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Hasil Revisi	roqiyul_maarif86	-	0	<input type="checkbox"/>
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## Management of Hajj Funds in Indonesia; Paradigm-Shifting in Islamic Legal Philosophy and State Administration

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### **Abstract:**

This paper investigates the shift in the *rechtreime* of the implementation of Hajj in Indonesia in theory in state administrative law that applies in Indonesia. From a contemporary perspective, the aspect of organizing and managing Hajj funds is one of the tasks of the government which is in the domain of public affairs based on law. This paper uses a normative juridical research method with a prescriptive-explanatory presentation using interdisciplinary theory, namely state administrative law and contemporary *maqasid*. The results of this study indicate that there is a shift in the hajj regime from private to public with the red vehicle theory towards the green light theory in state administrative law where the state intervenes in the administration and management of hajj funds. Along with this shift, the organization and management of hajj funds is in line with the shift in the classical *maqasid* paradigm which is limited to protection towards contemporary *maqashid* that encourages the improvement of the general benefit.

### **Keywords:**

Hajj Fund, Management, Administration Law, Maqasid al-Shariah, Green Light Theory

### **Abstrak:**

Tulisan ini bertujuan untuk membahas mengenai pergeseran *rechtreime* penyelenggaraan haji di Indonesia berdasarkan teori dalam hukum administrasi negara yang berlaku di Indonesia. Dari perspektif kontemporer, aspek penyelenggaraan dan pengelolaan dana haji merupakan salah satu tugas pemerintah yang berada pada domain

urusan publik berdasarkan hukum. Paper ini menggunakan metode penelitian yuridis normatif dengan penyajian preskriptif-eksplanatoris menggunakan teori interdisipliner yaitu hukum administrasi negara dan maqashid kontemporer. Hasil penelitian ini menunjukkan bahwa terdapat pergeseran *rechtregime* haji dari privat ke publik dengan kendaraan *red light theory* menuju *green light theory* dalam hukum administrasi negara dimana negara turut campur dalam penyelenggaraan dan pengelolaan dana haji. Seiring dengan pergeseran tersebut, penyelenggaraan dan pengelolaan dana haji selaras dengan pergeseran paradigma *maqashid* klasik yang terbatas pada perlindungan menuju *maqashid* kontemporer yang mendorong peningkatan kemaslahatan umum.

**Kata Kunci:**

Manajemen, Dana Haji, Hukum Administrasi, Maqasid al-Shariah, Green Light Theory

## Introduction

Indonesia is a country with a Muslim population that sends the largest hajj pilgrims almost every year. As a country which in its constitution guarantees the freedom of individuals to embrace and worship according to their respective religions and beliefs,<sup>1</sup> The government is responsible for organizing the pilgrimage for the Muslim population who will carry out the pilgrimage. One form of this guarantee is to provide guidance, service, and protection for citizens who perform the Hajj in a safe, comfortable, orderly, and following the provisions of the Shari'a.<sup>2</sup>

The problem of organizing the pilgrimage has a long history since the founding of the Republic of Indonesia. The Ministry of Religion has a central role as a regulator of the implementation and management of Hajj finances.<sup>3</sup> In terms of the management of hajj funds, Law Number 17 of 1999 concerning the Organization of the Hajj, the scope of hajj funds in the form of money received from prospective hajj pilgrims is not included in the state budget, because it does not include non-tax state revenues but hajj funds are managed through a government organization. The establishment of this organ was based on the Decree of the President of the Republic of Indonesia Number 35 of 1996 jo. Presidential Decree Number 52 of 1996 concerning the Organization and Work Procedure of BPDONHI. This institution later changed its nomenclature to Ummah's Endowment Fund Management Agency, *Badan Pengelola Dana Abadi Umat* (BP DAU).<sup>4</sup> This hajj fund is kept by the government as a deposit for prospective hajj pilgrims to be managed for the smooth running of hajj services. Therefore, the cost of organizing the pilgrimage is determined by the state to ensure certainty of departure to the holy land and guarantee security during the pilgrimage. In this period, the

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<sup>1</sup>This is as stated in the 1945 Constitution of the Republic of Indonesia Article 29.

<sup>2</sup> Indonesia (1), *Undang-Undang tentang Penyelenggaraan Ibadah Haji dan Umroh*, UU Nomor 8 Tahun 2019, LN. Nomor 75 Tahun 2019, TLN. Nomor 6338 Tahun 2019, konsideran.

<sup>3</sup> Rina Farihatul Jannah, "Kebijakan Penyelenggaraan Perjalanan Haji Indonesia Tahun 1945-2000", Thesis on the Postgraduate Program of the State Islamic University of Sunan Ampel Surabaya, 2018, 39-75.

<sup>4</sup> Muhammad M. Basyuni, *Reformasi Manajemen Haji*, (Jakarta: FDK Press, 2008), 83-85.

hajj funds are managed by setting aside the excess value to be stored as the Ummah's Endowment Fund, *Dana Abadi Umat* (DAU).<sup>5</sup>

As an annual ritual that uses quite a lot of money, the management of hajj funds is a financial domain that is in the area of public affairs. In addition to the problem of organizing the pilgrimage, it is also related to the relationship between the country of origin of the prospective pilgrims and the country of destination in carrying out the pilgrimage, namely Saudi Arabia. Indonesia is a country with a Muslim population that gets a large number of hajj quotas. However, the number of Hajj registrants each year the quota obtained is not sufficient for all Hajj registrants.<sup>6</sup> This has an impact on Hajj departures, which have to follow a waiting list for years.

The waiting list for Hajj departure is determined by the time of registration by paying the Hajj Travel Fee (*Bipih*).<sup>7</sup> This *Bipih* deposit is part of the Hajj fund. The term hajj fund itself is formulated in terms of the Hajj Financial Management Act, including BPIH deposit funds; efficiency funds; DAU; as well as the value of benefits controlled by the state in the context of organizing the pilgrimage and implementing program activities for the benefit of Muslims.<sup>8</sup>

With a large number of registrants on the waiting list for the departure of hajj pilgrims based on *Bipih* deposits, there will be the accumulation of hajj funds. With the accumulation of hajj funds, the government took the initiative to manage hajj funds by placing and/or investing in the productive sector to generate value for the benefits of managing hajj funds. This is the *ratio-legis* of the establishment of the Hajj Financial Management Act. Therefore, through the Hajj Financial Management Act, a special financial institution that has the authority to manage Hajj funds was established, namely the Hajj Financial Management Agency, *Badan Pengelola Keuangan Haji* (BPKH).<sup>9</sup>

The financial management of Hajj by the state, in this case through the BPKH institution, is interesting to study in an interdisciplinary manner, from the application aspect of *maqasid* theory as a philosophy of Islamic law and the aspect of its authority according to the constitution and administrative legislation in the perspective of state administrative law. *Maqasid* as a philosophy of

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5 Inti Ulfi Solichah, "Hukum Investasi Produktif dalam Pengelolaan Dana Haji (Perspektif Hukum Ekonomi Syariah)", Thesis on the Masters Program in Islamic Economic Law, Faculty of Sharia, Syarif Hidayatullah State Islamic University, Jakarta, 2018, 41.

6 The number of Hajj registrants in 2019 reached 710,000 pilgrims, exceeding the target of 650,000 pilgrims. See Faidah Umu Sofuroh, *Lampau Target, Pendaftar Haji 2019 Capai 710 Ribu Jemaah*, < <https://news.detik.com/berita/d-4836697/lampau-target-pendaftar-haji-2019-capai-710-ribu-jemaah>>, accessed March 8, 2021.

7 Indonesia (1), *Undang-Undang tentang Penyelenggaraan Ibadah Haji dan Umroh*, Pasal 5 Ayat (1).

8 Indonesia (2), *Undang-Undang tentang Pengelolaan Keuangan Haji*, UU Nomor 34 Tahun 2014, LN. Nomor 5605 Tahun 2014, Pasal 1 Ayat (2).

9 Erry Fitriya Primadhany, "Tinjauan Terhadap Tanggung Jawab Badan Pengelola Keuangan Haji (BPKH) dalam Melakukan Penempatan dan/atau Investasi Keuangan Haji", *Jurisdictie: Jurnal Hukum dan Syariah* Vol. 8 No.2 Tahun 2017, 126-127. <https://doi.org/10.18860/j.v8i2.4447>

Islamic law refers to the understanding given by Jasser Auda by quoting the views of Ibn al-Qayyim, to define Islamic law with the Arabic term 'shari'ah', which means: "... prosperity in this world and the hereafter. Shari'ah means everything including justice, forgiveness, wisdom, and goodness. Therefore, all regulations that contradict these matters are not sharia, even if it is claimed to refer to several interpretations (of the scholars)".<sup>10</sup>

The *maqasid* view above is in line with the concept of the welfare state which is the legal ideal contained in the preamble to the Indonesian constitution. Therefore, the state in Article 29 of the Indonesian Constitution acts as a protector, and guarantor of individual freedom of religion, and freedom of worship and plays an important role in implementing good governance in the management of hajj funds. In addition, the management of hajj funds following their objectives is also important to discuss considering the large number of hajj funds managed by BPKH so as not to deviate from the initial goal of financing the pilgrimage.

Policies regarding the management of hajj funds should be in line with the philosophical foundations of Islamic law, in this case, *maqasid*, and not conflict with the principles of legal certainty, benefit to the community, and good public services. The government's policy for managing Hajj finances should be based on rational considerations of the principles of certainty, fairness, and benefit,<sup>11</sup> and has a basis for the state. Thus, the policies made by the government can create general welfare for the community in line with the objectives of the founding of the Republic of Indonesia.

Research on the management of hajj funds has been done by many previous researchers. Some of these studies include a Thesis by Rina Farihatul Jannah the Postgraduate of the State Islamic University of Sunan Ampel.<sup>12</sup> Then Erry Fitria Primardhani's work on the responsibility of BPKH in Hajj financial investment,<sup>13</sup> Roikhan Muhammad Azis,<sup>14</sup> and Endang Jumali.<sup>15</sup> Another article is the work of Aishaath Muneeza and friends related to the comparison of the financial management of Hajj in Indonesia, Malaysia, and Maldives.<sup>16</sup> In

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<sup>10</sup> Jasser Auda, "*Maqasid al-Shariah as Philosophy of Islamic Law: A System Approach*". The International Institute of Islamic Thought, London, UK, 2007.

<sup>11</sup> D. Morris, (2016). Accommodating Nazi Tyranny? The Wrong Turn of the Social Democratic Legal Philosopher Gustav Radbruch After the War. *Law and History Review*, 34(3), 649-688. <https://doi.org/10.1017/S0738248016000213>

<sup>12</sup> Rina Farihatul Jannah, *Kebijakan Penyelenggaraan*, 2018.

<sup>13</sup> Erry Fitria Primadhany, *Tinjauan Terhadap Tanggung Jawab*, 125.

<sup>14</sup> Roikhan Mochammad Azis, "Hahslm Theory as Guidance of Straight Path in Management of Hajj and Finance", (*KnE Social Science* vol. 3, no. 8, 2018), 105-120. <https://doi.org/kss.v3i8.2503>

<sup>15</sup> Endang Jumali, "Management of Hajj Funds in Indonesia" (*Journal of Legal, Ethical, and Regulatory Issues*. Vol 21, no.3, 2018), 1-9.

<sup>16</sup> Aishaath Muneeza et al, "A Comparative Study of Hajj Funds Management Institutions in Malaysia, Indonesia, and Maldives". (*International Journal of Management and Applied Research* vol. 5, no.3, 2018), 1-15. <https://doi.org/10.18646/2056.53.18-009>

addition to this research, M. Ali Mubarak's paper.<sup>17</sup> Among the studies mentioned above, there has been no discussion on the management of hajj funds in terms of constitutional and administrative law theory and *maqasid al-shari'ah*. Therefore, this study will focus on the issue of how to regulate the implementation of hajj and the management of hajj funds in Indonesia from the perspective of state administrative law and *maqasid al-shari'ah* and how to shift the paradigm of hajj fund management from the perspective of state administrative law and *maqasid al-shari'ah*. By describing the two main issues, this paper has the relevance of the novelty element that deserves to be discussed.

## Methods

This paper uses a normative juridical research method. Namely, legal research based on legal rules or norms contained in the legislation. While the data used in this study is secondary data,<sup>18</sup> with three legal materials, namely primary legal materials, secondary legal materials, and tertiary legal materials.

The approach used in this research is the statutory approach, namely by linking existing legal norms with other legal norms in the laws and regulations that are used as data sources. Thus, it can be understood whether Law Number 34 of 2014 concerning Hajj Financial Management is following the objectives of managing Hajj funds. In addition, this paper also uses a theoretical approach, namely the theory of state administrative law and *maqasid al-shariah*. The results of this study are presented in writing in an analytical explanatory form. Namely, delivered by explaining and outlining the state's authority in managing Hajj funds from the perspective of state administrative law and *maqasid al-Sharia*.

## Discussion and Result

### Regulations for the Implementation of Hajj in Indonesia according to History

The implementation of Hajj in Indonesia has a long history of policy or regulatory aspects that govern it. Meanwhile, before the founding of the Republic of Indonesia, Muslims made pilgrimages to the holy land of Saudi Arabia. At the time the Islamic empire was established in the archipelago, there were no special regulations regarding the implementation of the pilgrimage that bound its citizens. Only after the Dutch colonial government came to power did the pilgrimage have regulations in the form of written positive law.<sup>19</sup>

After the proclamation of the independence of the Republic of Indonesia, especially during the New Order era, the regulations for organizing hajj based on the 1922 Pelgrims Ordonantie Saatsblaads and 1938 Pelgrims Verordening made by the Dutch colonial government have not been revoked but have been revised in the form of other regulations in

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17 M. Ali Mubarak, Manajemen Pengelolaan Dana Haji Republik Indonesia (Studi Kolaborasi Antar Lembaga BPKH, Kemenag dan Mitra Keuangan dalam Pengelolaan Dana Haji), (Itizam Journal Of Shariah Economic Research, Vol. 2, No. 2, 2018), 67-86. <https://doi.org/10.18646/2056.53.18-009>

18 Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, (Jakarta: Raja Grafindo Persada, 2015), 33.

19 Rina Farihatul Jannah, *Kebijakan Penyelenggaraan*, 23-38.

the form of Regulations or Decrees of the President of the Republic of Indonesia.<sup>20</sup> In this era, the implementation of the pilgrimage, both in terms of financial management and implementation, is under the authority of the government through the Ministry of Religion of the Republic of Indonesia, whose technical implementation is left to the Director General of Hajj Affairs in collaboration with private agents.

In the reform era, many regulatory changes have been made by the government in organizing the Hajj in the form of regulations, including 1) Law Number 17 of 1999 concerning the Organization of the Hajj; 2) Law of the Republic of Indonesia Number 13 of 2008 concerning the Organization of the Hajj; 3) Law of the Republic of Indonesia Number 34 of 2009 concerning Stipulation of Government Regulation in place of Law Number 2 of 2009 concerning Amendments to Law Number 13 of 2008 on the Organization of the Hajj into Law; and 4) Law of the Republic of Indonesia Number 8 of 2019 concerning the Implementation of Hajj and Umrah.

The enactment of Law Number 8 of 2019 concerning the Implementation of Hajj and Umrah Services and at the same time revoking the previous Law. In addition, before this regulation was made, the government separated the aspects of managing Hajj funds from aspects of organizing the Hajj. Aspects of the management of Hajj funds are regulated through Presidential Decree No. 22 of 2001 concerning the BP DAU.<sup>21</sup> However, due to several misappropriations of Hajj funds managed by BP DAU, an initiative emerged from the government by issuing a policy that became the basis for the establishment of an institution that specifically manages Hajj funds through Law Number 34 of 2004 concerning Hajj Financial Management. Through the law, the government established the BPKH which has the task of managing Hajj finances.<sup>22</sup> Since then the financial management of Hajj has its regulations and institutions that are separate from the Ministry of Religion.

To summarize the discussion on the management of hajj funds in Indonesia, below is a table based on the timeline for the development of hajj fund management in Indonesia:

**Table 1**

**Developments in the Implementation and Management of Hajj Funds in Indonesia**

<b>Year</b>	<b>Progress</b>
1920	The implementation of the Hajj is carried out by providing facilities for the pilgrims by the Dutch East Indies Government
1948	The beginning of the implementation of Hajj by the Government of Indonesia with official cooperation with the Kingdom of Saudi Arabia
1951	The issuance of Presidential Decree No. 53 of 1951 to stop the private sector from being involved in organizing the hajj
1964	The implementation of Hajj is carried out by the government through the Director General of Hajj Affairs

<sup>20</sup> Ajeng Dewi P. S., "Tanggungjawab Yuridis Kementerian Agama Dalam Pelaksanaan Ibadah Haji", Thesis on the Master Program in Law, Faculty of Law, Islamic University of Indonesia, Yogyakarta, 2015, 25-26.

<sup>21</sup> The Presidential Decree is a substitute for Presidential Decree No. 35/1996 concerning the Indonesian Hajj Riding Fee Fund Management Agency.

<sup>22</sup> Indonesia (2), *Undang-undang tentang Pengelolaan Keuangan Haji*, UU Nomor 34 Tahun 2014, LN. Nomor 296 Tahun 2014, TLN. Nomor 5605 Tahun 2014 Pasal 22.



1969	The administration of hajj trips is taken over by the government
1999	For the first time, the Policy regarding the Implementation of Hajj was enacted, namely Law Number 17 of 1999 concerning the Implementation of the Hajj
2001	Presidential Decree No. 22 of 2001 concerning BP DAU
2014	Law Number 34 of 2014 concerning Hajj Financial Management, the establishment of BPKH
2017	Presidential Regulation Number 110 of 2017 concerning the Hajj Financial Management Agency (BPKH)
2019	Law Number 8 of 2019 concerning the Implementation of the Hajj and Umrah Services as well as revoking Law Number 17 of 1999 concerning the Implementation of the Hajj

From the table above, since the first half of the 20th century when Indonesia was still colonized by the Dutch East Indies government, the problem of organizing the pilgrimage which is a religious obligation for Muslims has been regulated by the state. Although only limited to administrative facilitation, the state is not entirely secular, nor does it let go of its hands to interfere in the religious life of its citizens. And this, in organizing the Hajj, continues to be carried out until now with various regulatory changes towards a state administration system that is compatible with the concept of a welfare state.

#### **Religion is No Longer a *Res Privata*: Hajj in Public *Rechtsregiem***

The division of legal system from the aspect of its power environment is divided into two, namely the public legal environment and the private legal environment, which has occurred since the 2nd century AD. A Roman legal expert, Ulpianus provides an understanding that distinguishes the two. He said "*Publicum ius est, quod ad statum rei romanae spectat, privatum quod ad singulorum utilitatem*", which means that public law is a rule related to the welfare of the Roman state, while private law is a rule related to family relations. The effect of this distinction is felt to this day in every legal system in various countries which separates the environment of public attorneys and private lawyers, and Indonesia is no exception. This distinction also leads us to an understanding of the existence of the government in conducting legal intercourse (*rechtsverkeer*).<sup>23</sup>

Since the state of Indonesia was proclaimed in 1945, the constitution has not been based on any particular religion, even though Islam is the religion that is predominantly adopted by citizens. However, Pancasila is a legal ideal that in the opening of the 1945 Constitution is a *rechtsidee* or guiding star for the formation of regulations in the Indonesian state. Thus, the purpose of establishing positive law in Indonesia is to achieve the thoughts contained in

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<sup>23</sup> Ridwan HR, *Hukum Administrasi Negara Edisi Revisi*, (Jakarta: Rajawali Press, 2013), 69.

Pancasila, which is also useful as a tested stone for positive law.<sup>24</sup> Therefore, the first principle of Pancasila, namely Belief in the One and Only God, is the legal ideal of the Indonesian state which recognizes religion in national legal association (*rechtsverkeer*).<sup>25</sup>

Thus, the state does not completely disengage from the religious affairs of its citizens, which in the doctrine of secularism, religious affairs are private matters, not public affairs. In this case, the state plays a formal role in administrative law through the Ministry of Religion, which was established on January 3, 1946. This ministry does not only deal with the religious affairs of Muslims but also five other religions recognized by the state. To accommodate the religious affairs of its citizens administratively, positive law in Indonesia has adopted sharia since the era of the Dutch colonial government in power, in the form of several elements of Islamic jurisprudence which concentrate on marriage, divorce, inheritance, endowments, grants in the practice of religious courts. No exception in organizing hajj and umrah, the government plays a role in carrying out administrative and bureaucratic legal actions.

For the government, the pilgrimage is a national endeavor considering the large number of pilgrims who depart every hajj season. This means that the government must coordinate and cooperate with several agents, both government agencies and private agents in the country and abroad to organize several aspects of the implementation of the pilgrimage. Among the national tasks are transportation, accommodation, health, and security for pilgrims. Moreover, the implementation of Hajj for the Indonesian government is not limited to services for citizens who are Muslim but also involves foreign relations with Saudi Arabia as the destination country for the pilgrimage. Thus, the government needs to continue to improve the quality of the implementation of the pilgrimage effectively.

To achieve this goal, the government needs regulations as the legal basis for organizing the pilgrimage. The existence of regulations or policies as a legal umbrella to carry out the task of organizing the pilgrimage by this state is based on the doctrine of Indonesia as a state of the law as stated in the 1945 Constitution.

### **State Intervention in Religious Affairs through Administrative Law**

As a country that adheres to the concept of the welfare state to establish the state as stated in the fourth paragraph of the preamble of the constitution, the Republic of Indonesia has the authority to make arrangements and provide facilities for all aspects of the lives of its citizens, including the implementation of the pilgrimage for Muslim citizens.

The authority and role of the state in all aspects of the lives of its citizens are expanding along with the development of history and law. Carol Harlow and Richard Rowling argue that this role is related to a theoretical view which in the context of state administrative law theory is called redlight theory. The view of redlight theory assumes that the authority and

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<sup>24</sup> Jimly Asshidiqie, *Pancasila: Identitas Konstitusi Berbangsa dan Bernegara* (Jakarta: Sinar Grafika, 2020), 11.

<sup>25</sup> Alfitri, "Religion and Constitutional Practices in Indonesia: How Far Should the State Intervene in the Administration of Islam?", *Asian Journal of Comparative Law*, 13 (2018), 389-390. <https://doi.org/10.1017/asjcl.2018.20>

role of state administration are limited to law enforcement and public order, which is also known as the 'night watch state' or *nachtwachterstaat*. In this view, state administrative law functions to prevent violations by the state of human rights. Therefore, the red light theory emphasizes the balance of power by supporting a strong judiciary to control executive power. The thinking behind the red light theory is the Laissez Faire State which has the idea of the best government is the least government. This view assumes that the authority and role of state administration should be made as simple as possible so that the structure of state administration is very small.<sup>26</sup>

The adoption of the concept of the welfare state by the Indonesian state has resulted in the expanding authority and role of state administration in people's lives. In this case, state administrative law provides facilities for the enlargement of the state's role in providing welfare for its citizens. State administration has a role not only as a tool for law and order enforcement but also as a tool to achieve public welfare in various sectors of life, including the religious sector, which in this case is the implementation of the pilgrimage. The great role of state authority and state administration is facilitated theoretically by a view that contradicts the red light theory as stated above, namely the green light theory.<sup>27</sup> State administration becomes a vehicle to facilitate every aspect of citizens' lives, to achieve political progress and the realization of an "administrative state". This view assumes that state administrative law has broad powers and roles and must be proactive in various fields of people's lives.<sup>28</sup> As a result, the state's administrative structure became fatter and more hierarchical.

In addition, in contrast to the red light theory which prioritizes the judiciary in a country, the green light theory tends to the development of democracy and political accountability of the government. Therefore, community participation is a prerequisite for the formation of state administration following the view of the green light theory. From the view of the green light theory adopted in the legal system of the Republic of Indonesia, it can be understood that the state has broad authority covering aspects of the lives of citizens in the field of religion, namely the implementation of the pilgrimage.

The theoretical view that has influenced the development of state administrative law that adheres to green light theory is Léon Duguit's thought. Duguit's view is based on the idea of a socialistic state in which a strong government is a necessity and therefore its duties go far beyond the fields of law, order, justice, and defense. He believes in the idea of a collectivist state whose function is to provide public services. This he defined as "any activity that must be regulated by the government" and controlled because it is indispensable for the realization and development of social solidarity as long as it cannot be realized without the intervention

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<sup>26</sup> Carol Harlow and Richard Rawlings, *Law and Administration* (London: Butterwoths, 1997), 29 dalam Tri Hayati, "Perizinan Pertambangan di Era Reformasi Pemerintahan Daerah Studi tentang Perizinan Pertambangan Timah di Pulau Bangka", Disertasi Pada Program Studi Doktor Ilmu Hukum Program Pascasarjana Fakultas Hukum Universitas Indonesia, 2011. 38-39.

<sup>27</sup> Carol Harlow dan Richard Rawlings, *Law and Administration, Third Edition*, (New York: Cambridge University Press, 2009), 31.

<sup>28</sup> Carol Harlow dan Richard Rawlings, *Law and Administration*, 32.

of the government.<sup>29</sup> Of course, included in the activities that must be regulated by the government is the implementation of the pilgrimage, because, without government intervention, the pilgrimage for its citizens cannot be carried out because it is related to foreign relations between the country of origin of the pilgrims in this case Indonesia and the destination country, namely Saudi Arabia.

Based on the spirit of the welfare state, which is supported by the green light theory above, the state has the authority and role of administration in organizing the pilgrimage. Although there are models of organizing the pilgrimage that is carried out by private parties, when compared to other organizations, according to Gerald Caiden, the role of the state in administration has a specificity.<sup>30</sup> First, the state administration is unavoidable. Second, the state administration has a legal monopoly of coercive power which inevitably applies binding and can be coercive. Third, the priority of community activities. Fourth, the role of the state administratively provides services for every citizen. Fifth, the state is directly responsible to its political leadership, because the top leadership is a political institution. Therefore, it can be understood that the regulation of the implementation of Hajj, after all, is the authority of the state, in this case, the government.

From an organizational point of view, the implementation of the pilgrimage is based on four alternative principles as recognized in state administrative law, including:<sup>31</sup> first, the objectives to be achieved, namely the Ministry of Religion which carries out government functions in the religious sector; second, the group served, namely citizens who want to perform Hajj; third, the process carried out, namely the implementation of the pilgrimage which includes planning, budgeting, implementation, evaluation, and supervision; fourth, the geographical area covered, namely the territory of the state of Indonesia.

With this understanding, the state's authority in organizing the pilgrimage can be understood based on the view of state law in the field of administration that it adheres to, namely the green light theory above. This authority, even from Duguit's point of view, is a duty or obligation of the government in the form of public services. As a result, the view that considers the private affairs of citizens, namely religion, should not be managed by the state, becomes irrelevant. With the adoption of the green light theory, the state has a theoretical basis for its administrative authority to carry out the implementation of hajj activities carried out by state organizations or institutions, namely the Ministry of Religion.

### **Parallelity of *Maqasid* Paradigm and State Administration Shifting**

In the study of classical Islamic law, *maqasid al-shari'ah* is easily understood as the universal goal of enactment of a law. protection. However, in its development, Jasser Auda compiled a Contemporary Conception of *Maqashid* which is an evolution of classical *maqasid*

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<sup>29</sup> Carol Harlow dan Richard Rawlings, *Law and Administration*, 33-34.

<sup>30</sup> Gerald E. Caiden, *The Dynamics of Public Administrations in Theory and Practice* (New York: Holt, Reinhart and Winston, Inc., 1971), 6.

<sup>31</sup> Tri Hayati, "Perizinan Pertambangan di Era Reformasi Pemerintahan Daerah Studi tentang Perizinan Pertambangan Timah di Pulau Bangka", 40.

al-shari'ah theories and concepts; namely: (1). Keeping Descendants (*hifdz al-Nasl*) is a theory-oriented to family protection; more concern for family institutions; (2) Maintaining Intellect (*hifz al-Aql*) to multiplying the mindset and scientific research; prioritize travel to seek knowledge; suppress the mindset that prioritizes the criminality of the mob; avoiding attempts to underestimate the workings of the brain; (3) Maintaining honor; keep the soul (*hifdz al-'Irdh*) to maintain and protect human dignity; safeguard and protect human rights; (4) Protecting religion (*hifdz al-Diin*) is protecting, and respecting freedom of religion or belief, and (5) Protecting property (*hifdz al-Maal*) is prioritizing social care; pay attention to economic development and development; promote human well-being; eliminate the gap between rich and poor.

There is a paradigm shift and the classical maqasid al-shari'ah theory to the contemporary maqasid al-shari'ah theory. The change lies in the pressure point of both. The emphasis of classical maqasid al-shari'ah is more on protection and preservation, while contemporary maqasid al-shari'ah theory emphasizes development and rights. In an effort to develop the contemporary maqasid al-shari'ah concept, Jasser Auda proposes human development as the main target form of contemporary public interest; This *masalahah* should be the target of maqasid al-shari'ah to be realized through Islamic law. Furthermore, the realization of this contemporary maqasid al-shari'ah can be achieved empirically through human development targets.<sup>32</sup>

Parallel with the *maqasid* paradigm shifting is the shift in the role of the state administratively, which originally played a minimum role in protecting and protecting citizens, to a maximum by interfering in the private affairs of its citizens, such as religious affairs in this case the pilgrimage discussed in this paper. Along with the times, the modern world state as a subject of public law adopts laws that are increasingly facilitative in every aspect of the lives of their citizens. Regulations made by the state as authorized legal subjects are increasingly complex touching the joints of the lives of its citizens. In the context of Indonesia, in line with the purpose of the founding of the state, the ideals of a welfare state make the authority and role of state administration grow.

Behind every theory of administrative law, there is a discussion of the state. country. According to Harold Laski, as quoted by Carol Harlow and Richard Rawlings, constitutional law cannot be understood except as the expression of an economic system designed to function as a bulwark. <sup>33</sup> This, according to Carol Harlow and Richard Rawlings, means that the government machine is an expression of the society in which it operates; something that cannot be understood except when viewed from another context.<sup>34</sup>

By the end of the nineteenth century in England, all major political parties had for practical purposes abandoned the ideal of limited government and accepted the need for intervention. The old conception of government as minimal and static has been swept away by a new conception of government which is "collectivism" in Dicey's view. As Dicey calls it, socialist theory supports State intervention to provide benefits to society.<sup>35</sup> In his essay entitled "Introduction to the Law of the Constitution" published in 1885, Dicey as stated by Carol Harol and Richard Rawlings, argues that

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<sup>32</sup>Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law: A System Approach* (London: The International Institute of Islamic Thought, 2007), 248.

<sup>33</sup> Harold Laski, *A grammar of Politics* (London: Allen and Unwin, 1925), 578.

<sup>34</sup> Carol Harlow dan Richard Rawlings, *Law and Administration, Third Edition* (New York: Cambridge University Press, 2009), 1.

<sup>35</sup> Carol Harlow dan Richard Rawling, *Law and Administration, Thied Edition*, (New York: Cambridge University Press, 2009), 2-3.

the ideal type of constitution is a balance with broad authority in the executive field although, on the one hand, it will be subject to political control by parliament, on the other hand, to submit to legal control through law by the courts.<sup>36</sup>

In this case, the law of State Administration facilitates the enlargement of the role of state administration in people's lives. State administration plays a role no longer only as control of power, as the red light theory views,<sup>37</sup> but rather as the state regulation in realizing the welfare of society. The broad role of state administration is supported by a theory in state administrative law, namely the green light theory.<sup>38</sup> This theory views the role and authority of state administration which is very broad covering various aspects of citizens' lives, of course including in terms of religion and belief, in this case, the implementation of Hajj for Muslims.

With the spirit of the welfare state and the view of the greenlight theory, it is a necessity for the Republic of Indonesia through its constitution to regulate the guarantee of freedom of religion and worship according to the respective beliefs of its citizens. The constitution as the foundation of the legal system of the Republic of Indonesia regulates religious life. Although the 1945 Constitution has been amended four times, the basic norms regarding the guarantee of religious freedom are still maintained. Thus, in drafting legal regulations regarding religion, the constitution explicitly provides a legal foundation for this matter.

The regulation regarding the guarantee of religious freedom is regulated in Article 29 Paragraph (2) of the 1945 Constitution. The article reads: "The state guarantees the independence of each resident to embrace their religion and to worship according to their religion and beliefs". The sound of this article of the constitution later became a source of law as well as the basis for the state to use its authority in organizing the pilgrimage, which also includes the management of hajj funds which are regulated through regulations relating to these matters.

### Constitution, Islam, and Hajj in Indonesia

As a modern legal state, Indonesia has a constitutional foundation, namely the 1945 Constitution which in its preamble includes the purpose of the state and the affirmation of Pancasila as the state's foundation, or called the *staatsfundamentalnorm*. *Staatsfundamentalnorm* is the basic norm or legal foundation for the formation of the constitution or constitution (*staatsverfassung*) of a country. Rechitpositie from a *Staatsfundamentalnorm* is a condition for the validity of the constitution. This *Staatsfundamentalnorm* exists before the constitution of the country itself.<sup>39</sup>

When Sukarno introduced Pancasila before the constitution was drafted, he emphasized that 'divinity' would not only make Indonesia a 'nation that believes in God but also that 'every Indonesian must have God' and that every citizen should be free to worship according to his or her religion or each other's beliefs.<sup>40</sup> This explanation of what is contained in

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<sup>36</sup> Martin Loughlin, *Public Law and Political Theory* (Oxford Clarendon Press, 1992), 62.

<sup>37</sup> This red light theory view views state administrative law as an instrument for the control of power and the protection of individual freedom, the emphasis is on the courts, not the government. See Carol Harlow dan Richard Rawlings, *Law and Administration, Third Edition*, (New York: Cambridge University Press, 2009), 31.

<sup>38</sup> Carol Harlow dan Richard Rawlings, *Law and Administration, Third Edition*, (New York: Cambridge University Press, 2009), 31.

<sup>39</sup> Fitriani Ahlan Syarif (Ed.), *Aradhana Sang Guru Perundang-undangan; Kumpulan Tulisan Memperingati Ulang Tahun Ke-70 Prof. Dr. Maria Farida Indrati, S.H., M.H.* (Depok: Badan Penerbit Fakultas Hukum Universitas Indonesia, 2019), 283.

<sup>40</sup> Sekretariat Negara Republik Indonesia, *Himpunan Risalah Sidang-sidang dari Badan Penyelidik Usaha Persiapan Kemerdekaan Indonesia (BPUPKI) (Tanggal 29 Mei 1945–16 Juli 1945) dan*

Pancasila is also largely consistent with most scientific interpretations. Butt and Lindsey, for example, argue that the basic principles of the Indonesian state force the state to protect religious freedom, encourage the exercise of faith and give the state a role in religious affairs.<sup>41</sup> For this reason, they argue that Indonesia is not a fully secular state.

A similar view is expressed by scholars such as Intan and Hosen who argue that the primacy of religion in the public sphere means that Indonesia is neither secular nor theocratic.<sup>42</sup> Although many views contradict the views above, the scientific and political interpretations described above stipulate that Pancasila is the principle of religious freedom and pluralism, provides the basis for an interventionist role for the state in religious matters, and does not elevate one religion over another.

The nature of Pancasila, however, is challenged and opposed when it comes to the implementation of state policies. In this regard, Hefner suggested that the problem was rooted in the fact that Pancasila did not specify which religious doctrines or beliefs would fall under the principle of 'belief' in the one and only God and that it did not regulate 'how the government should intervene in the religious sphere to decide that.'<sup>43</sup> This prompted a problem that later arose, namely regarding the extent of state intervention when Pancasila became the most basic norm in the Indonesian constitution that allowed the state to play a role in encouraging and facilitating religion.

In this case, socially and politically the dominant religion, Islam, has privileges in terms of state administration which can be said to be the goal of the Pancasila formulation as aspired by the founding fathers. This is inevitable in a context where the state has a role in facilitating religion in public life and where more than 80 percent of the population is Muslim. As a result, the Ministry of Religion in 1946 –was a kind of compensation to the Islam-oriented factions.<sup>44</sup>

As is known, one of the teachings in Islam is the obligation to perform the pilgrimage. In this case, the state has the authority based on Article 29 Paragraph (2) of the 1945 Constitution as a manifestation of the *rechtsidee* of the First Principles of Pancasila. In the formulation of the articles of the constitution, the state is to provide guarantees of independence for every citizen to embrace their respective religions. This includes guarantees

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*Panitia Persiapan Kemerdekaan Indonesia (PPKI) (Tanggal 18 dan 19 Agustus 1945) Yang Berhubung Dengan Penyusunan Undang-undang Dasar 1945*, (Jakarta: Sekretariat Negara Republik Indonesia, 1954), 73.

<sup>41</sup> Simon Butt dan Tim Lindsey, *The Constitution of Indonesia: A Contextual Analysis* (Oxford and Portland, OR: Hart Publishing, 2012), 13.

<sup>42</sup> Benyamin Fleming Intan, "Public Religion" and the Pancasila-Based State of Indonesia: An Ethical and Sociological Analysis (New York: Peter Lang, 2006), 18. See Nadirsyah Hosen, *Shari'a & Constitutional Reform in Indonesia* (Singapore: Institute of Southeast Asian Studies, 2007), 229.

<sup>43</sup> Robert W. Hefner, 'Where Have All the Abangan Gone? Religionization and the Decline of Non-Standard Islam in Contemporary Indonesia' in Michel Picard and Rémy Madinier (eds.), *Politics of Religion in Indonesia: Syncretism, Orthodoxy, and Religious Contention in Java and Bali* (Abingdon, Oxon and New York: Routledge, 2011), 85.

<sup>44</sup> See Nadirsyah Hosen, *Shari'a & Constitutional Reform in Indonesia*, 229.

to worship for religious adherents according to their respective religions and beliefs. The formulation of the articles in the Indonesian constitution is based on the first principle of Pancasila, namely Belief in One Supreme God. In the implementation of Article 29 Paragraph (2) of the 1945 Constitution. Among the constitutional guarantees are state guarantees as mentioned above, namely the state's obligation to provide facilities and services for its citizens who want to perform the pilgrimage.<sup>45</sup> This basis is a source of state authority in the form of attribution of constitutional authority granted by the 1945 Constitution to the government in organizing the pilgrimage.

In connection with the above, citizens carrying out worship have various aspects of worship that must be guaranteed by the state as a form of state facilities and services in the field of religion to its citizens. These aspects include the dimensions of trust, the provision of facilities, the availability of worship infrastructure, how to worship, the time of worship, places of worship, and procedures for carrying out the worship. <sup>46</sup> Therefore, in terms of organizing the pilgrimage, the state is obliged to guarantee various aspects surrounding the implementation of the pilgrimage for its citizens. Since the preparation before departure, on the way, during the pilgrimage, until return to the homeland.

Based on the understanding of Article 29 Paragraph (2) above, the state's authority in the matter of implementing the Hajj and Umrah pilgrimages for Muslims is a relevant and sufficient reason for the state to make arrangements. The authority to make this regulation aims to carry out the mandate of Article 29 Paragraph (2) of the 1945 Constitution, namely state guarantees for every religious believer to worship according to their respective religions and beliefs. And in this case, state guarantees for all aspects of the implementation of the pilgrimage as well as financial management.

As stated above, the reach of the state to facilitate the religious aspects of citizens is through the form of administration prepared by the state. In this case, the Ministry of Religion plays a central role in the affairs of the pilgrimage. This ministry was established at the beginning of independence. The task as formulated by Wahid Hasyim who was the first minister was to ensure that everyone is free to profess and worship according to his religion and beliefs and 'to assist, support, protect and promote the aspirations of religious movements. The ministry has local offices and personnel throughout the country, even down to the village level, and has the authority to regulate matters such as marriage, religious education, courts and pilgrimages, and others.<sup>47</sup>

#### **Efforts to realize *masalah*: Investment and Optimization of Hajj Funds in Today's Indonesia**

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<sup>45</sup> Indonesia (1), *Undang-undang tentang Penyelenggaraan Ibadah Haji dan Umroh*, UU Nomor 8 Tahun 2019, LN. Nomor 75 Tahun 2019, TLN. Nomor 6338 Tahun 2019, konsideran.

<sup>46</sup> Mamonto & Rizki Ramadani, "Kebijakan Perlindungan Jamaah Haji Khusus dan Umroh Di Sulawesi Selatan", *PETITUM*, Vol. 7, No.2, 2019, 86-88. <https://doi.org/10.36090/jh.v7i2%20Oktober.650>

<sup>47</sup> Arskal Salim, *Challenging the Secular State: The Islamization of Law in Modern Indonesia* (Honolulu: University of Hawai'i Press, 2008), 71.



The economic aspect of organizing the pilgrimage certainly gets the attention of economic actors in Indonesia and Saudi Arabia. The implementation of the pilgrimage that provides a stimulus to the economy, both in the micro and macro scope, is used as the basis for the financial management of the pilgrimage, which amounts to trillions of rupiah in the form of investment. The investment of hajj funds by BPKH based on the Hajj Financial Management Act can be described, as the number of prospective Indonesian pilgrims who departed in 2015 was 154,455 people. Each congregation is assumed to pay IDR 20 million, so the total funds from the congregation will reach IDR 3.09 trillion. Meanwhile, the number of pilgrims on the waiting list reached more than 1 million people. You can imagine the large number of hajj funds that come from the accumulated congregation. Thus, considering the size of the Hajj funds, on April 22, 2009, based on the MoU agreed by the Ministry of Finance and the Ministry of Religion, the placement of Hajj funds and the Ummah's Endowment Fund was allocated to State Sharia Securities, *Surat Berharga Syariah Negara (SBSN)*.<sup>48</sup> by way of the private placement.<sup>49</sup> The securities are the Indonesian Hajj Fund Sukuk, *Sukuk Dana Haji Indonesia (SDHI)*. Until January 12, 2017, the outstanding SDHI reached a value of IDR 36.7 trillion.<sup>50</sup> Meanwhile, investment in Hajj funds in 2010 based on data obtained from the Ministry of Religion, the investment allocation in the form of Sukuk amounted to Rp 12 trillion. An increase in investment allocation to IDR 31.1 trillion occurred in 2013. Investment allocation in Sukuk was IDR 35.83 trillion in 2015.<sup>51</sup>

Hajj fund investment in Sukuk has been carried out since 2010. Based on the decision of the Chairman of the Capital Market and Financial Institutions Supervisory Agency (Bapepam-LK) Number KEP-181/BL/2009, the definition of Sukuk is Sharia securities in the form of certificates or proof of ownership of the same value and represents an inseparable or undivided part of the investment: (i) ownership of certain tangible assets, (ii) value of benefits and services for certain project assets or certain investment activities, (iii) ownership of certain project assets or certain investment activities. Meanwhile, based on the sharia standards of The Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) No. 17 concerning Investment Sukuk, Sukuk has the meaning of a certificate of equal value which is evidence of an unshared share of ownership of an asset, rights to benefits and services, or ownership of a particular project or investment activity.<sup>52</sup>

Meanwhile, SDHI is issued using a form of transaction or contract called *Ijarah al-Khadamat*. The form of contract is a form of contract development based on the DSN-MUI Fatwa Number 9/2000 concerning *Ijarah Financing*. Thus, the MUI fatwa became one of the grounds for allowing Sukuk transactions with the *Ijarah Al-Khadamat* contract. The purposes of the Sukuk transactions include: 1) as a source of funding to finance the pilgrimage other than the cost of the pilgrims. Such as the consumption costs of prospective pilgrims while in the Hajj hostel, books for Hajj rituals, making

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<sup>48</sup> Indonesia (7), *Undang-Undang tentang Surat Berharga Syariah Negara*, UU Nomor 19 Tahun 2008, LN. Nomor 70 Tahun 2008, TLN. Nomor 4852 Tahun 2008, Pasal 1 Ayat (1)

<sup>49</sup> *Private placement* is the placement of shares by yourself with the mechanism of issuing new shares without going through the regular mechanism in the stock market. See "Apa Itu Private Placement?" dalam <<https://www.wartaekonomi.co.id/read226085/apa-itu-private-placement.html>> accessed 22 November 2021.

<sup>50</sup> Dinda Purnamasari, "Di Mana Saja Dana Haji Ditempatkan?," <<https://tirto.id/di-mana-saja-dana-haji-ditempatkan-ct8V>>, accessed June 22, 2022.

<sup>51</sup> Inti Ulfi Solichah, *Hukum Investasi Produktif*, 105.

<sup>52</sup> Direktorat Pembiayaan Syariah, *Surat Berharga Syariah Negara (Sukuk Negara) Instrumen Keuangan Berbasis Syariah*, (Jakarta: Departemen Keuangan Republik Indonesia-Direktorat Pembiayaan Syariah, 2010), 8.

passports and visas; and 2) funding the state budget (APBN), including financing project development.<sup>53</sup>

The results from the investment of the Hajj funds can then be used for the value of the benefits following the objectives of managing the Hajj funds as previously mentioned, namely improving the quality of the implementation of the Hajj and the benefit of Muslims.<sup>54</sup> Furthermore, optimizing the benefits of managing Hajj funds can also be used and felt for the welfare of the community in general. This can be realized by referring to Presidential Decree No. 80 of 2003 concerning Guidelines for the Implementation of Government Procurement of Goods/Services. This optimization is carried out based on the principles of efficiency, effectiveness, openness, competitiveness, transparency, non-discrimination, and accountability, which can be used to 1) increase the use of domestic products; 2) increase the role of small and micro and medium enterprises, cooperatives; 3) increase in state revenue from the tax sector; and 4) growth and development of national business participation.<sup>55</sup>

In line with this, the value of the investment benefits of Hajj funds in the state Sukuk can be used for infrastructure development. For example, what has been implemented so far includes financing the construction of State Islamic University campuses in Indonesia using funds from the state Sukuk.<sup>56</sup> Thus, from the *maqasid* aspect, there has been a shift in the implementation of the pilgrimage by the state from being limited to efforts to maintain religion (*hifdz al-din*) to an effort to improve the country's economy and benefit. Moreover, the value of the benefits from the management of hajj funds can be used for infrastructure that can be used by the general public, not only Muslims. With good infrastructure, it will certainly have a positive impact on the economy and the welfare of society in general. Thus, the management of hajj funds is certainly in line with the principles of the welfare state and the purpose of the founding of the Republic of Indonesia.

## Conclusion

The modern world state since the 20th century has led to what is conceptualized as a welfare state, where the state has a maximum role in improving the basic rights of its citizens, including the right to religion, one of which is the pilgrimage. Paradigmatic developments in the theory of state administrative law can be seen in its implementation in the practice of organizing and managing Hajj funds in Indonesia, where the government does not only play a role in protecting the basic religious rights of citizens as guaranteed by the constitution but also facilitates administratively and financial management which can develop its beneficial

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<sup>53</sup> Direktorat Jenderal Penyelenggaraan Haji dan Umrah, *Dinamika dan Perspektif Haji Indonesia*, 278-279.

<sup>54</sup> Indonesia (2), *Undang-Undang tentang Pengelolaan Keuangan Haji*, Pasal 3.

<sup>55</sup> Direktorat Jenderal Penyelenggaraan Haji dan Umrah, *Dinamika dan Perspektif Haji Indonesia*, 280.

<sup>56</sup> Donald Banjarnahor, "Investasi di Sukuk Negara Berbuah Gedung Rafah UIN Palembang", dalam <https://www.cnbcindonesia.com/news/20191010113831-4-105857/investasi-di-sukuk-negara-berbuah-gedung-rafah-uin-palembang>, accessed June 22, 2021.

value for welfare purposes. general. Modern countries, including Indonesia, have gone beyond their role from being just a 'night watch state', but have played a maximum role in improving the quality of life of citizens in sectors that were originally in the private sphere, namely in this case the hajj. In line with the development of the state administration, the practice of organizing hajj in Indonesia illustrates the implementation of contemporary *maqasid* as a philosophy of Islamic law, where sharia, in this case, the pilgrimage is oriented not only to protecting religion (*hifdz al-din*) but further, namely improving public benefit with the value of economic benefits from organizing and managing Hajj funds.

## Bibliography

### Books

- Ahlan Syarif, Fitriani, ed. *Aradhana Sang Guru Perundang-undangan; Kumpulan Tulisan Memperingati Ulang Tahun Ke-70 Prof. Dr. Maria Farida Indrati, S.H., M.H.* Depok: Badan Penerbit Fakultas Hukum Universitas Indonesia, 2019.
- Asshiddiqie, Jimly. *Jimly Asshiddiqie, Pancasila: Identitas Konstitusi Berbangsa dan Bernegara.* Jakarta: Sinar Grafika, 2020.
- Basyuni, Muhammad M. *Reformasi Manajemen Haji.* Jakarta: FDK Press, 2008.
- Butt and Tim Lindsey, Simon. *The Constitution of Indonesia: A Contextual Analysis.* Oxford and Portland, OR: Hart Publishing, 2012.
- Caiden, Gerald E. *The Dynamics of Public Administrations in Theory and Practice.* New York: Holt, Reinhart and Winston, Inc., 1971.
- Direktorat Jenderal Urusan Haji, *Pokok-pokok Penjelasan Penyelenggaraan Urusan Haji.* Jakarta: Direktorat Jenderal Urusan Haji, 1970/1971.
- Fleming Intan, Benyamin. *"Public Religion" and the Pancasila-Based State of Indonesia: An Ethical and Sociological Analysis.* New York: Peter Lang, 2006.
- Harlow dan Richard Rawlings, Carol. *Law and Administration, Third Edition.* New York: Cambridge University Press, 2009.
- Horowitz, Donald L. *Constitutional Change and Democracy in Indonesia.* New York: Cambridge University Press, 2013.
- Hosen, Nadirsyah. *Shari'a & Constitutional Reform in Indonesia* (Singapore: Institute of Southeast Asian Studies, 2007).
- Laski, Harold. *A grammar of Politics.* London: Allen and Unwin, 1925.
- Loughlin, Martin. *Public Law and Political Theory.* Oxford Clarendon Press, 1992.
- Picard and Rémy Madinier, Michel ed., *Politics of Religion in Indonesia: Syncretism, Orthodoxy, and Religious Contention in Java and Bali.* Abingdon, Oxon and New York: Routledge, 2011.
- Ridwan HR, *Hukum Administrasi Negara Edisi Revisi.* Jakarta: Rajawali Press, 2013.
- Salim, Arskal. *Challenging the Secular State: The Islamization of Law in Modern Indonesia.* Honolulu: University of Hawai'i Press, 2008.
- Sekretariat Negara Republik Indonesia, *Himpunan Risalah Sidang-sidang dari Badan Penyelidik Usaha Persiapan Kemerdekaan Indonesia (BPUPKI) (Tanggal 29 Mei 1945-16 Juli 1945) dan Panitia Persiapan Kemerdekaan Indonesia (PPKI) (Tanggal 18 dan 19 Agustus 1945) Yang Berhubungan Dengan Penyusunan Undang-undang Dasar 1945.* Jakarta: Sekretariat Negara Republik Indonesia, 1954.
- Soekanto, Soerjono dan Sri Mamudji. *Penelitian Hukum Normatif Suatu Tinjauan Singkat.* Jakarta: Raja Grafindo Persada, 2015.

### Journal Articles

- Alfitri. "Religion and Constitutional Practices in Indonesia: How Far Should the State Intervene in the Administration of Islam?", *Asian Journal of Comparative Law*, Vol. 13, 2018, <https://doi.org/10.1017/asjcl.2018.20>
- Jumali, Endang. "Management of Hajj Funds in Indonesia". *Journal of Legal, Ethical, and Regulatory Issues*. Vol 21, no.3, 2018.
- Mamonto & Rizki Ramadani, "Kebijakan Perlindungan Jamaah Haji Khusus dan Umroh Di Sulawesi Selatan", *PETITUM*, Vol. 7, No.2, 2019. <https://doi.org/10.36090/jh.v7i2%20Oktober.650>
- Mochammad Aziz, Roikhan. "Hahslm Theory as Guidance of Straight Path in Management of Hajj and Finance", *KnE Social Science* vol. 3, no. 8, 2018. <https://doi.org/kss.v3i8.2503>
- Morris, D. (2016). Accommodating Nazi Tyranny? The Wrong Turn of the Social Democratic Legal Philosopher Gustav Radbruch After the War. *Law and History Review*, 34(3), 649-688. <https://doi.org/10.1017/S0738248016000213>
- Mubarak, M. Ali "Manajemen Pengelolaan Dana Haji Republik Indonesia (Studi Kolaborasi Antar Lembaga BPKH, Kemenag dan Mitra Keuangan dalam Pengelolaan Dana Haji", *Iltizam Journal Of Shariah Economic Research*, Vol. 2, No. 2, 2018. <https://doi.org/10.18646/2056.53.18-009>
- Muneeza, Aishaath et all, "A Comparative Study of Hajj Funds Management Institutions in Malaysia, Indonesia, and Maldives". *International Journal of Management and Applied Research* vol. 5, no.3, 2018. <https://doi.org/10.18646/2056.53.18-009>
- Primadhany, Erry Fitrya. "Tinjauan Terhadap Tanggung Jawab Badan Pengelola Keuangan Haji (BPKH) dalam Melakukan Penempatan dan/atau Investasi Keuangan Haji", *Jurisdictie: Jurnal Hukum dan Syariah* Vol. 8 No.2 Tahun 2017. <https://doi.org/10.18860/j.v8i2.4447>
- Santosa, A.A. Gede D. H. "Perbedaan Badan Hukum Publik Dan Badan Hukum Privat", *Jurnal Komunikasi Hukum (JKH)* Vol. 5, No. 2, 2019. <https://doi.org/kss.v3i8.2503>

### Regulations

Indonesia, Undang-Undang Dasar Negara Republik Indonesia Tahun 1945

\_\_\_\_\_ (1), *Undang-undang tentang Penyelenggaraan Ibadah Haji dan Umroh*, UU Nomor 8 Tahun 2019, LN. Nomor 75 Tahun 2019, TLN. Nomor 6338 Tahun 2019.

\_\_\_\_\_ (2), *Undang-undang tentang Pengelolaan Keuangan Haji*, LN. Nomor 296 Tahun 2014, TLN. Nomor 5605 Tahun 2014.

### Websites

Dinda Purnamasari, "Di Mana Saja Dana Haji Ditempatkan?", <<https://tirto.id/di-mana-saja-dana-haji-ditempatkan-ct8V>>, accessed June 22, 2022.

Donald Banjarnahor, "Investasi di Sukuk Negara Berbuah Gedung Rafah UIN Palembang", dalam <https://www.cnbcindonesia.com/news/20191010113831-4-105857/investasi-di-sukuk-negara-berbuah-gedung-rafah-uin-palembang>, accessed June 22, 2022.

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### Management of Hajj Funds in Indonesia; Paradigm-Shifting in Islamic Legal Philosophy and State Administration

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**Abstract:**

This paper investigates the shift in the *rechtregime* of the implementation of Hajj in Indonesia in theory in state administrative law that applies in Indonesia. From a contemporary perspective, the aspect of organizing and managing Hajj funds is one of the tasks of the government which is in the domain of public affairs based on law. This paper uses a normative juridical research method with a prescriptive-explanatory presentation using interdisciplinary theory, namely state administrative law and contemporary *maqasid*. The results of this study indicate that there is a shift in the hajj regime from private to public with the red vehicle theory towards the green light theory in state administrative law where the state intervenes in the administration and management of hajj funds. Along with this shift, the organization and management of hajj funds is in line with the shift in the classical *maqasid* paradigm which is limited to protection towards contemporary *maqashid* that encourages the improvement of the general benefit.

**Keywords:**

Hajj Fund, Management, Administration Law, Maqasid al-Shariah, Green Light Theory

**Abstrak:**

Tulisan ini bertujuan untuk membahas mengenai pergeseran *rechtregime* penyelenggaraan haji di Indonesia berdasarkan teori dalam hukum administrasi negara yang berlaku di Indonesia. Dari perspektif kontemporer, aspek penyelenggaraan dan pengelolaan dana haji merupakan salah satu tugas pemerintah yang berada pada domain urusan publik berdasarkan hukum. Paper ini menggunakan metode penelitian yuridis normatif dengan penyajian preskriptif-eksplanatoris menggunakan teori interdisipliner yaitu hukum administrasi negara dan *maqashid* kontemporer. Hasil penelitian ini menunjukkan bahwa terdapat pergeseran *rechtregime* haji dari privat ke publik dengan kendaraan *red light theory* menuju *green light theory* dalam hukum administrasi negara dimana negara turut campur dalam penyelenggaraan dan pengelolaan dana haji. Seiring dengan pergeseran tersebut, penyelenggaraan dan pengelolaan dana haji selaras dengan pergeseran paradigma *maqashid* klasik yang terbatas pada perlindungan menuju *maqashid* kontemporer yang mendorong peningkatan kemaslahatan umum.

**Kata Kunci:**

Manajemen, Dana Haji, Hukum Administrasi, Maqasid al-Shariah, Green Light Theory



## Introduction

Indonesia is a country with a Muslim population that sends the largest hajj pilgrims almost every year. As a country which in its constitution guarantees the freedom of individuals to embrace and worship according to their respective religions and beliefs,<sup>57</sup> The government is responsible for organizing the pilgrimage for the Muslim population who will carry out the pilgrimage. One form of this guarantee is to provide guidance, service, and protection for citizens who perform the Hajj in a safe, comfortable, orderly, and following the provisions of the Shari'a.<sup>58</sup>

The problem of organizing the pilgrimage has a long history since the founding of the Republic of Indonesia. The Ministry of Religion has a central role as a regulator of the implementation and management of Hajj finances.<sup>59</sup> In terms of the management of hajj funds, Law Number 17 of 1999 concerning the Organization of the Hajj, the scope of hajj funds in the form of money received from prospective hajj pilgrims is not included in the state budget, because it does not include non-tax state revenues but hajj funds are managed through a government organization. The establishment of this organ was based on the Decree of the President of the Republic of Indonesia Number 35 of 1996 jo. Presidential Decree Number 52 of 1996 concerning the Organization and Work Procedure of BPDONHI. This institution later changed its nomenclature to Ummah's Endowment Fund Management Agency, *Badan Pengelola Dana Abadi Umat* (BP DAU).<sup>60</sup> This hajj fund is kept by the government as a deposit for prospective hajj pilgrims to be managed for the smooth running of hajj services. Therefore, the cost of organizing the pilgrimage is determined by the state to ensure certainty of departure to the holy land and guarantee security during the pilgrimage. In this period, the hajj funds are managed by setting aside the excess value to be stored as the Ummah's Endowment Fund, *Dana Abadi Umat* (DAU).<sup>61</sup>

As an annual ritual that uses quite a lot of money, the management of hajj funds is a financial domain that is in the area of public affairs. In addition to the problem of organizing the pilgrimage, it is also related to the relationship between the country of origin of the prospective pilgrims and the country of destination in carrying out the pilgrimage, namely Saudi Arabia. Indonesia is a country with a Muslim population that gets a large number of hajj quotas. However, the number of Hajj registrants each year the quota obtained is not

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<sup>57</sup>This is as stated in the 1945 Constitution of the Republic of Indonesia Article 29.

<sup>58</sup> Indonesia (1), *Undang-Undang tentang Penyelenggaraan Ibadah Haji dan Umroh*, UU Nomor 8 Tahun 2019, LN. Nomor 75 Tahun 2019, TLN. Nomor 6338 Tahun 2019, konsideran.

<sup>59</sup> Rina Farihatul Jannah, "Kebijakan Penyelenggaraan Perjalanan Haji Indonesia Tahun 1945-2000", Thesis on the Postgraduate Program of the State Islamic University of Sunan Ampel Surabaya, 2018, 39-75.

<sup>60</sup> Muhammad M. Basyuni, *Reformasi Manajemen Haji*, (Jakarta: FDK Press, 2008), 83-85.

<sup>61</sup> Inti Ulfi Solichah, "Hukum Investasi Produktif dalam Pengelolaan Dana Haji (Perspektif Hukum Ekonomi Syariah)", Thesis on the Masters Program in Islamic Economic Law, Faculty of Sharia, Syarif Hidayatullah State Islamic University, Jakarta, 2018, 41.

sufficient for all Hajj registrants.<sup>62</sup> This has an impact on Hajj departures, which have to follow a waiting list for years.

The waiting list for Hajj departure is determined by the time of registration by paying the Hajj Travel Fee (Bipih).<sup>63</sup> This Bipih deposit is part of the Hajj fund. the term hajj fund itself is formulated in terms of the Hajj Financial Management Act, including BPIH deposit funds; efficiency funds; DAU; as well as the value of benefits controlled by the state in the context of organizing the pilgrimage and implementing program activities for the benefit of Muslims.<sup>64</sup>

With a large number of registrants on the waiting list for the departure of hajj pilgrims based on Bipih deposits, there will be the accumulation of hajj funds. With the accumulation of hajj funds, the government took the initiative to manage hajj funds by placing and/or investing in the productive sector to generate value for the benefits of managing hajj funds. This is the *ratio-legis* of the establishment of the Hajj Financial Management Act. Therefore, through the Hajj Financial Management Act, a special financial institution that has the authority to manage Hajj funds was established, namely the Hajj Financial Management Agency, *Badan Pengelola Keuangan Haji* (BPKH).<sup>65</sup>

The financial management of Hajj by the state, in this case through the BPKH institution, is interesting to study in an interdisciplinary manner, from the application aspect of *maqasid* theory as a philosophy of Islamic law and the aspect of its authority according to the constitution and administrative legislation in the perspective of state administrative law. *Maqasid* as a philosophy of Islamic law refers to the understanding given by Jasser Auda by quoting the views of Ibn al-Qayyim, to define Islamic law with the Arabic term 'shari'ah', which means: "... prosperity in this world and the hereafter. Shari'ah means everything including justice, forgiveness, wisdom, and goodness. Therefore, all regulations that contradict these matters are not sharia, even if it is claimed to refer to several interpretations (of the scholars)".<sup>66</sup>

The *maqasid* view above is in line with the concept of the welfare state which is the legal ideal contained in the preamble to the Indonesian constitution. Therefore, the state in Article 29 of the Indonesian Constitution acts as a protector, and guarantor of individual freedom of religion, and freedom of worship and plays an important role in implementing good governance in the management of hajj funds. In addition, the management of hajj funds

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<sup>62</sup> The number of Hajj registrants in 2019 reached 710,000 pilgrims, exceeding the target of 650,000 pilgrims. See Faidah Umu Sofuroh, Lampaui Target, Pendaftar Haji 2019 Capai 710 Ribu Jemaah, < <https://news.detik.com/berita/d-4836697/lampaui-target-pendaftar-haji-2019-capai-710-ribu-jemaah>>, accessed March 8, 2021.

<sup>63</sup> Indonesia (1), *Undang-Undang tentang Penyelenggaraan Ibadah Haji dan Umroh*, Pasal 5 Ayat (1).

<sup>64</sup> Indonesia (2), *Undang-Undang tentang Pengelolaan Keuangan Haji*, UU Nomor 34 Tahun 2014, LN. Nomor 5605 Tahun 2014, Pasal 1 Ayat (2).

<sup>65</sup> Erry Fitrya Primadhany, "Tinjauan Terhadap Tanggung Jawab Badan Pengelola Keuangan Haji (BPKH) dalam Melakukan Penempatan dan/atau Investasi Keuangan Haji", *Jurisdictie: Jurnal Hukum dan Syariah* Vol. 8 No.2 Tahun 2017, 126-127. <https://doi.org/10.18860/j.v8i2.4447>

<sup>66</sup> Jasser Auda, *"Maqasid al-Shariah as Philosophy of Islamic Law: A System Approach"*. The International Institute of Islamic Thought, London, UK, 2007.

following their objectives is also important to discuss considering the large number of hajj funds managed by BPKH so as not to deviate from the initial goal of financing the pilgrimage.

Policies regarding the management of hajj funds should be in line with the philosophical foundations of Islamic law, in this case, *maqasid*, and not conflict with the principles of legal certainty, benefit to the community, and good public services. The government's policy for managing Hajj finances should be based on rational considerations of the principles of certainty, fairness, and benefit,<sup>67</sup> and has a basis for the state. Thus, the policies made by the government can create general welfare for the community in line with the objectives of the founding of the Republic of Indonesia.

Research on the management of hajj funds has been done by many previous researchers. Some of these studies include a Thesis by Rina Farihatul Jannah the Postgraduate of the State Islamic University of Sunan Ampel.<sup>68</sup> Then Erry Fitria Primardhani's work on the responsibility of BPKH in Hajj financial investment,<sup>69</sup> Roikhan Muhammad Azis,<sup>70</sup> and Endang Jumali.<sup>71</sup> Another article is the work of Aishath Muneeza and friends related to the comparison of the financial management of Hajj in Indonesia, Malaysia, and Maldives.<sup>72</sup> In addition to this research, M. Ali Mubarak's paper.<sup>73</sup> Among the studies mentioned above, there has been no discussion on the management of hajj funds in terms of constitutional and administrative law theory and *maqasid al-shari'ah*. Therefore, this study will focus on the issue of how to regulate the implementation of hajj and the management of hajj funds in Indonesia from the perspective of state administrative law and *maqasid al-shari'ah* and how to shift the paradigm of hajj fund management from the perspective of state administrative law and *maqasid al-shari'ah*. By describing the two main issues, this paper has the relevance of the novelty element that deserves to be discussed.

## Methods

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<sup>67</sup> D. Morris, (2016). Accommodating Nazi Tyranny? The Wrong Turn of the Social Democratic Legal Philosopher Gustav Radbruch After the War. *Law and History Review*, 34(3), 649-688. <https://doi.org/10.1017/S0738248016000213>

<sup>68</sup> Rina Farihatul Jannah, *Kebijakan Penyelenggaraan*, 2018.

<sup>69</sup> Erry Fitria Primadhany, *Tinjauan Terhadap Tanggung Jawab*, 125.

<sup>70</sup> Roikhan Mochammad Azis, "Hahslm Theory as Guidance of Straight Path in Management of Hajj and Finance", (*KnE Social Science* vol. 3, no. 8, 2018), 105-120. <https://doi.org/kss.v3i8.2503>

<sup>71</sup> Endang Jumali, "Management of Hajj Funds in Indonesia" (*Journal of Legal, Ethical, and Regulatory Issues*. Vol 21, no.3, 2018), 1-9.

<sup>72</sup> Aishaath Muneeza et al, "A Comparative Study of Hajj Funds Management Institutions in Malaysia, Indonesia, and Maldives". (*International Journal of Management and Applied Research* vol. 5, no.3, 2018), 1-15. <https://doi.org/10.18646/2056.53.18-009>

<sup>73</sup> M. Ali Mubarak, *Manajemen Pengelolaan Dana Haji Republik Indonesia (Studi Kolaborasi Antar Lembaga BPKH, Kemenag dan Mitra Keuangan dalam Pengelolaan Dana Haji)*, (*Iltilizam Journal Of Shariah Economic Research*, Vol. 2, No. 2, 2018), 67-86. <https://doi.org/10.18646/2056.53.18-009>

This paper uses a normative juridical research method. Namely, legal research based on legal rules or norms contained in the legislation. While the data used in this study is secondary data,<sup>74</sup> with three legal materials, namely primary legal materials, secondary legal materials, and tertiary legal materials.

The approach used in this research is the statutory approach, namely by linking existing legal norms with other legal norms in the laws and regulations that are used as data sources. Thus, it can be understood whether Law Number 34 of 2014 concerning Hajj Financial Management is following the objectives of managing Hajj funds. In addition, this paper also uses a theoretical approach, namely the theory of state administrative law and *maqasid al-shariah*. The results of this study are presented in writing in an analytical explanatory form. Namely, delivered by explaining and outlining the state's authority in managing Hajj funds from the perspective of state administrative law and *maqasid al-Sharia*.

## Discussion and Result

### Regulations for the Implementation of Hajj in Indonesia according to History

The implementation of Hajj in Indonesia has a long history of policy or regulatory aspects that govern it. Meanwhile, before the founding of the Republic of Indonesia, Muslims made pilgrimages to the holy land of Saudi Arabia. At the time the Islamic empire was established in the archipelago, there were no special regulations regarding the implementation of the pilgrimage that bound its citizens. Only after the Dutch colonial government came to power did the pilgrimage have regulations in the form of written positive law.<sup>75</sup>

After the proclamation of the independence of the Republic of Indonesia, especially during the New Order era, the regulations for organizing hajj based on the 1922 Pelgrims Ordonantie Saatsblaads and 1938 Pelgrims Verordening made by the Dutch colonial government have not been revoked but have been revised in the form of other regulations in the form of Regulations or Decrees of the President of the Republic of Indonesia.<sup>76</sup> In this era, the implementation of the pilgrimage, both in terms of financial management and implementation, is under the authority of the government through the Ministry of Religion of the Republic of Indonesia, whose technical implementation is left to the Director General of Hajj Affairs in collaboration with private agents.

In the reform era, many regulatory changes have been made by the government in organizing the Hajj in the form of regulations, including 1) Law Number 17 of 1999 concerning the Organization of the Hajj; 2) Law of the Republic of Indonesia Number 13 of 2008 concerning the Organization of the Hajj; 3) Law of the Republic of Indonesia Number 34 of 2009 concerning Stipulation of Government Regulation in place of Law Number 2 of 2009 concerning Amendments to Law Number 13 of 2008 on the Organization of the Hajj into Law; and 4) Law of the Republic of Indonesia Number 8 of 2019 concerning the Implementation of Hajj and Umrah.

The enactment of Law Number 8 of 2019 concerning the Implementation of Hajj and Umrah Services and at the same time revoking the previous Law. In addition, before this regulation was

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<sup>74</sup> Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, (Jakarta: Raja Grafindo Persada, 2015), 33.

<sup>75</sup> Rina Farihatul Jannah, *Kebijakan Penyelenggaraan*, 23-38.

<sup>76</sup> Ajeng Dewi P. S., "Tanggungjawab Yuridis Kementerian Agama Dalam Pelaksanaan Ibadah Haji", Thesis on the Master Program in Law, Faculty of Law, Islamic University of Indonesia, Yogyakarta, 2015, 25-26.

made, the government separated the aspects of managing Hajj funds from aspects of organizing the Hajj. Aspects of the management of Hajj funds are regulated through Presidential Decree No. 22 of 2001 concerning the BP DAU.<sup>77</sup> However, due to several misappropriations of Hajj funds managed by BP DAU, an initiative emerged from the government by issuing a policy that became the basis for the establishment of an institution that specifically manages Hajj funds through Law Number 34 of 2004 concerning Hajj Financial Management. Through the law, the government established the BPKH which has the task of managing Hajj finances.<sup>78</sup> Since then the financial management of Hajj has its regulations and institutions that are separate from the Ministry of Religion.

To summarize the discussion on the management of hajj funds in Indonesia, below is a table based on the timeline for the development of hajj fund management in Indonesia:

**Table 1**

**Developments in the Implementation and Management of Hajj Funds in Indonesia**

<b>Year</b>	<b>Progress</b>
1920	The implementation of the Hajj is carried out by providing facilities for the pilgrims by the Dutch East Indies Government
1948	The beginning of the implementation of Hajj by the Government of Indonesia with official cooperation with the Kingdom of Saudi Arabia
1951	The issuance of Presidential Decree No. 53 of 1951 to stop the private sector from being involved in organizing the hajj
1964	The implementation of Hajj is carried out by the government through the Director General of Hajj Affairs
1969	The administration of hajj trips is taken over by the government
1999	For the first time, the Policy regarding the Implementation of Hajj was enacted, namely Law Number 17 of 1999 concerning the Implementation of the Hajj
2001	Presidential Decree No. 22 of 2001 concerning BP DAU
2014	Law Number 34 of 2014 concerning Hajj Financial Management, the establishment of BPKH
2017	Presidential Regulation Number 110 of 2017 concerning the Hajj Financial Management Agency (BPKH)
2019	Law Number 8 of 2019 concerning the Implementation of the Hajj and Umrah Services as well as revoking Law Number 17 of 1999 concerning the Implementation of the Hajj

<sup>77</sup> The Presidential Decree is a substitute for Presidential Decree No. 35/1996 concerning the Indonesian Hajj Riding Fee Fund Management Agency.

<sup>78</sup> Indonesia (2), *Undang-undang tentang Pengelolaan Keuangan Haji*, UU Nomor 34 Tahun 2014, LN. Nomor 296 Tahun 2014, TLN. Nomor 5605 Tahun 2014 Pasal 22.

From the table above, since the first half of the 20th century when Indonesia was still colonized by the Dutch East Indies government, the problem of organizing the pilgrimage which is a religious obligation for Muslims has been regulated by the state. Although only limited to administrative facilitation, the state is not entirely secular, nor does it let go of its hands to interfere in the religious life of its citizens. And this, in organizing the Hajj, continues to be carried out until now with various regulatory changes towards a state administration system that is compatible with the concept of a welfare state.

### **Religion is No Longer a *Res Privata*: Hajj in Public *Rechtsregiem***

The division of legal system from the aspect of its power environment is divided into two, namely the public legal environment and the private legal environment, which has occurred since the 2nd century AD. A Roman legal expert, Ulpianus provides an understanding that distinguishes the two. He said "*Publicum ius est, quod ad statum rei romanae spectat, privatum quod ad singulorum utilitatem*", which means that public law is a rule related to the welfare of the Roman state, while private law is a rule related to family relations. The effect of this distinction is felt to this day in every legal system in various countries which separates the environment of public attorneys and private lawyers, and Indonesia is no exception. This distinction also leads us to an understanding of the existence of the government in conducting legal intercourse (*rechtsverkeer*).<sup>79</sup>

Since the state of Indonesia was proclaimed in 1945, the constitution has not been based on any particular religion, even though Islam is the religion that is predominantly adopted by citizens. However, Pancasila is a legal ideal that in the opening of the 1945 Constitution is a *rechtsidee* or guiding star for the formation of regulations in the Indonesian state. Thus, the purpose of establishing positive law in Indonesia is to achieve the thoughts contained in Pancasila, which is also useful as a tested stone for positive law.<sup>80</sup> Therefore, the first principle of Pancasila, namely Belief in the One and Only God, is the legal ideal of the Indonesian state which recognizes religion in national legal association (*rechtsverkeer*).<sup>81</sup>

Thus, the state does not completely disengage from the religious affairs of its citizens, which in the doctrine of secularism, religious affairs are private matters, not public affairs. In this case, the state plays a formal role in administrative law through the Ministry of Religion, which was established on January 3, 1946. This ministry does not only deal with the religious affairs of Muslims but also five other religions recognized by the state. To accommodate the religious affairs of its citizens administratively, positive law in Indonesia has adopted sharia since the era of the Dutch colonial government in power, in the form of several elements of Islamic jurisprudence which concentrate on marriage, divorce, inheritance, endowments,

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<sup>79</sup> Ridwan HR, *Hukum Administrasi Negara Edisi Revisi*, (Jakarta: Rajawali Press, 2013), 69.

<sup>80</sup> Jimly Asshidiqie, *Pancasila: Identitas Konstitusi Berbangsa dan Bernegara* (Jakarta: Sinar Grafika, 2020), 11.

<sup>81</sup> Alfritri, "Religion and Constitutional Practices in Indonesia: How Far Should the State Intervene in the Administration of Islam?", *Asian Journal of Comparative Law*, 13 (2018), 389-390. <https://doi.org/10.1017/asjcl.2018.20>

grants in the practice of religious courts. No exception in organizing hajj and umrah, the government plays a role in carrying out administrative and bureaucratic legal actions.

For the government, the pilgrimage is a national endeavor considering the large number of pilgrims who depart every hajj season. This means that the government must coordinate and cooperate with several agents, both government agencies and private agents in the country and abroad to organize several aspects of the implementation of the pilgrimage. Among the national tasks are transportation, accommodation, health, and security for pilgrims. Moreover, the implementation of Hajj for the Indonesian government is not limited to services for citizens who are Muslim but also involves foreign relations with Saudi Arabia as the destination country for the pilgrimage. Thus, the government needs to continue to improve the quality of the implementation of the pilgrimage effectively.

To achieve this goal, the government needs regulations as the legal basis for organizing the pilgrimage. The existence of regulations or policies as a legal umbrella to carry out the task of organizing the pilgrimage by this state is based on the doctrine of Indonesia as a state of the law as stated in the 1945 Constitution.

#### **State Intervention in Religious Affairs through Administrative Law**

As a country that adheres to the concept of the welfare state to establish the state as stated in the fourth paragraph of the preamble of the constitution, the Republic of Indonesia has the authority to make arrangements and provide facilities for all aspects of the lives of its citizens, including the implementation of the pilgrimage for Muslim citizens.

The authority and role of the state in all aspects of the lives of its citizens are expanding along with the development of history and law. Carol Harlow and Richard Rowling argue that this role is related to a theoretical view which in the context of state administrative law theory is called redlight theory. The view of redlight theory assumes that the authority and role of state administration are limited to law enforcement and public order, which is also known as the 'night watch state' or *nachtwachterstaat*. In this view, state administrative law functions to prevent violations by the state of human rights. Therefore, the red light theory emphasizes the balance of power by supporting a strong judiciary to control executive power. The thinking behind the red light theory is the Laissez Faire State which has the idea of the best government is the least government. This view assumes that the authority and role of state administration should be made as simple as possible so that the structure of state administration is very small.<sup>82</sup>

The adoption of the concept of the welfare state by the Indonesian state has resulted in the expanding authority and role of state administration in people's lives. In this case, state administrative law provides facilities for the enlargement of the state's role in providing welfare for its citizens. State administration has a role not only as a tool for law and order enforcement but also as a tool to achieve public welfare in various sectors of life, including

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<sup>82</sup> Carol Harlow and Richrad Rowlings, *Law and Administration* (London: Butterwoths, 1997), 29 dalam Tri Hayati, "Perizinan Pertambangan di Era Reformasi Pemerintahan Daerah Studi tentang Perizinan Pertambangan Timah di Pulau Bangka", Disertasi Pada Program Studi Doktor Ilmu Hukum Program Pascasarjana Fakultas Hukum Universitas Indonesia, 2011. 38-39.

the religious sector, which in this case is the implementation of the pilgrimage. The great role of state authority and state administration is facilitated theoretically by a view that contradicts the red light theory as stated above, namely the green light theory.<sup>83</sup> State administration becomes a vehicle to facilitate every aspect of citizens' lives, to achieve political progress and the realization of an "administrative state". This view assumes that state administrative law has broad powers and roles and must be proactive in various fields of people's lives.<sup>84</sup> As a result, the state's administrative structure became fatter and more hierarchical.

In addition, in contrast to the red light theory which prioritizes the judiciary in a country, the green light theory tends to the development of democracy and political accountability of the government. Therefore, community participation is a prerequisite for the formation of state administration following the view of the green light theory. From the view of the green light theory adopted in the legal system of the Republic of Indonesia, it can be understood that the state has broad authority covering aspects of the lives of citizens in the field of religion, namely the implementation of the pilgrimage.

The theoretical view that has influenced the development of state administrative law that adheres to green light theory is Léon Duguit's thought. Duguit's view is based on the idea of a socialistic state in which a strong government is a necessity and therefore its duties go far beyond the fields of law, order, justice, and defense. He believes in the idea of a collectivist state whose function is to provide public services. This he defined as "any activity that must be regulated by the government" and controlled because it is indispensable for the realization and development of social solidarity as long as it cannot be realized without the intervention of the government.<sup>85</sup> Of course, included in the activities that must be regulated by the government is the implementation of the pilgrimage, because, without government intervention, the pilgrimage for its citizens cannot be carried out because it is related to foreign relations between the country of origin of the pilgrims in this case Indonesia and the destination country, namely Saudi Arabia.

Based on the spirit of the welfare state, which is supported by the green light theory above, the state has the authority and role of administration in organizing the pilgrimage. Although there are models of organizing the pilgrimage that is carried out by private parties, when compared to other organizations, according to Gerald Caiden, the role of the state in administration has a specificity.<sup>86</sup> First, the state administration is unavoidable. Second, the state administration has a legal monopoly of coercive power which inevitably applies binding and can be coercive. Third, the priority of community activities. Fourth, the role of the state administratively provides services for every citizen. Fifth, the state is directly responsible to its political leadership, because the top leadership is a political institution. Therefore, it can be

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<sup>83</sup> Carol Harlow dan Richard Rawlings, *Law and Administration, Third Edition*, (New York: Cambridge University Press, 2009), 31.

<sup>84</sup> Carol Harlow dan Richard Rawlings, *Law and Administration*, 32.

<sup>85</sup> Carol Harlow dan Richard Rawlings, *Law and Administration*, 33-34.

<sup>86</sup> Gerald E. Caiden, *The Dynamics of Public Administrations in Theory and Practice* (New York: Holt, Reinhart and Winston, Inc., 1971), 6.



understood that the regulation of the implementation of Hajj, after all, is the authority of the state, in this case, the government.

From an organizational point of view, the implementation of the pilgrimage is based on four alternative principles as recognized in state administrative law, including:<sup>87</sup> first, the objectives to be achieved, namely the Ministry of Religion which carries out government functions in the religious sector; second, the group served, namely citizens who want to perform Hajj; third, the process carried out, namely the implementation of the pilgrimage which includes planning, budgeting, implementation, evaluation, and supervision; fourth, the geographical area covered, namely the territory of the state of Indonesia.

With this understanding, the state's authority in organizing the pilgrimage can be understood based on the view of state law in the field of administration that it adheres to, namely the green light theory above. This authority, even from Duguit's point of view, is a duty or obligation of the government in the form of public services. As a result, the view that considers the private affairs of citizens, namely religion, should not be managed by the state, becomes irrelevant. With the adoption of the green light theory, the state has a theoretical basis for its administrative authority to carry out the implementation of hajj activities carried out by state organizations or institutions, namely the Ministry of Religion.

#### **Parallelity of *Maqasid* Paradigm and State Administration Shifting**

In the study of classical Islamic law, *maqasid al-shari'ah* is easily understood as the universal goal of enactment of a law. protection. However, in its development, Jasser Auda compiled a Contemporary Conception of *Maqashid* which is an evolution of classical *maqasid al-shari'ah* theories and concepts; namely: (1). Keeping Descendants (*hifdz al-Nasl*) is a theory-oriented to family protection; more concern for family institutions; (2) Maintaining Intellect (*hifz al-Aql*) to multiplying the mindset and scientific research; prioritize travel to seek knowledge; suppress the mindset that prioritizes the criminality of the mob; avoiding attempts to underestimate the workings of the brain; (3) Maintaining honor; keep the soul (*hifdz al-'Irdh*) to maintain and protect human dignity; safeguard and protect human rights; (4) Protecting religion (*hifdz al-Diin*) is protecting, and respecting freedom of religion or belief, and (5) Protecting property (*hifdz al-Maal*) is prioritizing social care; pay attention to economic development and development; promote human well-being; eliminate the gap between rich and poor.

There is a paradigm shift and the classical *maqasid al-shari'ah* theory to the contemporary *maqasid al-shari'ah* theory. The change lies in the pressure point of both. The emphasis of classical *maqasid al-shari'ah* is more on protection and preservation, while contemporary *maqasid al-shari'ah* theory emphasizes development and rights. In an effort to develop the contemporary *maqasid al-shari'ah* concept, Jasser Auda proposes human development as the main target form of contemporary public interest; This *masalah* should be the target of *maqasid al-shari'ah* to be realized through Islamic law. Furthermore, the

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<sup>87</sup> Tri Hayati, "Perizinan Pertambangan di Era Reformasi Pemerintahan Daerah Studi tentang Perizinan Pertambangan Timah di Pulau Bangka", 40.

realization of this contemporary maqasid al-shari'ah can be achieved empirically through human development targets.<sup>88</sup>

Parallel with the *maqasid* paradigm shifting is the shift in the role of the state administratively, which originally played a minimum role in protecting and protecting citizens, to a maximum by interfering in the private affairs of its citizens, such as religious affairs in this case the pilgrimage discussed in this paper. Along with the times, the modern world state as a subject of public law adopts laws that are increasingly facilitative in every aspect of the lives of their citizens. Regulations made by the state as authorized legal subjects are increasingly complex touching the joints of the lives of its citizens. In the context of Indonesia, in line with the purpose of the founding of the state, the ideals of a welfare state make the authority and role of state administration grow.

Behind every theory of administrative law, there is a discussion of the state. country. According to Harold Laski, as quoted by Carol Harlow and Richard Rawlings, constitutional law cannot be understood except as the expression of an economic system designed to function as a bulwark. <sup>89</sup> This, according to Carol Harlow and Richard Rawlings, means that the government machine is an expression of the society in which it operates; something that cannot be understood except when viewed from another context.<sup>90</sup>

By the end of the nineteenth century in England, all major political parties had for practical purposes abandoned the ideal of limited government and accepted the need for intervention. The old conception of government as minimal and static has been swept away by a new conception of government which is "collectivism" in Dicey's view. As Dicey calls it, socialist theory supports State intervention to provide benefits to society.<sup>91</sup> In his essay entitled "Introduction to the Law of the Constitution" published in 1885, Dicey as stated by Carol Harol and Richard Rawlings, argues that the ideal type of constitution is a balance with broad authority in the executive field although, on the one hand, it will be subject to political control by parliament, on the other hand, to submit to legal control through law by the courts.<sup>92</sup>

In this case, the law of State Administration facilitates the enlargement of the role of state administration in people's lives. State administration plays a role no longer only as control of power, as the red light theory views,<sup>93</sup> but rather as the state regulation in realizing the welfare of society. The broad role of state administration is supported by a theory in state administrative law, namely the green light theory.<sup>94</sup> This theory views the role and authority of state administration which is very broad covering various aspects of citizens' lives, of course including in terms of religion and belief, in this case, the implementation of Hajj for Muslims.

With the spirit of the welfare state and the view of the greenlight theory, it is a necessity for the Republic of Indonesia through its constitution to regulate the guarantee of freedom of religion and

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<sup>88</sup>Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law: A System Approach* (London: The International Institute of Islamic Thought, 2007), 248.

<sup>89</sup> Harold Laski, *A grammar of Politics* (London: Allen and Unwin, 1925), 578.

<sup>90</sup> Carol Harlow dan Richard Rawlings, *Law and Administration, Third Edition* (New York: Cambridge University Press, 2009), 1.

<sup>91</sup> Carol Harlow dan Richard Rawling, *Law and Administration, Thied Edition*, (New York: Cambridge University Press, 2009), 2-3.

<sup>92</sup> Martin Loughlin, *Public Law and Political Theory* (Oxford Clarendon Press, 1992), 62.

<sup>93</sup> This red light theory view views state administrative law as an instrument for the control of power and the protection of individual freedom, the emphasis is on the courts, not the government. See Carol Harlow dan Richard Rawlings, *Law and Administration, Third Edition*, (New York: Cambridge University Press, 2009), 31.

<sup>94</sup> Carol Harlow dan Richard Rawlings, *Law and Administration, Third Edition*, (New York: Cambridge University Press, 2009), 31.

worship according to the respective beliefs of its citizens. The constitution as the foundation of the legal system of the Republic of Indonesia regulates religious life. Although the 1945 Constitution has been amended four times, the basic norms regarding the guarantee of religious freedom are still maintained. Thus, in drafting legal regulations regarding religion, the constitution explicitly provides a legal foundation for this matter.

The regulation regarding the guarantee of religious freedom is regulated in Article 29 Paragraph (2) of the 1945 Constitution. The article reads: "The state guarantees the independence of each resident to embrace their religion and to worship according to their religion and beliefs". The sound of this article of the constitution later became a source of law as well as the basis for the state to use its authority in organizing the pilgrimage, which also includes the management of hajj funds which are regulated through regulations relating to these matters.

### Constitution, Islam, and Hajj in Indonesia

As a modern legal state, Indonesia has a constitutional foundation, namely the 1945 Constitution which in its preamble includes the purpose of the state and the affirmation of Pancasila as the state's foundation, or called the *staatsfundamentalnorm*. *Staatsfundamentalnorm* is the basic norm or legal foundation for the formation of the constitution or constitution (*staatsverfassung*) of a country. *Rechtpositie* from a *Staatsfundamentalnorm* is a condition for the validity of the constitution. This *Staatsfundamentalnorm* exists before the constitution of the country itself.<sup>95</sup>

When Sukarno introduced Pancasila before the constitution was drafted, he emphasized that 'divinity' would not only make Indonesia a 'nation that believes in God but also that 'every Indonesian must have God' and that every citizen should be free to worship according to his or her religion or each other's beliefs.<sup>96</sup> This explanation of what is contained in Pancasila is also largely consistent with most scientific interpretations. Butt and Lindsey, for example, argue that the basic principles of the Indonesian state force the state to protect religious freedom, encourage the exercise of faith and give the state a role in religious affairs.<sup>97</sup> For this reason, they argue that Indonesia is not a fully secular state.

A similar view is expressed by scholars such as Intan and Hosen who argue that the primacy of religion in the public sphere means that Indonesia is neither secular nor theocratic.<sup>98</sup> Although many views contradict the views above, the scientific and political

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<sup>95</sup> Fitriani Ahlan Syarif (Ed.), *Aradhana Sang Guru Perundang-undangan; Kumpulan Tulisan Memperingati Ulang Tahun Ke-70 Prof. Dr. Maria Farida Indrati, S.H., M.H.* (Depok: Badan Penerbit Fakultas Hukum Universitas Indonesia, 2019), 283.

<sup>96</sup> Sekretariat Negara Republik Indonesia, *Himpunan Risalah Sidang-sidang dari Badan Penyelidik Usaha Persiapan Kemerdekaan Indonesia (BPUPKI) (Tanggal 29 Mei 1945–16 Juli 1945) dan Panitia Persiapan Kemerdekaan Indonesia (PPKI) (Tanggal 18 dan 19 Agustus 1945) Yang Berhubungan Dengan Penyusunan Undang-undang Dasar 1945*, (Jakarta: Sekretariat Negara Republik Indonesia, 1954), 73.

<sup>97</sup> Simon Butt dan Tim Lindsey, *The Constitution of Indonesia: A Contextual Analysis* (Oxford and Portland, OR: Hart Publishing, 2012), 13.

<sup>98</sup> Benyamin Fleming Intan, *"Public Religion" and the Pancasila-Based State of Indonesia: An Ethical and Sociological Analysis* (New York: Peter Lang, 2006), 18. See Nadirsyah Hosen, *Shari'a & Constitutional Reform in Indonesia* (Singapore: Institute of Southeast Asian Studies, 2007), 229.

interpretations described above stipulate that Pancasila is the principle of religious freedom and pluralism, provides the basis for an interventionist role for the state in religious matters, and does not elevate one religion over another.

The nature of Pancasila, however, is challenged and opposed when it comes to the implementation of state policies. In this regard, Hefner suggested that the problem was rooted in the fact that Pancasila did not specify which religious doctrines or beliefs would fall under the principle of 'belief' in the one and only God and that it did not regulate 'how the government should intervene in the religious sphere to decide that.<sup>99</sup> This prompted a problem that later arose, namely regarding the extent of state intervention when Pancasila became the most basic norm in the Indonesian constitution that allowed the state to play a role in encouraging and facilitating religion.

In this case, socially and politically the dominant religion, Islam, has privileges in terms of state administration which can be said to be the goal of the Pancasila formulation as aspired by the founding fathers. This is inevitable in a context where the state has a role in facilitating religion in public life and where more than 80 percent of the population is Muslim. As a result, the Ministry of Religion in 1946 –was a kind of compensation to the Islam-oriented factions.<sup>100</sup>

As is known, one of the teachings in Islam is the obligation to perform the pilgrimage. In this case, the state has the authority based on Article 29 Paragraph (2) of the 1945 Constitution as a manifestation of the *rechtsidee* of the First Principles of Pancasila. In the formulation of the articles of the constitution, the state is to provide guarantees of independence for every citizen to embrace their respective religions. This includes guarantees to worship for religious adherents according to their respective religions and beliefs. The formulation of the articles in the Indonesian constitution is based on the first principle of Pancasila, namely Belief in One Supreme God. In the implementation of Article 29 Paragraph (2) of the 1945 Constitution. Among the constitutional guarantees are state guarantees as mentioned above, namely the state's obligation to provide facilities and services for its citizens who want to perform the pilgrimage.<sup>101</sup> This basis is a source of state authority in the form of attribution of constitutional authority granted by the 1945 Constitution to the government in organizing the pilgrimage.

In connection with the above, citizens carrying out worship have various aspects of worship that must be guaranteed by the state as a form of state facilities and services in the field of religion to its citizens. These aspects include the dimensions of trust, the provision of facilities, the availability of worship infrastructure, how to worship, the time of worship,

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<sup>99</sup> Robert W. Hefner, 'Where Have All the Abangan Gone? Religionization and the Decline of Non-Standard Islam in Contemporary Indonesia' in Michel Picard and Rémy Madinier (eds.), *Politics of Religion in Indonesia: Syncretism, Orthodoxy, and Religious Contention in Java and Bali* (Abingdon, Oxon and New York: Routledge, 2011), 85.

<sup>100</sup> See Nadirsyah Hosen, *Shari'a & Constitutional Reform in Indonesia*, 229.

<sup>101</sup> Indonesia (1), *Undang-undang tentang Penyelenggaraan Ibadah Haji dan Umroh*, UU Nomor 8 Tahun 2019, LN. Nomor 75 Tahun 2019, TLN. Nomor 6338 Tahun 2019, konsideran.

places of worship, and procedures for carrying out the worship. 102 Therefore, in terms of organizing the pilgrimage, the state is obliged to guarantee various aspects surrounding the implementation of the pilgrimage for its citizens. Since the preparation before departure, on the way, during the pilgrimage, until return to the homeland.

Based on the understanding of Article 29 Paragraph (2) above, the state's authority in the matter of implementing the Hajj and Umrah pilgrimages for Muslims is a relevant and sufficient reason for the state to make arrangements. The authority to make this regulation aims to carry out the mandate of Article 29 Paragraph (2) of the 1945 Constitution, namely state guarantees for every religious believer to worship according to their respective religions and beliefs. And in this case, state guarantees for all aspects of the implementation of the pilgrimage as well as financial management.

As stated above, the reach of the state to facilitate the religious aspects of citizens is through the form of administration prepared by the state. In this case, the Ministry of Religion plays a central role in the affairs of the pilgrimage. This ministry was established at the beginning of independence. The task as formulated by Wahid Hasyim who was the first minister was to ensure that everyone is free to profess and worship according to his religion and beliefs and 'to assist, support, protect and promote the aspirations of religious movements. The ministry has local offices and personnel throughout the country, even down to the village level, and has the authority to regulate matters such as marriage, religious education, courts and pilgrimages, and others.<sup>103</sup>

#### **Efforts to realize *maslahah*: Investment and Optimization of Hajj Funds in Today's Indonesia**

The economic aspect of organizing the pilgrimage certainly gets the attention of economic actors in Indonesia and Saudi Arabia. The implementation of the pilgrimage that provides a stimulus to the economy, both in the micro and macro scope, is used as the basis for the financial management of the pilgrimage, which amounts to trillions of rupiah in the form of investment. The investment of hajj funds by BPKH based on the Hajj Financial Management Act can be described, as the number of prospective Indonesian pilgrims who departed in 2015 was 154,455 people. Each congregation is assumed to pay IDR 20 million, so the total funds from the congregation will reach IDR 3.09 trillion. Meanwhile, the number of pilgrims on the waiting list reached more than 1 million people. You can imagine the large number of hajj funds that come from the accumulated congregation. Thus, considering the size of the Hajj funds, on April 22, 2009, based on the MoU agreed by the Ministry of Finance and the Ministry of Religion, the placement of Hajj funds and the Ummah's Endowment Fund was allocated to State Sharia Securities, *Surat Berharga Syariah Negara* (SBSN).<sup>104</sup> by way of the

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102 Mamonto & Rizki Ramadani, "Kebijakan Perlindungan Jamaah Haji Khusus dan Umroh Di Sulawesi Selatan", *PETITUM*, Vol. 7, No.2, 2019, 86-88. <https://doi.org/10.36090/jh.v7i2%20Oktober.650>

103 Arskal Salim, *Challenging the Secular State: The Islamization of Law in Modern Indonesia* (Honolulu: University of Hawai'i Press, 2008), 71.

104 Indonesia (7), *Undang-Undang tentang Surat Berharga Syariah Negara*, UU Nomor 19 Tahun 2008, LN. Nomor 70 Tahun 2008, TLN. Nomor 4852 Tahun 2008, Pasal 1 Ayat (1)

private placement.<sup>105</sup> The securities are the Indonesian Hajj Fund Sukuk, *Sukuk Dana Haji Indonesia* (SDHI). Until January 12, 2017, the outstanding SDHI reached a value of IDR 36.7 trillion.<sup>106</sup> Meanwhile, investment in Hajj funds in 2010 based on data obtained from the Ministry of Religion, the investment allocation in the form of Sukuk amounted to Rp 12 trillion. An increase in investment allocation to IDR 31.1 trillion occurred in 2013. Investment allocation in Sukuk was IDR 35.83 trillion in 2015.<sup>107</sup>

Hajj fund investment in Sukuk has been carried out since 2010. Based on the decision of the Chairman of the Capital Market and Financial Institutions Supervisory Agency (Bapepam-LK) Number KEP-181/BL/2009, the definition of Sukuk is Sharia securities in the form of certificates or proof of ownership of the same value and represents an inseparable or undivided part of the investment: (i) ownership of certain tangible assets, (ii) value of benefits and services for certain project assets or certain investment activities, (iii) ownership of certain project assets or certain investment activities. Meanwhile, based on the sharia standards of The Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) No. 17 concerning Investment Sukuk, Sukuk has the meaning of a certificate of equal value which is evidence of an unshared share of ownership of an asset, rights to benefits and services, or ownership of a particular project or investment activity.<sup>108</sup>

Meanwhile, SDHI is issued using a form of transaction or contract called *Ijarah al-Khadamat*. The form of contract is a form of contract development based on the DSN-MUI Fatwa Number 9/2000 concerning *Ijarah Financing*. Thus, the MUI fatwa became one of the grounds for allowing Sukuk transactions with the *Ijarah Al-Khadamat* contract. The purposes of the Sukuk transactions include: 1) as a source of funding to finance the pilgrimage other than the cost of the pilgrims. Such as the consumption costs of prospective pilgrims while in the Hajj hostel, books for Hajj rituals, making passports and visas; and 2) funding the state budget (APBN), including financing project development.<sup>109</sup>

The results from the investment of the Hajj funds can then be used for the value of the benefits following the objectives of managing the Hajj funds as previously mentioned, namely improving the quality of the implementation of the Hajj and the benefit of Muslims.<sup>110</sup> Furthermore, optimizing the benefits of managing Hajj funds can also be used and felt for the welfare of the community in general. This can be realized by referring to Presidential Decree No. 80 of 2003 concerning Guidelines for the Implementation of Government Procurement of Goods/Services. This optimization is carried out based on the principles of efficiency, effectiveness, openness, competitiveness, transparency, non-discrimination, and accountability, which can be used to 1) increase the use of domestic products; 2) increase the

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<sup>105</sup> *Private placement* is the placement of shares by yourself with the mechanism of issuing new shares without going through the regular mechanism in the stock market. See "Apa Itu Private Placement?" dalam < <https://www.wartaekonomi.co.id/read226085/apa-itu-private-placement.html>> accessed 22 November 2021.

<sup>106</sup> Dinda Purnamasari, "Di Mana Saja Dana Haji Ditempatkan?", < <https://tirto.id/di-mana-saja-dana-haji-ditempatkan-ct8V>>, accessed June 22, 2022.

<sup>107</sup> Inti Ulfi Solichah, *Hukum Investasi Produktif*, 105.

<sup>108</sup> Direktorat Pembiayaan Syariah, *Surat Berharga Syariah Negara (Sukuk Negara) Instrumen Keuangan Berbasis Syariah*, (Jakarta: Departemen Keuangan Republik Indonesia-Direktorat Pembiayaan Syariah, 2010), 8.

<sup>109</sup> Direktorat Jenderal Penyelenggaraan Haji dan Umrah, *Dinamika dan Perspektif Haji Indonesia*, 278-279.

<sup>110</sup> Indonesia (2), *Undang-Undang tentang Pengelolaan Keuangan Haji*, Pasal 3.

role of small and micro and medium enterprises, cooperatives; 3) increase in state revenue from the tax sector; and 4) growth and development of national business participation.<sup>111</sup>

In line with this, the value of the investment benefits of Hajj funds in the state Sukuk can be used for infrastructure development. For example, what has been implemented so far includes financing the construction of State Islamic University campuses in Indonesia using funds from the state Sukuk.<sup>112</sup> Thus, from the *maqasid* aspect, there has been a shift in the implementation of the pilgrimage by the state from being limited to efforts to maintain religion (*hifdz al-din*) to an effort to improve the country's economy and benefit. Moreover, the value of the benefits from the management of hajj funds can be used for infrastructure that can be used by the general public, not only Muslims. With good infrastructure, it will certainly have a positive impact on the economy and the welfare of society in general. Thus, the management of hajj funds is certainly in line with the principles of the welfare state and the purpose of the founding of the Republic of Indonesia.

### Conclusion

The modern world state since the 20th century has led to what is conceptualized as a welfare state, where the state has a maximum role in improving the basic rights of its citizens, including the right to religion, one of which is the pilgrimage. Paradigmatic developments in the theory of state administrative law can be seen in its implementation in the practice of organizing and managing Hajj funds in Indonesia, where the government does not only play a role in protecting the basic religious rights of citizens as guaranteed by the constitution but also facilitates administratively and financial management which can develop its beneficial value for welfare purposes. general. Modern countries, including Indonesia, have gone beyond their role from being just a 'night watch state', but have played a maximum role in improving the quality of life of citizens in sectors that were originally in the private sphere, namely in this case the hajj. In line with the development of the state administration, the practice of organizing hajj in Indonesia illustrates the implementation of contemporary *maqasid* as a philosophy of Islamic law, where sharia, in this case, the pilgrimage is oriented not only to protecting religion (*hifdz al-din*) but further, namely improving public benefit with the value of economic benefits from organizing and managing Hajj funds.

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<sup>111</sup> Direktorat Jenderal Penyelenggaraan Haji dan Umrah, *Dinamika dan Perspektif Haji Indonesia*, 280.

<sup>112</sup> Donald Banjarnahor, "Investasi di Sukuk Negara Berbuah Gedung Rafah UIN Palembang", dalam <https://www.cnbcindonesia.com/news/20191010113831-4-105857/investasi-di-sukuk-negara-berbuah-gedung-rafa-h-uin-palembang>, accessed June 22, 2021.

## Bibliography

### Books

- Ahlan Syarif, Fitriani, ed. *Aradhana Sang Guru Perundang-undangan; Kumpulan Tulisan Memperingati Ulang Tahun Ke-70 Prof. Dr. Maria Farida Indrati, S.H., M.H.* Depok: Badan Penerbit Fakultas Hukum Universitas Indonesia, 2019.
- Asshiddiqie, Jimly. *Jimly Asshiddiqie, Pancasila: Identitas Konstitusi Berbangsa dan Bernegara.* Jakarta: Sinar Grafika, 2020.
- Basyuni, Muhammad M. *Reformasi Manajemen Haji.* Jakarta: FDK Press, 2008.
- Butt and Tim Lindsey, Simon. *The Constitution of Indonesia: A Contextual Analysis.* Oxford and Portland, OR: Hart Publishing, 2012.
- Caiden, Gerald E. *The Dynamics of Public Administrations in Theory and Practice.* New York: Holt, Reinhart and Winston, Inc., 1971.
- Direktorat Jenderal Urusan Haji, *Pokok-pokok Penjelasan Penyelenggaraan Urusan Haji.* Jakarta: Direktorat Jenderal Urusan Haji, 1970/1971.
- Fleming Intan, Benyamin. *"Public Religion" and the Pancasila-Based State of Indonesia: An Ethical and Sociological Analysis.* New York: Peter Lang, 2006.
- Harlow dan Richard Rawlings, Carol. *Law and Administration, Third Edition.* New York: Cambridge University Press, 2009.
- Horowitz, Donald L. *Constitutional Change and Democracy in Indonesia.* New York: Cambridge University Press, 2013.
- Hosen, Nadirsyah. *Shari'a & Constitutional Reform in Indonesia* (Singapore: Institute of Southeast Asian Studies, 2007).
- Laski, Harold. *A grammar of Politics.* London: Allen and Unwin, 1925.
- Loughlin, Martin. *Public Law and Political Theory.* Oxford Clarendon Press, 1992.
- Picard and Rémy Madinier, Michel ed., *Politics of Religion in Indonesia: Syncretism, Orthodoxy, and Religious Contention in Java and Bali.* Abingdon, Oxon and New York: Routledge, 2011.
- Ridwan HR, *Hukum Administrasi Negara Edisi Revisi.* Jakarta: Rajawali Press, 2013.
- Salim, Arskal. *Challenging the Secular State: The Islamization of Law in Modern Indonesia.* Honolulu: University of Hawai'i Press, 2008.
- Sekretariat Negara Republik Indonesia, *Himpunan Risalah Sidang-sidang dari Badan Penyelidik Usaha Persiapan Kemerdekaan Indonesia (BPUPKI) (Tanggal 29 Mei 1945-16 Juli 1945) dan Panitia Persiapan Kemerdekaan Indonesia (PPKI) (Tanggal 18 dan 19 Agustus 1945) Yang Berhubungan Dengan Penyusunan Undang-undang Dasar 1945.* Jakarta: Sekretariat Negara Republik Indonesia, 1954.
- Soekanto, Soerjono dan Sri Mamudji. *Penelitian Hukum Normatif Suatu Tinjauan Singkat.* Jakarta: Raja Grafindo Persada, 2015.



### Journal Articles

- Alfitri. "Religion and Constitutional Practices in Indonesia: How Far Should the State Intervene in the Administration of Islam?", *Asian Journal of Comparative Law*, Vol. 13, 2018, <https://doi.org/10.1017/asjcl.2018.20>
- Jumali, Endang. "Management of Hajj Funds in Indonesia". *Journal of Legal, Ethical, and Regulatory Issues*. Vol 21, no.3, 2018.
- Mamonto & Rizki Ramadani, "Kebijakan Perlindungan Jamaah Haji Khusus dan Umroh Di Sulawesi Selatan", *PETITUM*, Vol. 7, No.2, 2019. <https://doi.org/10.36090/jh.v7i2%20Oktober.650>
- Mochammad Aziz, Roikhan. "Hahslm Theory as Guidance of Straight Path in Management of Hajj and Finance", *KnE Social Science* vol. 3, no. 8, 2018. <https://doi.org/kss.v3i8.2503>
- Morris, D. (2016). Accommodating Nazi Tyranny? The Wrong Turn of the Social Democratic Legal Philosopher Gustav Radbruch After the War. *Law and History Review*, 34(3), 649-688. <https://doi.org/10.1017/S0738248016000213>
- Mubarak, M. Ali "Manajemen Pengelolaan Dana Haji Republik Indonesia (Studi Kolaborasi Antar Lembaga BPKH, Kemenag dan Mitra Keuangan dalam Pengelolaan Dana Haji", *Iltizam Journal Of Shariah Economic Research*, Vol. 2, No. 2, 2018. <https://doi.org/10.18646/2056.53.18-009>
- Muneeza, Aishaath et all, "A Comparative Study of Hajj Funds Management Institutions in Malaysia, Indonesia, and Maldives". *International Journal of Management and Applied Research* vol. 5, no.3, 2018. <https://doi.org/10.18646/2056.53.18-009>
- Primadhany, Erry Fitrya. "Tinjauan Terhadap Tanggung Jawab Badan Pengelola Keuangan Haji (BPKH) dalam Melakukan Penempatan dan/atau Investasi Keuangan Haji", *Jurisdictie: Jurnal Hukum dan Syariah* Vol. 8 No.2 Tahun 2017. <https://doi.org/10.18860/j.v8i2.4447>
- Santosa, A.A. Gede D. H. "Perbedaan Badan Hukum Publik Dan Badan Hukum Privat", *Jurnal Komunikasi Hukum (JKH)* Vol. 5, No. 2, 2019. <https://doi.org/kss.v3i8.2503>

### Regulations

Indonesia, Undang-Undang Dasar Negara Republik Indonesia Tahun 1945

\_\_\_\_\_ (1), *Undang-undang tentang Penyelenggaraan Ibadah Haji dan Umroh*, UU Nomor 8 Tahun 2019, LN. Nomor 75 Tahun 2019, TLN. Nomor 6338 Tahun 2019.

\_\_\_\_\_ (2), *Undang-undang tentang Pengelolaan Keuangan Haji*, LN. Nomor 296 Tahun 2014, TLN. Nomor 5605 Tahun 2014.

### Websites

Dinda Purnamasari, "Di Mana Saja Dana Haji Ditempatkan?", <<https://tirto.id/di-mana-saja-dana-haji-ditempatkan-ct8V>>, accessed June 22, 2022.

Donald Banjarnahor, "Investasi di Sukuk Negara Berbuah Gedung Rafah UIN Palembang", dalam <https://www.cnbcindonesia.com/news/20191010113831-4-105857/investasi-di-sukuk-negara-berbuah-gedung-rafah-uin-palembang>, accessed June 22, 2022.

**REVISI KE-1 (22 Agustus 2023)**

## Hasil Revisi



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Masyithah Mardhatillah (masyithah1)

Roqiyul Ma'arif Syam (roqiyul\_maarif86)

### Messages

Note	From
Dengan hormat,  Terlampir hasil revisi sesuai dengan catatan reviewer dan editor. Izin menyampaikan ada beberapa perubahan terkait penulis. Besar harapan naskah ini dapat diproses publish, segala kode etik dan prosedur jurnal kami akan mematuhi.  Terimakasih...	roqiyul_maarif86 2023-08-22 11:38 AM
roqiyul_maarif86, REV_Management of Hajj Funds in Indonesia; Paradigm Shifting in Islamic Legal Philosophy and State Administration.docx	

## Konfirmasi Accepted LOA



### Participants [Edit](#)

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### Messages

Note	From
Dengan hormat,  kami lampirkan LOA dan bukti pembayaran APC yang sudah kami bayar.  Terimakasih...	roqiyul_maarif86 2023-08-22 11:43 AM
roqiyul_maarif86, LoA Artikel Al-Ihkam.pdf	
roqiyul_maarif86, Bukti pembayarn APC.jpeg	roqiyul_maarif86 2023-08-22 11:48 AM

**Management of *Hajj* Funds in Indonesia; Paradigm-Shifting in Islamic Legal Philosophy and State Administration**

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**Article history:** Received: May 30, 2023, Revised: July 01, 2023; Accepted May 04, 2024,

Published: June 30, 2024

**Abstract**

This paper investigates the shift in the rechtregime of the implementation of Hajj in Indonesia in theory in state administrative law that applies in Indonesia. From a contemporary perspective, the aspect of organizing and managing Hajj funds is one of the tasks of the government which is in the domain of public affairs based on law. This paper uses a normative juridical research method with a prescriptive-explanatory presentation using interdisciplinary theory, namely state administrative law and contemporary *maqasid*. The results of this study indicate that there is a shift in the hajj regime from private to public with the red vehicle theory towards the green light theory in state administrative law where the state intervenes in the administration and management of hajj funds. Along with this shift, the organization and management of hajj funds is in line with the shift in the classical *maqasid* paradigm which is limited to protection towards contemporary *maqashid* that encourages the improvement of the general benefit.

**Keywords**

## **Introduction**

*Hajj* is the fifth pillar of Islam that must be carried out by capable Muslims whose implementation is carried out during the Hajj season every year based on the Islamic Lunar calendar. In Indonesia, the implementation of the pilgrimage has high enthusiasm in the community. The high number of registrants for each pilgrimage causes a large number of funds to accumulate and results in a waiting list for the departure of the pilgrimage. This fact has prompted the government to take the initiative to increase the value of the accumulated benefits of hajj funds by managing them. The management of Hajj funds is regulated under the Hajj Financial Management Act in the form of placements and investments by the Hajj Financial Management Agency (BPKH). However, the issue of the management of hajj funds by BPKH as part of the implementation of the hajj pilgrimage which is under the authority of the government, in the history of the republic of Indonesia has always had its controversy. The management of hajj funds should be carried out with legal certainty, security, benefit, and increasing the benefit of Muslims in particular and the Indonesian people in general. Thus, the financial management of the Hajj can be used to achieve its objectives, namely improving the quality of the implementation of the pilgrimage, the efficiency of the cost of the pilgrimage (Bipih), and the benefits for Muslims.

Indonesia is a country with a Muslim population that sends the largest hajj pilgrims almost every year. As a country which in its constitution guarantees the freedom of individuals to embrace and worship according to their respective religions and beliefs,<sup>113</sup> The government is responsible for organizing the pilgrimage for the Muslim population who will carry out the pilgrimage. One form of this guarantee is to provide guidance, service, and protection for citizens who perform the Hajj in a safe, comfortable, orderly, and following the provisions of the Shari'a.<sup>114</sup> The problem of organizing the pilgrimage has a long history since the founding of the Republic of Indonesia. The Ministry of Religion has a central role as a regulator of the implementation and management of Hajj finances.<sup>115</sup> In terms of the management of hajj funds, Law Number 17 of 1999 concerning the Organization of the Hajj, the scope of hajj funds in the form of money received from prospective hajj pilgrims is not included in the state budget, because it does not include non-tax state revenues but hajj funds are managed through a government organization. The establishment of this organ was based on the Decree of the President of the Republic of Indonesia Number 35 of 1996 jo. Presidential Decree Number 52 of 1996 concerning the Organization and Work Procedure of BPDONHI. This institution later changed its nomenclature to Ummah's Endowment Fund Management

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<sup>113</sup>This is as stated in the 1945 Constitution of the Republic of Indonesia Article 29.

<sup>114</sup> Indonesia (1), *Undang-Undang tentang Penyelenggaraan Ibadah Haji dan Umroh*, UU Nomor 8 Tahun 2019, LN. Nomor 75 Tahun 2019, TLN. Nomor 6338 Tahun 2019, konsideran.

<sup>115</sup> Rina Farihatul Jannah, "Kebijakan Penyelenggaraan Perjalanan Haji Indonesia Tahun 1945-2000", Thesis on the Postgraduate Program of the State Islamic University of Sunan Ampel Surabaya, 2018, 39-75.

Agency, *Badan Pengelola Dana Abadi Umat* (BP DAU).<sup>116</sup> This hajj fund is kept by the government as a deposit for prospective hajj pilgrims to be managed for the smooth running of hajj services. Therefore, the cost of organizing the pilgrimage is determined by the state to ensure certainty of departure to the holy land and guarantee security during the pilgrimage. In this period, the hajj funds are managed by setting aside the excess value to be stored as the Ummah's Endowment Fund, *Dana Abadi Umat* (DAU).<sup>117</sup>

As an annual ritual that uses quite a lot of money, the management of hajj funds is a financial domain that is in the area of public affairs. In addition to the problem of organizing the pilgrimage, it is also related to the relationship between the country of origin of the prospective pilgrims and the country of destination in carrying out the pilgrimage, namely Saudi Arabia. Indonesia is a country with a Muslim population that gets a large number of hajj quotas. However, the number of Hajj registrants each year the quota obtained is not sufficient for all Hajj registrants.<sup>118</sup> This has an impact on Hajj departures, which have to follow a waiting list for years. The waiting list for Hajj departure is determined by the time of registration by paying the Hajj Travel Fee (Bipih).<sup>119</sup> This Bipih deposit is part of the Hajj fund. the term hajj fund itself is formulated in terms of the Hajj Financial Management Act, including BPIH deposit funds; efficiency funds; DAU; as well as the value of benefits controlled by the state in the context of organizing the pilgrimage and implementing program activities for the benefit of Muslims.<sup>120</sup>

With a large number of registrants on the waiting list for the departure of hajj pilgrims based on Bipih deposits, there will be the accumulation of hajj funds. With the accumulation of hajj funds, the government took the initiative to manage hajj funds by placing and/or investing in the productive sector to generate value for the benefits of managing hajj funds. This is the *ratio-legis* of the establishment of the Hajj Financial Management Act. Therefore, through the Hajj Financial Management Act, a special financial institution that has the

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<sup>116</sup> Muhammad M. Basyuni, *Reformasi Manajemen Haji*, (Jakarta: FDK Press, 2008), 83-85.

<sup>117</sup> Inti Ulfi Solichah, "Hukum Investasi Produktif dalam Pengelolaan Dana Haji (Perspektif Hukum Ekonomi Syariah)", Thesis on the Masters Program in Islamic Economic Law, Faculty of Sharia, Syarif Hidayatullah State Islamic University, Jakarta, 2018, 41.

<sup>118</sup> The number of Hajj registrants in 2019 reached 710,000 pilgrims, exceeding the target of 650,000 pilgrims. See Faidah Umu Sofuroh, Lampau Target, Pendaftar Haji 2019 Capai 710 Ribu Jemaah, < <https://news.detik.com/berita/d-4836697/lampau-target-pendaftar-haji-2019-capai-710-ribu-jemaah>>, accessed March 8, 2021.

<sup>119</sup> Indonesia (1), *Undang-Undang tentang Penyelenggaraan Ibadah Haji dan Umroh*, Pasal 5 Ayat (1).

<sup>120</sup> Indonesia (2), *Undang-Undang tentang Pengelolaan Keuangan Haji*, UU Nomor 34 Tahun 2014, LN. Nomor 5605 Tahun 2014, Pasal 1 Ayat (2).

authority to manage Hajj funds was established, namely the Hajj Financial Management Agency, *Badan Pengelola Keuangan Haji* (BPKH).<sup>121</sup>

The financial management of Hajj by the state, in this case through the BPKH institution, is interesting to study in an interdisciplinary manner, from the application aspect of *maqasid* theory as a philosophy of Islamic law and the aspect of its authority according to the constitution and administrative legislation in the perspective of state administrative law. *Maqasid* as a philosophy of Islamic law refers to the understanding given by Jasser Auda by quoting the views of Ibn al-Qayyim, to define Islamic law with the Arabic term 'shari'ah', which means: "... prosperity in this world and the hereafter. Shari'ah means everything including justice, forgiveness, wisdom, and goodness. Therefore, all regulations that contradict these matters are not sharia, even if it is claimed to refer to several interpretations (of the scholars)".<sup>122</sup>

The *maqasid* view above is in line with the concept of the welfare state which is the legal ideal contained in the preamble to the Indonesian constitution. Therefore, the state in Article 29 of the Indonesian Constitution acts as a protector, and guarantor of individual freedom of religion, and freedom of worship and plays an important role in implementing good governance in the management of hajj funds. In addition, the management of hajj funds following their objectives is also important to discuss considering the large number of hajj funds managed by BPKH so as not to deviate from the initial goal of financing the pilgrimage. Policies regarding the management of hajj funds should be in line with the philosophical foundations of Islamic law, in this case, *maqasid*, and not conflict with the principles of legal certainty, benefit to the community, and good public services. The government's policy for managing Hajj finances should be based on rational considerations of the principles of certainty, fairness, and benefit,<sup>123</sup> and has a basis for the state. Thus, the policies made by the government can create general welfare for the community in line with the objectives of the founding of the Republic of Indonesia.

Research on the management of hajj funds has been done by many previous researchers. Some of these studies include, Thesis by Rina Farihatul Jannah at the Postgraduate of the State Islamic University of Sunan Ampel.<sup>124</sup> Then Erry Fitria Primardhani's work on the responsibility of BPKH in Hajj financial investment,<sup>125</sup> Roikhan Muhammad Azis,<sup>126</sup> and

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121 Erry Fitrya Primadhany, "Tinjauan Terhadap Tanggung Jawab Badan Pengelola Keuangan Haji (BPKH) dalam Melakukan Penempatan dan/atau Investasi Keuangan Haji", *Jurisdictie: Jurnal Hukum dan Syariah* Vol. 8 No.2 Tahun 2017, 126-127. <https://doi.org/10.18860/j.v8i2.4447>

122 Jasser Auda, "*Maqasid al-Shariah as Philosophy of Islamic Law: A System Approach*". The International Institute of Islamic Thought, London, UK, 2007.

123 D. Morris, (2016). Accommodating Nazi Tyranny? The Wrong Turn of the Social Democratic Legal Philosopher Gustav Radbruch After the War. *Law and History Review*, 34(3), 649-688. <https://doi.org/10.1017/S0738248016000213>

124 Rina Farihatul Jannah, *Kebijakan Penyelenggaraan*, 2018.

125 Erry Fitrya Primadhany, *Tinjauan Terhadap Tanggung Jawab*, 125.

126 Roikhan Mochammad Aziz, "Hahslm Theory as Guidance of Straight Path in Management of Hajj and Finance", (*KnE Social Science* vol. 3, no. 8, 2018), 105-120. <https://doi.org/kss.v3i8.2503>

Endang Jumali.<sup>127</sup> Another article is the work of Aishath Muneeza and friends related to the comparison of the financial management of Hajj in Indonesia, Malaysia, and Maldives.<sup>128</sup> In addition to this research, M. Ali Mubarak's paper.<sup>129</sup> Among the studies mentioned above, there has been no discussion on the management of hajj funds in terms of constitutional and administration law theory and *maqashid al-syari'ah*. Therefore, this study will focus on the issue of how to regulate the implementation of hajj and the management of hajj funds in Indonesia in the perspective of state administrative law and *maqasid al-shari'ah* and how to shift the paradigm of hajj fund management from the perspective of state administrative law and *maqasid al-shari'ah*. . By describing the two main issues, this research has the relevance of the novelty element that deserves to be discussed.

## Methods

This paper uses a normative juridical research method. Namely, legal research based on legal rules or norms contained in legislation. While the data used in this study is secondary data,<sup>130</sup> with three legal materials, namely primary legal materials, secondary legal materials and tertiary legal materials. The approach used in this research is the statutory approach, namely by linking existing legal norms with other legal norms in the laws and regulations that are used as data sources. Thus, it can be understood whether Law Number 34 of 2014 concerning Hajj Financial Management is in accordance with the objectives of managing Hajj funds. In addition, this paper also uses a theoretical approach, namely the theory of state administrative law and *maqasid al-syariah*. The results of this study are presented in writing in an analytical explanatory form. Namely, delivered by explaining and outlining the state's authority in managing Hajj funds from the perspective of state administrative law and *maqasid al-Shariah*.

## Result and Discussion

### Regulations for the Implementation of Hajj in Indonesia according to History

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<sup>127</sup> Endang Jumali, "Management of Hajj Funds in Indonesia" (*Journal of Legal, Ethical, and Regulatory Issues*, Vol 21, no.3, 2018), 1-9.

<sup>128</sup> Aishaath Muneeza et al, "A Comparative Study of Hajj Funds Management Institutions in Malaysia, Indonesia, and Maldives". (*International Journal of Management and Applied Research* vol. 5, no.3, 2018), hlm. 1-15. <https://doi.org/10.18646/2056.53.18-009>

<sup>129</sup> M. Ali Mubarak, *Manajemen Pengelolaan Dana Haji Republik Indonesia (Studi Kolaborasi Antar Lembaga BPKH, Kemenag dan Mitra Keuangan dalam Pengelolaan Dana Haji)*, (*Iltizam Journal Of Shariah Economic Research*, Vol. 2, No. 2, 2018), 67-86. <https://doi.org/10.18646/2056.53.18-009>

<sup>130</sup> Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, (Jakarta: Raja Grafindo Persada, 2015), hlm. 33.



The implementation of Hajj in Indonesia has a long history of policy or regulatory aspects that govern it. Meanwhile, before the founding of the Republic of Indonesia, Muslims made pilgrimages to the holy land of Saudi Arabia. At the time the Islamic empire was established in the archipelago, there were no special regulations regarding the implementation of the pilgrimage that bound its citizens. Only after the Dutch colonial government came to power did the pilgrimage have regulations in the form of written positive law.<sup>131</sup>

After the proclamation of the independence of the Republic of Indonesia, especially during the New Order era, the regulations for organizing hajj based on the 1922 Pelgrims Ordonantie Saatsblaads and 1938 Pelgrims Verordening made by the Dutch colonial government have not been revoked but have been revised in the form of other regulations in the form of Regulations or Decrees of the President of the Republic of Indonesia.<sup>132</sup> In this era, the implementation of the pilgrimage, both in terms of financial management and implementation, is under the authority of the government through the Ministry of Religion of the Republic of Indonesia, whose technical implementation is left to the Director General of Hajj Affairs in collaboration with private agents.

In the reform era, many regulatory changes have been made by the government in organizing the Hajj in the form of regulations, including 1) Law Number 17 of 1999 concerning the Organization of the Hajj; 2) Law of the Republic of Indonesia Number 13 of 2008 concerning the Organization of the Hajj; 3) Law of the Republic of Indonesia Number 34 of 2009 concerning Stipulation of Government Regulation in place of Law Number 2 of 2009 concerning Amendments to Law Number 13 of 2008 on the Organization of the Hajj into Law; and 4) Law of the Republic of Indonesia Number 8 of 2019 concerning the Implementation of Hajj and Umrah. The enactment of Law Number 8 of 2019 concerning the Implementation of Hajj and Umrah Services and at the same time revoking the previous Law. In addition, before this regulation was made, the government separated the aspects of managing Hajj funds from aspects of organizing the Hajj. Aspects of the management of Hajj funds are regulated through Presidential Decree No. 22 of 2001 concerning the BP DAU.<sup>133</sup> However, due to several misappropriations of Hajj funds managed by BP DAU, an initiative emerged from the government by issuing a policy that became the basis for the establishment of an institution that specifically manages Hajj funds through Law Number 34 of 2004 concerning Hajj Financial Management. Through the law, the government established the BPKH which has the task of managing Hajj finances.<sup>134</sup> Since then the financial management of Hajj has its regulations and institutions that are separate from the Ministry of Religion. To summarize the discussion on the management of hajj funds in Indonesia, below is a table based on the timeline for the development of hajj fund management in Indonesia:

**Table 1. Developments in the Implementation and Management of Hajj Funds in Indonesia**

Year	Progress
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<sup>131</sup> Rina Farihatul Jannah, *Kebijakan Penyelenggaraan*, 23-38.

<sup>132</sup> Ajeng Dewi P. S., "Tanggungjawab Yuridis Kementerian Agama Dalam Pelaksanaan Ibadah Haji", Thesis on the Masters Program in Law, Faculty of Law, Islamic University of Indonesia, Yogyakarta, 2015, 25-26.

<sup>133</sup> The Presidential Decree is a substitute for Presidential Decree No. 35/1996 concerning the Indonesian Hajj Riding Fee Fund Management Agency.

<sup>134</sup> Indonesia (2), *Undang-undang tentang Pengelolaan Keuangan Haji*, UU Nomor 34 Tahun 2014, LN. Nomor 296 Tahun 2014, TLN. Nomor 5605 Tahun 2014 Pasal 22.

- 1920 The implementation of the Hajj is carried out by providing facilities for the pilgrims by the Dutch East Indies Government
- 1948 The beginning of the implementation of Hajj by the Government of Indonesia with official cooperation with the Kingdom of Saudi Arabia
- 1951 The issuance of Presidential Decree No. 53 of 1951 to stop the private sector from being involved in organizing the hajj
- 1964 The implementation of Hajj is carried out by the government through the Director General of Hajj Affairs
- 1969 The administration of hajj trips is taken over by the government
- 1999 For the first time, the Policy regarding the Implementation of Hajj was enacted, namely Law Number 17 of 1999 concerning the Implementation of the Hajj
- 2001 Presidential Decree No. 22 of 2001 concerning BP DAU
- 2014 Law Number 34 of 2014 concerning Hajj Financial Management, the establishment of BPKH
- 2017 Presidential Regulation Number 110 of 2017 concerning the Hajj Financial Management Agency (BPKH)
- 2019 Law Number 8 of 2019 concerning the Implementation of the Hajj and Umrah Services as well as revoking Law Number 17 of 1999 concerning the Implementation of the Hajj

Source: compiled by the author

From the table above, it can be seen that since the first half of the 20th century when Indonesia was still colonized by the Dutch East Indies government, the problem of organizing the pilgrimage which is a religious obligation for Muslims has been regulated by the state. Although only limited to administrative facilitation, the state is not entirely secular, nor does it let go of its hands to interfere in the religious life of its citizens. And this, in organizing the Hajj, continues to be carried out until now with various regulatory changes towards a state administration system that is compatible with the concept of a welfare state.

### **Religion is No Longer a *Res Privata*: Hajj in Public *Rechtregiem***

The division of legal system from the aspect of its power environment is divided into two, namely the public legal environment and the private legal environment, which has occurred since the 2nd century AD. A Roman legal expert, Ulpianus provides an understanding that distinguishes the two. He said "*Publicum ius est, quod ad statum rei romanae spectat, privatum quod ad singulorum utilitatem*", which means that public law is a rule related to the welfare of the Roman state, while private law is a rule related to family relations. The effect of this distinction is felt to this day in every

legal system in various countries which separates the environment of public attorneys and private lawyers, and Indonesia is no exception. This distinction also leads us to an understanding of the existence of the government in conducting legal intercourse (*rechtsverkeer*).<sup>135</sup>

Since the state of Indonesia was proclaimed in 1945, the constitution has not been based on any particular religion, even though Islam is the religion that is predominantly adopted by citizens. However, Pancasila is a legal ideal that in the opening of the 1945 Constitution is a *rechtsidee* or guiding star for the formation of regulations in the Indonesian state. Thus, the purpose of establishing positive law in Indonesia is to achieve the thoughts contained in Pancasila, which is also useful as a tested stone for positive law.<sup>136</sup> Therefore, the first principle of Pancasila, namely Belief in the One and Only God, is the legal ideal of the Indonesian state which recognizes religion in national legal association (*rechtsverkeer*).<sup>137</sup>

Thus, the state does not completely disengage from the religious affairs of its citizens, which in the doctrine of secularism, religious affairs are private matters, not public affairs. In this case, the state plays a formal role in administrative law through the Ministry of Religion, which was established on January 3, 1946. This ministry does not only deal with the religious affairs of Muslims but also five other religions recognized by the state. To accommodate the religious affairs of its citizens administratively, positive law in Indonesia has adopted sharia since the era of the Dutch colonial government in power, in the form of several elements of Islamic jurisprudence which concentrate on marriage, divorce, inheritance, endowments, grants in the practice of religious courts. No exception in organizing hajj and umrah, the government plays a role in carrying out administrative and bureaucratic legal actions.

For the government, the pilgrimage is a national endeavor considering the large number of pilgrims who depart every hajj season. This means that the government must coordinate and cooperate with several agents, both government agencies and private agents in the country and abroad to organize several aspects of the implementation of the pilgrimage. Among the national tasks are transportation, accommodation, health, and security for pilgrims. Moreover, the implementation of Hajj for the Indonesian government is not limited to services for citizens who are Muslim but also involves foreign relations with Saudi Arabia as the destination country for the pilgrimage. Thus, the government needs to continue to improve the quality of the implementation of the pilgrimage effectively. To achieve this goal, the government needs regulations as the legal basis for organizing the pilgrimage. The existence of regulations or policies as a legal umbrella to carry out the task of organizing the pilgrimage by this state is based on the doctrine of Indonesia as a state of the law as stated in the 1945 Constitution.

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<sup>135</sup> Ridwan HR, *Hukum Administrasi Negara Edisi Revisi*, (Jakarta: Rajawali Press, 2013), 69.

<sup>136</sup> Jimly Asshidiqie, *Pancasila: Identitas Konstitusi Berbangsa dan Bernegara* (Jakarta: Sinar Grafika, 2020), 11.

<sup>137</sup> Alfitri, "Religion and Constitutional Practices in Indonesia: How Far Should the State Intervene in the Administration of Islam?", *Asian Journal of Comparative Law*, 13 (2018), 389-390. <https://doi.org/10.1017/asjcl.2018.20>

### State Intervention in Religious Affairs through Administrative Law

As a country that adheres to the concept of the welfare state to establish the state as stated in the fourth paragraph of the preamble of the constitution, the Republic of Indonesia has the authority to make arrangements and provide facilities for all aspects of the lives of its citizens, including the implementation of the pilgrimage for Muslim citizens. The authority and role of the state in all aspects of the lives of its citizens are expanding along with the development of history and law. Carol Harlow and Richard Rowling argue that this role is related to a theoretical view which in the context of state administrative law theory is called redlight theory. The view of redlight theory assumes that the authority and role of state administration are limited to law enforcement and public order, which is also known as the 'night watch state' or *nachtwacherstaat*. In this view, state administrative law functions to prevent violations by the state of human rights. Therefore, the red light theory emphasizes the balance of power by supporting a strong judiciary to control executive power. The thinking behind the red light theory is the Laissez Faire State which has the idea of the best government is the least government. This view assumes that the authority and role of state administration should be made as simple as possible so that the structure of state administration is very small.

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The adoption of the concept of the welfare state by the Indonesian state has resulted in the expanding authority and role of state administration in people's lives. In this case, state administrative law provides facilities for the enlargement of the state's role in providing welfare for its citizens. State administration has a role not only as a tool for law and order enforcement but also as a tool to achieve public welfare in various sectors of life, including the religious sector, which in this case is the implementation of the pilgrimage. The great role of state authority and state administration is facilitated theoretically by a view that contradicts the red light theory as stated above, namely the green light theory.<sup>139</sup> State administration becomes a vehicle to facilitate every aspect of citizens' lives, to achieve political progress and the realization of an "administrative state". This view assumes that state administrative law has broad powers and roles and must be proactive in various fields of people's lives.<sup>140</sup> As a result, the state's administrative structure became fatter and more hierarchical.

In addition, in contrast to the red light theory which prioritizes the judiciary in a country, the green light theory tends to the development of democracy and political accountability of the government. Therefore, community participation is a prerequisite for the formation of state administration following the view of the green light theory. From the view of the green light theory adopted in the legal system of the Republic of Indonesia, it can be understood that the state has broad authority covering aspects of the lives of citizens in the

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138 Carol Harlow and Richrad Rowlings, *Law and Administration* (London: Butterwoths, 1997), 29 dalam Tri Hayati, "Perizinan Pertambangan di Era Reformasi Pemerintahan Daerah Studi tentang Perizinan Pertambangan Timah di Pulau Bangka", Disertasi Pada Program Studi Doktor Ilmu Hukum Program Pascasarjana Fakultas Hukum Universitas Indonesia, 2011. 38-39.

139 Carol Harlow dan Richard Rawlings, *Law and Administration, Third Edition*, (New York: Cambridge University Press, 2009), 31.

140 Carol Harlow dan Richard Rawlings, *Law and Administration*, 32.

field of religion, namely the implementation of the pilgrimage. The theoretical view that has influenced the development of state administrative law that adheres to green light theory is Léon Duguit's thought. Duguit's view is based on the idea of a socialistic state in which a strong government is a necessity and therefore its duties go far beyond the fields of law, order, justice, and defense. He believes in the idea of a collectivist state whose function is to provide public services. This he defined as "any activity that must be regulated by the government" and controlled because it is indispensable for the realization and development of social solidarity as long as it cannot be realized without the intervention of the government.<sup>141</sup> Of course, included in the activities that must be regulated by the government is the implementation of the pilgrimage, because, without government intervention, the pilgrimage for its citizens cannot be carried out because it is related to foreign relations between the country of origin of the pilgrims in this case Indonesia and the destination country, namely Saudi Arabia.

Based on the spirit of the welfare state, which is supported by the green light theory above, the state has the authority and role of administration in organizing the pilgrimage. Although there are models of organizing the pilgrimage that is carried out by private parties, when compared to other organizations, according to Gerald Caiden, the role of the state in administration has a specificity.<sup>142</sup> First, the state administration is unavoidable. Second, the state administration has a legal monopoly of coercive power which inevitably applies binding and can be coercive. Third, the priority of community activities. Fourth, the role of the state administratively provides services for every citizen. Fifth, the state is directly responsible to its political leadership, because the top leadership is a political institution. Therefore, it can be understood that the regulation of the implementation of Hajj, after all, is the authority of the state, in this case, the government.

From an organizational point of view, the implementation of the pilgrimage is based on four alternative principles as recognized in state administrative law, including:<sup>143</sup> first, the objectives to be achieved, namely the Ministry of Religion which carries out government functions in the religious sector; second, the group served, namely citizens who want to perform Hajj; third, the process carried out, namely the implementation of the pilgrimage which includes planning, budgeting, implementation, evaluation, and supervision; fourth, the geographical area covered, namely the territory of the state of Indonesia.

With this understanding, the state's authority in organizing the pilgrimage can be understood based on the view of state law in the field of administration that it adheres to, namely the green light theory above. This authority, even from Duguit's point of view, is a duty or obligation of the government in the form of public services. As a result, the view that considers the private affairs of citizens, namely religion, should not be managed by the state, becomes irrelevant. With the adoption of the green light theory, the state has a theoretical

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<sup>141</sup> Carol Harlow dan Richard Rawlings, *Law and Administration*, 33-34.

<sup>142</sup> Gerald E. Caiden, *The Dynamics of Public Administrations in Theory and Practice* (New York: Holt, Reinhart and Winston, Inc., 1971), 6.

<sup>143</sup> Tri Hayati, "Perizinan Pertambangan di Era Reformasi Pemerintahan Daerah Studi tentang Perizinan Pertambangan Timah di Pulau Bangka", 40.

basis for its administrative authority to carry out the implementation of hajj activities carried out by state organizations or institutions, namely the Ministry of Religion.

### **Parallellity of *Maqasid* Paradigm and State Administration Shifting**

In the study of classical Islamic law, *maqasid al-shari'ah* is easily understood as the universal goal of enactment of a law. protection. However, in its development, Jasser Auda compiled a Contemporary Conception of *Maqashid* which is an evolution of classical *maqasid al-shari'ah* theories and concepts; namely: (1). Keeping Descendants (*hifdz al-Nasl*) is a theory-oriented to family protection; more concern for family institutions; (2) Maintaining Intellect (*hifz al-Aql*) to multiplying the mindset and scientific research; prioritize travel to seek knowledge; suppress the mindset that prioritizes the criminality of the mob; avoiding attempts to underestimate the workings of the brain; (3) Maintaining honor; keep the soul (*hifdz al-'Irdh*) to maintain and protect human dignity; safeguard and protect human rights; (4) Protecting religion (*hifdz al-Diin*) is protecting, and respecting freedom of religion or belief, and (5) Protecting property (*hifdz al-Maal*) is prioritizing social care; pay attention to economic development and development; promote human well-being; eliminate the gap between rich and poor.

There is a paradigm shift and the classical *maqasid al-shari'ah* theory to the contemporary *maqasid al-shari'ah* theory. The change lies in the pressure point of both. The emphasis of classical *maqasid al-shari'ah* is more on protection and preservation, while contemporary *maqasid al-shari'ah* theory emphasizes development and rights. In an effort to develop the contemporary *maqasid al-shari'ah* concept, Jasser Auda proposes human development as the main target form of contemporary public interest; This *maslahah* should be the target of *maqasid al-shari'ah* to be realized through Islamic law. Furthermore, the realization of this contemporary *maqasid al-shari'ah* can be achieved empirically through human development targets.<sup>144</sup>

Parallel with the *maqasid* paradigm shifting is the shift in the role of the state administratively, which originally played a minimum role in protecting and protecting citizens, to a maximum by interfering in the private affairs of its citizens, such as religious affairs in this case the pilgrimage discussed in this paper. Along with the times, the modern world state as a subject of public law adopts laws that are increasingly facilitative in every aspect of the lives of their citizens. Regulations made by the state as authorized legal subjects are increasingly complex touching the joints of the lives of its citizens. In the context of Indonesia, in line with the purpose of the founding of the state, the ideals of a welfare state make the authority and role of state administration grow.

Behind every theory of administrative law, there is a discussion of the state. country. According to Harold Laski, as quoted by Carol Harlow and Richard Rowlings, constitutional law cannot be understood except as the expression of an economic system designed to function as a bulwark. <sup>145</sup> This, according to Carol Harlow and Richard Rawlings, means that the government machine is an

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<sup>144</sup>Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law: A System Approach* (London: The International Institute of Islamic Thought, 2007), 248.

<sup>145</sup> Harold Laski, *A grammar of Politics* (London: Allen and Unwin, 1925), 578.

expression of the society in which it operates; something that cannot be understood except when viewed from another context.<sup>146</sup>

By the end of the nineteenth century in England, all major political parties had for practical purposes abandoned the ideal of limited government, and accepted the need for intervention. The old conception of government as minimal and static has been swept away by a new conception of government which is "collectivism" in Dicey's view. As Dicey calls it, socialist theory supports State intervention for the purpose of providing benefits to society.<sup>147</sup> In his essay entitled "Introduction to the Law of the Constitution" published in 1885, Dicey as stated by Carol Harol and Richard Rawlings, argues that the ideal type of constitution is a balance with broad authority in the executive field although, on the one hand, it will be subject to political control by parliament, on the other hand, to submit to legal control through law by the courts.<sup>148</sup>

In this case, the law of State Administration facilitates the enlargement of the role of state administration in people's lives. State administration plays a role no longer only as control of power, as the red light theory views,<sup>149</sup> but rather as the state regulation in realizing the welfare of society. The broad role of state administration is supported by a theory in state administrative law, namely the green light theory.<sup>150</sup> This theory views the role and authority of state administration which is very broad covering various aspects of citizens' lives, of course including in terms of religion and belief, in this case, the implementation of Hajj for Muslims. With the spirit of the welfare state and the view of the greenlight theory, it is a necessity for the Republic of Indonesia through its constitution to regulate the guarantee of freedom of religion and worship according to the respective beliefs of its citizens. The constitution as the foundation of the legal system of the Republic of Indonesia regulates religious life. Although the 1945 Constitution has been amended four times, the basic norms regarding the guarantee of religious freedom are still maintained. Thus, in drafting legal regulations regarding religion, the constitution explicitly provides a legal foundation for this matter.

The regulation regarding the guarantee of religious freedom is regulated in Article 29 Paragraph (2) of the 1945 Constitution. The article reads: "The state guarantees the independence of each resident to embrace their own religion and to worship according to their religion and beliefs". The sound of this article of the constitution later became a source of law as well as the basis for the state to use its authority in organizing the pilgrimage, which also includes the management of hajj funds which are regulated through regulations relating to these matters.

### **Constitution, Islam, and Hajj in Indonesia**

As a modern legal state, Indonesia has a constitutional foundation, namely the 1945 Constitution which in its preamble includes the purpose of the state and the affirmation of Pancasila as the state's foundation, or called the *staatsfundamentalnorm*. *Staatsfundamentalnorm* is the basic norm or legal foundation for the formation of the constitution or constitution (*staatsverfassung*) of a country. Recondition from a *Staatsfundamentalnorm* is a condition for

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<sup>146</sup> Carol Harlow dan Richard Rawlings, *Law and Administration, Third Edition* (New York: Cambridge University Press, 2009), 1.

<sup>147</sup> Carol Harlow dan Richard Rawling, *Law and Administration, Thied Edition*, (New York: Cambridge University Press, 2009), 2-3.

<sup>148</sup> Martin Loughlin, *Public Law and Political Theory* (Oxford Clarendon Press, 1992), 62.

<sup>149</sup> This red light theory view views state administrative law as an instrument for the control of power and the protection of individual freedom, the emphasis is on the courts, not the government. See Carol Harlow dan Richard Rawlings, *Law and Administration, Third Edition*, (New York: Cambridge University Press, 2009), 31.

<sup>150</sup> Carol Harlow dan Richard Rawlings, *Law and Administration, Third Edition*, (New York: Cambridge University Press, 2009), 31.

the validity of the constitution. This *Staatsfundamentalnorm* exists before the constitution of the country itself.<sup>151</sup>

When Sukarno introduced Pancasila before the constitution was drafted, he emphasized that 'divinity' would not only make Indonesia a 'nation that believes in God but also that 'every Indonesian must have God' and that every citizen should be free to worship according to his or her religion or each other's beliefs.<sup>152</sup> This explanation of what is contained in Pancasila is also largely consistent with most scientific interpretations. Butt and Lindsey, for example, argue that the basic principles of the Indonesian state force the state to protect religious freedom, encourage the exercise of faith and give the state a role in religious affairs.<sup>153</sup> For this reason, they argue that Indonesia is not a fully secular state.

A similar view is expressed by scholars such as Intan and Hosen who argue that the primacy of religion in the public sphere means that Indonesia is neither secular nor theocratic.<sup>154</sup> Although there are also many views that contradict the views above, the scientific and political interpretations described above stipulate that Pancasila is the principle of religious freedom and pluralism, provides the basis for an interventionist role for the state in religious matters and does not elevate one religion over another. The nature of Pancasila, however, is challenged and opposed when it comes to the implementation of state policies. In this regard, Hefner suggested that the problem was rooted in the fact that Pancasila did not specify which religious doctrines or beliefs would fall under the principle of 'belief' in the one and only God and that it did not regulate 'how the government should intervene in the religious sphere to make a decision like that.<sup>155</sup> This prompted a problem that later arose, namely regarding the extent of state intervention when Pancasila became the most basic norm in the Indonesian constitution that allowed the state to play a role in encouraging and facilitating religion.

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151 Fitriani Ahlan Syarif (Ed.), *Aradhana Sang Guru Perundang-undangan; Kumpulan Tulisan Memperingati Ulang Tahun Ke-70 Prof. Dr. Maria Farida Indrati, S.H., M.H.* (Depok: Badan Penerbit Fakultas Hukum Universitas Indonesia, 2019), 283.

152 Sekretariat Negara Republik Indonesia, *Himpunan Risalah Sidang-sidang dari Badan Penyelidik Usaha Persiapan Kemerdekaan Indonesia (BPUPKI) (Tanggal 29 Mei 1945–16 Juli 1945) dan Panitia Persiapan Kemerdekaan Indonesia (PPKI) (Tanggal 18 dan 19 Agustus 1945) Yang Berhubungan Dengan Penyusunan Undang-undang Dasar 1945*, (Jakarta: Sekretariat Negara Republik Indonesia, 1954), 73.

153 Simon Butt dan Tim Lindsey, *The Constitution of Indonesia: A Contextual Analysis* (Oxford and Portland, OR: Hart Publishing, 2012), 13.

154 Benyamin Fleming Intan, "Public Religion" and the Pancasila-Based State of Indonesia: An Ethical and Sociological Analysis (New York: Peter Lang, 2006), 18. See Nadirsyah Hosen, *Shari'a & Constitutional Reform in Indonesia* (Singapore: Institute of Southeast Asian Studies, 2007), 229.

155 Robert W. Hefner, 'Where Have All the Abangan Gone? Religionization and the Decline of Non-Standard Islam in Contemporary Indonesia' in Michel Picard and Rémy Madinier (eds.), *Politics of Religion in Indonesia: Syncretism, Orthodoxy, and Religious Contention in Java and Bali* (Abingdon, Oxon and New York: Routledge, 2011), 85.



In this case, socially and politically the dominant religion, Islam, has privileges in terms of state administration which can be said to be the goal of the Pancasila formulation as aspired by the founding fathers. This is inevitable in a context where the state has a role in facilitating religion in public life and where more than 80 percent of the population is Muslim. As a result, the Ministry of Religion in 1946 –was a kind of compensation to the Islam-oriented factions.<sup>156</sup>

As is known, one of the teachings in Islam is the obligation to perform the pilgrimage. In this case, the state has the authority based on Article 29 Paragraph (2) of the 1945 Constitution as a manifestation of the *rechtsidee* of the First Principles of Pancasila. In the formulation of the articles of the constitution, the state is to provide guarantees of independence for every citizen to embrace their respective religions. This includes guarantees to worship for religious adherents according to their respective religions and beliefs. The formulation of the articles in the Indonesian constitution is based on the first principle of Pancasila, namely Belief in One Supreme God. In the implementation of Article 29 Paragraph (2) of the 1945th Constitution. Among the constitutional guarantees are state guarantees as mentioned above, namely the state's obligation to provide facilities and services for its citizens who want to perform the pilgrimage.<sup>157</sup> This basis is a source of state authority in the form of attribution of constitutional authority granted by the 1945 Constitution to the government in organizing the pilgrimage.

In connection with the above, citizens carrying out worship have various aspects of worship that must be guaranteed by the state as a form of state facilities and services in the field of religion to its citizens. These aspects include the dimensions of trust, the provision of facilities, the availability of worship infrastructure, how to worship, the time of worship, places of worship, and procedures for carrying out the worship. <sup>158</sup> Therefore, in terms of organizing the pilgrimage, the state is obliged to guarantee various aspects surrounding the implementation of the pilgrimage for its citizens. Since the preparation before departure, on the way, during the pilgrimage, until return to the homeland. Based on the understanding of Article 29 Paragraph (2) above, the state's authority in the matter of implementing the Hajj and Umrah pilgrimages for Muslims is a relevant and sufficient reason for the state to make arrangements. The authority to make this regulation aims to carry out the mandate of Article 29 Paragraph (2) of the 1945 Constitution, namely state guarantees for every religious believer to worship according to their respective religions and beliefs. And in this case, state guarantees for all aspects of the implementation of the pilgrimage as well as financial management.

As stated above, the reach of the state in order to facilitate the religious aspects of citizens is through the form of administration prepared by the state. In this case, the Ministry

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<sup>156</sup> See Nadirsyah Hosen, *Shari'a & Constitutional Reform in Indonesia*, 229.

<sup>157</sup> Indonesia (1), *Undang-undang tentang Penyelenggaraan Ibadah Haji dan Umroh*, UU Nomor 8 Tahun 2019, LN. Nomor 75 Tahun 2019, TLN. Nomor 6338 Tahun 2019, konsideran.

<sup>158</sup> Mamonto & Rizki Ramadani, "Kebijakan Perlindungan Jamaah Haji Khusus dan Umroh Di Sulawesi Selatan", *PETITUM*, Vol. 7, No.2, 2019, 86-88. <https://doi.org/10.36090/jh.v7i2%20Oktober.650>

of Religion plays a central role in the affairs of the pilgrimage. This ministry was established at the beginning of independence. The task as formulated by Wahid Hasyim who was the first minister was to ensure that everyone is free to profess and worship according to his own religion and beliefs and 'to assist, support, protect and promote the aspirations of religious movements. The ministry has local offices and personnel throughout the country, even down to the village level, and has the authority to regulate matters such as marriage, religious education, courts and pilgrimages, and others.<sup>159</sup>

### **Efforts to realize *maslahah*: Investment and Optimization of Hajj Funds in Today's Indonesia**

The economic aspect of organizing the pilgrimage certainly gets the attention of economic actors in Indonesia and Saudi Arabia. The implementation of the pilgrimage that provides a stimulus to the economy, both in the micro and macro scope, is used as the basis for the financial management of the pilgrimage, which amounts to trillions of rupiah in the form of investment. The investment of hajj funds by BPKH based on the Hajj Financial Management Act can be described, as the number of prospective Indonesian pilgrims who departed in 2015 was 154,455 people. Each congregation is assumed to pay IDR 20 million, so the total funds from the congregation will reach IDR 3.09 trillion. Meanwhile, the number of pilgrims on the waiting list reached more than 1 million people. You can imagine the large number of hajj funds that come from the accumulated congregation. Thus, considering the size of the Hajj funds, on April 22, 2009, based on the MoU agreed by the Ministry of Finance and the Ministry of Religion, the placement of Hajj funds and the Ummah's Endowment Fund was allocated to State Sharia Securities, *Surat Berharga Syariah Negara* (SBSN).<sup>160</sup> by way of the private placement.<sup>161</sup> The securities are the Indonesian Hajj Fund Sukuk, *Sukuk Dana Haji Indonesia* (SDHI). Until January 12, 2017, the outstanding SDHI reached a value of IDR 36.7 trillion.<sup>162</sup> Meanwhile, investment in Hajj funds in 2010 based on data obtained from the Ministry of Religion, the investment allocation in the form of Sukuk amounted to Rp 12 trillion. An increase in investment allocation to IDR 31.1 trillion occurred in 2013. Investment allocation in Sukuk was IDR 35.83 trillion in 2015.<sup>163</sup>

Hajj fund investment in Sukuk has actually been carried out since 2010. Based on the decision of the Chairman of the Capital Market and Financial Institutions Supervisory Agency (Bapepam-LK) Number KEP-181/BL/2009, the definition of Sukuk is Sharia securities in the form of certificates or proof of ownership of the same value and represents an inseparable or undivided part of the investment: (i) ownership of certain tangible assets, (ii) value of benefits and services for certain project assets or certain investment activities, (iii) ownership of certain project assets or certain

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<sup>159</sup> Arskal Salim, *Challenging the Secular State: The Islamization of Law in Modern Indonesia* (Honolulu: University of Hawai'i Press, 2008), 71.

<sup>160</sup> Indonesia (7), *Undang-Undang tentang Surat Berharga Syariah Negara*, UU Nomor 19 Tahun 2008, LN. Nomor 70 Tahun 2008, TLN. Nomor 4852 Tahun 2008, Pasal 1 Ayat (1)

<sup>161</sup> *Private placement* is the placement of shares by yourself with the mechanism of issuing new shares without going through the regular mechanism in the stock market. See "Apa Itu Private Placement?" dalam < <https://www.wartaekonomi.co.id/read226085/apa-itu-private-placement.html>> accessed 22 November 2021.

<sup>162</sup> Dinda Purnamasari, "Di Mana Saja Dana Haji Ditempatkan?", < <https://tirto.id/di-mana-saja-dana-haji-ditempatkan-ct8V>>, accessed June 22, 2022.

<sup>163</sup> Inti Ulfi Solichah, *Hukum Investasi Produktif*, 105.

investment activities. Meanwhile, based on the sharia standards of The Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) No. 17 concerning Investment Sukuk, Sukuk has the meaning of a certificate of equal value which is evidence of an unshared share of ownership of an asset, rights to benefits and services, or ownership of a particular project or investment activity.<sup>164</sup>

Meanwhile, SDHI is issued using a form of transaction or contract called Ijarah al-Khadamat. The form of contract is a form of contract development based on the DSN-MUI Fatwa Number 9/2000 concerning Ijarah Financing. Thus, the MUI fatwa became one of the grounds for allowing Sukuk transactions with the Ijarah Al-Khadamat contract. The purposes of the Sukuk transactions include: 1) as a source of funding to finance the pilgrimage other than the cost of the pilgrims. Such as the consumption costs of prospective pilgrims while in the Hajj hostel, books for Hajj rituals, making passports and visas; and 2) funding the state budget (APBN), including financing project development.<sup>165</sup>

The results from the investment of the Hajj funds can then be used for the value of the benefits in accordance with the objectives of managing the Hajj funds as previously mentioned, namely improving the quality of the implementation of the Hajj and the benefit of Muslims.<sup>166</sup> Furthermore, optimizing the benefits of managing Hajj funds can also be used and felt for the welfare of the community in general. This can be realized by referring to Presidential Decree No. 80 of 2003 concerning Guidelines for the Implementation of Government Procurement of Goods/Services. This optimization is carried out based on the principles of efficiency, effectiveness, openness, competitiveness, transparency, non-discrimination, and accountability, which can be used to 1) increase the use of domestic products; 2) increase the role of small and micro and medium enterprises, cooperatives; 3) increase in state revenue from the tax sector; and 4) growth and development of national business participation.<sup>167</sup>

In line with this, the value of the investment benefits of Hajj funds in the state Sukuk can be used for infrastructure development. For example, what has been implemented so far includes financing the construction of State Islamic University campuses in Indonesia using funds from the state Sukuk.<sup>168</sup> Thus, from the *maqasid* aspect, there has been a shift in the implementation of the pilgrimage by the state from being limited to efforts to maintain religion (*hifdz al-diin*) to an effort to improve the country's economy and benefit. Moreover, the value of the benefits from the management of hajj funds can be used for infrastructure that can be used by the general public, not only Muslims. With good infrastructure, it will certainly have a positive impact on the economy and

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164 Direktorat Pembiayaan Syariah, *Surat Berharga Syariah Negara (Sukuk Negara) Instrumen Keuangan Berbasis Syariah*, (Jakarta: Departemen Keuangan Republik Indonesia-Direktorat Pembiayaan Syariah, 2010), 8.

165 Direktorat Jenderal Penyelenggaraan Haji dan Umrah, *Dinamika dan Perspektif Haji Indonesia*, 278-279.

166 Indonesia (2), *Undang-Undang tentang Pengelolaan Keuangan Haji*, Pasal 3.

167 Direktorat Jenderal Penyelenggaraan Haji dan Umrah, *Dinamika dan Perspektif Haji Indonesia*, 280.

168 Donald Banjarnahor, "Investasi di Sukuk Negara Berbuah Gedung Rafah UIN Palembang", dalam <https://www.cnbcindonesia.com/news/20191010113831-4-105857/investasi-di-sukuk-negara-berbuah-gedung-rafah-uin-palembang>, accessed June 22, 2022.

the welfare of society in general. Thus, the management of hajj funds is certainly in line with the principles of the welfare state and the purpose of the founding of the Republic of Indonesia.

## Conclusion

The modern world state since the 20th century has led to what is conceptualized as a welfare state, where the state has a maximum role in improving the basic rights of its citizens, including the right to religion, one of which is the pilgrimage. Paradigmatic developments in the theory of state administrative law can be seen in its implementation in the practice of organizing and managing Hajj funds in Indonesia, where the government does not only play a role in protecting the basic religious rights of citizens as guaranteed by the constitution but also facilitates administratively and financial management which can develop its beneficial value for welfare purposes. general. Modern countries, including Indonesia, have gone beyond their role from being just a 'night watch state', but have played a maximum role in improving the quality of life of citizens in sectors that were originally in the private sphere, namely in this case the hajj. In line with the development of the state administration, the practice of organizing hajj in Indonesia illustrates the implementation of contemporary *maqasid* as a philosophy of Islamic law, where sharia, in this case, the pilgrimage is oriented not only to protecting religion (*hifdz al-din*) but further, namely improving public benefit with the value of economic benefits from organizing and managing Hajj funds.

## Acknowledgment

We would like to all of the key informants for their willingness to engage in the study and for providing us with such vital information. Furthermore, we would like to express our gratitude to editors and reviewers of *Al Ikhram: Jurnal Hukum dan Pranata Sosial* for reviewing and making substantial comments on our manuscript, as well as for publishing it.

## References

- Ahlan Syarif, Fitriani, ed. *Aradhana Sang Guru Perundang-undangan; Kumpulan Tulisan Memperingati Ulang Tahun Ke-70 Prof. Dr. Maria Farida Indrati, S.H., M.H.* Depok: Badan Penerbit Fakultas Hukum Universitas Indonesia, 2019.
- Alfitri. "Religion and Constitutional Practices in Indonesia: How Far Should the State Intervene in the Administration of Islam?", *Asian Journal of Comparative Law*, Vol. 13, 2018, <https://doi.org/10.1017/asjcl.2018.20>
- Asshiddiqie, Jimly. Jimly Asshiddiqie, *Pancasila: Identitas Konstitusi Berbangsa dan Bernegara.* Jakarta: Sinar Grafika, 2020.
- Basyuni, Muhammad M. *Reformasi Manajemen Haji.* Jakarta: FDK Press, 2008.
- Butt and Tim Lindsey, Simon. *The Constitution of Indonesia: A Contextual Analysis.* Oxford and Portland, OR: Hart Publishing, 2012.
- Caiden, Gerald E. *The Dynamics of Public Administrations in Theory and Practice.* New York: Holt, Reinhart and Winston, Inc., 1971.

Dinda Purnamasari, "Di Mana Saja Dana Haji Ditempatkan?", < <https://tirto.id/di-mana-saja-dana-haji-ditempatkan-ct8V>>, accessed June 22, 2022.

Donald Banjarnahor, "Investasi di Sukuk Negara Berbuah Gedung Rafah UIN Palembang", dalam <https://www.cnbcindonesia.com/news/20191010113831-4-105857/investasi-di-sukuk-negara-berbuah-gedung-rafah-uin-palembang>, accessed June 22, 2022.

Direktorat Jenderal Urusan Haji, *Pokok-pokok Penjelasan Penyelenggaraan Urusan Haji*. Jakarta: Direktorat Jenderal Urusan Haji, 1970/1971.

Fleming Intan, Benyamin. "Public Religion" and the Pancasila-Based State of Indonesia: An Ethical and Sociological Analysis. New York: Peter Lang, 2006.

Harlow dan Richard Rawlings, Carol. *Law and Administration, Third Edition*. New York: Cambridge University Press, 2009.

Horowitz, Donald L. *Constitutional Change and Democracy in Indonesia*. New York: Cambridge University Press, 2013.

Indonesia, Undang-Undang Dasar Negara Republik Indonesia Tahun 1945

\_\_\_\_\_ (1), *Undang-undang tentang Penyelenggaraan Ibadah Haji dan Umroh*, UU Nomor 8 Tahun 2019, LN. Nomor 75 Tahun 2019, TLN. Nomor 6338 Tahun 2019.

\_\_\_\_\_ (2), *Undang-undang tentang Pengelolaan Keuangan Haji*, LN. Nomor 296 Tahun 2014, TLN. Nomor 5605 Tahun 2014.

\_\_\_\_\_ (3), *Undang-undang Tentang Keuangan Negara*, UU N0. 17 Tahun 2003, LN No. 47 Tahun 2003, TLN No. 4286 Tahun 2003.

\_\_\_\_\_ (4), *Undang-undang tentang Penyelenggaraan Ibadah Haji*, UU Nomor 13 Tahun 2008, LN. Nomor 60 Tahun 2008, TLN. Nomor 4845 Tahun 2008.

\_\_\_\_\_ (5), *Peraturan Pemerintah Tentang Pelaksanaan Undang-undang Nomor 34 Tahun 2004 Tentang Pengelolaan Keuangan Haji*, PP Nomor 5 Tahun 2018, LN. Nomor 13 Tahun 2018.

\_\_\_\_\_ (6), *Peraturan Menteri Agama Republik Indonesia Nomor 39 Tahun 2015 tentang Pengelolaan Dana Abdi Umat*.

\_\_\_\_\_ (7), *Undang-Undang tentang Surat Berharga Syariah Negara*, UU Nomor 19 Tahun 2008, LN. Nomor 70 Tahun 2008, TLN. Nomor 4852 Tahun 2008.

\_\_\_\_\_ (8), *Peraturan Menteri Agama Republik Indonesia Nomor 4 Tahun 2013 tentang Sekretariat Badan Pengelola dan Pengelolaan Dana Abdi Umat*.

\_\_\_\_\_ (9), *Undang-undang tentang Surat Berharga Syariah Negara*, UU Nomor 19 Tahun 2008, LN. Nomor 70 Tahun 2008, TLN. Nomor 4852 Tahun 2008.

\_\_\_\_\_ (10), *Peraturan Keuangan Republik Indonesia Nomor 482/PMK.05 Tahun 2018 tentang Pengelolaan Kas dan Investasi Badan Layanan Umum*.

\_\_\_\_\_, Putusan Nomor 51/PUU-XV/2017

Jumali, Endang. "Management of Hajj Funds in Indonesia". *Journal of Legal, Ethical, and Regulatory Issues*. Vol 21, no.3, 2018.

Hosen, Nadirsyah. *Shari'a & Constitutional Reform in Indonesia* (Singapore: Institute of Southeast Asian Studies, 2007).

Laski, Harold. *A grammar of Politics*. London: Allen and Unwin, 1925.

Loughlin, Martin. *Public Law and Political Theory*. Oxford Clarendon Press, 1992.

Mamonto & Rizki Ramadani, "Kebijakan Perlindungan Jamaah Haji Khusus dan Umroh Di Sulawesi Selatan", *PETITUM*, Vol. 7, No.2, 2019.  
<https://doi.org/10.36090/jh.v7i2%20Oktober.650>

Mahkamah Konstitusi, Putusan Nomor 12/PUU-XIII/2015.

Mochammad Aziz, Roikhan. "Hahslm Theory as Guidance of Straight Path in Management of Hajj and Finance", *KnE Social Science* vol. 3, no. 8, 2018.  
<https://doi.org/kss.v3i8.2503>

Morris, D. (2016). Accommodating Nazi Tyranny? The Wrong Turn of the Social Democratic Legal Philosopher Gustav Radbruch After the War. *Law and History Review*, 34(3), 649-688. <https://doi.org/10.1017/S0738248016000213>

Mubarak, M. Ali "Manajemen Pengelolaan Dana Haji Republik Indonesia (Studi Kolaborasi Antar Lembaga BPKH, Kemenag dan Mitra Keuangan dalam Pengelolaan Dana Haji)", *Iltizam Journal Of Shariah Economic Research*, Vol. 2, No. 2, 2018.  
<https://doi.org/10.18646/2056.53.18-009>

Muneeza, Aishaath et al, "A Comparative Study of Hajj Funds Management Institutions in Malaysia, Indonesia, and Maldives". *International Journal of Management and Applied Research* vol. 5, no.3, 2018. <https://doi.org/10.18646/2056.53.18-009>

Picard and Rémy Madinier, Michel ed., *Politics of Religion in Indonesia: Syncretism, Orthodoxy, and Religious Contention in Java and Bali*. Abingdon, Oxon and New York: Routledge, 2011.

Ridwan HR, *Hukum Administrasi Negara Edisi Revisi*. Jakarta: Rajawali Press, 2013.

Salim, Arskal. *Challenging the Secular State: The Islamization of Law in Modern Indonesia*. Honolulu: University of Hawai'i Press, 2008.

Sekretariat Negara Republik Indonesia, *Himpunan Risalah Sidang-sidang dari Badan Penyelidik Usaha Persiapan Kemerdekaan Indonesia (BPUPKI) (Tanggal 29 Mei 1945-16 Juli 1945) dan Panitia Persiapan Kemerdekaan Indonesia (PPKI) (Tanggal 18 dan 19 Agustus 1945) Yang Berhubungan Dengan Penyusunan Undang-undang Dasar 1945*. Jakarta: Sekretariat Negara Republik Indonesia, 1954.

Soekanto, Soerjono dan Sri Mamudji. *Penelitian Hukum Normatif Suatu Tinjauan Singkat*. Jakarta: Raja Grafindo Persada, 2015.

Primadhany, Erry Fitrya. "Tinjauan Terhadap Tanggung Jawab Badan Pengelola Keuangan Haji (BPKH) dalam Melakukan Penempatan dan/atau Investasi Keuangan Haji", *Jurisdictie: Jurnal Hukum dan Syariah* Vol. 8 No.2 Tahun 2017. <https://doi.org/10.18860/j.v8i2.4447>

Santosa, A.A. Gede D. H. "Perbedaan Badan Hukum Publik Dan Badan Hukum Privat", *Jurnal Komunikasi Hukum (JKH)* Vol. 5, No. 2, 2019. <https://doi.org/kss.v3i8.2503>

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**Hajj Funds Management Based on Maqāṣid Al-Sharī'ah; A Proposal for Indonesian Context**  
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Submission    Review    Copyediting    **Production**

Round 1

**Round 1 Status**  
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<a href="#">[al-Ihkam] Editor Decision</a>	2024-01-09 03:12 PM
<a href="#">[al-Ihkam] Editor Decision</a>	2023-11-03 01:55 PM
<a href="#">[al-Ihkam] Editor Decision</a>	2023-11-27 12:52 PM
<a href="#">[al-Ihkam] Editor Decision</a>	2023-12-09 06:44 AM

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 32296-2	Article Text, Rev_7268-Article Text-31941-1-15-20231210.docx (2)	December 10, 2023	Article Text
 33782-1	Article Text, REV Hajj_05 Jan 24.docx	January 6, 2024	Article Text
 33870-1	Article Text, 10-Samsudin 547-570 (1).doc	January 9, 2024	Article Text

REVISI KE-2 (PASCA PERUBAHAN PENULIS\_1)

**Management of Hajj Funds in Indonesia through the Paradigm Approach of Islamic Legal Philosophy and State Administration**

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Article history: Received: May 30, 2023, Revised: July 01, 2023; Accepted May 04, 2024;

Published: June 30, 2024

**Abstract:**

Hajj is a special worship. All Muslims who have the ability to perform the Hajj can do so, including Indonesian Muslims. Hajj as the fifth pillar of Islam does not only aim to increase devotion and spiritual value, but also has economic potential. Through the

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management of Hajj funds, it can encourage economic growth and national development. However, the fundamental problem in the management of the Hajj pilgrimage is still not effective-professional. The purpose of this research is to examine in depth the management of Hajj funds through the paradigm approach of Islamic legal philosophy (maqasid sharia), and state administration theory. The aspect of organising and managing Hajj funds is one of the government's duties according to the law. This research uses normative juridical method with prescriptive-explanatory presentation through interdisciplinary theory. Secondary data comes from journals and scientific documents, as well as statistical data with the involvement of researchers as the main source in analysing and reviewing data, and interpreting in order to get the right conclusion. The results of this study show that in state administrative law there is always a shift in the Hajj regime from private to public with the vehicle of red-light theory to green light theory, where the state intervenes in the implementation and management of Hajj funds. The novelty of this research is linked to maqashid sharia in the dimension of hifd maal, which is to protect Hajj funds for the benefit of society.

#### Keywords:

Hajj Fund, Management, Administration Law, Maqasid al-Shariah, Green Light Theory

#### Abstrak:

Haji adalah ibadah yang istimewa. Semua umat Islam yang memiliki kemampuan untuk menunaikan ibadah haji dapat melaksanakannya, termasuk umat Islam Indonesia. Ibadah haji sebagai rukun Islam kelima tidak hanya bertujuan untuk meningkatkan ketaqwaan dan nilai spiritual, tetapi juga memiliki potensi ekonomi. Melalui pengelolaan dana haji dapat mendorong pertumbuhan ekonomi dan pembangunan nasional. Namun, permasalahan mendasar dalam pengelolaan ibadah haji masih belum efektif-profesional. Tujuan dari penelitian ini adalah untuk mengkaji secara mendalam pengelolaan dana haji melalui pendekatan paradigma filsafat hukum Islam (maqasid syariah) dan teori administrasi negara. Aspek penyelenggaraan dan pengelolaan dana haji merupakan salah satu tugas pemerintah menurut undang-undang. Penelitian ini menggunakan metode yuridis normatif dengan penyajian secara preskriptif-eksplanatoris melalui teori interdisipliner. Data sekunder berasal dari jurnal dan dokumen ilmiah, serta data statistik dengan melibatkan peneliti sebagai sumber utama dalam menganalisis dan mengkaji data, serta menginterpretasikan untuk mendapatkan kesimpulan yang tepat. Hasil penelitian ini menunjukkan bahwa dalam hukum administrasi negara selalu terjadi pergeseran rezim haji dari privat ke publik dengan kendaraan teori lampu merah ke teori lampu hijau, dimana negara melakukan intervensi dalam penyelenggaraan dan pengelolaan dana haji. Kebaruan dari penelitian ini dikaitkan dengan maqashid syariah dalam dimensi hifd maal, yaitu melindungi dana haji untuk kemaslahatan masyarakat.

#### Kata Kunci:

Manajemen, Dana Haji, Hukum Administrasi, *Maqasid al-Shariah*, *Green Light Theory*

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## Introduction

Indonesia is a country with a Muslim population that sends the largest hajj pilgrims almost every year.<sup>169</sup> This is because Indonesia is one of the countries whose constitution guarantees individual freedom to embrace and worship in accordance with their respective religions and beliefs.<sup>170</sup> The government is responsible to organize the pilgrimage for the Muslim population who will carry out the pilgrimage. One form of this guarantee is to provide guidance, service, and protection for citizens who perform the Hajj in a safe, comfortable, orderly, and following the provisions of the shari'ah.<sup>171</sup>

The problem of organizing the pilgrimage has a long history since the founding of the Republic of Indonesia. The Ministry of Religious Affairs has a central role as a regulator of the implementation and management of Hajj finances.<sup>172</sup> However, in its management, the government does not include Hajj funds, in the state budget, as stated in Law No. 17/1999 on the Implementation of Hajj, the scope of Hajj funds in the form of money received from prospective pilgrims is not included in the state budget, because it is not included in non-tax state revenue, but Hajj funds are managed through government organisations. This has been stipulated in Law No. 34/2014 mandating the management of Hajj finances to be carried out by BPKH (Hajj Financial Management Agency), a public legal entity that is independent and responsible to the President through the Minister of Religious Affairs. The structure of BPKH consists of an executive body and a supervisory board responsible for managing the revenue, development, expenditure, and accountability of Hajj finances.

The establishment of BPKH is based on the Presidential Decree of the Republic of Indonesia Number 35 of 1996 conjunction with Presidential Decree of the Republic of Indonesia Number 52 of 1996 concerning the Organisation and Work Procedures of BPDONHI (Hajj Pilgrimage Fund Management Agency). This institution later changed its nomenclature to Ummah's Endowment Fund Management Agency, *Badan Pengelola Dana Abadi Umat* (BP DAU).<sup>174</sup> This hajj fund is kept by the government as a deposit for prospective hajj pilgrims to be managed for the smooth running of hajj services. Therefore, the cost of organizing the pilgrimage is determined by the state to ensure certainty of departure to the holy land and guarantee security during the pilgrimage. In this period, the hajj funds are

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<sup>169</sup> Jumali, E. (2018). Management of Hajj funds in Indonesia. *J. Legal Ethical & Regul. Issues*, 21, 1.

<sup>170</sup> This is as stated in the 1945 Constitution of the Republic of Indonesia Article 29.

<sup>171</sup> Indonesia (1), *Undang-Undang tentang Penyelenggaraan Ibadah Haji dan Umroh*, UU Nomor 8 Tahun 2019, LN. Nomor 75 Tahun 2019, TLN. Nomor 6338 Tahun 2019, konsideran.

<sup>172</sup> Rina Farihatul Jannah, "Kebijakan Penyelenggaraan Perjalanan Haji Indonesia Tahun 1945-2000", Thesis on the Postgraduate Program of the State Islamic University of Sunan Ampel Surabaya, 2018, 39-75.

<sup>173</sup> The hajj (Islamic pilgrimage to Mecca) involves not only religious devotion, but also religious tourism and its associated business, necessary to deal with massive parties of pilgrims, embracing trans-national relations, central and local governments, flight and other travel agencies, pilgrimage guidance units, catering agencies and hotels to the pilgrims themselves in its scope.

<sup>174</sup> Muhammad M. Basyuni, *Reformasi Manajemen Haji*, (Jakarta: FDK Press, 2008), 83-85.

managed by setting aside the excess value to be stored as the Ummah's Endowment Fund, Community Endowment Fund (DAU).<sup>175</sup>

As an annual ritual that spend quite a lot of money, the management of hajj funds is a financial domain that is in the area of public affairs. In addition to the problem of organizing the pilgrimage, it is also related to the relationship between the country of origin of the prospective pilgrims and the country of destination in carrying out the pilgrimage, namely Saudi Arabia. Indonesia is a country with a Muslim population. It receives a large number of Hajj quotas. Indonesia will receive the largest Hajj quota in the world in 2023. It is recorded that Indonesia's Hajj quota will reach 221,000 pilgrims, consisting of 203,320 quotas for regular Hajj pilgrims and 17,6800 quotas for special Hajj pilgrims. Although the number of quotas in 2023 is large, it is not proportional to the number of applicants<sup>176</sup>, which is increasing every year.

The waiting list for Hajj departure is determined by the time of registration by paying the Hajj Travel Fee BPIH (Cost of Organizing the Hajj Pilgrimage).<sup>177</sup> This BPIH deposit is part of the Hajj fund. The term hajj fund itself is formulated in terms of the Hajj Financial Management Act, including BPIH deposit funds; efficiency funds; DAU (*Endowment Fund of The Ummah*); as well as the value of benefits controlled by the state in the context of organizing the pilgrimage and implementing program activities for the benefit of Muslims.<sup>178</sup>

Due to the limited Hajj quota each year, there will certainly be a build-up of Hajj funds due to the large number of applicants on the waiting list based on the BPIH deposit. Therefore the government has taken the initiative to manage Hajj funds by placing and/or investing State Sharia Bonds (SBSN), also known as Sukuk or Sharia Bonds, in productive sectors to generate the value of the benefits of Hajj fund management. This is a logical ratio of the establishment of the Hajj Financial Management Law. Therefore, through the Hajj Financial Management Law, a special financial institution has been established with the authority to manage Hajj funds, namely the Hajj Financial Management Agency (BPKH).<sup>179</sup>

The management of Hajj finances by the state, in this case by the institution BPKH, is interesting to study interdisciplinarily from the perspective of the application of *Mâqasid* theory as a philosophy of Islamic law and aspects of its authority according to the constitution

<sup>175</sup> Inti Ulfi Solichah, "Hukum Investasi Produktif dalam Pengelolaan Dana Haji (Perspektif Hukum Ekonomi Syariah)", Thesis on the Masters Program in Islamic Economic Law, Faculty of Sharia, Syarif Hidayatullah State Islamic University, Jakarta, 2018, 41.

<sup>176</sup> The number of Hajj registrants in 2019 reached 710,000 pilgrims, exceeding the target of 650,000 pilgrims. See Faidah Umu Sofuroh, Lampau Target, Pendaftar Haji 2019 Capai 710 Ribu Jemaah, <<https://news.detik.com/berita/d-4836697/lampau-target-pendaftar-haji-2019-capai-710-ribu-jemaah>>, accessed March 8, 2021.

<sup>177</sup> Indonesia (1), *Undang-Undang tentang Penyelenggaraan Ibadah Haji dan Umroh*, Pasal 5 Ayat (1).

<sup>178</sup> Indonesia (2), *Undang-Undang tentang Pengelolaan Keuangan Haji*, UU Nomor 34 Tahun 2014, LN. Nomor 5605 Tahun 2014, Pasal 1 Ayat (2).

<sup>179</sup> Erry Fitriya Primadhany, "Tinjauan Terhadap Tanggung Jawab Badan Pengelola Keuangan Haji (BPKH) dalam Melakukan Penempatan dan/atau Investasi Keuangan Haji", *Jurisdictie: Jurnal Hukum dan Syariah* Vol. 8 No.2 Tahun 2017, 126-127. <https://doi.org/10.18860/j.v8i2.4447>

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and administrative legislation from the perspective of state administrative law. *Maqasid* as a philosophy of Islamic law refers to the importance of safeguarding public finances (*hifz māl*), which, in the case of the Hajj waiting list, must be used to the greatest extent possible for the benefit of the ummah and must not be allowed to accumulate. This benefit can be seen, for example, in the construction of SBSN buildings in the State Islamic Religious Universities (PTKIN) in Indonesia.<sup>180</sup>

The above view of *maqasid* (*hifz mal*), particularly the professional management of Hajj funds, is in line with the concept of a welfare state, which is the legal ideal contained in the preamble of the Indonesian constitution. In addition, the management of hajj funds following their objectives is also important to discuss considering the large number of hajj funds managed by BPKH so as not to deviate from the initial goal of financing the pilgrimage. Policies regarding the management of hajj funds should be in line with the philosophical foundations of Islamic law, in this case, *maqasid*, and not conflict with the principles of legal certainty, benefit to the community, and good public services. The government's policy for managing Hajj finances should be based on rational considerations of the principles of certainty, fairness, and benefit,<sup>181</sup> and has a basis for the state. Currently, the management and optimal use of Indonesian Hajj funds is regulated in Law No. 13 of 2008 concerning the Implementation of the Hajj as a legal basis. Figures from academia and practitioners consider that the legal basis is not sufficient, so a separate law is needed that regulates the management of Hajj funds. However, in Law No. 13 of 2008, management is only limited to its optimal use and development in the form of bank instruments whose security is truly guaranteed. Thus, the policies made by the government can be used for the general welfare for the community in line with the objectives of the founding of the Republic of Indonesia.

Research on the management of hajj funds has been done by many previous researchers. For example, 1) Rina Farihatul Jannah's dissertation at the Postgraduate Programme of Sunan Ampel Surabaya State Islamic University focuses more on the historical aspects of Hajj fund management policy and its implementation<sup>182</sup>, 2) Erry Fitria Primardhani's writing on the responsibility of BPKH in investing Hajj funds, where Hajj funds must be invested economically and professionally<sup>183</sup>, 3) Roikhan Muhammad Azis<sup>184</sup> in his research found that the Hajj funds deposited in banks (not used for Hajj departure) are so large that they are underutilised. Therefore, he recommended that the funds should be used productively for the time being while waiting for the departure time from the government, 4) Endang Jumali's research focuses on the Hajj financing contract from the perspective of Islamic law. In his

<sup>180</sup> Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law: A System Approach*. The International Institute of Islamic Thought, London, UK, 2007.

<sup>181</sup> D. Morris, (2016). Accommodating Nazi Tyranny? The Wrong Turn of the Social Democratic Legal Philosopher Gustav Radbruch After the War. *Law and History Review*, 34(3), 649-688. <https://doi.org/10.1017/S0738248016000213>

<sup>182</sup> Rina Farihatul Jannah, *Kebijakan Penyelenggaraan*, 2018.

<sup>183</sup> Erry Fitria Primadhany, *Tinjauan Terhadap Tanggung Jawab*, 125.

<sup>184</sup> Roikhan Mochammad Aziz, "Hahslm Theory as Guidance of Straight Path in Management of Hajj and Finance", (*KnE Social Science* vol. 3, no. 8, 2018), 105-120. <https://doi.org/kss.v3i8.2503>

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findings, Endang<sup>185</sup> sees that the payment of Hajj funds uses a wakalah contract so that the payer (prospective pilgrims) does not demand anything from the deposited funds, although the manager (government) can benefit from the management of the funds, and 5) Aishath Muneeza *et al.*<sup>186</sup> examined the comparison of Hajj financial management in Indonesia, Malaysia and the Maldives, where the results of their research confirmed that the policies of the three countries are different.

This study only highlights the understanding of Hajj fund managers to actually implement in accordance with existing regulations, without looking at others. None of these five studies has discussed the management of Hajj funds in terms of the theory of constitutional law and state administration strengthened by *maqasid al-syari'ah* as a perspective. Therefore, the purpose of this research is to examine in depth the management of Hajj funds through the paradigm approach of Islamic legal philosophy and state administration theory in the perspective of *maqasid al-shari'ah*.

## Methods

This research uses a qualitative approach with a normative juridical method. The data source uses primary data derived from 3 (three) materials, namely 1) primary law, 2) secondary law, and 3) tertiary law. Meanwhile, secondary data<sup>187</sup> sources come from journals, both national and international journals, books, as well as, magazines, and other articles that have relevance to the problems and objects of research. Data collection comes from various books, journals, and articles related to the management of Hajj funds through the steps of 1) managing and organising data, 2) reading and recording emerging ideas, 3) describing and classifying codes into themes, 4) developing and accessing interpretations, and 5) representing and visualising data. The data analysis technique used is spiral analysis complemented by content analysis, comparative and critical analysis of Hajj legislation, and reviewed through the theory of state administration law and *maqasid al-Sharia*, especially in the aspect of *hifz mâl* in order to get the right conclusion according to the research objectives, an analytical explanatory interpretation is needed.

## Discussion and Result

### *Hajj fund management from maqasid sharia perspective*

<sup>185</sup> Endang Jumali, "Management of Hajj Funds in Indonesia" (*Journal of Legal, Ethical, and Regulatory Issues*. Vol 21, no.3, 2018), 1-9.

<sup>186</sup> Aishaath Muneeza et al, "A Comparative Study of Hajj Funds Management Institutions in Malaysia, Indonesia, and Maldives". (*International Journal of Management and Applied Research* vol. 5, no.3, 2018), 1-15. <https://doi.org/10.18646/2056.53.18-009>

<sup>187</sup> Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, (Jakarta: Raja Grafindo Persada, 2015), 33.

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In the study of classical Islamic legal philosophy, maqasid sharia is easily understood as the universal purpose of the law. Jasser Auda<sup>188</sup> compiled a contemporary conception of maqasid which is an evolution of the theory and concept of classical maqasid sharia, namely: (1). Preserving Descent (hifz al-Nasl) is a theory oriented towards protecting the family; pay more attention to family institutions; (2) Preserving the Intellect (hifz al-Aql) by multiplying mindset and scientific research; prioritising the journey of seeking knowledge; avoiding efforts to underestimate the workings of the brain; (3) Preserving honour; preserving the soul (hifdz al-'Irdh) by preserving and protecting human dignity; safeguarding and protecting human rights; (4) Safeguarding religion (hifdz al-Diin), namely protecting and respecting freedom of religion or belief, and (5) Safeguarding property (hifdz al-Maal), namely promoting social care; paying attention to economic development and development; advancing human welfare; eliminating the gap between the rich and the poor.

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There is a paradigm shift and classical maqasid sharia theory to contemporary maqasid sharia theory. The change lies in the main benefit, namely the protection and preservation aspects, while the contemporary maqasid sharia theory is more about development and rights. In an effort to develop the concept of contemporary maqasid sharia, Jasser Auda proposes human development as a form of the main target of contemporary public interest; this masalah should be the target of maqasid sharia to be realised through Islamic law, as is the case in reviewing the financial management of the pilgrimage. One of the worship services that is full of maqashid is the Hajj pilgrimage.

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With the spirit of the welfare state and the view of the green light theory, it should be implemented by the Republic of Indonesia through its constitution to regulate the guarantee of freedom of religion and worship in accordance with the beliefs of each citizen. The Constitution as the foundation of the legal system of the Republic of Indonesia regulates religious life, although the 1945 Constitution has been amended four times, but the basic norms regarding the guarantee of freedom of religion are maintained. For example, in drafting legal regulations regarding religion, the constitution explicitly always provides a legal basis. The regulation on the guarantee of freedom of religion, as explained in Article 29 Paragraph (2) of the 1945 Constitution that "The State guarantees the freedom of each citizen to embrace their respective religions and to worship according to their religion and belief". This constitutional article then becomes the source of law as well as the basis for the state to use its authority in organising the Hajj pilgrimage, which also includes the management of Hajj funds for the sake of benefit, and this is in accordance with the philosophy of Islamic law, especially maqasid sharia<sup>189</sup>.

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#### *Administrative Law Perspective on Hajj Fund Management*

As a country that adheres to the concept of the welfare state to establish the state as stated in the fourth paragraph of the preamble of the constitution, the Republic of Indonesia

<sup>188</sup> Auda, J. (2014). *Russian: Maqasid Al-Shariah: A Beginner's Guide*. International Institute of Islamic Thought (IIIT).

<sup>189</sup> Munira, M., & Astuti, S. B. (2019). Indonesian hajj fund management: An overview. *Asian Journal of Accounting and Finance*, 1(1), 1-9.



has the authority to make arrangements and provide facilities for all aspects of the lives of its citizens, including the implementation of the pilgrimage for Muslim citizens. The authority and role of the state in all aspects of the lives of its citizens are expanding along with the development of history and law. Carol Harlow and Richard Rowling argue that this role is related to a theoretical view which in the context of state administrative law theory is called redlight theory. The view of redlight theory assumes that the authority and role of state administration are limited to law enforcement and public order, which is also known as the 'night watch state' or *nachtwatcherstaat*. In this view, state administrative law functions to prevent violations by the state of human rights. Therefore, the red-light theory emphasizes the balance of power by supporting a strong judiciary to control executive power. The thinking behind the red-light theory is the Laissez Faire State which has the idea of the best government is the least government. This view assumes that the authority and role of state administration should be made as simple as possible so that the structure of state administration is very small.<sup>190</sup>

The adoption of the concept of the welfare state by the Indonesian state has resulted in the expanding authority and role of state administration in people's lives. In this case, state administrative law provides facilities for the enlargement of the state's role in providing welfare for its citizens. State administration has a role not only as a tool for law and order enforcement but also as a tool to achieve public welfare in various sectors of life, including the religious sector, which in this case is the implementation of the pilgrimage. The great role of state authority and state administration is facilitated theoretically by a view that contradicts the red light theory as stated above, namely the green light theory.<sup>191</sup> State administration becomes a vehicle to facilitate every aspect of citizens' lives, to achieve political progress and the realization of an "administrative state". This view assumes that state administrative law has broad powers and roles and must be proactive in various fields of people's lives.<sup>192</sup>

In addition, in contrast to the red light theory which prioritizes the judiciary in a country, the green light theory tends to the development of democracy and political accountability of the government. Therefore, community participation is a prerequisite for the formation of state administration following the view of the green light theory. From the view of the green light theory adopted in the legal system of the Republic of Indonesia, it can be understood that the state has broad authority covering aspects of the lives of citizens in the field of religion, namely the implementation of the pilgrimage.

The theoretical view that has influenced the development of state administrative law that adheres to green light theory is Léon Duguit's thought. Duguit's view is based on the idea of a socialistic state in which a strong government is a necessity and therefore its duties go far beyond the fields of law, order, justice, and defense. He believes in the idea of a collectivist

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<sup>190</sup> Carol Harlow and Richard Rawlings, *Law and Administration* (London: Butterwoths, 1997), 29 dalam Tri Hayati, "Perizinan Pertambangan di Era Reformasi Pemerintahan Daerah Studi tentang Perizinan Pertambangan Timah di Pulau Bangka", Disertasi Pada Program Studi Doktor Ilmu Hukum Program Pascasarjana Fakultas Hukum Universitas Indonesia, 2011. 38-39.

<sup>191</sup> Carol Harlow dan Richard Rawlings, *Law and Administration, Third Edition*, (New York: Cambridge University Press, 2009), 31.

<sup>192</sup> Carol Harlow dan Richard Rawlings, *Law and Administration*, 32.

state whose function is to provide public services. This he defined that the Hajj service as “any activity that must be regulated by the government” and controlled because it is indispensable for the realization and development of social solidarity as long as it cannot be realized without the intervention of the government.<sup>193</sup> Of course, included in the activities that must be regulated by the government is the implementation of the pilgrimage, because, without government intervention, the pilgrimage for its citizens cannot be carried out because it is related to foreign relations between the country of origin of the pilgrims in this case Indonesia and the destination country, namely Saudi Arabia.

Based on the spirit of the welfare state, which is supported by the green light theory above, the state has the authority and role of administration in organizing the pilgrimage. Although there are models of organizing the pilgrimage that is carried out by private parties, when compared to the implementation by the government, according to Gerald Caiden<sup>194</sup>, the role of the state in administration has a specificity. First, the state administration is unavoidable. Second, the state administration has a legal monopoly of coercive power which inevitably applies binding and can be coercive. Third, the priority of community activities. Fourth, the role of the state administratively provides services for every citizen. Fifth, the state is directly responsible to its political leadership, because the top leadership is a political institution. Therefore, it can be understood that the regulation of the implementation of Hajj, after all, is the authority of the state, in this case, the government.

From an organizational point of view, the implementation of the pilgrimage is based on four alternative principles as recognized in state administrative law, including:<sup>195</sup> first, the objectives to be achieved, namely the Ministry of Religion which carries out government functions in the religious sector; second, the group served, namely citizens who want to perform Hajj; third, the process carried out, namely the implementation of the pilgrimage which includes planning, budgeting, implementation, evaluation, and supervision; fourth, the geographical area covered, namely the territory of the state of Indonesia.

With this understanding, the state's authority in organizing the pilgrimage can be understood based on the view of state law in the field of administration that it adheres to, namely the green light theory above. This authority, even from Duguit's point of view, is a duty or obligation of the government in the form of public services. As a result, the view that considers the private affairs of citizens, namely religion, should not be managed by the state, becomes irrelevant. With the adoption of the green light theory, the state has a theoretical basis for its administrative authority to carry out the organisation of Hajj activities by a state institution, namely the Ministry of Religious Affairs through BPKH (Hajj Financial Management Agency)<sup>196</sup>.

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<sup>193</sup> Carol Harlow dan Richard Rawlings, *Law and Administration*, 33-34.

<sup>194</sup> Gerald E. Caiden, *The Dynamics of Public Administrations in Theory and Practice* (New York: Holt, Reinhart and Winston, Inc., 1971), 6.

<sup>195</sup> Tri Hayati, “Perizinan Pertambangan di Era Reformasi Pemerintahan Daerah Studi tentang Perizinan Pertambangan Timah di Pulau Bangka”, 40.

<sup>196</sup> Undang-Undangn No. 34 Tahun 2014

Thus, Law No. 34/2014 is the state's guarantee to provide facilities and services for its citizens who wish to perform the Hajj pilgrimage. This basis is the source of state authority in the form of attribution of constitutional authority given by the 1945 Constitution to the government in organising the Hajj pilgrimage that is professional and responsible. Citizens who perform worship have various aspects of worship that must be guaranteed by the state as a form of state facilities and services in the field of religion to its citizens. These aspects include the dimension of belief, the provision of facilities, the availability of worship infrastructure, the way of worship, the time of worship, the place of worship, and the procedures for the implementation of worship. Therefore, in terms of organising the Hajj, the state is obliged to guarantee various aspects surrounding the implementation of the Hajj for its citizens, starting from preparation before departure, on the way, during the implementation of the Hajj pilgrimage until returning to the homeland.

Thus, it can be concluded that the reach of the state to facilitate the religious aspects of citizens, such as in the organisation of Hajj and its management through the form of administration that has been prepared and the regulations enacted is in order to benefit the common good. In this case, the Ministry of Religious Affairs of the Republic of Indonesia through BPKH (Hajj Financial Management Agency) in particular, plays a central role in Hajj affairs. The Ministry, which was established at the beginning of independence and whose first minister was KH Wahid Hasyim, has ensured that everyone is free to declare and worship in accordance with their religion and beliefs, as well as assisting, supporting, protecting and promoting the aspirations of religious movements, in addition to the Hajj, such as marriage, religious education, religious courts, pilgrimages, and others.<sup>197</sup>

#### *Efforts to realize masalah: Investment and Optimization of Hajj Funds in Today's Indonesia*

The implementation of the Hajj pilgrimage, which provides a stimulus for the economy, both in the micro and macro scope, is used as the basis for managing Hajj finances, which amount to trillions of rupiah in the form of investment. For example, in 2015, based on BPKH records, if 154,455<sup>198</sup> Indonesian pilgrims were dispatched, assuming each jam'ah had paid Rp20 million, the total funds collected reached Rp3.09 trillion. Meanwhile, if the number of pilgrims on the waiting list reaches more than 1 million people diverted Rp20 million, it can be imagined that the funds that can be managed by BPKH can reach hundreds of trillions, and this is very potential to be invested productively (see Figure 1), either through SBSN (State Sharia Securities), golden, direct investment, or placed in other sharia-compliant investment funds<sup>199</sup>.

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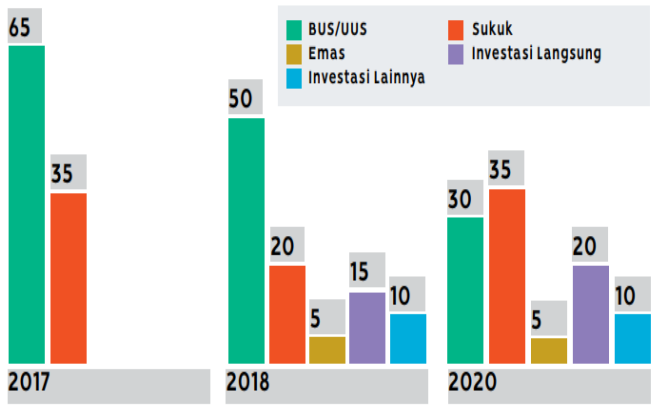
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<sup>197</sup> Arskal Salim, *Challenging the Secular State: The Islamization of Law in Modern Indonesia* (Honolulu: University of Hawai'i Press, 2008), 71.

<sup>198</sup> *Private placement* is the placement of shares by yourself with the mechanism of issuing new shares without going through the regular mechanism in the stock market. See "Apa Itu Private Placement?" dalam <<https://www.wartaekonomi.co.id/read226085/apa-itu-private-placement.html>> accessed 22 November 2021.

<sup>199</sup> Indonesia (7), *Undang-Undang tentang Surat Berharga Syariah Negara*, UU Nomor 19 Tahun 2008, LN. Nomor 70 Tahun 2008, TLN. Nomor 4852 Tahun 2008, Pasal 1 Ayat (1)

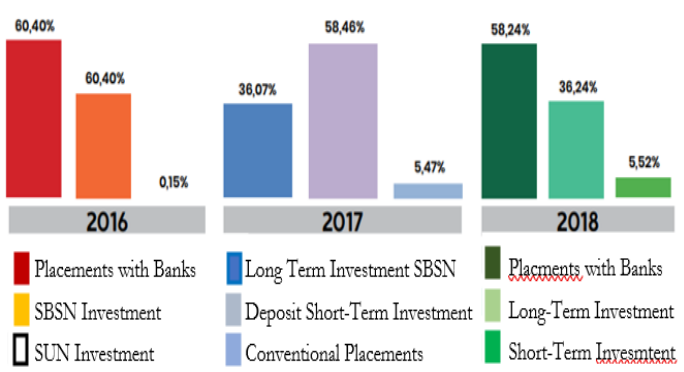


Source: BPKH, processed (2021)

Figure 1. Hajj Fund Placement and Investment

In Figure 1 above, BPKH has established a plan for the placement and investment of Hajj funds. As an illustration, in 2017, Hajj funds were only placed in two investment instruments, namely savings/ deposits (65%) and Sukuk (35%). In 2018, referring to Government Regulation No. 5/2018, BPKH plans to differentiate the investment of Hajj funds in gold (5%), direct investment (15%), and other investments (10%). In addition, the proportion of fund placement in savings/ deposits is reduced to 50% and placement in sukuk to 20%. Then, in 2020, the proportion of fund placement in savings/deposits will again decrease to only 30% and shift the proportion to sukuk investment and direct investmen.<sup>200</sup>

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Source: BPKH, processed (2021)

Figure 2. Hajj Fund Portfolio 2016-2018

Form Figure 2 above, it can be seen that throughout 2016-2018, BPKH placed its investment funds in banks through deposits always ranked first. In 2016, the composition of the placement of Hajj funds in banks was 60.40%, while in 2017 and 2018 it was 58.46% and 58.24% respectively. The next order of placement composition is securities in Sukuk. The placement in sukuk in 2016, 2017 and 2018 was 39.46%, 36.07% and 36.24% respectively. Investment placement of Hajj funds by BPKH in 2016 there were 3 instruments used, namely Government Securities, SBSN-SDHI and Deposits, as well as in 2017. In 2018, BPKH has followed the rules and regulations, so that the portfolio of investment instruments that go into conventional instruments are all withdrawn and invested in Islamic financial instrument.<sup>201</sup>

According to the Financial Report of the Hajj Financial Management Agency (BPKH, 2019)<sup>202</sup>, the placement of Hajj funds managed by BPKH is very risky, therefore it must be carried out professionally, including in supervising the investment of Hajj funds, one indicator of success that can be seen is the suitability of the investment process with what has been planned. Not only that, the supervision carried out is also narrowed down, and wants to explore how the benefits of the investment can be obtained both for the benefit of the institution and the pilgrims themselves as the basic principles of Islamic economics to support the distribution of resources and encourage investment, optimise beneficial investment, and encourage investment, optimise beneficial investment, and encourage social participation for the public interest.

In accordance with the mandate of the Law, according to Anggito Abimanyu (Head of BPKH Executive Board, 2020), BPKH's Hajj Finance investments can be made in sharia securities investment instruments, gold, direct investment, and other investments. The wide scope of this investment is a challenge for BPKH, especially to carry out an effective investment strategy in order to optimise the value of its benefits. Another challenge is how to anticipate the increase in the cost of performing the Hajj pilgrimage, both direct and indirect, so BPKH needs to carry out an investment strategy that can meet the needs of these costs through returns from various investment instruments.

Thus, the investment results of Hajj funds, in addition to improving Hajj services, are also used to improve the quality of Hajj implementation and other public benefits<sup>203</sup>, such as as financing financing the construction of schools and campuses within PTKIN with

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201 BPKH, B. I. (2022). Apa dan Bagaimana Investasi Keuangan Haji BPKH. Jakarta: Badan Pengelola Keuangan Haji.

202 Laporan Keuangan Badan Pengelola Keuangan Haji (BPKH) Semester I Tahun 2019.

203 Donald Banjarnahor, "Investasi di Sukuk Negara Berbuah Gedung Rafah UIN Palembang", dalam <https://www.cnbcindonesia.com/news/20191010113831-4-105857/investasi-di-sukuk-negara-berbuah-gedung-rafach-uin-palembang>, accessed June 22, 2021.

SBSN)204 (State Sukuk Securities) financing (see Figure 3a dan 3b). Thus, from the maqasid aspect, there has been a shift in the implementation of the Hajj pilgrimage by the state from being limited to efforts to protect religion (*hifz al-diin*) to efforts to improve the economy and develop educational facilities. In addition, the beneficial value of Hajj fund management can be used for infrastructure that can be utilised by the general public. With good infrastructure, it will certainly have a positive impact on improving the national economy which has an impact on improving people's welfare. Thus, the management of Hajj funds as mandated by the law is in line with the principles of the welfare state and the objectives of the establishment of the Republic of Indonesia.



Source: Websit

Figure 3a. SBSN Building IAIN Pontianak West Kalimantan



Source: Websit

Figure 3b. SBSN Building IAIN Syekh Nurjati Cirebon, Jawa Barat

From Figures 3a and 3b above, it is clear that the management of Hajj funds invested by BPKH of the Ministry of Religious Affairs of the Republic of Indonesia through the SBSN (State Sharia Securities) Financing scheme, according to the Director of Higher Education and Science and Technology of Bappenas RI, Hadiat205 that the SBSN project initiative initiated by the Directorate General of Islamic Education of the Ministry of Religious Affairs which has succeeded in building educational infrastructure at PTKIN for six years with a total budget of 7-8 trillion should be appreciated. The implementation of educational infrastructure development through SBSN which began in 2015 until 2022 has been running well, so that PTKIN has benefited.

## Conclusion

The presence of Law No. 24/2014 on Hajj Financial Management by the Hajj Financial Management Agency (BPKH), which is responsible to the President of the Republic of Indonesia through the Minister of Religious Affairs of the Republic of Indonesia, is the beginning of professional management of Hajj funds through productive investment. From the point of view of Islamic legal philosophy, such as maqasid Sharia, it is in accordance with the purpose of benefit, not only can defend religion (*hifz ad-din*), but more broadly protect property (finance, *hifz mal*). This is because the management of such a large amount of Hajj funds - reaching trillions of rupiah, which initially (50%) of the total funds managed to be stored in the Bank is not productive, with this regulation, especially the mandate in Article 20 paragraph 4, it allows 70% to be invested in investment instruments in the capital market,

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204 Enam Tahun SBSN, Bangun Gedung 57 PTKIN (kemenag.go.id)

205 Enam Tahun SBSN, Bangun Gedung 57 PTKIN (kemenag.go.id)

such as sukuk, and mutual funds, as well as direct investments such as gold, and other investments, both long-term and short-term investments. Meanwhile, in administrative governance, of course this is very practical, functional must be managed effectively in order to achieve welfare.

The implications of these findings are certainly very supportive for the Management Agency (BPKH) to continue to utilise these funds in a trustworthy, accountable, transparent, professional and responsible manner while paying attention to prudent investment and economic risks. Meanwhile, the people can benefit from the benefits obtained, both in the form of the quality of Hajj implementation services, infrastructure, facilities and infrastructure and other benefits. However, it is recognised that this research has limitations, especially in terms of methodological aspects and limited analysis of formal aspects. Therefore, it is suggested that further research is needed, especially from all dimensions of maqasid Sharia and the SDGs programme in order to encourage sustainable development.

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## Bibliography

### Books

Ahlan Syarif, Fitriani, ed. *Aradhana Sang Guru Perundang-undangan; Kumpulan Tulisan Memperingati Ulang Tahun Ke-70 Prof. Dr. Maria Farida Indrati, S.H., M.H.* Depok: Badan Penerbit Fakultas Hukum Universitas Indonesia, 2019.

Asshiddiqie, Jimly. Jimly Asshiddiqie, *Pancasila: Identitas Konstitusi Berbangsa dan Bernegara.* Jakarta: Sinar Grafika, 2020.

Basyuni, Muhammad M. *Reformasi Manajemen Haji.* Jakarta: FDK Press, 2008.

BPKH, B. I. (2022). *Apa dan Bagaimana Investasi Keuangan Haji BPKH.* Jakarta: Badan Pengelola Keuangan Haji.

Butt and Tim Lindsey, Simon. *The Constitution of Indonesia: A Contextual Analysis.* Oxford and Portland, OR: Hart Publishing, 2012.

Caiden, Gerald E. *The Dynamics of Public Administrations in Theory and Practice.* New York: Holt, Reinhart and Winston, Inc., 1971.

Direktorat Jenderal Urusan Haji, *Pokok-pokok Penjelasan Penyelenggaraan Urusan Haji.* Jakarta: Direktorat Jenderal Urusan Haji, 1970/1971.

Fleming Intan, Benyamin. *"Public Religion" and the Pancasila-Based State of Indonesia: An Ethical and Sociological Analysis.* New York: Peter Lang, 2006.

Harlow dan Richard Rawlings, Carol. *Law and Administration, Third Edition.* New York: Cambridge University Press, 2009.

Horowitz, Donald L. *Constitutional Change and Democracy in Indonesia.* New York: Cambridge University Press, 2013.

- Hosen, Nadirsyah. *Shari'a & Constitutional Reform in Indonesia* (Singapore: Institute of Southeast Asian Studies, 2007).
- Laski, Harold. *A grammar of Politics*. London: Allen and Unwin, 1925.
- Loughlin, Martin. *Public Law and Political Theory*. Oxford Clarendon Press, 1992.
- Picard and Rémy Madinier, Michel ed., *Politics of Religion in Indonesia: Syncretism, Orthodoxy, and Religious Contention in Java and Bali*. Abingdon, Oxon and New York: Routledge, 2011.
- Ridwan HR, *Hukum Administrasi Negara Edisi Revisi*. Jakarta: Rajawali Press, 2013.
- Salim, Arskal. *Challenging the Secular State: The Islamization of Law in Modern Indonesia*. Honolulu: University of Hawai'i Press, 2008.
- Sekretariat Negara Republik Indonesia, *Himpunan Risalah Sidang-sidang dari Badan Penyelidik Usaha Persiapan Kemerdekaan Indonesia (BPUPKI) (Tanggal 29 Mei 1945–16 Juli 1945) dan Panitia Persiapan Kemerdekaan Indonesia (PPKI) (Tanggal 18 dan 19 Agustus 1945) Yang Berhubungan Dengan Penyusunan Undang-undang Dasar 1945*. Jakarta: Sekretariat Negara Republik Indonesia, 1954.
- Soekanto, Soerjono dan Sri Mamudji. *Penelitian Hukum Normatif Suatu Tinjauan Singkat*. Jakarta: Raja Grafindo Persada, 2015.

#### Journal Articles

- Alfitri. "Religion and Constitutional Practices in Indonesia: How Far Should the State Intervene in the Administration of Islam?", *Asian Journal of Comparative Law*, Vol. 13, 2018, <https://doi.org/10.1017/asjcl.2018.20>
- Jumali, Endang. "Management of Hajj Funds in Indonesia". *Journal of Legal, Ethical, and Regulatory Issues*. Vol 21, no.3, 2018.
- Mamonto & Rizki Ramadani, "Kebijakan Perlindungan Jamaah Haji Khusus dan Umroh Di Sulawesi Selatan", *PETITUM*, Vol. 7, No.2, 2019. <https://doi.org/10.36090/jh.v7i2%20Oktober.650>
- Mochammad Aziz, Roikhan. "Hahslm Theory as Guidance of Straight Path in Management of Hajj and Finance", *KnE Social Science* vol. 3, no. 8, 2018. <https://doi.org/kss.v3i8.2503>
- Morris, D. (2016). Accommodating Nazi Tyranny? The Wrong Turn of the Social Democratic Legal Philosopher Gustav Radbruch After the War. *Law and History Review*, 34(3), 649-688. <https://doi.org/10.1017/S0738248016000213>
- Mubarak, M. Ali "Manajemen Pengelolaan Dana Haji Republik Indonesia (Studi Kolaborasi Antar Lembaga BPKH, Kemenag dan Mitra Keuangan dalam Pengelolaan Dana Haji)", *Iltizam Journal Of Shariah Economic Research*, Vol. 2, No. 2, 2018. <https://doi.org/10.18646/2056.53.18-009>



Muneeza, Aishaath et al, "A Comparative Study of Hajj Funds Management Institutions in Malaysia, Indonesia, and Maldives". *International Journal of Management and Applied Research* vol. 5, no.3, 2018. <https://doi.org/10.18646/2056.53.18-009>

Primadhany, Erry Fitriya. "Tinjauan Terhadap Tanggung Jawab Badan Pengelola Keuangan Haji (BPKH) dalam Melakukan Penempatan dan/atau Investasi Keuangan Haji", *Jurisdictie: Jurnal Hukum dan Syariah* Vol. 8 No.2 Tahun 2017. <https://doi.org/10.18860/j.v8i2.4447>

Santosa, A.A. Gede D. H. "Perbedaan Badan Hukum Publik Dan Badan Hukum Privat", *Jurnal Komunikasi Hukum (JKH)* Vol. 5, No. 2, 2019. <https://doi.org/kss.v3i8.2503>

#### Regulations

Indonesia, Undang-Undang Dasar Negara Republik Indonesia Tahun 1945

\_\_\_\_\_. (1), *Undang-undang tentang Penyelenggaraan Ibadah Haji dan Umroh*, UU Nomor 8 Tahun 2019, LN. Nomor 75 Tahun 2019, TLN. Nomor 6338 Tahun 2019.

\_\_\_\_\_. (2), *Undang-undang tentang Pengelolaan Keuangan Haji*, LN. Nomor 296 Tahun 2014, TLN. Nomor 5605 Tahun 2014.


#### Websites

Dinda Purnamasari, "Di Mana Saja Dana Haji Ditempatkan?", <<https://tirto.id/di-mana-saja-dana-haji-ditempatkan-ct8V>>, accessed June 22, 2022.

Enam Tahun SBSN, Bangun Gedung 57 PTKIN ([kemenag.go.id](http://kemenag.go.id))

Donald Banjarnahor, "Investasi di Sukuk Negara Berbuah Gedung Rafah UIN Palembang", dalam <https://www.cnbcindonesia.com/news/20191010113831-4-105857/investasi-di-sukuk-negara-berbuah-gedung-rafah-uin-palembang>, accessed June 22, 2022.

## REVISI KE-3

▶  31941-1 Article Text, Final manuscript revision results December Article Text  
C-7268 Hajj 02122023.docx 2, 2023

### **Analysis of Hajj Fund Management in Indonesia Based on Islamic Law and State Administration**

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**Article history:** Received: May 30, 2023; Revised: July 01, 2023; Accepted May 04, 2024;

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### Abstract:

Government regulations on the Indonesian Hajj pilgrimage have a major impact on the national economy. The Hajj pilgrimage not only aims to increase devotion and spiritual values, but the Hajj pilgrimage has great potential to improve a country's economy. There is a fundamental problem in managing the Hajj pilgrimage, namely that the management of Hajj funds is ineffective and unprofessional. This research aims to examine the management of Hajj funds in detail using an Islamic legal approach and state administration theory as well as to analyze and study in depth so that the management of Hajj funds in Indonesia can be carried out optimally. This research uses a normative juridical method, namely a method carried out through prescriptive presentation and explanation through interdisciplinary theory. Secondary data used in this research comes from journals and scientific documents, as well as statistical data. Researchers also act as the main source in analyzing and reviewing the data, as well as interpreting it to get the right conclusions. The research results show that in the maqashid sharia perspective, there is a *hifd maal* dimension, namely protecting Hajj funds for the benefit of society. This is related to the paradigm shift from private to public. In state administrative law, management and Hajj have experienced a shift from Islamic legal theory to state administration theory. The government can intervene in the organization and management of Hajj funds. Based on this, the government needs to make efforts to optimize Hajj funds in forms and mechanisms that can be beneficial to society in general, such as providing maximum Hajj services while prioritizing the welfare of the people.

### Keywords:

Hajj Funds, Islamic Law, State Administration, *Maqasid al-Shariah*, Green Light Theory

### Introduction

Indonesia contributes a lot of Hajj pilgrims almost every year as a result of its constitution.<sup>206</sup> The constitution guarantees Indonesian citizens to embrace and worship following their respective religions and beliefs.<sup>207</sup> The government is in charge of planning the *hajj* for those who want to practice it. They guide, give a service, and protect the citizens who perform the *hajj* in a safe, comfortable, orderly, and following the provisions of the *shari'ah*.<sup>208</sup>

<sup>206</sup> Jumali, E. (2018). Management of Hajj Funds in Indonesia. *J. Legal Ethical & Regul. Issues*, 21, 1.

<sup>207</sup> This is as stated in the 1945 Constitution of the Republic of Indonesia Article 29.

<sup>208</sup> Indonesia (1), *Undang-Undang tentang Penyelenggaraan Ibadah Haji dan Umroh*, UU Nomor 8 Tahun 2019, LN. Nomor 75 Tahun 2019, TLN. Nomor 6338 Tahun 2019, konsideran.

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Since the founding of the Unitary State of the Republic of Indonesia, efforts to shape issues regarding the implementation of the *Hajj* pilgrimage have been formulated. The Ministry of Religious Affairs has a central role as a regulator of the implementation and management of *Hajj* finances.<sup>209</sup> As specified in Law Number 17 of 1999 concerning the Implementation of the *Hajj*, the government does not, however, incorporate *Hajj* funds in the APBN is the annual financial plan of the state government approved by the DPR. The APBN consists of a revenue budget, expenditure budget, and financing.<sup>210</sup> It means that the APBN does not cover *hajj* funds in the form of cash received from potential pilgrims. This is because *hajj* money is administered by government organizations rather than being a part of non-tax state revenue. Law No. 34/2014 mandates the management of *Hajj* finances to be carried out by BPKH (Hajj Financial Management Agency), a public legal entity that is independent and responsible to the President through the Minister of Religious Affairs. The structure of BPKH consists of an executive body and a supervisory board responsible for managing the revenue, development, expenditure, and accountability of *Hajj* finances.

The establishment of BPKH is based on the Presidential Decree of the Republic of Indonesia Number 35 of 1996 in conjunction with the Presidential Decree of the Republic of Indonesia Number 52 of 1996 concerning the Organization and Work Procedures of BPDONHI (*Hajj* Pilgrimage Fund Management Agency). This institution later changed its nomenclature to Ummah's Endowment Fund Management Agency, *Community Endowment Fund Management Agency* (BP DAU).<sup>211</sup> This *hajj* fund is kept by the government as a deposit for prospective *hajj* pilgrims to be managed for the smooth running of *hajj* services. Therefore, the cost of organizing the pilgrimage is determined by the state to ensure certainty of departure to the holy land and guarantee security during the pilgrimage. In this period, the *hajj* funds are managed by setting aside the excess value to be stored as the Ummah's Endowment Fund, Community Endowment Fund (DAU).<sup>212</sup>

As an annual ritual that costs quite a lot of money, the management of *hajj* funds is a financial domain that is in the area of public affairs. In addition to the problem of organizing the pilgrimage, it is also related to the relationship between the country of origin of the prospective pilgrims and the country of destination in carrying out the pilgrimage, namely Saudi Arabia. Indonesia, as the highest Muslim population country, receives a large number of *hajj* quotas. In 2023, Indonesia will receive the largest *hajj* quota in the world. It is recorded that Indonesia's *hajj* quota will reach 221,000 pilgrims, consisting of 203,320 quotas for regular *hajj* pilgrims and 17,680 quotas for special *hajj* pilgrims. Even if there will be a lot of quotas in

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<sup>209</sup> Rina Farihatul Jannah, "Kebijakan Penyelenggaraan Perjalanan Haji Indonesia Tahun 1945-2000", Thesis on the Postgraduate Program of the State Islamic University of Sunan Ampel Surabaya, 2018, 39-75.

<sup>210</sup> The *hajj* (Islamic pilgrimage to Mecca) involves not only religious devotion, but also religious tourism and its associated business, necessary to deal with massive parties of pilgrims, embracing trans-national relations, central and local governments, flight and other travel agencies, pilgrimage guidance units, catering agencies and hotels to the pilgrims themselves in its scope.

<sup>211</sup> Muhammad M. Basyuni, *Reformasi Manajemen Haji*, (Jakarta: FDK Press, 2008), 83-85.

<sup>212</sup> Inti Ulfi Solichah, "Hukum Investasi Produktif dalam Pengelolaan Dana Haji (Perspektif Hukum Ekonomi Syariah)", Thesis on the Masters Program in Islamic Economic Law, Faculty of Sharia, Syarif Hidayatullah State Islamic University, Jakarta, 2018, 41.

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2023, they won't be in line with the number of applicants which rises annually<sup>213</sup> resulting in the waiting list of *hajj*.

The waiting list for *hajj* departure is determined by the time of registration by paying the *hajj* Travel Fee or so-called BPIH (Cost of Organizing the Hajj Pilgrimage).<sup>214</sup> This BPIH deposit is a part of the *Hajj* fund. The term *hajj* fund itself is formulated in terms of the Hajj Financial Management Act, including BPIH deposit funds; efficiency funds; DAU (*Endowment Fund of The Ummah*); as well as the value of benefits controlled by the state in the context of organizing the pilgrimage and implementing program activities for the benefit of Muslims.<sup>215</sup>

Due to the limited *hajj* quota each year, there will certainly be a build-up of *hajj* funds due to the large number of applicants on the waiting list based on the BPIH deposit. Therefore, the government has taken the initiative to manage *hajj* funds by placing and/or investing State Sharia Bonds (SBSN), also known as Sukuk or Sharia Bonds, in productive sectors to generate the value of the benefits of *hajj* fund management. This is a logical ratio of the establishment of the Hajj Financial Management Law. Therefore, through the Hajj Financial Management Law, a special financial institution has been established with the authority to manage *Hajj* funds, namely the Hajj Financial Management Agency (BPKH).<sup>216</sup>

The management of *hajj* funds by the state, in this case by the BPKH, is interesting to study interdisciplinarily. This research would like to discuss it from the perspective of *maqasid* as a philosophy of Islamic law while its authority according to the constitution and administrative legislation is from the perspective of state administrative law. *Maqâsid* as a philosophy of Islamic law refers to the importance of safeguarding public finances (*hifz mâl*) which, in the case of the *hajj* waiting list, must be used to the greatest extent possible for the benefit of the *ummah*.<sup>217</sup> This benefit can be seen, for example, in the construction of SBSN buildings in the State Islamic Religious Universities (PTKIN) in Indonesia.<sup>217</sup> Carol Harlow and Richard Rowling argue that this role is related to a theoretical view which in the context of state administrative law theory is called red light theory. The view of red light theory assumes that the authority and role of state administration are limited to law enforcement and public order, which is also known as the 'night watch state' or *nachtwatcherstaat*. In this view, state administrative law functions to prevent state violations of human rights. Therefore, the red-light theory emphasizes the balance of power by supporting a strong judiciary to control

<sup>213</sup> The number of *hajj* registrants in 2019 reached 710,000 pilgrims, exceeding the target of 650,000 pilgrims. See Faidah Umu Sofuroh, Lampau Target, Pendaftar Haji 2019 Capai 710 Ribu Jemaah, <<https://news.detik.com/berita/d-4836697/lampau-target-pendaftar-haji-2019-capai-710-ribu-jemaah>>, accessed March 8, 2021.

<sup>214</sup> Indonesia (1), *Undang-Undang tentang Penyelenggaraan Ibadah Haji dan Umroh*, Pasal 5 Ayat (1).

<sup>215</sup> Indonesia (2), *Undang-Undang tentang Pengelolaan Keuangan Haji*, UU Nomor 34 Tahun 2014, LN. Nomor 5605 Tahun 2014, Pasal 1 Ayat (2).

<sup>216</sup> Erry Fitrya Primadhany, "Tinjauan terhadap Tanggung Jawab Badan Pengelola Keuangan Haji (BPKH) dalam Melakukan Penempatan dan/atau Investasi Keuangan Haji", *Jurisdictie: Jurnal Hukum dan Syariah* Vol. 8 No.2 Tahun 2017, 126-127. <https://doi.org/10.18860/j.v8i2.4447>

<sup>217</sup> Jasser Auda, *"Maqasid al-Shariah as Philosophy of Islamic Law: A System Approach"*. The International Institute of Islamic Thought, London, UK, 2007.

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executive power. The thinking behind the red-light theory is the Laissez Faire State which has the idea that the best government is the least government. This view assumes that the authority and role of state administration should be made as simple as possible so that the structure of state administration is very small.<sup>218</sup>

*Maqâšid hifâz mal* relates to the management of Hajj funds so that the management of Hajj funds is in line with the concept of equality towards society which is the legal ideal contained in the preamble of the Indonesian constitution. In addition, the management of *hajj* funds following their objectives is also important to discuss considering the large number of *hajj* funds managed by BPKH so as not to deviate from the initial goal of financing the pilgrimage. Policies regarding the management of *hajj* funds should be in line with the philosophical foundations of Islamic law, in this case, *maqasid*, and not conflict with the principles of legal certainty, benefit to the community, and good public services. The government's policy for managing Hajj finances should be based on rational considerations of the principles of certainty, fairness, and benefit,<sup>219</sup> and has a basis for the state. Law No. 13 of 2008 concerning the Implementation of the Hajj serves as the legal foundation for current regulations regarding the management and best use of Indonesian *Hajj* funds. Academicians and practitioners consider that the legal basis is not sufficient, so a separate law is needed that regulates the management of *hajj* funds. However, in Law No. 13 of 2008, management is only limited to its optimal use and development in the form of bank instruments whose security is truly guaranteed. Thus, the policies made by the government can be used for the general welfare of the community in line with the objectives of the founding of the Republic of Indonesia.<sup>220</sup>

Research on the management of *hajj* funds has been done by some previous researchers. Rina Farihatul Jannah examined the historical aspects of the *hajj* fund management policy and its implementation.<sup>221</sup> Meanwhile, Erry Fitria Primardhani discussed the responsibility of BPKH in investing *hajj* funds. She concluded that *hajj* funds must be invested economically and professionally.<sup>222</sup> Roikhan Muhammad Azis<sup>223</sup> found that the *hajj* funds deposited in banks (not used for *hajj* departure) are so large yet under-utilized. Therefore, he recommended that the funds should be used productively for the time being while waiting for the departure time from the government. Meanwhile, Endang Jumali focuses on the *hajj* financing contract

<sup>218</sup> Carol Harlow and Richrad Rowlings, *Law and Administration* (London: Butterwoths, 1997), 29 dalam Tri Hayati, "Perizinan Pertambangan di Era Reformasi Pemerintahan Daerah Studi tentang Perizinan Pertambangan Timah di Pulau Bangka", Disertasi Pada Program Studi Doktor Ilmu Hukum Program Pascasarjana Fakultas Hukum Universitas Indonesia, 2011. 38-39.

<sup>219</sup> Muheramtohad, S. (2020). The use of Hajj fund for investment purpose: a maqashid sharia approach. *Journal of Islamic Economics, Management, and Business (JIEMB)*, 1(1), 99-116.

<sup>220</sup> Fahmi, A. S. R. (2017). An Analysis of Investment for Hajj Funds from Islamic Law Perspective. *Al-Iktisab: Journal of Islamic Economic Law*, 1(2), 131-140.

<sup>221</sup> Rina Farihatul Jannah, *Kebijakan Penyelenggaraan*, 2018.

<sup>222</sup> Erry Fitrya Primadhany, *Tinjauan terhadap Tanggung Jawab*, 125.

<sup>223</sup> Roikhan Mochammad Aziz, "Hahslm Theory as Guidance of Straight Path in Management of Hajj and Finance", (*KnE Social Science* vol. 3, no. 8, 2018), 105-120. <https://doi.org/kss.v3i8.2503>

**Commented [A89]:** Move this to the intro part

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from the perspective of Islamic law. She found<sup>224</sup> that the payment of *hajj* funds uses a *wakalah* (delegating) contract so that the payer (prospective pilgrims) does not demand anything from the deposited funds even though the manager (government) can get some benefit from the funds. Finally, Aishath Muneeza<sup>225</sup> examined the comparison of *hajj* financial management in Indonesia, Malaysia, and the Maldives confirming that the policies of the three countries are different.

There is a paradigm shift and classical *maqasid* sharia theory to contemporary *maqasid* sharia theory. The change lies in the main benefit, namely the protection and preservation aspects, while the contemporary *maqasid* sharia theory is more about development and rights. To develop the concept of contemporary *maqasid sharia*, Jasser Auda proposes human development as a form of the main target of contemporary public interest; this *maslahah* should be the target of *maqasid sharia* to be realized through Islamic law, as is the case in reviewing the financial management of the pilgrimage. The Hajj pilgrimage is among the devotional rituals that include a great deal of *maqashid*.

Jasser Auda<sup>226</sup> compiled a contemporary conception of *maqasid* which is an evolution of the theory and concept of classical *maqasid* sharia, namely: (1). Preserving Descent (*hifz al-Nasl*) is a theory oriented towards protecting the family; paying more attention to family institutions; (2) Preserving the Intellect (*hifz al-Aql*) by multiplying mindset and scientific research; prioritizing the journey of seeking knowledge; avoiding efforts to underestimate the workings of the brain; (3) Preserving honor; preserving the soul (*hifdz al-'Irdh*) by preserving and protecting human dignity; safeguarding and protecting human rights; (4) Safeguarding religion (*hifdz al-Diin*), namely protecting and respecting freedom of religion or belief, and (5) Safeguarding property (*hifdz al-Maal*), namely promoting social care; paying attention to economic development and development; advancing human welfare; eliminating the gap between the rich and the poor.

Performing the Hajj is one of the five pillars of Islam which is mandatory for a Muslim who has the financial means to perform this pilgrimage at least once in his life. To make it easier for Muslims to fulfill their religious obligations, countries with a majority Muslim population such as Malaysia, Indonesia, and the Maldives have established legal entities/institutions that manage Hajj funds from Hajj savers (prospective Hajj pilgrims) and provide Hajj-related services. Although these institutions have the same goal of helping Muslims perform the Hajj, their operational activities are fundamentally different. Those researchers have not discussed how the perspective of *maqashid shariah* and administrative law are employed in Indonesian *hajj* management. Furthermore, those researchers have not mentioned how the Indonesian government optimizes *hajj* management. Therefore, this research examines in depth the management of *hajj* funds through the paradigm of the Islamic

224 Endang Jumali, "Management of Hajj Funds in Indonesia" (*Journal of Legal, Ethical, and Regulatory Issues*. Vol 21, no.3, 2018), 1-9.

225 Aishath Muneeza et al, "A Comparative Study of Hajj Funds Management Institutions in Malaysia, Indonesia, and Maldives". (*International Journal of Management and Applied Research* vol. 5, no.3, 2018), 1-15. <https://doi.org/10.18646/2056.53.18-009>

226 Auda, J. (2014). *Russian: Maqasid Al-Shariah: A Beginner's Guide*. International Institute of Islamic Thought (IIIT).

**Commented [A97]:** To clarify your novelty, please do not only mention them. Map or categorize them so that your current article novelty is crystal clear.

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legal philosophy, describes how the state administration theory portrays Indonesian hajj management, and Indonesia's strategy to optimize hajj management.

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## Methods

This research uses a qualitative approach with a normative juridical method. The data source uses primary data derived from 3 (three) materials, namely 1) primary law, 2) secondary law, and 3) tertiary law. Primary data is data obtained directly from the objects studied, both individually and as a group of organizations. Secondary data is data obtained indirectly to obtain information about the object under study. Tertiary data is data obtained indirectly from the object under study, usually, the data is obtained from third parties, whether from individuals or groups who deliberately reveal facts from second parties. Meanwhile, secondary data<sup>227</sup> sources come from journals, both national and international journals, books, as well as, magazines, and other articles that have relevance to the problems and objects of research.

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Data collection comes from various books, journals, and articles related to the management of Hajj funds through the steps of 1) managing and organizing data, 2) reading and recording emerging ideas, 3) describing and classifying codes into themes, 4) developing and accessing interpretations, and 5) representing and visualizing data. The data analysis technique used is spiral analysis which is equipped with content analysis, comparative and critical analysis of Hajj laws and regulations, and studied through Islamic legal theory and state administration. The *maqasid al-Syariah* theory in this research is used to analyze the management of Hajj funds related to the *hifz māl* aspect so that researchers will be able to draw precise and profound conclusions.

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## Result and Discussion

### Indonesian Hajj Fund Management from *maqasid sharia* Perspective

The concept of *maqashid al-syari'ah* according to Al-Ghozali (1976) was transformed to measure the sharia objectives of managing Hajj funds. Muamalah activities that are based on Sharia principles must follow *maqashid al-syari'ah*. Hajj funds are all types of wealth that can be valued in money, whether in the form of money or goods, originating from the government's rights and obligations relating to the implementation of the Hajj pilgrimage, both from Hajj pilgrims. The government must provide administrative services, guidance, accommodation, transportation, and Hajj services, the costs of which come from the pilgrims and are given to the government through the Ministry of Religion's account.<sup>228</sup>

BPKH has a precautionary principle in managing Hajj finances which is carried out carefully, thoroughly, safely, and orderly and considers financial risk aspects. The principle

<sup>227</sup> Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, (Jakarta: Raja Grafindo Persada, 2015), 33.

<sup>228</sup> Zakiruddin, M. A., Kamsi, K., & Bahiej, A. (2022). Siyasa Syar'iyah Paradigm of Hajj Financial Management Regulation in Indonesia. *Al-Istinbath: Jurnal Hukum Islam*, 7(2 November), 531-552.



of benefit is that the financial management of the Hajj pilgrimage must provide benefits for the pilgrims and Muslims. The non-profit principle is that the management of Hajj finances is carried out by prioritizing the use of proceeds from the development of funds that provide benefits to Hajj pilgrims and the benefit of Muslims without any distribution of dividends for management. The principle of transparency is that Hajj financial management is carried out openly and honestly by providing information to the public, especially Hajj pilgrims, regarding the implementation and results of Hajj financial management. The principle of accountability is that the management of Hajj finances is carried out accurately and can be accounted for by the community, especially by the congregation. The application of sharia values in financial management is intended to achieve sharia goals (*maqāṣid al-shari'ah*). *Maqāṣid al-shari'ah* is seen from the activity of protecting five main things (*al-kulliyah al-Khaimah*), namely the protection of religion, soul, mind, lineage, and property. 229

The implementation of *hajj* in Indonesia has a long history of policy or regulatory aspects. Before the founding of the Republic of Indonesia, Muslims had performed pilgrimages to the holy land of Saudi Arabia. In around 1267 when the Islamic empire was established in the archipelago, there were no special regulations regarding the implementation of the *hajj*. Only after the Dutch colonial government came to power did the pilgrimage have regulations in the form of written positive law.<sup>230</sup> During the colonial period, the Dutch colonial government was worried about people going to the *hajj*. The reason is that when they were in Mecca, there was no longer any caste, skin color or position based discrimination, so it was worried that the pilgrims realized that everyone had the same rights so that this could trigger a rebellion. The Dutch were concerned about the political impact of the *hajj* because people returning from the *hajj* were accepted as holy people in Java. For this reason, it is believed that *hajj* pilgrims are more listened to by other ordinary people, so the Dutch government made strict regulations relating to the *hajj*.<sup>231</sup>

Ibn 'Asyur stated that the general aim of Sharia is to maintain the rules of the people, to continue the continuity of goodness, good for humans, reason, works, and things that appear on the face of the earth. Meanwhile, according to Al-Fāsi, the aim of sharia is that sharia, in general, to prosper the earth, maintain the rules of life, uphold goodness according to its place, and uphold what is required fairly, *istiḳāmah*, contains the goodness of reason and charity, improve and realize the goodness and being able to organize the benefit of many people. Meanwhile, the goal of Sharia in particular is the state intended by al-Shari' to realize beneficial humanitarian goals or maintain general welfare within special rules. So efforts to achieve special benefits do not cancel public wealth, because of negligence or because of lust.<sup>232</sup>

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229 Masrifah, A. R., & Firdaus, A. (2017). The Framework Of Maslahah Performa as Wealth Management System and Its Implication for Public Policy Objectives. *Media Syari'ah: Wahana Kajian Hukum Islam dan Pranata Sosial*, 18(2), 235-264.

230 Rina Farihatul Jannah, *Kebijakan Penyelenggaraan*, 23-38.

231 Ajeng Dewi P. S., "Tanggungjawab Yuridis Kementerian Agama Dalam Pelaksanaan Ibadah Haji", Thesis on the Master Program in Law, Faculty of Law, Islamic University of Indonesia, Yogyakarta, 2015, 25-26.

232 Muḥammad Abū Zahrah, *Uṣūl Al-Fiḥ* (Kairo: Dār al-Fikr al-'Arabī, n.d.), 346-366.

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Meanwhile, according to Abu Zahrah, Islamic Sharia law has three objectives, namely *tahdhīb al-fard* (education for individuals), *iqāmah al-'adl* (upholding justice) and *maṣlaḥa*. Thus, *maqāṣid al-sharī'ah* is the goal, wisdom, or secret of establishing a sharia law. *Maqāṣid al-sharī'ah* aims to guarantee the benefit of mankind (*jalb al-maṣāliḥ*) and protect mankind from damage and evil (*daf 'al-ḍarr*) both in this world and the hereafter and aims to achieve justice. The protection of humans is related to *maṣlaḥa*. *Maṣlaḥa* is divided into three levels, namely *darūriyāt* (primary), *ḥājjiyāt* (secondary) and *taḥsīniyāt* or *kamāliyyāt* (additional). *Maṣlaḥa ḥājjiyāt* and *taḥsīniyyāt* cannot be realized if *Maṣlaḥa darūriyāt* is not fulfilled. 233 *Maṣlaḥa darūriyāt* refers to the preservation of five things (*maqāṣid al-khamsah*), namely the preservation of religion, soul, wealth, intellect, and offspring. Ab ū Zahrah said that if these five things are not maintained then human life will suffer the noble ones will also not be preserved. able to be maintained perfectly. In essence, the world as a place for human life is based on the five pillars of life. *Maqāṣid al-khamsah* was placed in the position of *darūriyāt* because it was the most powerful level of *maṣlaḥa*. The maintenance of religion shows that the role of religion is very important. 234

The maintenance of the soul, mind, and offspring is maintenance related to individual humans. All three are related to human life needs, namely physical, psychological, educational, health, and survival needs. Asset maintenance is every action carried out in asset management. The constitution as the foundation of the legal system of the Republic of Indonesia regulates religious life, although the 1945 Constitution has been amended four times, the basic norms regarding the guarantee of freedom of religion are maintained. For example, in drafting legal regulations regarding religion, the Constitution explicitly always provides a legal basis. The regulation on the guarantee of freedom of religion is explained in Article 29 Paragraph (2) of the 1945 Constitution reading "The State guarantees the freedom of each citizen to embrace their respective religions and to worship according to their religion and belief". This constitutional article then becomes the source of law as well as the basis for the state to use its authority in organizing the *hajj*, which also includes the management of *hajj* funds for the sake of benefit. 235

#### ***Management of Indonesian Hajj Funds Based on State Administration***

As a country that adheres to the concept of the welfare state to establish the state as written in the fourth paragraph of the preamble of the constitution, the Republic of Indonesia has the authority to make arrangements and provide facilities for all aspects of the lives of its citizens, including the implementation of the *hajj* for Muslim citizens. The authority and role of the state in all aspects of the lives of its citizens are expanding along with the development of history and law. The adoption of the concept of the welfare state by the Indonesian state has resulted in the expanding authority and role of state administration in people's lives. In

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233 Muḥammad Ṭāhir Ibn 'Ashūr, *Maqāṣid Al-Sharī'ah Al-Islāmiyyah* (Qatar: al-Syaikh Muḥammad bin Khalīfah al-Asanī, 2004), 273.

234 Alal Al-Fāsī, *Maqāṣid Al-Sharī'ah Al-Islāmiyyah Wa Makārimuhā*, 5th ed. (Rabat: Dār al-Gharb al-Islāmī, 1993). 45-46

235 Munira, M., & Astuti, S. B. (2019). Indonesian hajj fund management: An overview. *Asian Journal of Accounting and Finance*, 1(1), 1-9.

this case, state administrative law provides facilities for the enlargement of the state's role in providing welfare for its citizens. The state administration has a role not only as a tool for law and order enforcement but also as a tool to achieve public welfare in various sectors of life, including the religious sector, which in this case is the implementation of the *Haji*.

The great role of state authority and state administration is facilitated theoretically by a view that contradicts the red light theory as stated above, namely the green light theory.<sup>236</sup> State administration becomes a vehicle to facilitate every aspect of citizens' lives, to achieve political progress and the realization of an "administrative state". This view assumes that state administrative law has broad powers and roles and must be proactive in various fields of people's lives.<sup>237</sup>

Moreover, unlike the red light theory which prioritizes the judiciary in a country, the green light theory tends to develop deliberation, consensus, and political accountability of the government. For example, the Indonesian government negotiated with the Saudi Arabian government through diplomatic relations to increase the hajj quota in 2022 by 10,000 people. Public participation is a prerequisite for state accountability according to the green light theory. From the view of the green light theory adopted by the government of the Republic of Indonesia, it can be understood as a broad authority for the Indonesian government in organizing the Hajj pilgrimage through the participation of the Indonesian people, who are the largest Muslim majority in the world.

Administratively, the transparency of the Hajj organized by the government, in this case, the Ministry of Religious Affairs of the Republic of Indonesia, is regulated in the Regulation of the Minister of Religious Affairs of the Republic of Indonesia. Number 5 of 2021 concerning Business Activity Standards for Organising Hajj Travel and Special Hajj Pilgrimage proves the government's seriousness in this matter. Besides the long-standing good diplomatic relations between the two countries, Indonesia and Saudi Arabia, it is no wonder that Indonesia always gets an additional Hajj quota. This is certainly very helpful in organizing the Hajj pilgrimage, especially in cutting the long queues that have now reached decades.

From an organizational point of view, the implementation of the pilgrimage is based on four alternative principles as recognized in state administrative law, including<sup>238</sup> first, the objectives to achieve a good and responsible organization of the Hajj by the Ministry of Religious Affairs; second, the group served, namely citizens who want to perform *hajj*; third, the process carried out, namely the implementation of the pilgrimage which includes planning, budgeting, implementation, evaluation, and supervision; fourth, the geographical area covered, namely the territory of the state of Indonesia. With this understanding, the state's authority in organizing the *hajj* can be understood based on the view of state law in the field of administration that it adheres to, namely the green light theory above. This authority,

<sup>236</sup> Carol Harlow dan Richard Rawlings, *Law and Administration, Third Edition*, (New York: Cambridge University Press, 2009), 31.

<sup>237</sup> Carol Harlow dan Richard Rawlings, *Law and Administration*, 32.

<sup>238</sup> Tri Hayati, "Perizinan Pertambangan di Era Reformasi Pemerintahan Daerah Studi tentang Perizinan Pertambangan Timah di Pulau Bangka", 40.

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to borrow Duguit's green light theory, is administratively the government's duty and obligation as a public servant. Therefore, the view that the private affairs of citizens, namely religion, should not be managed by the state becomes irrelevant. Therefore, administratively, the organization of Hajj activities is mandatory for the government through the Hajj Financial Management Agency (KBKH) to administer and manage to provide the best service to its citizens who can perform Hajj<sup>239</sup>.

Law No. 34/2014 on state guarantees to provide facilities and services for citizens who wish to perform the Hajj pilgrimage is a source of state authority in organizing a good, responsible, and professional Hajj pilgrimage, following the constitutional authority granted by the 1945 Constitution. Even though there are still weaknesses and shortcomings, for example, services that are not optimal in the nutrition sector and tent facilities when wukuf in Arafat. However, the government continues to make great efforts, such as guaranteeing security from departure to return of the pilgrims. Citizens who perform worship have various aspects of worship that must be guaranteed by the state as a form of state facilities and services in the field of religion to its citizens. These aspects include the dimension of belief, the provision of facilities, the availability of worship infrastructure, the way of worship, the time of worship, the place of worship, and the procedures for the implementation of worship. Therefore, in terms of organizing the Hajj pilgrimage, the state is obliged to guarantee various aspects surrounding the implementation of the Hajj pilgrimage for its citizens, starting from preparation before departure, on the way, during the implementation of the Hajj pilgrimage until returning to the homeland.

Thus, it can be concluded that the reach of the state to facilitate the religious aspects of citizens, such as in the organization of the *hajj* and its management through the form of administration that has been prepared and the regulations enacted is to benefit the common good. In this case, the Ministry of Religious Affairs of the Republic of Indonesia through BPKH (Hajj Financial Management Agency) in particular, plays a central role in *hajj* affairs. The Ministry, which was established at the beginning of independence and whose first minister was KH Wahid Hasyim, has ensured that everyone is free to declare and worship following their religion and beliefs, as well as assisting, supporting, protecting, and promoting the aspirations of religious movements, in addition to the *hajj*, such as marriage, religious education, religious courts, pilgrimages, and others.<sup>240</sup>

### Efforts to Realize *Mashlahah*: Investment and Optimization of Hajj Funds in Today's Indonesia

The implementation of the *hajj* pilgrimage provides a stimulus for the economy both in the micro and macro scope. This became the basis for the Indonesian government in managing the *hajj* fund which reached trillions of rupiah in the form of investment. For instance, according to BPKH records, if 154,455 Indonesian pilgrims were sent out in 2015 and each of them paid Rp20 million, the total amount of money collected would have been Rp 3.09 trillion.

239 Undang-Undangn No. 34 Tahun 2014

240 Arskal Salim, *Challenging the Secular State: The Islamization of Law in Modern Indonesia* (Honolulu: University of Hawai'i Press, 2008), 71.

**Commented [A126]:** Does it really happen? Talk about what happens, not what it should take place.

**Commented [AA127R126]:** has been revised as directed

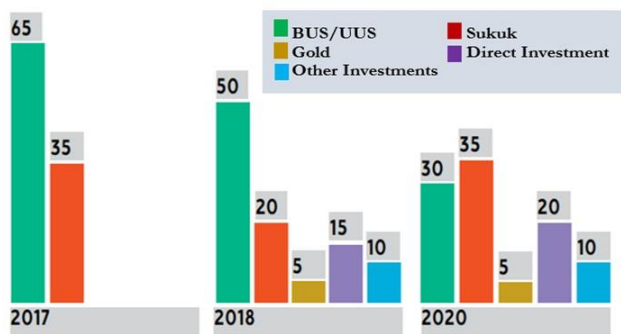
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In the meantime, it is conceivable that the amount of money that BPKH can manage could approach hundreds of trillions if the number of pilgrims on the waiting list surpasses one million, diverting 20 million IDR. The government could make this calculation very profitably by using gold coins, direct investment, SBSN (State Sharia Securities), or other Sharia-compliant investment funds.<sup>241</sup> Those data, then, can be expressed into some beneficial investment by the BPKH. Statistically, such investments in 2017, 2018, and 2020 can be seen in Figure 1.



Source: BPKH, processed (2021)

Figure 1. Hajj Fund Placement and Investment

Figure 1 shows that BPKH has established a plan for the placement and investment of *hajj* funds. As an illustration, in 2017, *hajj* funds were only placed in two investment instruments, namely savings/deposits (65%) and *Sukuk* (35%). Different from the previous one, in 2018, referring to Government Regulation No. 5/2018, BPKH invested the *hajj* funds into five types of investment. Two of them are still the same while three others were invested in the form of gold (5%), direct investment (15%), and other investments (10%). The proportion of fund placement for savings/deposits, similar to previous forms, is reduced to 50% and placement in *Sukuk* to 20%. With this increase in managed funds, the value of benefits provided to prospective waiting pilgrims also increased by Rp7.46 trillion, or an increase of 2.33 percent compared to the previous year of Rp7.29 trillion.<sup>242</sup>

Meanwhile, judging by BPKH's long period of investment in Hajj fund management, there are fluctuations. From 2016 to 2018, BPKH invested in the *hajj* fund as a form of monetary investment in three forms, namely investment with the bank, investment in the long term, and short-term. This kind of investment, detail, can be seen in Figure 2.

<sup>241</sup> Indonesia (7), *Undang-Undang tentang Surat Berharga Syariah Negara*, UU Nomor 19 Tahun 2008, LN. Nomor 70 Tahun 2008, TLN. Nomor 4852 Tahun 2008, Pasal 1 Ayat (1)

<sup>242</sup> Apa & Bagaimana Investasi Keuangan Haji BPKH, 2022

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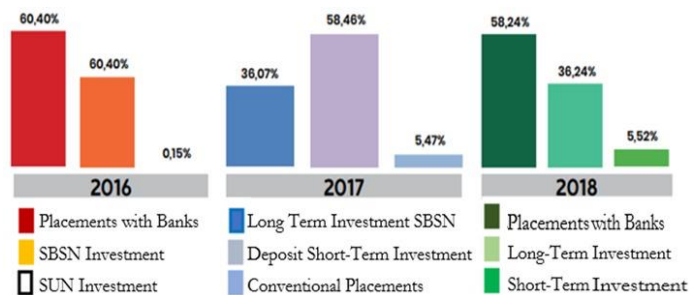
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Source: BPKH, processed (2021)

Figure 2. Hajj Fund Portfolio 2016-2018

From Figure 2 above, it can be seen that throughout 2016-2018, BPKH's investment funds in banks through deposits were always ranked first. In 2016, the composition of the placement of *hajj* funds in banks was 60.40%, while in 2017 and 2018 it was 58.46% and 58.24% respectively. The next order of placement composition is securities in *Sukuk*. The placement in *Sukuk* in 2016, 2017, and 2018 was 39.46%, 36.07%, and 36.24% respectively. Investment placement of *hajj* funds by BPKH in 2016 was to 3 instruments, namely Government Securities, SBSN-SDHI, and deposits, as well as in 2017. In 2018, BPKH followed the rules and regulations, so that the portfolio of investment instruments that go into conventional instruments are all withdrawn and invested in Islamic financial instruments.<sup>243</sup>

According to the Financial Report of the Hajj Financial Management Agency (BPKH, 2019)<sup>244</sup>, the placement of *hajj* funds managed by BPKH is very risky because it is management is invested in Islamic capital market instruments such as *sukuk*. But the rewards are also great. Therefore, it must be carried out professionally, including in supervising the investment of *hajj* funds. The indicator of success for this management can be seen when the investment process is suitable with what has been planned. Not only that, the supervision carried out is also narrowed down, and wants to explore how the benefits of the investment can be obtained both for the benefit of the institution and the pilgrims themselves as the basic principles of Islamic economics to support the distribution of resources and encourage investment, optimize beneficial investment, and encourage investment, optimize beneficial investment, and encourage social participation for the public interest.

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<sup>243</sup> BPKH, B. I. (2022). Apa dan Bagaimana Investasi Keuangan Haji BPKH. Jakarta: Badan Pengelola Keuangan Haji.

<sup>244</sup> Laporan Keuangan Badan Pengelola Keuangan Haji (BPKH) Semester I Tahun 2019.

Following the mandate of the Law, according to Anggito Abimanyu (Head of BPKH Executive Board, 2020), BPKH's Hajj Finance investments can be made in sharia securities investment instruments, gold, direct investment, and other investments. The wide scope of this investment is a challenge for BPKH, especially to carry out an effective investment strategy to optimize the value of its benefits. Another challenge is how to anticipate the increase in the cost of performing the Hajj pilgrimage, both direct and indirect, so BPKH needs to carry out an investment strategy that can meet the needs of these costs through returns from various investment instruments.

Thus, the investment results of *hajj* funds, besides improving *hajj* services, are also used to improve the quality of *hajj* implementation and other public benefits.<sup>245</sup> This can be in the form of financing the construction of schools and campuses within PTKIN with SBSN<sup>246</sup> (State Sharia Securities). Meanwhile, the government, by BPKH, tried to manage the Hajj funds by providing certain schemes. According to the Director of Higher Education and Science and Technology of Bappenas RI, Hadiat<sup>247</sup>, the SBSN project was initiated by the Directorate General of Islamic Education of the Ministry of Religious Affairs which has succeeded in building educational infrastructure at PTKIN for six years with a total budget of 7-8 trillion rupiahs should be appreciated. The implementation of educational infrastructure development through SBSN which began in 2015 until 2022 has been running well, so PTKIN has benefited.

Therefore, from the perspective of *mashalah*, especially *maqashid sharia*, the state's implementation of Hajj is not limited to the protection of religion (*hifz al-din*) and property (*hifz al-maal*), but also to the sustainability of economic improvement and development. In addition, the value of the benefits of Hajj fund management can be used to improve infrastructure useful to the community. With good infrastructure, it will certainly have a positive impact on improving the national economy, social facilities and infrastructure, education, health, etc. This is what is expected from BPKH Kemenag RI's professional, responsible, and transparent management of Hajj funds.

## Conclusion

From the point of view of Islamic legal philosophy, namely *maqasid Sharia*, it follows the purpose of benefit, not only can it defend religion (*hifz ad-din*), but more broadly, it enables to protection of property (finance, *hifz mal*). Initially, the investment of the total funds was to be stored in the Bank. Deemed not productive, a regulation, namely Article 20 paragraph 4 allows the fund to be invested in investment instruments in the capital market, such as *Sukuk*, mutual funds, as well as direct investments such as gold, and other investments, both long-term and short-term investments. The presence of Law No. 24/2014 on *Hajj* Financial Management by the Hajj Financial Management Agency (BPKH) is the beginning of

<sup>245</sup> Donald Banjarnahor, "Investasi di Sukuk Negara Berbuah Gedung Rafah UIN Palembang", dalam <https://www.cnbcindonesia.com/news/20191010113831-4-105857/investasi-di-sukuk-negara-berbuah-gedung-rafah-uin-palembang>, accessed June 22, 2021.

<sup>246</sup> Enam Tahun SBSN, Bangun Gedung 57 PTKIN (kemenag.go.id)

<sup>247</sup> Enam Tahun SBSN, Bangun Gedung 57 PTKIN (kemenag.go.id)

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professional management of *Haji* funds through productive investment. It shows that the administration for *hajj* management has been prepared well and the regulations enacted to benefit the common good. This regulation, then, can benefit several aspects such as *hajj* services, infrastructure, facilities, monetary aspects, and other benefits. However, this research has limitations, especially in terms of methodological aspects and limited analysis of formal aspects. Therefore, it is suggested that further research is needed, especially from all dimensions of *maqasid Sharia* and the SDGs program to encourage sustainable development.

### Acknowledgments

Researchers' gratitude expressed to the Rector and Director of the Postgraduate Program of IAIN Sheikh Nurjati Cirebon, the Rector of King Abdulaziz University, Jeddah Makkah, Saudi Arabia, and the Rector of Ata Alma University Yogyakarta. They have supported and provided opportunities for researchers to improve their academics through research and scientific publications so that the results can be published. As well as research gratitude was also expressed to the manager of the AI-IHKAM IAIN Madura Journal who has published the results of this research.

### Bibliography

#### Books

- Ahlan Syarif, Fitriani, ed. *Aradhana Sang Guru Perundang-undangan; Kumpulan Tulisan Memperingati Ulang Tahun Ke-70 Prof. Dr. Maria Farida Indrati, S.H., M.H.* Depok: Badan Penerbit Fakultas Hukum Universitas Indonesia, 2019.
- Asshiddiqie, Jimly. *Jimly Asshiddiqie, Pancasila: Identitas Konstitusi Berbangsa dan Bernegara.* Jakarta: Sinar Grafika, 2020.
- Basyuni, Muhammad M. *Reformasi Manajemen Haji.* Jakarta: FDK Press, 2008.
- BPKH, B. I. (2022). *Apa dan Bagaimana Investasi Keuangan Haji* BPKH. Jakarta: Badan Pengelola Keuangan Haji.
- Butt and Tim Lindsey, Simon. *The Constitution of Indonesia: A Contextual Analysis.* Oxford and Portland, OR: Hart Publishing, 2012.
- Caiden, Gerald E. *The Dynamics of Public Administrations in Theory and Practice.* New York: Holt, Reinhart and Winston, Inc., 1971.
- Direktorat Jenderal Urusan Haji, *Pokok-pokok Penjelasan Penyelenggaraan Urusan Haji.* Jakarta: Direktorat Jenderal Urusan Haji, 1970/1971.
- Fleming Intan, Benyamin. *"Public Religion" and the Pancasila-Based State of Indonesia: An Ethical and Sociological Analysis.* New York: Peter Lang, 2006.
- Harlow dan Richard Rawlings, Carol. *Law and Administration, Third Edition.* New York: Cambridge University Press, 2009.



- Horowitz, Donald L. *Constitutional Change and Democracy in Indonesia*. New York: Cambridge University Press, 2013.
- Hosen, Nadirsyah. *Shari'a & Constitutional Reform in Indonesia* (Singapore: Institute of Southeast Asian Studies, 2007).
- Laski, Harold. *A Grammar of Politics*. London: Allen and Unwin, 1925.
- Loughlin, Martin. *Public Law and Political Theory*. Oxford Clarendon Press, 1992.
- Picard and Rémy Madinier, Michel ed., *Politics of Religion in Indonesia: Syncretism, Orthodoxy, and Religious Contention in Java and Bali*. Abingdon, Oxon, and New York: Routledge, 2011.
- Ridwan HR, *Hukum Administrasi Negara Edisi Revisi*. Jakarta: Rajawali Press, 2013.
- Salim, Arskal. *Challenging the Secular State: The Islamization of Law in Modern Indonesia*. Honolulu: University of Hawai'i Press, 2008.
- Sekretariat Negara Republik Indonesia, *Himpunan Risalah Sidang-sidang dari Badan Penyelidik Usaha Persiapan Kemerdekaan Indonesia (BPUPKI) (Tanggal 29 Mei 1945–16 Juli 1945) dan Panitia Persiapan Kemerdekaan Indonesia (PPKI) (Tanggal 18 dan 19 Agustus 1945) Yang Berhubungan Dengan Penyusunan Undang-undang Dasar 1945*. Jakarta: Sekretariat Negara Republik Indonesia, 1954.
- Soekanto, Soerjono dan Sri Mamudji. *Penelitian Hukum Normatif Suatu Tinjauan Singkat*. Jakarta: Raja Grafindo Persada, 2015.

#### Journal Articles

- Alfieri. "Religion and Constitutional Practices in Indonesia: How Far Should the State Intervene in the Administration of Islam?", *Asian Journal of Comparative Law*, Vol. 13, 2018, <https://doi.org/10.1017/asjcl.2018.20>
- Jumali, Endang. "Management of Hajj Funds in Indonesia". *Journal of Legal, Ethical, and Regulatory Issues*. Vol 21, no.3, 2018.
- Mamonto & Rizki Ramadani, "Kebijakan Perlindungan Jamaah Haji Khusus dan Umroh Di Sulawesi Selatan", *PETITUM*, Vol. 7, No.2, 2019. <https://doi.org/10.36090/jh.v7i2%20Oktober.650>
- Mochammad Aziz, Roikhan. "Hahslm Theory as Guidance of Straight Path in Management of Hajj and Finance", *KnE Social Science* vol. 3, no. 8, 2018. <https://doi.org/kss.v3i8.2503>
- Morris, D. (2016). Accommodating Nazi Tyranny? The Wrong Turn of the Social Democratic Legal Philosopher Gustav Radbruch After the War. *Law and History Review*, 34(3), 649-688. <https://doi.org/10.1017/S0738248016000213>
- Mubarak, M. Ali "Manajemen Pengelolaan Dana Haji Republik Indonesia (Studi Kolaborasi Antar Lembaga BPKH, Kemenag dan Mitra Keuangan dalam Pengelolaan Dana Haji",

*Illizam Journal Of Shariah Economic Research*, Vol. 2, No. 2, 2018.  
<https://doi.org/10.18646/2056.53.18-009>

Muneeza, Aishaath et al, "A Comparative Study of Hajj Funds Management Institutions in Malaysia, Indonesia, and Maldives". *International Journal of Management and Applied Research* vol. 5, no.3, 2018. <https://doi.org/10.18646/2056.53.18-009>

Primadhany, Erry Fitriya. "Tinjauan Terhadap Tanggung Jawab Badan Pengelola Keuangan Haji (BPKH) dalam Melakukan Penempatan dan/atau Investasi Keuangan Haji", *Jurisdictie: Jurnal Hukum dan Syariah* Vol. 8 No.2 Tahun 2017. <https://doi.org/10.18860/j.v8i2.4447>

Santosa, A.A. Gede D. H. "Perbedaan Badan Hukum Publik Dan Badan Hukum Privat", *Jurnal Komunikasi Hukum (JKH)* Vol. 5, No. 2, 2019. <https://doi.org/kss.v3i8.2503>

#### Regulations

Indonesia, Undang-Undang Dasar Negara Republik Indonesia Tahun 1945

\_\_\_\_\_ (1), *Undang-undang tentang Penyelenggaraan Ibadah Haji dan Umroh*, UU Nomor 8 Tahun 2019, LN. Nomor 75 Tahun 2019, TLN. Nomor 6338 Tahun 2019.

\_\_\_\_\_ (2), *Undang-undang tentang Pengelolaan Keuangan Haji*, LN. Nomor 296 Tahun 2014, TLN. Nomor 5605 Tahun 2014.

#### Websites

Dinda Purnamasari, "Di Mana Saja Dana Haji Ditempatkan?", <<https://tirto.id/di-mana-saja-dana-haji-ditempatkan-ct8V>>, accessed June 22, 2022.

Enam Tahun SBSN, Bangun Gedung 57 PTKIN ([kemenag.go.id](http://kemenag.go.id))

Donald Banjarnahor, "Investasi di Sukuk Negara Berbuah Gedung Rafah UIN Palembang", dalam <https://www.cnbcindonesia.com/news/20191010113831-4-105857/investasi-di-sukuk-negara-berbuah-gedung-rafah-uin-palembang>, accessed June 22, 2022.

## REVISI KE-4 (10 DESEMBER 2023)

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### Analysis of Hajj Fund Management in Indonesia Based on **Maqāṣid Al-Sharī'ah** and State Administration Perspective

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**Article history:** Received: May 30, 2023, Revised: July 01, 2023; Accepted, 2023, Published:, 2023

### Abstract

There is a fundamental problem in managing the Hajj in Indonesia, namely the management of Hajj funds which is considered ineffective and unprofessional. Large Hajj funds have the potential to support the implementation of the Hajj pilgrimage in an effective, efficient, transparent, and accountable manner following Islamic law and sharia. This research aims to examine the management of Hajj funds in detail using the *maqāṣid al-sharī'ah* and state administration approaches. This research uses a normative juridical method, namely a method carried out through the presentation and explanation of interdisciplinary theory. The data used in this research comes from journals, scientific documents, and statistical data. The research results show that in the *maqāṣid al-sharī'ah* perspective, the *ḥifẓ māl* dimension is protecting Hajj funds for the benefit of society. *Maqāṣid al-sharī'ah* is an instrument used to determine the balance of the Muslim way of life with Islamic legal values which include social, political, economic, spiritual, and universal human aspects. The government has the authority to regulate state administrative law to provide benefits. The government can intervene in the organization and management of Hajj funds so that the objectives of the Hajj pilgrimage can be realized by the objectives of Islamic law. Policies and regulations made by the government can make it easier for Hajj pilgrims to carry out the Hajj pilgrimage comfortably, safely, and smoothly so that they can experience spiritual experiences that are useful for improving the quality of the Hajj pilgrimage.

### Keywords:

Hajj Funds, Hajj Fund Management, *Maqāṣid Al-Sharī'ah*, State Administration

### Introduction

As the world's largest Muslim country, Indonesia contributes a lot of *Hajj* pilgrims almost every year. This is partly supported by its constitution which guarantees Indonesian citizens to embrace and worship following their respective religions and beliefs. In addition to regulating and running the constitution, the government is also in charge of planning the

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*hajj* for those who want to practice it. They guide, give a service, and protect the citizens in a safe, comfortable, orderly, and compliance with the provisions of the *shari'ah*.<sup>248</sup> The implementation of *hajj* in Indonesia has a long history of policy or regulatory aspects. Before the founding of the Republic of Indonesia, Muslims had performed pilgrimages to the holy land of Saudi Arabia. In around 1267 when the Islamic empire was established in the archipelago, there were no special regulations regarding the implementation of the *hajj*. Only after the Dutch colonial government came to power did the pilgrimage have regulations in the form of written positive law.<sup>249</sup>

During the colonial period, the Dutch colonial government was worried about people going to the *hajj*. The reason is that when they were in Mecca, there was no longer any caste, skin color, or position-based discrimination, so it was worrying that the pilgrims realized that everyone had the same rights and this could trigger a rebellion. The Dutch were concerned about the political impact of the *hajj* because people returning from the *hajj* were accepted as holy people in Java. For this reason, it is believed that *hajj* pilgrims are more listened to by other ordinary people, so the Dutch government made strict regulations relating to the *hajj*.<sup>250</sup>

Since the founding of Indonesia as a republic, efforts to deal with issues regarding the implementation of the *hajj* have been formulated. The Ministry of Religious Affairs has a central role as a regulator of the implementation of *hajj* and the management of its funds. As specified in Law Number 17 of 1999 concerning the Implementation of the *hajj*, the government does not, however, incorporate *hajj* funds in the APBN as the annual financial plan of the state government approved by the DPR. The APBN consists of a revenue budget, expenditure budget, and financing.<sup>251</sup> It means that the APBN does not cover *hajj* funds in the form of cash received from potential pilgrims. This is because *hajj* money is administered by the government rather than being a part of non-tax state revenue. Law No. 34/2014 mandates the management of the *Hajj* fund to be carried out by BPKH (Hajj Financial Management Agency), a public legal entity that is independent and responsible to the President through the Minister of Religious Affairs. The structure of BPKH consists of an executive body and a supervisory board responsible for managing the revenue, development, expenditure, and accountability of the *Hajj* fund.

The establishment of BPKH is based on the Presidential Decree of the Republic of Indonesia Number 35 of 1996 in conjunction with the Presidential Decree of the Republic of Indonesia Number 52 of 1996 concerning the Organization and Work Procedures of

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248 Endang Jumali, "Management of Hajj Funds in Indonesia," *Journal of Legal, Ethical and Regulatory Issues* 21, no. 3 (2018): 1–9.

249 R M Aziz, "Hahslm Theory as Guidance of Straight Path in Management of Hajj and Finance," *KnE Social Sciences* 3, no. 8 (2018): 105.

250 Rustika Rustika et al., "An Evaluation of Health Policy Implementation for Hajj Pilgrims in Indonesia," *Journal of Epidemiology and Global Health* 10, no. 4 (2020): 263–268.

251 The *hajj* (Islamic pilgrimage to Mecca) involves not only religious devotion, but also religious tourism and its associated business, necessary to deal with massive parties of pilgrims, embracing trans-national relations, central and local governments, flight and other travel agencies, pilgrimage guidance units, catering agencies and hotels to the pilgrims themselves in its scope.

BPDONHI (*Hajj Pilgrimage Fund Management Agency*). This institution later changed its nomenclature to Ummah's Endowment Fund Management Agency, *Community Endowment Fund Management Agency* (BP DAU). This *hajj* fund is kept by the government as a deposit for prospective *hajj* pilgrims to be managed for the smooth running of *hajj* services. Therefore, the cost of organizing the pilgrimage is determined by the state to ensure certainty of departure to the holy land and guarantee security during the pilgrimage. In this period, the *hajj* funds are managed by setting aside the excess value to be stored as the Ummah's Endowment Fund, Community Endowment Fund (DAU). As an annual ritual that costs quite a lot of money with that sort of scheme, the management of *hajj* funds is therefore a financial domain that is in the area of public affairs.<sup>252</sup>

For maximum service, the government's policy for managing the *hajj* fund should be based on rational considerations on the principles of certainty, fairness, and benefit, and has a basis for the state. Academicians and practitioners consider that the legal basis is not sufficient, so a separate law is needed that regulates the management of *hajj* funds. However, in Law No. 13 of 2008, management is only limited to its optimal use and development in the form of bank instruments whose security is truly guaranteed. Thus, the policies made by the government enable the fund to be used for the general welfare of the community in line with the objectives of the founding of the Republic of Indonesia.<sup>253</sup> In addition to the problem of organizing the pilgrimage or its cost and fund management, another issue is the relationship between the country of prospective pilgrims and the country of destination in carrying out the pilgrimage, namely Saudi Arabia. Indonesia, as the highest Muslim population country, receives a large number of *hajj* quotas. In 2023, Indonesia will receive the largest *hajj* quota in the world. It is recorded that Indonesia's *hajj* quota will reach 221,000 pilgrims, consisting of 203,320 quotas for regular *hajj* pilgrims and 17,680 quotas for special *hajj* pilgrims. Even if there will be a lot of quotas in 2023, they won't be in line with the number of applicants which rises annually resulting in the waiting list of *hajj*.<sup>254</sup>

The waiting list for *hajj* departure is determined by the time of registration when paying the *hajj* Travel Fee or so-called BPIH (Cost of Organizing the Hajj Pilgrimage).<sup>255</sup> This BPIH deposit is a part of the *Hajj* fund. The term *hajj* fund itself is formulated in terms of the *Hajj* Financial Management Act, including BPIH deposit funds; efficiency funds; DAU (*Endowment Fund of The Ummah*) as well as the value of benefits controlled by the state in the context of

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252 Ulfah Alfiyanti, Achmad Firdaus, and Dede Abdul Fatah, "Hajj Financial Management in the Maq'ashid Shariah Perspective Introduction Data from the Indonesian Ministry of Religion ( Figure 1 ) Shows That the Figure 1 . Development of Indonesian Hajj Pilgrims for 2005 - 2015 ( Source : Processed from the Mini" 29, no. 2 (2019): 203–232.

253 Singgih Muheramtohad, "The Use of Hajj Fund for Investment Purpose: A Maqashid Sharia Approach," *Journal of Islamic Economics, Management, and Business (JIEMB)* 1, no. 1 (2020): 99–116.

254 Annas Syam Rizal Fahmi, "An Analysis of Investment for Hajj Funds from Islamic Law Perspective," *Al-Iktisab: Journal of Islamic Economic Law* 1, no. 2 (2017): 131.

255 Indonesia (1), *Undang-Undang tentang Penyelenggaraan Ibadah Haji dan Umroh*, Pasal 5 Ayat (1).

organizing the pilgrimage and implementing program activities for the benefit of Muslims.<sup>256</sup> Due to the limited *hajj* quota each year, there will certainly be a build-up of *hajj* funds from a large number of applicants on the waiting list based on the BIPIH deposit. Therefore, the government has taken the initiative to manage *hajj* funds by placing and/or investing State Sharia Bonds (SBSN), also known as Sukuk or Sharia Bonds, in productive sectors to generate the value of the benefits of *hajj* fund management.

This is a logical ratio of the establishment of the *Hajj* Financial Management Law. Therefore, through the *Hajj* Financial Management Law, a special financial institution has been established with the authority to manage *Hajj* funds, namely the Hajj Financial Management Agency (BPKH).<sup>257</sup> The management of *hajj* funds following their objectives is important to discuss considering the large number of *hajj* funds managed by BPKH so as not to deviate from the initial goal of financing the pilgrimage, let alone from various perspectives or interdisciplinarily. This research would like to discuss it from the perspective of *maqâsid* as a philosophy of Islamic law as well as its authority according to the constitution and administrative legislation from the perspective of state administrative law.

*Maqâsid* as a philosophy of Islamic law refers to the importance of safeguarding public finances (*hifz mâl*) which, in the case of the *hajj* waiting list, must be used to the greatest extent possible for the benefit of the *ummah*. This benefit can be seen, for example, in the construction of SBSN buildings in the State Islamic Religious Universities (PTKIN) in Indonesia.<sup>258</sup> A *maqâsid* part of *hifdz al-mâl*, in this context, relates to the management of *hajj* funds to make it in line with the concept of equality among society as the legal ideal contained in the preamble of the Indonesian constitution. There is a paradigm shift from classical *maqâsid* sharia theory to contemporary one. The change lies in the main benefit, namely the protection and preservation aspects because the contemporary *maqâsid* sharia is more about development and rights. To develop the concept, Jasser Auda proposes human development as a form of the main target. He compiled a contemporary conception of *maqâsid* as an evolution of the old theory consisting of *First*, preserving descent (*hifz al-Nasl*) oriented towards protecting the family as the smallest societal institution; *Second*, preserving the intellect (*hifz al-Aql*) by multiplying mindset and scientific research; prioritizing the journey of seeking knowledge; avoiding efforts to underestimate the workings of the brain; *Third*, preserving honor through preserving the soul (*hifdz al-'Irdh*) by preserving and protecting human dignity; safeguarding and protecting human rights; *Fourth*, preserving religion (*hifdz al-Diin*), namely protecting and respecting freedom of religion or belief; *Five*, preserving property (*hifdz al-Maal*), namely promoting social care; paying attention to economic development and improvement; advancing human welfare while eliminating the gap between the rich and the poor. In short word, *maslahah* should be the target of *maqâsid sharia* to be realized through Islamic law, as is

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<sup>256</sup> Indonesia (2), *Undang-Undang tentang Pengelolaan Keuangan Haji*, UU Nomor 34 Tahun 2014, LN. Nomor 5605 Tahun 2014, Pasal 1 Ayat (2).

<sup>257</sup> Erry Fitrya Primadhany, "Tinjauan Terhadap Tanggung Jawab Badan Pengelola Keuangan Haji (Bpkh) Dalam Melakukan Penempatan Dan/ Atau Investasi Keuangan Haji," *Jurisdictie* 8, no. 2 (2018): 125.

<sup>258</sup> Auda, J. (2022). *Maqâsid Al-Shari'ah as philosophy of Islamic law*. International Institute of Islamic Thought (IIIT).

the case in reviewing the financial management of the *hajj* considering that *hajj* is one of the devotional rituals that include a great deal of *maqashid*.<sup>259</sup>

According to Zakiruddin, *et.al.*,<sup>260</sup> investment management of Hajj funds in Indonesia is a very large amount of Muslim funds that are channeled through Sharia banking which is officially appointed and managed by BPKH. The Hajj fund, which increases every year, is an asset with great potential to be developed to maintain the benefit of all parties and bring prosperity. One of the developments in the *maqāṣid al-sharī'ah* paradigm is *hifdzul maal* which is not only about protecting material or assets so that it develops towards *at-tanmiyyatul iqtishadiyah* (economic growth), it is based on *maqashid al-khoshoh* (special benefit) in maintaining the sustainability of the people's assets, especially in the form of Hajj funds which must be safeguarded for the sake of benefit. Investment in managing Hajj funds in *maqāṣid al-sharī'ah* is not only oriented towards the profit aspect but also the benefit aspect or even welfare (*falah*) as an ideal in the development of Islamic economics. Therefore, as one of the developments of *maqāṣid al-khosoh*, namely *hifdzul al-maal attanmiyyatul iqtishadiyah*, it is necessary to maintain several aspects of its *madiyah* or *muamalah adabiyah*.<sup>261</sup> The security aspect means that the management of Hajj finances must be carried out by prioritizing security aspects in anticipating the risk of loss in the management of Hajj finances to guarantee financing. Organizing the Hajj Pilgrimage. Apart from that, when making investments, risk aspects are also considered, including the risk of default, reputation, market, and operations.

Hajj funds are funds deposited by prospective Indonesian pilgrims for registration fees to receive a portion of the departure. This is usually also called the initial Hajj Travel Expense Fund (BPIH). BPIH management has a special body that has been regulated by the state to ensure that the Hajj pilgrimage is carried out properly and regularly. The Hajj Financial Management Agency (BPKH) is a public legal institution that has the authority to manage Hajj finances in Indonesia which is independent and directly responsible to the President by Law No.34/2014 and Presidential Decree No. 110/2017. For the implementation mechanism, PP No. 5/2018 contains the duties and responsibilities of BPKH including investing Hajj funds. According to Law No.35/2014, BPKH is tasked with receiving, developing, managing expenditure, and being responsible for Hajj finances that have been collected from prospective Hajj pilgrims, as well as managing financial investments Hajj that complies with Sharia principles, is careful, safe and beneficial.<sup>262</sup>

259 Auda, J. (2008). *Maqasid al-shariah: A beginner's guide* (Vol. 14). International Institute of Islamic Thought (IIIT).

260 Muhammad Aziz Zakiruddin, Kamsi, and Ahmad Bahiej, "Siyasah Syar'iyah Paradigm of Hajj Financial Management Regulation in Indonesia," *Al-Istinbath: Jurnal Hukum Islam* 7, no. 2 (2022): 531–552.

261 M Zidny Nafi Hasbi, Makhruh Munajat, and Abdul Qoyum, "Amwaluna : Jurnal Ekonomi Dan Keuangan Syariah A Conceptual Framework of The Islamic Human Development Index ( I-HDI ) and Its Relationship with Maqāṣid Al - Shari ' Ah," no. 2019 (2023).

262 Pemerintah Republik Indonesia, Pasal 24 huruf (a) dan (b), *UU PKH*

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Previous research discussing the management of Hajj funds in Indonesia in several aspects, factors, and indicators still requires further research development. Hajj in terms of political factors. Ichwan<sup>263</sup> discusses the Politics of Islamic Worship Services in Indonesia. The complexity of Hajj and Umrah services is not so much caused by religious aspects but rather by political aspects and economic motives. Hajj and its relationship with the economy. Kouchi et al.<sup>264</sup> studied the relationship between the growth in the number of Hajj pilgrims and economic growth in Saudi Arabia. The increase in the number of people performing Hajj has a major impact on Saudi Arabia's economic progress. The annual Hajj and Umrah pilgrimages to Saudi Arabia could play an increasingly important role in economic growth and development. In a broad general sense, religious tourism plays an important role as a foreign exchange earner, job creator, and tool for improving the balance of payments. Its contribution to economic prosperity, if planned well, can be greater than that of any other known economic force.

From an economic theory perspective Kurniadi, et.al.,<sup>265</sup> studied the management of Hajj funds from a financial theory perspective. The diversity of Hajj funds can form private or legal forms into separate provisions of rights, obligations, and responsibilities (dzimmah) and parties that have institutions for prospective Hajj pilgrims and Hajj pilgrims. BPKH can function as a representative or the government as a representative for prospective Hajj pilgrims in the management and development of Hajj funds. Aziz<sup>266</sup> examines the Hahslm theory as a guide to the straight path in managing the Hajj. The large number of pilgrims registering compared to the available quota means that in normal circumstances a congregation would have to wait an average of 19 years. If the congregation has paid a down payment of IDR 25 million, then the money will be paid off during the waiting period, resulting in a large accumulation of pilgrims' funds. So far, the management of Hajj funds has been carried out by the Ministry of Religion. Hajj funds are placed in bank deposits which are only guaranteed IDR 2 billion by the deposit insurance agency (LPS). It would be a shame if the amount of Hajj funds paid was quite large without playing a role in the productive sector.

Based on previous research, it is clear that most researchers still focus on the issue of Hajj in politics, economics, and as a religious obligation. However, there are still few who concentrate on studying and researching the management of Hajj funds in Indonesia based on *maqāṣid al-sharī'ah* and state administration. The research examines the issue of managing

263 Moch Nur Ichwan, "Governing Hajj: Politics of Islamic Pilgrimage Services in Indonesia Prior to Reformasi Era," *Al-Jami'ah: Journal of Islamic Studies* 46, no. 1 (2008): 125–151.

264 Amin Nouri Kouchi, Mansour Zarra Nezhad, and Pouyan Kiani, "A Study of the Relationship between the Growth in the Number of Hajj Pilgrims and Economic Growth in Saudi Arabia," *Journal of Hospitality and Tourism Management* 36 (2018): 103–107, <http://dx.doi.org/10.1016/j.jhtm.2016.01.008>.

265 Dece Kurniadi, Jamal Wiwoho, and Hudi Asrori, "Hajj Fund Management in Perspective of the Financial Theory and Fiqh," *International Conference on Globalization of Law and Local Wisdom* 358, no. 34 (2019): 225–227.

266 Aziz, "Hahslm Theory as Guidance of Straight Path in Management of Hajj and Finance."

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Hajj funds in Indonesia based on *maqāṣid al-sharī'ah* and state administration so that it can see differences in the management of Hajj funds in other countries such as Malaysia, India, Bangladesh, and other Islamic countries. The difference between this research and previous research is that the researcher focuses on studying the management of Hajj funds based on *maqāṣid al-sharī'ah* and state administration. *Maqāṣid al-sharī'ah* is a bridge that can connect text and context, between goals and means, between goals and methodology, and between Islamic law and universal Islamic goals as a means for actualization. *Maqāṣid al-sharī'ah* theory can be a framework for developing theories, models, policies, and reform programs in various aspects of life

## Methods

This research uses a qualitative approach with normative juridical methods. Data sources used include primary data, secondary data, and tertiary data. Primary data is obtained directly from the objects studied, both individually and as a group of organizations. Secondary data is data obtained indirectly to obtain information about the object under study. Tertiary data is data obtained indirectly from the object under study, usually, the data is obtained from third parties, whether from individuals or groups who deliberately reveal facts from second parties. Meanwhile, secondary data<sup>267</sup> sources come from journals, both national and international journals, books, as well as, magazines, and other articles that have relevance to the problems and objects of research. The data analysis used is descriptive-qualitative. With this method, problems and facts will be described descriptively and then analyzed to obtain a complete picture of the object being studied.<sup>268</sup>

Data related to the management of *hajj* funds are then processed through the steps of managing and organizing data, reading and recording emerging ideas, describing and classifying codes developing and accessing interpretations, and then representing and visualizing data. The data analysis technique used is spiral analysis which is equipped with content analysis, comparative and critical analysis of *hajj* laws and regulations using the perspective of Islamic legal theory and state administration. The *maqasid al-Syariah* theory in this research is used to analyze the management of *hajj* funds related to the *hifz māl* aspect so that researchers will be able to draw precise and profound conclusions.

## Result and Discussion

### Management of Indonesian Hajj Funds Based on the *Maqāṣid Al-Sharī'ah* Perspective

Hajj funds are funds deposited by prospective Indonesian pilgrims for registration fees to receive a portion of the departure. This is usually also called the initial Hajj Travel Expense Fund (BPIH). BPIH management has a special body that has been regulated by the state to ensure that the Hajj pilgrimage is carried out properly and regularly. The regulations that have been issued by the government contain regarding the implementation of the Hajj

<sup>267</sup> Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, (Jakarta: Raja Grafindo Persada, 2015), 33.

<sup>268</sup> Satori, D. A., & Komariah, A. (2009). *Metodologi penelitian kualitatif*. Bandung: alfabeta, 22.

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pilgrimage including regulations regarding the money management activities (funds) of prospective Hajj Pilgrims Law on the Implementation of the Hajj Pilgrimage No. 13/2008 is the legal basis for managing Hajj funds in Indonesia. The Hajj funds referred to in this law are called the Ummah Endowment Fund (DAU), namely the amount of funds obtained from the development of the Ummah Endowment Fund and/or remaining operational costs for organizing the Hajj pilgrimage as well as other sources that are halal and non-binding. Meanwhile, the manager of the Hajj funds is called the Ummah Endowment Fund Management Agency (BP DAU).

In practice, Law No. 13/2008 has not been able to accommodate the management of Hajj funds which are so large and continue to increase every year. The increase in waiting numbers which results in a buildup of accumulation of Hajj funds is also one of the considerations for issuing a special law regulating the management of Hajj finances. Based on these considerations, the Hajj Financial Management Law No. 34/2014. Article 48 Paragraph 2 of the Hajj Financial Management Law no. 34/2014 requires the management of Hajj funds according to Sharia principles with aspects of security, prudence, useful value, and liquidity. Then in Article 49 Paragraph 1, it is also stated that investments in Hajj funds can be made with the approval of the BPKH supervisory board. Apart from that, several other articles in Law No.34/2014 are the legal basis for BPKH in making investments.<sup>269</sup>

*Hajj* funds are all types of wealth that can be valued in money, whether in the form of money or goods resulting from pilgrims' desk-posted payment and are the government's rights and obligations to manage them well. BPKH has a precautionary principle in managing *hajj* finances, namely by carrying it out carefully, thoroughly, safely, and orderly while considering financial risk aspects. The principle of benefit means that the financial management of the *hajj* must provide benefits for the pilgrims and Muslims. Meanwhile, the non-profit principle means that the management of *hajj* finances is carried out by prioritizing the use of proceeds from the development of funds that provide benefits to *hajj* pilgrims and the benefit of Muslims without any distribution of dividends for management. The principle of transparency indicates that *hajj* financial management is carried out openly and honestly by providing information to the public, especially pilgrims, regarding its implementation and results. The principle of accountability is that the management of Hajj finances is carried out accurately and can be accounted for by the community, especially by the congregation.<sup>270</sup>

Hajj funds are all types of wealth that can be valued in money, whether in the form of money or goods resulting from pilgrims' desk-posting payments and it is the government's right and obligation to manage them well. BPKH has a precautionary principle in managing Hajj finances, namely by implementing it carefully, thoroughly, safely, and orderly while still considering financial risk aspects. The principle of benefit means that the financial management of the Hajj must provide benefits for the pilgrims and Muslims. Hajj financial management is carried out openly and honestly by providing information to the public,

269 Diseminasi BPKH (2018) Diseminasi Peran Pengawasan Keuangan Haji, In . bpkh.go.id/.

270 Ilham Maulid and Amirsyah Amirsyah, "Analysis of the Hajj Fund Management Based on the Fatwa of the National Sharia Council (DSN) Number 122 Concerning the Management of BPIH Fund and Special BPIH Based on Sharia Principles," *ADI Journal on Recent Innovation (AJRI)* 3, no. 1 (2021): 21-35.

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especially Hajj pilgrims, regarding the implementation and results. The principle of accountability is that the management of Hajj finances is carried out accurately and can be accounted for by the community, especially by the congregation.<sup>271</sup>

The main aim of *maqāṣid al-sharī'ah* is to realize the benefit of humanity, both in this world and in the afterlife. This is following the overall mission of Islam which is *rahmatan li al-'ālamīn*. Al-Syatibi in *al-Muwafaqat* emphasized that the promulgation of Islamic sharia was to realize the absolute benefit of creatures. In another expression, Yusuf Al-Qaradawi stated that where there is benefit, there is the law of Allah SWT. It is necessary to manage Hajj finances according to the objectives of *maqāṣid al-sharī'ah* so that Hajj finances maintain the integrity of trust in the management process starting from the finances distributed by Hajj pilgrims to the return and financial inclusion of Hajj pilgrims after Hajj. Hajj financial management to implement Sharia financial principles is required as a principle of an obedient financial management system for Hajj pilgrims.<sup>272</sup> The source of law that covers the Hajj financial management system as stated in the Al-Quran and Hadith is also the rules of *fiqh*. The application of sharia values in financial management is intended to achieve sharia goals (*maqāṣid al-sharī'ah*). *Maqāṣid al-sharī'ah* is seen from the activity of protecting five main things (*al-kulliyah al-Khaimah*), namely the protection of religion, soul, mind, lineage, and property. The concept of *maqashid al-syari'ah* according to Al-Ghozali (1976) was transformed to measure the sharia objectives of managing Hajj funds. Muamalah activities that are based on Sharia principles must follow *maqashid al-syari'ah*.<sup>273</sup>

The government must provide administrative services, guidance, accommodation, transportation, and Hajj services, the costs of which come from the pilgrims and are given to the government through the Ministry of Religion's account. In terms of statutory regulations, Hajj funds are differentiated from Hajj Funds. Hajj funds include all Hajj funds, starting from the money generated from deposits from the Hajj pilgrimage, the remainder of the Hajj pilgrimage, and the Endowment Fund. In justifying the use of Hajj funds for investment purposes, scholars usually use the term *maslahah*. According to al Ghazali,<sup>274</sup> *maslahah* is an effort to bring benefits and avoid harm. The use of Hajj funds is a form of protection for prospective Hajj pilgrims' assets from decreasing in value because they are saved during the waiting period for the Hajj pilgrimage. If someone performs the Hajj this year amounting to 35 million, and he will go on the Hajj in 20 years, and inflation is 6% per year, then you can imagine the value of the money he has set aside during that period.

Hajj financial management is one solution to this problem because the income from Hajj funds managed by the state (through the Ministry of Religion, then transferred to BPKH) is

271 Budi Kisworo, "Ibadah Haji Ditinjau Dari Berbagai Aspek," *Al-Istinbath: Jurnal Hukum Islam* 2, no. 1 (2017): 75.

272 Atika Rukminastiti Masrifah and Achmad Firdaus, "The Framework Of Maslahah Performa as Wealth Management System and Its Implication for Public Policy Objectives The Emergence of Waqf Bank: A Social Welfare Alternative in Indonesia," *Media Syariah* 18, no. 2 (2016): 1-36.

273 Muḥammad Abū Zahrah, *Uṣūl Al-Fiqh* (Kairo: Dār al-Fikr al-'Arabī, n.d.), 346-366.

274 Alal Al-Fāsī, *Maqāṣid Al-Sharī'ah Al-Islāmiyyah Wa Makārimuhā*, 5th ed. (Rabat: Dār al-Gharb al-Islāmī, 1993). 45-46

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higher than the expenditure, so there will continue to be accumulation. This problem is visible before our eyes, and there needs to be breakthrough steps to overcome this problem. The function of utilizing Hajj finances can also be seen from efforts to maintain the Islamic religion. In the maqashid of Sharia, *hifzh al-din*, safeguards the Islamic religion, so that *hifzh al-din* is often associated with sharia orders to carry out jihad and da'wah. With jihad, Islam can be defended from attacks or aggression from other parties. Meanwhile, with da'wah, Islamic values can be instilled in society. One element of da'wah is religious symbols.<sup>275</sup>

### Indonesian Hajj Fund Management Regulations |

According to Law Number 13 of 2008 concerning the Implementation of the Hajj, it is stated that the implementation of the Hajj is the responsibility of the Government, and its implementation is divided into two, namely the regular Hajj organized by the government and the special Hajj organized by private companies that have received permission from the Minister of Religion. Even though the private sector is given the authority to carry out the Hajj pilgrimage, this does not mean that the government (Ministry of Religion) does not intervene at all, the government still carries out monitoring and guidance duties to ensure they comply with the stipulated provisions. Initially, the implementation of the Hajj pilgrimage in Indonesia was handled directly by the community, then during the reign of President Soeharto, the responsibility was taken over by the government after cases of neglect by private parties occurred.<sup>276</sup>

Hajj financial management is the responsibility of BPKH (Hajj Financial Management Agency) which was established on 26 July 2017 Law Number 34 of 2014. BPKH has the function of carrying out planning, implementation, as well as accountability and reporting of Hajj finances. In its management, there are the terms Hajj fund and Ummah Endowment Fund (DAU). According to Law Number 34 of 2014, Hajj Funds are defined as funds for paying the costs of organizing the Hajj pilgrimage, efficiency funds for organizing the Hajj pilgrimage, endowment funds for the Ummah, as well as the value of benefits controlled by the state in the context of organizing the Hajj pilgrimage and implementing activity programs for the benefit of the Muslim Ummah. Meanwhile, the Community Endowment Fund (DAU) is several funds which, before the enactment of Law Number 34 of 2014, were obtained from the results of the development of the DAU and/or remaining operational costs for organizing the Hajj pilgrimage, as well as other sources that are halal and non-binding following the provisions of statutory regulations. for example, zakat funds, waqf funds, and other funds that are deliberately donated by someone within the scope of BPKH. 10 The entire Hajj fund is then managed by BPKH with rules that are by Islamic sharia and always prioritize the

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<sup>275</sup> Mira Munira and Shinta Budi Astuti, "Indonesian Hajj Fund Management: An Overview," *Asian Journal of Accounting and Finance* 1, no. 1 (2019): 1-9, <https://myjms.mohe.gov.my/index.php/ajafin/article/view/6900/2792>.

<sup>276</sup> Muhammad Iqbal Fasa et al., "Economic Protection Toward Financial Management Hajj Funds: Indonesian Case," *Ad-Deenar: Jurnal Ekonomi dan Bisnis Islam* 4, no. 02 (2020): 163.

principle of prudence, based on benefits, not seeking profits, transparency, and accountability.<sup>277</sup>

In Law No. 34 of 2014 concerning Hajj financial management, the government places Hajj funds in Sharia financial institutions which are limited to a maximum of 50%, and other funds are directly invested in Sharia instruments which are considered safe and provide much better returns. Hajj funds must be invested so that more benefits can be achieved. Because long queues will cause registration funds to sit in the bank, these funds must be invested so that their value is not eroded by inflation and can provide benefits to the community, such as in the distribution of DAU (Ummah Endowment Fund). This DAU is funded resulting from management efficiency or other sources which are then used for social activities such as Hajj services, education, and da'wah, health, social, economic, and religious infrastructure.<sup>278</sup>

The Hajj Financial Management Agency (BPKH) was initiated several years ago. This institution was previously known as the Community Endowment Fund Management Agency (BP DAU). Duties include, among others; planning, organizing, managing, and at the same time as an authorized institution to utilize the people's endowment funds. This non-structural institution is under the legal umbrella of Presidential Decree Number 22 of 2001 concerning the Community Endowment Fund Management Agency (BP DAU). The Ummah Endowment Fund (DAU) is funds obtained from the results of efficiency costs for organizing the Hajj pilgrimage and from other sources by the provisions of applicable laws and regulations. The management of this DAU is directed as much as possible for the benefit of the people and is carried out in several fields, including; the field of education and da'wah, the health sector, the social and economic sectors, the construction of religious facilities and infrastructure and the organization of the Hajj pilgrimage.<sup>279</sup>

Based on Government Regulation (PP) Number 5 of 2018, p supervision over the implementation of Kuangan Haji management rests with the supervisory board. In line with this, Law Number 34 of 2014 states that the supervisory board has the function of supervising the management of Hajj finances whose duties include, among others; carrying out assessments of policy formulation, carrying out supervision and monitoring of the implementation of Hajj financial management, as well as assess and provide consideration to BPKH accountability reports. The Law and Government Regulations regulate procedures for managing Hajj finances with several basic principles, including; prudence, transparency, expediency, etc. One of the precautionary principles that needs to be carefully observed is that in terms of utilizing Hajj funds by diverting them to investment, the status must be clear and real. It is halal, not gray (subhat) let alone haram. Don't let mistakes in choosing this investment sector later cloud the status of *maqasidh al-syari'ah* which could lead to the

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277 Acep R Jayaprawira and . Abdussalam, "Analysis of the Implementation of the Islamic Contract Principle on Hajj Fund Management By Hajj Fund Management Agency (BPKH)," *KnE Social Sciences* 2019 (2019): 628-661.

278 Maizul Imran and Rio Satria, "Dinamika Formulasi Akad Terhadap Pengelolaan Dana Haji Di Indonesia," *Alhurriyah: Jurnal Hukum Islam (Alhurriyah Journal Of Islamic Law)* 3, no. 2 (2018): 141.

279 Pasal 1 (1) Keputusan Presiden Nomor 22 Tahun 2001 tentang Badan Pengelola Dana Abadi Umat (BP DAU)

proliferation of ribawi practices. Because in several types of investment, both conventional and Sharia-based, both are the same and have a measurable take-return standard. So, choosing this investment sector needs to be a common concern.<sup>280</sup>

Management of Hajj funds is an important issue that must be of concern to the government, especially in Indonesia and Malaysia, which have Muslim-majority populations. In managing Hajj funds, the government must be transparent and accountable, but apart from that, it must also prioritize security and prudence because the main aim of managing Hajj funds is to make it easier for the Muslim community to worship, not to seek profit. The public must also understand the mechanisms that exist in their country. Apart from that, the public can also provide suggestions or input regarding optimal Hajj management. It is hoped that the public can know and understand the management mechanisms carried out by the government so that there are no negative issues regarding the management of Hajj funds. Apart from that, the government must also continue to improve its financial governance so that public trust arises.<sup>281</sup>

#### **Efforts to Realize *Maslahah*: Investment and Optimization of Hajj Funds in Today's Indonesia**

The implementation of the *hajj* pilgrimage provides a stimulus for the economy both in the micro and macro scope. This became the basis for the Indonesian government in managing the *hajj* fund which reached trillions of rupiah in the form of investment. For instance, according to BPKH records, if 154,455 Indonesian pilgrims were sent out in 2015 and each of them paid Rp20 million, the total amount of money collected would have been Rp 3.09 trillion. In the meantime, it is conceivable that the amount of money that BPKH can manage could approach hundreds of trillions if the number of pilgrims on the waiting list surpasses one million, diverting 20 million IDR. The government potentially makes this calculation very profitably by using gold coins, direct investment, SBSN (State Sharia Securities), or other Sharia-compliant investment funds.<sup>282</sup> Those data, then, can be expressed into some beneficial investment by the BPKH. Statistically, such investments in 2017, 2018, and 2020 can be seen in Figure 1.

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280 Aishath Muneeza et al., "A Comparative Study of Hajj Fund Management Institutions in Malaysia, Indonesia and Maldives," *International Journal of Management and Applied Research* 5, no. 3 (2018): 120–134.

281 Eric Kurniawan, "Akuntabilitas Pengelolaan Dana Haji Republik Indonesia," *Jurnal Ilmiah Ekonomi Islam* 7, no. 3 (2021): 1449–1456, <https://jurnal.stie-aas.ac.id/index.php/jei/article/view/2682>.

282 Indonesia (7), *Undang-Undang tentang Surat Berharga Syariah Negara*, UU Nomor 19 Tahun 2008, LN. Nomor 70 Tahun 2008, TLN. Nomor 4852 Tahun 2008, Pasal 1 Ayat (1)



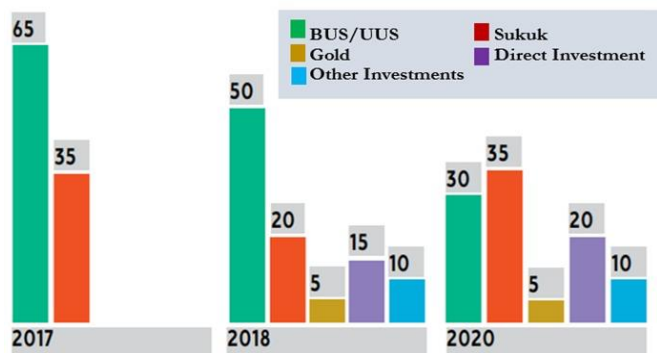


Figure 1. Hajj Fund Placement and Investment

Source: BPKH, processed (2021)

Figure 1 shows that BPKH has established a division for the placement and investment of *hajj* funds. As an illustration, in 2017, *hajj* funds were only placed in two investment instruments, namely savings/deposits (65%) and *Sukuk* (35%). Different from the previous one, in 2018, referring to Government Regulation No. 5/2018, BPKH invested the *hajj* funds into five types of investment. Two of them are still the same while three others were invested in the form of gold (5%), direct investment (15%), and other investments (10%). The proportion of fund placement for savings/deposits, similar to previous forms, is reduced to 50% and placement in *Sukuk* to 20%. With this increase in managed funds, the value of benefits provided to prospective waiting pilgrims also increased by Rp7.46 trillion, or an increase of 2.33 percent compared to the previous year of Rp7.29 trillion.

Two factors hinder the aggressiveness of the investment performance of Hajj institutions. First, it is because of the large amount of Hajj funds that have been placed in the Indonesian Hajj Fund Sukuk (SDHI) investment instrument. The second factor, which also hampers BPKH's investment performance, is the provisions in Article 53 of Law Number 34 of 2014 concerning Hajj Financial Management. This causes delays in BPKH investment in managing Hajj funds, resulting in fluctuations. From 2016 to 2018, BPKH invested in Hajj funds as a form of monetary investment in three forms, namely investment in banks, long-term and short-term investments. This kind of investment, detail, can be seen in Figure 2.

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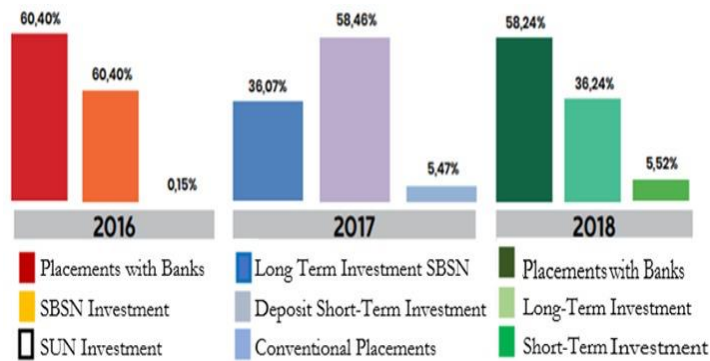


Figure 2. Hajj Fund Portfolio 2016-2018

Source: BPKH, processed (2021)

From Figure 2 above, it can be seen that throughout 2016-2018, BPKH's investment funds in banks through deposits were always ranked first. In 2016, the composition of the placement of *hajj* funds in banks was 60.40%, while in 2017 and 2018 it was 58.46% and 58.24% respectively. The next order of placement composition is securities in *Sukuk*. The placement in *Sukuk* in 2016, 2017, and 2018 was 39.46%, 36.07%, and 36.24% respectively. Investment placement of *hajj* funds by BPKH in 2016 was to 3 instruments, namely Government Securities, SBSN-SDHI, and deposits, as well as in 2017. In 2018, BPKH followed the rules and regulations, so that the portfolio of investment instruments that go into conventional instruments are all withdrawn and invested in Islamic financial instruments.<sup>283</sup>

So far, Hajj funds have been managed by placing them in the banking sectors. There are three main instruments for placing initial deposits for Hajj Organizing Fees (BPIH), namely in the form of national Sharia Securities (Sukuk/SBSN), government debt securities (SUN), and Sharia-based deposits. One of how the government carries out the financial management of Hajj funds is the issuance of State Sharia Securities (SBSN), in this case, the Indonesian Hajj Fund Sukuk (SDHI) product. The use of Hajj finances is following the decision of the Ulama Ijtima, Indonesian Fatwa Commission IV of 2012, that deposits included in the waiting list in the account of the Minister of Religion may be allocated to Tasharruf for productive things, namely providing profits through placement in Sharia Banking or invested in the form of sukuk.<sup>284</sup>

Therefore, it must be carried out professionally, including in supervising the investment of *hajj* funds. The indicator of success for this management can be seen when the investment process is suitable with what has been planned. Not only that, the supervision carried out is

283 BPKH, B. I. (2022). *Apa dan Bagaimana Investasi Keuangan Haji BPKH*. Jakarta: Badan Pengelola Keuangan Haji.

284 M. Rifka Maulana and Sokhikhatul Mawadah, "Management of Hajj Funds in Sukuk Investment from an Islamic Economic Perspective," *International Conference on Islamic Economic (ICIE)* 2, no. 1 (2023): 10-35.

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also narrowed down, and wants to explore how the benefits of the investment can be obtained both for the benefit of the institution and the pilgrims themselves as the basic principles of Islamic economics to support the distribution of resources and encourage investment, optimize beneficial investment, and encourage investment, optimize beneficial investment, and encourage social participation for the public interest. Following the mandate of the Law, according to Anggito Abimanyu, BPKH's Hajj Finance investments can be made in sharia securities investment instruments, gold, direct investment, and other investments. The wide scope of this investment is a challenge for BPKH, especially to carry out an effective investment strategy to optimize the value of its benefits. Another challenge is how to anticipate the increase in the cost of performing the *hajj* pilgrimage. Therefore, BPKH needs to carry out an investment strategy that can meet the needs of these costs through returns from various investment instruments.<sup>285</sup>

Thus, the investment results of *hajj* funds, besides improving *hajj* services, are also used to improve the quality of *hajj* implementation and other public benefits. This can be in the form of financing the construction of schools and campuses within PTKIN with SBSN (State Sharia Securities). Meanwhile, the government, by BPKH, tried to manage the *hajj* funds by providing certain schemes. According to the Director of Higher Education and Science and Technology of Bappenas RI, Hadiat,<sup>286</sup> the SBSN project was initiated by the Directorate General of Islamic Education of the Ministry of Religious Affairs which has succeeded in building educational infrastructure at PTKIN for six years with a total budget of 7-8 trillion rupiahs should be appreciated. The implementation of educational infrastructure development through SBSN which began in 2015 until 2022 has been running well, so PTKIN has benefited.

Therefore, from the perspective of *mashalah*, especially *maqashid sharia*, the state's implementation of *hajj* is not limited to the protection of religion (*hifz al-din*) and property (*hifz al-maal*), but also to the sustainability of economic improvement and development. In addition, the value of the benefits of *hajj* fund management can be used to improve infrastructure useful to the community. With good infrastructure, it will certainly have a positive impact on improving the national economy, social facilities and infrastructure, education, health, etc. This is what is expected from BPKH RI's professional, responsible, and transparent management of Hajj funds.<sup>287</sup>

## Conclusion

From the point of view of Islamic legal philosophy, namely *maqasid Sharia*, it follows the purpose of benefit, not only can it defend religion (*hifz ad-din*), but more broadly, it enables to protection of property (finance, *hifz mal*). Initially, the investment of the total funds was to

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<sup>285</sup> Indin Rarasati, "Analisis Empiris Potensi Resiko Investasi Dana Haji Melalui Sukuk Dana Haji Indonesia," *Jurnal Ilmiah Ekonomi Islam* 8, no. 03 (2022): 2571–2581.

<sup>286</sup> Enam Tahun SBSN, Bangun Gedung 57 PTKIN (kemenag.go.id)

<sup>287</sup> Andre Zanj Deananda and Wirnyaningsih, "Alternative Optimization of Hajj Fund Using Sharia Shares" 413, no. 34 (2020): 34–40.

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be stored in the Bank. Deemed not productive, a regulation, namely Article 20 paragraph 4 allows the fund to be invested in investment instruments in the capital market, such as *Sukuk*, mutual funds, as well as direct investments such as gold, and other investments, both long-term and short-term investments. The presence of Law No. 24/2014 on *Hajj* Financial Management by the Hajj Financial Management Agency (BPKH) is the beginning of professional management of *Hajj* funds through productive investment. It shows that the administration for *hajj* management has been prepared well and the regulations enacted to benefit the common good. This regulation, then, can benefit several aspects such as *hajj* services, infrastructure, facilities, monetary aspects, and other benefits. However, this research has limitations, especially in terms of methodological aspects and limited analysis of formal aspects. Therefore, it is suggested that further research is needed, especially from all dimensions of *maqasid Sharia* and the SDGs program to encourage sustainable development.

### Acknowledgments

Researchers' gratitude expressed to the Rector and Director of the Postgraduate Program of IAIN Sheikh Nurjati Cirebon, the Rector of King Abdulaziz University, Jeddah Makkah, Saudi Arabia, and the Rector of Ata Alma University Yogyakarta. They have supported and provided opportunities for researchers to improve their academics through research and scientific publications so that the results can be published. As well as research gratitude was also expressed to the manager of the *Al-IHKAM IAIN Madura Journal* who has published the results of this research.

### Bibliography

- Alfiyanti, Ulfah, Achmad Firdaus, and Dede Abdul Fatah. "Hajj Financial Management in the Maq'As Id Shar i' Ah Perspective Introduction Data from the Indonesian Ministry of Religion ( Figure 1 ) Shows That the Figure 1 . Development of Indonesian Hajj Pilgrims for 2005 - 2015 ( Source : Processed from the Mini" 29, no. 2 (2019): 203-232.
- Auda, J. (2022). *Maqasid Al-Shari'ah is the philosophy of Islamic law*. International Institute of Islamic Thought (IIIT).
- Auda, J. (2008). *Maqasid al-shariah: A beginner's guide (Vol. 14)*. International Institute of Islamic Thought (IIIT).
- Alal Al-Fāsi, (1993) *Maqāṣid Al-Sharī'ah Al-Islāmiyyah Wa Makārimuhā*, 5th ed. Rabat: Dār al-Gharb al-Islāmī
- Aziz, R M. "Hahslm Theory as Guidance of Straight Path in Management of Hajj and Finance." *KnE Social Sciences* 3, no. 8 (2018): 105.
- Deananda, Andre Zanij, and Wirdyaningsih. "Alternative Optimization of Hajj Fund Using Sharia Shares" 413, no. 34 (2020): 34-40.
- Enam Tahun SBSN, Bangun Gedung 57 PTKIN (kemenag.go.id)
- Fahmi, Annas Syam Rizal. "An Analysis of Investment for Hajj Funds from Islamic Law Perspective." *Al-Iktisab: Journal of Islamic Economic Law* 1, no. 2 (2017): 131.

**Commented [A195]:** Our journal template doesn't have categorization like this. Most importantly, you haven't used any reference manager

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- Fasa, Muhammad Iqbal, Adib Fachri, Ghina Ulfah Saefurrohman, Ahmad Hazas Syarif, and Suharto Suharto. "Economic Protection Toward Financial Management Hajj Funds: Indonesian Case." *Ad-Deenar: Jurnal Ekonomi dan Bisnis Islam* 4, no. 02 (2020): 163.
- Hasbi, M Zidny Nafi, Makhrus Munajat, and Abdul Qoyum. "Amwaluna : Jurnal Ekonomi Dan Keuangan Syariah A Conceptual Framework of The Islamic Human Development Index ( I-HDI ) and Its Relationship with Maqāṣid Al - Shari ' Ah," no. 2019 (2023).
- Ichwan, Moch Nur. "Governing Hajj: Politics of Islamic Pilgrimage Services in Indonesia Before Reformasi Era." *Al-Jami'ah: Journal of Islamic Studies* 46, no. 1 (2008): 125-151.
- Imran, Maizul, and Rio Satria. "Dinamika Formulasi Akad Terhadap Pengelolaan Dana Haji Di Indonesia." *Alhurriyah: Jurnal Hukum Islam (Alhurriyah Journal Of Islamic Law)* 3, no. 2 (2018): 141.
- Indonesia, Undang-Undang Dasar Negara Republik Indonesia Tahun 1945
- \_\_\_\_\_. (1), *Undang-undang tentang Penyelenggaraan Ibadah Haji dan Umroh*, UU Nomor 8 Tahun 2019, LN. Nomor 75 Tahun 2019, TLN. Nomor 6338 Tahun 2019.
- \_\_\_\_\_. (2), *Undang-undang tentang Pengelolaan Keuangan Haji*, LN. Nomor 296 Tahun 2014, TLN. Nomor 5605 Tahun 2014.
- Jayaprawira, Acep R, and . Abdussalam. "Analysis of the Implementation of the Islamic Contract Principle on Hajj Fund Management By Hajj Fund Management Agency (BPKH)." *KnE Social Sciences* 2019 (2019): 628-661.
- Jumali, Endang. "Management of Hajj Funds in Indonesia." *Journal of Legal, Ethical and Regulatory Issues* 21, no. 3 (2018): 1-9.
- Kisworo, Budi. "Ibadah Haji Ditinjau Dari Berbagai Aspek." *Al-Istinbath : Jurnal Hukum Islam* 2, no. 1 (2017): 75.
- Kurniadi, Dece, Jamal Wiwoho, and Hudi Asrori. "Hajj Fund Management in Perspective of the Financial Theory and Fiqh." *International Conference on Globalization of Law and Local Wisdom* 358, no. 34 (2019): 225-227.
- Kurniawan, Eric. "Akuntabilitas Pengelolaan Dana Haji Republik Indonesia." *Jurnal Ilmiah Ekonomi Islam* 7, no. 3 (2021): 1449-1456. <https://jurnal.stie-aas.ac.id/index.php/jei/article/view/2682>.
- Masrifah, Atika Rukminastiti, and Achmad Firdaus. "The Framework Of Masalahah Performa as Wealth Management System and Its Implication for Public Policy Objectives The Emergence of Waqf Bank: A Social Welfare Alternative in Indonesia." *Media Syariah* 18, no. 2 (2016): 1-36.
- Maulana, M. Rifka, and Sokhikhatul Mawadah. "Management of Hajj Funds in Sukuk Investment from an Islamic Economic Perspective." *International Conference on Islamic Economics (ICIE)* 2, no. 1 (2023): 10-35.
- Maulid, Ilham, and Amirsyah Amirsyah. "Analysis of the Hajj Fund Management Based on the Fatwa of the National Sharia Council (DSN) Number 122 Concerning the Management of BPIH Fund and Special BPIH Based on Sharia Principles." *ADI Journal*

*on Recent Innovation (AJRI)* 3, no. 1 (2021): 21-35.

Mira Munira, and Shinta Budi Astuti. "Indonesian Hajj Fund Management: An Overview." *Asian Journal of Accounting and Finance* 1, no. 1 (2019): 1-9. <https://myjms.mohe.gov.my/index.php/ajafin/article/view/6900/2792>.

Muheramtohad, Singgih. "The Use of Hajj Fund for Investment Purpose: A Maqashid Sharia Approach." *Journal of Islamic Economics, Management, and Business (JIEMB)* 1, no. 1 (2020): 99-116.

Muneeza, Aishath, Amira Sudeen, Atiqoh Nasution, and Ratih Nurmalasari. "A Comparative Study of Hajj Fund Management Institutions in Malaysia, Indonesia and Maldives." *International Journal of Management and Applied Research* 5, no. 3 (2018): 120-134.

Nouri Kouchi, Amin, Mansour Zarra Nezhad, and Pouyan Kiani. "A Study of the Relationship between the Growth in the Number of Hajj Pilgrims and Economic Growth in Saudi Arabia." *Journal of Hospitality and Tourism Management* 36 (2018): 103-107. <http://dx.doi.org/10.1016/j.jhtm.2016.01.008>.

Primadhany, Erry Fitrya. "Tinjauan Terhadap Tanggung Jawab Badan Pengelola Keuangan Haji (Bpkh) Dalam Melakukan Penempatan Dan/Atau Investasi Keuangan Haji." *Jurisdiction* 8, no. 2 (2018): 125.

Rarasati, Indin. "Analisis Empiris Potensi Resiko Investasi Dana Haji Melalui Sukuk Dana Haji Indonesia." *Jurnal Ilmiah Ekonomi Islam* 8, no. 03 (2022): 2571-2581.

Soekanto, Soerjono dan Sri Mamudji. *Penelitian Hukum Normatif Suatu Tinjauan Singkat*. Jakarta: Raja Grafindo Persada, 2015.


Satori, D. A., & Komariah, A. (2009). *Metodologi penelitian kualitatif*. Bandung: alfa beta,

Rustika, Rustika, Ratih Oemiati, Al Asyary, and Tety Rachmawati. "An Evaluation of Health Policy Implementation for Hajj Pilgrims in Indonesia." *Journal of Epidemiology and Global Health* 10, no. 4 (2020): 263-268.

Zahrah, M. A. (1958). *Uşūl al-fiqh. Dār al-Fikr al-Arabi*.

Zakiruddin, Muhammad Aziz, Kamsi, and Ahmad Bahiej. "Siyasah Syar'iyah Paradigm of Hajj Financial Management Regulation in Indonesia." *Al-Istinbath: Jurnal Hukum Islam* 7, no. 2 (2022): 531-552.

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**Indonesian Hajj Funds Management Based on *Maqāṣid Al-Sharī'ah*; A Proposal for Indonesian Context**

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**Article history:** Received: May 30, 2023, Revised: July 01, 2023; Accepted, 2023.,

Published: 2023

### Abstract

Indonesian *hajj* funds (BIPH) have potential to support implementation of *hajj* worship in an effective, efficient, transparent, and accountable manner while complying with Islamic law. However, it is said that the management turns out to be ineffective and unprofessional. This research aims to examine the management of *hajj* funds in details using *maqāṣid al-sharī'ah* perspective to propose a breakthrough for its better management. It uses a normative juridical method through data presentation and explanation using interdisciplinary perspective on *maqāṣid al-sharī'ah*. The data comes from journal articles, scientific documents, and statistical data. The research results show that in *maqāṣid al-sharī'ah* perspective, namely an instrument to create balance of the Muslim way of life with Islamic legal values in social, political, economic, spiritual, and universal human aspects, the *ḥifẓ māl* dimension urges using *hajj* funds for the benefit of society. As the government has the authority to regulate administrative law for managing *hajj* funds for public benefit, the *hajj* Financial Management Agency (BPKH) should collaborate with the Ministry of Religious Affair and various other stakeholders to manage *hajj* funds optimally and efficiently while increasing trust and reduce negative public perceptions. Policies and regulations by the government are made in such a way that it can make it easier for *hajj* pilgrims to carry out the worship comfortably, safely, smoothly, and spiritually enriching.

### Keywords:

*Hajj* Funds Management, *Maqāṣid Al-Sharī'ah*, Indonesia

### Introduction

As the world's largest Muslim country, Indonesia contributes a lot of *hajj* pilgrims every year. This is partly supported by its constitution which guarantees Indonesians to worship following their respective religions and beliefs. In addition to formulating and enforcing the constitution, the government is also in charge of planning and organizing the

*hajj*. They are supposed to guide, give service, and protect Indonesians citizens in a safe, comfortable, orderly, and compliance with the provisions of the *shari'ah*.<sup>288</sup>

In addition to the problem of organizing the pilgrimage, another issue is the relationship between the country of prospective pilgrims and the country of destination, namely Saudi Arabia. Indonesia receives many *hajj* quotas. In 2023, Indonesia got the largest *hajj* quota in the world. It is recorded that Indonesia's *hajj* quota reaches 221,000 pilgrims, consisting of 203,320 quotas for regular *hajj* pilgrims and 17,680 quotas for special *hajj* pilgrims. Even if there are a lot of quotas in the current year, they aren't adequate to fulfill the demand as indicated by the number of applicants which rises annually resulting in the long waiting list of *hajj*.<sup>289</sup>

The waiting list for *hajj* departure is determined by the time of registration when paying the *Hajj* Travel Fee or so-called BIPIH (Cost of Organizing the *Hajj* Pilgrimage).<sup>290</sup> This BIPIH is deposited by prospective pilgrims for registration fees to receive a portion of the departure. The Law No. 13 of 2008 mentions that the management is only limited to its optimal use and development in the form of bank instruments whose security is truly guaranteed. Thus, the policies made by the government had enabled the fund to be used for general welfare of the community in line with the objectives of the founding fathers of the Republic of Indonesia.<sup>291</sup> However, academicians and practitioners consider that the existing legal basis was not sufficient, so a separate law was needed that regulates the management of *hajj* funds at a more specific scope.

According to the Law no. 34/2014 on *Hajj* Fund Management, the term *hajj* funds (BIPH) consists of BIPIH deposit funds; efficiency funds; DAU (*Endowment Fund of The Ummah*) as well as the value of benefits controlled by the state in the context of organizing the *hajj* and implementing program activities for the benefit of Muslims.<sup>292</sup> Due to the limited *hajj* quota each year, there will certainly be a build-up of *hajj* funds from a large number of applicants on the waiting list. This certainly requires a more well-organized management of the funds manifested by the establishment of a special financial institution with the authority to manage the *hajj* funds called Hajj Financial Management Agency (BPKH) which was established on 26

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<sup>288</sup> Endang Jumali, "Management of Hajj Funds in Indonesia," *Journal of Legal, Ethical and Regulatory Issues* 21, no. 3 (2018): 1-9.

<sup>289</sup> Annas Syam Rizal Fahmi, "An Analysis of Investment for Hajj Funds from Islamic Law Perspective," *Al-Iktisab: Journal of Islamic Economic Law* 1, no. 2 (2017): 131, <https://doi.org/10.21111/al-iktisab.v1i2.2388>.

<sup>290</sup> Indonesia (1), *Undang-Undang tentang Penyelenggaraan Ibadah Haji dan Umroh*, Pasal 5 Ayat (1).

<sup>291</sup> Singgih Muheramtohad, "The Use of Hajj Fund for Investment Purpose: A Maqashid Sharia Approach," *Journal of Islamic Economics, Management, and Business (JIEMB)* 1, no. 1 (2020): 99-116, <https://doi.org/10.21580/jiemb.2019.1.1.3740>.

<sup>292</sup> Indonesia (2), *Undang-Undang tentang Pengelolaan Keuangan Haji*, UU Nomor 34 Tahun 2014, LN. Nomor 5605 Tahun 2014, Pasal 1 Ayat (2).



July 2017.<sup>293</sup> It is a public legal entity that is independent and responsible to the President through the Minister of Religious Affairs. The structure of BPKH consists of an executive body and a supervisory board responsible for managing the revenue, development, expenditure, and accountability of the *hajj* fund.

The management of *hajj* funds following their objectives is important to discuss considering the large number of *hajj* funds managed by BPKH so as not to deviate from the initial goal of financing the pilgrimage, let alone from various perspectives embedded in *Maqāṣid al-sharī'ah*. This research would therefore discuss it from the perspective of *mâqasid* as a philosophy of Islamic law with its continuously developed concept concerning various basic aspects of people's common needs in the context of Indonesia.

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Recently, there is a paradigm shift from classical *maqasid* sharia theory to the contemporary one. The change lies in the main benefit as the target to manifest, namely the protection and preservation aspects because the contemporary *maqasid* sharia is more about development and rights. To develop the concept, Jasser Auda proposes human development as the main target. He compiled a contemporary conception of *maqasid* as an evolution of the old theory which in the context of *hifdz mal*, is promoting social care; paying attention to economic development and improvement; advancing human welfare while eliminating the gap between the rich and the poor.

Previous research discussing the management of *hajj* in Indonesia from several aspects, factors, and indicators still require further development. *Hajj* in terms of political factor, among others, was discussed by Ichwan. He found that the complexity of *hajj* and *umrah* services is not so much caused by religious aspects, but rather by political aspects and economic motives.<sup>294</sup> From the aspect of economy, Kouchi et al.<sup>295</sup> studied the relationship between the growth in the number of *hajj* pilgrims and economic growth in Saudi Arabia. The increase in the number of people performing *hajj* has a major impact on Saudi Arabia's economic progress. The annual *hajj* and *umrah* could play an increasingly important role in economic growth and development. In a broad general sense, religious tourism plays an important role as a foreign exchange earner, job creator, and tool for improving the balance of payments. Its contribution to economic prosperity, if planned well, can be greater than that of any other known economic force.

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<sup>293</sup> Erry Fitrya Primadhany, "Tinjauan terhadap Tanggung Jawab Badan Pengelola Keuangan Haji (BPKH) dalam Melakukan Penempatan dan/atau Investasi Keuangan Haji," *Jurisdictie* 8, no. 2 (2018): 125.

<sup>294</sup> Moch Nur Ichwan, "Governing Hajj: Politics of Islamic Pilgrimage Services in Indonesia Prior to Reformasi Era," *Al-Jami'ah: Journal of Islamic Studies* 46, no. 1 (2008): 125-51, <https://doi.org/10.14421/ajis.2008.461.125-151>.

<sup>295</sup> Amin Nouri Kouchi, Mansour Zarra Nezhad, and Pouyan Kiani, "A Study of the Relationship between the Growth in the Number of Hajj Pilgrims and Economic Growth in Saudi Arabia," *Journal of Hospitality and Tourism Management* 36 (2018): 103-7, <https://doi.org/10.1016/j.jhtm.2016.01.008>.

Another study from Kurniadi, et.al<sup>296</sup> who examined the management of *hajj* funds from an economic theory found that BPKH can function as a representative of the government for prospective *hajj* pilgrims in the management and development of *hajj* funds. Aziz,<sup>297</sup> meanwhile, examines the Hahslm theory as a guide to the straight path in managing the *hajj* fund. The large number of prospective pilgrims doing registration compared to the available quota means that in normal circumstances, a pilgrim would have to wait an average of 19 years. If he/she has paid a down payment of IDR 25 million, it results in a large accumulation of pilgrims' funds. So far, it is placed in bank deposits which are only guaranteed IDR 2 billion by the deposit insurance agency (LPS). It would be a shame, for him, to find that quite a large of *hajj* funds was managed without playing a role in the productive sector.

Based on previous research, most researchers still focus on the issue of *hajj* in politics, economy, and religious aspect. There are still few who concentrate on studying the management of *hajj* funds in Indonesia through the newer concept of *maqāṣid al-sharī'ah*. Therefore, this current research examines the issue so that it can propose a breakthrough for better *hajj* funds management based on *maqāṣid al-sharī'ah*. We wish the proposal will help for better *hajj* fund management for Indonesian context by firstly portraying Indonesian *hajj* management in general, the *hajj* funds management according to *maqāṣid al-sharī'ah*, and a proposal for better *hajj* funds management in the Indonesian context.

## Methods

This research uses a qualitative approach with normative juridical methods. Data sources include primary and secondary ones. Primary data is obtained directly from the source, namely journal articles, books, magazines, and other articles that have relevance to the problems and objects of research, while secondary is indirectly from the object under study<sup>298</sup> The data analysis used is descriptive-qualitative so that the problems and facts are described descriptively and then analyzed to obtain its complete picture.<sup>299</sup>

Data related to the management of *hajj* funds are then processed through the steps of managing and organizing data, reading and recording emerging ideas, describing and classifying codes, developing and accessing interpretations, and then representing and visualizing data. This spiral analysis is equipped with content analysis, comparative and critical analysis of *hajj* laws and regulations using the perspective of Islamic legal theory. The *maqasid al-Syariah* theory in this research is used to analyze the management of *hajj* funds

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<sup>296</sup> Dece Kurniadi, Jamal Wiwoho, and Hudi Asrori, "Hajj Fund Management in Perspective of the Financial Theory and Fiqh," *International Conference on Globalization of Law and Local Wisdom* 358, no. 34 (2019): 225–27, <https://doi.org/10.2991/icglow-19.2019.57>.

<sup>297</sup> R M Aziz, "Hahslm Theory as Guidance of Straight Path in Management of Hajj and Finance," *KnE Social Sciences* 3, no. 8 (2018): 105, <https://doi.org/10.18502/kss.v3i8.2503>.

<sup>298</sup> Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, (Jakarta: Raja Grafindo Persada, 2015), 33.

<sup>299</sup> Satori, D. A., & Komariah, A. (2009). *Metodologi Penelitian Kualitatif*. Bandung: Alfabeta, 22.

related to the *hifz mâl* aspect so that researchers will be able to draw precise and profound conclusions.

## Result and Discussion

### An Overview of Indonesian Existing *Hajj* Management

The organization of *hajj* in Indonesia has a long history of policy or regulatory aspects. Before the founding of the Republic of Indonesia, Muslims had performed pilgrimages to the holy land of Saudi Arabia. In around 1267 when Islamic empire existed in the archipelago, there were no special regulations regarding the *hajj*. Only after the Dutch colonial government came to power did the pilgrimage have regulations in the form of written positive law.<sup>300</sup>

During the colonial period, the Dutch colonial government was worried about people going to the *hajj*. The reason is that when they were in Mecca, there was no longer any caste, race, or position-based discrimination, so it was worried that the pilgrims realized that everyone had the same rights, and this could trigger a rebellion. The Dutch were furthermore concerned about the political impact of the *hajj* because people returning from the *hajj* were accepted as holy people in Java. For this reason, it is believed that *hajj* pilgrims are more listened to by ordinary people, so the Dutch government made strict regulations relating to the *hajj*.<sup>301</sup>

Since the founding of Indonesia as a republic, efforts to deal with issues regarding organization of the *hajj* have been formulated. The Ministry of Religious Affairs has a central role as a regulator of the *hajj* and the management of its funds. Although the government is the one in charge to organize *hajj* service, in practice, it is divided into two, namely the government and private companies that have received permission from the Minister of Religion so called KBIH (Guiding Group of *Hajj* Worship). However, the latter still engages the Ministry of Religious Affairs particularly in monitoring and guiding the duties to ensure they comply with the stipulated provisions. Historically, the service of *hajj* pilgrimage in Indonesia was handled directly by the community or the private sectors, then during the reign of President Soeharto, the responsibility was taken over by the government after cases of neglect by private parties occurred.<sup>302</sup>

BPHL, The Indonesian Hajj Management Agency, is the institution responsible for managing the *hajj* in Indonesia. It is tasked with providing the services and facilities needed by *hajj* pilgrims, mainly when in Saudi Arabia, ranging from accommodation, transportation, food, and health, to protection and security. In recent years, it has often been in the public

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<sup>300</sup> Aziz, "Hahslm Theory as Guidance of Straight Path in Management of Hajj and Finance."

<sup>301</sup> Rustika Rustika et al., "An Evaluation of Health Policy Implementation for Hajj Pilgrims in Indonesia," *Journal of Epidemiology and Global Health* 10, no. 4 (2020): 263-68, <https://doi.org/10.2991/jegh.k.200411.001>.

<sup>302</sup> Muhammad Iqbal Fasa et al., "Economic Protection Toward Financial Management Hajj Funds: Indonesian Case," *Ad-Deenar: Jurnal Ekonomi Dan Bisnis Islam* 4, no. 02 (2020): 163, <https://doi.org/10.30868/ad.v4i02.953>.

spotlight due to various problems<sup>303</sup> that occur during the *hajj* process as reported at the annual report of the *hajj* service.

*First* is the problem of the long waiting period before the departure time. Future Indonesian *hajj* pilgrims must wait for approximately 20-25 years to perform the *hajj* worship from the time they pay the BPIH. This is due to the limited quota provided by the Saudi Arabian government on the one hand and the high number of registrations among the future pilgrims on another hand.

*Second* is health problems. While in Saudi Arabia, many *hajj* pilgrims experience health problems, such as dehydration, heatstroke, and respiratory infections. This is mainly caused by very hot weather as well as pilgrims' old age<sup>304</sup> and lack of knowledge of preparation in dealing with the situation. Apart from that, health problems also occur due to the lack of adequate health facilities on where *hajj* pilgrims live, let alone that of Indonesian authorities.

*Third* is accommodation problems. While in Saudi Arabia, *hajj* pilgrims stay in dormitories provided by the government. However, many complain that the dormitory is inadequate, such as having poor hygiene and lack of adequate water, electricity, and sanitation facilities. This causes *hajj* pilgrims to feel uncomfortable during the stay that it disturbs the smooth running of their worship.

*Fourth* is transportation problems. Transportation is very important during the *hajj*. However, many pilgrims have trouble in getting adequate transportation. Apart from that, the transportation schedules are quite irregular causing pilgrims to wait a long time for reaching their destination.

*Fifth* is service problems. The services provided by BPHI are also often criticized by the public. Many pilgrims complained about the lack of coordination between BPHI officers and officials in Saudi Arabia, causing pilgrims to experience difficulties in getting adequate services. Apart from that, there were also complaints regarding the attitude of BPHI officers who were less friendly and less responsive to complaints and problems experienced by *hajj* pilgrims.

To overcome these problems, BPHI needs to make various efforts, such as improving coordination with the Saudi Arabian government and advancing facilities. The Indonesian hospitals located in Saudi are among the most important ones in addition to accommodation of pilgrims like dormitory and transportation service. Since Indonesia does not have any assets for accommodation, selective search of the chosen one must be ensured. Professionalism and responsiveness to cope with complaints from *hajj* pilgrims also deserve attention, let alone in dealing with or anticipating any unexpected situation. Security and safety aspects of pilgrims should be inevitably the main concern. Every year, some incidents

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<sup>303</sup> Kementerian Agama Republik Indonesia, Laporan Evaluasi Penyelenggaraan Ibadah Haji, 2023

<sup>304</sup>Masyithah Mardhatillah, "Specific Treatment of Elderly Pilgrims on Hajj According to Hadith; the Approach of Mukhtalif Ahadis," *Al-Ihkam: Jurnal Hukum dan Pranata Sosial* 14, no. 1 (2019): 99-123, <https://doi.org/10.19105/al-ihkam.v14i1.2290>.

occur during the pilgrimage season, such as transportation accidents, riots in holy places, and so on.<sup>305</sup>

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In short, it is necessary to evaluate the existing *hajj* management system and service, so that better and more effective solutions can be arranged in overcoming various typical problems. This includes things ranging from enlarging annual quotas to ensuring every detail is well set from the departure to arrival times. By making these various efforts, it is hoped that the *hajj* worship for Indonesian pilgrims can run better and more smoothly while giving them a positive spiritual experience. This public satisfaction will lead to public trust along with the decrease of public criticism.

One of the potentials and instruments to overcome those disadvantages in the *hajj* service and organization comes from the BIPIH deposit that the future pilgrims pay for getting the portion or seats. Under good and appropriate management, it likely affects in positive ways for developing both *hajj* service and Indonesian/Muslims life in general. The upcoming part will reveal the proposal for the use and allocation of the fund according to *maqashid al-shari'ah* as the philosophy of Islamic law.

#### Management of Indonesian Hajj Funds on *Maqāshid Al-Sharī'ah* Perspective

*Hajj* funds are all types of wealth that can be valued in money, whether in the form of cash money or goods resulting from pilgrims' desk-posted payment (BIPIH) and other related sources. It is the government's rights and obligations to manage them well. BPKH has a precautionary principle in managing *hajj* funds, namely by carrying it out in a beneficial, non-profit, transparent, and accountable manner while considering financial risks. The principle of benefit means that *hajj* financial management must provide benefits for pilgrims and Muslims. The principle of transparency indicates an open and honest financial management by providing information to the public regarding its allocation and implementation. Meanwhile, the principle of accountability is accurate management of *hajj* fund that enable community, especially the pilgrims, to account for.<sup>306</sup>

The service of *hajj* provides a stimulus for the economy both in the micro and macro scope. This became the basis for the Indonesian government in managing the *hajj* funds which reached trillions of rupiah in the form of investment. For instance, according to BPKH records, if 154,455 Indonesian pilgrims were sent out in 2015 and each of them paid Rp20 million, the total amount of money collected would have been Rp 3.09 trillion. In the meantime, it is conceivable that the amount of money that BPKH can manage could approach hundreds of trillions if the number of pilgrims on the waiting list surpasses one million, diverting 20

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<sup>305</sup> Qomarul Huda and Ilham Dwitama Haeba, "Hajj, Istita'ah, and Waiting List Regulation in Indonesia," *Al-'Adalah* 18, no. 2 (2021): 193–212.

<sup>306</sup> Ilham Maulid and Amirsyah Amirsyah, "Analysis of the Hajj Fund Management Based on the Fatwa of the National Sharia Council (DSN) Number 122 Concerning the Management of BIPIH Fund and Special BIPIH Based on Sharia Principles," *ADI Journal on Recent Innovation (AJRI)* 3, no. 1 (2021): 21–35, <https://doi.org/10.34306/ajri.v3i1.490>.

million IDR. The government potentially makes this calculation very profitably by using gold coins, direct investment, SBSN (State Sharia Securities), or other Sharia-compliant investment funds.<sup>307</sup>

In line with it, *maqāṣid al-sharī'ah* as a framework for developing theories, models, policies, and reform programs in various aspects of life, is deemed relevant to use as a perspective in managing the *hajj* fund. In this case, moreover, the *hajj* is also a **primary needs** that the government must facilitate the worship which is also included at the pillars of Islam and therefore, in the perspective of *maqāṣid*, is a part of maintaining religion.<sup>308</sup> According to *maqāṣid al-sharī'ah*, *maslahah* should be the target to realize through Islamic law, as is the case in financial management of the *hajj* considering that *hajj* is one of the devotional rituals that include a great deal of *maqāṣid*.<sup>309</sup>

The highest level of *maslahah* is called *maqāṣid al-khamsah* due to its *ḍarūriyāt* (urgency) aspect. The maintenance of religion shows that the role of religion is very important. The maintenance of soul, mind, and offspring, meanwhile, relates to individual humans. All three are related to human life needs, namely physical, psychological, educational, health, and survival needs. Asset maintenance, in this talk, is every action carried out in asset management.<sup>310</sup> According to Zakiruddin, *et.al.*,<sup>311</sup> one of the developments in the *maqāṣid al-sharī'ah* paradigm is *hifdzul maal* which is not only about protecting material or assets, but also development toward *at-tanmiyyatul iqtishadiyah* (economic growth) based on *maqāṣid al-khoshoh* (special benefit) in maintaining the sustainability of people's assets. In this context, *hajj* funds must be safeguarded for the sake of benefit, so that the investment is not only oriented towards the profit aspect, but also the welfare (*falah*) as an ideal situation in the development of Islamic economics. Therefore, as one of the developments of *maqāṣid al-khoshoh*, namely *hifdzul al-maal attanmiyyatul iqtishadiyah* **namely efforts to protect assets and use them to improve the economy with the aim of providing welfare to society and helping the needs of people who cannot afford it, so it is necessary to maintain the ethical aspect of worship such as carrying out the Hajj in accordance with the objectives of the Shari'a and maintaining the mu'amalah aspect, namely**.<sup>312</sup>

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<sup>307</sup> Indonesia (7), *Undang-Undang tentang Surat Berharga Syariah Negara*, UU Nomor 19 Tahun 2008, LN. Nomor 70 Tahun 2008, TLN. Nomor 4852 Tahun 2008, Pasal 1 Ayat (1)

<sup>308</sup> Mira Munira and Shinta Budi Astuti, "Indonesian Hajj Fund Management: An Overview," *Asian Journal of Accounting and Finance* 1, no. 1 (2019): 1-9.

<sup>309</sup> Auda, J. (2008). *Maqasid al-Shariah: A Beginner's Guide* (Vol. 14). International Institute of Islamic Thought (IIIT).

<sup>310</sup> Abū Ḥāmid Muḥammad ibn Muḥammad Al-Ghazālī, *Al-Mustashfā Min Ilm Al Ushūl* (Beirut: Dar Ihyā at-Turāts al-Ārabi, n.d.)

<sup>311</sup> Muhammad Aziz Zakiruddin, Kamsi, and Ahmad Bahiej, "Siyasah Syar'iyah Paradigm of Hajj Financial Management Regulation in Indonesia," *Al-Istinbath: Jurnal Hukum Islam* 7, no. 2 (2022): 531-52, <https://doi.org/10.29240/jhi.v7i2.5310>.

<sup>312</sup> M Zidny Nafi Hasbi, Makhruh Munajat, and Abdul Qoyum, "Amwaluna : Jurnal Ekonomi Dan Keuangan Syariah A Conceptual Framework of The Islamic Human Development Index ( I-HDI) and Its Relationship with Maqāṣid Al - Shari ' Ah," no. 2019 (2023).

This furthermore implies that management of *hajj* funds must be carried out by prioritizing security aspects, namely in anticipating the risk of loss in the *hajj* fund investment. This includes the risk of reputation, market, operations, or an inherent one. The protection for prospective pilgrims' assets from any decrease in value becomes urgent because they are saved during the waiting period which can take place a plenty of years. If someone pays the cost this year amounting to 25 million and he will go for *hajj* later in 20 years while inflation is 6% per year, there will be much money he can set aside during that period.

Based on the Hajj Organizing Evaluation Report, it was found that problems that arose during the Hajj pilgrimage, including service accommodation in Mecca, did not meet appropriateness standards in the aspects of health, safety and comfort. The catering distribution service is not on time and with a monotonous menu, and does not meet the needs of the elderly congregation. Transportation services are not yet able to reach all accommodation. Apart from that, there are still many technical obstacles in transportation services.<sup>313</sup> There are six problems that have been discovered by the DPR RI Hajj Monitoring Team, namely delays in buses picking up Indonesian pilgrims while in *Muzdalifah*. Over capacity tents in *Armuzna*. Unavailability of food before departure to *Arafat* and after leaving *Mina*. Accommodation per room that exceeds capacity. Bathrooms or toilets in *Armuzna* are limited, causing long queues and facilities for elderly pilgrims are less than optimal. Among the six problems, the *Muzdalifah* tragedy has attracted the most public attention. The *Muzdalifah* tragedy was the moment when thousands of Indonesian Hajj pilgrims piled up and could not be transported for more than 10 hours in hot conditions above 35 degrees Celsius. This condition resulted in many congregants experiencing dehydration and even fainting. At that time, on June 28 2023, thousands of pilgrims from Indonesia were stuck in the *Muzdalifah* area because the *Muzdalifah-Mina-Muzdalifah* shuttle bus was stuck in the *Mina* area due to traffic jams.<sup>314</sup>

Below is the table outlining the ideal situation of *hajj* funds management using *maqashid shariah* as the approach for the allocation of hajj pilgrims needs.

**Table 1. Relevance of *Maqāṣid Al-Sharī'ah* to Ideal Hajj Financial Management for Pilgrims Need**

No	Dimensions	Target	Technical Steps
1	<i>Ḥifẓ al-Dīn</i>	Pilgrims get their spirituality increased through <i>hajj</i> experience	Allocating funds to facilitate the fulfillment of <i>hajj</i> condition ranging from <i>hajj</i> pilgrims' health, rituals, and take advantage in

<sup>313</sup> J. Edward Taylor, M. R. Habib, And M. A. Mustafa, "Transparency, Public Sector Performance, And the Quality of Governance: An Empirical Analysis," *World Development* 42, no. 11 (2014): 2029.

<sup>314</sup> Evaluasi Pelaksanaan Haji 2023, antaranews, 6 Juli 2023, [https:// www.antaranews.com/ infografik/3621255/evaluasi-pelaksanaan-haji-2023](https://www.antaranews.com/infografik/3621255/evaluasi-pelaksanaan-haji-2023), diakses 6 Juli 2023.

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		through the mental and material support from the organizer.	<p>maintaining the prosperity of the hajj pilgrims.</p> <p>Developing more intensive pre-hajj departure</p> <p>Organizing post-hajj guidance</p> <p>Managing hajj fund professionally, transparently, accountably, productively, and in accordance with sharia principles</p>
2	<i>Hifz al-Nafs</i>	The stable health of pilgrims and safety from any diseases	<p>Allocating funds for collaboration with the ministry of health in intensifying practical health education for specific purpose (hajj) so that pilgrims are better prepared physically and mentally</p> <p>Allocating funds to develop quality of hajj health facilities and instruments</p>
3	<i>Hifz 'Aql</i>	Pilgrims get theoretically and practically adequate knowledge about performing the hajj worship.	Allocating funds for renewing curricula and material for pre-hajj departure training as well as building the hajj officers capability
4	<i>Hifz Nasl</i>	The fulfillment of need for special segments of pilgrims, such as elderly, children, disabled, and those with special needs	<p>Allocate funds to provide supporting facilities for those with special needs according to the type of worship such as overnight stays</p> <p>circumambulate the Kaaba and spend the night in Mina when the weather changes in Saudi.</p>



5	<i>Ḥifẓ Māl</i>	The allocation and investment of <i>hajj</i> funds in <i>halal</i> sectors free from <i>gharar</i> , <i>maysir</i> , <i>tadlis</i> , <i>ihhtikar</i> , and usury unsure.	The agreement between <i>hajj</i> pilgrims and BPKH is carried out with a safekeeping of money replacing the <i>hajj</i> bailout funds funded by loans without compensation.
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The table above explains the alignment of *hajj* financial management policies by BPKH in accordance with *Maqāṣid al-Sharī'ah*. *Ḥifẓ al-dīn* represents the religious dimension, BPKH policies must be able to increase the congregation's faith. Therefore, it is necessary to develop more intensive pre-*hajj* departures. Organizing post-*hajj* guidance. Manage *hajj* funds professionally, transparently, accountably, productively and in accordance with sharia principles. *Ḥifẓ al-nafs* represents the dimension of the soul that must be able to provide life services to increase the faith of the congregation. BPKH collaborates with the Ministry of Health practically for a specific purpose (*hajj*) so that pilgrims are better prepared physically and mentally and provide quality *hajj* health facilities and infrastructure. *Ḥifẓ al-'aql* represents the dimension of knowledge. Updated the curriculum and training materials for *hajj* departures and increased the capabilities of *hajj* officers. There are still many pilgrims who do not understand the perfection of the *hajj* pilgrimage. For example, during the state of ihram, the congregation stops by the hotel and changes clothes into jackets, clothes, and so on. Carrying out the *hajj* pilgrimage requires mastery of aspects of religious knowledge. *Ḥifẓ al-nasl* represents the dimension of descendants. To fulfill the needs of *hajj* pilgrims in special segments such as the elderly, children, people with disabilities and those with special needs, BPKH needs to provide supporting facilities for pilgrims with special needs according to their type of worship, such as overnight stays. circumambulate the Ka'bah and spend the night in Mina when the weather changes in Saudi. *Ḥifẓ al-māl* represents the dimension of wealth. *Hajj* financial management must be transparent. This is the mandate of Law Number 34 of 2014. Transparency in the management of *hajj* funds increases public trust in the credibility of Hajj financial management organizers.

It is necessary, therefore, to manage *hajj* finances according to the objectives of *maqāṣid al-sharī'ah* while maintaining the integrity in the management process starting from the cost payment process among *hajj* pilgrims to the return and financial inclusion after *hajj*.<sup>315</sup> Based on the *maqāṣid al-sharī'ah* concept, financial management of the *hajj* can be said to be successful if the aspects of *dharuriyat* needs are met. It seems that food, drink and shelter are provided when carrying out the *hajj* pilgrimage. In the *maqāṣid al-sharī'ah* perspective, management of the *hajj* funds is therefore not limited to the protection of religion (*hifẓ al-dīn*) and property (*hifẓ al-maal*), but also to the sustainability of economic improvement and development. Apart

<sup>315</sup> Atika Rukminastiti Masrifah and Achmad Firdaus, "The Framework of Maslahah Performa as Wealth Management System and Its Implication for Public Policy Objectives the Emergence of Waqf Bank: A Social Welfare Alternative in Indonesia," Media Syariah 18, no. 2 (2016): 1-36.

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from that, the value of the benefits of the funds can be used to improve infrastructure beneficial to the community. Good infrastructure will certainly have a positive impact on the national economy, social facilities, education, health, etc. This is what is expected from Indonesian BPKH's professional, responsible and transparent management of hajj funds.<sup>316</sup>

### Management of Hajj Funds; A Proposal for Indonesian Context

The *hajj* in general was regulated in the Law No. 13/2008. It contains many verses about *hajj* service, including related to the *hajj* funds. The Article 1 verse 8 mentions that *hajj* cost or so called BIPIH is the cost to pay for getting *hajj* service. In practice, The Law was then completed by another one, namely a more specific Law regulating the management of *hajj* funds, namely the *Hajj* Financial Management Law No. 34/2014. Article 48 Paragraph 2 of the Law requires the management of *hajj* funds to accord with sharia principles with aspects of security, prudence, useful value, and liquidity. Then, Article 49 Paragraph 1 stated that investments in *hajj* funds can be made with the approval of BPKH supervisory board. Apart from that, several other articles in the Law become the legal basis for BPKH in making investments.<sup>317</sup>

Management of *hajj* funds is carried out optimally, professionally, transparently and efficiently. If at the end of the *hajj* financial year there is greater efficiency and benefit value, it will be returned to the *hajj* treasury belonging to the *hajj* pilgrims. Management of *hajj* funds by BPKH is carried out transparently, published, audited by BPK and supervised by the DPR. The government and BPKH guarantee that departing *hajj* pilgrims are guaranteed to receive adequate services and have all their financial rights fulfilled. *Hajj* financial management is carried out carefully and safely, without being dangerous for the *hajj* pilgrims who are departing or the *hajj* pilgrims who are still in the waiting stage. *Hajj* deposit funds deposited in the account of the Minister of Religion whose registrants are included in the waiting list according to Sharia belong to the registrants of prospective *hajj* pilgrims, therefore, if the person concerned dies or there is a sharia obstacle that makes the prospective *hajj* pilgrims concerned fail to depart, then *hajj* deposit funds must be returned to prospective *hajj* pilgrims or their heirs.

*Hajj* deposit funds for prospective pilgrims who are on the waiting list contained in the account of the minister of religion, should be used for productive things and managed with high risk mitigation. Therefore, the government can use these funds in halal sectors, namely sectors that are protected from *maisir*, *gharar* and usury. Based on Law Number 34 of 2014 concerning *Hajj* Financial Management, what needs to be emphasized in this case is that the use of *Hajj* funds for investment as regulated in this Law must strictly safeguard the invested funds. Management must obtain approval from the *hajj* financial placement supervisory

<sup>316</sup> Andre Zanij Deananda and Wirdyaningsih, "Alternative Optimization of Hajj Fund Using Sharia Shares" 413, no. 34 (2020): 34–40, <https://doi.org/10.2991/assehr.k.200306.176>.

<sup>317</sup> Diseminasi BPKH (2018) Diseminasi Peran Pengawasan Keuangan Haji, *In*. [bpkh.go.id/](http://bpkh.go.id/).

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board and investment is transferred from the *Hajj* Treasury to the BPKH Treasury (*Hajj* Financial Management Agency). BPKH is responsible for the finances it has managed and if the *hajj* pilgrims cancel their departure, they are required to return the deposit.<sup>318</sup>

BPKH has the function of carrying out planning, implementation, as well as accountability checking and reporting of *hajj* funds in compliance with sharia while prioritizing the principle of prudence, benefits-based, not seeking profits, transparency, and accountability.<sup>319</sup> In this talk, there are two correlating terms which are often incorrectly interchanged, namely *hajj* funds and Ummah Endowment Fund (DAU). This is likely because, in the Law Number 34 of 2014, *hajj* funds are defined as funds consisting of *hajj* cost or BIPIH, efficiency funds for organizing the *hajj*, DAU, as well as the value of benefits controlled by the state in the context of organizing the *hajj* and implementing activity programs for the benefit of Muslims. Meanwhile, the DAU, which is a part of *hajj* funds, is several funds which, before the enactment of the Law, were obtained from the development of the funds and/or remaining operational costs of *hajj* as well as other sources that are *halal* and non-binding following the provisions of statutory regulations such as *zakat*, *waqf*, and other funds source.

Furthermore, the Law No. 34 of 2014 mentions that the government places *hajj* funds in sharia financial institutions which are limited to a maximum of 50%, while other funds are directly invested in sharia instruments which are considered safe and providing much better returns. The investment of *hajj* funds becomes a must considering long queues of departure so that the *hajj* cost in the bank is made for investment to make their value not eroded by inflation. Instead, it can provide benefits to the community through, among others, DAU schemes. DAU is typically used for social activities such as improving the quality of *hajj* services, education, *da'wa*, health, social, and economic, and religious infrastructure.<sup>320</sup>

Meanwhile, the *hajj* cost or BIPIH covers flight costs, accommodation costs in Mecca and Medina as well as living costs for *hajj* pilgrims. Each prospective *hajj* pilgrims had to deposit the initial BIPIH cost into the bank to get a portion or seat. Afterward, when it is the time for departure, they will pay off according to the total BIPIH amount determined later according to the currency. The deposited fund from initial payment of prospective *hajj* pilgrims, which has now reached 40 trillion rupiahs with an average interest of 1 trillion rupiahs managed by the Ministry of Religious Affairs, is used to subsidize the needs of *hajj* pilgrims who depart first. However, this practice has minimal legal support because without the pilgrims' consent, the interest from their savings (through initial payment they made) is

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318 Undang-Undang Nomor 34 Tahun 2014 tentang Pengelolaan Keuangan Haji

<sup>319</sup> Acep R Jayaprawira and Abdussalam, "Analysis of the Implementation of the Islamic Contract Principle on Hajj Fund Management by Hajj Fund Management Agency (BPKH)," *KnE Social Sciences* 2019 (2019): 628–61, <https://doi.org/10.18502/kss.v3i26.5405>.

<sup>320</sup> Maizul Imran and Rio Satria, "Dinamika Formulasi Akad Terhadap Pengelolaan Dana Haji Di Indonesia," *Alhurriyah: Jurnal Hukum Islam (Alhurriyah Journal of Islamic Law)* 3, no. 2 (2018): 141.

potentially prone to irregularities and fraud as indicated by the Corruption Eradication Commission.<sup>321</sup>

Despite it, the use of deposited fund triggers various following problems and/or requirements.<sup>322</sup> *Firstly*, the Ministry of Religious Affair is publicly required to enforce accountability in managing the initial funds for registration of *hajj* candidates amounting IDR 25,000,000.00 which is deposited from the time of getting the *hajj* portion in Siskohaj (Indonesian *hajj* application) until the time of departure. BPKH as the one that manages *hajj* funds needs to pay attention to accountability regarding transparency and how to present financial reports of managed funds. Transparency is a concept that emphasizes clarity and openness in accordance with a process, system, or institution. In some contexts, it can mean crucial facts which are openly available and easily accessible to the public, thereby enabling supervision and understanding of ongoing processes. Transparency can also be believed to be a principle of democracy because it allows the public to monitor decisions made by the government or other institutions that hold power.

*Second*, the status of legal ownership of the initial funds for registration of *hajj* candidates is in question, whether it belongs to the future *hajj* pilgrims or the government as the *hajj* organizer or service provider. *Hajj* deposit funds deposited in the account of the Minister of Religion whose registrant is on the waiting list according to Sharia are the property of the registrant *hajj* candidate. If the person concerned dies or there are sharia obstacles that prevent the *Hajj* candidate from leaving, the *Hajj* deposit funds must be returned to the *Hajj* candidate or their heirs. BPIH funds belonging to *Hajj* candidates who are on the waiting list may not be used for any purpose except to finance the needs concerned. Therefore, it is important to make clear about the legal ownership of the fund through transparent management and funding allocation.

*Third*, Law No. 13 of 2008 gives authority to carry out an efficiency fund, i.e. remaining funds from operational cost of *hajj* service through the DAU which the amount is quite large. However, it cannot be used for any investment or other purposes because there are no government regulations about management of DAU that it keeps untouchable since May 2005.<sup>323</sup> The policy to make efficiency funds in the *hajj* service contains legal gaps in both state and religious law. For the former, it is argued that no single clause stated by the *hajj* pilgrims regarding the agreement on utilizing the efficiency fund. Thus, the efficiency policy is deemed to violate the law. Meanwhile, for the latter, even though the DAU aims for the benefit of people, agreement and willingness of the whole *hajj* pilgrims is in question. It is very important to think about the pledge and agreement among the *hajj* pilgrims who willingly deposit their money to get the departure portion or seat. In dealing with the problems, namely those related to DAU and BPKH recommends the funds to be returned for the interests and benefit of the *ummah*, as per the results of the *Ijtima' Ulama* of the All-

<sup>321</sup> Pasal 1 (1) Keputusan Presiden Nomor 22 Tahun 2001 tentang Badan Pengelola Dana Abadi Umat (BP DAU)

<sup>322</sup> Aishath Muneeza et al., "A Comparative Study of Hajj Fund Management Institutions in Malaysia, Indonesia and Maldives," *International Journal of Management and Applied Research* 5, no. 3 (2018): 120-134.

<sup>323</sup> <https://peraturan.bpk.go.id/Details/39044/uu-no-13-tahun-2005>

Commented [213]: Maksudnya bagaimana?

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Indonesian Fatwa Commission III MUI 1430 H/2009 AD in Padang Panjang, 24-26 January 2009.

Fourth, prospective *hajj* pilgrims might become banking business commodities with the offer of a *hajj* bailout system. In this case, prospective *hajj* pilgrims become the target to receive a loan facility numbering IDR 25,000,000.00 so that they can register to immediately receive *hajj* portions. In other words, the banking business seizes a good market opportunity to expand its customers by providing *hajj* funding to fulfill the wishes of prospective *hajj* pilgrims, so they don't get too far on the waiting list.<sup>324</sup>

In fact, the government—through the Indonesian Ministry of Religious Affairs—claimed that it had managed the DAU successfully through, among others, SBSN (State Sharia Securities), including preparing documents for funding the Ministry of Religion's project through Project *Sukuk* (SBSN PBS), namely in the form of a *hajj* dormitory revitalization and development project worthing IDR 200 billion. Moreover, The Minister of Finance and the Minister of Religious Affairs, on Friday, 22/11/2017 signed a revised Memorandum of Understanding (MoU) regarding the Placement of *Hajj* Funds in (SBSN).<sup>325</sup>

Following the mandate of the Law, according to Anggito Abimanyu, BPKH's investments can be made in sharia securities investment instruments, gold, direct investment, and other investments. The wide scope of this investment is a challenge for BPKH, especially to carry out an effective investment strategy to optimize the value of its benefits. Another challenge is how to anticipate the increase in the cost of performing the *hajj* pilgrimage. Therefore, BPKH needs to carry out an investment strategy that can meet the needs of these costs through returns from various investment instruments complying with Sharia principles, prudence, and liquidity without raising the *hajj* cost.<sup>326</sup> Investment risks are borne by the government and should not disturb the process of providing good facilities for the *hajj* pilgrims. Meanwhile, profits obtained from investments must be used for improving *hajj* facilities at specific and public benefits in general. This can be in the form of financing the construction of schools and campuses within PTKIN with SBSN scheme.

So far, there are three main instruments for placing initial deposits for BIPIH, namely in the form of national Sharia Securities (*Sukuk*/SBSN), government debt securities (SUN), and Sharia-based deposits. One of ways on how the government carries out the financial management of *hajj* funds is the issuance of State Sharia Securities (SBSN), in this case, the Indonesian *Hajj* Fund *Sukuk* (SDHI) product. This accords to the decision of *Ulama Ijtima*, Indonesian Fatwa Commission IV of 2012 which mentions that deposits in the waiting list for

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<sup>324</sup> Eric Kurniawan, "Akuntabilitas Pengelolaan Dana Haji Republik Indonesia," *Jurnal Ilmiah Ekonomi Islam* 7, no. 3 (2021): 1449–56.

<sup>325</sup> Anggito Abimanyu, *Naskah Akademik Rancangan Perubahan UU Nomor 13 tentang Penyelenggaraan Ibadah Haji*, hlm. 6.

<sup>326</sup> Indin Rarasati, "Analisis Empiris Potensi Resiko Investasi Dana Haji Melalui *Sukuk* Dana Haji Indonesia," *Jurnal Ilmiah Ekonomi Islam* 8, no. 03 (2022): 2571–81.

*hajj* departure may be allocated to for productive things, namely providing profits through placement in Sharia Banking or invested in the form of *sukuk* <sup>327</sup>

In line with it, according to the Director of Higher Education and Science and Technology of Bappenas RI, Hadiat,<sup>328</sup> the SBSN project initiated by the Directorate General of Islamic Education of the Ministry of Religious Affairs which has succeeded in building educational infrastructure at PTKIN (State Islamic Religious College) for six years with a total budget of 7-8 trillion rupiahs should be appreciated. The implementation of educational infrastructure development through SBSN which began in 2015 until 2022 has been running well and PTKIN has benefited from that sector as well.

The importance of investment requires professionalism in its management, including its supervision process. Not only that, the supervision needs to be narrowed down, mainly by exploring how the benefits of the investment can be obtained both for the benefit of the institution and the pilgrims themselves. They are the basic principles of Islamic economics to support the distribution of resources and encourage investment, optimize beneficial investment, and encourage investment, optimize beneficial investment, and encourage social participation for the public interest.

## Conclusion

The management of *hajj* funds in the perspective of *maqāṣid al-shari'ah* has the aim of benefiting the *hajj* pilgrims not only to fulfill the obligation of the fifth pillar of Islam or maintaining religion (*hifz ad-din*), but also on other related aspects to ensure smooth running service of *hajj*. Therefore, it is suggested the deposited funds of BIPIH is managed transparently with the allocation made appropriate to the pilgrims needs, both physical and spiritual. Other than that, in the Indonesian context, the funds are best invested in various sectors beneficial for *ummah* with the minimum risk of loss so that it would not bear expenses for the *hajj* costs. The refinement of pledge on the use of investment or funds between pilgrims and the government is also a need. This research has limitations, especially in terms of methodology and limited analysis of formal aspects. Therefore, it is suggested that further research is needed to develop this research by examining the management of *hajj* funds in Muslim countries other than Indonesia, as well as further researchers being able to use other variables to expand the study of *hajj* fund management.

## Acknowledgments

Researchers' gratitude expressed to the Rector and Director of the Postgraduate Program of IAIN Sheikh Nurjati Cirebon, the Rector of King Abdulaziz University, Jeddah Makkah, Saudi Arabia, and the Rector of Ata Alma University Yogyakarta. They have supported and provided opportunities for researchers to improve their academics through research and

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<sup>327</sup> M. Rifka Maulana and Sokhikhatul Mawadah, "Management of Hajj Funds in Sukuk Investment from an Islamic Economic Perspective," *International Conference on Islamic Economic (ICIE)* 2, no. 1 (2023): 10–35, <https://doi.org/10.58223/icie.v2i1.204>.

<sup>328</sup> Enam Tahun SBSN, Bangun Gedung 57 PTKIN (kemenag.go.id)

scientific publications so that the results can be published. As well as research gratitude was also expressed to the manager of the Al-IHKAM IAIN Madura Journal who has published the results of this research.

## Bibliography


- Abū Ḥāmid Muḥammad ibn Muḥammad Al-Ghazālī, *Al-Mustashfā Min Ilm Al Ushūl*, Beirut: Dar Ihyā at-Turāts al-Ārabi, n.d.
- Aziz, R M. "Hahslm Theory as Guidance of Straight Path in Management of Hajj and Finance." *KnE Social Sciences* 3, no. 8 (2018): 105. <https://doi.org/10.18502/kss.v3i8.2503>.
- Deananda, Andre Zani, and Wirdyaningsih. "Alternative Optimization of Hajj Fund Using Sharia Shares" 413, no. 34 (2020): 34-40. <https://doi.org/10.2991/assehr.k.200306.176>.
- Fahmi, Annas Syam Rizal. "An Analysis of Investment for Hajj Funds from Islamic Law Perspective." *Al-Iktisab: Journal of Islamic Economic Law* 1, no. 2 (2017): 131. <https://doi.org/10.21111/al-iktisab.v1i2.2388>.
- Evaluasi Pelaksanaan Haji 2023, antaranews, 6 Juli 2023, <https://www.antaranews.com/infografik/3621255/evaluasi-pelaksanaan-haji-2023>, diakses 6 Juli 2023.
- Fasa, Muhammad Iqbal, Adib Fachri, Ghina Ulfah Saefurrohman, Ahmad Hazas Syarif, and Suharto Suharto. "Economic Protection Toward Financial Management Hajj Funds: Indonesian Case." *Ad-Deenar: Jurnal Ekonomi dan Bisnis Islam* 4, no. 02 (2020): 163. <https://doi.org/10.30868/ad.v4i02.953>.
- Hasbi, M Zidny Nafi, Makhrus Munajat, and Abdul Qoyum. "Amwaluna : Jurnal Ekonomi dan Keuangan Syariah A Conceptual Framework of The Islamic Human Development Index (I-HDI) and Its Relationship with Maqāṣid Al - Shari' Ah," no. 2019 (2023).  
<https://peraturan.bpk.go.id/Details/39044/uu-no-13-tahun-2005>
- Huda, Qomarul, and Ilham Dwitama Haeba. "Hajj, Istita'ah, and Waiting List Regulation in Indonesia." *Al-'Adalah* 18, no. 2 (2021): 193-212.
- Ichwan, Moch Nur. "Governing Hajj: Politics of Islamic Pilgrimage Services in Indonesia Prior to Reformasi Era." *Al-Jami'ah: Journal of Islamic Studies* 46, no. 1 (2008): 125-51. <https://doi.org/10.14421/ajis.2008.461.125-151>.
- Imran, Maizul, and Rio Satria. "Dinamika Formulasi Akad terhadap Pengelolaan Dana Haji di Indonesia." *ALHURRIYAH: Jurnal Hukum Islam (ALHURRIYAH JOURNAL OF ISLAMIC LAW)* 3, no. 2 (2018): 141. <https://doi.org/10.30983/alhurriyah.v3i2.755>.
- Jayaprawira, Acep R, and Abdussalam. "Analysis of the Implementation of the Islamic Contract Principle on Hajj Fund Management by Hajj Fund Management Agency (BPKH)." *KnE Social Sciences* 2019 (2019): 628-61. <https://doi.org/10.18502/kss.v3i26.5405>.
- Jumali, Endang. "Management of Hajj Funds in Indonesia." *Journal of Legal, Ethical and Regulatory Issues* 21, no. 3 (2018): 1-9.

- Kurniadi, Dece, Jamal Wiwoho, and Hudi Asrori. "Hajj Fund Management in Perspective of the Financial Theory and Fiqh." *International Conference on Globalization of Law and Local Wisdom* 358, no. 34 (2019): 225–27. <https://doi.org/10.2991/icglow-19.2019.57>.
- Kurniawan, Eric. "Akuntabilitas Pengelolaan Dana Haji Republik Indonesia." *Jurnal Ilmiah Ekonomi Islam* 7, no. 3 (2021): 1449–56.
- Mardhatillah, Masyithah. "Specific Treatment of Elderly Pilgrims on Hajj According to Hadith; the Approach of Mukhtalif Ahadis." *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 14, no. 1 (2019): 99–123. <https://doi.org/10.19105/al-lhkam.v14i1.2290>.
- Masrifah, Atika Rukminastiti, and Achmad Firdaus. "The Framework of Masalahah Performa as Wealth Management System and Its Implication for Public Policy Objectives the Emergence of Waqf Bank: A Social Welfare Alternative in Indonesia." *Media Syariah* 18, no. 2 (2016): 1–36.
- Maulana, M. Rifka, and Sokhikhatul Mawadah. "Management of Hajj Funds in Sukuk Investment from an Islamic Economic Perspective." *International Conference on Islamic Economic (ICIE)* 2, no. 1 (2023): 10–35. <https://doi.org/10.58223/icie.v2i1.204>.
- Maulid, Ilham, and Amirsyah Amirsyah. "Analysis of the Hajj Fund Management Based on the Fatwa of the National Sharia Council (DSN) Number 122 Concerning the Management of BPIH Fund and Special BPIH Based on Sharia Principles." *ADI Journal on Recent Innovation (AJRI)* 3, no. 1 (2021): 21–35. <https://doi.org/10.34306/ajri.v3i1.490>.
- Mira Munira, and Shinta Budi Astuti. "Indonesian Hajj Fund Management: An Overview." *Asian Journal of Accounting and Finance* 1, no. 1 (2019): 1–9.
- Muheramtohad, Singgih. "The Use of Hajj Fund for Investment Purpose: A Maqashid Sharia Approach." *Journal of Islamic Economics, Management, and Business (JIEMB)* 1, no. 1 (2020): 99–116. <https://doi.org/10.21580/jiemb.2019.1.1.3740>.
- Muneeza, Aishath, Amira Sudeen, Atiqoh Nasution, and Ratih Nurmalasari. "A Comparative Study of Hajj Fund Management Institutions in Malaysia, Indonesia and Maldives." *International Journal of Management and Applied Research* 5, no. 3 (2018): 120–34. <https://doi.org/10.18646/2056.53.18-009>.
- Nouri Kouchi, Amin, Mansour Zarra Nezhad, and Pouyan Kiani. "A Study of the Relationship between the Growth in the Number of Hajj Pilgrims and Economic Growth in Saudi Arabia." *Journal of Hospitality and Tourism Management* 36 (2018): 103–7. <https://doi.org/10.1016/j.jhtm.2016.01.008>.
- Primadhany, Erry Fitriya. "Tinjauan Terhadap Tanggung Jawab Badan Pengelola Keuangan Haji (Bpkh) dalam Melakukan Penempatan dan/atau Investasi Keuangan Haji." *Jurisdictie* 8, no. 2 (2018): 125. <https://doi.org/10.18860/j.v8i2.4447>.
- Rarasati, Indin. "Analisis Empiris Potensi Resiko Investasi Dana Haji Melalui Sukuk Dana Haji Indonesia." *Jurnal Ilmiah Ekonomi Islam* 8, no. 03 (2022): 2571–81.
- Rustika, Rustika, Ratih Oemati, Al Asyary, and Tety Rachmawati. "An Evaluation of Health Policy Implementation for Hajj Pilgrims in Indonesia." *Journal of Epidemiology and Global Health* 10, no. 4 (2020): 263–68. <https://doi.org/10.2991/jegh.k.200411.001>.



Zakiruddin, Muhammad Aziz, Kamsi, and Ahmad Bahiej. "Siyasah Syar'iyah Paradigm of Hajj Financial Management Regulation in Indonesia." *Al-Istinbath: Jurnal Hukum Islam* 7, no. 2 (2022): 531–52. <https://doi.org/10.29240/jhi.v7i2.5310>.

## REVISI KE-6

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### ***Hajj Funds Management Based on Maqāṣid Al-Sharī'ah; A Proposal for Indonesian Context***

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### Abstract:

Indonesian *hajj* funds (BIPH) have the potential to support the implementation of *hajj* worship in an effective, efficient, transparent, and accountable manner while complying with Islamic law. However, it is said that the management turned out to be ineffective and unprofessional. This research aims to examine the management of *hajj* funds in detail using *maqāṣid al-sharī'ah* perspective to propose a breakthrough for its better management. It uses a normative juridical method through data presentation and explanation using an interdisciplinary perspective on *maqāṣid al-sharī'ah*. The data comes from journal articles, scientific documents, and statistical data. The research results show that in *maqāṣid al-sharī'ah* perspective, namely an instrument to create a balance of the Muslim way of life with Islamic legal values in social, political, economic, spiritual, and universal human aspects, the *ḥifz māl* dimension urges using *hajj* funds for the benefit of society. Therefore, the *Hajj* Financial Management Agency (BPKH) should collaborate with the Ministry of Religious Affairs and other related stakeholders to manage *Hajj* funds optimally and efficiently while increasing trust and reducing negative public perceptions. Policies and regulations by the government are made in such a way that it can ease *hajj* pilgrims to carry out the worship comfortably, safely, smoothly, and spiritually enriching.

### Keywords:

*Hajj* Funds Management; *Maqāṣid Al-Sharī'ah*; Indonesia

### Introduction

As the world's largest Muslim country, Indonesia contributes a lot of *Hajj* pilgrims every year. This is partly supported by its constitution which guarantees Indonesians to worship following their respective religions and beliefs. In addition to formulating and enforcing the constitution, the government is also in charge of planning and organizing the *hajj*. They are supposed to guide, give service, and protect Indonesian citizens in a safe, comfortable, orderly, and compliance with the provisions of the *sharī'ah*.<sup>329</sup>

In addition to the problem of organizing the pilgrimage, another issue is the relationship between the country of prospective pilgrims and the country of destination, namely Saudi Arabia. Indonesia receives many *hajj* quotas. In 2023, Indonesia got the largest *hajj* quota in the world. It is recorded that Indonesia's *hajj* quota reached 221,000 pilgrims, consisting of 203,320 quotas for regular *hajj* pilgrims and 17,680 quotas for special *hajj* pilgrims. Even if there are a lot of quotas in the current year, they aren't adequate to fulfill the

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<sup>329</sup> Endang Jumali, "Management of *Hajj* Funds in Indonesia," *Journal of Legal, Ethical and Regulatory Issues* 21, no. 3 (2018): 1-9.

demand as indicated by the number of applicants which rises annually resulting in the long waiting list of *hajj*.<sup>330</sup>

The waiting list for *Hajj* departure is determined by the time of registration when paying the *Hajj* Travel Fee or so-called BIPIH (Cost of Organizing the *Hajj* Pilgrimage).<sup>331</sup> This BIPIH is deposited by prospective pilgrims for registration fees to receive a portion of the departure. The Law No. 13 of 2008 mentions that the management is only limited to its optimal use and development in the form of bank instruments whose security is truly guaranteed. Thus, the policies made by the government enabled the funds to be used for the general welfare of the community in line with the objectives of the founding fathers of the Republic of Indonesia.<sup>332</sup> However, academicians and practitioners consider that the existing legal basis was not sufficient, so a separate law was needed that regulates the management of *hajj* funds at a more specific scope.

According to Law no. 34/2014 on *Hajj* Funds Management, the term *hajj* funds (BIPH) consists of BIPIH deposit funds; efficiency funds; DAU (*Endowment Fund of The Ummah*) as well as the value of benefits controlled by the state in the context of organizing the *hajj* and implementing program activities for the benefit of Muslims.<sup>333</sup> Due to the limited *hajj* quota each year, there will certainly be a build-up of *hajj* funds from a large number of applicants on the waiting list. This certainly requires a more well-organized management of the funds. It was manifested by the establishment of a special financial institution with the authority to manage the *hajj* funds called the Hajj Financial Management Agency (BPKH) on 26 July 2017.<sup>334</sup> It is a public legal entity that is independent and responsible to the President through the Minister of Religious Affairs. The structure of BPKH consists of an executive body and a supervisory board responsible for managing the revenue, development, expenditure, and accountability of the *Hajj* funds.

The management of *hajj* funds following their objectives is important to discuss considering the large number of *hajj* funds managed by BPKH so as not to deviate from the initial goal of financing the pilgrimage, let alone from various perspectives embedded in *maqāsid al-sharī'ah*. This research would therefore discuss it from the perspective of *māqasid* as a philosophy of Islamic law with its continuously developed concept concerning various basic aspects of people's common needs in the context of Indonesia.

Recently, there has been a paradigm shift from classical *maqasid sharia* theory to the contemporary one. The change lies in the main benefit as the target to manifest, namely the protection and preservation aspects because the contemporary *maqasid sharia* is more about

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<sup>330</sup> Annas Syam Rizal Fahmi, "An Analysis of Investment for Hajj Funds from Islamic Law Perspective," *Al-Iktisab: Journal of Islamic Economic Law* 1, no. 2 (2017): 131, <https://doi.org/10.21111/al-iktisab.v1i2.2388>.

<sup>331</sup> Indonesia (1), *Undang-Undang tentang Penyelenggaraan Ibadah Haji dan Umroh*, Pasal 5 Ayat (1).

<sup>332</sup> Singgih Muheramtahadi, "The Use of Hajj Fund for Investment Purpose: A Maqashid Sharia Approach," *Journal of Islamic Economics, Management, and Business (JIEMB)* 1, no. 1 (2020): 99-116, <https://doi.org/10.21580/jiemb.2019.1.1.3740>.

<sup>333</sup> Indonesia (2), *Undang-Undang tentang Pengelolaan Keuangan Haji*, UU Nomor 34 Tahun 2014, LN. Nomor 5605 Tahun 2014, Pasal 1 Ayat (2).

<sup>334</sup> Erry Fitrya Primadhany, "Tinjauan terhadap Tanggung Jawab Badan Pengelola Keuangan Haji (BPKH) dalam Melakukan Penempatan dan/atau Investasi Keuangan Haji," *Jurisdictie* 8, no. 2 (2018): 125.

development and rights. To develop the concept, Jasser Auda proposes human development as the main target. He developed the current conception of *maqasid* as an evolution of the old theory which in the context of *hifdz mal* prioritized social concerns; paying attention to economic development and improvement; and advancing human welfare while eliminating the gap between the rich and the poor.

Previous research discussing the management of *hajj* in Indonesia from several aspects, factors, and indicators still requires further development. *Hajj* in terms of political factors, among others, was discussed by Ichwan. He found that the complexity of *hajj* and *umrah* services is not so much caused by religious aspects, but rather by political aspects and economic motives.<sup>335</sup> From the aspect of economy, Kouchi et al.<sup>336</sup> studied the relationship between the growth in the number of *Hajj* pilgrims and economic growth in Saudi Arabia. The increase in the number of people performing *hajj* has a major impact on Saudi Arabia's economic progress. The annual *hajj* and *umrah* could play an increasingly important role in economic growth and development. In a broad general sense, religious tourism plays an important role as a foreign exchange earner, job creator, and tool for improving the balance of payments. Its contribution to economic prosperity, if planned well, can be greater than that of any other known economic force.

Another study by Kurniadi, et.al<sup>337</sup> who examined the management of *hajj* funds from an economic theory found that BPKH can function as a representative of the government in the management and development of *hajj* funds. Aziz,<sup>338</sup> meanwhile, examines the Hahslm theory as a guide to the straight path in managing the *hajj* funds. The large number of prospective pilgrims doing registration compared to the available quota means that in normal circumstances, a pilgrim would have to wait an average of 19 years. If he/she has paid a down payment of IDR 25 million, it results in a large accumulation of pilgrims' funds. So far, it is placed in bank deposits which are only guaranteed IDR 2 billion by the deposit insurance agency (LPS). It would be a shame, for him, to find that quite a large of *hajj* funds were managed without playing a significant role in the productive sector.

Based on previous research, it is clear that most researchers still focus on the issue of *hajj* in politics, economy, and religious aspects. There are still few who concentrate on studying the management of *hajj* funds in Indonesia through the newer concept of *maqāṣid al-sharī'ah*. Therefore, this current research examines the issue so that it can propose a breakthrough for better *hajj* funds management based on *maqāṣid al-sharī'ah*. We hope the proposal will help for better *hajj* funds management in the Indonesian context by firstly

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<sup>335</sup> Moch Nur Ichwan, "Governing Hajj: Politics of Islamic Pilgrimage Services in Indonesia Prior to Reformasi Era," *Al-Jami'ah: Journal of Islamic Studies* 46, no. 1 (2008): 125–51, <https://doi.org/10.14421/ajis.2008.461.125-151>.

<sup>336</sup> Amin Nouri Kouchi, Mansour Zarra Nezhad, and Pouyan Kiani, "A Study of the Relationship between the Growth in the Number of Hajj Pilgrims and Economic Growth in Saudi Arabia," *Journal of Hospitality and Tourism Management* 36 (2018): 103–7, <https://doi.org/10.1016/j.jhtm.2016.01.008>.

<sup>337</sup> Dece Kurniadi, Jamal Wiwoho, and Hudi Asrori, "Hajj Fund Management in Perspective of the Financial Theory and Fiqh," *International Conference on Globalization of Law and Local Wisdom* 358, no. 34 (2019): 225–27, <https://doi.org/10.2991/icglow-19.2019.57>.

<sup>338</sup> R M Aziz, "Hahslm Theory as Guidance of Straight Path in Management of Hajj and Finance," *KnE Social Sciences* 3, no. 8 (2018): 105, <https://doi.org/10.18502/kss.v3i8.2503>.

portraying Indonesian *hajj* management in general, the *hajj* funds management according to *maqāṣid al-sharī'ah*, and a proposal for better *hajj* funds management in the Indonesian context.

## Method

This research uses a qualitative approach with normative juridical methods. Data sources include primary and secondary ones. Primary data is obtained directly from the source, namely journal articles, books, magazines, and other articles that have relevance to the problems and objects of research, while secondary is indirectly from the object under study.<sup>339</sup> The data analysis used is descriptive-qualitative so that the problems and facts are described descriptively and then analyzed to obtain a complete picture.<sup>340</sup>

Data related to the management of *hajj* funds are then processed through the steps of managing and organizing data, reading and recording emerging ideas, describing and classifying codes, developing and accessing interpretations, and then representing and visualizing data. This spiral analysis is equipped with content analysis, a comparative and critical analysis of *hajj* laws and regulations using the perspective of Islamic legal theory. The *maqāṣid al-syariah* theory in this research is used to analyze the management of *hajj* funds related to the *hifz māl* aspect so that researchers will be able to draw precise and profound conclusions.

## Result and Discussion

### An Overview of Indonesian Existing *Hajj* Management

The organization of *hajj* in Indonesia has a long history of policy or regulatory aspects. Before the founding of the Republic of Indonesia, Muslims had performed pilgrimages to the holy land of Saudi Arabia. In around 1267 when the Islamic empire existed in the archipelago, there were no special regulations regarding the *hajj*. Only after the Dutch colonial government came to power did the pilgrimage have regulations in the form of written positive law.<sup>341</sup>

During the colonial period, the Dutch colonial government was worried about people going to the *hajj*. The reason is that when they were in Mecca, there was no longer any caste, race, or position-based discrimination, so it was worrying that the pilgrims realized that everyone had the same rights, and this could trigger a rebellion. The Dutch were furthermore concerned about the political impact of the *hajj* because people returning from the *hajj* were accepted as holy people in Java. For this reason, it is believed that *hajj* pilgrims are more

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<sup>339</sup> Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif; Suatu Tinjauan Singkat*, (Jakarta: Raja Grafindo Persada, 2015), 33.

<sup>340</sup> Satori, D. A., & Komariah, A. (2009). *Metodologi Penelitian Kualitatif*. Bandung: Alfabeta, 22.

<sup>341</sup> Aziz, "Hahslm Theory as Guidance of Straight Path in Management of Hajj and Finance."

listened to by ordinary people, so the Dutch government made strict regulations relating to the *hajj*.<sup>342</sup>

Since the founding of Indonesia as a republic, efforts to deal with issues regarding the organization of the *hajj* have been formulated. The Ministry of Religious Affairs has a central role as a regulator of the *hajj* and the management of its funds. Although the government is the one in charge of organizing the *hajj* service, in practice, it is divided into two, namely the government and private companies that have received permission from the Minister of Religion so called KBIH (Guiding Group of *Hajj* Worship). However, the latter still engages the Ministry of Religious Affairs, particularly in monitoring and guiding the duties to ensure they comply with the stipulated provisions. Historically, the service of the *hajj* pilgrimage in Indonesia was handled directly by the community or the private sector, then during the reign of President Soeharto, the responsibility was taken over by the government after cases of neglect by private parties occurred.<sup>343</sup>

BPHI, The Indonesian Hajj Management Agency, is the institution responsible for managing the *hajj* in Indonesia. It is tasked with providing the services and facilities needed by *hajj* pilgrims, mainly when in Saudi Arabia, ranging from accommodation, transportation, food, and health, to protection and security. In recent years, it has often been in the public spotlight due to various problems<sup>344</sup> that occur during the *hajj* process as reported in the annual report of the *hajj* service. Based on the Hajj Organizing Evaluation Report, it was found that problems that arose during the Hajj pilgrimage are as follows:

*First* is the problem of the long waiting period before the departure time. Future Indonesian *Hajj* pilgrims must wait for approximately 20-25 years to perform the *hajj* worship from the time they pay the BIPIH. This is due to the limited quota provided by the Saudi Arabian government on the one hand and the high number of registrations among the future pilgrims on another hand.

*The second* is health problems. While in Saudi Arabia, many *hajj* pilgrims experience health problems, such as dehydration, heatstroke, and respiratory infections. This is mainly caused by very hot weather as well as pilgrims' old age<sup>345</sup> and lack of knowledge of preparation in dealing with the situation. Apart from that, health problems also occur due to the lack of adequate health facilities, let alone that of Indonesian authorities. Meanwhile, it is reported that the catering distribution service is sometimes not on time along with a monotonous menu that cannot meet the needs of the elderly congregation. There is also a report about the unavailability of food before departure to *Arafat* and after leaving *Mina*.

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<sup>342</sup> Rustika Rustika et al., "An Evaluation of Health Policy Implementation for Hajj Pilgrims in Indonesia," *Journal of Epidemiology and Global Health* 10, no. 4 (2020): 263–68, <https://doi.org/10.2991/jegh.k.200411.001>.

<sup>343</sup> Muhammad Iqbal Fasa et al., "Economic Protection Toward Financial Management Hajj Funds: Indonesian Case," *Ad-Deenar: Jurnal Ekonomi dan Bisnis Islam* 4, no. 02 (2020): 163, <https://doi.org/10.30868/ad.v4i02.953>.

<sup>344</sup> Kementerian Agama Republik Indonesia, *Laporan Evaluasi Penyelenggaraan Ibadah Haji*, 2023

<sup>345</sup> Masyithah Mardhatillah, "Specific Treatment of Elderly Pilgrims on Hajj According to Hadith; the Approach of Mukhtalif Ahadis," *Al-Ihkam: Jurnal Hukum dan Pranata Sosial* 14, no. 1 (2019): 99–123, <https://doi.org/10.19105/al-ihkam.v14i1.2290>.

*Third* is accommodation problems. While in Saudi Arabia, *hajj* pilgrims stay in dormitories provided by the government. However, many complain that the facility is inadequate, such as having poor hygiene and lack of adequate water, electricity, and sanitation facilities, as well as exceeding capacities rooms. This causes Hajj pilgrims to feel uncomfortable during their stay, thereby disrupting the smooth running of their pilgrimage. Out of the dormitory, pilgrims also stayed in tents during the *Arafah*, *Muzdalifah*, and *Mina* in which there were over-capacity tents along with limited bathrooms causing long queues with inadequate facilities for elderly pilgrims.

*Fourth* is transportation problems. Transportation is very important during the *hajj*. However, many pilgrims have trouble getting adequate transportation. Apart from that, the transportation schedules are quite irregular causing pilgrims to wait a long time to reach their destination, such as delays in buses picking up Indonesian pilgrims while in *Muzdalifah*.<sup>346</sup> Moreover, transportation services are not yet able to reach all accommodations.

*Fifth* is service problems. The services provided by BPHI are also often criticized by the public. Many pilgrims complained about the lack of coordination between BPHI officers and officials in Saudi Arabia, causing pilgrims to experience difficulties in getting adequate services. Apart from that, there were also complaints regarding the attitude of BPHI officers who were less friendly and less responsive to complaints and problems experienced by *hajj* pilgrims.

Among the six problems, the *Muzdalifah* tragedy has attracted the most public attention. The *Muzdalifah* tragedy was the moment when thousands of Indonesian *hajj* pilgrims piled up and could not be transported for more than 10 hours in hot conditions above 35 degrees Celsius. This condition resulted in many congregants experiencing dehydration and even fainting. At that time, on June 28, 2023, thousands of pilgrims from Indonesia were stuck in the *Muzdalifah* area because the *Muzdalifah-Mina-Muzdalifah* shuttle bus was stuck in the *Mina* area due to traffic jams.

To overcome these problems, BPHI needs to make various efforts, such as improving coordination with the Saudi Arabian government and advancing facilities. The Indonesian hospitals located in Saudi are among the most important ones in addition to accommodation of pilgrims like dormitory and transportation services. Since Indonesia does not have any assets for accommodation, a selective search of the chosen one must be ensured. Professionalism and responsiveness to cope with complaints from *hajj* pilgrims also deserve attention, let alone in dealing with or anticipating any unexpected situation. Security and safety aspects of pilgrims should be inevitably the main concern. Every year, some incidents occur during the pilgrimage season, such as transportation accidents, riots in holy places, and so on.<sup>347</sup>

In short, it is necessary to evaluate the existing *hajj* management system and service, so that better and more effective solutions can be arranged in overcoming various typical problems. This includes things ranging from enlarging annual quotas to ensuring every detail

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<sup>346</sup> J. Edward Taylor, M. R. Habib, And M. A. Mustafa, "Transparency, Public Sector Performance, And the Quality of Governance: An Empirical Analysis," *World Development* 42, no. 11 (2014): 2029.

<sup>347</sup> Qomarul Huda and Ilham Dwitama Haeba, "Hajj, Istita'ah, and Waiting List Regulation in Indonesia," *Al-'Adalah* 18, no. 2 (2021): 193-212.

is well set from the departure to arrival times. By making these various efforts, it is hoped that the *hajj* worship for Indonesian pilgrims can run better and more smoothly while giving them a positive spiritual experience. This public satisfaction will lead to public trust along with a decrease in public criticism.

One of the potential instruments to overcome those disadvantages in the *hajj* service and organization comes from the BIPIH deposit that the future pilgrims pay for getting the portion or seats. Under good and appropriate management, it likely affects in positive ways for development of both *hajj* service and Indonesian/Muslim life in general. The upcoming part will reveal the proposal for the use and allocation of the fund according to *maqashid al-shari'ah* as the philosophy of Islamic law.

### Management of Indonesian Hajj Funds on *Maqāṣid Al-Sharī'ah* Perspective

*Hajj* funds are all types of wealth that can be valued in money, whether in the form of cash or goods resulting from pilgrims' desk-posted payment (BIPIH) and other related sources. It is the government's right and obligation to manage them well. BPKH has a precautionary principle in managing *hajj* funds, namely by carrying it out in a beneficial, transparent, and accountable manner while considering financial risks. The principle of beneficial means that *hajj* financial management must provide benefits for pilgrims and Muslims. The principle of transparency indicates open and honest financial management by providing information to the public regarding its allocation and implementation. Meanwhile, the principle of accountability is the accurate management of *hajj* funds that enable the community, especially the pilgrims, to account for them.<sup>348</sup>

The service of *hajj* provides a stimulus for the economy both in the micro and macro scope. This became the basis for the Indonesian government in managing the *hajj* funds reaching trillions of rupiah in the form of investment. For instance, according to BPKH records, if 154,455 Indonesian pilgrims were sent out in 2015 and each of them paid IDR 20 million, the total amount of money collected would have been IDR 3.09 trillion. In the meantime, it is conceivable that the amount of money that BPKH can manage could approach hundreds of trillions if the number of pilgrims on the waiting list surpasses one million, diverting IDR 20 million. The government potentially makes this calculation very profitably by using gold coins, direct investment, SBSN (State Sharia Securities), or other Sharia-compliant investment funds.<sup>349</sup>

In line with it, *maqāṣid al-sharī'ah* as a framework for developing theories, models, policies, and reform programs in various aspects of life, is deemed relevant to use as a perspective in managing the *hajj* funds. In this case, moreover, the *hajj* is also a *dharuriyyat* (primary need) that the government must facilitate worship which is also included in the

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<sup>348</sup> Ilham Maulid and Amirsyah Amirsyah, "Analysis of the Hajj Fund Management Based on the Fatwa of the National Sharia Council (DSN) Number 122 Concerning the Management of BPIH Fund and Special BPIH Based on Sharia Principles," *ADI Journal on Recent Innovation (AJRI)* 3, no. 1 (2021): 21–35, <https://doi.org/10.34306/ajri.v3i1.490>.

<sup>349</sup> Indonesia (7), *Undang-Undang tentang Surat Berharga Syariah Negara*, UU Nomor 19 Tahun 2008, LN. Nomor 70 Tahun 2008, TLN. Nomor 4852 Tahun 2008, Pasal 1 Ayat (1)



pillars of Islam and therefore, in the perspective of *maqāṣid*, is a part of maintaining religion.<sup>350</sup> According to *maqāṣid al-sharī'ah*, *maslahah* (benefit) should be the target to realize through Islamic law, as is the case in the financial management of the *hajj* considering that *hajj* is one of the devotional rituals that include a great deal of *maqāṣid*.<sup>351</sup>

The highest level of *maṣlahah* is called *maqāṣid al-khamsah* (the five main purposes) due to its *ḍarūriyyāt* (urgency) aspect. The maintenance of religion shows that the role of religion is very important. The maintenance of soul, mind, and offspring, meanwhile, relates to individual humans. All three are related to human life needs, namely physical, psychological, educational, health, and survival needs. Asset maintenance, in this talk, is every action carried out in asset management.<sup>352</sup> According to Zakiruddin, *et.al.*,<sup>353</sup> one of the developments in the *maqāṣid al-sharī'ah* paradigm is *hifdzul maal* which is not only about protecting material or assets but also development toward *at-tanmiyyatul iqtishadiyah* (economic growth) based on *maqāṣid al-khoshoh* (special benefit) in maintaining the sustainability of people's assets. In this context, *hajj* funds must be safeguarded for the sake of benefit, so that the investment is not only oriented towards the profit aspect but also the welfare (*falah*) as an ideal situation in the development of Islamic economics. Therefore, in this context, one of the developments of *maqāṣid al-khosoh* is *hifdzu al-maal attanmiyyah al iqtishadiyah*. It refers to efforts to protect assets and use them to improve the economy with the aim of providing welfare to society and helping the needs of people who cannot afford it. This accentuates the necessity to maintain the ethical aspect in the whole related process so that it can be in accordance with the objectives of the Shari'a.<sup>354</sup>

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<sup>350</sup> Mira Munira and Shinta Budi Astuti, "Indonesian Hajj Fund Management: An Overview," *Asian Journal of Accounting and Finance* 1, no. 1 (2019): 1-9.

<sup>351</sup> Auda, J. (2008). *Maqasid al-Shariah: A Beginner's Guide* (Vol. 14). International Institute of Islamic Thought (IIIT).

<sup>352</sup> Abū Ḥamid Muḥammad ibn Muḥammad Al-Ghazālī, *Al-Mustashfā Min Ilm Al Ushūl* (Beirut: Dar Ihyā at-Turāts al-Ārabi, n.d.)

<sup>353</sup> Muhammad Aziz Zakiruddin, Kamsi, and Ahmad Bahiej, "Siyasah Syar'iyah Paradigm of Hajj Financial Management Regulation in Indonesia," *Al-Istinbath: Jurnal Hukum Islam* 7, no. 2 (2022): 531-52, <https://doi.org/10.29240/jhi.v7i2.5310>.

<sup>354</sup> M Zidny Nafi Hasbi, Makhrus Munajat, and Abdul Qoyum, "Amwaluna : Jurnal Ekonomi dan Keuangan Syariah A Conceptual Framework of The Islamic Human Development Index (I-HDI) and Its Relationship with Maqāṣid Al- Shari'ah," no. 2019 (2023).

**Table 1.** Relevance of Maqāṣid Al-Sharī'ah to Ideal Hajj Financial Management for Pilgrims Need

No	Dimensions	Target	Technical Steps
1	<i>Hifẓ al-Dīn</i>	Pilgrims get their spirituality increased through the <i>hajj</i> experience through the mental and material support from the organizer.	Allocating funds to facilitate the fulfillment of <i>hajj</i> conditions, mainly challenging rituals like in Arafah, Muzdalifah, and Mina, while maintaining the prosperity of the <i>hajj</i> pilgrims. Developing more intensive pre- <i>hajj</i> departure Organizing post- <i>hajj</i> guidance Managing <i>hajj</i> fund professionally, transparently, accountably, productively, and in accordance with <i>sharia</i> principles
2	<i>Hifẓ al-Nafs</i>	The stable health of pilgrims and safety from any diseases	Allocating funds for collaboration with the Ministry of Health in intensifying practical health education for specific purposes ( <i>hajj</i> ) so that pilgrims are better prepared physically and mentally Allocating funds to develop quality of <i>hajj</i> health facilities and instruments, mainly when the weather changes in Saudi.
3	<i>Hifẓ 'Aql</i>	Pilgrims get theoretically and practically adequate knowledge about performing the <i>hajj</i> worship.	Allocating funds for renewing curricula and material for pre- <i>hajj</i> departure training as well as building the <i>hajj</i> officers' capability
4	<i>Hifẓ Nasl</i>	The fulfillment of the need for special segments of pilgrims, such as the elderly, children, disabled, and those with special needs	Allocating funds to provide supporting facilities for those with special needs according to the type of worship such as <i>mabit</i> (overnight stay) in Mina and <i>tawaf</i> (Circumambulate the Kaaba).
5	<i>Hifẓ Māl</i>	The allocation and investment of <i>hajj</i> funds in <i>halal</i> sectors free from <i>gharar</i> , <i>maysir</i> , <i>tadlis</i> , <i>ihtikar</i> , and usury is unsure.	The agreement between <i>hajj</i> pilgrims and BPKH is carried out with the safekeeping of money replacing the <i>hajj</i> bailout funds funded by loans without compensation.

Table 1 outlines the ideal situation of *hajj* funds management using *maqashid shariah* as the approach for the allocation of *hajj* pilgrims' needs. This furthermore implies that management of *hajj* funds must be carried out by prioritizing security aspects, namely in anticipating the risk of loss in the *hajj* fund investment. This includes the risk of reputation, market, operations, or an inherent one. The protection of prospective pilgrims' assets from any decrease in value becomes urgent because they are saved during the waiting period which can take place a plenty of years. If someone pays the cost this year amounting to IDR 25 million and he will go for *hajj* later in 20 years while inflation is 6% per year, there will be much money he can set aside during that period.

Table 1 also explains the ideal alignment of *hajj* financial management policies by BPKH in accordance with *Maqāṣid al-Shari'ah*. It is necessary, therefore, to manage *hajj* funds according to the objectives of *maqāṣid al-shari'ah* while maintaining integrity in the management process starting from the cost payment process among *hajj* pilgrims to the return and financial inclusion after *hajj*.<sup>355</sup> Based on the *maqāṣid al-shari'ah* concept, financial management of the *hajj* can be said to be successful if the aspects of *dharuriyat* needs are met, namely food, drink, and shelter. In the *maqāṣid al-shari'ah* perspective, management of the *hajj* funds is therefore not limited to the protection of religion (*hifz al-dīn*) and property (*hifz al-maal*), but also to the sustainability of economic improvement and development. Apart from that, the value of the benefits of the funds can be used to improve infrastructure beneficial to the community. Good infrastructure will certainly have a positive impact on the national economy, social facilities, education, health, etc. This is what is expected from Indonesian BPKH's professional, responsible, and transparent management of *hajj* funds.<sup>356</sup>

### Management of Hajj Funds; A Proposal for Indonesian Context

The *hajj* in general was regulated in Law No. 13/2008. It contains many verses about *hajj* service, including those related to the *hajj* funds. Article 1 verse 8 mentions that *hajj* cost or so called BIPIH is the cost to pay for getting *hajj* service. In practice, The Law was then completed by another one, namely a more specific Law regulating the management of *hajj* funds, the *Hajj* Financial Management Law No. 34/2014. Article 48 Paragraph 2 of the Law requires the management of *hajj* funds to accord with Sharia principles with aspects of security, prudence, useful value, and liquidity. Then, Article 49 Paragraph 1 stated that investments in *hajj* funds can be made with the approval of the BPKH supervisory board. Apart from that, several other articles in the Law become the legal basis for BPKH in making investments.<sup>357</sup>

In this talk, there are two correlating terms that are often incorrectly interchanged, namely *hajj* funds and Ummah Endowment Fund (DAU). This is likely because, in Law Number 34 of 2014, *hajj* funds are defined as funds consisting of *hajj* cost or BIPIH, efficiency funds for organizing the *hajj*, DAU, as well as the value of benefits controlled by the state in the context of organizing the *hajj* and implementing activity programs for the benefit of Muslims. Meanwhile, the DAU, which is a part of *hajj* funds, is several funds that, before the enactment of the Law, were obtained from the development of the funds and/or remaining operational costs of *hajj* as well as other sources that are *halal* and non-binding following the provisions of statutory regulations such as *zakat*, *waqf*, and other funds source.

Furthermore, Law No. 34 of 2014 mentions that the government places *hajj* funds in Sharia financial institutions which are limited to a maximum of 50%, while other funds are directly invested in Sharia instruments which are considered safe and provide much better

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<sup>355</sup> Atika Rukminastiti Masrifah and Achmad Firdaus, "The Framework of Maslahah Performa as Wealth Management System and Its Implication for Public Policy Objectives the Emergence of Waqf Bank: A Social Welfare Alternative in Indonesia," *Media Syariah* 18, no. 2 (2016): 1–36.

<sup>356</sup> Andre Zanj Deananda and Wirdyaningsih, "Alternative Optimization of Hajj Fund Using Sharia Shares" 413, no. 34 (2020): 34–40, <https://doi.org/10.2991/assehr.k.200306.176>.

<sup>357</sup> Diseminasi BPKH (2018) Diseminasi Peran Pengawasan Keuangan Haji, *In*. [bpkh.go.id/](http://bpkh.go.id/).

returns. The investment of *hajj* funds becomes a must considering long queues of departure so that the *hajj* cost in the bank is made for investment to make their value not eroded by inflation. Instead, it can provide benefits to the community through, among others, DAU schemes. DAU is typically used for social activities such as improving the quality of *hajj* services, education, *da'wa*, health, social, and economic, and religious infrastructure.<sup>358</sup>

Meanwhile, the *hajj* cost or BIPIH covers flight costs, accommodation costs in Mecca and Medina as well as living costs for *hajj* pilgrims. Each prospective *hajj* pilgrim had to deposit the initial BIPIH cost into the bank to get a portion or seat. Afterward, when it is time for departure, they will pay off according to the total BIPIH amount determined later according to the currency. The deposited fund from the initial payment of prospective *hajj* pilgrims, which has now reached 40 trillion rupiahs with an average interest of 1 trillion rupiahs managed by the Ministry of Religious Affairs, is used to subsidize the needs of *hajj* pilgrims who depart first. However, this practice has minimal legal support because, without the pilgrims' consent, the interest from their savings (through the initial payment they made) is potentially prone to irregularities and fraud as indicated by the Corruption Eradication Commission (KPK).<sup>359</sup>

Despite this, the use of deposited funds triggers various problems and/or requirements.<sup>360</sup>

*First*, the Ministry of Religious Affairs is publicly required to enforce accountability in managing the initial funds for registration of *hajj* candidates amounting to IDR 25,000,000.00 which is deposited from the time of getting the *hajj* portion in Siskohaj (Indonesian *hajj* application) until the time of departure. BPKH as the one that manages *hajj* funds needs to pay attention to accountability regarding transparency and how to present financial reports of managed funds. Along with that, the government and BPKH must guarantee that the deposited money will be used to provide adequate services during the *hajj* worship while ensuring that future pilgrims' financial rights are fulfilled, namely regarding to departure for *Hajj*. For instance, if a future *hajj* pilgrim cancels the departure, BPKH is required to return the deposit.<sup>361</sup>

*Second*, the status of legal ownership of the initial funds for registration of *hajj* candidates is in question, whether it belongs to the future *hajj* pilgrims or the government as the *hajj* organizer or service provider. Therefore, it is important to make clear the legal ownership of the fund through transparent management and funding allocation considering that *hajj* deposit funds are deposited in the account of the Minister of Religion. This clear status will also affect the upcoming situation when something unexpected happens. If the registrar dies or there is a sharia obstacle that makes him/her fail to depart, then *hajj* deposit funds must be returned to prospective *hajj* pilgrims or their heirs.

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<sup>358</sup> Maizul Imran and Rio Satria, "Dinamika Formulasi Akad Terhadap Pengelolaan Dana Haji di Indonesia," *Alhurriyah: Jurnal Hukum Islam (Alhurriyah Journal of Islamic Law)* 3, no. 2 (2018): 141.

<sup>359</sup> Pasal 1 (1) Keputusan Presiden Nomor 22 Tahun 2001 tentang Badan Pengelola Dana Abadi Umat (BP DAU)

<sup>360</sup> Aishath Muneeza et al., "A Comparative Study of Hajj Fund Management Institutions in Malaysia, Indonesia and Maldives," *International Journal of Management and Applied Research* 5, no. 3 (2018): 120-134.

<sup>361</sup> Undang-Undang Nomor 34 Tahun 2014 tentang Pengelolaan Keuangan Haji

*Third*, Law No. 13 of 2008 gives authority to carry out an efficiency fund, i.e. remaining funds from the operational cost of *hajj* service through the DAU which the amount is quite large. However, these funds cannot be used for investment or any other purpose because there are no government regulations regarding the management of DAU that cannot be changed since May 2005.<sup>362</sup> The policy to make efficiency funds in the *hajj* service contains legal gaps in both state and religious law. For the former, it is argued that no single clause was stated by the *hajj* pilgrims regarding the agreement on utilizing the efficiency fund. Thus, the efficiency policy is deemed to violate the law. Meanwhile, for the latter, even though the DAU aims for the benefit of people, the agreement and willingness of the whole *hajj* pilgrims is in question. It is very important to think about the pledge and agreement among the *hajj* pilgrims who willingly deposit their money to get the departure portion or seat. In dealing with the problems, namely those related to DAU and BPKH recommends the funds be returned for the interests and benefit of the *ummah*, as per the results of the *Ijtima' Ulama* of the All-Indonesian Fatwa Commission III MUI 1430 H/2009 AD in Padang Panjang, 24-26 January 2009.

*Fourth*, prospective *hajj* pilgrims might become banking business commodities with the offer of a *hajj* bailout system. In this case, prospective *hajj* pilgrims become the target to receive a loan facility numbering IDR 25,000,000.00 so that they can register to immediately receive *hajj* portions. In other words, the banking business seizes a good market opportunity to expand its customers by providing *hajj* funding to fulfill the wishes of prospective *hajj* pilgrims, so they don't get too far on the waiting list.<sup>363</sup>

In short, BPKH needs to manifest its function of carrying out planning, implementation, as well as accountability checking and reporting of *hajj* funds in compliance with sharia while prioritizing the principle of prudence, benefits-based, not seeking profits, transparency, and accountability.<sup>364</sup> The criteria for optimal, professional, and efficient management of *hajj* funds is the policy after the *hajj* season. If there is greater efficiency and benefit value, it must be returned to the *hajj* treasury belonging to the *hajj* pilgrims. Meanwhile, the transparent criteria of *hajj* funds management can be reached by involving the House of Representatives in the supervision process and BPK in the auditing stage.

Law Number 34 of 2014 concerning *Hajj* Financial Management urges the *Hajj* funds to be used for productive things and managed with high-risk mitigation. Therefore, the government can use these funds in halal sectors, namely sectors that are protected from *maisir*, *gharar*, and usury. In determining the investment sector, it needs approval from the *Hajj* financial placement supervisory board while the investment is transferred from the *Hajj* Treasury to the BPKH Treasury (*Hajj* Financial Management Agency). In fact, the government—through the Indonesian Ministry of Religious Affairs—claimed that it had managed the DAU successfully through, among others, SBSN (State Sharia Securities), including preparing documents for funding the Ministry of Religion's project through Project *Sukuk* (SBSN PBS), namely in the form of a *hajj* dormitory revitalization and development

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<sup>362</sup> <https://peraturan.bpk.go.id/Details/39044/uu-no-13-tahun-2005>

<sup>363</sup> Eric Kurniawan, "Akuntabilitas Pengelolaan Dana Haji Republik Indonesia," *Jurnal Ilmiah Ekonomi Islam* 7, no. 3 (2021): 1449–56.

<sup>364</sup> Acep R Jayaprawira and Abdussalam, "Analysis of the Implementation of the Islamic Contract Principle on Hajj Fund Management by Hajj Fund Management Agency (BPKH)," *KnE Social Sciences* (2019): 628–61, <https://doi.org/10.18502/kss.v3i26.5405>.

project that around IDR 200 billion. Moreover, The Minister of Finance and the Minister of Religious Affairs, on Friday, 22/11/2017 signed a revised Memorandum of Understanding (MoU) regarding the Placement of *Hajj* Funds in (SBSN).<sup>365</sup>

Following the mandate of the Law, according to Anggito Abimanyu, BPKH's investments can be made in sharia securities investment instruments, gold, direct investment, and other investments. The wide scope of this investment is a challenge for BPKH, especially to carry out an effective investment strategy to optimize the value of its benefits. Another challenge is how to anticipate the increase in the cost of performing the *hajj* pilgrimage. Therefore, BPKH needs to carry out an investment strategy that can meet the needs of these costs through returns from various investment instruments complying with Sharia principles, prudence, and liquidity without raising the *hajj* cost.<sup>366</sup> Investment risks are borne by the government and should not disturb the process of providing good facilities for the *Hajj* pilgrims. Meanwhile, profits obtained from investments must be used for improving *hajj* facilities at specific and public benefits in general. This can be in the form of financing the construction of schools and campuses within PTKIN with the SBSN scheme.

So far, there are three main instruments for placing initial deposits for BIPIH, namely in the form of national Sharia Securities (Sukuk/SBSN), government debt securities (SUN), and Sharia-based deposits. One of the ways how the government carries out the financial management of *hajj* funds is the issuance of State Sharia Securities (SBSN), in this case, the Indonesian Hajj Fund Sukuk (SDHI) product. This accords with the decision of *Ulama Ijtima*, Indonesian Fatwa Commission IV of 2012 which mentions that deposits in the waiting list for *hajj* departure may be allocated for productive things, namely providing profits through placement in Sharia Banking or invested in the form of *sukuk*.<sup>367</sup>

In line with this, according to the Director of Higher Education and Science and Technology of Bappenas (The National Development Planning Agency) RI, Hadiat,<sup>368</sup> the SBSN project initiated by the Directorate General of Islamic Education of the Ministry of Religious Affairs which has succeeded in building educational infrastructure at PTKIN (State Islamic Religious College) for six years with a total budget of 7-8 trillion rupiahs should be appreciated. The implementation of educational infrastructure development through SBSN which began in 2015 until 2022 has been running well and PTKIN has benefited from that sector as well.

The importance of investment requires professionalism in its management, including its supervision process. Not only that, but the supervision also needs to be narrowed down, mainly by exploring how the benefits of the investment can be obtained both for the benefit of the institution and the pilgrims themselves. They are the basic principles of Islamic

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<sup>365</sup> Anggito Abimanyu, *Naskah Akademik Rancangan Perubahan UU Nomor 13 tentang Penyelenggaraan Ibadah Haji*, 6.

<sup>366</sup> Indin Rarasati, "Analisis Empiris Potensi Resiko Investasi Dana Haji Melalui Sukuk Dana Haji Indonesia," *Jurnal Ilmiah Ekonomi Islam* 8, no. 03 (2022): 2571-81.

<sup>367</sup> M. Rifka Maulana and Sokhikhatul Mawadah, "Management of Hajj Funds in Sukuk Investment from an Islamic Economic Perspective," *International Conference on Islamic Economic (ICIE)* 2, no. 1 (2023): 10-35, <https://doi.org/10.58223/icie.v2i1.204>.

<sup>368</sup> Enam Tahun SBSN, Bangun Gedung 57 PTKIN ([kemenag.go.id](http://kemenag.go.id))

economics to support the distribution of resources and encourage investment, optimize beneficial investment, and encourage investment, optimize beneficial investment, and encourage social participation in the public interest.

## Conclusion

The management of *hajj* funds in the perspective of *maqāṣid al-sharī'ah* has the aim of benefiting the *hajj* pilgrims not only to fulfill the obligation of the fifth pillar of Islam or maintaining religion (*hifz ad-din*), but also on other related aspects to ensure smooth running service of *hajj*. Therefore, it is suggested the deposited funds of BIPIH be managed transparently with the allocation made appropriate to the pilgrim's needs, both physical and spiritual. Other than that, in the Indonesian context, the funds are best invested in various sectors beneficial for the *ummah* with the minimum risk of loss so that it would not bear expenses for the *hajj* costs. The refinement of pledges on the use of investment or funds between pilgrims and the government is also a need. This research has limitations, especially in terms of methodology and limited analysis of formal aspects. Therefore, it is suggested that further research is needed to develop this research by examining the management of *hajj* funds in Muslim countries other than Indonesia, as well as further research using other variables to expand the study of *hajj* funds management.

## Acknowledgment

Researchers' gratitude expressed to the Rector and Director of the Postgraduate Program of IAIN Sheikh Nurjati Cirebon, the Rector of King Abdulaziz University, Jeddah Makkah, Saudi Arabia, and the Rector of Ata Alma University Yogyakarta. They have supported and provided opportunities for researchers to improve their academics through research and scientific publications so that the results can be published. Researchers' gratitude was also expressed to the manager of the AI-IHKAM IAIN Madura Journal who has published the results of this research.

## Bibliography

- Abū Ḥāmid Muḥammad ibn Muḥammad Al-Ghazālī, *Al-Mustashfā Min Ilm Al Ushūl*, Beirut: Dar Ihyā at-Turāts al-Ārabi, n.d.
- Aziz, R M. "Hahslm Theory as Guidance of Straight Path in Management of Hajj and Finance." *KnE Social Sciences* 3, no. 8 (2018): 105. <https://doi.org/10.18502/kss.v3i8.2503>.
- Bahrudin, Ahmad. "Implementasi Maqasid Al-Shari'ah Sebagai Solusi Problematika Sosial dan Kemasyarakatan Kontemporer." *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 17.1 (2017): 1-18.
- Busriyanti, Busriyanti. "Maqasid al-Syari'ah dalam Penegakkan Hukum Lalu Lintas di Indonesia." *Al-Istinbath: Jurnal Hukum Islam* 6.1 May (2021): 79-84.
- Deananda, Andre Zanjij, and Wirdyaningsih. "Alternative Optimization of Hajj Fund Using

- Sharia Shares" 413, no. 34 (2020): 34–40. <https://doi.org/10.2991/assehr.k.200306.176>.
- Dedi, Syahrial. "Perluasan Teori Maqashid Al-Syari'ah: Kaji Ulang Wacana Hifdz Al-'Ummah A. Djuzuli." *Al-Istinbath: Jurnal Hukum Islam* 1.1 June (2016): 45-62.
- Fahmi, Annas Syam Rizal. "An Analysis of Investment for Hajj Funds from Islamic Law Perspective." *Al-Iktisab: Journal of Islamic Economic Law* 1, no. 2 (2017): 131. <https://doi.org/10.21111/al-iktisab.v1i2.2388>.
- Evaluasi Pelaksanaan Haji 2023, antaranews, 6 Juli 2023, <https://www.antaranews.com/infografik/3621255/evaluasi-pelaksanaan-haji-2023>, diakses 6 Juli 2023.
- Fasa, Muhammad Iqbal, Adib Fachri, Ghina Ulfah Saefurrohman, Ahmad Hazas Syarif, and Suharto Suharto. "Economic Protection Toward Financial Management Hajj Funds: Indonesian Case." *Ad-Deenar: Jurnal Ekonomi dan Bisnis Islam* 4, no. 02 (2020): 163. <https://doi.org/10.30868/ad.v4i02.953>.
- Hamzani, Achmad Irwan, Siswanto Siswanto, and Havis Aravik. "Legal Protection for Hajj Pilgrims Through Regional Regulation." *Mazahib* 17.2 (2018): 61-88.
- Hasbi, M Zidny Nafi, Makhrus Munajat, and Abdul Qoyum. "A Conceptual Framework of The Islamic Human Development Index (I-HDI) and Its Relationship with Maqāṣid Al - Shari'ah." *Amwaluna: Jurnal Ekonomi dan Keuangan Syariah* 7, no. 2 (2023).
- <https://peraturan.bpk.go.id/Details/39044/uu-no-13-tahun-2005>
- Huda, Qomarul, and Ilham Dwitama Haeba. "Hajj, Istita'ah, and Waiting List Regulation in Indonesia." *Al-'Adalah* 18, no. 2 (2021): 193–212.
- Ichwan, Moch Nur. "Governing Hajj: Politics of Islamic Pilgrimage Services in Indonesia Prior to Reformasi Era." *Al-Jami'ah: Journal of Islamic Studies* 46, no. 1 (2008): 125–51. <https://doi.org/10.14421/ajis.2008.461.125-151>.
- Imran, Maizul, and Rio Satria. "Dinamika Formulasi Akad terhadap Pengelolaan Dana Haji di Indonesia." *ALHURRIYAH: Jurnal Hukum Islam (Alhurriyah Journal of Islamic Law)* 3, no. 2 (2018): 141. <https://doi.org/10.30983/alhurriyah.v3i2.755>.
- Jayaprawira, Acep R, and Abdussalam. "Analysis of the Implementation of the Islamic Contract Principle on Hajj Fund Management by Hajj Fund Management Agency (BPKH)." *KnE Social Sciences* 2019 (2019): 628–61. <https://doi.org/10.18502/kss.v3i26.5405>.
- Jumali, Endang. "Management of Hajj Funds in Indonesia." *Journal of Legal, Ethical and Regulatory Issues* 21, no. 3 (2018): 1–9.
- Kisworo, Budi. "Ibadah Haji Ditinjau dari Berbagai Aspek." *Al-Istinbath: Jurnal Hukum Islam* 2.1 June (2017): 75-98.
- Kurniadi, Dece, Jamal Wiwoho, and Hudi Asrori. "Hajj Fund Management in Perspective of the Financial Theory and Fiqh." *International Conference on Globalization of Law and Local Wisdom* 358, no. 34 (2019): 225–27. <https://doi.org/10.2991/icglow-19.2019.57>.
- Kurniawan, Eric. "Akuntabilitas Pengelolaan Dana Haji Republik Indonesia." *Jurnal Ilmiah Ekonomi Islam* 7, no. 3 (2021): 1449–56.



- Mardhatillah, Masyithah. "Specific Treatment of Elderly Pilgrims on Hajj According to Hadith; the Approach of Mukhtalif Ahadis." *Al-Ihkam: Jurnal Hukum dan Pranata Sosial* 14, no. 1 (2019): 99-123. <https://doi.org/10.19105/al-lhkam.v14i1.2290>.
- Masrifah, Atika Rukminastiti, and Achmad Firdaus. "The Framework of Masalahah Performa as Wealth Management System and Its Implication for Public Policy Objectives the Emergence of Waqf Bank: A Social Welfare Alternative in Indonesia." *Media Syaria* 18, no. 2 (2016): 1-36.
- Maulana, M. Rifka, and Sokhikhatul Mawadah. "Management of Hajj Funds in Sukuk Investment from an Islamic Economic Perspective." *International Conference on Islamic Economic (ICIE)* 2, no. 1 (2023): 10-35. <https://doi.org/10.58223/icie.v2i1.204>.
- Maulid, Ilham, and Amirsyah Amirsyah. "Analysis of the Hajj Fund Management Based on the Fatwa of the National Sharia Council (DSN) Number 122 Concerning the Management of BPIH Fund and Special BPIH Based on Sharia Principles." *ADI Journal on Recent Innovation (AJRI)* 3, no. 1 (2021): 21-35. <https://doi.org/10.34306/ajri.v3i1.490>.
- Mira Munira, and Shinta Budi Astuti. "Indonesian Hajj Fund Management: An Overview." *Asian Journal of Accounting and Finance* 1, no. 1 (2019): 1-9.
- Muheramtohad, Singgih. "The Use of Hajj Fund for Investment Purpose: A Maqashid Sharia Approach." *Journal of Islamic Economics, Management, and Business (JIEMB)* 1, no. 1 (2020): 99-116. <https://doi.org/10.21580/jiemb.2019.1.1.3740>.
- Muneeza, Aishath, Amira Sudeen, Atiqoh Nasution, and Ratih Nurmalasari. "A Comparative Study of Hajj Fund Management Institutions in Malaysia, Indonesia and Maldives." *International Journal of Management and Applied Research* 5, no. 3 (2018): 120-34. <https://doi.org/10.18646/2056.53.18-009>.
- Nouri Kouchi, Amin, Mansour Zarra Nezhad, and Pouyan Kiani. "A Study of the Relationship between the Growth in the Number of Hajj Pilgrims and Economic Growth in Saudi Arabia." *Journal of Hospitality and Tourism Management* 36 (2018): 103-7. <https://doi.org/10.1016/j.jhtm.2016.01.008>.
- Primadhany, Erry Fitrya. "Tinjauan terhadap Tanggung Jawab Badan Pengelola Keuangan Haji (BPKH) dalam Melakukan Penempatan dan/atau Investasi Keuangan Haji." *Jurisdictie* 8, no. 2 (2018): 125. <https://doi.org/10.18860/j.v8i2.4447>.
- Rarasati, Indin. "Analisis Empiris Potensi Resiko Investasi Dana Haji Melalui Sukuk Dana Haji Indonesia." *Jurnal Ilmiah Ekonomi Islam* 8, no. 03 (2022): 2571-81.
- Rosyid, Moh. "Dinamika Haji Indonesia Sejak Era Kolonial dan Problematika Calon Haji Ilegal." *Jurnal Wacana Hukum Islam dan Kemanusiaan* 17.2 (2017): 241-259.
- Rustika, Rustika, Ratih Oemiaty, Al Asyary, and Tety Rachmawati. "An Evaluation of Health Policy Implementation for Hajj Pilgrims in Indonesia." *Journal of Epidemiology and Global Health* 10, no. 4 (2020): 263-68. <https://doi.org/10.2991/jegh.k.200411.001>.
- Syaikhu, Syaikhu. "Istitha'ah dalam Haji (Studi Tematik Tafsir Ahkam Surah Ali Imran Ayat 97)." *El-Mashlahah* 10.1 (2020): 15-25.
- Zakiruddin, Muhammad Aziz, Kamsi, and Ahmad Bahiej. "Siyasah Syar'iyah Paradigm of

Hajj Financial Management Regulation in Indonesia." *Al-Istinbath: Jurnal Hukum Islam* 7, no. 2 (2022): 531-52. <https://doi.org/10.29240/jhi.v7i2.5310>.

Zainal, Zainal. "Regulasi Haji Indonesia dalam Tinjauan Sejarah." *JURIS (Jurnal Ilmiah Syariah)* 11.2 (2018): 96-113.

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 31941-1	Article Text, Final manuscript revision results C-7268 Hajj 02122023.docx	December 2, 2023	Article Text
 32296-2	Article Text, Rev_7268-Article Text-31941-1-15-20231210.docx (2)	December 10, 2023	Article Text
 33782-1	Article Text, REV Hajj_05 Jan 24.docx	January 6, 2024	Article Text
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Management of Hajj Funds in Indonesia Through the Paradigm Approach of Islamic Legal Philosophy and State Administration

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Article history: Received: May 30, 2023, Revised: July 01, 2023; Accepted May 04, 2024.;

Published: June 30, 2024

Abstract:

Hajj is a special worship. All Muslims who have the ability have the desire to carry out the Hajj pilgrimage, including Indonesian Muslims. The Hajj as the fifth pillar of Islam apparently not only aims to increase devotion and spiritual values, but also holds great economic potential. Through the management of Hajj funds, it can encourage economic growth and contribute to national development. One of the problems in the Hajj pilgrimage is the management of Hajj funds which causes many problems. The aim of this research is to discuss and analyze the management of Hajj funds through the paradigm approach of Islamic legal philosophy and theory in state administrative law that applies in Indonesia from a contemporary perspective. The aspect of organizing and managing Hajj funds is one of the government's tasks which is in the domain of public affairs based

on law. This research uses normative juridical research methods with prescriptive- explanatory presentation using interdisciplinary theory, namely state administrative law. Secondary data originating from various scientific journals and scientific documents was obtained using statistical data with the involvement of researchers as the main source in analyzing and reviewing data, which was carried out during data collection until the data was collected so that researchers could draw appropriate conclusions. The results of this research show that there is a shift in the Hajj regime from private to public with the vehicle of red light theory towards green light theory in state administrative law where the state intervenes in the administration and management of Hajj funds. The organization and management of Hajj funds in Indonesia in accordance with the objectives of maqashid sharia in the hifd maal dimension aims to safeguard Hajj funds for the benefit of society in general.

**Keywords:**

Hajj Fund, Management, Administration Law, Maqasid al-Shariah, Green Light Theory

**Abstrak:**

Haji adalah ibadah yang istimewa. Semua umat Islam yang memiliki kemampuan memiliki keinginan untuk melaksanakan ibadah haji, tidak terkecuali umat Islam Indonesia. Haji sebagai rukun Islam yang kelima ternyata tidak hanya bertujuan untuk meningkatkan ketaqwaan dan nilai spiritual, namun juga menyimpan potensi ekonomi yang besar. Melalui pengelolaan dana haji dapat mendorong pertumbuhan ekonomi serta berkontribusi dalam pembangunan nasional. Salah satu permasalahan dalam ibadah haji adalah pengelolaan dana haji yang menimbulkan banyak persoalan. Tujuan penelitian ini untuk membahas dan menganalisis pengelolaan dana haji di melalui pendekatan paradigma filsafat hukum Islam dan teori dalam hukum administrasi negara yang berlaku di Indonesia dari perspektif kontemporer, aspek penyelenggaraan dan pengelolaan dana haji merupakan salah satu tugas pemerintah yang berada pada domain urusan publik berdasarkan hukum. Penelitian ini menggunakan metode penelitian yuridis normatif dengan penyajian preskriptif-eksplanatoris menggunakan teori interdisipliner yaitu hukum administrasi negara. Data sekunder yang berasal dari berbagai jurnal ilmiah dan dokumen ilmiah diperoleh dengan menggunakan data statistik dengan keterlibatan peneliti sebagai sumber utama dalam melakukan analisis dan penelaahan data, yang dilakukan pada saat pengumpulan data sampai dengan data terkumpul sehingga peneliti dapat mengambil kesimpulan yang tepat. Hasil penelitian ini menunjukkan bahwa terdapat pergeseran rechtegime haji dari privat ke publik dengan kendaraan red light theory menuju green light theory dalam hukum administrasi negara di mana negara turut campur dalam penyelenggaraan dan pengelolaan dana haji. Penyelenggaraan dan pengelolaan dana haji di Indonesia sesuai dengan tujuan maqashid syariah pada dimensi hifd maal bertujuan menjaga dana haji untuk kemaslahatan masyarakat secara umum.

**Kata Kunci:**

Manajemen, Dana Haji, Hukum Administrasi, Maqasid al-Shariah, Green Light Theory

## Introduction

Indonesia is a country with a Muslim population that sends the largest hajj pilgrims almost every year. As a country which in its constitution guarantees the freedom of individuals to embrace and worship according to their respective religions and beliefs. The government is responsible for organizing the pilgrimage for the Muslim population who will carry out the pilgrimage. One form of this guarantee is to provide guidance, service, and protection for citizens who perform the Hajj in a safe, comfortable, orderly, and following the provisions of the Shari'a.

The problem of organizing the pilgrimage has a long history since the founding of the Republic of Indonesia. The Ministry of Religion has a central role as a regulator of the implementation and management of Hajj finances. In terms of the management of hajj funds, Law Number 17 of 1999 concerning the Organization of the Hajj, the scope of hajj funds in the form of money received from prospective hajj pilgrims is not included in the state budget, because it does not include non-tax state revenues but hajj funds are managed through a government organization. Law Number 34 of 2014 mandates financial management of pilgrimage carried out by BPKH (Hajj Financial Management Agency), a public legal entity that is independent and responsible to the President through the Minister of Religious Affairs. The structure of BPKH (Hajj Financial Management Agency) consists of the executing agency and the supervisory board responsible for managing the acceptance, development, expenditure, and financial accountability of the pilgrimage.

The establishment of this organ was based on the Decree of the President of the Republic of Indonesia Number 35 of 1996 jo. Presidential Decree Number 52 of 1996 concerning the Organization and Work Procedure of BPDONHI (Indonesian Hajj Fee Fund Management Agency). This institution later changed its nomenclature to Ummah's Endowment Fund Management Agency, Badan Pengelola Dana Abadi Umat (BP DAU). This hajj fund is kept by the government as a deposit for prospective hajj pilgrims to be managed for the smooth running of hajj services. Therefore, the cost of organizing the pilgrimage is determined by the state to ensure certainty of departure to the holy land and guarantee security during the pilgrimage. In this period, the hajj funds are managed by setting aside the excess value to be stored as the Ummah's Endowment Fund, Community Endowment Fund (DAU).

As an annual ritual that uses quite a lot of money, the management of hajj funds is a financial domain that is in the area of public affairs. In addition to the problem of organizing the pilgrimage, it is also related to the relationship between the country of origin of the prospective pilgrims and the country of destination in carrying out the pilgrimage, namely Saudi Arabia. Indonesia is a country with a Muslim population that gets a large number of hajj quotas. Indonesia will receive the largest Hajj quota in the world in 2023. It is recorded that Indonesia's Hajj quota will reach 221,000 pilgrims, consisting of 203,320 quotas for regular Hajj pilgrims and 17,680 quotas for special Hajj pilgrims. However, the number of Hajj registrants each year the quota obtained is not sufficient for all Hajj registrants. This has an impact on Hajj departures, which have to follow a waiting list for years.

The waiting list for Hajj departure is determined by the time of registration by paying the Hajj Travel Fee BPIH (Cost of Organizing the Hajj Pilgrimage). This Bipih deposit is part of the Hajj fund. The term hajj fund itself is formulated in terms of the Hajj Financial Management Act, including BPIH deposit funds; efficiency funds; DAU; as well as the value of benefits controlled by the state in the context of organizing the pilgrimage and implementing program activities for the benefit of Muslims.

With a large number of registrants on the waiting list for the departure of hajj pilgrims based on BPIH deposits, there will be the accumulation of hajj funds. With the accumulation of hajj funds, the

government took the initiative to manage hajj funds by placing and/or investing state sharia securities (SBSN) aka sukuk or sharia bonds in the productive sector to generate value for the benefits of managing hajj funds. This is the ratio-legis of the establishment of the Hajj Financial Management Act. Therefore, through the Hajj Financial Management Act, a special financial institution that has the authority to manage Hajj funds was established, namely the Hajj Financial Management Agency, Badan Pengelola Keuangan Haji (BPKH).

The financial management of Hajj by the state, in this case through the BPKH institution, is interesting to study in an interdisciplinary manner, from the application aspect of maqasid theory as a philosophy of Islamic law and the aspect of its authority according to the constitution and administrative legislation in the perspective of state administrative law. Maqasid as a philosophy of Islamic law refers to the understanding given by Jasser Auda by quoting the views of Ibn al-Qayyim, to define Islamic law with the Arabic term 'shari'ah', which means: "... prosperity in this world and the hereafter. Shari'ah means everything including justice, forgiveness, wisdom, and goodness. Therefore, all regulations that contradict these matters are not sharia, based even if it is claimed to refer to several interpretations (of the scholars)".

The maqasid view above is in line with the concept of the welfare state which is the legal ideal contained in the preamble to the Indonesian constitution. In addition, the management of hajj funds following their objectives is also important to discuss considering the large number of hajj funds managed by BPKH so as not to deviate from the initial goal of financing the pilgrimage. Policies regarding the management of hajj funds should be in line with the philosophical foundations of Islamic law, in this case, maqasid, and not conflict with the principles of legal certainty, benefit to the community, and good public services. The government's policy for managing Hajj finances should be based on rational considerations of the principles of certainty, fairness, and benefit, and has a basis for the state. Currently, the management and optimal use of Indonesian Hajj funds is regulated in Law No. 13 of 2008 concerning the Implementation of the Hajj as a legal basis. Many parties consider that the legal basis is not sufficient, so a separate law is needed that regulates the management of Hajj funds. However, in Law No. 13 of 2008, management is only limited to its optimal use and development in the form of bank instruments whose security is truly guaranteed. Thus, the policies made by the government can create general welfare for the community in line with the objectives of the founding of the Republic of Indonesia.

Research on the management of hajj funds has been done by many previous researchers. Some of these studies include a thesis by Rina Farihatul Jannah the Postgraduate of the State Islamic University of Sunan Ampel Surabaya. Then Erry Fitria Primardhani's work on the responsibility of BPKH in Hajj financial investment, Roikhan Muhammad Azis, and Endang Jumali. Another article is the work of Aishath Muneeza and friends related to the comparison of the financial management of Hajj in Indonesia, Malaysia, and Maldives. Among the studies mentioned above, there has been no discussion on the management of hajj funds in terms of constitutional and administrative law theory and maqasid al-shari'ah.

## Methods

This paper uses a normative juridical research method. Namely, legal research based on legal rules or norms contained in the legislation. Hajj Fund Management Act. While the data used in this study is secondary data, with three legal materials, namely primary legal materials, secondary legal materials, and tertiary legal materials. Secondary data is in the form of material obtained from IDB

international journals, books, magazines, and online articles from internet media that have relevance to the problems in the research object. Secondary data was explored through various primary books and research-based articles regarding discourse on Hajj fund management. The data analysis technique used is spiral analysis which is equipped with content, comparative and critical analysis. This includes managing and organizing data, reading and recording emerging ideas, describing and classifying codes into themes, developing and assessing interpretations, and representing and visualizing data.

The approach used in this research is the statutory approach, namely by linking existing legal norms with other legal norms in the laws and regulations that are used as data sources. Thus, it can be understood whether Law Number 34 of 2014 concerning Hajj Financial Management is following the objectives of managing Hajj funds. In addition, this paper also uses a theoretical approach, namely the theory of state administrative law and maqasid al-shariah. The results of this study are presented in writing in an analytical explanatory form. Namely, delivered by explaining and outlining the state's authority in managing Hajj funds from the perspective of state administrative law and maqasid al-Sharia.

## Discussion and Result

### Regulations for the Implementation of Hajj in Indonesia according to History

The implementation of Hajj in Indonesia has a long history of policy or regulatory aspects. Meanwhile, before the founding of the Republic of Indonesia, Muslims made pilgrimages to the holy land of Saudi Arabia. At the time the 1267 Islamic empire was established in the archipelago, there were no special regulations regarding the implementation of the pilgrimage that bound its citizens. Only after the Dutch colonial government came to power did the pilgrimage have regulations in the form of written positive law. During the colonial period, the Dutch colonial government was worried about people going on the Hajj. The reason is that when they were in Mecca, there was no longer any caste, skin color or position, so the pilgrims realized that everyone had the same rights and could trigger a rebellion. The Dutch were concerned about the political impact of the Hajj because people returning from the Hajj were accepted as holy people in Java. For this reason, it is believed that Hajj pilgrims are more listened to by other ordinary people, so the Dutch government made strict regulations relating to the Hajj pilgrimage.

In this era, the implementation of the pilgrimage, both in terms of financial management and implementation, is under the authority of the government through the Ministry of Religion of the Republic of Indonesia, whose technical implementation is left to the Director General of Hajj Affairs in collaboration with private agents. Facing the condition of Muslims in Indonesia, in 1825 the Dutch colonial government issued regulations relating to the Hajj pilgrimage. In this regulation, Hajj pilgrims from the island of Java are required to pay 110 guilders to obtain permission to go on Hajj and must depart on a Dutch ship. Those who do not take permission will be charged 1000 guilders.

In the reform era, many regulatory changes have been made by the government in organizing the Hajj in the form of regulations, including 1) Law Number 17 of 1999 concerning the Organization of the Hajj; 2) Law of the Republic of Indonesia Number 13 of 2008 concerning the Organization of the Hajj; 3) Law of the Republic of Indonesia Number 34 of 2009 concerning Stipulation of Government Regulation in place of Law Number 2 of 2009 concerning Amendments to Law Number 13 of 2008 on the Organization of the Hajj into Law; and 4) Law of the Republic of Indonesia Number 8 of 2019 concerning the Implementation of Hajj and U In addition, before this regulation was made, the



government separated the aspects of managing Hajj funds from aspects of organizing the Hajj. Aspects of the management of Hajj funds are regulated through Presidential Decree No. 22 of 2001 concerning the BP DAU. However, due to several misappropriations of Hajj funds managed by BP DAU, an initiative emerged from the government by issuing a policy that became the basis for the establishment of an institution that specifically manages Hajj funds through Law Number 34 of 2004 concerning Hajj Financial Management. Through the law, the government established the BPKH (Hajj Financial Management Agency) which has the task of managing Hajj finances. Since then, the financial management of Hajj has its regulations and institutions that are separate from the Ministry of Religion.

To summarize the discussion on the management of hajj funds in Indonesia, below is a table based on the timeline for the development of hajj fund management in Indonesia:

Table 1. Developments in the Implementation and Management of Hajj Funds in Indonesia

Year	Progress
1920	The implementation of the Hajj is carried out by providing facilities for the pilgrims by the Dutch East Indies Government
1948	The beginning of the implementation of Hajj by the Government of Indonesia with official cooperation with the Kingdom of Saudi Arabia
1951	The issuance of Presidential Decree No. 53 of 1951 to stop the private sector from being involved in organizing the hajj
1964	The implementation of Hajj is carried out by the government through the Director General of Hajj Affairs
1969	The administration of hajj trips is taken over by the government. Management of the Hajj in Indonesia is currently handled by the Hajj Financial Management Agency (BPKH). BPKH is an institution that manages Hajj finances which aims to improve the quality of the Hajj pilgrimage, rationality and efficiency in the use of costs for organizing the Hajj pilgrimage (BPIH) which is beneficial for the benefit of Muslims.
1999	For the first time, the Policy regarding the Implementation of Hajj was enacted, namely Law Number 17 of 1999 concerning the Implementation of the Hajj
2001	Presidential Decree No. 22 of 2001 concerning BP DAU
2014	Law Number 34 of 2014 concerning Hajj Financial Management, the establishment of BPKH
2017	Presidential Regulation Number 110 of 2017 concerning the Hajj Financial Management Agency (BPKH)
2019	Law Number 8 of 2019 concerning the Implementation of the Hajj and Umrah Services as well as revoking Law Number 17 of 1999 concerning the Implementation of the Hajj

From the table 1 above, since the first half of the 20th century when Indonesia was still colonized by the Dutch East Indies government, the problem of organizing the pilgrimage which is a religious obligation for Muslims has been regulated by the state. Although only limited to administrative facilitation, nor does it let go of its hands to interfere in the religious life of its citizens. And this, in organizing the Hajj, continues to be carried out until now with various regulatory changes towards a state administration system that is compatible with the concept of a welfare state. Welfare issues have become a concern for many countries, including Indonesia. The state does not only exist as a political building tasked with creating security and order, but is also responsible for supporting the realization of a just, prosperous and prosperous society. Pancasila and the constitution have provided guidance and a basis for realizing the ideals of a welfare state. To realize this, it is the duty and responsibility of policy makers to translate it into legal economic and political policies that are in line with achieving this goal. The ideal of a just, prosperous and prosperous society is our common national ideal and goal.

#### Religion is No Longer a Res Privata: Hajj in Public Rechtsregiem

The division of legal system from the aspect of its power environment is divided into two, namely the public legal environment and the private legal environment, which has occurred since the 2nd century AD. A Roman legal expert, Ulpianus provides an understanding that distinguishes the two. He said "Publicum ius est, quod ad statum rei romanae spectat, privatum quod ad singulorum utilitatem", which means that public law is a rule related to the welfare of the Roman state, while private law is a rule related to family relations. The effect of this distinction is felt to this day in every legal system in various countries which separates the environment of public attorneys and private lawyers, and Indonesia is no exception. This distinction also leads us to an understanding of the existence of the government in conducting legal intercourse (rechtsverkeer).

Since the state of Indonesia was proclaimed in 1945, the constitution has not been based on any particular religion, even though Islam is the religion that is predominantly adopted by citizens. However, Pancasila is a legal ideal that in the opening of the 1945 Constitution is a rechtsidee or guiding star for the formation of regulations in the Indonesian state. Thus, the purpose of establishing positive law in Indonesia is to achieve the thoughts contained in Pancasila, which is also useful as a tested stone for positive law. Therefore, the first principle of Pancasila, namely Belief in the One and Only God, is the legal ideal of the Indonesian state which recognizes religion in national legal association (rechtsverkeer).

Thus, the state does not completely disengage from the religious affairs of its citizens, which in the doctrine of secularism, religious affairs are private matters, not public affairs. In this case, the state plays a formal role in administrative law through the Ministry of Religion, which was established on January 3, 1946. This ministry does not only deal with the religious affairs of Muslims but also five other religions recognized by the state. To accommodate the religious affairs of its citizens administratively, positive law in Indonesia has adopted sharia since the era of the Dutch colonial government in power, in the form of several elements of Islamic jurisprudence which concentrate on marriage, divorce, inheritance, endowments, grants in the practice of religious courts. No exception in organizing hajj and umrah, the government plays a role in carrying out administrative and bureaucratic legal actions.

For the government, the pilgrimage is a national endeavor considering the large number of pilgrims who depart every hajj season. This means that the government must coordinate and cooperate with several agents, both government agencies and private agents in the country and abroad to organize several aspects of the implementation of the pilgrimage. Among the national tasks are transportation, accommodation, health, and security for pilgrims. Moreover, the implementation of Hajj for the Indonesian government is not limited to services for citizens who are Muslim but also involves foreign relations with Saudi Arabia as the destination country for the pilgrimage. Thus, the government needs to continue to improve the quality of the implementation of the pilgrimage effectively. To achieve this goal, the government needs regulations as the legal basis for organizing the pilgrimage

#### State Intervention in Religious Affairs through Administrative Law

As a country that adheres to the concept of the welfare state to establish the state as stated in the fourth paragraph of the preamble of the constitution, the Republic of Indonesia has the authority to make arrangements and provide facilities for all aspects of the lives of its citizens, including the implementation of the pilgrimage for Muslim citizens. The authority and role of the state in all aspects of the lives of its citizens are expanding along with the development of history and law. Carol Harlow and Richard Rowling argue that this role is related to a theoretical view which in the context of state administrative law theory is called redlight theory. The view of redlight theory assumes that the authority and role of state administration are limited to law enforcement and public order, which is also known as the 'night watch state' or nachtwatcherstaat. In this view, state administrative law functions to prevent violations by the state of human rights. Therefore, the red light theory emphasizes the balance of power by supporting a strong judiciary to control executive power. The thinking behind the red light theory is the Laissez Faire State which has the idea of the best government is the least government. This view assumes that the authority and role of state administration should be made as simple as possible so that the structure of state administration is very small.

The adoption of the concept of the welfare state by the Indonesian state has resulted in the expanding authority and role of state administration in people's lives. In this case, state administrative law provides facilities for the enlargement of the state's role in providing welfare for its citizens. State administration has a role not only as a tool for law and order enforcement but also as a tool to achieve public welfare in various sectors of life, including the religious sector, which in this case is the implementation of the pilgrimage. The great role of state authority and state administration is facilitated theoretically by a view that contradicts the red light theory as stated above, namely the green light theory. State administration becomes a vehicle to facilitate every aspect of citizens' lives, to achieve political progress and the realization of an "administrative state". This view assumes that state administrative law has broad powers and roles and must be proactive in various fields of people's lives.

In addition, in contrast to the red light theory which prioritizes the judiciary in a country, the green light theory tends to the development of democracy and political accountability of the government. Therefore, community participation is a prerequisite for the formation of state administration following the view of the green light theory. From the view of the green light theory adopted in the legal system of the Republic of Indonesia, it can be understood that the state has broad authority covering aspects of the lives of citizens in the field of religion, namely the implementation of the pilgrimage.

The theoretical view that has influenced the development of state administrative law that adheres to green light theory is Léon Duguit's thought. Duguit's view is based on the idea of a socialistic state in which a strong government is a necessity and therefore its duties go far beyond the fields of law, order, justice, and defense. He believes in the idea of a collectivist state whose function is to provide public services. This he defined that the Hajj service as "any activity that must be regulated by the government" and controlled because it is indispensable for the realization and development of social solidarity as long as it cannot be realized without the intervention of the government. Of course, included in the activities that must be regulated by the government is the implementation of the pilgrimage, because, without government intervention, the pilgrimage for its citizens cannot be carried out because it is related to foreign relations between the country of origin of the pilgrims in this case Indonesia and the destination country, namely Saudi Arabia.

Based on the spirit of the welfare state, which is supported by the green light theory above, the state has the authority and role of administration in organizing the pilgrimage. Although there are models of organizing the pilgrimage that is carried out by private parties, when compared to other organizations, according to Gerald Caiden, the role of the state in administration has a specificity. First, the state administration is unavoidable. Second, the state administration has a legal monopoly of coercive power which inevitably applies binding and can be coercive. Third, the priority of community activities. Fourth, the role of the state administratively provides services for every citizen. Fifth, the state is directly responsible to its political leadership, because the top leadership is a political institution. Therefore, it can be understood that the regulation of the implementation of Hajj, after all, is the authority of the state, in this case, the government.

From an organizational point of view, the implementation of the pilgrimage is based on four alternative principles as recognized in state administrative law, including: first, the objectives to be achieved, namely the Ministry of Religion which carries out government functions in the religious sector; second, the group served, namely citizens who want to perform Hajj; third, the process carried out, namely the implementation of the pilgrimage which includes planning, budgeting, implementation, evaluation, and supervision; fourth, the geographical area covered, namely the territory of the state of Indonesia.

With this understanding, the state's authority in organizing the pilgrimage can be understood based on the view of state law in the field of administration that it adheres to, namely the green light theory above. This authority, even from Duguit's point of view, is a duty or obligation of the government in the form of public services. As a result, the view that considers the private affairs of citizens, namely religion, should not be managed by the state, becomes irrelevant. With the adoption of the green light theory, the state has a theoretical basis for its administrative authority to carry out the implementation of hajj activities carried out by state organizations or institutions, namely the Ministry of Religion. Maqāsid al-sharī'ah is an instrument used to determine the conformity of the Muslim way of life with the values of Islamic law which consist of social, political, economic, spiritual, environmental and universal aspects of humanity. On the one hand, maqāsid al-sharī'ah connects the spirit and philosophy of sharia and on the other hand it is connected to the social, economic, historical, political and environmental context of society. This serves as a tool to measure the conformity of changes with the universal goals, principles and values of sharia.

Parallelity of Maqasid Paradigm and State Administration Shifting

In the study of classical Islamic law, maqasid al-shari'ah is easily understood as the universal goal of enactment of a law. However, in its development, Jasser Auda compiled a contemporary Conception of Maqashid which is an evolution of classical maqasid al-shari'ah theories and concepts; namely: (1). Keeping Descendants (hifdz al-Nasl) is a theory-oriented to family protection; more concern for family institutions; (2) Maintaining Intellect (hifz al-Aql) to multiplying the mindset and scientific research; prioritize travel to seek knowledge; avoiding attempts to underestimate the workings of the brain; (3) Maintaining honor; keep the soul (hifdz al-'Irdh) to maintain and protect human dignity; safeguard and protect human rights; (4) Protecting religion (hifdz al-Diin) is protecting, and respecting freedom of religion or belief, and (5) Protecting property (hifdz al-Maal) is prioritizing social care; pay attention to economic development and development; promote human well-being; eliminate the gap between rich and poor.

There is a paradigm shift and the classical maqasid al-shari'ah theory to the contemporary maqasid al-shari'ah theory. The change lies in the pressure point of both. The emphasis of classical maqasid al-shari'ah is more on protection and preservation, while contemporary maqasid al-shari'ah theory emphasizes development and rights. In an effort to develop the contemporary maqasid al-shari'ah concept, Jasser Auda proposes human development as the main target form of contemporary public interest; This maslahah should be the target of maqasid al-shari'ah to be realized through Islamic law. Parallel with the maqasid paradigm shifting is the shift in the role of the state administratively, which originally played a minimum role in protecting and protecting citizens, to a maximum by interfering in the private affairs of its citizens, such as religious affairs in this case the pilgrimage discussed in this paper. Along with the times, the modern world state as a subject of public law adopts laws that are increasingly facilitative in every aspect of the lives of their citizens. Regulations made by the state as authorized legal subjects are increasingly complex touching the joints of the lives of its citizens.

Behind every theory of administrative law, there is a discussion of the state. According to Harold Laski, as quoted by Carol Harlow and Richard Rawlings, constitutional law cannot be understood except as the expression of an economic system designed to function as a bulwark. This, according to Carol Harlow and Richard Rawlings, means that the government machine is an expression of the society in which it operates; something that cannot be understood except when viewed from another context. By the end of the nineteenth century in England, all major political parties practical purposes abandoned the ideal of limited government and accepted the need for intervention. The old conception of government as minimal and static has been swept away by a new conception of government which is "collectivism" in Dicey's view. As Dicey calls it, socialist theory supports State intervention to provide benefits to society. In his essay entitled "Introduction to the Law of the Constitution" published in 2022, Dicey as stated by Carol Harol and Richard Rawlings, argues that the ideal type of constitution is a balance with broad authority in the executive field although, on the one hand, it will be subject to political control by parliament, on the other hand, to submit to legal control through law by the courts.

In this case, the law of State Administration facilitates the enlargement of the role of state administration in people's lives. State administration plays a role no longer only as control of power, as the red light theory views, but rather as the state regulation in realizing the welfare of society. The broad role of state administration is supported by a theory in state administrative law, namely the green light theory. This theory views the role and authority of state administration which is very broad covering various aspects of citizens' lives, of course including in terms of religion and belief, in this case, the implementation of Hajj for Muslims. One of the worship services that is full of

maqashid is the Hajj pilgrimage. This worship is full of various important aims and objectives, as well as benefits that can be gained as benefits and lessons from carrying out the Hajj pilgrimage.

With the spirit of the welfare state and the view of the greenlight theory, it is a necessity for the Republic of Indonesia through its constitution to regulate the guarantee of freedom of religion and worship according to the respective beliefs of its citizens. The constitution as the foundation of the legal system of the Republic of Indonesia regulates religious life. Although the 1945 Constitution has been amended four times, the basic norms regarding the guarantee of religious freedom are still maintained. Thus, in drafting legal regulations regarding religion, the constitution explicitly provides a legal foundation for this matter.

The regulation regarding the guarantee of religious freedom is regulated in Article 29 Paragraph (2) of the 1945 Constitution. The article reads: "The state guarantees the independence of each resident to embrace their religion and to worship according to their religion and beliefs". The sound of this article of the constitution later became a source of law as well as the basis for the state to use its authority in organizing the pilgrimage, which also includes the management of hajj funds which are regulated through regulations relating to these matters.

#### Constitution, Islam, and Hajj in Indonesia

As a modern legal state, Indonesia has a constitutional foundation, namely the 1945 Constitution which in its preamble includes the purpose of the state and the affirmation of Pancasila as the state's foundation, or called the staatsfundamentalnorm. Staatsfundamentalnorm is the basic norm or legal foundation for the formation of the constitution or constitution (staatsverfassung) of a country. Rechitpositie from a Staatsfundamentalnorm is a condition for the validity of the constitution. This Staatsfundamentalnorm exists before the constitution of the country itself. When Sukarno introduced Pancasila before the constitution was drafted, he emphasized that 'divinity' would not only make Indonesia a 'nation that believes in God but also that 'every Indonesian must have God' and that every citizen should be free to worship according to his or her religion or each other's beliefs. This explanation of what is contained in Pancasila is also largely consistent with most scientific interpretations. Butt and Lindsey, for example, argue that the basic principles of the Indonesian state force the state to protect religious freedom, encourage the exercise of faith and give the state a role in religious affairs. For this reason, they argue that Indonesia is not a fully secular state.

A similar view is expressed by scholars such as Intan and Hosen who argue that the primacy of religion in the public sphere means that Indonesia is neither secular nor theocratic. Although many views contradict the views above, the scientific and political interpretations described above stipulate that Pancasila is the principle of religious freedom and pluralism, provides the basis for an interventionist role for the state in religious matters, and does not elevate one religion over another.

The nature of Pancasila, however, is challenged and opposed when it comes to the implementation of state policies. In this regard, Hefner suggested that the problem was rooted in the fact that Pancasila did not specify which religious doctrines or beliefs would fall under the principle of 'belief' in the one and only God and that it did not regulate 'how the government should intervene in the religious sphere to decide that hajj fund management. This prompted a problem that later arose, namely regarding the extent of state intervention when Pancasila became the most basic norm in the Indonesian constitution that allowed the state to play a role in encouraging and facilitating religion.

In this case, socially and politically the dominant religion, Islam, has privileges in terms of state administration which can be said to be the goal of the Pancasila formulation as aspired by the founding fathers. This is inevitable in a context where the state has a role in facilitating religion in public life and where more than 80 percent of the population is Muslim. As is known, one of the teachings in Islam is the obligation to perform the pilgrimage. In this case, the state has the authority based on Article 29 Paragraph (2) of the 1945 Constitution as a manifestation of the *rechtsidee* of the First Principles of Pancasila. In the formulation of the articles of the constitution, the state is to provide guarantees of independence for every citizen to embrace their respective religions. This includes guarantees to worship for religious adherents according to their respective religions and beliefs. The formulation of the articles in the Indonesian constitution is based on the first principle of Pancasila, namely Belief in One Supreme God. Among the constitutional guarantees are state guarantees as mentioned above, namely the state's obligation to provide facilities and services for its citizens who want to perform the pilgrimage. This basis is a source of state authority in the form of attribution of constitutional authority granted by the 1945 Constitution to the government in organizing the pilgrimage.

In connection with the above, citizens carrying out worship have various aspects of worship that must be guaranteed by the state as a form of state facilities and services in the field of religion to its citizens. These aspects include the dimensions of trust, the provision of facilities, the availability of worship infrastructure, how to worship, the time of worship, places of worship, and procedures for carrying out the worship. Therefore, in terms of organizing the pilgrimage, the state is obliged to guarantee various aspects surrounding the implementation of the pilgrimage for its citizens. Since the preparation before departure, on the way, during the pilgrimage, until return to the homeland.

Based on the understanding of Article 29 Paragraph (2) above, the state's authority in the matter of implementing the Hajj and Umrah pilgrimages for Muslims is a relevant and sufficient reason for the state to make arrangements. The authority to make this regulation aims to carry out the mandate of Article 29 Paragraph (2) of the 1945 Constitution, namely state guarantees for every religious believer to worship according to their respective religions and beliefs. And in this case, state guarantees for all aspects of the implementation of the pilgrimage as well as financial management. In the Al-Quran and Sunnah of the Prophet -sallallahu alaihi wasallam- normatively various aims, objectives and benefits of the Hajj pilgrimage have been mentioned. Also in reality on the ground, practically these goals and benefits can be seen and felt directly or indirectly.

As stated above, the reach of the state to facilitate the religious aspects of citizens is through the form of administration prepared by the state. In this case, the Ministry of Religion plays a central role in the affairs of the pilgrimage. This ministry was established at the beginning of independence. The task as formulated by Wahid Hasyim who was the first minister was to ensure that everyone is free to profess and worship according to his religion and beliefs and 'to assist, support, protect and promote the aspirations of religious movements. The ministry has local offices and personnel throughout the country, even down to the village level, and has the authority to regulate matters such as marriage, religious education, courts and pilgrimages, and others.

Efforts to realize *maslahah*: Investment and Optimization of Hajj Funds in Today's Indonesia

The implementation of the pilgrimage that provides a stimulus to the economy, both in the micro and macro scope, is used as the basis for the financial management of the pilgrimage, which amounts to trillions of rupiah in the form of investment. The investment of hajj funds by BPKH based on the Hajj Financial Management Act can be described, as the number of prospective Indonesian pilgrims who departed in 2015 was 154,455 people. Each congregation is assumed to pay IDR 20

million, so the total funds from the congregation will reach IDR 3.09 trillion. Meanwhile, the number of pilgrims on the waiting list reached more than 1 million people. Thus, considering the size of the Hajj funds, on April 22, 2009, based on the MoU agreed by the Ministry of Finance and the Ministry of Religion, the placement of Hajj funds and the Ummah's Endowment Fund was allocated to State Sharia Securities, Surat Berharga Syariah Negara (SBSN). Until January 12, 2017, the outstanding SDHI reached a value of IDR 36.7 trillion. Meanwhile, investment in Hajj funds in 2010 based on data obtained from the Ministry of Religion, the investment allocation in the form of Sukuk amounted to Rp 12 trillion. An increase in investment allocation to IDR 31.1 trillion occurred in 2013. Investment allocation in Sukuk was IDR 35.83 trillion in 2015.

Hajj fund investment in Sukuk has been carried out since 2010. Based on the decision of the Chairman of the Capital Market and Financial Institutions Supervisory Agency (Bapepam-LK) Number KEP-181/BL/2009, the definition of Sukuk is Sharia securities in the form of certificates or proof of ownership of the same value and represents an inseparable or undivided part of the investment: (i) ownership of certain tangible assets, (ii) value of benefits and services for certain project assets or certain investment activities, (iii) ownership of certain project assets or certain investment activities. Meanwhile, based on the sharia standards of The Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) No. 17 concerning Investment Sukuk, Sukuk has the meaning of a certificate of equal value which is evidence of an unshared share of ownership of an asset, rights to benefits and services, or ownership of a particular project or investment activity.

Meanwhile, SDHI is issued using a form of transaction or contract called Ijarah al-Khadamat. The form of contract is a form of contract development based on the DSN-MUI Fatwa Number 9/2000 concerning Ijarah Financing. Thus, the MUI fatwa became one of the grounds for allowing Sukuk transactions with the Ijarah Al-Khadamat contract. The purposes of the Sukuk transactions include: 1) as a source of funding to finance the pilgrimage other than the cost of the pilgrims. Such as the consumption costs of prospective pilgrims while in the Hajj hostel, books for Hajj rituals, making passports and visas; and 2) funding the state budget (APBN), including financing project development. The results from the investment of the Hajj funds can then be used for the value of the benefits following the objectives of managing the Hajj funds as previously mentioned, namely improving the quality of the implementation of the Hajj and the benefit of Muslims. Furthermore, optimizing the benefits of managing Hajj funds can also be used and felt for the welfare of the community in general. This can be realized by referring to Presidential Decree No. 80 of 2003 concerning Guidelines for the Implementation of Government Procurement of Goods/Services. This optimization is carried out based on the principles of efficiency, effectiveness, openness, competitiveness, transparency, non-discrimination, and accountability, which can be used to 1) increase the use of domestic products; 2) increase the role of small and micro and medium enterprises, cooperatives; 3) increase in state revenue from the tax sector; and 4) growth and development of national business participation.

In line with this, the value of the investment benefits of Hajj funds in the state Sukuk can be used for infrastructure development. For example, what has been implemented so far includes financing the construction of State Islamic University campuses in Indonesia using funds from the state Sukuk. Thus, from the maqasid aspect, there has been a shift in the implementation of the pilgrimage by the state from being limited to efforts to maintain religion (hifdz al-diin) to an effort to improve the country's economy and benefit. Moreover, the value of the benefits from the management of hajj funds can be used for infrastructure that can be used by the general public, not only Muslims. With good infrastructure, it will certainly have a positive impact on the economy and the welfare of



society in general. Thus, the management of hajj funds is certainly in line with the principles of the welfare state and the purpose of the founding of the Republic of Indonesia.

## Conclusion

The modern world state since the 20th century has led to what is conceptualized as a welfare state, where the state has a maximum role in improving the basic rights of its citizens, including the right to religion, one of which is the pilgrimage. Paradigmatic developments in the theory of state administrative law can be seen in its implementation in the practice of organizing and managing Hajj funds in Indonesia, where the government does not only play a role in protecting the basic religious rights of citizens as guaranteed by the constitution but also facilitates administratively and financial management which can develop its beneficial value for welfare purposes. Modern countries, including Indonesia, have gone beyond their role from being just a 'night watch state', but have played a maximum role in improving the quality of life of citizens in sectors that were originally in the private sphere, namely in this case the hajj. In line with the development of the state administration, the practice of organizing hajj in Indonesia illustrates the implementation of contemporary maqasid as a philosophy of Islamic law, in this case, the pilgrimage is oriented not only to protecting religion (hifdz al-din) but further, namely improving public benefit with the value of economic benefits from organizing and managing Hajj funds.

## Bibliography

### Books

- Ahlan Syarif, Fitriani, ed. *Aradhana Sang Guru Perundang-undangan; Kumpulan Tulisan Memperingati Ulang Tahun Ke-70 Prof. Dr. Maria Farida Indrati, S.H., M.H.* Depok: Badan Penerbit Fakultas Hukum Universitas Indonesia, 2019.
- Asshiddiqie, Jimly. *Jimly Asshiddiqie, Pancasila: Identitas Konstitusi Berbangsa dan Bernegara.* Jakarta: Sinar Grafika, 2020.
- Basyuni, Muhammad M. *Reformasi Manajemen Haji.* Jakarta: FDK Press, 2008.
- Butt and Tim Lindsey, Simon. *The Constitution of Indonesia: A Contextual Analysis.* Oxford and Portland, OR: Hart Publishing, 2012.
- Caiden, Gerald E. *The Dynamics of Public Administrations in Theory and Practice.* New York: Holt, Reinhart and Winston, Inc., 1971.
- Direktorat Jenderal Urusan Haji, *Pokok-pokok Penjelasan Penyelenggaraan Urusan Haji.* Jakarta: Direktorat Jenderal Urusan Haji, 1970/1971.
- Fleming Intan, Benyamin. *"Public Religion" and the Pancasila-Based State of Indonesia: An Ethical and Sociological Analysis.* New York: Peter Lang, 2006.
- Harlow dan Richard Rawlings, Carol. *Law and Administration, Third Edition.* New York: Cambridge University Press, 2009.
- Horowitz, Donald L. *Constitutional Change and Democracy in Indonesia.* New York: Cambridge University Press, 2013.

Hosen, Nadirsyah. *Shari'a & Constitutional Reform in Indonesia* (Singapore: Institute of Southeast Asian Studies, 2007).

Laski, Harold. *A grammar of Politics*. London: Allen and Unwin, 1925.

Loughlin, Martin. *Public Law and Political Theory*. Oxford Clarendon Press, 1992.

Picard and Rémy Madinier, Michel ed., *Politics of Religion in Indonesia: Syncretism, Orthodoxy, and Religious Contention in Java and Bali*. Abingdon, Oxon and New York: Routledge, 2011.

Ridwan HR, *Hukum Administrasi Negara Edisi Revisi*. Jakarta: Rajawali Press, 2013.

Salim, Arskal. *Challenging the Secular State: The Islamization of Law in Modern Indonesia*. Honolulu: University of Hawai'i Press, 2008.

Sekretariat Negara Republik Indonesia, *Himpunan Risalah Sidang-sidang dari Badan Penyelidik Usaha Persiapan Kemerdekaan Indonesia (BPUPKI) (Tanggal 29 Mei 1945–16 Juli 1945) dan Panitia Persiapan Kemerdekaan Indonesia (PPKI) (Tanggal 18 dan 19 Agustus 1945) Yang Berhubung Dengan Penyusunan Undang-undang Dasar 1945*. Jakarta: Sekretariat Negara Republik Indonesia, 1954.

Soekanto, Soerjono dan Sri Mamudji. *Penelitian Hukum Normatif Suatu Tinjauan Singkat*. Jakarta: Raja Grafindo Persada, 2015.

#### Journal Articles

Alfitri. "Religion and Constitutional Practices in Indonesia: How Far Should the State Intervene in the Administration of Islam?", *Asian Journal of Comparative Law*, Vol. 13, 2018, <https://doi.org/10.1017/asjcl.2018.20>

Jumali, Endang. "Management of Hajj Funds in Indonesia". *Journal of Legal, Ethical, and Regulatory Issues*. Vol 21, no.3, 2018.

Mamonto & Rizki Ramadani, "Kebijakan Perlindungan Jamaah Haji Khusus dan Umroh Di Sulawesi Selatan", *PETITUM*, Vol. 7, No.2, 2019. <https://doi.org/10.36090/jh.v7i2%20Oktober.650>

Mochammad Aziz, Roikhan. "Hahslm Theory as Guidance of Straight Path in Management of Hajj and Finance", *KnE Social Science* vol. 3, no. 8, 2018. <https://doi.org/kss.v3i8.2503>

Morris, D. (2016). *Accommodating Nazi Tyranny? The Wrong Turn of the Social Democratic Legal Philosopher Gustav Radbruch After the War*. *Law and History Review*, 34(3), 649-688. <https://doi.org/10.1017/S0738248016000213>

Mubarak, M. Ali "Manajemen Pengelolaan Dana Haji Republik Indonesia (Studi Kolaborasi Antar Lembaga BPKH, Kemenag dan Mitra Keuangan dalam Pengelolaan Dana Haji)", *Iltizam Journal Of Shariah Economic Research*, Vol. 2, No. 2, 2018. <https://doi.org/10.18646/2056.53.18-009>

Muneeza, Aishaath et all, "A Comparative Study of Hajj Funds Management Institutions in Malaysia, Indonesia, and Maldives". *International Journal of Management and Applied Research* vol. 5, no.3, 2018. <https://doi.org/10.18646/2056.53.18-009>

Primadhany, Erry Fitrya. "Tinjauan Terhadap Tanggung Jawab Badan Pengelola Keuangan Haji (BPKH) dalam Melakukan Penempatan dan/atau Investasi Keuangan Haji", *Jurisdictie: Jurnal Hukum dan Syariah* Vol. 8 No.2 Tahun 2017. <https://doi.org/10.18860/j.v8i2.4447>

Santosa, A.A. Gede D. H. "Perbedaan Badan Hukum Publik Dan Badan Hukum Privat", *Jurnal Komunikasi Hukum (JKH)* Vol. 5, No. 2, 2019. <https://doi.org/kss.v3i8.2503>

#### Regulations

Indonesia, Undang-Undang Dasar Negara Republik Indonesia Tahun 1945

\_\_\_\_ (1), Undang-undang tentang Penyelenggaraan Ibadah Haji dan Umroh, UU Nomor 8 Tahun 2019, LN. Nomor 75 Tahun 2019, TLN. Nomor 6338 Tahun 2019.

\_\_\_\_ (2), Undang-undang tentang Pengelolaan Keuangan Haji, LN. Nomor 296 Tahun 2014, TLN. Nomor 5605 Tahun 2014.

#### Websites

Dinda Purnamasari, "Di Mana Saja Dana Haji Ditempatkan?", <<https://tirto.id/di-mana-saja-dana-haji-ditempatkan-ct8V>>, accessed June 22, 2022.

Donald Banjarnahor, "Investasi di Sukuk Negara Berbuah Gedung Rafah UIN Palembang", dalam <https://www.cnbcindonesia.com/news/20191010113831-4-105857/investasi-di-sukuk-negara-berbuah-gedung-rafah-uin-palembang>, accessed June 22, 2022.

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Hajj Funds Management Based on Maqāshid Al-Sharī'ah; A Proposal for Indonesian Context

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Article history: Received: November 04, 2022, Accepted: January 27, 2023, Published:

December 30, 2023

#### Abstract:

Indonesian hajj funds (BIPH) have the potential to support the implementation of hajj worship in an effective, efficient, transparent, and accountable manner while complying with Islamic law. However, it is said that the management turned out to be ineffective and unprofessional. This research aims to examine the management of hajj funds in detail using *maqāṣid al-sharī'ah* perspective to propose a breakthrough for its better management. It uses a normative juridical method through data presentation and explanation using an interdisciplinary perspective on *maqāṣid al-sharī'ah*. The data comes from journal articles, scientific documents, and statistical data. The research results show that in *maqāṣid al-sharī'ah* perspective, namely an instrument to create a balance of the Muslim way of life with Islamic legal values in social, political, economic, spiritual, and universal human aspects, the *ḥifẓ māl* dimension urges using hajj funds for the benefit of society. Therefore, the Hajj Financial Management Agency (BPKH) should collaborate with the Ministry of Religious Affairs and other related stakeholders to manage Hajj funds optimally and efficiently while increasing trust and reducing negative public perceptions. Policies and regulations by the government are made in such a way that it can ease hajj pilgrims to carry out the worship comfortably, safely, smoothly, and spiritually enriching.

#### Keywords:

Hajj Funds Management; *Maqāṣid Al-Sharī'ah*; Indonesia

#### Introduction

As the world's largest Muslim country, Indonesia contributes a lot of Hajj pilgrims every year. This is partly supported by its constitution which guarantees Indonesians to worship following their respective religions and beliefs. In addition to formulating and enforcing the constitution, the government is also in charge of planning and organizing the hajj. They are supposed to guide, give service, and protect Indonesian citizens in a safe, comfortable, orderly, and compliance with the provisions of the shari'ah.<sup>369</sup>

In addition to the problem of organizing the pilgrimage, another issue is the relationship between the country of prospective pilgrims and the country of destination, namely Saudi Arabia. Indonesia receives many hajj quotas. In 2023, Indonesia got the largest hajj quota in the world. It is recorded that Indonesia's hajj quota reached 221,000 pilgrims, consisting of 203,320 quotas for regular hajj pilgrims and 17,680 quotas for special hajj pilgrims. Even if there are a lot of quotas in the current year, they aren't adequate to fulfill the demand as indicated by the number of applicants which rises annually resulting in the long waiting list of hajj.<sup>370</sup>

The waiting list for Hajj departure is determined by the time of registration when paying the Hajj Travel Fee or so-called BIPH (Cost of Organizing the Hajj Pilgrimage).<sup>371</sup> This BIPH is deposited by prospective pilgrims for registration fees to receive a portion of the departure. The Law No. 13 of 2008 mentions that the management is only limited to its optimal use and development in the form of bank instruments whose security is truly guaranteed. Thus, the policies made by the government enabled the funds to be used for the general welfare of the community in line with the objectives of the founding fathers of the Republic of Indonesia.<sup>372</sup> However, academicians and practitioners consider that the existing legal basis was not sufficient, so a separate law was needed that regulates the management of hajj funds at a more specific scope.

According to Law no. 34/2014 on Hajj Funds Management, the term hajj funds (BIPH) consists of BIPH deposit funds; efficiency funds; DAU (Endowment Fund of The Ummah) as well as the value of benefits controlled by the state in the context of organizing the hajj and implementing program activities for the benefit of Muslims.<sup>373</sup> Due to the limited hajj quota each year, there will certainly be a build-up of hajj funds from a large number of applicants on the waiting list. This certainly requires a more well-organized management of the funds. It was manifested by the establishment of a special financial institution with the authority to manage the hajj funds called the Hajj Financial

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369 Endang Jumali, "Management of Hajj Funds in Indonesia," *Journal of Legal, Ethical and Regulatory Issues* 21, no. 3 (2018): 1–9.

370 Annas Syam Rizal Fahmi, "An Analysis of Investment for Hajj Funds from Islamic Law Perspective," *Al-Iktisab: Journal of Islamic Economic Law* 1, no. 2 (2017): 131, <https://doi.org/10.21111/al-iktisab.v1i2.2388>.

371 Indonesia (1), Undang-Undang tentang Penyelenggaraan Ibadah Haji dan Umroh, Pasal 5 Ayat (1).

372 Singgih Muheramtohad, "The Use of Hajj Fund for Investment Purpose: A Maqashid Sharia Approach," *Journal of Islamic Economics, Management, and Business (JIEMB)* 1, no. 1 (2020): 99–116, <https://doi.org/10.21580/jiemb.2019.1.1.3740>.

373 Indonesia (2), Undang-Undang tentang Pengelolaan Keuangan Haji, UU Nomor 34 Tahun 2014, LN. Nomor 5605 Tahun 2014, Pasal 1 Ayat (2).

Management Agency (BPKH) on 26 July 2017.<sup>374</sup> It is a public legal entity that is independent and responsible to the President through the Minister of Religious Affairs. The structure of BPKH consists of an executive body and a supervisory board responsible for managing the revenue, development, expenditure, and accountability of the Hajj funds.

The management of hajj funds following their objectives is important to discuss considering the large number of hajj funds managed by BPKH so as not to deviate from the initial goal of financing the pilgrimage, let alone from various perspectives embedded in *maqāṣid al-sharī'ah*. This research would therefore discuss it from the perspective of *māqasid* as a philosophy of Islamic law with its continuously developed concept concerning various basic aspects of people's common needs in the context of Indonesia.

Recently, there has been a paradigm shift from classical *maqasid sharia* theory to the contemporary one. The change lies in the main benefit as the target to manifest, namely the protection and preservation aspects because the contemporary *maqasid sharia* is more about development and rights. To develop the concept, Jasser Auda proposes human development as the main target. He developed the current conception of *maqasid* as an evolution of the old theory which in the context of *hifdz mal* prioritized social concerns; paying attention to economic development and improvement; and advancing human welfare while eliminating the gap between the rich and the poor.

Previous research discussing the management of hajj in Indonesia from several aspects, factors, and indicators still requires further development. Hajj in terms of political factors, among others, was discussed by Ichwan. He found that the complexity of hajj and umrah services is not so much caused by religious aspects, but rather by political aspects and economic motives.<sup>375</sup> From the aspect of economy, Kouchi et al.<sup>376</sup> studied the relationship between the growth in the number of Hajj pilgrims and economic growth in Saudi Arabia. The increase in the number of people performing hajj has a major impact on Saudi Arabia's economic progress. The annual hajj and umrah could play an increasingly important role in economic growth and development. In a broad general sense, religious tourism plays an important role as a foreign exchange earner, job creator, and tool for improving the balance of payments. Its contribution to economic prosperity, if planned well, can be greater than that of any other known economic force.

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374 Erry Fitriya Primadhany, "Tinjauan terhadap Tanggung Jawab Badan Pengelola Keuangan Haji (BPKH) dalam Melakukan Penempatan dan/atau Investasi Keuangan Haji," *Jurisdictie* 8, no. 2 (2018): 125.

375 Moch Nur Ichwan, "Governing Hajj: Politics of Islamic Pilgrimage Services in Indonesia Prior to Reformasi Era," *Al-Jami'ah: Journal of Islamic Studies* 46, no. 1 (2008): 125–51, <https://doi.org/10.14421/ajis.2008.461.125-151>.

376 Amin Nouri Kouchi, Mansour Zarra Nezhad, and Pouyan Kiani, "A Study of the Relationship between the Growth in the Number of Hajj Pilgrims and Economic Growth in Saudi Arabia," *Journal of Hospitality and Tourism Management* 36 (2018): 103–7, <https://doi.org/10.1016/j.jhtm.2016.01.008>.

Another study by Kurniadi, et.al<sup>377</sup> who examined the management of hajj funds from an economic theory found that BPKH can function as a representative of the government in the management and development of hajj funds. Aziz,<sup>378</sup> meanwhile, examines the Hahslm theory as a guide to the straight path in managing the hajj funds. The large number of prospective pilgrims doing registration compared to the available quota means that in normal circumstances, a pilgrim would have to wait an average of 19 years. If he/she has paid a down payment of IDR 25 million, it results in a large accumulation of pilgrims' funds. So far, it is placed in bank deposits which are only guaranteed IDR 2 billion by the deposit insurance agency (LPS). It would be a shame, for him, to find that quite a large of hajj funds were managed without playing a significant role in the productive sector.

Based on previous research, it is clear that most researchers still focus on the issue of hajj in politics, economy, and religious aspects. There are still few who concentrate on studying the management of hajj funds in Indonesia through the newer concept of *maqāṣid al-sharī'ah*. Therefore, this current research examines the issue so that it can propose a breakthrough for better hajj funds management based on *maqāṣid al-sharī'ah*. We hope the proposal will help for better hajj funds management in the Indonesian context by firstly portraying Indonesian hajj management in general, the hajj funds management according to *maqāṣid al-sharī'ah*, and a proposal for better hajj funds management in the Indonesian context.

#### Method

This research uses a qualitative approach with normative juridical methods. Data sources include primary and secondary ones. Primary data is obtained directly from the source, namely journal articles, books, magazines, and other articles that have relevance to the problems and objects of research, while secondary is indirectly from the object under study.<sup>379</sup> The data analysis used is descriptive-qualitative so that the problems and facts are described descriptively and then analyzed to obtain a complete picture.<sup>380</sup>

Data related to the management of hajj funds are then processed through the steps of managing and organizing data, reading and recording emerging ideas, describing and classifying codes, developing and accessing interpretations, and then representing and visualizing data. This spiral analysis is equipped with content analysis, a comparative and critical analysis of hajj laws and regulations using the perspective of Islamic legal theory. The *maqasid al-syariah* theory in this research is used to analyze the management of hajj funds related to the *hifz māl* aspect so that researchers will be able to draw precise and profound conclusions.

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377 Dece Kurniadi, Jamal Wiwoho, and Hudi Asrori, "Hajj Fund Management in Perspective of the Financial Theory and Fiqh," *International Conference on Globalization of Law and Local Wisdom* 358, no. 34 (2019): 225–27, <https://doi.org/10.2991/icglow-19.2019.57>.

378 R M Aziz, "Hahslm Theory as Guidance of Straight Path in Management of Hajj and Finance," *KnE Social Sciences* 3, no. 8 (2018): 105, <https://doi.org/10.18502/kss.v3i8.2503>.

379 Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif; Suatu Tinjauan Singkat*, (Jakarta: Raja Grafindo Persada, 2015), 33.

380 Satori, D. A., & Komariah, A. (2009). *Metodologi Penelitian Kualitatif*. Bandung: Alfabeta, 22.



## Result and Discussion

### An Overview of Indonesian Existing Hajj Management

The organization of hajj in Indonesia has a long history of policy or regulatory aspects. Before the founding of the Republic of Indonesia, Muslims had performed pilgrimages to the holy land of Saudi Arabia. In around 1267 when the Islamic empire existed in the archipelago, there were no special regulations regarding the hajj. Only after the Dutch colonial government came to power did the pilgrimage have regulations in the form of written positive law.<sup>381</sup>

During the colonial period, the Dutch colonial government was worried about people going to the hajj. The reason is that when they were in Mecca, there was no longer any caste, race, or position-based discrimination, so it was worrying that the pilgrims realized that everyone had the same rights, and this could trigger a rebellion. The Dutch were furthermore concerned about the political impact of the hajj because people returning from the hajj were accepted as holy people in Java. For this reason, it is believed that hajj pilgrims are more listened to by ordinary people, so the Dutch government made strict regulations relating to the hajj.<sup>382</sup>

Since the founding of Indonesia as a republic, efforts to deal with issues regarding the organization of the hajj have been formulated. The Ministry of Religious Affairs has a central role as a regulator of the hajj and the management of its funds. Although the government is the one in charge of organizing the hajj service, in practice, it is divided into two, namely the government and private companies that have received permission from the Minister of Religion so called KBIH (Guiding Group of Hajj Worship). However, the latter still engages the Ministry of Religious Affairs, particularly in monitoring and guiding the duties to ensure they comply with the stipulated provisions. Historically, the service of the hajj pilgrimage in Indonesia was handled directly by the community or the private sector, then during the reign of President Soeharto, the responsibility was taken over by the government after cases of neglect by private parties occurred.<sup>383</sup>

BPHI, The Indonesian Hajj Management Agency, is the institution responsible for managing the hajj in Indonesia. It is tasked with providing the services and facilities needed by hajj pilgrims, mainly when in Saudi Arabia, ranging from accommodation, transportation, food, and health, to protection and security. In recent years, it has often been in the public spotlight due to various problems<sup>384</sup> that occur during the hajj process as reported in the annual report of the hajj service. Based on the Hajj Organizing Evaluation Report, it was found that problems that arose during the Hajj pilgrimage are as follows:

First is the problem of the long waiting period before the departure time. Future Indonesian Hajj pilgrims must wait for approximately 20-25 years to perform the hajj worship from the time they pay

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381 Aziz, "Hahslm Theory as Guidance of Straight Path in Management of Hajj and Finance."

382 Rustika Rustika et al., "An Evaluation of Health Policy Implementation for Hajj Pilgrims in Indonesia," *Journal of Epidemiology and Global Health* 10, no. 4 (2020): 263–68, <https://doi.org/10.2991/jegh.k.200411.001>.

383 Muhammad Iqbal Fasa et al., "Economic Protection Toward Financial Management Hajj Funds: Indonesian Case," *Ad-Deenar: Jurnal Ekonomi dan Bisnis Islam* 4, no. 02 (2020): 163, <https://doi.org/10.30868/ad.v4i02.953>.

384 Kementerian Agama Republik Indonesia, *Laporan Evaluasi Penyelenggaraan Ibadah Haji, 2023*

the BIPIH. This is due to the limited quota provided by the Saudi Arabian government on the one hand and the high number of registrations among the future pilgrims on another hand.

The second is health problems. While in Saudi Arabia, many hajj pilgrims experience health problems, such as dehydration, heatstroke, and respiratory infections. This is mainly caused by very hot weather as well as pilgrims' old age<sup>385</sup> and lack of knowledge of preparation in dealing with the situation. Apart from that, health problems also occur due to the lack of adequate health facilities, let alone that of Indonesian authorities. Meanwhile, it is reported that the catering distribution service is sometimes not on time along with a monotonous menu that cannot meet the needs of the elderly congregation. There is also a report about the unavailability of food before departure to Arafat and after leaving Mina.

Third is accommodation problems. While in Saudi Arabia, hajj pilgrims stay in dormitories provided by the government. However, many complain that the facility is inadequate, such as having poor hygiene and lack of adequate water, electricity, and sanitation facilities, as well as exceeding capacities rooms. This causes Hajj pilgrims to feel uncomfortable during their stay, thereby disrupting the smooth running of their pilgrimage. Out of the dormitory, pilgrims also stayed in tents during the Arafah, Muzdalifah, and Mina in which there were over-capacity tents along with limited bathrooms causing long queues with inadequate facilities for elderly pilgrims.

Fourth is transportation problems. Transportation is very important during the hajj. However, many pilgrims have trouble getting adequate transportation. Apart from that, the transportation schedules are quite irregular causing pilgrims to wait a long time to reach their destination, such as delays in buses picking up Indonesian pilgrims while in Muzdalifah.<sup>386</sup> Moreover, transportation services are not yet able to reach all accommodations.

Fifth is service problems. The services provided by BPHI are also often criticized by the public. Many pilgrims complained about the lack of coordination between BPHI officers and officials in Saudi Arabia, causing pilgrims to experience difficulties in getting adequate services. Apart from that, there were also complaints regarding the attitude of BPHI officers who were less friendly and less responsive to complaints and problems experienced by hajj pilgrims.

Among the six problems, the Muzdalifah tragedy has attracted the most public attention. The Muzdalifah tragedy was the moment when thousands of Indonesian hajj pilgrims piled up and could not be transported for more than 10 hours in hot conditions above 35 degrees Celsius. This condition resulted in many congregants experiencing dehydration and even fainting. At that time, on June 28, 2023, thousands of pilgrims from Indonesia were stuck in the Muzdalifah area because the Muzdalifah-Mina-Muzdalifah shuttle bus was stuck in the Mina area due to traffic jams.

To overcome these problems, BPHI needs to make various efforts, such as improving coordination with the Saudi Arabian government and advancing facilities. The Indonesian hospitals located in Saudi are among the most important ones in addition to accommodation of pilgrims like dormitory and transportation services. Since Indonesia does not have any assets for accommodation, a

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385 Masyithah Mardhatillah, "Specific Treatment of Elderly Pilgrims on Hajj According to Hadith; the Approach of Mukhtalif Ahadis," *Al-Ihkam: Jurnal Hukum dan Pranata Sosial* 14, no. 1 (2019): 99–123, <https://doi.org/10.19105/al-Ihkam.v14i1.2290>.

386 J. Edward Taylor, M. R. Habib, And M. A. Mustafa, "Transparency, Public Sector Performance, And the Quality of Governance: An Empirical Analysis," *World Development* 42, no. 11 (2014): 2029.

selective search of the chosen one must be ensured. Professionalism and responsiveness to cope with complaints from hajj pilgrims also deserve attention, let alone in dealing with or anticipating any unexpected situation. Security and safety aspects of pilgrims should be inevitably the main concern. Every year, some incidents occur during the pilgrimage season, such as transportation accidents, riots in holy places, and so on.<sup>387</sup>

In short, it is necessary to evaluate the existing hajj management system and service, so that better and more effective solutions can be arranged in overcoming various typical problems. This includes things ranging from enlarging annual quotas to ensuring every detail is well set from the departure to arrival times. By making these various efforts, it is hoped that the hajj worship for Indonesian pilgrims can run better and more smoothly while giving them a positive spiritual experience. This public satisfaction will lead to public trust along with a decrease in public criticism.

One of the potential instruments to overcome those disadvantages in the hajj service and organization comes from the BIPIH deposit that the future pilgrims pay for getting the portion or seats. Under good and appropriate management, it likely affects in positive ways for development of both hajj service and Indonesian/Muslim life in general. The upcoming part will reveal the proposal for the use and allocation of the fund according to maqashid al-shari'ah as the philosophy of Islamic law.

#### Management of Indonesian Hajj Funds on Maqāshid Al-Shari'ah Perspective

Hajj funds are all types of wealth that can be valued in money, whether in the form of cash or goods resulting from pilgrims' desk-posted payment (BIPIH) and other related sources. It is the government's right and obligation to manage them well. BPKH has a precautionary principle in managing hajj funds, namely by carrying it out in a beneficial, transparent, and accountable manner while considering financial risks. The principle of beneficial means that hajj financial management must provide benefits for pilgrims and Muslims. The principle of transparency indicates open and honest financial management by providing information to the public regarding its allocation and implementation. Meanwhile, the principle of accountability is the accurate management of hajj funds that enable the community, especially the pilgrims, to account for them.<sup>388</sup>

The service of hajj provides a stimulus for the economy both in the micro and macro scope. This became the basis for the Indonesian government in managing the hajj funds reaching trillions of rupiah in the form of investment. For instance, according to BPKH records, if 154,455 Indonesian pilgrims were sent out in 2015 and each of them paid IDR 20 million, the total amount of money collected would have been IDR 3.09 trillion. In the meantime, it is conceivable that the amount of money that BPKH can manage could approach hundreds of trillions if the number of pilgrims on the waiting list surpasses one million, diverting IDR 20 million. The government potentially makes this

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<sup>387</sup> Qomarul Huda and Ilham Dwitama Haeba, "Hajj, Istita'ah, and Waiting List Regulation in Indonesia," *Al-'Adalah* 18, no. 2 (2021): 193–212.

<sup>388</sup> Ilham Maulid and Amirsyah Amirsyah, "Analysis of the Hajj Fund Management Based on the Fatwa of the National Sharia Council (DSN) Number 122 Concerning the Management of BPIH Fund and Special BPIH Based on Sharia Principles," *ADI Journal on Recent Innovation (AJRI)* 3, no. 1 (2021): 21–35, <https://doi.org/10.34306/ajri.v3i1.490>.

calculation very profitably by using gold coins, direct investment, SBSN (State Sharia Securities), or other Sharia-compliant investment funds.<sup>389</sup>

In line with it, *maqāṣid al-sharī'ah* as a framework for developing theories, models, policies, and reform programs in various aspects of life, is deemed relevant to use as a perspective in managing the hajj funds. In this case, moreover, the hajj is also a *dharuriyyat* (primary need) that the government must facilitate worship which is also included in the pillars of Islam and therefore, in the perspective of *maqāṣid*, is a part of maintaining religion.<sup>390</sup> According to *maqāṣid al-sharī'ah*, *maslahah* (benefit) should be the target to realize through Islamic law, as is the case in the financial management of the hajj considering that hajj is one of the devotional rituals that include a great deal of *maqāṣid*.<sup>391</sup>

The highest level of *maṣlahah* is called *maqāṣid al-khamsah* (the five main purposes) due to its *ḍarūriyyāt* (urgency) aspect. The maintenance of religion shows that the role of religion is very important. The maintenance of soul, mind, and offspring, meanwhile, relates to individual humans. All three are related to human life needs, namely physical, psychological, educational, health, and survival needs. Asset maintenance, in this talk, is every action carried out in asset management.<sup>392</sup> According to Zakiruddin, et.al.,<sup>393</sup> one of the developments in the *maqāṣid al-sharī'ah* paradigm is *hifdzul maal* which is not only about protecting material or assets but also development toward *attanmiyyatul iqtishadiyah* (economic growth) based on *maqāṣid al-khoshoh* (special benefit) in maintaining the sustainability of people's assets. In this context, hajj funds must be safeguarded for the sake of benefit, so that the investment is not only oriented towards the profit aspect but also the welfare (*falah*) as an ideal situation in the development of Islamic economics. Therefore, in this context, one of the developments of *maqāṣid al-khoshoh* is *hifz al-maal attanmiyyah al iqtishadiyah*. It refers to efforts to protect assets and use them to improve the economy with the aim of providing welfare to society and helping the needs of people who cannot afford it. This accentuates the necessity to maintain the ethical aspect in the whole related process so that it can be in accordance with the objectives of the *Shari'a*.<sup>394</sup>

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389 Indonesia (7), Undang-Undang tentang Surat Berharga Syariah Negara, UU Nomor 19 Tahun 2008, LN. Nomor 70 Tahun 2008, TLN. Nomor 4852 Tahun 2008, Pasal 1 Ayat (1)

390 Mira Munira and Shinta Budi Astuti, "Indonesian Hajj Fund Management: An Overview," *Asian Journal of Accounting and Finance* 1, no. 1 (2019): 1–9.

391 Auda, J. (2008). *Maqasid al-Shariah: A Beginner's Guide* (Vol. 14). International Institute of Islamic Thought (IIIT).

392 Abū Ḥāmid Muḥammad ibn Muḥammad Al-Ghazālī, *Al-Mustashfā Min Ilm Al Ushūl* (Beirut: Dar Ihyā at-Turāts al-Ārabi, n.d.)

393 Muhammad Aziz Zakiruddin, Kamsi, and Ahmad Bahiej, "Siyasah Syar'iyah Paradigm of Hajj Financial Management Regulation in Indonesia," *Al-Istinbath: Jurnal Hukum Islam* 7, no. 2 (2022): 531–52, <https://doi.org/10.29240/jhi.v7i2.5310>.

394 M Zidny Nafi Hasbi, Makhrus Munajat, and Abdul Qoyum, "Amwaluna : Jurnal Ekonomi dan Keuangan Syariah A Conceptual Framework of The Islamic Human Development Index (I-HDI) and Its Relationship with Maqāṣid Al- Shari'ah," no. 2019 (2023).

Table 1. Relevance of Maqāṣid Al-Sharī'ah to Ideal Hajj Financial Management for Pilgrims Need

No	Dimensions	Target	Technical Steps
1	Ḥifz al-Dīn	Pilgrims get their spirituality increased through the hajj experience through the mental and material support from the organizer.	<p>Allocating funds to facilitate the fulfillment of hajj conditions, mainly challenging rituals like in Arafah, Muzdalifah, and Mina, while maintaining the prosperity of the hajj pilgrims.</p> <p>Developing more intensive pre-hajj departure</p> <p>Organizing post-hajj guidance</p> <p>Managing hajj fund professionally, transparently, accountably, productively, and in accordance with sharia principles</p>
2	Ḥifz al-Nafs	The stable health of pilgrims and safety from any diseases	<p>Allocating funds for collaboration with the Ministry of Health in intensifying practical health education for specific purposes (hajj) so that pilgrims are better prepared physically and mentally</p> <p>Allocating funds to develop quality of hajj health facilities and instruments, mainly when the weather changes in Saudi.</p>
3	Ḥifz 'Aql	Pilgrims get theoretically and practically adequate knowledge about performing the hajj worship.	Allocating funds for renewing curricula and material for pre-hajj departure training as well as building the hajj officers' capability
4	Ḥifz Nasl	The fulfillment of the need for special segments of pilgrims, such as the elderly, children, disabled, and those with special needs	<p>Allocating funds to provide supporting facilities for those with special needs according to the type of worship such as mabit (overnight stay) in Mina and tawaf</p> <p>(Circumambulate the Kaaba).</p>

5	Hifz Māl	The allocation and investment of hajj funds in halal sectors free from gharar, maysir, tadlis, ihtikar, and usury is unsure.	The agreement between hajj pilgrims and BPKH is carried out with the safekeeping of money replacing the hajj bailout funds funded by loans without compensation.	Table 1 outlines the ideal situation of hajj funds management using maqashid shariah as the
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approach for the allocation of hajj pilgrims' needs. This furthermore implies that management of hajj funds must be carried out by prioritizing security aspects, namely in anticipating the risk of loss in the hajj fund investment. This includes the risk of reputation, market, operations, or an inherent one. The protection of prospective pilgrims' assets from any decrease in value becomes urgent because they are saved during the waiting period which can take place a plenty of years. If someone pays the cost this year amounting to IDR 25 million and he will go for hajj later in 20 years while inflation is 6% per year, there will be much money he can set aside during that period.

Table 1 also explains the ideal alignment of hajj financial management policies by BPKH in accordance with Maqāshid al-Sharī'ah. It is necessary, therefore, to manage hajj funds according to the objectives of maqāshid al-sharī'ah while maintaining integrity in the management process starting from the cost payment process among hajj pilgrims to the return and financial inclusion after hajj.<sup>395</sup> Based on the maqāshid al-sharī'ah concept, financial management of the hajj can be said to be successful if the aspects of dharuriyat needs are met, namely food, drink, and shelter. In the maqāshid al-sharī'ah perspective, management of the hajj funds is therefore not limited to the protection of religion (hifz al-diin) and property (hifz al-maal), but also to the sustainability of economic improvement and development. Apart from that, the value of the benefits of the funds can be used to improve infrastructure beneficial to the community. Good infrastructure will certainly have a positive impact on the national economy, social facilities, education, health, etc. This is what is expected from Indonesian BPKH's professional, responsible, and transparent management of hajj funds.<sup>396</sup>

#### Management of Hajj Funds; A Proposal for Indonesian Context

The hajj in general was regulated in Law No. 13/2008. It contains many verses about hajj service, including those related to the hajj funds. Article 1 verse 8 mentions that hajj cost or so called BIPIH is the cost to pay for getting hajj service. In practice, The Law was then completed by another one, namely a more specific Law regulating the management of hajj funds, the Hajj Financial Management Law No. 34/2014. Article 48 Paragraph 2 of the Law requires the management of hajj funds to accord with Sharia principles with aspects of security, prudence, useful value, and liquidity. Then, Article 49 Paragraph 1 stated that investments in hajj funds can be made with the approval of

<sup>395</sup> Atika Rukminastiti Masrifah and Achmad Firdaus, "The Framework of Maslahah Performa as Wealth Management System and Its Implication for Public Policy Objectives the Emergence of Waqf Bank: A Social Welfare Alternative in Indonesia," *Media Syariah* 18, no. 2 (2016): 1–36.

<sup>396</sup> Andre Zanij Deananda and Wirdyaningsih, "Alternative Optimization of Hajj Fund Using Sharia Shares" 413, no. 34 (2020): 34–40, <https://doi.org/10.2991/assehr.k.200306.176>.

the BPKH supervisory board. Apart from that, several other articles in the Law become the legal basis for BPKH in making investments.<sup>397</sup>

In this talk, there are two correlating terms that are often incorrectly interchanged, namely hajj funds and Ummah Endowment Fund (DAU). This is likely because, in Law Number 34 of 2014, hajj funds are defined as funds consisting of hajj cost or BIPIH, efficiency funds for organizing the hajj, DAU, as well as the value of benefits controlled by the state in the context of organizing the hajj and implementing activity programs for the benefit of Muslims. Meanwhile, the DAU, which is a part of hajj funds, is several funds that, before the enactment of the Law, were obtained from the development of the funds and/or remaining operational costs of hajj as well as other sources that are halal and non-binding following the provisions of statutory regulations such as zakat, waqf, and other funds source.

Furthermore, Law No. 34 of 2014 mentions that the government places hajj funds in Sharia financial institutions which are limited to a maximum of 50%, while other funds are directly invested in Sharia instruments which are considered safe and provide much better returns. The investment of hajj funds becomes a must considering long queues of departure so that the hajj cost in the bank is made for investment to make their value not eroded by inflation. Instead, it can provide benefits to the community through, among others, DAU schemes. DAU is typically used for social activities such as improving the quality of hajj services, education, da'wa, health, social, and economic, and religious infrastructure.<sup>398</sup>

Meanwhile, the hajj cost or BIPIH covers flight costs, accommodation costs in Mecca and Medina as well as living costs for hajj pilgrims. Each prospective hajj pilgrim had to deposit the initial BIPIH cost into the bank to get a portion or seat. Afterward, when it is time for departure, they will pay off according to the total BIPIH amount determined later according to the currency. The deposited fund from the initial payment of prospective hajj pilgrims, which has now reached 40 trillion rupiahs with an average interest of 1 trillion rupiahs managed by the Ministry of Religious Affairs, is used to subsidize the needs of hajj pilgrims who depart first. However, this practice has minimal legal support because, without the pilgrims' consent, the interest from their savings (through the initial payment they made) is potentially prone to irregularities and fraud as indicated by the Corruption Eradication Commission (KPK).<sup>399</sup>

Despite this, the use of deposited funds triggers various problems and/or requirements.<sup>400</sup>

First, the Ministry of Religious Affairs is publicly required to enforce accountability in managing the initial funds for registration of hajj candidates amounting to IDR 25,000,000.00 which is deposited from the time of getting the hajj portion in Siskohaj (Indonesian hajj application) until the time of departure. BPKH as the one that manages hajj funds needs to pay attention to accountability

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<sup>397</sup> Diseminasi BPKH (2018) Diseminasi Peran Pengawasan Keuangan Haji, In. [bpkh.go.id/](http://bpkh.go.id/).

<sup>398</sup> Maizul Imran and Rio Satria, "Dinamika Formulasi Akad Terhadap Pengelolaan Dana Haji di Indonesia," *Alhurriyah: Jurnal Hukum Islam (Alhurriyah Journal of Islamic Law)* 3, no. 2 (2018): 141.

<sup>399</sup> Pasal 1 (1) Keputusan Presiden Nomor 22 Tahun 2001 tentang Badan Pengelola Dana Abadi Umat (BP DAU)

<sup>400</sup> Aishath Muneeza et al., "A Comparative Study of Hajj Fund Management Institutions in Malaysia, Indonesia and Maldives," *International Journal of Management and Applied Research* 5, no. 3 (2018): 120–134.

regarding transparency and how to present financial reports of managed funds. Along with that, the government and BPKH must guarantee that the deposited money will be used to provide adequate services during the hajj worship while ensuring that future pilgrims' financial rights are fulfilled, namely regarding to departure for Hajj. For instance, if a future hajj pilgrim cancels the departure, BPKH is required to return the deposit.<sup>401</sup>

Second, the status of legal ownership of the initial funds for registration of hajj candidates is in question, whether it belongs to the future hajj pilgrims or the government as the hajj organizer or service provider. Therefore, it is important to make clear the legal ownership of the fund through transparent management and funding allocation considering that hajj deposit funds are deposited in the account of the Minister of Religion. This clear status will also affect the upcoming situation when something unexpected happens. If the registrar dies or there is a sharia obstacle that makes him/her fail to depart, then hajj deposit funds must be returned to prospective hajj pilgrims or their heirs.

Third, Law No. 13 of 2008 gives authority to carry out an efficiency fund, i.e. remaining funds from the operational cost of hajj service through the DAU which the amount is quite large. However, these funds cannot be used for investment or any other purpose because there are no government regulations regarding the management of DAU that cannot be changed since May 2005.<sup>402</sup> The policy to make efficiency funds in the hajj service contains legal gaps in both state and religious law. For the former, it is argued that no single clause was stated by the hajj pilgrims regarding the agreement on utilizing the efficiency fund. Thus, the efficiency policy is deemed to violate the law. Meanwhile, for the latter, even though the DAU aims for the benefit of people, the agreement and willingness of the whole hajj pilgrims is in question. It is very important to think about the pledge and agreement among the hajj pilgrims who willingly deposit their money to get the departure portion or seat. In dealing with the problems, namely those related to DAU and BPKH recommends the funds be returned for the interests and benefit of the ummah, as per the results of the Ijtima' Ulama of the All-Indonesian Fatwa Commission III MUI 1430 H/2009 AD in Padang Panjang, 24-26 January 2009.

Fourth, prospective hajj pilgrims might become banking business commodities with the offer of a hajj bailout system. In this case, prospective hajj pilgrims become the target to receive a loan facility numbering IDR 25,000,000.00 so that they can register to immediately receive hajj portions. In other words, the banking business seizes a good market opportunity to expand its customers by providing hajj funding to fulfill the wishes of prospective hajj pilgrims, so they don't get too far on the waiting list. <sup>403</sup>

In short, BPKH needs to manifest its function of carrying out planning, implementation, as well as accountability checking and reporting of hajj funds in compliance with sharia while prioritizing the principle of prudence, benefits-based, not seeking profits, transparency, and accountability.<sup>404</sup> The

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401 Undang-Undang Nomor 34 Tahun 2014 tentang Pengelolaan Keuangan Haji

402 <https://peraturan.bpk.go.id/Details/39044/uu-no-13-tahun-2005>

403 Eric Kurniawan, "Akuntabilitas Pengelolaan Dana Haji Republik Indonesia," *Jurnal Ilmiah Ekonomi Islam* 7, no. 3 (2021): 1449–56.

404 Acep R Jayaprawira and Abdussalam, "Analysis of the Implementation of the Islamic Contract Principle on Hajj Fund Management by Hajj Fund Management Agency (BPKH)," *KnE Social Sciences* (2019): 628–61, <https://doi.org/10.18502/kss.v3i26.5405>.



criteria for optimal, professional, and efficient management of hajj funds is the policy after the hajj season. If there is greater efficiency and benefit value, it must be returned to the hajj treasury belonging to the hajj pilgrims. Meanwhile, the transparent criteria of hajj funds management can be reached by involving the House of Representatives in the supervision process and BPK in the auditing stage.

Law Number 34 of 2014 concerning Hajj Financial Management urges the Hajj funds to be used for productive things and managed with high-risk mitigation. Therefore, the government can use these funds in halal sectors, namely sectors that are protected from *maisir*, *gharar*, and *usury*. In determining the investment sector, it needs approval from the Hajj financial placement supervisory board while the investment is transferred from the Hajj Treasury to the BPKH Treasury (Hajj Financial Management Agency). In fact, the government—through the Indonesian Ministry of Religious Affairs—claimed that it had managed the DAU successfully through, among others, SBSN (State Sharia Securities), including preparing documents for funding the Ministry of Religion's project through Project Sukuk (SBSN PBS), namely in the form of a hajj dormitory revitalization and development project that around IDR 200 billion. Moreover, The Minister of Finance and the Minister of Religious Affairs, on Friday, 22/11/2017 signed a revised Memorandum of Understanding (MoU) regarding the Placement of Hajj Funds in (SBSN).<sup>405</sup>

Following the mandate of the Law, according to Anggito Abimanyu, BPKH's investments can be made in sharia securities investment instruments, gold, direct investment, and other investments. The wide scope of this investment is a challenge for BPKH, especially to carry out an effective investment strategy to optimize the value of its benefits. Another challenge is how to anticipate the increase in the cost of performing the hajj pilgrimage. Therefore, BPKH needs to carry out an investment strategy that can meet the needs of these costs through returns from various investment instruments complying with Sharia principles, prudence, and liquidity without raising the hajj cost.<sup>406</sup> Investment risks are borne by the government and should not disturb the process of providing good facilities for the Hajj pilgrims. Meanwhile, profits obtained from investments must be used for improving hajj facilities at specific and public benefits in general. This can be in the form of financing the construction of schools and campuses within PTKIN with the SBSN scheme.

So far, there are three main instruments for placing initial deposits for BIPIH, namely in the form of national Sharia Securities (Sukuk/SBSN), government debt securities (SUN), and Sharia-based deposits. One of the ways how the government carries out the financial management of hajj funds is the issuance of State Sharia Securities (SBSN), in this case, the Indonesian Hajj Fund Sukuk (SDHI) product. This accords with the decision of Ulama Ijtima, Indonesian Fatwa Commission IV of 2012 which mentions that deposits in the waiting list for hajj departure may be allocated for productive things, namely providing profits through placement in Sharia Banking or invested in the form of sukuk <sup>407</sup>

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<sup>405</sup> Anggito Abimanyu, Naskah Akademik Rancangan Perubahan UU Nomor 13 tentang Penyelenggaraan Ibadah Haji, 6.

<sup>406</sup> Indin Rarasati, "Analisis Empiris Potensi Resiko Investasi Dana Haji Melalui Sukuk Dana Haji Indonesia," *Jurnal Ilmiah Ekonomi Islam* 8, no. 03 (2022): 2571–81.

<sup>407</sup> M. Rifka Maulana and Sokhikhatul Mawadah, "Management of Hajj Funds in Sukuk Investment from an Islamic Economic Perspective," *International Conference on Islamic Economic (ICIE) 2*, no. 1 (2023): 10–35, <https://doi.org/10.58223/icie.v2i1.204>.

In line with this, according to the Director of Higher Education and Science and Technology of Bappenas (The National Development Planning Agency) RI, Hadiat,<sup>408</sup> the SBSN project initiated by the Directorate General of Islamic Education of the Ministry of Religious Affairs which has succeeded in building educational infrastructure at PTKIN (State Islamic Religious College) for six years with a total budget of 7-8 trillion rupiahs should be appreciated. The implementation of educational infrastructure development through SBSN which began in 2015 until 2022 has been running well and PTKIN has benefited from that sector as well.

The importance of investment requires professionalism in its management, including its supervision process. Not only that, but the supervision also needs to be narrowed down, mainly by exploring how the benefits of the investment can be obtained both for the benefit of the institution and the pilgrims themselves. They are the basic principles of Islamic economics to support the distribution of resources and encourage investment, optimize beneficial investment, and encourage investment, optimize beneficial investment, and encourage social participation in the public interest.

#### Conclusion

The management of hajj funds in the perspective of maqāṣid al-sharī'ah has the aim of benefiting the hajj pilgrims not only to fulfill the obligation of the fifth pillar of Islam or maintaining religion (hifz ad-din), but also on other related aspects to ensure smooth running service of hajj. Therefore, it is suggested the deposited funds of BIPIH be managed transparently with the allocation made appropriate to the pilgrim's needs, both physical and spiritual. Other than that, in the Indonesian context, the funds are best invested in various sectors beneficial for the ummah with the minimum risk of loss so that it would not bear expenses for the hajj costs. The refinement of pledges on the use of investment or funds between pilgrims and the government is also a need. This research has limitations, especially in terms of methodology and limited analysis of formal aspects. Therefore, it is suggested that further research is needed to develop this research by examining the management of hajj funds in Muslim countries other than Indonesia, as well as further research using other variables to expand the study of hajj funds management.

#### Acknowledgment

Researchers' gratitude expressed to the Rector and Director of the Postgraduate Program of IAIN Sheikh Nurjati Cirebon, the Rector of King Abdulaziz University, Jeddah Makkah, Saudi Arabia, and the Rector of Ata Alma University Yogyakarta. They have supported and provided opportunities for researchers to improve their academics through research and scientific publications so that the results can be published. Researchers' gratitude was also expressed to the manager of the AI-IHKAM IAIN Madura Journal who has published the results of this research.

#### Bibliography

Abū Ḥāmid Muḥammad ibn Muḥammad Al-Ghazālī, *Al-Mustashfā Min Ilm Al Ushūl*, Beirut: Dar Ihyā at-Turāts al-Ārabi, n.d.

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<sup>408</sup> Enam Tahun SBSN, Bangun Gedung 57 PTKIN (kemenag.go.id)

Aziz, R M. "Hahslm Theory as Guidance of Straight Path in Management of Hajj and Finance." *KnE Social Sciences* 3, no. 8 (2018): 105. <https://doi.org/10.18502/kss.v3i8.2503>.

Bahrudin, Ahmad. "Implementasi Maqasid Al-Shari'ah Sebagai Solusi Problematika Sosial dan Kemasyarakatan Kontemporer." *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 17.1 (2017): 1-18.

Busriyanti, Busriyanti. "Maqasid al-Syari'ah dalam Penegakkan Hukum Lalu Lintas di Indonesia." *Al-Istinbath: Jurnal Hukum Islam* 6.1 May (2021): 79-84.

Deananda, Andre Zanij, and Wirdyaningsih. "Alternative Optimization of Hajj Fund Using Sharia Shares" 413, no. 34 (2020): 34-40. <https://doi.org/10.2991/assehr.k.200306.176>.

Dedi, Syahrial. "Perluasan Teori Maqashid Al-Syari'ah: Kaji Ulang Wacana Hifdz Al-'Ummah A. Djuzuli." *Al-Istinbath: Jurnal Hukum Islam* 1.1 June (2016): 45-62.

Fahmi, Annas Syam Rizal. "An Analysis of Investment for Hajj Funds from Islamic Law Perspective." *Al-Iktisab: Journal of Islamic Economic Law* 1, no. 2 (2017): 131. <https://doi.org/10.21111/al-iktisab.v1i2.2388>.

Evaluasi Pelaksanaan Haji 2023, *antaranews*, 6 Juli 2023, <https://www.antaranews.com/infografik/3621255/evaluasi-pelaksanaan-haji-2023>, diakses 6 Juli 2023.

Fasa, Muhammad Iqbal, Adib Fachri, Ghina Ulfah Saefurrohman, Ahmad Hazas Syarif, and Suharto Suharto. "Economic Protection Toward Financial Management Hajj Funds: Indonesian Case." *Ad-Deenar: Jurnal Ekonomi dan Bisnis Islam* 4, no. 02 (2020): 163. <https://doi.org/10.30868/ad.v4i02.953>.

Hamzani, Achmad Irwan, Siswanto Siswanto, and Havis Aravik. "Legal Protection for Hajj Pilgrims Through Regional Regulation." *Mazahib* 17.2 (2018): 61-88.

Hasbi, M Zidny Nafi, Makhrus Munajat, and Abdul Qoyum. "A Conceptual Framework of The Islamic Human Development Index (I-HDI) and Its Relationship with Maqāṣid Al - Shari'ah." *Amwaluna: Jurnal Ekonomi dan Keuangan Syariah* 7, no. 2 (2023). <https://peraturan.bpk.go.id/Details/39044/uu-no-13-tahun-2005>

Huda, Qomarul, and Ilham Dwitama Haeba. "Hajj, Istita'ah, and Waiting List Regulation in Indonesia." *Al-'Adalah* 18, no. 2 (2021): 193-212.

Ichwan, Moch Nur. "Governing Hajj: Politics of Islamic Pilgrimage Services in Indonesia Prior to Reformasi Era." *Al-Jami'ah: Journal of Islamic Studies* 46, no. 1 (2008): 125-51. <https://doi.org/10.14421/ajis.2008.461.125-151>.

Imran, Maizul, and Rio Satria. "Dinamika Formulasi Akad terhadap Pengelolaan Dana Haji di Indonesia." *ALHURRIYAH: Jurnal Hukum Islam (Alhurriyah Journal of Islamic Law)* 3, no. 2 (2018): 141. <https://doi.org/10.30983/alhurriyah.v3i2.755>.

Jayaprawira, Acep R, and Abdussalam. "Analysis of the Implementation of the Islamic Contract Principle on Hajj Fund Management by Hajj Fund Management Agency (BPKH)." *KnE Social Sciences* 2019 (2019): 628-61. <https://doi.org/10.18502/kss.v3i26.5405>.

Jumali, Endang. "Management of Hajj Funds in Indonesia." *Journal of Legal, Ethical and Regulatory Issues* 21, no. 3 (2018): 1-9.

Kisworo, Budi. "Ibadah Haji Ditinjau dari Berbagai Aspek." *Al-Istinbath: Jurnal Hukum Islam* 2.1 June (2017): 75-98.

Kurniadi, Dece, Jamal Wiwoho, and Hudi Asrori. "Hajj Fund Management in Perspective of the Financial Theory and Fiqh." *International Conference on Globalization of Law and Local Wisdom* 358, no. 34 (2019): 225-27. <https://doi.org/10.2991/icglow-19.2019.57>.

Kurniawan, Eric. "Akuntabilitas Pengelolaan Dana Haji Republik Indonesia." *Jurnal Ilmiah Ekonomi Islam* 7, no. 3 (2021): 1449-56.

Mardhatillah, Masyithah. "Specific Treatment of Elderly Pilgrims on Hajj According to Hadith; the Approach of Mukhtalif Ahadis." *Al-Ihkam: Jurnal Hukum dan Pranata Sosial* 14, no. 1 (2019): 99-123. <https://doi.org/10.19105/al-Ihkam.v14i1.2290>.

Masrifah, Atika Rukminastiti, and Achmad Firdaus. "The Framework of Maslahah Performa as Wealth Management System and Its Implication for Public Policy Objectives the Emergence of Waqf Bank: A Social Welfare Alternative in Indonesia." *Media Syariah* 18, no. 2 (2016): 1-36.

Maulana, M. Rifka, and Sokhikhatul Mawadah. "Management of Hajj Funds in Sukuk Investment from an Islamic Economic Perspective." *International Conference on Islamic Economic (ICIE)* 2, no. 1 (2023): 10-35. <https://doi.org/10.58223/icie.v2i1.204>.

Maulid, Ilham, and Amirsyah Amirsyah. "Analysis of the Hajj Fund Management Based on the Fatwa of the National Sharia Council (DSN) Number 122 Concerning the Management of BPIH Fund and Special BPIH Based on Sharia Principles." *ADI Journal on Recent Innovation (AJRI)* 3, no. 1 (2021): 21-35. <https://doi.org/10.34306/ajri.v3i1.490>.

Mira Munira, and Shinta Budi Astuti. "Indonesian Hajj Fund Management: An Overview." *Asian Journal of Accounting and Finance* 1, no. 1 (2019): 1-9.

Muheramtohad, Singgih. "The Use of Hajj Fund for Investment Purpose: A Maqashid Sharia Approach." *Journal of Islamic Economics, Management, and Business (JIEMB)* 1, no. 1 (2020): 99-116. <https://doi.org/10.21580/jiemb.2019.1.1.3740>.

Muneeza, Aishath, Amira Sudeen, Atiqoh Nasution, and Ratih Nurmalasari. "A Comparative Study of Hajj Fund Management Institutions in Malaysia, Indonesia and Maldives." *International Journal of Management and Applied Research* 5, no. 3 (2018): 120-34. <https://doi.org/10.18646/2056.53.18-009>.

Nouri Kouchi, Amin, Mansour Zarra Nezhad, and Pouyan Kiani. "A Study of the Relationship between the Growth in the Number of Hajj Pilgrims and Economic Growth in Saudi Arabia." *Journal of Hospitality and Tourism Management* 36 (2018): 103-7. <https://doi.org/10.1016/j.jhtm.2016.01.008>.

Primadhany, Erry Fitrya. "Tinjauan terhadap Tanggung Jawab Badan Pengelola Keuangan Haji (BPKH) dalam Melakukan Penempatan dan/atau Investasi Keuangan Haji." *Jurisdictie* 8, no. 2 (2018): 125. <https://doi.org/10.18860/j.v8i2.4447>.

Rarasati, Indin. "Analisis Empiris Potensi Resiko Investasi Dana Haji Melalui Sukuk Dana Haji Indonesia." *Jurnal Ilmiah Ekonomi Islam* 8, no. 03 (2022): 2571-81.

Rosyid, Moh. "Dinamika Haji Indonesia Sejak Era Kolonial dan Problematika Calon Haji Ilegal." *Jurnal Wacana Hukum Islam dan Kemanusiaan* 17.2 (2017): 241-259.

Rustika, Rustika, Ratih Oemiati, Al Asyary, and Tety Rachmawati. "An Evaluation of Health Policy Implementation for Hajj Pilgrims in Indonesia." *Journal of Epidemiology and Global Health* 10, no. 4 (2020): 263–68. <https://doi.org/10.2991/jegh.k.200411.001>.

Syaikhu, Syaikhu. "Istitha'ah dalam Haji (Studi Tematik Tafsir Ahkam Surah Ali Imran Ayat 97)." *El-Mashlahah* 10.1 (2020): 15-25.

Zakiruddin, Muhammad Aziz, Kamsi, and Ahmad Bahiej. "Siyasah Syar'iyah Paradigm of Hajj Financial Management Regulation in Indonesia." *Al-Istinbath: Jurnal Hukum Islam* 7, no. 2 (2022): 531–52. <https://doi.org/10.29240/jhi.v7i2.5310>.

Zainal, Zainal. "Regulasi Haji Indonesia dalam Tinjauan Sejarah." *JURIS (Jurnal Ilmiah Syariah)* 11.2 (2018): 96-113.

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al-Ihkam: Jurnal Hukum dan Pranata Sosial, 18 (2), 2023: 544-567  
ISSN: 1907-591X, E-ISSN: 2442-9084  
DOI: <http://doi.org/10.19105/al-ihkam.v18i2.7268>

### Hajj Funds Management Based on *Maqāṣid Al-Sharī'ah*; A Proposal for Indonesian Context

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Article history: Received: November 04, 2022, Accepted: January 27, 2023, Published: December 30, 2023

#### Abstract:

Indonesian *hajj* funds (BIPH) have the potential to support the implementation of *hajj* worship in an effective, efficient, transparent, and accountable manner while complying with Islamic law. However, it is said that the management turned out to be ineffective and unprofessional. This research aims to examine the management of *hajj* funds in detail using *maqāṣid al-sharī'ah* perspective to propose a breakthrough for its better management. It uses a normative juridical method through data

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**al-Ihkam:** Jurnal Hukum dan Pranata Sosial, 18 (2), 2023: 544-567  
ISSN: 1907-591X, E-ISSN: 2442-3084  
DOI: <http://doi.org/10.19105/al-ihkam.v18i2.7268>

## ***Hajj Funds Management Based on Maqāṣid Al-Sharī'ah; A Proposal for Indonesian Context***

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Article history: Received: November 04, 2022, Accepted: January 27, 2023, Published:  
December 30, 2023

### **Abstract:**

Indonesian *hajj* funds (BIPH) have the potential to support the implementation of *hajj* worship in an effective, efficient, transparent, and accountable manner while complying with Islamic law. However, it is said that the management turned out to be ineffective and unprofessional. This research aims to examine the management of *hajj* funds in detail using *maqāṣid al-sharī'ah* perspective to propose a breakthrough for its better management. It uses a normative juridical method through data

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presentation and explanation using an interdisciplinary perspective on *maqāṣid al-shari'ah*. The data comes from journal articles, scientific documents, and statistical data. The research results show that in *maqāṣid al-shari'ah* perspective, namely an instrument to create a balance of the Muslim way of life with Islamic legal values in social, political, economic, spiritual, and universal human aspects, the *ḥifẓ māl* dimension urges using *hajj* funds for the benefit of society. Therefore, the *Hajj* Financial Management Agency (BPKH) should collaborate with the Ministry of Religious Affairs and other related stakeholders to manage *Hajj* funds optimally and efficiently while increasing trust and reducing negative public perceptions. Policies and regulations by the government are made in such a way that it can ease *hajj* pilgrims to carry out the worship comfortably, safely, smoothly, and spiritually enriching.

**Keywords:**

*Hajj* Funds Management; *Maqāṣid Al-Shari'ah*; Indonesia

**Introduction**

As the world's largest Muslim country, Indonesia contributes a lot of *Hajj* pilgrims every year. This is partly supported by its constitution which guarantees Indonesians to worship following their respective religions and beliefs. In addition to formulating and enforcing the constitution, the government is also in charge of planning and organizing the *hajj*. They are supposed to guide, give service, and protect Indonesian citizens in a safe, comfortable, orderly, and compliance with the provisions of the *shari'ah*.<sup>1</sup>

In addition to the problem of organizing the pilgrimage, another issue is the relationship between the country of prospective pilgrims and the country of destination, namely Saudi Arabia. Indonesia receives many *hajj* quotas. In 2023, Indonesia got the largest *hajj* quota in the world. It is recorded that Indonesia's *hajj* quota reached 221,000 pilgrims, consisting of 203,320 quotas for regular *hajj* pilgrims and 17,680 quotas for special *hajj* pilgrims. Even if there are a lot of quotas in the current year, they aren't adequate to fulfill the

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<sup>1</sup> Endang Jumali, "Management of Hajj Funds in Indonesia," *Journal of Legal, Ethical and Regulatory Issues* 21, no. 3 (2018): 1-9.



demand as indicated by the number of applicants which rises annually resulting in the long waiting list of *hajj*.<sup>2</sup>

The waiting list for *Hajj* departure is determined by the time of registration when paying the *Hajj* Travel Fee or so-called BIPIH (Cost of Organizing the *Hajj* Pilgrimage).<sup>3</sup> This BIPIH is deposited by prospective pilgrims for registration fees to receive a portion of the departure. The Law No. 13 of 2008 mentions that the management is only limited to its optimal use and development in the form of bank instruments whose security is truly guaranteed. Thus, the policies made by the government enabled the funds to be used for the general welfare of the community in line with the objectives of the founding fathers of the Republic of Indonesia.<sup>4</sup> However, academicians and practitioners consider that the existing legal basis was not sufficient, so a separate law was needed that regulates the management of *hajj* funds at a more specific scope.

According to Law no. 34/2014 on *Hajj* Funds Management, the term *hajj* funds (BIPH) consists of BIPIH deposit funds; efficiency funds; DAU (*Endowment Fund of The Ummah*) as well as the value of benefits controlled by the state in the context of organizing the *hajj* and implementing program activities for the benefit of Muslims.<sup>5</sup> Due to the limited *hajj* quota each year, there will certainly be a build-up of *hajj* funds from a large number of applicants on the waiting list. This certainly requires a more well-organized management of the funds. It was manifested by the establishment of a special financial institution with the authority to manage the *hajj* funds called the Hajj Financial Management Agency (BPKH) on 26 July 2017.<sup>6</sup> It is a public legal entity that is independent and responsible to the President through

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<sup>2</sup> Annas Syam Rizal Fahmi, "An Analysis of Investment for Hajj Funds from Islamic Law Perspective," *Al-Iktisab: Journal of Islamic Economic Law* 1, no. 2 (2017): 131, <https://doi.org/10.21111/al-iktisab.v1i2.2388>.

<sup>3</sup> Indonesia (1), *Undang-Undang tentang Penyelenggaraan Ibadah Haji dan Umroh*, Pasal 5 Ayat (1).

<sup>4</sup> Singgih Muheramtohad, "The Use of Hajj Fund for Investment Purpose: A Maqashid Sharia Approach," *Journal of Islamic Economics, Management, and Business (JIEMB)* 1, no. 1 (2020): 99-116, <https://doi.org/10.21580/jiemb.2019.1.1.3740>.

<sup>5</sup> Indonesia (2), *Undang-Undang tentang Pengelolaan Keuangan Haji*, UU Nomor 34 Tahun 2014, LN. Nomor 5605 Tahun 2014, Pasal 1 Ayat (2).

<sup>6</sup> Erry Fitrya Primadhany, "Tinjauan terhadap Tanggung Jawab Badan Pengelola Keuangan Haji (BPKH) dalam Melakukan Penempatan dan/atau Investasi Keuangan Haji," *Jurisdictie* 8, no. 2 (2018): 125.

the Minister of Religious Affairs. The structure of BPKH consists of an executive body and a supervisory board responsible for managing the revenue, development, expenditure, and accountability of the *Hajj* funds.

The management of *hajj* funds following their objectives is important to discuss considering the large number of *hajj* funds managed by BPKH so as not to deviate from the initial goal of financing the pilgrimage, let alone from various perspectives embedded in *maqāṣid al-sharī'ah*. This research would therefore discuss it from the perspective of *mâqasid* as a philosophy of Islamic law with its continuously developed concept concerning various basic aspects of people's common needs in the context of Indonesia.

Recently, there has been a paradigm shift from classical *maqasid sharia* theory to the contemporary one. The change lies in the main benefit as the target to manifest, namely the protection and preservation aspects because the contemporary *maqasid sharia* is more about development and rights. To develop the concept, Jasser Auda proposes human development as the main target. He developed the current conception of *maqasid* as an evolution of the old theory which in the context of *hifdz mal* prioritized social concerns; paying attention to economic development and improvement; and advancing human welfare while eliminating the gap between the rich and the poor.

Previous research discussing the management of *hajj* in Indonesia from several aspects, factors, and indicators still requires further development. *Hajj* in terms of political factors, among others, was discussed by Ichwan. He found that the complexity of *hajj* and *umrah* services is not so much caused by religious aspects, but rather by political aspects and economic motives.<sup>7</sup> From the aspect of economy, Kouchi et al.<sup>8</sup> studied the relationship between the growth in the number of *Hajj* pilgrims and economic growth in Saudi Arabia. The increase in the number of people performing *hajj* has a major impact on Saudi Arabia's economic progress. The annual *hajj* and

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<sup>7</sup> Moch Nur Ichwan, "Governing Hajj: Politics of Islamic Pilgrimage Services in Indonesia Prior to Reformasi Era," *Al-Jami'ah: Journal of Islamic Studies* 46, no. 1 (2008): 125-51, <https://doi.org/10.14421/ajis.2008.461.125-151>.

<sup>8</sup> Amin Nouri Kouchi, Mansour Zarra Nezhad, and Pouyan Kiani, "A Study of the Relationship between the Growth in the Number of Hajj Pilgrims and Economic Growth in Saudi Arabia," *Journal of Hospitality and Tourism Management* 36 (2018): 103-7, <https://doi.org/10.1016/j.jhtm.2016.01.008>.

*umrah* could play an increasingly important role in economic growth and development. In a broad general sense, religious tourism plays an important role as a foreign exchange earner, job creator, and tool for improving the balance of payments. Its contribution to economic prosperity, if planned well, can be greater than that of any other known economic force.

Another study by Kurniadi, et.al<sup>9</sup> who examined the management of *hajj* funds from an economic theory found that BPKH can function as a representative of the government in the management and development of *hajj* funds. Aziz,<sup>10</sup> meanwhile, examines the Hahslm theory as a guide to the straight path in managing the *hajj* funds. The large number of prospective pilgrims doing registration compared to the available quota means that in normal circumstances, a pilgrim would have to wait an average of 19 years. If he/she has paid a down payment of IDR 25 million, it results in a large accumulation of pilgrims' funds. So far, it is placed in bank deposits which are only guaranteed IDR 2 billion by the deposit insurance agency (LPS). It would be a shame, for him, to find that quite a large of *hajj* funds were managed without playing a significant role in the productive sector.

Based on previous research, it is clear that most researchers still focus on the issue of *hajj* in politics, economy, and religious aspects. There are still few who concentrate on studying the management of *hajj* funds in Indonesia through the newer concept of *maqāṣid al-sharī'ah*. Therefore, this current research examines the issue so that it can propose a breakthrough for better *hajj* funds management based on *maqāṣid al-sharī'ah*. We hope the proposal will help for better *hajj* funds management in the Indonesian context by firstly portraying Indonesian *hajj* management in general, the *hajj* funds management according to *maqāṣid al-sharī'ah*, and a proposal for better *hajj* funds management in the Indonesian context.

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<sup>9</sup> Dece Kurniadi, Jamal Wiwoho, and Hudi Asrori, "Hajj Fund Management in Perspective of the Financial Theory and Fiqh," *International Conference on Globalization of Law and Local Wisdom* 358, no. 34 (2019): 225-27, <https://doi.org/10.2991/icglow-19.2019.57>.

<sup>10</sup> R M Aziz, "Hahslm Theory as Guidance of Straight Path in Management of Hajj and Finance," *KnE Social Sciences* 3, no. 8 (2018): 105, <https://doi.org/10.18502/kss.v3i8.2503>.

## **Method**

This research uses a qualitative approach with normative juridical methods. Data sources include primary and secondary ones. Primary data is obtained directly from the source, namely journal articles, books, magazines, and other articles that have relevance to the problems and objects of research, while secondary is indirectly from the object under study.<sup>11</sup> The data analysis used is descriptive-qualitative so that the problems and facts are described descriptively and then analyzed to obtain a complete picture.<sup>12</sup>

Data related to the management of *hajj* funds are then processed through the steps of managing and organizing data, reading and recording emerging ideas, describing and classifying codes, developing and accessing interpretations, and then representing and visualizing data. This spiral analysis is equipped with content analysis, a comparative and critical analysis of *hajj* laws and regulations using the perspective of Islamic legal theory. The *maqasid al-syariah* theory in this research is used to analyze the management of *hajj* funds related to the *hifz māl* aspect so that researchers will be able to draw precise and profound conclusions.

## **Result and Discussion**

### **An Overview of Indonesian Existing *Hajj* Management**

The organization of *hajj* in Indonesia has a long history of policy or regulatory aspects. Before the founding of the Republic of Indonesia, Muslims had performed pilgrimages to the holy land of Saudi Arabia. In around 1267 when the Islamic empire existed in the archipelago, there were no special regulations regarding the *hajj*. Only after the Dutch colonial government came to power did the pilgrimage have regulations in the form of written positive law.<sup>13</sup>

During the colonial period, the Dutch colonial government was worried about people going to the *hajj*. The reason is that when they were in Mecca, there was no longer any caste, race, or position-based discrimination, so it was worrying that the pilgrims realized

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<sup>11</sup> Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif; Suatu Tinjauan Singkat*, (Jakarta: Raja Grafindo Persada, 2015), 33.

<sup>12</sup> Satori, D. A., & Komariah, A. (2009). *Metodologi Penelitian Kualitatif*. Bandung: Alfabeta, 22.

<sup>13</sup> Aziz, "Hahslm Theory as Guidance of Straight Path in Management of Hajj and Finance."

that everyone had the same rights, and this could trigger a rebellion. The Dutch were furthermore concerned about the political impact of the *hajj* because people returning from the *hajj* were accepted as holy people in Java. For this reason, it is believed that *hajj* pilgrims are more listened to by ordinary people, so the Dutch government made strict regulations relating to the *hajj*.<sup>14</sup>

Since the founding of Indonesia as a republic, efforts to deal with issues regarding the organization of the *hajj* have been formulated. The Ministry of Religious Affairs has a central role as a regulator of the *hajj* and the management of its funds. Although the government is the one in charge of organizing the *hajj* service, in practice, it is divided into two, namely the government and private companies that have received permission from the Minister of Religion so called KBIH (Guiding Group of *Hajj* Worship). However, the latter still engages the Ministry of Religious Affairs, particularly in monitoring and guiding the duties to ensure they comply with the stipulated provisions. Historically, the service of the *hajj* pilgrimage in Indonesia was handled directly by the community or the private sector, then during the reign of President Soeharto, the responsibility was taken over by the government after cases of neglect by private parties occurred.<sup>15</sup>

BPHI, The Indonesian Hajj Management Agency, is the institution responsible for managing the *hajj* in Indonesia. It is tasked with providing the services and facilities needed by *hajj* pilgrims, mainly when in Saudi Arabia, ranging from accommodation, transportation, food, and health, to protection and security. In recent years, it has often been in the public spotlight due to various problems<sup>16</sup> that occur during the *hajj* process as reported in the annual report of the *hajj* service. Based on the Hajj Organizing Evaluation Report, it was found that problems that arose during the Hajj pilgrimage are as follows:

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<sup>14</sup> Rustika Rustika et al., "An Evaluation of Health Policy Implementation for Hajj Pilgrims in Indonesia," *Journal of Epidemiology and Global Health* 10, no. 4 (2020): 263–68, <https://doi.org/10.2991/jegh.k.200411.001>.

<sup>15</sup> Muhammad Iqbal Fasa et al., "Economic Protection Toward Financial Management Hajj Funds: Indonesian Case," *Ad-Deenar: Jurnal Ekonomi dan Bisnis Islam* 4, no. 02 (2020): 163, <https://doi.org/10.30868/ad.v4i02.953>.

<sup>16</sup> Kementerian Agama Republik Indonesia, Laporan Evaluasi Penyelenggaraan Ibadah Haji, 2023

*First* is the problem of the long waiting period before the departure time. Future Indonesian *Hajj* pilgrims must wait for approximately 20-25 years to perform the *hajj* worship from the time they pay the BIPIH. This is due to the limited quota provided by the Saudi Arabian government on the one hand and the high number of registrations among the future pilgrims on another hand.

*The second* is health problems. While in Saudi Arabia, many *hajj* pilgrims experience health problems, such as dehydration, heatstroke, and respiratory infections. This is mainly caused by very hot weather as well as pilgrims' old age<sup>17</sup> and lack of knowledge of preparation in dealing with the situation. Apart from that, health problems also occur due to the lack of adequate health facilities, let alone that of Indonesian authorities. Meanwhile, it is reported that the catering distribution service is sometimes not on time along with a monotonous menu that cannot meet the needs of the elderly congregation. There is also a report about the unavailability of food before departure to *Arafat* and after leaving *Mina*.

*Third* is accommodation problems. While in Saudi Arabia, *hajj* pilgrims stay in dormitories provided by the government. However, many complain that the facility is inadequate, such as having poor hygiene and lack of adequate water, electricity, and sanitation facilities, as well as exceeding capacities rooms. This causes *Hajj* pilgrims to feel uncomfortable during their stay, thereby disrupting the smooth running of their pilgrimage. Out of the dormitory, pilgrims also stayed in tents during the *Arafah*, *Muzdalifah*, and *Mina* in which there were over-capacity tents along with limited bathrooms causing long queues with inadequate facilities for elderly pilgrims.

*Fourth* is transportation problems. Transportation is very important during the *hajj*. However, many pilgrims have trouble getting adequate transportation. Apart from that, the transportation schedules are quite irregular causing pilgrims to wait a long time to reach their destination, such as delays in buses picking up Indonesian

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<sup>17</sup>Masyithah Mardhatillah, "Specific Treatment of Elderly Pilgrims on Hajj According to Hadith; the Approach of Mukhtalif Ahadis," *Al-Ihkam: Jurnal Hukum dan Pranata Sosial* 14, no. 1 (2019): 99-123, <https://doi.org/10.19105/al-lhkam.v14i1.2290>.

pilgrims while in *Muzdalifah*.<sup>18</sup> Moreover, transportation services are not yet able to reach all accommodations.

*Fifth* is service problems. The services provided by BPHI are also often criticized by the public. Many pilgrims complained about the lack of coordination between BPHI officers and officials in Saudi Arabia, causing pilgrims to experience difficulties in getting adequate services. Apart from that, there were also complaints regarding the attitude of BPHI officers who were less friendly and less responsive to complaints and problems experienced by *hajj* pilgrims.

Among the six problems, the *Muzdalifah* tragedy has attracted the most public attention. The *Muzdalifah* tragedy was the moment when thousands of Indonesian *hajj* pilgrims piled up and could not be transported for more than 10 hours in hot conditions above 35 degrees Celsius. This condition resulted in many congregants experiencing dehydration and even fainting. At that time, on June 28, 2023, thousands of pilgrims from Indonesia were stuck in the *Muzdalifah* area because the *Muzdalifah-Mina-Muzdalifah* shuttle bus was stuck in the Mina area due to traffic jams.

To overcome these problems, BPHI needs to make various efforts, such as improving coordination with the Saudi Arabian government and advancing facilities. The Indonesian hospitals located in Saudi are among the most important ones in addition to accommodation of pilgrims like dormitory and transportation services. Since Indonesia does not have any assets for accommodation, a selective search of the chosen one must be ensured. Professionalism and responsiveness to cope with complaints from *hajj* pilgrims also deserve attention, let alone in dealing with or anticipating any unexpected situation. Security and safety aspects of pilgrims should be inevitably the main concern. Every year, some incidents occur during the pilgrimage season, such as transportation accidents, riots in holy places, and so on.<sup>19</sup>

In short, it is necessary to evaluate the existing *hajj* management system and service, so that better and more effective solutions can be arranged in overcoming various typical problems.

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<sup>18</sup> J. Edward Taylor, M. R. Habib, And M. A. Mustafa, "Transparency, Public Sector Performance, And the Quality of Governance: An Empirical Analysis," *World Development* 42, no. 11 (2014): 2029.

<sup>19</sup> Qomarul Huda and Ilham Dwitama Haeba, "Hajj, Istita'ah, and Waiting List Regulation in Indonesia," *Al-'Adalah* 18, no. 2 (2021): 193-212.

This includes things ranging from enlarging annual quotas to ensuring every detail is well set from the departure to arrival times. By making these various efforts, it is hoped that the *hajj* worship for Indonesian pilgrims can run better and more smoothly while giving them a positive spiritual experience. This public satisfaction will lead to public trust along with a decrease in public criticism.

One of the potential instruments to overcome those disadvantages in the *hajj* service and organization comes from the BIPIH deposit that the future pilgrims pay for getting the portion or seats. Under good and appropriate management, it likely affects in positive ways for development of both *hajj* service and Indonesian/Muslim life in general. The upcoming part will reveal the proposal for the use and allocation of the fund according to *maqashid al-shari'ah* as the philosophy of Islamic law.

### **Management of Indonesian Hajj Funds on Maqāṣid Al-Sharī'ah Perspective**

*Hajj* funds are all types of wealth that can be valued in money, whether in the form of cash or goods resulting from pilgrims' desk-posted payment (BIPIH) and other related sources. It is the government's right and obligation to manage them well. BPKH has a precautionary principle in managing *hajj* funds, namely by carrying it out in a beneficial, transparent, and accountable manner while considering financial risks. The principle of beneficial means that *hajj* financial management must provide benefits for pilgrims and Muslims. The principle of transparency indicates open and honest financial management by providing information to the public regarding its allocation and implementation. Meanwhile, the principle of accountability is the accurate management of *hajj* funds that enable the community, especially the pilgrims, to account for them.<sup>20</sup>

The service of *hajj* provides a stimulus for the economy both in the micro and macro scope. This became the basis for the Indonesian government in managing the *hajj* funds reaching trillions of rupiah in the form of investment. For instance, according to BPKH records, if

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<sup>20</sup> Ilham Maulid and Amirsyah Amirsyah, "Analysis of the Hajj Fund Management Based on the Fatwa of the National Sharia Council (DSN) Number 122 Concerning the Management of BPIH Fund and Special BPIH Based on Sharia Principles," *ADI Journal on Recent Innovation (AJRI)* 3, no. 1 (2021): 21-35, <https://doi.org/10.34306/ajri.v3i1.490>.



154,455 Indonesian pilgrims were sent out in 2015 and each of them paid IDR 20 million, the total amount of money collected would have been IDR 3.09 trillion. In the meantime, it is conceivable that the amount of money that BPKH can manage could approach hundreds of trillions if the number of pilgrims on the waiting list surpasses one million, diverting IDR 20 million. The government potentially makes this calculation very profitably by using gold coins, direct investment, SBSN (State Sharia Securities), or other Sharia-compliant investment funds.<sup>21</sup>

In line with it, *maqāṣid al-sharī'ah* as a framework for developing theories, models, policies, and reform programs in various aspects of life, is deemed relevant to use as a perspective in managing the *hajj* funds. In this case, moreover, the *hajj* is also a *dharuriyyat* (primary need) that the government must facilitate worship which is also included in the pillars of Islam and therefore, in the perspective of *maqāṣid*, is a part of maintaining religion.<sup>22</sup> According to *maqāṣid al-sharī'ah*, *maṣlahah* (benefit) should be the target to realize through Islamic law, as is the case in the financial management of the *hajj* considering that *hajj* is one of the devotional rituals that include a great deal of *maqāṣid*.<sup>23</sup>

The highest level of *maṣlahah* is called *maqāṣid al-khamsah* (the five main purposes) due to its *ḍarūriyyāt* (urgency) aspect. The maintenance of religion shows that the role of religion is very important. The maintenance of soul, mind, and offspring, meanwhile, relates to individual humans. All three are related to human life needs, namely physical, psychological, educational, health, and survival needs. Asset maintenance, in this talk, is every action carried out in asset management.<sup>24</sup> According to Zakiruddin, *et.al.*,<sup>25</sup> one of

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<sup>21</sup> Indonesia (7), *Undang-Undang tentang Surat Berharga Syariah Negara*, UU Nomor 19 Tahun 2008, LN. Nomor 70 Tahun 2008, TLN. Nomor 4852 Tahun 2008, Pasal 1 Ayat (1)

<sup>22</sup> Mira Munira and Shinta Budi Astuti, "Indonesian Hajj Fund Management: An Overview," *Asian Journal of Accounting and Finance* 1, no. 1 (2019): 1-9.

<sup>23</sup> Auda, J. (2008). *Maqāṣid al-Shariah: A Beginner's Guide* (Vol. 14). International Institute of Islamic Thought (IIIT).

<sup>24</sup> Abū Ḥamid Muḥammad ibn Muḥammad Al-Ghazālī, *Al-Mustashfā Min Ilm Al Ushūl* (Beirut: Dar Ihyā at-Turāts al-Ārabi, n.d.)

<sup>25</sup> Muhammad Aziz Zakiruddin, Kamsi, and Ahmad Bahiej, "Siyasah Syar'iyah Paradigm of Hajj Financial Management Regulation in Indonesia," *Al-*

the developments in the *maqāṣid al-sharī'ah* paradigm is *hifdzul maal* which is not only about protecting material or assets but also development toward *at-tanmiyyatul iqtishadiyah* (economic growth) based on *maqaashid al-khoshoh* (special benefit) in maintaining the sustainability of people's assets. In this context, *hajj* funds must be safeguarded for the sake of benefit, so that the investment is not only oriented towards the profit aspect but also the welfare (*falah*) as an ideal situation in the development of Islamic economics. Therefore, in this context, one of the developments of *maqāṣid al-khosoh* is *hifdzu al-maal attanmiyyah al iqtishadiyah*. It refers to efforts to protect assets and use them to improve the economy with the aim of providing welfare to society and helping the needs of people who cannot afford it. This accentuates the necessity to maintain the ethical aspect in the whole related process so that it can be in accordance with the objectives of the Shari'a.<sup>26</sup>

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*Istinbath: Jurnal Hukum Islam* 7, no. 2 (2022): 531–52,  
<https://doi.org/10.29240/jhi.v7i2.5310>.

<sup>26</sup> M Zidny Nafi Hasbi, Makhrus Munajat, and Abdul Qoyum, "Amwaluna : Jurnal Ekonomi dan Keuangan Syariah A Conceptual Framework of The Islamic Human Development Index (I-HDI) and Its Relationship with Maqāṣid Al- Sharī'ah," no. 2019 (2023).

**Table 1.** Relevance of Maqāṣid Al-Sharī'ah to Ideal Hajj Financial Management for Pilgrims Need

No	Dimensions	Target	Technical Steps
1	<i>Hifz al-Din</i>	Pilgrims get their spirituality increased through the <i>hajj</i> experience through the mental and material support from the organizer.	Allocating funds to facilitate the fulfillment of <i>hajj</i> conditions, mainly challenging rituals like in Arafah, Muzdalifah, and Mina, while maintaining the prosperity of the <i>hajj</i> pilgrims. Developing more intensive pre-hajj departure Organizing post-hajj guidance Managing <i>hajj</i> fund professionally, transparently, accountably, productively, and in accordance with <i>sharia</i> principles
2	<i>Hifz al-Nafs</i>	The stable health of pilgrims and safety from any diseases	Allocating funds for collaboration with the Ministry of Health in intensifying practical health education for specific purposes ( <i>hajj</i> ) so that pilgrims are better prepared physically and mentally Allocating funds to develop quality of <i>hajj</i> health facilities and instruments, mainly when the weather changes in Saudi.
3	<i>Hifz 'Aql</i>	Pilgrims get theoretically and practically adequate knowledge about performing the <i>hajj</i> worship.	Allocating funds for renewing curricula and material for pre-hajj departure training as well as building the <i>hajj</i> officers' capability
4	<i>Hifz Nasl</i>	The fulfillment of the need for special segments of pilgrims, such as the elderly, children, disabled, and those with special needs	Allocating funds to provide supporting facilities for those with special needs according to the type of worship such as <i>mabit</i> (overnight stay) in Mina and <i>tawaf</i> (Circumambulate the Kaaba).
5	<i>Hifz Māl</i>	The allocation and investment of <i>hajj</i> funds in <i>halal</i> sectors free from <i>gharar</i> , <i>maysir</i> , <i>tadlis</i> , <i>ihtikar</i> , and usury is unsure.	The agreement between <i>hajj</i> pilgrims and BPKH is carried out with the safekeeping of money replacing the <i>hajj</i> bailout funds funded by loans without compensation.

Table 1 outlines the ideal situation of *hajj* funds management using *maqashid syariah* as the approach for the allocation of *hajj* pilgrims' needs. This furthermore implies that management of *hajj* funds must be carried out by prioritizing security aspects, namely in anticipating the risk of loss in the *hajj* fund investment. This includes the risk of reputation, market, operations, or an inherent one. The protection of prospective pilgrims' assets from any decrease in value becomes urgent because they are saved during the waiting period which can take place a plenty of years. If someone pays the cost this year amounting to IDR 25 million and he will go for *hajj* later in 20 years while inflation is 6% per year, there will be much money he can set aside during that period.

Table 1 also explains the ideal alignment of *hajj* financial management policies by BPKH in accordance with *Maqāṣid al-Shari'ah*. It is necessary, therefore, to manage *hajj* funds according to the objectives of *maqāṣid al-shari'ah* while maintaining integrity in the management process starting from the cost payment process among *hajj* pilgrims to the return and financial inclusion after *hajj*.<sup>27</sup> Based on the *maqāṣid al-shari'ah* concept, financial management of the *hajj* can be said to be successful if the aspects of *dharuriyat* needs are met, namely food, drink, and shelter. In the *maqāṣid al-shari'ah* perspective, management of the *hajj* funds is therefore not limited to the protection of religion (*hifz al-diin*) and property (*hifz al-maal*), but also to the sustainability of economic improvement and development. Apart from that, the value of the benefits of the funds can be used to improve infrastructure beneficial to the community. Good infrastructure will certainly have a positive impact on the national economy, social facilities, education, health, etc. This is what is expected from Indonesian BPKH's professional, responsible, and transparent management of *hajj* funds.<sup>28</sup>

### **Management of Hajj Funds; A Proposal for Indonesian Context**

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<sup>27</sup> Atika Rukminastiti Masrifah and Achmad Firdaus, "The Framework of Maslahah Performa as Wealth Management System and Its Implication for Public Policy Objectives the Emergence of Waqf Bank: A Social Welfare Alternative in Indonesia," *Media Syariah* 18, no. 2 (2016): 1-36.

<sup>28</sup> Andre Zani Deananda and Wiryaningsih, "Alternative Optimization of Hajj Fund Using Sharia Shares" 413, no. 34 (2020): 34-40, <https://doi.org/10.2991/assehr.k.200306.176>.

The *hajj* in general was regulated in Law No. 13/2008. It contains many verses about *hajj* service, including those related to the *hajj* funds. Article 1 verse 8 mentions that *hajj* cost or so called BIPIH is the cost to pay for getting *hajj* service. In practice, The Law was then completed by another one, namely a more specific Law regulating the management of *hajj* funds, the *Hajj* Financial Management Law No. 34/2014. Article 48 Paragraph 2 of the Law requires the management of *hajj* funds to accord with Sharia principles with aspects of security, prudence, useful value, and liquidity. Then, Article 49 Paragraph 1 stated that investments in *hajj* funds can be made with the approval of the BPKH supervisory board. Apart from that, several other articles in the Law become the legal basis for BPKH in making investments.<sup>29</sup>

In this talk, there are two correlating terms that are often incorrectly interchanged, namely *hajj* funds and Ummah Endowment Fund (DAU). This is likely because, in Law Number 34 of 2014, *hajj* funds are defined as funds consisting of *hajj* cost or BIPIH, efficiency funds for organizing the *hajj*, DAU, as well as the value of benefits controlled by the state in the context of organizing the *hajj* and implementing activity programs for the benefit of Muslims. Meanwhile, the DAU, which is a part of *hajj* funds, is several funds that, before the enactment of the Law, were obtained from the development of the funds and/or remaining operational costs of *hajj* as well as other sources that are *halal* and non-binding following the provisions of statutory regulations such as *zakat*, *waqf*, and other funds source.

Furthermore, Law No. 34 of 2014 mentions that the government places *hajj* funds in Sharia financial institutions which are limited to a maximum of 50%, while other funds are directly invested in Sharia instruments which are considered safe and provide much better returns. The investment of *hajj* funds becomes a must considering long queues of departure so that the *hajj* cost in the bank is made for investment to make their value not eroded by inflation. Instead, it can provide benefits to the community through, among others, DAU schemes. DAU is typically used for social activities such

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<sup>29</sup> Diseminasi BPKH (2018) Diseminasi Peran Pengawasan Keuangan Haji, *In*. [bpkh.go.id/](http://bpkh.go.id/).

as improving the quality of *hajj* services, education, *da'wa*, health, social, and economic, and religious infrastructure.<sup>30</sup>

Meanwhile, the *hajj* cost or BIPIH covers flight costs, accommodation costs in Mecca and Medina as well as living costs for *hajj* pilgrims. Each prospective *hajj* pilgrim had to deposit the initial BIPIH cost into the bank to get a portion or seat. Afterward, when it is time for departure, they will pay off according to the total BIPIH amount determined later according to the currency. The deposited fund from the initial payment of prospective *hajj* pilgrims, which has now reached 40 trillion rupiahs with an average interest of 1 trillion rupiahs managed by the Ministry of Religious Affairs, is used to subsidize the needs of *hajj* pilgrims who depart first. However, this practice has minimal legal support because, without the pilgrims' consent, the interest from their savings (through the initial payment they made) is potentially prone to irregularities and fraud as indicated by the Corruption Eradication Commission (KPK).<sup>31</sup>

Despite this, the use of deposited funds triggers various problems and/or requirements.<sup>32</sup>

First, the Ministry of Religious Affairs is publicly required to enforce accountability in managing the initial funds for registration of *hajj* candidates amounting to IDR 25,000,000.00 which is deposited from the time of getting the *hajj* portion in Siskohaj (Indonesian *hajj* application) until the time of departure. BPKH as the one that manages *hajj* funds needs to pay attention to accountability regarding transparency and how to present financial reports of managed funds. Along with that, the government and BPKH must guarantee that the deposited money will be used to provide adequate services during the *hajj* worship while ensuring that future pilgrims' financial rights are fulfilled, namely regarding to departure for *Hajj*. For instance, if a future *hajj* pilgrim cancels the departure, BPKH is required to return the deposit.<sup>33</sup>

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<sup>30</sup> Maizul Imran and Rio Satria, "Dinamika Formulasi Akad Terhadap Pengelolaan Dana Haji di Indonesia," *Alhurriyah: Jurnal Hukum Islam (Alhurriyah Journal of Islamic Law)* 3, no. 2 (2018): 141.

<sup>31</sup> Pasal 1 (1) Keputusan Presiden Nomor 22 Tahun 2001 tentang Badan Pengelola Dana Abadi Umat (BP DAU)

<sup>32</sup> Aishath Muneeza et al., "A Comparative Study of Hajj Fund Management Institutions in Malaysia, Indonesia and Maldives," *International Journal of Management and Applied Research* 5, no. 3 (2018): 120-134.

<sup>33</sup> Undang-Undang Nomor 34 Tahun 2014 tentang Pengelolaan Keuangan Haji

*Second*, the status of legal ownership of the initial funds for registration of *hajj* candidates is in question, whether it belongs to the future *hajj* pilgrims or the government as the *hajj* organizer or service provider. Therefore, it is important to make clear the legal ownership of the fund through transparent management and funding allocation considering that *hajj* deposit funds are deposited in the account of the Minister of Religion. This clear status will also affect the upcoming situation when something unexpected happens. If the registrar dies or there is a sharia obstacle that makes him/her fail to depart, then *hajj* deposit funds must be returned to prospective *hajj* pilgrims or their heirs.

*Third*, Law No. 13 of 2008 gives authority to carry out an efficiency fund, i.e. remaining funds from the operational cost of *hajj* service through the DAU which the amount is quite large. However, these funds cannot be used for investment or any other purpose because there are no government regulations regarding the management of DAU that cannot be changed since May 2005.<sup>34</sup> The policy to make efficiency funds in the *hajj* service contains legal gaps in both state and religious law. For the former, it is argued that no single clause was stated by the *hajj* pilgrims regarding the agreement on utilizing the efficiency fund. Thus, the efficiency policy is deemed to violate the law. Meanwhile, for the latter, even though the DAU aims for the benefit of people, the agreement and willingness of the whole *hajj* pilgrims is in question. It is very important to think about the pledge and agreement among the *hajj* pilgrims who willingly deposit their money to get the departure portion or seat. In dealing with the problems, namely those related to DAU and BPKH recommends the funds be returned for the interests and benefit of the *ummah*, as per the results of the *Ijtima' Ulama* of the All-Indonesian Fatwa Commission III MUI 1430 H/2009 AD in Padang Panjang, 24-26 January 2009.

*Fourth*, prospective *hajj* pilgrims might become banking business commodities with the offer of a *hajj* bailout system. In this case, prospective *hajj* pilgrims become the target to receive a loan facility numbering IDR 25,000,000.00 so that they can register to immediately receive *hajj* portions. In other words, the banking business seizes a good market opportunity to expand its customers by

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<sup>34</sup> <https://peraturan.bpk.go.id/Details/39044/uu-no-13-tahun-2005>

providing *hajj* funding to fulfill the wishes of prospective *hajj* pilgrims, so they don't get too far on the waiting list.<sup>35</sup>

In short, BPKH needs to manifest its function of carrying out planning, implementation, as well as accountability checking and reporting of *hajj* funds in compliance with sharia while prioritizing the principle of prudence, benefits-based, not seeking profits, transparency, and accountability.<sup>36</sup> The criteria for optimal, professional, and efficient management of *hajj* funds is the policy after the *hajj* season. If there is greater efficiency and benefit value, it must be returned to the *hajj* treasury belonging to the *hajj* pilgrims. Meanwhile, the transparent criteria of *hajj* funds management can be reached by involving the House of Representatives in the supervision process and BPK in the auditing stage.

Law Number 34 of 2014 concerning *Hajj* Financial Management urges the *Hajj* funds to be used for productive things and managed with high-risk mitigation. Therefore, the government can use these funds in halal sectors, namely sectors that are protected from *maisir*, *gharar*, and usury. In determining the investment sector, it needs approval from the *Hajj* financial placement supervisory board while the investment is transferred from the *Hajj* Treasury to the BPKH Treasury (*Hajj* Financial Management Agency). In fact, the government—through the Indonesian Ministry of Religious Affairs—claimed that it had managed the DAU successfully through, among others, SBSN (State Sharia Securities), including preparing documents for funding the Ministry of Religion's project through Project *Sukuk* (SBSN PBS), namely in the form of a *hajj* dormitory revitalization and development project that around IDR 200 billion. Moreover, The Minister of Finance and the Minister of Religious Affairs, on Friday, 22/11/2017 signed a revised Memorandum of Understanding (MoU) regarding the Placement of *Hajj* Funds in (SBSN).<sup>37</sup>

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<sup>35</sup> Eric Kurniawan, "Akuntabilitas Pengelolaan Dana Haji Republik Indonesia," *Jurnal Ilmiah Ekonomi Islam* 7, no. 3 (2021): 1449–56.

<sup>36</sup> Acep R Jayaprawira and Abdussalam, "Analysis of the Implementation of the Islamic Contract Principle on Hajj Fund Management by Hajj Fund Management Agency (BPKH)," *KnE Social Sciences* (2019): 628–61, <https://doi.org/10.18502/kss.v3i26.5405>.

<sup>37</sup> Anggito Abimanyu, *Naskah Akademik Rancangan Perubahan UU Nomor 13 tentang Penyelenggaraan Ibadah Haji*, 6.



Following the mandate of the Law, according to Anggito Abimanyu, BPKH's investments can be made in sharia securities investment instruments, gold, direct investment, and other investments. The wide scope of this investment is a challenge for BPKH, especially to carry out an effective investment strategy to optimize the value of its benefits. Another challenge is how to anticipate the increase in the cost of performing the *hajj* pilgrimage. Therefore, BPKH needs to carry out an investment strategy that can meet the needs of these costs through returns from various investment instruments complying with Sharia principles, prudence, and liquidity without raising the *hajj* cost.<sup>38</sup> Investment risks are borne by the government and should not disturb the process of providing good facilities for the *Hajj* pilgrims. Meanwhile, profits obtained from investments must be used for improving *hajj* facilities at specific and public benefits in general. This can be in the form of financing the construction of schools and campuses within PTKIN with the SBSN scheme.

So far, there are three main instruments for placing initial deposits for BIPIH, namely in the form of national Sharia Securities (Sukuk/SBSN), government debt securities (SUN), and Sharia-based deposits. One of the ways how the government carries out the financial management of *hajj* funds is the issuance of State Sharia Securities (SBSN), in this case, the Indonesian Hajj Fund Sukuk (SDHI) product. This accords with the decision of *Ulama Ijtima*, Indonesian Fatwa Commission IV of 2012 which mentions that deposits in the waiting list for *hajj* departure may be allocated for productive things, namely providing profits through placement in Sharia Banking or invested in the form of *sukuk*<sup>39</sup>

In line with this, according to the Director of Higher Education and Science and Technology of Bappenas (The National Development Planning Agency) RI, Hadiat,<sup>40</sup> the SBSN project initiated by the Directorate General of Islamic Education of the Ministry of Religious

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<sup>38</sup> Indin Rarasati, "Analisis Empiris Potensi Resiko Investasi Dana Haji Melalui Sukuk Dana Haji Indonesia," *Jurnal Ilmiah Ekonomi Islam* 8, no. 03 (2022): 2571-81.

<sup>39</sup> M. Rifka Maulana and Sokhikhatul Mawadah, "Management of Hajj Funds in Sukuk Investment from an Islamic Economic Perspective," *International Conference on Islamic Economic (ICIE)* 2, no. 1 (2023): 10-35, <https://doi.org/10.58223/icie.v2i1.204>.

<sup>40</sup> Enam Tahun SBSN, Bangun Gedung 57 PTKIN ([kemenag.go.id](http://kemenag.go.id))

Affairs which has succeeded in building educational infrastructure at PTKIN (State Islamic Religious College) for six years with a total budget of 7-8 trillion rupiahs should be appreciated. The implementation of educational infrastructure development through SBSN which began in 2015 until 2022 has been running well and PTKIN has benefited from that sector as well.

The importance of investment requires professionalism in its management, including its supervision process. Not only that, but the supervision also needs to be narrowed down, mainly by exploring how the benefits of the investment can be obtained both for the benefit of the institution and the pilgrims themselves. They are the basic principles of Islamic economics to support the distribution of resources and encourage investment, optimize beneficial investment, and encourage investment, optimize beneficial investment, and encourage social participation in the public interest.

### **Conclusion**

The management of *hajj* funds in the perspective of *maqāṣid al-shari'ah* has the aim of benefiting the *hajj* pilgrims not only to fulfill the obligation of the fifth pillar of Islam or maintaining religion (*hifz ad-din*), but also on other related aspects to ensure smooth running service of *hajj*. Therefore, it is suggested the deposited funds of BIPIH be managed transparently with the allocation made appropriate to the pilgrim's needs, both physical and spiritual. Other than that, in the Indonesian context, the funds are best invested in various sectors beneficial for the *ummah* with the minimum risk of loss so that it would not bear expenses for the *hajj* costs. The refinement of pledges on the use of investment or funds between pilgrims and the government is also a need. This research has limitations, especially in terms of methodology and limited analysis of formal aspects. Therefore, it is suggested that further research is needed to develop this research by examining the management of *hajj* funds in Muslim countries other than Indonesia, as well as further research using other variables to expand the study of *hajj* funds management.

### **Acknowledgment**

Researchers' gratitude expressed to the Rector and Director of the Postgraduate Program of IAIN Sheikh Nurjati Cirebon, the Rector of King Abdulaziz University, Jeddah Makkah, Saudi Arabia, and the

Rector of Ata Alma University Yogyakarta. They have supported and provided opportunities for researchers to improve their academics through research and scientific publications so that the results can be published. Researchers' gratitude was also expressed to the manager of the Al-IHKAM IAIN Madura Journal who has published the results of this research.

### **Bibliography**

- Abū Ḥamid Muḥammad ibn Muḥammad Al-Ghazālī, *Al-Mustashfā Min Ilm Al Ushūl*, Beirut: Dar Ihyā at-Turāts al-Ārabi, n.d.
- Aziz, R M. "Hahslm Theory as Guidance of Straight Path in Management of Hajj and Finance." *KnE Social Sciences* 3, no. 8 (2018): 105. <https://doi.org/10.18502/kss.v3i8.2503>.
- Bahrudin, Ahmad. "Implementasi Maqasid Al-Shari'ah Sebagai Solusi Problematika Sosial dan Kemasyarakatan Kontemporer." *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 17.1 (2017): 1-18.
- Busriyanti, Busriyanti. "Maqasid al-Syari'ah dalam Penegakkan Hukum Lalu Lintas di Indonesia." *Al-Istinbath: Jurnal Hukum Islam* 6.1 May (2021): 79-84.
- Deananda, Andre Zanj, and Wirduyaningsih. "Alternative Optimization of Hajj Fund Using Sharia Shares" 413, no. 34 (2020): 34-40. <https://doi.org/10.2991/assehr.k.200306.176>.
- Dedi, Syahrial. "Perluasan Teori Maqashid Al-Syari'ah: Kaji Ulang Wacana Hifdz Al-Ummah A. Djuzuli." *Al-Istinbath: Jurnal Hukum Islam* 1.1 June (2016): 45-62.
- Fahmi, Annas Syam Rizal. "An Analysis of Investment for Hajj Funds from Islamic Law Perspective." *Al-Iktisab: Journal of Islamic Economic Law* 1, no. 2 (2017): 131. <https://doi.org/10.21111/al-iktisab.v1i2.2388>.
- Evaluasi Pelaksanaan Haji 2023, antaranews, 6 Juli 2023, <https://www.antaranews.com/infografik/3621255/evaluasi-pelaksanaan-haji-2023>, diakses 6 Juli 2023.
- Fasa, Muhammad Iqbal, Adib Fachri, Ghina Ulfah Saefurrohman, Ahmad Hazas Syarif, and Suharto Suharto. "Economic Protection Toward Financial Management Hajj Funds: Indonesian Case." *Ad-Deenar: Jurnal Ekonomi dan Bisnis Islam* 4, no. 02 (2020): 163. <https://doi.org/10.30868/ad.v4i02.953>.
- Hamzani, Achmad Irwan, Siswanto Siswanto, and Havis Aravik.

- "Legal Protection for Hajj Pilgrims Through Regional Regulation." *Mazahib* 17.2 (2018): 61-88.
- Hasbi, M Zidny Nafi, Makhrus Munajat, and Abdul Qoyum. "A Conceptual Framework of The Islamic Human Development Index (I-HDI) and Its Relationship with Maqāṣid Al - Shari'ah." *Amwaluna: Jurnal Ekonomi dan Keuangan Syariah* 7, no. 2 (2023).  
<https://peraturan.bpk.go.id/Details/39044/uu-no-13-tahun-2005>
- Huda, Qomarul, and Ilham Dwitama Haeba. "Hajj, Istita'ah, and Waiting List Regulation in Indonesia." *Al-'Adalah* 18, no. 2 (2021): 193-212.
- Ichwan, Moch Nur. "Governing Hajj: Politics of Islamic Pilgrimage Services in Indonesia Prior to Reformasi Era." *Al-Jami'ah: Journal of Islamic Studies* 46, no. 1 (2008): 125-51.  
<https://doi.org/10.14421/ajis.2008.461.125-151>.
- Imran, Maizul, and Rio Satria. "Dinamika Formulasi Akad terhadap Pengelolaan Dana Haji di Indonesia." *ALHURRIYAH: Jurnal Hukum Islam (Alhurriyah Journal of Islamic Law)* 3, no. 2 (2018): 141. <https://doi.org/10.30983/alhurriyah.v3i2.755>.
- Jayaprawira, Acep R, and Abdussalam. "Analysis of the Implementation of the Islamic Contract Principle on Hajj Fund Management by Hajj Fund Management Agency (BPKH)." *KnE Social Sciences* 2019 (2019): 628-61.  
<https://doi.org/10.18502/kss.v3i26.5405>.
- Jumali, Endang. "Management of Hajj Funds in Indonesia." *Journal of Legal, Ethical and Regulatory Issues* 21, no. 3 (2018): 1-9.
- Kisworo, Budi. "Ibadah Haji Ditinjau dari Berbagai Aspek." *Al-Istinbath: Jurnal Hukum Islam* 2.1 June (2017): 75-98.
- Kurniadi, Dece, Jamal Wiwoho, and Hudi Asrori. "Hajj Fund Management in Perspective of the Financial Theory and Fiqh." *International Conference on Globalization of Law and Local Wisdom* 358, no. 34 (2019): 225-27. <https://doi.org/10.2991/icglow-19.2019.57>.
- Kurniawan, Eric. "Akuntabilitas Pengelolaan Dana Haji Republik Indonesia." *Jurnal Ilmiah Ekonomi Islam* 7, no. 3 (2021): 1449-56.
- Mardhatillah, Masyithah. "Specific Treatment of Elderly Pilgrims on Hajj According to Hadith; the Approach of Mukhtalif Ahadis." *Al-Ihkam: Jurnal Hukum dan Pranata Sosial* 14, no. 1 (2019): 99-123. <https://doi.org/10.19105/al-lhkam.v14i1.2290>.
- Masrifah, Atika Rukminastiti, and Achmad Firdaus. "The Framework

- of Masalah Performa as Wealth Management System and Its Implication for Public Policy Objectives the Emergence of Waqf Bank: A Social Welfare Alternative in Indonesia." *Media Syariah* 18, no. 2 (2016): 1-36.
- Maulana, M. Rifka, and Sokhikhatul Mawadah. "Management of Hajj Funds in Sukuk Investment from an Islamic Economic Perspective." *International Conference on Islamic Economic (ICIE)* 2, no. 1 (2023): 10-35. <https://doi.org/10.58223/icie.v2i1.204>.
- Maulid, Ilham, and Amirsyah Amirsyah. "Analysis of the Hajj Fund Management Based on the Fatwa of the National Sharia Council (DSN) Number 122 Concerning the Management of BPIH Fund and Special BPIH Based on Sharia Principles." *ADI Journal on Recent Innovation (AJRI)* 3, no. 1 (2021): 21-35. <https://doi.org/10.34306/ajri.v3i1.490>.
- Mira Munira, and Shinta Budi Astuti. "Indonesian Hajj Fund Management: An Overview." *Asian Journal of Accounting and Finance* 1, no. 1 (2019): 1-9.
- Muheramtohad, Singgih. "The Use of Hajj Fund for Investment Purpose: A Maqashid Sharia Approach." *Journal of Islamic Economics, Management, and Business (JIEMB)* 1, no. 1 (2020): 99-116. <https://doi.org/10.21580/jiemb.2019.1.1.3740>.
- Muneeza, Aishath, Amira Sudeen, Atiqoh Nasution, and Ratih Nurmalasari. "A Comparative Study of Hajj Fund Management Institutions in Malaysia, Indonesia and Maldives." *International Journal of Management and Applied Research* 5, no. 3 (2018): 120-34. <https://doi.org/10.18646/2056.53.18-009>.
- Nouri Kouchi, Amin, Mansour Zarra Nezhad, and Pouyan Kiani. "A Study of the Relationship between the Growth in the Number of Hajj Pilgrims and Economic Growth in Saudi Arabia." *Journal of Hospitality and Tourism Management* 36 (2018): 103-7. <https://doi.org/10.1016/j.jhtm.2016.01.008>.
- Primadhany, Erry Fitrya. "Tinjauan terhadap Tanggung Jawab Badan Pengelola Keuangan Haji (BPKH) dalam Melakukan Penempatan dan/atau Investasi Keuangan Haji." *Jurisdictie* 8, no. 2 (2018): 125. <https://doi.org/10.18860/j.v8i2.4447>.
- Rarasati, Indin. "Analisis Empiris Potensi Resiko Investasi Dana Haji Melalui Sukuk Dana Haji Indonesia." *Jurnal Ilmiah Ekonomi Islam* 8, no. 03 (2022): 2571-81.
- Rosyid, Moh. "Dinamika Haji Indonesia Sejak Era Kolonial dan

- Problematika Calon Haji Ilegal." *Jurnal Wacana Hukum Islam dan Kemanusiaan* 17.2 (2017): 241-259.
- Rustika, Rustika, Ratih Oemiati, Al Asyary, and Tety Rachmawati. "An Evaluation of Health Policy Implementation for Hajj Pilgrims in Indonesia." *Journal of Epidemiology and Global Health* 10, no. 4 (2020): 263-68. <https://doi.org/10.2991/jegh.k.200411.001>.
- Syaikhu, Syaikhu. "Istitha'ah dalam Haji (Studi Tematik Tafsir Ahkam Surah Ali Imran Ayat 97)." *El-Mashlahah* 10.1 (2020): 15-25.
- Zakiruddin, Muhammad Aziz, Kamsi, and Ahmad Bahiej. "Siyasah Syar'iyah Paradigm of Hajj Financial Management Regulation in Indonesia." *Al-Istinbath: Jurnal Hukum Islam* 7, no. 2 (2022): 531-52. <https://doi.org/10.29240/jhi.v7i2.5310>.
- Zainal, Zainal. "Regulasi Haji Indonesia dalam Tinjauan Sejarah." *JURIS (Jurnal Ilmiah Syariah)* 11.2 (2018): 96-113.