeling affects someone who is labeled or stamped. This problem treats labeling as an independent variable or independent or influencing variable. In terms of the labeling effect, there are two processes how labeling affects a person who is exposed to a stamp or label to deviate his behavior.

First, the stamp or label attracts the attention of the observer and causes the observer to always pay attention to it and then the stamp or label is given to him by the adherent.

Second, the stamp or label where a person admits by himself as to which the stamp or label was given to him by the adherent. In another sense, it has been adopted by someone and affects him.

Either of the two processes above can increase deviant behavior (crime) and shape a person's criminal career. A person who has obtained a stamp or label by itself will become the attention of the people around him. Furthermore, the vigilance or attention of the people around him will influence the person in question so that the second and subsequent crimes may occur again.

Based on the description of the labeling theory above, it can be understood that the human person is formed through a process of social interaction by separating the good from the bad, which can apply and those who deviate, their attention is not on the consequences but on social interaction with someone and human behavior is built from a continuous process. of action and reaction.

5. *Social Control Theory and Containment*

Control theory refers to any perspective that discusses controlling human behavior. Meanwhile, the understanding of this theory refers more to the discussion of delinquency and crime related to sociological variables, including education, family structure, and dominant groups. Thus, the approach to social control theory is different from other control theories.

Another approach was used by Walter Reckels (1961) with the help of Simon Dinitz who proposed containment theory. This theory explains that juvenile delinquency is the result of the interrelation between two forms of control, namely external control and internal control.

Hafizh Siraji

Sykes and Matza put forward the concept or theory of the technique of neutralization. The technique in question has provided an opportunity for an individual to loosen his relationship with the dominant value system, so that he feels his freedom to commit delinquency. Sykes and Matza detail the five neutrality techniques as follows:

- a. Denial of responsibility
Refers to an assumption among juvenile delinquents who states that they are victims of unloving parents, bad social circles, or come from slum dwellings.
- b. Denial of injury
Refers to a reason among juvenile delinquents that their behavior does not actually constitute a major danger. Thus, they assume that vandalism is a mere negligence and stealing a car is actually borrowing a car, fighting between gangs is an ordinary fight.
- c. Denial of the victim
Refers to a self-confidence in juvenile delinquents that they are heroes while victims are seen as those who commit crimes.
- d. Condemnation of the condemners
Refers to an assumption that the police are hypocritical as perpetrators who do wrong or have feelings of displeasure with them. The effect of this technique is to turn the subject into the center of attention, turning away from the evil deeds he has done.
- e. Appeal to higher loyalty
Refers to an assumption among juvenile delinquents that they are caught between the demands of society, the law, and the will of their group.¹⁴

In line with Reis, Ramli Atmasasmita further distinguishes two types of control:

1. Personal control is a person's ability not to achieve his needs by not violating the norms prevailing in society.
2. Social Control is the ability of social groups or community institutions to implement norms or regulations to be effective.

Based on the theory of Reis Ramli Atmasasmita above, it can be concluded that the basis of this theory is the ability of a person to do something to achieve his wishes without violating the rules and norms that apply in society in other words that the community knows the causes and effects that will occur. when they do.

¹⁴ Topo Santoso dan Eva Achjani Zulfa, *Kriminologi*, Rajawali Press, Jakarta, 2011, p. 9

III. CRIMINOLOGY, FRAUD, AND PROTECTION OF VICTIMS (FIRST TRAVEL CASE)

Criminal law science or Criminal Law provides information about applicable Criminal Law, so studying the norms (rules) of Criminal Law and Criminal Law, so the object of Criminal Law Science is Criminal Law. What is the purpose of studying Criminal Law? The goal is that legal officers can apply these criminal laws appropriately and fairly.

Criminology as an auxiliary science in criminal law that provides a deep understanding of the phenomenon of crime, the causes of crime and efforts to overcome crime, which aim to suppress the rate of development of crime. An anthropologist from France, named Paul Topinard stated that Criminology is etymologically based on two words, *crimen* which means crime and *logos* which means science, so criminology can be interpreted as the study of science. In the study of criminal law, criminology is a branch of science that studies crime.¹⁵

Criminology according to Soedjono Dirdjosisworo is a science that studies the causes, effects, improvement and prevention of crime as a human phenomenon by collecting contributions from various sciences. Strictly speaking, criminology is a means to find out the causes of crime and its consequences, to learn how to prevent possible crimes from occurring.

According to Stephan Her Pezt, criminology is considered as part of Criminal Science which with empirical research tries to provide an overview of the factors of crime (etiology of crime). Criminology is considered as a local or general term for a field of science that is so wide and varied that it is impossible to be mastered by an expert alone.¹⁶

More specifically, Edwin H. Sutherland defines criminology as the overall knowledge that discusses crime as a social phenomenon, in the context of this discussion including the process of law-making and reactions to violations of the law. This process includes three aspects which constitute a unified causal relationship that influences each other, including sociology of law, criminal etiology, and penology.

Basically, the study of criminology can play a role not only limited to identifying or explaining the causes of violent crime, but can further be integrated into transdisciplinary efforts to develop prevention and control programs. In this regard, Rusli Effendi stated the objectives and objects of criminology: "The object of criminology is the person who commits the crime itself. The goal is to learn what causes people to

¹⁵ Moeljatno, *Kriminologi*, Bina Aksara, Jakarta, 1986, p. 3

¹⁶ A. Rajamuddin, "Tinjauan Kriminologi terhadap Timbulnya Kejahatan yang Diakibatkan oleh Pengaruh Minuman Keras di Kota Makassar", *Al Daulah*, 3(2), Desember 2014, p. 184

commit crimes and what causes crime. Does the crime arise because that person's talent is evil or is it caused by the condition of the surrounding community (*milien*) both sociological and economic conditions, if the causes are known, then actions can be taken so that they do not do this again and carry out prevention in addition to punishment".¹⁷

In relation. With this understanding, it is precisely what Rusli Effendi stated, that criminology includes:

- a. Criminal Etiology is a branch of criminology that is concerned with studying the causes or background, explanations and correlations of crime. This branch of science generally includes: criminal biology, criminal psychology, criminal psychiatry, as well as the sociology of criminal law.
- b. Criminal phenomenology is a branch of criminology and studies about how crime develops and its symptoms.
- c. Criminal victimology is a branch of criminology that specifically studies the consequences of a crime (victims of crime).
- d. Penology is the science of punishment in a narrow sense, but this science is one of the branches of criminology that discusses the construction of criminal law laws, punishment and the administration of criminal sanctions.¹⁸

If you look at some of the aspects above, the scope of the discussion of criminology looks very broad, so some experts suggest that criminology should be divided into several parts for more practicality. In this regard, Rusli Effendi stated that in countries with an Anglo Saxon legal system, criminology is divided into three parts, namely:

- a. Criminal Biology is the one who investigates the person himself, for the reasons of his actions both physically and spiritually.
- b. Criminal Sociology is a science that tries to find the cause in the society where the criminal is domiciled (*Milleau*).
- c. Criminal Policy is an act of criminal action carried out in order to make it better or so that people do not participate in doing the act.

Based on the contents of the quotes above, it can be concluded that criminology is a discipline that studies crime. Basically studying crime is very dependent on other scientific disciplines, so it can be said that the existence of criminology is the result of various disciplines that study the crime. Thus, it can be interpreted that criminology has an "*interdisciplinary*" nature, meaning that it is a scientific discipline that does not stand alone, but is the result of studies from other sciences on crime. So, the interdisciplinary approach is an approach from various disciplines to the same object, namely crime.

¹⁷ Rusli Efendy, *Ruang Lingkup Kriminologi*, Alumni, Bandung, 1993, p. 11

¹⁸ *Ibid.*

Victimology is a science in the study that examines the protection of victims as a human problem in social reality.¹⁹ The study of that into a conversation of victimology and criminology is a matter that has close ties to:

1. The theory of the etiology of criminal victimization
2. Various criminal victimizations or crimes.
3. The participants who are involved in the occurrence of a criminal victimization or crime such as victims, perpetrators, observers, legislators, police, prosecutors, judges, lawyers and so on.
4. Reaction to a criminal victimization.
5. Responses to a criminal victimization such as argumentation on activities to resolve a victimization or victimization, efforts of preference, repression, follow-up (compensation and making legal regulations).

Criminology has been studied to have a related object of study, namely, between the victim and the perpetrator in a crime. However, in the study of victimology, more emphasis is placed on the victim's side, while criminology emphasizes on the perpetrator's side. In this interaction, criminal victimization arises from each interacting component (absolutely).

IV. CRIMINAL LAW ANALYSIS AND THE PROTECTION OF THE VICTIMS ON FIRST TRAVEL FRAUD CASE

The case that occurred in the first travel congregation caused a new controversy among the wider community, not only in the first travel congregation. The Supreme Court through its decision 3096/K/PID.SUS/2018 assigned the Depok Kejari to auction in accordance with the cassation court. However, this is considered less in favor of the interests of the first travel pilgrims, the article states that even if it has to be auctioned, the results of the auction must be returned to the congregation as victims who are harmed in this case.

In the perspective of restorative justice which is used as the main principle, the court should use more the perspective of the victim as the bearer of the greatest loss for a crime.

Whereas Article 98 paragraph (1) of the Criminal Procedure Code explains that *"if an act that forms the basis of an indictment in an examination of a criminal case by a district court causes harm to another person, then the presiding judge of the trial at the request of that person*

¹⁹ Harefa, S. (2019). Criminal Law Protection On Online Victims Of Victims. *Veteran Law Review*, 2(1), pp. 33-45.

Hafizh Siraji

may decide to combine the lawsuit for compensation. to the criminal case."

With this article, the mechanism for incorporating compensation to the victim into a single unit, will make the victim not need to make a separate lawsuit in the compensation process. The Supreme Court, starting from the District Court, considered that there would be difficulties regarding the compensation mechanism involving tens of thousands of First Travel pilgrims. From this it is necessary to understand that victimization must be seen as:

- a) That the victim as a result of a criminal act can trigger criminal and non-criminal acts.
- b) Victims outside of criminal acts committed by humans such as natural disasters and so on.²⁰

According to Arif Gosita, Victim was born when the interaction due to an interrelation between existing events affected each other. According to Arif Gosita the rights of victims in general include:

1. The victim has the right to receive compensation for his suffering, in accordance with the ability to compensate the victim maker and the level of involvement/participation/role of the victim in the occurrence of such compensation and storage.
2. The right to refuse compensation for the benefit of the victim maker (do not want to be compensated because they do not need it).
3. The right to get compensation for his heirs if the victim dies because of the action.
4. Right to receive coaching and rehabilitation
5. The right to get back his property
6. The right to refuse to be a witness if this will endanger him.
7. The right to get protection from threats from the victim maker when reporting and becoming a witness.
8. The right to get legal advice, the right to use legal remedies.²¹

Indirectly, the victims of the First Travel congregation did not get it only as victims of crimes committed by PT First Travel which carried out money laundering and fraudulent acts as a predicate offence. Andika Surrachman, Anniesa Hasibuan, Kiki Hasibuan who have failed to manage PT Fisrt Travel in dispatching pilgrims for Hajj and Umrah. With some aspects of such rights, the victim should be expected to receive the benefits that should be the victim's right. This also means that there must be a statutory regulation which is an early preventive measure regarding justice and order in law enforcement in the future.

It has been a long time since the victim's perspective has disappeared from the focus of law enforcement in the world, the most ancient thing that is still passed down by the world to future generations

²⁰ J.E. Sahetapy. 1987. *Victimologi*. Jakarta. Pustaka SinarHarapan. p. 35

²¹ Arif Gosita. 1983. *MasalahKorbanKejahatan*. Edisi I.Jakarta: Akademika Pressindo. p. 75

is only the process of administering the law that includes revenge against the perpetrators of the crime. In the oldest legal practices in the world at the time of Hamurabbi who had implemented this. Compensation for the victims' sufferings is related to the restitution system, related to the losses suffered by the victims in terms of moral, material to physical losses that were also experienced by the victim.²²

V. CONCLUSION

Starting from the first-level judiciary, that victim protection is not a priority in which the role of the victim is only part of the witness who will give what he sees, feels about the crime scene. This is mined by the negligence of our legal system which makes the victims not include the amalgamation of cases which will allow the judge to adjudicate compensation under Article 98 of the Criminal Procedure Code at the same time as the criminal decision against the perpetrator. It is suspected that the views of the Indonesian people still view that criminal justice is only limited to punishing the provision of imprisonment for perpetrators of criminal acts. However, today, with the principle of restorative justice, the emphasis on the principle of benefit from a decision should have a more important position than just punishing the perpetrators. This is so that the victim gets more optimal protection.

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²² Bambang Poernomo, Hukum dan Viktimologi, Program Pascasarjana Ilmu Hukum Pidana Universitas Padjadjaran Bandung, 2001/2002.

Hafizh Siraji

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