

## THE EXISTENCE AND RECONSTRUCTION OF BUYING AND SELLING FIQH OF SYAFI'I MADHAB IN GLOBALIZATION ERA BASED ON ISLAMIC VALUE OF JUSTICE (Case Study of Buying-Selling Fiqh of Syafi'i Madhab in PPTQ al-Asy'ariyah Wonosobo Central Java and PP al-Munawwir Krapyak Yogyakarta)

Machfudz  
Gunarto  
Akhmad Khisni

### ABSTRACT

*This study aims to examine and analyze the practice of buying and selling Syafi'i madhab fiqh within the pesantren (PPTQ Al-Asy'ariyah Wonosobo Central Java and PP Al-Munawwir Krapyak Yogyakarta) and the reconstruction of Buying and selling fiqh from i madhab Syafi 'because many terms and pillars no longer fit in the global era. The results of the study found that the practice of buying and selling Syafi'i madhab fiqh within the pesantren (PPTQ Al-Asy'ariyah Wonosobo Central Java and PP Al-Munawwir Krapyak Yogyakarta) had shifted. It was previously carried out by the Syafi'i madhab (traditional) method. Now this is done in a modern way. Buying and selling fiqh from Syafi'i Madhab must be reconstructed (Tajdid) because many terms and pillars are no longer suitable in the current global era, it can be predicted that in the future, the modern market will develop. On the other hand, traditional markets will disappear while technological advances in various aspects of life.*

**KeyWords:** Reconstruction, Selling Fiqh Of Syafi'i Madhab, , Globalization Era.

### A. INTRODUCTION

Globalization process is attached to change happening in all aspects of human's life. It essentially is a series of processes integrating global life in one space and time through internationalized commerce, market, product, finance and culture supported by rapid and advanced global telecommunication system. The end goal of globalization is the creation of a more integrated life net. Globalization, followed immediately by sophisticated technology penetration, have bridged nations into global village (Ali Idrus, 2010: 48-49).

Globalization gives implication or even impact towards nations/countries. It seems to be based on two assumptions. First, the subject of globalization is developed industrialized countries, at least to certain degree. In other words, in this term globalization is an extension to fulfill the interests of industrialized countries. Second, there are anxiety, worry, and fear of negative effect of globalization generally felt by developing countries. These countries are the object of globalization. Nevertheless, either due to the fact that developing countries depend on developed countries in various aspects such as finance, economy, technology or due to their desire to catch up the development, developing countries are actually supporting the process of globalization (H.A.R. Tilaar, 2005: 165).

In its development, globalization also steps in the *pesantren* world. *Pesantren* as education institution is not only identical to Islam, but also indigenous to Indonesia as it has spread around since the 7<sup>th</sup> century (M. Enung K. Rukiati and Fenti Hikmawati, 2006:20). *Pesantren* tradition has at least five elements namely *pondok* (lodge/dormitory), mosque, *santri* (students staying in the dormitory), classical Islamic books (*Kutub Al-Shofro'*) and *kyai* (Islamic teachers/experts). According to Martin Van Bruinessen, this is one of Indonesia's grand traditions – *pondok pesantren* (Islamic boarding school) aims to convey traditional Islam as found in the Islam classical books written centuries ago (Martin Van Bruinessen, 1995:17).

*Pesantren* functions not only as educational institutions to shape Muslims character but also as bases to maintain Islam teachings related to fiqh as their manifestations. Moreover, Martin Van Bruinessen stated that the content of *yellow* holy books studied in *pesantren* revolves around Asy'ari creed concept, Syafi'i fiqh madhab, and al-Ghazali's moral teachings and Sufism (Karel A. Steenbrink, 1994:19).

Syafi'i madhab is one of popular Ahlussunah fiqh madhab. Thus it is common among muslim around the world, including those in Indonesia. This madhab is propagated by Muhammad bin Idris asy-Syafi'i (Abdul Azis Dahlan, 2000:327), better known as Imam Syafi'i, through his masterpiece in ushul fiqh namely *ar-Risalah* and *al-Umm*. His main thoughts and basic principles were then preached and developed by his three students. This madhab is mostly followed by under Egyptians, western part Arabic, Syria, Malaysia, Brunei, Koromandel Beach, Malabar, Hadramaut and Bahrain (Ihsan Yilmas, 2005: ISBN 0-7546-4389-1). Hence, Syafi'i madhab spread dominantly around Eastern Africa and some parts of Arab and Southeast Asia.

Syafi'i fiqh madhab (idealist-traditional) which was once followed by the majority of the moslems in Asia has been reduced into minority madhab nowadays. In fact,  $\frac{3}{4}$  moslems are now following rational and realistic Abu Hanifah madhab. As a result, it is not impossible that Syafi'i madhab will be abandoned by its followers in line with technological advances and globalization era.

The researcher is interested in studying the existence and reconstruction of buying-selling fiqh of Syafi'i madhab in *pesantren* in globalization era. The objects of this research are PPTQ Al-Asy'ariyah Wonosobo and PP Al-Munawwir Krapyak Yogyakarta. The problem statements are: (1) How is the existence of buying-selling fiqh of Syafi'i madhab in PPTQ al-Asy'ariyah Wonosobo Central Java and PP al-Munawwir Krapyak Yogyakarta? (2) How to reconstruct buying-selling fiqh of Syafi'i madhab in PPTQ al-Asy'ariyah Wonosobo Central Java and PP al-Munawwir Krapyak Yogyakarta in globalization era?

This research aims to explain the existence of buying and selling fiqh of Syafi'i madhab in PPTQ al-Asy'ariyah Wonosobo Central Java and Pondok Pesantren al-Munawwir Krapyak Yogyakarta. It also aims to explain buying and selling fiqh of Syafi'i madhab reconstruction in globalization era.

This is a qualitative research carried out by compound case study (multi-case studies) as its objects involve two Islamic boarding schools, PPTQ al-Asy'ariyah Wonosobo Central Java and al-Munawwir Krapyak Yogyakarta. The paradigm employed in this research is constructive paradigm – a paradigm which is almost an antithesis of concept that put observation and objectivity in finding a reality or science. This paradigm sees social science as systematic analysis towards socially meaningful action through direct and meticulous observation to one's social behavior that create and maintain/manage their social world (Dedy N. Hidayat, 2003:3).

This study employs two approaches. They are socio-anthropological approach and phenomenological approach (Turnomo Rahardjo, 2005:44). In socio-anthropological approach, the researcher attempted to step in Islamic boarding schools and blend with their elements while at the same time avoiding dissolve in the values being sought. On the other hand, phenomenological approach requires the researcher to understand a phenomenon from others' point of view by experiencing it and understanding the situation, or interpreting it. Researcher did not attempt to become measure the extent or level of an event or to interpret the reason behind it (Turnomo Rahardjo, 2005:44). Data are collected by observation, interview and documentation study methods. Meanwhile, data analysis are conducted in descriptive analysis of critical qualitative.

## B. RESULT AND DISCUSSION

### 1. The existence of buying and selling in Islamic boarding schools

*Pesantren* is one of the oldest indigenous educational institutions in Indonesia with deep root in its society. Historically, *pesantren* has incredible role in nurturing, educating, and developing the society. In fact, *pesantren* has exceeds its achievement by exploring the potential in the surrounding environment.

*Kyai* is a central figure of a *pesantren*. He is an expert and spiritual guide taking role as parents to be imitated by his students in terms of his conduct and his knowledge in Islam (Depag RI, 2003:16). *Pesantren* is not only educational institutions to shape Muslims character but also bases to maintain Islam teachings related to fiqh that mostly teach Syafi'i (Karel A. Steenbrink).

In its practice, buying and selling fiqh in PPTQ al-Asy'ariyah Wonosobo is implemented in (1) Warung Serba Ada (Grocery Store) "Al-Hikmah" (2) Photo studio "Al-Lion" (3) El-Nusa photocopy (4) Bahana printing. In PP Al-Munawwir Krapyak Yogyakarta, it is practiced in Kopontren, Minimarket and bookstore.

### 2. The reconstruction of buying and selling fiqh

Nowadays there are many new business concepts offering business transactions. As one of Islamic law sources, fiqh should solve legal affairs of the business transactions. If the concept is found to be *haram*, then it is the duty of fuqaha to find new transaction business concept product in accordance with the sharia concept through *ijtihad*.

One of the basic problems faced by contemporary fiqh muamalah is how Islamic law provides answers to all kinds of problems and economical transactions forms not mentioned in the classical fiqh books. That is why current Islamic law study is aimed at exploring Islamic law foundation of detail rules stipulated by classical fuqoha as they have more and more significant meaning. It is due to the appearance of various financial institutions and sharia businesses such as banking, insurance, pawn, bonds, etc. This of course demands justification of sharia aspects.

The most important aspect of muamalah fiqh associated with buying and selling is transaction law including general principles and certain regulations. Akad is the most significant thing related to the validity of buying and selling. A transaction is forbidden in Islam unless it has akad in it. Nullity of a transaction can be caused by several factors, such as pillars (consist of subject/doer, object, *ijab qabul*), unfulfilled requirements, *ta'alluq* (two interrelated akad), or two akad at the same time. The rules for akad have been established in Islamic law based on Al Quran and hadith. Etymologically akad is defined as among other:

Arabic trans

"Bond between two things, be it real or figurative, of one side or two sides".

Generally, *akad* is defined by scholars of Syafi'iyah, Malikiyah and Hanabilah as "Everything done by one person on the basis of one own wishes, such as *waqaf*, divorce, liberation, or anything requires two people's wish like buying and selling, representation and pledge". That is why not all kinds of agreements can be categorized as *akad*, especially those that are not sharia based. From that point on, the things need to be reviewed further are transaction *akad as-Salam* and *Istishnah* for those two are kinds of transactions prioritizing *akad* usage by postponement or promptness of goods delivery as agreed in the *akad* being studied.

**a. Salam Akad**

*Salam* transaction were common among *jahiliyah* Arabic prior to Islam. When Rasulullah arrived in Madinah city after Hijrah (migration), he found that the residents of the city had practiced *salam*. *Ba'i salam* were then developed into agriculture. Madhab scholars allow *ba'i salam* for any items provided that they fulfill requirements governed by *syara'*.

In its practice, there is negative risk of *salam* transaction (*gharar*) due to the absence of goods in trade during transaction. However, Islam allow it seeing the its benefits and society's needs. The scholars also name *salam* transaction *bai'lul mahawij*, meaning legalized buying and selling owing to interdependence and needs. Buyers need the item sold and sellers need capital to fund their business or to provide for their families and so on.

This wisdom is the reason why *salam* practice is excluded from *gharar*. *Gharar* has dark meaning as buyers might fall into it because they cannot well see or observe the items bought. Therefore *ba'i salam* must display clear quantity, quality and timing. These principles (quality, quantity, timing) have to be fair as stated in the holy Qur'an.

*Arabic trans*

*and that (what We order) is My righteous way, so follow Him, and don't you follow (other) ways as they will tear you apart from His path. These are meant so that you shall be cautious.*

*Salam* is a *masdar* form of the word *aslama* which means put capital first. *Salam* means selling things that cannot be seen (intangible) – they can only be determined by their nature – that the things are in the acknowledgement (dependent) of the seller. Ibnu Abbas define debt in this term as *salam* debt. Etymologically *salam* can also be termed as *salaf* (interest-free loans).

As a matter of fact there are no fundamental differences among scholars as to whether or not this *salam* practice is carried out. Most scholars of *salaf* and *khalaf* of all the madhab agree that *salam* is allowed and ruled by Allah SWT, stated both in the holy Qur'an and in the elaboration of Prophet Muhammad SAW. The only proposed hadith text is used by some scholars like Ibnu Musayyib. Among the chapters and verses allowing *salam* practice mentioned by fiqh scholars is Surah Al Baqarah verse 282 as follows:

*Arabic trans*

*O you who have believed, when contract debt for a specified term, write it down. And let a scribe write (it) between you in justice. Let no scribe refuse to write as Allah has taught him. So let him write and let the one who has obligation dictate. And let him fear Allah, his Lord, and not let anything out of it. But if the one who has the obligation is of limited understanding or weak or unable to dictate himself, then let his guardian dictate in justice. And bring to witness two witnesses from among your men. And if there are not two men (available), then a man and two women from those whom you accept as witnesses – so if one of the women errs, then the other can remind her. And let not the witnesses refuse when they are called upon. And do not be (too) weary to write it, whether it is small or large, for its (specified) term. That is more just in the sight of Allah and stronger as evidence and more likely to prevent doubt between you, except when it is an immediate transaction which you conduct among yourselves. For (then) there is no blame upon you if you do not write it. And take a witness when you conclude a contract. Let no scribe be harmed or any witness. For if you do so, indeed, it is (grave) disobedience in you. And fear Allah. And Allah teaches you. And Allah is Knowing of all things.*

Ibnu Abbas said: "I witness that *salam* in guarantee to a specified time is justified by Allah in Al Qur'an." He then recited Al Qur'an surah Al Baqarah verse 282. According to him, guaranteed-goods *salam* is halal (justified). Ibnu Abbas narrated that when Rasulullah SAW arrived in Medina, he saw that its occupants had practiced *salam*; ordering goods for a term of a year or two. Rasulullah then said:

*Arabic trans*

*"Whoever conduct salaf, he must do it for heavy goods whether in weight or size, and for a specified period." (Narrated Bukhari)*

In *Mausu'ah Al Um*, Imam As Syafi'i RA stated scholars' *ijma'* on *salam* as follows: "... *Salaf* or *salam* is allowed in accordance with Rasulullah SAW *sunnah*, and *atsar* and there are no discrepancies among scholars, as I have known." Most scholars added into *salam* pillars *Al Aqidan* (transaction doer: *Al Muslamu Ilaih* or seller and *Al Muslim* or buyer), *Al Muslamu fih* (the goods and its delivery place), and *Ra'sul mal* (fund or price).

If classified terms are met in *salam* transaction in accordance with the pillars, then each existing pillar should fulfill several certain conditions. These conditions can be grouped into two. First is general conditions, including those that must be fulfilled in every buying and selling *akad* and have been agreed upon by scholars. They are: (1) *akad* continuity (2) *Ijab qabul* are not suspended (Nasrun Haroen, 2007:105); (3) Conformity of *qabul lafadz* and

ijab (consent). Second, specific conditions of lafadz of *salam* akad are: (1) Ijab can only use *salam* or *salaf* lafadz, (2) *khiyar* conditions are not allowed, (3) designation of place where the goods are delivered when the place can only be reached by paying cost, (4) designation of agreed time when the goods are delivered which according to Malikiyah is 15 days minimum after the akad, (5) designation of the properties, type, shape, and size of the goods.

**b. Istishna' Akad**

Some scholars state that basically Muslims have agreed the consensus (*ijma'*) that *istishna'* is a justified akad and has been conducted for a very long time without any rebuttal from Rasulullah's friend or scholars. *Istishna'* buying and selling is a transaction closely related to *salam*. The form of *istishna'* is connected to *salam*, and in fact most classical fiqh scholars define *istishna'* as modified *salam*.

*Istishna'* means asking the manufacturer to make certain item with certain features. This transaction is a kind of akad developed by Hanafiyah madhab although they have different opinion about it. Both Al-Marwazi and Muhammad bin Salamah state that *istishna'* is nothing more but seller's promise to his buyer. However, their madhab have strong argument that *istishna'* is an independent akad. Meanwhile the non-Hanafiyah scholars (Syafi'i, Maliki and Hanabilah) claim that *istishna'* is none other than *salam* form along with its terms. *Istishna'* resembles *salam* although its term of payment can be carried out in the beginning or the end of akad or by installment.

In addressing this akad, classical scholars are divided into two groups. The majority of Hanafiyah fiqh scholars permit *istishna'* transaction as long as it is based on *salam* akad while requiring *salam* terms in it. *Istishna'* is justified by argumentation that there is people's need in it. Besides these scholars hold the base that Rasulullah SAW was once asked for a ring be made.

Apart from obligating the *salam* conditions in *istishna'*, Hanafiyah madhab add three specific criteria namely: a. clarifying the type, properties, and value of the goods, b. the goods possess production element, c. the goods contain no forbidden element, d. not forcing certain delay. They argue that when the time is specified, then it is *salam* instead of *istishna'*.

*Istishna'* buying and selling is a transaction based on certain (not general) criteria. Members may pay their order while the goods are being made or after they are made or by installments. *Istishna'* business is justified by *jumhur fuqaha* even if they have different opinion on its incorporation to *salam* system. In this system, it has to meet quite troublesome terms owing to the presence of *mudharat*, assigning the price in akad council, or for three days.

**3. The reconstruction of buying and selling practice**

As before mentioned, buying and selling are carried out by two people doing trade. The trade is for certain goods or anything else with similar law to the goods. In line with the globalization, the model of buying and selling at PPTQ Al-Asy'ariyah Wonosobo and PP Al-Munawwir Krapyak Yogyakarta is shifting from traditional to modern system. Modern system is like on-line trading and self-service store/supermarket.

**a. Online buying and selling**

Online buying and selling is a trade akad directed by applying electronic means (internet) on goods or service (Ade Manan Suherman, 2002:179). It can also be defined as agreed akad (contract) by determining certain properties by paying in advance while the goods is delivered afterwards (W.A. Urnomo, 2000:4)

Similar to regular transaction off buying and selling in the real world, online transaction is executed by related parties despite the fact that they do not directly meet. They are connected through the internet. Ijab qabul can be carried in SMS, WA, or other social media to come to agreement between the seller and the buyer. The followings are parties involved in online transaction:

- 1) Seller or businessperson offering their product in the internet.
- 2) Buyer or consumer who is everyone permitted by law to accept offer and desires to have buying and selling transaction of the product offered.
- 3) Bank as fund channel from buyer or consumer to seller or merchant, since in online transaction the buyer and seller do not have face-to-face interaction.
- 4) Provider as the one who supply internet access (Andi Sunarto, 2009:94) who is obligated to provide 24-hour service to potential buyers, allowing them to have transaction through the internet with the sellers. In this case, there can be cooperation between seller/businessperson with the internet provider.

In essence, online buying and selling transactions have similar mechanism to traditional buying and selling transaction. The difference is in the system or tools employed in the process. One is carried out online, the other is offline (manually). This supports Janus Sibalok's argument that "this buying and selling transaction can be classified into three stages, they are pre-transaction stage, transaction stage (the real one), and post-transaction. E-mail transactions are also easily executed. Both parties should have e-mail addresses" (Janus Sibalok, 2010:69)

Both seller and buyer use social media in online buying and selling transaction to ease direct contact between them. Pre-transaction is aimed to send seller's and buyer's biodata before payment takes place. Post-transaction is payment after transaction takes place. Before the transaction, the buyer should have known the e-mail addressed

to, kinds and number of goods purchased. The buyer write down the name of the product, the number, delivery address and preferred payment method. S/he will then receive confirmation from the merchant (businessperson or seller) of the goods ordered (Litbang Wahana, 2001:63).

A buyer has an obligation to pay for the goods purchased to the seller in accordance to the beforehand agreed price. A buyer should also be committed to fill the identity form truly. On the other hand, s/he has the right to have complete information of the goods from the seller to avoid loss from the goods purchased. S/he also has legal protection against seller with foul intention.

Electronic buying and selling transaction is a legal relationship built by combining network of computer-based information and net-telecommunication-service-based communication system. Internet transaction is carried out in several stages namely offer, acceptance, shipping, and payment. Actual online transaction include buying and selling conducted by means of telephone, SMS, and other telecommunication devices. The most important thing in this kind of transaction is the presence of the goods traded that is halal and has clear ownership.

Contemporary scholars such as Syeikh Muhammad Bakhit al Muthi'i, Musthofa az Zarqa', Wahbah Zuhaili and Abdullah bin Mani' claim that transactions by means of modern devices are legal/justified as long as the conditions and clarity in them present. Their arguments are based on several reasons. First, many of the past scholars stated the justification of transactions conducted through letter if *ijab* (the first party consent) is legitimate and the second party has received the letter. Transaction executed by yelling is also justified. Second, what is meant by 'unity of transaction assembly' is the existence of a certain time when two people having transaction occupied by it, instead of two people having transaction in the same place (Wahbah al Zuhaili, 2006:339).

Majma' Fiqhi Islami in their sixth congress in Jeddah also stipulated the permission of transaction by means of modern communication devices. This kind of transaction is considered as transaction between two people in the same place provided that the terms are met. However, these means must not be used for currency exchange transaction because *sharf* requires direct transfer. The same thing applies to *salam* transaction as in *salam* fund has to be handed once the transaction is executed. But Wahbah Zuhaili argued that if currency handover present in *sharf* transaction and fund handover present in *salam* transaction can be transferred by using those devices, then the transaction is deemed legal. These are possibilities of some transaction models in global era.

Based on the explanation it can be concluded that akad assembly in online buying and selling is the time when transaction communication takes place. When transaction is performed in written letter, the transaction assembly is the arrival of the letter to the second party. When *qobul* is delayed – there is no *qobul* from the second party upon the arrival of the letter – then the transaction is not legitimate. Syeikh Muhammad Bakhit al Muthi'i was given a question about the law of doing transaction via telegram. He answered, "Telegram is like letter. Only it is faster. But error might occur" (Muhyiddin Ali, 2003: 25).

Thus, it is understood that there is a compulsion to clarify by means of the existing devices today. It can be conducted through telephone, internet, telegram or fax. Other means most likely similar to telephone or telegram with faster and clearer communication. Therefore, the same law applies. Better means are more feasible to be permitted.

b. Self-service supermarket (*Swalayan*)

World trade develops in line with the globalization to the more practical form. The technical implementation no longer uses "*ijab* and *qabul*". The absence of *ijab qabul* in transaction is called "*mu'athah* buying and selling" (give and receive each other) in fiqh language because the parties involved have understood the transaction along with its legal consequences. This kind of transaction occur in supermarket, self-service store, mall, department store, shopping center, etc. where bargaining process is absence.

Buying and selling system in a self-service store is performed in dealing transaction. It is called *ta'ati* or *mu'athah*' (give and receive each other). The parties involve understand the transaction along with its legal consequences. It happens in supermarket where the bargaining process is absence. The buyers learn the price from the label in the goods. Having the customer to come to the cashier is a signal that they are having buying and selling transaction (*akad*) (Imam al-Baihaqi, al-Maktabah al-Syamilah. *Mu'athah* akad is .....[Arabic trans]..... ("al-Mutha'alah is (a buying and selling akad by means of) taking and giving something without any word") (Sayyid Sabiq, 1997:47). On that account, the law of buying and selling in supermarket is legitimate.

A red line can be drawn from the above analysis, that is transaction is carried out in a way that will ease both parties. This is because Islam law is principally allow all kinds of business practice that provide well-being. The three basic principles are: (1) the rule of Islamic law that reads "every work is allowed until there is a proposition stipulated its prohibition", (2) Rasulullah SAW hadith that reads "Muslims transact in accordance to the terms as long as the prohibited is not permitted and the permitted is prohibited," (3) the rule of Islamic law that reads "*habit is part of the law.*" This conclusion conforms to the essence of *akad* itself, which is not in the form of *lafadz* or expression of *ijab* and *qabul*, but rather in the meaning of the transaction. This is in accordance with

phrases in fiqh that reads “what is meant in akad are the intention and meaning, not lafadz and wordy expressions”.

### C. CONCLUSION

Based on the above explanation and analysis, it can be concluded that:

1. The practice of buying and selling fiqh of Syafi'i madhab in *pesantren* environment (PPTQ Al-Asy'ariyah Wonosobo Central Java and PP Al-Munawwir Krapyak Yogyakarta) has shifted. It was formerly conducted in Syafi'i madhab manner (traditional). Now it is carried out in the modern (Hanafi madhab), more practical, simple, aggressive manner corresponding to the characteristics of modern people. One of the factors contributing the changes is technological advancement in this global era. It is quite possible that Syafi'i madhab will be abandoned by many of its followers in the future.
2. Buying and selling fiqh of Syafi'i madhab should be reconstructed (*tajdid*) since many of its terms and pillars are no longer fit in the nowadays global era. It is proven by the presence of many modern buying and selling system such as self-service store, supermarket, and online trade. Essentially, the principle of buying and selling desired by Al Qur'an, As Sunnah, fiqh formulated by *fuqaha* (especially Syafi'i madhab) is buying and selling aiming toward modern-base market, be it in the *akad* or in the transaction system. Modern transaction system include online trade, self-service store, supermarket, hypermarket and so on. Therefore, it can be predicted that in the future, it is the modern market that will thrive. On the other hand, traditional market will disappear while technology advances in various aspects of this life.

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Machfudz

Student of Doctoral program in Law Science, UNISSULA Semarang  
Email: machfudz@gmail.com

Gunarto

Email: gunarto@unissula.ac.id  
Lecturer at Faculty of Law, UNISSULA Semarang

Akhmad Khisni

Email: khisni@unissula.ac.id  
Lecturer at Faculty of Law, UNISSULA Semarang