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PREFACE

First of all, let's say Thanks to Allah, who has been giving us guidance, happiness, healthy, and mercy, so we can finish this conference proceeding without any obstacles. Praise and salutation upon our prophet Muhammad saw the last messenger, the best figure of this universe; the person who was able to save us from Jahiliyah era.

We would like to extend our thanks to the invited speakers: Prof. Henning Glaser from Thammasat University, Prof. Shimada Yuzuru from Nagoya University, Hilaire Tegnau, Ph.D from Sorbone University, Prof. Topo Santoso From Indonesian University, and Dr. Sri Endah Wahyuningsih, S.H., M.H from Sultan Agung Islamic University.

This was our fourth International conference and call for paper held by Faculty of Law, Sultan Agung Islamic University. This annual conference tries to gain any information and studies done by academician and practitioner in the concerned field to be discussed as guidelines to exchange and talk about views on the most important recent on Legal Construction and Development focusing on The Role of Indigenous and Global Community in Constructing National Law happens in both developed and developing countries and its role in shaping a good future, and to discuss the challenges and practical aspects in integrating competition law enforcement and guidelines to develop legal state in accordance with the diversity of all countries around the world. We hope this conference brings benefit for both participants and our faculty.

We are pleased to have your critique, suggestion and correction in order to make us better. Finally, we do thanks to all who helped this conference. May Allah guide us to always develop useful knowledge for human being.

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The Government's Efforts Through Legal Politics In Hajj Management

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Abstract

The politics of law does not escape the formation of regulations on the implementation of hajj in Indonesia, which is a series of binding regulations between each item related to the implementation, from departure to the return of congregations. Because it involves a large number of pilgrims and a series of activities carried out both in Indonesia and in Saudi Arabia, organizing the Hajj requires a complex and interrelated management and system of organizing worship. Due to this need, the organization of the pilgrimage is then regulated in law and its implementation is carried out by the government and society. The first law regulating the implementation of the hajj pilgrimage was Law Number 17 of 1999, which was later refined by Law Number 13 of 2008 concerning the Implementation of the Hajj. The mandate given by Law No. 17 of 1999 junto Law No.13 of 2008 concerning the Implementation of Hajj, in which the Minister of Religion is given the mandate as a public task to organize the hajj in collaboration with banks receiving deposits to manage BPIH by making an agreement. As for the legal relationship between the Government (Minister of Religion) and Candidates for Hajj Pilgrims, the Ministry of Religion is the Regulator, Operator and Supervisor of Hajj organizers.

Keywords: Government Efforts, Political Law, Hajj Management.

A. INTRODUCTION

The figure of the Prophet Muhammad and his place of birth are sacred to the Indonesian Muslim community.¹ The sacredness of the place of his birth is marked by the building of the Ka'ba which is the mecca for Muslims. It is for this reason that the Muslim community in general and the Indonesian Muslim community in particular, always visit the birthplace of the Prophet Muhammad.² Various reasons for visiting the place of birth of this prophet, among others, are to perform Hajj and Umrah because they are related to or part of religious doctrines / teachings that are often used as the life goal of Muslims. Moreover, this pilgrimage to the Holy Land where Muhammad was born is the

Shari'a that has been obligatory since the time of Prophet Abraham, because of Mecca with the Ka'ba, this city has never been deserted since its existence until today.³

The world's people are attracted to Mecca because of its spiritual attraction. In Islamic law, every command, suggestion, and or prohibition in religion is accompanied by a reason and purpose⁴ will have an impact on the behavior of Muslims. The command to visit the Ka'bah is theologically based on verses of the Koran and / or the prophet's provisions and practices as stated in the hadith. The suggestion to visit Mecca is contained in the holy verses of the Koran using *sighat'amar* or orders to carry out Hajj and Umrah.

Indonesia, as a country with the largest Muslim population in the world and as the largest population to carry out Hajj, is very interested in responding to Saudi

¹ Marshall G. S. Hodgson, *The Venture of Islam Iman dan Sejarah dalam Peradaban Dunia*, terj. Mulyadhi Kartanegara (Jakarta: Paramadina, 2002),, p. 202

² Saudi Gazette, Saudi Arabia has hosted 25 million hajj pilgrims in 10 years ', Al Arabiya net. 19 October 2014.

<https://english.alarabiya.net/en/perspective/features/2014/10/19/Saudi-Arabiahosted-25m-hajj-pilgrims-in-past-10-years.html>

³ Saiful Hamiwanto (Editor), *Bimbingan Islam untuk Hidup Muslim*, Jakarta: Maghfirah Pustaka, 2014, p. 216.

⁴ Abd al-Wahhab Khallaf, *Ilm Ushul al-Fikih*, (Cairo, Dar al-Qalam: 1978), p. 216.

Arabia's foreign policy and in discussing regulations related to Hajj and Umrah. Indonesia must play an active role in responding to Saudi Arabia's foreign policy related to the implementation of Hajj and Umrah. The Indonesian government must consider the existence of regulations with several aspects, including social, political, economic, cultural, educational, and other interests, all of which aim to serve the pilgrims.

The politics of law does not escape the formation of regulations on the implementation of hajj in Indonesia, which is a series of binding regulations between every item related to the implementation, from departure to the return of congregations. Law is a political product, so when discussing legal politics it tends to describe the political influence on law or the influence of the political system on legal development. Bellfroid defines *rechtpolitiek*, namely the process of forming *ius contitutum* (positive law) from *ius contituendum* (laws that will and must be established) to meet the needs of changes in people's lives. Legal politics is sometimes also associated with public policy (public policy) which, according to Thomas Dye, is: "whatever the government choose to do or not to do".⁵

The administration of Hajj and Umrah is a national duty and is the responsibility of the government under the coordination of the Ministry of Religion. The government, in this case the Ministry of Religion, is obliged to carry out services, guidance and protection as best as possible with a good system and management.⁶

B. PROBLEM FORMULATION

⁵ Siti Nur Intihani, *Pengaruh Politik Dalam Pembentukan Hukum Islam di Indonesia*, Jurnal Program Pasca Sarjana Ilmu Hukum, Vol.6 No.2, 2020, p. 117

⁶ Taufiq Kamil, *Dirjen Bimas Islam Dan Penyelenggaraan Haji (BPIH) dari tahun ke tahun Faktual atau Komersial*, Media Indonesia, Edisi Selasa, 9 Juli 2002, p. 9.

Based on the background of the problem above, a problem formulation is formed in the form of:

- 1) What is the government's effort through legal politics in managing Hajj in Indonesia?
- 2) How are government stakeholders related to the legal products of Hajj management in Indonesia?

C. DISCUSSION

1. Government Efforts through Political Law in Hajj Management in Indonesia

The implementation of the hajj pilgrimage since the colonial period was basically based on Dutch regulations, namely *Pelgrims Ordonnatie Staatsblaads 1922* number 698 including changes and additions and *Pelgrims Verordening* in 1938. Arrangements for organizing the Indonesian hajj have been carried out since the colonial era until today. The difference is that in the colonial era it contained very strong political nuances, namely on the one hand to win over the hearts of Indonesian Muslims and on the other hand, it was intended to monitor and control the hujjaj so as not to harm colonial interests. For this purpose, the Dutch Government, among other things, established burdensome provisions for the congregation and opened a Consulate office in Jeddah in 1872.⁷

The implementation of the hajj pilgrimage is not only related to a series of ritual activities, but also related to a series of other activities such as registration, guidance for hajj, accommodation services, catering, land and air transportation, health, and protection of congregations, both domestic and local. in Saudi Arabia. The entire series of activities must be able to be carried out so that the congregation can carry out their Hajj smoothly, comfortably and safely so that they

⁷ Ajeng Dewi P.S, *Tinjauan Yuridis Tanggung Jawab Kementerian Agama Dalam Pelaksanaan Ibadah Haji*, Tesis, Magister Ilmu Hukum, UII Yogyakarta, 2015, p. 25

can return to their homeland and get the Hajj mabrur.

Because it involves a large number of pilgrims and a series of activities carried out both in Indonesia and in Saudi Arabia, organizing the Hajj requires a complex and interrelated management and system of organizing worship. Due to this need, the organization of the pilgrimage is then regulated in law and its implementation is carried out by the government and society. The first law regulating the implementation of the haj pilgrimage was Law Number 17 of 1999, which was later refined by Law Number 13 of 2008 concerning the Implementation of the Hajj.⁸

Political reform has indeed changed many aspects of the life of the nation and state, including changes in government management to a more democratic, transparent and not centralized direction, including changes to Law Number 17 of 1999 with the issuance of Law Number 13 of 2008 concerning the implementation of the haj pilgrimage which consists of 17 chapters and 69 articles, which later underwent revisions with the issuance of Law Number 34 of 2009 concerning the appointment of government regulations in lieu of Law Number 2 of 2009 concerning amendments to Law Number 13 of 2008 concerning the implementation of the haj pilgrimage to Law .The birth of Law Number 34 of 2009 in order to overcome the occurrence of the Saudi Arabian government policy which stipulates that starting from 1430 H / 2009 M pilgrims from all countries who are going to perform the pilgrimage must use an ordinary passport that is valid internationally, including pilgrims. Indonesian Hajj.⁹

Law Number 13 of 2008 concerning the Implementation of the Hajj has regulated various policies related to the implementation

of the haj pilgrimage but these policies are no longer sufficient to serve as the basis for organizing the Hajj. As a result, there were various problems surrounding the holding of the haj pilgrimage. Therefore, it is not an exaggeration to say that the various problems that have arisen and plague the holding of worship can only be resolved by revising Law Number 13 of 2008.

The amendment of the law must cover all aspects of the haj pilgrimage, starting from the objectives and principles of organizing the haj pilgrimage, the rights and obligations of pilgrims, organizing organizations, organizing committees, haj pilgrims, supervisors of the haj pilgrimage, determining and discussing BPIH, the registration process and the determination of quotas. , guidance for Hajj rituals and other technical guidance, health services, immigration services, transportation, luggage, accommodation, catering, organizing special hajj pilgrimages, and organizing Umrah pilgrimages outside the haj season.¹⁰

2. The Relationship between Government Stakeholders and Legal Products for Hajj Management in Indonesia

The administration of Hajj and Umrah is a national duty and is the responsibility of the government under the coordination of the Ministry of Religion. The government, in this case the Ministry of Religion, is obliged to carry out services, guidance and protection as best as possible with the system and good management. As is the case in the activities of organizing the Indonesian haj, the government through the Ministry of Religion of the Republic of Indonesia continues to make improvements in carrying out services for organizing the Hajj in Indonesia.

It is explicitly stated in article 5 of Law Number 17 of 1999 that "The implementation of the pilgrimage aims to provide the best possible guidance, service and protection through a good management

⁸ Nashuddin, *Sistem Pelayanan Haji pada Kementerian Agama Provinsi Nusa Tenggara Barat*, dalam *Jurnal Penelitian Keislaman*, Vol. 7, No. 2, Juni 2011, p. 453-478

⁹ M. Gazali Suyuti, *Problematika Pelaksanaan Ibadah Haji*, Cet. I; Makassar: Alauddin University Press, 2013, p. 166

¹⁰ Achmad Muchaddam Fahham, *Penyelenggaraan Ibadah Haji: Masalah dan Penanganannya*, *Jurnal Hukum*, Vol.20 No.3 September 2015, p. 214

system and management so that the implementation of the pilgrimage can run safely, orderly, smoothly, and comfortable according to religious guidance and pilgrims can perform their worship independently so that the haji mabrur is obtained.

From the provisions stated in article 5 of Law Number 17 of 1999, it can be clearly concluded that the philosophy of regulating the implementation of the haj pilgrimage has the main objective of providing the best possible guidance, service and protection to the pilgrims through a good management system and management. However, the mandate of a good implementation system and management is still inconsistent between *das sein* and *das sollen* at the level of implementation in the field.

As stated in Article 8 paragraph (2) of Law Number 13 Year 2008, it is clear that policies and implementation of the haj pilgrimage are national duties and are the responsibility of the government. On that basis, the government is obliged to provide guidance, service and protection by providing the facilities, conveniences, security and comfort required by every citizen who is going to perform the haj pilgrimage.

Therefore, the basis for some of the explanations of the description of Article 5 of Law Number 17 of 1999, Article 8 paragraph (2) and Article 10 paragraph (1) of Law Number 13 of 2008, the government or the Ministry of Religion is the organizer of the haj pilgrimage as a state institution. carry out the service function and authorization of the hajj in Indonesia.

The mandate given by Law No. 17 of 1999 junto Law No.13 of 2008 concerning the Implementation of Hajj in which the Minister of Religion is given the mandate as a public task to conduct Hajj in collaboration with banks that receive deposits to manage BPIH by making an agreement (MoU) in which both parties the parties jointly hold

discussions on matters that need to be agreed upon to be further outlined in the MoU.¹¹

The form of agreement above tends to balance the rights and obligations of both parties, but in practice its implementation depends on the loyalty and commitment of each party as well as compliance with the agreements that have been made jointly which are affected by the sanctions contained in the MoU.

As for the legal relationship between the Government (Minister of Religion) and Candidates for Hajj Pilgrims, the Ministry of Religion as the Regulator, Operator and Supervisor of Hajj organizers further in Article 2 of Law No. 13 of 2008 concerning the Implementation of Hajj, it is stated that the implementation of the Hajj is carried out based on the principles of justice, professionalism and accountability with the principle of non-profit.

D. CONCLUSION

1. Because it involves a large number of pilgrims and a series of activities carried out both in Indonesia and in Saudi Arabia, organizing the Hajj requires a complex and interrelated management and system of organizing worship. Due to this need, the organization of the pilgrimage is then regulated in law and its implementation is carried out by the government and society. The first law regulating the implementation of the haj pilgrimage was Law Number 17 of 1999, which was later refined by Law Number 13 of 2008 concerning the Implementation of the Hajj;
2. The mandate given by Law No. 17 of 1999 junto Law No.13 of 2008 concerning the Implementation of Hajj, in which the Minister of Religion is given the mandate as a public task to organize the hajj in collaboration with banks receiving deposits to manage BPIH by making an

¹¹ Burhanudin, *Sistem Pengelolaan BPIH Menurut Perspektif Hukum Positif di Indonesia*, Universitas Mataram, Jurnal IUS, Vol.II No.4, April 2014, p. 133

agreement. As for the legal relationship between the Government (Minister of Religion) and Candidates for Hajj

Pilgrims, the Ministry of Religion is the Regulator, Operator and Supervisor of Hajj organizers.

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